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FIRST SESSION

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United States of America

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## HOUSE OF REPRESENTATIVES—*Tuesday, November 21, 1989*

The House met at 9 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Our hearts are filled with gratitude, O God, for the gifts of this season—for food and family, for fellowship and reunion and for all the blessings of freedom that have been our heritage and now give new hope to people from other lands. We also give thanks for the institutions of our democracy, where people are free to do the works of justice and mercy. Bless, O gracious God, those who labor in this place, those who serve as the representatives of the people of our Nation. Give to them and to all who enjoy the liberties of your good world the full measure of your grace, now and evermore.

The Lord bless us and keep us.

The Lord make His face shine on us and be gracious to us.

The Lord look upon us with favor and give us peace. Amen.

### THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

### PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Mississippi [Mr. TAYLOR] come forward and lead the House in the Pledge of Allegiance.

Mr. TAYLOR led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 2134. An act to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to authorize the distribution of wholesome meat and poultry products for human consumption that are not in compliance with the acts to charity and public agencies;

H.R. 3670. An act to authorize the expansion of the membership of the Superior Court of the District of Columbia from 50 associate judges to 58 associate judges;

H.R. 3743. An act making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1990, and for other purposes; and

H.R. 3746. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1990, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 2712), "An act to facilitate the adjustment or change of status of Chinese nationals in the United States by waiving the 2-year foreign residence requirement for 'J' nonimmigrants."

The message also announced that the Senate agrees to the amendments of the House to the amendment of the Senate to the bill (H.R. 1502), "An act to authorize the appropriation of funds to the District of Columbia for additional officers and members of the Metropolitan Police Department of the District of Columbia, and to provide for the implementation in the District of Columbia of a community-oriented policing system."

The message also announced that the Senate agrees to the amendment of the House to the bill (S. 892) entitled "An act to exclude agent orange settlement payments from countable income and resources under Federal means-tested programs."

**NOTICE**

A final issue of the daily Congressional Record for the first session of the 101st Congress will be published after the sine die adjournment in order to permit Members to revise and extend remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–220 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m., through December 8. The final issue will be dated December 8, 1989 and will be delivered on December 11.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event, that occurred after the adjournment date.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record during the adjournment may do so by contacting the Congressional Printing Management Division, at the Government Printing Office, on 275–2226, between the hours of 8:00 a.m. and 4:30 p.m. daily.

By order of the Joint Committee on Printing.

WENDELL H. FORD, *Chairman.*

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1610. An act to develop a program to determine potential impacts of climate change on agriculture and forestry, to provide for the development of policies designed to address issues of potential climate change, with respect both to developing a capacity for agriculture and forestry to adapt to climate change, and to developing innovative ways to ameliorate climate change, and for other purposes.

## PRIVATE CALENDAR

The SPEAKER pro tempore (Mr. MURTHA). This is the day for the call of the Private Calendar. The Clerk will call the individual bill on the Private Calendar.

## AUTHORIZING CERTIFICATE OF DOCUMENTATION FOR COASTWISE TRADE FOR VESSEL "JAMAL"

The Clerk called the bill (H.R. 3133) to authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel *Jamal.*

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

## ACTION NEEDED ON BRADY BILL

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, in September 1988, the House, over my objection, rejected the Brady bill, which as we remember would have called for a national 7-day waiting period before certain kinds of firearms would be available for sale or transfer.

In its place, the House adopted language which directed the Justice Department to make a study and recommendations of systems which could be used by gun dealers in order to identify those people who should not receive firearms, such as convicted felons, the mentally incompetent, and drug abusers.

This report is now in, Mr. Speaker. The Attorney General, Mr. Thornburgh, has reported that there is no way to have a computerized identification system until the Nation's criminal records files are brought up to date. This could take as long as 3 years.

Mr. Speaker, I really think we need a Brady-type waiting period on the Nation's statute books much in advance of the 3-year period that would be necessitated under the recent recommendation of the Attorney General.

I would hope that when we return in the 1990 session that the House will take up very quickly two pieces of very important national safety legislation:

One, the Brady bill to call for a national 7-day waiting period before handguns could be purchased or transferred.

And, with respect to my city of Louisville which experienced a terrible carnage some months ago at the hands of a person using an AK-47 assault weapon, I would hope that the House would come to grips with the assault weapons issue and on a sensible bill restraining their availability.

These are two very important issues, Mr. Speaker, facing Congress when we come back in 1990.

## SEQUESTRATION IS BETTER THAN RECONCILIATION

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, sometime today we hope the House will take up the matter of reconciliation. We should remind ourselves that this reconciliation package is in existence for the purpose hopefully of reducing the deficit that is projected.

When we compare what will take place if reconciliation does not pass with what would take place under sequestration, the facts are quite revealing. If we do not adopt reconciliation today, we will lower the entire base of Federal spending so that over the course of 5 years we will have reduced the deficit by $91.1 billion.

If we adopt the reconciliation package, on the other hand, over that same 5 years we will have reduced the deficit by some $15.9 billion.

It is obvious that the taxpayers of this country, the overburdened bearers of debt, are better off by leaving sequestration in place and not adopting the reconciliation package.

I would urge my colleagues to do precisely that.

The rationale is quite simple. Sequestration, now in effect, which will continue, lowers the entire base of Federal spending so that over the next 5 years we will have saved $91.1 billion in reductions of the deficit.

## GOOD NEWS FOR COUPLES WANTING CHILDREN

(Mr. WYDEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WYDEN. Mr. Speaker, today there is some very good news for the many, many couples in our country who are trying to conceive a child. We have just received word from San Francisco that the American Fertility Society has voted to survey the clinics that do in-vitro fertilization, commonly known as the test tube conception of children, and make these results available to the public. Up until recently, this data has been kept secret, and couples wanting children have found it incredibly difficult to get good, factual, information about the success rates of fertility clinics.

Earlier this year, the Small Business Subcommittee on Regulation, which I chair, surveyed these clinics and published their success rates for the first time. The subcommittee also asked the American Fertility Society to accept the responsibility of regularly surveying the clinics in the future—and to make the results of these surveys public.

To their credit, the American Fertility Society has just agreed to the subcommittee's request. The many couples who are desperate to have a child, who spend thousands and thousands of dollars on fertility treatments will finally be able to get good information about a fertility clinic's performance and the type of medical problem that clinic is best equipped to handle.

American families are entitled to the facts about our health care system, and I look forward to working with the American Fertility Society to ensure that crucial information about in-vitro fertilization gets out to the American people.

□ 0910

## TRIBUTE TO THE FAIRLESS HIGH SCHOOL WIND ENSEMBLE

(Mr. REGULA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REGULA. Mr. Speaker, on December 12-16, the Fairless High School wind ensemble will travel to Chicago to perform in the 43d Annual Mid-West International Band and Orchestra Clinic, considered by many as the school music "Super Bowl". As an alumnus of the Fairless school district, I feel great pride in their achievements.

Under the direction of Clarence Crum, the 9-year Fairless band director, the ensemble has practiced and worked its way to being one of the best school music ensembles in the Midwest and its accomplishments are very praiseworthy. These students compromise 1 of 14 ensembles selected to perform.

In Chicago, they will perform a newly published composition by Georgia State University Prof. James Curnow, "Sinfonietta". Curnow, described by Crum as one of the country's top five band composers, visited Fairless November 3 to rehearse the piece for the concert.

The Fairless High School wind ensemble is proof that bigger is not always better, because Fairless will probably be one of the smallest schools to perform at the clinic.

It has always been Mr. Crum's dream to have a band play at the clinic, and because of his and the students dedication and hard work, he will live that dream on December 12.

## WELCOME TO THE RED ARMY CHORUS

(Mr. DINGELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, Washington is honored by many distinguished visitors. We are particularly pleased that we are being visited at this time in Washington by the Red Army Chorus, one of the great musical and one of the great entertainment institutions, not only of Russia but of the world. They have had a very successful visit here.

Mr. Speaker, as my colleagues know, they are extraordinary for both music, their dance, and for exemplifying the great culture of the country from which they come. We hope that their visit here is successful and happy, and it is our hope that their visit will strengthen the relationship and increase the friendship between our two countries.

I know that every American joins me in welcoming this distinguished band of musicians, dancers, singers, and specialists in carrying forward the great culture of the wonderful nation which they represent.

Mr. Speaker, I am sure Americans join me in welcoming them and wishing them a successful and happy visit.

## A WORD OF CAUTION

(Mr. LEWIS of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of California. Mr. Speaker and my colleagues, a word of caution. It was only a week ago that we joined together in celebration of Lech Walesa's wonderful speech in these Chambers. He talked of freedom and hope and opportunity in Poland. Almost within hours the Secretary of Defense suggested the possibility of significant reductions in our defense budget.

Mr. Speaker, we should remember that the problems of Poland's economy are largely the result of awesome debt owed to the Soviet Union. Virtually 95-plus percent of that debt is in Soviet currency. The Soviet Union is desperate for Western capital.

We should make certain assistance sent to Poland is used to provide help for the people of Poland rather than a back door subsidy for a failed Soviet economy.

At the moment some suggest major cuts in our defense budget, Soviet Migs are being delivered in Cuba. There is ample evidence that arms used by guerrillas in El Salvador still flow from Cuba. The world is fascinated by the appearance of change in Eastern Europe, but it would appear that Soviet intentions in our own hemisphere remain the same.

We close this first session of the 101st Congress in celebration—lest we err by wishing the worlds' problems away I suggest to my colleagues—a word of caution.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker signed the following enrolled bills on Monday, November 20, 1989:

H.R. 3072. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 1990, and for other purposes; and

H.R. 3566. An act making appropriations for the Departments of Labor, Health and Human Services, and related agencies, for the fiscal year ending September 30, 1990, and for other purposes.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker signed the following enrolled bill earlier today:

H.R. 3746. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said district for the fiscal year ending September 30, 1990, and for other purposes.

## RECESS

The SPEAKER pro tempore. Pursuant to the order of the House of Monday, November 20, 1989, the Chair declares the House in recess subject to the call of the Chair. Bells will be rung 15 minutes before the House reconvenes.

Accordingly (at 9 o'clock and 16 minutes a.m.), the House stood in recess.

□ 1200

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 12 o'clock and 5 mintues p.m.

## CLARIFICATION ON LEVERAGING PROVISION

(Mr. OBEY asked and was given permission to address the House for 1 minute.)

Mr. OBEY. Mr. Speaker, last night I had a conversation with the Secretary of State concerning the dispute between the administration and Congress over a general provision, section 582, on the leveraging of foreign aid funds. The general provision is included in the fiscal year 1990 foreign operations, export financing and related programs appropriations bill that was approved yesterday by both the House and the Senate. As a result of this conversation I would like to make one additional point in order to make clear the language of section 582.

Subsection a of the leveraging general provision indicates that none of the funds appropriated by this act can be provided in exchange for the recipient undertaking any action which, if carried out by U.S. Government officials, would be expressly prohibited by a provision of U.S. law. In that section the word "exchange" should be understood to refer to a direct verbal or written agreement.

Mr. Speaker, this provision in the bill is, therefore, to prohibit the expenditure of foreign aid assistance in a manner that is prohibited by U.S. law. It is not an attempt to hamstring government officials in the course of their normal duties or to make them vulnerable to wayward or runaway prosecutors. It is simply an attempt to make sure that specific prohibitions written into U.S. law and signed by the President would not be subverted.

Mr. Speaker, I am joined in this statement, I should say, by the gentleman form Oklahoma [Mr. EDWARDS], the ranking Republican member of the subcommittee who participated with me in the final drafting of section 582.

I should also say that I am certainly willing at any time next year to sit down and discuss any legitimate concerns that the administration might have with any particular piece of this language, with no commitments on either side, but certainly the committee is willing to at any time discuss any specific problems that the administration might feel it would have.

## FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment concurrent resolutions of the House of the following titles:

H. Con. Res. 167. Concurrent resolution authorizing the printing of the book entitled "Women in Congress";

H. Con. Res. 168. Concurrent resolution authorizing the printing of the book entitled "The U.S. Capitol: A Brief Architectural History";

H. Con. Res. 169. Concurrent resolution authorizing the printing of the book entitled "Origins of the House of Representatives: A Documentary Record";

H. Con. Res. 170. Concurrent resolution authorizing the printing of the book entitled "Black Americans in Congress"; and

H. Con. Res. 193. Concurrent resolution authorizing the printing of the brochure entitled "How Our Laws Are Made".

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2783. An act to improve the management of certain public lands in the State of Minnesota, and

H.R. 3259. An act to amend the Immigration and Nationality Act to provide for adjustment of status, without regard to numerical limitations, for certain H-1 nonimmigrant nurses and to establish conditions for the admission, during a 5-year period, of nurses as temporary workers.

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 974) entitled "An act to designate certain lands in the State of Nevada as wilderness, and for other purposes," with an amendment.

The message also announced that the Senate agrees to the amendments of the House to the bill (S.J. Res. 164) entitled "An act designating 1990 as the 'International Year of Bible Reading'."

The message also announced that the Senate agrees to the amendments of the House to the amendments of the Senate to the bill (H.R. 901) "An act to amend title 38, United States Code, to improve programs for the recruitment and retention of health-care personnel of the Department of Veterans Affairs, to extend certain expiring programs of that Department, and for other purposes."

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate to the bill (H.R. 972) entitled "An act to amend section 3724 of title 31, United States Code, to increase the authority of the Attorney General to settle claims for damages resulting from law enforcement activities of the Department of Justice."

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1121. An act to authorize additional appropriations for the construction of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming, and

S. 1524. An act to amend the Wild and Scenic Rivers Act of 1968 by designating segments of the Pemigewasset River in the State of New Hampshire for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes.

## MEDICARE CATASTROPHIC COVERAGE REPEAL ACT OF 1989

Mr. ROSTENKOWSKI. Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 3607) to repeal Medicare provisions in the Medicare Catastrophic Coverage Act of 1988, with a Senate amendment thereto, and that the House further insist on its disagreement to the Senate amendment.

The Clerk read the title of the bill.

The text of the Senate amendment is as follows:

Senate amendment: Strike out all after the enacting clause and insert:

*SECTION 1. SHORT TITLE.*

*This title may be cited as the "Medicare Catastrophic Coverage Reform Amendments of 1989".*

*TITLE I—PROVISIONS RELATING TO PART A OF MEDICARE PROGRAM AND SUPPLEMENTAL MEDICARE PREMIUM*

*SEC. 101. REVISION OF EXTENDED CARE SERVICES BENEFITS.*

*(a) 100 DAYS DURING EACH SPELL OF SNF CARE.—Section 1812 of the Social Security Act (42 U.S.C. 1395d) is amended—*

*(1) by amending paragraph (2) of subsection (a) to read as follows:*

*"(2)(A) post-hospital extended care services for up to 100 days during any spell of snf care, and (B) to the extent provided in subsection (f), extended care services that are not post-hospital extended care services;";*

*(2) by amending paragraph (1) of subsection (b) to read as follows:*

*"(1) post-hospital extended care services furnished to the individual during a spell of snf care after such services have been furnished to the individual for 100 days during such spell, or";*

*(3) in subsection (e), by inserting "post-hospital" before "extended care"; and*

*(4) by adding at the end the following new subsection:*

*"(f)(1) The Secretary shall provide for coverage, under clause (B) of subsection (a)(2) of this section, of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the inclusion of such services will not result in any increase in the total of payments made under this title and will not alter the acute care nature of the benefit described in subsection (a)(2).*

*"(2) The Secretary may provide—*

*"(A) for such limitations on the scope and extent of such services described in subsection (a)(2)(B), and on the categories of individuals who may be eligible to receive such services, and*

*"(B) notwithstanding sections 1814, 1861(v), and 1886 for such restrictions and alternatives on the amount and methods of payment for services described in such subsection,*

*as may be necessary to carry out paragraph (1).".*

*(b) COINSURANCE.—Paragraph (3) of section 1813(a) of such Act (42 U.S.C. 1395e(a)) is amended to read as follows:*

*"(3) The amount payable for post-hospital extended care services furnished an individual during any spell of snf care shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which the individual is furnished such services after such services have been furnished to the individual for 20 days during such spell.".*

*(c) CONFORMING AMENDMENTS AND RESTORATION OF LAW.—*

*(1) SPELL OF SNF CARE DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by inserting before subsection (b) the following new subsection:*

*"Spell of SNF Care*

*"(a) The term 'spell of snf care' with respect to any individual means a period of consecutive days—*

*"(1) beginning with the first day (not included in a previous spell of snf care) (A) on which such individual is furnished extended care services, and (B) which occurs in a month for which the individual is entitled to benefits under part A, and*

*"(2) ending with the close of the first period of 60 consecutive days thereafter on each of which the individual is not an inpatient of a skilled nursing facility.".*

*(2) CONFORMING AMENDMENTS.—(A) Except as provided in subparagraph (B)—*

*(i) the amendments made by subsection (d) of section 104 of the Medicare Catastrophic Coverage Act of 1988 are repealed, and*

*(ii) the provisions of the Social Security Act amended by such subsection shall be restored and revived as if such amendments had not been made.*

*(B) Subparagraph (A) shall not apply to the amendments made by paragraphs (2)(C), (2)(D), (3), (4)(A), (4)(B)(iii), (4)(B)(iv), and (7) of section 104(d) of the Medicare Catastrophic Coverage Act of 1988.*

*(3) ADDITIONAL CONFORMING AMENDMENT.—Title XVIII of the Social Security Act is amended by striking "spell of illness" and "spells of illness" each place either appears and inserting "spell of snf care" and "spells of snf care", respectively.*

*(d) EFFECTIVE DATE AND TRANSITION.—*

*(1) EFFECTIVE DATE.—Except as provided in this subsection, the amendments made by this section shall apply to extended care services furnished in a spell of snf care (as defined in paragraph (4)) beginning on or after December 1, 1989.*

*(2) TRANSITION FOR INDIVIDUALS IN CURRENT SPELL OF SNF CARE.—In the case of an individual who is in a current spell of snf care—*

*(A) the number of days of coverage of extended care services (furnished during such spell and on or after December 1, 1989) to which the individual is entitled under part A of title XVIII of the Social Security Act shall not exceed 150 less the number of days for which benefits for extended care services were payable under such part for the individual in 1989 before December 1, and*

*(B) in applying section 1813(a)(3) of such Act (as in effect before the enactment of this Act), extended care services furnished during such spell during 1990 shall be considered to have been furnished in 1989.*

*In this paragraph, the term "current spell of snf care" means a spell of snf care which began before December 1, 1989, which includes such date, and for which benefits for extended care services under part A of title XVIII of the Social Security Act were payable before such date.*

*(3) LIMITATION ON OVERLAPPING BENEFITS.—*

(A) In no case shall paragraph (1) result in an individual being entitled to benefits for extended care services under part A of title XVIII of the Social Security Act for more than 150 days during 1989.

(B) If an individual, but for subparagraph (A), would be entitled to benefits for extended care services under such part for more than 150 days in 1989, in determining the number of days of benefits for such services in 1990 during a spell of snf care and the days on which coinsurance applies under section 1813(a)(1) of the Social Security Act, those days in 1989 in the spell of snf care on which benefits would have been provided but for subparagraph (A) shall not be counted.

(4) SPELL OF SNF CARE DEFINED.—In this subsection, the term "spell of snf care" has the meaning given such term in section 1861(a) of the Social Security Act, as amended by subsection (c)(1) of this section. Days before December 1, 1989, are included in the determination of spells of snf care.

(e) STUDY.—The Comptroller General shall study the reasons for the unexpected increase in cost estimates of the extended care services benefit under title XVIII of the Social Security Act. Not later than February 1, 1990, the Comptroller General shall submit a report to Congress describing the results of the study.

SEC. 102. REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM AND FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.

(a) IN GENERAL.—Sections 111 and 112 of the Medicare Catastrophic Coverage Act of 1988 are repealed and the provisions of the Internal Revenue Code of 1986 and the Social Security Act amended by such sections shall be restored and revived as if such sections had not been enacted.

(b) DISPOSAL OF FUNDS IN FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.—Any balance in the Federal Hospital Insurance Catastrophic Coverage Reserve Fund as of the date of the enactment of this Act shall be transferred into the Federal Hospital Insurance Trust Fund and any amounts payable due to overpayments into such Trust Fund shall be payable from the Federal Hospital Insurance Trust Fund.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the provisions of this section shall take effect on the date of the enactment of this Act.

(2) REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.—The repeal of section 111 of the Medicare Catastrophic Coverage Act of 1988 shall apply to taxable years beginning after December 31, 1988.

## TITLE II—PROVISIONS RELATING TO PART B OF THE MEDICARE PROGRAM

SEC. 201. REPEAL OF LIMITATION ON MEDICARE PART B COST-SHARING.

Subsections (a)(4), (b), and (c) of section 201 of the Medicare Catastrophic Coverage Act of 1988 are repealed and the provisions of the Social Security Act amended by such subsections shall be restored and revived as if such subsections had not been enacted.

SEC. 202. LIMITATION ON COVERED OUTPATIENT DRUGS AND DELAY IN DRUG-RELATED BENEFITS.

(a) LIMITATION OF DRUG BENEFITS TO IMMUNOSUPPRESSANTS AND HOME IV DRUGS.—Section 1861(t) of the Social Security Act (42 U.S.C. 1395x(t)) is amended—

(1) in paragraph (3)(B), by striking "in 1990" and inserting "in years after 1990", and

(2) in paragraph (4)(B), by striking "1990" and inserting "1991".

(b) DELAY IN DRUG-RELATED BENEFITS.—

(1) COVERED OUTPATIENT DRUGS.—Section 202(m)(1) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(2) HOME INTRAVENOUS DRUG THERAPY SERVICES.—Section 203(g) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(c) CONFORMING AND MISCELLANEOUS AMENDMENTS TO PAYMENT PROVISIONS.—

(1) CATASTROPHIC DRUG DEDUCTIBLE AMOUNT.—Section 1834(c)(1)(C) of the Social Security Act, as added by section 202(b)(4) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(A) by amending clause (i) to read as follows:

"(i) IN GENERAL.—The catastrophic drug deductible specified in this subparagraph for—

"(I) 1991 is $550, and

"(II) any succeeding year, is the catastrophic drug deductible for the previous year increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) applicable to physicians' services furnished in that succeeding year."; and

(B) in clause (iii), by striking "1992" and inserting "1991".

(2) COINSURANCE PERCENT.—Section 1834(c)(2) of such Act is amended—

(A) in subparagraph (B), by striking "100 percent" and all that follows and inserting "80 percent", and

(B) by striking subparagraphs (C) and (D).

(3) MISCELLANEOUS DELAYS.—Section 1834(c) of such Act is further amended—

(A) in paragraph (3)(A), by striking "1992" and inserting "1993", and

(B) in paragraphs (3)(C)(i) and (3)(C)(ii)(I), by striking "1990" and inserting "1991".

(4) ADMINISTRATIVE DISPENSING ALLOWANCE.—Clause (i) of section 1834(c)(4)(A) of such Act is amended to read as follows:

"(i) in 1991, the administrative allowance under this paragraph is $4.50; or".

(5) REPEAL OF SPECIAL TREATMENT OF PREPAID ORGANIZATIONS AND PHYSICIAN GUIDE.—Section 1834(c) of such Act is further amended by striking paragraphs (6) and (7).

(6) CHANGE IN REPORTING REQUIREMENTS.—Section 1834(c)(8) of such Act is amended—

(A) in subparagraph (B), by striking "in May and November of 1989 and 1990 and in May of each succeeding year" and inserting "in May of each year (beginning with 1990)", and

(B) by striking subparagraphs (C) through (F).

(7) DELETION OF EXTRANEOUS DEFINITION.—Section 1834(c)(9) of such Act is further amended by striking subparagraph (D).

(d) DELETION OF PROVISIONS RELATING TO PARTICIPATING PHARMACIES, SPECIAL ADMINISTRATIVE PROVISIONS, AND MODIFICATION OF HMO/CMP CONTRACTS.—Subsections (c), (e), and (f) of section 202 of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Social Security Act amended by such subsections shall be restored and revived as if such subsections had not been enacted.

(e) REPEAL OF REQUIREMENT FOR REESTIMATION OF COSTS, ADDITIONAL STUDIES, AND DEVELOPMENT OF STANDARD CLAIMS FORM.—Paragraph (2) of subsection (i), subsection (k), and subsection (l) of section 202 of the Medicare Catastrophic Coverage Act of 1988 are repealed.

(f) REPEAL OF PRESCRIPTION DRUG PAYMENT REVIEW COMMISSION.—

(1) IN GENERAL.—Section 1847 of the Social Security Act (42 U.S.C. 1395w-3), as added by section 202(j) of the Medicare Catastrophic Coverage Act of 1988, is repealed.

(2) TRANSITION.—The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act, but the Prescription Drug Payment Review Commission is authorized to continue its activities for 30 days after such date to conclude its business.

(g) CONFORMING DELAYS TO PROVISIONS RELATING TO HOME INTRAVENOUS DRUG THERAPY SERVICES.—

(1) Section 1834(d)(2) of the Social Security Act, as added by section 203(c)(1)(F) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1990" and inserting "1991".

(2) Section 203(c)(2) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1991" and inserting "1992".

(3) Section 1835(a)(2)(G) of the Social Security Act, as inserted by section 203(d)(1)(C) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1993" and inserting "1994".

(4) Section 1154(a)(16) of the Social Security Act, as added by section 203(d)(2) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1993" and inserting "1994".

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 203. DELAY IN COVERAGE OF SCREENING MAMMOGRAPHY.

(a) IN GENERAL.—Section 204(e) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(b) CONFORMING AMENDMENTS.—Section 1834(e) of the Social Security Act (42 U.S.C. 1395m(e)), as added by section 204(b)(2) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) in paragraph (2)(B)(ii), by striking "1992" and inserting "1993",

(2) in paragraph (4)(A)(i), by striking "1990" and inserting "1991",

(3) in paragraph (4)(B), by striking "1991" and inserting "1992", and

(4) in paragraph (5), by striking "1990" and "1991" each place each appears and inserting "1991" and "1992", respectively.

SEC. 204. DELAY IN COVERAGE OF IN-HOME CARE.

(a) IN GENERAL.—Section 205(f) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(b) CONFORMING AMENDMENTS.—Section 1861(ll) of the Social Security Act (42 U.S.C. 1395x(ll)), as added by section 205(b) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) by amending subparagraph (A) of paragraph (4) to read as follows:

"(A) has incurred out-of-pocket part B cost sharing (as defined in paragraph (5)(A)) in an amount equal to part B catastrophic limit (as determined under paragraph (5)(B)) for the year, or"; and

(2) by adding at the end the following new paragraph:

"(5) For purposes of this subsection:

"(A) The term 'out-of-pocket part B cost sharing' means, with respect to an individual covered under part B, the amounts of expenses that the individual incurs that are attributable to—

"(i) the deductions established under section 1833(b), and

"(ii) the difference between the payment amount provided under part B and the payment amount that would be provided under

part B if '100 percent' and '0 percent' were substituted for '80 percent' and '20 percent', respectively, each place either appears in sections 1833(a), 1833(i)(2), 1834(e)(1)(C), 1835(b)(2), 1866(a)(2)(A), 1881(b)(2), and 1881(b)(3).

"(B)(i) The part B catastrophic limit for 1991 is $1,780. The part B catastrophic limit for any succeeding year shall be such an amount (rounded to the nearest multiple of $1) as the Secretary estimates, for that succeeding year, will reflect a level of out-of-pocket part B expenses that only 5.5 percent of the average number of individuals enrolled under part B (other than individuals enrolled with an eligible organization under section 1876 or an organization described in section 1833(a)(1)(A)) will equal or exceed in that succeeding year.

"(ii) Not later than September 1 of each year (beginning with 1991), the Secretary shall promulgate the part B catastrophic limit under this subparagraph for the succeeding year.".

(c) REPORT ON ALTERNATIVE ELIGIBILITY STANDARDS.—The Secretary of Health and Human Services shall submit to the Congress by June 1, 1990, a report describing alternatives to the standards for determining the eligibility of individuals for in-home care services contained in section 1861(ll) of the Social Security Act (as amended by subsection (b)).

SEC. 205. CHANGES IN PART B MONTHLY PREMIUM FINANCING.

(a) CONSOLIDATION OF CATASTROPHIC MONTHLY PREMIUM.—

(1) IN GENERAL.—Section 1839(g)(1) of the Social Security Act (42 U.S.C. 1395r(g)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking "paragraphs (4) and (5)" and inserting "paragraphs (3) and (4)",

(ii) by striking "the sum of the catastrophic coverage monthly premium and the prescription drug monthly premium" and inserting "the catastrophic coverage monthly premium",

(iii) by striking "paragraphs (2) and (3)" and inserting "paragraph (2)",

(iv) in the column in the table relating to the catastrophic coverage monthly premium, by striking "$5.46", "$6.75", and "$7.18" and inserting "$7.40", "$9.20", and "$10.20", respectively, and

(v) by striking the column in the table relating to the prescription drug monthly premium; and

(B) by striking subparagraphs (B) through (D) and inserting the following:

"(B) The Secretary shall determine during September of 1990, 1991, and 1992, the monthly actuarial rate for months in the succeeding year which, if substituted for the catastrophic coverage monthly premium specified in subparagraph (A) for such months, would assure (taking into account potential contingencies) a positive balance in the Medicare Catastrophic Coverage Account at the end of the succeeding year.

"(C) If the monthly actuarial rate determined under subparagraph (B) for months in a year is less than the catastrophic coverage monthly premium otherwise specified in the table in subparagraph (A), such monthly actuarial rate shall be substituted for the catastrophic coverage monthly premium under subparagraph (A) for months in the year.".

(2) MONTHLY PREMIUM AFTER 1993.—Paragraph (2) of section 1839(g) of such Act is amended to read as follows:

"(2)(A) The Secretary shall determine during September of each year (beginning with 1993) the monthly actuarial rate for months in the succeeding year which, if substituted for the catastrophic coverage monthly premium specified in subparagraph (A) for such months, would assure a balance in the Medicare Catastrophic Coverage Account at the end of the succeeding year equal to 20 percent of the estimated total debits to the Account during the year.

"(B) In the case of months in a year after 1993, the catastrophic coverage monthly premium is the monthly actuarial rate determined under subparagraph (A) for months in the year.".

(3) ELIMINATION OF SEPARATE PRESCRIPTION DRUG MONTHLY PREMIUM.—Section 1839(g) of such Act is further amended by striking paragraph (3).

(4) TREATMENT OF RESIDENTS OF PUERTO RICO AND TERRITORIES.—Section 1839(g)(4) of such Act is amended to read as follows:

"(3)(A) In the case of an individual who is a resident of Puerto Rico or who is a resident of another U.S. commonwealth or territory during a month, instead of the premium increase provided under paragraph (1), subject to subsection (b), the monthly premium for each individual enrolled under this part (otherwise determined without regard to this subsection) shall be increased—

"(i) for months in 1989 by $1.30 for residents of Puerto Rico and $2.10 for residents of another U.S. commonwealth or territory,

"(ii) for months in 1990 by $1.40 for residents of Puerto Rico and $2.30 for residents of another U.S. commonwealth or territory, and

"(iii) for months in a succeeding year by a fraction (determined under subparagraph (B)) of the premium increase determined under paragraph (1) for residents of Puerto Rico and for residents of the other U.S. commonwealths and territories, respectively.

"(B) The Secretary shall from time to time establish, separately for Puerto Rico and for the other U.S. commonwealths and territories, a fraction that reflects the relative per capita outlays which are accounted for under the Medicare Catastrophic Coverage Account for residents in such respective areas compared to such per capita outlays for individuals who are resident in the 50 States and the District of Columbia.".

(5) PART B ONLY INDIVIDUALS.—Section 1839(g)(5) of such Act is amended to read as follows:

"(4)(A) In the case of a part B only individual during a month, instead of any premium increase otherwise provided under paragraph (1), subject to subsection (b), the monthly premium for each individual enrolled under this part (otherwise determined without regard to this subsection) shall be increased for months (beginning with January 1991) by a fraction (determined under subparagraph (B)) of the premium increase determined under paragraph (1).

"(B) The Secretary shall from time to time establish a fraction that reflects the relative per capita outlays which are accounted for under the Medicare Catastrophic Coverage Account for part B only individuals compared to such per capita outlays for individuals entitled to benefits under both part A and this part.".

(6) CONFORMING AMENDMENTS.—Section 1839 of such Act is further amended—

(A) in subsection (b), by striking "(g)(6)" and inserting "(g)(5)",

(B) in subsection (g)(6), by striking "(6)(A)" and inserting "(5)" and by striking subparagraph (B),

(C) in subsection (g)(7), by striking "(7)(A) The Secretary and the Secretary of the Treasury" and inserting "(5)(A) The Secretary", and

(D) in subsection (g)(8)—

(i) by striking subparagraphs (A), (B), and (C), and

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (A), (B), and (C), respectively.

(b) PAYMENT OF PART OF PREMIUM TO COVER PART A OUTLAYS.—Section 1841(a) of the Social Security Act (42 U.S.C. 1395t(a)), as amended through the operation of subsection (c), is amended by adding at the end the following: "There is appropriated from the Trust Fund to the Federal Hospital Insurance Trust Fund, from such amounts in the Trust Fund as are attributable to premium increases imposed under section 1839(g) for months after December 1989, amounts equal to the amount by which (1) the amount of outlays made, from the Federal Hospital Insurance Trust Fund, that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988 (as amended), exceeds (2) amounts transferred under section 205(e) of the Medicare Catastrophic Coverage Reform Amendments of 1989. The amounts appropriated by the preceding sentence shall be transferred from time to time (not less frequently than monthly), such amounts to be based on estimates by the Secretary of premiums and outlays described in such sentence, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than appropriate amounts.".

(c) REPEAL OF FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND.—Section 212 (other than paragraphs (3) and (4) of subsection (c)) of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Social Security Act amended by such section (other than such paragraphs) shall be restored and revived as if such amendments had not been made.

(d) AMENDMENTS TO MEDICARE CATASTROPHIC COVERAGE ACCOUNT.—Section 1841B of the Social Security Act (42 U.S.C. 1395t-2) is amended—

(1) in subsection (a), by striking ", and section 59B of the Internal Revenue Code of 1986," and by striking "and for purposes of section 59B of the Internal Revenue Code of 1986";

(2) by amending paragraph (1) of subsection (b) to read as follows:

"(1) The Account shall be—

"(A) credited for receipts of the Federal Supplementary Medical Insurance Trust Fund attributable to premiums under section 1839(g), and

"(B) debited for outlays under this title that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988 (as amended) and to the provisions of section 101(d)(2) of the Medicare Catastrophic Coverage Reform Amendments of 1989.";

(3) in subsection (b)(3), by striking "and the Secretary of the Treasury";

(4) in subsection (b)(4), by striking ", receipts that are also" and all that follows through "Reserve Fund"; and

(5) in subsection (c)(2), by striking "and under section 59B of the Internal Revenue Code of 1986".

(e) 1-TIME TRANSFER OF NET ADDITIONAL PREMIUMS IN 1989.—There shall be transferred, as of January 1, 1990, from the Federal Supplementary Medical Insurance Trust Fund to the Federal Hospital Insurance Trust Fund an amount equal to—

(1) the amount of the premiums collected pursuant to section 1839(g) of the Social Security Act for months in 1989, minus

(2) the amount of administrative expenses incurred under part B of title XVIII of such Act relating to implementation of the amendments made by the Medicare Catastrophic Coverage Act of 1988, plus

(3) the amount of interest accrued to the Federal Supplementary Medical Insurance Trust Fund attributable to balance described in paragraphs (1) and (2).

(f) CONFORMING AMENDMENTS.—

(1) Section 1844(a) of the Social Security Act (42 U.S.C. 1395w(a)) is amended by striking "or section 59B of the Internal Revenue Code of 1986".

(2) Section 1876(a)(5) of such Act (42 U.S.C. 1395ff(a)(5)) is amended by striking ", the Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund" and inserting "and the Federal Supplementary Medical Insurance Trust Fund".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 206. CONTINUATION OF RISK-SHARING CONTRACTS WITH HEALTH MAINTENANCE ORGANIZATIONS.

Notwithstanding any other provision of this title, the amendments made by this title shall not apply to risk-sharing contracts, for contract year 1990—

(1) with eligible organizations under section 1876 of the Social Security Act, or

(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967, or under section 222(a) of the Social Security Amendments of 1972.

SEC. 207. CLARIFICATION OF TRANSITION FOR PPS-EXEMPT HOSPITALS.

Effective as if included in the Medicare Catastrophic Coverage Act of 1988, section 104(c)(2) of such Act is amended by striking the period at the end and inserting the following: ", without regard to whether any of such beneficiaries exhausted medicare inpatient hospital benefits before January 1, 1989.".

## TITLE III—MISCELLANEOUS

SEC. 301. TRANSITION IN MEDIGAP REGULATIONS.

(a) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 221(d) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) in the third sentence of subsection (a) and in subsection (b)(1), by striking "subsection (k)(3)" and inserting "subsections (k)(3), (m), and (n)";

(2) in subsection (k)—

(A) in paragraph (1)(A), by inserting "except as provided in subsection (m)," before "subsection (g)(2)(A)", and

(B) in paragraph (3), by striking "subsection (l)" and inserting "subsections (l), (m), and (n)"; and

(3) by adding at the end the following new subsections:

"(m)(1)(A) If, within the 90-day period beginning on the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection and subsection (n) referred to as the 'Association') revises the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) and adopted on September 20, 1988) to reflect the changes in law made by the Medicare Catastrophic Coverage Reform Amendments of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the amended NAIC Model Regulation (referred to in subsection (k)(1)(A)) as revised by the Association in accordance with this paragraph (in this subsection and subsection (n) referred to as the 'revised NAIC Model Regulation').

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

"(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) referred to as 'revised Federal model standards') for medicare supplemental policies to reflect the changes in law made by the Medicare Catastrophic Coverage Reform Amendments of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised Federal model standards or 1 year after the date the Secretary first promulgates such standards.

"(3) Notwithstanding any other provision of this section (except as provided in subsection (n))—

"(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a),

"(B) no certification made pursuant to subsection (a) shall remain in effect, and

"(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A),

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

"(n)(1) Until the date specified in paragraph (4), in the case of a qualifying medicare supplemental policy described in paragraph (3) issued in a State—

"(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the transition provision described in paragraph (2), or

"(B) on or after the transition deadline, the policy is deemed to be in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term 'transition deadline' means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Secretary promulgates revised Federal model standards (as the case may be).

"(2) The transition provision described in this paragraph is—

"(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this title made by the Medicare Catastrophic Coverage Reform Amendments of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

"(B) if the Association does not provide for a transition provision by the date described in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

"(3) In paragraph (1), the term 'qualifying medicare supplemental policy' means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before the date of the enactment of this subsection.

"(4)(A) The date specified in this paragraph for a policy issued in a State is—

"(i) the first date a State adopts, after the date of the enactment of this subsection, standards equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

"(ii) the date specified in subparagraph (B),

whichever is earlier.

"(B) In the case of a State which the Secretary identifies, in consultation with the Association, as—

"(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

"(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

"(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) unless each individual who is entitled to benefits under this title and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

"(A) the changes in benefits under this title effected by the Medicare Catastrophic Coverage Reform Amendments of 1989, and

"(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

"(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before the date of the enactment of this subsection, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) unless the insurer—

"(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

"(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstitution of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

"(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of the date of the enactment of this subsection, if (as of January 1, 1990) the policy under which the individual was provided coverage provides for no waiting period with respect to treatment of a pre-existing condition.".

(b) SENSE OF CONGRESS.—It is the sense of Congress that States should respond, at the earliest practicable date after the date of enactment of this Act, to requests by insurers for review and approval of riders and premium adjustments for medicare supplemental policies in order to comply with the amendments made by subsection (a) and that all such premium adjustments be effective January 1, 1990.

SEC. 302. NOTICE OF CHANGES.

The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act of 1990, for a description of the changes in benefits under title XVIII of such Act made by the amendments made by this title.

SEC. 303. MISCELLANEOUS AMENDMENTS AND TECHNICAL CORRECTIONS.

(a) CORRECTIONS RELATING TO CATASTROPHIC DRUG BENEFIT.—

(1) DEFINITION OF COVERED OUTPATIENT DRUGS.—Section 1861(t)(3)(A) of the Social Security Act, as added by section 202(a)(2)(C) of the Medicare Catastrophic Coverage Act of 1988 (in this section referred to as "MCCA"), is amended—

(A) by redesignating clauses (iv) through (xiii) as clauses (vi), (vii), (viii), (ix), (x), (xii), (xiii), (xiv), (xvi), and (xviii), respectively;

(B) by inserting after clause (iii) the following:

"(iv) Diagnostic services under subsections (s)(2)(C) and (s)(3).

"(v) X-ray, radium, and radioactive isotope therapy under subsection (s)(4).";

(C) by inserting after clause (x), as so redesignated, the following:

"(xi) Parenteral nutrition nutrients under subsection (s)(8).";

(D) by inserting after clause (xvi), as so redesignated, the following:

"(xv) Partial hospitalization services (as defined in subsection (ff)).''; and

(E) by inserting after clause (xvi), as so redesignated, the following:

"(xvii) Qualified psychologist services (as defined in subsection (ii)).".

(2) COVERED HOME IV DRUGS.—Section 1861(t)(4)(A) of such Act (42 U.S.C 1395x(t)(4)(A)) is amended by striking "dispensed" and inserting "furnished by a qualified home intravenous drug therapy provider".

(3) REFERENCES TO CATASTROPHIC DRUG DEDUCTIBLE AMOUNT.—Section 1834(c) of the Social Security Act, as added by section 202(b)(4) of MCCA, is amended—

(A) in paragraph (2)(A), by striking "under paragraph (1)(A) and except as provided in subparagraph (C)" and inserting "under paragraph (1)", and

(B) in paragraph (8)(E), by striking "paragraph (1)(A)" each place it appears and inserting "paragraph (1)".

(b) SCREENING MAMMOGRAPHY.—

(1) APPLICATION OF PARTICIPATING PHYSICIAN DIFFERENTIAL.—Section 1834(e)(4) of the Social Security Act, as added by section 204(b)(2) of MCCA, is amended by adding at the end the following new subparagraph:

"(D) APPLICATION OF PARTICIPATING PHYSICIAN DIFFERENTIAL.—In applying the limit under subparagraph (A) with respect to a nonparticipating physician, the limit applied shall be the applicable percent (as defined in the second sentence of section 1842(b)(4)(A)(iv)) of the limit otherwise established in that subparagraph.".

(2) FREQUENCY OF SCREENING.—Section 1834(e)(2)(A) of the Social Security Act, as added by section 204(b)(2) of MCCA, is amended—

(A) in clause (iii)(I), by striking "the 11 months of a previous screening mammography" and inserting "11 months following the month in which a previous screening mammography was performed",

(B) in clause (iii)(II), by striking "the 23 months of a previous screening mammography" and inserting "23 months following the month in which a previous screening mammography was performed",

(C) in clause (iv), by striking "11 months of a previous screening mammography" and inserting "11 months following the month in which a previous screening mammography was performed", and

(D) in clause (v), by striking "23 months of a previous screening mammography" and inserting "23 months following the month in which a previous screening mammography was performed".

(c) ROUNDING OF PART B PREMIUM.—Section 1839 of the Social Security Act, as amended by section 211(c)(1)(E) of MCCA, is amended—

(1) in the first sentence of subsection (b), by striking "subsections (f) and (g)(5)" and inserting "subsection (f)",

(2) in subsection (b), by inserting after the first sentence the following new sentence: "If the resulting monthly premium is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.", and

(3) in subsection (c), by striking "the foregoing provisions of this section" and inserting "subsection (a)(3) or (e)".

(d) MISCELLANEOUS.—

(1) Clause (iii) of section 1814(a)(7)(A) of the Social Security Act, as added by section 104(d)(2)(C)(iii) of MCCA, is amended by moving its alignment 2 ems to the left so its alignment is the same as that of clause (ii) of such section.

(2) Section 1842(p)(3)(B) of the Social Security Act, as added by section 202(g) of MCCA, is amended by striking "section 1842(j)(2)(A)" and inserting "subsection (j)(2)(A)".

(3) Section 221(g)(3) of MCCA is amended by striking "subsection (f)" and inserting "subsection (e)".

(4) Section 1842(h)(5)(B)(iv) of the Social Security Act, as added by section 223(b)(4) of MCCA, is amended by striking "paragraph (2)(A)" and inserting "paragraph (2)".

(e) MISCELLANEOUS CORRECTIONS RELATING TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987.—

(1) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1834(b)(4)(A) of the Social Security Act, as added by section 4049(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "insurance and deductibles under section 1835(a)(1)(I)" and inserting "coinsurance and deductibles under sections 1833(a)(1)(J)".

(2) Section 1842(j)(1)(C)(vii) of the Social Security Act, as added by section 4085(i)(7)(C) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "accordingly" and inserting "according".

(3) Section 1886(g)(3)(A)(iv) of the Social Security Act, as added by section 4006(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "may) be" and inserting "may be)".

(f) OTHER CORRECTIONS.—

(1) Section 1866(a)(1)(F)(i)(III) of the Social Security Act is amended by striking "fiscal year))" and inserting "fiscal year)".

(2) Section 1875(c)(7) of the Social Security Act, as added by section 9316(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of this section".

(3) Section 1842(j)(2)(B) of the Social Security Act, as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987, is amended by striking "paragraphs" and inserting "subsections".

## TITLE IV—MISCELLANEOUS SOCIAL SECURITY PROVISIONS

SEC. 401. EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTHCARE BENEFITS PROVIDED BY THE EMPLOYERS.

(a) OLD-AGE SURVIVORS, AND DISABILITY, AND HOSPITAL INSURANCE PROGRAMS.—For purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(b) RAILROAD RETIREMENT PROGRAM.—For purposes of chapter 22 of the Internal Revenue Code of 1986, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(c) FEDERAL UNEMPLOYMENT PROGRAMS.—

(1) FEDERAL UNEMPLOYMENT TAX.—For purposes of chapter 23 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(2) RAILROAD UNEMPLOYMENT CONTRIBUTIONS.—For purposes of the Railroad Unemployment Insurance Act, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(3) RAILROAD UNEMPLOYMENT REPAYMENT TAX.—For purposes of chapter 23A of the Internal Revenue Code of 1986, the term "rail wages" shall not include the amount of any

*refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.*

*(d) EFFECTIVE DATE.—This section shall apply with respect to refunds provided on or after January 1, 1989.*

The SPEAKER. The gentleman from Illinois [Mr. ROSTENKOWSKI] will be recognized for 30 minutes and the gentleman from Texas [Mr. ARCHER] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. ROSTENKOWSKI].

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I offer this motion in order to move the conflicting position of the two bodies toward a final resolution.

The House has spoken overwhelmingly in favor of repeal of the Medicare Catastrophic Illness Insurance Program on two separate occasions. However, in an effort to resolve this issue the House has shown more flexibility in the conference than has the Senate.

Regretfully the Senate has shown no flexibility to date. In fact, the Senate took the highly unusual, if not unprecedented and objectionable, action of deeming to be disapproved the conference report—which a majority of their conferees had signed—prior to the House's approval of that conference report.

By insisting now on our disagreement with the Senate, and declining the Senate's request to go to conference, the House clearly puts the ball in the Senate's court.

It is now their turn. The alternative to reforming the Catastrophic Health Insurance Program is repeal, a position I do not personally favor. I sincerely hope the Senate can fashion a workable compromise that will protect our most vulnerable senior citizens.

□ 1210

Mr. ARCHER. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. SCHULZE].

Mr. SCHULZE. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, let us stop this cat and dog debate on catastrophic health care. The indecision of Congress is causing more problems and more aggravation for senior citizens than the original act. I rise in support of a compromise—a proposal I introduced during conference which includes more catastrophic benefits without imposing tax increases.

The Schulze proposal retains key catastrophic benefits such as unlimited hospital protection, home health provisions, hospice benefits, mammography screening and certain home IV drugs. Slight increases in the part B premium which would amount to no more than $6.10 in the out years would pay for all benefits. This increase is significantly less than the increase called for under current law.

The Schulze proposal is a true compromise between the Senate offer and repeal of all catastrophic benefits.

My proposal does not include a hospice benefit and scales down the home health benefit to 28 days. As a result, my proposal costs $2 billion dollars less than the Senate proposal and does not impose unbearable increases in monthly part B premiums. This proposal was endorsed by several senior citizens lobbies including the National Committee to Preserve Social Security and Medicare, the National Council of the Aging and the Coalition of Affordable Health Care.

The House and the Senate conference committees debated bitterly between repeal and retention of certain benefits. While democracy would dictate a solution somewhere between the two positions, the committees failed to produce an adequate compromise.

The spirit of compromise was lost in this conference. In light of the strong controversy on the issue, I urge my colleagues to vote for repeal of the act. I do not support repeal because I believe that catastrophic benefits are unnecessary.

To the contrary, a policy which provides vital medical benefits for those who cannot afford them is crucial for a healthy and humane nation. I support repeal only because I believe Congress needs to start anew within the spirit of compromise and allow democracy to work its will.

Mr. Speaker, I urge my colleagues to vote for repeal of catastrophic health care and I hope that we can devise a solution which truly meets the needs of the elderly.

Mr. ARCHER. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. SHAW].

Mr. SHAW. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, this is a most important vote. The other day we voted an ethics package, an ethics package that has been widely misunderstood by many of our constituents, but if we should leave here this year without the repeal of catastrophic, it is going to be very, very difficult for the Members of this Congress to return to their home districts and explain how we engineered a pay raise for ourselves but failed at repeal of catastrophic. We would certainly have lost faith with the thousands and thousands of senior citizens who have contacted each of our offices asking for repeal of catastrophic health coverage.

True, compromises have been tried to be worked out. We have tried to work them out in the Ways and Means Committee, and were unsuccessful. At this late date, at this late hour, the only proven action that this House can take is to force the Senate into agreeing with us for absolute repeal.

Should we go back and look at some other facets of the bill or some other ways of solving it, we have a very competent committee that will be looking for other answers; however, our business of today should be, and our No. 1 priority in the closing hours of this session, should be repeal of catastrophic.

Mr. Speaker, I urge support for the motion.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. DONNELLY].

Mr. DONNELLY. Mr. Speaker, I thank the chairman of the committee for yielding me this time.

I have asked for this time so that I can engage the chairman in a colloquy so that the membership will understand exactly the parliamentary situation that we are in.

It is my understanding that we will not concur with the Senate amendment, the so-called McCain amendment, and send back to the Senate the position of the House, which has on two occasions been overwhelmingly reaffirmed in this institution.

Then it is assumed, clearly not predicted because of the impossibility of predicting what the other distinguished body would do, but it is assumed that a modified version of the so-called McCain amendment would then be sent back to the House. We would then have an opportunity under the rules to have a full and fair debate on that modified so-called McCain amendment, at which time the Members of the House would have an opportunity to vote up or down on that modification, and hopefully end this stalemate once and for all, if that is possible.

Mr. ROSTENKOWSKI. Mr. Speaker, will the gentleman yield?

Mr. DONNELLY. I am happy to yield to the gentleman from Illinois.

Mr. ROSTENKOWSKI. Mr. Speaker, hopefully the Senate would return to us a modified McCain amendment, at which time the gentleman's observations are absolutely correct.

Mr. DONNELLY. So we would assume there would be a recorded vote when the Senate sends back this so-called modification.

Mr. Speaker, I thank the chairman for those answers.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 1 minute to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Speaker, I thank Chairman ROSTENKOWSKI for yielding me this time.

Mr. Speaker, I would like to suggest to my colleagues that the hot issue among senior citizens next year will be skyrocketing increases in the private health insurance policies they purchase to supplement their Medicare.

These policies, commonly known as Medigap policies, are purchased by 85 percent of our elderly.

At a time when Congress is on the verge of repealing or significantly modifying the Catastrophic Act, one thing is certain: there will be mass confusion among our elderly constitutents. The repeal or alteration of the catastrophic law will create a uniquely dangerous opportunity for Medigap abuses.

Before Congress adjourns, this body should pass legislation to rein in questionable private insurers seeking to capitalize on the confusion that is sure to be part of the months ahead. Certainly there are good insurers and responsible agents, but without additional Federal reforms in the Medigap area, there will be a ripe environment for insurance hucksters who want to make a fast buck by selling duplicative Medigap policies.

A typical Medigap policy in my home State costs $60 per month. The insurance industry found in 1987 that 19 percent of the elderly have two or more Medigap policies—that's about 6.3 million people. A recent Health Care Financing Administration analysis found that up to 34 percent of the elderly have two or more Medigap policies—that's about 11.2 million people.

Unfortunately, the current loopholes in the Federal law prohibiting duplicate Medigap policies is as much loophole as law. For example, current law stipulates that duplicate coverage may be sold as long as it is not substantially duplicative. "Substantially" is nowhere defined, and as a result, unscrupulous agents can use this loophole to sell policies that aren't worth the paper they're written on.

Next year, when Medigap rates shoot through the Moon, Americans are going to ask, "Why did Congress adjourn without taming the Medigap mess?" At the very least, since catastrophic legislation is now stalemated between the House and the Senate, let us use this time to work together to achieve legislation that truly eliminates duplicate Medigap coverage.

Mr. ARCHER. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. FAWELL].

Mr. FAWELL. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of the motion made, which as I understand it is to insist on the disagreement by this body with the other body's position on catastrophic care.

There is one point that I would like to bring out, if I may. Neither catastrophic nor the McCain proposal or whatever may come back—and I hope we can agree on repeal—is something that deals with Government financing. I think this is very important, if you will listen. We are talking about the seniors' money. We are not talking about Government largess, and that is so important. Yet everything that we have had before us, whether it is McCain or whether it is the original catastrophic bill, we have a mandate, one way for all, for all 33 million Medicare recipients. It is duplicative. It has no options. They take it whether they want it or not. They have to take it, period, whether they want it, whether they need or, or whether they can afford it.

In reality, what we have here is government for the first time selling insurance and charging a full quid pro quo. One hundred percent of the premium cost is paid by the seniors. I do not know if we have ever had government in the insurance business this way, but government is not really in the insurance business, as I have said, because all that government can ever do is to mandate benefits one way for all.

Everybody is not alike. All those 33 million recipients out there on Medicare are not alike.

All I can say is that the Senate, not the House, but the Senate, it seems to me, has not heard the message.

Seniors are saying that we have gone in the wrong direction, and they are saying that if we are going to charge the seniors 100 percent of the cost of expanding Medicare, and the cost of the debt and the deficit problem is something that we have to consider, the seniors are saying, "Please, extend Medicare to cover the greatest potential catastrophe facing seniors and, indeed, most families in America, long-term custodial nursing home care, which is not covered by Medicare and cannot be bought on the market."

□ 1210

The reply, it seems to me, of too many of us in Congress this year and still the reply of the Senate is that, "We know best. Trust us. We know how to spend your money." That is the important point, because they can go out and they can get this, and the rates that have just been referred to going sky-high, that is not true. The insurance companies are talking about, for instance, an increase of no more than $5 to cover the part A that they would have to take over.

But, Mr. Speaker, Congress has already proved that it does not know how to spend the seniors money for up to this point Congress continually insists on spending it by mandating insurance coverage which is duplicative, one way for all, and without option or choices. Congress appears hellbent to elbow out employer provided health care and medigap insurance and apparently assumes that the Federal Government can "sell" such mandated insurance policies to the seniors and out-compete Blue Cross, AARP, Golden Rule and all the other health care insurers. Yet if that is so, why has the Senate refused to make the McCain proposal optional to seniors? Why has the Senate insisted their proposal must be mandatory, unless of course they believe that the Federal Government, with its mandated insurance coverage cannot compete with the general insurance market and must charge higher premiums.

But most of all, Mr. Speaker, why does the Senate turn a deaf ear to the seniors who have clearly stated that if Congress insists on fully charging seniors for new health coverage, that, at the very least, they could spend seniors money on the coverage seniors most want, long-term custodial nursing home care.

The time has come to have concensus between the House and the Senate and to repeal the Medicare Catastrophic Coverage Act in accordance with terms of the Donnelly-Archer bill.

I hope we shall stick to our repeal position.

Mr. ARCHER. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. Goss].

Mr. GOSS. Mr. Speaker, 10 months ago a small band of Members of this House began fighting for repeal of the Catastrophic Health Care Act. We were looked upon a somewhat of a renegade group. But our numbers grew steadily over the course of the year and now, today, it seems that we finally have a majority of both Houses of Congress on our side.

After several false starts and much delay—it looks as though this tortuous struggle may finally be over. Repeal of the Catastrophic Health Care Act is finally within our grasp.

I rise today to give credit where credit is due for the remarkable evolution of thought we've witnessed in this body—we have not reached this point because a few Members of Congress said all the right things on the floor of this House. We have come this far because the seniors of this Nation made themselves heard in every congressional district across the country.

When this began, I was very much the new kid on the block. Distinguished Members with far more seniority said we would never repeal this law—let alone get a chance to vote on the issue.

But here we are—and we've proven that we should never say never again—least of all when it comes to estimating the power of a vibrant democracy.

As we leave here this week to celebrate the holidays, we must not forget that an even greater challenge lies ahead. Our efforts to repeal the Catastrophic Health Care Act will only serve the interests of this Nation's seniors if we seize the opportunity to develop a fair and workable plan for providing quality long-term health care.

Mr. Speaker, as this is hopefully the last time I will address this body on the subject of catastrophic health care repeal, I would like to thank my colleagues on the Catastrophic Health Care Task Force, particularly HARRIS FAWELL and BILL ARCHER, for their good faith and hard work on this issue.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 1 minute to the gentleman from Georgia [Mr. ROWLAND].

Mr. ROWLAND of Georgia. Mr. Speaker, I do not have to get hit full in the face by a 2 by 4 to understand what the people in my district, the senior citizens, are saying about the catastrophic insurance bill. They want it repealed.

The House has already voted twice to repeal it, so I urge the Members of this body to sustain the House position.

The seniors are particularly concerned about long-term care, and that is something that we need to focus our attention on. We do not need to support some hastily drawn up position to try to save some part of this legislation even though that is commendable to do that. What we need to do is repeal this legislation, to come back next year and address it in a more appropriate manner.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, I want to say to the House that I think the effort to repeal would be the wrong step at the wrong time. I shall not vote for repeal.

Mr. Speaker, it would seem to me that we ought to get together on some kind of a compromise. Everybody is in haste to get home, and I accept that. That does not make this action any more right. If we repeal this, we are saying to millions of Americans, "You will not receive protection from catastrophic illness; you will have no hospitalization coverage other than through basic Medicare."

Mr. Speaker, I commend the chairman of my committee and the other conferees and my friend, the gentleman from Texas [Mr. ARCHER], and the chairman, the gentleman from Michigan [Mr. DINGELL], and the gentleman from California [Mr. WAXMAN]. They made a valiant effort to try to find an answer. But to repeal it is the wrong thing. We are saying to a lot of American citizens, "You do not want it. We are not going to give you the benefits." We are also saying to millions of Americans who need the help, "You are not going to get catastrophic illness protection." I think that is wrong.

We are not going to be any nearer reaching a better solution in January or March of next year than we are now. So to just simply repeal it and say, "Well, we have got to start over again," just seems to me a sort of a weak defense.

The right thing to do is to make some modification, some form of the McCain amendment. I have prepared an amendment that I would think improves that amendment and would be acceptable. I recognize that the supplemental surcharge is going to be repealed, and I agree with that. My only purpose in urging a compromise is to try to save the important hospitalization benefits.

To say that we are just going to repeal it may bring this debate to a halt now, but it is not going to stop this issue. I would say that repeal is not the solution.

I would hope that Members of the House can decide at least not to just hastily vote to repeal, but to consider that we ought to make another effort to reach an agreement. I believe we might get an offer back from the Senate that could be acceptable.

I, therefore, am saying to this body then that we should not repeal.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Speaker, my colleagues, the only sensible thing for the Congress to do, given the circumstances of this catastrophic bill and where we are now, is to repeal it and come back next year and figure out something on catastrophic health insurance that the elderly want, and if they are going to be required to pay money for something, something they are willing to pay for.

As I understand, the Senate is going to send us back the McCain amendment weakened, but providing two hospital deductibles before there is any hospital benefit. We are trying to re-create this catastrophic bill, and we are only going to make it worse with this new revised McCain amendment.

Stick with the House position. Go repeal. Then come back next year and figure out something that is worth saving.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. WAXMAN. I am happy to yield to the gentleman from Texas.

Mr. PICKLE. Mr. Speaker, is the gentleman saying that he would not accept a two-tier reduction on premiums with respect to hospitalization?

Mr. WAXMAN. Absolutely not. Under the catastrophic bill as it passed the House and is now existing law, there is a 1-day hospital deductible. If a person goes to the hospital, they pay the first day, then they have protection for all the hospital services thereafter. What MCCAIN is seeking to do, again, and to revise his proposal, is to change that to 2 hospital day deductibles for which the elderly will have to pay $6 every month. If they pay $6 every month and they have Medigap insurance, which they certainly will, they are paying $6 for nothing, and I do not think it is worth holding on to a bill that is called catastrophic that does not cover catastrophic health care, because it is for the elderly, gives them a benefit that they already have, asks them to pay in a regressive way in a more limited amendment than the McCain amendment that is presented to us now.

Mr. ARCHER. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. Mr. Speaker, with all due respect to our prior speakers and some coming up subsequently, I say that the right thing to do is what the senior citizens of this country are telling us to do. In my judgment, our older Americans are telling us that what they really need is long-term care protection that would include the victims of Alzheimer's disease.

I know how very expensive that is, but I just cannot believe Congress is unable to sit down and try to work out something that will at least help out these people, maybe not cover it completely, but assist these people in something they really need, and that is long-term care.

I certainly support the motion for complete repeal with the thought that Congress would readdress the issue next year by working on a benefits package that is currently not covered in the Medicare part A and part B programs or a standard feature of Medigap policies.

As a House catastrophic conferee, I firmly believe repeal is the better alternative—it is in the best interest of all older Americans. My primary concern with the Senate approach is the additional expense it will impose on older Americans—preliminary estimates indicate that these benefits may cost older Americans as much as $10 per month by 1995.

The additional premium will have a detrimental effect on our low-income elderly who are not Medicaid eligible. The Senate proposal also has benefits that, I don't believe, are truly catastrophic ones. In addition, most of these benefits are already included in most Medigap insurance policies, and therefore, those individuals who have Medigap policies would not benefit from the Senate proposal.

The House catastrophic conference committee had the opportunity to review several options. One proposal we discussed, I found quite appealing because it provided benefits that are normally not found within Medigap policies and it was cost efficient. Therefore, it would benefit all older Americans, not just a select few.

This proposal provided benefits such as respite care, mammography screening, extended home health care coverage, unlimited hospice care, and blood deductibles. Additionally, the cost is

reasonable—80 cents to $1.35 per month. This eases the financial burden for the low-income elderly who do not qualify for Medicaid. Unfortunately, the Senate rejected this proposal when it was presented to the Senate conferees last week.

I firmly believe that when we are faced with a decision of whether to repeal or restructure the catastrophic law, repealing catastrophic is in the best interest of all older Americans. This time, Congress should listen to our older Americans—older persons know what is best for them, not Congress. By repealing catastrophic, Congress can start from scratch and give our older Americans what they really need—long-term care protection.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I want to just expand upon what the gentleman from California [Mr. WAXMAN], chairman of the subcommittee, has indicated. It is very important to deal with the question of catastrophic next year by virtue of an outright repeal this year.

The expectation level has been raised out there in the country to that level, and we need to do it to clear the air, to unpoison the well, to clean up the problems that have arisen from the various interpretations.

What is more important is that after we come back next year and start dealing with catastrophic, we need to deal with the long-term care and the whole concept of health care for the elderly and for the young in this country. If we do that, then we are going to get the support of all the American people early on in the process and not get picked to death at the end by their opposition to it.

□ 1230

Mr. ARCHER. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, the House should be aware that we have been flexible on this issue with our colleagues in the Senate. At one point the conferees offered to the Senate a version of this measure whereby we would have covered certain needs that are not presently covered with a resultant premium of less than $1 a month to the beneficiaries. The Senate rejected that.

We have shown flexibility. The Senate has not shown flexibility to us, and I believe that what we should do now is support repeal, flat out, and hopefully, with the passage of time, wisdom will come to those who are slow in recognizing it.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. HALL].

Mr. HALL of Texas. Mr. Speaker, I also rise to take this opportunity to urge that we hold fast to total repeal. I just do not think the people out in the hinterlands know exactly what the McCain Senate amendment, or any other such plan to salvage catastrophic, is going to cost them.

I think we ought to go out and come in again, with total repeal of the catastrophic, and conduct completely new hearings and write a bill that the senior citizens of this country can live with.

Mr. ARCHER. Mr Speaker, I yield 2 minutes to the gentleman from California [Mr. LEWIS.]

Mr. LEWIS of California. Mr. Speaker, I thank my colleague for yielding time to me, and I will not take the 2 minutes.

It is very apparent that the Congress made a mistake in the first place by addressing catastrophic health insurance by providing coverage that was already available in the marketplace. It is time to go back to the drawing boards. Let us repeal that mistake and start over again next Congress.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 1 minute to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Mr. Speaker, whether it be MARVIN LEATH from Waco, TX, or BOB MATSUI from Sacramento, or ROY ROWLAND from Dublin, GA, or whether it be CHARLIE RANGEL from East Harlem, or Barbara KENNELLY from Hartford, the message has come in loud and clear from the people of the United States of America. The people that we represent, really the only people important in our lives, the message is repeal. They understand we have tried very hard to have a good bill. We cannot bring it together, and so let us listen to them. They care about us. We care about them.

So, Mr. Speaker, let us repeal, and begin again and see if we can give the elderly of the United States of America what they really want next year: long-term care.

Mr. ARCHER. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. REGULA].

Mr. REGULA. Mr. Speaker, today, I vote for repeal of the catastrophic care law but exhort my colleagues that total repeal without maintaining a core of basic benefits is a mistake. The poor elderly will lose access to health coverage they would otherwise receive under current law. Nearly 20 million older taxpayers with incomes below $15,000 who would have received the benefits without paying will now be put at risk of not having the care because of their inability to pay.

Alternative forms of coverage are simply too expensive for many Medicare beneficaries. Recent findings by the Aging health subcommittee indicate that insurance industry premiums for Medigap coverage will rise in 1990. For example, Massachusetts Blue Cross-Blue Shield reportedly plans to ask State approval for a 75-percent increase in its premiums if the catastrophic law is totally repealed. Although this is an extreme example with most insurers asking for increases between 11 to 25 percent it reveals the difficulty of lower income elderly finding coverage for these services in the private sector. Premiums for these policies range from $200 to $1,300 a year.

Those who support total repeal would say these figures are inflated and misleading. No doubt some insurers will attempt to use these changes in law to their advantage. It is the responsibility of the State insurance commissioners to address this issue while it is our duty to carefully consider the effect of Federal law upon all elderly.

Congressmen SCHULZE, and myself, have introduced legislation, H.R. 3585, to provide for a benefit package based on the McCain plan which passed the Senate by a vote of 99 to 0. We are confident this will go toward alleviating the potential costs to the poor elderly.

Our proposal will provide for long-term hospitalization protection, limited home health and respite care, mammograms, hospice care, and a restricted prescription drug benefit. Because of the low costs of the package there is no need for any surtax or supplemental premium. Financing is provided completely through the existing flat part B premium.

It is my hope that the House can come to agreement with our Senate colleagues in maintaining some form of benefit package which will protect our elderly while repealing the onerous surtax. To do otherwise ignores the genuine needs of our Nation's older Americans.

Mr. ARCHER. Mr. Speaker, I yield myself such time as I may consume to say that it is clear, particularly after listening to all of the speakers on the floor in the last few minutes, that the chairman's motion is the appropriate motion, and I support it.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 30 seconds to the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. Mr. Speaker, I thank the gentleman for yielding time to me and I rise in support of the motion offered by the gentleman from Illinois [Mr. ROSTENKOWSKI].

All throughout the summer when I had my town hall meetings the refrain that was sounded constantly was get rid of this whole program and start from scratch to design a better program for Medicare, including long-term care.

I thank the gentleman again and appreciate his work, and urge the House to support the gentleman's motion.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 30 seconds to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise in opposition to outright repeal of the Medicare Catastrophic Protection Act. I think we are throwing the baby out with the bath water.

The Catastrophic Protection Act contains a number of vital and important provisions which should not be discarded along with the duplicative benefits and supplemental premium which so many seniors found objectionable.

Mr. Speaker, not only have many seniors come to rely upon the added security which this act provides, they have terminated many of their private insurance policies as well.

Repeal of this act at this time would leave many seniors in a worse position than they found themselves before the law was ever enacted.

Additionally, many hospitals in my district have expressed a concern over the fate of the Catastrophic Act, and particularly, the hospitals benefits provision of this important law.

Specifically, hospitals have been treating Medicare patients with the understanding that the Health Care Financing Administration would reimburse the hospital for an unlimited Medicare patient hospital stay. Should the law revert to a 150-day hospital stay limit, many hospitals would be faced with collecting bills from patients who suddenly had no Medicare coverage.

Furthermore, many alternatives have been proposed which would have removed the supplemental premium while retaining the most vital benefits.

Why should we repeal the act only to revisit this legislation in a few short months. Months in which seniors will go without the vital coverage provided by the provisions of this bill.

Accordingly, Mr. Speaker, I urge my colleagues to reconsider the repeal of the Catastrophic Protection Act, and consider some of the viable alternatives which have been proposed.

Mr. ROSTENKOWSKI. Mr. Speaker, I have no further requests for time, and I move the previous question on the motion.

The previous question was ordered.

The SPEAKER pro tempore (Mr. HEFNER). The question is on the motion offered by the gentleman from Illinois [Mr. ROSTENKOWSKI].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PICKLE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 352, nays 63, not voting 18, as follows:

[Roll No. 376]

YEAS—352

| | | |
|---|---|---|
| Ackerman | Andrews | Applegate |
| Akaka | Annunzio | Archer |
| Armey | Frost | McCloskey |
| Atkins | Gallegly | McCollum |
| AuCoin | Gallo | McCrery |
| Baker | Gaydos | McCurdy |
| Ballenger | Gejdenson | McDade |
| Barnard | Gekas | McDermott |
| Bartlett | Geren | McEwen |
| Barton | Gibbons | McGrath |
| Bateman | Gillmor | McMillan (NC) |
| Bates | Gingrich | McMillen (MD) |
| Beilenson | Glickman | Meyers |
| Bennett | Goodling | Michel |
| Bentley | Gordon | Miller (OH) |
| Bereuter | Goss | Miller (WA) |
| Berman | Grandy | Mineta |
| Bevill | Grant | Moakley |
| Bilirakis | Gray | Mollohan |
| Bliley | Guarini | Montgomery |
| Boggs | Gunderson | Morella |
| Bonior | Hall (OH) | Morrison (CT) |
| Borski | Hall (TX) | Morrison (WA) |
| Bosco | Hammerschmidt | Mrazek |
| Boxer | Hancock | Murphy |
| Broomfield | Hansen | Natcher |
| Browder | Harris | Neal (MA) |
| Brown (CA) | Hastert | Neal (NC) |
| Brown (CO) | Hatcher | Nelson |
| Bruce | Hayes (LA) | Nielson |
| Buechner | Hefley | Nowak |
| Bunning | Hefner | Olin |
| Burton | Henry | Ortiz |
| Bustamante | Herger | Oxley |
| Byron | Hertel | Packard |
| Callahan | Hiler | Pallone |
| Campbell (CA) | Hoagland | Parker |
| Campbell (CO) | Hochbrueckner | Parris |
| Cardin | Holloway | Pashayan |
| Carper | Horton | Patterson |
| Carr | Hoyer | Paxon |
| Chandler | Huckaby | Payne (VA) |
| Chapman | Hughes | Pease |
| Clarke | Hunter | Pelosi |
| Clement | Hyde | Penny |
| Clinger | Inhofe | Petri |
| Coble | Ireland | Pickett |
| Coleman (MO) | Jacobs | Porter |
| Coleman (TX) | James | Poshard |
| Collins | Jenkins | Price |
| Combest | Johnson (CT) | Pursell |
| Condit | Johnson (SD) | Quillen |
| Cooper | Johnston | Ravenel |
| Costello | Jones (GA) | Ray |
| Coughlin | Jones (NC) | Regula |
| Courter | Kanjorski | Rhodes |
| Cox | Kasich | Richardson |
| Craig | Kastenmeier | Ridge |
| Crane | Kennedy | Rinaldo |
| Dannemeyer | Kennelly | Ritter |
| Darden | Kildee | Roberts |
| Davis | Kleczka | Robinson |
| de la Garza | Kolbe | Roe |
| DeFazio | Kolter | Rogers |
| DeLay | Kyl | Rohrabacher |
| Dellums | Lagomarsino | Ros-Lehtinen |
| Derrick | Lancaster | Rose |
| DeWine | Lantos | Roth |
| Dickinson | Laughlin | Roukema |
| Dicks | Leach (IA) | Rowland (CT) |
| Dingell | Leath (TX) | Rowland (GA) |
| Dixon | Lehman (CA) | Russo |
| Donnelly | Lehman (FL) | Saiki |
| Dornan (CA) | Lent | Sangmeister |
| Douglas | Levine (CA) | Sarpalius |
| Dreier | Lewis (CA) | Sawyer |
| Duncan | Lewis (FL) | Saxton |
| Durbin | Lewis (GA) | Schaefer |
| Dwyer | Lightfoot | Schiff |
| Dyson | Lipinski | Schneider |
| Eckart | Livingston | Schroeder |
| Edwards (OK) | Lloyd | Schuette |
| Emerson | Lowery (CA) | Schulze |
| Engel | Lowey (NY) | Schumer |
| English | Luken, Thomas | Sensenbrenner |
| Erdreich | Lukens, Donald | Sharp |
| Espy | Machtley | Shaw |
| Fascell | Madigan | Shays |
| Fawell | Manton | Shumway |
| Fazio | Markey | Shuster |
| Feighan | Marlenee | Sikorski |
| Fields | Martin (IL) | Sisisky |
| Fish | Martin (NY) | Skaggs |
| Flake | Martinez | Skeen |
| Foglietta | Matsui | Skelton |
| Ford (MI) | Mavroules | Slaughter (NY) |
| Frank | Mazzoli | Slaughter (VA) |
| Frenzel | McCandless | Smith (FL) |
| Smith (NE) | Sundquist | Volkmer |
| Smith (NJ) | Swift | Vucanovich |
| Smith (TX) | Synar | Walgren |
| Smith (VT) | Tallon | Walker |
| Smith, Robert (NH) | Tanner | Walsh |
| | Tauke | Watkins |
| Smith, Robert (OR) | Tauzin | Waxman |
| | Taylor | Weber |
| Snowe | Thomas (CA) | Weiss |
| Solarz | Thomas (GA) | Weldon |
| Solomon | Thomas (WY) | Wheat |
| Spence | Torres | Whitten |
| Spratt | Traficant | Williams |
| Stallings | Traxler | Wolf |
| Stangeland | Udall | Wyden |
| Stark | Unsoeld | Wylie |
| Stearns | Upton | Yates |
| Stenholm | Valentine | Yatron |
| Studds | Vander Jagt | Young (AK) |
| Stump | Visclosky | Young (FL) |

NAYS—63

| | | |
|---|---|---|
| Alexander | Hawkins | Owens (NY) |
| Anderson | Hayes (IL) | Owens (UT) |
| Anthony | Hopkins | Panetta |
| Boehlert | Houghton | Payne (NJ) |
| Brennan | Hubbard | Perkins |
| Clay | Hutto | Pickle |
| Conte | Jontz | Rangel |
| Conyers | Kaptur | Rostenkowski |
| Coyne | Kostmayer | Roybal |
| Dorgan (ND) | LaFalce | Sabo |
| Downey | Levin (MI) | Savage |
| Dymally | Long | Scheuer |
| Early | McHugh | Slattery |
| Edwards (CA) | McNulty | Smith (IA) |
| Evans | Mfume | Staggers |
| Gephardt | Miller (CA) | Stokes |
| Gilman | Moody | Towns |
| Gonzalez | Murtha | Vento |
| Gradison | Myers | Whittaker |
| Green | Nagle | Wise |
| Hamilton | Obey | Wolpe |

NOT VOTING—18

| | | |
|---|---|---|
| Aspin | Florio | Rahall |
| Bilbray | Ford (TN) | Smith, Denny (OR) |
| Boucher | Garcia | |
| Brooks | Molinari | Torricelli |
| Bryant | Moorhead | Wilson |
| Crockett | Oakar | |
| Flippo | Oberstar | |

□ 1254

The Clerk announced the following pair:

On this vote:

Mr. Flippo for, with Mr. Ford of Tennessee against.

Mr. ALEXANDER and Mr. WOLPE changed their vote from "yea" to "nay."

Mr. McDERMOTT and Mr. MARKEY changed their vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## PERSONAL EXPLANATION

Mr. BILBRAY. Mr. Speaker, I was absent for debate on H.R. 3607, the instruction to the conferees on the catastrophic health insurance bill. Had I been present, I would have voted "aye" on rollcall 376 to instruct the conferees to hold steady to the House position.

## REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 2044

*[Inadvertently omitted from the Congressional Record of Monday, November 20, 1989]*

Mr. MORRISON of Connecticut. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor from the bill, H.R. 2044.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

## REPORT ON IMPROVEMENT OF THE HONORABLE JACK BROOKS

(Mr. PICKLE asked and was given permission to address the House for 1 minute.)

Mr. PICKLE. Mr. Speaker, I have asked for this time to give the House a report on the condition of our beloved friend, the gentleman from Texas [Mr. BROOKS]. I have been told by doctors at Bethesda Naval Hospital that they expect to move our friend, Mr. BROOKS, from the intensive care unit to a private room at the hospital today.

As Members know, the gentleman from Texas [Mr. BROOKS], chairman of the Committee on the Judiciary, has been treated for acute pancreatitis. Doctors at Bethesda say that his condition is greatly improved, and he is now classified as "good."

JACK will remain in the hospital for further monitoring of his progress for an additional period of time, and will complete his recovery at home. He is transacting committee and office business from the hospital, and expects to return to a regular work schedule at the beginning of the second session of the 101st Congress.

Chairman BROOKS asked me to make this statement to Members. He says:

Charlotte and I want all our friends to know how much their thoughtfulness and concern have meant to us over the past few weeks. It is most gratifying to know that so many people have been thinking of us.

All Members rejoice that Chairman BROOKS is greatly improved.

## REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1233

Mr. WATKINS. Mr. Speaker, I ask unanimous consent that my name be removed from H.R. 1233. It was erroneously placed there on March 21.

The SPEAKER pro tempore (Mr. HALL of Texas). Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

## APPOINTMENT OF CONFEREES ON S. 593, TELEVISION VIOLENCE AND INDECENT MATERIAL ACT

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 593) to exempt certain activities from provisions of the antitrust laws, with a Senate amendment to the House amendment thereto, disagree to the Senate amendment to the House amendment, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The Speaker will appoint conferees upon his return to the chair.

## CONFERENCE REPORT ON H.R. 3611, INTERNATIONAL NARCOTICS CONTROL ACT OF 1989

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 3611) to combat international narcotics production and trafficking.

The Clerk read the title of the bill.

(For conference report and statement see proceedings of the House of Monday, November 20, 1989, at page 30321.)

The SPEAKER pro tempore. Is a second demanded?

Mr. BROOMFIELD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. FASCELL] will be recognized for 20 minutes, and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

□ 1300

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 3611, the International Narcotics Control Act of 1989.

This bill will not solve America's drug problem, which can only be solved at home. But it will provide some necessary tools to assist in our efforts overseas.

H.R. 3611 authorizes $115 million for international narcotics control programs in fiscal year 1990, the amount requested by the President. It also authorizes $125 million in military and law enforcement aid for Bolivia, Colombia, and Peru, of which amount up to $19 million may go to police forces in those countries. Again, this is the amount requested by the President, although the committee has included some safeguards on this aid.

Finally, we have noted a number of drug-related problems, such as the need to deal with the flow of weapons to South American drug dealers and to develop a trade policy which is coordinated with our narcotics control objectives.

The conference report is supported by Members on both sides of the aisle, and by the administration. I therefore urge the House to approve H.R. 3611 expeditiously.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am happy to join Chairman FASCELL in recommending the conference report to H.R. 3611, the International Narcotics Control Act of 1989. As a conferee to this report, I have carefully watched its preparation and the extensive negotiations involved in crafting this bill.

I want to commend the outstanding efforts of Congressmen BEN GILMAN, LARRY SMITH, and the other members of the Task Force on International Narcotics Control. They expertly guided this legislation through the congressional process on an expedited basis and closely worked with our Senate colleagues in preparing this report. They deserve our thanks as do the committee staffers.

I am pleased to say that this bill and report were crafted in a spirit of cooperation. There can be no partisanship on an issue which threatens America's national security. This final product is fair and balanced and merits the support of our colleagues in the Congress.

H.R. 3611 provides implementing language for the international aspects of the President's new drug strategy. The bill authorizes $125 million in military and law enforcement aid for Bolivia, Colombia, and Peru. Of that amount, up to $12.5 million may be provided to police forces in those countries for antinarcotics efforts. Up to $6.5 million may be provided for police training in those Andean nations. Key waivers to current law concerning police training and U.S. aid to

nations in arrears on their debt payments were also granted in the bill.

While economic assistance to drug-producing nations is an essential element in the war on drugs, we all agreed that the President's plan to grant that aid in fiscal year 1991, and not in fiscal year 1990, is a sound strategy which should be tested.

Last year, Congress mandated that the Office of National Drug Control Policy be established and that a drug strategy be prepared. In complying with that request, the President unveiled his strategy in September and requested congressional implementing language. I am pleased to say that this bill and report represent Congress' contribution to the international aspects of the war on drugs.

I urge my colleagues on both sides of the aisle to join me in approving this conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Let me just conclude on this side by expressing my appreciation of the chairman of the task force on narcotics abuse in the Committee on Foreign Affairs, the gentleman from Florida [Mr. SMITH], and also the ranking member, the gentleman from New York [Mr. GILMAN], and other members of the task force who have worked diligently and consistently over long periods of time in establishing a congressional initiative with respect to U.S. policy and the relationship with other countries in trying to help deal with the entire narcotics problem.

Mr. Speaker, we will continue that work. We have tried a lot of things. Some have been successful, some have failed. We will continue to try to be innovative and to work with the administration for a comprehensive policy that covers not only production, but interdiction, rehabilitation, education, and the entire process, including enforcement.

Mr. Speaker, I want to conclude my brief remarks with this admonition: No matter what we do in terms of trying to get producing countries to stop producing and shipping into the U.S. market, as long as Americans insist on paying horrible prices for the privilege of killing themselves with narcotics, there will always be a market for somebody to produce the drugs and bring them in this country, notwithstanding the fact we have had excellent cooperation with countries where there is a problem of production, where it is extremely difficult to eradicate, where there has now been cooperation with terrorists, where democratic institutions are being destroyed because of the tremendous amount of money in narcotics. Most of that money is coming from right here in this country and destroying democratic institutions in other countries, as well as the fabric of this society.

This bill plays a part in the comprehensive policy of the United States in dealing with the drug problem, but no one should be under the illusion that because we are leaning on our friends or because they are cooperating with us, that in some miraculous way we will abolish production of drugs or drug substances and therefore solve the problem in this country of drug abuse.

Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. SMITH], the chairman of the task force.

Mr. SMITH of Florida. Mr. Speaker, I thank the chairman for yielding. I want to commend the gentleman and the ranking member, the gentleman from Michigan [Mr. BROOMFIELD] for continuing a very significant interest in getting this kind of legislation passed.

There has been a significant amount of obstacles placed in the path of this legislation this year, unfortunately, because of a rather difficult process in which the administration finds itself. That process has ultimately led to a rather different point of view coming from different parts of the administration.

Mr. Speaker, I am happy, however, that we do have a product, and I certainly want to rise in support of that product, H.R. 3611, the International Narcotics Act of 1989.

The conference report on this bill is largely the same as H.R. 3611, as it passed the House originally. Certain technical corrections have been made and a debt for drugs provision was broadened.

In addition, at the insistence of the chairman of the Senate Committee on Appropriations, we were forced to drop our provisions which have been in the law for 3 years. This will unfortunately have the effect of limiting aid to only the three Andean countries, Bolivia, Colombia, and Peru, rather than permitting assistance to those country's neighbors as well where there are still significant problems.

I would like to note for the RECORD the history of this bill. When we first began writing H.R. 2655, the foreign assistance authorization bill, containing the narcotics provisions which are now in the bill in front of us, the administration told us that providing a Brooke waiver and 620(q) waiver to release these countries from prohibitions on aid to countries in default on past debt, was adamantly opposed by the administration and might be cause for vetoing the bill.

□ 1310

Mr. Speaker, in September of this year Director Bennett requested exactly those waivers which we had proposed and which the administration opposed in the previous March. Further, we had originally tied these waivers to performance criteria of the host country. We have had to drop that conditionality for fiscal year 1990 because the administration opposed any such accountability measures for this fiscal year.

In October in H.R. 3611, when we first passed it, we tried to provide $100 million in increased economic aid to these countries. Like many of my colleagues, I believe, if we have any degree of success on the enforcement side, it will be imperative to provide economic aid to alleviate the social, economic, and political consequences of drugs. Unfortunately the administration told us that the inclusion of such aid, even as an authorization, not an appropriation, would constitute grounds for a veto of this bill. If, as I suspect, a supplementary request for economic aid is going to be submitted next spring as part of what the administration now calls strategy 2, which Director Bennett will unveil to us sometime in February, I hope that we can all remind on both sides of the aisle the administration of their original opposition to such aid. We will try to provide a 2-year authorization to demonstrate to the Andean countries the commitment of the United States Congress to sustain support for cooperating countries. The administration insisted that we limit our bill to 1 year.

In short, although this bill is better than not having a bill, although there is no question that we need to continue the war on drugs with words, and with deeds, and with dollars and with support for the other countries involved, and this is, after all, the international component, there still, however, seems to be what I call an NIH mentality, the not-invented-here. If they do not like it down on the White House lawn, or in the old Executive Building, or wherever else Mr. Bennett is located, it is only because they did not make it up. When we gave them most of this in March, they turned it down. Now, when they came back to us in September, they asked us for it.

Now, is it right? Is it good? What is the difference who authored it? If it is going to work, if it is going to be important in the fight against drugs, we do not claim any pride of authorship. I say, "You want it, take it. Use it, but don't fight us when we first propose it."

Mr. Speaker, that has been the basic rub all along over the years, and we thought we were past that, and, Mr. Speaker, both myself and my colleagues on the other side of the aisle want to get past that. We want to get into a situation where the administration and the Congress seek to do the right thing, pass the appropriate legislation, pass the appropriate funding and turn loose the people that can ul-

timately win this war on drugs. I would hope that we can overcome this not-invented-here mentality the next time we go through this next year.

Notwithstanding all of that, the bill, however, remains important and worthy of our colleagues' support.

I would like to commend, as I said, the gentleman from Florida [Mr. FASCELL] for his leadership and support, together with the gentleman from Michigan [Mr. BROOMFIELD], the ranking member. I would also like to thank my colleagues on the task force, especially the gentleman from New York [Mr. GILMAN] and the gentleman from Ohio [Mr. FEIGHAN] for their assistance and guidance. They have been an integral part of shaping a lot of what drug policy in this country is, and we would like to be able to say that we also thank the administration because they are implementing the policy that was arrived at.

Mr. Speaker, with the hope that it works, I urge all Members to support this international narcotics component of the whole drug strategy.

Mr. Speaker, I yield back the balance of my time.

Mr. BROOMFIELD. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. GILMAN], the cochairman of the Task Force on International Narcotics Control.

Mr. GILMAN. Mr. Speaker, I rise in support of the conference report accompanying H.R. 3611, the International Narcotics Control Act of 1989. As the vice chairman of the Foreign Affairs Committee's Task Force on International Narcotics Control, I want to commend the task force's chairman, the gentleman from Florida [Mr. SMITH] for his leadership in formulating this bipartisan measure with the other body, as well as for the support from our Committee's distinguished chairman, the gentleman from Florida [Mr. FASCELL] and our committee's distinguished ranking minority member, the gentleman from Michigan [Mr. BROOMFIELD].

The Andean nations of Colombia, Peru, and Bolivia are realing under the devastating attacks of the drug traffickers. Hardly a day goes by that we do not learn of the tragic assassinations of judges, journalists, elected officials, attornies general, business leaders, and other citizens who are desperately trying to earn a living and live their lives in peace.

In addition to authorizing $115 million for the State Department's Bureau of International Narcotics Matters, H.R. 3611 provides $125 million for fiscal year 1990 in military assistance and training to Colombia, Peru, and Bolivia to fund the President's Andean initiative and authorizes the Special Defense Acquisition Fund to be used to acquire military equipment, such as small boats, helicopters, and communications gear, that is particularly suited for narcotics control efforts.

This measure also urges the President to seek agreement by foreign nations, especially NATO and Warsaw Pact nations, to join with our Nation in taking the necessary steps to halt the transfers of weapons to narcotic traffickers. I am pleased to note that at our request, the request of our foreign affairs committee, that President Bush will soon be participating in an Andean drug summit with leaders of the drug-producing nations.

This bill also urges the President to direct our representatives to INTERPOL to urge that organization to study the feasibility of creating an international data-base on the flow of the types of weapons that are being acquired illegally by international narcotics traffickers.

Furthermore, this legislation permits the transfer of excess defense equipment to encourge military forces of a Latin American or Caribbean nation to participate with local law enforcement agencies in a comprehensive anti-narcotics program. The Secretary of State is authorized to determine which nations are eligibile to receive such equipment and to ensure that the defense equipment is coordinated with other anti-narcotics programs receiving our Government's assistance.

H.R. 3611 also releases Colombia, Peru or Bolivia from certain loan obligations if the President determines that that nation is implementing programs to reduce the flow of cocaine to the United States in accordance with a formal agreement to which our Nation is a party and that the agreement contains specific performance criteria with respect to its drug reduction program.

Mr. Speaker, this measure, like many that have been churned out of this chamber during the last moments of this session of the 101st Congress, is not perfect. Some important provisions have been deleted in an effort to reach a compromise with the other body. Nevertheless, H.R. 3611 is a good bill. It is a step in the right direction, especially in funding urgently needed funds to the beleaguered Andean nations of Colombia, Peru, and Bolivia. The success of our Nation's efforts to reduce the supply of illicit drugs is dependent on a sound cooperative international effort. This measure provides a basis for such a cooperative effort. Accordingly, Mr. Speaker, I urge my colleagues to support this important conference report.

□ 1320

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. GOSS], a member of the Foreign Affairs Committee.

Mr. GOSS. Mr. Speaker, I thank the distinguished ranking member for yielding me this time.

Mr. Speaker, I rise as a conferee obviously in support of the proposition before us. I think a lot of work has gone into this. I think the time has come to get on with it.

I particularly want to commend the leadership for the excellent job they have done in responding quickly to the President's request on this.

There is no question that the response would have been slower had not considerable homework, many hearings, much debate, much information, much analysis, already been concluded by our committee, and through the hard work and the good leadership efforts of our leadership.

I think it is important that people know that.

I think it is also important that people know that this is only one aspect of the war on drugs. It is an important aspect, one that the President has asked for, one that we have responded to, but there are other aspects, as the chairman of the Foreign Affairs Committee has suggested.

The only thing we all need is commitment to the war on drugs, and in addition to support for this proposition I urge the commitment of all of us to keep up the war on drugs and win it.

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the gentlewoman from Kansas [Mrs. MEYERS].

Mrs. MEYERS of Kansas. Mr. Speaker, as a conferee, I would like to associate myself with the remarks of the Chairman, Mr. FASCELL, and the ranking member of the Foreign Affairs Committee Mr. BROOMFIELD, and of Mr. SMITH, the chairman of the Narcotics Task Force, of which I am a member.

Mr. Speaker, many people do not realize that there is a major international aspect to our drug problem. If I lived in Colombia, I would hate the drug users in the United States for the chaos that the drug trade causes in that country. With especially many countries in this hemisphere, the drug traffic makes the job of our President and State Department much more difficult.

We will win this war. For the first time the percentage of those who say they have used drugs at least once in the last month has dropped. But we must be constant and consistent in our effort, and continue to cooperate with the other countries in our hemisphere. This bill is a giant step in that direction. I urge my colleagues to support this conference report.

Mr. BROOMFIELD. Mr. Speaker, I yield such time as he may consumer to the gentleman from Pennsylvania [Mr. COUGHLIN], who is the vice chairman of the Permanent Select Commit-

tee on Narcotics Abuse and Control, and has been instrumental in bringing this bill to the floor in support of President Bush's Andean strategy.

Mr. COUGHLIN. Mr. Speaker, I thank the distinguished ranking member for yielding me this time.

Mr. Speaker, I rise in support of the conference report to accompany H.R. 3611, the International Narcotics Control Act of 1989. I want to commend the chairman of the Foreign Affairs Committee, Mr. FASCELL, the distinguished ranking minority member, the gentleman from Michigan [Mr. BROOMFIELD] the gentleman from Florida [Mr. SMITH] and my friend and colleague from New York, Mr. GILMAN. I also want to commend our distinguished chairman of the House Select Committee on Narcotics, Mr. RANGEL, for his leadership in moving this legislation and other aspects of the President's drug strategy forward.

I am pleased that the House and Senate conferees, through bipartisanship and comity, have diligently crafted this legislation and conference report to give the President additional tools, resources and authorities to win the war against drugs. Most importantly, it will allow us to provide desperately needed assistance to Colombia, which is facing a continuing onslaught of drug violence. This conference report gives the President the implementing language he needs to carry out his international antinarcotics policies.

In the past 4 days, we have witnessed a high degree of bipartisan and bicameral cooperation. This cooperative spirit has produced technical enhancements to provide $125 million in military and law enforcement aid to Bolivia, Colombia, and Peru to fund the President's Andean initiative.

I should add that the antinarcotics military and law enforcement assistance in this package is conditional upon beneficiary nations maintaining democratic governments that do not engage violations of human rights.

During the conference, language was inserted which stresses the importance of assistance to those countries that we are providing funds to for security in fiscal year 1990 and for economic development from fiscal year 1991 through fiscal year 1994. This expenditure strategy will provide the incentives for these countries to pursue the war against drugs to the fullest of their abilities.

Mr. Speaker, Colombia must not be forced to wait any longer for the desperately needed assistance included in this package. The International Narcotics Control Act of 1989 is a critical part of the President's antidrug strategy and thus I strongly urge my colleagues to support this conference report.

Mr. SMITH of Florida. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. FEIGHAN), the cochair of the International Narcotics Control Task Force.

Mr. FEIGHAN. Mr. Speaker, as a cochairman of the International Narcotics Control Task Force, I want to very genuinely commend Chairman FASCELL and Representative LARRY SMITH, chairman of the task force, for their leadership in bringing this bill to fruition. I would reiterate that much of the bill consists of the provisions we approved in the foreign aid bill and responds to Director Bennett's request.

First, the bill provides authorizing language for the $125 million Andean initiative along with the $115 million authorization for the State Department's Bureau of International Narcotics Matter. It also includes the necessary waiver authorities requested by the administration. I would point out that the waiver on aid to police forces applies only to the three Andean countries, only for those units that are organized for the specific purpose of narcotics enforcement, and only for the next fiscal year.

Second, the bill contains human rights language and other reporting requirements that will ensure that Congress is notified about the type and value of assistance provided; which units will receive assistance; and an explanation of how this aid meets our antinarcotics objectives.

While I support this bill, I must say that I am disappointed by the absence of economic assistance and the failure of the administration to come up with, and fight for, more economic aid. The administration's rationale is that first we must assist these countries in reestablishing control of those areas dominated by the cartel—then we can provide economic assistance.

But our efforts on the enforcement side will be seriously hampered unless these nations see that the United States is able to provide tangible economic assistance to their countries. Our experience tells us that cocoa farmers will continue growing cocoa, even in the face of increased enforcement actions, if there are no realistic alternatives to the drug trade. We have received assurances from the administration that a more detailed plan, outlining a multiyear, $2 billion effort will be submitted in February and I look forward to seeing that plan.

Finally, I want to point out that the conference report takes into account the other international aspects of our antinarcotics efforts. It recognizes the role that our Western European allies and Japan can play in joining us in assisting these countries with alternative development assistance. It endorses the idea of multinational antinarcotics strike force made up of our allies in the hemisphere, and calls for the United States to explore this idea through the OAS and the United Nations.

I think the bill fully meets the administration request and prepares us to move ahead in a more comprehensive way next year. I urge my colleagues to support the conference report.

Mr. SMITH of Florida. Mr. Speaker, I yield myself such time as I may consume.

This may be the only piece of the authorization bills dealing with drugs that makes it through the House and the Senate this year. It is important that we pass this component. It is important that we acknowledge that there is a major problem in the Andean countries and that the focus should be right now in that area on Columbia, Bolivia, and Peru.

This bill does that. It provides some flexibility to the administration to deal with the problems. It provides for additional sums for training, for antinarcotics units and for the provisioning of supplies which are absolutely necessary in the drug war. It provides the authorization for the continued use of dollars to protect judges and all of the other things that we have in the task force in the Foreign Affairs Committee been able to come up with as part of our contribution to this fight against drugs; but what is important that this be only the first step and this task force is awaiting two things early next years. One will be the unveiling of strategy by the administration as to the whole region, the economic package as well as the work involved in bringing other countries around these three core countries on board.

I especially will be looking at the strategy vis-a-vis Mexico, which as was reported just today in the press in backsliding badly in terms of its drug fighting efforts.

□ 1330

Finally, we will be looking for the certification process on March 1 to see whether or not the administration is going to adhere to a realistic approach to whether or not all of these drug-trafficking or drug-producing countries are in fact "fully cooperating with the United States." We hope we do not go back to the way it was during the previous administration. There has been a good start.

We are going to be partners in this fight, and ultimately the victors are going to be the people of the United States who want to get rid of this drug problem once and for all.

This bill is a small piece of that solution.

Mr. BROOMFIELD. Mr. Speaker, I yield back the balance of my time.

Mr. SMITH of Florida. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. HALL of Texas). The question is on the motion offered by the gentleman

from Florida [Mr. SMITH] that the House suspend the rules and agree to the conference report on the bill, H.R. 3611.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. SMITH of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on the bill, H.R. 3611, just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

## CONFERENCE REPORT ON H.R. 3614, DRUG-FREE SCHOOLS AND COMMUNITIES ACT AMENDMENT OF 1989

Mr. FORD of Michigan. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 3614) to amend the Drug-Free Schools and Communities Act of 1986 to revise certain requirements relating to the provision of drug abuse education and prevention programs in elementary and secondary schools, and for other purposes.

The Clerk read the title of the bill.

(For conference report and statement, see proceedings of the House of Monday, November 20, 1989, at page H 9147.)

The SPEAKER pro tempore. Is a second demanded?

Mr. GOODLING. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was not objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. FORD] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. GOODLING] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. FORD].

Mr. FORD of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. FORD of Michigan. Mr. Speaker, the Drug-Free Schools and Communities Act of 1989 (H.R. 3614) as passed by the House, and the comparable provisions contained within the omnibus antidrug bill as passed by the Senate, were similar in most respects.

This bill includes important proposals to more directly target scarce funds on disadvantaged areas; to direct the bulk of new funding to local school districts; to cap the funds that flow to the Governors and target them.

The bill also authorizes $40 million per fiscal year to be distributed through the Child Abuse Prevention and Treatment Act/National Center for Child Abuse and Neglect Network.

The conferees also included a provision written by Senator ADAMS to address concerns about unsupervised children who are at greater risk to use drugs. The amendment creates programs for such children as part of the Community Youth Activity Program.

There were, however, several important differences which the joint House-Senate conference had to resolve, I believe that those issues were generally resolved in a manner satisfactory to the House.

The legislation provides that, to be eligible to receive Federal funds, institutions of higher education and local educational agencies must develop and implement programs to prevent the unlawful use and possession of illicit drugs and alcohol by students and employees. The Secretary can apply a series of remedies and sanctions which may include termination of all Federal funds if this provision is not met.

Any school district receiving Federal money must adopt a strong antidrug policy, including the provision of courses for all students in all grade levels emphasizing prevention of illicit alcohol and drug abuse. This requirement is binding notwithstanding any other provision of law.

The conference agreement includes two important conditions which were not contained in the Senate version. First, the requirement I have described is subject to two other provisions of law which forbid the Federal Government from exercising any control over the curriculum of local school districts.

For a quarter of a century, it has been the clearly established policy of Congress that the Federal Government shall not step in and dictate the curriculum in local school districts regardless of the worthiness of the cause, in this case preventing drug abuse. Federal aid to education was stymied for many decades before 1965, due in large measure to the fear that the Federal Government would control local schools. Federal aid was achieved when the country was assured that Federal financial assistance to local schools did not mean Federal control of the curriculum. This conference agreement reaffirms that principle.

The second modifications sets forth a requirement that school districts provide a program emphasizing prevention of the use of illicit drugs and alcohol, but, with the Senate-passed version, does not refer to "curriculum." The conferees were determined to make clear that the Secretary cannot issue any regulations implementing this legislation which would permit the Federal Government to dictate the curriculum of local schools.

And to summarize, Mr. Speaker, the Drug-Free School and Communities Act amendments are in response to an over $150 million increase in funding under this program for fiscal year 1990.

This conference report would distribute the money by increasing to $100 million the money available to the Governors for state-wide drug education and prevention programs, sending most of the new appropriations directly to the local school districts based on enrollment and need, and providing $25 million in funding for emergency grants to school districts in most need of drug education and prevention.

As I explained, this conference report also retains the language agreed to by the House which would require local education agencies and institutions of higher education to develop a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees in order to be eligible for any Federal funds.

The House bill differed from the Senate bill in two main ways. The Senate bill would require the adoption of a strong drug policy, notwithstanding any other Federal law. The House bill explicitly makes this new provision subject to the General Education Provisions Act and the Department of Education Organization Act. These laws prohibit the Federal Government from exercising any control over school curriculum.

Also, the House language provided schools with appeals and waiver rights, so that Federal funding could not be unjustly denied a local education agency or institution of higher education. The Senate has agreed to the House langauge.

The House agreed to Senate language that would allow the Governor of a State to use funding under this act for drug testing programs for students voluntarily participating in athletic activities only in schools which approve a drug testing program. This language was included to address a problem in Indiana which ended up in court. This language is not intended to either condone or prohibit voluntary drug testing programs.

Drug and alcohol abuse is one of the major problems our school children and college students face. The language worked out in this conference report will target funds on educating students on the harmful effects of drug and alcohol abuse and preventing further abuse.

Mr. Speaker, I urge my colleagues to support this conference report.

Mr. GOODLING. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I am pleased to rise in support of H.R. 3614, the Drug Free Schools and Communities Act of 1989, and I would like to commend the distinguished chairman of our Education and Labor Committee, the gentleman from California [Mr. HAWKINS] and the ranking minority member, the gentleman from Pennsylvania [Mr. GOODLING], for their work on bringing this measure to the floor.

Mr. Speaker, throughout my tenure in Congress I have been actively involved in the fight against illegal drugs. Dishearteningly, the battle front in this war is now fought in our schoolgrounds. Our Nation's youth are falling prey to crack ice dealers at an increasingly alarming rate.

Drug education and prevention in schools is the greatest weapon we possess to curb illegal drug use among our children. H.R. 3614 authorizes funds for the critical establishment and maintenance of drug-free school zones.

The bill also requires institutions of higher education and local educational agencies to develop and implement a program to prevent the use of illicit drugs and abuse of alcohol by students and employees. The programs must include standards of conduct, an educational component, and information regarding counseling and rehabilitation programs.

Mr. Speaker, I firmly believe that the drug crisis is the No. 1 problem facing our Nation today. H.R. 3614 helps to fund a very important segment in our fight to curtail drug abuse in our schools and communities. Accordingly, I wholeheartedly support this measure and urge my colleagues to vote in favor of H.R. 3614.

Mr. GOODLING. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. HENRY].

Mr. HENRY. Mr. Speaker, let me simply say that this is essentially the bill that the House voted unanimously for without opposition on record vote about a week and a half ago. The House position prevailed in each of the major provisions of the bill with modest adjustments relative to some modest increases in the Governors' discretionary fund.

The basic formula distributions under the bill are unchanged. The emergency grants desired by the administration discretionary to the Secretary of Education were maintained.

Every Member on the Republican and Democratic sides of the House conferees signed the report, and with that I would simply urge adoption of the report.

Mr. GOODLING. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. BARTLETT].

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Mr. BARTLETT. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of this legislation, and do want to bring to the House's attention some information on one item that was the subject of a small amount of dispute in the conference, but I believe has been resolved.

The legislation provides that a program authorized under this bill is, and this is in the words of the conference report, "is a program to prevent the use of illicit drugs and alcohol by students or employees." Mr. Speaker, there was some question raised in conference as to whether or not GEPA restrictions, the restrictions under the General Education Provisions Act, would negate the requirement for drug education programs, a requirement for drug education programs under this legislation.

I want to note for the RECORD that the words, "a program to prevent the use of illicit drugs and alcohol by students or employees," are not intended to be nor is it a program of instruction under the GEPA language. Indeed, the program authorized under the conference agreement includes eight specific points, some of which do not deal with instruction at all. For example, sanctions that will be imposed, notification requirements, and standards of conduct. But the requirement that an educational component be a part of this mandated program is very much a part of the legislation.

GEPA only requires that the Federal Government not dictate exactly what the curriculum is to be, but this legislation does require that, in fact, drug education be part of the program.

Every local education agency then, under this legislation must adopt and implement such a program in order to be eligible to receive any Federal funds at all. This requirement is not negated by GEPA. It is not the intent to negate GEPA by either the members of the Committee on Education and Labor, the Members of this House, or the members of the conference or by the language of the legislation. Further, there is a local application that is required under current law and a State application that is required. Each of those applications must include assurances that there will be compliance with the specific requirements of the Drug-Free Schools and Communities Act, the drug-free schools and campuses amendments known as the Gramm amendment in the Senate, is now a part of that act and is indeed enforceable.

The Secretary has the authority to publish regulations that enforce the drug-free schools and campuses section, including regulations for periodic review of the program.

The State education agency must certify to the Secretary that it has adopted and implemented a program to prevent the use of illicit drugs and abuse of alcohol by its students and employees. All those requirements apply to elementary and secondary education. With regard to higher education, the concerns raised by the GEPA amendment to the Gramm amendment do not apply to the higher education requirements of the drug-free schools and campuses amendment at all.

I will note one other thing for the RECORD, and that is this language and this requirement is already in current law and is subject to GEPA, that is, the language that the schools shall provide for drug abuse education and prevention programs, and that section has never been challenged.

Mr. GOODLING. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania. [Mr. COUGHLIN], who has worked day and night to bring this day about.

Mr. COUGHLIN. Mr. Speaker, I want to join in congratulating the distinguished chairman and the distinguished ranking member for bringing this conference report to us. I also want to congratulate the gentleman from Michigan [Mr. HENRY], who I know had a very important part in negotiating this language, and this is a very, very important part of the President's drug strategy. It is a necessary component of trying to do something about the demand side of the equation, about educating our young people to the dangers of illicit drugs, and putting some teeth in that so that we know that those programs which we want to see happen are actually happening in our schools and in our colleges.

So I want to say again that this is very important legislation and I urge its adoption by all the House.

Mr. GOODLING. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, I will read from my statement because apparently pride of authorship on this side gets us into trouble as far as progress is concerned, and apparently pride of authorship over in the other body sometimes get in the way of progress.

Mr. Speaker, I rise in support of the conference report for the Drug Free Schools and Communities Act Amendments of 1989. This bill represents the bipartisan commitment of both the House and the Senate to eliminate the threat that drug and alcohol abuse pose for the youth of this Nation. Our youth are our investment in the future and its imperative that we take the steps that are necessary to safeguard that investment by removing drugs from our schools and communities.

What is in this conference agreement contains those necessary steps and utilizes several strategies to strengthen the Federal resolve to achieve drug free schools and communities. The Drug Free Schools and Communities Act has, for the past 3 years, been the primary vehicle for Federal support of State and local efforts to educate youth about the devastating effects of drug and alcohol

abuse. We have been provided an opportunity to make changes to the act that make it more efficient and effective. Toward that end, we have targeted new moneys toward areas of greatest need; emphasized a community-wide approach to the war on drugs; strengthened the training provisions; and tightened the evaluation requirements of the act.

The escalating problem of drug and alcohol abuse in our schools and communities, however, has forced us to develop a new weapon in the war against drugs. This weapon is an integral part of the Federal-State-local partnership to achieve a drug free America. The conference agreement before us today contains a provision that would require local education agencies and institutions of higher education to adopt and implement a program, within specified parameters, to prevent the use of illicit drugs and the abuse of alcohol by students and employees as a condition of receiving any Federal financial assistance. This provision is essentially the one which was included in the President's drug control strategy.

Although what we have provided for is a significant departure from what we have employed in the past, the seriousness of this issue requires such measures. This provision does not authorize the Federal Government or the Secretary of Education to dictate to local schools the particulars of the curriculum, the methods of teaching or the specific materials to be used. It does however, require that every school and college campus develop and implement a plan to prevent the use of illicit drugs and the abuse of alcohol by students and employees. No school may opt out of this war on drugs.

The missing ingredient in our effort to eliminate drugs from our schools and communities has been a mechanism to hold schools and college campuses accountable for their failure to communicate the drug free message. This failure is corrected through the drug-free schools and campuses amendment which has been included in this conference agreement. When combined with the plan approval requirements, general audit authority, and State and local application procedures already in place, we finally have teeth in the mandate to schools and colleges that they provide drug and alcohol abuse education, and that they are committed to a drug free environment for their students and employees. The Secretary can apply remedies and sanctions up to and including termination of any form of Federal financial assistance if this provision is not met.

I encourage all my colleagues to vote for this conference agreement and demonstrate their equal commitment to a drug free America.

Mr. Speaker, I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I yield 3 minutes to the gentleman from Florida [Mr. BENNETT].

Mr. BENNETT. Mr. Speaker, it is of course proper under our Constitution that we do not dictate the curricula of the school.

I would like to say, however, that State governments can do that, and in this particular field of drug abuse and alcohol abuse there is a need that State governments should do that. There are some 6,000-plus school boards throughout the United States. They are not all equipped to handle a complicated matter of this nature. So I would urge that the States be encouraged to use this legislation as a method to be as directive as possible to assist the school boards of various schools in the United States to comply with this legislation and to go forward with a vigorous program, which in each State I think should be as much mandated as possible.

The second point I would like to make about this matter is that this matter goes to the heart of the answer to the problem of drug abuse, and that is the question of demand.

I am reminded of a political hero for myself, Jack Kennedy, and what he said: "Think not what your country can do for you, but what you can do for your country." This is a field that we are dealing with today in which the U.S. Government cannot win the war for the people. The people have to win this war for the United States.

It depends at its heart on the decision of each individual. Every individual in our country has a responsibility to win for our country the war on drugs. That means the decision to make the "no" answer. It means the decision to discourage any peer pressure for the consumption of these drugs. It means a feeling of patriotism and dedication to what is best for our country, and to mankind, to enter into the heart of all of the American people to fight this serious threat that is upon the American scene today.

Mr. FORD of Michigan. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HALL of Texas). The question is on the motion offered by the gentleman from Michigan [Mr. FORD] that the House suspend the rules and agree to the conference report on the bill, H.R. 3614.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on H.R. 3614 just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

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□ 1350

## NEVADA WILDERNESS PROTECTION ACT OF 1989

Mr. VENTO. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the House amendments to the Senate bill (S. 974) to designate certain lands in the State of Nevada as wilderness, and for other purposes.

The Clerk read as follows:

Senate amendment to House amendments: Page 11, after line 6, of the Senate engrossed bill, insert:

(e) The Federal water rights reserved by this Act are specific to the wilderness areas located in the State of Nevada designated by this Act. Nothing in this Act, nor in any legislative history accompanying this Act related to reserved Federal water rights, shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

The SPEAKER pro tempore (Mr. HALL of Texas). Is a second demanded?

Mrs. VUCANOVICH. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes, and the gentlewoman from Nevada [Mrs. VUCANOVICH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment to House amendments presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, of course I support the passage of S. 974, the Nevada Wilderness Protection Act. This bill would designate 733,000 acres of wilderness in 14 areas. It is essentially the same bill that the House approved by a wide margin last Friday (November 17). The Senate, however, has amended

section 8 which provides a Federal reserved water right for wilderness. The amendment clarifies that this reserved water right applies only to the wilderness areas designated by this bill and that this act is not a precedent for future designations or to be used to interpret other acts. In the spirit of compromise with the other body, I reluctantly support this amendment and urge my colleagues once again to support the passage of S. 974.

Mr. Speaker, I yield such time as he may consume to the gentleman from Nevada [Mr. BILBRAY].

Mr. BILBRAY. Mr. Speaker, I thank the gentleman for yielding.

We support the bill; both Senators from Nevada and myself support the amendment and urge my colleagues to support the language as proposed by the Senate and to vote "yes" on this amendment, to suspend the rules and pass this bill.

Mr. VENTO. Mr. Speaker, I reserve the balance of my time.

Mrs. VUCANOVICH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in continued opposition to the Nevada Wilderness bill, S. 974. The amendment of the Senate added late last night does indeed act to correct some of my misgivings about this bill—but certainly not all of them.

Though I continue to argue strenuously that a Federal reserved water right is clearly not necessary given the circumstances of this bill—headwaters areas within National Forest reserves—the new section 8 paragraph (e) helps by making it expressly clear that this bill is not be considered a precedent. Mr. Speaker, I would like stronger language to clarify that the courts of the State of Nevada are the proper forum for litigation of water adjudication questions, but the current language is a major improvement. Most importantly, when we are in this Chamber in the not-too-distant future deciding questions of BLM-land wilderness designations, we will not be saddled with the burden of this bill having established reserved water rights precedents. When downstream areas are considered for wilderness we must revisit the water rights issue.

Despite the Senate's amendment I must still speak out against the bill. It still contains nearly twice the acreage that the administration wants. It still removes from multiple-use managment tens of thousands of acres that are highly prospective for oil and gas discoveries. Mr. Speaker, the largest flowing well in the lower 48 States is in Railroad Valley, NV, immediately adjacent to a proposed wilderness area. The geology was sufficiently favorable to convince this body not to designate the area in 1987. Why should we lock it up today?

Likewise in a previous Nevada wilderness bill passed by this body we designated the Mt. Rose area as a National Recreation Area rather than wilderness per se. Why? Because my constituents utilize a portion of the area as a snowmobile corridor, a use that will be disallowed in wilderness. Otherwise NRA status protects the land in a similar manner as wilderness designation—no mining or mineral leasing, no timber harvesting, and so forth. Mr. Speaker, if NRA status was preferred in 1987 why is it no longer preferred?

For these reasons and all the remaining unstated reasons that are in the committee's record, and the record developed on the floor last week, I voice my opposition to S. 974.

Mr. Speaker, I reserve the balance of my time.

Mr. VENTO. Mr. Speaker, this bill releases 2.4 million acres of land for multiple use in Nevada which is part of the roadless area study. It means that of the 5 million-plus acres of national forest lands, less than 15 percent would be wilderness. It would be the first wilderness we have added to Nevada since the passage of the Wilderness Act some 25 years ago.

This is a moderate measure, a reasoned measure, one that this House opted to pass last week by 323 votes in favor to 75 against.

Mr. Speaker, I think it demonstrates the overwhelming support of this body for this measure.

This is essentially the same bill with the differences that I articulated in my opening statement.

Mr. Speaker, I do not believe there is a necessity to continue to debate. The House has spoken. I think it will speak again.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mrs. VUCANOVICH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and concur in the Senate amendment to the House amendments to the Senate bill S. 974.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment to the House amendments was concurred in.

A motion to reconsider was laid on the table.

## FOOD SECURITY ACT OF 1985 CLARIFICATION

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3620) to clarify the Food Security Act of 1985, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the Senate amendments, as follows:

Senate amendments:

Page 2, line 2, strike out "subparagraph 1001(5)(D)" and insert "section 1001(5)(D)".

Page 2, line 24, strike out "paragraph (2)" and insert "paragraph (1) or (2)".

Page 3, line 4, strike out "subparagraph 1001(5)(D)" and insert "section 1001(5)(D)".

Page 3, line 13, strike out "paragraph (2)"and insert "paragraph (1) or (2)".

Page 3, line 18, strike out "Secretary" and insert "Secretary of Agriculture".

Mr. DE LA GARZA (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. MADIGAN. Mr. Speaker, reserving the right to object, I do so in order to yield to the chairman of the committee, the gentleman from Texas [Mr. DE LA GARZA], for the purpose of explaining what we are doing.

Mr. DE LA GARZA. I thank the gentleman for yielding to me.

Mr. Speaker, this is the bill which corrects a technical need in the Food Security Act of 1985. We found that on Indian reservations principally, although the bill will now apply generally to everyone, if there was some impropriety with the agriculture commodity programs, the whole tribe was penalized rather than the individual. This bill corrects that.

We would now have it that if there is any discrepancy with the rules of the program, the penalty would apply solely to the individual and not to the ownership or to the tribe or to the persons who own the land.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was on objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Texas?

Mr. MADIGAN. Mr. Speaker, reserving the right to object, under my reservation I yield to the gentleman from Arizona.

Mr. RHODES. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, as the original sponsor of the bill, I am familiar with the amendments that have been proposed or have been added. I think they greatly strengthen the original purpose of the bill. I am pleased to lend my support to adoption of the amendments.

Mr. MADIGAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that, notwithstanding the end of the session, all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

## LEGISLATION ON DRUNK AND DRUGGED DRIVING AWARENESS WEEK

(Mr. MINETA asked and was given permission to address the House for 1 minute.)

Mr. MINETA. Mr. Speaker, we will shortly be considering items on the Unanimous Consent Calendar. Under this procedure, there are a number of things coming up.

One of the items that we will be bringing up a little later on is House Joint Resolution 429, which is to designate the week of December 10 through December 16 this year as "National Drunk and Drugged Driving Awareness Week."

Mr. Speaker, we have had this resolution in the past, and this measure comes over from the Senate. We are going to be taking up this measure with, I believe, about 220 cosponsors of this measure. As the person who chairs the Subcommittee on Public Works and Transportation, we are very interested in this whole issue of drunk driving and drugged driving. I think it is especially appropriate that this week of December 10 through December 16, 1989, just prior to the holiday season, be recognized and designated as this "National Drunk and Drugged Driving Awareness Week."

The fatalities are continuing to decline in terms of total traffic fatalities. There is a decline also as they are related to alcohol from the 1982 figures.

I think this is a positive direction in which we are moving, and hopefully we will be able to take up this House Joint Resolution 429 in order to be able to designate this week as "National Drunk and Drugged Driving Awareness Week."

## NATIONAL DRUNK AND DRUGGED DRIVING AWARENESS WEEK

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 429) to designate the week of December 10, 1989, through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore (Mr. HALL of Texas). Is there objection to the request of the gentleman from Ohio?

Mr. GILMAN. Mr. Speaker, reserving the right to object, I yield to the gentleman from California [Mr. MINETA], who is the chief sponsor of House Joint Resolution 429 to designate the week of December 10, 1989, through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week."

Mr. MINETA. Mr. Speaker, I thank the gentleman from New York for yielding.

Mr. Speaker, I rise in support of House Joint Resolution 429 which designates the week of December 10 through 16, 1989, as "National Drunk and Drugged Driving Awareness Week." I want to thank the gentleman from Ohio for his expeditious handling of this matter.

Last year, alcohol-related crashes killed more than 23,300 people on America's highways. This is just over 40 percent of all traffic fatalities for 1988, a decline from the 56 percent alcohol-related fatalities in 1982.

This decline can be attributed to tougher drunk driving laws, increased enforcement efforts, and an enhanced public awareness of the scope of the problem. But we are still far from being home free. Alcohol is stil the No. 1 killer on our Nation's highways. Moreover, that decline may be offset by the fact that accidents involving drivers who have used marijuana or other illegal drugs are increasing.

National Drunk and Drugged Driving Awareness Week, in the past, has played a vital role in reducing the impaired driving problem by helping to change individual attitudes and developing healthy and safe lifestyles.

This year will be no exception. During this year's awareness week, the antidrinking and driving message will be spread in mass to expose the public to these messages from a variety of sources and activities. The public recognizes many of these activities and associates them with awareness week. Along with recognition has come public support, demonstrated by the growing numbers of corporate and individual participants.

By enacting House Joint Resolution 429, Congress can proclaim its political support for National Drunk and Drugged Driving Awareness Week.

I urge the adoption of House Joint Resolution 429.

Mr. GILMAN. Mr. Speaker, further reserving the right to object, I am pleased to rise in support of House Joint Resolution 429, designating the week of December 10, 1989 through December 16, 1989 as "National Drunk and Drugged Driving Awareness Week." I would like to commend the gentleman from California, [Mr. MINETA] for sponsoring this legislation, and the chairman of the Subcommittee on Census and Population, the gentleman from Ohio [Mr. SAWYER], and the ranking Republican, the gentleman from Pennsylvania [Mr. RIDGE], for their efforts on bringing this measure to the floor.

Mr. Speaker, a year ago, the National Center for Statistics and Analysis published facts on drunk driving. At that time, it was estimated that about two in every five Americans will be involved in an alcohol-related crash. Approximately 10 percent of car crashes involved alcohol abuse/intoxication, and an astounding 25 percent of drivers involved in fatal traffic crashes were drunk.

These disparaging statistics are only the tip of the iceberg. These figures are even more discouraging in those studies that concentrate on our young people.

Mr. Speaker, more than 40 percent of all teenage deaths result from motor vehicle crashes, about half of these involve drunk driving. In 1987, nearly 27 percent of the fatally injured 15 to 19 year old teenaged drivers were intoxicated.

Just as we cannot afford to turn our back on Americans who are experimenting and regularly using illicit narcotics, we cannot ignore the abuse of alcohol. Drunk driving, drunk driving accidents, and drunk driving fatalities have reached unprecedented proportions. We must send out a clear, strong message to all our Nation, especially our young. We must send them a clear message that drunk driving is not only wrong, not only foolish, but fatal.

I am pleased this legislation is on the floor of the House today, and I ask all my colleagues to join me in support of House Joint Resolution 429.

Mr. CHANDLER. Mr. Speaker, how many times every year do we hear of the senseless, needless deaths and injuries inflicted by the drunk driver? Those who drink and drive are the scourge of this Nation's highways.

Last year, alcohol was involved in the deaths of more than 23,000 people on America's highways. In the State of Washington, there were 9,436 collisions in 1988 caused by drivers under the influence. Alcohol is the No. 1 killer on our Nation's highways.

Costs to the Nation from drunk driving add up to an estimated $25 billion each year. Higher speed limits, greater individual travel, and deteriorating roads will increase this burden unless effective action is taken to lower the risks created by drunk drivers.

Some progress has been made against drunk driving: States have passed tougher laws and these laws are being aggressively enforced. But we need to do more. We need to change public attitudes that often seem to tolerate the drunk behind the wheel. We need to teach young people that it's okay not to

drink, and that it's never okay to drink and drive.

Recently, I received over 2,000 petitions collected by the Campaign Against Drunk Driving in the State of Washington. Led by Dr. Richard Aanderud, a Puyallup, Washington physician, groups and individuals such as this deserve more than our thanks for their efforts against drunk driving, they need our continued active support.

I understand that perhaps 27 percent of all 12-year-olds get drunk twice per month on beer. With a percentage like this, the DWI problem is bound to get worse over the next several years, unless we increase public awareness of the problem today.

My friend, Congressman NORMAN MINETA has introduced House Joint Resolution 429, to designate the week of December 10 through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week." I would urge my colleagues to support this measure, and promote public education efforts addressing drunk driving in their home States. I would also urge my colleagues to assist efforts at the congressional district level, speaking out on the issue, and lending whatever assistance we can otherwise give.

Let's continue to make the campaign against drunk driving a top national priority. Let's support House Joint Resolution 429.

Mr. ANDERSON. Mr. Speaker, as an original cosponsor, I rise in support of House Joint Resolution 429, designating December 10 through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week."

Over the past 10 years, about 250,000 Americans lost their lives in alcohol-related traffic crashes. This is 25,000 deaths each year; 500 every week; 70 every day; or 1 every 20 minutes.

But the news isn't all bad. According to the National Highway Traffic Safety Administration, Federal, State and local attempts to reduce drunk driving have been having an impact. The number of intoxicated drivers killed in traffic crashes decreased 22 percent between 1980 and 1988. And the proportion of 15- to 19-year-old drivers who were legally drunk dropped from 28 percent in 1982 to 18 percent in 1988, the largest decrease of all driver age groups during that time.

We in Congress can be proud of our part in enacting legislation that has helped achieve some of the decrease in fatalities, including the Alcohol Traffic Safety Grant Program, the 21-year-old drinking age, and the Alcohol and Drug Traffic Safety Act.

The impetus for these legislative actions and others have been grassroots community efforts throughout the Nation, whose efforts have resulted in a decline in alcohol-related traffic fatalities to their lowest level in history.

While this decline is heartening, we cannot lose sight of our goal to make drunk and drugged driving a thing of the past. Nor can we overlook an up and coming menace: driving under the influence of drugs. Driving under the influence of marijuana and other drugs has been increasing and may overcome the successes we've seen in lowering the alcohol-related fatalities.

Obviously, there is much work to be done. We must continue the programs that work, including enactment and enforcement of laws that are shown to be a deterrent to impaired driving. Most of all, deterring the drunk and drugged driver will require strong public education campaigns that are designed to educate the public to the dangers of driving while under the influence of alcohol or under the influence of drugs.

National Drunk and Drugged Driving Awareness Week commemorates several years of accomplishment in fighting this serious social problem, and continues the focus on the dangers of drinking and driving. Scores of volunteers from civic, health, and business organizations will be working with local, State and Federal Governments to educate citizens on the responsibility they share with each other to make the road they share with each other alcohol and drug free.

I urge adoption of House Joint Resolution 429.

Mr. GILMAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. HALL of Texas). Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 429

Whereas traffic accidents cause more violent deaths in the United States than any other cause; approximately 47,000 in 1988;

Whereas traffic accidents cause thousands of serious injuries in the United States each year;

Whereas 37.5 percent of all drivers fatally injured in 1988 had blood alcohol concentrations above the legal limit of .10;

Whereas the United States Surgeon General has reported that life expectancy has risen for every age group over the past 75 years except for Americans 15 to 24 years old, whose death rate, the leading cause of which is drunk driving, is higher now than it was 20 years ago;

Whereas the total societal cost of drunk driving has been estimated at more than $26,000,000,000 per year, which does not include the human suffering that can never be measured;

Whereas there are increasing reports of driving after drug use and accidents involving drivers who have used marijuana or other illegal drugs;

Whereas driving after the use of therapeutic drugs, either alone or in combination with alcohol, contrary to the advice of physician, pharmacist, or manufacturer, may create a safety hazard on the roads;

Whereas more research is needed on the effect of drugs, either alone or in combination with alcohol, on driving ability and the incidence of traffic accidents;

Whereas an increased public awareness of the gravity of the problem of drugged driving may warn drug users to refrain from driving and may stimulate interest in increasing necessary research on the effect of drugs on driving ability and the incidence of traffic accidents;

Whereas the public, particularly through the work of citizens groups, is demanding a solution to the problem of drunk and drugged driving;

Whereas the best defense against the drunk or drugged driver is the use of safety belts and consistent safety belt usage by all drivers and passengers would save as many as 10,000 lives each year;

Whereas an increase in the public awareness of the problem of drunk and drugged driving may contribute to a change in society's attitude toward the drunk or drugged driver and help sustain current efforts to develop comprehensive solutions at the State and local levels;

Whereas the Christmas and New Year holiday period, with more drivers on the roads and an increased number of social functions, is a particularly appropriate time to focus national attention on this critical problem;

Whereas designation of National Drunk and Drugged Driving Awareness Week in each of the last 7 years stimulated many activities and programs by groups in both the private and public sectors aimed at curbing drunk and drugged driving in the high-risk Christmas and New Year holiday period and thereafter; and

Whereas the activities and programs during National Drunk and Drugged Driving Awareness Week have heightened the awareness of the American public to the danger of drunk and drugged driving: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the week of December 10, 1989, through December 16, 1989, is designated as "National Drunk and Drugged Driving Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on House Joint Resolution 429, the joint resolution just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

## STAFF WORK ON ETHICS BILL

Mr. MOAKLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MOAKLEY. Mr. Speaker, Congress has enacted landmark legislation on ethics reform. Many Members worked very hard on this matter. The leadership of the bipartisan task force, particularly the gentleman from California [Mr. FAZIO], and the gentlewoman from Illinois [Mrs. MARTIN], deserve special thanks from the House for taking on a thankless chore, and doing it well. The principal staff persons on the task force, Roy Dye and Don Wolfensberger, worked energetically and effectively.

However, Mr. Speaker, the record on this bill would be incomplete if I failed to point out the services of the office of legislative council.

On Friday, we considered a bill, more than 150 pages long, amending a wide range of complicated status. In the early morning on Saturday, we considered an equally long and complex Senate substitute. Then, on Sunday, we passed a concurrent resolution making 44 separate corrections in the bill.

All of these vastly complicated papers that passed between the two Houses were assembled by an able and dedicated legal group that was hard at work—late at night, and sometimes through the night. I would like to specifically acknowledge the hard work and sound advise of Mr. Robert F. Weinhagen, Mr. Edward Leong, Mr. Willoughby G. Sheane, Jr., and Ms. Sandra Lee Strokoff.

□ 1410

## LEGISLATIVE PROGRAM

Mr. GUNDERSON. Mr. Speaker, all indications are a recess is about to be called. Following the experience of yesterday, there are a number of Members who would like to find out what kind of notice requirement we are going to have while we are in recess? If a Member from the leadership could give us some indication of when we are or are not going to come back, I know a number of Members on this side would like more than the 15 minute notice that kept us sitting around for 6 hours yesterday because we could not go anywhere.

Mr. Speaker, I am not trying to hold up proceedings. I want to finish as much as anybody else. Could Members have a half hour notice so we are not sitting here into the evening if that would be the case?

Mr. GEPHARDT. Mr. Speaker, if the gentleman would yield?

Mr. GUNDERSON. I yield to the gentleman from Missouri.

Mr. GEPHARDT. Mr. Speaker, I appreciate the concern of the gentleman from Wisconsin. I know all Members share the same frustration with being able to predict exactly when this is going to occur. We will give Members a 1-hour notice when we are in recess so they can feel at ease going home or doing whatever they need to do.

Mr. Speaker, we are making good progress on the reconciliation. There are a few rather minor matters that need to be resolved. This is a large complicated bill, as all Members know, and we are going to bring it to the floor as quickly as we possibly can. We will give notice of that kind.

Mr. GUNDERSON. Mr. Speaker, would the gentleman from Missouri venture any guess as to the time? Are we looking at 5 o'clock, 7 o'clock?

Mr. GEPHARDT. Mr. Speaker, it is entirely impossible for me to do that. I am fearful that if I give a time, Members will try to work schedules around it.

I know Members have planes to catch. We are going to get this here as quickly as we possibly can, and I am hoping we can do it yet this afternoon.

## REPORT OF THE BIPARTISAN TASK FORCE ON ETHICS ON H.R. 3660, GOVERNMENT ETHICS REFORM ACT OF 1989

(Mr. FAZIO asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. FAZIO. Mr. Speaker, as Chairman of the Bipartisan Task Force on Ethics, I submit for printing in the RECORD the following report of the Bipartisan Task Force on Ethics of the U.S. House of Representatives on the bill (H.R. 3660) to amend the rules of the House of Representatives and the Ethics in Government Act of 1978 to provide for government-wide ethics reform, and for other purposes:

REPORT OF THE BIPARTISAN TASK FORCE ON ETHICS ON H.R. 3660 TO AMEND THE RULES OF THE HOUSE OF REPRESENTATIVES AND THE ETHICS IN GOVERNMENT ACT OF 1978 TO PROVIDE FOR GOVERNMENT-WIDE ETHICS REFORM, AND FOR OTHER PURPOSES

### LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
BIPARTISAN TASK FORCE ON ETHICS,
*November 15, 1989.*

The SPEAKER,
The MINORITY LEADER,
*House of Representatives, Washington, DC.*

DEAR MR. SPEAKER AND MR. MINORITY LEADER: We are pleased to transmit to you today the final report and recommendations of the Bipartisan Task Force on Ethics.

As you know, we were appointed by the Speaker and Minority Leader last February 2 with the charge of conducting a comprehensive review of all rules, laws and regulations relating to the conduct of House Members in their official capacities. Specifically, we were asked to recommend any changes that would enhance Members' understanding of and compliance with these standards of official conduct and thereby help to restore public confidence in the integrity of this institution.

The task force had the unique perspective and opportunity of operating on a completely bipartisan basis—seven Democrats and seven Republicans. We feel this experience has enabled us to develop a package that transcends partisanship and speaks directly to the needs of the Congress and the American people.

On the basis of our seven months of hearings and deliberations, we feel we have developed the kind of ethics package that meets the criteria you have set for us and that can be supported and adopted by a majority of our colleagues.

We therefore commend to your consideration and that of the House the findings and recommendations of the task force contained in this report and in our proposed legislation entitled, "The Government Ethics Reform Act of 1989."

Sincerely yours,
VIC FAZIO,
*Chairman.*
LYNN MARTIN,
*Cochair.*

### INTRODUCTION

The Bipartisan Task Force on Ethics was appointed on February 2, 1989 by Speaker Jim Wright and Republican Leader Representative Bob Michel to conduct a comprehensive review of House ethics rules and regulations.

The task force was charged with reviewing all rules, regulations and statutes governing the official conduct of Members of the House, and recommending changes that will both enhance Members' understanding and compliance with the rules and increase public respect for the integrity of the institution.

The principle areas addressed by the task force were (1) acceptance of gifts; (2) honoraria and outside earned income; (3) ethics committee procedures; (4) financial disclosure; and (5) use of official resources. During the course of its review, the task force also examined issues relating to the compensation of Members and other high government officials.

The task force recommendations amount to the most far-reaching government-wide ethics legislation in over a decade. The reform proposals built on the fundamental principles established by the Commission on Administrative Review, known as the Obey Commission, in 1977, and simplify the rules to enhance Members' understanding and compliance.

### PURPOSE OF THE BILL

The purpose of the bill is to restore public confidence in the integrity of government officials by promoting the highest professional and ethical standards in public service.

### WORK OF THE TASK FORCE

The task force began its work by reviewing existing rules and identifying those areas where there is confusion among Members due to ambiguities or inconsistencies in various rules, regulations and laws. It also examined areas where there was lax compliance or an obvious need to strengthen certain rules.

The goal of the task force from the beginning has been to strengthen and clarify rules where necessary, but more importantly to simplify and bring a greater degree of rationality and practicality to the rules under which Members must operate on a daily basis.

After preliminary organizational meetings, the task force began weekly meetings and briefings in late March. One of the first sessions the task force held was a meeting with Judge Malcolm Richard Wilkey, chairman of the President's Commission on Federal Ethics Law Reform, which had just issued its report, "To Serve With Honor," on March 9, 1989. On April 12, President Bush submitted his proposed "Government-Wide Ethics Act of 1989," based on the Wilkey Commission's recommendations.

Most helpful to the task force in its work was its direct input from Members both in survey responses and private interviews. The task force circulated surveys to all House Members in April (and recirculated in July), soliciting their views on existing rules and any suggestions for change. All

told, the task force received over 75 responses from a broad cross-section of Democratic and Republican Members.

In addition, in June and July, the task force invited all Members to meet privately in executive session to discuss in detail both their observations and problems with existing rules and to make any recommendations for improvements in the current system. In the course of four such sessions running several hours each, the task force heard from 30 Members, and received very valuable assistance in shaping the final ethics package.

In addition to its weekly deliberations and interviews, the task force held four public hearings during the course of its review, all of which were broadcast to the public through C-SPAN. On May 3, 1989, the task force heard testimony from a panel of Members who have played important roles over the years in the development of the original ethics code and subsequent reforms. These included Representatives Charles Bennett, Lee Hamilton, Bill Frenzel and Don Edwards. Former Representatives John Anderson, John Buchanan, Otis Pike and Charles Whalen also contributed their views and suggestions on ethics issues. Former Representative Richardson Preyer, who chaired the Select Committee on Ethics in the 95th Congress, submitted a statement for the record.

On May 24, 1989, the task force held a hearing on the President's proposed ethics legislation, and on the recommendations of both the Wilkey Commission and the National Commission on Public Service chaired by Paul Volcker. Witnesses included Assistant Attorney General Edward Dennis, former Senator Charles Mathias, Volcker Commission members Lloyd Cutler, Norman Ornstein, and Nancy Neuman, and Professor Dennis Thompson of Harvard University and Professor James C. Kirby of the University of Tennessee.

On July 12, the task force heard testimony on enforcement procedures of the Committee on Standards of Official Conduct from attorneys John Nields and William Oldaker. In executive session, the task force also discussed the role of the committee with Standards Committee Chairman Julian Dixon and Ranking Minority Member John Myers.

On September 24, the task force conducted a hearing on congressional ethics and the role of the media. The first panel consisted of academicians Bruce Jennings, Stephen Hess, and Michael Josephson. The second panel included journalists Tom Oliphant, Sara Fritz, and Ken Bode.

All four of the hearings have since been published by GPO in a single hearing document entitled, "Congressional Ethics Reform: Hearings Before the Bipartisan Task Force on Ethics."

The task force divided its work into subgroups of two Members each—one Republican and one Democratic—to investigate problems and options in specific areas and report back to the full group their findings and recommendations. The subgroups covered the following areas: use of official resources; gifts, travel expenses and financial disclosure; the role and enforcement procedures of the ethics committee; honoraria, outside employment, and compensation-setting procedures; and conflict of interest rules and laws.

The subgroups began reporting back to the full panel in July, and by late September the task force had considered the various options developed by the subgroups and had made some preliminary decisions. These preliminary decisions were then discussed with the members and staff of the various committees of jurisdiction, as well as with the leadership on both sides.

The month of October was spent further refining the ethics package on the basis of these wide-ranging discussions. Early in November, the task force began its final round of discussions with leadership, committee representatives, the Senate counterpart task forces and the Administration.

Out of this process has developed a strong, workable ethics reform package that is built on myriad compromises both within the group and without, and which holds together a fundamental strengthening of House rules and government-wide ethics laws.

## SUMMARY OF THE BILL

### TITLE I—LIMITATIONS ON OUTSIDE EMPLOYMENT AND ELIMINATION OF HONORARIA

Members, officers and non-career employees of the Federal government earning at the GS-16 grade pay level and above could not have outside earned income of more than 15% of Executive Level II salary beginning in 1991;

Honoraria would be prohibited for all government Members, officers and employees beginning in 1991;

Payments in lieu of honoraria could be donated on behalf of a Member, officer of employee to a charity provided any such payment does not exceed $2,000, does not financially benefit the individual or immediate family member and is not received or counted for tax purposes.

Members, officers and employees could not be affiliated with or employed by a professional service firm which involves a fiduciary relationship, for compensation, or practice a profession involving a fiduciary relationship for compensation;

Members, officers, or employees could serve on boards of directors without compensation; and could teach with compensation if approved by the supervising ethics office;

The above provisions do not apply to the Senate;

Executive branch employees required to divest holdings for conflict of interest reasons could defer taxes on the gain by reinvesting in an approved neutral instrument within 60 days.

### TITLE II—FINANCIAL DISCLOSURE

Payments made to charities in lieu of honoraria would be disclosed beginning in 1991 by source and amount, but the identity of the recipient charity would be filed in confidence with the supervising ethics office; spousal honoraria must be reported by source and amount;

More detailed reporting of travel expenses would be required;

Gifts and travel reimbursement thresholds for reporting would be made uniform at $200 from any source;

Financial disclosure reporting categories would be broadened to range from less than $15,000 to over $1 million;

Blind trust requirements would be tightened to ensure the independence of the trustee, and the total value of trust assets would be disclosed;

Termination reports would be required on May 15 or 30-days after leaving government, whichever occurs later;

Civil penalties would be increased from $5,000 to $10,000 for knowing and willful failure to file or false filings.

### TITLE III—CITIZENS' COMMISSION ON PUBLIC SERVICE AND COMPENSATION

The quadrennial commission on executive, legislative and judicial salaries would be reconstituted as a Citizens' Commission on Public Service and Compensation consisting of 11 members, including 5 chosen by lot from registered voters, and 6 appointed by the President, Congress, and Judiciary;

The commission would first be appointed in fiscal 1993; the President would submit his recommendations in January of 1994;

The president's recommendation would be subject to a privileged joint resolution of approval if offered by the majority leader within 60-days;

No recommendation or other pay increase could take effect in the same Congress or without an intervening House election;

The 1989 and 1990 COLAs (4.1% and 3.6%) would be restored for Congress (except the Senate) and executive and judicial branch senior officials denied these adjustments;

Senior officials of the three branches (except for Senators) would receive a 25% salary increase in 1991 as part of the ban on honoraria and new restrictions on outside income;

Future annual COLAs for senior officials would be tied to the Economic Cost Index for private industry salaries minus .5%, and could never exceed 5%.

### TITLE IV—MISCELLANEOUS STATUTORY CHANGES

Various statutory changes from the President's ethics package relating to conflicts of interest would be included;

The incidental use of government and officially leased vehicles would be permitted subject to regulations; House Administration Committee is directed to adopt such regulations for the House;

The "grandfather clause" on coverting campaign funds would be repealed for Members after the 102nd Congress, and Members could not covert more than held by their campaign fund on the date of enactment.

### TITLE V—HOUSE RULES CHANGES

Gifts aggregating more than the minimal amount permitted under the Foreign Gifts and Decorations Act (now $180) from any source, other than a relative, would be prohibited. Gifts of personal hospitality and gifts of $75 or less, and meals which are not in connection with overnight lodging are exempt; waivers from the ethics committee are authorized in exceptional circumstances;

The anti-discrimination provisions in various House rules, regulations and elsewhere would be consolidated in the Code of Official Conduct;

The current rule prohibiting Members from retaining staff who do not perform work commensurate with their pay would be amended to extend to officers and committees and to ensure staff are performing official duties in the offices of their employing authority;

The Committee on Standards of Official Conduct would be expanded from 12 to 14 members in 1991 and would be required to "bifurcate" its investigative and adjudicative functions into separate subcommittees; reports would be required on any investigative undertaken; right to counsel on the House floor would be allowed for accused Members; a three-term statute of limitations would apply to investigations unless violations are related to more recent offenses; an Office of Advice and Education would be created in the ethics committee to assist with inquiries and advisory opinions

and conduct periodic briefings and seminars for Members, staff and spouses to acquaint them with ethics rules.

The honoraria ban and outside income limits and restrictions effective in 1991 would be incorporated in House rules.

A 4-day limit on domestic private travel and 7-day limit on foreign travel paid by private sources would be imposed, with waiver authority granted to the ethics committee.

TITLE VI—SENATE RULES CHANGES [To be provided by Senate]

## DISCUSSION OF ISSUES

### 1. ACCEPTANCE OF GIFTS

#### BACKGROUND

Members of Congress and House employees are often given gifts by relatives, friends, and business acquaintances. Most often there is nothing improper concerning receipt of such gifts by Members and employees.

However, acceptance of substantial gifts by a Member of Congress from parties with an interest in legislation creates a potential conflict of interest for the Member. Valuable gifts to Members from persons other than relatives or personal friends may also create at least the appearance of impropriety.

Regardless of any actual corruption or undue influence upon a Member or employee of Congress, the receipt of gifts or favors from private interests may affect public confidence in the integrity of the individual and in the institution of the Congress. Legitimate concerns of favoritism or abuse of public position may be raised by disclosure of frequent or expensive gifts from representatives of special interests, or valuable gifts from anyone other than a relative or personal friend.

Thus, Members and employees of the House are always cautioned to exercise discretion concerning the acceptance of any gifts, favors, or entertainment from persons who are not family members or personal friends. They should be particularly sensitive to the source and value of a gift, the frequency of gifts from one source, and possible motives of the donor.

*Current House Rules and Statutes*

The House gifts rule, as first adopted in 1968, prohibited acceptance of gifts "of substantial value" from any person or organization having a direct interest in legislation before the Congress. The Commission on Administrative Review of the 95th Congress (the Obey Commission) noted the obvious problems of interpretation and recommended that the rule be amended so that it is less subjective and therefore more enforceable.

House Rule XLIII, clause 4 prohibits a Member, officer or employee of the House from accepting gifts aggregating $100 or more in value in a calendar year from any person having a direct interest in legislation before the Congress, or from a foreign national. Exempted are gifts with a value of $50 or less, gifts from relatives, and gifts of personal hospitality of an individual.

Persons with a direct interest in legislation are defined to include (1) registered lobbyists, and persons or organizations which retain a lobbyist; (2) corporations or organizations which maintain a political action committee, and the officers or directors of such organizations; and (3) any other individual or organization "which the Member or employee knows has a distinct or special interest in influencing or affecting the Federal legislative process which sets such individual or organization apart from the general public."

Advisory Opinions issued by the Select Committee on Ethics of the 95th Congress determined that necessary travel expenses (transportation, food and lodging) provided to a Member or employee in connection with (1) an event in which he substantially participates, or (2) a fact-finding event directly related to official duties, are not considered to be gifts for purposes of the rule. The first exemption, for speaking engagements and similar events, also applies to the expenses of the spouse or other family member. The second exemption, for fact-finding events, also applies to the expenses of the spouse but only in the case of foreign travel.

The Constitution prohibits government officials from accepting gifts from foreign governments without the consent of Congress. The Foreign Gifts and Decorations Act (5 U.S.C. 7342) gives consent to acceptance of gifts of "minimal value" as established by the General Services Administration (currently, $180). Gifts of more than minimal value may be accepted on behalf of the United States if refusal might cause offense or embarrassment, and must be turned over to the Clerk of the House within 60 days. Gifts of travel taking place entirely outside of the United States offered by a foreign government may be accepted when the travel relates directly to official duties.

There is also a statutory prohibition against acceptance of gifts, special favors or anything of value by a Federal official "for or because of any official act performed or to be performed by him," (18 U.S.C. 201c). Unlike the related bribery offense (section 201b), an explicit *quid pro quo* need not exist to prove an offense of the illegal gratuity statute. The gratuity or thing of value need only be related in some way to an official's actions.

#### ISSUES

There are two main problems with the current rule prohibiting acceptance of gifts of $100 or more from any person with a direct interest in legislation: (1) it is too subjective in determining who has a direct interest in legislation; and (2) the dollar limit and the secondary limit for de minimis gifts are so low as to be impractical and unworkable.

It is often impractical, if not impossible, for Members to ascertain whether a donor has a direct interest in legislation, particularly in cases where the Member and donor have a long-standing personal relationship. The current rule specifically includes lobbyists and PACs as prohibited sources. However, the third broad category, which includes any person who has a special interest in the legislative process which sets that person apart from the general public, provides little guidance for Members and is subject to varying interpretations.

It is also difficult, and at times embarrassing, for a Member to determine whether lodging or entertainment provided by a friend on his property satisfies the personal hospitality exemption. It may be impossible for a Member to know for certain, for example, whether a friend's vacation property is owned by him or by the friend's business, or whether the Member's use of the property is a deductible business expense, or whether the friend is being reimbursed by his business.

Another concern is that the present limits do not reflect the impact of inflation, nor is there any provision to maintain realistic levels regarding the value of acceptable gifts. The $100 limit has remained unchanged for 12 years, while the exemption for gifts of $35 or less was increased to $50 in 1981. If adjusted by the rate of inflation over the past 12 years, the gifts limits would have more than doubled in value.

There are also needless problems caused by the different dollar thresholds in the gifts prohibition in House Rules and the statutory financial disclosure requirements applicable to gifts. The rule and the statute should be uniform to avoid confusion and enhance compliance and enforcement.

The principal issue concerning the acceptance of travel expenses in connection with speaking engagements and other events is the public perception that such trips often may amount to paid vacations for the Member and his family at the expense of special interest groups. There is also confusion over the different circumstances under which the spouse or another family member may accompany the Member on such trips. A further issue is the inadequate reporting of such travel expenses in the annual financial disclosure statements. While the reporting instructions require a brief description of the itinerary and the nature of the expenses provided, that basic information is often omitted, nor is there any requirement to indicate the dates of the trip.

There is also concern regarding the illegal gratuities statute, 18 U.S.C. 201(c), and its potential application to incidental or de minimis gifts to Members and employees. The Department of Justice has taken the expansive view that gifts of appreciation or goodwill may be subject to criminal prosecution under this statute. For example, a bottle of domestic wine given to a Member at the end of the year with a note from the donor expressing gratitude for his legislative work during the past session of Congress could be a prosecutable offense under the Department's interpretation.

#### RECOMMENDATIONS

*Gifts Rule*

The task force proposes to amend Rule XLIII, clause 4 and relevant committee interpretations in order to clarify and simplify the gifts rule by establishing a precise standard that is clearly understood by Members and employees and easily enforced by the Standards Committee.

The recommendations follow:

*Prohibited Sources.*—The rules change eliminates any question as to whether a donor has a direct interest in legislation by prohibiting acceptance of gifts of more than "minimal value" from all sources other than a relative. Specific waivers may be granted by the Standards Committee in exceptional circumstances. The definition of a relative is amended to include fiance or fiancee, consistent with the definition in the Ethics in Government Act.

*Dollar Limits.*—The dollar limit will conform to the minimal value established under the Foreign Gifts and Decorations Act. That value is currently defined as $180, and is expected to be increased to $200 on January 1, 1990. It is adjusted every three years by the General Services Administration. The dollar limit for gifts that are not aggregated is increased to $75. Both the $200 and $75 limits that will take effect in 1990 represent an inflation adjustment from the original limits of $100 and $35 set in 1977.

*Specific Waivers.*—The bill permits waivers from the gifts rule and specifically authorizes the Standards Committee to grant waivers in exceptional circumstances. The task force expects that the dollar limit, adjusted every three years, will remain at a

reasonable level that will not interfere with normal social relationships or the customary gift-giving between personal friends. However, given the application of the gifts rule to all sources, it is essential to provide some flexibility to allow the acceptance of gifts above the limit in cases where there is no potential conflict of interest or appearance of impropriety.

The task force recommends that the committee develop guidelines and procedures for the granting of waivers. As a general rule, it is intended that such exceptions from the gifts prohibition would be appropriate in the case of gifts from individuals who have a long-standing personal or social relationship with the Member or employee, where it is clear that it is those relationships that are the motivating factors of the gift, rather than the fact of the individual's office or position in the Congress.

Such waivers must be requested in writing by the Member, officer, or employee, and would be considered by the chairman and ranking minority member, acting on behalf of the committee, on a strictly confidential basis. The request for and grant of a waiver would not be made available to the public. However, in the case of financial disclosure reports under the Ethics in Government Act, any gift over $200 in value must be publicly disclosed, unless a publicly available request for a waiver is granted. Therefore, a second waiver would be needed if the individual is required to file a disclosure statement and wanted to keep the gift a confidential matter.

*Personal Hospitality.*—The task force proposes to clarify the existing personal hospitality exemption and establish strict criteria governing that exemption. The bill directs the Standards Committee to amend its formal advisory opinions interpreting the gifts rule to prohibit lodging received as personal hospitality from any individual (other than a relative) in excess of 30 days in a calendar year unless a written waiver is granted by the committee. The task force also directs the committee to clarify the personal hospitality exemption as follows:

If a Member receives apparent personal hospitality from an individual for more than *four days or three nights* in a calendar year, then the Member or his staff must make a documentable effort to determine whether the hospitality in fact meets the criteria for the exemption by making appropriate inquiries. Examples of documentable efforts to make such a determination include contemporaneous written memoranda concerning conversations between the Member and the person providing the hospitality, or written communications between them, which clearly describe the criteria for personal hospitality, and seek to determine whether the hospitality meets that criteria.

The criteria for exemption, as described by the Standards Committee, is that the hospitality is for a nonbusiness purpose on property or facilities owned by that individual or his family, none of the costs of which are deducted as a business expense. If the hospitality meets that criteria, the Member may accept personal hospitality from that individual for up to 30 days in a calendar year. The 30-day limit may not be exceeded unless a written waiver is granted by the committee. A waiver might be granted, for example, in the case of a Member who customarily stays overnight in a friend's house whenever he visits his congressional district.

On the other hand, if the apparent personal hospitality is provided for four days or less in a calendar year, absent clear indications that it is not personal hospitality, the Member may rely in good faith on the apparent personal nature of the hospitality.

The task force expects the committee, in its revised advisory opinion, to provide a sample form or letter for the use of Members and employees in making a documentable effort to determine if a particular gift of personal hospitality qualifies for the exemption.

*Food and Beverage.*—The bill directs the Standards Committee to exempt gifts of food and beverage which are not in connection with a gift of overnight lodging. This exemption applies to meals provided by an individual who is not also providing a gift of overnight lodging to the Member or employee. The intent of this exemption is to allow Members, officers, and employees to accept meals and beverage in the Washington, D.C. area without regard to the cost, and thus relieve them of the burden of keeping account of the cost of their portion of a restaurant meal as someone's guest.

While most meals would probably be excluded under the specific exemption for gifts valued at $75 or less, as proposed by the task force, the cost of a dinner at some restaurants in the Washington area could approximate or exceed that amount. If there were any doubt, without this blanket exemption, the Member would be obliged to ask the host whether the cost of his meal exceeded $75, particularly if the Member's spouse was also a dinner guest. In the event that the cost of the meal for each was $80, for example, the Member would be deemed to have accepted two gifts aggregating $160 in value from that person.

The proposed exemption for meals not in connection with overnight lodging is consistent with the intent of the original de minimis exemption adopted in 1977. That intent was to avoid unnecessarily burdensome recordkeeping requirements and to disregard insignificant gifts that are irrelevant to potential conflicts of interest.

The exemption applies only to meals and beverage provided for immediate consumption. It would not extend, for example, to a gift of a case of imported wine or other consumable items that are not intended for immediate consumption. Such gifts would be subject to the general rule prohibiting gifts aggregating more then minimal value, and excluding gifts valued at $75 or less.

*Travel Expenses*

The bill directs the Standards Committee to amend its advisory opinions concerning acceptance of travel expenses in connection with speaking engagements and similar events to establish a limit on the duration of such trips. The task force proposes to prohibit acceptance of such expenses for more than four consecutive days in the case of domestic travel and seven consecutive days (excluding travel days) in the case of foreign travel.

Acceptance of such travel expenses (food, lodging, and transportation) is permitted under current rulings in connection with speeches and other events in which the Member or employee substantially participates, and fact-finding events directly related to official duties.

The four-day domestic limit would apply to travel within the continental United States, and the seven-day foreign travel limit would apply to travel outside the continental United States. The exclusion of travel days in the case of foreign travel is intended to allow a day of travel to one's destination and a day of travel for the return trip. The task force expects that the committee will provide further guidance on this exclusion in its advisory opinions.

The bill authorizes the Standards Committee to grant prior written waivers from the four-day and seven-day limits in exceptional circumstances. The committee may grant a waiver, for example, with respect to a single conference or similar event that is held at one location and requires significant participation by the Member or employee throughout its duration. A waiver may also be granted in the case of foreign educational conferences sponsored by nonprofit, tax exempt organizations, such as those sponsored by The Aspen Institute.

As a general rule, the task force intends that the duration limits could not be circumvented in the case of different sponsoring organizations providing expenses for a single conference or meeting at one location. However, in some circumstances, it would be acceptable for a Member or employee to attend separate events with different sponsors at the same location stay beyond the four-day limit. The task force expects that the committee will provide guidelines on the application of the duration limits and establish criteria for the granting of waivers in exceptional circumstances.

The task force emphasizes that it recommends no change in the current interpretations which limit acceptance to necessary travel expenses (food, lodging and transportation). Any entertainment provided during such a trip is considered a gift and is subject to the limitations of the gifts rule.

The Standards Committee is also directed to amend its advisory opinions to allow the Member, officer, or employee to also accept travel expenses for one relative in connection with both foreign and domestic fact-finding events, as well as for substantial participation events. This change would make the current rules uniform and thus end the confusion about the circumstances under which the spouse or other family member may accompany a Member or employee on such trips. Under the task force proposal, a Member or employee would be free to accept travel expenses for the spouse *or* another relative in lieu of the spouse, when participating in such events. It should be noted that the disclosure of any such travel reimbursements in annual financial disclosure reports should indicate that expenses were also provided for one relative.

*Government-wide Gifts Rule*

The bill establishes a new government-wide rule on acceptance of gifts by Members, officers, or employees of the government. The amendment to title 5 of the U.S. Code would prohibit Federal employees from accepting gifts from anyone who is seeking official action from the individual or his employing agency, conducting activities regulated by the agency, or whose interests may be substantially affected by the employee's official duties. This prohibition would not apply in the case of gifts that are permissible in accordance with rules and regulations issued by the individual's supervising ethics office.

The bill specifically authorizes the House and Senate ethics committees, the Judicial Ethics Committee, and the Office of Government Ethics to implement this gifts prohibition and provide reasonable exceptions, and provides that Members and employees may accept gifts pursuant to regulations established by those offices.

The intent of this provision is to establish in statute that Members and employees may

accept token gifts of appreciation or goodwill, and other gifts as authorized by the appropriate ethics office. This statutory authority would bar any possible prosecution under the illegal gratuities statute for acceptance of a gift of minimal value that may bear some relation to official actions.

2. HONORARIA AND OUTSIDE EARNED INCOME

BACKGROUND

The current limitations on outside earned income and honoraria were prompted by three major considerations: First, substantial payments to a Member of Congress for rendering personal services to outside organizations presents a significant and avoidable potential for conflict of interest; second, substantial earnings from other employment is inconsistent with the concept that being a Member of Congress is a full-time job; and third, substantial outside earned income creates at least the appearance of impropriety and thereby undermines public confidence in the integrity of government officials.

In developing its recommendations on outside earned income, the Obey Commission noted that earned income creates a variety of more serious potential conflicts of interest than does unearned or investment income, ranging from overt attempts to curry favor by private groups to subtle distortions in the judgment of Members on particular issues. The earned income limitation was intended to assure the public that (1) Members are not using their positions of influence for personal gain or being affected by the prospects of outside income; and (2) outside activities are not detracting from a Member's full-time attention to his or her official duties.

CURRENT HOUSE RULES AND STATUTE

House Rule XLVII limits outside earned income of Members (including honoraria) to 30 percent of annual congressional salary ($26,850 at the current salary level of $89,500). The Federal Election Campaign Act (2 U.S.C. 44li) limits any single honorarium that may be accepted by any Member, officer, or employee of the Federal Government to $2,000 for any single speech, appearance, or article.

The Supplemental Appropriations Act of 1983 (2 U.S.C. 31-1) limits annual honoraria income of Members of Congress (both Representatives and Senators) to 40 percent of their annual salary ($35,800 currently).

There is no rule or statute that specifically prohibits Members or employees from engaging in outside employment activities. However, clause 3 of Rule XLIII prohibits a member or employee from receiving compensation by virtue of influence improperly exerted from his position in Congress. In addition, the Code of Ethics for Government Service provides that a Member or employee should never accept "benefits under circumstances which might be construed by reasonable persons as affecting the performance of his government duties."

Certain other restrictions are placed upon particular outside compensation or endeavors, including restrictions on receiving compensation for services rendered anyone before a federal agency (18 U.S.C. 203); self-dealings with private foundations (26 U.S.C. 4941, 4946); Members contracting with or sharing in the benefits of a government contract (18 U.S.C. 431); and some areas in the practice of law (note 18 U.S.C. 204).

Most rank-and-file employees of the executive branch currently have no specific limitation on the amount of income that they may earn on the outside. Certain high-level presidential appointees who are appointed to a full-time, noncareer position, are now restricted by a recent presidential Executive Order (EO 12674, April 12, 1989) from receiving any earned income from outside employment or activities during the time of their appointment. Before this presidential order, appointees of the President who required Senate confirmation, and who earned at the GS-16 salary level and above, were restricted by the Ethics in Government Act to earning 15 percent of their official salary on the outside.

ISSUES

The controversy over outside earned income focuses primarily on honoraria fees accepted by Members of Congress. In 1987, Members of the House and Senate received a combined total of $9.8 million in honoraria, including $3 million donated to charity. Significant increases in honoraria income in recent years have heightened the public perception that honoraria is a way for special interests to try to gain influence or buy access to Members of Congress, particularly since interest groups most often give honoraria to Members who serve on committees which have jurisdiction over their legislative interests.

As early as 1976, the Commission on Executive, Legislative, and Judicial Salaries reported inadequate salaries for Members and officials of the three branches of government, and recommended salary increases together with certain ethics reforms, including limitations on honoraria and other outside earned income. Partly because of the continual rejection of recommended salary increases from the pay commissions and the ensuing compensation dilemma in the government, Members have turned increasingly to earning honoraria as a supplement to their official salaries. There is growing concern that the practice of acceptance of honoraria by Members, particularly from interest groups with important stakes in legislation, creates serious conflict of interest problems and threatens to undermine the institutional integrity of Congress.

Concern also exists regarding the tax advantages that accrue to Members who receive substantial honoraria income in excess of the annual limitation and donate the excess to charity. First, Members may hold their excess honoraria until the end of the year and keep any interest earned on it. Second, Members may set up tax-sheltered retirement funds, such as Keogh Accounts available to the self-employed, and contribute up to 25 percent of their total honoraria earnings as self-employment income. This gives Members an incentive to earn more in honoraria, including amounts donated to charity, in order to increase their tax-sheltered contributions to a pension plan, or to increase interest income.

There is also concern that receipt of legal fees and other compensation for professional services, and directors' fees from serving on boards of corporations, associations, nonprofit organizations, and other entities, creates at least the appearance of impropriety and the potential for conflicts of interest. Based on the fundamental principle that a public office is a public trust, all officials of the government are expected to act in the interests of the beneficiaries of that trust, that is, the general public.

When certain private positions and employment create for the Member or public official a fiduciary or a representational responsibility to a private client or a limited number of private parties, then such outside activities create the potential for a serious conflict of interest. The conflict occurs in the clash of those responsibilities and the divergence of public and private interests on a particular governmental matter or in general government policy.

There is a potential for abuse of this type of income in cases where outside interests attempt to trade on the prestige of Members of Congress, or use such fees to channel income to Members if honoraria income is banned.

RECOMMENDATIONS

*Honoraria*

The task force recommends that honoraria be abolished for all officers and employees of the government, except the Senate, beginning in 1991. In 1990, honoraria would be limited to the amount permitted in 1989—30 percent of the 1989 salary level, or $26,850. The term "honorarium" means the payment of money or any thing of value for an appearance, speech, or article by a Member, officer, or employee. The limit on all outside earned income in 1990 would be frozen at the 1989 level. It would not increase as a result of a higher salary rate in 1990.

The task force intends that the prohibition on honoraria for speeches, articles, and appearances extends to payment or compensation for such activity in any form. The ban on honoraria could not be circumvented, for example, by arranging for a continuing series of talks, lectures, speeches, or appearances and re-characterizing the income as a "stipend" or "salary."

Donations of honoraria to charity would continue to be permitted after honoraria is abolished in 1991, but with certain restrictions and protections against potential abuse. Any honorarium that could have been received but for these provisions of law may be donated instead directly by the payor to a charitable organization (as defined in section 170c of the Internal Revenue Code of 1986), and no tax consequence or benefits to the Member or official may be derived from such payments to charity. The bill would amend the tax code to provide that a payment in lieu of honoraria made to a charity would not be deemed to be income received by the Member or employee. Thus, the amount of honoraria donations to charity could not be used to inflate the amount of tax-sheltered contributions made to a Keogh Plan or other pension fund.

A payment in lieu of honoraria to a charitable organization may not exceed $2,000, nor may it be directed to a charity from which the Member, officer, or employee, or anyone in his or her immediate family, derives a financial benefit. The task force intends that a financial benefit for purposes of this rule would be a direct benefit to the individual or a family member that is separate from any general benefit that the institution would derive. For example, this provision would not prohibit a payment to a university at which the Member's child is a student, or to a health care facility at which a family member is a patient.

*Outside Earned Income*

In addition to banning honoraria after 1991 for all officers and employees of the government, the task force recommends a limitation on all other outside earned income equal to 15 percent of the salary set for Executive Level II, beginning in 1991. The limitation would apply to all officers and noncareer employees paid at the GS-16 salary level and above (currently $67,000).

The outside earned income rule would be administered by and subject to the rules and regulations of the House ethics committee; the Office of Government Ethics and designated agency ethics officials for the executive branch; and the Judicial Conference of the United States for the judicial branch. The existing interpretation of the ethics committee on the application of the House Rule to outside earned income is not changed in any way by the task force proposals.

*Outside Employment*

The task force recommends other rules and restrictions on outside employment activities for Members, officers, and noncareer employees in all three branches of the government (except the Senate), compensated at the GS-16 salary rate and above. These provisions include (1) affiliating with or being employed by a firm, partnership, or other entity for compensation to provide professional services which involve a fiduciary relationship; (2) permitting one's name to be used in a firm, partnership, or other entity; (3) practicing a profession for compensation as an officer or on the board of an association, corporation, or other entity; and (4) teaching activities for compensation without prior notification and approval from the appropriate ethics office.

The task force notes that a "fiduciary" is generally described as one "having a duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking" (*Black's Law Dictionary*, 5th Ed. 563). However, the task force intends that the term fiduciary not be applied in a narrow, technical sense and wants to ensure that honoraria not reemerge in various kinds of professional fees from outside interests. The task force intends the ban to reach, for example, services such as legal, real estate, consulting and advising, insurance, medicine, architecture, or financial. The appropriate ethics office will make the determination as to which professional activities involve a "fiduciary" relationship.

The task force intends the ban on the use of names by firms, partnerships, and other entities to be interpreted and applied in a manner consistent with the rules presently governing lawyers who are appointed to a federal judgeship. Specifically, the task force understands that a law firm, real estate agency, or other firm that bears a "family" name, as opposed to the name of the individual Member, officer, or employee, would not have to change its name. Thus, the fact that a Member, officer, or employee is presently associated with a law firm founded by, and still bearing the name of, his father would not require the firm to drop the "family" name.

The restriction on service as an officer or member of the board of any organization or other entity relates only to paid activities. Unpaid service on a board of directors is permitted. The prohibition on paid service extends only to directors' fees or other salary payments. It would not extend, for example, to receipt of travel expenses in connection with service on the board, or to an insurance policy as a member of the board.

The restrictions and limitations on outside earned income, honoraria, and employment made by the bill are conditional on the enactment and retention of the proposed salary increase for Members and high-ranking executive and judicial branch personnel.

3. STANDARDS COMMITTEE PROCEDURES

BACKGROUND

Under the Constitution, "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two-thirds, expel a Member."

This internal authority to discipline and even expel Members for misconduct is one which Congress has historically been reluctant to use. Not only is it difficult for Members to sit in judgment of their peers, but there is a strong belief that such matters should be left for the courts and the people to decide.

Nevertheless, the House has recognized that the principal purpose of its disciplinary authority is not so much to punish an offending Member as it is to protect the institution. In 1873, a House select committee, in recommending the expulsion of two Members, echoed these views and observed that the continued presence of the two Members "tends to bring the body into contempt and disgrace." And it concluded that the power of expulsion "is a power of purgation and purification to be exercised for the public safety and . . . for the protection and character of the House."

The same is true of lesser forms of discipline: the House has a right and responsibility to protect the dignity and integrity of the institution if the people are to retain confidence in it.

Prior to the second half of this century, the House had no Code of Official Conduct and no standing committee to investigate misconduct. When investigations of misconduct were authorized, they were either assigned to a select committee or one of the standing committees. But, in 1967, mainly in response to the case of Rep. Adam Clayton Powell Jr. (D-N.Y.), the House created the Committee on Standards of Official Conduct; and the following year it adopted the Code of Official Conduct and gave the committee authority to investigate alleged wrong-doing and report its findings and recommendations to the House.

CURRENT HOUSE RULE

Under House Rule X, the Committee on Standards of Official Conduct is required to be composed of an equal number of Members from the majority and minority parties (now 6 members each). It is given legislative jurisdiction over measures relating to the Code of Official Conduct.

The committee is also authorized to recommend to the House administrative actions to establish or enforce standards of official conduct, and to investigate alleged violations by Members, officers, or employees of any law, rule, regulation or standard of official conduct relating to their official duties. After notice and hearing relating to an investigation, the committee is authorized to recommend to the House, by resolution or otherwise, any action it considers appropriate in the case.

As a result of any evidence disclosed in the course of an investigation that a law relating to official duties has been violated, the committee is authorized, with the approval of the House, to report it to the appropriate Federal or State authorities.

The committee is also authorized to issue advisory opinions on request as to the propriety of any current or proposed activity, and to publish such opinions for the guidance of the House after deleting the name of the requesting individual to assure privacy.

The House rule requires a majority vote of the committee membership to undertake any investigation, to approve any resolution, report, recommendation or advisory opinion, and to make public the contents of any complaint or any information or testimony received.

The committee is authorized to undertake an investigation on its own initiative; on receipt of a sworn complaint from any Member; or on receipt of a sworn complaint from a non-Member who has been refused in writing by at least three Members to transmit the complaint to the committee.

Finally, House rule X provides that a committee member may not participate in any investigation into his own conduct, and may disqualify himself, with committee approval, from participating in the investigation of any individual if he stipulates in writing and under oath that he could not render an impartial and unbiased opinion. In both such instances, provision is made for the Speaker to designate another Member to serve for that investigation.

ISSUES

The Committee on Standards of Official Conduct has been variously criticized over the years as either being too lax or too zealous in its investigative and enforcement responsibilities. The criticism has emanated from a variety of sources, both inside and outside the Congress, depending on the times and the circumstances.

In reviewing the present operations of the ethics committee, both in public hearings and private interviews with Members, the task force has found generally that both public and congressional perceptions of the committee are favorable. It has proven under very difficult circumstances that its present operations and procedures are working and are effective.

Nevertheless, certain issues have been raised in the course of the task force review that deserve to be addressed. Most of the issues raised are not so much a reflection on the performance of the current committee as they are on the perceived structural deficiencies of the system that has existed since the creation of the committee.

The most commonly heard complaint about the process is that the same persons who conduct the investigation are also in charge of deciding guilt and recommending sanctions to the House. Under the current system, the full committee decides on: (a) whether to undertake an investigation; (b) whether to issue a "Statement of Alleged Violations" on grounds that it has reason to believe a violation has occurred; (c) whether there is clear and convincing proof that a violation occurred; and (d) what recommendation, if any, to make to the House.

Growing concern has been voiced by Members over the filing of "frivolous" complaints for political purposes. It has been pointed out that some campaign organizations even recommend such a tactic to put an opponent on the defensive.

A related complaint levelled at the process is that once a statement of alleged violations has been made public, the accused Member is presumed by the press and public to have been found guilty. A person's personal character and professional reputation may never recover from the media attention given to a preliminary finding that a violation may have occurred, even if the Member is later exonerated.

Other concerns relating to the due process rights of the accused include the fact that an accused Member is denied the basic right to counsel while defending himself on the House floor and that there seem to be in-

consistent penalties imposed for similar offenses.

Many Members have also urged a statute of limitations on alleged violations. A Democratic Caucus Task Force in 1980 recommended a 5-year statute of limitations on ethics committee investigations.

One of the most frequently expressed frustrations of Members is the conflicting advice they receive on what is and is not acceptable conduct. More often than not the fault is not with the ethics committee, but the tendency of Members to seek advice elsewhere for fear of being investigated if they ask the ethics committee directly.

RECOMMENDATIONS

The task force finds that, for the most part, existing ethics committee rules contain sufficient safeguards to protect Members against frivolous complaints and procedural unfairness. Indeed, the task force would recommend against attempting to duplicate the judicial system in every respect since this would only prolong proceedings and detract from the basic purpose of an internal disciplinary process. That purpose is to deal fairly yet expeditously with wrongdoing to restore the integrity of and public confidence in the institution.

While the task force considered proposals for an independent investigative office or special prosecutor for the Congress, it rejected these on grounds that such mechanisms ignore the basic responsibility of the Congress under the Constitution to discipline its own Members for disorderly behavior.

*Bifurcation of the Ethics Committee.*—The task force recommends that the investigative and adjudicative functions be divided within the ethics committee into two sets of subcommittees—the so-called bifurcation approach. While the task force considered drawing on Members by lot from outside the ethics committee to conduct each investigation, it ultimately rejected this approach because of numerous practical problems. These included finding Members who would be willing and able to serve, questions involving the consistency of opinions and rulings, and additional delays in constituting new subcommittees, and familiarizing them with committee procedures.

Under the task force proposal, the committee would be enlarged from 12 to 14 members, and a three-term limit would be imposed on membership for any five consecutive Congresses. Whenever the committee votes to undertake an investigation, a subcommittee on investigation consisting of 4 or 6 members would be appointed to conduct the investigation (with equal representation from the majority and minority parties). The senior members from each party would serve as chairman and ranking minority member. The chairman and ranking minority member of the full committee could only serve as non-voting, ex-officio members of an investigative subcommittee.

If the investigative subcommittee issues a Statement of Alleged Violations, the statement could not be released to the public until the accused has been afforded an opportunity to respond. Both the statement and response, if any, would be released simultaneously, either at the first public meeting or hearing on the case, or, if there is no such public session, as part of the final report to the House on the matter.

A subcommittee on adjudication, consisting of the remaining members of the full committee, would then be constituted to hear the evidence and determine guilt. A majority of the subcommittee membership plus one must be present at all times for any hearing or the conduct of any business. The task force considered, but rejected as impractical, a requirement that all subcommittee members be present at all times.

The findings of the adjudicatory subcommittee would be reported to the full committee which would then decide what recommendations or sanctions, if any, to submit to the House in its final report.

Under the task force proposal, a committee report to the House would be required for any case the committee has voted to investigate, no matter what the final disposition of the case. This is designed to ensure full accountability to the House which has ultimate authority over disciplinary matters under the Constitution. It is also designed to assure the public that the House has conscientiously carried out its responsibility to investigate official misconduct.

The task force further recommends that any letter of reproval or other administrative action of the committee in connection with an investigation may only be issued or made as a part of its final report to the House. There should be no question that the committee has any authority to unilaterally impose administrative remedies without simultaneous House awareness of the action. The task force would note that this is the practice that has been followed by the ethics committee in recent times, and commends it on adhering to its obligation under rule X to recommend to the House any enforcement actions of an administrative nature.

If the committee includes in its report to the House a letter of reproval, and recommends that no further action be taken by the House, then the act of filing the report shall be deemed to be acceptance by the House of the recommended administrative action. Obviously the House may always consider additional sanctions as a constitutionally privileged matter, just as a Member could appeal an administrative sanction with which he disagreed.

Nothing in this procedure should be considered a grant of authority to the committee to impose fines as an administrative action not requiring approval by the House. The committee already recognizes under its own rules that fines are one of several sanctions that require House action.

*Statute of Limitations.*—The task force recommends that the ethics committee not be permitted to initiate or undertake an investigation of an alleged violation which occurred prior to the third previous Congress unless the alleged violations occurring prior to that are directly related to, and constitute a continuous course of conduct in conjunction with more recent actions.

This limitation does not purport to inhibit the constitutional authority of the House to discipline and, when appropriate, expel a Member of the House. In any instance it would still be within the prerogative of the House to instruct, by the adoption of a resolution, the Committee on Standards of Official Conduct to conduct an investigation with respect to any matter, notwithstanding this provision.

*Right to Counsel.*—The task force recommends that an accused Member be permitted to be accompanied by counsel on the House floor when the recommendation of the ethics committee on his case is under consideration by the House. It should be made clear that this change in House rules to give counsel floor privileges in no way authorizes a counsel to address the House at any time. Nor does this recommendation in any way affect the right of an accused Member to have another Member speak in his defense.

*Advice and Education.*—The task force strongly feels that more initiatives can and should be taken by both Members and the ethics committee to achieve a greater understanding of and compliance with House rules and those laws affecting official conduct. This is not offered in criticism of the current committee. It is more a reflection on the reluctance of Members to utilize its offices for advice and to better educate themselves and their staffs on acceptable conduct.

In order to promote a greater outreach effort from both the committee and Members and staff, the task force recommends that an Office of Advice and Education be created within the ethics committee for the sole purpose of handling inquiries and organizing seminars, workshops and briefings for the benefit of the House.

It is not the intention of the task force that such an office be an autonomous entity, for that would defeat its purpose of providing reliable information from the committee.

Instead, the office would be headed by a director appointed by the chairman, in consultation with the ranking minority member. It would be comprised of such staff as the chairman determines is necessary. However, the task force strongly recommends that the staff of the ethics committee be enlarged to properly carry-out the responsibilities of the new office, as well as to provide adequate staff support to the various investigative subcommittees which may be operating simultaneously under the task force proposal.

In addition to conducting ethics seminars and briefings for House Members, spouses and staff, the office would assist the chairman and committee in developing written responses to inquiries as well as formal advisory opinions of general applicability.

The task force specifically recommends that no information provided by the committee to a Member, officer or employee regarding prospective conduct could be used as the basis for initiating an investigation if the requesting individual acts in accordance with the written advice of the committee. This is for the purpose of encouraging greater utilization of the ethics committee for more accurate and reliable advice.

The task force feels that a more active educational effort on ethics matters can be the greatest deterrent to inadvertent misconduct in the future. There should no longer be any excuse of ignorance of the rules. Members will have greater opportunities to learn them and a more positive obligation to observe them.

4. FINANCIAL DISCLOSURE

BACKGROUND

The principal objectives of financial disclosure are to inform the public about the financial interests of government officials in order to deter potential conflicts of interest and to increase public confidence in the integrity of government officials. Public disclosure of the financial interests and outside business activities of Members of Congress enables their constituents to monitor any potential conflicts of interest and to evaluate their performance of official duties in light of those private interests and activities.

The problem of conflicts of interest involves complex and difficult issues, especially with respect to the legislative branch. A

conflict of interest is generally defined as a situation in which an official's private financial interests conflict or appear to conflict with the public interest. Some conflicts of interest are inherent in a representative system of government, and are not in themselves necessarily improper or unethical. Members of Congress frequently maintain economic interests that merge or correspond with the interests of their constituents. This community of interests is in the nature of representative government, and is therefore inevitable and unavoidable.

At the other extreme, a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial interests. Between these extremes are those ambiguous circumstances which may create a real or potential conflict of interest. The problem is identifying those instances in which an official allows his personal economic interests to impair his independence of judgment in the conduct of his public duties.

The task force believes, in light of the ten year history of the disclosure law under the Ethics in Government Act, that public financial disclosure, coupled with the discipline of the electoral process, remains the best safeguard and the most appropriate method to deter and monitor potential conflicts of interest in the legislative branch.

The original financial disclosure rule in the House of Representatives, adopted in 1968, was perceived as inadequate to accomplish the objectives of disclosure because it did not provide the public with all the relevant information needed to assess potential conflicts of interest. The data publicly disclosed provided only minimal information on a Member's financial affairs, and public access to the disclosure statements was limited.

The disclosure requirements recommended by the Obey Commission and enacted into law by the Select Committee on Ethics of the 95th Congress expanded upon the information required by the House rule and increased public access to the disclosure reports. The financial disclosure provisions in the Ethics Act were grounded on two basic principles: (1) disclosure should be required only for those items which are relevant to potential conflicts of interest; and (2) reporting requirements should be designed to avoid unnecessary invasions of privacy or excessively burdensome record-keeping requirements.

The task force believes that the financial disclosure law as it now applies to all three branches of government effectively balances the privacy rights of the reporting individual with the governmental interests in informing the public and deterring conflicts of interest.

CURRENT HOUSE RULE AND STATUTE

House Rule XLIV incorporates by reference the Legislative Branch Financial Disclosure requirements in Title I of the Ethics in Government Act (2 U.S.C. 701) as a rule of the House. The disclosure law requires Members, officers, and employees compensated at the GS-16 salary rate or above to report the following financial information for the preceding calendar year:

*Income.*—(A) The source, type, and amount of income, and the source, date, and amount of honoraria, aggregating $100 or more from any source; (B) the source, type, and category of value of income from dividends, interest, rent, and capital gains aggregating $100 or more from any source.

Categories of value for reporting income from dividends, interest, rent, and capital gains are: (1) less than $1,000; (2) between $1,000 and $2,500; (3) between $2,500 and $5,000; (4) between $5,000 and $15,000; (5) between $15,000 and $50,000; (6) between $50,000 and $100,000; and (7) greater than $100,000.

*Gifts.*—(A) The source and a brief description of gifts of transportation, lodging, food, or entertainment aggregating $250 or more from any source; (B) the source, a brief description, and value of all other gifts aggregating $100 or more in value from any source. Exempted are gifts from relatives, gifts of personal hospitality of an individual, and gifts valued at $35 or less.

*Reimbursements.*—The source and a brief description of reimbursements aggregating $250 or more in value from any source.

*Assets.*—The identity and category of value of any interest in property held during the year in a trade or business, or for investment or the production of income, which has a value which exceeds $1,000 as of the close of the calendar year.

*Liabilities.*—The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $10,000 at any time during the calendar year. Mortgages on a personal residence are exempted.

*Transactions.*—A brief description, date, and category of value of any purchase, sale, or exchange during the calendar year which exceeds $1,000 in real property (other than a personal residence), or in securities or commodity futures.

Categories of value for reporting assets, liabilities, and transactions are: (A) less than $5,000; (B) between $5,000 and $15,000; (C) between $15,000 and $50,000; (D) between $50,000 and $100,000; (E) between $100,000 and $250,000; and (F) greater than $250,000.

Members, officers, and employees are also required to report any positions held as an officer, director, trustee, partner, employee or consultant of any business entity, nonprofit organization, labor organization, or educational institution; and the terms of any agreement with respect to future employment or continuation of payments or benefits by a former employer.

ISSUES

The dollar amounts established in the 1978 disclosure law have not been increased in 11 years. Both the minimum threshold figures for reporting some information and the exceptions from reporting may now be too low. Similarly, the upper limits on the categories of value for reporting assets, liabilities and transactions (over $250,000) are too low to give as full a disclosure of financial interests as when the law was first enacted.

There is also concern that the specific categories for reporting financial interests are unduly narrow and result in a needless burden on filers without providing any more relevant information. The narrow categories of value also increase the risk that filers will make inadvertent mistakes.

Neither the House or Senate require Members and employees to file termination reports after they leave their positions. The executive and judicial branches require such reports to be filed within 30 days after an official leaves government service. The lack of termination reports in the legislative branch leaves substantial gaps of as much as a year or more in the reporting of financial information for the period immediately prior to leaving office. As such, the objectives of the disclosure system and the effective enforcement of ethics rules and regulations is undermined.

The House and Senate ethics committee are required to review financial disclosure reports to determine whether they are filed on time, are complete, and in proper form. A General Accounting Office report on the legislative branch financial disclosure systems, issued September 8, 1989 (GAO/GGD-89-103), concluded that the House and Senate have substantially improved their systems, but recommended that compliance review and follow-up procedures be strengthened.

The task force is also aware of concerns expressed by Members and staff that the House disclosure forms are unclear and difficult to use, and that the separate instructions booklet is overly complicated.

RECOMMENDATIONS

The task force recommends a number of amendments to the financial disclosure law to update and strengthen the reporting requirements for all three branches of government, and to improve compliance review procedures.

The recommendations follow:

*Contents of Report*

*Income.*—The bill increases the disclosure threshold for reporting income to $200 from any source.

*Honoraria.*—The task force recommends that a new reporting procedure be established with respect to honoraria payments to charity beginning in 1991, when it is proposed that honoraria be abolished. The financial disclosure statement for calendar year 1991 would report the source, date and amount of any payment in lieu of honoraria made on behalf of a Member, officer, or employee to charitable organization.

In addition, a corresponding list of the date, amount, and recipient of any such payments would be filed under seal with the Committee on Standards of Official Conduct. That information would remain sealed unless the committee, pursuant to its investigative authority, determines that the examination of such information is essential in an official investigation by the committee. The Committee may make public any portion of the information unsealed in any report it may file with respect to an investigation of the individual.

This procedure would serve as an enforcement mechanism to ensure compliance with the proposed restrictions on payments in lieu of honoraria made on behalf of a Member or employee to a charitable organization, (see section 2). The current reporting requirements for honoraria (source, date, and amount) would remain in effect for calendar year 1990.

In addition, the task force recommends that the source, date and amount of any honoraria earned by the spouse be reported. Current law requires the source, but not the amount, of any earned income of the spouse over $1,000 from any person. The bill treats honoraria income of the spouse separately and requires the source, date and amount of any honoraria, regardless of amount.

*Gifts.*—The bill collapses the two disclosure categories into one, and changes the reporting threshold to $200. In order to conform disclosure of gifts with appropriate agency rules on acceptance of gifts, the bill provides that any gift which does not exceed the nominal value as defined by the rules of the House or Senate (or of the Office of Government Ethics or the Judicial Conference in the case of the executive and judicial branches) need not be aggregated.

The effect of this change, in the case of the House, would be to exempt from the dis-

closure requirements any gifts that are not aggregated for purposes of the prohibitions on acceptance of gifts under clause 4 of rule XLIII.

The task force also intends that anyone who seeks a waiver from the House gifts rule would also be entitled to request a waiver from the disclosure requirements. Under current law, the appropriate supervising ethics office may grant a "publicly available request" for a waiver from the gifts reporting requirements. According to executive branch regulations, such a waiver is generally based on a determination that the relationship between the individual and the donor and the motivation for the gift are purely personal, and that there is no contervailing public purpose requiring disclosure of the nature, source and value of the gift. The waiver request, identifying the donor and the circumstances justifying a waiver, and the grant of the waiver are made publicly available in the same manner as the disclosure report.

The task force urges the Committee on Standards to adopt similar procedures for the grant of a waiver from the gifts reporting requirements.

*Reimbursements.*—The bill lowers the disclosure threshold to $200 to provide uniformity with other rules and reporting requirements. The bill also requires more detailed reporting of travel expenses by including a travel itinerary and the dates, in addition to the nature of the expenses provided. The current reporting instructions require a brief description of the itinerary and the nature of the expenses provided when disclosing travel expenses paid or reimbursed by a private source in connection with speaking engagements and similar events. The task force recommends that the statute be amended to specifically require that information together with the dates of the travel.

The only substantive change in terms of the information reported is the inclusion of dates of travel. For example, the sample reporting form prepared by the Committee on Standards of Official Conduct shows the following reimbursement item: *"Source:* ABC Trade Association; *Brief Description:* Roundtrip airfare, Washington, D.C. to Chicago, 2 days lodging." Under the proposed amendment, the only change in that example would be to include the dates of the reimbursement. An example of a description in the case of foreign travel with several stops on the itinerary might be as follows: "August 8-16, New York to Paris to Geneva to Washington, D.C., 8 days food and lodging, self and spouse."

It is important to include the dates on which travel expenses were incurred because of the proposed limit on the duration of any travel reimbursement that may be accepted in connection with privately-funded speaking engagements or other events. Enforcement of that limitation through the financial disclosure law will help to ensure full compliance and will demonstrate to the public that the House intends to enforce the new restrictions.

*Assets.*—The bill authorizes the House and Senate ethics committees to exempt from reporting the financial interests held by a regulated investment company or a pension plan or other deferred compensation plan. The intent of this provision is to clarify that the underlying assets of a mutual fund whose portfolio is available in standard reference manuals, or a widely-diversified pension plan that is managed independently of the reporting individual, need not be reported. The provision allows the committee to limit disclosure of the interests held within pension plans or mutual funds, while retaining the reporting of the individual's interests in such funds.

The task force has made no change in the current exemption from disclosure for a personal residence, either as a property holding, transaction or a liability in the case of a mortgage. However, the reporting instructions currently require that if any part of a personal residence produces rental income, it is deemed to be property held for the production of income and therefore its total value is reported as an asset and the mortgage as a liability. The task force believes that in the case of a personal residence, only the pro rata value of that part of the residence that produces rental income should be disclosed, rather than the full value of the residence, and the total value of the mortgage should be reduced by a proportionate amount. The committee is urged to change the reporting instructions accordingly. The privacy rights of the individual that underlie the exemption for reporting a personal residence should not be disregarded simply because some part of the residence is rented.

*Qualified Blind Trusts.* The bill reinforces the independence of the trustee of a qualified blind trust, by requiring that the trustee must be a financial institution, a law firm, a brokerage firm, a certified public accounting firm, or an investment firm, and not an individual or any entity owned entirely by one individual. It also requires that the category of value of the total assets of a blind trust must be reported, in addition to income from the trust as required under current law.

*Liabilities.*—The bill narrows the exemption for reporting liabilities owned to a relative to apply only to liabilities owed to the spouse, parent, grandparent, brother, sister or child of the reporting individual or of his spouse. Current law exempts loans from any relative as that term is defined in the Act. The definition, principally for purposes of exempting disclosure of gifts from relatives, includes first cousins, aunts and uncles, step children, grandchildren and other relatives beyond the immediately family. The task force believes that the current exemption for loans owed to relatives is overly broad and that the omission of such information could conceal an individual's potential conflict of interest with a relative who may have significant financial interests in government decisions.

*Termination Reports*

The task force recommends that Members and employees of the legislative branch be required to file termination reports within 30 days after leaving office, or by May 15, whichever is later. The report would cover the preceding calendar year, if no report for that year has been filed, and the period up to the date the individual leaves office. Current law authorizes the House and Senate ethics committees to require such termination reports by rule, but neither has done so. Without such a requirement, there is a substantial gap in the reporting of financial information for legislative branch personnel that could disclose conflicts of interest, and use of the disclosure law as an enforcement tool for restrictions on gifts and outside earned income is negated.

*Coverage of Candidates*

The definition of a candidate for purposes of the disclosure law should conform to the definition in the Federal Election Campaign Act. Current law defines candidates to include any person who has qualified for the ballot for nomination or election to the Congress, and any person who has registered with the Federal Election Commission. A candidate must file with the FEC if he or his principal campaign committee has either spent or raised $5,000 or more. On the other hand, a person may qualify for the ballot in some states simply by paying a nominal fee. According to a 1989 report by the General Accounting Office, there is widespread noncompliance with the disclosure requirements by many of those minor candidates who qualify for the ballot but do not wage a serious campaign.

The task force determined that the financial disclosure requirements should only apply to those candidates who are subject to the requirements of the Federal Election Campaign Act. Candidates who do not meet the requirements for registering with the FEC are unlikely to mount a serious campaign and there is no public interest in requiring financial disclosure statements by such minor candidates. Accordingly, the task force recommends that the definition of candidate for purposes of financial disclosure be the same as the definition for purposes of federal election law.

*Public Availability*

The time within which reports must be made available to the public should be extended from 15 days to 30 days after they are filed. This extension is intended to allow additional time for the House and Senate ethics committees to review the reports filed by Members and identify any inadvertent errors or apparent omissions. The Member would then have an opportunity to file a correction which would be made available to the public at the same time as the original report.

The task force also recommends that the deadline by which the Clerk of the House must publish all reports filed by Members as a public document be extended from July 1 to August 1. As amended, Rule XLIV, clause 1 would require the Clerk to publish by August 1 of each year reports filed between January 1 and June 15. The extension corresponds with the delay in the time the reports must be made pubicly available and will ensure that the Clerk has sufficient time to publish reports that have been reviewed and, if necessary, corrected by the reporting individual.

*Compliance Review*

The task force proposal directs the Committee on Standards of Official Conduct to adopt procedures to ensure that disclosure reports are reviewed with 60 days after they are filed. The task force appreciates the additional workload that this would impose on the committee, but notes that personnel from the General Accounting Office are usually detailed to the committee to assist in its review of disclosure reports.

The task force also suggests that the committee, in its review of reports, adopt procedures to ascertain whether the reporting individual is in compliance with applicable laws and regulations, and in the event it determines that the individual is not in compliance, to provide advice on what steps should be taken to ensure compliance.

The September, 1989 GAO report found that the committee did not follow up to ensure that requested amendments were received and that amendments corrected the errors identified. The task force notes the committee's position that, after the filers are presented with the apparent need for

correction or explanation, it is the filers, not the committee staff, who are responsible for ensuring that correct reports are submitted. However, the task force agrees with the GAO's comments that the lack of follow-up to obtain amendments and to ensure that corrections have been made properly allows some reports to go uncorrected and thus defeats the purpose of the review program. Accordingly, the task force urges the committee to establish procedures to ensure that disclosure statements are corrected as requested.

*Enforcement*

The maximum civil penalty for violation of the disclosure law is increased from $5,000 to $10,000. Other civil fines under the law, for violation of the blind trust requirements and for unlawful use of the information obtained from disclosure statements, are also doubled.

A new late filing penalty of $200 is established for anyone who files a report later than 30 days after the original due date or any extension of the due date. The task force notes that the law authorizes reasonable extensions of time up to 90 days beyond the due date, yet there continues to be a problem with individuals who do not file by the due date and fail to respond on a timely basis to repeated reminders that their report is overdue. There is no penalty of any kind for late filing. The imposition of a $200 fine should serve as further inducement for those who fail to file on the due date. The task force intends that the committee would determine, based on the relevant circumstances, at what point civil penalties for willful failure to file would apply in the case of a report that has not been filed.

The task force also recommends that the civil sanction for knowing and willful falsification or failure to file a disclosure statement should be the sole and exclusive penalty for any violation of the statute. The legislative history of the Ethics in Government Act of 1978 demonstrates that Congress intended that no criminal penalties should apply to violations of the law. The original House bill as introduced (H.R. 7401) and the bill passed by the Senate (S. 555) both included criminal penalties for violations of the disclosure law. The compromise bill approved by the House (H.R. 13850) specifically provided for civil penalties for "knowing and willful violations" and deliberately deleted criminal sanctions altogether. The conference committee adopted the House position on penalties, thereby dropping entirely the criminal sanctions included in the Senate version. In addition, statements made during Floor debate by the bill's managers and others conveyed the unmistakable meaning that all criminal penalties were eliminated in order to accomplish passage of the bill.

Thus, it is clear that Congress did not intend a general criminal fraud statute, such as the False Claims Act under 18 U.S.C. 1001, to apply to reporting violations under the Ethics in Government Act. The False Claims Act imposes criminal sanctions for knowing and willful falsification or concealment of a material fact, or the making of any false, fictitious or fraudulent statement or document, on any matter within the jurisdiction of the United States government. However, a 1985 decision of the United States Court of Appeals for the District of Columbia Circuit held that 18 U.S.C. 1001 applies to the intentional falsification of financial disclosure reports. *United States* v. *Hansen*, 771 F.2d 940 (D.C. Cir. 1985). The court concluded that the legislative history was contradictory and did not provide the necessary "clear and manifest" intent on the part of Congress to preclude the otherwise clear application of section 1001 by its terms to false submissions under the Ethics Act.

The task force notes that the Department of Justice has indicated that Department policy is to bring prosecutions under section 1001 only in aggravated cases where it is satisfied that the false statements were deliberately designed to conceal improper or illegal conduct and thus can be shown beyond a reasonable doubt to have been made knowingly and willfully. Accordingly, the task force decided against recommending an amendment to the Ethics Act to explicity provide that the civil penalties would be the exclusive sanction for violations of the Act. In doing so, it expects that the Department will decline criminal prosecution under section 1001 for any but the most egregious cases were falsification of reports can be shown to have been designed to conceal illegal acts.

*Disclosure Forms*

The task force recommends that the Committee on Standards of Official Conduct, which is assigned responsibility under the Act for developing reporting forms, adopt the basic design and format of the Senate disclosure forms, with certain modifications. The Senate disclosure forms and reporting instructions, which are comparable to those used by the executive branch, are more readily understood and easier to use than the House forms, and more comprehensible to the public.

The Senate disclosure reports have separate pages for each category of required information, and provide at least 15 lines for the reporting of individual items. In contrast, the House forms provide very little space for the reporting of financial interests, and rely on the use of continuation sheets if needed by the filer. The Senate forms also combine assets and income on the same page, with clearly labeled columns to check off the appropriate category of value, type of income, whether it was bought or sold during the year, and other required information. Instructions and examples are printed on the same page, and detailed reporting instructions are attached to the form.

The task force also recommends, as an improvement on the Senate form, that the reporting of honoraria and reimbursements for travel expenses from the same source be juxtaposed in some way to clearly identify those reimbursements that are in connection with a speaking engagement or other honoraria event. Also, for the benefit of the press and the public, the task force believes it would be helpful to include a statement on the front page of the form explaining the purpose of financial disclosure and emphasizing that the report is not intended to be a net worth statement.

The task force believes that redesigned disclosure forms modeled on the Senate reports will ease the reporting burden for Members and employees, will help to reduce inadvertent mistakes, and will facilitate the public's understanding and use of the financial disclosure statements.

### 5. Use of Official Resources

#### I. Rights and Duties of Staff

*Current House Rules*

There are a variety of House rules which affect the rights and duties of staff. Six of the 11 clauses of the Code of Official Conduct apply uniformly to Members, officers and employees of the House, including prohibitions against being paid by any source for exerting improper influence, against the acceptance of certain gifts, and against accepting honoraria in excess of the customary amount.

Clause 8 of the Code of Official Conduct prohibits Members from using their clerk hire allowance to pay someone for work which is not commensurate with their services. And clause 9 prohibits Members, officers or employees from discharging or refusing to hire someone, or otherwise discriminating against them with respect to compensation, terms, conditions or privileges of employment, on the basis of race, color, religion, sex, age or national origin.

House rule XI, clause 6, contains similar anti-discrimination provisions relating to the appointment of professional and clerical committee staff: they are to be appointed without regard to race, creed, sex, or age.

The Fair Employment Practices Resolution, adopted as H. Res. 558 in the 100th Congress, and readopted as H. Res. 15 in the 101st Congress, requires that House personnel actions shall be made free from discrimination based on race, color, national origin, religion, sex (including marital or parental status), handicap, or age. The resolution also establishes a grievance procedure for consideration of alleged violations.

House rule XI, clause 6, prohibits professional committee staff from engaging in any work other than committee business, and from being assigned any duties other than those pertaining to committee business.

Rule XI, clause 2, imposes certain requirements on committee members and employees with respect to the use of committee funds for travel.

House rule XLI prohibits any officer or employee of the House from prosecuting or being interested in any claim against the government (other than as an original claimant).

Finally, rule XLIV, which incorporates Title I of the Ethics in Government Act relating to financial disclosure, requires staff members paid at the GS-16 level and above to file annual financial disclosure statements.

ISSUES

The fair and nondiscriminatory treatment of House staff is a matter of ongoing concern. While there is no evidence that major abuses of staff are occurring on a widespread basis, the isolated incidents which do come to light reflect poorly on the entire House.

The task force has received no evidence that the new Office of Fair Employment Practices is not working as intended, though it is barely a year old, and many employees may be unaware of its mediation, counseling and complaint review services.

Another issue which arises from time to time is the so-called "ghost employee" problem—staff who do not keep regular office hours in a congressional or committee office or who are being compensated for work they do not perform.

Concern has also been raised about potential financial conflicts of interest which may affect employees contacts with Federal agencies.

Finally, it has been pointed out that House staff are not subject to the same outside earned income and honoraria limits as Members, and yet are often in a position to command large speaking fees from groups with which they deal legislatively.

RECOMMENDATIONS

The task force recommends that House rules and the law be changed to prohibit any employee from receiving honoraria after 1990. The task force also recommends, by rule and by law, that senior staff, those paid at the GS-16 salary rate or above, be subject to the same 15 percent outside earned income limit and other employment restrictions that will apply to Members beginning in 1991. The details of these proposals are discussed in another section.

The task force recommends that the Code of Official Conduct, Rule XLIII of the Rules of the House, be amended to add a new clause 12 which provides guidance and direction to senior House employees with respect to potential or apparent conflicts of interest. Under the new restriction senior staff, those required to file financial disclosure statements, are instructed to refrain from participating, in a personal and substantial manner and in their official capacity, in any contacts with agencies of the executive and judicial branches with respect to non-legislative matters which affect any business in which the employee has a significant financial interest.

The new provision recognizes that Members may not have alternative staff resources to utilize in making these important and appropriate communications on behalf of their constituents. Therefore, the rule provides, in subsection (b) that a Member can "waive" the restriction of this provision by executing a written waiver after having been advised, by the employee, of the employee's financial interest. Copies of all such waivers must be submitted to the Committee on Standards of Official Conduct.

The Committee will provide interpretive guidance to the Members and employees of the House. This guidance will include providing appropriate definitions for the various terms, such as "significant financial interest" and "participating personally and substantially" in line with its jurisdiction and responsibility to advise Members and employees of their obligations under the Code of Conduct and other provisions of the Rules of the House.

This new provision is intended to provide both a standard of conduct and a workable framework to guarantee that employees who engage in the proper and necessary congressional role of performing constituent service are not motivated by personal financial interests but are performing, at the direction of the Member, services motivated by the Member's representational duties.

The adoption, interpretation and enforcement of this restriction on the actions of House employees is an appropriate exercise of the House's constitutional authority and responsibility to regulate the conduct, and punish the misconduct, of those who work for the House.

Other than these major changes, the task force does not recommend any substantial amendments to House rules relating to the rights and duties of staff. It does expect, however, that the Committee on House Administration will conduct a thorough review of the new employee grievance procedure in the next Congress to determine whether it is working effectively, and, if not, what improvements should be made.

The task force has recommended some related technical amendments to House rules for the purpose of consolidating prohibited forms of discrimination found in rules XI and XLIII, and the Fair Employment Practices Resolution, under clause 9 of the Code of Official Conduct.

Under the proposed amendment, the clause would prohibit House Members, officers or employees from discharging, refusing to hire, or discriminating in conditions of employment against a person "because of such individual's race, color, religion, sex (*including marital or parental status*), *handicap*, age or national origin, *but may take into consideration the domicile or political affiliation of such individual.*"

The matters in italics are those which are incorporated from the Fair Employment Practices Resolution. It should be noted that this change in the Code of Conduct in no way changes the rules which already apply to Members, officers and employees, since the Fair Employment Practices Resolution is already considered to have the same force and effect as a standing rule of the House.

The amendment has been made simply for the sake of convenience and uniformity. To the extent the additional matters are now included in the Code of Official Conduct, they are elevated in visibility and importance, even though they impose no new obligations on the House under its rules.

The task force also recommends amending clause 8 of rule XLIII in the Code of Official Conduct. That clause now prohibits Members from using their clerk hire allowance to pay someone who does not perform duties commensurate with the compensation he receives. Under the task force recommendation, the reference to clerk hire allowance would be stricken so that the rule would now apply to committee as well as personal staff, and it would be expanded to include employees of House officers as well.

Under the new language, a Member or officer could employ no one who does not perform official duties commensurate with his pay in the offices of his employing authority.

It should be noted that this rule in no way alters the current House Administration Committee regulation requiring monthly certification. It simply conforms the language of the Code of Conduct respecting a Member's responsibility for staff with the existing regulation. By placing this conforming language in the Code of Conduct, the task force is not proposing any new requirement, but rather is helping to ensure that Members are more fully aware of their obligations with respect to the staff personnel working for them.

The task force proposal includes an additional matter which is discretionary with committee chairmen. That change would authorize them to require that committee members who have direct supervisory authority over committee staff (e.g., subcommittee chairman and ranking minority members) affirm in writing to the chairman that the employees are in compliance with this provision.

The purpose of this requirement is to ensure accountability for employee performance. The rule specifically states that, if a supervising Member has affirmed in writing that the employee under his authority has met the criteria of the rule, this written affirmation is sufficient evidence that the chairman is in compliance with the rule's provisions. Any violation would consequently become the responsibility of the supervising Member.

One concern expressed about the existing certification requirement in the regulation, and the new rule's requirement that work be commensurate with compensation, is that Members may be vouching for work not actually performed if an employee is on authorized paid leave, either due to illness, maternity, or vacation.

It is not the purpose of this requirement, any more than it is of the present certification regulation, to require 52-weeks a year of work for an employee to be in compliance with the requirement. Authorized leave does not violate the work-commensurate-with-pay criterion.

However, to avoid questions of abuse, each office is advised to adopt a uniform leave policy applicable to all employees. It has been suggested to the task force, and it concurs, that the Committee on House Administration might provide a model leave policy for the guidance of Member and committee offices. It would not be controlling but could be helpful to each office in devising its own uniform leave policy.

The task force has recommended amendments to House rules in two related areas. First, in clause 6 of rule XI, the requirement that professional committee staff "not engage in any work other than committee business," is amended by adding, "during congressional working hours." This is to conform the rule to the longstanding ethics committee interpretation that the rule does not prohibit such staff from outside employment on their own time.

Secondly, the task force recommends that rule XLI, which now prohibits House officers and employees from prosecuting or having an interest in any claim before the government, other than a personal claim, be amended by adding an exception for "the proper discharge of official duties."

This proposed change conforms with the parallel statute, 18 U.S.C. § 203, which prohibits government officials and employees from being compensated for performing government services, "except as provided by law for the proper discharge of official duties * * *."

The proposed change in House rules simply makes it clear that an employee would not be in violation of the rule for contacting government agencies on behalf of a constitutent of the Member for whom the employee works. Constituent service and casework are an integral part of every congressional office and in no way should be inhibited by a literal interpretation of the existing rule. The proposed amendment is designed to remove any question about the propriety of such contacts.

II. USE OF OFFICIAL AND CAMPAIGN FUNDS

*Current House Rules*

House rule XLV prohibits Members from maintaining unofficial office accounts.

Federal law provides that funds generally may be used only for the purpose for which appropriated. Pursuant to this requirement, the *Regulations for Member Offices* issued by the Committee on House Administration states as a general rule that a Member's official expense allowance is provided to pay ordinary and necessary business expenses incurred in support of the Member's official and representational duties. The regulations specifically allow for automatic reimbursement for short-term and long-term leased automobiles that are "used exclusively in support of the conduct of official and representational business."

House rule XLIII, clause 6 requires that Members keep campaign funds separate from personal funds, and not convert campaign funds to personal use in excess of legitimate and verifiable prior campaign expenditures. Moreover, the rule prohibits Members from expending funds from their

campaign account which are not attributable to bona fide campaign purposes.

ISSUES

The most common problem expressed to the task force by Members was the frequent dilemma of travelling in their districts on official or political business, and the impracticality of completely separating official, political and personal activities. The job of a congressman is, after all, it is argued, a matter of representing competing political interests: politics is integral to the business of government.

By the same token, even when a Member is travelling on strictly campaign business, matters relating to his official, representative duties are bound to arise.

And yet, Members generally use either an official or campaign leased or owned car during a particular day's travel in the district, depending on whether the day is to be devoted to official or campaign business. It is obviously impractical to take two cars and switch back and forth during the course of a day's events.

The incidental occurrence of other matters during a day's travel leaves Members understandably concerned about strict compliance with House rules and laws relating to the use of official and campaign funds.

RECOMMENDATIONS

The task force recommends the enactment of statutory language authorizing the incidental use of government owned and leased vehicles for other purposes, pursuant to the issuance of regulations by the appropriate agency. The Committee on House Administration is directed to amend its regulations to reflect this change with respect to officially used vehicles.

While the task force would not attempt to dictate the exact wording of such regulations, during its deliberations it considered language which made it clear that such incidental use should be during the course of and along the route of a day's official itinerary, incidental to the day's official business, *de minimis* in nature, frequency and time consumed, and otherwise not constitute a significant activity or event.

It should be clear from such suggested language that the task force in no way intends by this incidental use rule to authorize any significant commingling of activities, i.e., official, political and personal. For those Members who find such substantial commingling unavoidable, the task force strongly recommends that they enter into private leases or use personally owned vehicles and seek reimbursement from their official expense allowance or campaign funds as appropriate.

The task force is aware that this will involve new recordkeeping requirements for Members who are accustomed to the automatic prepayment system, but would hasten to point out that roughly one-third of the membership now uses such a system (while 40% use the long-term, automatic payment leases, and the remaining Members use short-term leases).

The task force does not propose changing the per mile reimbursement method to compensate for the official use of privately owned or leased vehicles. However, it is concerned that those Members who use leased vehicles for mixed purposes may not be adquately compensated for their official use on a per-mile basis.

Therefore, the task force recommends that the Committee on House Administration conduct a thorough review of present travel reimbursement procedures and possible alternatives. Such a review should include consideration of a procedure whereby Members could seek *pro rata* reimbursement based on the daily itinerary rather than on mileage.

The task force understands that such a system is an option available in the Senate, and that it works successfully. Obviously documentation would still be required, but not in the same detail as a mileage record.

The task force urges the Committee on House Administration to report to the House its findings and recommendations not later than July 1, 1990, so that any new options for reimbursement can be implemented as soon as possible thereafter.

The task force also directs the Committee on Standards of Official Conduct to issue an advisory opinion to permit similar incidental use of campaign owned or leased cars for other purposes.

Finally, the task force recommends that clause 6 of Rule XLIII be amended to bring it into conformity with Advisory Opinion No. 6 of the Committee on Standards of Official Conduct. Clause 6 specifically prohibits a Member from expending funds from his campaign account that are not attributable to "*bona fide* campaign purposes."

Advisory Opinion No. 6 provides that, contrary to the language of clause 6, there are gray area expenditures that can be classified as either political or official, and that the definition of what is political is left to the Member. And yet, the word "political" is not used in the rule itself.

The change in clause 6 is intended only to clarify the original intent of the rule adopted in 1977. Current rules require that campaign funds be used solely for campaign purposes and specifically prohibit the use of campaign funds for personal or official purposes. The Select Committee on Ethics of the 95th Congress made clear in its *Final Report*, "The intent of this rule is to restrict the use of campaign funds to politically-related activities and thus to prohibit their conversion to personal use or to supplement official allowances. The rule should not be interpreted to limit the use of campaign funds strictly to a Member's reelection campaign * * * Thus, if a Member determines, for example, that advertisements in publications of civic organizations, the mailing of holiday greetings to constituents, or travel to meetings with local party officials would constitute a political expenditure" these would be allowed under the rule.

Thus the proposed change to allow expenditures for bona fide "political" as well as "campaign" purposes conforms the language of the rule to the original intent that campaign funds may be spent for the traditional politically-related activities of Members. It is not in any way intended to blur the bright line in the rules prohibiting the use of campaign funds for personal or official use.

As the Ethics Committee has made clear "* * * a bona fide campaign purpose is not established merely because the use of campaign money might result in a campaign benefit as an incident to benefits personally realized by the recipient of such funds * * *. Any other interpretation * * * would open the door to a potentially wide range of abuse and could result in situations where campaign moneys were expended for the personal enjoyment, entertainment, or economic well-being of an individual without any clear nexus that the funds so expended achieved any policital benefit to the disburser (campaign organization) of the funds."

The intent of the change is to make clear that traditional politically-related activities are allowed under the rule and to underscore that campaign funds may not be used for personal or official use.

6. CITIZENS' COMMISSION AND COMPENSATION

BACKGROUND

Under Article I, section 6, of the Constitution, "The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by law, and paid out of the Treasury of the United States."

The matter of establishing the pay of Members of Congress has been a troublesome one for Members since the beginning of the Republic. In the very first Congress, Representative James Madison proposed as one of the first 12 amendments to the Constitution an amendment which read quite simply:

"No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened."

In defending the proposal on the House floor on June 8, 1979, Madison said of Congress' authority to set its own pay:

"Perhaps of all the powers granted, it is least likely to abuse; but there is a seeming impropriety in leaving any set of men without control to put their hand into the public coffers, to take out money to put in their pockets; there is a seeming indecorum in such power, which leads me to propose [this] change."

While the amendment was never ratified by the requisite three-fourths of the states, various alternative statutory pay procedures have been proposed and tried over the years. In more recent years, these have taken the form of presidential commissions to recommend salary levels for senior executive and judicial branch officials as well as Members of Congress.

The first such Commission on Executive, Legislative and Judicial Salaries was established in 1967 for the purpose of reviewing the salaries of Members of Congress, federal judges and top executive branch officials every four years and recommending any changes it determined were appropriate. The nine-member commission was to be composed of three members appointed by the President and two each to be appointed by the President of the Senate, the Speaker of the House, and the Chief Justice of the U.S.

After the commission reported its recommendations, the President was to recommend to the Congress whatever pay levels he deemed advisable. The recommendations were to take effect within 30-days unless Congress disapproved all or part of them, or enacted a different pay bill.

Since enactment of the Federal Salary Act of 1967, the Act has been amended numerous times. There have been seven commissions in all over the 22 year-period, only three of which have seen their recommendations enacted. Most recently, in February of 1989, Congress rejected a 51% pay increase recommended by the fiscal 1989 Quadrennial Commission.

CURRENT LAW

Under the 1967 Federal Salary Act, as amended, the Commission on Executive, Legislative and Judicial Salaries is charged with reviewing in every fourth year the rates of pay for Members of Congress (and certain other legislative branch personnel), Federal justices and judges, offices and positions under the Executive Schedule, and the Governors of the Board of Governors of the U.S. Postal Service.

The commission review is to be conducted to determine the appropriate pay levels and relationships between the various positions covered.

The commission is comprised of nine persons: three appointed by the President, two by the President of the Senate, two by the Speaker of the House, and two by the Chief Justice of the United States.

The commission is appointed for the fiscal year in which they are to make a report and are to report to the President no later than December 15th of that fiscal year.

The President must include in his budget message the following month his recommendations for pay for the positions covered by the commission report.

The President's recommendations become effective after 30 days unless Congress enacts a joint resolution of disapproval within that period.

The pay increases take effect on the first day of the first pay period after the end of the 30-day period.

The Executive Salary Cost of Living Adjustment Act of 1975 provides for annual automatic adjustments in the pay of Federal executives equal to the average percentage of the comparability adjustments in the rates of pay under the General Schedule. Such increases for employees under the General Schedule are recommended by the President and subject to disapproval by the Congress.

The General Schedule annual adjustment procedure, to which senior executives are now tied, was authorized in the Federal Pay Comparability Act of 1970. The Act requires the President to direct his pay agent to annually submit to him a report that compares the rates of pay of the statutory pay systems with the pay in private industry, based on the annual survey of the Bureau of Labor Statistics.

The Advisory Committee on Federal Pay, which was also created by the Act, advises the President on the pay adjustments recommended by his pay agent. The President could then determine that the recommended amount is inappropriate due to a national emergency or other economic conditions, in which case he may submit to Congress an alternative pay plan.

ISSUES

This year the National Commission on the Public Service, chaired by Paul Volker, called the Nation's attention to what is saw as a "quiet crisis" in government. As the commission summed-up the crisis in its final report, *Leadership for America: Rebuilding the Public Service:*

"Simply put too many of the best of the Nation's senior executives are ready to leave government, and not enough of its most talented young people are willing to join."

And the Commission went on to observe that this erosion in the attractiveness of public service "undermines the ability of the government to respond effectively to the needs and aspirations of the American people, and ultimately damages the democratic process itself."

The Commission concluded on this point: "Although the "quiet crisis" affects all levels of government, the Commission has been particularly concerned about quality and performance at the senior administrative and professional levels of the federal government. That is where America looks for leadership and where standards of government service may have their widest influence."

Similar concerns have been expressed this year by the President's Commission on Executive, Legislative and Judicial Salaries in its report, *Fairness for our Public Servants.*

Chief among the concerns of these commissions in being able to attract and retain highly-qualified individuals to public service has been the matter of inadequate compensation. As the President's quadrennial commission correctly observed:

"Most who seek or enter high public office do so despite rather than because of the salaries these positions pay. Much more important motivations are the pride, prestige and privilege of service, and the opportunity to contribute to the greater public good."

The Commission goes on to observe that while private sector wages have more than kept pace with inflation over the last two decades, the levels of salaries of senior officials in all three branches is only about 65-70% in constant dollars of what their 1969 salaries were for the same positions. As a result, Federal judges are resigning at a higher rate than ever before; the average tenure of Executive branch officials is only about 18 months; and many Members of Congress are retiring early in their careers due to financial pressures, and taking positions in the private sector.

This is the principal cause of the "quiet crisis" in government and should be a major cause of concern for all Americans who value professionalism and dedication from their public servants.

Directly related to this problem are the attempts by some top officials who remain in government to augment their salaries through outside activities, simply to keep up with the rising cost of living. Not only does this detract from the time and energy they can devote to public service, but it often poses the appearance of conflict with their public duties. As the President's Commission on Federal Ethics Law Reform noted in its March, 1989 report entitled, *To Serve With Honor,* "there is an obligation in a public official to be sure his actions appear ethical as well as be ethical. The duty is to conduct one's office not only with honor but with perceived honor."

The perceptions which attend the practice of honoraria and other outside employment and the task force's recommendations are dealt with elsewhere in this report. The important point is that all three commissions which viewed these problems from different perspectives came to the basic conclusions that top public officials should be better compensated, that honoraria should be banned, and that outside employment should be more tightly restricted.

While all this seems self-evident, doing something about it is quite another matter given the political difficulties which have surrounded government pay since the beginning of the Republic. The multitude of government studies, commissions and salary mechanisms produced over the years to address these basic problems have met with only mixed success in the face of certain political realities.

The current system of tying senior salaries to the same percentage increase as those of other Federal workers has only reopened to political gamesmanship what was intended to be a more objective and automatic cost-of-living adjustment (COLA).

The resulting loss of several annual COLAs for senior officials has in turn placed the Quadrennial Commission on Executive, Legislation and Judicial Salaries in the near-impossible position of recommending politically unacceptable increases, simply to restore lost purchasing power. The recent failure of the 1989 Commission's recommendation of a 51% salary increase for senior officials in a single year is only the most recent example of the failure of the system.

RECOMMENDATIONS

The task force recommends a fundamental departure from the present system which responds to the public's demand for a fair, straightforward and accountable approach.

*Citizen's Commission on Public Service and Compensation.*—The task force recommends the reconstitution of the quadrennial pay commission into a new Citizens' Commission on Public Service and Compensation. Unlike its predecessor commissions which were comprised entirely of individuals appointed by the President, Speaker of the House, President of the Senate, and Chief Justice, five of the 11-member commission would be comprised of citizens drawn by lot from voter registration rolls. These five commissioners would be appointed by the Administrator of the General Services Administration under a procedure that would be designed to ensure the greatest geographic diversity.

Of the remaining six members, two would be appointed by the President, one by the President of the Senate, one by the Speaker of the House, and two by the Chief Justice. The President would appoint one of the commission members to serve as chairman. They would be appointed without regard to political affiliation from among persons with experience or expertise in such areas as government, public administration and personnel management. None of the commission members (or members of their immediate family) could be a lobbyist or employee of the Federal government.

The task force appreciates that this bold approach to such an important endeavor may cause concerns given the uncertainty of membership.

However, the task force would point out three things in defense of the proposal. First, past commissions have not been particularly successful despite the high positions of those making the appointments, the high level of prestige and expertise of the appointees, and the high quality of their final reports and justifications for their recommendations. As has already been mentioned, only three of the seven commissions have succeeded in having their recommendations enacted into law.

Second, the task force proposal is based on the Washington State system which entrusts a citizens' commission with even greater authority, and yet which has met with much greater success than the present approach.

The Washington Citizens' Commission on Salaries for Elected Officials is comprised of 15-members, of whom eight are randomly selected from voter registration rolls, one from each of the congressional districts. The other seven members are jointly selected by the Speaker of the House and President of the Senate. The latter appointees must possess experience in the field of personnel management and be from the sectors of labor, business, private higher education, personnel management and the legal profession.

Since the enactment of this system in 1986, the two proposals of the commission in 1987 and 1989 have been successfully implemented. The first resulted in a 25% pay increase for the governor and Supreme Court and a 14% increase for legislators.

The second provided a 21% increase for the State legislature.

The third point the task force wishes to make in defense of the citizens' commission approach is that it is a necessary first step in restoring public confidence in the process. A citizens' commission can help to open the door of government to more direct citizen participation.

The commission would be responsible for recommending appropriate salaries for the same top officials now covered by the existing Federal Salary Act. This includes 834 executive branch officials, 549 legislative branch officials, and 1,115 judicial branch officials. In addition, the task force recommends that the new commission not only look at salaries, but the overall problems of recruiting and retaining senior officials and of maintaining appropriate ethical standards. While the proposed pay authority of the commission only covers the most senior officials in the three branches, the task force proposes that the review of personnel recruitment, retention and ethical problems be government-wide as the scope of the term "public service" in its title implies.

The first commission under the new law would be appointed in fiscal 1993 (not later than February 15, 1993), and subsequent commissions would be appointed every fourth fiscal year thereafter. The commission would report its recommendations to the President at a date designated by him, but not later than December 15 after the close of the fiscal year in which the commission is appointed.

After considering the commission's report, the President would then be required to submit his own recommendations to Congress in connection with his budget in early January. The December and January reporting deadlines for the commission and President are the same as the present Quadrennial Commission procedure, although it is no longer necessary for the President's recommendations to be submitted at the same time as the budget.

Furthermore, there are criteria specified for the President to use in making these recommendations, including, after considering the commission's report, fairness, the prevailing market value of the services rendered, and the overall economic and fiscal conditions of the economy and the Federal government.

Finally, the recommendations of the commission and President shall be equal for: (a) the Vice President, the Speaker and the Chief Justice; (b) the cabinet, other executive level I positions, the majority and minority leaders of the House and Senate, and the President pro tempore of the Senate; and (c) Members of Congress, Federal district judges, and other executive level II positions.

The task force recommends several important changes in the present procedure which it feels are necessary to restore public confidence in this salary-setting process. First, the commission could recommend that any salary increases be spread over a four fiscal year period instead of being confined to just one year as is now the case. Had the 1989 Quadrennial Commission had this option and recommended 12% annual increases for the affected officials over four years, its report might have met with less resistance.

Second, the task force recommends that any salary increases recommended by the President could not take effect until there has been an intervening election of U.S. Representatives after the approval of the recommendation. Moreover, the task force recommends that this same Madisonian approach be applied to any other salary increase for top officials (other than annual COLAs which would already be provided for by law under this Act). The task force strongly believes that both Members and the public will be more comfortable and satisfied with a system which prevents Members from voting themselves any pay raise. The new statutory requirement would only permit such increases for future Congresses.

Third, the recommendations of the President would require the affirmative vote of both Houses of Congress instead of taking effect automatically unless disapproved by both Houses as is now the case. The task force believes the public expects and deserves this kind of accountability from its Representatives in the Congress.

Under the proposed procedure, a joint resolution of approval of the President's pay package could be called up as a matter of highest privilege in either House by the majority leader or his designee within 60 calendar days of its submission by the President. The task force wishes to make clear that this 60-day period for privileged consideration would not preclude consideration at a later date of the President's proposal or any alternative so long as it is under the usual rules of the House concerned. The 60-day period simply allows for expedited consideration of an approval resolution.

Moreover, the approval procedure must be completed before the earliest effective date of the recommendations. If the President's proposal or another plan is considered after the 60-day period, it could still not become effective prior to an intervening election. For instance, if it is voted on during a lame-duck session, it could not take effect in the succeeding Congress.

In summary, the task force is confident that the new citizens' commission and the new process for considering its recommendations overcome many if not most of the problems which have plagued the present system. The principal challenge is to restore the public's faith in the process. By making the people a part of that process, by making their congressional Representatives accountable under it, and by delaying any salary increases until after an election, that challenge has been met.

*COLA Restorations.*—The task force recommends that the 1989 4.1% comparability adjustment which went to other Federal workers under the General Schedule be restored for the top government officials who were denied the increase. The task force recommends that the 1990 3.6% comparability adjustment which has been approved for other Federal workers also be granted to senior officials.

In both instances, even though the senior officials are entitled to the same annual adjustment, on equity grounds and under current law, provisions were attached to appropriations laws to separate them from these authorized annual increases.

The bill includes language which requires that Federal judges receive the COLA restorations. Also, neither of the two COLA restorations will take effect until the current sequestration of funds for Federal programs, pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 is rescinded.

*Future COLA Adjustments.*—Because the current system of considering comparability adjustments for top officials is tied to the procedure for other Federal workers under the General Schedule, these senior officials in all three branches have been the most vulnerable to and the most hurt by riders to appropriations bills to deny them COLAs when other Federal employees receive theirs. This is the single, most important explanation for the growing disparity between top salaries in government and the private sector, and the 38% loss of purchasing power by these officials since 1969.

For this reason, the task force recommends that, beginning in 1991, a separate index be used to determine whether or not there should be an annual salary adjustment for these top officials. Specifically, the task force recommends that prospective adjustments be pegged to the rate of change in the Economic Cost Index (ECI), minus one-half a percent (0.5%). The ECI is a quarterly index of wages and salaries for private industry workers published by the Bureau of Labor Statistics.

Since the statutory effective date for comparability adjustments is October 1, the task force recommends that, in determining the percent of change, the base quarter ending the previous December should be compared to the base quarter ending the next previous December. In other words, in determining the first comparability adjustment under this new system which would be effective on October 1, 1991, the ECI as of December 31, 1990 would be compared with that of December 31, 1989.

The task force further recommends that any annual adjustment shall not exceed 5%, or be less than 0. Thus, while the average annual ECI percentage change in wages and salaries over the last decade was 5.6%, the subtraction of a half-percentage point and the imposition of a 5% cap would bring that annual average down to 4.1%. That is a half-percent less than the 4.6% average annual cost of living increase for that 10-year period.

For the years 1986-90, the ECI (−0.5%) was 3.6%, 3.6%, 2.6%, 2.8%, and 3.6%, respectively. Coincidentially, the 1990 figure is the same as the 3.6% increase going to Federal workers under the General Schedule next January, as enacted by the Treasury, Postal, General Government Appropriations Act, 1990.

In conclusion, the task force believes this new index is both equitable and workable. By separating top government officials from the method for adjusting the salaries of Federal workers under the General Schedule, both should be better served and protected from political manipulation. If anything, the separate systems should enable Congress to more dispassionately and objectively consider the appropriate salary levels for other Federal workers.

*The 1991 Increase.*—The task force recommends that the top federal officials under the Quadrennial Commission's purview, (top executive branch officials, Members of Congress, Federal judges and others) should receive a 25 percent salary increase as part of a comprehensive ethics package which both abolishes honoraria and imposes strict new limits and restrictions on any outside income and employment.

The increase is approximately half of what was recommended by the 1989 Quadrennial Commission. With the two COLA restorations, the 1991 increase will raise the salaries of House Members and other top executive and judicial branch officials now earning $89,500 to $120,800. If the salaries of these officials had simply kept up with inflation since 1969, their salaries would now be $135,800.

The task force wishes to emphasize that it considers the salary provisions of its recommendations to be an integral part of the total ethics package being proposed. Serving as a senior government official is and should be a full-time job and should be compensated accordingly. Along with adequate compensation there would be less need to supplement income from outside sources.

The task force's proposed bans on honoraria and on practicing a profession for compensation outside the government are intended both to better focus the attention of government officials on the obligations of public service and to restore public confidence in government. The task force also believes that putting the salary system for such officials on a more realistic level should ensure that the government will continue to attract and retain high caliber leaders to carryout the important work of government.

*Work Performed by Senior Judges.*—The task force also recommends as part of its ethics reform package the enactment of a bipartisan proposal introduced by Rep. Kastenmeier (D-WI) and Rep. Moorhead (R-CA) to require that judges in the senior status must be certified as having performed a certain amount of work each year in order to receive any salary increase.

Senior judges are those individuals in a semi-retired status who stay on the bench but are not expected to work fulltime. Certification would be made by the chief judge of the circuit, and in most cases is based on a caseload involving courtroom participation equal to what an average active judge would perform in three months. The three month work obligation could also be satisfied by engaging in substantial judicial duties not involving courtroom participation.

*Other Federal Workers.*—While the task force did not consider it to be within its mandate to conduct a thorough review of government pay systems at all levels, let alone to make specific recommendations, it is nevertheless cognizant of the need to maintain adequate pay levels for all government workers.

In this regard the task force strongly urges the Administration and appropriate committees to work together in this Congress to ensure that other government employees are better compensated, and particularly to review the General Schedule pay system. The task force is especially concerned that Senior Executive Service (SES) and Senior Foreign Service employees' salaries should reflect the increases recommended for top government officials by the task force.

The task force commends President Bush on his senior executive salary message of July 7, 1989, in which he called for a significant pay increase for senior executives to narrow the gap between public and private sectors in order "to attract and retain the skilled and motivated senior executives necessary to direct the complex, wide-ranging and critical functions of the Federal Government."

The task force also asks that serious consideration be given to raising the present pay cap on administrative law judges (ALJs) and those who serve on Boards of Contract Appeals (BCAs). The cap has resulted in a disparity in pay between the ALJs and BCAs and that of senior Federal attorneys. This in turn makes it difficult to induce federal attorneys and qualified lawyers in private practice to join the administrative judiciary. The ALJs have proposed a three-tier pay schedule (85 percent, 95 percent, and 100 percent of Executive Level IV) to recognize the additional supervisory and administrative duties performed by some judges and the variation and complexity of cases.

The task force observes that both the Volcker Commission on the Public Service and the 1989 Quadrennial Commission recommended that the pay inequities among the SES and ALJs be corrected.

The task force is also aware that the National Association of Chapter 13 Trustees, who administer the bankruptcy plans involving small businesses and individuals, have requested that the pay cap for standing trustees be raised from GS-16 to GS-17, and that a benefit allowance be authorized.

Standing trustees' pay has not increased significantly in ten years, while their caseload has grown substantially due to the 1986 bankruptcy amendments. The task force has been informed that there would be no cost to the Federal Government due to such a change since the trustees are paid from a percentage of funds paid by the debtor and administered by the Trustee in bankruptcy cases. The Executive Office for the U.S. Trustees at the Justice Department would administer the proposed benefit allowance.

Finally, but not least, the task force strongly urges the Committee on House Administration to thoroughly review the adequacy of the clerk hire allowance in attracting and retaining qualified staff personnel in the House. The task force is concerned that the average tenure of legislative assistants in the House is less than two years. The loss of experienced staff at mid-salary levels in the House due to limited resources makes it difficult to maintain legislative continuity in congressional offices, and the House in turn suffers as an institution.

## SECTION-BY-SECTION ANALYSIS

### Government Ethics Reform Act of 1989

#### TITLE I—LIMITATIONS ON OUTSIDE EMPLOYMENT AND ELIMINATION OF HONORARIA

*Limitations on Outside Earned Income and Employment (Sec. 101)*

Section 101 adds a new Title V to the Ethics in Government Act of 1978 to establish government-wide (except the Senate) limitations on outside earned income and employment, and to abolish honoraria.

*Outside Earned Income and Honoraria*

Proposed section 501 provides that a Member, officer, or non-career employee of any branch of the government paid at the GS-16 salary rate or above may not have outside earned income in a calendar year in excess of 15 percent of the salary for Level II of the Executive Schedule.

Subsection (b) provides that no Member, officer, or employee of any branch of the government may receive any honoraria. Subsection (c) provides that any payment in lieu of honoraria which is paid on behalf of a Member, officer, or employee to a charitable organization shall be deemed not to have been received for income tax or pension purposes. Any such payment made to charity may not exceed $2,000 or be made to a charitable organization from which the individual or any immediate family member derives any financial benefit.

*Outside Employment*

Proposed section 502 provides that a Member, officer, or non-career employee of any branch of government paid at the GS-16 salary rate or above shall not (1) affiliate with or be employed by a firm for compensation to provide professional services which involve a fiduciary relationship; (2) permit their name to be used by any such firm or other entity; (3) practice a profession for compensation which involves a fiduciary relationship; (4) serve for compensation on the board of directors of any association, corporation, or other entity; or (5) receive compensation for teaching without the prior notification and approval of the appropriate ethics office.

*Administration*

Proposed Section 503 provides that the limitations on outside earned income and employment are to be administered by and subject to the rules and regulations of the House or Senate ethics committee, the agency ethics official pursuant to regulations issued by the Office of Government Ethics, and the Judicial Conference of the United States with respect to officers and employees under their jurisdiction.

*Civil Penalties*

Proposed Section 504 provides a maximum civil penalty of $10,000 or the amount of the compensation received for the prohibited conduct, whichever is greater, for violations of the outside employment and earned income restrictions. Subsection (b) provides that the appropriate ethics office may render advisory opinions interpreting these restrictions, and any individual who acts in good faith in accordance with those advisory opinions shall not be subject to any civil sanction under the Act.

*Definitions*

Proposed Section 504 defines various terms used in the new title V. The term "officer or employee" is defined to mean any officer or employee of the government (except the Senate), excluding any whose rate of compensation is less than the minimum rate payable for grade GS-16 of the General Schedule. With respect to honoraria, the term means any officer or employee, regardless of salary level.

The term "honoraria" means a payment of money or anything of value for an appearance, speech or article, excluding any payment of actual and necessary travel expenses incurred by the individual (and one relative). The term "travel expenses" means the cost of transportation and the cost of meals and lodging while away from the individual's residence or principal place of employment.

The term "charitable organization" means an organization described in section 170(c) of the Internal Revenue Code of 1986.

*Conforming Amendments*

Subsection (b) conforms current limitations on honoraria and outside earned income in the Ethics in Government Act of 1978, the Federal Election Campaign Act of 1971, and the Supplemental Appropriations Act for FY 1983 so that they apply only to the Senate, and conforms the definition of honoraria in the financial disclosure requirements.

*Tax Treatment of Amounts Paid to Charity (Sec. 102)*

Section 102 amends section 7701 of the Internal Revenue Code of 1986 by inserting a new subsection to provide that any payment which is paid in lieu of an honorarium to a charity shall not be treated as "received" by the officer or employee for income tax purposes, and no deduction shall be allowed for such individual under any provision of the tax code.

*Tax Rollover Legislation (Sec. 103)*

Section 103 amends the Internal Revenue Code of 1986 to provide a deferral of capital gains taxes on assets which must be divested

by executive branch officials to avoid conflicts of interest under federal laws and regulations provided they are reinvested in a neutral investment. Any such sale or disposition of property must be pursuant to a "certificate of divestiture", a written determination issued by the appropriate agency ethics official that divestiture of specified property is reasonably necessary to comply with an executive order relating to conflict of interest rules.

*Effective Date (Sec. 104)*

Section 104 provides that the amendments on outside earned income and employment shall take effect on January 1, 1991. This section also provides that these amendments shall cease to be effective if the provisions of the Act relating to compensation of Members are subsequently repealed, in which case the prior laws shall be deemed to have been reenacted. The amendments on capital gains deferral apply to any assets sold after the date of enactment.

TITLE II—FINANCIAL DISCLOSURE

Title II amends the financial disclosure provisions of the Ethics in Government Act of 1978 applicable to all three branches of government.

*Legislative Personnel (Sec. 201)*

*Coverage*

Subsection (a)(1) provides that candidates who must file disclosure reports in any given year, and have not as yet filed, must file no later than 30 days prior to an election, rather than seven days. Subsection (a)(2) repeals obsolete provisions relating to the voluntary filing of termination reports, candidates required to file reports in 1978, and a 1980 General Accounting Office report.

*Contents of Report*

Subsection (b) makes the following changes in the reporting requirements:

*Income.*—The threshold for reporting income is increased from $100 to $200. Effective January 1, 1991, the source, date, and amount of any payment in lieu of honoraria donated on behalf of a Member, officer, or employee to a charitable organization must be disclosed. A corresponding list of the recipients of such payments must be filed on a confidential basis with the Standards Committee.

*Gifts.*—The two categories of gifts (tangible gifts and gifts of transportation, lodging, food and entertainment) are collapsed into one, and the threshold for reporting gifts is increased from $100 to $200. Any gift with a value less than the nominal value as defined by the rules of the House or Senate need not be aggregated.

*Reimbursements.*—The reporting of reimbursements is amended to lower the reporting threshold from $250 to $200, and to require disclosure of a travel itinerary and the dates and nature of expenses provided.

*Liabilities.*—The exemption for reporting liabilities owed to a relative is amended to apply only to liabilities owed to the spouse, parent, grandparent, brother, sister or child of the reporting individual or of his spouse.

*Categories of Value.*—The categories of value for reporting assets, liabilities and transactions are changed as follows: (A) not more than $15,000; (B) $15,000 to $50,000; (C) $50,000 to $100,000; (d) $100,000 to $250,000 (E) $250,000 to $500,000; (F) $500,000 to $1,000,000; (G) greater than $1,000,000.

*Spousal Honoraria.*—The source and amount of any honorarium earned by the spouse must be reported.

*Alternative Forms.*—A new provision is added to provide that an individual may supply the required information on a different form, pursuant to rules or a specific determination by the ethics committees, and to clarify that specific dollar amounts may be indicated in lieu of categories of value on any report form.

*Qualified Blind Trust*

Subsection (c) provides that the category of value of the Total assets of a blind trust must be reported, in addition to income from the trust as required under current law. The requirements for a qualified blind trust are amended to require that the trustee must be a financial institution, a law firm, a certified public accounting firm, a brokerage firm, or an investment advisor, and not an individual or entity owned entirely by an individual. Additional requirements are established to assure the independence of the trustee from the reporting individual any interested party by prohibiting current or past affiliations with the trustee or any employee of the trustee.

Subsection (c)(3) provides that the ethics committees may exempt from reporting the financial interests held by a regulated investment company, or a pension, profitsharing or other deferred compensation plan. This provision is intended to clarify that disclosure would not be required of the underlying assets of mutual funds when the portfolio is available in standard reference manuals, or of a widely-diversified pension plan that is managed independently of the reporting individual.

*Termination Reports*

Subsection (d) provides that Members, officers and employees must file a report by the later of May 15 or the 30th day after they leave office or after termination of employment. The report would cover the preceding calendar year, if the annual report was not yet filed, and the period up until termination.

*Public Availability*

Subsection (e) extends the time within which reports must be made available for public inspection from 15 days to 30 days after they are filed.

*Review and Compliance Procedures*

Subsection (f) provides that the House and Senate ethics committees shall assess a $200 fine on any individual who files a report later than 30 days after the due date, including any extensions of the due date granted by the committee. This subsection also requires the committees to establish procedures to ensure that each disclosure statement is reviewed within 60 days after it is filed.

*Civil Penalties*

Subsection (g) increases the civil penalty for knowing and willful failure to file or falsification of a disclosure statement from $5,000 to $10,000. The penalties for disclosure of information respecting a qualified blind trust between the trustee and the reporting individual are increased from $5,000 to $10,000 for knowing disclosure and from $1,000 to $5,000 for negligent disclosure. The penalty for unlawful use of the disclosure statements is increased from $5,000 to $10,000.

*Candidates*

Subsection (h) amends the definition of a candidate to conform to the definition in the Federal Election Campaign Act.

*General Accounting Office Study*

Subsection (i) requires the GAO to conduct a study on the implementation of the amended disclosure law by December 31, 1992.

*Executive Personnel (Sec. 202)*

Section 202 provides for the executive branch the same amendments respecting the contents of reports, qualified blind trusts, and civil penalties provided for the legislative branch. Other amendments that affect only the executive branch follow:

*Coverage*

Subsection (a) includes civilians in the Executive Office of the President (other than Special Government employees) who hold a commission of appointment from the President on the list of those required to file a disclosure statement. This section also repeals the requirement that all individuals performing staff functions for advisory committees file reports, thus limiting coverage only to those at the GS-16 salary rate or above.

This subsection also amends the filing deadline for termination reports to May 15 or 30 days after the individual leaves office, whichever is later.

*Public Availability*

Subsection (d) makes minor changes in the current exemption from disclosure of reports filed by individuals engaged in intelligence activities. This section also eliminates the current requirement that the official position description for the reporting individual's office, if available, be provided along with the disclosure statement.

*Confidential Reports*

Subsection (g) reauthorizes the executive branch confidential reporting system and includes special government employees within the scope of persons who may be required by the Office of Government Ethics to file a confidential financial disclosure report. It also clarifies that nothing in this title shall be interpreted to prevent the appropriate supervising ethics office from requiring personnel in the judicial branch or in the legislative branch to submit confidential financial statements that supplement the public reports required under this title.

*Judicial Personnel (Sec. 203)*

Section 203 provides for the judicial branch the same amendments respecting the contents of reports, qualified blind trusts, public availability, review and compliance procedures, and civil penalties provided for the legislative branch.

*Effective Date (Sec. 204)*

Section 204 provides that the amendments made by this title shall apply to the financial disclosure statements filed after December 31, 1990.

TITLE III—CITIZENS' COMMISSION ON PUBLIC SERVICE AND COMPENSATION

*Citizens' Commission on Public Service and Compensation (Sec. 301)*

The periodic study of salaries of the top officials in the three branches will no longer be conducted by the quadrennial Commission on Executive, Legislative, and Judicial Salaries. The Citizens' Commission on Public Service and Compensation, which will have basically the same responsibilities with regard to the study of pay, will differ in composition and will have additional functions.

*Membership*

Subsection (b) provides that the Citizens' Commission shall be composed of 11 members (as opposed to nine in the Commission on Salaries): two appointed by the President of the United States, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and two appointed by the Chief Justice of the United States. These six members of the Commission, chosen without regard to political affiliation are expected to have experience or expertise in such areas as government, personnel management, or public administration.

The remaining five members are to be selected through a procedure, to be established by the Administrator of General Services, under which the members shall be chosen, by lot, from among names randomly selected from voter registration lists and providing the greatest possible degree of geographic diversity. None of the members may be officers or employees of the Federal Government. Also, they may not be individuals who are required to register under the Federal Regulation of Lobbying Act, or relatives of such employees, officers, or individuals.

The President will designate a chairperson from among them. A vacancy in membership will be filled in the same manner as the original appointment was made. Each member will be eligible to receive $100 per day for each day that member is engaged in Commission business. Travel expenses and a per diem allowance will also be paid.

The Citizen's Commission will also follow a quadrennial cycle, being activated during fiscal year 1993 and each fourth fiscal year thereafter. The term of the members extends through the fiscal year in which they are appointed, unless the President calls for a reporting date which would require the members to continue their work into a subsequent fiscal year. The term of the members shall begin no later than February 14, 1993.

*Conforming Amendments (301. (c) and (d))*

These sections contain conforming language.

*Commission's Pay Report (301(e))*

The Citizens' Commission is required to submit its report on pay rates to the President at a date designated by the President or no later than the December 15 following the close of the fiscal year in which the Commission was activated.

*President's Pay Recommendations (301(f))*

The President shall submit his recommendations on the first Monday after January 3 of the first calendar year beginning after the date on which the Commission submits its pay report. The President's specific recommendations on pay levels are to be those which the President "considers to be fair and reasonable in light of the Commission's report and recommendations, the prevailing market value of the services rendered in the offices and positions involved, the overall economic condition of the country, and the fiscal condition of the Federal Government." The last three considerations represent new language with regard to the elements which the President is directed to consider.

*Effective Date (301(g))*

Before the recommendations may take effect, a bill or resolution must be enacted into law. During the 60-day period following transmittal of the President's recommendations, it shall be in order in each House of Congress to consider a privileged bill or resolution approving such recommendations in their entirety. It is required that an election of Representatives (on the Tuesday following the first Monday of November in any even-numbered calendar year) take place between the date on which the congressional approval becomes law and the new rates take effect.

*Conforming Amendments (301(h))*

This section amends section 225(j) for the purpose of conformance.

*Requirements Applicable to Recommendations (301(i))*

This section sets forth certain requirements to be met by the Citizens' Commission and by the President in submitting their recommendations:

*Effective date stipulation*

An effective date must be specified by the Commission and by the President. The proposed effective date "may occur no earlier than January 1 of the second fiscal year, and no later than December 31 next following the close of the fifth fiscal year, beginning after the fiscal year in which the Commission conducts its review . . ." For example: if the Citizens' Commission reported December 15, 1993, if the President transmitted his recommendations January 10, 1994 (January 3, 1994 falling on a Monday), if the Congress approved those recommendations prior to the November election of 1994, the earliest effective date could be January 1, 1995. If the Congress should fail to act before the next intervening election, none of the recommendations could take effect. The new mechanism would require that the latest effective date for those recommendations would be December 31, 1998.

*Pay parity provisions*

The rates of pay recommended for the Speaker of the House of Representatives, the Vice President of the United States and the Chief Justice of the United States shall be equal.

The rates of pay recommended for the majority and minority leaders of the Senate and the House of Representatives, the President pro tempore of the Senate, and Level I of the Executive Schedule shall be equal.

The rates of pay recommended for a Senator, a Member of the House of Representatives, the Resident Commissioner from Puerto Rico, a judge of a district court of the United States, a judge of the United States Court of International Trade and Level II of the Executive Schedule shall be equal.

The rates recommended by the President are not required to be the same as those recommended by the Commission.

*Additional Function (301(j))*

The Citizens' Commission shall also conduct reviews relating to recruitment and retention problems as well as other public policy issues involved in maintaining appropriate ethical standards, with respect to any offices or positions in the Federal public service.

*Certain other pay adjustments (301(k))*

This section requires the passage of an intervening congressional election between the enactment of a pay increase and the date on which it takes effect. This requirement does not apply to recommendations by the Citizens Commission on Public Service and Compensation (which already requires an intervening election), a cost of living increase authorized under section 304, and the COLA restoration in section 302.

*Restoration of Comparability Adjustments (Sec. 302)*

*(302(a)). Fiscal Year 1989.* Section 620(b) of the 1989 Treasury, Postal Service, General Government Appropriations Act excluded all positions under the purview of this act, with the exception of Levels IV and V of the Executive Schedule (and any related salaries) from receiving the 4.1% increase effective January 1, 1989. Those excluded positions will receive a 4.1% increase effective the beginning of the pay period beginning after enactment of this Act.

*Fiscal Year 1990.* The bill sets aside section 619(b) of the 1990 Treasury Appropriations Act. Those positions under this Act, which had been denied the prospective January 1, 1990 comparability adjustment will receive the 3.6% increase effective January 1, 1990.

(302(b)). The salary rates of Senators, the President pro tempore of the Senate and the majority and minority leaders of the Senate are not affected by section 302(a) or 302(b).

(302(c)). The section provides a specific enactment of the comparability adjustments for Federal judges and Justices of the Supreme Court.

(302(d)). This section prevents any comparability adjustment from occurring until the sequestration of funds for Federal programs, currently in effect pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, is rescinded.

*Salary Levels of Senior Government Officials (Sec. 303)*

*Executive Branch* (303(a)(1))

Effective the first pay period beginning on or after January 1, 1991, the basic pay for individuals on the Executive Schedule will be increased by 25%. This is identical to the increase proposed by the President in his July 1989 message proposing the "Senior Executives Salary Act of 1989." (H. Doc. 101-79)

*Legislative Branch* (303(a)(2))

Effective the first pay period beginning on or after January 1, 1991, the basic pay of the Legislative Branch offices and positions, under the Commission's study will receive an increase of 25%. The exceptions are Senators, President pro tempore of the Senate, and the majority and minority leaders of the Senate.

*Judicial Branch* (303(a)(3))

Effective the first pay period beginning on or after January 1, 1991, the basic pay of the Chief Justice of the United States, an associate justice of the Supreme Court of the United States, a judge of a United States circuit court, a judge of a district court of the United States, and a judge of the United States Court of International Trade shall be increased by 25%. This was the rate of increase recommended by the President in his April 1989 transmittal proposing the "Judicial Salary Act of 1989." (See H. Doc. 101-46).

*Coordination Rule (303(b))*

If the 25% increases are to be effective the same date as any other pay adjustment affecting these positions, the 25% increase is to considered to be in effect first.

*Revision in Method by Which Annual Pay Adjustments for Certain Executive, Legislative, and Judicial Positions are to be Made (Sec. 304)*

*COLA rate determination: Employment Cost Index (ECI)*

Currently, under the provisions of P.L. 94-84, the positions under the Commission's review are eligible to receive adjustments in basic pay at the same rate and at the same time as the comparablility adjustments for the General Schedule. This Act provides annual comparability adjustments for these officials. However, the rate of adjustment would correspond to the percent of change in the Employment Cost Index (ECI), less one-half of one percent. The ECI, as defined in the Act, is the quarterly index of wages and salaries for private industry, as published by the Bureau of Labor Statistics.

No rate of adjustment under this provision may be less than zero percent nor more than five percent.

Under the comparability pay statute (5 U.S.C. 5305(a)(2)), the effective date of the increase is October 1. In determining the percent of change in the ECI, the base quarter ending as of the immediately preceding December 31 will be compared to the ECI as of the prior December 31. For example, when determining the first increase for these positions as of October 1, 1991, the ECI for December 31, 1990 will be compared to that for December 31, 1989. The percent of change will be further reduced by one-half of one percent.

There is language in the section which brings current language into conformance with the new provision.

*Effective Date*

The effective date for the section 304 provision is January 1, 1991.

TITLE IV—MISCELLANEOUS STATUTORY CHANGES

*Amendments to Title 18, United States Code, Conflict of Interest Laws (Sec. 401)*

*Compensation in Matters Affecting the Government*

Subsection (a) amends section 18 U.S.C. 203 to treat officers and employees of the District of Columbia government and the Federal Government separately in the prohibition against receiving compensation for services rendered before a government agency on a matter in which the U.S. has an interest. The effect of this change is to only prohibit District Government employees from appearing before District Government agencies and courts, and Federal employees from appearing before Federal government agencies and courts.

This section also authorizes misdemeanor and civil penalties as sanctions for violations of 18 U.S.C. 203, while retaining and strengthening felony sanctions for willful violations of the law. The penalties in this and subsequent sections are one year imprisonment for a violation and five years for a willful violation, or fined in accordance with title 18 (double the defendant's gain or $250,000, whichever is greater), and a civil penalty of up to $50,000.

*Practice before the Claims Court*

Subsection (b) makes minor and technical amendments to 18 U.S.C. 204, which prohibits practice in the Court of Claims or Court of Appeals by Members of Congress, and authorizes misdemeanor and civil penalties as sanctions for violations of the law, while retaining and strengthening felony sanctions for willful violations.

*Activities of Officers or Employees in Matters Affecting the Government*

Subsection (c) amends 18 U.S.C. 205 to treat officers and employees of the District of Columbia government separately from officers and employees of the Federal Government in the prohibition against acting as agent or attorney, with or without compensation, for anyone in a matter before a Federal agency in the case of Federal employees, or a District government agency in the case of District employees. This section also changes penalties provisions as stated in the previous sections.

*Disqualification of Partners and Employees*

Subsection (d) amends section 207(g) of title 18 to strike the term "partner" and insert "general partner".

*Acts Affecting a Personal Financial Interest*

Subsection (e) amends 18 U.S.C. 208, which prohibits executive branch officials and District Government employees from taking any official action on a matter in which they have a personal financial interest, by amending the penalties provisions in conformance with the changes made in the preceding sections.

This section also broadens the authority for the issuance of exemptions or waivers from the financial conflict of interest requirements. The amendment allows the Office of Government Ethics, as well as an agency head, to issue regulations providing for exemptions of a general nature for interests that are too remote or too inconsequential to affect the integrity of one's services to the government. This subsection also authorizes waivers for advisory committee members where the appointing authority determines, after review of confidential financial disclosure forms, that the need for a member's expertise outweighs the potential for conflict of interest.

This subsection also provides an exemption from section 208 for certain conflicts of interest which arise because of one's birthright in an Indian tribe or other community or in an Indian allotment or claims fund if the matter does not involve such entity specifically as a party.

All certifications granting a conflict of interest waiver must be provided to the Director of OGE, who would be required to make them available to the public.

*Salary of Government Officials and Employees*

Subsection (f) amends 18 U.S.C. 209, which prohibits employees from receiving private compensation for their government duties, to authorize misdemeanor and civil sanctions as penalties for violations of the law, while retaining and strengthening felony sanctions for willful violations.

*Injunctive Relief*

Subsection (g) amends title 18 by adding a new section 216 to allow the Attorney General to seek injunctive relief to prohibit persons from engaging in conduct constituting an offense under the conflict of interests provisions in sections 203, 204, 205, 207, 208, or 209 of title 18.

*Gifts to Supervisors (Sec. 402)*

Section 402 amends section 7351 of title 5, United States Code to permit exceptions to the prohibition on gifts from employees to supervisors as set forth by regulations issued by the supervising ethics office.

*Gifts to Federal Employees (Sec. 403)*

Section 403 amends title 5 of the United States Code to add a new section respecting acceptance of gifts by Federal employees. It provides in general that no Member, officer, or employee of the government shall solicit or accept anything of value from any person seeking official action from, doing business with, or conducting activities regulated by the individual's employing agency, or whose interests may be substantially affected by the performance or nonperformance of official duties.

Subsection (b) authorizes the House and Senate ethics committees, the Office of Government Ethics, and the Judicial Conference to issue rules and regulations implementing this section and providing for reasonable exceptions, and provides that a Member, officer, or employee may accept gifts pursuant to rules or regulations established by his supervising ethics office.

*President's Commission on Simplification of the Appointment Process (Sec. 404)*

Section 404 establishes an advisory commission to study the best means of simplifying the presidential appointment process by reducing the number and complexity of forms to be completed by nominees. The commission is to report to the President within 90 days of its creation, and then cease to exist.

*Federal Travel Acceptance Authority (Sec. 405)*

Section 405 amends title 31 of the United States Code by adding a new section to provide for acceptance of travel and related expenses from non-federal sources by executive branch agencies. The proposed new section authorizes the head of an executive branch agency or an employee to accept payment in cash or in kind from private sources in connection with meetings or similar functions relating to their official duties. Any cash payment would be credited to the agency's appropriation for travel expenses. In the case of a payment in kind, a pro rate reduction would be made in any government reimbursement to which the employee is entitled. An employee who accepts payment in violation of this section may be required to pay an equal amount to the Treasury, and lose his entitlement to payment from the government for such expenses.

The Administrator of General Services, in consultation with the Director of the Office of Government Ethics, is directed to promulgate uniform regulations to implement this travel acceptance authority.

*Work Certification Requirement for Senior Judges to Receive Salary Increase (Sec. 406)*

Section 406 amends title 28 of the United States Code to establish a work certification procedure for judges in senior status to receive salary increases. Certification is made by the chief judge of the circuit, and in most cases is based on a caseload involving courtroom participation equal to what an average active judge would perform in three months. The three-month work obligation could also be satisfied by engaging in substantial judicial duties not involving courtroom work.

The work certification requirement would apply to work performed after January 1, 1990.

*Use of Government Vehicles (Sec. 407)*

Section 407 provides that, notwithstanding any other law, the head of any government agency or other entity of each branch of government shall prescribe by rule conditions for the incidential use for non-official purposes of vehicles owned or leased by the government.

*Elimination of the Excess Campaign Fund Grandfather Provision (Sec. 408)*

Section 408 amends section 313 of the Federal Election Campaign Act of 1971 to repeal the provision that exempts Members in office on January 8, 1980 from the prohibition against conversion of excess campaign funds to personal use. The repeal would apply to those members in office after the 102nd Congress. The amendment would prohibit conversion to personal use of any amount in excess of the balance on hand as of the date of enactment.

*Repeals and related modifications (Sec. 409)*

This section repeals the Office of Federal Procurement Policy Act, sections 2397a and 2397b of title 10, section 801 of title 37, section 281 of title 18, and sections 603-606, 607, and 608(a) and (c) of the Department of Energy Organization Act.

TITLE V—AMENDMENTS TO RULES OF THE HOUSE

*Acceptance of Gifts (Sec. 501)*

Section 501 amends clause 4 of Rule XLIII to provide that a Member, officer, or employee of the House shall not accept gifts in a calendar year aggregating more than minimal value, as established by the Foreign Gifts and Decorations Act, from any person other than a relative. Gifts of personal hospitality of an individual and gifts with a fair market value of $75 or less are exempted.

The dollar limit in the gifts rule will be adjusted every three years in accordance with the automatic indexation provision of the Foreign Gifts and Decorations Act (5 U.S.C. 7342), which establishes the minimal value of gifts that may be accepted from foreign governments. The current minimal value is $180, and is expected to be increased to $200 by the Administrator of General Services effective January 1, 1990.

Subsection (a) also amends clause 4 to permit written waivers from the rule granted by the Committee on Standards of Official Conduct. Subsection (d) amends clause 4(e)(1) of Rule X to specifically authorize the Committee to give consideration to the request of any Member, officer, or employee for a waiver in exceptional circumstances with respect to the gifts rule.

Subsection (b) makes conforming changes in the definitions of terms used in the rule, and includes fiance or fiancee in the definition of a relative.

Subsection (c) amends Rule XLIII to add a new clause 12 to prohibit any employee required to file a financial disclosure statement from participating personally and substantially in any contact with any executive or judicial branch agency regarding non-legislative matters affecting any non-governmental entity in which he has a significant financial interest. This prohibition may be waived by the employing authority through a written waiver filed with the Standards Committee.

Subsection (e) directs the Standards Committee to amend its advisory opinions relating to the acceptance of gift (1) to prohibit lodging received as personal hospitality in excess of 30 days in a calendar year from any individual (other than a relative) unless a written waiver is granted by the committee; and (2) to exempt gifts of food and beverages not in connection with a gift of overnight lodging.

*Use of Official Resources (Sec. 502)*

*Qualifications of Officers and Employees*

Subsection (a) makes a conforming change to Rule XLI to include employees in the prohibition against prosecuting or having an interest in any claim against the government, and clarifies that this prohibition does not apply to cases in which employees are discharging their official duties. This section also deletes an obsolete reference to the Committee on House Administration.

*Rights and Duties of Staff*

Subsection (b) amends clause 8 of Rule XLIII to strengthen and broaden Member's accountability for the pay and performance of staff. The amendment provides that a Member or officer shall retain no one on his payroll who does not regularly perform official duties commensurate with the compensation he receives. The effect of the amendment is to include employees of officers and committees under the requirement that Members' personal office employees perform duties commensurate with compensation received, and to clarify that they shall perform official duties in the employing authority's offices.

In the case of committee employees, the amendment authorizes the chairman to require other Members to affirm in writing that employees under their direct supervision have met this criteria.

Paragraph (2) amends clause 9 of Rule XLIII to conform the existing staff anti-discrimination rules to the Fair Employment Practices Resolution adopted in the 100th Congress. The amendment adds handicap and marital or parental status to the prohibited discriminatory practices, and specifies that a person's domicile or political affiliation may be taken into consideration.

Paragraph (3) amends clause 6 of Rule XI to clarify that the existing prohibition against professional committee staff engaging in any work other than committee business applies only during congressional working hours. It also strikes redundant anti-discrimination rules applicable to committee staff.

*Clarification of Political Activities*

Subsection (c) amends clause 6 of Rule XLIII to clarify that campaign funds may only be used for bona fide campaign or political purposes. This change brings the rule into conformity with legislative history and interpretations of the rule by the Committee on Standards of Official Conduct and the Select Committee on Ethics of the Ninety-fifth Congress.

*Use of Official Vehicles*

Subsection (d) directs the Committee on House Administration to take necessary action relating to regulations which allow for the incidental use of government owned or leased vehicles pursuant to section 407. Similarly, subsection (e) directs the Standards Committee to issue an advisory opinion to provide that vehicles owned or leased by a Member's campaign committee may be used for nonpolitical purposes if such use is incidental.

*Reforms Respecting the Committee on Standards of Official Conduct (Sec. 503)*

*Committee Composition*

Section 503(a) amends clause (6)(a)(2) of Rule X to establish a three-term limit, in any period of five successive Congresses, on the length of service of any Member on the Committee on Standards of Official Conduct. Service performed for less than a full session or before the beginning of the first Congress after adoption of this rule would be disregarded.

Subsection (b) directs the Democratic Caucus and the Republican Conference to each nominate at the beginning of each Congress seven members to serve on the committee, thereby expanding the size of the committee to 14.

*Disciplinary Procedures*

Subsection (c) and (d) direct the committee to adopt rules governing disciplinary proceedings that separate the investigative and adjudicative functions within the existing committee structure. Subsection (c) states that a four- or six-member investigative panel must be established whenever the committee votes to undertake an investigation. The chairman and ranking minority member may only serve as non-voting ex officio members on any investigative panel.

Subsection (d) states that, upon completion of an investigation, an investitative panel shall report its finding and recommendations to the committee. If the investigative panel adopts a statement of alleged violation, the remaining members of the committee shall comprise a panel on adjudication to hold a disciplinary hearing to determine whether the counts in the statement have been proved. Any statement of alleged violation and response would be made public at the first public meeting or hearing on the matter after the subject of the investigation has had an opportunity to respond. If no public hearing or meeting is held, the statement of alleged violation and any written response would be included in the committee's final report to the House.

A quorum for an adjudicatory subcommittee for the purpose of taking testimony or conducting any business is a majority of the membership of the panel plus one.

The provisions of clause 5(d) of Rule XI authorizing chairmen and ranking minority members of subcommittees to appoint staff members would not apply to investigative and adjudicative subcommittee.

*Administrative Actions/Report to the House*

Subsection (e) amends clause 4(e)(1)(A) of Rule X to provide that a letter of reproval or other administrative action of the committee shall only be implemented as part of a report to the House. No action by the House need be taken in such instances.

Subsection (f) amends clause 4(e)(1)(B) of Rule X to require the committee to report to the House its findings of fact and recommendations, if any, upon the final disposition of any matter in which it has voted to undertake an investigation, and such action as it may deem appropriate.

*Statute of Limitations*

Subsection (g) amends clauses 4(e)(2)(C) of Rule X to establish a general statute of limitations for ethics matters considered by the committee. It may not investigate allegations of violations occurring before the third previous Congress unless it determines that such matters are directly related to, and constitute a continuous course of conduct in conjunction with, more current alleged violations.

*Right to Counsel*

Subsection (h) amends clause 1 of Rule XXXII to permit one attorney for a Member who is a respondent in a committee investigation to be on the Floor of the House when the committee's recommendation is under consideration.

*Advice and Education*

Subsection (i) directs the committee to establish an office on advice and education whose primary responsibilities shall include providing guidance to Members and employees on applicable rules and regulations, recommending to the committee formal advisory opinions of general applicability, and de-

veloping an educational program for Members and employees.

*Effective Dates*

Subsection (j) provides that those provisions respecting the Committee on Standards of Official Conduct shall take effect at the beginning of the 102nd Congress, except that the provisions relating to the right to counsel, a statute of limitations, and the office of advice and education shall take effect January 1, 1990.

*Elimination of Honoraria and Limitations on Outside Earned Income and Employment (Sec. 504)*

*Honoraria and Outside Earned Income*

Subsection (a) amends clauses 1 and 2 of Rule XLVII to provide that, beginning in 1991, a Member, officer, or employee of the House paid at the GS-16 salary rate or above may not have outside earned income in a calendar year in excess of 15 percent of the salary for Level II of the Executive Schedule. This subsection also provides that no Member, officer, or employee may receive any honoraria, beginning in 1991.

Proposed paragraph (3) of the Rule XLVII provides that any payment in lieu of honoraria which is made on behalf of a Member, officer, or employee to a charitable organization (as described in section 170c of the Internal Revenue Code) may not be received by such individual. This means that the honoraria donation is not deemed to be accepted for purposes of the rule or for income tax or pension purposes. Any such payment made to a charity may not exceed $2,000 or be made to a charitable organization from which the individual or a relative derives any financial benefit.

Proposed subsection (b) of the rule provides that a Member may not have outside earned income, including honoraria, in 1990 in excess of 30 percent of the per annum salary payable in 1989.

*Limitations on Outside Employment*

Subsection (b) amends Rule XLVII to provide, beginning in 1991, that a Member, officer, or employee paid at the GS-16 salary rate or above may not (1) affiliate with or be employed by a firm for compensation to provide professional services which involve a fiduciary relationship; (2) permit their name to be used by any such entity; (3) practice a profession for compensation which involves a fiduciary relationship; (4) serve for compensation on the board of directors of any association, corporation, or other entity; or (5) receive compensation for teaching, without the prior notification and approval of the Standards Committee.

Subsection (c) defines various terms used in the rule and conforms the definition of income to reflect the elimination of honoraria. It also clarifies the copyright royalties exemption to specify that copyright royalties must be from established trade publishers and consistent with usual and customary contract terms.

Subsection (e) provides a conforming amendment.

Subsection (f) is a conforming amendment to clause 5 of Rule XLIII, effective in 1991, to provide that a Member, officer, or employee shall not accept any honoraria. The current rule prohibits acceptance of honoraria in excess of the usual and customary value.

*Effective Date (p. 87)*

Subsection (g) provides that the amendments made by this section shall take effect on January 1, 1990. It also provides that the amendments will cease to be effective if provisions of the Act relating to compensation are subsequently repealed, in which case the prior laws shall be deemed to have been readopted.

*Restrictions on Travel Expenses (Sec. 505)*

Section 505 directs the Committee on Standards of Official Conduct to amend its advisory opinions on acceptance of necessary travel expenses in connection with speaking engagements and similar events to prohibit acceptance of such expenses for more than four consecutive days in the case of domestic travel, and seven consecutive days in the case of foreign travel, excluding travel days. The Committee is authorized to grant an exemption from the limitation in exceptional circumstances. This section also directs the committee to permit acceptance of travel expenses for the spouse or other family member in connection with any substantial participation event or fact-finding activity.

*Exercise of Rulemaking Powers (Sec. 506)*

Section 506 provides that the provision of title I are enacted as an exercise of the rulemaking power of the House and shall be considered as part of the rules of the House.

## RECESS

The SPEAKER pro tempore (Mr. HALL of Texas). Pursuant to the order of the House of Monday, November 20, 1989, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 2 o'clock and 12 minutes p.m.), the House stood in recess, subject to the call of the Chair.

□ 2031

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 8 o'clock and 31 minutes p.m.

## FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment bills and a concurrent resolution of the House of the following titles:

H.R. 481. An act to designate the building located at 2562 Hylan Boulevard, Staten Island, New York, as the "Walter Edward Grady United States Post Office Building";

H.R. 3720. An act to amend provisions of the National Consumer Cooperative Bank Act relating to the payment of interest on and the redemption of class A notes issued by the National Consmer Cooperative Bank; and

H. Con. Res. 237. Concurrent resolution correcting the enrollment of the bill S. 488.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 1465. An act to establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes;

H.R. 3607. An act to repeal medicare provisions in the Medicare Catastrophic Coverage Act of 1988; and

H.R. 3629. An act extending the authority of the Secretary of Commerce to conduct the quarterly financial report program under section 91 of title 13, United States Code, through September 30, 1993.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 993. An act to implement the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction, by prohibiting certain conduct relating to biological weapons, and for other purposes;

S. 1894. An act to amend the Consolidated Farm and Rural Development Act to require borrowers to act in good faith with respect to restructuring loans made or guaranteed under such Act, and for other purposes; and

S. 1960. An act to authorize the food stamp portion of the Minnesota Family Investment Plan.

## ELECTION OF MEMBER TO COMMITTEE ON THE JUDICIARY

Mr. MICHEL. Mr. Speaker, I call up a privileged resolution (H. Res. 299) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 299

*Resolved,* That Representative Campbell of California, and is hereby, elected to the Committee on the Judiciary.

Mr. MICHEL. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1990 AND 1991

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3792) to authorize appropriations for fiscal years 1990 and 1991 for the Department of State, and for other purposes.

The Clerk read as follows:

H.R. 3792

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Foreign Relations Authorization Act, Fiscal Years 1990 and 1991".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—DEPARTMENT OF STATE

Part A—Authorization of Appropriations; Allocations of Funds; Restrictions

Sec. 101. Administration of foreign affairs.
Sec. 102. International organizations and conferences.
Sec. 103. International commissions.
Sec. 104. Migration and refugee assistance.
Sec. 105. Other programs.
Sec. 106. Reduction in earmarks if appropriations are less than authorizations.
Sec. 107. Availability of funds.
Sec. 108. Restriction on funds for negotiations with certain Palestine Liberation Organization representatives.

Part B—Department of State Authorities and Activities; Foreign Missions

Sec. 111. Authorization of certain operational activities.
Sec. 112. Working capital fund for Office of Foreign Missions.
Sec. 113. Authority of Diplomatic Security Service.
Sec. 114. Access to criminal records.
Sec. 115. Enhancement of evacuation capability and procedures regarding major disasters and incidents abroad affecting United States citizens.
Sec. 116. Acquisition of domestic property as interim step to acquiring property abroad.
Sec. 117. Debt collection.
Sec. 118. Munitions control registration fees.
Sec. 119. Fees and reimbursements.
Sec. 120. International Center.
Sec. 121. Closing of diplomatic and consular posts in Antigua and Barbuda.
Sec. 122. Submission of annual country reports on terrorism.
Sec. 123. Consular officer duties.
Sec. 124. Opening a United States consulate in Bratislava.
Sec. 125. Construction of United States embassy in Ottawa.
Sec. 126. Voluntary pilot program for increased participation by economically and socially disadvantaged enterprises in foreign relations activities.
Sec. 127. Report on reorganization of the Department of State.
Sec. 128. Prohibition on exclusion or deportation of nonimmigrant aliens on certain grounds.

Part C—Diplomatic Immunity, Reciprocity, and Security

Sec. 131. Exclusion of aliens previously involved in serious criminal offenses committed in the United States.
Sec. 132. Modification of preference for United States contractors in diplomatic construction program.
Sec. 133. Use of cleared personnel to ensure secure maintenance and repair of diplomatic facilities abroad.
Sec. 134. United States-Soviet reciprocity in matters relating to embassies.
Sec. 135. Construction security certification.
Sec. 136. Increased participation of United States contractors in local guard contracts abroad under the diplomatic security program.

Part D—Personnel

Sec. 141. Authority to transfer retirement contributions for Foreign Service nationals to local plans.
Sec. 142. Disqualification for service on Foreign Service selection boards.
Sec. 143. Separation for cause; judicial review.
Sec. 144. Visiting scholars program for the Foreign Service Institute.
Sec. 145. Credit for service at unhealthful posts.
Sec. 146. Former spouses of United States Information Agency and Agency for International Development employees.
Sec. 147. Child care facilities at certain posts abroad.
Sec. 148. Travel, leave, and other benefits.
Sec. 149. Foreign Service internship program.
Sec. 150. Grants for institutions and students for training in international affairs.
Sec. 151. Danger pay allowance.
Sec. 152. Judicial review of certain Foreign Service grievances.
Sec. 153. Broadening the cultural, geographic, and ethnic representation of the Foreign Service and the Department of State.
Sec. 154. Report to Congress concerning polygraph program.
Sec. 155. Study of sexual harassment at the Department of State.
Sec. 156. Limitation on housing benefits.

Part E—Foreign Language Competence Within the Foreign Service

Sec. 161. Expansion of model foreign language competence posts.
Sec. 162. Report on foreign language entrance requirement for the Foreign Service.
Sec. 163. Foreign Service promotion panels.
Sec. 164. Language proficiency in the Employee Evaluation Report.

TITLE II—UNITED STATES INFORMATIONAL, EDUCATIONAL, AND CULTURAL PROGRAMS

Part A—United States Information Agency

Sec. 201. Authorization of appropriations.
Sec. 202. Dissemination of information within the United States.
Sec. 203. Distribution within the United States of United States Information Agency film entitled "Long Journey Home".
Sec. 204. The J. William Fulbright Foreign Scholarship Board.
Sec. 205. USIA satellite and television.
Sec. 206. United States Advisory Commission on Public Diplomacy.
Sec. 207. Foreign language services.
Sec. 208. Use of certain fees and payments.
Sec. 209. Debt collection.
Sec. 210. USIA network for dissemination of information concerning United States programs to combat narcotics and other controlled substances.
Sec. 211. Afghanistan country plan.
Sec. 212. General Accounting Office study of the National Endowment for Democracy.
Sec. 213. Report to Congress on the acquisition and use of public programming materials.

Part B—Bureau of Educational and Cultural Affairs

Sec. 221. Authorization of appropriations.
Sec. 222. Citizen exchanges.
Sec. 223. Programs to promote international youth understanding.
Sec. 224. United States-Soviet exchanges.
Sec. 225. Scholarships for Tibetans and Burmese.
Sec. 226. Sense of Congress concerning the Humphrey Fellowship Program.

Part C—Voice of America

Sec. 231. Authorization of appropriations.
Sec. 232. Voice of America hiring practices.
Sec. 233. VOA public service announcements to promote child survival.
Sec. 234. Voice of America broadcasts to Tibet.
Sec. 235. Voice of America's Thailand radio facilities.
Sec. 236. Voice of America broadcasts to the People's Republic of China.
Sec. 237. Voice of America equipment abroad.

Part D—Television Broadcasting to Cuba

Sec. 241. Short title.
Sec. 242. Findings and purposes.
Sec. 243. Television broadcasting to Cuba.
Sec. 244. Television Marti Service of the United States Information Agency.
Sec. 245. Amendments to the Radio Broadcasting to Cuba Act.
Sec. 246. Assistance from other government agencies.
Sec. 247. Authorization of appropriations.
Sec. 248. Definitions.

TITLE III—BOARD FOR INTERNATIONAL BROADCASTING

Sec. 301. Authorizations of appropriations.
Sec. 302. Requirement for authorization of appropriations.
Sec. 303. Procurement of legal services.
Sec. 304. Radio Free Afghanistan.

TITLE IV—INTERNATIONAL ORGANIZATIONS AND COMMISSIONS

Sec. 401. United States membership in International Sugar Organization and International Tropical Timber Organization.
Sec. 402. Authorization for membership in the International Union for the Conservation of Nature and Natural Resources.
Sec. 403. Authorization of appropriations for membership in wildlife conventions.
Sec. 404. Authorization of appropriations for the Commission on the Ukraine Famine.
Sec. 405. Reform in budget decision-making procedures of the United Nations and its specialized agencies.
Sec. 406. Annual report to Congress on voting practices at the United Nations.
Sec. 407. Denial of visas to certain representatives to the United Nations.
Sec. 408. Policy on UNESCO.
Sec. 409. United States Commission on Improving the Effectiveness of the United Nations.
Sec. 410. Contribution to the regular budget of the International Committee of the Red Cross.
Sec. 411. Sense of Congress concerning an enhanced role for the International Court of Justice in resolution of international disputes.

Sec. 412. International Boundary and Water Commission.
Sec. 413. Review of multilateral and bilateral commissions.
Sec. 414. Membership of the Palestine Liberation Organization in United Nations agencies.
Sec. 415. Sense of Congress concerning the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA).
Sec. 416. United Nations sponsorship of a Middle East peace conference.
Sec. 417. Contributions for peacekeeping activities in southern Africa.

TITLE V—ASIA FOUNDATION

Sec. 501. Authorization of appropriations.

TITLE VI—INTER-AMERICAN FOUNDATION

Sec. 601. Authorization of appropriations.

TITLE VII—REFUGEE AND OTHER PROVISIONS

Sec. 701. United Nations High Commissioner for Refugees audit requirement.
Sec. 702. Tibetan and Burmese refugees.
Sec. 703. Report regarding Burmese students.
Sec. 704. The treatment of the Turkish minority by the Government of the People's Republic of Bulgaria and Bulgarian refugees in Turkey.

TITLE VIII—PLO COMMITMENTS COMPLIANCE ACT OF 1989

Sec. 801. Short title.
Sec. 802. Findings.
Sec. 803. Policy.
Sec. 804. Reporting requirement.

TITLE IX—PEOPLE'S REPUBLIC OF CHINA

Sec. 901. Findings and statements of policy.
Sec. 902. Suspension of certain programs and activities.

TITLE X—MISCELLANEOUS PROVISIONS

Sec. 1001. Increasing amount of rewards for combatting terrorism.
Sec. 1002. Assignment of commercial officers to the United States mission to the European Community.
Sec. 1003. Buy-American requirement.
Sec. 1004. Support for the Benjamin Franklin House museum and library.
Sec. 1005. Association of Democratic Nations.
Sec. 1006. Policy regarding human rights abuses in Cuba.
Sec. 1007. Concerning the submission to the Congress of agreements pertaining to the boundaries of the United States.
Sec. 1008. Report to Congress concerning Oceania.
Sec. 1009. Report concerning Mexico.
Sec. 1010. Establishment of a Latin American and Caribbean data base.

TITLE XI—BUDGET ACT COMPLIANCE

Sec. 1101. Compliance with Congressional Budget Act.

## TITLE I—DEPARTMENT OF STATE

### PART A—AUTHORIZATION OF APPROPRIATIONS; ALLOCATIONS OF FUNDS; RESTRICTIONS

SEC. 101. ADMINISTRATION OF FOREIGN AFFAIRS.

(a) DIPLOMATIC AND ONGOING OPERATIONS.—The following amounts are authorized to be appropriated for the Department of State under "Administration of Foreign Affairs" to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States and for other purposes authorized by law (other than the diplomatic security program):

(1) SALARIES AND EXPENSES.—For "Salaries and Expenses", of the Department of State $1,432,124,000 for the fiscal year 1990 and $1,583,598,000 for the fiscal year 1991, of which not less than $250,000 for each fiscal year shall be available only for use by the Bureau of International Communications and Information Policy to support international institutional development and other activities which promote international communications and information development.

(2) ACQUISITION AND MAINTENANCE OF BUILDINGS ABROAD.—For "Acquisition and Maintenance of Buildings Abroad", $218,900,000 for the fiscal year 1990 and $227,656,000 for the fiscal year 1991.

(3) REPRESENTATION ALLOWANCES.—For "Representation Allowances", $4,600,000 for the fiscal year 1990 and $5,000,000 for the fiscal year 1991.

(4) EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE.—For "Emergencies in the Diplomatic and Consular Service", $4,700,000 for the fiscal year 1990 and $4,888,000 for the fiscal year 1991.

(5) OFFICE OF THE INSPECTOR GENERAL.—For "Office of the Inspector General", $21,000,000 for the fiscal year 1990 and $21,840,000 for the fiscal year 1991.

(6) PAYMENT TO THE AMERICAN INSTITUTE IN TAIWAN.—For "Payment to the American Institute in Taiwan", $11,300,000 for the fiscal year 1990 and $11,752,000 for the fiscal year 1991.

(b) DIPLOMATIC SECURITY PROGRAM.—In addition to amounts authorized to be appropriated by subsection (a), the following amounts are authorized to be appropriated under "Administration of Foreign Affairs" for the fiscal years 1990 and 1991 for the Department of State to carry out the diplomatic security program:

(1) SALARIES AND EXPENSES.—For "Salaries and Expenses", $309,365,000 for the fiscal year 1990 and $361,995,000 for the fiscal year 1991.

(2) PROTECTION OF FOREIGN MISSIONS AND OFFICIALS.—For "Protection of Foreign Missions and Officials", $9,100,000 for the fiscal year 1990 and $9,464,000 for the fiscal year 1991.

(c) ALLOCATION FOR OFFICE OF MUNITIONS CONTROL.—Of the amounts authorized to be appropriated by this section, there shall be available only for the Office of Munitions Control of the Department of State for each of the fiscal years 1990 and 1991 such amount as is necessary to maintain at least 53 full-time equivalent personnel and any associated costs.

SEC. 102. INTERNATIONAL ORGANIZATIONS AND CONFERENCES.

(a) ASSESSED CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS.—

(1) There are authorized to be appropriated for "Contributions to International Organizations", $714,927,000 for the fiscal year 1990 and $817,000,000 for the fiscal year 1991 for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States with respect to international organizations and for other purposes authorized by law.

(2) Of the amounts authorized to be appropriated by paragraph (1), $1,249,000 for the fiscal year 1990 shall be available only for the South Pacific Commission.

(b) CONTRIBUTIONS TO INTERNATIONAL PEACEKEEPING ACTIVITIES.—There are authorized to be appropriated for "Contributions to International Peacekeeping Activities", $111,184,000 for the fiscal year 1990 and $115,000,000 for the fiscal year 1991 for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States with respect to international peacekeeping activities and for other purposes authorized by law.

(c) INTERNATIONAL CONFERENCES AND CONTINGENCIES.—(1) There are authorized to be appropriated for "International Conferences and Contingencies", $6,340,000 for the fiscal year 1990 and $7,300,000 for the fiscal year 1991 for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States with respect to international conferences and contingencies and for other purposes authorized by law.

(2) None of the funds authorized to be appropriated under paragraph (1), may be obligated or expended for any United States delegation to any meeting of the Conference on Security and Cooperation in Europe (CSCE) or meetings within the framework of the CSCE unless the United States delegation to any such meeting includes individuals representing the Commission on Security and Cooperation in Europe.

SEC. 103. INTERNATIONAL COMMISSIONS.

The following amounts are authorized to be appropriated under "International Commissions" for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States and for other purposes authorized by law:

(1) INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO.—For "International Boundary and Water Commission, United States and Mexico"—

(A) for "Salaries and Expenses" for the fiscal year 1990, $10,460,000 and, for the fiscal year 1991, $10,878,000; and

(B) for "Construction" for the fiscal year 1990, $11,500,000 and, for the fiscal year 1991, $11,900,000.

(2) INTERNATIONAL BOUNDARY COMMISSION, UNITED STATES AND CANADA.—For "International Boundary Commission, United States and Canada", $750,000 for the fiscal year 1990 and $780,000 for the fiscal year 1991.

(3) INTERNATIONAL JOINT COMMISSION.—For "International Joint Commission", $3,750,000 for the fiscal year 1990 and $3,900,000 for the fiscal year 1991.

(4) INTERNATIONAL FISHERIES COMMISSIONS.—For "International Fisheries Commissions", $11,000,000 for the fiscal year 1990 and $11,440,000 for the fiscal year 1991.

SEC. 104. MIGRATION AND REFUGEE ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for "Migration and Refugee Assistance"—

(1) for authorized activities, $415,000,000 for the fiscal year 1990 and $445,000,000 for the fiscal year 1991; and

(2) for each of the fiscal years 1990 and 1991 for assistance for refugees resettling in Israel, $25,000,000.

(b) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) or (2) of subsection (a) are authorized to remain available until expended.

SEC. 105. OTHER PROGRAMS.

The following amounts are authorized to be appropriated for the Department of

State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States and for other purposes authorized by law:

(1) UNITED STATES BILATERAL SCIENCE AND TECHNOLOGY AGREEMENTS.—For "United States Bilateral Science and Technology Agreements", $4,000,000 for the fiscal year 1990 and $4,160,000 for the fiscal year 1991.

(2) SOVIET-EAST EUROPEAN RESEARCH AND TRAINING.—For "Soviet-East European Research and Training", $4,600,000 for the fiscal year 1990 and $5,200,000 for the fiscal year 1991.

SEC. 106. REDUCTION IN EARMARKS IF APPROPRIATIONS ARE LESS THAN AUTHORIZATIONS.

The State Department Basic Authorities Act of 1956 is amended by inserting after section 10 (22 U.S.C. 2677) the following new section:

"SEC. 11. REDUCTION IN EARMARKS IF APPROPRIATIONS ARE LESS THAN AUTHORIZATIONS.

"If the amount appropriated (or made available in the event of a sequestration order issued pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177; 2 U.S.C. 901 et seq.) for a fiscal year pursuant to any authorization of appropriations provided by an Act other than an appropriation Act is less than the authorization amount and a provision of that Act provides that a specified amount of the authorization amount shall be available only for a certain purpose, then the amount so specified shall be deemed to be reduced for that fiscal year to the amount which bears the same ratio to the specified amount as the amount appropriated (or made available in the event of sequestration) bears to the authorization amount.".

SEC. 107. AVAILABILITY OF FUNDS.

Section 24 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2696) is amended by adding after subsection (d) the following new subsection:

"(e) Amounts authorized to be appropriated for a fiscal year for the Department of State or to the Secretary of State are authorized to be obligated for twelve-month contracts which are to be performed in two fiscal years, if the total amount for such contracts is obligated in the earlier fiscal year.".

SEC. 108. RESTRICTION ON FUNDS FOR NEGOTIATIONS WITH CERTAIN PALESTINE LIBERATION ORGANIZATION REPRESENTATIVES.

Section 1302(b) of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2151), is amended by inserting before the period at the end thereof the following: ", except that no funds authorized to be appropriated by this or any other Act may be obligated or made available for the conduct of the current dialogue on the Middle East peace process with any representative of the Palestine Liberation Organization if the President knows and advises the Congress that that representative directly participated in the planning or execution of a particular terrorist activity which resulted in the death or kidnapping of a United States citizen".

## PART B—DEPARTMENT OF STATE AUTHORITIES AND ACTIVITIES; FOREIGN MISSIONS

SEC. 111. AUTHORIZATION OF CERTAIN OPERATIONAL ACTIVITIES.

Section 2 of the State Department Basic Authorities Act (22 U.S.C. 2669) is amended—

(1) in subsection (g), by striking out "and" at the end thereof;

(2) in subsection (h), by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by inserting after subsection (h) the following new subsections:

"(i) pay obligations assumed in Germany on or after June 5, 1945;

"(j) provide telecommunications services; and

"(k) provide maximum physical security in Government-owned and leased properties and vehicles abroad.".

SEC. 112. WORKING CAPITAL FUND FOR OFFICE OF FOREIGN MISSIONS.

Section 13(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2684(a)) is amended—

(1) in the first sentence—

(A) by inserting "and" before "(4)"; and

(B) by striking out "; and (5) services and supplies to carry out title II of this Act"; and

(2) by inserting after the first sentence the following new sentence: "Such fund shall also be available without fiscal year limitation to carry out the purposes of title II of this Act".

SEC. 113. AUTHORITY OF DIPLOMATIC SECURITY SERVICE.

Section 37(a) of the State Department Basic Authorities Act (22 U.S.C. 2709(a)) is amended—

(1) in paragraph (2)—

(A) by striking out "and" at the end of subparagraph (A);

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following new subparagraph:

"(B) make arrests without warrant for any offense concerning passport or visa issuance or use if the special agent has reasonable grounds to believe that the person has committed or is committing such offense, and"; and

(2) in paragraph (5), by amending the text preceding subparagraph (A) to read as follows:

"(5) arrest without warrant any person for a violation of section 111, 112, 351, 970, or 1028 of title 18, United States Code—".

SEC. 114. ACCESS TO CRIMINAL RECORDS.

Section 9101 of title 5, United States Code, is amended—

(1) in subsections (b)(1), (b)(3)(A), (b)(3)(B), and (c) by inserting "the Department of State," after "Defense," each place it appears; and

(2) by adding at the end thereof the following new subsection:

"(e) The authority provided under this section with respect to the Department of State may be exercised only so long as the Department of State continues to extend to its employees and applicants for employment, at a minimum, those procedural safeguards provided for as part of the security clearance process that were made available, as of May 1, 1987, pursuant to section 163.4 of volume 3 of the Foreign Affairs Manual.".

SEC. 115. ENHANCEMENT OF EVACUATION CAPABILITY AND PROCEDURES REGARDING MAJOR DISASTERS AND INCIDENTS ABROAD AFFECTING UNITED STATES CITIZENS.

(a) RESPONSIBILITY OF SECRETARY OF STATE.—Section 102(b) of the Diplomatic Security Act of 1986 (22 U.S.C. 4801(b)) is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by redesignating paragraph (5) as paragraph (6);

(3) by inserting after paragraph (4) the following new paragraph:

"(5) to set forth the responsibility of the Secretary of State with respect to the safe and efficient evacuation of United States Government personnel, their dependents, and private United States citizens when their lives are endangered by war, civil unrest, or natural disaster; and".

(b) DEVELOPMENT AND IMPLEMENTATION OF POLICIES.—Section 103 of the Diplomatic Security Act of 1986 (22 U.S.C. 4802) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(2) by inserting after subsection (a) the following new subsection:

"(b) OVERSEAS EVACUATIONS.—The Secretary of State shall develop and implement policies and programs to provide for the safe and efficient evacuation of United States Government personnel, dependents, and private United States citizens when their lives are endangered. Such policies shall include measures to identify high risk areas where evacuation may be necessary and, where appropriate, providing staff to United States Government missions abroad to assist in those evacuations. In carrying out these responsibilities, the Secretary shall—

"(1) develop a model contingency plan for evacuation of personnel, dependents, and United States citizens from foreign countries;

"(2) develop a mechanism whereby United States citizens can voluntarily request to be placed on a list in order to be contacted in the event of an evacuation, or which, in the event of an evacuation, can maintain information on the location of United States citizens in high risk areas submitted by their relatives;

"(3) assess the transportation and communications resources in the area being evacuated and determine the logistic support needed for the evacuation; and

"(4) develop a plan for coordinating communications between embassy staff, Department of State personnel, and families of United States citizens abroad regarding the whereabouts of those citizens.".

(c) PROCEDURES REGARDING MAJOR DISASTERS AND INCIDENTS ABROAD.—The State Department Basic Authorities Act of 1956 (22 U.S.C. 2269 et seq.) is amended—

(1) by redesignating section 43 as section 44; and

(2) by adding after section 42 the following new section:

"SEC. 43. PROCEDURES REGARDING MAJOR DISASTERS AND INCIDENTS ABROAD AFFECTING UNITED STATES CITIZENS.

"In the case of a major disaster or incident abroad which affects the health and safety of citizens of the United States residing or traveling abroad, the Secretary of State shall provide prompt and thorough notification of all appropriate information concerning such disaster or incident and its effect on United States citizens to the next-of-kin of such individuals. Notification shall be provided through the most expeditious means available, including telephone communications, and shall include timely written notice. The Secretary, through the appropriate offices of the Department of State, shall act as a clearinghouse for up-to-date information for the next-of-kin and shall provide other services and assistance. Assistance shall include liaison with foreign governments and persons and with United

States air carriers concerning arrangements for the preparation and transport to the United States of the remains of citizens who die abroad, as well as disposition of personal effects.".

(d) DEVELOPMENT OF STANDARDIZED PROCEDURES.—

(1) The Secretary of State shall enter into discussions with international air carriers and other appropriate entities to develop standardized procedures which will assist the Secretary in implementing the provisions of section 43 of the State Department Basic Authorities Act of 1956, as amended by subsection (c).

(2) The Secretary of State shall consider the feasibility of establishing a toll-free telephone number to facilitate inquiries by the next-of-kin in cases of major disasters or incidents abroad which affect the health and safety of citizens of the United States residing or traveling abroad.

(e) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall prepare and submit a report to the Congress which sets forth plans for the implementation of the amendment made by subsection (c) and the provisions of subsection (d)(1), together with the Secretary's comments concerning the proposal under subsection (d)(2).

SEC. 116. ACQUISITION OF DOMESTIC PROPERTY AS INTERIM STEP TO ACQUIRING PROPERTY ABROAD.

(a) ADDITIONAL AUTHORITY FOR THE DIRECTOR OF THE OFFICE OF FOREIGN MISSIONS.—Section 203(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4303(c)) is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) dispose of property acquired in carrying out the purposes of this Act; and".

(b) PROVISION OF BENEFITS.—Section 204 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4304) is amended—

(1) in subsection (b)—

(A) by striking out "or" at the end of paragraph (3);

(B) by inserting "or" at the end of paragraph (4);

(C) by inserting after paragraph (4) the following new paragraph:

"(5) subject to subsection (f), to implement an exchange of property between the Government of the United States and the government of a foreign country, such property to be used by each government in the respective receiving state for, or in connection with, diplomatic or consular establishments,"; and

(2) by adding at the end thereof the following new subsection:

"(f)(1) Upon a determination in each specific case by the Secretary of State or the Secretary's designee that the purpose of the Foreign Service Buildings Act, 1926, can best be met on the basis of an in-kind exchange of properties with a foreign country pursuant to subsection (b)(5), the Secretary of State may transfer funds made available under the heading 'Acquisition and Maintenance of Buildings Abroad' (including funds held in the Foreign Service Buildings Fund) for such purpose to the Working Capital Fund, as provided in section 208(h)(1). Except for funds that may be provided by a foreign government for the purchase of property, only funds transferred under the preceding sentence may be used for the purposes of subsection (b)(5).

"(2) The Secretary of State may acquire property in the United States for the purposes of subsection (b)(5) only in the context of a specific reciprocal agreement with a specified foreign government. Property acquired by the United States in the foreign country through such an exchange shall benefit the United States at least to the same extent as the property acquired in the United States benefits the foreign government.

"(3) The Secretary of State shall prescribe regulations for the implementation of any in-kind exchange of properties pursuant to subsection (b)(5).

"(4) At least 15 days before entering into any reciprocal agreement for the exchange of property with another foreign government, the Secretary of State shall notify the Committee on Foreign Affairs and the Committee on Public Works and Transportation of the House of Representatives and the Committee on Foreign Relations of the Senate.

"(5)(A) Proceeds from the disposition of properties acquired pursuant to this subsection shall be credited to the Foreign Service Buildings Fund (referred to in section 9 of the Foreign Service Buildings Act, 1926).

"(B) The authority to spend proceeds received under subparagraph (A) may be exercised only to such extent or in such amounts as are provided in advance in an appropriation Act.".

(c) CONFORMING AMENDMENT.—Section 9(a)(1) of the Foreign Service Buildings Act, 1926 (22 U.S.C. 300(a)(1)), is amended by inserting before the comma at the end thereof the following: "or in the United States pursuant to section 204(b)(5) of the State Department Basic Authorities Act of 1956".

SEC. 117. DEBT COLLECTION.

Title I of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669 et seq.) is amended—

(1) by redesignating section 44 (as redesignated by section 115) as section 45; and

(2) by inserting after section 43 (as redesignated by section 115) the following:

"SEC. 44. DEBT COLLECTION.

"(a) CONTRACT AUTHORITY.—(1) Subject to the availability of appropriations, the Secretary of State shall enter into contracts for collection services to recover indebtedness owed by a person, other than a foreign country, to the United States which arises out of activities of the Department of State and is delinquent by more than 90 days.

"(2) Each contract entered into under this section shall provide that the person with whom the Secretary enters into such contract shall submit to the Secretary at least once every 180 days a status report on the success of the person in collecting debts. Section 3718 of title 31, United States Code, shall apply to any such contract to the extent that such section is not inconsistent with this subsection.

"(b) DISCLOSURE OF DELINQUENT DEBT TO CREDIT REPORTING AGENCIES.—The Secretary of State shall, to the extent otherwise allowed by law, disclose to those credit reporting agencies to which the Secretary reports loan activity information concerning any debt of more than $100 owed by a person, other than a foreign country, to the United States which arises out of activities of the Department of State and is delinquent by more than 31 days.".

SEC. 118. MUNITIONS CONTROL REGISTRATION FEES.

The State Department Basic Authorities Act of 1956 (22 U.S.C. 2269 et seq.) is amended—

(1) by redesignating section 45 (as redesignated by section 117) as section 46; and

(2) by inserting after section 44 (as redesignated by section 117) the following new section:

"SEC. 45. MUNITIONS CONTROL REGISTRATION FEES.

"(a) MUNITIONS CONTROL REGISTRATION FEES.—For each fiscal year, $500,000 of the registration fees collected by the Office of Munitions Control of the Department of State shall be credited to a Department of State account, to be available without fiscal year limitation. Fees credited to that account shall be available only for payment of expenses incurred for—

"(1) contract personnel to assist in the evaluation of munitions control license applications, reduction in processing time for license applications, and improved monitoring of compliance with the terms of licenses; and

"(2) the automation of munitions control functions and the processing of munitions control license applications, including the development, procurement, and utilization of computer equipment and related software.

"(b) BUDGET ACT COMPLIANCE.—The authority contained in subsection (a) shall be exercised to such extent and in such amounts as are to be provided in an appropriation Act.".

SEC. 119. FEES AND REIMBURSEMENTS.

The State Department Basic Authorities Act of 1956 is amended—

(1) by redesignating section 46 (as redesignated by section 118) as section 47; and

(2) by inserting after section 45 (as redesignated by section 118) the following new section:

"SEC. 46. FEES RECEIVED FOR USE OF BLAIR HOUSE.

"(a) USE OF FEES.—Notwithstanding any other provision of law, for the fiscal years 1990 and 1991, funds received by the Department of State in connection with use of Blair House (including reimbursements and surcharges for services and goods provided and fees for use of Blair House facilities) may be credited to the appropriate appropriation account of the Department of State which is currently available. Such funds shall be available only for maintenance and other expenses of Blair House.

"(b) COMPLIANCE WITH THE BUDGET ACT.—The authority of this section may be exercised only to such extent or in such amounts as are provided in advance in an appropriation Act.".

SEC. 120. INTERNATIONAL CENTER.

Section 4 of the International Center Act (Public Law 90-553, as amended) is amended by adding at the end thereof the following new subsection:

"(c)(1)(A) The Department of State is authorized to require the payment of a fee by other executive agencies of the United States for the lease or use of facilities located at the International Center which are used for the purposes of security and maintenance. Any payments received for lease or use of such facilities shall be credited to the account entitled 'International Center, Washington, District of Columbia' and shall be available, without fiscal year limitation, to cover the operation and maintenance expenses of such facilities, including adminis-

tration, maintenance, utilities, repairs, and alterations.

"(B) The authority of subparagraph (A) shall be exercised only to such extent or in such amounts as are provided in advance in an appropriation Act.

"(2) For purposes of paragraph (1), the term 'Executive agencies' is used within the meaning of section 105 of title 5, United States Code.".

SEC. 121. CLOSING OF DIPLOMATIC AND CONSULAR POSTS IN ANTIGUA AND BARBUDA.

Section 123 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204) is repealed.

SEC. 122. SUBMISSION OF ANNUAL COUNTRY REPORTS ON TERRORISM.

Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204) is amended by striking out "March 31" and inserting in lieu thereof "April 30".

SEC. 123. CONSULAR OFFICER DUTIES.

Section 31 of the Act of June 22, 1860 (12 Stat. 79; 22 U.S.C. 4192), relating to the solemnization of marriages, is repealed.

SEC. 124. OPENING A UNITED STATES CONSULATE IN BRATISLAVA.

(a) FINDINGS.—The Congress finds that—

(1) the State Department's "special consulate" concept offers a model for reopening a consulate in Bratislava, Czechoslovakia, at modest cost and with significant public diplomacy and political benefits;

(2) the United States still owns the old consulate building and in 1987-1988 spent about $500,000 to renovate parts of the building;

(3) the building has been productively used for trade and cultural events, but could be more effectively used by restoring it to its original purpose as the locus of official United States representation in the Slovak capital;

(4) Slovakia has been the source of the largest and most recent wave of Czechoslovak emigration to the United States and approximately three and one-half million Americans are of Slovak heritage;

(5) American tourists in Slovakia, many visiting relatives, often require consular assistance and this consular support could best be provided by a consulate in Bratislava;

(6) Slovaks account for more than half of all Czechoslovak tourist travel to the United States and this travel, which should be encouraged, could be expedited by a United States consulate in Bratislava;

(7) the Slovak underground Catholic Church is one of the most vibrant religious forces in Czechoslovakia and each year tens of thousands of Catholics make pilgrimages to Slovakia;

(8) American outreach efforts in Slovakia have been hindered by the absence of a constant and direct American presence in Bratislava; and

(9) with its Hungarian, Polish, and Ukrainian minorities, a United States consulate in Bratislava would provide important information on both regional and local developments.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the President should take all practicable steps to reopen the United States consulate in Bratislava, Czechoslovakia.

SEC. 125. CONSTRUCTION OF UNITED STATES EMBASSY IN OTTAWA.

Section 402(a) of the Diplomatic Security Act (22 U.S.C. 4852(a)) shall not apply to the construction or renovation of the United States Embassy in Ottawa, Canada.

SEC. 126. VOLUNTARY PILOT PROGRAM FOR INCREASED PARTICIPATION BY ECONOMICALLY AND SOCIALLY DISADVANTAGED ENTERPRISES IN FOREIGN RELATIONS ACTIVITIES.

(a) ESTABLISHMENT OF PILOT PROGRAM FOR VOLUNTARY SET-ASIDES.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State (in consultation with the Director of the United States Information Agency) shall prepare and transmit a detailed plan for the establishment for the fiscal years 1990 and 1991 of a pilot program of voluntary set-asides for increased participation, to the extent practicable, by economically and socially disadvantaged enterprises in programs and activities of the Department of State and the United States Information Agency to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(b) CONTENTS OF PLAN.—Such plan shall include—

(1) a description of where such pilot program will be located in each such agency's organizational structure and what relevant lines of authority will be established;

(2) a listing of the specific responsibilities that will be assigned to the pilot program to enable it to increase, to the extent practicable and in a rational and effective manner, participation of economically and socially disadvantaged enterprises in activities funded by such agencies;

(3) a detailed design for a time-phase system for bringing about expanded participation, to the extent practicable, by economically and socially disadvantaged enterprises, including—

(A) specific recommendations for percentage allocations of contracts, subcontracts, procurement, grants, and research and development activities by such agencies to such enterprises; and

(B) particular consideration of the participation of economically and socially disadvantaged enterprises in activities in the areas of communications, telecommunications, and information systems;

(4) a proposed reporting system that will permit objective measuring of the degree of participation of economically and socially disadvantaged enterprises in comparison to the total activities funded by such agencies;

(5) a detailed projection of the administrative budgetary impact of the establishment of the pilot program; and

(6) a detailed set of objective criteria upon which determinations will be made as to the qualifications of economically and socially disadvantaged enterprises to receive contracts funded by such agencies.

(c) OBJECTIVES.—The objective of the pilot program shall be to increase the participation, to the extent practicable, of economically and socially disadvantaged business enterprises in contract, procurement, grant, and research and development activities funded by the agencies.

(d) RESPONSIBILITIES.—The pilot program shall—

(1) establish, maintain, and disseminate information to, and otherwise serve as an information clearinghouse for, economically and socially disadvantaged business enterprises regarding business opportunities funded by the agencies;

(2) design and conduct projects to encourage, promote, and assist economically and socially disadvantaged business enterprises to secure direct contracts, host country contracts, subcontracts, grants, and research and development contracts in order for such enterprises to participate in programs funded by the Department of State and the United States Information Agency;

(3) conduct market research, planning, economic and business analyses, and feasibility studies to identify business opportunities funded by such agencies;

(4) develop support mechanisms which will enable socially and economically disadvantaged enterprises to take advantage of business opportunities in programs funded by such agencies; and

(5) enter into such contracts (to such extent or in such amounts as are provided in advance in appropriation Acts), cooperative agreements, or other transactions as may be necessary in the conduct of its functions under this section.

(e) RESPONSIBILITIES OF THE SECRETARY.—The Secretary of State (after consultation with the Director of the United States Information Agency) shall provide the pilot program with such relevant information, including procurement schedules, bids, and specifications with respect to programs funded by the Department of State and the United States Information Agency, as may be requested by the pilot program in connection with the performance of its functions under this section.

(f) DEFINITIONS.—

(1) For the purposes of this section, the term "economically and socially disadvantaged enterprise" means a business—

(A) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(B) whose management and daily business operations are controlled by one or more such individuals.

(2) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(3) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the Administrator of the agency shall consider, but not be limited to, the assets and net worth of the socially disadvantaged individual.

(g) REPORTS TO CONGRESS.—For each of the fiscal years 1990 and 1991, the Secretary of State shall prepare and submit a report concerning the implementation of the pilot program under this section to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 127. REPORT ON REORGANIZATION OF THE DEPARTMENT OF STATE.

(a) FINDINGS.—The Congress makes the following findings:

(1) The Department of State is currently reviewing its organizational structure.

(2) Each of the geographical bureaus deals with a large number of countries and often a broad diversity of cultures, nationalities, and ethnic divisions.

(3) The territory covered by the Bureau of Near Eastern and South Asian Affairs, for example, stretches from the Atlantic coast of Morocco to the Bay of Bengal, includes 25 countries, more than a billion people, a

number of regional disputes, and several cultural and linguistic divisions. The Bureau of Inter-American Affairs has within its jurisdiction 33 countries, including Mexico, the nations of the Caribbean Basin, and Central and South America.

(4) Among the most pressing international issues is the prospect for global warming. Over the next few years, American leadership at the international level will be crucial to worldwide efforts to ensure that global warming does not occur. The Department of State will need to consider appropriate steps to prepare for the leadership role of the United States.

(5) The United States continues to face a foreign intelligence threat, including the danger to United States diplomatic missions. The Department of State will need to improve its ability to detect and prevent intelligence penetration of United States missions abroad.

(b) REPORT.—Not later than February 3, 1990, the Secretary of State shall submit to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report assessing the advisability of reorganization of its regional and functional bureaus. The report shall include, but not be limited to, an assessment of the advisability of two bureaus to cover the present responsibilities of the Bureau of Inter-American Affairs, an office of Diplomatic Security to be headed by an Under Secretary-level Director of Diplomatic Security, and an Office of Global Warming within the Bureau of Oceans, International Environmental and Scientific Affairs. The report shall also include an assessment of the advisability of transferring the jurisdictional responsibility for the Organization of American States from the Bureau of International Organizations to the Bureau of Inter-American Affairs, and of creating a high-level coordinator for United States policy toward Mexico. In the context of the report required by this subsection, it is the sense of the Congress that the Secretary of State should give serious consideration to the establishment of a Bureau of South Asian Affairs within the Department of State.

SEC. 128. PROHIBITION ON EXCLUSION OR DEPORTATION OF NONIMMIGRANT ALIENS ON CERTAIN GROUNDS.

(a) TECHNICAL CORRECTION.—Section 901 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (8 U.S.C. 1182 note) is amended in subsection (a) by inserting "subject to restrictions or conditions on entry into the United States," after "United States," the first place it appears.

(b) REPEAL OF TERMINATION PROVISION.—Subsection (d) of section 901 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (8 U.S.C. 1182 note) is repealed.

## PART C—DIPLOMATIC IMMUNITY, RECIPROCITY, AND SECURITY

SEC. 131. EXCLUSION OF ALIENS PREVIOUSLY INVOLVED IN SERIOUS CRIMINAL OFFENSES COMMITTED IN THE UNITED STATES.

(a) GROUNDS OF EXCLUSION.—Section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended—

(1) by striking out the period at the end of paragraph (33) and inserting in lieu thereof a semicolon; and

(2) by adding after paragraph (33) the following new paragraph:

"(34) Any alien who has committed in the United States any serious criminal offense, as defined in section 101(h), for whom immunity from criminal jurisdiction was exercised with respect to that offense, who as a consequence of the offense and the exercise of immunity has departed the United States, and who has not subsequently submitted fully to the jurisdiction of the court in the United States with jurisdiction over the offense.".

(b) DEFINITION.—Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) is amended by adding at the end thereof the following new subsection:

"(h) For purposes of section 212(a)(34), the term 'serious criminal offense' means—

"(1) any felony;

"(2) any crime of violence, as defined in section 16 of title 18 of the United States Code; or

"(3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.".

(c) WAIVER.—Section 212(h) of the Immigration and Nationality Act (8 U.S.C. 1182(h)) is amended by striking out "or (12)" and inserting in lieu thereof "(12), or (34)".

(d) REPORT CONCERNING COMPENSATION AND DIPLOMATIC IMMUNITY.—(1) Not later than 180 days after the date of enactment of this Act, the Secretary of State shall prepare and submit to the appropriate committees of the Congress a report which considers the need and feasibility of establishing a program which makes compensation awards to United States citizens and permanent resident aliens in the United States for physical injury or financial loss which is the result of criminal activity reasonably believed to have been committed by individuals with immunity from criminal jurisdiction as a result of international obligations of the United States arising from multilateral agreements, bilateral agreements, or otherwise under international law.

(2) Together with such other information as the Secretary of State considers appropriate, the report shall include—

(A) a plan and feasibility analysis for the establishment of such a program, including—

(i) specific recommendations for funding, administration, and procedures and standards for compensation and payment of awards; and

(ii) particular consideration of the feasibility of an appeals mechanism;

(B) an assessment of—

(i) the feasibility of establishing a fund;

(ii) the availability of existing accounts; or

(iii) other sources of funding for the program; and

(C) consideration of other possible mechanisms for compensation or reimbursement, including direct compensation by the individual with immunity from criminal jurisdiction or by the sending country of that individual.

SEC. 132. MODIFICATION OF PREFERENCE FOR UNITED STATES CONTRACTORS IN DIPLOMATIC CONSTRUCTION PROGRAM.

Section 402(a) of the Diplomatic Security Act (22 U.S.C. 4852) is amended in paragraph (2) to read as follows:

"(2) bid on a diplomatic construction or design project which involves physical or technical security, unless the project—

"(A) involves nonsophisticated, low-level technology, as determined by the Assistant Secretary for Diplomatic Security;

"(B) is for the design or construction of a facility that does not process or store classified material; and

"(C) does not exceed a total value of $500,000.".

SEC. 133. USE OF CLEARED PERSONNEL TO ENSURE SECURE MAINTENANCE AND REPAIR OF DIPLOMATIC FACILITIES ABROAD.

(a) IN GENERAL.—Title IV of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 is amended by adding at the end thereof the following new section:

"SEC. 415. USE OF CLEARED PERSONNEL TO ENSURE SECURE MAINTENANCE AND REPAIR OF DIPLOMATIC FACILITIES ABROAD.

"(a) POLICIES AND REGULATIONS.—The Secretary of State shall develop and implement policies and regulations to provide for the use of persons who have been granted an appropriate United States security clearance to ensure that the security of areas intended for the storage of classified materials or the conduct of classified activities in a United States diplomatic mission or consular post abroad is not compromised in the performance of maintenance and repair services in those areas.

"(b) STUDY AND REPORT.—The Secretary of State shall conduct a study of the feasibility and necessity of requiring that, in the case of certain United States diplomatic facilities abroad, no contractor shall be hired to perform maintenance or repair services in an area intended for the storage of classified materials or the conduct of classified activities unless such contractor has been granted an appropriate United States security clearance. Such study shall include, but is not limited to, United States facilities located in Cairo, New Delhi, Riyadh, and Tokyo. Not later than 180 days after the date of the enactment of this section, the Secretary of State shall report the results of such study to the Chairman of the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.".

(b) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents for the Omnibus Diplomatic Security and Antiterrorism Act of 1986 is amended by inserting after the item relating to section 414 the following new item:

"Sec. 415. Use of cleared personnel to ensure secure maintenance and repair of diplomatic facilities abroad.".

SEC. 134. UNITED STATES-SOVIET RECIPROCITY IN MATTERS RELATING TO EMBASSIES.

(a) WAIVER OF RESTRICTION REGARDING SOVIET CONSULATES IN THE UNITED STATES.—(1) Notwithstanding section 153(b) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204) and subject to paragraph (2), the Secretary of State may allow the Soviet mission to the United States to occupy, on the basis of reciprocity, a consulate facility in the United States.

(2) Paragraph (1) shall apply only after the Secretary of State certifies to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate that the United States mission in Kiev is able to occupy an interim facility intended for the conduct of unclassified activities.

(b) REPORTS TO CONGRESS.—Not later than January 30, 1991, the Secretary of State shall develop and submit to the Congress a long-term plan for acquiring secure permanent facilities for the United States mission in Kiev, together with a budget proposal to implement such plan.

SEC. 135. CONSTRUCTION SECURITY CERTIFICATION.

Section 160(a) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204) is amended—

(1) in the text preceding paragraph (1), by inserting "or approving occupancy of a similar facility for which construction or major renovation began before the effective date of this section," after "activities,";

(2) at the end of paragraph (1), by striking out "and";

(3) at the end of paragraph (2), by striking out the period and inserting in lieu thereof "; and"; and

(4) by inserting after paragraph (2) the following new paragraph:

"(3) a plan has been put into place for the continued evaluation and maintenance of adequate security at such facility, which plan shall specify the physical security methods and technical countermeasures necessary to ensure secure operations, including any personnel requirements for such purposes.".

SEC. 136. INCREASED PARTICIPATION OF UNITED STATES CONTRACTORS IN LOCAL GUARD CONTRACTS ABROAD UNDER THE DIPLOMATIC SECURITY PROGRAM.

(a) FINDINGS.—The Congress makes the following findings:

(1) State Department policy concerning the advertising of security contracts at Foreign Service buildings has been inconsistent over the years. In many cases, diplomatic and consular posts abroad have been given the responsibility to determine the manner in which the private sector was notified concerning an invitation for bids or a request for proposals with respect to a local guard contract. Some United States foreign missions have only chosen to advertise locally the availability of a local security guard contract abroad.

(2) As a result, many United States security firms that provide local guard services abroad have been unaware that local guard contracts were available for bidding abroad and such firms have been disadvantaged as a result.

(3) Undoubtedly, United States security firms would be interested in bidding on more local guard contracts abroad if such firms knew of the opportunity to bid on such contracts.

(b) OBJECTIVE.—It is the objective of this section to improve the efficiency of the local guard programs abroad administered by the Bureau of Diplomatic Security of the Department of State and to ensure maximum competition for local guard contracts abroad concerning Foreign Service buildings.

(c) PARTICIPATION OF UNITED STATES CONTRACTORS IN LOCAL GUARD CONTRACTS ABROAD.—With respect to local guard contracts for a Foreign Service building which exceed $250,000 and are entered into after the date of enactment of this Act, the Secretary of State shall—

(1) establish procedures to ensure that all solicitations for such contracts are adequately advertised in the Commerce and Business Daily;

(2) establish procedures to ensure that appropriate measures are taken by diplomatic and consular post management to assure that United States persons and qualified United States joint venture persons are not disadvantaged during the solicitation and bid evaluation process due to their distance from the post; and

(3) give preference to United States persons and qualified United States joint venture persons where such persons are price competitive to the non-United States persons bidding on the contract, are properly licensed by the host government, and are otherwise qualified to carry out all the terms of the contract.

(d) DEFINITIONS.—For the purposes of this section—

(1) the term "United States person" means a person which—

(A) is incorporated or legally organized under the laws of the United States, including the laws of any State, locality, or the District of Columbia;

(B) has its principal place of business in the United States;

(C) has been incorporated or legally organized in the United States for more than 2 years before the issuance date of the invitation for bids or request for proposals with respect to the contract under subsection (c);

(D) has performed within the United States and overseas security services similar in complexity to the contract being bid;

(E) with respect to the contract under subsection (c), has achieved a total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C);

(F)(i) employs United States citizens in at least 80 percent of its principal management positions in the United States; and

(ii) employs United States citizens in more than half of its permanent, full-time positions in the United States; and

(G) has the existing technical and financial resources in the United States to perform the contract;

(2) the term "qualified United States joint venture person" means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture; and

(3) the term "Foreign Service building" means any building or grounds of the United States which is in a foreign country and is under the jurisdiction and control of the Secretary of State, including residences of United States personnel assigned overseas under the authority of the Ambassador.

(e) UNITED STATES MINORITY CONTRACTORS.—Not less than 10 percent of the amount of funds obligated for local guard contracts for Foreign Service buildings subject to subsection (c) shall be allocated to the extent practicable for contracts with United States minority small business contractors.

(f) UNITED STATES SMALL BUSINESS CONTRACTORS.—Not less than 10 percent of the amount of funds obligated for local guard contracts for Foreign Service buildings subject to subsection (c) shall be allocated to the extent practicable for contracts with United States small business contractors.

(g) LIMITATION OF SUBCONTRACTING.—With respect to local guard contracts subject to subsection (c), a prime contractor may not subcontract more than 50 percent of the total value of its contract for that project.

PART D—PERSONNEL

SEC. 141. AUTHORITY TO TRANSFER RETIREMENT CONTRIBUTIONS FOR FOREIGN SERVICE NATIONALS TO LOCAL PLANS.

(a) LOCAL COMPENSATION PLANS.—Section 408(a) of the Foreign Service Act of 1980 (22 U.S.C. 3968(a)) is amended by inserting at the end thereof the following new paragraph:

"(3)(A) Whenever a foreign national employee so elects during a one-year period established by the Secretary of State with respect to each post abroad, the Secretary of the Treasury (at the direction of the Secretary of State) shall transfer such employee's interest in the Civil Service Retirement and Disability Fund to a trust or other local retirement plan certified by the United States Government under a local compensation plan established for foreign national employees pursuant to this section (excluding local social security plans).

"(B) For purposes of subparagraph (A), the phrase "employee's interest in the Civil Service Retirement and Disability Fund" means the total contributions of the employee and the employing agency with respect to such employee, pursuant to sections 8331(8) and 8334(a)(1) of title 5, United States Code, respectively, plus interest at the rate provided in section 8334(e)(3) of such title.

"(C) Any such transfer shall void any annuity rights or entitlement to lump-sum credit under subchapter III of chapter 83 of such title.".

(b) TRANSFER AS CONSTITUTING FINAL PAYMENT.—Section 8345 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(l) Transfers of contributions and deposits authorized by section 408(a)(3) of the Foreign Service Act of 1980 shall be deemed to be a complete and final payment of benefits under this chapter.".

(c) The transfer of an employee's interest in the Civil Service Retirement and Disability Fund shall occur after October 1, 1990.

SEC. 142. DISQUALIFICATION FOR SERVICE ON FOREIGN SERVICE SELECTION BOARDS.

Section 602 of the Foreign Service Act of 1980 (22 U.S.C. 4002) is amended by adding at the end thereof the following:

"(c) No public members appointed pursuant to this section may be, at the time of their appointment or during their appointment, an agent of a foreign principal (as defined by section 1(b) of the Foreign Agents Registration Act of 1938) or receive income from a government of a foreign country.".

SEC. 143. SEPARATION FOR CAUSE; JUDICIAL REVIEW.

(a) AVAILABILITY OF JUDICIAL REVIEW.—Section 610(a)(2) of the Foreign Service Act of 1980 (22 U.S.C. 4010(a)(2)) is amended by adding at the end thereof the following new sentence: "Section 1110 shall apply to proceedings under this paragraph.".

(b) SEPARATION DUE TO CRIMINAL CONVICTION.—Section 610(a)(2) of the Foreign Service Act of 1980 (22 U.S.C. 4010) is amended by inserting at the end of the first sentence before the period the following: "or, notwithstanding section 1106(8) of this Act, unless the member has been convicted of a crime related to the cause for separation, subject to reinstatement with back pay (for any period during which separation for cause had not been established by such a hearing) if such conviction is reversed on appeal".

SEC. 144. VISITING SCHOLARS PROGRAM FOR THE FOREIGN SERVICE INSTITUTE.

(a) IN GENERAL.—Chapter 7 of title I of the Foreign Service Act of 1980 is amended by adding at the end thereof the following new section:

"SEC. 707. VISITING SCHOLARS PROGRAM.

"(a) ESTABLISHMENT OF PROGRAM.—There is authorized to be established at the Foreign Service Institute a program whereby selected scholars would participate fully in the educational and training activities of the Institute. This program may be referred to as the 'Visiting Scholars Program'.

"(b) SELECTION AND APPOINTMENT OF SCHOLARS.—

"(1) Scholars participating in the Visiting Scholars Program shall be selected by a five-member board described in subsection (c).

"(2) Each visiting scholar shall serve a term of one year, except that such term may be extended for one additional one-year period.

"(c) ESTABLISHMENT OF SELECTION BOARD.—The board referred to in subsection (b) shall be composed of the Director of the Foreign Service Institute, who shall serve as chairperson, and four other members appointed by the Secretary of State.".

(b) AMENDMENT TO TABLE OF CONTENTS.—The table of contents of the Foreign Service Act of 1980 is amended by inserting after the item relating to section 706 the following new item:

"Sec. 707. Visiting Scholars Program.".

SEC. 145. CREDIT FOR SERVICE AT UNHEALTHFUL POSTS.

(a) APPLICATION TO DETERMINATIONS OF ELIGIBILITY FOR FORMER SPOUSES.—Section 816(i)(2) of the Foreign Service Act of 1980 (22 U.S.C. 4056(i)(2)) is amended to read as follows:

"(2) A former spouse shall not be considered as married to a participant for periods assumed to be creditable service under section 808(a) or section 809(e).".

(b) TERMINATION OF EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS.—Section 817 of such Act (22 U.S.C. 4057) is amended by adding at the end thereof the following new sentences: "Such extra credit may not be used to determine the eligibility of a person to qualify as a former spouse under this subchapter, or to compute the pro rata share under section 804(10). No extra credit for service at unhealthful posts may be given under this section for any service as part of a tour of duty, or extension thereof, beginning on or after the date of enactment of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991.".

SEC. 146. FORMER SPOUSES OF UNITED STATES INFORMATION AGENCY AND AGENCY FOR INTERNATIONAL DEVELOPMENT EMPLOYEES.

(a) RETIREMENT BENEFITS FOR CERTAIN FORMER SPOUSES.—Section 830 of the Foreign Service Act of 1980 (22 U.S.C. 4069a) (relating to retirement benefits for certain former spouses) is amended by adding at the end the following new subsection:

"(f) Any individual who on February 14, 1981, was an otherwise qualified former spouse pursuant to this section, but who was married to a former Foreign Service employee of the United States Information Agency or of the Agency for International Development, shall be entitled to benefits under this section if—

"(1) the former employee retired from the Civil Service Retirement and Disability System on a date before his employing agency could legally participate in the Foreign Service Retirement and Disability System; and

"(2) the marriage included at least five years during which the employee was assigned overseas.".

(b) SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES.—Section 831 of the Foreign Service Act of 1980 (22 U.S.C. 4069b) (relating to survivor benefits for certain former spouses) is amended by adding at the end the following new subsection:

"(g) Any individual who on February 14, 1981, was an otherwise qualified former spouse pursuant to this section, but who was married to a former Foreign Service employee of the United States Information Agency or of the Agency of International Development, shall be entitled to benefits under this section if—

"(1) the former employee retired from the Civil Service Retirement and Disability System on a date before his employing agency could legally participate in the Foreign Service Retirement and Disability System; and

"(2) the marriage included at least five years during which the employee was assigned overseas.".

(c) HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES.—Section 832 of the Foreign Service Act of 1980 (22 U.S.C. 4069c) (relating to health benefits for certain former spouses) is amended by adding at the end the following new subsection:

"(f) Any individual who on February 14, 1981, was an otherwise qualified former spouse pursuant to subsections (a), (b), and (c) of this section, but who was married to a former Foreign Service employee of the United States Information Agency or of the Agency for International Development, shall be entitled to benefits under this section if—

"(1) the former employee retired from the Civil Service Retirement and Disability System on a date before his employing agency could legally participate in the Foreign Service Retirement and Disability System; and

"(2) the marriage included at least five years during which the employee was assigned overseas.".

SEC. 147. CHILD CARE FACILITIES AT CERTAIN POSTS ABROAD.

Section 31 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2684) is amended by adding at the end thereof the following new subsection:

"(e) For the fiscal years 1990 and 1991, the Secretary of State may make grants to child care facilities, to offset in part the cost of such care, in Moscow and at no more than five other posts abroad where the Secretary determines that due to extraordinary circumstances such facilities are necessary to the efficient operation of the post. In making that determination, the Secretary shall take into account factors such as—

"(1) whether Foreign Service spouses are encouraged to work at the post because—

"(A) the number of members of the post is subject to a ceiling imposed by the receiving country; and

"(B) Foreign Service nationals are not employed at the post; and

"(2) whether local child care is available.".

SEC. 148. TRAVEL, LEAVE, AND OTHER BENEFITS.

Section 901(9) of chapter 9 of the Foreign Service Act of 1980 (22 U.S.C. 4081(9)) is amended to read as follows:

"(9) roundtrip travel to or from an employee's post of assignment for purposes of family visitation in emergency situations involving personal hardship, except that payment for travel by family members to an employee's post of assignment may be authorized under this paragraph only where the family of the member is prevented by official order from residing at such post.".

SEC. 149. FOREIGN SERVICE INTERNSHIP PROGRAM.

(a) FINDINGS.—The Congress makes the following findings:

(1) On September 3, 1986, George Shultz, as Secretary of State, issued a statement containing 32 directives concerning equal opportunity in the Foreign Service. In his statement Secretary Shultz affirmed that it was of "fundamental importance that the Foreign Service truly represent the cultural and ethnic diversity of our own society", and indicated that the lack of such balanced representation was "a foreign policy problem which affects our image as a nation and as a leader of the free world". Secretary Shultz stated "that representation of women and minorities in the Foreign Service is still unacceptably low" and declared that he was "particularly concerned at the small number of Blacks in the Senior Foreign Service".

(2) The Secretary approved 32 recommendations included with the statement regarding recruitment, assignments, performance evaluations, and equal employment opportunity procedures within the Foreign Service. The recommendations of Secretary of State Shultz included—

(A) the targeting of historically Black American colleges and universities for special recruitment efforts, including specific information on how to apply for the Foreign Service examination, the testing process, and the mechanics of entry;

(B) independent review of the written exam for any cultural bias against African Americans;

(C) the inclusion of more African Americans on the board of examiners panels;

(D) investigation of methods to increase African American enrollment in university courses which might improve an applicant's chances of passing the written exam;

(E) development of new recruitment strategies;

(F) the assignment of more African American officers to senior (and visible) role model positions; and

(G) the recruitment of more African American officers into the political and economic cones of the Foreign Service.

(3) During the past 7 years, equal opportunity programs to attract women and minorities to the Foreign Service have been most successful in recruiting women and Asian Americans. Such programs have been less than successful in the recruitment of African Americans, Hispanic Americans, and Native Americans. In 1982, 188 new recruits were appointed to the Foreign Service, 48 were minority appointments constituting 26 percent. In 1985 the number of new appointments had increased 33 percent to 281, but minorities comprised only 10.3 percent of such appointments, a total of 29.

(4) For African Americans and Hispanics the trend of hiring in the Foreign Service is disconcerting. Nineteen African Americans were appointed to the Foreign Service in 1983, in 1987 only 10 African Americans were appointed. Hispanic appointments ranged from 12 in 1983 to 8 in 1985 to 15 in 1987. For Native Americans the Foreign Service statistics are ominous, 5 appointments in 1983, 1 in 1984, and no appointments in 1985, 1986, or 1987.

(5) The severe underrepresentation in the Foreign Service of individuals from certain cultural and ethnic groups is in large part due to the small pool of applicants from such groups. In each year from 1982 through 1987, minority applicants represented 14 to 17 percent of the total applicants and only 50 percent of such applicants took the written exam. In 1987, 1,769 minority applicants took the written exam, 191 passed, and 36 were actually appointed to the Foreign Service.

(6) The absolute and relative decline in the appointment to the Foreign Service of certain minorities who reflect the cultural

and ethnic diversity of the United States dictates that more aggressive equal opportunity programs be established to facilitate the recruitment and appointment of such individuals.

(b) ESTABLISHMENT.—Title I of the Foreign Service Act of 1980 is amended by adding at the end the following new chapter:

"CHAPTER 12—FOREIGN SERVICE INTERNSHIP PROGRAM

"SEC. 1201. STATEMENT OF POLICY; OBJECTIVES.

"(a) STATEMENT OF POLICY.—Consistent with the findings of section 101, the Foreign Service of the United States should be representative of the American people. In order to facilitate and encourage the entry into the Foreign Service of individuals who meet the rigorous requirements of the Service, while ensuring a Foreign Service system which reflects the cultural and ethnic diversity of the United States, intensive recruitment efforts are mandated. This is particularly true for Native Americans, African Americans, and Hispanic Americans, where other affirmative action and equal opportunity efforts have not been successful in attracting the ablest applicants for entry into the Foreign Service. The United States remains committed to equal opportunity and to a Foreign Service system operated on the basis of merit principles.

"(b) OBJECTIVES.—The objective of this chapter is to strengthen and improve the Foreign Service of the United States through the establishment of a Foreign Service Internship Program. The program shall promote the Foreign Service as a viable and rewarding career opportunity for qualified individuals who reflect the cultural and ethnic diversity of the United States through a highly-selective internship program for students enrolled in institutions of higher education.

"SEC. 1202. FOREIGN SERVICE INTERNSHIP PROGRAM.

"(a) ESTABLISHMENT.—In consultation with the heads of other agencies utilizing the Foreign Service system, the Secretary of State shall establish a Foreign Service internship program to carry out the objectives of this chapter in accordance with the provisions of this chapter.

"(b) FOREIGN SERVICE INTERNSHIP PROGRAM.—The program shall introduce interns to the practice of diplomacy and the unique rewards of the Foreign Service. The program shall consist of three successive summer internships of not less than eight weeks duration in each year to be completed over the course of not more than four years. Special emphasis shall be given to preparing the intern for the Foreign Service examination process. In each year not less than 10 interns shall enter the program.

"(c) ELIGIBILITY TO PARTICIPATE.—

"(1) Students enrolled full-time in institutions of higher education from groups which are underrepresented in the Foreign Service in terms of the cultural and ethnic diversity of the Foreign Service and for whom equal opportunity and affirmative action recruitment efforts have not been successful in achieving balanced representation in appointments to the Foreign Service shall be eligible to be interns in programs under this chapter.

"(2) An intern shall have successfully completed not less than one academic year of study at an institution of higher education to be admitted to the program. In each succeeding year of participation an intern shall have completed an additional year of undergraduate or graduate study and shall maintain an exemplary record of academic achievement.

"(3) In selecting interns, the Secretary shall consider only the ablest students of superior ability selected on the basis of demonstrated achievement and exceptional promise whose academic records reflect the requisite standards of performance necessary for the Foreign Service.

"(d) SUMMER INTERNSHIPS.—

"(1) The primary focus of the first internship shall be the study of international relations, the functions of the Department of State and other agencies which utilize the Foreign Service system, and the nature of the Foreign Service. The internship shall be held in Washington, District of Columbia, at the Department of State. As appropriate, the Secretary shall utilize the personnel and facilities of the Foreign Service Institute.

"(2) The second internship shall be, principally, an assignment to a specific bureau of the Department of State. Emphasis shall be on providing insight into the economic and political functional areas.

"(3) The third internship shall be an assignment to a United States mission abroad in the political or economic area.

"(4) The first and second internships may include a detail to the Congress.

"(e) ADMINISTRATION.—The Secretary of State shall determine the academic requirements, other selection criteria, and standards for successful completion of each internship period. The Secretary shall be responsible for the design, implementation, and operation of the program.

"(f) MENTORS.—Each intern shall be assigned a career Foreign Service officer as a mentor. The mentor shall act as a counselor and advisor throughout each summer internship and as a personal Foreign Service contact throughout the period of participation in the program. In the assignment of mentors, the Secretary shall give preference to Foreign Service officers who volunteer for such assignment and who may be role models for the interns.

"(g) COMPENSATION.—Interns shall be compensated at a rate determined by the Secretary which shall not be less than the compensation of comparable summer interns at the Department of State. As determined by the Secretary, for the purposes of travel, housing, health insurance, and other appropriate benefits, interns shall be considered employees of the Foreign Service during each internship period.

"(h) STUDY OF FOREIGN SERVICE EXAMINATION.—The Secretary of State shall study the feasibility of administering the Foreign Service examination in separate segments over several years. Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report summarizing the findings of such a study to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

"SEC. 1203. REPORT TO CONGRESS.

"Together with the annual submission required under section 105(d)(2), the Secretary of State shall submit a report to the Congress concerning the implementation of the program established under this chapter. Such report accompanied by such other information as the Secretary considers appropriate, shall include specific information concerning the completion rates of interns in the program, interns who took the Foreign Service examination, interns who passed the examination, former interns appointed to the Foreign Service, assignments of former interns, and the advancement of former interns through the Foreign Service System.

"SEC. 1204. AUTHORIZATION OF APPROPRIATIONS.

"Of the amounts authorized to be appropriated by section 101(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, $100,000 for the fiscal year 1990 and $150,000 for the fiscal year 1991 shall be available only to carry out this chapter. Sums appropriated for the purposes of this chapter are authorized to remain available until expended.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The Foreign Service Act of 1980 is amended by adding after the items relating to chapter 11 the following:

"CHAPTER 12—FOREIGN SERVICE INTERNSHIP PROGRAM

"Sec. 1201. Statement of policy; objectives.
"Sec. 1202. Foreign service internship program.
"Sec. 1203. Report to Congress.
"Sec. 1204. Authorization of appropriations.".

(d) REPORT TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall submit a report to the Congress concerning the implementation of the Foreign Service Internship Program.

SEC. 150. GRANTS FOR INSTITUTIONS AND STUDENTS FOR TRAINING IN INTERNATIONAL AFFAIRS.

The State Department Basic Authorities Act of 1956 (22 U.S.C. 2269 et seq.) is amended—

(1) by redesignating section 47 (as redesignated by section 119) as section 48; and

(2) by inserting after section 46 (as redesignated by section 119) the following new section:

"SEC. 47. GRANTS FOR TRAINING AND EDUCATION IN INTERNATIONAL AFFAIRS.

"The Secretary of State may make grants to postsecondary educational institutions or students for the purpose of increasing the level of knowledge and awareness of and interest in employment with the Foreign Service, consistent with section 105 of the Foreign Service Act of 1980. To the extent possible, the Secretary shall give special emphasis to promoting such knowledge and awareness of, and interest in employment with, the Foreign Service among minority students. Any grants awarded shall be made pursuant to regulations to be established by the Secretary of State, which shall provide for a limit on the size of any specific grant and, regarding any grants to individuals, shall ensure that no grant recipient receives an amount of grants from one or more Federal programs which in the aggregate would exceed the cost of his or her education, and shall require satisfactory educational progress by grantees as a condition of eligibility for continued receipt of grant funds.".

SEC. 151. DANGER PAY ALLOWANCE.

The Secretary of State may not deny a request by the Drug Enforcement Administration to authorize a danger pay allowance (under section 5928 of title 5, United States Code) for any employee of such agency.

SEC. 152. JUDICIAL REVIEW OF CERTAIN FOREIGN SERVICE GRIEVANCES.

For the purposes of judicial review under section 1110 of the Foreign Service Act of 1980, any recommendation made by the Foreign Service Grievance Board with respect to the tenure of a grievant which was reviewed by the Secretary of State before the date of enactment of the Foreign Relations

Authorization Act, Fiscal Years 1988 and 1989, shall be considered to be a final action of the Department of State, and any such recommendation shall be considered to have been made within the authority of the Foreign Service Grievance Board.

SEC. 153. BROADENING THE CULTURAL, GEOGRAPHIC, AND ETHNIC REPRESENTATION OF THE FOREIGN SERVICE AND THE DEPARTMENT OF STATE.

(a) FINDINGS.—The Congress finds that a primary role of the Department of State is to represent the interests of the American people in foreign affairs and, as such, should strive to represent and include, among its policy and professional employees, the great diversity of the American people.

(b) RECRUITMENT.—(1) Not later than 120 days after the date of enactment of this Act, the Secretary of State shall provide the Congress with a plan to assure that equal efforts are undertaken in each of the regions of the United States to recruit policy and professional Government Service employees and Foreign Service officers for the Department of State and each of its affiliated agencies.

(2) Not later than January 1, 1990, the Secretary of State shall implement the plan provided for in paragraph (1).

(c) REPORT BY THE INSPECTOR GENERAL.—Not later than 120 days after the date of enactment of this Act, the Office of Inspector General of the Department of State shall submit to the Congress a report documenting, with respect to geographic distribution, race, ethnicity, gender and handicapping conditions, the composition of the workforce of the policy and professional Government Service employees and Foreign Service officers of the Department and each of its affiliated agencies. The report shall include—

(1) a breakdown of current policy and professional Government Service employees and Foreign Service officers of the Department and each of its affiliated agencies by age, race, gender, undergraduate institution, graduate institution, and place of birth;

(2) a breakdown by age, race, gender, ethnic background, undergraduate institution, graduate institution, and place of birth of those persons who during 1988 passed the written portion of the Foreign Service examination but failed the interview portion; and

(3) a breakdown by age, race, gender, ethnic background, undergraduate institution, graduate institution, and place of birth of those persons who during 1989 passed the Foreign Service examination.

(d) PROHIBITION ON DISCRIMINATION BASED ON GEOGRAPHIC OR EDUCATIONAL AFFILIATION.—Section 105(b)(1) of the Foreign Service Act of 1980 (22 U.S.C. 3905(b)(1)) is amended by inserting "geographic or educational affiliation within the United States," after "marital status,".

(e) TASK FORCE AND REPORT ON HISPANIC RECRUITMENT.—The Secretary of State shall appoint a task force comprised of high-ranking officials to conduct a study and make recommendations concerning improvements in the recruitment and promotion of Hispanic Americans at the Department of State and within the Foreign Service. Not later than one year after the date of the enactment of this Act, the task force shall submit a report of the findings of such study to the Secretary of State and the appropriate committees of the Congress.

(f) REPORT TO CONGRESS ON STATUS OF UNDERREPRESENTED GROUPS AT THE DEPARTMENT OF STATE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall prepare and submit to the Congress a report concerning efforts of the Department of State to improve the percentage of individuals who are at the assistant secretary and head of bureau level at the Department of State from groups which are underrepresented in the Foreign Service in terms of the cultural and ethnic diversity of the Foreign Service.

(g) STUDY OF FOREIGN SERVICE EXAMINATION.—The Secretary of State shall enter into a contract with a private organization for a comprehensive review and evaluation of the Foreign Service examination. Such review and evaluation shall—

(1) identify any cultural, racial, ethnic, and sexual bias;

(2) evaluate the ability of the examination to measure an individual's aptitude for and potential in the Foreign Service;

(3) consider the relevance of the Foreign Service examination to the work of a Foreign Service officer;

(4) make recommendations for the removal of any element of bias in the examination; and

(5) make recommendations for improvements to achieve an examination free of any bias.

Not more than 18 months after the date of the enactment of this Act, the Secretary of State shall prepare and submit a report to the Congress which contains the findings of such review and evaluation, together with the comments of the Secretary and measures which the Secretary has initiated to respond to any adverse findings of such review. Such report shall take into consideration the current efforts by the Department of State to review its Foreign Service examination.

(h) FOREIGN SERVICE FELLOWSHIPS.—The Secretary of State is authorized to establish a Foreign Service fellowship program at the Department of State. The Foreign Service fellowship program shall provide a fellowship, for not less than 4 months, for academics in the area of international affairs who are members of the faculty of institutions of higher education. Such program shall give priority consideration in the award of fellowships to individuals teaching in programs in international affairs which serve significant numbers of students who are from cultural and ethnic groups which are underrepresented in the Foreign Service.

SEC. 154. REPORT TO CONGRESS CONCERNING POLYGRAPH PROGRAM.

(a) REPORT TO CONGRESS.—Not later than January 31, of each of the years 1990 and 1991, the Secretary of State shall prepare and submit an annual report on the polygraph program of the Department of State to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(b) CONTENTS OF REPORT.—The report shall provide an assessment of the implementation of the polygraph program during the preceding fiscal year. Together with such other information and comments as the Secretary considers appropriate, the report shall include the following:

(1) Data on the number of lie-detector tests administered.

(2) A description of the purposes and results of such tests.

(3) A description of the criteria used in the selection of programs and individuals for administration of lie-detector tests.

(4) The number of individuals who refused to submit to the administration of such tests.

(5) The number of lie detector tests administered in which a specific incident was not under investigation.

(6) A description of the actions taken when an individual fails or refuses the administration of such tests, including the denial of clearance or any other adverse action.

(7) A detailed accounting of cases in which more than two administrations of such tests were necessary to resolve discrepancies.

(8) Any proposed changes in regulations for the Department of State polygraph program.

(c) DEFINITION.—For purposes of this section, the term "lie detector" shall have the meaning given such term under section 2 of the Employee Polygraph Protection Act of 1988.

SEC. 155. STUDY OF SEXUAL HARASSMENT AT THE DEPARTMENT OF STATE.

(a) FINDINGS.—The June 1988 report of the United States Merit Systems Protection Board entitled "Sexual Harassment in the Federal Government: An Update" determined that the Department of State (including the United States Information Agency) had the highest rate of incidence of sexual harassment of women of any agency of the Federal Government.

(b) STUDY.—Subject to the availability of appropriations, not later than 90 days after the date of the enactment of this Act, the Secretary of State (in consultation with the Director of the United States Information Agency) shall enter into a contract with a private organization with established expertise and demonstrated capabilities in personnel systems and problems for the purpose of conducting a study and preparing a report concerning sexual harassment at the Department of State and the United States Information Agency.

(c) REPORT.—Together with such other information as is determined to be appropriate and informative, such report shall include—

(1) a determination of the reasons for the high rate of incidence of sexual harassment at such Federal agencies;

(2) an evaluation of the actions which have been proposed and implemented by such Federal agencies to respond to the findings of the Merit Systems Protection Board report;

(3) a proposal for further specific actions by each agency; and

(4) recommendations for such changes in administrative procedures, regulations, and legislation as may be considered necessary to address the problem of sexual harassment at the Department of State and the United States Information Agency.

(d) SUBMISSION OF REPORT TO THE CONGRESS.—Not later than one year after the date of the enactment of this Act, the Secretary of State shall submit the full and complete report of such study, together with such comments as the Secretary of State or the Director of the United States Information Agency consider appropriate, to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 156. LIMITATION ON HOUSING BENEFITS.

(a) IN GENERAL.—The Secretary of State shall establish and implement an appropriate housing policy and space standards in consultation with all agencies with employees outside the United States who are under

the authority of the chief of mission or with other agencies or employees who participate in the overseas housing program. Such policy may not provide housing or related benefits based solely on the representational status of the employee, except if such individual is the ambassador, deputy chief of mission, permanent charge, or the consul general when serving as the principal officer.

(b) WAIVER.—The Secretary of State may grant exceptions to the restriction on providing housing or related benefits on a representational basis under subsection (a) on a case-by-case basis where a documented need for such exception is established. The Secretary of State shall prepare a comprehensive list annually of all such exceptions granted under this subsection.

PART E—FOREIGN LANGUAGE COMPETENCE WITHIN THE FOREIGN SERVICE

SEC. 161. EXPANSION OF MODEL FOREIGN LANGUAGE COMPETENCE POSTS.

(a) DESIGNATION OF POSTS.—In order to carry out the purposes of section 702 of the Foreign Service Act of 1980, and in light of the positive report issued on March 28, 1986, by the Department of State, as required by section 2207 of the Foreign Service Act of 1980, the Secretary of State shall designate as model foreign language competence posts a minimum of six Foreign Service posts, representing the Department of State's five geographic bureaus, in countries where English is not the common language. Such designation shall be made not later than February 1, 1990, and shall be implemented so that not later than October 1, 1991, in the case of non-hard language posts, and October 1, 1992, in the case of hard language posts, each Government employee permanently assigned to those posts shall possess an appropriate level of competence in the language common to the country where the post is located. The Secretary of State shall determine appropriate levels of language competence for employees assigned to those posts by reference to the nature of their functions and the standards employed by the Foreign Service Institute.

(b) "HARD LANGUAGE COUNTRY" POST TO BE DESIGNATED.—At least one of the posts designated under subsection (a) shall be in a "hard language" country, as identified in the report to the Under Secretary of State for Management of May 12, 1986, entitled "Hard Language Proficiency in the Foreign Service". Such post shall be in one of the countries where the official or principal language is Arabic, Chinese, Japanese, or Russian.

(c) TERMINATION DATE.—The posts designated under subsection (a) shall continue as model foreign language posts at least until September 30, 1993, in the case of non-hard language posts, and September 30, 1994, in the case of hard language posts. Not later than January 31, 1995, the Secretary of State shall submit to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report describing the operation of such posts and the costs, advantages, and disadvantages associated with meeting the foreign language competence requirements of this section.

(d) EXEMPTION AUTHORITY.—The Secretary of State may authorize exceptions to the requirements of this section if—

(1) he determines that unanticipated exigencies so require; and

(2) he immediately reports such exceptions to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(e) EXCLUDED POSTS.—The posts designated under subsection (a) may not include Dakar, Senegal, or Montevideo, Uruguay. The report required under subsection (c) shall include progress made in these posts in maintaining the high foreign language standards achieved under the initial pilot program.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 162. REPORT ON FOREIGN LANGUAGE ENTRANCE REQUIREMENT FOR THE FOREIGN SERVICE.

Not later than December 31, 1989, the Secretary of State shall submit to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs and the Committee on Post Office and Civil Service of the House of Representatives a report evaluating an entrance requirement for the Foreign Service of at least one world language at the General Professional Speaking Proficiency level, as defined by the Foreign Service Institute, or one nonworld language at the next lowest proficiency level. Such report shall also describe—

(1) the amount of time necessary to implement such a requirement;

(2) the use of bonus points on the Foreign Service candidate scoring system for candidates with foreign language ability; and

(3) the adjustments necessary to raise otherwise qualified candidates, especially including affirmative action applicants, to the levels required for entrance as evaluated in the report required by this section.

SEC. 163. FOREIGN SERVICE PROMOTION PANELS.

It is the sense of the Congress that, to the greatest extent possible, Foreign Service promotion panels should—

(1) only promote candidates to the Senior Foreign Service who have demonstrated foreign language proficiency in at least one language at the General Professional Speaking Proficiency level, as defined by the Foreign Service Institute;

(2) strive for the objective stipulated in the Foreign Service Manual "to be able to use two foreign languages at a minimum professional level of proficiency of S-3/R-3, which is the general professional speaking proficiency level"; and

(3) have at least one person on each Foreign Service promotion panel who has attained at least the General Professional Speaking Proficiency level in one language level.

SEC. 164. LANGUAGE PROFICIENCY IN THE EMPLOYEE EVALUATION REPORT.

(a) ASSESSMENT OF FOREIGN LANGUAGE COMPETENCE.—The Department of State and the Agency for International Development shall revise the Employee Evaluation Report for Foreign Service officers, and the United States Information Agency shall revise the Officer Evaluation Report for its Foreign Service officers, to require in a separate entry, an assessment of the employee's effectiveness in using, in his or her work, a foreign language or languages tested at the general professional speaking proficiency level or above, in cases where the supervisor is capable of making such an assessment.

(b) PRECEDENCE IN PROMOTION.—The directors of personnel of the Department of State, the Agency for International Development, and the United States Information Agency shall instruct promotion panels to take account of language ability and, all matters being otherwise equal, to give precedence in promotions to officers who have achieved at least the General Professional Speaking Proficiency level in one or more foreign languages over officers who lack that level of proficiency.

TITLE II—UNITED STATES INFORMATIONAL, EDUCATIONAL, AND CULTURAL PROGRAMS

PART A—UNITED STATES INFORMATION AGENCY

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATIONS OF APPROPRIATIONS.—The following amounts are authorized to be appropriated for the United States Information Agency (other than for the Voice of America) to carry out international information, educational, cultural, and exchange programs under the United States Information and Educational Exchange Act of 1948, the Mutual Educational and Cultural Exchange Act of 1961, Reorganization Plan Number 2 of 1977, and other purposes authorized by law:

(1) SALARIES AND EXPENSES.—For "Salaries and Expenses", $410,000,000 for the fiscal year 1990 and $432,640,000 for the fiscal year 1991.

(2) TELEVISION AND FILM SERVICE.—For "Television and Film Service", $31,000,000 for the fiscal year 1990 and $32,240,000 for the fiscal year 1991.

(3) NATIONAL ENDOWMENT FOR DEMOCRACY.—For "National Endowment for Democracy" $25,000,000 for the fiscal year 1990 and $25,000,000 for the fiscal year 1991.

(4) CENTER FOR CULTURAL AND TECHNICAL INTERCHANGE BETWEEN EAST AND WEST.—For "Center for Cultural and Technical Interchange between East and West", $20,700,000 for the fiscal year 1990 and $26,000,000 for the fiscal year 1991.

(b) SEVILLE WORLD'S FAIR.—(1) Subject to paragraph (2), there are authorized to be appropriated to the United States Information Agency for fiscal year 1990 $7,300,000 for United States participation in the World's Fair in Seville, Spain.

(2) Funds made available under this title for any educational or cultural exchange program, Voice of America programming to China, or any overseas post of the United States Information Agency may not be transferred or otherwise made available for the purposes of paragraph (1).

SEC. 202. DISSEMINATION OF INFORMATION WITHIN THE UNITED STATES.

Section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461) is amended—

(1) by inserting "(a)" after "501."; and

(2) in the second sentence, by striking out "Any" and inserting in lieu thereof "Subject to subsection (b), any"; and

(3) by adding at the end thereof the following new subsection:

"(b)(1) The Director of the United States Information Agency shall make available to the Archivist of the United States, for domestic distribution, motion pictures, films, videotapes, and other material prepared for dissemination abroad 12 years after the initial dissemination of the material abroad or, in the case of such material not disseminated abroad, 12 years after the preparation of the material.

"(2) The Director of the United States Information Agency shall be reimbursed for any attendant expenses. Any reimbursement to the Director pursuant to this subsection shall be credited to the applicable appropriation of the United States Information Agency.

"(3) The Archivist shall be the official custodian of the material and shall issue

necessary regulations to ensure that persons seeking its release in the United States have secured and paid for necessary United States rights and licenses and that all costs associated with the provision of the material by the Archivist shall be paid by the persons seeking its release. The Archivist may charge fees to recover such costs, in accordance with section 2116(c) of title 44, United States Code. Such fees shall be paid into, administered, and expended as part of the National Archives Trust Fund.".

SEC. 203. DISTRIBUTION WITHIN THE UNITED STATES OF UNITED STATES INFORMATION AGENCY FILM ENTITLED "LONG JOURNEY HOME".

Notwithstanding section 208 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (22 U.S.C. 1461-1(a)) and the second sentence of section 501 of the United States Information and Education Exchange Act of 1948 (22 U.S.C. 1461)—

(1) the Director of the United States Information Agency shall make available to the Archivist of the United States a master copy of the film entitled "Long Journey Home"; and

(2) upon evidence that necessary United States rights and licenses have been secured and paid for by the person seeking domestic release of the film, the Archivist shall—

(A) reimburse the Director for any expenses of the Agency in making that master copy available;

(B) deposit that film in the National Archives of the United States; and

(C) make copies of that film available for purchase and public viewing within the United States.

Any reimbursement to the Director pursuant to this section shall be credited to the applicable appropriation of the United States Information Agency.

SEC. 204. THE J. WILLIAM FULBRIGHT FOREIGN SCHOLARSHIP BOARD.

(a) AMENDMENTS TO THE MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE ACT OF 1961.—(1) Section 106(a) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2456(a)(1)) is amended in paragraph (1), by striking out "Board of Foreign Scholarships" and inserting in lieu thereof "board of foreign scholarships which shall be known as the 'J. William Fulbright Foreign Scholarship Board'".

(2) Section 112 of such Act (22 U.S.C. 2460) is amended—

(A) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(B) by inserting after subsection (a) the following new subsection:

"(b)(1) All recipients of Fulbright Academic Exchange and Humphrey Fellowship awards shall have full academic and artistic freedom, including freedom to write, publish, and create. No award granted pursuant to this Act may be revoked or diminished on account of the political views expressed by the recipient or on account of any scholarly or artistic activity that would be subject to the protections of academic and artistic freedom normally observed in universities in the United States. The Board shall ensure that the academic and artistic freedoms of all persons receiving grants are protected.

"(2) The J. William Fulbright Foreign Scholarship Board shall formulate a policy on revocation of Fulbright grants which shall be made known to all grantees. Such policy shall fully protect the right to due process as well as the academic and artistic freedom of all grantees.".

(b) CONTINUED SERVICE OF MEMBERS OF BOARD OF FOREIGN SCHOLARSHIPS.—Each member appointed to the Board of Foreign Scholarships before the date of the enactment of this Act shall continue to serve for the remainder of the term to which each such member was appointed.

(c) REFERENCES IN LAW.—Any reference in any provision of law to the Board of Foreign Scholarships shall, on and after the date of enactment of this Act, be deemed to be a reference to the J. William Fulbright Foreign Scholarship Board.

SEC. 205. USIA SATELLITE AND TELEVISION.

(a) IN GENERAL.—Title V of the United States Information and Educational Exchange Act of 1948 is amended by adding at the end thereof the following new section:

"SEC. 505. USIA SATELLITE AND TELEVISION.

"(a) IN GENERAL.—The Director of the United States Information Agency is authorized to lease or otherwise acquire time on commercial or United States Government satellites for the purpose of transmitting materials and programs to posts and other users abroad.

"(b) BROADCAST PRINCIPLES.—The Congress finds that the long-term interests of the United States are served by communicating directly with the peoples of the world by television. To be effective, the United States Information Agency must win the attention and respect of viewers. These principles will therefore govern the Agency's television broadcasts (hereinafter in this section referred to as 'USIA-TV'):

"(1) USIA-TV will serve as a consistently reliable and authorative source of news. USIA-TV news will be accurate and objective.

"(2) USIA-TV will represent the United States, not any single segment of American society and will, therefore, present a balanced and comprehensive projection of significant American thought and institutions.

"(3) USIA-TV will present the policies of the United States clearly and effectively and will also present responsible discussions and opinion on these policies.

"(c) PROGRAMS.—The Director of the United States Information Agency is authorized to produce, acquire, or broadcast television programs, via satellite, only if such programs—

"(1) are interactive, consisting of interviews among participants in different locales;

"(2) cover news, public affairs, or other current events;

"(3) cover official activities of government, Federal or State, including congressional proceedings and news briefings of any agency of the Executive branch; or

"(4) are of an artistic or scientific character or are otherwise representative of American culture.

"(d) COSTS.—When a comparable program produced by United States public or commercial broadcasters and producers is available at a cost which is equal to or less than the cost of production by USIA-TV, the Director of the United States Information Agency shall use such materials in preference to USIA-TV produced materials.

"(e) ALLOCATION OF FUNDS.—(1) Of the funds authorized to be appropriated to the United States Information Agency not more than $12,000,000 for the fiscal year 1990 and not more than $12,480,000 for the fiscal year 1991 may be obligated or expended for USIA-TV.

"(2) The United States Information Agency shall prepare and submit to the Congress quarterly reports which contain a detailed explanation of expenditures for USIA-TV during the fiscal years 1990 and 1991. Such reports shall contain specific justification and supporting information pertaining to all programs, particularly those described in subsection (c)(4), that were produced in-house by USIA-TV. Each such report shall include a statement by the Director of the United States Information Agency that, according to the best information available to the United States Information Agency, no comparable United States commercially-produced or public television program is available at a cost which is equal to or less than the cost of production by USIA-TV.

"(3) Of the funds authorized to be appropriated to the United States Information Agency, $1,500,000 for the fiscal year 1990 and $1,500,000 for the fiscal year 1991 shall be available only for the purchase or use of programs produced with grants from the Corporation for Public Broadcasting or produced by United States public broadcasters.".

(b) CONFORMING AMENDMENT.—Section 209 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204) is amended by striking out subsection (e).

SEC. 206. UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY.

(a) IN GENERAL.—Section 604 of the United States Information and Education Exchange Act of 1948 (22 U.S.C. 1469) is amended to read as follows:

"SEC. 604. UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY.

"(a) ESTABLISHMENT.—(1) There is established an advisory commission to be known as the United States Advisory Commission on Public Diplomacy.

"(2) The Commission shall consist of seven members appointed by the President, by and with the advice and consent of the Senate. The members of the Commission shall represent the public interest and shall be selected from a cross section of educational, communications, cultural, scientific, technical, public service, labor, business, and professional backgrounds. Not more than four members shall be from any one political party.

"(3) The term of each member shall be 3 years, except that of the original seven appointments, two shall be for a term of 1 year and two shall be for a term of 2 years.

"(4) Any member appointed to fill a vacancy occurring before the expiration of the term for which a predecessor was appointed shall be appointed for the remainder of such term. Upon the expiration of a member's term of office, such member may continue to serve until a successor is appointed and qualified.

"(5) The President shall designate a member to chair the Commission.

"(b) STAFF.—The Commission shall have a staff director who shall be appointed by the chairperson of the Commission. Subject to such rules and regulations as may be adopted by the Commission, the chairperson of the Commission may—

"(1) appoint such additional personnel for the staff of the Commission as the chairperson considers necessary; and

"(2) procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.

"(c) DUTIES AND RESPONSIBILITIES.—(1) The Commission shall formulate and recommend to the Director of the United States Information Agency, the Secretary of State, and the President policies and programs to carry out the functions vested in the Director or the Agency, and shall appraise the effectiveness of policies and programs of the Agency.

"(2) The Commission shall submit to the Congress, the President, the Secretary of State, and the Director of the United States Information Agency annual reports on programs and activities carried out by the Agency, including appraisals, where feasible, as to the effectiveness of the several programs. The Commission shall also include in such reports such recommendations as shall have been made by the Commission to the Director for effectuating the purposes of the Agency, and the action taken to carry out such recommendations.

"(3) The Commission may also submit such other reports to the Congress as it considers appropriate, and shall make reports to the public in the United States and abroad to develop a better understanding of and support for the programs conducted by the Agency.

"(4) The Commission's reports to the Congress shall include assessments of the degree to which the scholarly integrity and nonpolitical character of the educational and cultural exchange activities vested in the Director of the United States Information Agency have been maintained, and assessments of the attitudes of foreign scholars and governments regarding such activities.

"(d) LIMITATION ON AUTHORITY.—The Commission shall have no authority with respect to the J. William Fulbright Foreign Scholarship Board or the United States National Commission for UNESCO.".

(b) CONTINUED SERVICE OF MEMBERS OF COMMISSION.—Each member of the United States Advisory Commission on Public Diplomacy as in existence on the day before the effective date of section 604 of the United States Information and Educational Exchange Act of 1948 (as amended by section 213 of Public Law 100-204) shall continue to serve for the remainder of the term to which such member was appointed.

SEC. 207. FOREIGN LANGUAGE SERVICES.

Section 804(1) of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1474(1)) is amended by inserting "when job vacancies occur" after "available".

SEC. 208. USE OF CERTAIN FEES AND PAYMENTS.

Section 810 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1475e) is amended to read as follows:

"SEC. 810. USE OF CERTAIN FEES AND PAYMENTS.

"(a) Notwithstanding section 3302 of title 31, United States Code, or any other law or limitation of authority, fees received by or for the use of the United States Information Agency from or in connection with English-teaching and library services, and Agency-produced publications, and not to exceed $100,000 of payments from motion picture and television programs, produced or conducted by or on behalf of the Agency under the authority of this Act or the Mutual Educational and Cultural Exchange Act of 1961 is authorized to be credited each fiscal year to the appropriate appropriation of the United States Information Agency to such extent as may be provided in advance in an appropriation Act.".

SEC. 209. DEBT COLLECTION.

Title VIII of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1472 et seq.) is amended by adding at the end thereof the following:

"SEC. 811. DEBT COLLECTION.

"(a) CONTRACT AUTHORITY.—(1) Subject to the availability of appropriations, the Director of the United States Information Agency shall enter into contracts for collection services to recover indebtedness owed by a person, other than a foreign country, to the United States which arises out of activities of the United States Information Agency and is delinquent by more than 90 days.

"(2) Each contract entered into under this section shall provide that the person with whom the Director of the United States Information Agency enters into such contract shall submit to the Director at least once every 180 days a status report on the success of the person in collecting debts. Section 3718 of title 31, United States Code, shall apply to any such contract to the extent that such section is not inconsistent with this subsection.

"(b) DISCLOSURE OF DELINQUENT DEBT TO CREDIT REPORTING AGENCIES.—The Director of the United States Information Agency shall, to the extent otherwise allowed by law, disclose to those credit reporting agencies to which the Director reports loan activity information concerning any debt of more than $100 owed by a person, other than a foreign country, to the United States which arises out of activities of the United States Information Agency and is delinquent by more than 31 days.".

SEC. 210. USIA NETWORK FOR DISSEMINATION OF INFORMATION CONCERNING UNITED STATES PROGRAMS TO COMBAT NARCOTICS AND OTHER CONTROLLED SUBSTANCES.

The United States Information Agency shall establish and maintain an international narcotics information network. The network shall disseminate prompt, accurate, and comprehensive information to foreign governments concerning programs and activities of the United States Government—

(1) to eliminate the illicit production, trafficking, and abuse of narcotic and psychotropic drugs and other controlled substances within the United States; and

(2) to promote drug prevention and rehabilitation in the United States.

SEC. 211. AFGHANISTAN COUNTRY PLAN.

(a) MAINTENANCE OF PLAN.—The Director of the United States Information Agency shall maintain a comprehensive country plan for the Agency's activities with respect to Afghanistan, consistent with the plan submitted to the Congress for the fiscal year 1989.

(b) REPORT.—Not later than March 1, 1990, the Director of the United States Information Agency shall submit to the Congress a report describing the Afghanistan country plan and including a specific outline on how that country plan will be adapted for implementation inside a free Afghanistan.

SEC. 212. GENERAL ACCOUNTING OFFICE STUDY OF THE NATIONAL ENDOWMENT FOR DEMOCRACY.

(a) STUDY OF NED.—The Comptroller General of the United States shall conduct a study of the operations of the National Endowment for Democracy. Such study shall evaluate—

(1) the programs and operations of the National Endowment for Democracy;

(2) the effectiveness of the National Endowment for Democracy in fulfilling its goals; and

(3) the management structure of the National Endowment for Democracy, including—

(A) an assessment of the present composition of the board of directors; and

(B) the capability and effectiveness of the board in providing objective oversight of the programs and operations of the National Endowment for Democracy.

(b) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall prepare and submit a report of the findings of such study to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 213. REPORT TO CONGRESS ON THE ACQUISITION AND USE OF PUBLIC PROGRAMMING MATERIALS.

Not later than 90 days after the date of enactment of this Act, the Director of the United States Information Agency shall provide to the chairman of the Foreign Relations Committee of the Senate and the Speaker of the House of Representatives a detailed report describing all programming material acquired by the United States Information Agency in the fiscal years 1988 and 1989 from public television and radio entities, including a description of how such program material was utilized by the United States Information Agency, in whole or in part, in original or edited form. Such report shall include a description of projected United States Information Agency use of programming material acquired for public television and radio entities through the fiscal year 1992.

## PART B—BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS

SEC. 221. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise made available under section 201 for such purposes, there are authorized to be appropriated to the Bureau of Educational and Cultural Affairs to carry out the purposes of the Mutual Educational and Cultural Exchange Act of 1961 the following amounts:

(1) For "Salaries and Expenses", $43,323,000 for the fiscal year 1990 and $45,056,000 for the fiscal year 1991.

(2) For the Fulbright Academic Exchange Programs, $97,460,000 for the fiscal year 1990 and $101,358,000 for the fiscal year 1991.

(3) For the Hubert H. Humphrey Fellowship Program, $5,500,000 for the fiscal year 1990 and $5,720,000 for the fiscal year 1991.

(4) For the International Visitors Program, $41,817,000 for the fiscal year 1990 and $43,490,000 for the fiscal year 1991.

(5) For the Arts America Program, $6,400,000 for the fiscal year 1990 and $6,656,000 for the fiscal year 1991.

(b) ALLOCATION OF FUNDS.—Of the amounts authorized to be appropriated by subsection (a)(1), $150,000 for the fiscal year 1990 and $200,000 for the fiscal year 1991 shall be available only for the training at the University of Maine and in Washington, District of Columbia, of media personnel from developing French-speaking countries. The voice of America International Broadcast Training Center shall administer such training program. The Bureau of Educational and Cultural Exchanges shall provide to the center such assistance as may be necessary in the facilitation of such program.

SEC. 222. CITIZEN EXCHANGES.

(a) IN GENERAL.—Section 112 of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2460) is amended by adding at the end thereof the following new subsection:

"(e) There is established in the Bureau of Educational and Cultural Affairs an Office of Citizen Exchanges. The Office shall support private not-for-profit organizations engaged in the exchange of persons between the United States and other countries.".

(b) TRANSFER OF FUNCTIONS.—There are hereby transferred to the Office of Citizen Exchanges on the date of enactment of this Act all functions carried out by the Office of Private Sector Programs on the day before such date.

SEC. 223. PROGRAMS TO PROMOTE INTERNATIONAL YOUTH UNDERSTANDING.

Section 112(a)(8) of the Mutual Educational and Cultural Exchange Act (22 U.S.C. 2460(a)(8)) is amended by inserting after "degree" the following: "or through other programs designed to promote contact between the young peoples of the United States, the Soviet Union, and Eastern European countries".

SEC. 224. UNITED STATES-SOVIET EXCHANGES.

The Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2451 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 113. UNITED STATES-SOVIET EXCHANGES.—(a) The President is authorized to negotiate and implement an agreement with the Union of Soviet Socialist Republics under which repayments made by the Soviet Union on Lend-Lease debts to the United States would be used to finance the exchange of persons between the United States and the Soviet Union for educational, cultural, and artistic purposes. Exchanges authorized pursuant to this section shall be administered subject to the provisions of this Act. Part of the funds repaid to the United States shall be in convertible currency for the purpose of paying the expenses associated with study and other exchange activities by Soviet citizens in the United States.

"(b) Funds made available for the purposes of this section shall be available only to the extent and in the amounts provided for in an appropriation Act.".

SEC. 225. SCHOLARSHIPS FOR TIBETANS AND BURMESE.

(a) ALLOCATION OF SCHOLARSHIPS.—Of the funds authorized to be appropriated by section 221 for each of the fiscal years 1990 and 1991, not less than 30 scholarships shall be made available to Tibetan students and professionals who are outside Tibet, and not less than 15 scholarships shall be made available to Burmese students and professionals who are outside Burma.

(b) WAIVER.—Subsection (a) shall not apply to the extent that the Director of the United States Information Agency determines that there are not enough qualified students to fulfill such allocation requirement.

SEC. 226. SENSE OF CONGRESS CONCERNING THE HUMPHREY FELLOWSHIP PROGRAM.

It is the sense of the Congress that the United States Information Agency should review the Humphrey Fellowship Program and consider the feasibility of broadening the placement of fellows under such program to provide exposure to the processes of the United States Government, the Congress, and State and local governmental processes.

## PART C—VOICE OF AMERICA

SEC. 231. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the United States Information Agency for the Voice of America for carrying out title V of the United States Information and Educational Exchange Act of 1948 and the Radio Broadcasting to Cuba Act the following amounts:

(1) SALARIES AND EXPENSES.—For "Salaries and Expenses", $170,024,000 for the fiscal year 1990 and $176,825,000 for the fiscal year 1991.

(2) ACQUISITION AND CONSTRUCTION OF RADIO FACILITIES.—For "Acquisition and Construction of Radio Facilities", $69,000,000 for the fiscal year 1990 and $122,000,000 for the fiscal year 1991.

(3) RADIO BROADCASTING TO CUBA.—For "Radio Broadcasting to Cuba", $12,700,000 for the fiscal year 1990 and $13,208,000 for the fiscal year 1991.

(4) VOA EUROPE.—For "VOA Europe", $3,000,000 for the fiscal year 1990 and $3,120,000 for the fiscal year 1991.

SEC. 232. VOICE OF AMERICA HIRING PRACTICES.

Title V of the United States Information and Educational Exchange Act of 1948 is further amended by adding at the end thereof the following new section:

"SEC. 506. VOICE OF AMERICA HIRING PRACTICES.

"(a) PROHIBITION.—After the date of enactment of this section, the Voice of America shall not select candidates for employment who must be or are preapproved for employment at the Voice of America by a foreign government or an entity controlled by a foreign government.

"(b) EXCEPTION.—The prohibition referred to in this section shall not apply to—

"(1) participants in the Voice of America's exchange programs; or

"(2) clerical, technical, or maintenance staff at Voice of America offices in foreign countries.

"(c) REPORT.—If the Director of the United States Information Agency determines that the prohibition under subsection (a) would require the termination of a specific Voice of America foreign language service, then, not less than 90 days before the Agency begins to recruit such candidates, the Director shall submit to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report concerning—

"(1) the number and location of speakers of the applicable foreign language who could be recruited by the Voice of America without violating this section; and

"(2) the efforts made by the Voice of America to recruit such individuals for employment.".

SEC. 233. VOA PUBLIC SERVICE ANNOUNCEMENTS TO PROMOTE CHILD SURVIVAL.

The United States Information Agency shall establish and maintain through the Voice of America a system of public service announcements focusing on child survival techniques.

SEC. 234. VOICE OF AMERICA BROADCASTS TO TIBET.

(a) ESTABLISHMENT OF SERVICE.—Not later than 90 days after the date of enactment of this Act, the Director of the United States Information Agency shall establish through the Voice of America, a service to provide Voice of America Tibetan language programming to the people of Tibet.

(b) AMOUNT OF PROGRAMMING.—For each of the fiscal years 1990 and 1991, programming broadcasts to the people of Tibet pursuant to this section shall occur for not less than two hours each day.

(c) REPORT.—As soon as possible in the fiscal year 1990, the Director of the United States Information Agency shall submit to the Congress a comprehensive written report detailing the implementation of the programming provided for in this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds otherwise available under subsection (e), there are authorized to be appropriated to the Voice of America for purposes of carrying out this section $1,000,000 for each of the fiscal years 1990 and 1991.

(e) TRANSFER AUTHORITY.—The Director of the United States Information Agency may transfer to Voice of America Tibet Service such amounts appropriated for the "Television and Film Service" for each of the fiscal years 1990 and 1991 as exceed the amounts authorized to be appropriated for each such fiscal year for such Service.

SEC. 235. VOICE OF AMERICA'S THAILAND RADIO FACILITIES.

The Director of the United States Information Agency may enter into a contract for the construction of the Voice of America's Thailand radio facilities for periods not in excess of 5 years or delegate such authority to the Corps of Engineers of the United States Department of the Army if there are sufficient funds to cover at least the Government's liability for payments for the fiscal year in which the contract is awarded plus the full amount of estimated cancellation costs.

SEC. 236. VOICE OF AMERICA BROADCASTS TO THE PEOPLE'S REPUBLIC OF CHINA.

For each of the fiscal years 1990 and 1991, the Voice of America shall provide not less than 12 hours of programming each day for the People's Republic of China.

SEC. 237. VOICE OF AMERICA EQUIPMENT ABROAD.

It is the sense of the Congress that the United States Information Agency and the Voice of America should take every step necessary to ensure that existing Voice of America equipment abroad is properly maintained and enhanced to prevent deterioration.

## PART D—TELEVISION BROADCASTING TO CUBA

SEC. 241. SHORT TITLE.

This part may be cited as the "Television Broadcasting to Cuba Act".

SEC. 242. FINDINGS AND PURPOSES.

The Congress finds and declares that—

(1) it is the policy of the United States to support the right of the people of Cuba to seek, receive, and impart information and ideas through any media and regardless of frontiers, in accordance with article 19 of the Universal Declaration of Human Rights;

(2) consonant with this policy, television broadcasting to Cuba may be effective in furthering the open communication of accurate information and ideas to the people of Cuba and, in particular, information about Cuba;

(3) television broadcasting to Cuba, operated in a manner not inconsistent with the broad foreign policy of the United States and in accordance with high professional standards, would be in the national interest;

(4) facilities broadcasting television programming to Cuba must be operated in a manner consistent with applicable regulations of the Federal Communications Commission, and must not affect the quality of domestic broadcast transmission or reception; and

(5) that the Voice of America already broadcasts to Cuba information that repre-

sents America, not any single segment of American society, and includes a balanced and comprehensive projection of significant American thought and institutions, but that there is a need for television broadcasts to Cuba which provide news, commentary, and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba.

SEC. 243. TELEVISION BROADCASTING TO CUBA.

(a) TELEVISION BROADCASTING TO CUBA.—In order to carry out the purposes set forth in section 242 and notwithstanding the limitation of section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461) with respect to the dissemination in the United States of information prepared for dissemination abroad to the extent such dissemination is inadvertent, the United States Information Agency (hereafter in this part referred to as the "Agency") shall provide for the open communication of information and ideas through the use of television broadcasting to Cuba. Television broadcasting to Cuba shall serve as a consistently reliable and authoritative source of accurate, objective, and comprehensive news.

(b) VOICE OF AMERICA STANDARDS.—Television broadcasting to Cuba under this part shall be in accordance with all Voice of America standards to ensure the broadcast of programs which are objective, accurate, balanced, and which present a variety of views.

(c) USIA TELEVISION MARTI.—Any program of United States Government television broadcasts to Cuba authorized by this section shall be designated "USIA Television Marti Program".

(d) FREQUENCY ASSIGNMENT.—

(1) Subject to the Communications Act of 1934, the Federal Communications Commission shall assign by order a suitable frequency to further the national interests expressed in this part, except that no such assignment shall result in objectionable interference with the broadcasts of any domestic licensee.

(2) No Federal branch or agency shall compel an incumbent domestic licensee to change its frequency in order to eliminate objectionable interference caused by broadcasting of the Service.

(3) For purposes of section 305 of the Communications Act of 1934, a television broadcast station established for purposes of this part shall be treated as a government station, but the Federal Communications Commission shall exercise the authority of the President under such section to assign a frequency to such station.

(e) INTERFERENCE WITH DOMESTIC BROADCASTING.—

(1) Broadcasting by the Television Marti Service shall be conducted in accordance with such parameters as shall be prescribed by the Federal Communications Commission to preclude objectionable interference with the broadcasts of any domestic licensee. The Television Marti Service shall be governed by the same standards regarding objectionable interference as any domestic licensee. The Federal Communications Commission shall monitor the operations of television broadcasting to Cuba pursuant to subsection (f). If, on the basis of such monitoring or a complaint from any person, the Federal Communications Commission determines, in its discretion, that broadcasting by the Television Marti Service is causing objectionable interference with the transmission or reception of the broadcasts of a domestic licensee, the Federal Communications Commission shall direct the Television Marti Service to cease broadcasting and to eliminate the objectionable interference. Broadcasts by the Service shall not be resumed until the Federal Communications Commission finds that the objectionable interference has been eliminated and should not recur.

(2) The Federal Communications Commission shall take such actions as are necessary and appropriate to assist domestic licensees in overcoming the adverse effects of objectionable interference caused by broadcasting by the Television Marti Service. Such assistance may include the authorization of nondirectional increases in the effective radiated power of a domestic television station so that its coverage is equivalent to the maximum allowable for such facilities, to avoid any adverse effect on such stations of the broadcasts of the Television Marti Service.

(3) If the Federal Communications Commission directs the Television Marti Service to cease broadcasting pursuant to paragraph (1), the Commission shall, as soon as practicable, notify the appropriate committees of Congress of such action and the reasons therefor. The Federal Communications Commission shall continue to notify the appropriate committees of Congress of progress in eliminating the objectionable interference and shall assure that Congress is fully informed about the operation of the Television Marti Service.

(f) MONITORING OF INTERFERENCE.—The Federal Communications Commission shall continually monitor and periodically report to the appropriate committees of the Congress interference to domestic broadcast licensees—

(1) from the operation of Cuban television and radio stations; and

(2) from the operations of the television broadcasting to Cuba.

(g) TASK FORCE.—It is the sense of the Congress that the President should establish a task force to analyze the level of interference from the operation of Cuban television and radio stations experienced by broadcasters in the United States and to seek a practical political and technical solution to this problem.

SEC. 244. TELEVISION MARTI SERVICE OF THE UNITED STATES INFORMATION AGENCY.

(a) TELEVISION MARTI SERVICE.—The Director of the United States Information Agency shall establish within the Voice of America a Television Marti Service. The Service shall be responsible for all television broadcasts to Cuba authorized by this part. The Director of the United States Information Agency shall appoint a head of the Service who shall report directly to the Director of the Voice of America. The head of the Service shall employ such staff as the head of the Service may need to carry out the duties of the Service.

(b) USE OF EXISTING FACILITIES OF THE USIA.—To assure consistency of presentation and efficiency of operations in conducting the activities authorized under this part, the Television Marti Service shall make maximum feasible utilization of Agency facilities and management support, including Voice of America: Cuba Service, Voice of America, and the United States Information Agency Television Service.

(c) USIA AUTHORITY.—The Agency may carry out the purposes of this part by means of grants, leases, or contracts (subject to the availability of appropriations), or such other means as the Agency determines will be most effective.

SEC. 245. AMENDMENTS TO THE RADIO BROADCASTING TO CUBA ACT.

(a) ADVISORY BOARD FOR CUBA BROADCASTING.—Section 5 of the Radio Broadcasting to Cuba Act (22 U.S.C. 1465c) is amended—

(1) by amending the heading to read as follows: "ADVISORY BOARD FOR CUBA BROADCASTING";

(2) by amending subsections (a) and (b) to read as follows:

"(a) There is established within the Office of the President the Advisory Board for Cuba Broadcasting (hereafter in this Act referred to as the 'Board'). The Board shall consist of nine members, appointed by the President by and with the advice and consent of the Senate, of whom not more than five shall be members of the same political party. The President shall designate one member of the Board to serve as chairperson.

"(b) The Board shall review the effectiveness of the activities carried out under this Act and the Television Broadcasting to Cuba Act and shall make recommendations to the President and the Director and Associate Director for Broadcasting of the United States Information Agency as it may consider necessary.";

(3) by amending subsection (d) to read as follows:

"(d) The head of the Cuba Service and the head of the Television Marti Service shall serve, ex officio, as members of the Board."; and

(4) in the last sentence of subsection (e) by striking out "The ex officio member" and inserting in lieu thereof "The ex officio members".

(b) REFERENCES.—A reference in any provision of law to the "Advisory Board for Radio Broadcasting to Cuba" shall be considered to be a reference to the "Advisory Board for Cuba Broadcasting".

(c) CONTINUED SERVICE OF MEMBERS OF BOARD.—Each member of the Advisory Board for Radio Broadcasting to Cuba as in existence on the day before the effective date of the amendment made by subsection (a) shall continue to serve for the remainder of the term to which such member was appointed as a member of the Advisory Board for Cuba Broadcasting.

(d) STAFF DIRECTOR.—The Board shall have a staff director who shall be appointed by the Chairperson of the Advisory Board for Cuba Broadcasting.

SEC. 246. ASSISTANCE FROM OTHER GOVERNMENT AGENCIES.

In order to assist the United States Information Agency in carrying out the provisions of this part, any agency or instrumentality of the United States may sell, loan, lease, or grant property (including interests therein) and may perform administrative and technical support and services at the request of the Agency.

SEC. 247. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise made available under section 201 for such purposes, there are authorized to be appropriated to the United States Information Agency, $16,000,000 for the fiscal year 1990 and $16,000,000 for the fiscal year 1991 for television broadcasting to Cuba in accordance with the provisions of this part.

(b) LIMITATION.—

(1) Subject to paragraph (2), no funds authorized to be appropriated under subsection (a) may be obligated or expended unless the President determines and notifies the appropriate committees of Congress

that the test of television broadcasting to Cuba (as authorized by title V of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Public Law 100-459)) has demonstrated television broadcasting to Cuba is feasible and will not cause objectionable interference with the broadcasts of incumbent domestic licensees. The Federal Communications Commission shall furnish to the appropriate committees of Congress all interim and final reports and other appropriate documentation concerning objectionable interference from television broadcasting to Cuba to incumbent domestic licensees.

(2) Not less than 30 days before the President makes the determination under paragraph (1), the President shall submit a report to the appropriate committees of the Congress which includes the findings of the test of television broadcasting to Cuba. The period for the test of television broadcasting may be extended until—

(A) the date of the determination and notification by the President under paragraph (1), or

(B) 30 days,

whichever comes first.

SEC. 248. DEFINITIONS.

As used in this part—

(1) the term "licensee" has the meaning provided in section 3(c) of the Communications Act of 1934;

(2) the term "incumbent domestic licensee" means a licensee as provided in section 3(c) of the Communications Act of 1934 that was broadcasting a television signal as of January 1, 1989;

(3) the term "objectionable interference" shall be applied in the same manner as such term is applied under regulations of the Federal Communications Commission to other domestic broadcasters; and

(4) the term "appropriate committees of Congress" includes the Committee on Foreign Affairs and the Committee on Energy and Commerce of the House of Representatives and the Committee on Foreign Relations of the Senate.

## TITLE III—BOARD FOR INTERNATIONAL BROADCASTING

SEC. 301. AUTHORIZATIONS OF APPROPRIATIONS.

(a) AMENDMENT TO BOARD FOR INTERNATIONAL BROADCASTING ACT OF 1973.—Subparagraph (A) of section 8(a)(1) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2877(a)(1)) is amended to read as follows:

"(A) $180,330,000 for the fiscal year 1990 and $187,543,000 for the fiscal year 1991, at April 21, 1989, exchange rates, and such additional amounts for each such fiscal year as may be necessary to offset adverse fluctuations in foreign currency exchange rates after such date; and".

(b) RADIO TRANSMITTER CONSTRUCTION AND MODERNIZATION.—There are authorized to be appropriated to the Board for International Broadcasting for radio transmitter construction and modernization $15,845,000 for the fiscal year 1990 and $12,000,000 for the fiscal year 1991. Amounts appropriated under this subsection are authorized to remain available until expended.

(c) BROADCASTING RELAY STATION IN ISRAEL.—

(1) There are authorized to be appropriated to the Board for International Broadcasting for the costs associated with construction of a relay station in Israel, $183,500,000 for the fiscal year 1990 and $23,500,000 for the fiscal year 1991. Amounts appropriated under this subsection are authorized to remain available until expended.

(2) To the extent not precluded by the international agreement with the host foreign country of June 18, 1987, and to the extent practicable, not less than 10 percent of the amounts which are authorized to be appropriated under paragraph (1), and which are available for contracts with United States contractors, shall be made available only for contracts and subcontracts with economically and socially disadvantaged enterprises (within the meaning of section 133(c)(5) of the International Development and Food Assistance Act of 1977).

SEC. 302. REQUIREMENT FOR AUTHORIZATION OF APPROPRIATIONS.

(a) LIMITATION ON OBLIGATION AND EXPENDITURE OF FUNDS.—Notwithstanding any other provision of law, for the fiscal year 1990 and for each subsequent fiscal year, any funds appropriated for the Board for International Broadcasting shall not be available for obligation or expenditure—

(1) unless such funds are appropriated pursuant to an authorization of appropriations; or

(2) in excess of the authorized level of appropriations.

(b) SUBSEQUENT AUTHORIZATION.—The limitation under subsection (a) shall not apply to the extent that an authorization of appropriations is enacted after such funds are appropriated.

(c) APPLICATION.—The provisions of this section—

(1) may not be superseded, except by a provision of law which specifically repeals, modifies, or supersedes the provisions of this section; and

(2) shall not apply to, or affect in any manner, permanent appropriations, trust funds, and other similar accounts which are authorized by law and administered by the Board for International Broadcasting.

SEC. 303. PROCUREMENT OF LEGAL SERVICES.

Section 26(b) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2698) is amended by striking out "International Communication Agency" and inserting in lieu thereof "United States Information Agency, the chairman of the Board for International Broadcasting,".

SEC. 304. RADIO FREE AFGHANISTAN.

Section 2(5) of the Board for International Broadcasting Act of 1973 (22 U.S.C. 2871(5)) is amended by striking out "(as long as it is under Soviet occupation)" and inserting in lieu thereof "(until the government in Kabul is replaced by a government achieved through a free act of self-determination)".

## TITLE IV—INTERNATIONAL ORGANIZATIONS AND COMMISSIONS

SEC. 401. UNITED STATES MEMBERSHIP IN INTERNATIONAL SUGAR ORGANIZATION AND INTERNATIONAL TROPICAL TIMBER ORGANIZATION.

(a) UNITED STATES MEMBERSHIP.—The President is authorized to maintain membership of the United States in the International Sugar Organization and the International Tropical Timber Organization.

(b) PAYMENT OF ASSESSED CONTRIBUTIONS.—For the fiscal year 1991 and for each fiscal year thereafter, the United States assessed contributions to such organizations may be paid from funds appropriated for "Contributions to International Organizations".

SEC. 402. AUTHORIZATION FOR MEMBERSHIP IN THE INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE AND NATURAL RESOURCES.

The President is authorized to maintain membership of the United States in the International Union for the Conservation of Nature and Natural Resources (IUCN).

SEC. 403. AUTHORIZATION OF APPROPRIATIONS FOR MEMBERSHIP IN WILDLIFE CONVENTIONS.

There are authorized to be appropriated to the President $1,511,000 for the fiscal year 1990 and $1,571,440 for the fiscal year 1991 in support of United States participation in the following international environmental organizations and conventions of which not more than—

(1) $650,000 for the fiscal year 1990 shall be available for dues and arrearages for United States contributions to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

(2) $231,000 for the fiscal year 1990 shall be available for dues and arrearages for United States contributions to the International Tropical Timber Organization (ITTO);

(3) $450,000 for the fiscal year 1990 shall be available to support United States participation in the World Heritage Convention; and

(4) $180,000 for the fiscal year 1990 shall be available to support United States participation in the International Union for the Conservation of Nature and Natural Resources.

SEC. 404. AUTHORIZATION OF APPROPRIATIONS FOR THE COMMISSION ON THE UKRAINE FAMINE.

There are authorized to be appropriated for the Commission on the Ukraine Famine $100,000 for the fiscal year 1990, which amount is authorized to remain available until expended.

SEC. 405. REFORM IN BUDGET DECISION-MAKING PROCEDURES OF THE UNITED NATIONS AND ITS SPECIALIZED AGENCIES.

(a) FINDINGS.—(1) The Congress finds that the United Nations and its specialized agencies have made progress in the formulation and implementation of budget reforms as called for by section 143 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Public Law 99-93). Presidential determinations that were required by that and other laws confirm the progress that has been made in this respect.

(2) The Congress remains concerned about the need to make further progress to protect the independence of the international civil service working at the United Nations and urges the President to make vigorous efforts to this end.

(3) The Congress is specifically concerned with the practice of reserving certain professional staff slots in the United Nations Secretariat for nationals of certain member states, and urges the President to pursue vigorously a program of regular rotation in these staff positions among all member states of the United Nations.

(b) FINANCIAL RESPONSIBILITY IN BUDGET PROCEDURES.—To assure financial responsibility in preparation of the assessed budgets of the United Nations and its specialized agencies, it is the sense of the Congress that the President should continue vigorous efforts to ensure continued implementation by the United Nations and its specialized agencies of consensus-based decision-making procedures where applicable on budgetary matters which assure that sufficient atten-

tion is paid to the views of the United States and other member states who are major financial contributors to such assessed budgets.

(c) LIMITATION ON ASSESSED CONTRIBUTIONS.—

(1) For assessed contributions authorized to be appropriated by section 102(a)(1) of this Act, the President shall withhold 20 percent of the funds appropriated for the United States assessed contribution to the United Nations or to any of its specialized agencies for any calendar year until the President determines and reports to the Congress that the United Nations or any such agency—

(A) has continued implementation of decision-making procedures on budgetary matters referred to in subsection (b); and

(B) in the case of the United Nations—

(i) is making further progress toward the elimination of the abuse of secondment in the United Nations Secretariat which undermines the independence of the international civil service; and

(ii) is implementing the 15 percent reduction in the staff of the United Nations Secretariat (recommendation 15 of the Group of High Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations (Group of 18)) and that such reduction is being equitably applied among the nationals on such staff.

(2) The President shall notify the Congress when each such determination is made. Each such notification shall include appropriate consultation between the President or his designated representative and the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 406. ANNUAL REPORT TO CONGRESS ON VOTING PRACTICES AT THE UNITED NATIONS.

(a) IN GENERAL.—Not later than March 31 of each year, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a full and complete annual report which assesses for the preceding calendar year, with respect to each foreign country member of the United Nations, the voting practices of the governments of such countries at the United Nations, and which evaluates General Assembly and Security Council actions and the responsiveness of those governments to United States policy on issues of special importance to the United States.

(b) INFORMATION ON VOTING PRACTICES IN THE UNITED NATIONS.—Such report shall include, with respect to voting practices and plenary actions in the United Nations during the preceding calendar year, information to be compiled and supplied by the Permanent Representative of the United States to the United Nations, consisting of—

(1) an analysis and discussion, prepared in consultation with the Secretary of State, of the extent to which member countries supported United States policy objectives at the United Nations;

(2) an analysis and discussion, prepared in consultation with the Secretary of State, of actions taken by the United Nations by consensus;

(3) with respect to plenary votes of the United Nations General Assembly—

(A) a listing of all such votes on issues which directly affected important United States interests and on which the United States lobbied extensively and a brief description of the issues involved in each such vote;

(B) a listing of the votes described in subparagraph (A) which provides a comparison of the vote cast by each member country with the vote cast by the United States;

(C) a country-by-country listing of votes described in subparagraph (A); and

(D) a listing of votes described in subparagraph (A) displayed in terms of United Nations regional caucus groups;

(4) a listing of all plenary votes cast by member countries of the United Nations in the General Assembly which provides a comparison of the votes cast by each member country with the vote cast by the United States;

(5) an analysis and discussion, prepared in consultation with the Secretary of State, of the extent to which other members supported United States policy objectives in the Security Council and a separate listing of all Security Council votes of each member country in comparison with the United States; and

(6) a side-by-side comparison of agreement on important and overall votes for each member country and the United States.

(c) FORMAT.—Information required pursuant to subsection (b)(3) shall also be submitted, together with an explanation of the statistical methodology, in a format identical to that contained in chapter II of the Report to Congress on Voting Practices in the United Nations, dated March 14, 1988.

(d) STATEMENT BY THE SECRETARY OF STATE.—Each report under subsection (a) shall contain a statement by the Secretary of State discussing the measures which have been taken to inform United States diplomatic missions of United Nations General Assembly and Security Council activities.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The following provisions of law are repealed:

(1) The second undesignated paragraph of section 101(b)(1) of the Foreign Assistance and Related Programs Appropriations Act, 1984 (Public Law 98-151; 97 Stat. 967).

(2) Section 529 of the Foreign Assistance and Related Programs Appropriations Act, 1986, as enacted by Public Law 99-190 (99 Stat. 1307).

(3) Section 528 of the Foreign Assistance and Related Programs Appropriations Act, 1987, as enacted by Public Law 99-500 (100 Stat. 1783) and Public Law 99-591 (100 Stat. 3341).

(4) Section 528 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as enacted by Public Law 100-202 (101 Stat. 1329).

(5) Section 527 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, as enacted by Public Law 100-461.

SEC. 407. DENIAL OF VISAS TO CERTAIN REPRESENTATIVES TO THE UNITED NATIONS.

(a) IN GENERAL.—The President shall use his authority, including the authorities contained in section 6 of the United Nations Headquarters Agreement Act (Public Law 80-357), to deny any individual's admission to the United States as a representative to the United Nations if the President determines that such individual has been found to have been engaged in espionage activities directed against the United States or its allies and may pose a threat to United States national securrity interests.

(b) WAIVER.—The President may waive the provisions of subsection (a) if the President determines, and so notifies the Congress, that such a waiver is in the national security interests of the United States.

SEC. 408. POLICY ON UNESCO.

(a) CONGRESSIONAL FINDINGS.—The Congress finds that—

(1) the United States withdrew from the United Nations Educational, Scientific and Cultural Organization (UNESCO) on December 31, 1984, in response to grave and persistent problems in UNESCO under the then-Director General;

(2) chief among these problems was the assault on the free flow of information supported by that Director General and the pervasive ideological conflict fomented by the alliance between totalitarian and developing nations;

(3) UNESCO has since acquired a new Director General, Federico Mayor, who has pledged his support for the free flow of information, the return of UNESCO to the principles enunciated in its Charter, and other needed changes in UNESCO policy;

(4) Soviet Foreign Minister Eduard Shevardnadze stated on October 11, 1988, that the Soviet Union was responsible for "the exaggerated ideological approach [that] undermined tolerance intrinsic to UNESCO," and stated that Soviet policy would improve in this regard;

(5) substantial progress remains to be made in implementing the reforms proposed by the new Director General and in determining the degree to which ideological conflict has actually declined; and

(6) when the United States withdrew from UNESCO, the policy of the United States was that at such time as satisfactory changes were achieved in UNESCO, the United States would act on reentry.

(b) POLICY.—It is the sense of the Congress that the Secretary of State should monitor closely the changes achieved in UNESCO and should work with United States allies and the UNESCO leadership to continue to promote the progress necessary to justify United States consideration of reentry into UNESCO.

(c) REPORT REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall prepare and submit to the Congress a report on the activities after December 31, 1984, of the United Nations Educational, Scientific, and Cultural Organization.

SEC. 409. UNITED STATES COMMISSION ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS.

Section 727 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204) is amended in subsection (b) by inserting "the greater of" after "than".

SEC. 410. CONTRIBUTION TO THE REGULAR BUDGET OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS.

Notwithstanding section 742 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204), for each of the fiscal years 1990 and 1991, the Secretary of State shall not be required to make an annual contribution to the regular budget of the International Committee of the Red Cross of an amount which is greater than 10 percent of the 1989 regular budget of the International Committee of the Red Cross.

SEC. 411. SENSE OF CONGRESS CONCERNING AN ENHANCED ROLE FOR THE INTERNATIONAL COURT OF JUSTICE IN RESOLUTION OF INTERNATIONAL DISPUTES.

(a) FINDINGS.—The Congress makes the following findings:

(1) In 1945, the United States supported the establishment of the International Court of Justice (ICJ) to provide for the orderly resolution of disputes among nations under the rule of law.

(2) The United States, pursuant to Article 93 of the Charter of the United Nations, is also a party to the Statute of the International Court of Justice which provides in Article 36(1) that the International Court of Justice will have jurisdiction over "all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force".

(3) In August 1946, the United States, pursuant to Senate advice and consent (61 Stat. 1218), voluntarily accepted the compulsory jurisdiction of the International Court of Justice in other international disputes under Article 36(2) of the Statute of the International Court of Justice, on certain conditions, and maintained such recognition for four decades from 1946 to 1986 when United States acceptance was terminated.

(4) The United States has utilized the International Court of Justice on numerous occasions to resolve disputes with other nations.

(5) In April 1984, the United States notified the Secretary General of the United Nations that the United States was suspending for two years its acceptance of the compulsory jurisdiction of the International Court of Justice in cases relating to Central America.

(6) In 1985, the United States announced it was terminating, in whole, United States acceptance (effective April 1, 1986) of the compulsory jurisdiction of the International Court of Justice.

(7) The Soviet Union, as a member of the United Nations, is also a party to the Statute of the International Court of Justice and is thus bound by Article 36(1).

(8) The Soviet Union, unlike the United States, has not since the inception of the International Court of Justice voluntarily accepted the compulsory jurisdiction of the ICJ under Article 36(2) or taken any other case voluntarily to the court.

(9) Soviet leader Mikhail Gorbachev, in his address to the United Nations in December of 1988 said: "We believe that the jurisdiction of the International Court of Justice at the Hague as regards the interpretation and implementation of agreements on human rights should be binding on all states.".

(10) The Legal Adviser of the State Department is holding discussions with Soviet officials and representatives of other permanent members of the United Nations Security Council and other states to determine whether and how the International Court of Justice might be used for the peaceful settlement of international disputes through procedures that assure fairness and the protection of legitimate national interests.

(b) SENSE OF CONGRESS.—The Congress commends and strongly supports efforts by the United States to broaden, where appropriate, the compulsory jurisdiction and enhance the effectiveness of the International Court of Justice.

SEC. 412. INTERNATIONAL BOUNDARY AND WATER COMMISSION.

(a) AUTHORIZATION.—Title I of the Act of June 20, 1956 (70 Stat. 302; 22 U.S.C. 277d-12), is amended in the fourth undesignated paragraph under the heading "INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO"—

(1) by inserting "or sanitation" after "flood control"; and

(2) by inserting before the period at the end thereof the following: ", the Colorado or Tijuana Rivers, and for taking emergency actions to protect against health threatening sanitation problems by repairing or replacing existing capital infrastructure along the United States-Mexico Boundary".

(b) RESTRICTIONS.—The Act of May 13, 1924, as amended (49 Stat. 660; 22 U.S.C. 277-277f), is amended—

(1) in section 3 (22 U.S.C. 277b) by—

(A) by inserting "(1)" after "authorized";

(B) by striking out "and (b)" and inserting in lieu thereof "(2)";

(C) by inserting before the period at the end thereof the following: "; and (3) to carry out preliminary surveys, operations, and maintenance of the interceptor system constructed to intercept sewage flows from Tijuana from selected canyon areas"; and

(D) by adding at the end thereof the following new subsections:

"(b) Expenditures for the Rio Grande bank protection project shall be subject to the provisions and conditions made with respect to that project in the first undesignated paragraph under the heading 'INTERNATIONAL OBLIGATIONS' contained in the Act of April 25, 1945 (59 Stat. 89).

"(c) The Anzalduas diversion dam shall not be operated for irrigation or water supply purposes in the United States unless suitable arrangements have been made with the prospective water users for repayment to the Government of the United States for such portions of the dam as shall have been allocated to such purposes by the Secretary of State."; and

(2) in section 2 (49 Stat. 660; 22 U.S.C. 277a) by striking out "and stabilization" and inserting in lieu thereof "stabilization, drainage of transboundary storm waters,".

SEC. 413. REVIEW OF MULTILATERAL AND BILATERAL COMMISSIONS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall prepare and submit a report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate which provides a review of United States participation in all multilateral and bilateral commissions for which appropriations are authorized to be made under the "International Commissions" account of the Department of State. Together with such comments and recommendations as the Secretary considers appropriate, such report shall include—

(1) a justification for United States participation in each multilateral or bilateral commission;

(2) an assessment of the effectiveness of each multilateral or bilateral commission in which the United States participates; and

(3) information concerning the cost of United States participation in each such commission.

SEC. 414. MEMBERSHIP OF THE PALESTINE LIBERATION ORGANIZATION IN UNITED NATIONS AGENCIES.

(a) PROHIBITION.—No funds authorized to be appropriated by this Act or any other Act shall be available for the United Nations or any specialized agency thereof which accords the Palestine Liberation Organization the same standing as member states.

(b) TRANSFER OR REPROGRAMMING.—Funds subject to the prohibition contained in subsection (a) which would be available for the United Nations or any specialized agency thereof (but for that prohibition) are authorized to remain available until expended and may be reprogrammed or transferred to any other account of the Department of State or the Agency for International Development to carry out the general purposes for which such funds were authorized.

SEC. 415. SENSE OF CONGRESS CONCERNING THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINIAN REFUGEES IN THE NEAR EAST (UNRWA).

(a) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) international burdensharing of the costs of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) is crucial to the survival of such organization;

(2) the Secretary of State should redouble the efforts of the Department of State to promote international burdensharing of the costs of UNRWA's operations; and

(3) regular and substantial contributions by the Arab states to the budget of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East would reflect the commitment of Arab states to a peaceful political settlement in the Middle East.

(b) REPORT TO CONGRESS.—The Secretary of State shall prepare and submit a report on progress being made to promote international burdensharing of the costs of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 416. UNITED NATIONS SPONSORSHIP OF A MIDDLE EAST PEACE CONFERENCE.

(a) FINDINGS.—The Congress finds that—

(1) the General Assembly of the United Nations adopted Resolution No. 3379 on November 10, 1975, maintaining that Zionism constituted a form of racism;

(2) most of the proposals for an international peace conference regarding the Middle East have identified the United Nations as the sponsoring organization for such a conference;

(3) all international diplomatic participants in any potential Middle East peace conference must acknowledge the sovereignty of the State of Israel and the right of its citizens to live within secure and permanent boundaries;

(4) United Nations General Assembly Resolution No. 3379 of November 10, 1975, damages the credibility of the General Assembly as a forum for furthering the search for peace in the Middle East; and

(5) the United States does not favor an international conference on the Middle East at this time, and believes that the Israeli proposal for elections that was advanced in May 1989 is the best available vehicle for furthering the Middle East peace process.

(b) POLICY.—The Congress declares, therefore, that—

(1) the United States should use all appropriate means to obtain rescission by the United Nations General Assembly of Resolution No. 3379 and calls upon the General Assembly to do so; and

(2) so long as that resolution remains in effect, the General Assembly and all affiliated agencies of the United Nations constitute an inappropriate forum for the sponsorship of any international conference on the Arab-Israeli conflict.

SEC. 417. CONTRIBUTIONS FOR PEACEKEEPING ACTIVITIES IN SOUTHERN AFRICA.

(a) ASSURANCES THAT ALL CUBAN TROOPS WILL BE WITHDRAWN.—The United States may not, after the date of enactment of this Act, expend any funds authorized to be appropriated by this Act for a contribution or any other assistance with respect to implementation of the Tripartite Agreement until the President certifies to the Congress that—

(1) the United States has received explicit and reliable assurances from each of the parties to the Bilateral Agreement that all Cuban troops will be withdrawn from Angola by July 1, 1991, and that no Cuban troops will remain in Angola after that date; and

(2) the Secretary General of the United Nations has assured the United States that it is his understanding that all Cuban troops will be withdrawn from Angola by July 1, 1991, and that no Cuban troops will remain in Angola after that date.

(b) CONTRIBUTIONS CONDITIONAL ON COMPLIANCE.—The United States may not expend any funds authorized to be appropriated by this Act for a contribution or any other assistance with respect to implementation of the Tripartite Agreement—

(1) if the Government of Cuba fails at any time to comply with any of its obligations under Article 1 of the Bilateral Agreement (relating to the calendar for redeployment and withdrawal of Cuban troops); or

(2) if any Cuban troops remain in Angola after July 1, 1991.

(c) REPORTS TO CONGRESS, COMPLIANCE WITH OBLIGATIONS.—Not more than 15 days after each scheduled phase of the redeployment northward and withdrawal of Cuban troops pursuant to the Bilateral Agreement, the President shall submit to the appropriate congressional committees a report on whether each of the signatories of the Tripartite Agreement is complying with its obligations under the agreement. Whenever he has determined that a material breach of the Tripartite Agreement may have been committed by any of the signatories to that agreement, the President shall so report to the appropriate congressional committees.

(d) DISBURSEMENTS.—Of the amount authorized to be appropriated to be made available for contribution with respect to implementation of the Agreement Among the People's Republic of Angola, the Republic of Cuba, and the Republic of South Africa signed at the United Nations on December 22, 1988 (hereinafter known as the Tripartite Agreement) 50 percent of the annual amount shall be available on October 1, 1989, and the remaining 50 percent on April 1, 1990, only if the President determines and certifies to the appropriate congressional committees as of each date that (1) each of the signatories to the Tripartite Agreement is in compliance with its obligations under the Agreement, (2) the Government of Cuba has complied with its obligations under Article 1 of the Bilateral Agreement (relating to the calendar for redeployment and withdrawal of Cuban troops), (3) the Cubans have not engaged in any offensive military actions against UNITA, including the use of chemical warfare, (4) the United Nations and its affiliated agencies have terminated all funding and other support, in conformity with the United Nations impartiality package, to the South West Africa People's Organization (SWAPO), and (5) the United Nations Angola Verification Mission is demonstrating diligence, impartiality, and professionalism in verifying the departure of Cuban troops and the recording of any troop rotations.

(e) Funding of these activities by the United States may not be construed as constituting recognition of any government in Angola.

(f) For purposes of this section—

(1) term "Bilateral Agreement" means the Agreement Between the Governments of the People's Republic of Angola and the Republic of Cuba for the Termination of the International Mission of the Cuban Military Contingent, signed at the United Nations on December 22, 1988;

(2) the term "Tripartite Agreement" means the Agreement Among the People's Republic of Angola, the Republic of Cuba, and the Republic of South Africa, signed at the United Nations on December 22, 1988; and

(3) term "appropriate congressional committees" means the Committees on Appropriations, Foreign Affairs, and Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations, Foreign Relations, and the Select Committee on Intelligence of the Senate.

## TITLE V—ASIA FOUNDATION

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

Section 404 of The Asia Foundation Act (22 U.S.C. 4403) is amended to read as follows:

"SEC. 404. FUNDING.

"(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of State $13,900,000 for the fiscal year 1990 and $18,000,000 for the fiscal year 1991 for grants to The Asia Foundation pursuant to this title.

"(b) ALLOCATION OF FUNDS.—Of amounts authorized to be appropriated under subsection (a), $1,324,000 for the fiscal year 1990 and $1,324,000 for the fiscal year 1991 shall be available only for the expansion of programs and services (including the establishment of a field office) for Oceania, comprised of Polynesia, Micronesia, and Melanesia.".

## TITLE VI—INTER-AMERICAN FOUNDATION

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

Section 401 of the Inter-American Foundation Act (22 U.S.C. 290f) is amended in subsection (s)(2) by striking out the first sentence and inserting in lieu thereof "There are authorized to be appropriated $16,932,000 for the fiscal year 1990 and $25,000,000 for the fiscal year 1991 to carry out the purposes of this section.".

## TITLE VII—REFUGEE AND OTHER PROVISIONS

SEC. 701. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES AUDIT REQUIREMENT.

Subsection (a) of section 8 of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2606) is amended to read as follows:

"(a) PROGRAM AUDITS.—Funds may not be available to the United Nations High Commissioner for Refugees (UNHCR) under this or any other Act unless provision is made for—

"(1) annual program audits to determine the use of UNHCR funds, including the use of such funds by implementing partners; and

"(2) such audits are made available through the Department of State for inspection by the Comptroller General of the United States.".

SEC. 702. TIBETAN AND BURMESE REFUGEES.

(a) TIBETAN REFUGEES.—Of the amounts authorized to be appropriated by section 104(a)(1) for the Department of State for "Migration and Refugee Assistance" $500,000 for the fiscal year 1990 and $500,000 for the fiscal year 1991 shall be available only for assistance for displaced Tibetans in India and Nepal. The Secretary of State shall determine the best means for providing such assistance.

(b) BURMESE REFUGEES.—Of the amounts authorized to be appropriated by section 104(a)(1) for the Department of State for "Migration and Refugee Assistance" $250,000 for the fiscal year 1990 and $250,000 for the fiscal year 1991 shall be available only for humanitarian assistance for displaced Burmese on both sides of the border between Thailand and Burma.

SEC. 703. REPORT REGARDING BURMESE STUDENTS.

(a) REPORTING REQUIREMENT.—Not later than 30 days after the date of enactment of this Act, the Secretary of State, in consultation with the Attorney General, shall submit to the Committee on Foreign Relations and the Committee on the Judiciary of the Senate and the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives a report on the immigration and refugee policy of the United States regarding Burmese pro-democracy protesters who have fled from the military government of Burma and are now located in border camps or inside Thailand. Specifically, the report shall include—

(1) a description of the number and location of such persons in border camps in Burma, inside Thailand, and in third countries;

(2) the number of visas, parole applications, applications for refugee status, and approvals for such persons by the United States and the feasibility of using parole or the need for creating statutory alternatives to parole to facilitate the entry of such persons;

(3) the immigration policy of Thailand and other countries from which such persons have sought immigration assistance;

(4) the involvement of international organizations, such as the United Nations High Commission for Refugees, in meeting the residency needs of such persons; and

(5) the involvement of the United States, other countries, and international organizations in meeting the humanitarian needs of such persons.

(b) RECOMMENDATIONS FOR LEGISLATIVE CHANGES.—The Secretary of State shall recommend in the report required by subsection (a) any policy or legislative changes he deems appropriate to meet the asylum, refugee, parole, or visa status needs of such persons.

(c) DEFINITION.—As used in this section, the term "pro-democracy protester" means any person who has fled from the current military regime of Burma since the outbreak of pro-democracy demonstrations in Burma in 1988.

SEC. 704. THE TREATMENT OF THE TURKISH MINORITY BY THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BULGARIA AND BULGARIAN REFUGEES IN TURKEY.

(a) FINDINGS.—The Congress finds that—

(1) the Government of the People's Republic of Bulgaria is a signatory to the 1947 Paris Peace Treaty, the Universal Declaration on Human Rights by the United Nations, and the Final Act of the Conference on Security and Cooperation in Europe (also known as the Helsinki Accords);

(2) the Helsinki Accords express the commitment of the participating states to re-

spect the fundamental freedoms of conscience, religion, expression, and emigration, and to guarantee the rights of minorities;

(3) the 1971 Constitution of the People's Republic of Bulgaria declares that fundamental rights will not be restricted because of distinction of national origin, race, or religion, and guarantees minorities the rights to study in their mother tongue and freely practice their religion;

(4) despite its international obligations and constitutional guarantees, the Government of the People's Republic of Bulgaria has taken numerous steps to repress Turkish language and culture, including prohibiting the study of the Turkish language in schools, banning the use of the Turkish language in public, making the receipt and reading of Turkish publications a punishable act, and jamming the reception of Turkish radio and television programs in Bulgaria;

(5) the right of the ethnic Turkish community to freedom of religion has been severely circumscribed by the Government of the People's Republic of Bulgaria, which has closed a number of mosques and barred the importation of copies of the Koran;

(6) emigration by ethnic Turks and others has been banned with only a few exceptions;

(7) beginning in December 1984, the Bulgarian authorities forced the Turkish minority to change their Turkish names to Bulgarian ones, and hundreds of ethnic Turks were killed, injured, or arrested by Bulgarian forces in 1984 and 1985 when they protested this new policy;

(8) the Bulgarian authorities have used both force and coercion to resettle ethnic Turks from their local villages to areas in Bulgaria with small Turkish populations;

(9) in May 1989, Bulgarian troops and police attacked ethnic Turks and others who were peacefully demonstrating against their discriminatory treatment in Bulgaria;

(10) hundreds of demonstrators were killed or wounded in these attacks, and hundreds more were arrested; and

(11) since these demonstrations, the Government of the People's Republic of Bulgaria has forcibly expelled or coerced into emigrating to Turkey thousands of ethnic Turks without either their money or their possessions, often resulting in the separation of families.

(b) POLICY.—It is the sense of the Congress that the Congress—

(1) strongly condemns the brutal treatment of, and blatant discrimination against, the Turkish minority by the Government of the People's Republic of Bulgaria;

(2) calls upon the Bulgarian authorities to immediately cease all discriminatory practices against this community and to release all ethnic Turks and others currently imprisoned because of their participation in nonviolent political acts;

(3) calls upon the Government of Bulgaria to honor its obligations and public statements concerning the right of all Bulgarian citizens to emigrate freely; and

(4) urges the President and Secretary of State to make strong diplomatic representations to Bulgaria protesting its discriminatory treatment of its Turkish minority and to raise this issue in all appropriate international forums, including the Conference on Security and Cooperation in Europe meeting on the environment in Sofia, Bulgaria, this year.

(c) ALLOCATION OF FUNDS FOR ASSISTANCE TO CERTAIN TURKISH REFUGEES.—Of the funds authorized to be appropriated by section 104(a)(1) for the fiscal year 1990, $10,000,000 shall be available only to the Republic of Turkey for assistance for shelter, food, and other basic needs to ethnic Turkish refugees fleeing the People's Republic of Bulgaria and resettling in the sovereign territory of Turkey.

## TITLE VIII—PLO COMMITMENTS COMPLIANCE ACT OF 1989

SEC. 801. SHORT TITLE.

This title may be cited as the "PLO Commitments Compliance Act of 1989".

SEC. 802. FINDINGS.

The Congress finds that—

(1) United States policy regarding contracts with the Palestine Liberation Organization (including its Executive Committee, the Palestine National Council, and any constituent groups related thereto (hereafter in this title referred to as the "PLO")) set forth in the Memorandum of Agreement between the United States and Israel, dated September 1, 1975, stated that the United States "will not recognize or negotiate with the Palestine Liberation Organization so long as the PLO does not recognize Israel's right to exist and does not accept United Nations Security Council Resolutions 242 and 338";

(2) section 1302 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2151 note; Public Law 99-83), effective October 1, 1985, stated that "no officer or employee of the United States Government and no agent or other individual acting on behalf of the United States Government shall negotiate with the PLO or any representatives thereof (except in emergency or humanitarian situations) unless and until the PLO recognizes Israel's right to exist, accepts United Nations Security Council Resolutions 242 and 338, and renounces the use of terrorism";

(3) the Department of State statement of November 26, 1988, found that "the United States Government has convincing evidence that PLO elements have engaged in terrorism against Americans and others" and that "Mr. [Yasser] Arafat, Chairman of the PLO, knows of, condones, and lends support to such acts; he therefore is an accessory to such terrorism";

(4) Secretary of State Shultz declared on December 14, 1988, that "the [PLO] today issued a statement in which it accepted United Nations Security Council Resolutions 242 and 338, recognized Israel's right to exist in peace and security, and renounced terrorism. As a result, the United States is prepared for a substantive dialogue with PLO representatives";

(5) President Ronald Reagan, subsequent to the decision to open a United States-PLO dialogue, stated that the PLO "must demonstrate that its renunciation of terrorism is pervasive and permanent" and if the PLO reneges on its commitments, the United States "will certainly break off communications";

(6) since the United States agreed to enter into a dialogue with the PLO, there have been several attempted incursions into Israel by the following PLO-affiliated groups: the Popular Struggle Front, the Palestine Liberation Front, the Democratic Front for the Liberation of Palestine, and the Islamic Jihad group;

(7) Yasser Arafat has not renounced any of these incidents, that he has threatened "ten bullets in the chest" to those Palestinians who advocate a cessation of the unrest, and that his principal deputy, Abu Iyad, as well as other senior Al-Fatah figures, have been quoted as saying that the PLO recognition of Israel and renunciation of terrorism is merely tactical and that a Palestinian state is but the first step in the "liberation of Palestine"; and

(8) that the United States should regularly evaluate the PLO's compliance with the commitments made by Yasser Arafat on behalf of the PLO in Geneva on December 14, 1988.

SEC. 803. POLICY.

(a) IN GENERAL.—The Congress reiterates long-standing United States policy that any dialogue with the PLO be contingent upon the PLO's recognition of Israel's right to exist, its acceptance of United Nations Security Council Resolutions 242 and 338, and its abstention from and renunciation of all acts of terrorism.

(b) POLICY TOWARD IMPLEMENTATION OF PLO COMMITMENTS.—It is the sense of the Congress that the United States, in any discussions with the PLO, should seek—

(1) the prevention of terrorism and other violent activity by the PLO or any of its factions; and

(2) the implementation of concrete steps by the PLO consistent with its commitments to recognize Israel and renounce terrorism, including concrete actions that will further the peace process such as—

(A) disbanding units which have been involved in terrorism;

(B) publicly condemning all acts of terrorism;

(C) ceasing the intimidation of Palestinians who advocate a cessation of or who do not support the unrest;

(D) calling on the Arab states to recognize Israel and to end their economic boycott of Israel; and

(E) amending the PLO's Covenant to remove provisions which undermine Israel's legitimacy and which call for Israel's destruction.

(c) POLICY TOWARD RECENT ARMED INCURSIONS INTO ISRAEL BY PLO-AFFILIATED GROUPS.—During the next round of talks with the PLO, should such talks occur after the date of enactment of this Act, the representative of the United States should obtain from the representative of the PLO a full accounting of the following attempted incursions into Israel which occurred after Yasser Arafat's statement of December 14, 1988:

(1) On December 26, 1988, an attempted armed infiltration into Israel by boat by four members of the PLO-affiliated Popular Struggle Front.

(2) On December 28, 1988, an attempted armed infiltration into Israel by three members of the PLO-affiliated Palestine Liberation Front.

(3) On January 24, 1989, an unprovoked attack on an Israeli patrol in Southern Lebanon by the PLO-affiliated Palestine Liberation Front.

(4) On February 5, 1989, an attempted armed infiltration into Israel by nine members of the PLO-affiliated Palestine Liberation Front and Popular Front for the Liberation of Palestine.

(5) On February 23, 1989, an attempted attack on targets in Israel by members of the PLO-affiliated Democratic Front for the Liberation of Palestine.

(6) On February 27, 1989, a PLO-affiliated Popular Front for the Liberation of Palestine ambush of a pro-Israeli Southern Lebanese army vehicle.

(7) On March 2, 1989, an attempted armed infiltration into Israel by four members of the PLO affiliated Democratic Front for the

Liberation of Palestine headed for the civilian town of Zarit.

(8) On March 13, 1989, an attempted armed infiltration into Israel by three members of the PLO-aligned Palestine Liberation Front.

(9) On March 15, 1989, an attempted attack on Israel through Gaza by two members of the Islamic Jihad group.

SEC. 804. REPORTING REQUIREMENT.

(a) REPORT ON ARMED INCURSIONS.—In the event that talks are held with the PLO after the date of enactment of this Act, the Secretary of State, shall, within 30 days after the next round of such talks, report to the the Chairman of the Committee on Foreign Affairs of the Senate and the Speaker of the House of Representatives any accounting provided by the representative of the PLO of the incidents described in section 803(c).

(b) REPORT ON COMPLIANCE WITH COMMITMENTS.—Beginning 30 days after the date of enactment of this Act, and every 120 days thereafter in which the dialogue between the United States and the PLO has not been discontinued, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report, in unclassified form to the maximum extent practicable, regarding progress toward the achievement of the measures described in section 803(b). Such report shall include—

(1) a description of actions or statements by the PLO as an organization, its Chairman, members of its Executive Committee, members of the Palestine National Council, or any constituent groups related thereto, as they relate to the Geneva commitments of December 1988 regarding cessation of terrorism and recognition of Israel's right to exist, including actions or statements that contend that the declared "Palestinian state" encompasses all of Israel;

(2) a description of the steps, if any, taken by the PLO to evict or otherwise discipline individuals or groups taking actions inconsistent with the Geneva commitments;

(3) a statement of whether the PLO, in accordance with procedures in Article 33 of the Palestinian National Covenant, has repealed provisions in that Covenant which call for Israel's destruction;

(4) a statement of whether the PLO has repudiated its "strategy of stages" whereby it seeks to use a Palestinian state in the West Bank and Gaza as the first step in the total elimination of the state of Israel;

(5) a statement of whether the PLO has called on any Arab state to recognize and enter direct negotiations with Israel or to end its economic boycott of Israel;

(6) a statement of whether "Force 17" and the "Hawari Group", units directed by Yasser Arafat that have carried out terrorist attacks, have been disbanded and not reconstituted under different names;

(7) a statement of whether the following PLO constituent groups conduct or participate in terrorist or other violent activities: the Fatah; the Popular Front for the Liberation of Palestine; the Democratic Front for the Liberation of Palestine; the Arab Liberation Front; the Palestine Liberation Front;

(8) a statement of the PLO's position on the unrest in the West Bank and Gaza, and whether the PLO threatens, through violence or other intimidation measures, Palestinians in the West Bank and Gaza who advocate a cessation of or who do not support the unrest, and who might be receptive to taking part in elections there;

(9) a statement of the position of the PLO regarding the prosecution and extradition, if so requested, of known terrorists such as Abu Abbas, who directed the Achille Lauro hijacking during which Leon Klinghoffer was murdered, and Muhammed Rashid, implicated in the 1982 bombing of a PanAm jet and the 1986 bombing of a TWA jet in which four Americans were killed; and

(10) a statement of the position of the PLO on providing compensation to the American victims or the families of American victims of PLO terrorism.

(c) REPORT ON POLICIES OF ARAB STATES.—Not more than 30 days after the date of enactment of this Act, the Secretary of State shall prepare and submit to the Congress a report concerning the policies of Arab states toward the Middle East peace process, including progress toward—

(1) public recognition of Israel's right to exist in peace and security;

(2) ending the Arab economic boycott of Israel; and

(3) ending efforts to expel Israel from international organizations or denying participation in the activities of such organizations.

## TITLE IX—PEOPLE'S REPUBLIC OF CHINA

SEC. 901. FINDINGS AND STATEMENTS OF POLICY.

(a) FINDINGS.—The Congress finds that—

(1) on June 4, 1989, the Government of the People's Republic of China ordered an unprovoked, brutal, and indiscriminate assault on thousands of peaceful and unarmed demonstrators and onlookers in and around Tiananmen Square by units of the People's Liberation Army, which resulted in at least 1,000 deaths and several thousand injuries;

(2) the Chinese Government has executed dozens of individuals who participated in prodemocracy demonstrations or who protested the brutal military assault against peaceful demonstrators;

(3) the Government of the People's Republic of China is engaging in widespread mass arrests in the aftermath of the June 4, 1989, military assault in Tiananmen Square, which have resulted in the arrests of thousands of students, workers, and other civilians so far;

(4) independent international human rights organizations, such as Amnesty International and Asia Watch, have documented daily incidences of arbitrary arrests, torture, and beatings by police and military forces in the People's Republic of China;

(5) the Chinese Government has established telephone hotlines and other local communications networks for the express purpose of identifying and imprisoning prodemocracy supporters and political dissidents throughout the country;

(6) officials of the Chinese Government have grossly distorted the Government's actions to suppress the prodemocracy movement, including the clandestine disposal of the bodies of demonstrators without informing their families, and have consistently denied that the massacre in and around Tiananmen Square took place or that abuses of human rights have occurred;

(7) in an effort to conceal the truth about the Chinese Government's brutal suppression of the prodemocracy movement, foreign journalists have been expelled and Voice of America broadcasts are being jammed;

(8) in view of the widespread and continuing repression, noted Chinese intellectuals and advocates of peaceful democratic reform, Fang Lizhi and Li Shuxian, sought refuge at the United States Embassy in Beijing on June 3, 1989, and the United States exercised its prerogatives under longstanding practices of diplomatic missions by granting them refuge; and

(9) the President has condemned the actions of the leaders of the People's Republic of China against participants in the prodemocracy movement in China and has taken several concrete steps to respond to the repression of the movement, including—

(A) suspending all exports of items on the United States Munitions List, including arms and defense related equipment, to the People's Republic of China;

(B) suspending high level government-to-government contact between the United States and the People's Republic of China;

(C) extending the visas of nationals of the People's Republic of China currently in the United States;

(D) offering humanitarian and medical assistance to the injured through the Red Cross;

(E) instructing United States representatives to international financial institutions to seek delay in the consideration of loan requests that are made to those financial institutions and would benefit the People's Republic of China;

(F) suspending action on applications for the issuance by the Overseas Private Investment Corporation of new insurance and financing of investments in the People's Republic of China by United States investors;

(G) opposing the further liberalization of the guidelines of the group known as the Coordinating Committee (COCOM) regarding trade with the People's Republic of China;

(H) taking no further action to implement the agreement for cooperation between the United States and the People's Republic of China relating to the uses of nuclear energy, thereby foreclosing the issuance of new licenses; and

(I) suspending the license for the export of any United States manufactured satellites for launch on launch vehicles owned by the People's Republic of China, including the two Aussat satellites and the Asiasat satellite.

(b) STATEMENTS OF POLICY.—It is the sense of the Congress that—

(1) the President is to be commended for his clear articulation of United States condemnation of the actions of the Government of the People's Republic of China in the killing and persecution of the participants of the prodemocracy movement in the People's Republic of China, and for the responses and measures by the President against the People's Republic of China, which the Congress supports;

(2) the consultative approach that the President has used in coordinating with other countries the United States response to the atrocities committed by the leaders of the People's Republic of China should be supported;

(3) it is essential that the United States speak in a bipartisan and unified voice in response to the events in the People's Republic of China, and that the President be given the necessary flexibility to respond to rapidly changing situations so that the long-term interests of the United States are not damaged;

(4) in this vein, the President should continue to emphasize to the leaders of the Government of the People's Republic of China that resumption of normal diplomatic and military relations between the United States and the People's Republic of China will depend directly on the Chinese Government's halting of executions of prodemoc-

racy movement supporters, releasing those imprisoned for their political beliefs, and increasing respect for internationally recognized human rights;

(5) because human rights violations in a country as populous as the People's Republic of China may have serious implications for the stability of the Asia-Pacific region, the United Nations should, in order to further regional security and peace, condemn the violent repression, mass arrests, abuse of African students, and executions of peaceful demonstrators by the Government of the People's Republic of China and urge the Chinese Government to enter into negotiations with representatives of the prodemocracy movement;

(6) United States policy toward the People's Republic of China should be explicitly linked with the situation in Tibet, specifically as to whether—

(A) martial law is lifted in Lhasa and other parts of Tibet;

(B) Tibet is open to foreigners, including representatives of the international press and of international human rights organizations;

(C) Tibetan political prisoners are released; and

(D) the Government of the People's Republic of China is entering into negotiations with representatives of the Dalai Lama on a settlement of the Tibetan question;

(7) with respect to Hong Kong—

(A) the President should convey to the leaders of the People's Republic of China the importance of living up to its international undertaking with respect to the 1984 Joint Declaration for the future prosperity and stability of Hong Kong; and

(B) the Secretary of State should convey to the Government of the United Kingdom the strong concern of the United States for continued respect for human rights in Hong Kong, and the need to accelerate progress toward representative government through free and fair direct elections;

(8) the United States should offer admission to the United States to any national of the People's Republic of China who is under threat of severe penalty as a result of participating in prodemocracy activities; and

(9) the President should be commended for his courageous and appropriate action, in accordance with the Vienna Convention on Diplomatic Relations and customary international law, in swiftly providing temporary refuge to Fang Lizhi and Li Shuxian at the United States Embassy in Beijing, and the President should continue to provide refuge to those individuals to ensure their personal safety.

(c) ADDITIONAL MEASURES.—It is further the sense of the Congress that, in addition to the measures already taken or required to be taken by this title—

(1) because systematic repression in China continues, the President should urge the Export-Import Bank of the United States to continue to postpone approval of any application for financing United States exports to the People's Republic of China;

(2) under the direction of the Secretary of the Treasury, the United States executive directors of the appropriate international financial institutions should continue to oppose the extension of loans or any other financial assistance by such institutions to the People's Republic of China;

(3) if systematic repression in China deepens, the President should review—

(A) the advisability of continuing to extend most-favored-nation (MFN) trade treatment to Chinese products;

(B) all bilateral trade agreements between the United States and the People's Republic of China;

(C) the bilateral commercial agreements governing Chinese-American cooperation on satellite launches; and

(D) the Chinese-American Agreement for Cooperation on the Peaceful Uses of Atomic Energy, signed at Washington on July 23, 1985;

(4) if systematic repression in China deepens, the President should consult—

(A) with the members of the group known as the Coordinating Committee (COCOM) for the purpose of reviewing the current favorable treatment accorded to high technology exports to the People's Republic of China; and

(B) with the other signatories of the General Agreement on Tariffs and Trade (GATT) for the purpose of reviewing the People's Republic of China's observer status at meetings on GATT and reassessing the People's Republic of China's right to accede to GATT.

SEC. 902. SUSPENSION OF CERTAIN PROGRAMS AND ACTIVITIES.

(a) SUSPENSIONS.—

(1) OVERSEAS PRIVATE INVESTMENT CORPORATION.—The Overseas Private Investment Corporation shall continue to suspend the issuance of any new insurance, reinsurance, guarantees, financing, or other financial support with respect to the People's Republic of China, unless the President makes a report under subsection (b) (1) or (2) of this section.

(2) TRADE AND DEVELOPMENT PROGRAM.—The President shall suspend the obligation of funds under the Foreign Assistance Act of 1961 for any new activities of the Trade and Development Program with respect to the People's Republic of China, unless the President makes a report under subsection (b) (1) or (2) of this section.

(3) MUNITIONS EXPORT LICENSES.—(A) The issuance of licenses under section 38 of the Arms Export Control Act for the export to the People's Republic of China of any defense article on the United States Munitions List, including helicopters and helicopter parts, shall continue to be suspended, subject to subparagraph (B), unless the President makes a report under subsection (b) (1) or (2) of this section.

(B) The suspension set forth in subparagraph (A) shall not apply to systems and components designed specifically for inclusion in civil products and controlled as defense articles only for purposes of export to a controlled country, unless the President determines that the intended recipient of such items is the military or security forces of the People's Republic of China.

(4) CRIME CONTROL AND DETECTION INSTRUMENTS AND EQUIPMENT.—The issuance of any license under section 6(k) of the Export Administration Act of 1979 for the export to the People's Republic of China of any crime control or detection instruments or equipment shall be suspended, unless the President makes a report under subsection (b) (1) or (2) of this section.

(5) EXPORT OF SATELLITES FOR LAUNCH BY THE PEOPLE'S REPUBLIC OF CHINA.—Exports of any satellite of United States origin that is intended for launch from a launch vehicle owned by the People's Republic of China shall remain suspended, unless the President makes a report under subsection (b) (1) or (2) of this section.

(6) NUCLEAR COOPERATION WITH THE PEOPLE'S REPUBLIC OF CHINA.—(A) Any—

(i) application for a license under the Export Administration Act of 1979 for the export to the People's Republic of China for use in a nuclear production or utilization facility of any goods or technology which, as determined under section 309(c) of the Nuclear Non-Proliferation Act of 1978, could be of significance for nuclear explosive purposes, or which, in the judgment of the President, is likely to be diverted for use in such a facility, for any nuclear explosive device, or for research on or development of any nuclear explosive device, shall be suspended,

(ii) application for a license for the export to the People's Republic of China of any nuclear material, facilities, or components subject to the Agreement shall be suspended,

(iii) approval for the transfer or retransfer to the People's Republic of China of any nuclear material, facilities, or components subject to the Agreement shall not be given, and

(iv) specific authorization for assistance in any activities with respect to the People's Republic of China relating to the use of nuclear energy under section 57b.(2) of the Atomic Energy Act of 1954 shall not be given,

until the conditions specified in subparagraph (B) are met.

(B) Subparagraph (A) applies until—

(i) the President certifies to the Congress that the People's Republic of China has provided clear and unequivocal assurances to the United States that it is not assisting and will not assist any nonnuclear-weapon state, either directly or indirectly, in acquiring nuclear explosive devices or the materials and components for such devices;

(ii) the President makes the certifications and submits the report required by Public Law 99-183; and

(iii) the President makes a report under subsection (b) (1) or (2) of this section.

(C) For purposes of this paragraph, the term "Agreement" means the Agreement for Cooperation Between the Government of the United States of America and the Government of the People's Republic of China Concerning Peaceful Uses of Nuclear Energy (done on July 23, 1985).

(7) LIBERALIZATION OF EXPORT CONTROLS.—(A) The President shall negotiate with the governments participating in the group know as the Coordinating Committee (COCOM) to suspend, on a multilateral basis, any liberalization by the Coordinating Committee of controls on exports of goods and technology to the People's Republic of China under section 5 of the Export Administration Act of 1979, including—

(i) the implementation of bulk licenses for exports to the People's Republic of China; and

(ii) the raising of the performance levels of goods or technology below which no authority or permission to export to the People's Republic of China would be required.

(B) The President shall oppose any liberalization by the Coordinating Committee of controls which is described in subparagraph (A)(ii), until the end of the 6-month period beginning on the date of enactment of this Act or until the President makes a report under subsection (b) (1) or (2) of this section, whichever occurs first.

(b) TERMINATION OF SUSPENSIONS.—A report referred to in subsection (a) is a report by the President to the Congress either—

(1) that the Government of the People's Republic of China has made progress on a

program of political reform throughout the country, including Tibet, which includes—

(A) lifting of martial law;

(B) halting of executions and other reprisals against individuals for the nonviolent expression of their political beliefs;

(C) release of political prisoners;

(D) increased respect for internationally recognized human rights, including freedom of expression, the press, assembly, and association; and

(E) permitting a freer flow of information, including an end to the jamming of Voice of America and greater access for foreign journalists; or

(2) that it is in the national interest of the United States to terminate a suspension under subsection (a) (1), (2), (3), (4), or (5), to terminate a suspension or disapproval under subsection (a)(6), or to terminate the opposition required by subsection (a)(7), as the case may be.

(c) REPORTING REQUIREMENT.—Sixty days after the date of enactment of this Act, the President shall submit to the Congress a report on—

(1) any steps taken by the Government of China to achieve the objectives described in subsection (b)(1);

(2) the effect of multilateral sanctions on political and economic developments in China and on China's international economic relations;

(3) the impact of the President's actions described in section 901(a)(9) and of the suspensions under subsection (a) of this section on—

(A) political and economic developments in China;

(B) the standard of living of the Chinese people;

(C) relations between the United States and China; and

(D) the actions taken by China to promote a settlement in Cambodia which will ensure Cambodian independence, facilitate an act of self-determination by the Cambodian people, and prevent the Khmer Rouge from returning to exclusive power;

(4) the status of programs and activities suspended under subsection (a); and

(5) the additional measures taken by the President under section 901(c) if repression in China deepens.

## TITLE X—MISCELLANEOUS PROVISIONS

### SEC. 1001. INCREASING AMOUNT OF REWARDS FOR COMBATTING TERRORISM.

Section 36(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is amended by striking out "$500,000" and inserting in lieu thereof "$2,000,000".

### SEC. 1002. ASSIGNMENT OF COMMERCIAL OFFICERS TO THE UNITED STATES MISSION TO THE EUROPEAN COMMUNITY.

Within 90 days of the date of enactment of this Act, the United States Foreign and Commercial Service shall assign to the United States Mission to the European Community in Brussels no less than three commercial officers and such other staff as may be necessary to support such officers.

### SEC. 1003. BUY-AMERICAN REQUIREMENT.

(a) DETERMINATION BY SECRETARY OF STATE.—If the Secretary of State, with the concurrence of the United States Trade Representative and the Secretary of Commerce, determines that the public interest so requires, the Secretary of State is authorized to award to a domestic firm a contract that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(1) the final product of the domestic firm will be completely assembled in the United States;

(2) when completely assembled, not less than 50 percent of the final product of the domestic firm will be domestically produced; and

(3) the difference between the bids submitted by the foreign and domestic firms is not more than 6 percent.

In determining under this subsection whether the public interest so requires, the Secretary of State shall take into account United States international obligations and trade relations.

(b) LIMITED APPLICATION.—This section shall not apply to the extent to which—

(1) such applicability would not be in the public interest;

(2) compelling national security considerations require otherwise; or

(3) the United States Trade Representative determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States; and

(2) the term "foreign firm" means a business entity not described in paragraph (1).

(d) APPLICABILITY OF PROVISION.—This section shall apply only to contracts for which—

(1) amounts are authorized to be made available by this Act; and

(2) solicitations for bids are issued after the date of the enactment of this Act.

### SEC. 1004. SUPPORT FOR THE BENJAMIN FRANKLIN HOUSE MUSEUM AND LIBRARY.

(a) FINDINGS.—The Congress finds that—

(1) the former London residence of Benjamin Franklin is the only surviving home of Benjamin Franklin existing today and should be preserved to commemorate his great contributions to human liberty, science, and education; and

(2) the Friends of Benjamin Franklin House and the American Franklin Friends Committee are twin charities dedicated to the restoration, preservation, and maintenance of the Benjamin Franklin House as a museum and library open to the public.

(b) POLICY OF SUPPORT.—The Congress hereby—

(1) urges the people of the United States to recognize June 17, 1990, as the bicentennial of Benjamin Franklin's death and to celebrate Franklin's long and distinguished public service, his scientific and literary achievements, and his role as a Founding Father of our country; and

(2) calls on the relevant agencies and departments of the Federal Government of the United States to recognize the important goals of the Friends of Benjamin Franklin House and the American Franklin Friends Committee.

### SEC. 1005. ASSOCIATION OF DEMOCRATIC NATIONS.

(a) FINDINGS.—The Congress makes the following findings:

(1) It is the policy of the United States to support and promote democratic values and institutions around the world.

(2) Over the last decade, the United States, in concert with other nations, has provided support to those working for democracy in many nations throughout the world.

(3) Such support has advanced the cause of freedom and democracy in those nations by providing international technical expertise on holding free and fair elections, providing international observers to document the conduct of the elections, and in offering economic and humanitarian support to newly established democracies.

(4) On June 8, 1989, at the commencement ceremonies at Harvard University, the newest leader of a democratic nation, Prime Minister Benazir Bhutto of Pakistan, called for the establishment of an Association of Democratic Nations to support the right of peoples everywhere to choose freely their own government.

(5) The goals of the Association would be to promote—

(A) the holding of elections at regular intervals which are open to the participation of all significant political parties, which are fairly administered, and in which the franchise is broad or universal;

(B) respect for fundamental human rights, including freedom of expression, freedom of conscience, and freedom of association;

(C) international recognition of legitimate elections through international election observer missions at all stages of the election, including the campaign, the voting, and the ballot counting;

(D) the mobilization of international opinion and economic measures against the military overthrow of democratic governments; and

(E) the provision of economic assistance to strengthen and support democratic nations.

(b) POLICY.—It is the sense of the Congress that—

(1) the proposal offered by Prime Minister Benazir Bhutto of Pakistan would further the cause of democracy, freedom, and justice and is in the interest of the United States; and

(2) the President of the United States should give serious consideration to the implementation of the proposal, and should provide by December 31, 1989, a report to the Congress assessing the merits of and estimated annual costs of establishing such an Association of Democratic Nations.

### SEC. 1006. POLICY REGARDING HUMAN RIGHTS ABUSES IN CUBA.

(a) FINDINGS.—The Congress finds that—

(1) the United Nations Commission on Human Rights in 1989 issued its first report on human rights in Cuba, the result of a year-long investigation that concluded on the 30th year of Fidel Castro's rise to power;

(2) that report extensively documented across-the-board human rights abuses, including cases of torture, missing persons, religious persecution, violations of civil and political rights, and violations of economic and social rights;

(3) the United Nations received 137 complaints of "torture, cruel, inhuman or degrading treatment or punishment";

(4) among the abuses reported to the United Nations were sensory deprivation, immersion in a pit latrine, mock executions, overcrowding in special cells, deafening loudspeakers, keeping prisoners naked in front of relatives, and forcing a prisoner about to be executed to carry his own coffin or dig his own grave;

(5) despite the Cuban Government's statements not to harass those who cooperated with the United Nations' investigation, many Cuban citizens who met, or attempted to meet with the United Nations team suffered reprisals;

(6) at least 26 Cuban human rights monitors and independent activists who were ar-

rested in the aftermath of the United Nations investigation are currently serving prison sentences or being held without trial; and

(7) the United Nations Commission on Human Rights approved a resolution on March 9, 1989, calling on the Government of Cuba to cooperate with the Secretary General of the United Nations in settling unresolved questions of human rights.

(b) STATEMENT OF POLICY.—In the interest of promoting respect for internationally recognized human rights in Cuba, the Congress—

(1) calls on the Secretary General of the United Nations to act upon the resolution approved by the Commission on Human Rights March 9, 1989, calling on the Secretary General to take appropriate action to follow up on the Commission's report on human rights in Cuba; and

(2) calls on the Secretary General to specifically urge the Government of Cuba to release at least 26 persons still being held in detention because of their human rights activities.

SEC. 1007. CONCERNING THE SUBMISSION TO THE CONGRESS OF AGREEMENTS PERTAINING TO THE BOUNDARIES OF THE UNITED STATES.

It is the sense of the Congress that all international agreements pertaining to the international boundaries of the United States should be submitted to the Congress for such consideration as is appropriate pursuant to the respective constitutional responsibilities of the Senate and the House of Representatives.

SEC. 1008. REPORT TO CONGRESS CONCERNING OCEANIA.

Not later than 180 days after the date of the enactment of this Act, and one year thereafter, the Secretary of State shall prepare and submit an unclassified report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate which—

(1) sets forth in detail the policy of the United States with respect to Oceania, which is comprised of Polynesia, Micronesia, and Melanesia;

(2) examines the nature, extent, and source of political, social, and economic instability affecting states in such region;

(3) assesses the impact and level of communist influence in Oceania;

(4) analyzes projections for the total economic growth of such region, with particular emphasis on the exclusive economic zones (EEZ); and

(5) makes recommendations for specific measures necessary to ensure a strong United States presence in Oceania that contributes to and strengthens democratic institutions and economic growth for the states of the region.

SEC. 1009. REPORT CONCERNING MEXICO.

Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall prepare and submit to the Congress a report concerning the relationship between the United States and Mexico. Such report shall—

(1) analyze potential changes in political, cultural, diplomatic, economic, and other factors as the United States and Mexico move toward greater economic integration and cooperation;

(2) consider the feasibility and effect of a three-way meeting among Canada, Mexico, and the United States to discuss greater economic integration and cooperation;

(3) analyze political, cultural, diplomatic, economic, and other factors related to the development of an economically integrated and cooperative border region between Mexico and the United States; and

(4) evaluate the adequacy of the resources of the Department of State which currently address relations between the United States and Mexico, including a projection of future needs to handle the increasing work load requirements resulting from the growing flow of goods, services, and people across the United States-Mexican border.

SEC. 1010. ESTABLISHMENT OF A LATIN AMERICAN AND CARIBBEAN DATA BASE.

(a) AUTHORIZATION.—Of the funds authorized to be appropriated for fiscal year 1990 by section 101(a)(1), $1,300,000 are authorized to be appropriated to provide continued support for the establishment of a Latin American and Caribbean Data base.

(b) CONDITIONS.—In developing the data base described in subsection (a), the Secretary of State shall be required to satisfy the following conditions:

(1) Any agreement for an on-line bibliographic data base entered into for purposes of this section shall continue to be subject to full and open competition or merit review among qualified United States institutions with strong Latin American and Caribbean programs.

(2) The Secretary of State shall ensure that funds are not awarded to maintain services which are significantly duplicative of existing services.

TITLE XI—BUDGET ACT COMPLIANCE

SEC. 1101. COMPLIANCE WITH CONGRESSIONAL BUDGET ACT.

(a) LIMITATION ON SPENDING AUTHORITY.—Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to the extent or in such amounts as are provided in advance in appropriation Acts.

(b) LIMITATION ON CONTRACT AUTHORITY.—Any authority provided by this Act to enter into contracts shall be effective only—

(1) to the extent that the budget authority for the obligation to make outlays, which is created by the contract, has been provided in advance by an appropriation Act; or

(2) to the extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 1102. WAIVER OF EARMARKS.

Section 101(a)(1) that follows "1991"; 101(c); 102(a)(2); 221(b); 702(a); 702(b) and 704(c) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (including amendments made thereunder), and section 1204 of the Foreign Service Act of 1980 as amended by section 149(b) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991; section 505(e)(3) of title V of the United States Information and Educational Exchange Act of 1948, as amended by section 205 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991; and section 404(b) of the Asia Foundation Act as amended by section 501 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991; are hereby waived during fiscal years 1990 and 1991. So much of the preceding sentence as pertains to the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, shall take effect only on the date of enactment of this Act.".

The SPEAKER. Is a second demanded?

Mr. BROOMFIELD. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentleman from Florida [Mr. FASCELL] will be recognized for 20 minutes, and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL] .

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the bill currently under consideration. I urge my colleagues to approve this legislation which authorizes appropriations for the Department of State, the U.S. Information Agency, the Board for International Broadcasting, the Asia Foundation, and the InterAmerican Foundation.

The package that is before the House is the same as the conference report on H.R. 1487 passed by both Houses last week, with one exception. The legislative history established in House Report 101-17 and House Report 101-343 is applicable to the relevant provisions contained in H.R. 3792. This clean bill does not include section 109 of the conference report which prohibited the channeling or diversion of funds to carry out activities for which U.S. assistance is prohibited.

The deletion of this section was made possible by the adoption of language in the Foreign Operations Appropriations Act approved by the House this morning. I congratulate the Senator from New York for his initiative on these very important matters. I am delighted this has been resolved and I thank him for his efforts in securing the adoption of this bill.

I urge my colleagues to support this legislation.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. BROOMFIELD. Mr. Speaker, I wish to take this opportunity really to commend the chairman of the Foreign Affairs Committee, Mr. FASCELL, for his hard work and determination in bringing this bill, H.R. 3792, to the House floor again tonight. I am pleased that this legislation no longer contains the leveraging provision objected to by the President, and if the Senate acts without amendments, I expect it to become law.

On the whole, this bill does an excellent job of authorizing the State Department's operations. H.R. 3792 is identical to the conference report previously agreed to by the House except that the Moynihan leveraging amendment which resulted in the President's veto of the measure has been deleted. This is the only difference between the conference report and the bill before us. Because this provision has now been removed, I strongly urge my colleagues to support the bill.

Unnecessary and troubling provisions affecting U.S. foreign policy and its conduct by the President have been kept to a minimum in this measure. The policy provisions that have been retained are generally acceptable and some are both useful and important.

Again, I urge my colleagues to support this bill.

Mr. Speaker, again, I would like to thank the gentleman from Florida [Mr. FASCELL] for the work that he has done on this particular bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of the measure. It is a measure we have all worked on at length in the Committee on Foreign Affairs and in conference.

Mr. Speaker, I want to commend the distinguished chairman of our Committee on Foreign Affairs, the gentleman from Florida [Mr. FASCELL], and our ranking minority member, the gentleman from Michigan [Mr. BROOMFIELD], for helping us arrive at this point where we can finally consider this measure. This measure is necessary to allow some of the more important agencies of our U.S. Government to continue their smooth operations.

It also contains the China sanctions provision as a response to egregious human rights violations perpetrated by the PRC including those against the people of Tibet, and I, accordingly, urge my colleagues to firmly support the bill.

Mr. BROOMFIELD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FASCELL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HOYER). The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and pass the bill, H.R. 3792.

The question was taken.

Mr. BROWN of Colorado. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

Mr. BROWN of Colorado. Mr. Speaker, I withdraw my point of order.

The SPEAKER pro tempore. The Chair will put the question again.

The question's on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and pass the bill, H.R. 3792.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

## WITHDRAWAL OF PRIOR REQUEST RELATIVE TO APPOINTMENT OF CONFEREES ON S. 593, TELEVISION VIOLENCE AND INDECENT MATERIAL ACT

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that my request earlier today concerning S. 593 be withdrawn.

I have consulted the minority. I believe there is no objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

## AUTHORIZING FOOD STAMP PORTION OF THE MINNESOTA FAMILY INVESTMENT PLAN

Mr. PENNY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1960) to authorize the food stamp portion of the Minnesota Family Investment Plan, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

□ 2040

Mr. EMERSON. Mr. Speaker, reserving the right to object, under my reservation I yield to the gentleman from Minnesota [Mr. PENNY].

Mr. PENNY. Mr. Speaker, I rise to support legislation, S. 1960, that would allow the State of Minnesota to pursue the food stamp portion of a demonstration project in family financial assistance that could set a significant precedent for the delivery of such assistance.

On July 11, the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition held a hearing on the food stamp portion of the Minnesota Family Investment Plan [MFIP] initiative where testimony was heard from the State of Minnesota, advocacy groups and the Department of Agriculture. Although this provision comes to us as a Senate bill, in fact, the legislation as proposed today is identical to the bill I introduced yesterday (H.R. 3744) and is the product of nearly 6 months of determined effort by House Agriculture staff of both the majority and minority to achieve the necessary consensus among the concerned parties. It effectively meshes the concerns of the advocacy groups with the program needs of the Minnesota plan.

The Minnesota Family Investment Plan [MFIP] seeks to go beyond the reforms already enacted by Congress with a simplified welfare system that would consolidate AFDC and Food Stamps into one cash grant for families. In order to do that, the State is seeking authority for a demonstration project similar to that granted the State of Washington, in Public Law 100-485. The demonstration would involve approximately 10 percent of the Minnesota welfare caseload, with 3,000 cases from an urban test site and 3,000 cases from a cluster of rural counties. The demonstration is guaranteed as revenue neutral to the Federal Government since the Minnesota Legislature has passed legislation recognizing that the State will pay all costs above what would normally be expected to be the Federal cost.

Allowing Minnesota to move forward with this demonstration would be a constructive step in accomplishing the goals of family self-sufficiency and administrative simplicity that could be the keystone of future assistance programs. It would also provide further evidence of Federal-State cooperation in improving services to all citizens. Legislation enabling the State to pursue the AFDC portions of the MFIP, which are under the jurisdiction of the Ways and Means and Energy and Commerce Committees, has been moving on a separate track.

I am most grateful to Subcommittee Chairman CHARLES HATCHER and ranking minority member BILL EMERSON and their excellent staff for their assistance in moving this legislation forward. I would also extend my appreciation to Chairman DE LA GARZA and ranking minority member Mr. MADIGAN for their help and guidance.

This is a carefully crafted bill with the specific purpose of allowing Minnesota to proceed with the food stamp portion of its Minnesota Family Investment Plan demonstration project. I urge my colleagues to adopt this legislation.

Mr. EMERSON. Mr. Speaker, reclaiming my time, the Food Stamp Act is amended by S. 1960 to authorize the implementation of the Minnesota Family Investment Plan [MFIP] as a welfare reform demonstration project. The MFIP will consist of a 5-year project to be tested on 6,000 families in Minnesota. It is claimed to be budget neutral for 5 years.

S. 1960 covers the Food Stamp Program portion of MFIP; while the Reconciliation Bill H.R. 3299, authorizes the Aid to Families With Dependent Children [AFDC] portion of the demonstration project.

The Minnesota State representatives who testified with respect to this bill and some of whom will administer the program if this is enacted into law assert that they will coordinate the

rules for the AFDC and Food Stamp Programs for those who are seeking employment as well as those who become employed.

Under this MFIP Program, AFDC benefits and food stamps would be combined into a cash grant for families. However, families could reserve the right to request that their food assistance be supplied in food stamp coupons rather than cash.

Participation in the Minnesota Family Investment Plan will be voluntary or may be by random selection. As I understand it, it is contemplated that Minnesota will provide two basic levels of assistance under the program: One, families that initially participate who are unemployed will receive the current aggregate value of AFDC and food stamps; and two, as family members obtain employment, the family will continue to receive payments, beyond the payments they would receive under current law, at the State of Minnesota's expense and the family's overall income would be increased.

The program contemplates a contract with families looking to an objective or goal of family self-sufficiency. The contract will make provision for employment opportunities, job training services, as well as education goals for the heads of the households to make them self-sufficient. Sanctions are imposed on individuals and families for noncompliance with the provisions of the contract. An evaluation of MFIP is provided for in the legislation and will hopefully provide information and data to the Departments of Agriculture and Health and Human Services as well as the Congress from the time the program, demonstration project is initiated until it is completed.

The information contained in tables No. 1 and No. 2 below provide further information on how the MFIP should operate based on testimony provided to the Committee.

I urge your support of this bill that has recently passed the Senate.

TABLE No. 1.—ELIGIBILITY OF CURRENT FOOD STAMP FAMILIES FOR MFIP

Note: The figures used in the table represent statewide implementation of MFIP. MFIP is proposed as field trials which will involve 10% of statewide caseloads.

| AFDC use among Food Stamp families | Current Food Stamp families | Food Stamp families eligible for MFIP |
|---|---|---|
| Concurrently receiving AFDC | 43,000 | 43,000 |
| Not receiving AFDC | 10,300 | 5,900 |
| Total | 53,300 | 48,900 |

COMMENTS

MFIP will be implemented in field trials which will involve 10% of the statewide caseload. Participation in MFIP field trials by food stamp families would be as follows:

1. All current food stamp families concurrently receiving AFDC would qualify for MFIP (approximately 4,300 families).

2. Most food stamp families not receiving AFDC would be eligible for MFIP. Only 400 to 500 families would not qualify, due to earned income exceeding MFIP eligibility thresholds. These families would continue to receive food stamps according to existing food stamp eligibility guidelines.

In addition, MFIP field trials would serve families that currently do not use food stamps. Included in this group are 1,100 families currently receiving AFDC but not eligible for food stamps, and 100 to 200 families receiving general assistance (state funded program).

TABLE No. 2.—IMPACT ON BENEFITS OF FOOD STAMP FAMILIES ELIGIBLE FOR MFIP

MFIP PROVIDES GREATER FINANCIAL ASSISTANCE FOR MOST FAMILIES

*Families Currently Receiving AFDC and Food Stamps*

Effect of MFIP standard of assistance:

Families currently receiving "full" food stamps [1] (46% of these families) would see no increase in financial benefits, as they are currently receiving assistance equal to the MFIP standard of assistance.

Families currently not receiving "full" food stamps (54% of these families) would see a slight increase in financial assistance, up to $45 per month.

Effect of increased earnings disregards in MFIP: 1500 more families are projected to be working in MFIP field trials than currently work under AFDC and food stamp rules.

*Families Currently Using Food Stamps Only*

Increased disregards of earned income will provide food stamp users who are currently working with $200 to $300 in additional income each month.

MEDICAL ASSISTANCE WOULD BE EXTENDED TO MANY FOOD STAMP FAMILIES

MFIP will provide automatic Medical Assistance (MA) coverage to all participants. This will extend coverage to many non-AFD food stamp families not eligible for MA. Food stamp families that concurrently receive AFDC would continue to receive automatic MA coverage.

CHILD CARE ASSISTANCE ASSURED FOR ALL MFIP PARTICIPANTS

MFIP would provide child care assistance to all participants who are working, in school, or in other employment and training activities. Currently, little funding is available to assist food stamp recipients with child care.

SPECIAL RIGHTS AND SERVICES FOR FOOD STAMP USERS ARE PRESERVED

MFIP will guarantee the continuation of special provisions to migrants, seasonal farm workers and the homeless.

Mr. DE LA GARZA. Mr. Speaker, this legislation will waive certain provisions of the Food Stamp Act to allow the State of Minnesota to conduct a 5-year demonstration project called the Minnesota Family Investment Plan [MFIP], an alternative to the current Food Stamp and AFDC Programs for families with minor children. The bill is indentical to H.R. 3744, a bill introduced by Congressman TIM PENNY of Minnesota.

[1] MFIP assistance standard set at AFDC plus "full cash value of food stamps." "Full food stamps" calculated by: assume unearned income equal to AFDC standard and subtract the standard deduction and maximum shelter deduction from gross income.

Under the plan, Minnesota would combine AFDC, Food Stamps, and the State's general assistance program into a single unified program with one set of simplified rules and one cash grant to the household. Eligible families, however, may elect to receive a designated portion of their total assistance in the form of food coupons. The new program will have standardized eligibility rules and benefit levels. All MFIP households, including those receiving food stamps, will be made automatically eligible for Medicaid. Households, with certain exceptions, will be required to take advantage of all available education and training services. Working would always be more profitable than not working.

The authority to waive certain provisions of the AFDC program to permit MFIP to take its place is included in H.R. 3299, the reconciliation bill.

The State of Minnesota has been working on the concept of MFIP since 1986 and has incorporated in the plan several provisions of a similar program now being carried out by the State of Washington.

The demonstration will be outlay neutral to the Federal Government, although the evaluation required of the demonstration project will cost less than $500,000 annually over the 5-year period according to the Congressional Budget Office. Minnesota's Legislature has passed legislation specifying that the State will pay all costs above what would normally be those costs of the Federal Government in conducting separate AFDC and Food Stamp Programs.

The Agriculture Committee's Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition held a hearing last July on the proposed project. Since that time, this legislation has been fine tuned to merit the full support of both the House and Senate Committees on Agriculture, the State of Minnesota, the administration, and the low income and food advocacy groups.

I applaud the work of Minnesota in developing this very worthwhile project and urge passage of this legislation.

Mr. EMERSON. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. HOYER). Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1960

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) is amended by adding the following new section:

SEC. 22. (a) IN GENERAL.—

(1) Subject to paragraph (2), upon written application of the State of Minnesota that complies with this section and sections 6 to 11, 13, 130, and 132 of article 5 of 282 of the 1989 Laws of Minnesota, and after approval of such application by the Secretary in accordance with subsections (b) and (d), the State may implement a family investment demonstration project (hereinafter in this section referred to as the "Project") in parts of the State to determine whether the

Project more effectively helps families to become self-supporting and enhances their ability to care for their children than do the food stamp program and programs under parts A and F of title IV of the Social Security Act. The State may provide cash payments under the Project, subject to paragraph (2), that replace assistance otherwise available under the food stamp program and under part A of title IV of the Social Security Act.

(2) The Project may be implemented only in accordance with this section and only if the Secretary of Health and Human Services approves an application submitted by the State permitting the State to include in the Project families who are eligible to receive benefits under part A of title IV of the Social Security Act.

(b) REQUIRED TERMS AND CONDITIONS OF THE PROJECT.—The application submitted by the State under subsection (a) shall provide an assurance that the Project shall satisfy all of the following requirements:

(1) Only families may be eligible to receive assistance and services through the Project.

(2) Participating families, families eligible for or participating in the program authorized under part A of title IV of the Social Security Act or the food stamp program that are assigned to and found eligible for the Project, and families required to submit an application for the Project that are found eligible for the Project shall be ineligible to receive benefits under the food stamp program.

3(A) Subject to the provisions of this paragraph and any reduction imposed under subsctiion (c)(3) of this section, the value of assistance provided to participating families shall not be less than the aggregate value of the assistance such families could receive under the food stamp program and part A of title IV of the Social Security Act if such families did not participate in the Project.

(B) For purposes of satisfying the requirement specified in subparagraph (A)—

(i) payments for child care expenses under the Project shall be considered part of the value of assistance provided to participating families with earnings;

(ii) payments for child care expenses for families without earnings shall not be considered part of the value of assistance provided to participating families or the aggregate value of assistance that such families could have received under the food stamp program and part A of title IV of the Social Security Act; and

(iii) any child support payments not assigned to the State under the provisions of part A of Title IV of the Social Security Act, less $50.00 per month, shall be considered part of the aggregate value of assistance participating families woud receive if such families did not participate in the Project.

(C) For purposes of satisfying the requirement specified in subparagraph (A), the State shall—

(i) identify the sets of characteristics indicative of families that might receive less assistance under the Project;

(ii) establish a mechanism to determine, for each participating family that has a set of characteristics identified under clause (i) whether such family could receive more assistance, in the aggregate, under the food stamp program and part A of title IV of the Social Security Act if such family did not participate in the Project;

(iii) increase the amount of assistance provided under the Project to any family that could receive more assistance, in the aggregate, under the food stamp program and part A of title IV of the Social Security Act if such family did not participate in the Project, so that the assistance provided under the Project to such family is not less than the aggregate amount of assistance such family could receive under the food stamp program and part A of title IV of the Social Security Act if such family did not participate in the Project; and

(iv) increase the amount of assistance paid to participating families, if the State or locality imposes a sales tax on food, by the amount needed to compensate for the tax.

This subparagraph shall not be construed to require the State to make the determination under clause (ii) for families that do not have a set of characteristics identified under clause (i).

(D)(i) The State shall designate standardized amounts of assistance provided as food assistance under the Project and notify monthly each participating family of such designated amount.

(ii) The amount of food assistance so designated shall be at least the value of coupons such family could have received under the food stamp program if the Project had not been implemented. The provisions of this subparagraph shall not require that the State make individual determinations to the amount of assistance under the Project designated as food assistance.

(iii) The State shall periodically allow participating families the option to receive such food assistance in the form of coupons.

(E)(i) Individuals ineligible for the Project who are members of of a household including a participating family shall have their eligibility for the food stamp program determined and have their benefits calculated and issued following the standards established under the food stamp program, except as provided differently in this subparagraph.

(ii) The State agency shall determine such individuals' eligibility for benefits under the food stamp program and the amount of such benefits without regard to the participating family.

(iii) In computing such individuals' income for purposes of determining eligibility (under section 5(c)(1)) and benefits, the State agency shall apply the maximum excess shelter expense deduction specified under section 5(e).

(iv) Such individuals' monthly allotment shall be the higher of $10 or 75 percent of the amount calculated following the standards of the food stamp program and the foregoing requirements of this subparagraph, rounded to the nearest lower whole dollar.

(4) The Project shall include education, employment, and training services equivalent to those offered under the employment and training program described in section 6(d)(4) to families similar to participating families elsewhere in the State.

(5) The State may select families for participation in the Project through submission and approval of an application for participation in the Project or by assigning to the Project families that are determined eligible for or are participating in the program authorized by part A of title IV of the Social Security Act or the food stamp program.

(6) Whenever selection for participation in the Project is accomplished through submission and approval of an application for the Project—

(A) the State shall promptly determine eligibility for the Project, and issue assistance to eligible families, retroactive to the date of application, not later than 30 days following the family's filing of an application;

(B) in the case of families determined ineligible for the Project upon application, the application for the Project shall be deemed an application for the food stamp program, and benefits under the food stamp program shall be issued to those found eligible following the standards established under the food stamp program;

(C) expedited benefits shall be provided under terms no more restrictive than under paragraph (9) of section 11(o) and the laws of Minnesota and shall include expedited issuance of designated food assistance provided through the Project or expedited benefits through the food stamp program;

(D) each individual who contacts the State in person during office hours to make what may reasonably be interpreted as an oral or written request to receive financial assistance shall receive and shall be permitted to file an application form on the same day such contact is first made;

(E) provision shall be made for telephone contact by, mail delivery of forms to and mail return of forms by, and subsequent home or telephone interview with, elderly individuals, physically or mentally handicapped individuals, and individuals otherwise unable to appear in person solely because of transportation difficulties and similar hardships;

(F) a family may be represented by another person if the other person has clearly been designated as the representative of such family for that purpose and the representative is an adult who is sufficiently aware of relevant circumstances, except that the State may—

(i) restrict the number of families who may be represented by such person; and

(ii) otherwise establish criteria and verification standards for representation under this subparagraph; and

(G) the State shall provide a method for reviewing applications to participate in the Project submitted by, and distributing assistance under the Project to, families that do not reside in permanent dwellings or who have no fixed mailing address.

(7) Whenever selection for participation in the Project is accomplished by assigning families that are determined eligible for or participating in the program authorized by part A of title IV of the Social Security Act or the food stamp program—

(A) the State shall provide eligible families assistance under the Project no later than benefits would have been provided following the standards established under the food stamp program; and

(B) the State shall ensure that assistance under the Project is provided so that there is no interruption in benefits for families participating in the program under part A of title IV of the Social Security Act or the food stamp program.

(8) Paragraphs (1)(B) and (8) of section 11(e) shall apply with respect to applicants and participating families in the same manner as such paragraphs apply with respect to applicants and participants in the food stamp program.

(9) Assistance provided under the Project shall be reduced to reflect the pro rata value of any coupons received under the food stamp program for the same period.

(10)(A) The State shall provide each family or family member whose participation in the Project ends and each family whose participation is terminated with notice of the existence of the food stamp

program and the person or agency to contact for more information.

(B)(i) Following the standards specified in subparagraph (C), the State shall ensure that benefits under the food stamp program are provided to participating families in case the Project is terminated or to participating families or family members that are determined ineligible for the Project because of income, resources, or change in household composition, if such families or individuals are determined eligible for the food stamp program. Food coupons shall be issued to eligible families and individuals described in this clause retroactive to the date of termination from the Project; and

(ii) If sections 256.031 through 256.036 of the Minnesota Statutes, 1989 Supplement, or Minnesota Laws 1989, Chapter 282, article 5, section 130, are amended to reduce or eliminate benefits provided under those sections or restrict the rights of Project applicants or participating families, the State shall exclude from the Project applicants or participating families or individuals affected by such amendments and follow the standards specified in subparagraph (C), except that the State shall continue to pay from State funds an amount equal to the food assistance portion to such families and individuals until the State determines eligibility or ineligibility for the food stamp program or the family or individual has failed to supply the needed additional information within 10 days. Food coupons shall be provided to families and individuals excluded from the Project under this clause who are determined eligible for the food stamp program retroactive to the date of the determination of eligibility. The Secretary shall pay to the State the value of the food coupons for which such families and individuals would have been eligible in the absence of food assistance payments under this clause from the date of termination from the Project to the date food coupons are provided.

(C) Each family whose Project participation is terminated shall be screened for potential eligibility for the food stamp program and if the screening indicates potential eligibility, the family or family member shall be given a specific request to supply all additional information needed to determine such eligibility and assistance in completing a signed food stamp program application including provision of any relevant information obtained by the State for the purpose of the Project. If the family or family member supplies such additional information within ten days after receiving the request, the State shall, within five days after the State receives such information, determine whether the family or family member is eligible for the food stamp program. Each family or family member who is determined through the screening or otherwise to be ineligible for the food stamp program shall be notified of that determination.

(11) Section 11(e)(10) shall apply with respect to applicant and participating families in the same manner as such paragraph applies with respect to applicants and participants in the food stamp program, except that families shall be given notice of any action for which a hearing is available in a manner consistent with the notice requirements of the regulations implementing sections 402(a)(4) and 482(h) of the Social Security Act.

(12)(A) For each fiscal year, the Secretary shall not be liable for any costs related to carrying out the Project in excess of those that the Secretary would have been liable for had the Project not been implemented, except for costs for evaluating the Project, but shall adjust for the full amount of the Federal share of increases or decreases in costs that result from changes in economic, demographic, and other conditions in the State based on data specific to the State, changes in eligibility or benefit levels authorized by the Food Stamp Act, as amended, or changes in amounts of Federal funds available to States and localities under the food stamp program.

(13) The State shall carry out the food stamp program throughout the State while the State carries out the Project.

(14)(A) Except as provided in subparagraph (B), the State will carry out the Project during a 5-year period beginning on the date the first family receives assistance under the Project.

(B) The Project may be terminated—

(i) by the State 180 days after the State gives notice to the Secretary that it intends to terminate the Project;

(ii) by the Secretary 180 days after the Secretary, after notice and an opportunity for a hearing, determines that the State materially failed to comply with this section; or

(iii) whenever the State and the Secretary jointly agree to terminate the Project.

(15) Not more than 6,000 families may participate in the Project simultaneously.

(c) ADDITIONAL TERMS AND CONDITIONS OF THE PROJECT.—The Project shall be subject to the following additional terms and conditions:

(1) The State may require any parent in a participating family to participate in education, employment, or training requirements unless the individual is a parent in a family with one parent who—

(A) is ill, incapacitated, or 60 years of age or older;

(B) is needed in the home because of the illness or incapacity of another family member;

(C) is the parent of a child under one year of age and is personally providing care for the child;

(D) is the parent of a child under 6 years of age and is employed or participates in education or employment and training services for 20 or more hours a week;

(E) works 30 or more hours a week or, if the number of hours worked cannot be verified, earns at least the Federal minimum hourly wage rate multiplied by 30 per week; or

(F) is in the second or third trimester of pregnancy.

(2) The State shall not require any parent of a child under 6 years of age in a participating family with only one parent to be employed or participating in education or employment and training services for more than 20 hours a week.

(3) For any period during which an individual required to participate in education, employment, or training requirements fails to comply without good cause with a requirement imposed by the State under paragraph (1), the amount of assistance to the family under the Project may be reduced by an amount not more than 10 percent of the assistance the family would be eligible for with no income other than that from the Project.

(d) FUNDING.—(1) If an application submitted under subsection (a) complies with the requirements specified in subsection (b), then the Secretary shall—

(A) approve such application; and

(B) subject to subsection (b)(12) from the funds appropriated under this Act provide grant awards and pay the State each calendar quarter for—

(i) the cost of food assistance provided under the Project equal to the amount that would have otherwise been issued in the form of coupons under the food stamp program had the Project not been implemented, as estimated under a methodology satisfactory to the Secretary after negotiations with the State; and

(ii) the administrative costs incurred by the State to provide food assistance under the Project that are authorized under subsections (a), (g), (h)(2) and (h)(3) of section 16 equal to the amount that otherwise would have been paid under such subsections had the Project not been implemented, as estimated under a methodology satisfactory to the Secretary after negotiations with the State: *Provided*, that payments made under subsection (g) of section 16 shall equal payments that would have been made if the Project had not been implemented.

(2) The Secretary shall periodically adjust payments made to the State under paragraph (1) to reflect—

(A) the cost of coupons issued to individuals ineligible for the Project specified in subsection (b)(3)(E) in excess of the amount that would have been issued to such individuals had the project not been implemented, as estimated under a methodology satisfactory to the Secretary after negotiations with the State; and

(B) the cost of coupons issued to families exercising the option specified in paragraph (b)(3)(D)(iii) in excess of the amount that would have been issued to such individuals had the Project not been implemented, as estimated under a methodology satisfactory to the Secretary after negotiation with the State.

(3) Payments under paragraph (1)(B) shall include adjustments, as estimated under a methodology satisfactory to the Secretary after negotiations with the State, for increases or decreases in the costs of providing food assistance and associated administrative costs that result from changes in economic, demographic, or other conditions in the State based on data specific to the State, changes in eligibility or benefit levels authorized by the Food Stamp Act, as amended, and changes in or additional amounts of Federal funds available to States and localities under the food stamp program.

(e) WAIVER.—With respect to the Project, the Secretary shall waive compliance with any requirement contained in this Act (other than this section) that, if applied, would prevent the State from carrying out the Project or effectively achieving its purpose.

(f) PROJECT AUDITS.—The Comptroller General of the United States shall—

(1) conduct periodic audits of the operation of the Project to verify the amounts payable to the State from time to time under subsection (d); and

(2) submit to the Secretary, the Secretary of Health and Human Services, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of each such audit.

(g) CONSTRUCTION.—(1) For purposes of any Federal, State, or local law other than part A of title IV of the Social Security Act or the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.)—

(A) cash assistance provided under the Project that is designated as food assistance by the State shall be treated in the same manner as coupon allotments under the food stamp program are treated; and

(B) participating families shall be treated in the same manner as participants in the food stamp program are treated.

(2) Nothing in this section shall—

(A) allow payments made to the State under the Project to be less than the amounts the State and eligible households within the State would have received if the Project had not been implemented; or

(B) require the Secretary to incur costs as a result of the Project in excess of costs that would have been incurred if the Project had not been implemented, except for costs for evaluation.

(h) QUALITY CONTROL.—Participating families shall be excluded from any sample taken for purposes of making any determination under section 16(c). For purposes of establishing the total value of allotments under section 16(c)(1)(C), food coupons and the amount of federal liability for food assistance provided under the Project as limited by subsection b(12) of this section shall be treated as allotments issued under the food stamp program. Payments for administrative costs incurred by the State shall be included for purposes of establishing the adjustment under section 16(c)(1)(A).

(i) EVALUATION.—(1) The State shall develop and implement a plan for an independent evaluation designed to provide reliable information on Project impacts and implementation. The evaluation will include treatment and control groups and will include random assignment of families to treatment and control groups in an urban setting. The evaluation plan shall satisfy the evaluation concerns of the Secretary of Agriculture such as effects on benefits to participants, costs of the Project, payment accuracy, administrative consequences, any reduction in welfare dependency, any reduction in total assistance payments, and the consequences of cash payments on household expenditures, and food consumption. The evaluation plan shall take into consideration the evaluation requirements and administrative obligations of the State. The evaluation will measure the effects of the Project in regard to goals of increasing family income, prevention of long term dependency, movement toward self support, and simplification of the welfare system.

(2) The State shall pay 50 percent of the cost of developing and implementing such plan and the Federal government shall pay the remainder.

(j) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) The term "family" means the following individuals who live together: a minor child or a group of minor children related to each other as siblings, half siblings, stepsiblings, or adopted siblings, together with their natural or adoptive parents, or their caregiver. Family also includes a pregnant woman in the third trimester of pregnancy with no children.

(2) The term "contract" means a plan to help a family pursue self-sufficiency, based on the State's assessment or the family's needs and abilities and developed with a parental caregiver.

(3) The term "caregiver" means a minor child's natural or adoptive parent or parents who live in the home with the minor child. For purposes of determining eligibility for the Project, "caregiver" also means any of the following individuals who live with and provide care and support to a minor child when the minor child's natural or adoptive parent or parents do not reside in the same home: grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, persons of preceding generations as denoted by prefixes of "great" or "great-great" or a spouse of any person named in the above groups even after the marriage ends by death or divorce.

(4) The term "State" means the State of Minnesota.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid upon the table.

## EXTENSION OF AUTHORITY OF SECRETARY OF COMMERCE TO CONDUCT QUARTERLY FINANCIAL REPORT PROGRAM

Mr. SAWYER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3629) extending the authority of the Secretary of Commerce to conduct the quarterly financial report program under section 91 of title 13, United States Code, through September 30, 1993, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

Senate amendment: Page 1, after line 5, insert:

SEC. 2. PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (c), any lump-sum credit payable to an employee or Member pursuant to the election of an altermative form of annuity by such employee or Member under section 8343a or section 8420a of title 5, United States Code, shall be paid in accordance with the schedule under subsection (b) (instead of the schedule which would otherwise apply), if the commencement date of the annuity payable to such employee or Member occurs after December 2, 1989, and before October 1, 1990.

(b) SCHEDULE OF PAYMENTS.—The schedule of payment of any lump-sum credit subject to this section is as follows:

(1) 50 percent of the lump-sum credit shall be payable on the date on which, but for the enactment of this section, the full amount of the lump-sum credit would otherwise be payable.

(2) the remainder of the lump-sum credit shall be payable on the date which occurs 12 months after the date described in paragraph (1).

An amount payable in accordance with paragraph (2) shall be payable with interest, computed using the rate under section 8334(e)(3) of title 5, United States Code.

(c) EXCEPTIONS.—The Office of Personnel Management shall prescribe regulations to provide that, unless the individual involved indicates otherwise by written notice to the Office (submitted at such time and in such manner as the regulations may require), this section shall not apply—

(1) in the case of any individual who is separated from Government service involuntarily, other than for cause on charges of misconduct or delinquency; and

(2) in the case of any individual as to whom the application of this section would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

(d) ANNUITY BENEFITS NOT AFFECTED.—Nothing in this section shall affect the commencement date, the amount, or any other aspect of any annuity benefits payable under section 8343a or section 8420a of title 5, United States Code.

(e) DEFINITIONS.—For purposes of this section, the terms "lump-sum credit", "employee", and "Member" each has the meaning given such term by section 8331 or section 8401 of title 5, United States Code, as appropriate.

SEC. 3. AMENDMENTS RELATING TO LIMITATIONS ON POSTAL SERVICE'S BORROWING AUTHORITY.

(a) IN GENERAL.—Section 2005(a) of title 39, United States Code, is amended—

(1) by striking "(a)" and inserting "(a)(1)";

(2) by striking "$10,000,000,000." and inserting "the maximum amount then allowable under paragraph (2) of this subsection.";

(3) by striking "$1,500,000,000" and inserting "$2,000,000,000";

(4) by striking "$500,000,000" and inserting "$1,000,000,000"; and

(5) by adding at the end the following:

"(2) The maximum amount allowable under this paragraph is—

"(A) $10,000,000,000 for fiscal year 1990;

"(B) $12,500,000,000 for fiscal year 1991; and

"(C) $15,000,000,000 for fiscal year 1992 and each fiscal year thereafter.".

(b) EFFECTIVE DATE.—(1) Subject to the provisions of paragraph (2), the amendments made by subsection (a) shall take effect on October 1, 1990.

(2) Notwithstanding any other provision of this section, the amendments made by subsection (a) shall not take effect, if no law provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990 is enacted before October 1, 1990.

Mr. SAWYER (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I yield to the gentleman from Ohio [Mr. SAWYER] to speak on this bill.

(Mr. SAWYER asked and was given permission to revise and extend his remarks).

Mr. SAWYER. Mr. Speaker, this request has been cleared by the chairman and ranking minority member of the Committee on Post Office and Civil Service.

The bill before us, H.R. 3629, passed the House last Monday. The Senate has added two amendments. One pro-

vides for deferred payment of a portion of the so-called lump-sum retirement payment for civil service retirees. The other increases the borrowing authority of the Postal Service. Similar versions of both provisions passed the House earlier this session.

Mr. RIDGE. Mr. Speaker, reclaiming my time, with the expiration of the Secretary's authority fast approaching, we run the risk of having no figures on which to base our gross national product projections. The quarterly financial report, under the authority of the Secretary of Commerce, provides the most current financial statistics on the performance of U.S. corporations. The QFR is also the only quarterly source of information on America's small business.

Mr. Speaker, H.R. 3629 merely extends the authority of the Secretary of Commerce to conduct the Quarterly Financial Report Program. The authority is due to expire on January 12, 1990.

H.R. 3629 returns from the Senate carrying two provisions contained in the budget reconciliation bill and agreed to in conference by all sides. The first, promised to Federal retirees in early summer, allows a 50-50 split in their lump sum distribution of retirement benefits. The second extends the necessary borrowing authority to the newly independent Postal Service. Both provisions are noncontroversial and are not objected to by the minority.

Mr. Speaker, I withdraw my reservation of objection.

Mr. FRENZEL. Mr. Speaker, I object to the passage of H.R. 3629 with the Senate amendments.

The first Senate amendment, the 50-50 lump sum provision, is unnecessary because it is contained in the reconciliation bill which will be on the floor shortly.

The second Senate provision, an increase in Postal Service borrowing authority, is even more objectionable. It is an extraneous and nongermane amendment and an attempt to avoid debate on an important policy and budgetary point.

As the previous speaker acknowledged, a similar provision had been in the reconciliation bill but was removed because it would result in an increase in the Federal deficit. Even in its present scaled-down form, the provision increasing the Postal Service's borrowing authority is still a multibillion dollar amendment to a bill originally intended to continue the publication of financial information at a $2 million cost.

The fact that the increase in the Postal Service borrowing authority was removed from the reconciliation bill and therefore will not be debated in that forum does not mean that it is noncontroversial. An increase in Postal Service borrowing authority is controversial on its own merits, no matter whether it stands alone or is attached to another bill. During fiscal year 1990, it will add an estimated $430 million to Treasury borrowing and Federal spending, notwithstanding the new off-budget status of the Postal Service.

A matter of this importance ought to be fully debated and considered. Unfortunately, this will not happen under the procedures being used tonight.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Ohio?

There was no objection.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on H.R. 3629.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

## SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1990

Mr. NATCHER. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 448) making supplemental appropriations for the fiscal year 1990, and for other purposes.

The Clerk read as follows:

H.J. RES. 448

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following sum is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year 1990, and for other purposes, namely:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSISTANT SECRETARY FOR HUMAN DEVELOPMENT SERVICES

SOCIAL SERVICES BLOCK GRANT

For an additional amount for carrying out the Social Services Block Grant Act, $100,000,000. *Provided,* That this amount shall only become available if specifically authorized in law.

The SPEAKER pro tempore. Is a second demanded?

Mr. MICHEL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

Mr. MICHEL. Mr. Speaker, I ask unanimous consent that the time on our side be allocated to the distinguished ranking member on the Committee on Appropriations, the gentleman from Massachusetts [Mr. CONTE].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. NATCHER] will be recognized for 20 minutes, and the gentleman from Massachusetts [Mr. CONTE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. NATCHER].

Mr. NATCHER. Mr. Speaker, I yield myself such time as I may consume.

This is a single-item joint resolution making an additional 1990 appropriation for the social services block grant, title XX, in the amount of $100,000,000. This would bring the program up to its revised authorization ceiling that will be part of the budget reconciliation bill. This is a entitlement program.

In the regular bill for fiscal year 1990 which the President signed today, we carried $2,700,000,000 for this program. That represented the full entitlement authorization up until this time; the reconciliation bill will raise the ceiling to $2,800,000,000. In this joint resolution we are simply following through with the necessary appropriation.

These funds are distributed among all 50 States according to a statutory formula. The States have flexibility to use these funds to provide a wide variety of social services for the purpose of preventing or reducing dependency, and assisting individuals to achieve self-sufficiency. Activities include child and adult day care, child and adult abuse and neglect prevention, home-based services, and independent living services.

Mr. CONTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, with the failure of this Congress to pass a separate child care bill, we are left with this supplemental appropriations bill as the only hope for improved child care funding. Folks, what we have before us is the real child care bill of 1989. This supplemental bill will add $100 million to the Social Services Block Grant and the States will have the flexibility where and how to spend the money.

The fall of 1989 will go down in budgetary history as the sequester semester. Because reconciliation dragged on and on, Gramm-Rudman-Hollings kicked in and our appropriations bills had to take a big hit from sequestration. The Social Services Block Grant is just one of many victims of the meat-ax. Preliminary estimates from HHS and OMB indicate that, after the addition of these funds, for a total of $2.8 billion, and with the sequestration left in place by the reconciliation agreement, the block grant will lose $39 million. So a big chunk of the funds we are adding, nearly 40 percent will be lost due to sequestration. This bill could end up being only a $60 million supplemental.

Maybe we should consider waiting until the spring to do this bill. By then, sequester might have taken its toll, and the full $100 million, might become available for the child care

services that families need. But while the outcome of sequestration is up in the air, I will stick with this bill to assure that some additional money will go to the block grant.

Mr. Speaker, while I'm not too keen with the haphazard way we are adding this money, I strongly urge passage of this bill to help the millions of working families and single parents who need child care, and other programs provided by the title XX block grant.

□ 2050

Mr. Speaker, I would like to ask my good chairman, the gentleman from Kentucky [Mr. NATCHER] a question. This is a supplemental. The other day we saw what happened to our HHS appropriation bill. It went over to the Senate, they tacked on seven amendments.

My question of my good chairman is that if this bill, this supplemental, goes over to the Senate and they tack on a lot of amendments or any amendment to this bill, will we consider this bill or will we just forget it for the year?

Mr. NATCHER. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Kentucky [Mr. NATCHER].

Mr. NATCHER. I thank the gentleman for yielding.

Mr. Speaker, I would like to say to my friend, Mr. CONTE of Massachsetts, that I agree with the gentleman that if the other body adds any amendments on this House joint resolution of any nature or description, we will not take it.

Mr. CONTE. I am pleased to hear that.

Mr. NATCHER. Further I would like to say to the distinguished gentleman from Massachusets that it is a distinct honor and privilege for me to serve with him. I want him to know that. I have enjoyed serving with him through the years and we will serve together for many more years.

Mr. CONTE. I thank the chairman for that, and the feeling is mutual.

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. I thank the gentleman for yielding.

Mr. Speaker, I have a question I would like to ask my colleague. If I understand what this bill will do, it is that under the existing law sequestration means that certain programs have to remit in order to meet Gramm-Rudman-Hollings targets. Is that right?

Mr. CONTE. That is right.

Mr. DANNEMEYER. If we do not adopt reconciliation so as to remove sequestration, then the gentleman feels this bill must come along in order to make sure that the reductions that sequestration has mandated will not take effect. Is that right?

Mr. CONTE. Well, it is more than that. It is also because the child care bill will not be taken up this year. Therefore this money, this supplemental of $100 million, will go to the social services block grant with a tremendous amount of flexibility to the States, that they can use it to fund additional child care programs. It will not be as much money, but it will help out. But sequestration does hurt the child care situation.

Mr. DANNEMEYER. I thank my colleague.

Mr. Speaker, I hesitate to take too much time over $100 million, since it is a modest sum.

Mr. CONTE. No, it is a lot of money, a lot of money.

Mr. DANNEMEYER. We set up a sequestration for the purpose of bringing some discipline onto this institution. I do not quarrel with the need for these programs. When you look at them in isolation, you can justify the need for most of them, that they should not be affected adversely by sequestration. But if we are going to have any discipline in this body at all controlling spending, we must insist, in my view, that if sequestration bites, the bite stays there.

Mr. CONTE. I see the gentleman's point, but I must say that this $100 million, as I understand it, was in the reconciliation bill for this purpose, but the additional funding is more properly provided in an appropriations bill, not in the reconciliation bill, and so one of the reasons why we have this bill is to carry out a part of the agreement reached in the resolution process.

Mr. DANNEMEYER. I thank the gentleman.

Mr. NATCHER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. CONTE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HOYER). The question is on the motion offered by the gentleman from Kentucky [Mr. NATCHER] that the House suspend the rules and pass the joint resolution, House Joint Resolution 448.

The question was taken.

Mr. DANNEMEYER. Mr. Speaker, I object to the vote on the ground a quorum is not present and make the point of order a quorum is not present.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

## IMMIGRATION NURSING RELIEF ACT OF 1989

Mr. MORRISON of Connecticut. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3259) to amend the Immigration and Nationality Act to provide for adjustment of status, without regard to numerical limitations, for certain H-1 nonimmigrant nurses and to establish conditions for the admission, during a 5-year period, of nurses as temporary workers, with Senate amendments thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Senate amendments: Page 3, after line 15 insert:

(d) APPLICATION PERIOD.—The alien, and accompanying spouse and children, must apply for such adjustment within the 5-year period beginning on the date the Attorney General promulgates regulations required under subsection (a).

Page 5, line 18, strike out "at".

Page 5, line 18, strike out "prevailing".

Page 7, strike out lines 11, 12, and 13, and insert:

"(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area."

Page 7, after line 21, insert:

"Nothing herein shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable.".

Page 9, line 5, strike out "120" and insert "180".

Page 9, line 18, after "penalties' insert in an amount not to exceed $1,000 per violation".

Page 10, line 4, strike out "additional".

Page 12, strike out all after line 14 over to and including line 2 on page 13.

Page 13, after line 2, insert:

SECTION 4. FRAUD PREVENTION IN SAW PROGRAM.

Section 210(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1160(a)(3)) is amended by—

(a) inserting "(A)" before "During", and

(b) inserting at the end of such paragraph the following new subparagraph:

"(B) Before any alien becomes eligible for adjustment of status under paragraph (2), the Attorney General may deny adjustment to permanent status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

"(i) the Attorney General finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 212(a)(19), or

"(ii) the alien commits an act that (I) makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(2), or (II) is convicted of a felony or 3 or more misdemeanors committed in the United States."

Section 210(b)(6)(A) of the Immigration and Nationality Act (8 U.S.C. 1160) is amended to read as follows:

"(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application including a de-

termination under subparagraph (a)(3)(B), or for enforcement of paragraph (7)."

Page 13, after line 2, insert:

SECTION 5. PILOT PROJECTS FOR SECURE DOCUMENTS.

(a) CONSULTATION.—Before June 1, 1991, the Attorney General shall consult with State governments on any proper State initiative to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a). The result of such consultations shall be reported, before September 1, 1991, to the Committees on the Judiciary of the Senate and House of Representatives of the United States.

(b) ASSISTANCE FOR STATE INITIATIVES.—After such consultation described in subsection (a), the Attorney General shall make grants to, and enter into contracts with (to such extent or in such amounts as are provided in an appropriation Act), the State of California and a least 2 other States with large immigrant populations to promote any State initiatives to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $10,000,000 for fiscal year 1992 to carry out subsection (b).

(d) REPORT REQUIRED.—The Attorney General shall report to the Committees on the Judiciary of the Senate and House of Representatives not later than August 1, 1993, on the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a), and any improvements in such documents that have occurred as a result of this section.

Page 13, after line 2, insert:

SEC. 6. ADDITIONAL USES OF STATE LEGALIZATION IMPACT ASSISTANCE GRANT FUNDS.

(a) IN GENERAL.—Section 204(c) of the Immigration Reform and Control Act of 1986 is amended—

(1) in paragraph (1)—

(A) by striking "and" at the end of subparagraph (B),

(B) by striking the period at the end of subparagraph (C) and inserting a comma, and

(C) by inserting after subparagraph (C) the following new subparagraphs:

"(D) to make payments for public education and outreach (including the provision of information to individual applicants) to inform temporary resident aliens regarding—

"(i) the requirements of sections 210, 210A, and 245A of the Immigration and Nationality Act regarding the adjustment of resident status,

"(ii) sources of assistance for such aliens obtaining the adjustment of status described in clause (i), including educational, informational, referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence,

"(iii) the identification of health, employment, and social services, and

"(iv) the importance of identifying oneself as a temporary resident alien to service providers,

except that nothing in this subparagraph may be construed as authorizing the provision of client counseling or any other service which would assume responsibility for the alien's application for the adjustment of status described in clause (i),"

"(E) (i) subject to clause (ii), to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status,

"(ii) except that the State agencies shall not initiate such efforts until after such consultation with the Office of the Special Counsel for Unfair Immigration-Related Employment Practices as is appropriate to ensure, to the maximum extent feasible, a uniform program. "; and

(2) in paragraph (2), by adding at the end the following new subparagraph:

"(D) Of the amount allotted to a State with respect to any fiscal year, a State may not use more than—

"(i) 1 percent (or, if greater, $100,000) for payments under paragraph (1)(D), and

"(ii) 1 percent (or, if greater, $100,000) for payments under paragraph (1)(E).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to the use of allotments for fiscal years beginning with fiscal year 1989.

Mr. MORRISON of Connecticut (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Connecticut?

Mr. WALKER. Mr. Speaker, reserving the right to object, I am trying to figure out which bill we are doing.

Mr. MORRISON of Connecticut. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Connecticut.

Mr. MORRISON of Connecticut. I thank the gentleman for yielding.

Mr. Speaker, the bill under consideration is the one that the gentleman from Texas is the ranking member of our subcommittee and this bill is the bill regarding nurses and emergency legislation dealing with the visa for foreign nurses.

Mr. WALKER. Is it H.R. 3259?

Mr. MORRISON of Connecticut. It is H.R. 3259.

Mr. Speaker, the need for experienced nurses in health care delivery has never been greater. Our country is facing an extreme nursing shortage and this legislation will help alleviate the problem. On December 31, 1989, temporary relief that was enacted last year to extend the visas of foreign nurses will expire, forcing the nurses to return home. H.R. 3259 addresses this problem by providing for the adjustment of status to permanent residency of registered nurses in the United States and by establishing conditions for the admission of foreign registered nurses during a 5-year period.

The Senate has also added language regarding the timely and significant steps that the facilities are required to take to ensure that they have tried to retain and recruit American nurses. A facilities is required to take more than one step, unless it can demonstrate that taking an additional step is not reasonable. In determining what the term "reasonable" means, it is our intent that the facility should make every effort to take the additional step, unless it would result in financial inability to continue providing the same quality and quantity of health care, or direct patient care would otherwise be jeopardized.

This bill addresses the needs of our Nation's hospitals and health care facilities, by allowing foreign nurses in the United States to adjustment their status to permanent residency. At the same time it creates a pilot program to ensure that the future admission of foreign nurses does not adversely affect the wages and working conditions of U.S. workers, but rather encourages the recruitment and retention of American nurses.

The Senate has added some important amendments to H.R. 3259. These amendments would, first, combat fraud in the Seasonal Agricultural Workers Program [SAW]; second, allow the Attorney General to assist States to improve State and local documents needed to meet requirements in the Immigration and Nationality Act for employment in the United States; third, allow States to use State legalization impact assistance grants [SLIAG] funds for public education and outreach to assist with adjustment of status to permanent residency, and for public education with respect to employment discrimination.

With respect to the SAW amendment, we understand that the Immigration and Naturalization Service has agreed that existing law permits administrative and judicial review of rescission of temporary status and denial of adjustment to permanent status and, during such review, it would be possible for an alien to supplement the evidentiary record so as to establish eligibility for legislation under section 210.

Mr. SMITH of Texas. Mr. Speaker, I support H.R. 3259, as amended by the Senate.

H.R. 3259 provides a short-term solution for the serious nursing shortage in the United States today. It establishes conditions for admission of foreign nurses as temporary workers over a 5-year period, and provides for the adjustment of status of certain H-1 nonimmigrant nurses.

The disruptions in health care delivery that result from insufficient numbers of practicing nurses concern many of us in the Congress. We must seek long-term solutions by providing incentives for qualified U.S. citizens to enter nursing and by encouraging current American nurses to continue to work in their important profession.

H.R. 3259 is a first step.

All of the amendments added by the Senate improve H.R. 3259.

The provision that prohibits the Attorney General from changing the H-1 regulations has ben deleted. This section set a dangerous precedent by blocking the executive branch's ability to promulgate regulations on issues it enforces. Its deletion removes that bad precedent.

Further minor changes address concerns raised in the labor law context.

An amendment now establishes a 5-year deadline by which all benefiting aliens, their spouses and children must file for adjustment of status. Previously, H.R. 3259 had no deadline for adjustment. This deadline ensures that

the provisions of H.R. 3259 and their ramifications are limited

Two amendments added by the Senate are not directly related to H.R. 3259 but greatly enhance our current immigration laws by addressing the issue of fraud.

The first allows the Attorney General to deny the adjustment of status of seasonal agricultural workers from temporary resident status to permanent resident status if there is a preponderance of evidence that fraud, willful misrepresentation, or acts that make an alien inadmissible as an immigrant have occurred.

Given that the amount of fraud in the Seasonal Agricultural Workers Program, this amendment greatly enhances the ability of the Attorney General to prevent those who submit fraudulent documentation from benefiting from our generous immigration laws.

The second amendment establishes a program by which the Attorney General can make grants to States with large immigrant populations in order to promote secure identification documents issued by the State, such as driver's licenses and birth certificates.

This amendment also would aid in the prevention of further fraud, particularly in the area of dispensing social benefits.

The last amendment addresses the further use of State legalization impact assistance grant funds. The SLIAG funds will be extended to cover public education and outreach to inform temporary resident aliens of their rights, responsibilities, benefits, and assistance, as well as for education and outreach regarding unfair discrimination in employment practices based on national origin on citizenship status.

The use of these funds are limited to not more than 1 percent of total SLIAG reimbursements to a State, or $100,000.

I have a few concerns about the SLIAG fund provision, as it pertains to unfair discrimination in employment practices.

First, it appears that the use of these funds will not be limited to instances of discrimination in employment practices of temporary resident aliens, but instead will be extended to all. Coverage of this kind extends the use of SLIAG funds beyond what they were originally intended to cover.

Further, this provision seemingly requires the Department of Health and Human Services to disperse funds based on civil rights grounds, not on the basis of the provision of social services.

However, these concerns will not prevent me from supporting the first portion of the amendment nor the remainder of the bill.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Connecticut?

There was no objection.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. MORRISON of Connecticut. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

## COAST GUARD AUTHORIZATION ACT OF 1989

Mr. TAUZIN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2459) to authorize appropriations for the Coast Guard for fiscal year 1990, and for other purposes, with a Senate amendment to the House amendment to the Senate amendment thereto, and concur in the Senate amendment to the House amendment to the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendment, as follows:

Senate amendment to House amendment to Senate amendment:

In lieu of the matter proposed to be inserted by the amendment of the House to the amendment of the Senate, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coast Guard Authorization Act of 1989".

### TITLE I—AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF FUNDS FOR FISCAL YEAR 1990.

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1990, as follows:

(1) OPERATION AND MAINTENANCE.—For the operation and maintenance of the Coast Guard, $2,312,200,000.

(2) ACQUISITION AND CONSTRUCTION.—For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including related equipment, $746,300,000 of which up to $20,000,000 shall be used to rehabilitate the Coast Guard Cutter Mackinaw, and additional sums as may be necessary to carry out the Coast Guard icebreaker ship program and the Coast Guard patrol boat program, to remain available until expended.

(3) RESEARCH AND DEVELOPMENT.—For research, development, test, and evaluation, $29,000,000, to remain available until expended.

(4) RETIREMENT BENEFITS.—For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $420,800,000, to remain available until expended.

(5) ALTERATION OR REMOVAL OF BRIDGES.—For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $2,300,000.

SEC. 102. AUTHORIZATION OF FUNDS FOR FISCAL YEAR 1991.

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1991, as follows:

(1) OPERATION AND MAINTENANCE.—For the operation and maintenance of the Coast Guard, $2,381,500,000.

(2) ACQUISITION AND CONSTRUCTION.—For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including related equipment, $501,800,000, to remain available until expended.

(3) RESEARCH AND DEVELOPMENT.—For research, development, test, and evaluation, $29,000,000, to remain available until expended.

(4) RETIREMENT BENEFITS.—For retired pay, including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose and payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and for payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $451,200,000, to remain available until expended.

(5) ALTERATION OR REMOVAL OF BRIDGES.—For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $7,500,000.

SEC. 103. AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1990.

(a) ACTIVE DUTY PERSONNEL.—As of September 30, 1990, the Coast Guard is authorized an end-of-year strength for active duty personnel of 38,750. This authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) STUDENT LOANS.—For fiscal year 1990, the Coast Guard is authorized average military training student loans as follows:

(1) RECRUIT AND SPECIAL TRAINING.—For recruit and special training, 2,687 student years.

(2) FLIGHT TRAINING.—For flight training, 110 student years.

(3) PROFESSIONAL TRAINING.—For professional training in military and civilian institutions, 390 student years.

(4) OFFICER ACQUISITION.—For officer acquisition, 900 student years.

SEC. 104. AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1991.

(a) ACTIVE DUTY PERSONNEL.—As of September 30, 1991, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,300. The authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) STUDENT LOADS.—For fiscal year 1991, the Coast Guard is authorized average military training student loads as follows:

(1) RECRUIT AND SPECIAL TRAINING.—For recruit and special training, 2,787 student years.

(2) FLIGHT TRAINING.—For flight training, 110 student years.

(3) PROFESSIONAL TRAINING.—For professional training in military and civilian institutions, 390 student years.

(4) OFFICER ACQUISITION.—For officer acquisition, 900 student years.

SEC. 105. MODIFICATION AND EXTENSION OF RULES OF ROAD ADVISORY COUNCIL AND EXTENSION OF TOWING SAFETY ADVISORY COMMITTEE.

(a) RULES OF THE ROAD ADVISORY COUNCIL.—

(1) MODIFICATION AND EXTENSION.—Section 5 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) is amended as follows:

(A) Subsection (a) is amended by striking "Rules of the Road Advisory Council" and inserting "Navigation Safety Advisory Council".

(B) Subsection (b) is amended to read as follows:

"(b) The Council shall advise, consult with, and make recommendations to the Secretary on matters relating to the prevention of collisions, rammings, and groundings, including the Inland rules of the road, the International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems. Any advice or recommendation made by the Council to the Secretary shall reflect the independent judgement of the Council on the matter concerned. The Council shall meet at the call of the Secretary, but in any event not less than twice during each calendar year. All proceedings of the Council shall be public, and a record of the proceedings shall be made available for public inspection.".

(C) Subsection (d) is amended by striking "September 30, 1990" and inserting "September 30, 1995".

(2) REFERENCES.—Each reference to the Rules of the Road Advisory Council in a law, regulation, order, document, record, or paper of the United States is deemed to be a reference to the Navigation Safety Advisory Council.

(b) TOWING SAFETY COMMITTEE.—Subsection (e) of the Act entitled "An Act to establish a Towing Safety Advisory Committee in the Department of Transportation", approved October 6, 1980 (33 U.S.C. 2131a(e)), is amended by striking "September 30, 1990" and inserting "September 30, 1995".

SEC. 106 COMMERCIAL FISHING INDUSTRY VESSEL ADVISORY COMMITTEE APPOINTMENTS.

Section 4508 of title 46, United States Code, is amended by adding at the end of subsection (b)(2) the following: "The Secretary may not seek or use information concerning the political affiliation of individuals in making appointments to the Committee."

## TITLE II—PROGRAMS

SEC. 201. TECHNICAL AMENDMENTS TO ACT TO PREVENT POLLUTION FROM SHIPS

The Act to Prevent Pollution from Ships (33 U.S.C. 1901-1912) is amended—

(1) in section 6(c)(1), by striking "Annex V" and inserting "Annex I and Annex II";

(2) in section 8(c)(1), by inserting "or of this Act" after "Convention"; and

(3) in section 8(c)(2), by inserting "or of this Act" after "MARPOL Protocol".

SEC. 202. TECHNICAL CORRECTIONS RELATING TO SAFEGUARDING MILITARY WHISTLEBLOWERS.

Section 1034 of title 10, United States Code, is amended—

(1) in subsection (c)(1), by inserting "when the Coast Guard is not operating as a service in the Navy" immediately after "in the case of a member of the Coast Guard';

(2) in subsection (c)(5), by inserting "(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)" immediately after "to the Secretary of Defense";

(3) in subsection (c)(6), by inserting "(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)" immediately after "to the Secretary of Defense"; and

(4) in the first sentence of subsection (e), by inserting "(except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)" immediately after "former member of the armed forces".

SEC. 203. MISCELLANEOUS PROVISIONS CONCERNING CONTINUITY OF GRADE, APPOINTMENT, AND RETIREMENT OF COAST PERSONNEL.

Title 14, United States Code, is amended—

(1) in section 52, by inserting "our admiral" immediately after "to another position as a vice admiral";

(2) in section 271(c), by inserting at the end of the first sentence, ", except that advice and consent is not required for appointments under this section in the grade of lieutenant (junior grade) or lieutenant" immediately after "consent of the Senate";

(3) in section 289(c), by striking "no less than 75 percent" and inserting "no less than 50 percent";

(4) in section 736(c), by adding at the end the following new sentence: "However, the Secretary may adjust the date of appointment—

"(1) if a delay in the finding required under section 734(a) of this title is beyond the control of the officer and the officer is otherwise qualified for promotion; or

"(2) for any other reason that equity requires."; and

(5) in section 741(a), by inserting "who have 18 years or more of service for retirement and are" after "in an active status" the third time it appears.

SEC. 204. AUTHORIZATION OF JUNIOR RESERVE OFFICERS TRAINING PROGRAM PILOT PROGRAM.

(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating (hereinafter in this section referred to as the "Secretary") may carry out a pilot program to establish and maintain a junior reserve officers training program in cooperation with the Dade County Public School System of Dade County, Florida, as part of the Maritime and Science Technology Academy established by that school system (hereinafter in this section referred to as the "Academy").

(b) PROGRAM REQUIREMENTS.—A pilot program carried out by the Secretary under this section—

(1) shall be known as the "Claude Pepper Junior Reserve Officers Training Program"; and

(2) shall provide to students at the Academy—

(A) instruction in subject areas relating to operations of the Coast Guard; and

(B) training in skills which are useful and appropriate for a career in the Coast Guard.

(c) PROVISION OF ADDITIONAL SUPPORT.—To carry out a pilot program under this section, the Secretary may provide to the Academy—

(1) assistance in course development, instruction, and other support activities;

(2) commissioned, warrant, and petty officers of the Coast Guard to serve as administrators and instructors; and

(3) necessary and appropriate course materials, equipment, and uniforms.

(d) EMPLOYMENT OF RETIRED COAST GUARD PERSONNEL.—

(1) IN GENERAL.—Subject to paragraph (2) of this subsection, the Secretary may authorize the Academy to employ as administrators and instructors for the pilot program retired Coast Guard and Coast Guard Reserve commissioned, warrant, and petty officers who request that employment and who are approved by the Secretary and the Academy.

(2) AUTHORIZED PAY.—(A) Retired members employed under paragraph (1) of this subsection are entitled to receive their retired or retainer pay and an additional amount of not more than the difference between—

(i) the amount the individual would be paid as pay and allowance if they were considered to have been ordered to active duty during that period of employment; and

(ii) the amount of retired pay the individual is entitled to receive during that period.

(B) The Secretary shall pay to the Academy an amount equal to one half of the amount described in subparagraph (A) of this paragraph, from funds appropriated for that purpose.

(C) Notwithstanding any other law, while employed under this subsection, an individual is not considered to be on active duty or inactive duty training.

SEC. 205. LIMITATIONS ON CONTRACTING OF COAST GUARD SERVICES.

Notwithstanding any other provision of law, an officer or employee of the United States may not enter into a contract for procurement of performance of any function being performed by Coast Guard personnel as of January 1, 1989, before—

(1) a study has been performed by the Secretary of Transportation under the Office of Management and Budget Circular A-76 with respect to that procurement;

(2) the Secretary of Transportation has performed a study, in addition to the study required by paragraph (1) of this subsection, to determine the impact of that procurement on the multimission capabilities of the Coast Guard; and

(3) copies of the studies required by paragraphs (1) and (2) of this subsection are submitted to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 206. LOCAL HIRE.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by adding at the end the following new section:

"§ 666. Local hire

"(a) Notwithstanding any other law, each contract awarded by the Coast Guard for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment (as determined by the Secretary of Labor) shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. The Secretary of Transportation, may waive the requirements of this subsection in the interest of national security or economic efficiency.

"(b) LOCAL RESIDENT DEFINED.—As used in this section, 'local resident' means a resident of, or an individual who commutes daily to, a State described in subsection (a).".

(b) CLERICAL AMENDMENT.—The analysis for chapter 17 of title 14, United States Code, is amended by adding at the end of the following:

"666. Local hire.".

SEC. 207. REPORT ON CONTROL OF EXOTIC SPECIES.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall submit to the Congress a report on the options avail-

able to control the infestation of the waters of the United States, including the Great Lakes, by exotic species from the ballast water of vessels operating on the waters of the United States. In preparing this report, the Secretary shall consult with the Secretary of the Interior, the Secretary of Commerce, the Great Lakes Fishery Commission, and other appropriate parties.

(b) EXOTIC SPECIES DEFINED.—In this section "exotic species" means nonnative fish, mollusks, crustaceans, zooplankton, and other aquatic organisms, other than sea lampreys.

SEC. 208. LAW ENFORCEMENT SURVEILLANCE.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Transportation shall—

(1) submit a report to the Congress that identifies—

(A) the needs of outfitting existing Coast Guard aircraft with surveillance and reconnaissance equipment to assist in the conduct of law enforcement activities; and

(B) the cost of that equipment; and

(2) in cooperation with the Secretary of Defense, establish and submit to the Congress a plan for closing existing gaps in radar coverage along the coastline of the United States on the Gulf of Mexico and the coastline of the southeastern United States on the Atlantic Ocean.

SEC. 209. NUMBERING OF VESSELS.

Section 2101 of title 46, United States Code, is amended by inserting after paragraph (17) the following:

"(17a) 'numbered vessel' means a vessel for which a number has been issued under chapter 123 of this title.".

SEC. 210. CONSTRUCTIVE SEIZURE PROCEDURES.

Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation and the Secretary of the Treasury, in order to avoid the devastating economic effects on innocent owners of seizures of their vessels, shall develop a procedure for constructive seizure of vessels of the United States engaged in commercial service as defined in Section 2101 of Title 46, United States Code, that are suspected of being used for committing violations of law involving personal use quantities of controlled substances.

SEC. 211. USER FEES REPORT CLARIFICATION.

Section 664(c) of title 14, United States Code, is amended as follows:

(1) in paragraph (1) by striking "collected stating—" and substituting "collected under any law stating—"; and

(2) in paragraph (2) by inserting "under any law" after "collected" the first time it appears.

SEC. 212. BOARD FOR THE CORRECTION OF MILITARY RECORDS.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Transportation shall—

(1) amend part 52 of title 33, Code of Federal Regulations, governing the proceedings of the board established by the Secretary under section 1552 of title 10, United States Code, to ensure that a complete application for correction of military records is processed expeditiously and that final action on the application is taken within 10 months of its receipt; and

(2) appoint and maintain a permanent staff, and a panel of civilian officers or employees to serve as members of the board, which are adequate to ensure compliance with paragraph (1) of this subsection.

SEC. 213. CONSIDERATION OF MARITIME ADMINISTRATION VESSELS.

Before acquiring a vessel for use by the Coast Guard, the Secretary of Transportation or the Commandant of the Coast Guard, as appropriate, shall review the inventory of vessels acquired by the Secretary or the Secretary of Commerce as the result of a default under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271-1279c), to determine whether any of those vessels are suitable for use by the Coast Guard.

SEC. 214. REQUIREMENT TO REPORT SEXUAL OFFENSES.

(a) IN GENERAL.—Chapter 101 of title 46, United States Code is amended by:

(1) deleting section 10104; and

(2) adding the following new section:

"§ 10104. Requirement to report sexual offenses

"(a) A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code.

"(b) A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of not more than $5,000.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 101 of title 46, United States Code, is amended by striking, "10104. Regulations." and inserting "10104. Requirement to report sexual offenses.".

SEC. 215. LIMITATION ON VESSEL TRANSFER FROM GULFPORT, MISSISSIPPI.

The Secretary of Transportation shall not transfer the Coast Guard cutter ACUSHNET from Gulfport, Mississippi, until at least two Coast Guard patrol boats are based permanently in Gulfport.

SEC. 216. CONSIDERATION OF DEPARTMENT OF DEFENSE HOUSING FOR COAST GUARD.

Notwithstanding any other provision of law, the Coast Guard is deemed to be an instrumentality within the Department of Defense for the purposes of Section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 US..C. 2687).

SEC. 217. PROHIBITION AGAINST REDUCTION IN SERVICES.

The Secretary of Transportation may not reduce expenditures in fiscal year 1990 or fiscal year 1991 for Coast Guard services other than drug law enforcement to increase drug law enforcement unless the Secretary first notifies the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives 30 days prior to any reduction, except that nothing in this section shall be construed to reduce the Coast Guard's ability to respond to interdiction opportunities that may arise in the course of normal activities.

SEC. 218. COST OF SECURITY AT KENNEBUNKPORT, MAINE.

Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall—

(1) submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives that indentifies the costs incurred by the Coast Guard and any reallocation of assets or personnel that would have been used for search and rescue or law enforcement operations, as a result of providing security at Kennebunkport, Maine; and

(2) actively seek reimbursement of those costs from the Secretary of Treasury.

SEC. 219. VESSEL TRAFFIC SERVICE RESTORATION.

The Secretary of the department in which the Coast Guard is operating shall reestablish a vessel traffic service on the Lower Mississippi River in New Orleans, and shall continue operation of the New York Harbor area and other existing vessel traffic service systems.

SEC. 220. SEARCH AND RESCUE SATELLITE SYSTEM.

(a)(1) The Secretary of Transportation shall take such action as may be necessary to upgrade the ground segment of the Search and Rescue Satellite Aided Tracking system (hereafter in this section referred to as "SARSAT").

(2) In carrying out this section, the Secretary of Transportation shall establish not less than 5 SARSAT ground stations for the purpose of providing adequate coverage of the United States area of search and rescue for which it has responsibility under the program known as "COSPAS-SARSAT". In establishing such stations, the Secretary, after consulation with the satellite search and rescue offices of the Coast Guard, the National Oceanic and Atmospheric Administration, the Air Force, the National Aeronautics and Space Administration, and the SARSAT Program Steering Group, shall locate the stations in the most options sites to assure complete coverage of the search and rescue areas for which the United States is responsible.

(b) The Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration, shall administer the SARSAT ground stations. Such administration shall be carried out in consultation with the Secretary of Transportation and the Secretary of Defense.

(2) For the purpose of carrying out the provisions of subsection (a) of this section, there is authorized to be appropriated $5,300,000. Moneys appropriated pursuant to this subsection shall remain available until expended.

BOSTON LIGHT STATION

SEC. 221(a) The Congress finds and declares the following:

(1) The Boston Light Station (hereafter in this section referred to as the "Boston Light") or Little Brewster Island, Boston Harbor, Massachusetts, is the Nation's eldest lighthouse station.

(2) The Boston Light is a National Historic Landmark and Little Brewster Island is listed in the National Register of Historic Places. As such, they should be administered and maintained in a way that preserves for public enjoyment and appreciation their special historic character.

(3) Continued manned operation of the Boston Light will preserve its special historic character. Any proposal to automate or modernise Boston Light must be consistent with the provisions of sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470f and 470h-2).

(4) Efforts should be undertaken that will facilitate public access to, and enhance the public enjoyment and appreciation of, the Boston Light and Little Brewster Island.

(b) The Boston Light shall be operated on a permanently manned basis. The amounts authorized to be appropriated under sections 101 and 102 include funds—

(1) for maintenance of the keeper's house and of the Boston Lighthouse, and

(2) to enhance public access to the Boston Light and Little Brewster Island, including making pier improvements on the island.

(c) The Secretary of Transportation shall, in consultation with the Secretary of Interior, the Massachusetts Department of Environmental Management, the Massachusetts Historical Preservation Officer, appropriate local government entities, and private preservation groups, develop a strategy to implement policies regarding the ownership, maintenance, staffing, and use of the Boston Light. The strategy shall propose ways—

(1) to provide improved public access to the Boston Light and Little Brewster Island, and

(2) to ensure that the special historic characters of the Boston Light will be preserved, with the continuing presence of Coast Guard personnel, so as to provide the best possible public enjoyment and appreciation.

SEC. 222. COAST GUARD ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM.

(a) ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM.—Title 14, United States Code, is amended by adding the following new chapter 19 after chapter 17:

"CHAPTER 19—ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM

"Sec.
"690. Definitions.
"691. Environmental Compliance and Restoration Program.
"692. Environmental Compliance and Restoration Account.
"693. Annual Report to Congress.
"690. Definitions

"For the purposes of this chapter—

"(1) 'environment', 'facility', 'person', 'release', 'removal', 'remedial', and 'response' have the same meaning they have in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601);

"(2) 'hazardous substance' has the same meaning it has in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), except that it also includes the meaning given 'oil' in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and

"(3) 'pollutant' has the same meaning it has in section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362).

"691. Environmental Compliance and Restoration Program

"(a) The Secretary shall carry out a program of environmental compliance and restoration at current and former Coast Guard facilities.

"(b) Program goals include:

"(1) Identifying, investigating, and cleaning up contamination from hazardous substances and pollutants.

"(2) Correcting other environmental damage that poses an imminent and substantial danger to the public health or welfare or to the environment.

"(3) Demolishing and removing unsafe buildings and structures, including buildings and structures at former Coast Guard facilities.

"(4) Preventing contamination from hazardous substances and pollutants at current Coast Guard facilities.

"(c)(1) The Secretary shall respond to releases of hazardous substances and pollutants—

"(A) at each Coast Guard facility the United States owns, leases, or otherwise possesses;

"(B) at each Coast Guard facility the United States owned, leased, or otherwise possessed when the actions leading to contamination from hazardous substances or pollutants occurred; and

"(C) on each vessel the Coast Guard owns or operates.

"(2) Paragraph (1) of this subsection does not apply to a removal or remedial action when a potentially responsible person responds under section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9622).

"(3) The Secretary shall pay a fee or charge imposed by a state authority for permit services for disposing of hazardous substances or pollutants from Coast Guard facilities to the same extent that nongovernmental entities are required to pay for permit services. This paragraph does not apply to a payment that is the responsibility of a lessee, contractor, or other private person.

"(d) The Secretary may agree with another Federal agency for that agency to assist in carrying out the Secretary's responsibilities under this chapter. The Secretary may enter into contracts, cooperative agreements, and grant agreements with State and local governments to assist in carrying out the Secretary's responsibilities under this chapter. Services that may be obtained under this subsection include identifying, investigating, and cleaning up off-site contamination that may have resulted from the release of a hazardous substance or pollutant at a Coast Guard facility.

"(e) Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9619) applies to response action contractors that carry out response actions under this chapter. The Coast Guard shall indemnify response action contractors to the extent that adequate insurance is not generally available at a fair price at the time the contractor enters into the contract to cover the contractor's reasonable, potential, long-term liability.

"692. Environmental Compliance and Restoration Account

"(a) There is established for the Coast Guard an account known as the Coast Guard Environmental Compliance and Restoration Account. All sums appropriated to carry out the Coast Guard's environmental compliance and restoration functions under this chapter or another law shall be credited or transferred to the account and remain available until expended.

"(b) Funds may be obligated or expended from the account to carry out the Coast Guard's environmental compliance and restoration functions under this chapter or another law.

"(c) In proposing the budget for any fiscal year under section 1105 of title 31, United States Code, the President shall set forth separately the amount requested for the Coast Guard's environmental compliance and restoration activities under this chapter or another law.

"(d) Amounts recovered under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607) for the Secretary's response actions at current and former Coast Guard facilities shall be under this chapter or another law.

"(d) Amounts recovered under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607) for the Secretary's response actions at current and former Coast Guard facilities shall be credited to the account.

"693. Annual Report to Congress

"(a) The Secretary shall submit to Congress a report each fiscal year describing the progress the Secretary has made during the preceding fiscal year in implementing this chapter.

"(b) Each report shall include:

"(1) A statement for each facility or vessel for which the Secretary is responsible under section 691(c) of this title where a release of a hazardous substance or pollutant has been identified.

"(2) The status of response actions contemplated or undertaken at each facility.

"(3) The specific cost estimates and budgetary proposals for response actions contemplated or undertaken at each facility.

"(4) The total amount required to clean up contamination at all identified facilities.".

(b) TITLE ANALYSIS.—The title analysis at the beginning of part I of title 14, United States Code, is amended by adding after item 17:

"19. Coast Guard Environmental Compliance and Restoration Program ..... 690".

(c) PRIOR AUTHORIZATION REQUIREMENT.—Section 662 of title 14, United States Code, is amended by adding the following new paragraph:

"(5) For environmental compliance and restoration at Coast Guard facilities.".

SEC. 223. BLOCK ISLAND SOUTHEAST LIGHTHOUSE PRESERVATION.

(a) CONVEYANCE.—(1) The Secretary of the department in which the Coast Guard is operating may convey, by any appropriate means, all right, title and interest of the United States in the Block Island Southeast Lighthouse to the Block Island Southeast Lighthouse Foundation (hereafter referred to as the "Foundation") of the town of New Shoreham, Rhode Island.

(2) The purpose of this conveyance is to establish and maintain a nonprofit center for the public at the Block Island Southeast Lighthouse for interpretation and preservation of the culture of the United States Coast Guard and Block Island's maritime history.

(3) The Secretary may not transfer the the Block Island Southeast Lighthouse until the Foundation or the State of Rhode Island, acting on its behalf, requests from the Secretary that the transfer occur.

(b TERMS AND CONDITIONS.—The conveyance shall be made—

(1) without payment of consideration;

(2) subject to the condition that if the property, or any part of the property, ceases to be used for the purpose of this section, title, to all such property shall be deemed to have immediately reverted to the United States; and

(3) subject to such other terms and conditions as the Secretary of the department in which the Coast Guard is operating may impose.

(c) REQUIREMENTS.—The conveyance shall include provisions necessary to assure that—

(1) the light, antennae, sound signal, and associated equipment which are active aids to navigation shall continue to be operated and maintained by the United States;

(2) the Foundation will not interfere or allow interference in any manner with navigational aids without written permission of the United States;

(3) there is reserved to the United States the right to relocate, replace, or add any navigational aids, or make any changes on

any portion of the property as may be necessary for navigational purposes;

(4) the United States shall have the right, at any time, to enter the property without notice to maintain navigational aids; and

(5) the United States shall have an easement for access to the property to maintain navigational aids.

(d) PROPERTY DESCRIPTION.—The Secretary of the department in which the Coast Guard is operating shall identify, describe, and determine the property to be conveyed under this section.

(e) DEFINITION.—For purposes of this section, "Block Island Southeast Lighthouse" means the lighthouse and attached keeper's dwelling, several ancillary buildings, a fog signal, and land (but not less than nine acres) necessary to carry out the purposes of this section located in the town of New Shoreham, Rhode Island.

(f) STRATEGY.—The Secretary of Transportation shall within six months of the date of enactment, in consultation with the Secretary of the Interior, appropriate state, local, and other governmental entities, and private preservation groups, develop a strategy regarding the ownership, maintenance, operation, and use of the Block Island Southeast Lighthouse that will preserve the special historic character of the Lighthouse and ensure public access. Any proposal must be consistent with the provisions of the National Historic Preservation Act (16 U.S.C. 470 et seq.), other applicable law, and efforts to interpret and preserve the material culture of the United States Coast Guard and Block Island's maritime history.

## TITLE III—MISCELLANEOUS

SEC. 301. DOCUMENTATION OF VESSELS.

(a) TECHNICAL AMENDMENTS.—Chapter 121 of title 46, United States Code, is amended as follows:

(1) Section 12101(b) is amended—

(A) in paragraph (1), by striking "registry as" and inserting "registry endorsement as";

(B) in paragraph (2), by striking "coastwise license" and inserting "coastwise endorsement";

(C) in paragraph (3), by striking "Great Lakes license" and inserting "Great Lakes endorsement";

(D) by repealing paragraph (4); and

(E) by redesignating paragraph (5) as paragraph (4).

(2) Section 12102 is amended—

(A) in the matter preceding paragraph (1) of subsection (a)—

(i) by inserting "that is" before "not", and

(ii) by inserting "or is not titled in a State" after "foreign country";

(B) by striking "(b)(1)" and inserting "(c)(1)";

(C) in subsection (c)(1) (as redesignated by subparagraph (B)), by striking "fishery license" and inserting "fishery endorsements"; and

(D) by repealing subsection (c).

(3) Section 12103 is amended—

(A) in subsection (a), by striking "of one of the types" and inserting "endorsed with one or more of the endorsements"; and

(B) in subsection (b)—

(i) by striking "(b)" and inserting "(b)(1)"; and

(ii) by adding at the end the following new paragraph;

"(2) The Secretary shall require each person applying to document a vessel to provide—

"(A) the person's social security number; or

"(B) for a person other than an individual—

"(i) the person's taxpayer identification number; or

"(ii) if the person does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the person and who signs the application for documentation for the vessel.".

(4) Section 12104(2) is amended by striking "vessel license," and inserting "endorsement,".

(5) Section 12105 is amended—

(A) by amending subsection (a) to read as follows:

"(a) A certificate of documentation may be endorsed with a registry endorsement.";

(B) in subsection (b), by inserting "endorsement" after "registry";

(C) by repealing subsections (c) and (d); and

(D) in the catchline, by inserting "endorsements" after "Registry".

(6) Section 12106 is amended—

(A) in subsection (a), by striking "A coastwise license or, as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued" and inserting "A certificate of documentation may be endorsed with a coastwise endorsement";

(B) in subsection (b), by striking "coastwise license or an appropriately endorsed registry" and inserting "certificate of documentation with a coastwise endorsement";

(C) in subsection (c), by striking "license" and inserting "endorsement";

(D) by repealing subsection (d); and

(E) in the catchline, by striking "licenses and registry" and inserting "endorsements".

(7) Section 12107 is amended—

(A) in subsection (a), by striking "A Great Lakes license, or as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued" and inserting "A certificate of documentation may be endorsed with a Great Lakes endorsement";

(B) by amending subsection (b) to read as follows:

"(b) Subject to the laws of the United States regulating trade with Canada, only a vessel for which a certificate of documentation with a Great Lakes endorsement is issued may be employed on the Great Lakes and their tributary and connecting waters in trade with Canada.";

(C) by repealing subsection (c); and

(D) in the catchline, by striking "licenses and registry" and inserting "endorsements".

(8) Section 12108 is amended—

(A) in subsection (a), by striking "A fishery license or, as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued" and inserting " A certificate of documentation may be endorsed with a fishery endorsement";

(B) in subsection (a)(1), by striking "and";

(C) in subsection (b), by striking "fishery license or an appropriately endorsed registry" and inserting "certificate of documentation with a fishery endorsement";

(D) in subsection (c), by striking "license" and inserting "endorsement";

(E) by repealing subsection (d); and

(F) in the catchline, by striking "licenses and registry" and inserting "endorsements".

(9) Section 12109 is amended—

(A) by striking subsection (a) and inserting the following:

"(a) A certificate of documentation with a recreational endorsement may be issued for a vessel that is eligible for documentation.";

(B) in subsection (b)—

(i) by striking "licensed recreational vessel" and inserting "documented vessel with a recreational endorsement"; and

(ii) by striking "Such" and inserting "A recreational";

(C) by adding at the end the following new subsection:

"(c) A documented vessel operating under a recreational endorsement may be operated only for pleasure."; and

(D) in the catchline, by striking "vessel licenses" and inserting "endorsements".

(10) Section 12110 is amended—

(A) by amending subsection (a) to read as follows:

(a) A vessel may not be employed in a trade except a trade covered by the endorsement issued for that vessel."; and

(B) in subsection (c)—

(i) by striking "certificate of documentation" and inserting "endorsement",

(ii) by striking "recreational vessel" and inserting "vessel with a recreational endorsement", and

(iii) by striking "except" and inserting

(11) Section 12112 is amended—

(A) in subsection (a), by striking "an appropriate document" and inserting "a certificate of documentation with an appropriate endorsement"; and

(B) in subsection (b), by striking "an appropriate" and inserting "a".

(12) The table of sections at the beginning of chapter 121 is amended by striking the entries for sections 12105 through 12109 and inserting the following:

"12105. Registry endorsements.

"12106. Coastwise endorsements.

"12107. Great Lakes endorsements.

"12108. Fishery endorsements.

"12109. Recreational endorsements."

(b) DOCUMENTATION SURRENDER AND INVALIDATION.—Section 12111(c)(3) of title 46, United States Code, does not apply to a mortgage that—

(1) was filed or recorded before January 1, 1989; and

(2) was not a preferred mortgage (as that term is defined in section 31301(6) of that title) on that date.

SEC. 302. VESSEL IDENTIFICATION SYSTEMS.

Chapter 125 of title 46, United States Code, is amended as follows:

(1) Section 12501(b)(2) is amended to read as follows:

"(2) identifying the owner of the vessel, including—

"(A) the owner's social security number; or

"(B) for an owner other than an individual—

"(i) the owner's taxpayer identification number; or

"(ii) if the owner does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the owner and who signed the application for documentation or numbering for the vessel;".

(2) Section 12503(a)(2) is amended to read as follows:

"(2) identifies the owner of the vessel, including by—

"(A) the owner's social security number; or

"(B) for an owner other than an individual—

"(i) the owner's taxpayer identification number; or

"(ii) if the owner does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the owner and who signed the applica-

tion for documentation or numbering for the vessel;".

(3) Section 12504 is amended by striking "Secretary, the Secretary of Transportation—" and inserting "Secretary of Transportation, the Secretary—".

SEC. 303. COMMERCIAL INSTRUMENTS AND MARITIME LIENS.

Chapter 313 of title 46, United States Code, is amended as follows:

(1) Section 31306 is amended—

(A) in subsection (a), by striking "When" and inserting "Except as provided by the Secretary of Transportation, when" and by striking "of Transportation"; and

(B) in subsection (c), by striking "An" and inserting "Except as provided by the Secretary, an".

(2) Section 31321(c) is amended—

(A) by striking "that has not yet been documented," and inserting "for which an application for documentation is filed,"; and

(B) by striking "party whose name and address is stated on" and inserting "interested party to";

(3) Section 31322 is amended—

(A) by amending subsection (a)(2) to read as follows:

"(2) Paragraph (1)(D) of this subsection does not apply to—

"(A) a documented vessel that has a fisheries endorsement or a recreational endorsement, or both endorsements; or

"(B) a vessel for which an application for documentation with a fisheries endorsement or a recreational endorsement, or both endorsements, has been filed.";

(B) in subsection (d)(1), by striking "representing financing of a vessel under State law that is made under applicable State law" and inserting "granting a security interest perfected under State law"; and

(C) in subsection (e) (1) and (2) by striking "the validity of the preferred mortgage" each place that phrase appears and inserting "the status of the preferred mortgage".

(4) Section 31325 is amended by amending subsections (b) and (c) to read as follows:

"(b) On default of any term of the preferred mortgage, the mortgagee may—

"(1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, or a foreign vessel; and

"(2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—

"(A) a civil action in personam in admiralty against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

"(B) a civil action against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

"(c) The district courts have original jurisdiction of a civil action brought under subsection (b) (1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section."

(5) Section 31341(a)(3) is amended by striking "management" and inserting "management".

(6) Section 31342 is amended—

(A) by striking "A person providing necessaries to a vessel (except a public vessel) on the order of a person listed in section 31341 of this title" and inserting "(a) Except as provided in subsection (b) of this section, a person providing necessaries to a vessel on the order of the owner"; and

(B) by adding the following new subsection (b) at the end:

"(b) This section does not apply to a public vessel.".

SEC. 304. AMENDMENTS TO THE SHIPPING ACT, 1916.

(a) EXEMPTION FROM REQUIREMENT OF APPROVAL BY SECRETARY.—Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), is amended in subsection (c)(1) by inserting "or the last documentation of which was under the laws of the United States" before the semicolon at the end;

(2) in subsection (c)(2) by inserting ", or a vessel the last documentation of which was under the laws of the United States," after "a documented vessel";

(3) in subsection (d) (1) and (2), by striking "or control in" and inserting "in or control of"; and

(4) adding the following new paragraph:

"(4) A person that charters, sells, transfers, or mortgages a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.".

(b) REMISSION OF FORFEITURE.—Section 38 of the Shipping Act, 1916 (46 App. U.S.C. 836) is amended by striking "duties." and inserting "duties, except that forfeitures may be remitted without seizure of the vessel.".

SEC. 305. CIVIL PENALTY PROCEDURES.

Chapter 3 of title 49, United States Code, is amended—

(1) by adding at the end of subchapter II the following new section:

"§ 336. Civil penalty procedures.

"(a) After notice and an opportunity for a hearing, a person found by the Secretary of Transportation to have violated a provision of law that the Secretary carries out through the Maritime Administrator or the Commandant of the Coast Guard or a regulation prescribed under that law by the Secretary for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

"(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

"(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

"(d) The Secretary may refund or remit a civil penalty collected under this section if—

"(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

"(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed."; and

(2) in the table of sections, by adding at the end the following:

"336. Civil penalty procedures.".

SEC. 306. EXEMPTION OF CERTAIN FISHING INDUSTRY FROM INSPECTION REQUIREMENTS.

Section 403(a) of Public Law 98-364 is amended by striking "1990" in the first sentence and inserting "1991".

SEC. 307. LAWS REPEALED.

The following laws are repealed:

(1) Section 4172 of the Revised Statutes of the United States (46 App. U.S.C. 41).

(2) Section 8 of Public Law 96-376 (46 App. U.S.C. 382b-1).

(3) Section 9(a) of the Shipping act, 1916 (46 App. U.S.C. 808(a)).

(4) Sections 15 and 34 of the Merchant Marine Act, 1920.

(5) Section 701 of the Merchant Marine Act, 1928 (46 App. U.S.C. 891s).

(6) Section 6 of the Act of June 16, 1933 (46 App. U.S.C. 891y).

(7) Sections 201(b), 201(g), 510(h), 612, 804(c)(2), 805(e), 806(a), 807, 1106, 1107, and 1109 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1111(b), 1111(g) 1160(h), 1182, 1222(c)(2), 1223(e), 1224, 1225, 1276, 1279, and 1279b).

(8) Section 402 of the Act of October 8, 1940 (46 App. U.S.C. 1155a).

(9) Section 101 of the Act of June 25, 1958 (46 App. U.S.C. 1242-1).

(10) Sections 3(b) and 9 of the Act of December 13, 1977 (46 App. U.S.C. 1502(b) and 1508).

(11) Sections 20(a), 21, and 22 of the Shipping Act of 1984 (46 App. U.S.C. 1720).

(12) Sections 3(b)-(f), 4, 5(a), (b), and (d), 6, 7, 8(a)-(c), 10, 11(b), 12(b)-(e), and 13 of the Act of March 8, 1946 (50 App. U.S.C. 1736(b)-(f), 1737, 1738(a), (b), and (d), 1739, 1740, 1741(a)-(c), 1743, 1744(b), 1745(b)-(f), and 1746).

(13) Section 2 of the Act of June 29, 1949 (50 App. U.S.C. 1738a).

(14) The Act of September 21, 1959 (50 App. U.S.C. 1745a).

(15) Section 1-5 of the Act of March 21, 1945 (50 App. U.S.C. 1721-1725).

(16) The Act of August 20, 1954 (50 App. U.S.C. 2391-2394).

(17) Section 4377 of the Revised Statutes of the United States (46 App. U.S.C. 325).

SEC. 308. COASTWISE DOCUMENTATION AND OPERATION.

(a) DOCUMENTATION.—Notwithstanding section 12106 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation endorsed with a coastwise endorsement for each of the following vessels:

(1) CAMELOT (United States official number 536408)

(2) CRILI (United States official number 656976)

(3) DA WARRIOR (Hawaiian Registration number HA 161 CP)

(4) HARBOR EXEC (United States official number 563895)

(5) JAMAL (United States official number 611165)

(6) KARLISSA (United States official number 950453)

(7) LAZY JACK (Maine Registration number ME9395G)

(8) MAGNUM FORCE (United States official number 287968)

(9) TERANGI NO. 2 (United States official number 572048)

(10) 3/4 TIME (United States official number 907962)

(11) WINDDANCER (United States official number 955031)

(b) OPERATION.—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the submersible vessel PC-1501 may engage in the coastwise trade.

SEC. 309. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act take effect on the date of the enactment of this Act.

(b) EXCEPTIONS.—

(1) The amendments made by section 1(a)(2) take effect January 1, 1989, except that the amendment made by subparagraph (A) of such section doe not apply to a vessel titled in a State until one year after the Secretary of Transportation prescribes guidelines for a titling system under section 13106(b)(8) of title 46, United States Code.

(2) The amendments made by section 1(a)(3) take effect on the 180th day after the date of the enactment of this Act.

SEC. 310. SUBSTITUTION OF VESSEL.

Section 4(c)(2) of 101 Stat. 1780 is amended by adding after "1987" the following:

", except that an alternative vessel of no greater tonnage than the vessel in the application may be substituted, if that substitution is made by the original applicant".

Mr. TAUZIN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment to the House amendment to the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Louisiana?

Mr. MILLER of Washington. Mr. Speaker, reserving the right to object, I yield to my distinguished colleague, the gentleman from Louisiana, to get an explanation of the bill.

Mr. TAUZIN. Mr. Speaker, as the House of Representatives completes its legislative agenda for the First Session of the One Hundred First Congress, the Merchant Marine and Fisheries Committee asks for final consideration of the bill H.R. 2459, the Coast Guard Authorization Act of 1989.

Throughout the legislative process, this bill has been guided by the abundant wisdom, skill, and leadership of the distinguished Chairman of the Committee, the Hon. WALTER B. JONES of North Carolina. I am personally grateful for his boundless contributions and for the privilege to speak on behalf of the Committee on this matter today.

Mr. Speaker, I am also extremely thankful for the significant and substantive contributions of the Committee's distinguished ranking Republican member, Mr. BOB DAVIS of Michigan. He has helped us define bipartisanship as "working together to make America better."

On May 24, 1989, I joined Mr. JONES, Mr. DAVIS, and SAM GEJDENSON of Connecticut to introduce H.R. 2459. The bill was ordered reported by the Committee on Merchant Marine and Fisheries on June 21, 1989, by unanimous voice vote, and reported September 6, 1989 (H. Rept. No. 101-227). The House approved the bill with amendments on November 7, 1989, by a vote of 383 to 3. It was approved with an amendment by the Senate on November 18, 1989, by unanimous voice vote. Yesterday, on November 20, the HOUSE approved the bill with an amendment to the Senate amendment. Earlier today, the Senate approved the bill with a further amendment. The House is now asked to give its unanimous consent and to concur in the Senate amendment.

Mr. Speaker, the House can be pleased to send H.R. 2459 to the President of the United States for signature. The bill authorizes appropriations for the Coast Guard's operating expenses; acquisition, construction, and improvements; research and development; and retired pay for fiscal years 1990 and 1991. The House may be confident that bill's funding level is adequate to meet the Coast Guard's operating and capital plant requirements. H.R. 2459 authorizes $3.5106 billion in appropriations for the Coast Guard in fiscal year 1990 and $3.371 billion in fiscal year 1991, including:

First. $2.3122 billion for operating expenses in fiscal year 1990 and $2.3815 billion in fiscal year 1991;

Second. $746.3 million in fiscal year 1990 for acquisition, construction and improvements, and $501.8 million in fiscal year 1991; and

Third. $29 million for research, development, test and evaluation in both fiscal years 1990 and 1991.

Although the section-by-section analysis provides additional detail on the intent of the bill, I would like to focus Members' attention on a few key provisions and the contributions of Members of this HOUSE. First, I must congratulate the entire membership of the Coast Guard and Navigation Subcommittee for a very productive year which included a thorough review of many of the Coast Guard's most crucial missions and responsibilities and an extensive examination of oil spill prevention and response capabilities.

The coming year will mark the Coast Guard's 200th anniversary of dedicated and often heroic service to American public. In fact, the history of the Coast Guard can be traced to the Lighthouse Service, created by the Congress in 1789. It is fitting, therefore, that in 1989 the Congress takes an important step toward the perpetual preservation of the Boston Light House, our nation's oldest beacon of hope for safe harbor. The Gentleman from Massachusetts, Mr. GERRY STUDDS, chairman of the Subcommittee on Fish and Wildlife Conservation and the Environment, is to be honored for his contributions to keep alive the historic character and spirit of this important national landmark.

Another noteworthy feature of the bill is the level it sets for active duty military personnel and for military training. Our colleagues, Mr. GREG LAUGHLIN of Texas and Mr. HOWARD COBLE of North Carolina, deserve much recognition for their efforts to ensure that additional men and women will be available to perform the Coast Guard's ever-expanding missions. Early next year when, hopefully, the Congress enacts oil spill legislation, the Coast Guard surely will be given much broader responsibility to prevent and respond to spills into the nation's navigable waters. It will require hundreds more well trained and always ready people to handle that job alone.

The bill also provides authorization for the continuation and expansion of the Coast Guard's shipbuilding program. In this regard, the Committee is grateful for the efforts of many distinguished members of the Appropriations Committee, through whose leadership funds were dedicated for the Motorlife Boat Replacement Program, the Polar Icebreaker Program, and the Patrol Boat Program. Mr. BILL LEHMAN, chairman of the Subcommittee on Transportation, and JACK MUTHA, chairman of the Subcommittee on Defense, as well as my colleagues from Louisiana, LINDY BOGGS and BOB LIVINGSTON, are to be singled out for their efforts to fund new Coast Guard vessels. In addition to the new vessels, they were able to fund the continuation of the Fleet Rehabilitation and Modernization Program for the heavy endurance cutters, the service life extension for buoy tenders, and the midlife maintenance and modernization of the medium endurance cutters. These vessels are essential to the Coast Guard if it is to perform the many missions the American people have asked it to do.

One of the most rapidly expanding jobs the Coast Guard performs is the enforcement of laws to protect the marine environment. That job starts in its own backyard, so to speak. Through the persistent and capable leadership of the Gentleman from Alaska, Mr. DON YOUNG, H.R. 2459 contains a requirement that the Coast Guard carry out a fully accountable program of environmental compliance and restoration at current and former Coast Guard facilities. To further protect the marine environment, the bill amends the Act to Prevent Pollution from Ships and calls for a report on options to control the introduction of exotic species into U.S. waters through vessel ballast water.

For the improved safety of the public, the bill reinstates vessel traffic service (VTS) on the Mississippi River and provides for the continued operation of existing VTS systems in the nation's harbors and ports. It requires

an upgrade of the Search and Rescue Satellite Aided Tracking System.

The bill also contains provisions which govern Coast Guard operations to protect military whistleblowers, to improve personnel matters, and to make modifications and extensions of important advisory committees. It authorizes a pilot program for Junior Reserve Officers Training, establishes study and reporting conditions to be met prior to privatizing services that Coast Guard now performs, and requires a report on improvements needed for Coast Guard surveillance and reconnaissance aircraft.

The bill also includes provisions related to issues within the maritime jurisdiction of the House and Senate authorizing Committees, including changes to United States Code related to vessel documentation, identification, commercial instruments and maritime liens, amendments to shipping laws, and eligibility authorizations for the documentation of specific vessels.

Mr. Speaker, before I conclude, I wish to extend my gratitude to the Members and Staff of the Senate Committee on Commerce, Science, and Transportation, and especially to Fritz Hollings, the distinguished Senator from South Carolina and chairman of the Committee, and Senator JOHN DANFORD of Missouri, the ranking Republican Member of the Committee.

Finally, the staff members for the Merchant Marine and Fisheries Committee and the Coast Guard and Navigation Subcommittee have worked long and hard this year. In addition to their contributions in bringing H.R. 2459 to this point, our staff organized and helped execute an ambitious oil spill oversight program with nearly one hundred and fifty witnesses, more than a dozen official hearings, including field hearings on the Atlantic, Pacific and Gulf coasts. I offer my deepest thanks for their dedicated and tireless good work.

Mr. MILLER of Washington. Mr. Speaker, I thank my distinguished colleague for his explanation. I agree with the amendment, and with the legislative history that has been outlined.

Mr. DAVIS. Mr. Speaker, I rise in support of H.R. 2459, the Coast Guard Authorization Act of 1989. I concur with the remarks of the gentleman from Louisiana [Mr. TAUZIN], including the section-by-section analysis submitted for the RECORD.

I urge my colleagues to support the bill.

Mr. MILLER of Washington. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Louisiana?

There was no objection.

A motion to reconsider was laid on the table.

## AUTHORIZING INCLUSION OF SECTION-BY-SECTON ANALYSIS OF H.R. 2459, COAST GUARD AUTHORIZATION ACT OF 1989

Mr. TAUZIN. Mr. Speaker, I ask unanimous consent that the Committee on Merchant Marine and Fisheries' analysis of the bill, H.R. 2459, be included at this point in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The section-by-section analysis is as follows:

SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title*

This Act is entitled the "Coast Guard Authorization Act of 1989."

TITLE I—AUTHORIZATIONS

*Section 101. Authorization of Funds for Fiscal Year 1990*

This section authorizes funds for Coast Guard expenses in various budget categories for fiscal year 1990 in accordance with the following table:

[Numbers in millions]

| Account | 1989 (Reflects P.L. 100-457 and P.L. 100-690) | 1990 (Administration request) | 1990 (proposed authorization) | 1991 (proposed authorization) |
|---|---|---|---|---|
| Operating expenses | [1] 2,122.4 | [2] 2,252.2 | 2,312.2 | 2,381.5 |
| AC&I | [3] 435.8 | 682.3 | 746.3 | 501.8 |
| Research and development | 18.8 | 19.0 | 29.0 | 29.0 |
| Bridge alteration | 13.5 | ..... | 2.3 | 7.5 |
| Retired pay | 410.8 | 420.8 | 420.8 | 451.2 |

[1] Includes $140 million "services-in-kind," $60 million "cash," and $6 million for 200 LEDETS from the DOD and $16 million from the Anti-Drug Abuse Act of 1988.

[2] Includes $10 million requested in the President's budget, but not contained in the Administration's proposed authorization bill.

[3] Includes $50.3 million from Military Construction Appropriations and $100 million from the Anti-Drug Abuse Act of 1988.

Paragraph (1) authorizes $2,312,200,000 for operating expenses for fiscal year 1990. This number exceeds the amount proposed by the President for expenditure from this account during 1990 by $60 million. However, it is $70 million more than the amount contained in the Administration's proposed Coast Guard Authorization bill. The additional $10 million was added by President Bush to the Reagan budget and is intended to allow the Coast Guard to increase its drug interdiction activities in fiscal year 1990, but was inadvertently deleted from the Administration's proposed authorization bill. The amount authorized in H.R. 2459 for operating expenses is approximately $211.7 million more than the amount authorized for 1989 and $189.8 million more than the amount appropriated for that year.

Paragraph (2) authorizes $746,300,000 for acquisition, construction, and improvements (AC&I) for 1990. This number is $64 million more than the President's request, and $310,500,000 more than the amount appropriated for 1989, and $398,300,000 more than the 1989 authorization.

The acquisition and construction account authorization includes a direction to spend not more than $20,000,000 to rehabilitate the Coast Guard Cutter MACKINAW. This paragraph authorizes additional sums as may be necessary to carry out the Coast Guard icebreaker program and patrol boat program; funds for these programs are presently contained in the 1989 Defense Appropriations Act, and this language authorizes the expenditure of those funds.

Paragraph (3) authorizes $29,000,000 for the Coast Guard's research, development, test, and evaluation program. This amount is $10,000,000 more than the President's 1990 request and the 1989 authorization. It is $10,200,000 more than the 1989 appropriation.

Paragraph (4) authorizes $420,800,000 to pay obligations to retired Coast Guard personnel. This amount is the same as that requested by the Administration.

Paragraph (5) authorizes $2,300,000 for the Truman-Hobbs bridge alteration or removal program. These monies are needed to complete the alteration of the Burlington Northern Railroad bridge in Portland, Oregon and to continue alteration of the Norfolk Southern Railroad bridge in Hannibal, Missouri. The Committee notes that legislation transferring the Coast Guard's entire bridge administration program to the U.S. Army Corps of Engineers (H.R. 1755) was ordered reported by the Committee on June 21, 1989. When this legislation is enacted, any unexpended appropriations in this account will be transferred to the Army Corps.

*Section 102. Authorizes Funds for Fiscal Year 1991*

Section 102 authorizes funds totalling $3,579,600,000 for the Coast Guard for Fiscal Year 1991, as follows: $2,381,500,000 for operations and maintenance, $501,800,000 for acquisition and construction, $29,000,000 for research and development, $451,200,000 for retirement benefits, and $7,500,000 for alteration or removal of bridges.

*Section 103. Authorized Levels of Military Strength and Military Training for Fiscal Year 1990*

Subsection (a) authorizes a Coast Guard end-of-year strength for military personnel of 38,750 in fiscal year 1990. In the wake of the EXXON VALDEZ oil spill it is imperative that the Coast Guard improve its oil spill prevention and response capabilities. Therefore, the Committee is authorizing this higher number of military personnel to allow the Coast Guard to reestablish its Atlantic Strike Team in Elizabeth City, North Carolina, and to create another strike team on the west coast (for a total of four strike teams), as well as to increase the number of personnel assigned to marine safety and local Captain of the Port offices. Personnel assigned to these offices respond to oil and hazardous chemical spills as well as inspect oil and hazardous chemical facilities and vessels to insure compliance with Coast Guard regulations. The Committee would also like to encourage the Coast Guard to use a portion of the additional personnel to increase its drug interdiction efforts.

Subsection (b) also authorizes the student year levels for various categories of Coast Guard training for Fiscal Year 1988 as follows:

1—For recruit and special training: 2687 student years

2—For flight training: 110 student years—For professional training in military and civilian institutions: 390 student years

4—For officer acquisition: 900

A student year is defined as the product of the number of students scheduled to attend each course in the category multiplied by the course length expressed in fractions of years (i.e., course length in weeks divided by

weeks). The proposed student training levels are equal to the Administration's request, except for recruit training which has been increased by 170 student years. This increase is intended to allow the Coast Guard to recruit and train the additional active duty military personnel authorized in section 104(a).

*Section 104. Authorized Levels of Military Strength and Military Training for Fiscal Year 1991*

Subsection (a) authorizes a Coast Guard end-of-year strength for military personnel of 39,300 in fiscal year 1991.

Subsection (b) also authorizes the student year levels for various categories of Coast Guard training for Fiscal Year 1988 as follows:

1—For recruit and special training: 2687 student years

2—For flight training: 110 student years

3—For professional training in military and civilian institutions: 390 student years

4—For officer acquistion: 900

*Section 105. Modification and Extension of Rules of the Road Advisory Council and Extension of Towing Safety Advisory Committee*

Subsection (a) changes the name of the Rules of the Road Advisory Council to the Navigation Safety Advisory Council. In addition, this subsection expands the charter of the Council to include advice and recommendations on matters relating to the prevention of collisions, rammings, and groundings, including navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems. Finally, this subsection extends the termination date for the Council until September 30, 1995, and directs that the Council meet at least twice each calendar year.

Subsection (b) extends the termination date of the Towing Safety Advisory Committee to September 30, 1995. This extension, along with the extension authorized under subsection (a), will insure that the authorization for all advisory committees under the purview of the Coast Guard expire at the same time.

*Section 106. Commercial Fishing Industry Vessel Advisory Committee Appointments*

This section amends section 4508 of title 46, United States Code, to ensure that the Secretary of Transportation does not solicit or use the political affiliation of potential members of the Commercial Fishing Industry Advisory Committee when making appointments to the Advisory Committee. The Committee strongly believes that a person's political affiliation has no bearing on his or her ability to serve on this Advisory Committee.

TITLE II—PROGRAMS

*Section 201. Technical Amendments to the Act To Prevent Pollution From Ships*

Subsection (a) corrects inadvertent errors in the Act to Prevent Pollution from Ships (APPS) by substituting the words "Annexes I and II" for "Annex V" in section 6(c)(1) of APPS. This change is necessary because section 6(c)(1) deals with reception facilities for oil and noxious liquids, the subject of these annexes, not garbage, the subject of Annex V.

Paragraphs (2) and (3) add "or of this Act" to sections 8(c)(1) and 8(e)(2) of APPS. Both of these provisions concern inspections for violations of the International Convention for the Prevention of Pollution from Ships (MARPOL). This section extends the inspections to include inspections for violations of APPS.

*Section 202. Technical Corrections Relating to Safeguarding Military Whistleblowers*

This section makes several changes to section 1034 of title 10, United States Code, which relate to the protection of military whistleblowers. When section 1034 was enacted in 1988, it did not provide for the proper relationship between the Secretary of Transportation, the Inspector General (IG), and a Coast Guard member, because it was only concerned with instances when the Coast Guard is operating as a service of the Navy, not as part of the Department of Transportation where it normally operates.

Paragraph (1) clarifies that the Department of Transportation Inspector General (DOTIG) is required to investigate allegations of personnel actions prohibited by section 1034 when the Coast Guard is in the Department of Transportation (DOT) and the Department of Defense Inspector General (DODIG) when it is operating as a service in the Navy. Paragraph (2) makes it clear that the DOTIG shall report the findings of the investigation to the Secretary of Transportation and the DODIG shall report to the Secretary of Defense.

Section 1034(c)(6) of title 10, United States Code, requires the IG to notify the Secretary of Defense if the report on the allegation cannot be completed within 90 days. Paragraph (3) clarifies that the DOTIG is required to make the same notification when the Coast Guard is operating in the DOT.

Paragraph (4) clarifies that an administrative review by a board for the correction of military records provided for by section 1034(e) should be reviewed by either the Secretary of Defense or the Secretary of Transportation depending on which department the Coast Guard is operating in.

*Section 203. Miscellaneous Provisions Concerning Continuity of Grade, Appointment, and Retirement of Coast Guard personnel*

Paragraph (1) provides that a vice admiral who is selected for Commandant will retain precedence on the active duty promotion list, date of rank, grade, pay, and allowances at the rank of vice admiral. Under current law, a vice admiral who is selected to become Commandant would lose precedence to vice admirals and rear admirals with an earlier date of rank. If the pay cap were raised, this could result in loss of pay.

Paragraph (2) removes the requirement that appointments to lieutenant (junior grade) and lieutenant receive the advice and consent of the Senate. This will improve the efficiency of the promotion process and brings the Coast Guard into conformity with the Department of the Defense.

Paragraph (3) amends section 289(c) of title 14, United States Code to require the Coast Guard to select not less than 50 percent of the captains eligible for promotion to admiral for continuation in the service. Under current law, not less than 75 percent of the captains eligible for promotion to admiral must be selected, i.e., only 25 percent of the captains can be involuntarily retired. This statute along with the large number of captains who entered the Coast Guard in the late 1960's and the early 1970's has combined to severely impede the promotion flow from the grade of lieutenant commander through captain. This section will provide the Coast Guard the flexibility to manage the number of captains so that promotions from the lower grades are not impeded and an adequate pool of captains is maintained to compete for rear admiral.

Paragraph (4) gives the Secretary of Transportation the authority to adjust the appointment date of a reserve officer if there is a delay in finding the officer physically fit for promotion and the delay is beyond the control of the officer. This provision only applies prospectively.

Paragraph (5) codifies the existing Coast Guard administrative practice of not separating reserve officers with under 18 years of service through captain's retention boards. This provision is designed to protect captains with under 18 years of service from competing with more senior captain for retention in the Coast Guard.

*Section 204. Authorization of Junior Reserve Officers Training Program Pilot Program*

This section authorizes the Coast Guard to establish and maintain a Junior Reserve Officers Training Corps (JROTC) program in cooperation with the Maritime and Science Technology Academy of the Dade County Public School System. The program shall be entitled the "Claude Pepper, Junior Reserve Officers Training Program," in honor of the late Senator and Congressman from Florida. This represents the Coast Guard's first JROTC program and is modeled after existing programs within the Department of Defense under section 2031 of title 10, United States Code. This section authorizes the Coast Guard to provide assistance in developing the pilot program's curriculum, as well as to provide instructors, and uniforms and other course materials. In an effort to reduce the costs of this pilot program, the Academy is authorized to hire retired or reserve Coast Guard personnel to serve as instructors and administrators.

*Section 205. Limitations on Contracting of Coast Guard Services*

This section prohibits an employee of the United States from entering into a contract for the performance of any function being performed by Coast Guard personnel as of January 1, 1989, unless three conditions are met. Specifically, the conditions are: 1) an Office of Management and Budget Circular A-76 study is completed; 2) the Secretary of Transportation has completed a study of how the proposed contract will affect the multimission capabilities of the Coast Guard; 3) copies of these two reports have been submitted to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Commerce, Science, and Transportation. The Committee has received reports that the Coast Guard may be moving beyond areas that it has normally contracted out, e.g., food services, security, and grounds maintenance, and is considering contracting out functions which are central to the Coast Guard's mission, e.g., aids to navigation. The Committee strongly believes that the Coast Guard's aids to navigation program is an inherently governmental responsibility, and as such should not be contracted out under the A-76 program.

*Section 206. Local Hire*

This section adds a new section to the end of chapter 17 of title 14, United States Code, which will require that Coast Guard contracts in states with unemployment rates above the national average be performed with local state residents. Local resident is defined as a resident of a particular state or an individual who commutes daily to the state. Individuals who are temporary residents of a state only for the purpose of ful-

filling a Coast Guard contract do not qualify as local residents under this section. The Secretary of Transportation may waive this requirement for either national security or economic reasons.

*Section 207. Report on Control of Exotic Species*

This section requires that the Secretary of Transportation report on the options available to control the infestation of the waters of the United States, including the Great Lakes, by exotic species transported in vessel ballast water. Exotic species are defined as nonnative fish, mollusks, crustaceans, zooplankton, and other aquatic organisms, other than sea lampreys. The report must be submitted to Congress within six months of the date of enactment of this Act.

In compiling information for this report, the Secretary shall consult with the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and Environmental Protection Agency, the Great Lakes Fishery Commission, state fish and wildlife agencies, the American Fisheries Society, and any other individuals or groups that the Secretary deems appropriate. This report should contain a complete discussion of the monetary costs, efficacy, and environmental risks associated with each method of controlling ballast water introductions. Control methods discussed in the report should include: 1) ballast water exchange at sea; 2) treatment of ballast water with chlorine or some other toxicant; 3) installation of filters on ballast water pumps; and 4) coating vessel ballast water tanks with antifouling paint. The Secretary should also be aware that different control methods may be required for different parts of the country. For example, ballast water exchange at sea may be effective in controlling the introduction of marine exotic species in the fresh waters of the Great Lakes, but it may not be effective in the saline waters of many U.S. ports. Finally, given the international nature of this problem, the secretary is urged to bring this matter before the International Maritime Organization.

*Section 208. Law Enforcement Surveillance*

Paragraph (1) requires the Secretary of Transportation to identify the needs and cost of outfitting existing Coast Guard aircraft with proper surveillance and reconnaissance equipment and report to Congress within six months of the date of enactment of this Act. The Committee is aware that the Coast Guard's ability to photograph aircraft suspected of smuggling drugs is limited by incomplete or nonexistent equipment on some of its HU-25 Falcon aircraft. Therefore, the Committee believes that the report mandated by this subsection is an important first step towards improving the Coast Guard's drug interdiction capability.

Paragraph (2) requires the Secretary of Transportation, in consultation with the Secretary of the Defense, to establish and submit to Congress a plan for closing the gaps in radar coverage along the Gulf and southeast Atlantic coasts.

*Section 209. Numbering of Vessels*

This section amends section 2101 of title 46, United States Code, by defining numbered vessel as a vessel that is numbered under chapter 123 of title 46.

*Section 210. Constructive Seizures*

This section directs the Secretaries of Transportation and the Treasury to develop a procedure for constructive seizure of vessels of the United States engaged in commercial service that are suspected of having on board personal use quantities of controlled substances. The constructive seizure procedure should allow the owners or operators of vessels seized for violations of the drug laws to continue to operate the vessel while the owner appeals the seizure of a vessel on which personal use quantities of illegal substances are found. This section is designed to protect innocent owners from the devastating economic effects of the physical seizure of a vessel.

*Section 211. User Fees Report Clarification*

This section amends section 664(c) of title 14, United States Code, to clarify that the report required under section 664(c) applies to user fees collected under any law, not just section 664. This section was prompted by the incomplete report that the Committee received from the Secretary of Transportation in January 1989. In that report, the Secretary stated that the Coast Guard had collected about $300 in user fees in 1988. Since 46 C.F.R. 76.43, *inter alia*, allows the Coast Guard to charge $100 for each of the thousands recreational vessel documents it issues each year, this figure is obviously incomplete. An itemized accounting of all of the user fees currently collected by the Coast Guard is essential for the Committee deliberations on the Administration's proposal to impose additional Coast Guard user fees.

*Section 212. Board for the Corrections of Military Records*

This section requires the Secretary of Transportation to amend the regulations governing the Coast Guard's Board for the Correction of Military Records (BCMR) so that appeals are processed expeditiously and that final decisions are made within 10 months of their receipt by the BCMR. The Secretary is required to maintain a staff and a panel of potential BCMR members that is adequate to ensure compliance with this section.

The Committee first became aware of problems with the BCMR when six present and former Coast Guard personnel filed a class action suit against the BCMR and the General Counsel of the Department of Transportation. The plaintiffs in that suit maintained that their applications for relief were not considered in a reasonable period of time (some of the plaintiff's applications were pending over 2½ years). Delays of this length are problematic because Coast Guard members often are not aware that there is a significant problem with their military record until they are passed over for promotion because of it. If a member's appeal is not acted on within a year the officer will likely be passed over for promotion again. In many cases this will mean an end to the officer's Coast Guard career.

The BCMR suit was settled out of court in April of 1988. Under the terms of this settlement, the Coast Guard and the Department of Transportation agreed to take several actions designed to improve the efficiency of the BCMR. However, the agreement did not address the central problem with the BCMR, an insufficient number of BCMR staff attorneys capable of processing applications for relief expeditiously. Therefore, this section directs the Secretary of Transportation ensure that adequate personnel are assigned to the BCMR to ensure that applications are processed expeditiously.

This section requires that an application for relief be complete before the 10-month time period begins. An application is complete when the military records of the applicant, and any applicable Veterans' Administration medical records have been received by the BCMR. This requirement should not be used by the BCMR to unreasonably extend the 10-month time period. For example, the time period necessary to complete a hearing, including oral argument, is included in the 10-month time period. The presumption is that each case should be completed in 10 months, unless there are extraordinary circumstances involved in obtaining official records.

*Section 213. Consideration of Marad Vessels*

This section requires the Secretary of Transportation or the Commandant of the Coast Guard to consider vessels held by the Secretary as a result of a title XI default (title XI of the Merchant Marine Act of 1936) before acquiring additional Coast Guard vessels. The intent of this section is to reduce the inventory of title XI vessels and allow the Coast Guard to acquire suitable vessels at a significant savings to the Government. When carrying out the provisions of this section, the Secretary and the Commandant should consider the cost of the acquisition of a title XI vessel relative to the cost of a new vessel and how well the title XI vessel meets the Coast Guard's requirements. This section shall remain in effect until specifically repealed.

*Section 214. Requirement to Report Sexual Offenses*

This section requires the master or other person in charge of a documented vessel to report a complaint of a sexual offense prohibited by the Sexual Abuse Act of 1986, and imposes a civil penalty of not more than $5,000 for failure to comply with this provision. The provision was prompted by a General Accounting Office report that found that the Coast Guard has no specific requirements for the reporting of shipboard assaults and other offenses covered by the Sexual Abuse Act. Reports from women mariners confirmed that such incidents are rarely reported to the Coast Guard or other law enforcement authorities. This provision should serve to promote greater awareness of the Sexual Abuse Act within the maritime community, it should provide information on the circumstances and extent of such offenses, and it could serve to increase the willingness of victims to come forward.

*Section 215. Limitation on the Transfer of a Vessel From Gulfport, Mississippi*

This section requires the Coast Guard to replace the cutter ACUSHNET, a buoy tender currently stationed in Gulfport, Mississippi, and scheduled for transfer to the Pacific area. In addition to the ACUSHNET, a Coast Guard patrol boat is presently stationed in Gulfport; this section ensures that the two-vessel compliment will be maintained by requiring that two patrol boats be permanently stationed at the Gulfport location.

*Section 216. Coast Guard Housing*

This section designates the Coast Guard as an instrumentality within the Department of Defense for the purpose of section 204(b) of the Defense Authorization Amendments and Base Closures and Realignment Act, thus qualifying for the Coast Guard to acquire surplus military housing units for its official use under that provision.

*Section 217. Prohibition Against Reduction in Services*

Section 217 of this bill contains a prohibition against a reduction in Coast Guard services other than drug law enforcement to

increase drug law enforcement without 30 days notice to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries in the House of Representatives.

In the Anti-Drug Abuse Acts of 1986 and 1988, the Coast Guard is prohibited from increasing drug law enforcement except to the extent additional funds are appropriated for that purposes.

In recent years, the Coast Guard reduced the amounts spent for search and rescue, fisheries law enforcement, and other essential Coast Guard services and devoted a greater percentage of budgetary resources to drug law enforcement without an increase in appropriations for that purpose.

Section 217 of this bill prohibits the Coast Guard from sacrificing essential Coast Guard services, such as search and rescue, aids to navigation, marine safety, fisheries law enforcement, marine environmental protection, ice operations, or defense readiness, to increase drug law enforcement efforts without notifying the appropriate authorizing committees in the House and Senate.

*Section 218. Cost of Security at Kennebunkport, Maine*

This section requires the Secretary of Transportation to identify and report on the costs of providing security for the President at Kennebunkport, Maine, and any reallocation of assets or personnel that would have been used for search and rescue or law enforcement operations as a result of providing that security. The Coast Guard is to actively seek reimbursement for those costs from the Secretary of the Treasury within six months of the date of enactment of this act.

*Section 219. Vessel Traffic Service Restoration*

This section directs the Secretary of the Department in which the Coast Guard is operating to reestablish a vessel traffic service (VTS) system on the Lower Mississippi River in New Orleans and to continue operation of the New York harbor area and other existing VTS systems.

*Section 220. Search and Rescue Satellite System*

Under the National Search and Rescue Plan, the Coast Guard coordinates maritime and aeronautical search and rescue for 5.9 million square miles of the Atlantic and 18.7 million square miles of the Pacific. Approximately 20% of the Atlantic and 50% of the Pacific areas remain without coverage by the system for most existing beacons (about 350,000 U.S. beacons are in service) and without real-time coverage for new beacons coming into service. The United States is responsible for search and rescue for distressed vessels and aircraft of any nation within these areas. The entire international system (known as COSPAS-SARSAT) has been credited with saving about 1,200 lives, (half of which were U.S. citizens), with about an equal number of maritime and aeronautical saves recorded. Nevertheless, the system has been criticized by Congress, National Transportation Safety Board, the Office of the Secretary of Transportation Safety Task Force, and increasingly by the public for insufficient coverage in Caribbean, Atlantic, and Pacific areas. This provision takes a step toward complete and adequate funding for the system.

*Section 221. Boston Light Station*

This section ensures that Boston Light, the oldest lighthouse station in the nation, will continue to be manned and operated in a manner which preserves its historical significance. Any proposal to modernize the lighthouse must be consistent with the general provisions of the National Historic Preservation Act.

In addition, this section directs the Coast Guard to work with various state and local government entities to develop a strategy that will provide increased public access and enjoyment of this historical light. This section clarifies that the funds authorized by section 101 and 102 of this bill include the sums necessary to operate and maintain the lighthouse and its associated keeper's house and pier. Under this section, the Coast Guard is no longer required to man the lighthouse when a final transfer of the lighthouse has been completed.

*Section 222. Coast Guard Environmental Compliance and Restoration Program*

Section 222 of this bill adds a new chapter 19 to title 14, United States Code, which establishes a new Coast Guard Environmental Compliance and Restoration program. This program is similar to the Department of Defense Environmental Restoration program contained in chapter 160 of title 10, United States Code.

New section 609 of title 14, United States Code, defines certain terms used in this chapter. The definitions of "hazardous substance" and "pollutant" are intended to include very substance regulated by a Federal, State, or local environmental law or regulation.

New section 691 directs the Secretary of Transportation to carry out the Environmental Compliance and Restoration program at current and former Coast Guard facilities. The program is intended to include all actions the Coast Guard takes to comply with Federal, State, or local environmental laws or regulations. In this respect, the Coast Guard program is broader than the existing Department of Defense program. For example, under section 691(b), the Coast Guard program includes ongoing monitoring actions to prevent contamination from hazardous substances and pollutants at Coast Guard facilities. In addition, under subsections 691(b) and (c), the Coast Guard program applies to all Coast Guard activities related to environmental compliance and is not limited to compliance with any particular law.

Under subsections 691(b) and (c), the Coast Guard is required to demolish and remove unsafe buildings and structures at former Coast Guard facilities and respond to releases of hazardous substances and pollutants at formerly owned Coast Guard facilities. These subsections require the Coast Guard to clean up the PCB contamination from the electrical distribution system transferred to the Kodiak Electric Association in Kodiak, Alaska, in November 1984.

New section 691(d) allows the Secretary to enlist the help of other Federal, State, or local government entities in carrying out the Environmental Compliance and Restoration program.

New section 691(e) also requires the Coast Guard to indemnify all response action contractors to the extent that adequate insurance is not available at a fair price. Under this section, section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9619) applies to response action contractors. This reference does not limit the Coast Guard's responsibility to indemnify response action contractors to sites on the National Priorities List. For the purpose of this chapter, the term "response action contract" means any written contract or agreement entered into by a response action contractor (as that term is defined in section 119 of CERCLA) with the Coast Guard to undertake any environmental compliance or restoration actions authorized under this chapter, including response actions, with respect to the release or threatened release of a hazardous substance, or pollutant or contaminant.

Normally, a response action contractor would obtain insurance to cover the liabilities associated with the cleanup of hazardous waste sites, and the cost of the premiums would be reimbursed as a contract item. According to recent reports by the General Accounting Office, pollution insurance is not generally available in adequate amounts or duration, and the future prospects for the development of insurance are uncertain.

For this reason, the Coast Guard is required to indemnify response action contractors against the reasonable, potential long-term liability associated with the cleanup of hazardous waste sites. This liability potentially includes the cost of future cleanups, and third-party claims which may exceed the value of the cleanup contract. Liability may also persist for decades after completion of the cleanup contract.

The Coast Guard may require contractors to purchase any insurance that is available at a fair and reasonable price. Indemnification shall continue to be provided to the extent that insurance is not adequate to cover the liabilities that may arise both during and after cleanup. In establishing indemnity terms, the Coast Guard should consider the potential cost of future cleanup or third-party claims if contractors are found liable, and the fact that claims may arise many years after completion of cleanup contracts.

Under new section 692, the President's annual budget submission for the Coast Guard is required to reflect the total amount requested for all environmental compliance and restoration at Coast Guard facilities in the new Environmental Compliance and Restoration program. The funds appropriated to this new account are "no year" dollars, and remain available until expended.

New section 693 requires the Secretary to report to Congress each fiscal year on the progress the Secretary is making in implementing the new Environmental Compliance and Restoration program.

Subsection (c) of section 244 of this bill amends section 662 of title 14, United States Code, to require an annual "line item" authorization on funds for the Coast Guard Environmental Compliance and Restoration program.

TITLE III—MISCELLANEOUS

*Section 301. Documentation of Vessels.*

Section 301 makes certain technical changes to chapter 121 of title 46, United States Code, to reflect the conversion from a system of separate and distinct types of documents based on the use of the vessel to a system of multiple endorsements on a single document to reflect authorization for a particular trade or use. Section 12103 of title 46 is amended by adding a new paragraph requiring the Secretary of Transportation to obtain either a social security number or a taxpayer identification number from each person applying to document a vessel. Since a taxpayer identification number may not have been received by an entity prior to its application for documentation a provision has been included in such

cases for the submission of the social security number of the individual who is holding certain positions within the entity and who signs the application for documentation.

*Section 302. Vessel Identification Systems.*

This section amends chapter 125 of title 46, United States Code, by requiring the Secretary to include the owner's social security number or the owners taxpayer identification number in the vessel identification system established by Public Law 100-710. This amendment further serves to conform the data required on the application for documentation to the information required for the effective operation of the vessel identification system.

*Section 303. Commercial Instruments and Maritime Liens.*

Section 303 makes certain technical and conforming amendments to chapter 313 of title 46, United States Code. Specifically, section 31306 is amended to allow the Secretary greater flexibility with respect to the filing of a declaration of citizenship at the time of transfer of ownership. The Secretary may, for instance, choose to issue regulations which exempt mortgagees of recreational and fishing vessels from the declaration of citizenship requirements under this section. Section 31321 is amended to clarify the notice provisions when the Secretary determines that a vessel cannot be documented after the application has been filed.

Section 31322 is amended to exempt certain recreational and fishing industry vessels from the citizenship requirements otherwise applicable to preferred ship mortgages. The exemption is changed from being based solely on the pleasure or fishing operations of these vessels. Instead, the exemption is based also on the fishing or recreational endorsement issued to the vessel.

Section 31325 is amended to clarify the fact that a duly recorded foreign mortgage on foreign flag vessel can be foreclosed in a civil action in rem in a U.S. District Court. This change simply conforms this section with the long established rule of law in international shipping. This amendment clarifies and revises the traditional requirements for a vessel sale in an in rem action in admiralty as well as the traditional distinction between an in rem action in admiralty against the vessel and an in personam action the mortgagor, comaker, or guarantor.

Section 31342 has been rewritten by deleting the parenthetical provisions relating to excluding public vessels from the application of the existing law and replacing it with a new subsection (b) to assure clarity. This is not a substantive change but simply makes more explicit the long established rule of law prohibiting maritime liens against public vessels. It further clarifies the existing law that a claim may not be brought either in personam or in rem on a maritime lien theory against a public vessel. This section does not affect a cause of action against the United States based on a valid maritime contract.

*Section 304. Amendments to the Shipping Act, 1916.*

Section 304 simply clarifies the authority of the Secretary to exempt certain transactions from the requirement of approval. A new penalty provision is added to enhance the enforcement mechanisms in Section 9 of the Shipping Act, 1916. Section 38 of that Act is amended to allow a remission without seizure of the vessel.

*Section 305. Civil Penalty Procedures.*

Section 305 amends title 49, United States Code, to establish uniform penalty assessment procedures whenever there is a violation of a law that is administered by the Coast Guard or the Maritime Administration. This change simply codifies existing practices and provides procedures which conform to fundamental due process standards. The assessment of civil penalties under this section should not require an "on the record" hearing within the meaning of the Administrative Procedures Act (APA). It is intended that these civil penalties be assessed in a fair manner. Statutes passed in the last decade have involved the Coast Guard in tens of thousands of civil penalty enforcement cases and that it is necessary that the penalties be assessed efficiently. The more rigid and time-consuming procedures applicable to APA adjudications are unwarranted in the case of civil penalty assessment procedures and would seriously hamper the orderly enforcement of these administrative penalties. It is expected that the procedures established under sections 2107 and 2108 of title 46, United States Code, will be continued.

*Section 306. Exemption of Certain Fishing Industry Vessels From Inspection Requirements.*

Section 306 exempts for an additional year certain fishing industry vessels from inspections requirements to they may continue to provide general cargo service to remote communities in Alaska.

*Section 307. Laws Repealed.*

Section 307 repeals various obsolute or redundant maritime laws.

*Section 308. Coastwise Documentation and Operation.*

Section 308 authorizes certain vessels to operate in the coastwise trade.

*Section 309. Effective Dates.*

Section 309 provides generally that the amendments made by this Act are effective on the date of enactment. However, the provisions in section 12102 of title 46, United States Code, relating to surrender of a certificate of title will not be effective until 1 year after the Secretary prescribes guidelines for a state boat titling system.

*Section 310. Substitution of Vessel.*

Section 310 permits the substitution of an alternative vessel of equal size for purposes of satisfying the grandfather provision of the Fishing Industry Anti-Reflagging Act of 1987, if the substitution of the vessel is made by the original applicant.

## GENERAL LEAVE

Mr. TAUZIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2459, the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

## JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1877) to improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes, and ask for its immediate consideration of the House.

The Clerk read the title of the Senate bill:

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1877

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. REIMBURSEMENT FOR EXPENSES.

Section 803(d) of the James Madison Memorial Fellowship Act (20 U.S.C. 4502(d)) is amended to read as follows:

"(d)(1) Subject to paragraph (2), members of the Board shall serve without pay.

"(2) Members of the Board and the President, Executive Secretary, and other personnel of the Foundation shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties at rates applicable to judges of the United States under section 456(a) of title 28, United States Code.".

SEC. 2. INFLATION ADJUSTMENT.

Section 809 of the James Madison Memorial Fellowship Act (20 U.S.C. 4508) is amended to read as follows:

"AMOUNT OF FELLOWSHIPS

"SEC. 809. For each year of academic study a student awarded a fellowship shall receive a stipend which shall not exceed the lesser of—

"(1) the actual cost to the student of tuition, fees, books, and room and board; or

"(2) $12,000 plus an amount determined by the Foundation to be necessary to account for increases in the costs of tuition, fees, books, and room and board since the date of enactment of this Act.".

SEC. 3. PRESIDENT AND EXECUTIVE SECRETARY OF FOUNDATION.

Section 813 of the James Madison Memorial Fellowship Act (20 U.S.C. 4512) is amended to read as follows:

"PRESIDENT AND EXECUTIVE SECRETARY OF FOUNDATION

"SEC. 813. (a)(1) The Board may appoint a President of the Foundation to serve full-time or part-time and for such a term as the Board shall determine.

"(2) The President shall carry out such of the functions and duties of the Foundation as the Board may determine, subject to the supervision and direction of the Board.

"(3) The President shall be compensated at a rate to be determined by the Board without regard to subchapter III of chapter 53 of title 5, United States Code, not to exceed the rate for level I of the Executive Schedule under section 5313 of that title.

"(4) Sections 5532, 8344, and 8468 of title 5, United States Code, shall not apply to a person while such person is serving as President of the Foundation.

"(b)(1) There shall be an Executive Secretary of the Foundation who shall be appointed by the Board.

"(2) The Executive Secretary shall be the chief operating officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and

direction of the Board or the President, as determined by the Board.

"(3) The Executive Secretary shall be compensated at the rate specified for employees placed in grade GS-18 of the General Schedule set forth in section 5332 of title 5, United States Code.".

SEC. 4. ADMINISTRATIVE PROVISIONS.

Section 814 of the James Madison Memorial Fellowship Act (20 U.S.C. 4513) is amended—

(1) in subsection (a) by—

(A) amending paragraph (1) to read as follows:

"(1) to appoint and fix the compensation of such personnel as may be necessary to carry out this Act, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of that title relating to classification and General Schedule pay rates, but at such rates not in excess of the maximum rate for grade GS-15 of the General Schedule under section 5332 of that title;";

(B) amending paragraph (8) to read as follows:

"(8) to rent office space in the District of Columbia or its environs;";

(C) striking "and" at the end of paragraph (9);

(D) striking "(10)" and inserting "(11)"; and

(E) inserting immediately following paragraph (9) the following new paragraph:

"(10) to expend not more than 5 percent of its annual operating budget to pay the costs of fundraising activities, including public and private gatherings; and"; and

(2) by adding at the end thereof the following new subsection:

"(c) On request of the Chairman of the Foundation, the head of a Federal agency may detail personnel of the agency to the Foundation to assist the Foundation in carrying out this Act. Details under this subsection shall be without reimbursement by the Foundation to the agency from which personnel are detailed.".

The SPEAKER pro tempore. The gentleman from Montana [Mr. WILLIAMS] is recognized for 1 hour.

Mr. WILLIAMS. Mr. Speaker, this is a bill sponsored by Senator KENNEDY and HATCH that recently passed the Senate. It is aimed at improving the operational efficiency of the James Madison Memorial Fellowship Foundation. That foundation is designed to provide graduate fellowship assistance to students and teachers who are pursuing graduate degrees in teaching, particularly in social studies and American history. The Madison Foundation was first authorized in 1986, and the bill before us today amends that authorizing legislation in a way that will improve the administration of the Foundation was first authorized in 1986, and the bill before us today amends that authorizing legislation in a way that will improve the administration of the Foundation and permit it to get on with its important mission.

The amendment I am offering in the nature of a substitute to the Senate passed bill makes the graduate fellowship provisions of the Madison Foundation consistent with other fellowships authorized by the Higher Education Act. It also makes several changes in the manner in which the officers and employees of the Foundation can be compensated. These particular provisions have the approval of the House Committee on Post Office and Civil Service. They have been drafted by Chairman FORD and his staff, and I am assured that they have the support of that committee.

I move that we adopt the amendment.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. WILLIAMS

Mr. WILLIAMS. Mr. Speaker, I offer an amendment in the nature of a substitute. The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. WILLIAMS:

Strike all after the enacting clause and insert the following:

SECTION 1. REIMBURSEMENT FOR EXPENSES.

Section 803(d) of the James Madison Memorial Fellowship Act (20 U.S.C. 4502(d)) is amended to read as follows:

"(d)(1) Subject to paragraph (2), members of the Board shall serve without pay.

"(2) Members of the Board and the President, Executive Secretary, and other personnel of the Foundation shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties at rates applicable to judges of the United States under section 456(a) of title 28, United States Code.".

SEC. 2. PRESIDENT AND EXECUTIVE SECRETARY OF FOUNDATION.

Section 813 of the James Madison Memorial Fellowship Act (20 U.S.C. 4512) is amended to read as follows:

"PRESIDENT AND EXECUTIVE SECRETARY OF FOUNDATION

"SEC. 813. (a)(1) The Board may appoint a President of the Foundation to serve full-time or part-time and for such a term as the Board shall determine.

"(2) The President shall carry out such of the functions and duties of the Foundation as the Board may determine, subject to the supervision and direction of the Board.

"(3) The President shall be compensated at a rate to be determined by the Board without regard to subchapter III of chapter 53 of title 5, United States Code, not to exceed the rate for level III of the Executive Schedule under section 5314 of that title.

"(4) Sections 5532, 8344, and 8468 of title 5, United States Code, shall not apply to a person while such person serving as President of the Foundation. The first sentence of this paragraph shall not, in the case of any individual, apply longer than December 31, 1990.

"(b)(1) There shall be an Executive Secretary of the Foundation who shall be appointed by the Board.

"(2) The Executive Secretary shall be the Chief operating officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board or the President, as determined by the Board.

"(3) The Executive Secretary shall be compensated at the rate specified for employees placed in grade GS-18 of the General Schedule set forth in section 5332 of title 5, United States Code.".

SEC. 3. ADMINISTRATIVE PROVISIONS.

Section 814 of the James Madison Memorial Fellowship Act (20 U.S.C. 4513) is amended—

(1) in subsectin (a) by—

(A) amending paragraph (1) to read as follows:

"(1) to appoint and fix the compensation of such personnel as may by necessary to carry out this Act, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, but at General Schedule pay rates not in excess of the maximum rate for grade GS-15 of the General Schedule under section 5332 of that title;";

(B) amending paragraph (8) to read as follows:

"(8) to rend office space in the District of Columbia or its environs;";

(C) Striking "and" at the end of paragraph (9);

(D) Striking "(1)" and inserting "(11)"; and

(E) inserting immediately following paragraph (9) the following new paragraph:

"(10) to expend not more than 5 percent of its annual operating budget to pay the costs of fundraising activities, including public and private gatherings; and"; and

(2) by adding at the end thereof the following new subsection:

"(c) On request of the Chairman of the Foundation, the head of a federal agency may detail personnel of the agency to the Foundation to assist the Foundation in carrying cut this Act. Details under this subsection shall be without reimbursement by the Foundation to the agency from which personnel are detailed.".

Mr. WILLIAMS (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

Mr. HENRY. Mr. Speaker, reserving the right to object, and I will not object, I would simply like to use this opportunity to express my gratitude to the gentleman from Montana [Mr. WILLIAMS], the gentleman from Michigan [Mr. FORD], the gentleman from Missouri [Mr. COLEMAN], and the gentleman from Pennsylvania [Mr. GOODLING], all of whom have worked to facilitate the technical correction in the James Madison Foundation Act to facilitate the work of the Commission.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Montana [Mr. WILLIAMS].

The amendment in the nature of the substitute was agreed to.

The Senate bill was ordered to be read a third time, was read a third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1877 the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will inform the Members that we are currently awaiting a message from the Senate.

□ 2100

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I ask to proceed for a moment to inquire of the distinguished Speaker whether it is our intention to move along with the intentions that we have been talking about here, and with unanimous-consent requests?

The SPEAKER pro tempore (Mr. HOYER). That is the intention of the Chair, as soon as a Member asks for recognition to do so. Pending that, it would be the Presiding Officer's intention to recognize Members for 1-minute speeches.

NATIONAL CITIES FIGHT BACK AGAINST DRUGS WEEK

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 205) designating December 3 through 9, 1989, as "National Cities Fight Back Against Drugs Week," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. GILMAN. Mr. Speaker, reserving the right to object, I am pleased to rise in support of the resolution designating December 3 through December 9, 1989, as "National Cities Fight Back Against Drugs Week," and I want to commend the sponsor of this resolution, the gentleman from New York, [Mr. RANGEL].

As a cosponsor of the resolution, I am pleased to have yet another opportunity to work with my good friend, the distinguished chairman of the Select Committee on Narcotics Abuse and Control, Mr. RANGEL, in the difficult effort to heighten awareness to the perils of drug abuse and to the scourge on society which the use of illicit narcotics must cause. Over the years, we have had many opportunities to witness the degradation to our children, our neighborhoods, our schools, and our future which the trade in narcotics necessarily generates. The threat posed by the illegal drug economy goes right to the fabric of our society, threatening to tear apart the very seams from which a civilized culture is sewn together.

It is imperative that we take coordinated action to alleviate the rising tide of drug trafficking and drug abuse. The national drug control strategy announced by President Bush is a significant first step. Enactment of Senate Joint Resolution 205, "National Cities Fight Back Against Drugs Week" is another important step in the right direction.

Across the Nation, in cities throughout the United States, cities will launch important educational and preventative efforts to combat the urban blight of narcotics use. While we know that the drug problem has now extended beyond urban areas affecting rural communities as well; however, we are all too well aware of the urban drug war zones that have taken over too many of our urban communities. Here in our Nation's Capital, as well as in my own 22d Congressional District, in New York State coordinated effort on the part of all city and local governments is required in order to effectively wage our drug war. The events planned during "National Cities Fight Back Against Drugs Week" will provide significant help in that effort.

Accordingly, I am pleased to join in this effort sponsored by the National League of Cities, and I urge my colleagues to fully support the resolution.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from Ohio [Mr. SAWYER].

Mr. SAWYER. Mr. Speaker, I thank my colleague, the gentleman from New York [Mr. GILMAN] for taking the time to yield.

I want to make special thanks to the gentleman for the effort that he has made in the last 24 hours to gather signatures for this, so that the scheduled commemoration on the part of the National League of Cities can take place in an orderly and timely way. The effort that we have put into this enormously important campaign is reflected by the kind of effort that has been put into gathering the signatures for this important commemorative resolution by a number of Members on the floor.

Therefore, it is in recognition of their extraordinary effort that I would like to thank my friend, the gentleman from New York [Mr. GILMAN], and my friend, the gentleman from Pennsylvania [Mr. RIDGE] and all those who have been involved in the last day or so in making sure there was sufficient support all across this floor to bring this measure before Members today.

Mr. GILMAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 205

Whereas the presence of drugs and narcotics in our society has resulted in innumerable problems of human, community, social, and economic dimensions;

Whereas the dissolution of the family, inadequate education system, poverty, unemployment, and greed all contribute to illegal drug use;

Whereas the consequences of drug-related problems are witnessed in the loss of human lives, the loss of economic productivity, and the diversion of public resources to address these problems on all fronts;

Whereas the demand for illegal drugs is a pervasive problem that affects all segments of our society, including professional and affluent people;

Whereas the illegal drugs plague urban, suburban, and rural communities of all sizes and regions;

Whereas illegal drugs constitute a problem in our community and lead to a host of problems such as homicide, robbery, burglary, and other crimes and domestic violence;

Whereas a national response is needed to curtail the importation, trafficking, sale, and abuse of drugs;

Whereas our Nation's cities and towns carry the heaviest burden in confronting the Nation's drug problem;

Whereas hundreds of America's dedicated public servants have died and thousands of others risk their lives daily in our cities' individual battles against illegal drugs and in the criminal activities stemming from illegal drugs; and

Whereas the National League of Cities has called on the President and the Congress to join in a partnership in fighting drugs: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That December 3 through 9, 1989, is designated as "National Cities Fight Back Against Drugs Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate programs, ceremonies, and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on Senate Joint Resolution 205, the joint resolution just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will recognize Members for 1-minute speeches. We are expecting a bill, perhaps momentarily, back from the Senate.

## HOLIDAY CHALLENGE

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I think the last few days have been very interesting. Mr. Speaker, there has been a very interesting debate going on in the airwaves and in the byways and in the newspapers the last few days about the defense budget.

As Members know, the body just passed a $305 billion defense budget, and now Secretary Cheney and many others are all scrambling to try and figure out how we will make the pieces fit in the next few years as we see the Berlin Wall becoming a speed bump, as we see all sorts of things happen in the Warsaw Pact countries that we never, never thought would happen.

I think they realize that they can no longer plant their feet and say, "No one is free till Albania is free," because that will not keep $305 billion budgets. I hope that what drives this debate, and I hope all Members spend time thinking about it over the holidays when our heads are a little clearer, I hope what drives this debate is what this country needs for national security. I do not think we need to maintain the kind of forces that we have in Europe today. I think that the President could go to Malta and say to Mr. Gorbachev, you get your troops out of the Warsaw Pack countries, we get ours out of Europe." We could save megabucks and "bigga" bucks, and not only that, we could make the world much more stable and have money to put into Eastern Europe for what Eastern Europe really needs now, which is economic stability.

I think that is our holiday challenge, to go home and figure out what is needed for America's national defense, and how we are going to spend much more wisely, rather than to continue down the road of $471,000 fax machines that do not have fungus in them or whatever else. Those days are over, and I think Secretary Cheney is telling Members a new day is coming.

## MISSION FOR NEXT CONGRESS

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, as we all prepare to go home, I have a message for Members as to our mission for the next Congress, and a message to the President as to what his mission is for the last year of the 101st Congress.

□ 2110

The Japanese gave it to us on the front page of yesterday's New York Times. It says, "Japan, where are your figures on trade?" They are telling Americans they trail in one of the most sweeping critiques in the United States ever suggested by an ally. Japan is telling the Bush administration that it ought to upgrade schools, investment, and scientific research, close the Federal deficit, and take other drastic steps to improve American industrial competitiveness.

Mr. Speaker, I say to my colleagues the Japanese are telling it just like it is, and I hope the President will heed their advice. We need an education President. He ignores their counsel at his peril and at our country's peril. Many of our schools for many students are dysfunctional. My New York City school system is a prime example of that.

In many places in New York, for many students, the school system is utterly dysfunctional. We need to take it apart and put it back together again. It needs an investment of patience, it needs an investment of capital, and it needs improvements of all kinds. It needs an investment of capital for the future of America.

Mr. Speaker, I say to the President that he has not been listening. It would be a wonderful thing if he would listen to the Japanese, but he has not been listening to us in this House. He has not been listening to corporate America, and maybe it takes the Japanese to get the message home.

## THE AIDS EPIDEMIC

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, one of the issues that we have not resolved during this session has been the terrible tragedy that is facing many individuals across this country, that being the AIDS epidemic.

Today, Mr. Speaker, it was reported on a number of television news shows around the country that many health care workers are very concerned about the possibility of them contracting AIDS through surgery. The Centers for Disease Control and Health and Human Services have told us for the past several years that we could not get the disease through AIDS being spread as an aerosol. Yet these health care workers have concluded that there is a very real possibility that blood in a fine mist being spread through an operation could even penetrate the masks they wear, and these health care workers are very concerned that they could get AIDS through this blood that is spread as a mist through the air during surgery.

The reason I took this 1-minute is to talk about this AIDS epidemic and how really severe it is. We know that the incubation period can be up to 20 years. We know that the CDC said 4 years ago that we had 1.5 million infected with the virus. We know that they said it was doubling every year or year and a half. Yet they still say today that we have 1.5 million people infected.

Many scientists believe that we have at least 4 million to 5 million infected, and some believe it is even more than that. Anyhow, we have not addressed this issue. We have not come to grips with how to deal with it. We have not come up with a program on how to deal with it.

We continue to say that we should just educate the people and the problem will solve itself.

Mr. Speaker, I want to give my colleagues some hard facts before we adjourn and go home. I hope that we can have some order and my colleagues will listen to this. In 1983 we had 4,200 people who had AIDS, active AIDS. in 1984 that more than doubled to 9,900. In 1985 it more than doubled again to 20,000. In 1986 we have 35,000 people dead or dying of AIDS. In 1987 it was 48,139. in 1988 it was 80,538 people dead or dying of AIDS. Through September of 1989, it was 109,167 cases.

By the end of this year, Mr. Speaker, there will be over 130,000 people dead or dying of AIDS in this country.

Mr. Speaker, I hope my colleagues will listen to this. Let me tell them what the projections are. I hope my colleagues will pay attention to this because we have not been addressing this issue, and Mr. Speaker, I would ask to have some attention from my colleagues.

The SPEAKER pro tempore (Mr. HOYER). Let the Chair say that the Chair understands the time situation. We are sort of filling in time, and the Chair will recognize the gentleman from New York next.

The gentleman from Indiana may continue.

Mr. BURTON of Indiana. Mr. Speaker, the projections of the Centers for Disease Control are that we will have 365,000 people dead or dying of AIDS in the next 2½ years. The projections that I and many other people have concluded will be that we will have 375,000 people dead or dying. There is not a big difference there, only 10,000 people.

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. BURTON of Indiana. I am happy to yield to the gentleman from California.

Mr. DANNEMEYER. Mr. Speaker, the gentleman is from Indiana, and the Hudson Institute located in his State has come out with a recommendation that I think this body should take seriously, and that is that every person in America should be tested for the virus, for AIDS.

Mr. BURTON of Indiana. Mr. Speaker, I appreciate my colleague's pointing that out. I have been hollering for that for 5 years now.

Mr. DANNEMEYER. It would be voluntary testing, but there would be a unique twist to it. They are saying to us as a suggestion that every citizen would have a choice of deciding if they want to be voluntarily tested for HIV, but also every citizen would be put on notice that if one is engaged in sexual relations without knowledge of their status and there is a transfer of the virus to another human being, that person would be committing a crime.

If this Congress or some State in the Union would have the authority to do that, we would be moving in the direction of treating this tragic epidemic as a public health issue, not a civil rights issue.

Mr. BURTON of Indiana. Mr. Speaker, I know I have extended my time beyond my 1-minute period.

The SPEAKER pro tempore. The gentleman will suspend. The Chair is obviously being somewhat liberal in the determination of what a 1-minute is. The Chair is doing that because we are waiting for a bill.

The Chair will recognize the gentleman from Indiana, but the Chair really believes that if we are going to enter into colloquys on the floor, that would not be fair to the other side that has an opportunity for the next 1-minute.

The Chair recognizes the gentleman from Indiana for the conclusion of his statement.

Mr. BURTON of Indiana. Mr. Speaker, let me just end up by saying this: If we extrapolate these figures out through the year 1999, we will have between 4 million and 8 million people in this country dead or dying. Now, Mr. Speaker, we have to address that issue. People are being infected daily, and we are not dealing with it.

We have not come to grips with contact tracing, testing, or scientific research. There is a myriad of things that need to be done, and this body is derelict in its responsibility to the American people because we have not come to grips with the problem.

So, Mr. Speaker, I submit to my colleagues that when the second session of the 101st Congress convenes, I hope this will be a priority item, because Americans daily are being infected with this disease and are being condemned to death and we are not doing anything about it.

## CUTS IN THE DEFENSE BUDGET

(Mr. WEISS asked was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, as we listen to and read the remarks of the Secretary of Defense, Mr. Cheney, we know that there are enormous cuts in the Defense budget coming at us, and they are coming for budgetary reasons as well as because of the changing situation across the globe, especially within the Soviet Union and in eastern and central Europe.

It has been projected that in the course of the coming calendar year there will be as many as 40,000 Americans now working in defense establishments who will be losing their jobs. American society is not prepared for that, and unless we taken immediate steps and start planning for economic conversion to reorient and restrain those people for civilian production, there is going to be not only personal pain and hardship but there is going to be tremendous economic disclocation in communities across this country.

□ 2120

A piece of legislation which I have introduced, H.R. 101, seeks to provide a concept and a plan for advance contingent planning between and by management and labor at defense establishments across the country. It can mitigate much of the pain and dislocation.

I hope that in the next early part of next year we will have occasion to address this issue seriously, because otherwise unless we really focus on it, I think that the pain and the suffering across this country is going to be just intolerable.

Mr. Speaker, I ask my colleagues to examine, H.R. 101, and if persuaded, as I am, that we ought to be taking steps to plan ahead to try to prevent the economic dislocation which otherwise will occur, I urge and invite my colleagues to become cosponsors of the bill.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HOYER). The Chair will take one last 1-minute speech, and then the Chair is going to call for a vote on House Joint Resolution 448.

## "GOOD AFTERNOON, MR. and MRS. AMERICA, AND ALL THE SHIPS AT SEA"

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, when I was a little boy, there was a commentator by the name of Walter Winchell, and Walter Winchell used to open his program by saying, "Good morning, Mr. and Mrs. America, and all the ships at sea."

So let me say to all of you:

Good afternoon, Mr. and Mrs. America, and all the ships at sea. The liberals in this House are out to get your jobs and your pocketbooks.

You have heard them stand here talking about cutting the defense budget in half. All those ships at sea, all those sailors out there, get ready to mothball all the ships, because these liberals want to take these ships and mothball them and put you on the welfare rolls back home; 500,000, half a million troops will come home and go on the welfare rolls if those liberals get their way.

Let me say to the parents of those 500,000 troops, they are going to go into your pocketbooks, because do you think they are going to use one nickel of that $150 billion in savings to lower the deficit? Do not count on it. They are going to take that money and spend it.

So wake up, Mr. and Mrs. America, protect your jobs at sea. Vote Republican.

## SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1990

The SPEAKER pro tempore. The pending business is the question de novo of suspending the rules and passing the joint resolution, House Joint Resolution 448.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr NATCHER] that the House suspend the rules and pass the joint resolution, House Joint Resolution 448.

The question was taken.

Mr. DANNEMEYER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 354, nays 46, not voting 33, as follows:

[Roll No. 377]

YEAS—354

| | | |
|---|---|---|
| Ackerman | Bennett | Broomfield |
| Akaka | Bentley | Browder |
| Alexander | Bereuter | Brown (CA) |
| Anderson | Berman | Bruce |
| Andrews | Bevill | Buechner |
| Annunzio | Bilbray | Bunning |
| Anthony | Bilirakis | Bustamante |
| Applegate | Boehlert | Byron |
| Atkins | Boggs | Callahan |
| AuCoin | Bonior | Campbell (CA) |
| Ballenger | Borski | Campbell (CO) |
| Barnard | Bosco | Carper |
| Bates | Boxer | Carr |
| Beilenson | Brennan | Chandler |

Chapman
Clarke
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins
Condit
Conte
Cooper
Costello
Coughlin
Courter
Coyne
Darden
Davis
de la Garza
DeFazio
Dellums
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Downey
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Emerson
Engel
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fish
Flake
Foglietta
Ford (MI)
Frank
Frenzel
Frost
Gallegly
Gallo
Gejdenson
Gephardt
Geren
Gibbons
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Goss
Gradison
Grandy
Grant
Gray
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Hammerschmidt
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Henry
Hertel
Hiler
Hoagland
Hochbrueckner
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
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Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Laughlin
Leach (IA)
Lehman (CA)
Lehman (FL)
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Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lloyd
Long
Lowery (CA)
Lowey (NY)
Luken, Thomas
Lukens, Donald
Machtley
Madigan
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCollum
McCurdy
McDade
McDermott
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murtha
Myers
Nagle
Natcher
Neal (MA)
Neal (NC)
Nelson
Nowak
Obey
Ortiz
Owens (UT)
Oxley
Pallone
Panetta
Parker
Parris
Pashayan
Patterson
Paxon
Payne (NJ)
Pease
Pelosi
Penny
Perkins
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Roe
Rogers
Ros-Lehtinen
Rostenkowski
Roth
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Sangmeister
Sarpalius
Savage
Sawyer
Saxton
Scheuer
Schiff
Schneider
Schroeder
Schuette
Schulze
Schumer
Sharp
Shaw
Shays
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (VT)
Smith, Robert (OR)
Snowe
Solarz
Spence
Spratt
Staggers
Stallings
Stangeland
Stark
Stearns
Stokes
Studds
Sundquist
Swift
Synar
Tallon
Tanner
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Thomas (WY)
Torres
Towns
Traficant
Udall
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walsh
Watkins
Waxman
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wise
Wolf
Wolpe
Wyden
Yates
Yatron
Young (AK)
Young (FL)

NAYS—46

Archer
Armey
Bartlett
Barton
Bateman
Bliley
Brown (CO)
Burton
Combest
Cox
Craig
Crane
Dannemeyer
DeLay
Dornan (CA)
Douglas
Dreier
Edwards (OK)
Fields
Gekas
Hall (TX)
Hancock
Hefley
Herger
Holloway
Hunter
Livingston
McCandless
McCrery
Murphy
Nielson
Olin
Packard
Payne (VA)
Rohrabacher
Roukema
Schaefer
Sensenbrenner
Shumway
Shuster
Slaughter (VA)
Smith, Robert (NH)
Solomon
Stenholm
Stump
Walker

NOT VOTING—33

Aspin
Baker
Boucher
Brooks
Bryant
Cardin
Conyers
Crockett
Derrick
Flippo
Florio
Ford (TN)
Garcia
Gaydos
Hansen
Lantos
Leath (TX)
Lipinski
Manton
Marlenee
Molinari
Moorhead
Oakar
Oberstar
Owens (NY)
Robinson
Rose
Smith, Denny (OR)
Torricelli
Traxler
Weber
Wilson
Wylie

□ 2142

Mr. PACKARD and Mr. HEFLEY changed their vote from "yea" to "nay."

Mr. BATES and Mr. DUNCAN changed their vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

The SPEAKER pro tempore. Without objection, the gentleman from Illinois is recognized for 1 minute.

There was no objection.

Mr. MICHEL. Mr. Speaker, I ask for this time for the purpose of inquiring of the distinguished majority leader how to alert the Members as to how we would like to conclude this evening and this session.

Mr. GEPHARDT. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I am happy to yield to the gentleman from Missouri.

Mr. GEPHARDT. Mr. Speaker, I thank the gentleman. I would start by saying that the end is clearly in sight. I did not say light at the end of the tunnel; I said clearly in sight.

We will now move to a consideration again of the catastrophic health legislation. There will be a motion by the chairman of the Committee on Ways and Means to concur in Senate amendments which were passed earlier which constitute a scaled-back package on catastrophic. That vote will go on. If that vote succeeds, then the bill goes back to the Senate. If it fails, we then will have a motion to insist on the House position, and then whatever the outcome there, we will have that issue behind us.

We then move on to reconciliation. That will be another hour. The reconciliation vote will happen at about 11:30 or more like 12 o'clock.

After that, we have time for more unanimous-consent requests, bills coming back from the Senate and other various items.

We will have to adjourn at the end of that until January 23, 1990, and there may be a vote on that. There could be a vote on other matters as we go through the night, but we do not know that.

I frankly doubt that there will be a great number of votes, but I cannot assure Members there will not be votes after midnight.

Mr. MICHEL. If I might, and I am not sure that I heard the distinguished majority correctly, but I think that if the motion to concur is agreed to, then the measure would go on to the White House.

Mr. GEPHARDT. If the gentleman will yield further, I am sorry, it goes to the President.

Mr. GINGRICH. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I am happy to yield to the gentleman from Georgia.

Mr. GINGRICH. Mr. Speaker, I just want to say on behalf of the Republican Cloakroom, the Republican Cloakroom told me a while ago, as I mentioned to the majority leader, that the majority leaders team the last few days as we have gone through this chaos, has been more helpful and more responsive, turned over all of the unanimous-consent requests in writing, and they said it really has made their life a lot easier. They asked me to personally, on behalf of the Republican side, thank you for everything you have done in the last few days.

Thank you.

Mr. GEPHARDT. Thank you.

## MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Chirdon, one of his secretaries.

## MEDICARE CATASTROPHIC COVERAGE REFORM AMENDMENTS OF 1989

Mr. ROSTENKOWSKI. Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 3607) to repeal Medicare provisions in the Medicare Catastrophic Coverage Act of 1988, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

Senate Amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This title may be cited as the "Medicare Catastrophic Coverage Reform Amendments of 1989".

### TITLE I—PROVISIONS RELATING TO PART A OF MEDICARE PROGRAM AND SUPPLEMENTAL MEDICARE PREMIUM

SEC. 101. REVISION OF EXTENDED CARE SERVICES BENEFITS.

(a) 100 DAYS DURING EACH SPELL OF SNF CARE.—Section 1812 of the Social Security Act (42 U.S.C. 1395d) is amended—

(1) by amending paragraph (2) of subsection (a) to read as follows:

"(2)(A) post-hospital extended care services for up to 100 days during any spell of snf care, and (B) to the extent provided in subsection (f), extended care services that are not post-hospital extended care services;";

(2) by amending paragraph (1) of subsection (b) to read as follows:

"(1) post-hospital extended care services furnished to the individual during a spell of snf care after such services have been furnished to the individual for 100 days during such spell, or";

(3) in subsection (e), by inserting "post-hospital" before "extended care"; and

(4) by adding at the end the following new subsection:

"(f)(1) The Secretary shall provide for coverage, under clause (B) of subsection (a)(2) of this section, of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the inclusion of such services will not result in any increase in the total of payments made under this title and will not alter the acute care nature of the benefit described in subsection (a)(2).

"(2) The Secretary may provide—

"(A) for such limitations on the scope and extent of such services described in subsection (a)(2)(B), and on the categories of individuals who may be eligible to receive such services, and

"(B) notwithstanding sections 1814, 1861(v), and 1886 for such restrictions and alternatives on the amount and methods of payment for services described in such subsection,

as may be necessary to carry out paragraph (1).".

(b) COINSURANCE.—Paragraph (3) of section 1813(a) of such Act (42 U.S.C. 1395e(a)) is amended to read as follows:

"(3) The amount payable for post-hospital extended care services furnished an individual during any spell of snf care shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for the first period of hospitalization in a year for each day (before the 101st day) on which the individual is furnished such services after such services have been furnished to the individual for 20 days during such spell.".

(c) CONFORMING AMENDMENTS AND RESTORATION OF LAW.—

(1) SPELL OF SNF CARE DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by inserting before subsection (b) the following new subsection:

"Spell of SNF Care

"(a) The term 'spell of snf care' with respect to any individual means a period of consecutive days—

"(1) beginning with the first day (not included in a previous spell of snf care) (A) on which such individual is furnished extended care services, and (B) which occurs in a month for which the individual is entitled to benefits under part A, and

"(2) ending with the close of the first period of 60 consecutive days thereafter on each of which the individual is not an inpatient of a skilled nursing facility.".

(2) CONFORMING AMENDMENTS.—(A) Except as provided in subparagraph (B)—

(i) the amendments made by subsection (d) of section 104 of the Medicare Catastrophic Coverage Act of 1988 are repealed, and

(ii) the provisions of the Social Security Act amended by such subsection shall be restored and revived as if such amendments had not been made.

(B) Subparagraph (A) shall not apply to the amendments made by paragraphs (2)(C), (2)(D), (3), (4)(A), (4)(B)(iii), (4)(B)(iv), and (7) of section 104(d) of the Medicare Catastrophic Coverage Act of 1988.

(3) ADDITIONAL CONFORMING AMENDMENT.—Title XVIII of the Social Security Act is amended by striking "spell of illness" and "spells of illness" each place either appears and inserting "spell of snf care" and "spells of snf care", respectively.

(d) EFFECTIVE DATE AND TRANSITION.—

(1) EFFECTIVE DATE.—Except as provided in this subsection, the amendments made by this section shall apply to extended care services furnished in a spell of snf care (as defined in paragraph (4)) beginning on or after January 1, 1990.

(2) TRANSITION PROVISIONS FOR POST-HOSPITAL EXTENDED CARE SERVICES.—In applying subsections (a)(2)(A) and (b)(1) of section 1812 and section 1813(a)(3) of the Social Security Act, as restored by this section, with respect to extended care services provided on or after January 1, 1990—

(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of snf care; and

(B) the limitation of coverage of extended care services to post-hospital extended care services shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30-consecutive days in which the individual is not provided inpatient hospital services or extended care services.

(3) SPELL OF SNF CARE DEFINED.—In this subsection, the term "spell of snf care" has the meaning given such term in section 1861(a) of the Social Security Act, as amended by subsection (c)(1) of this section. Days before January 1, 1990, are included in the determination of spells of snf care.

(e) STUDY.—The Comptroller General shall study the reasons for the unexpected increase in cost estimates of the extended care services benefit under title XVIII of the Social Security Act. Not later than February 1, 1990, the Comptroller General shall submit a report to Congress describing the results of the study.

SEC. 102. REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.

(a) IN GENERAL.—Section 111 of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Internal Revenue Code of 1986 and the Social Security Act amended by such section shall be restored and revived as if such section had not been enacted.

(b) EFFECTIVE DATE.—The repeal of section 111 of the Medicare Catastrophic Coverage Act of 1988 shall apply to taxable years beginning after December 31, 1988.

SEC. 103. IMPOSITION OF SECOND INPATIENT HOSPITAL DEDUCTIBLE.

(a) IN GENERAL.—Section 1813(a)(1)(A) of the Social Security Act (42 U.S.C. 1395e(a)(1)(A)) is amended—

(1) by striking "first period" and inserting "first and second periods",

(2) by striking "shall be reduced" and inserting "shall each be reduced", and

(3) by adding at the end thereof the following new sentence: "For purposes of this section, a period of hospitalization shall be considered a second period of hospitalization if such period begins more than 60 days after the end of the first period of hospitalization for the calendar year.".

(b) AMOUNT OF DEDUCTIBLES.—Section 1813(b)(1) of the Social Security Act (42 U.S.C. 1395e(b)(1)) is amended by striking the first sentence and inserting the following new sentences: "The inpatient hospital deductible for the first period of hospitalization for 1990 shall be $592. In the case of a second period of hospitalization beginning in 1990 and any subsequent year, and for no other purposes, the inpatient hospital deductible shall be 93 percent of the amount of the inpatient hospital deductible for the first period of hospitalization for that year.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to periods of hospitalization beginning after December 31, 1989.

SEC. 104. REVISION IN FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.

(a) CHANGE IN FUNDING SOURCE.—Section 1817A(a) of the Social Security Act (42 U.S.C. 1395t-1a(a)) is amended—

(1) in paragraph (1), by striking "and amounts appropriated under paragraph (2)" and inserting "and amounts transferred under section 1841(a) and section 204(e) of the Medicare Catastrophic Coverage Amendments of 1987",

(2) by striking paragraph (2), and

(3) by redesignating paragraph (3) as paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1990.

### TITLE II—PROVISIONS RELATING TO PART B OF THE MEDICARE PROGRAM

SEC. 201. REPEAL OF LIMITATION ON MEDICARE PART B COST-SHARING.

Subsections (a)(4), (b), and (c) of section 201 of the Medicare Catastrophic Coverage Act of 1988 are repealed and the provisions of the Social Security Act amended by such subsections shall be restored and revived as if such subsections had not been enacted.

SEC. 202. LIMITATION ON COVERED OUTPATIENT DRUGS AND DELAY IN DRUG-RELATED BENEFITS.

(a) LIMITATION OF DRUG BENEFITS TO IMMUNOSUPPRESSANTS AND HOME IV DRUGS.—Section 1861(t) of the Social Security Act (42 U.S.C. 1395x(t)) is amended—

(1) in paragraph (3)(B), by striking "in 1990" and inserting "in years after 1990", and

(2) in paragraph (4)(B), by striking "1990" and inserting "1991".

(b) DELAY IN DRUG-RELATED BENEFITS.—

(1) COVERED OUTPATIENT DRUGS.—Section 202(m)(1) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(2) HOME INTRAVENOUS DRUG THERAPY SERVICES.—Section 203(g) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(c) CONFORMING AND MISCELLANEOUS AMENDMENTS TO PAYMENT PROVISIONS.—

(1) CATASTROPHIC DRUG DEDUCTIBLE AMOUNT.—Section 1834(c)(1)(C) of the Social Security Act, as added by section 202(b)(4) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(A) by amending clause (i) to read as follows:

"(i) IN GENERAL.—The catastrophic drug deductible specified in this subparagraph for—

"(I) 1990 is $550, and

"(II) any succeeding year, is the catastrophic drug deductible for the previous year increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) applicable to physicians' services furnished in that succeeding year."; and

(B) in clause (iii), by striking "1992" and inserting "1990".

(2) COINSURANCE PERCENT.—Section 1834(c)(2) of such Act is amended—

(A) in subparagraph (B), by striking "100 percent" and all that follows and inserting "80 percent", and

(B) by striking subparagraphs (C) and (D).

(3) MISCELLANEOUS DELAYS.—Section 1834(c) of such Act is further amended—

(A) in paragraph (3)(A), by striking "1992" and inserting "1993", and

(B) in paragraphs (3)(C)(i) and (3)(C)(ii)(I), by striking "1990" and inserting "1991".

(4) ADMINISTRATIVE DISPENSING ALLOWANCE.—Clause (i) of section 1834(c)(4)(A) of such Act is amended to read as follows:

"(i) in 1990 or 1991, the administrative allowance under this paragraph is $4.50; or".

(5) REPEAL OF SPECIAL TREATMENT OF PREPAID ORGANIZATIONS AND PHYSICIAN GUIDE.—Section 1834(c) of such Act is further amended by striking paragraphs (6) and (7).

(6) CHANGE IN REPORTING REQUIREMENTS.—Section 1834(c)(8) of such Act is amended—

(A) in subparagraph (B), by striking "in May and November of 1989 and 1990 and in May of each succeeding year" and inserting "in May of each year (beginning with 1990)", and

(B) by striking subparagraphs (C) through (F).

(7) DELETION OF EXTRANEOUS DEFINITION.—Section 1834(c)(9) of such Act is further amended by striking subparagraph (D).

(d) DELETION OF PROVISIONS RELATING TO PARTICIPATING PHARMACIES, SPECIAL ADMINISTRATIVE PROVISIONS, AND MODIFICATION OF HMO/CMP CONTRACTS.—Subsections (c), (e), and (f) of section 202 of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Social Security Act amended by such subsections shall be restored and revived as if such subsections had not been enacted.

(e) REPEAL OF REQUIREMENT FOR REESTIMATION OF COSTS, ADDITIONAL STUDIES, AND DEVELOPMENT OF STANDARD CLAIMS FORM.—Paragraph (2) of subsection (i), subsection (k), and subsection (l) of section 202 of the Medicare Catastrophic Coverage Act of 1988 are repealed.

(f) REPEAL OF PRESCRIPTION DRUG PAYMENT REVIEW COMMISSION.—

(1) IN GENERAL.—Section 1847 of the Social Security Act (42 U.S.C. 1395w-3), as added by section 202(j) of the Medicare Catastrophic Coverage Act of 1988, is repealed.

(2) TRANSITION.—The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act, but the Prescription Drug Payment Review Commission is authorized to continue its activities for 30 days after such date to conclude its business.

(g) CONFORMING DELAYS TO PROVISIONS RELATING TO HOME INTRAVENOUS DRUG THERAPY SERVICES.—

(1) Section 1834(d)(2) of the Social Security Act, as added by section 203(c)(1)(F) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1990" and inserting "1991".

(2) Section 203(c)(2) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1991" and inserting "1992".

(3) Section 1835(a)(2)(G) of the Social Security Act, as inserted by section 203(d)(1)(C) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1993" and inserting "1994".

(4) Section 1154(a)(16) of the Social Security Act, as added by section 203(d)(2) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1993" and inserting "1994".

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 203. CHANGES IN COVERAGE OF IN-HOME CARE.

(a) IN GENERAL.—Section 205(f) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(b) CONFORMING AMENDMENTS.—Section 1861(ll) of the Social Security Act (42 U.S.C. 1395x(ll)), as added by section 205(b) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) by amending subparagraph (A) of paragraph (4) to read as follows:

"(A) has incurred out-of-pocket part B cost sharing (as defined in paragraph (5)(A)) in an amount equal to part B catastrophic limit (as determined under paragraph (5)(B)) for the year, or"; and

(2) by adding at the end the following new paragraph:

"(5) For purposes of this subsection:

"(A) The term 'out-of-pocket part B cost sharing' means, with respect to an individual covered under part B, the amounts of expenses that the individual incurs that are attributable to—

"(i) the deductions established under section 1833(b), and

"(ii) the difference between the payment amount provided under part B and the payment amount that would be provided under part B if '100 percent' and '0 percent' were substituted for '80 percent' and '20 percent', respectively, each place either appears in sections 1833(a), 1833(i)(2), 1834(e)(1)(C), 1835(b)(2), 1866(a)(2)(A), 1881(b)(2), and 1881(b)(3).

"(B)(i) The part B catastrophic limit for 1990 is $1,780. The part B catastrophic limit for any succeeding year shall be such an amount (rounded to the nearest multiple of $1) as the Secretary estimates, for that succeeding year, will reflect a level of out-of-pocket part B expenses that only 5.5 percent of the average number of individuals enrolled under part B (other than individuals enrolled with an eligible organization under section 1876 or an organization described in section 1833(a)(1)(A)) will equal or exceed in that succeeding year.

"(ii) Not later than September 1 of each year (beginning with 1990), the Secretary shall promulgate the part B catastrophic limit under this subparagraph for the succeeding year.".

(c) REPORT ON ALTERNATIVE ELIGIBILITY STANDARDS.—The Secretary of Health and Human Services shall submit to the Congress by June 1, 1990, a report describing alternatives to the standards for determining the eligibility of individuals for in-home care services contained in section 1861(ll) of the Social Security Act (as amended by subsection (b)).

SEC. 204. CHANGES IN PART B MONTHLY PREMIUM FINANCING.

(a) CONSOLIDATION OF CATASTROPHIC MONTHLY PREMIUM.—

(1) IN GENERAL.—Section 1839(g)(1) of the Social Security Act (42 U.S.C. 1395r(g)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking "paragraphs (4) and (5)" and inserting "paragraphs (3) and (4)",

(ii) by striking "the sum of the catastrophic coverage monthly premium and the prescription drug monthly premium" and inserting "the catastrophic coverage monthly premium",

(iii) by striking "paragraphs (2) and (3)" and inserting "paragraph (2)",

(iv) in the column in the table relating to the catastrophic coverage monthly premium, by striking "$4.90", "$5.46", "$6.75", and "$7.18" and inserting "$3.90", "$4.80", "$5.60", and "$6.00", respectively, and

(v) by striking the column in the table relating to the prescription drug monthly premium; and

(B) by striking subparagraphs (B) through (D) and inserting the following:

"(B) The Secretary shall determine during September of 1990, 1991, and 1992, the monthly actuarial rate for months in the succeeding year which, if substituted for the catastrophic coverage monthly premium specified in subparagraph (A) for such months, would assure (taking into account potential contingencies) a positive balance in the Medicare Catastrophic Coverage Account at the end of the succeeding year.

"(C) If the monthly actuarial rate determined under subparagraph (B) for months in a year is less than the catastrophic coverage monthly premium otherwise specified in the table in subparagraph (A), such monthly actuarial rate shall be substituted for the catastrophic coverage monthly premium under subparagraph (A) for months in the year.".

(2) MONTHLY PREMIUM AFTER 1993.—Paragraph (2) of section 1839(g) of such Act is amended to read as follows:

"(2)(A) The Secretary shall determine during September of each year (beginning with 1993) the monthly actuarial rate for months in the succeeding year which, if substituted for the catastrophic coverage monthly premium specified in subparagraph (A) for such months, would assure a

balance in the Medicare Catastrophic Coverage Account at the end of the succeeding year equal to 20 percent of the estimated total debits to the Account during the year.

"(B) In the case of months in a year after 1993, the catastrophic coverage monthly premium is the monthly actuarial rate determined under subparagraph (A) for months in the year.".

(3) ELIMINATION OF SEPARATE PRESCRIPTION DRUG MONTHLY PREMIUM.—Section 1839(g) of such Act is further amended by striking paragraph (3).

(4) TREATMENT OF RESIDENTS OF PUERTO RICO AND TERRITORIES.—Section 1839(g)(4) of such Act is amended to read as follows:

"(3)(A) In the case of an individual who is a resident of Puerto Rico or who is a resident of another U.S. commonwealth or territory during a month, instead of the premium increase provided under paragraph (1), subject to subsection (b), the monthly premium for each individual enrolled under this part (otherwise determined without regard to this subsection) shall be increased—

"(i) for months in 1989 by $1.30 for residents of Puerto Rico and $2.10 for residents of another U.S. commonwealth or territory,

"(ii) for months in 1990 by $1.40 for residents of Puerto Rico and $2.30 for residents of another U.S. commonwealth or territory, and

"(iii) for months in a succeeding year by a fraction (determined under subparagraph (B)) of the premium increase determined under paragraph (1) for residents of Puerto Rico and for residents of the other U.S. commonwealths and territories, respectively.

"(B) The Secretary shall from time to time establish, separately for Puerto Rico and for the other U.S. commonwealths and territories, a fraction that reflects the relative per capita outlays which are accounted for under the Medicare Catastrophic Coverage Account for residents in such respective areas compared to such per capita outlays for individuals who are resident in the 50 States and the District of Columbia.".

(5) PART B ONLY INDIVIDUALS.—Section 1839(g)(5) of such Act is amended to read as follows:

"(4)(A) In the case of a part B only individual during a month, instead of any premium increase otherwise provided under paragraph (1), subject to subsection (b), the monthly premium for each individual enrolled under this part (otherwise determined without regard to this subsection) shall be increased for months (beginning with January 1991) by a fraction (determined under subparagraph (B)) of the premium increase determined under paragraph (1).

"(B) The Secretary shall from time to time establish a fraction that reflects the relative per capita outlays which are accounted for under the Medicare Catastrophic Coverage Account for part B only individuals compared to such per capita outlays for individuals entitled to benefits under both part A and this part.".

(6) CONFORMING AMENDMENTS.—Section 1839 of such Act is further amended—

(A) in subsection (b), by striking "(g)(6)" and inserting "(g)(5)",

(B) in subsection (g)(6), by striking "(6)(A)" and inserting "(5)" and by striking subparagraph (B),

(C) in subsection (g)(7), by striking "(7)(A) The Secretary and the Secretary of the Treasury" and inserting "(5)(A) The Secretary", and

(D) in subsection (g)(8)—

(i) by striking subparagraphs (A), (B), and (C), and

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (A), (B), and (C), respectively.

(b) PAYMENT OF PART OF PREMIUM TO COVER PART A OUTLAYS.—Section 1841(a) of the Social Security Act (42 U.S.C. 1395t(a)), as amended through the operation of subsection (c), is amended by adding at the end the following: "There is appropriated from the Trust Fund to the Federal Hospital Insurance Catastrophic Coverage Reserve Fund, from such amounts in the Trust Fund as are attributable to premium increases imposed under section 1839(g) for months after December 1989, amounts equal to the amount by which (1) the amount of outlays made, from the Federal Hospital Insurance Trust Fund, that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988, as amended (other than outlays for extended care services attributable to such amendments, except with respect to outlays attributable to section 101(d)(2) of the Medicare Catastrophic Coverage Reform Amendments of 1989), exceeds (2) amounts transferred under section 204(e) of the Medicare Catastrophic Coverage Reform Amendments of 1989 and the reductions in outlays from the Federal Hospital Insurance Trust Fund. The amounts appropriated by the preceding sentence shall be transferred from time to time (not less frequently than monthly), such amounts to be based on estimates by the Secretary of premiums and outlays described in such sentence, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than appropriate amounts.".

(c) REPEAL OF FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND.—Section 212 (other than paragraphs (3) and (4) of subsection (c)) of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Social Security Act amended by such section (other than such paragraphs) shall be restored and revived as if such amendments had not been made.

(d) AMENDMENTS TO MEDICARE CATASTROPHIC COVERAGE ACCOUNT.—Section 1841B of the Social Security Act (42 U.S.C. 1395t-2) is amended—

(1) in subsection (a), by striking ", and section 59B of the Internal Revenue Code of 1986," and by striking "and for purposes of section 59B of the Internal Revenue Code of 1986";

(2) by amending paragraph (1) of subsection (b) to read as follows:

"(1) The Account shall be—

"(A) credited for receipts of the Federal Supplementary Medical Insurance Trust Fund attributable to premiums under section 1839(g) for months beginning with January 1990,

"(B) debited for outlays under this title that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988 (as amended) and to the provisions of section 101(d)(2) of the Medicare Catastrophic Coverage Reform Amendments of 1989 with respect to services furnished on or after January 1, 1990, and

"(C) credited for reductions in outlays under this title that are attributable to section 103 of the Medicare Catastrophic Coverage Reform Amendments of 1989.";

(3) in subsection (b)(3), by striking "and the Secretary of the Treasury"; and

(4) in subsection (c)(2), by striking "and under section 59B of the Internal Revenue Code of 1986".

(e) 1-TIME TRANSFER OF NET ADDITIONAL PREMIUMS IN 1989.—There shall be transferred, as of January 1, 1990, from the Federal Supplementary Medical Insurance Trust Fund to the Federal Hospital Insurance Catastrophic Coverage Reserve Fund an amount equal to—

(1) the amount of the premiums collected pursuant to section 1839(g) of the Social Security Act for months in 1989, minus

(2) the amount of administrative expenses incurred under part B of title XVIII of such Act before January 1, 1990, relating to implementation of the amendments made by the Medicare Catastrophic Coverage Act of 1988 and by this Act, plus

(3) the amount of interest accrued to the Federal Supplementary Medical Insurance Trust Fund attributable to the balance described in paragraphs (1) and (2).

(f) CONFORMING AMENDMENTS.—

(1) Section 1844(a) of the Social Security Act (42 U.S.C. 1395w(a)) is amended by striking "or section 59B of the Internal Revenue Code of 1986".

(2) Section 1876(a)(5) of such Act (42 U.S.C. 1395ff(a)(5)) is amended by striking ", the Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund" and inserting "and the Federal Supplementary Medical Insurance Trust Fund".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 205. CONTINUATION OF RISK-SHARING CONTRACTS WITH HEALTH MAINTENANCE ORGANIZATIONS.

Notwithstanding any other provision of this title, the amendments made by this title (other than repeal of Section 1833(c)(5) and 1834(c)(6) of the Social Security Act) shall not apply to risk-sharing contracts, for contract year 1990—

(1) with eligible organizations under section 1876 of the Social Security Act, or

(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967, or under section 222(a) of the Social Security Amendments of 1972.".

SEC. 206. CLARIFICATION OF TRANSITION FOR PPS-EXEMPT HOSPITALS.

Effective as if included in the Medicare Catastrophic Coverage Act of 1988, section 104(c)(2) of such Act is amended by striking the period at the end and inserting the following: ", without regard to whether any of such beneficiaries exhausted medicare inpatient hospital benefits before January 1, 1989.".

## TITLE III—MISCELLANEOUS

SEC. 301. TRANSITION IN MEDIGAP REGULATIONS.

(a) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 221(d) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) in the third sentence of subsection (a) and in subsection (b)(1), by striking "subsection (k)(3)" and inserting "subsections (k)(3), (k)(4), (m), and (n)";

(2) in subsection (k)—

(A) in paragraph (1)(A), by inserting "except as provided in subsection (m)," before "subsection (g)(2)(A)", and

(B) in paragraph (3), by striking "subsection (l)" and inserting "subsections (l), (m), and (n)"; and

(3) by adding at the end the following new subsections:

"(m)(1)(A) If, within the 90-day period beginning on the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection and subsection (n) referred to as the 'Association') revises the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) and adopted on September 20, 1988) to reflect the changes in law made by the Medicare Catastrophic Coverage Reform Amendments of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the amended NAIC Model Regulation (referred to in subsection (k)(1)(A)) as revised by the Association in accordance with this paragraph (in this subsection and subsection (n) referred to as the 'revised NAIC Model Regulation').

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

"(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) referred to as 'revised Federal model standards') for medicare supplemental policies to reflect the changes in law made by the Medicare Catastrophic Coverage Reform Amendments of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised Federal model standards or 1 year after the date the Secretary first promulgates such standards.

"(3) Notwithstanding any other provision of this section (except as provided in subsection (n))—

"(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a),

"(B) no certification made pursuant to subsection (a) shall remain in effect, and

"(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A),

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

"(n)(1) Until the date specified in paragraph (4), in the case of a qualifying medicare supplemental policy described in paragraph (3) issued in a State—

"(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the transition provision described in paragraph (2), or

"(B) on or after the transition deadline, the policy is deemed to be in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term 'transition deadline' means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Secretary promulgates revised Federal model standards (as the case may be).

"(2) The transition provision described in this paragraph is—

"(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this title made by the Medicare Catastrophic Coverage Reform Amendments of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

"(B) if the Association does not provide for a transition provision by the date described in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

"(3) In paragraph (1), the term 'qualifying medicare supplemental policy' means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before the date of the enactment of this subsection.

"(4)(A) The date specified in this paragraph for a policy issued in a State is—

"(i) the first date a State adopts, after the date of the enactment of this subsection, standards equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

"(ii) the date specified in subparagraph (B),

whichever is earlier.

"(B) In the case of a State which the Secretary identifies, in consultation with the Association, as—

"(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

"(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

"(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) unless each individual who is entitled to benefits under this title and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

"(A) the changes in benefits under this title effected by the Medicare Catastrophic Coverage Reform Amendments of 1989, and

"(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

"(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before the date of the enactment of this subsection, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) unless the insurer—

"(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

"(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstitution of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

"(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of the date of the enactment of this subsection, if (as of January 1, 1990) the policy under which the individual was provided coverage provides for no waiting period with respect to treatment of a pre-existing condition.".

(b) SENSE OF CONGRESS.—It is the sense of Congress that States should respond, at the earliest practicable date after the date of enactment of this Act, to requests by insurers for review and approval of riders and premium adjustments for medicare supplemental policies in order to comply with the amendments made by subsection (a) and that all such premium adjustments be effective January 1, 1990.

SEC. 302. NOTICE OF CHANGES.

The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act of 1990, for a description of the changes in benefits under title XVIII of such Act made by the amendments made by this title.

SEC. 303. MISCELLANEOUS AMENDMENTS AND TECHNICAL CORRECTIONS.

(a) CORRECTIONS RELATING TO CATASTROPHIC DRUG BENEFIT.—

(1) DEFINITION OF COVERED OUTPATIENT DRUGS.—Section 1861(t)(3)(A) of the Social Security Act, as added by section 202(a)(2)(C) of the Medicare Catastrophic Coverage Act of 1988 (in this section referred to as "MCCA"), is amended—

(A) by redesignating clauses (iv) through (xiii) as clauses (vi), (vii), (viii), (ix), (x), (xii), (xiii), (xiv), (xvi), and (xviii), respectively;

(B) by inserting after clause (iii) the following:

"(iv) Diagnostic services under subsections (s)(2)(C) and (s)(3).

"(v) X-ray, radium, and radioactive isotope therapy under subsection (s)(4).";

(C) by inserting after clause (x), as so redesignated, the following:

"(xi) Parenteral nutrition nutrients under subsection (s)(8).";

(D) by inserting after clause (xvi), as so redesignated, the following:

"(xv) Partial hospitalization services (as defined in subsection (ff)).''; and

(E) by inserting after clause (xvi), as so redesignated, the following:

"(xvii) Qualified psychologist services (as defined in subsection (ii)).".

(2) COVERED HOME IV DRUGS.—Section 1861(t)(4)(A) of such Act (42 U.S.C. 1395x(t)(4)(A)) is amended by striking "dispensed" and inserting "furnished by a qualified home intravenous drug therapy provider".

(3) REFERENCES TO CATASTROPHIC DRUG DEDUCTIBLE AMOUNT.—Section 1834(c) of the Social Security Act, as added by section 202(b)(4) of MCCA, is amended—

(A) in paragraph (2)(A), by striking "under paragraph (1)(A) and except as provided in subparagraph (C)" and inserting "under paragraph (1)", and

(B) in paragraph (8)(E), by striking "paragraph (1)(A)" each place it appears and inserting "paragraph (1)".

(b) SCREENING MAMMOGRAPHY.—

(1) APPLICATION OF PARTICIPATING PHYSICIAN DIFFERENTIAL.—Section 1834(e)(4) of the Social Security Act, as added by section 204(b)(2) of MCCA, is amended by adding at the end the following new subparagraph:

"(D) APPLICATION OF PARTICIPATING PHYSICIAN DIFFERENTIAL.—In applying the limit under subparagraph (A) with respect to a nonparticipating physician, the limit applied shall be the applicable percent (as defined in the second sentence of section 1842(b)(4)(A)(iv)) of the limit otherwise established in that subparagraph.".

(2) FREQUENCY OF SCREENING.—Section 1834(e)(2)(A) of the Social Security Act, as added by section 204(b)(2) of MCCA, is amended—

(A) in clause (iii)(I), by striking "the 11 months of a previous screening mammography" and inserting "11 months following the month in which a previous screening mammography was performed",

(B) in clause (iii)(II), by striking "the 23 months of a previous screening mammography" and inserting "23 months following the month in which a previous screening mammography was performed",

(C) in clause (iv), by striking "11 months of a previous screening mammography" and inserting "11 months following the month in which a previous screening mammography was performed", and

(D) in clause (v), by striking "23 months of a previous screening mammography" and inserting "23 months following the month in which a previous screening mammography was performed".

(c) ROUNDING OF PART B PREMIUM.—Section 1839 of the Social Security Act, as amended by section 211(c)(1)(E) of MCCA, is amended—

(1) in the first sentence of subsection (b), by striking "subsections (f) and (g)(5)" and inserting "subsection (f)",

(2) in subsection (b), by inserting after the first sentence the following new sentence: "If the resulting monthly premium is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.", and

(3) in subsection (c), by striking "the foregoing provisions of this section" and inserting "subsection (a)(3) or (e)".

(d) MISCELLANEOUS.—

(1) Clause (iii) of section 1814(a)(7)(A) of the Social Security Act, as added by section 104(d)(2)(C)(iii) of MCCA, is amended by moving its alignment 2 ems to the left so its alignment is the same as that of clause (ii) of such section.

(2) Section 1842(p)(3)(B) of the Social Security Act, as added by section 202(g) of MCCA, is amended by striking "section 1842(j)(2)(A)" and inserting "subsection (j)(2)(A)".

(3) Section 221(g)(3) of MCCA is amended by striking "subsection (f)" and inserting "subsection (e)".

(4) Section 1842(h)(5)(B)(iv) of the Social Security Act, as added by section 223(b)(4) of MCCA, is amended by striking "paragraph (2)(A)" and inserting "paragraph (2)".

(e) MISCELLANEOUS CORRECTIONS RELATING TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987.—

(1) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1834(b)(4)(A) of the Social Security Act, as added by section 4049(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "insurance and deductibles under section 1835(a)(1)(I)" and inserting "coinsurance and deductibles under section 1833(a)(1)(J)".

(2) Section 1842(j)(1)(C)(vii) of the Social Security Act, as added by section 4085(i)(7)(C) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "accordingly" and inserting "according".

(3) Section 1886(g)(3)(A)(iv) of the Social Security Act, as added by section 4006(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "may) be" and inserting "may be)".

(f) OTHER CORRECTIONS.—

(1) Section 1866(a)(1)(F)(i)(III) of the Social Security Act is amended by striking "fiscal year))" and inserting "fiscal year)".

(2) Section 1875(c)(7) of the Social Security Act, as added by section 9316(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of this section".

(3) Section 1842(j)(2)(B) of the Social Security Act, as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987, is amended by striking "paragraphs" and inserting "subsections".

## TITLE IV—MISCELLANEOUS SOCIAL SECURITY PROVISIONS

SEC. 401. EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY THE EMPLOYERS.

(a) OLD-AGE SURVIVORS, AND DISABILITY, AND HOSPITAL INSURANCE PROGRAMS.—For purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(b) RAILROAD RETIREMENT PROGRAM.—For purposes of chapter 22 of the Internal Revenue Code of 1986, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(c) FEDERAL UNEMPLOYMENT PROGRAMS.—

(1) FEDERAL UNEMPLOYMENT TAX.—For purposes of chapter 23 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(2) RAILROAD UNEMPLOYMENT CONTRIBUTIONS.—For purposes of the Railroad Unemployment Insurance Act, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(3) RAILROAD UNEMPLOYMENT REPAYMENT TAX.—For purposes of chapter 23A of the Internal Revenue Code of 1986, the term "rail wages: shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(d) EFFECTIVE DATE.—This section shall apply with respect to refunds provided on or after January 1, 1989.

Mr. ROSTENKOWSKI (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. HOYER). Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. ROSTENKOWSKI] will be recognized for 30 minutes, and the gentleman from Texas [Mr. ARCHER] will be recognized for 30 minutes.

### PARLIAMENTARY INQUIRIES

Mr. RUSSO. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. RUSSO. Mr. Speaker, I would wonder whether or not the gentleman from Texas is opposed to the motion.

The SPEAKER pro tempore. The Chair will inquire: Is the gentleman from Texas opposed to the amendment?

Mr. MADIGAN. Mr. Speaker, I am opposed to the amendment on this side.

The SPEAKER pro tempore. The Chair propounded a question, however, to the gentleman from Texas, the ranking member. Will the ranking member respond to the question of the Chair?

□ 2150

The Chair must ascertain whether the ranking member, who is entitled under the rules to 30 minutes, whether the ranking member is opposed to the amendment.

Mr. ARCHER. Mr. Speaker, I am in favor of the amendment.

The SPEAKER pro tempore. Does a Member seek 20 minutes in opposition to the amendment?

Mr. MADIGAN. Mr. Speaker, I seek time in opposition.

The SPEAKER pro tempore. For what purpose does the gentleman from Illinois [Mr. RUSSO] rise?

Mr. PICKLE. Mr. Speaker, we have two gentlemen who wish to be recognized.

The SPEAKER pro tempore. The Chair is going to recognize one Member for the purpose of being in opposition. That Member will be assigned 20 minutes of the time allotted.

Mr. ROSTENKOWSKI. Mr. Speaker, if I may be recognized, I have no idea why the gentleman on my left and the gentleman on my right are seeking recognition. However, if it is because of opposition, I would suggest that the senior member be recognized in opposition.

The SPEAKER pro tempore. Does the gentleman from Texas [Mr. PICKLE] seek time in opposition? The gentleman from Texas is on his feet and the gentleman from Texas is the ranking member. Under the rules he would be entitled to recognition. Is the gentleman from Texas [Mr. PICKLE] opposed to the amendment?

Mr. PICKLE. No, I am not. I am for the amendment, Mr. Speaker.

Mr. MADIGAN. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. MADIGAN. Mr. Speaker, this bill is in the jurisdiction of both the Ways and Means Committee and the Energy and Commerce Committee, and members from both of those committees are conferees on the subject matter that is before us. Am I to understand that the Committee on Energy and Commerce is not entitled to any time?

The SPEAKER pro tempore. The Chair would ask the gentleman from Illinois if he is opposed to the amendment?

Mr. MADIGAN. I am opposed, Mr. Speaker.

The SPEAKER pro tempore. Under the rule, the gentleman is entitled to 20 minutes as the senior Member seeking time.

Mr. MADIGAN. I thank the Chair.

The SPEAKER pro tempore. The Chair will inform the Members that the gentleman from Illinois [Mr. ROSTENKOWSKI] will be recognized for 20 minutes, the gentleman from Texas [Mr. ARCHER] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. MADIGAN] will be recognized for 20 minutes.

Mr. ARCHER. Mr. Speaker, I have a unanimous consent request.

Mr. Speaker, I ask unanimous consent that 15 minutes be allotted to the gentleman from Illinois [Mr. MADIGAN], 15 minutes to myself, 15 minutes to the gentleman from Illinois [Mr. ROSTENKOWSKI], and 15 minutes to the gentleman from Illinois [Mr. RUSSO].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. DONNELLY. Reserving the right to object, Mr. Speaker, I would ask the gentleman from Texas, my good friend [Mr. ARCHER] and former cosponsor, for what reason he makes that request?

Mr. ARCHER. If the gentleman will yield, Mr. Speaker, the purpose of making the request is so that the time will be divided equally between the opposition and the proponents, and so that 30 minutes will be allotted to those that oppose the motion.

Mr. DONNELLY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. The Chair will state that the gentleman from Illinois [Mr. ROSTENKOWSKI] will be recognized for 15 minutes, the gentleman from Texas [Mr. ARCHER] will be recognized for 15 minutes, the gentleman from Illinois [Mr. MADIGAN] will be recognized for 15 minutes, and the gentleman from Illinois [Mr. RUSSO] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Illinois [Mr. ROSTENKOWSKI].

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I believe that the majority leader has explained the parliamentary situation quite accurately. The present motion is to concur in the Senate amendment. Should there be a vote on that and it fails, immediately thereafter would be then a motion to disagree to the Senate amendment and send back the repeal that the House has taken three votes on.

Mr. Speaker, I rise in reluctant support of the latest Senate amendment. Let me emphasize, however, that it is not the answer that senior citizens have been asking for. Unfortunately, it is not a catastrophic coverage plan.

It is, however, a small step forward. And, it is obviously the best that we can do this year. So the question we face now is whether this proposal is better than nothing. I think it is.

It provides two types of important benefits. First, it protects seniors who have extended hospital stays or multiple hospital admissions within a single year. We're talking about a small group of people who are generally quite ill when they receive benefits. They need help. This plan will provide it.

Second, it provides an array of new benefits. They are relatively small, but important. There is mammography screening that will save both money and lives by detecting breast cancer earlier.

There are also extended home health benefits and respite care to provide some needed relief for caregivers within the family who can be overwhelmed by the responsibilities thrust upon them. And there is the hospice benefit that will allow beneficiaries to die with dignity.

Taken together this is a positive package. It is not as good as the original catastrophic plan. It is not the ultimate solution to senior health coverage.

But it is a step forward, voters in my district say, by a 2-to-1 margin, that we should retain some benefits rather than just eliminating the program entirely. I believe they are right. That is why I will vote in favor of agreeing to the Senate amendment, and I urge my colleagues to join me.

Mr. Speaker, I reserve the balance of my time.

Mr. ARCHER. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. SCHULZE].

PARLIAMENTARY INQUIRY

Mr. RUSSO. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. RUSSO. Mr. Speaker, under the process that we have agreed upon, who has the right to close debate; in what order do we close this debate?

The SPEAKER pro tempore. The chairman of the committee who made the motion has the right to close debate.

Mr. RUSSO. And prior to the chairman of the committee, who is the next in line to close debate; would it be some Member for the opposition?

The SPEAKER pro tempore. Not necessarily, since the ranking minority member to whom 30 minutes was originally allocated has the right to close prior to the chairman.

Mr. RUSSO. It would seem to me, Mr. Speaker, that having two Members who are in support of the amendment and two opposing the amendment speaking before that, would it not be more equitable that we would have one to close against, one to close for, one to close against, and then the chairman to close for; would that not be more fair?

The SPEAKER pro tempore. The precedents require the Chair to go by the reverse order of the original allocation under the circumstances when more than two Members control time.

The gentleman from Pennsylvania [Mr. SCHULZE] is recognized for 2 minutes.

Mr. SCHULZE. Mr. Speaker, earlier I took the microphone to urge the passage of the measure which we sent over to the Senate which would eliminate catastrophic, which would continue the action we had taken before.

What we should have done in committee, and we had the opportunity, was to put in a 1-year delay in the implementation of catastrophic. This would have given us time to sit down

in a deliberative manner and devise a program which would have been acceptable as a follow-on to that which caused so many problems.

We did not have that option. We lost.

□ 2200

Se we went to conference and we tried to balance out a compromise. During this process a gentleman from the other body introduced the McCain amendment, which was compromise. The gentleman from Ohio [Mr. REGULA] and I introduced that as a bill on the floor. And during the conference we tried to compromise in between the two positions of complete elimination from the House and the McCain amendment.

We were unsuccessful. At this point we now have a compromise. Is it satisfactory? No; it probably is not. But I think it is the best that we are going to be able to get under the circumstances we have this evening.

Is it a step in the right direction? Absolutely. It is. It says to the senior citizens, "We are going to take this small step," as the chairman characterized it, and hopefully we can take a bigger step later on and we can provide good catastrophic coverage for the senior citizens of America.

But at this point we are not going to be able to do that. We do not have the time. We are in the closing moments of this session.

Mr. Speaker, I urge my colleagues to support the amendment and get the catastrophic out of the way.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, at the outset I would like to pay my respects to my colleague, the gentleman from Illinois [Mr. ROSTENKOWSKI], who has worked very hard on this. I know this has been a very difficult problem for him. He has tried very hard to accommodate all different points of view, and we got very close but we did not make it.

Mr. MICHEL of Illinois tried very hard to help us as did Mr. TAUKE, Mr. LENT of New York, and even Mr. HATCH from the other body. But we did not make it. We did not work out something that is good for the senior citizens of America.

I prefer repeal to what we have before us at the moment.

What we have before us at the moment adds an additional part B premium to the existing Medicare Program. But it does not add any additional part B benefits. Seniors are going to figure that out very quickly. You are asking them to pay an additional part B premium, but you are not giving them additional part B benefits.

It adds a second hospital deductible to the existing law. The existing law has a $592 part A deductible. Under this proposal there would be a second part A deductible of $550. There is a sheet that has been passed out that purports to show you what the premiums would be under this program. But what is not on that sheet and is in the legislative language is that these are not the premiums. The Secretary may go above these premiums in the legislative language.

In 1994 and beyond he may go as high as he wants to go. There is no control in the legislative language at all on the premiums for this proposal in the legislative language.

I think this is a very, very bad proposal. The seniors are going to figure it out very quickly and they are going to be just as mad at you for this as they are for the existing program.

Mr. Speaker, I urge you to reject this and send repeal back to the Senate so that we can all go home.

Mr. Speaker, I reserve the balance of my time.

Mr. RUSSO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to oppose the Senate amendment to reform the Medicare catastrophic coverage program.

A vote for this amendment will not win you many friends back home. Once the senior citizens understand exactly what is happening in this amendment, you will understand why you should be for repeal.

Let me explain to you what has happened here. This amendment creates two deductibles under part A, the first time $592, the second deductible, $550.

Usage under the first deductible was about 6 million to 7 million people. Second-time users are about 1.5 million people who will use the second deductible.

Under current law, prior to catastrophic health care under the Medicare provisions, you have a deductible for $600, close to $600, for a first-time deductible, and a second deductible for $600 the second time. And if you have to go a third time, another $600 deductible.

So what we are doing for the American people right now is we are going to ask them to pay an additional $6 so they get a reduction in their deductible by $58 approximately. It just does not add up, my colleagues. It is not the way you are going to do it.

What we are saying to the American seniors is that under the figures that we have here, we do not know if this is going to cover the total cost of what I just said to you.

The Secretary has the authority under the bill after 1993 to raise the premium higher.

OMB's report to our committee was that they felt that it would take a $6 premium in 1993 to get close to neutral. They do not think it will likely do it. But after 1993 it is whatever the Secretary of HHS determines to be necessary to raise the money.

So it is not a program that is very easy to defend on its face. So I would suggest to my colleagues that the easiest solution to this problem is to vote for repeal, and that is what we have done three times.

Let us continue to do it.

Mr. Speaker, I reserve the balance of my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 8 minutes to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, I rise in support of the amendment that has been sent to us by the other body, the McCain-Bentsen-Dole-Mitchell package. I rise in strong support of it.

My friends, this is the last time this year that you will have a chance to do something for the elderly who are afflicted and who must endure catastrophic illness. There will probably be no other chance this year.

The package that the other body has sent over is a reasonable package. It deserves your serious consideration, and I hope that you will follow with me and not just be convinced that this is a terrible program and we have just got to repeal it. This is a rather defenseless sort of position.

Let me take you through one or two of the steps.

Last year some 7 million people used catastrophic, needed hospital coverage at least once.

□ 2210

It was used by 1.2 million on a second admission into the hospital. We spent, from our Treasury, somewhere around $5 billion paying benefits for people who needed these benefits, who would be absolutely wiped out if we did not have catastrophic inpatient coverage. That is silent proof to me that there is a great need for this coverage, that people are using it, and we ought to do something to preserve it.

Now, Members say we ought to repeal and start over again next year. We will not be any more in agreement next year than we have been all during this conference. Members know that and I know that. It seems to me that this is just as good a time to work an agreement out.

Let me say first that this proposal does not have a surcharge. That is out. We have to accept that the surcharge was misadventure, and the opposition of seniors knocked it out. There is no surcharge in this proposal. There is a small monthly premium. I want to read Members the premiums that have come over from the other side. This is what they will be per month, starting in 1989, would be $4, which is the present premium for catastrophic coverage. Then it will go $3.50, $3.40, $3.70, $4.10, and $4.40 per month. That is all. Now, that is a relatively

small amount. It is almost half the amount of the premium under current law.

Now, admittedly, they do provide that there would be two annual hospital deductions. That is, for the first admission and the second admission. The contention is that some people will be charged a second deductible and they will not get much protection for their money. Let me say to Members that under original Medicare hospital coverage there is a series of deductions, all through the year, and when patients come in for the first, second, or third time there is another deductible. When Members say, "Oh, you are not getting much after a second admission," that was the law before catastrophic coverage. So, all we are doing in this bill is saying there is a second deductible. That does save a little money by reducing benefits and thus the premium can be reduced.

Is the coverage worthwhile? Well, let me give an example. Say a person goes to the hospital and has to pay the $590 deductible now. Under this provision, he would have to pay that deductible and if he is admitted a second time after 60 days, then a person has a second deductible which would be 93 percent of the first deductible. Well, we can argue, is that too much?

If a person is admitted to the hospital now, almost in one night a person will reach the deductible. In two nights a person will surely reach the deductible. Even if a person had to pay on the second admission, and be eligible for hospital benefits the next 360 days and save the family $25, $50, $100,000. Is that worth the cost? I say to Members that premium is an insurance policy.

The cost is only a premium of $4, $3.50, $3.40, $3.70, and $4.10. Now, is that a good risk? Is that a good insurance policy? I say that beneficiaries cannot get that protection anywhere in the world for the price, and to say they are not getting anything for it is just not fair. It is just not true. It is not honorable, in my judgment.

Now, Members will say tonight that this is a regressive tax. I think my friend, the gentleman from Illinois, or my friend, the gentleman from Massachusetts said it is a regressive tax. Well, when we passed the catastrophic bill we tried to go a route so that premiums would not be regressive. That is, we passed a surcharge. That was progressive, but seniors did not want that. They said no. When the Ways and Means Committee proposed to cut the premium in half because we did not want it to be regressive, but Members said that is too much. So the committee again went back, and we said that we would cut the premium in half. That is progressive. No, we did not do it. I offered an amendment in the committee to say raise the H.I. test just 0.08 percent to make participation voluntary, but that was voted down. That would have been progressive. Now, we say this premium is regressive. I say to the gentleman from Illinois [Mr. RUSSO] that we cannot have it both ways, the premium must be either progressive or regressive. We cannot advocate a progressive premium and not vote for it. The gentleman can respond to that later. I am just saying to Members, the cold logic is that this is a reasonable insurance premium. It ought to be passed.

Now, the surcharge is gone. This premium is reasonable. I admit to Members that it is just coverage for hospitalization, and not part B coverage. I accept that. I do say to Members that, in the package, there is help for home health care, skilled nursing care, for hospice, for respite, for mammography screening, and for the Home IV immuno suppressive drugs. So we get about 5 items that we would not get out of any other proposal.

So the Senate package provides for a two-tier deductible hospital. It provides for premiums that are very low, $3.30 and up. The argument made against it has been is this enough of a benefit for the cost? That has been argued. Our CBO says it is. OMB says the cost might be a little bit more. However, they would support it because there is language in the bill that says the Secretary can increase the premium if it is required. Now some say, "Oh, that is a big mistake, he could raise it up to 6.80 instead of the 4.40." That is the maximum amount allowed by this language and it is unfair to say he is going to do that. The Secretary has said that we need the language just as a little insurance. I say, then, if we do not want to trust the Secretary, then obviously there is something wrong.

Now, Mr. Speaker, the leadership in the other body, the Democrats and Republicans both endorse this as a package. The administration, the Secretary of HHS, endorses it. OMB says that this is fundable. The White House already said they will sign this bill if it comes over. Now, they have also said they would sign repeal. So I say to myself, that is great leadership, and I do not know whether they do not care or they just do not have a "dog in this fight." It would seem to me, my dear friends, we ought to do this for the American people who cannot afford any other help. We have 7 million people out there that need it. I would hope for $3.30 and $3.40 a month, we can support this. We should not be saying we will come back and start anew, and every Member will be happy. That will not happen. This is the best time to do it. I ask Members for their support of this amendment.

Mr. ARCHER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. GRADISON].

Mr. GRADISON. Mr. Speaker, I thank the gentleman for yielding time to me.

Let me summarize what I think is before Members. I think those Members who want to vote to repeal the income-related premium can vote aye. This eliminates the income-related premium. Those who want to save the valuable Medicaid provisions, the medication buying, and espousal impoverishment provision, vote aye. This saves those provisions. Those who want to save a number of the new Medicare benefits added in here can also vote aye.

This is not just a question of hospital benefits. There are new benefits in here for home health, respite, mammography screening, home administration of IV, and immunosuppressibility drugs.

□ 2220

Now there is one other thought that might justify an aye vote.

We are going to see the first of the year whopping increases in Medigap insurance premiums. They are going to be a lot higher because of the repeal of catastrophic than if we can save any portion of this.

I would say to Members, if they want to try to hold down the whopping increases in Medigap premiums which total repeal would cause, and if they want to answer for that when their constituents ask why those increases are coming along, I think an aye vote is something worth doing.

This is a fair compromise. It certainly is not any Member's first choice, certainly not mine. It saves what can be saved, and it will be signed by the President.

Mr. Speaker, I urge my colleagues to support the motion to concur in the Senate amendment. Again, I thank the gentleman for yielding.

Mr. MADIGAN. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. STARK].

Mr. STARK. Mr. Speaker, I apologize for keeping Members here tonight, because I think with the previous speaker perhaps it was legislation that we co-authored that has created this conundrum. I have agonized that I have opposed repeal in this particular amendment which has been offered.

We have tried, and the conferees have tried, the chairman of the Committee on Energy and Commerce, the chairman of the Committee on Ways and Means, the ranking members of the subcommittee chairs, have tried to come to an agreement. The other body has been absolutely recalcitrant and unable to.

The reasons I have decided, and it has been a close call, to vote this time in opposition to the McCain amendment, are simple. The gentleman from

Ohio [Mr. GRADISON] is quite right. The mammography benefit, the hospice benefit, and other hospital benefits are valuable. They cost $1 a month.

If Members do not think tonight that we can pass this in January under suspension as a separate group, I miss my guess, and I pledge Members I would do everything to bring them back. But it is not worth that $1 a month's worth in benefits.

I want to disagree with the distinguished gentleman from Texas. We were told tonight by OMB that the Secretary has the authority to raise this premium to $7. Mark my word, in my experience with this Secretary and the previous Secretary of Health and Human Services, they will.

So for $6 or $7 a month, basically what you are going to tell your constituents, aside from this very excellent $1 a month package is for $5 to $6 a month, what now you have to pay about $1,200 out of pocket at a maximum, and less than 300,000 people in this country ever exceed that, we are going to lower it to $1,152.

Basically you are swapping $72 out of your pocket for the chance, the chance, one in four, that you might save $50.

Now, at no window at any track do I know of could you sell that. I am not going to sell it to my mother.

If Members think they had a lot of trouble with the bill that was presented to them which we all supported last year, think a moment before we go home and explain the $6 or $7 a month increase when constituents say, "What are we getting?"

"Well, you are getting what you already got."

"What do I save?"

"You are saving what your Medigap insurer might not raise your premium."

As my grandmother used to say in German "danke fur obst," thank you for the fruit.

I would suggest that we vote this down and face repeal, which is what the House has voted for repeatedly. We go back and set it straight early next year.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. STARK. I yield to the distinguished gentleman from Texas.

Mr. PICKLE. Mr. Speaker, I say to you again, OMB supports this package that comes to us.

Mr. STARK. Mr. Speaker, reclaiming my time, the White House said they would support either package.

Mr. RUSSO. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. DINGELL], chairman of the Committee on Energy and Commerce.

Mr. DINGELL. Mr. Speaker, like most of the Members in this Chamber, I strongly supported the original catastrophic care legislation. We found when we went home that people did not want it, the beneficiaries were totally opposed.

That situation has not changed. They were opposed for two basic reasons: One, we charged them money in the form of taxes that they did not want to pay; two, we gave them benefits that they said they had and that they did not want.

This proposal does not change that situation one iota. The benefits offered are inadequate. The charges are excessive.

If Members look, they will find that it is possible under the legislation for the Secretary to raise the charges against the beneficiaries. Members may be absolutely sure that he will do so.

Let me remind my colleagues that there is probably only one group in this society that really wants this proposal, and that is the Office of Management and Budget, because this will afford them the opportunity to assess some of the outstanding costs from the old catastrophic proposal against the senior citizens.

The taxes are regressive. They can be raised. Members can be assured that they do not meet the costs of the program.

The CBO and OMB have very different cost estimates with regard to this program. Members can be absolutely sure that when it comes time to increase costs, OMB will use the higher of those figures.

As has been pointed out, only a minute percentage of the senior citizens and Medicare beneficiaries will be helped by this proposal. Members can be assured that they are smart enough to recognize the fact that the odds here, as pointed out by the gentleman from California, are well below what they could get at any bookie establishment in this country.

Mr. Speaker, I urge the rejection of the motion of the gentleman from Illinois.

Mr. ARCHER. Mr. Speaker, I yield 2 minutes to the gentleman from Washington [Mr. CHANDLER].

Mr. CHANDLER. Mr. Speaker, I think there are a couple of important questions Members ought to ask themselves right now. It is late at night. The Senate just a couple of hours ago voted on and sent us this Medicare package.

How many Members have studied it? How many Members can tell me what it will cover? How many Members could call one of their constituents and tell them what the premium will be?

Let me tell Members, one of the most knowledgeable individuals on this subject just gave a speech, not the last one, a little earlier, and quoted the wrong premium figures.

Are Members aware that there is a major discrepancy between the cost estimates of the Office of Management and Budget and the Congressional Budget Office? Do Members know that that totals $600 millon a year, and by the time we get to the year 1993, $1.80 a month in premium? Do Members know all of this?

No, Members do not. Because there are two little sheets like this going around the floor tonight to explain this proposal. None of us have had a chance to study this. Nobody knows what it is really going to pay for. Nobody knows what it is really going to cost, except perhaps the gentleman from California [Mr. STARK], and he just got through telling us it is not worth it to take this.

Mr. Speaker, I urge my colleagues to turn this down. Clearly we have heard from the American people that they do not want this benefit. They wanted long-term care. They thought that is what they got with catastrophic, and they did not.

It is better now to simply stop, start over next year, and try to produce something that will be acceptable.

Mr. Speaker, I urge Members to vote no on this turn.

□ 2230

Mr. MADIGAN. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. LENT].

Mr. LENT. My colleagues, I am voting to reject the proposal for some very simple reasons.

No. 1, it is billed as catastrophic coverage, but it does not provide any catastrophic coverage at all. It does provide some protection against hospital bills. It does nothing to protect beneficiaries from the costs of their doctor bills.

To call this approach catastrophic makes absolutely no sense at all, and, believe me, senior citizens are very quickly going to find this out.

Moreover, Mr. Speaker, the proposals sent to us from the other body add to the costs of the premiums that senior citizens pay for doctor bills without adding one whit of protection against unlimited physicians bills.

One last point, and it has been made here several times tonight. When the proponents quote the additional Part B premiums of only $4.10 a month in 1993, and that is on top of the existing premiums, OMB says they are underestimating by a factor of 50 percent. OMB says not $4.10 a month additional, but $6 a month additional, but no more, because under the terms of this proposal the Secretary of Health and Human Services can go as high as he needs to. He can make that premium starting in 1994, and all of the outyears thereafter, as high as he needs to go without any cap whatsoever.

So, this is a ticking time bomb, my colleagues, and for these reasons I urge that we reject the Senate propos-

al, and in just a few minutes we will be able to vote for complete repeal.

Mr. RUSSO. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Speaker and my colleagues, it is unfortunate that we are faced with having to throw out the whole catastrophic bill and some of the important benefits that would have been there for the elderly. But what we are faced with is not the catastrophic bill and all those benefits, but this McCain amendment, and it is just not worth it.

This is not a sensible deal for the elderly in this country. We would be asking them to pay $6 a month, $72 a year, for benefits that they would already have covered for hospitalization under a Medigap policy. By and large, most elderly people will get nothing out of that $72 investment.

The only value in passing this would be for my colleagues to say they did not repeal catastrophic. However we have repealed it; let us face it. Let us not only face it, let us do it. Let us repeal this legislation and come back and start again.

Mr. Speaker, my colleagues are going to hear about mammography, and respite care and home health benefits, and those are important benefits that came out of our committee, but we will come back and get those benefits another time. Those benefits are not worth paying the kind or price the elderly will have to pay if this legislation is adopted.

So, I tell my colleagues with some sadness that the only sensible course for us now is to vote for repeal, vote down the McCain amendment, and vote to send repeal to the Senate, and let us go home.

Mr. ARCHER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut [Mrs. JOHNSON].

Mrs. JOHNSON of Connecticut. Mr. Speaker, having voted for reform, I intend to support this amendment and hope that my colleagues will do likewise.

Medicare has not been restructured significantly since it was adopted in 1965. Meanwhile, we adopted DRG's that completely changed the role of hospital care in the health care system that supports our seniors. So, now hospitals only provide acute care, not acute care and recovery care.

Our seniors desperately need home health care in order to deal with the problem of seniors being released from the hospital sicker and quicker. This will restore that continuity of care, hospital/home health care, so we do not have seniors dumped in their homes unable to take care of themselves and ineligible for daily home care service.

My colleagues, let us do this for a year for $3.90. There is nothing to prevent the committees of Congress from doing exactly what some have promised here; that is, reevaluating the situation and adopting more significant compromise in the future.

Meanwhile, by retaining hospital benefits we will prevent Medicare premiums from shooting up. By retaining home health care benefits we restore that continuity of care that our seniors so desperately need, and we give ourself the time to more carefully evaluate the situation in the future. The premiums that have been quoted, the $3.90 for this year, the $4 next year; excuse me, the $3.90 in 1990 and so on, are caps on the maximum increase. The Secretary does not have latitude until 1994, and surely by then we will have had to time to come to some significant agreement on this matter.

So, Mr. Speaker, I urge my colleagues' support of a thoughtful amendment that gives us time that we need while serving our seniors.

Mr. MADIGAN. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, if this proposal passes this evening, my colleages can hear the questions that the town hall forums next year will have for all of us, particularly for those who have over the course of the last week voted three times for total repeal. If my colleagues are in those shoes, the questions will go as follows:

"Congressman, how did you vote for repeal and yet vote to raise my premium from $4 to $5 a month? I don't understand that."

The next question is: "Is it now the policy of the United States Congress to be in the business of putting private sellers of insurance in Medigap out of business? Who gave you the right to get into the insurance business on behalf of the Federal Government?"

Next question: "Congressman, I see you have voted to give us an adjustment in Social Security based on the debasement of our currency the first of the year."

"Yes."

"Having done that, why do you now take away with one hand what you've given with the other? Can't you people keep your fingers out of my pocket? How much longer must we tell you that we don't want this program?

"Thank you very much. The kindest thing you could have done is adjourn before you adopted this compromise."

Just by way of an addition, Mr. Speaker, such a constituent may say, "When I vote in November, my dear Congressman, I may recall your tender concern for my pocketbook."

Mr. Speaker, I say to my colleagues, "Thank you very much for coming to my town hall forum."

Mr. RUSSO. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. LEVIN].

Mr. LEVIN of Michigan. Mr. Speaker, I have actively worked for reform instead of repeal. This is not reform. I am opposed to it.

What is left? Part A coverage, the one most easily attained through private insurance, a double deductible to make it worse, and now seniors would have to pay for the repeal of SNF as shifting from the general Treasury to them?

Mr. Speaker, I heard someone on the other side say, "Don't throw the baby out with the bath water," but there is no baby left here, none at all.

□ 2240

Anything at all is not necessarily better than nothing. This is not a program. This is a palliative.

So reluctantly, but firmly, I say let us turn it down, send repeal to the Senate. I think they will pass it. The President will sign it and we can go home and start again next year.

Mr. ARCHER. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. MCGRATH].

Mr. MCGRATH. Mr. Speaker, I stand before you tonight as somebody who has supported catastrophic health insurance and defended the present plan in my district on a number of occasions.

I stand before you tonight as somebody who is for complete repeal of the program, not because I am being batted around by my constituents, but what we are being presented tonight as a compromise is a joke. It is not worthy of our consideration.

There has been talk and talk and talk about the $6 a month, I believe it to be an open-ended increase in premium. I do not think that is defensible when you talk about what the increase in benefits may be.

We talk about the skilled nursing facility component. That same component is in the repeal.

The SPEAKER pro tempore. The time of the gentleman from New York has expired.

Mr. ARCHER. Mr. Speaker, I yield an additional 30 seconds to the gentleman from New York.

Mr. MCGRATH. Mr. Speaker, if Members think they had trouble explaining the Catastrophic Program that exists today, when you go home and you tell your constituents that they now have two deductibles, when the present plan had one, Mr. Speaker, this is not an option. We should reject it.

Mr. MADIGAN. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. SHAW].

Mr. SHAW. Mr. Speaker, I thank the gentleman for yielding me this time.

Right now the time is 10:40 in the evening. How many of us would invite an insurance salesman into our living

rooms at 10:40 in the evening to start explaining to us an insurance bill that was going to be so important as this bill is going to be to so many of our constituents.

How many of us have heard from our constituents that they want modification?

How many of us have heard from our constituents, our senior constituents, that they want repeal?

Mr. Speaker, we are here to work the will of our constituents to the extent that we can. It would indeed be bad judgment to take all of the rates that have been handed us tonight and say, "This is the one that I am going to adopt," and we have no idea what it is going to cost our seniors.

It is time for us to face the fact that so many of the speakers who have come before us, the gentleman from California [Mr. STARK] who is one of the greatest proponents of catastrophic health care in this House has come to us and said, "Let's go for repeal."

This is a pig in a poke. My colleagues, I can tell you as being from the State of Florida and probably representing as many senior citizens as anyone in this Chamber, I can tell you that the only way to go, and this is what our seniors are asking for, is repeal.

Reject this motion and stick to our guns for complete repeal of catastrophic.

Mr. RUSSO. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. FAWELL].

Mr. FAWELL. Mr. Speaker, I thank the gentleman for yielding this 2 minutes to me.

Mr. Speaker, if some people are confused in regard to the consistency of the speakers, be of good cheer. I am, too. I think as the seniors all over this Nation listen to what we are saying here today, they may be a bit confused, but not really.

What we have before us is exactly what we had this morning. There are just a few minor changes. That is the first point I wanted to bring out.

This bill has been scrutinized and examined and pulled apart in so many ways, but what we should look at here is what our seniors have told us from the very beginning. They said that it was the worst of all taxes, to begin with, and they said also, "You've gone in the wrong direction."

And they have said from the very start, "If you are going to tell us that we have to use our money and you are giving us an insurance policy that is expanding Medicare and we are going to have to pay for it because we have a debt and a deficit that we built up that is so very big, all right, we understand that, but if you are going to do this"—and this is the central message I think that at least they have given me, "If you are going to do this, then listen to us in regard to what you should be spending our money for."

And then they tell us that long-term custodial nursing home care is what we need and that is not now covered by Medicare and it is something that you cannot go out and buy.

Now, that seems to me to be a very simple message. What we have got here again is Congress using other people's money to say, "We know best about what you really want and about what you really need," but that is not so. You are giving them what they have already got, because they have got employer-provided health care. They have got Medigap. Seventy-five percent of the people are of that category, 10 percent of the very poor are covered by Medicaid, so you are giving them what they already have.

Listen to the seniors. Do not reverse yourselves here. Stand up for repeal and let us be done with it.

Mr. ARCHER. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. THOMAS].

Mr. THOMAS of California. Mr. Speaker, I listened to my seniors all last year, as someone who voted against the original catastrophic. The seniors are very clear on what they want. They wanted all the benefits and did not want to pay. I do not think we really want to focus necessarily on that narrow segment.

I think we are here tonight because of the force of two personalities, one no longer with us, the Senator and Congressman from Florida, and the other one no longer President of the United States. I do not think we have a clear vision where we wanted to go. It was a compromise package.

The gentleman from Illinois is correct. It did not meet anyone's real needs. What we need to do is to do something that we do not often do, and that is admit we were wrong in the first place.

I do not want to come back here next year and go back to those narrow categories that my colleague, the gentleman from California said we ought to go back to. I think we have got to begin a fundamental examination of where we need to be with seniors, not just next year, but into the next 10 years.

We talk about tax credits. We talk about long-term nursing care.

The SPEAKER pro tempore. The time of the gentleman from California has expired.

Mr. ARCHER. Mr. Speaker, I yield 1 additional minute to the gentleman from California.

Mr. THOMAS of California. We must look at it with some kind of an understanding of where we want to go, not in terms of narrow constituency groups in terms of services, but as the Congress of the United States meeting the needs of senior citizens, not just in one narrow area, but in the needs of the seniors across the board.

Mr. RUSSO. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. HALL].

□ 2250

Mr. HALL of Texas. Mr. Speaker, it will not take me a full minute. I just want to suggest that three times we voted for total repeal. If we vote yes tonight, it is another $10 billion that we have to explain. I say let us vote total repeal for one reason, one reason only, and that is that some of us are planning on going home.

Mr. MADIGAN. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. TAUKE].

Mr. TAUKE. Mr. Speaker, Members of the House, there are a couple of facts that I think people should be aware of before they vote on this issue. While everyone tried hard, this bill is just a bad deal. This compromise is a bad deal.

Members should be aware that if we reject this compromise and stick with total repeal, that we are not throwing out everything. We are saving some very good things.

The assertion has been made that if we vote for this motion, we save spousal impoverishment. If we vote for repeal, we also save spousal impoverishment, which is the only long-term care piece in this package.

We can vote for repeal and save that. We can vote for repeal and save the Medicaid provisions which provide for Medicaid payments for poor senior citizens on their Medicare premiums.

I suggest to the Members that many of the transition rules that are contained in this package will also survive if we vote for repeal. We can vote for repeal and still maintain many of those key benefits that many of our senior citizens have asked for.

The second point that I think we need to be aware of is that Medigap premiums are not going to be substantially curtailed by this package. Those premiums are going to rise substantially, and we have to understand that the part B premiums are also going to rise substantially without this catastrophic increase, but if we add the catastrophic increase to it, we really get big increases in part B premiums. I do not think that is going to be easy to explain to seniors, why the part B premium increases are going up so much each month at the same time that their Medigap premiums are also going up. This is a very significant problem, and all seniors pay those premiums.

Mr. RUSSO. Mr. Speaker, I yield 30 seconds to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Mr. Speaker, we have not only worked so hard, we have learned so much. I would dare say that

we know each and every one of us more about Medicare, the statute, than we ever thought we would.

After we repeal this bill tonight, we should all make a pact that we will take this knowledge, come back next year, and do it the right way, because we all really wanted to in the first place.

Mr. RUSSO. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, the tenor of the debate is obvious, and I respect the gentleman's views, but my heart is heavy that we seem to be rushing pell-mell toward adjourning and not trying to help the people who need this help.

The Office of Management and Budget has said that they would support this bill because the language does give the HHS Secretary authority to raise the premium, if necessary.

Members talk about the premiums going up to $6 a month and seniors getting nothing for it. That is $6, which is 5 years from now. The next 3 years the premium will only be $3.30, $3.40, and $3.50. Those are facts, and we ought to recognize that.

Members say that a second hospital deductible will be an extra charge, but, my friends, we have multiple deductibles in the basic Medicare Program. The monthly premium is about $24.90 every month. We are asking to add $3.30 more, and that is all.

It is right, if we go back to our constituents in town hall meetings, they are going to say, "What protection will I get now?" The people who will not be at the town hall are the impoverished people who cannot afford to help themselves.

We are going to see, after the first of the year, elderly people being hauled out of the hospital because they cannot stay in without Medicare protection.

I say to the Members, my dear friends, this bill is supported by the administration. They will sign it. This bill is supported by the AARP, the National Committee to Preserve Social Security, the National Association of Retired Federal Employees, and the Council on Aging. All of these groups support this bill.

Mr. Speaker, the right thing to do is save something of catastrophic coverage. It is absolutely false to say that beneficiaries do not get anything for their money. This bill would be saving hospitalization. We could save 7 to 10 million people the pain and the agony of having no way to get protection from the expense of hospitalization, and that is not fair, and that is not right. The people we do not hear from are the poor who have no coverage. They are who we ought to be voting for tonight.

Let us help the poor people who need it.

Mr. ARCHER. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona [Mr. RHODES].

Mr. RHODES. Mr. Speaker, one did not have to be on the committees of jurisdiction to work on this issue over the course of the 100th Congress and now the 101st Congress.

I was on Republican leader MICHEL's task force that worked on our alternative to this bill, and beginning immediately with the convening of the 101st Congress, I started to work on legislation to revise, to attempt to fix the bill that I voted against in the 100th Congress. I thought I had a pretty good bill, and with many of my colleagues, the gentleman from Illinois [Mr. FAWELL], the gentleman from Illinois [Mr. MADIGAN], and others, we worked that bill. We worked it through September, and all of a sudden in September we started getting numbers that did not make any sense, and suddenly the Congressional Budget Office kept coming to us and saying, "We do not know that is what your bill does." The numbers changed daily, and in one case twice in 1 day. It suddenly became very clear we did not know that we had in a substitute bill, much less the bill that was passed into law.

It suddenly became clear that even the best-put-together substitute did not make sense, and I became an advocate of repeal. I remain an advocate of repeal. I certainly remain an advocate of repeal when you come to us at 11 o'clock on the night that we are trying to adjourn and say, "Here, let us try this and see how this works," and we do not know that it does. We do not know who it affects. We do not know who it benefits. We do not know what it costs. All we know is it is just, "Let us try something."

My colleagues, let us do try something. Next year.

I would never say to a Member of this House, Republican or Democrat, or a Member of the Senate, Republican or Democrat, "You are embarking on an act of cowardice," but I am saying to the Members that an act of courage is to say it is wrong and it is time to start over.

Mr. RUSSO. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Mr. Speaker, as someone who represents almost more seniors than anyone else in this Chamber, I rise in strong opposition to this bill, and I ask for repeal.

Mr. RUSSO. Mr. Speaker, I yield myself 1 minute, 15 seconds.

Mr. Speaker, we have heard a lot of comments about what the premium will be. The gentleman from Texas talked about $3.50, $3.40, $3.70, $4.10, but the bill allows the Secretary to increase those premiums if, in fact, they will not be sufficient to pay for the costs of the program.

□ 2300

But what people do not talk about this evening is what the basic premium is to start off with. It is not an additional $72 a year or just an additional $4 a month. The premium this year for part B will be $31. Then we add the $4 on top of it. In 1991, it will be $33, and then we have to add $5 on top of that. And in 1993, it will be $41 a month, plus $6 for this particular provision, so that is not just $72 a year, it is $47 a month.

The key benefits the gentleman from Ohio [Mr. GRADISON] talked about are worth something. They are skilled nursing for transitional rooms, home health care, blood bank deductions, drugs, hospice, respite, mammography screening. We made that offer to the Senate for a dollar a month and they turned it down, so they sent it back to us for $1 a month and added $5 on top for something that people get already today.

Mr. Speaker, I yield the balance of my time to the author of the amendment on catastrophic health care repeal, the gentleman from Massachusetts [Mr. DONNELLY].

Mr. DONNELLY. Mr. Speaker, I was born and bred in Boston politics, served in the State legislature there, and have served 11 years in this institution. I do not know if I have ever seen anything like the performance that we are seeing this evening.

The House has clearly said time after time after time that in their considered judgment what we ought to do is repeal the program, come back next year, go back to square one and rewrite a program that meets the needs of 33 million Medicare beneficiaries.

But this evening at 11 o'clock we are presented with the grand compromise, the grand compromise that I was never spoken to about, a grand compromise that could have been brought to the House floor this time last evening, not at 11 o'clock the night before we all go back to our homes to celebrate one of the greatest American holidays.

This is not the time or the place to write health care policy. It is not the time or the place that Members of this institution ought to put themselves on the line for a program they know nothing about.

Has any Member read this document? I hold the document in my hand. This is it. Nobody has read the document because the document has not been available to anybody, including myself.

Let me just say that from what I know about the Senate offer it fails the one fundamental test, the fundamental test that killed the present program, and that is that it duplicates benefits that Medicare beneficiaries have paid for, have worked for, those who earned coverage rightly object to

pay for coverage again, and that is what this document does. The fatal flaw of the Catastrophic Program which I helped write 3 years ago was that we did not deal with the issue of duplication.

So whether we accept another document coming from the Senate, it still duplicates benefits that seniors have that paid for them. They paid for them and they do not want to pay for them again, and they should object to paying for them again, and we as Members of this institution ought to object to being brought here at 11 o'clock at night before we adjourn and told to vote for a bill and a document and a program that affects 33 million people that we have never seen.

I strongly urge the Members to reject the Senate position and vote for repeal, which we have voted for time and time again.

Mr. MADIGAN. Mr. Speaker, I yield my 2 remaining minutes to the gentleman from Georgia [Mr. GINGRICH].

Mr. GINGRICH. Mr. Speaker, I am going to vote no, but I do so with considerable regret.

I want to echo the tone of the gentleman from Texas [Mr. PICKLE] and his remarks. This process of wrestling with catastrophic health care has been exhausting, thorough, and very sincere on both sides. On both sides honorable men and women have worked long hours to try to find the best solution.

I want to speak especially of the five men who have been leaders in this process in our Chamber, the gentleman from Massachusetts [Mr. DONNELLY], the gentleman from Illinois [Mr. RUSSO], and the gentleman from Texas [Mr. ARCHER], who have been real leaders in repealing the surtax, and they have succeeded in that effort. They have never been stubborn on their own, but they have stood firm of the House position, and they deserve our gratitude. Also in our Chamber; the gentleman from Illinois [Mr. FAWELL] led the task force on the Republican side that played a key role in winning repeal of the surtax.

In the other body, a former colleague of ours, Senator MCCAIN of Arizona, has labored valiantly to find the right solution. No one has put in more hours, attempted more negotiating sessions or been more creative in trying to find the right solution to providing hospital coverage for our senior citizens.

While our House will reject this proposal, we do so with the deepest respect and affection for a genuine hero, an alumnus of the House, and a good friend to all of us, and I salute JOHN MCCAIN for his hard work and his sincerity in this House.

Yet, after looking at all of the options, I cannot try to respond to the mistake of the catastrophic bill by voting at 11 p.m. on our last night for a proposal which most of our Members have not seen, have not analyzed, and could not be sure of, and that is why I will vote "no," and recommend that Members vote "no."

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield whatever time I have.

Mr. PICKLE. Mr. Speaker, I would like to ask the gentleman in the well and anyone in the House, if we do not follow the path of increasing the premiums, how would we have catastrophic? The premiums, I say to Members, and to the gentleman in the well, sir, is the only route. We, through the Ways and Means Committee, have given Members two or three chances to do it today.

When we come back next year, you say start over again. We have to have the premium. That is the only way we are going to pay for it, unless we want to pay more taxes.

Not one Member has offered another possibility. You say start all over again, and I today think that is somewhat dishonorable.

Mr. ARCHER. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Mr. Speaker, I rise in strong opposition to the motion.

Mr. Speaker, the Senator from Arizona [Mr. MCCAIN] has worked diligently to save a part of the catastrophic legislation from repeal. We should commend the sincerity of his efforts and his desire to reach compromise with the House and at the same time reject the offer.

Mr. Speaker, there is only one action we should take regarding this ill-advised legislation. We should repeal it. That is what the senior citizens of America are asking us to do, and they are right.

Don't try to resurrect a part of the catastrophic legislation at the 11th hour. No one can know the implications or costs of the Senate proposal. If it is wise now, it will still be wise next spring when we will have had time to study it thoroughly and learn exactly what the benefits and costs will be.

No, Mr. Speaker, the catastrophic bill was poorly conceived from the beginning and should never have been passed in the first place and I'm glad I was one of 72 House Members who voted against it. The action we should take now is to reject the motion of the gentleman from Illinois [Mr. ROSTENKOWSKI], insist on complete repeal and, if it then seems desirable, start over on this subject matter next year.

Mr. ARCHER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I sincerely believe that it was certainly a unique event when a Republican President, namely Ronald Reagan, suggested that we legislate in the catastrophic health care area. Maybe we made some mistakes, but we tried our best.

Turning to the issue before us, we have tried in this body to get the attention of the other body, and have voted consistently for repeal, and my colleagues, I can count the votes, tonight. However, we never got a response from the other body until today. They really never appreciated how committed this body was to repeal.

I would like to close with this observation. I am worried about the sick, the poor, and the most vulnerable people in our society, who will be affected by the repeal of the Catastrophic Health Act. I am worried about the predators who will be out there with their new Medigap policies and the premium increases that they are going to force on senior citizens.

□ 2310

I also worry a little bit that if we were not able to sit down and negotiate a counteroffer, then how easy is it going to be next year.

I am probably the symbol of the attack on the catastrophic health policy which we enacted last year. And I have no malice at all. I think that those are some of the experiences that we elected officials are exposed to.

But I do not think repealing is going to be the final answer and next year when we are going to have to face this issue, it is not going to be easy. It's not going to be easy because our society has grown accustomed to not paying its way. And that is the key to the difference about what we are doing in catastrophic health. I do not just mean the senior citizens. I mean all of us.

There comes a time, my colleagues and Mr. Speaker, when we are going to have to put our hands in our pockets and pay for some of the programs that we expect this Government to furnish.

I sincerely hope that we collectively are up to the task next year because the longer we wait to combine our thoughts and efforts to produce a policy that protects the senior citizen, the more the poor will suffer.

Mr. BRENNAN. Mr. Speaker, once again we are called to consider salvaging the Medicare Catastrophic Coverage Act. There are two options we face: Total repeal of the program or maintaining some of the important provisions of this important health care program.

I have consistently voted and supported the repeal of the unfair surtax. I do not believe we should turn our backs on certain critical components which address the problems of individuals or families facing catastrophic disease, injury, and illness. We must not concede our opportunity to make a major step toward addressing an ongoing crisis facing so many of our constituents—rising health care costs.

This compromise measure we consider before us permits some coverage for individuals facing an extended hospital stay. This is the type of situation which can rapidly deplete an individual's lifelong savings. Other impor-

tant provisions which are retained under this revised measure are the home health and respite care benefits which are so vital to families caring for a loved one. We can also save the hospice benefits which permit an individual to maintain their dignity when faced with a terminal illness. There is also the mammography screening coverage which could save 41,000 lives through early detection and treatment of a leading cause of cancer for women.

We must do more than talk about addressing the serious health care crisis confronting our Nation. By voting to totally repeal this important program, we will retreat on making a concerted first step toward addressing the rising costs of treating serious illnesses. I urge my colleagues to keep certain important components of the original catastrophic plan and continue our efforts to meet the ever-increasing long-term health care needs of the Nation.

Mr. WALGREN. Mr. Speaker, I urge repeal of the Medicare Catastrophic Program.

Congress has wrestled and grappled for over a year with what to do about the Medicare Catastrophic Protection Act, the bill we enacted last year adding new benefits to Medicare to prevent medical catastrophies from devastating the elderly. We should admit that we all have learned a lot from this process. But we should also admit that there is no broad agreement about what benefits should be provided and how we should pay for them.

Medicare is not a complete health insurance program. There are many things that Medicare does not cover. In fact, Medicare only pays about half the actual medical costs of those over 65. And worse yet, the elderly now pay the same amount for their health care out of their pocket as they did before Medicare was created.

With all the right intentions, Congress tried to fill in some of the gaping holes in Medicare coverage by adding unlimited hospital coverage, a catastrophic drug benefit, a minimal respite care benefit and improving nursing home and home health benefits.

Congress made a mistake, however, in the financing of these benefits. We put into law a Medicare "surtax" on the elderly that in some cases could be as high as $800 per year. And we increased the Medicare basic monthly premium by over $10 in the near future bringing the beneficiary's monthly premium to at least $43.60 in 1993 without counting any annual increases between now and then.

I opposed this method of financing. The broad spread revolt against the catastrophic surtax should be simple proof that the full cost of medical care cannot be carried by one segment of the public alone. The costs of benefits should be spread across the broad base of the population, as we have done with the social security.

The House and Senate have taken opposite positions on the Catastrophic Program. The House has stood for repeal of the whole program; the Senate has insisted on supporting the program with financing based on monthly premiums. The conference between the House and Senate has been unable to find agreement and, upon those circumstances, the only proper course is to repeal and start over.

I believe Congress should now support a package of critical benefits paid for by an increase in the monthly premium by about $1.00. These benefits could include mammography screening, respite care, hospice benefits and expanded home health coverage. All these are critical steps toward a comprehensive health care system.

Payment under Medicare for mammography screening, something that every woman over 40 years old should receive on a regular basis, is critical. Presently, 1 in 10 women will develop breast cancer. According to the American Cancer Society, mammography screening of women 40 years of age and older can reduce deaths from breast cancer by one-third.

Some kind of respite benefit is an important step. Eight of 10 severely-impaired elderly live in the community and most can do that because they have a caregiver, like a spouse or daughter to care for them. Even the most heroic need help and relief. Respite care helps keep people at home, out of institutions.

Improving the home health and hospice benefits are also vital parts of any comprehensive health insurance program.

While the enactment and repeal of Medicare catastrophic may seen a fruitless misadventure, some important steps forward will remain. One of the most important improvements left after the repeal of catastrophic will be the provisions covering "spousal impoverishment."

We are not repealing the provision that allows the "well" spouse to keep a significant level of income and resources even though their spouse requires Government-support under State Medicaid programs for nursing home care. The requirement that the "well" spouse at home must exhaust all funds before the ill spouse could get Medicaid coverage of nursing home care will end. Left in law despite the repeal of catastrophic is the ability of the at-home spouse to keep at least $12,000 and the equity in their home. This is a most welcome and humane change for everyone because everyone faces the prospect of being completely wiped out by the long-term illness of a spouse.

I hope the public debate and the debate in Congress over Medicare catastrophic has jolted people and politicians alike into recognizing the large gaps in our health care system. The repeal of catastrophic should be the beginning of a real discussion about the obstacles many people face in getting adequate health insurance and how they can be eliminated.

Mr. WEISS. Mr. Speaker, for over 30 years Congress has considered proposals to alter substantially the role of the Federal Government in providing for the health care of the American people, and many of these efforts have in fact led to significant improvements in the health status of the American people.

The largest of these proposals was Medicare. When Congress enacted Medicare in 1965, we made a solemn compact with the American people—a compact which declared that when you grow old and retire, you should not live in fear that you will become sick and not be able to pay the medical bills. However, it is abundantly clear that the Medicare Program has not kept pace with the skyrocketing costs of health care. We therefore have the responsibility to review, revise, and renew the Medicare compact.

As a nation we took an important step in this direction in 1988 with the Catastrophic Care Act. This measure was the only type of legislation to expand health care coverage for the elderly that the Reagan administration was willing to consider. The legislation that passed was by no means perfect or even adequate. It did not address, for example, the most pressing health care problem now facing our senior citizens and those who care for them, namely the appalling lack of any comprehensive approach to long-term health care. Basic coverage for long-term home care and nursing home stays was a grievous omission in the catastrophic legislation. It is my firm belief that any comprehensive health care package must include provisions for long-term care.

Nevertheless, senior citizens organizations strongly supported the Catastrophic Coverage Act, and it did provide a host of health benefits to people who greatly needed them. These included limited hospital costs, prescription drug coverage, an increase in Medicare's mental health reimbursement, a respite care benefit, and spousal impoverishment provisions.

Contrary to current public opinion, many Members of Congress, including myself, attempted to overturn the inequitable method of financing the catastrophic care legislation. I have always felt that the cost of these essential benefits should be paid for by all Americans, rather than specifically targeting one segment of the population, in this case better off Medicare beneficiaries. However, President Reagan was very clear about his desire for full financing by the elderly and about the need for a self-financing mechanism such as the controversial surtax that was signed into law. In fact, he assured Congress that he would veto legislation that did not contain this component. Thus, the funding mechanism established in the 1988 act was simply the best we could do at the time and we were encouraged to support the entire package by various of the seniors organizations.

Today, under dramatically different circumstances, Congress must decide the future of the 1988 Catastrophic Care Act.

I will vote for adoption of the modified Senate amendment because the premiums are fairer and more fairly distributed than in the original bill and provide important benefits for senior citizens. However, if the motion to adopt fails I will vote for repeal again because I still believe that the funding mechanism as it stands is unfair. I am also persuaded that those seniors who would pay the surtax strongly believe that they are being unfairly treated. However, in our determinations to do away with the 1988 Catastrophic Care Act's flawed method of financing, we must not lose sight of the merit of its purpose. Under these circumstances, I believe it makes sense for Congress to start again and develop a health policy which is fair and responds to the needs of all Americans, in particular the poor and elderly.

A primary purpose of Government is to assure the protection of basic rights and services for all its citizens. We have a responsibility to protect America's health as well as her

borders, but we are failing to meet that critical responsibility. Millions of Americans are falling through the widening holes in the social safety net. Recent estimates indicate that there are over 37 million people with no health insurance coverage.

The United States is the only major industrialized nation, with the exception of South Africa, that does not have a national health plan for its citizens. Although establishing a national health plan is not the issue at hand today, I would like to reaffirm my strong support for such a plan. I believe that all Americans—young and old—are entitled to quality medical care.

We must work to change the current reality where quality health care is the privilege of the few who can afford it. Only a National Health Plan, paid for by society at large, can help us achieve this goal.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the motion.

The previous question was ordered.

The SPEAKER pro tempore (Mr. HOYER). The question is on the motion offered by the gentleman from Illinois [Mr. ROSTENKOWSKI].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DONNELLY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 55, nays 346, not voting 32 as follows:

[Roll No. 378]

YEAS—55

| | | |
|---|---|---|
| Alexander | Henry | Owens (UT) |
| Anthony | Houghton | Panetta |
| Archer | Hutto | Payne (NJ) |
| Bartlett | Johnson (CT) | Pease |
| Brennan | Jontz | Perkins |
| Conte | Kastenmeier | Petri |
| Coughlin | Kennedy | Pickle |
| Coyne | Leach (IA) | Regula |
| DeWine | Long | Rostenkowski |
| Dymally | McHugh | Savage |
| Early | Mfume | Schulze |
| Evans | Michel | Slattery |
| Ford (TN) | Moody | Smith (IA) |
| Gephardt | Morella | Staggers |
| Gilman | Morrison (WA) | Weiss |
| Goodling | Murphy | Whittaker |
| Gradison | Murtha | Wise |
| Green | Myers | |
| Hamilton | Obey | |

NAYS—346

| | | |
|---|---|---|
| Ackerman | Boehlert | Chapman |
| Akaka | Boggs | Clarke |
| Anderson | Bonior | Clay |
| Andrews | Borski | Clement |
| Annunzio | Bosco | Clinger |
| Applegate | Boxer | Coble |
| Armey | Broomfield | Coleman (MO) |
| Atkins | Browder | Coleman (TX) |
| AuCoin | Brown (CA) | Collins |
| Ballenger | Brown (CO) | Combest |
| Barnard | Bruce | Condit |
| Barton | Buechner | Cooper |
| Bateman | Bunning | Costello |
| Bates | Burton | Courter |
| Beilenson | Bustamante | Cox |
| Bennett | Byron | Craig |
| Bentley | Callahan | Crane |
| Bereuter | Campbell (CA) | Dannemeyer |
| Bevill | Campbell (CO) | Darden |
| Bilbray | Carper | Davis |
| Bilirakis | Carr | de la Garza |
| Bliley | Chandler | DeFazio |
| DeLay | Kolbe | Roukema |
| Dellums | Kolter | Rowland (CT) |
| Dickinson | Kostmayer | Rowland (GA) |
| Dicks | Kyl | Roybal |
| Dingell | LaFalce | Russo |
| Dixon | Lagomarsino | Sabo |
| Donnelly | Lancaster | Saiki |
| Dorgan (ND) | Lehman (CA) | Sangmeister |
| Dornan (CA) | Lehman (FL) | Sarpalius |
| Douglas | Lent | Sawyer |
| Downey | Levin (MI) | Saxton |
| Dreier | Levine (CA) | Schaefer |
| Duncan | Lewis (CA) | Scheuer |
| Durbin | Lewis (FL) | Schiff |
| Dwyer | Lewis (GA) | Schneider |
| Dyson | Lightfoot | Schroeder |
| Eckart | Livingston | Schuette |
| Edwards (CA) | Lloyd | Schumer |
| Edwards (OK) | Lowery (CA) | Sensenbrenner |
| Emerson | Lowey (NY) | Sharp |
| Engel | Luken, Thomas | Shaw |
| English | Lukens, Donald | Shays |
| Erdreich | Machtley | Shumway |
| Espy | Madigan | Shuster |
| Fascell | Markey | Sikorski |
| Fawell | Martin (IL) | Sisisky |
| Fazio | Martin (NY) | Skaggs |
| Feighan | Martinez | Skeen |
| Fields | Matsui | Skelton |
| Fish | Mavroules | Slaughter (NY) |
| Flake | Mazzoli | Slaughter (VA) |
| Foglietta | McCandless | Smith (FL) |
| Ford (MI) | McCloskey | Smith (NE) |
| Frank | McCollum | Smith (NJ) |
| Frenzel | McCrery | Smith (TX) |
| Frost | McCurdy | Smith (VT) |
| Gallegly | McDade | Smith, Robert (NH) |
| Gallo | McDermott | Smith, Robert (OR) |
| Gejdenson | McEwen | Snowe |
| Gekas | McGrath | Solarz |
| Geren | McMillan (NC) | Solomon |
| Gibbons | McMillen (MD) | Spence |
| Gillmor | McNulty | Spratt |
| Gingrich | Meyers | Stallings |
| Glickman | Miller (CA) | Stangeland |
| Gonzalez | Miller (OH) | Stark |
| Gordon | Miller (WA) | Stearns |
| Goss | Mineta | Stenholm |
| Grandy | Moakley | Stokes |
| Grant | Mollohan | Studds |
| Gray | Montgomery | Stump |
| Guarini | Morrison (CT) | Sundquist |
| Gunderson | Mrazek | Swift |
| Hall (OH) | Nagle | Synar |
| Hall (TX) | Natcher | Tallon |
| Hammerschmidt | Neal (MA) | Tanner |
| Hancock | Neal (NC) | Tauke |
| Harris | Nelson | Tauzin |
| Hastert | Nielson | Taylor |
| Hatcher | Nowak | Thomas (CA) |
| Hawkins | Olin | Thomas (GA) |
| Hayes (IL) | Ortiz | Thomas (WY) |
| Hayes (LA) | Oxley | Torres |
| Hefley | Packard | Towns |
| Hefner | Pallone | Traficant |
| Herger | Parker | Udall |
| Hertel | Parris | Unsoeld |
| Hiler | Pashayan | Upton |
| Hoagland | Patterson | Valentine |
| Hochbrueckner | Paxon | Vander Jagt |
| Holloway | Payne (VA) | Vento |
| Hopkins | Pelosi | Visclosky |
| Horton | Penny | Volkmer |
| Hoyer | Pickett | Vucanovich |
| Hubbard | Porter | Walgren |
| Huckaby | Poshard | Walker |
| Hughes | Price | Walsh |
| Hunter | Pursell | Watkins |
| Hyde | Quillen | Waxman |
| Inhofe | Rahall | Weber |
| Ireland | Rangel | Weldon |
| Jacobs | Ravenel | Wheat |
| James | Ray | Whitten |
| Jenkins | Rhodes | Williams |
| Johnson (SD) | Richardson | Wilson |
| Johnston | Ridge | Wolf |
| Jones (GA) | Rinaldo | Wolpe |
| Jones (NC) | Ritter | Wyden |
| Kanjorski | Roberts | Yates |
| Kaptur | Roe | Yatron |
| Kasich | Rogers | Young (AK) |
| Kennelly | Rohrabacher | Young (FL) |
| Kildee | Ros-Lehtinen | |
| Kleczka | Roth | |

NOT VOTING—32

| | | |
|---|---|---|
| Aspin | Florio | Moorhead |
| Baker | Garcia | Oakar |
| Berman | Gaydos | Oberstar |
| Boucher | Hansen | Owens (NY) |
| Brooks | Lantos | Robinson |
| Bryant | Laughlin | Rose |
| Cardin | Leath (TX) | Smith, Denny (OR) |
| Conyers | Lipinski | Torricelli |
| Crockett | Manton | Traxler |
| Derrick | Marlenee | Wylie |
| Flippo | Molinari | |

□ 2329

Mr. STALLINGS and Mr. McNULTY changed their vote from "yea" to "nay."

Mr. KENNEDY changed his vote from "nay" to "yea."

So the motion was rejected.

The result of the vote was announced as above recorded.

## CONFERENCE REPORT ON H.R. 3299, OMNIBUS BUDGET RECONCILIATION ACT OF 1989

Mr. PANETTA, on behalf of the Committee on the Budget, submitted the following conference report and statement on the bill (H.R. 3299) to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for fiscal year 1990:

CONFERENCE REPORT (H. REPT. 101-386)

[To accompany H.R. 3299]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3299) to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990, having met, after full and free conference, have agreed to recommend and do recommend to their respective House as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

*SECTION 1. SHORT TITLE.*

*This Act may be cited as the "Omnibus Budget Reconciliation Act of 1989".*

*SEC. 2. TABLE OF CONTENTS.*

*Title I—Agriculture and related programs.*
*Title II—Student loan and pension fiduciary amendments.*
*Title III—Regulatory agency fees.*
*Title IV—Civil service and postal service programs.*
*Title V—Veterans programs.*
*Title VI—Medicare, medicaid, maternal and child health, and other health provisions.*
*Title VII—Revenue provisions.*
*Title VIII—Human resource and income security provisions.*
*Title IX—Offshore oil pollution compensation fund.*
*Title X—Miscellaneous and technical Social Security Act amendments.*
*Title XI—Miscellaneous.*

### *TITLE I—AGRICULTURE AND RELATED PROGRAMS*

*SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.*

*(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 1989".*

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1001. Short title; table of contents.
Sec. 1002. Soybean, sunflower, and safflower planting program; feed grain acreage limitation program.
Sec. 1003. Reduction of deficiency payments for 1990 crops.
Sec. 1004. Repayment of advance deficiency payments.
Sec. 1005. Reduction of expenditures under the export enhancement program and for targeted export assistance.
Sec. 1006. Purchases of Financial Assistance Corporation stock by Farm Credit System institutions.
Sec. 1007. Adjustments in dairy price support program.

SEC. 1002. SOYBEAN, SUNFLOWER, AND SAFFLOWER PLANTING PROGRAM; FEED GRAIN ACREAGE LIMITATION PROGRAM.

(a) PLANTING OF SOYBEANS, SUNFLOWERS, AND SAFFLOWERS ON PERMITTED ACREAGE.—Effective only for the 1990 crops, subsection (e) of section 504 of the Agricultural Act of 1949 (7 U.S.C. 1464(e)) is amended to read as follows:

"(e) Notwithstanding any other provision of this Act—

"(1) Effective for the 1990 crops, the Secretary shall, subject to paragraph (2), permit producers on a farm to plant soybeans, sunflowers, or safflowers on a portion specified by the producer (but in any event not more than 25 percent) of the producers' 1990 wheat, feed grain, upland cotton, extra long staple cotton, and rice permitted acreage, as determined by the Secretary.

"(2)(A) The Secretary shall establish a sign-up period during which the producers on a farm, participating in the 1990 crop wheat, feed grain, upland cotton, extra long staple cotton, or rice price support and production adjustment program, must state their intentions regarding use of the increased planting provision under paragraph (1).

"(B) After termination of the sign-up period under subparagraph (A), the Secretary shall estimate whether, based on the anticipated additional soybean, sunflower, and safflower plantings for the crop, the average market price for the 1990 crop of soybeans will be below 110 percent of the loan rate established for the 1989 crop of soybeans.

"(C) If the Secretary estimates that the average market price for the 1990 crop of soybeans will be below 110 percent of such loan rate, the Secretary shall reduce the percentage of permitted acreage on the farm that may be planted to soybeans, sunflowers, and safflowers to a level, or prohibit such plantings, as necessary to ensure that the average soybean market price does not fall below 110 percent of such loan rate.

"(D) The Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a statement setting forth the reasons for any reduction in the permitted planting percentage, or prohibition on such plantings, under this paragraph.

"(3)(A) For the purposes of determining the farm acreage base or the crop acreage bases for the farm, any acreage on the farm on which soybeans, sunflowers, or safflowers are planted under this subsection shall be considered to be planted to the program crop for which soybeans, sunflowers, or safflowers are substituted.

"(B) The Secretary may not make program benefits other than soybean or sunflower seed price support loans and purchases available to producers with respect to acreage planted to soybeans, sunflowers, or safflowers under this subsection and shall ensure that the crop acreage bases established for the farm and the farm acreage base are not increased due to such plantings.".

(b) FEED GRAIN ACREAGE LIMITATION PROGRAM.—Effective only for the 1990 crop of feed grains, section 105C(f)(1)(C) of such Act (7 U.S.C. 1444e(f)(1)(C)) is amended—

(1) by striking "(C)", "1990", "(i)", and "(ii)" and inserting "(C)(i)", "1989", "(I)", and "(II)", respectively; and

(2) by adding at the end the following new clause:

"(ii) In the case of the 1990 crop of feed grains, if the Secretary estimates, not later than September 30, 1989, that the quantity of corn on hand in the United States on the first day of the marketing year for that crop (not including any quantity of corn of that crop) will be—

"(I) more than 2,000,000,000 bushels, the Secretary shall provide for an acreage limitation program (as described in paragraph (2)) under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base for the farm for the crop reduced by not less than 12½ percent nor more than 20 percent;

"(II) less than 2,000,000,000 bushels but more than 1,800,000,000 bushels, the Secretary shall provide for an acreage limitation program (as described in paragraph (2)) under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base for the farm for the crop reduced by not less than 10 percent nor more than 12½ percent; or

"(III) 1,800,000,000 bushels or less, the Secretary may provide for an acreage limitation program (as described in paragraph (2)) under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base for the farm for the crop reduced by not more than 10 percent.".

SEC. 1003. REDUCTION OF DEFICIENCY PAYMENTS FOR 1990 CROPS.

(a) IN GENERAL.—Effective only for the 1990 crops, title IV of the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) is amended by adding at the end the following new section:

"SEC. 425. REDUCTION OF DEFICIENCY PAYMENTS FOR 1990 CROPS.

"(a) IN GENERAL.—Notwithstanding any other provision of law, the amount of deficiency payments made available to producers of the 1990 crops of wheat, feed grains, upland cotton, and rice under sections 107D(c), 105C(c), 103A(c), and 101A(c), respectively, shall be reduced by—

"(1) in the case of wheat, 2.33 cents per bushel;

"(2) in the case of corn, 2.33 cents per bushel (and a comparable amount for other feed grains, as determined by the Secretary);

"(3) in the case of upland cotton, .515 cents per pound; and

"(4) in the case of rice, 5.15 cents per hundredweight.

"(b) APPLICATION TO ADVANCE DEFICIENCY PAYMENTS.—To the extent practicable, the Secretary shall apply the reduction required under subsection (a) to any advance deficiency payment made available to producers of the 1990 crops under section 107C.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Effective only for the 1990 crops of wheat, feed grains, upland cotton, and rice, section 107C(a)(2)(G) of such Act (7 U.S.C. 1445b-2(a)(2)(G)) is amended—

(A) by inserting after "subsection" the following: "(taking into consideration any reduction in the payment made under section 425)"; and

(B) by striking "finallly" and inserting "finally".

(2) Effective only for the 1986 through 1990 crops of feed grains, section 105C(c)(1)(D)(i) of such Act (7 U.S.C. 1444e(c)(1)(D)(i)) is amended by striking "subsection (a)(4)" and inserting "subsection (a)(3)".

SEC. 1004. REPAYMENT OF ADVANCE DEFICIENCY PAYMENTS.

(a) DELAY IN REFUND.—Paragraph (4) of section 201(b) of the Disaster Assistance Act of 1988 (7 U.S.C. 1421 note) (as amended by section 602 of the Disaster Assistance Act of 1989 (Public Law 101-82; 103 Stat. 587)) is amended to read as follows:

"(4) Effective only for the 1988 crops of wheat, feed grains, upland cotton, and rice, if the Secretary determines that any portion of the advance deficiency payment made to producers for the crop under section 107C of such Act must be refunded, such refund shall not be required—

"(A) prior to December 31, 1989, if such producers suffered losses of 1988 or 1989 crops due to a natural disaster in 1988 or 1989; or

"(B) prior to July 31, 1990, for that portion of the crop for which a disaster payment is made under subsection (a).".

(b) RATIONALE.—For purposes of section 202 of Public Law 100-119 (2 U.S.C. 909), the amendment made by subsection (a) is a necessary (but secondary) result of a significant policy change.

SEC. 1005. REDUCTION OF EXPENDITURES UNDER THE EXPORT ENHANCEMENT PROGRAM AND FOR TARGETED EXPORT ASSISTANCE.

(a) EXPORT ENHANCEMENT PROGRAM.—During fiscal year 1990, the Commodity Credit Corporation shall not, except to the extent provided for under section 4301 of the Agricultural Competitiveness and Trade Act of 1988 (Public Law 100-418; 7 U.S.C. 1446 note), make available to exporters, processors, or foreign importers under the authority of section 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(f)) more than $566,000,000 in commodities of the Commodity Credit Corporation to enhance the export of United States commodities by making the price of such commodities competitive in the world market.

(b) TARGETED EXPORT ASSISTANCE.—Section 1124(a) of the Food Security Act of 1985 (7 U.S.C. 1736s(a)) is amended—

(1) by striking "and" at the end of paragraph (2); and

(2) by striking paragraph (3) and inserting the following:

"(3) for the fiscal year 1989, the Secretary shall use under this section not less than $325,000,000 of the funds of, or commodities owned by, the Corporation; and

"(4) for the fiscal year 1990, the Secretary shall use under this section not less than $200,000,000 of the funds of, or commodities owned by, the Corporation.".

SEC. 1006. PURCHASES OF FINANCIAL ASSISTANCE CORPORATION STOCK BY FARM CREDIT SYSTEM INSTITUTIONS.

(a) DELAYED EFFECTIVE DATE FOR STOCK PURCHASE REQUIREMENT.—Notwithstanding any other provision of law, the amendments to section 6.29 of the Farm Credit Act of 1971 (12 U.S.C. 2278b-9) made by section 646 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989

(Public Law 100-460; 102 Stat. 2266) shall be effective on October 1, 1992.

(b) PAYMENTS.—

(1) FOUR ANNUAL PAYMENTS.—Notwithstanding any other provision of law, the Financial Assistance Corporation shall pay, out of the Financial Assistance Corporation Trust Fund (hereinafter in this section referred to as the "Trust Fund") established under section 6.25(b) of the Farm Credit Act of 1971 (12 U.S.C. 2278b-5(b)), to each of the institutions of the Farm Credit System that purchased stock in the Financial Assistance Corporation under section 6.29 of the Farm Credit Act of 1971, four annual payments as provided in this subsection.

(2) TIMING OF PAYMENTS.—The annual payments provided for by this subsection shall be made available as soon as practicable after October 1 of each of the calendar years 1989 through 1992.

(3) CALCULATION OF FIRST PAYMENT.—The first annual payment made available under this subsection shall be in an amount equal to—

(A) a percentage equal to 1.5 times the average rate of interest received by the Financial Assistance Corporation on assets of the Trust Fund from March 30, 1988, through September 30, 1989; times

(B) the difference between $177,000,000 and 4.4 percent of the cumulative amount of the bonds issued by the Financial Assistance Corporation through September 30, 1989.

(4) CALCULATION OF REMAINING PAYMENTS.—The second, third, and fourth annual payments made available under this subsection shall be in an amount equal to—

(A) a percentage equal to the average rate of interest received by the Financial Assistance Corporation on assets of the Trust Fund during each of the fiscal years 1990 through 1992; times

(B) the difference between $177,000,000 and 4.4 percent of the cumulative amount of the bonds issued by the Financial Assistance Corporation through September 30 of each of such fiscal years.

(5) DISTRIBUTION OF ANNUAL PAYMENTS.—Annual payments due under this subsection shall be made available to each institution described in paragraph (1) in an amount equal to the total amount of annual payments to be made available times the ratio of the amount of stock each institution purchased divided by $177,000,000.

SEC. 1007. ADJUSTMENTS IN DAIRY PRICE SUPPORT PROGRAM.

Effective only for calendar year 1990, section 201(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(1)) is amended—

(1) in subparagraph (C)—

(A) in clause (ii), by inserting after "Except as provided in" the following: "clause (iii) and"; and

(B) by adding at the end the following new clause:

"(iii) In carrying out this paragraph during calendar year 1990, the Secretary shall offer to purchase butter for not more than $1.10 per pound, except that the Secretary may allocate the rate of price support between the purchase prices for nonfat dry milk and butter in such other manner as the Secretary determines will result in the lowest level of expenditures by the Commodity Credit Corporation and shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of such determination."; and

(2) in subparagraph (D)(i)—

(A) by striking "each of the calendar years 1988 and 1990" and inserting "calendar year 1990"; and

(B) by striking "shall reduce by" and inserting "may reduce by not more than".

## TITLE II—STUDENT LOAN AND PENSION FIDUCIARY AMENDMENTS

### Subtitle A—Student Loan Reconciliation Amendments

SEC. 2001. SHORT TITLE.

This subtitle may be cited as the "Student Loan Reconciliation Amendments of 1989".

SEC. 2002. INTERNSHIP DEFERMENTS AND FORBEARANCE.

(a) DEFERMENTS.—

(1) FEDERALLY INSURED STUDENT LOANS.—Section 427(a)(2)(C)(i) of the Higher Education Act of 1965 (20 U.S.C. 1077(a)(2)(C)(i)) is amended by inserting before the semicolon at the end thereof the following: ", except that no borrower shall be eligible for a deferment under this clause, or a loan made under this part (other than a loan made under 428B or 428C), while serving in a medical internship or residency program".

(2) FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS.—Section 428(b)(1)(M)(i) of such Act (20 U.S.C. 1078(b)(1)(M)(i)) is amended by inserting before the semicolon at the end thereof the following: ", except that no borrower shall be eligible for a deferment under this clause, or loan made under this part (other than a loan made under 428B or 428C), while serving in a medical internship or residency program".

(3) LOAN AGREEMENTS.—Section 464(c)(2)(A)(i) of such Act (20 U.S.C. 1087dd(c)(2)(A)(i)) is amended by inserting before the semicolon at the end thereof the following: ", except that no borrower shall be eligible for a deferment under this clause, or a loan made under this part (other than a loan made under 428B or 428C), while serving in a medical internship or residency program".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any loan made, insured, or guaranteed under part B or part E of title IV of the Higher Education Act of 1965, including a loan made before the enactment of this Act, and shall take effect on January 1, 1990, except that such amendments shall not apply with respect to any portion of a period of deferment granted to a borrower under section 427(a)(2)(C)(i), 428(b)(1)(M)(i), or 464(c)(2)(A)(i) of the Higher Education Act of 1965 for service in a medical internship or residency program that is completed prior to the effective date of this section.

(b) FORBEARANCE.—

(1) FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS.—Section 428 of the Higher Education Act of 1965 (20 U.S.C. 1078) is amended—

(A) in subsection (b)(1)—

(i) in subparagraph (T), by striking "and" at the end thereof;

(ii) in subparagraph (U), by striking the period at the end thereof and inserting "; and"; and

(iii) by adding at the end thereof the following new subparagraph:

"(V)(i) provides that, upon written request, a lender shall grant a borrower forbearance, renewable at 12-month intervals for a period equal to the length of time remaining in the borrower's medical or dental internship or residency program, on such terms as are otherwise consistent with the regulations of the Secretary and agreed upon in writing by the parties to the loan, with the approval of the insurer, if the borrower—

"(I) is serving in a medical or dental internship or residency program, the successful completion of which is required to begin professional practice or service, or is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training; and

"(II) has exhausted his or her eligibility for a deferment under section 427(a)(2)(C)(vii) or subparagraph (M)(vii) of this paragraph; and

"(ii) provides that no administrative or other fee may be charged in connection with the granting of a forbearance under clause (i), and that no adverse information regarding a borrower may be reported to a credit bureau organization solely because of the granting of a forbearance under clause (i).''; and

(B) by amending subsection (c)(3) to read as follows:

"(3) FORBEARANCE.—A guaranty agreement under this subsection—

"(A) shall contain provisions providing for forbearance in accordance with subsection (b)(1)(V) for the benefit of the student borrower serving in a medical or dental internship or residency program; and

"(B) may, to the extent provided in regulations of the Secretary, contain provisions that permit such forbearance for the benefit of the student borrower as may be agreed upon by the parties to an insured loan and approved by the insurer.

Such regulations shall not preclude guaranty agencies from permitting the parties to such a loan from entering into a forbearance agreement solely because the loan is in default.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to loans made before, on, or after the date of enactment of this Act.

SEC. 2003. CHANGES IN THE SUPPLEMENTAL LOANS FOR STUDENTS PROGRAM.

(a) RESTRICTIONS ON SLS PROGRAM AT INSTITUTIONS WITH HIGH COHORT DEFAULT RATES.

(1) RESTRICTION.—Section 428A(a) of the Higher Education Act of 1965 (20 U.S.C. 1078-1(a)) is amended—

(A) by striking "(a) AUTHORITY TO BORROW.—Graduate and professional students"; and inserting the following:

"(a) AUTHORITY TO BORROW.—

"(1) STUDENT ELIGIBILITY.—Graduate and professional students";

(B) by indenting the remaining text of subsection (a) two em spaces; and

(C) by adding at the end thereof the following:

"(2) INSTITUTIONAL ELIGIBILITY.—Funds may not be borrowed under this section by any undergraduate student who is enrolled at any institution during any fiscal year if the cohort default rate for such institution, for the most recent fiscal year for which such rates are available, equals or exceeds 30 percent. The Secretary shall notify institutions to which such restriction applies annually, and specify the fiscal year covered by the restriction. The Secretary shall afford any institution to which such restriction applies an opportunity to present evidence contesting the accuracy of the calculation of the cohort default rate for such institution.".

(2) DEFINITION.—Section 435 of such Act (20 U.S.C. 1085) is amended by adding at the end thereof the following new subsection:

"(m) COHORT DEFAULT RATE.—The term 'cohort default rate' means, for any fiscal year in which 30 or more current and former students at the institution enter repayment

on loans under section 428 or 428A received for attendance at the institution, the percentage of those current and former students who enter repayment on such loans received for attendance at that institution in that fiscal year who default before the end of the following fiscal year. For any fiscal year in which less than 30 of the institution's current and former students enter repayment, the term 'cohort default rate' means the average of the rate calculated under the preceding sentence for the 3 most recent fiscal years. In the case of a student who has attended and borrowed at more than one school, the student (and his or her subsequent repayment or default) is attributed to each school for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the school, its owner, agent, contractor, employee, or any other entity or individual affiliated with such school, in order to avoid default by the borrower, is considered as in default for purposes of this subsection. Any loan which has been rehabilitated before the end of such following fiscal year is not considered as in default for purposes of this subsection. The Secretary shall prescribe regulations designed to prevent an institution from evading the application to that institution of a default rate determination under this subsection through the use of such measures as branching, consolidation, change of ownership or control, or any similar device.".

(3) EFFECTIVE DATE.—

(A) Except as provided in subparagraph (B), the amendments made by this subsection shall apply to loans made on or after January 1, 1990, and before October 1, 1991. Regulations prescribed by the Secretary under the last sentence of section 435(m) of the Higher Education Act of 1965 (as added by such amendments) shall apply with respect to measures described in such sentence that are used on or after October 1, 1989.

(B) The amendments made by this subsection shall not be applied to prevent an individual who is enrolled on the date of enactment of this Act in a program of instruction for which the individual has obtained a loan under section 428A of the Higher Education Act of 1965 from receiving additional loans under such section to cover the cost of attendance at that eligible institution to complete that program of instruction.

(C) If, on or after November 8, 1989, the duration of any program of instruction is extended, subparagraph (B) shall not permit a student enrolled in such program of instruction to receive additional loans under such section 428A during the extension.

(b) MAXIMUM LOAN AMOUNTS.—

(1) AMENDMENT.—Section 428A(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-1(b)(1)) is amended to read as follows:

"(1) ANNUAL LIMIT.—Subject to paragraphs (2) and (3), the maximum amount a student may borrow in any academic year or its equivalent (as defined by regulation by the Secretary), or in any period of 9 consecutive months, whichever is longer, is $4,000, except that in the case of a student who has not successfully completed the first year of a program of undergraduate education and who is not enrolled in a program that is at least one academic year in length, as determined in accordance with regulations prescribed by the Secretary, such maximum amount shall be—

"(A) $2,500 for a student who is determined, in accordance with such regulations, to be enrolled in a program whose length is at least ⅔ of an academic year;

"(B) $1,500 for a student who is determined, in accordance with such regulations, to be enrolled in a program whose length is less than ⅔, but at least ⅓, of an academic year; and

"(C) zero for a student who is determined, in accordance with such regulations, to be enrolled in a program whose length is less than ⅓ of an academic year.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to loans made on or after January 1, 1990, and before October 1, 1991.

(c) COMPLETION OF HIGH SCHOOL EQUIVALENCY REQUIRED.

(1) ABILITY-TO-BENEFIT STUDENTS INELIGIBLE FOR SLS PROGRAM UNTIL GED COMPLETION.—Section 428A(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-1(a)(1)) is further amended by adding at the end thereof the following new sentence: "No student who is admitted on the basis of the ability to benefit from the education or training provided by the institution (as determined under section 484(d)) shall be eligible to borrow funds under this section until such student has obtained a certificate of high school equivalency or a high school diploma.".

(2) GED PROGRAM REQUIRED FOR ABILITY-TO-BENEFIT STUDENTS.—Section 487(a) of the Higher Education Act of 1965 is amended by adding at the end thereof the following new paragraph:

"(11) In the case of any institution which admits students on the basis of their ability to benefit from the education or training provided by such institution (as determined under section 484(d)), the institution will make available to such students a program proven successful in assisting students in obtaining a certificate of high school equivalency.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to periods of enrollment beginning on or after January 1, 1990.

SEC. 2004. ADDITIONAL REQUIREMENTS WITH RESPECT TO DISBURSEMENT OF STUDENT LOANS.

(a) AMENDMENT.—Part B of title IV of the Higher Education Act of 1965 is amended by inserting after section 428F (20 U.S.C. 1078-6) the following new section:

"REQUIREMENTS FOR DISBURSEMENT OF STUDENT LOANS

"SEC. 428G. (a) MULTIPLE DISBURSEMENT REQUIRED.—

"(1) TWO DISBURSEMENTS REQUIRED.—The proceeds of any loan made, insured, or guaranteed under this part that is made for any period of enrollment shall be disbursed in 2 or more installments, none of which exceeds one-half of the loan.

"(2) MINIMUM INTERVAL REQUIRED.—The interval between the first and second such installments shall be not less than one-half of such period of enrollment, except as necessary to permit the second installment to be disbursed at the beginning of the second semester, quarter, or similar division of such period of enrollment.

"(b) DISBURSEMENT AND ENDORSEMENT REQUIREMENTS.—

"(1) SLS LOANS TO FIRST-YEAR STUDENTS.—The first installment of the proceeds of any loan made under section 428A that is made to a student borrower who has not successfully completed the first year of a program of undergraduate education shall not (regardless of the amount of such loan or the duration of the period of enrollment) be presented by the institution to the student for endorsement until—

"(A) 30 days after the borrower begins a course of study; and

"(B) the institution certifies that the borrower continues to be enrolled and in attendance at the end of such 30-day period, and is maintaining satisfactory progress;

but may be disbursed to the eligible institution prior to the end of such 30-day period.

"(2) OTHER STUDENTS.—The proceeds of any loan made, insured, or guaranteed under this part that is made to any student other than a student described in paragraph (1) shall not be disbursed more than 30 days prior to the beginning of the period of enrollment for which the loan is made.

"(c) METHOD OF MULTIPLE DISBURSEMENT.—Disbursements under subsection (a)—

"(1) shall be made in accordance with a schedule provided by the institution (under section 428(a)(2)(A)(i)(III)) that complies with the requirements of this section; and

"(2) may be made directly by the lender or, in the case of a loan under sections 428 and 428A, may be disbursed pursuant to the escrow provisions of section 428(i).

"(d) WITHHOLDING OF SECOND DISBURSEMENT.—

"(1) WITHDRAWING STUDENTS.—A lender or escrow agent that is informed by the borrower or the institution that the borrower has ceased to be enrolled before the disbursement of the second or any succeeding installment shall withhold such disbursement. Any disbursement which is so withheld shall be credited to the borrower's loan and treated as a prepayment thereon.

"(3) STUDENTS RECEIVING OVER-AWARDS.—If the sum of a disbursement for any student and the other financial aid obtained by such student exceeds the amount of assistance for which the student is eligible under this title, the institution such student is attending shall withhold and return to the lender or escrow agent the portion (or all) of such installment that exceeds such eligible amount. Any portion (or all) of a disbursement installment which is so returned shall be credited to the borrower's loan and treated as a prepayment thereon.

"(e) EXCLUSION OF PLUS, CONSOLIDATION, AND FOREIGN STUDY LOANS.—The provisions of this section shall not apply in the case of a loan made under section 428B or 428C or made to a student to cover the cost of attendance at an eligible institution outside the United States.

"(f) BEGINNING OF PERIOD OF ENROLLMENT.—For purposes of this section, a period of enrollment begins on the first day that classes begin for the applicable period of enrollment.".

(b) CONFORMING AMENDMENTS.—

(1) TRANSMITTAL OF INSTITUTION SCHEDULES TO LENDERS.—Section 428(a)(2)(A)(i) of the Higher Education Act of 1965 (20 U.S.C. 1078(a)(2)(A)(i)) is amended—

(A) by striking "and" at the end of clause (I); and

(B) by inserting after clause (II) the following:

"(III) sets forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G; and".

(2) FEDERALLY INSURED LOANS.—Section 427(a)(4) of the Higher Education Act of 1965 (20 U.S.C. 1077(a)(4)) is amended to read as follows:

"(4) the funds borrowed by a student are disbursed in accordance with section 428G.".

(3) STAFFORD LOANS.—Section 428(b)(1)(O) of the Higher Education Act of 1965 (20 U.S.C. 1078(b)(1)(O)) is amended to read as follows:

"(O) provides that the proceeds of the loans will be disbursed in accordance with the requirements of section 428G;".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to loans made to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1990.

SEC. 2005. DEFAULT REDUCTION PROGRAM.

(a) AMENDMENT.—Section 428F of the Higher Education Act of 1965 (20 U.S.C. 1078-6) is amended to read as follows:

"DEFAULT REDUCTION PROGRAM

"SEC. 428F. (a) PROGRAM REQUIREMENTS.—

"(1) AUTHORITY TO ESTABLISH A DEFAULT REDUCTION PROGRAM.—The Secretary shall, in accordance with the requirements of this section, establish a default reduction program for borrowers who have one or more loans under part B of this title which are in default, as defined in section 435(l), as of the date of enactment of this section. Such program shall be commenced on, March 1, 1990, and shall last for six months.

"(2) ELIGIBILITY FOR THE BENEFITS OF THE DEFAULT REDUCTION PROGRAM.—In order to be eligible for the benefits of the default reduction program, a borrower who has a loan or loans which are in default shall contact the holder of such loan or loans during the default reduction program and shall pay in full all remaining principal and interest on such loan or loans.

"(3) BENEFITS OF THE DEFAULT REDUCTION PROGRAM.—For each borrower meeting the requirement of paragraph (2)—

"(A) no penalties shall be charged on defaulted loans which are paid in full;

"(B) the guaranty agency shall report to the appropriate credit bureau or bureaus that the loan has been paid in full; and

"(C) notwithstanding section 484, eligibility to receive additional assistance under this title shall be reestablished.

"(4) SECRETARY'S SHARE OF REPAYMENTS.—The Secretary's equitable share for purposes of section 428(c)(2)(D) of amounts paid by any borrower under paragraph (2) of this subsection shall be 81.5 percent of the principal amount outstanding on the loan at the time of repayment, multiplied by the reinsurance percentage in effect when the payment under the guaranty agreement was made with respect to such loan.

"(b) OTHER REPAYMENT INCENTIVES.—

"(1) SALE OF LOAN.—

"(A) Upon securing consecutive payments for 12 months of amounts owed on a loan for which the Secretary has made a payment under paragraph (1) of section 428(c), the guaranty agency (pursuant to an agreement with the Secretary) or the Secretary shall, if practicable, sell the loan to an eligible lender. Such loan shall not be sold to an eligible lender who has been found by the guaranty agency or the Secretary to have substantially failed to exercise the due diligence required of lenders under this part.

"(B) An agreement between the guaranty agency and the Secretary for purposes of this paragraph shall provide—

"(i) for the repayment by the agency to the Secretary of 81.5 percent of the amount of the principal balance outstanding at the time of such sale, multiplied by the reinsurance percentage in effect when payment under the guaranty agreement was made with respect to the loan; and

"(ii) for the reinstatement by the Secretary (I) of the obligation to reimburse such agency for the amount expended by it in discharge of its insurance obligation under its loan insurance program, and (II) of the obligation to pay to the holder of such loan a special allowance pursuant to section 438.

"(C) A loan which does not meet the requirements of subparagraph (A) may also be eligible for sale under this paragraph upon a determination that the loan was in default due to clerical or data processing error and would not, in the absence of such error, be in a delinquent status.

"(2) USE OF PROCEEDS OF SALES.—Amounts received by the Secretary pursuant to the sale of such loans by a guaranty agency under this paragraph shall be deducted from the calculations of the amount of reimbursement for which the agency is eligible under paragraph (1)(B)(ii) of this section for the fiscal year in which the amount was received, notwithstanding the fact that the default occurred in a prior fiscal year.

"(3) BORROWER ELIGIBILITY.—Any borrower whose loan is sold under paragraph (1) shall not be precluded by section 484 from receiving additional loans under this title (for which he or she is otherwise eligible) on the basis of defaulting on the loan prior to such loan sale.

"(4) APPLICABILITY OF GENERAL LOAN CONDITIONS.—A loan which is sold under this paragraph shall, so long as the borrower continues to make scheduled repayments thereon, be subject to the same terms and conditions and qualify for the same benefits and privileges as other loans made under this part.".

(b) PUBLICITY.—The Secretary of Education shall, from funds available through student loan collections, commencing not less than 30 days before the beginning of the default reduction program required by the amendment made by this section, and continuing throughout the duration of such program, widely publicize (through various communications media) the availability of the default reduction program.

SEC. 2006. SANCTIONS AGAINST LENDERS AND INSTITUTIONS.

(a) SANCTIONS BY SECRETARY ON LENDERS.—Section 432 of the Higher Education Act of 1965 (20 U.S.C. 1082) is amended by adding at the end thereof the following new subsection:

"(j) AUTHORITY OF THE SECRETARY TO TAKE EMERGENCY ACTIONS AGAINST LENDERS.—

"(1) IMPOSITION OF SANCTIONS.—If the Secretary—

"(A) receives information, determined by the Secretary to be reliable, that a lender is violating any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation;

"(B) determines that immediate action is necessary to prevent misuse of Federal funds; and

"(C) determines that the likelihood of loss outweighs the importance of following the limitation, suspension, or termination procedures authorized in subsection (h);

the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to the lender (by registered mail, return receipt requested), take emergency action to stop the issuance of guarantee commitments and the payment of interest benefits and special allowance to the lender.

"(2) LENGTH OF EMERGENCY ACTION.—An emergency action under this subsection may not exceed 30 days unless a limitation, suspension, or termination proceeding is initiated against the lender under subsection (h) before the expiration of that period.

"(3) OPPORTUNITY TO SHOW CAUSE.—The Secretary shall provide the lender, if it so requests, an opportunity to show cause that the emergency action is unwarranted.".

(b) SANCTIONS BY GUARANTY AGENCIES.—Section 428(b)(1) (20 U.S.C. 1078(b)(1)) is amended—

(1) by inserting "emergency action," before "limitation," each place it appears in subparagraphs (T) and (U); and

(2) by inserting "take emergency action," before "limit, suspend," in subparagraph (U).

(c) SANCTIONS AGAINST INSTITUTIONS AND INSTITUTIONS' AGENTS.—Section 487(c)(1) of the Higher Education Act of 1965 (20 U.S.C. 1094(c)(1)) is amended—

(1) in subparagraph (C), by striking "and" at the end thereof;

(2) in subparagraph (D)—

(A) by striking "or any regulation prescribed under this title," and inserting in lieu thereof a comma and "any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation,"; and

(B) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new subparagraphs:

"(E) an emergency action against an institution, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to the institution (by registered mail, return receipt requested), withhold funds from the institution or its students and withdraw the institution's authority to obligate funds under any program under this title, if the Secretary—

"(i) receives information, determined by the Secretary to be reliable, that the institution is violating any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation,

"(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

"(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (D) for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless limitation, suspension, or termination proceedings are initiated by the Secretary against the institution within that period of time, and except that the Secretary shall provide the institution an opportunity to show cause, if it so requests, that the emergency action is unwarranted;

"(F) the limitation, suspension, or termination of the eligibility of an individual or an organization to contract with any institution to administer any aspect of an institution's student assistance program under this title, or the imposition of a civil penalty under paragraph (2)(B), whenever the Secretary has determined, after reasonable notice and opportunity for a hearing on the record, that such organization, acting on behalf of an institution, has violated or failed to carry out any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this subparagraph shall exceed 60 days unless the organization and the Secretary agree to an extension, or unless limitation or termination proceedings are initiated by the Secretary against the individual or organization within that period of time; and

"(G) an emergency action against an individual or an organization that has contract-

ed with an institution to administer any aspect of the institution's student assistance program under this title, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to such individual or organization (by registered mail, return receipt requested), withhold funds from the individual or organization and withdraw the individual or organization's authority to act on behalf of an institution under any program under this title, if the Secretary—

"(i) receives information, determined by the Secretary to be reliable, that the individual or organization, acting on behalf of an institution, is violating any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation,

"(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

"(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (F), for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless the limitation, suspension, or termination proceedings are initiated by the Secretary against the individual or organization within that period of time, and except that the Secretary shall provide the individual or organization an opportunity to show cause, if it so requests, that the emergency action is unwarranted.".

SEC. 2007. EFFECT OF LOSS OF ACCREDITATION.

(a) STATUS AS ELIGIBLE INSTITUTION FOR STAFFORD STUDENT LOAN PROGRAM.—Section 435 of the Higher Education Act of 1965 (20 U.S.C. 1085) is amended—

(1) in subsection (a)(1), by striking "The term" and inserting "Subject to subsection (n), the term"; and

(2) by adding at the end thereof the following:

"(n) IMPACT OF LOSS OF ACCREDITATION.—An institution may not be certified or recertified as an eligible institution under subsection (a) of this section if such institution has—

"(1) had its institutional accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months; or

"(2) withdrawn from institutional accreditation voluntarily under a show cause or suspension order during the preceding 24 months;

unless—

"(A) such accreditation has been restored by the same accrediting agency which had accredited it prior to the withdrawal, revocation, or termination; or

"(B) the institution has demonstrated its academic integrity to the satisfaction of the Secretary in accordance with section 1201(a)(5)(A) or (B) of this Act.".

(b) STATUS AS ELIGIBLE INSTITUTION FOR OTHER TITLE IV PROGRAMS.—Section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) is amended—

(1) in subsection (a)(1), by striking "For the purpose" and inserting "Subject to subsection (e), for the purpose"; and

(2) by adding at the end thereof the following:

"(e) IMPACT OF LOSS OF ACCREDITATION.—An institution may not be certified or recertified as an institution of higher education under subsection (a) of this section if such institution has—

"(1) had its institutional accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months; or

"(2) withdrawn from institutional accreditation voluntarily under a show cause or suspension order during the preceding 24 months;

unless—

"(A) such accreditation has been restored by the same accrediting agency which had accredited it prior to the withdrawal, revocation, or termination; or

"(B) the institution has demonstrated its academic integrity to the satisfaction of the Secretary in accordance with section 1201(a)(5)(A) or (B) of this Act.".

(c) ELIGIBLE INSTITUTION ACCREDITATION RULE.—Section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)) is amended by inserting after paragraph (2) the following new paragraph:

"(3) Whenever the Secretary determines eligibility under paragraph (1), the Secretary shall not recognize the accreditation of any eligible institution of higher education under this subsection if the institution of higher education is in the process of receiving a new accreditation or changing accrediting agency or association unless the eligible institution submits to the Secretary all materials relating to the prior accreditation, including materials demonstrating reasonable cause for changing the accrediting agency or association.".

SEC. 2008. REVISION OF NATIONAL STUDENT LOAN DATA SYSTEM.

Section 485B of the Higher Education Act of 1965 (20 U.S.C 1092(b)) is amended to read as follows:

"NATIONAL STUDENT LOAN DATA SYSTEM

"SEC. 485B. (a) DEVELOPMENT OF THE SYSTEM.—The Secretary shall consult with a representative group of guaranty agencies, eligible lenders, and eligible institutions to develop a mutually agreeable proposal for the establishment of a National Student Loan Data System containing information regarding loans made, insured, or guaranteed under part B and loans made under part E. The information in the data system shall include (but is not limited to)—

"(1) the amount and type of each such loan made;

"(2) the names and social security numbers of the borrowers;

"(3) the guaranty agency responsible for the guarantee of the loan;

"(4) the institution of higher education or organization responsible for loans made under part E;

"(5) the eligible institution in which the student was enrolled or accepted for enrollment at the time the loan was made, and any additional institutions attended by the borrower;

"(6) the total amount of loans made to any borrower and the remaining balance of the loans;

"(7) the lender, holder, and servicer of such loans;

"(8) information concerning the date of any default on the loan and the collection of the loan, including any information concerning the repayment status of any defaulted loan on which the Secretary has made a payment pursuant to section 430(a) or the guaranty agency has made a payment to the previous holder of the loan;

"(9) information regarding any deferments or forbearance granted on such loans; and

"(10) the date of cancellation of the note upon completion of repayment by the borrower of the loan or payment by the Secretary pursuant to section 437.

"(b) ADDITIONAL INFORMATION.—For the purposes of research and policy analysis, the proposal shall also contain provisions for obtaining additional data concerning the characteristics of borrowers and the extent of student loan indebtedness on a statistically valid sample of borrowers under part B. Such data shall include—

"(1) information concerning the income level of the borrower and his family and the extent of the borrower's need for student financial assistance, including loans;

"(2) information concerning the type of institution attended by the borrower and the year of the program of education for which the loan was obtained;

"(3) information concerning other student financial assistance received by the borrower; and

"(4) information concerning Federal costs associated with the student loan program under part B of this title, including the costs of interest subsidies, special allowance payments, and other subsidies.

"(c) VERIFICATION.—The Secretary may require lenders, guaranty agencies, or institutions of higher education to verify information or obtain eligibility or other information through the National Student Loan Data System prior to making, guaranteeing, or certifying a loan made under part B or part E.

"(d) REPORT TO CONGRESS.—The Secretary shall prepare and submit to the appropriate committees of the Congress, in each fiscal year, a report describing the results obtained by the establishment and operation of the student loan data system authorized by this section.".

SEC. 2009. INFORMATION USED IN EXERCISE OF AID ADMINISTRATOR DISCRETION.

Section 479A(a) of such Act (20 U.S.C. 1987tt(a)) is amended to read as follows:

"SEC. 479A. (a) IN GENERAL.—Nothing in this title shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to the cost of attendance or the data required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances not addressed by the data elements in subparts 1 and 2 of part A and parts B, C, and E of this title. However, this authority shall not be construed to permit aid administrators to deviate from the contributions expected under subparts 1 and 2 of part A and parts B, C, and E in the absence of special circumstances. Special circumstances shall be conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students. Adequate documentation for such adjustments shall substantiate such special circumstances of individual students. In addition, nothing in this title shall be interpreted as limiting the authority of the student financial aid administrator in such cases to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under subparts 1 and 2 of part A and parts B, C, and E of this title.".

**Subtitle B—Fiduciary Responsibilities**

SEC. 2101. CIVIL PENALTIES ON VIOLATIONS BY FIDUCIARIES.

(a) IN GENERAL.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end thereof the following new subsection:

"(l)(1) In the case of—

"(A) any breach of fiduciary responsibility under (or other violation of) part 4 by a fiduciary, or

"(B) any knowing participation in such a breach or violation by any other person,

the Secretary shall assess a civil penalty against such fiduciary or other person in an amount equal to 20 percent of the applicable recovery amount.

"(2) For purposes of paragraph (1), the term 'applicable recovery amount' means any amount which is recovered from a fiduciary or other person with respect to a breach or violation described in paragraph (1)—

"(A) pursuant to any settlement agreement with the Secretary, or

"(B) ordered by a court to be paid by such fiduciary or other person to a plan or its participants and beneficiaries in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5).

"(3) The Secretary may, in the Secretary's sole discretion, waive or reduce the penalty under paragraph (1) if the Secretary determines in writing that—

"(A) the fiduciary or other person acted reasonably and in good faith, or

"(B) it is reasonable to expect that the fiduciary or other person will not be able to restore all losses to the plan without severe financial hardship unless such waiver or reduction is granted.

"(4) The penalty imposed on a fiduciary or other person under this subsection with respect to any transaction shall be reduced by the amount of any penalty or tax imposed on such fiduciary or other person with respect to such transaction under subsection (i) of this section and section 4975 of the Internal Revenue Code of 1986."

(b) CONFORMING AMENDMENT.—Section 502(a)(6) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)(6)) is amended by inserting "or (l)" after "subsection (i)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any breach of fiduciary responsibility or other violation occurring on or after the date of the enactment of this Act.

### TITLE III—REGULATORY AGENCY FEES.

#### Subtitle A—Federal Communications Commission Fees and Penalties

SEC. 3001. FEDERAL COMMUNICATIONS COMMISSION FEES.

(a) UPDATE OF FEE SCHEDULE.—Section 8 of the Communications Act of 1934 (47 U.S.C. 158) is amended by adding at the end thereof the following:

"(g) Until modified pursuant to subsection (b) of this section, the Schedule of Charges which the Federal Communications Commission shall prescribe pursuant to subsection (a) of this section shall be as follows:

"SCHEDULE OF CHARGES

| Service | Fee amount |
|---|---|
| PRIVATE RADIO SERVICES | |
| 1. Marine Coast Stations | |
| a. New License (per station) | $70.00 |
| b. Modification of License (per station) | 70.00 |
| c. Renewal of License (per station) | 70.00 |
| d. Special Temporary Authority (Initial, Modifications, Extensions) | 100.00 |
| e. Assignments (per station) | 70.00 |
| f. Transfers of Control (per station) | 35.00 |
| g. Request for Waiver (i) Routine (per request) | 105.00 |
| (ii) Non-Routine (per rule section/ per station) | $105.00 |
| 2. Ship Stations | |
| a. New License (per application) | 35.00 |
| b. Modification of License (per application) | 35.00 |
| c. Renewal of License (per application) | 35.00 |
| d. Request for Waiver (i) Routine (per request) | 105.00 |
| (ii) Non-Routine (per rule section/ per station) | 105.00 |
| 3. Operational Fixed Microwave Stations | |
| a. New License (per station) | 155.00 |
| b. Modification of License (per station) | 155.00 |
| c. Renewal of License (per station) | 155.00 |
| d. Special Temporary Authority (Initial, Modifications, Extensions) | 35.00 |
| e. Assignments (per station) | 155.00 |
| f. Transfers of Control (per station) | 35.00 |
| g. Request for Waiver (i) Routine (per request) | 105.00 |
| (ii) Non-Routine (per rule section/ per station) | 105.00 |
| 4. Aviation (Ground Stations) | |
| a. New License (per station) | 70.00 |
| b. Modification of License (per station) | 70.00 |
| c. Renewal of License (per station) | 70.00 |
| d. Special Temporary Authority (Initial, Modifications, Extensions) | 100.00 |
| e. Assignments (per station) | 70.00 |
| f. Transfers of Control (per station) | 35.00 |
| g. Request for Waiver (i) Routine (per request) | 105.00 |
| (ii) Non-Routine (per rule section/ per station) | 105.00 |
| 5. Aircraft Stations | |
| a. New License (per application) | 35.00 |
| b. Modification of License (per application) | 35.00 |
| c. Renewal of License (per application) | 35.00 |
| d. Request for Waiver (i) Routine (per request) | 105.00 |
| (ii) Non-Routine (per rule section/ per station) | 105.00 |
| 6. Land Mobile Radio Stations (including Special Emergency and Public Safety Stations) | |
| a. New License (per call sign) | $35.00 |
| b. Modification of License (per call sign) | 35.00 |
| c. Renewal of License (per call sign) | 35.00 |
| d. Special Temporary Authority (Initial, Modifications, Extensions) | 35.00 |
| e. Assignments (per station) | 35.00 |
| f. Transfers of Control (per call sign) | 35.00 |
| g. Request for Waiver (i) Routine (per request) | 105.00 |
| (ii) Non-Routine (per rule section/ per station) | 105.00 |
| h. Reinstatement (per call sign) | 35.00 |
| i. Specialized Mobile Radio Systems-Base Stations | |
| (i) New License (per call sign) | 35.00 |
| (ii) Modification of License (per call sign | 35.00 |
| (iii) Renewal of License (per call sign) | 35.00 |
| (iv) Waiting List (annual charge per application) | 35.00 |
| (v) Special Temporary Authority (Initial, Modifications, Extensions) | 35.00 |
| (vi) Assignments (per call sign) | 35.00 |
| (vii) Transfers of Control (per call sign) | 35.00 |
| (viii) Request for Waiver (1) Routine (per request) | 105.00 |
| (2) Non-Routine (per rule section/per station) | 105.00 |
| (ix) Reinstatements (per call sign) | 35.00 |
| j. Private Carrier Licenses | |
| (i) New License (per call sign) | 35.00 |
| (ii) Modification of License (per call sign) | 35.00 |

"SCHEDULE OF CHARGES—Continued

| Service | Fee amount |
|---|---|
| (iii) Renewal of License (per call sign) | 35.00 |
| (iv) Special Temporary Authority (Initial, Modifications, Extensions) | 35.00 |
| (v) Assignments (per call sign) | 35.00 |
| (vi) Transfers of Control (per call sign) | 35.00 |
| (vii) Request for Waiver | |
| (1) Routine (per request) | $105.00 |
| (2) Non-Routine (per rule section/per station) | 105.00 |
| (viii) Reinstatements (per call sign) | 35.00 |
| 7. General Mobile Radio Service | |
| a. New License (per call sign) | 35.00 |
| b. Modifications of License (per call sign) | 35.00 |
| c. Renewal of License (per call sign) | 35.00 |
| d. Request for Waiver | |
| (i) Routine (per request) | 105.00 |
| (ii) Nonroutine (per rule section/per station) | 105.00 |
| e. Special Temporary Authority (Initial, Modifications, Extensions) | 35.00 |
| f. Transfer of control (per call sign) | 35.00 |
| 8. Restricted Radiotelephone Operator Permit | 35.00 |
| 9. Request for Duplicate Station License (all services) | 35.00 |
| 10. Hearing (Comparative, New, and Modifications) | 6,760.00 |
| EQUIPMENT APPROVAL SERVICES/ EXPERIMENTAL RADIO | |
| 1. Certification | |
| a. Receivers (except TV and FM receivers) | 285.00 |
| b. All Other Devices | 735.00 |
| c. Modifications and Class II Permissive Changes | 35.00 |
| d. Request for Confidentiality | 105.00 |
| 2. Type Acceptance | |
| a. All Devices | 370.00 |
| b. Modifications and Class II Permissive Changes | 35.00 |
| c. Request for Confidentiality | 105.00 |
| 3. Type Approval (all devices) | |
| a. With Testing (including Major Modifications | 1,465.00 |
| b. Without Testing (including Minor Modifications) | 170.00 |
| c. Request for Confidentiality | 105.00 |
| 4. Notifications | 115.00 |
| 5. Advance Approval for Subscription TV System | 2,255.00 |
| a. Request for Confidentiality | 105.00 |
| 6. Assignment of Grantee Code for Equipment Identification | $35.00 |
| 7. Experimental Radio Service | |
| a. New Construction Permit and Station Authorization (per application) | 35.00 |
| b. Modification to Existing Construction Permit and Station Authorization (per application) | 35.00 |
| c. Renewal of Station Authorization (per application) | 35.00 |
| d. Assignment or Transfer of Control (per application) | 35.00 |
| e. Special Temporary Authority (per application) | 35.00 |
| f. Additional Charge for Applications Containing Requests to Withhold Information From Public Inspection (per application) | 35.00 |
| MASS MEDIA SERVICES | |
| 1. Commercial TV Stations | |
| a. New or Major Change Construction Permits | 2,535.00 |
| b. Minor Change | |
| c. Hearing (Major/ Minor Change, Comparative New, or Comparative Renewal) | 6,760.00 |
| d. License | 170.00 |
| e. Assignment or Transfer | |
| (i) Long Form (Forms 314/315) | 565.00 |
| (ii) Short Form (Form 316) | 80.00 |
| f. Renewal | 100.00 |
| g. Call Sign (New or Modification) | 55.00 |
| h. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) | 100.00 |
| i. Extension of Time to Construct or Replacement of CP | 200.00 |
| j. Permit to Deliver Programs to Foreign Broadcast Stations | 55.00 |
| k. Petition for Rulemaking for New Community of License | 1,565.00 |
| l. Ownership Report (per report) | 35.00 |
| 2. Commercial Radio Stations | |
| a. New and Major Change Construction Permit | |
| (i) AM Station | 2,255.00 |
| (ii) FM Station | 2,030.00 |
| b. Minor Change | |
| (i) AM Station | 565.00 |
| (ii) FM Station | 565.00 |
| c. Hearing (Major/ Minor Change, Comparative New, or Comparative Renewal) | 6,760.00 |
| d. License | |
| (i) AM | 370.00 |
| (ii) FM | $115.00 |
| (iii) AM Directional Antenna | 425.00 |
| (iv) FM Directional Antenna | 355.00 |
| (v) AM Remote Control | 35.00 |
| e. Assignment or Transfer | |
| (i) Long Form (Forms 314/315) | 565.00 |
| (ii) Short Form (Form 316) | 80.00 |
| f. Renewal | 100.00 |
| g. Call Sign (New or Modification) | 55.00 |
| h. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) | 100.00 |
| i. Extension of Time to Construct or Replacement of CP | 200.00 |
| j. Permit to Deliver Programs to Foreign Broadcast Stations | 55.00 |
| k. Petition for Rulemaking for New Community of License or Higher Class Channel | 1,565.00 |
| l. Ownership Report (per report) | 35.00 |
| 3. FM Translators | |
| a. New or Major Change Construction Permit | 425.00 |
| b. License | 85.00 |
| c. Assignment or Transfer | 80.00 |
| d. Renewal | 35.00 |
| e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) | 100.00 |
| 4. TV Translators and LPTV Stations | |
| a. New or Major Change Construction Permit | 425.00 |
| b. License | 85.00 |
| c. Assignment or Transfer | 80.00 |
| d. Renewal | 35.00 |
| e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) | 100.00 |

"SCHEDULE OF CHARGES—Continued

| Service | Fee amount |
|---|---|
| 5. Auxiliary Services (Includes Remote Pickup stations, TV Auxiliary Broadcast stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary stations) | |
| a. Major Actions | 85.00 |
| b. Renewals | 35.00 |
| c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) | 100.00 |
| 6. FM/TV Boosters | |
| a. New and Major Change Construction Permits | 425.00 |
| b. License | 85.00 |
| c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) | $100.00 |
| 7. International Broadcast Station | |
| a. New Construction Permit and Facilities Change CP | 1,705.00 |
| b. License | 385.00 |
| c. Assignment or Transfer (per station) | 60.00 |
| d. Renewal | 95.00 |
| e. Frequency Assignment and Coordination (per frequency hour) | 35.00 |
| f. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) | 100.00 |
| 8. Cable Television Service | |
| a. Cable Television Relay Service | |
| (i) Construction Permit | 155.00 |
| (ii) Assignment or Transfer | 155.00 |
| (iii) Renewal | 155.00 |
| (iv) Modification | 155.00 |
| (v) Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) | 100.00 |
| b. Cable Special Relief Petition | 790.00 |
| c. 76.12 Registration Statement (per statement) | 35.00 |
| d. Aeronautical Frequency Usage Notifications (per notice) | 35.00 |
| e. Aeronautical Frequency Usage Waivers (per waiver) | 35.00 |
| 9. Direct Broadcast Satellite | |
| a. New or Major Change Construction Permit | |
| (i) Application for Authorization to Construct a Direct Broadcast Satellite | 2,030.00 |
| (ii) Issuance of Construction Permit & Launch Authority | 19,710.00 |
| (iii) License to Operate Satellite | 565.00 |
| b. Hearing (Comparative New, Major/Minor Modifications, or Comparative Renewal) | 6,760.00 |
| c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) | 100.00 |
| COMMON CARRIER SERVICES | |
| 1. All Common Carrier Services | |
| a. Hearing (Comparative New or Major/Minor Modifications) | 6,760.00 |
| b. Development Authority—Same charge as regular authority in service unless otherwise indicated | |
| c. Formal Complaints and Pole Attachment Complaints Filing Fee | |
| 2. Domestic Public Land Mobile Stations (includes Base, Dispatch, Control & Repeater Stations) | |
| a. New or Additional Facility (per transmitter) | 230.00 |
| b. Major Modifications (per transmitter) | 230.00 |
| c. Fill In Transmitters (per transmitter) | 230.00 |
| d. Major Amendment to a Pending Application (per transmitter) | 230.00 |
| e. Assignment or Transfer | |
| (i) First Call Sign on Application | 230.00 |
| (ii) Each Additional Call Sign | 35.00 |
| f. Partial Assignment (per call sign) | 230.00 |
| g. Renewal (per call sign) | 35.00 |
| h. Minor Modification (per transmitter) | 35.00 |
| i. Special Temporary Authority (per frequency/per location) | 200.00 |
| j. Extension of Time to Construct (per application) | 35.00 |
| k. Notice of Completion of Construction (per application) | 35.00 |
| l. Auxiliary Test Station (per transmitter) | 200.00 |
| m. Subsidiary Communications Service (per request) | 100.00 |
| n. Reinstatement (per application) | 35.00 |
| o. Combining Call Signs (per call sign) | 200.00 |
| p. Standby Transmitter (per transmitter/per location) | 200.00 |
| q. 900 MHz Nationwide Paging | |
| (i) Renewal | |
| (1) Network Organizer | 35.00 |
| (2) Network Operator (per operator/per city) | 35.00 |
| r. Air-Ground Individual License (per station) | |
| (i) Initial License | 35.00 |
| (ii) Renewal of License | 35.00 |
| (iii) Modification of License | 35.00 |
| 3. Cellular Systems (per system) | |
| a. New or Additional Facilities | 230.00 |
| b. Major Modification | 230.00 |
| c. Minor Modification | 60.00 |
| d. Assignment or Transfer (including partial) | 230.00 |
| e. License to Cover Construction | |
| (i) Initial License for Wireline Carrier | $595.00 |
| (ii) Subsequent License for Wireline Carrier | 60.00 |
| (iii) License for Nonwireline Carrier | 60.00 |
| (iv) Fill In License (all carriers) | 60.00 |
| f. Renewal | 35.00 |
| g. Extension of Time to Complete Construction | 35.00 |
| h. Special Temporary Authority (per system) | 200.00 |
| i. Combining Cellular Geographic Service Areas (per system) | 50.00 |
| 4. Rural Radio (includes Central Office, Interoffice, or Relay Facilities) | |
| a. New or Additional Facility (per transmitter) | 105.00 |
| b. Major Modification (per transmitter) | 105.00 |
| c. Major Amendment to Pending Application (per transmitter) | 105.00 |
| d. Minor Modification (per transmitter) | 35.00 |
| e. Assignments or Transfers | |
| (i) First Call Sign on Application | 105.00 |
| (ii) Each Additional Call Sign | 35.00 |
| (iii) Partial Assignment (per call sign) | 105.00 |
| f. Renewal (per call sign) | 35.00 |
| g. Extension of Time to Complete Construction (per application) | 35.00 |

"SCHEDULE OF CHARGES—Continued

| Service | Fee amount |
|---|---|
| h. Notice of Completion of Construction (per application) | 35.00 |
| i. Special Temporary Authority (per frequency/per location) | 200.00 |
| j. Reinstatement (per application) | 35.00 |
| k. Combining Call Signs (per call sign) | 200.00 |
| l. Auxiliary Test Station (per transmitter) | 200.00 |
| m. Standby Transmitter (per transmitter/per location) | 200.00 |
| 5. Offshore Radio Service (Mobile, Subscriber, and Central Stations; fees would also apply to any expansion of this service into coastal waters other than the Gulf of Mexico) | |
| a. New or Additional Facility (per transmitter) | 105.00 |
| b. Major Modifications (per transmitter) | 105.00 |
| c. Fill In Transmitters (per transmitter) | $105.00 |
| d. Major Amendment to Pending Application (per transmitter) | 105.00 |
| e. Minor Modification (per transmitter) | 35.00 |
| f. Assignment or Transfer | |
| (i) Each Additional Call Sign | 35.00 |
| (ii) Partial Assignment (per call sign) | 105.00 |
| g. Renewal (per call sign) | 35.00 |
| h. Extension of Time to Complete Construction (per application) | 35.00 |
| i. Reinstatement (per application) | 35.00 |
| j. Notice of Completion of Construction (per application) | 35.00 |
| k. Special Temporary Authority (per frequency/per location) | 200.00 |
| l. Combining Call Signs (per call sign) | 200.00 |
| m. Auxiliary Test Station (per transmitter) | 200.00 |
| n. Standby Transmitter (per transmitter/per location) | 200.00 |
| 6. Point-to-Point Microwave and Local Television Radio Service | |
| a. Conditional License (per station) | 155.00 |
| b. Major Modification of Conditional License or License Authorization (per station) | 155.00 |
| c. Certification of Completion of Construction (per station) | 155.00 |
| d. Renewal (per licensed station) | 155.00 |
| e. Assignment or Transfer | |
| (i) First Station on Application | 55.00 |
| (ii) Each Additional Station | 35.00 |
| f. Extension of Construction Authorization (per station) | 55.00 |
| g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request) | 70.00 |
| 7. Multipoint Distribution Service (including multichannel MDS) | |
| a. Conditional License (per station) | 155.00 |
| b. Major Modification of Conditional License or License Authorization (per station) | 155.00 |
| c. Certification of Completion of Construction (per channel) | 455.00 |
| d. Renewal (per licensed station) | 155.00 |
| e. Assignment or Transfer | |
| (i) First Station on Application | $55.00 |
| (ii) Each Additional Station | 35.00 |
| f. Extension of Construction Authorization (per station) | 110.00 |
| g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request) | 70.00 |
| 8. Digital Electronic Message Service | |
| a. Conditional License (per nodal station) | 155.00 |
| b. Modification of Conditional License or License Authorization (per nodal station) | 155.00 |
| c. Certification of Completion of Construction (per nodal station) | 155.00 |
| d. Renewal (per licensed nodal station) | 155.00 |
| e. Assignment or Transfer | |
| (i) First Station on Application | 55.00 |
| (ii) Each Additional Station | 35.00 |
| f. Extension of Construction Authorization (per station) | 55.00 |
| g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request) | 70.00 |
| 9. International Fixed Public Radio (Public & Control Stations) | |
| a. Initial Construction Permit (per station) | 510.00 |
| b. Assignment or Transfer (per application) | 510.00 |
| c. Renewal (per license) | 370.00 |
| d. Modification (per station) | 370.00 |
| e. Extension of Construction Authorization (per station) | 185.00 |
| f. Special Temporary Authority or Request for Waiver (per request) | 185.00 |
| 10. Fixed Satellite Transmit/Receive Earth Stations | |
| a. Initial Application (per station) | 1,525.00 |
| b. Modification of License (per station) | 105.00 |
| c. Assignment or Transfer | |
| (i) First Station on Application | 300.00 |
| (ii) Each Additional Station | 100.00 |
| d. Developmental Station (per station) | 1,000.00 |
| e. Renewal of License (per station) | 105.00 |
| f. Special Temporary Authority or Waivers of Prior Construction Authorization (per request) | $105.00 |
| g. Amendment of Application (per station) | 105.00 |
| h. Extension of Construction Permit (per station) | 105.00 |
| 11. Small Transmit/Receive Earth Stations (2 meters or less and operating in the 4/6 GHz frequency band) | |
| a. Lead Application | 3,380.00 |
| b. Routine Application (per station) | 35.00 |
| c. Modification of License (per station) | 105.00 |
| d. Assignment or Transfer | |
| (i) First Station on Application | 300.00 |
| (ii) Each Additional Station | 35.00 |
| e. Developmental Station (per station) | 1,000.00 |
| f. Renewal of License (per station) | 105.00 |
| g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request) | 105.00 |
| h. Amendment of Application (per station) | 105.00 |
| i. Extension of Construction Permit (per station) | 105.00 |
| 12. Receive Only Earth Stations | |
| a. Initial Application for Registration | 230.00 |
| b. Modification of License or Registration (per station) | 105.00 |

| | |
|---|---|
| c. Assignment or Transfer | |
| (i) First Station on Application | 300.00 |
| (ii) Each Additional Station | 100.00 |
| d. Renewal of License (per station) | 105.00 |
| e. Amendment of Application (per station) | 105.00 |
| f. Extension of Construction Permit (per station) | 105.00 |
| g. Waivers (per request) | 105.00 |
| 13. Very Small Aperture Terminal (VSAT) Systems | |
| a. Initial Application (per system) | 5,630.00 |
| b. Modification of License (per system) | 105.00 |
| c. Assignment or Transfer of System | 1,505.00 |
| d. Developmental Station | 1,000.00 |
| e. Renewal of License (per system) | 105.00 |
| f. Special Temporary Authority or Waivers of Prior Construction Authorization (per request) | 105.00 |
| g. Amendment of Application (per system) | $105.00 |
| h. Extension of Construction Permit (per system) | 105.00 |
| 14. Mobile Satellite Earth Stations | |
| a. Initial Application of Blanket Authorization | 5,630.00 |
| b. Initial Application for Individual Earth Station | 1,350.00 |
| c. Modification of License (per system) | 105.00 |
| d. Assignment or Transfer (per system) | 1,505.00 |
| e. Developmental Station | 1,000.00 |
| f. Renewal of License (per system) | 105.00 |
| g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request) | 105.00 |
| h. Amendment of Application (per system) | 105.00 |
| i. Extension of Construction Permit (per system) | 105.00 |
| 15. Radio determination Satellite Earth Stations | |
| a. Initial Application of Blanket Authorization | 5,630.00 |
| b. Initial Application for Individual Earth Station | 1,350.00 |
| c. Modification of License (per system) | 105.00 |
| d. Assignment or Transfer (per system) | 1,505.00 |
| e. Developmental Station | 1,000.00 |
| f. Renewal of License (per system) | 105.00 |
| g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request) | 105.00 |
| h. Amendment of Application (per system) | 105.00 |
| i. Extension of Construction Permit (per system) | 105.00 |
| 16. Space Stations | |
| a. Application for Authority to Construct | 2,030.00 |
| b. Application for Authority to Launch & Operate | |
| (i) Initial Application | 70,000.00 |
| (ii) Replacement Satellite | 70,000.00 |
| c. Assignment or Transfer (per satellite) | 5,000.00 |
| d. Modification | 5,000.00 |
| e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request) | 500.00 |
| f. Amendment of Application | 1,000.00 |
| g. Extension of Construction Permit/ Launch Authorization (per request) | 500.00 |
| 17. Section 214 Applications | |
| a. Overseas Cable Construction | $9,125.00 |
| b. Cable Landing License | |
| (i) Common Carrier | 1,025.00 |
| (ii) Non-Common Carrier | 10,150.00 |
| c. Domestic Cable Construction | 610.00 |
| d. All Other 214 Applications | 610.00 |
| e. Special Temporary Authority (all services) | 610.00 |
| f. Assignments or Transfers (all services) | 610.00 |
| 18. Recognized Private Operating Status (per application) | 610.00 |
| 19. Telephone Equipment Registration | 155.00 |
| 20. Tariff Filings | |
| a. Filing Fee | 490.00 |
| b. Special Permission Filing (per filing) | 490.00 |
| 21. Accounting and Audits | |
| a. Field Audit | 62,290.00 |
| b. Review of Attest Audit | 34,000.00 |
| c. Review of Depreciation Update Study (Single State) | 20,685.00 |
| (i) Each Additional State | 680.00 |
| d. Interpretation of Accounting Rules (per request) | 2,885.00 |
| e. Petition for Waiver (per petition) | 4,660.00 |
| MISCELLANEOUS CHARGES | |
| 1. International Telecommunications Settlements Administrative Fee for Collections (per line item) | 2.00 |
| 2. Radio Operator Examinations | |
| a. Commercial Radio Operator Examination | 35.00 |
| b. Renewal of Commercial Radio Operator License, Permit, or Certificate | 35.00 |
| c. Duplicate or Replacement Commercial Radio Operator License, Permit, or Certificate | 35.00 |
| 3. Ship Inspections | |
| a. Inspection of Oceangoing Vessels Under Title III, Part II of the Communications Act (per inspection) | 620.00 |
| b. Inspection of Passenger Vessels Under Title III, Part III of the Communications Act (per inspection) | 320.00 |
| c. Inspection of Vessels Under the Great Lakes Agreement (per inspection) | 360.00 |
| d. Inspection of Foreign Vessels Under the Safety of Life at Sea (SOLAS) Convention (per inspection) | 540.00 |
| e. Temporary Waiver for Compulsorily Equipped Vessel | $60.00". |

(b) CONFORMING AMENDMENTS.—Section 8 of the Communications Act of 1934 is further amended—

(1) by striking the last sentence of subsection (a);

(2) in subsection (b)(1), by striking "April 1, 1987" and inserting "October 1, 1991"; and

(3) in subsection (d)(1)—

(A) by striking out "to the following radio services:" and inserting "(A) to governmental entities and nonprofit entities licensed in the following radio services:"; and

(B) by inserting "(B)" after "Emergency Radio, or".

(c) EFFECTIVE DATE; IMPLEMENTATION.—The amendments made by this section shall take effect on the date of enactment of this Act, and the Schedule of Charges required by the amendment made by subsection (a) of this section shall be implemented not later than 150 days after the date of enactment of this Act.

SEC. 3002. FINES AND PENALTIES UNDER THE COMMUNICATIONS ACT OF 1934.

(a) DISCRIMINATION AND PREFERENCE BY COMMON CARRIER.—Section 202(c) of the Communications Act of 1934 (47 U.S.C. 202(c)) is amended—

(1) by striking "$500" and inserting "$6,000"; and

(2) by striking "$25" and inserting "$300".

(b) FAILURE IN FILING OF SCHEDULE OF CHARGES.—Section 203(e) of such Act (47 U.S.C. 203(e)) is amended—

(1) by striking "$500" and inserting "$6,000"; and

(2) by striking "$25" and inserting "$300".

(c) NONCOMPLIANCE WITH RATE ORDERS.—Section 205(b) of such Act (47 U.S.C. 205(b)) is amended by striking "$1,000" and inserting "$12,000".

(d) NONCOMPLIANCE WITH LINE EXTENSION ORDERS.—Section 214(d) of the Act (47 U.S.C. 214(d)) is amended by striking "$100" and inserting "$1,200".

(e) FAILURE TO FILE REPORTS OR INFORMATION.—Section 219(b) of the Act (47 U.S.C. 219(b)) is amended by striking "$100" and inserting "$1,200".

(f) RECORDKEEPING FAILURES.—Section 220(d) of the Act (47 U.S.C. 220(d)) is

amended by striking "$500" and inserting "$6,000".

(g) NONCOMPLIANCE WITH SHIPBOARD RADIO REQUIREMENTS.—Section 364 of such Act (47 U.S.C. 362) is amended—

(1) by striking "$500" in subsection (a) and inserting "$5,000"; and

(2) by striking "$100" in subsection (b) and inserting "$1,000".

(h) NONCOMPLIANCE WITH PASSENGER VESSEL RADIO REQUIREMENTS.—Section 386 of such Act (47 U.S.C. 386) is amended—

(1) by striking "$500" in subsection (a) and inserting "$5,000"; and

(2) by striking "$100" in subsection (b) and inserting "$1,000".

(i) GENERAL FORFEITURES.—Subsection (b) of section 503 of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended—

(1) by inserting "(1)" after "(b)" at the beginning of such subsection; and

(2) by striking paragraph (2) and inserting the following:

"(2)(A) If the violator is (i) a broadcast station licensee or permittee, (ii) a cable television operator, or (iii) an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument or authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $25,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $250,000 for any single act or failure to act described in paragraph (1) of this subsection.

"(B) If the violator is a common carrier subject to the provisions of this Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this subsection shall not exceed $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act described in paragraph (1) of this subsection.

"(C) In any case not covered in subparagraph (A) or (B), the amount of any forfeiture penalty determined under this subsection shall not exceed $10,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $75,000 for any single act or failure to act described in paragraph (1) of this subsection.

"(D) The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.".

**Subtitle B—NRC User Fees**

SEC. 3201. NRC USER FEES.

Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Public Law 99-272) is amended to read as follows:

"(1) IN GENERAL.—The Nuclear Regulatory Commission shall assess and collect annual charges from its licensees on a fiscal year basis, except that—

"(A) the maximum amount of the aggregate charges assessed pursuant to this paragraph in any fiscal year may not exceed an amount that, when added to other amounts collected by the Commission for such fiscal year under other provisions of law, is estimated to be equal to 33 percent of the costs incurred by the Commission with respect to such fiscal year, except that for fiscal year 1990 such maximum amount shall be estimated to be equal to 45 percent of the costs incurred by the Commission for fiscal year 1990; and

"(B) any such charge assessed pursuant to this paragraph shall be reasonably related to the regulatory service provided by the Commission and shall fairly reflect the cost to the Commission of providing such service.

"(2) ESTABLISHMENT OF AMOUNT BY RULE.—The amount of the charges assessed pursuant to this paragraph shall be established by rule.".

**TITLE IV—CIVIL SERVICE AND POSTAL SERVICE PROGRAMS**

SEC. 4001. BUDGETARY TREATMENT OF THE POSTAL SERVICE FUND.

(a) TREATMENT OF THE POSTAL SERVICE FUND.—

(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by inserting after section 2009 the following:

**"§ 2009a. Budgetary treatment of the Postal Service Fund**

"Notwithstanding any other provision of law, the receipts and disbursements of the Postal Service Fund, including disbursements for administrative expenses incurred in connection with the Fund—

"(1) shall not be included in the totals of—

"(A) the budget of the United States Government as submitted by the President, or

"(B) the congressional budget (including allocations of budget authority and outlays provided therein);

"(2) shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government; and

"(3) shall be exempt from any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985, and shall not be counted for purposes of calculating the deficit under section 3(6) of the Congressional Budget and Impoundment Control Act of 1974 for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 nor counted in calculating the excess deficit for purposes of sections 251 and 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, for any fiscal year."

(2) CHAPTER ANALYSIS.—The analysis for chapter 20 of title 39, United States Code, is amended by inserting after the item relating to section 2009 the following:

"2009a. Budgetary treatment of the Postal Service Fund."

(b) CONSTRUCTION.—Nothing in any amendment made by subsection (a) shall be considered to diminish the oversight responsibilities or authority of the Congress under law, rule, or regulation with respect to the budget and operations of the United States Postal Service.

(c) APPLICABILITY.—The amendments made by this section shall apply with respect to budgets for fiscal years beginning after September 30, 1989.

SEC. 4002. FUNDING OF COST-OF-LIVING ADJUSTMENTS FOR CERTAIN POSTAL SERVICE ANNUITANTS AND SURVIVOR ANNUITANTS.

(a) IN GENERAL.—Section 8348 of title 5, United States Code, is amended by adding at the end the following:

"(m)(1) Notwithstanding any other provision of law, the United States Postal Service shall be liable for that portion of any estimated increase in the unfunded liability of the Fund which is attributable to any benefits payable from the Fund to former employees of the Postal Service who first become annuitants by reason of separation from the Postal Service on or after October 1, 1986, or to their survivors, or to the survivors of individuals who die on or after October 1, 1986, while employed by the Postal Service, when the increase results from a cost-of-living adjustment under section 8340 of this title.

"(2) The estimated increase in the unfunded liability referred to in paragraph (1) of this subsection shall be determined by the Office after consultation with the Postal Service. The Postal Service shall pay the amount so determined to the Office in 15 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, and with the first payment thereof due at the end of the fiscal year in which the cost-of-living adjustment with respect to which the payment relates becomes effective.

"(3) In determining any amount for which the Postal Service is liable under this subsection, the amount of the liability shall be prorated to reflect only that portion of total service (used in computing the benefits involved) which is attributable to civilian service performed after June 30, 1971, as estimated by the Office."

(b) EFFECTIVE DATE; SIZE OF ANNUAL INSTALLMENTS TO FUND EARLIER COLAs; ADDITIONAL AMOUNT INITIALLY PAYABLE.—

(1) EFFECTIVE DATE.—This section and the amendment made by this section shall be effective as of October 1, 1986.

(2) SIZE OF ANNUAL INSTALLMENTS TO FUND PREVIOUS YEARS' COLAs.—Notwithstanding any provision of section 8348(m) of title 5, United States Code (as added by subsection (a)), the estimated increase in the unfunded liability referred to in paragraph (1) of such section 8348(m) shall be payable based on annual installments equal to—

(A) $100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1987;

(B) $6,000,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1988; and

(C) $15,000,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1989.

(3) ADDITIONAL AMOUNT PAYABLE.—

(A) GENERALLY.—The first payment made under the provisions of section 8348(m) of title 5, United States Code (as added by subsection (a)) shall include, in addition to the amount which would otherwise be payable at that time, an amount equal to the sum of any amounts which would have been due under those provisions in any prior year if this section had been enacted before October 1, 1986.

(B) COMPUTATION METHOD.—Subject to paragraph (2), the additional amount payable under this paragraph shall be computed in accordance with section 8348(m) of title 5, United States Code (as added by subsection (a)), and shall include interest. Interest on an amount—

(i) shall be computed at the rate used in the most recent valuation of the Civil Service Retirement System;

(ii) shall accrue, and be compounded, annually; and

(iii) shall be computed for the period beginning on the date by which such amount

should have been paid (if this section had been enacted before October 1, 1986) and ending on the date on which payment is made.

SEC. 4003. FUNDING OF HEALTH BENEFIT PREMIUMS FOR SURVIVORS OF EMPLOYEES AND FORMER EMPLOYEES OF THE POSTAL SERVICE.

(a) GENERALLY.—Section 8906(g)(2) of title 5, United States Code, is amended by inserting "or for a survivor of such an individual or of an individual who died on or after October 1, 1986, while employed by the United States Postal Service," after "1986,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1989, and shall apply with respect to amounts payable for periods beginning on or after that date.

SEC. 4004. POSTAL SERVICE PAYMENTS TO THE EMPLOYEES' COMPENSATION FUND.

(a) AMENDMENT.—Section 2003 of title 39, United States Code, is amended by adding at the end the following:

"(g) Notwithstanding any provision of section 8147 of title 5, whenever the Secretary of Labor furnishes a statement to the Postal Service indicating an amount due from the Postal Service under subsection (b) of that section, the Postal Service shall make the deposit required pursuant to that statement (and any additional payment under subsection (c) of that section, to the extent that it relates to the period covered by such statement) not later than 30 days after the date on which such statement is so furnished. Any deposit (and any additional payment) which is subject to the preceding sentence shall, once made, remain available without fiscal year limitation."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1989.

SEC. 4005. PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (c), any lump-sum credit payable to an employee or Member pursuant to the election of an alternative form of annuity by such employee or Member under section 8343a or section 8420a of title 5, United States Code, shall be paid in accordance with the schedule under subsection (b) (instead of the schedule which would otherwise apply), if the commencement date of the annuity payable to such employee or Member occurs after December 2, 1989, and before October 1, 1990.

(b) SCHEDULE OF PAYMENTS.—The schedule of payment of any lump-sum credit subject to this section is as follows:

(1) 50 percent of the lump-sum credit shall be payable on the date on which, but for the enactment of this section, the full amount of the lump-sum credit would otherwise be payable.

(2) The remainder of the lump-sum credit shall be payable on the date which occurs 12 months after the date described in paragraph (1).

An amount payable in accordance with paragraph (2) shall be payable with interest, computed using the rate under section 8334(e)(3) of title 5, United States Code.

(c) EXCEPTIONS.—The Office of Personnel Management shall prescribe regulations to provide that, unless the individual involved indicates otherwise by written notice to the Office (submitted at such time and in such manner as the regulations may require), this section shall not apply—

(1) in the case of any individual who is separated from Government service involuntarily, other than for cause on charges of misconduct or delinquency; and

(2) in the case of any individual as to whom the application of this section would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

(d) ANNUITY BENEFITS NOT AFFECTED.—Nothing in this section shall affect the commencement date, the amount, or any other aspect of any annuity benefits payable under section 8343a or section 8420a of title 5, United States Code.

(e) DEFINITIONS.—For purposes of this section, the terms "lump-sum credit", "employee", and "Member" each has the meaning given such term by section 8331 or section 8401 of title 5, United States Code, as appropriate.

SEC. 4006. COORDINATION.

For purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987 (2 U.S.C. 909), any transfer resulting from any provision of this title or any of the amendments made by this title is a necessary (but secondary) result of a significant policy change (within the meaning of section 202(b) of such Act).

## TITLE V—VETERANS PROGRAMS

SEC. 5001. EXTENSION OF LOAN FEE.

Section 1829(c) of title 38, United States Code, is amended by striking out "September 30, 1989" and inserting in lieu thereof "September 30, 1990".

SEC. 5002. POSTPONEMENT OF RESTRICTIONS ON WITHOUT-RECOURSE VENDEE LOAN SALES.

Section 1833(a)(3) of title 38, United States Code, is amended by striking out "October 1, 1989" each place it appears and inserting in lieu thereof "October 1, 1990".

SEC. 5003. PROCEEDS OF VENDEE LOAN SALES.

(a) IN GENERAL.—Section 1833 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of law, the amount received from the sale of any note evidencing a loan secured by real property described in subsection (a)(1) of this section shall be credited, without any reduction and for the fiscal year in which the amount is received, as offsetting collections of—

"(1) the revolving fund for which a fee under section 1829 of this title was collected (or was exempted from being collected) at the time of the original guaranty of the loan that was secured by the same property; or

"(2) in any case in which there was no requirement of (or exemption from) a fee at the time of the original guaranty of the loan that was secured by the same property, the Loan Guaranty Revolving Fund; and

the total so credited to any revolving fund for a fiscal year shall offset outlays attributed to such revolving fund during such fiscal year.".

(b) EFFECTIVE DATE.—Subsection (e) of section 1833 of title 38, United States Code, as added by subsection (a), shall apply with respect to amounts referred to in such subsection (e) received on or after October 1, 1989.

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## TITLE VI—MEDICARE, MEDICAID, MATERNAL AND CHILD HEALTH, AND OTHER HEALTH PROVISIONS

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SEC. 6001. EXTENSION OF REDUCTIONS UNDER ORIGINAL SEQUESTER ORDER AND APPLICABILITY OF NEW SEQUESTER ORDER.

*Notwithstanding any other provision of law (including section 11002 or any other provision of this Act, other than section 6201), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on October 16, 1989, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through December 31, 1989, with respect to payments for items and services under part A of such title (including payments under section 1886 of such title attributable or allocated to such part). Each such payment made for items and services provided during fiscal year 1990 after such date shall be increased by 1.42 percent above what it would otherwise be under this Act.*

**SEC. 6002. REDUCTION IN PAYMENTS FOR CAPITAL-RELATED COSTS OF INPATIENT HOSPITAL SERVICES FOR FISCAL YEAR 1990.**

*Section 1886(g)(3)(A) of the Social Security Act (42 U.S.C. 1395ww(g)(3)(A)) is amended—*

*(1) in clause (iii), by striking "and";*

*(2) in clause (iv), by striking the period at the end and inserting ", and"; and*

*(3) by adding at the end the following new clause:*

*"(v) 15 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during the period beginning January 1, 1990, and ending September 30, 1990.".*

SEC. 6003. PROSPECTIVE PAYMENT HOSPITALS.

(a) CHANGES IN HOSPITAL UPDATE FACTORS.—

(1) IN GENERAL.—Section 1886(b)(3)(B)(i) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended—

(A) by striking "and" at the end of subclause (IV),

(B) in subclause (V), by striking "1990" and inserting "1991" and redesignating such subclause as subclause (VI), and

(C) by inserting after subclause (IV) the following new subclause:

"(V) for fiscal year 1990, the market basket percentage increase plus 4.22 percentage points for hospitals located in a rural area, the market basket percentage increase plus 0.12 percentage points for hospitals located in a large urban area, and the market basket percentage increase minus 0.53 percentage points for hospitals located in other urban areas, and".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to payments for discharges occurring on or after January 1, 1990.

(3) INDEXING OF FUTURE APPLICABLE PERCENTAGE INCREASES.—For discharges occurring on or after October 1, 1990, the applicable percentage increase (described in section 1886(b)(3)(B) of the Social Security Act) for discharges occurring during fiscal year 1990 is deemed to have been such percentage increase as amended by paragraph (1).

(b) REDUCTION IN DRG WEIGHTING FACTORS FOR FISCAL YEAR 1990; FUTURE ANNUAL RECALIBRATION OF DRG WEIGHTS ON BUDGET-NEUTRAL BASIS.—Section 1886(d)(4)(C) of such Act (42 U.S.C. 1395ww(d)(4)(C)) is amended—

(1) by striking "(C)" and inserting "(C)(i)"; and

(2) by adding at the end the following new clauses:

"(ii) For discharges in fiscal year 1990, the Secretary shall reduce the weighting factor for each diagnosis-related group by 1.22 percent.

"(iii) Any such adjustment under clause (i) for discharges in a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection for discharges in the fiscal year are not greater or less than those that would have been made for discharges in the year without such adjustment.

"(iv) The Secretary shall include recommendations with respect to adjustments to weighting factors under clause (i) in the annual report to Congress required under subsection (e)(3)(B).".

(c) INCREASE IN DISPROPORTIONATE SHARE ADJUSTMENT.—

(1) CHANGE IN FORMULA.—Section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(A) in clause (iv)(I), by striking "the following formula" and all that follows through "(as defined in clause (vi));" and inserting "the applicable formula described in clause (vii);", and

(B) by adding at the end the following new clause:

"(vii) The formula used to determine the disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (iv)(I) is—

"(I) in the case of such a hospital with a disproportionate patient percentage (as defined in clause (vi)) greater than 20.2, (P-20.2)(.65) + 5.62, or

"(II) in the case of any other such hospital, (P-15)(.6) + 2.5,

where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi)).".

(2) TREATMENT OF RURAL HOSPITALS FOR DISPROPORTIONATE SHARE CALCULATION.—Section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)), as amended by paragraph (1), is amended—

(A) in clause (iv)—

(i) in subclause (II), by striking "or",

(ii) in subclause (III), by inserting "in subclause (IV) or (V) or" after "described",

(iii) by striking the period at the end of subclause (III) and inserting a semicolon, and

(iv) by adding at the end the following new subclauses:

"(IV) is located in a rural area, is classified as a rural referral center under subparagraph (C), and is classified as a sole community hospital under subparagraph (D), is equal to 10 percent or, if greater, the percent determined in accordance with the applicable formula described in clause (viii); or

"(V) is located in a rural area, is classified as a rural referral center under subparagraph (C), and is not classified as a sole community hospital under subparagraph (D), is equal to the percent determined in accordance with the applicable formula described in clause (viii); or

"(VI) is located in a rural area, is classified as a sole community hospital under subparagraph (D), and is not classified as a rural referral center under subparagraph (C), is 10 percent.",

(B) in clause (v)—

(i) in subclause (III), by striking "area" and inserting "area and is not described in subclause (II)",

(ii) by redesignating subclauses (II) and (III) as subclauses (III) and (IV), and

(iii) by inserting after subclause (I) the following new subclause:

"(II) 30 percent, if the hospital is located in a rural area and has more than 100 beds, or is located in a rural area and is classified as a sole community hospital under subparagraph (D),", and

(C) by adding at the end the following new clause:

"(viii) The formula used to determine the disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (iv)(IV) or (iv)(V) is the percentage determined in accordance with the following formula: (P-30)(.6) + 4.0, where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi)).".

(3) INCREASE FOR HOSPITALS WITH DISPROPORTIONATE INDIGENT CARE REVENUES.—Section 1886(d)(5)(F)(iii) of such Act (42 U.S.C. 1395ww(d)(5)(F)(iii)) is amended by striking "25 percent" and inserting "30 percent".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to discharges occurring on or after April 1, 1990.

(d) EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C) of the Social Security Act as of September 30, 1989, including a hospital so classified as a result of section 9302(d)(2) of the Omnibus Budget Reconciliation Act of 1986, shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1989, and before October 1, 1992.

(e) CRITERIA AND PAYMENT FOR SOLE COMMUNITY HOSPITALS.—

(1) IN GENERAL.—(A) Section 1886(d)(5) of the Social Security Act (42 U.S.C. 1395ww(d)(5)) is amended—

(i) by transferring clause (iv) of subparagraph (C) to the end and by redesignating it as subparagraph (H),

(ii) by transferring clause (iii) of subparagraph (C) to the end and by redesignating it as subparagraph (I),

(iii) in subparagraph (D), by striking "(D)(i)" and inserting "(E)(i)", and

(iv) by amending clause (ii) of subparagraph (C) to read as follows:

"(D)(i) For any cost reporting period beginning on or after April 1, 1990, with respect to a subsection (d) hospital which is a sole community hospital, payment under paragraph (1)(A) shall be—

"(I) an amount based on 100 percent of the hospital's target amount for the cost reporting period, as defined in subsection (b)(3)(C), or

"(II) the amount determined under paragraph (1)(A)(iii),

whichever results in greater payment to the hospital.

"(ii) In the case of a sole community hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

"(iii) The term 'sole community hospital' means any hospital—

"(I) that the Secretary determines is located more than 35 road miles from another hospital, or

"(II) that, by reason of factors such as the time required for an individual to travel to the nearest alternative source of appropriate inpatient care (in accordance with standards promulgated by the Secretary), location, weather conditions, travel conditions, or absence of other like hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to individuals in a geographic area who are entitled to benefits under part A.

"(iv) The Secretary shall promulgate a standard for determining whether a hospital meets the criteria for classification as a sole community hospital under clause (iii)(II) because of the time required for an individual to travel to the nearest alternative source of appropriate inpatient care.".

(B) Section 1886(b)(3) of such Act (42 U.S.C. 1395ww(b)(3)), is further amended—

(i) in subparagraph (A), by striking "(A) For purposes of this subsection" and inserting "(A) Except as provided in subparagraph (C), for purposes of this subsection", and

(ii) by adding at the end the following new subparagraph:

"(C) In the case of a hospital that is a sole community hospital (as defined in subsection (d)(5)(D)(iii)), the term 'target amount' means—

"(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

"(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4)) recognized under this title for the hospital for the 12-month cost reporting

period (in this subparagraph referred to as the 'base cost reporting period') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

"(II) the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

"(ii) with respect to a later cost reporting period, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(i) for discharges occurring in the fiscal year in which that later cost reporting period begins.

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.".

(2) CONFORMING AMENDMENTS.—Such Act is further amended—

(A) in section 1833(h)(1)(D), by striking "the last sentence of section 1886(d)(5)(C)(ii)" and inserting "section 1886(d)(5)(D)(iii)";

(B) in section 1886(d)(5)(C)(i)—

(i) by striking "(C)(i)(I)" and inserting "(C)(i)", and

(ii) by redesignating subclause (II) as clause (ii) and by striking "subclause (I)" each place it appears in such clause and inserting "clause (i)";

(C) in section 1886(d)(9)(B)(ii)(IV), by striking "(D)(v)" and inserting "(D)(iii)";

(D) in section 1886(d)(9)(D)—

(i) by striking clause (iv),

(ii) by transferring clause (iii) to the end and redesignating it as clause (iv), and by striking "(C)(iii)" and inserting "(H)", and

(iii) by redesignating clause (v) as clause (iii); and

(E) in section 1886(g)(3)(B), by striking "(d)(5)(C)(ii)" and inserting "(d)(5)(D)(iii)".

(3) CONTINUATION OF SOLE COMMUNITY HOSPITAL DESIGNATION FOR CURRENT SOLE COMMUNITY HOSPITALS.—Any hospital classified as a sole community hospital under section 1886(d)(5)(C)(ii) of the Social Security Act on the date of the enactment of this Act that will no longer be classified as a sole community hospital after such date as a result of the amendments made by paragraph (1) shall continue to be classified as a sole community hospital for purposes of section 1886(d)(5)(D) of such Act.

(f) CRITERIA AND PAYMENT FOR MEDICARE-DEPENDENT, SMALL RURAL HOSPITALS.—

(1) CRITERIA.—Section 1886(d)(5) of the Social Security Act (42 U.S.C. 1395ww(d)(5)), as amended by subsection (e)(1)(A), is further amended by inserting after subparagraph (F) the following new subparagraph:

"(G)(i) For any cost reporting period beginning on or after April 1, 1990, and ending on or before March 31, 1993, with respect to a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be—

"(I) an amount based on 100 percent of the hospital's target amount for the cost reporting period, as defined in subsection (b)(3)(D), or

"(II) the amount determined under paragraph (1)(A)(iii),

whichever results in the greater payment to the hospital.

"(ii) In the case of a medicare dependent, small rural hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

"(iii) The term 'medicare-dependent, small rural hospital' means, with respect to any cost reporting period to which clause (i) applies, any hospital—

"(I) located in a rural area,

"(II) that has not more than 100 beds,

"(III) that is not classified as a sole community hospital under subparagraph (D), and

"(IV) for which not less than 60 percent of its inpatient days or discharges during the cost reporting period beginning in fiscal year 1987 were attributable to inpatients entitled to benefits under part A.".

(2) PAYMENT.—Section 1886(b)(3) of such Act (42 U.S.C. 1395ww(b)(3)), as amended by subsection (e)(1)(B), is further amended—

(i) in subparagraph (A), by striking "subparagraph (C)" and inserting "subparagraphs (C) and (D)", and

(ii) by adding at the end the following new subparagraph:

"(D) For cost reporting periods ending on or before March 31, 1993, in the case of a hospital that is a medicare-dependent, small rural hospital (as defined in subsection (d)(5)(G)), the term 'target amount' means—

"(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

"(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4)) recognized under this title for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the 'base cost reporting period') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

"(II) the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

"(ii) with respect to a later cost reporting period, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(i) for discharges occurring in the fiscal year in which that later cost reporting period begins.

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.".

(g) ESSENTIAL ACCESS COMMUNITY HOSPITAL PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—

(A) IN GENERAL.—Part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is amended by adding at the end the following new section:

"ESSENTIAL ACCESS COMMUNITY HOSPITAL PROGRAM

"SEC. 1820. (a) IN GENERAL.—There is hereby established a program under which the Secretary—

"(1) shall make grants to not more than 7 States to carry out the activities described in subsection (d)(1);

"(2) shall make grants to eligible hospitals and facilities (or consortia of hospitals and facilities) to carry out the activities described in subsection (d)(2); and

"(3) shall designate (under subsection (i)) hospitals and facilities located in States receiving grants under paragraph (1) as essential access community hospitals or rural primary care hospitals.

"(b) ELIGIBILITY OF STATES FOR GRANTS.—A State is eligible to receive a grant under subsection (a)(1) only if the State submits to the Secretary, at such time and in such form as the Secretary may require, an application containing—

"(1) assurances that the State—

"(A) has developed, or is in the process of developing, a State rural health care plan that—

"(i) provides for the creation of one or more rural health networks (as defined in subsection (g)) in the State,

"(ii) promotes regionalization of rural health services in the State,

"(iii) improves access to hospital and other health services for rural residents of the State, and

"(iv) enhances the provision of emergency and other transportation services related to health care;

"(B) has developed the rural health care plan described in subparagraph (A) in consultation with the hospital association of the State and rural hospitals located in the State (or, in the case of a State in the process of developing such plan, that assures the Secretary that it will consult with its State hospital association and rural hospitals located in the State in developing such plan); and

"(C) has designated, or is in the process of designating, rural non-profit or public hospitals or facilities located in the State as essential access community hospitals or rural primary care hospitals within such networks; and

"(2) such other information and assurances as the Secretary may require.

"(c) ELIGIBILITY OF HOSPITALS AND CONSORTIA FOR GRANTS.—

"(1) IN GENERAL.—Except as provided in paragraph (3), a hospital or facility is eligible to receive a grant under subsection (a)(2) only if the hospital or facility—

"(A) is located in a State receiving a grant under subsection (a)(1);

"(B) is designated as an essential access community hospital or a rural primary care hospital by the State in which it is located or is a member of a rural health network (as defined in subsection (g));

"(C) submits to the State in which it is located and to the Secretary, at such time and in such form as the Secretary may require, an application containing such information and assurances as the Secretary may require; and

"(D) the State in which the hospital or facility is located certifies to the Secretary that—

"(i) the receiving of such a grant by the hospital or facility is consistent with the State's rural health care plan (described in subsection (b)(1)(A)), and

"(ii) the State has approved the application submitted under subparagraph (C).

"(2) TREATMENT OF CONSORTIA.—A consortium of hospitals or facilities each of which is part of the same rural health network is eligible to receive a grant under subsection (a)(2) if each of its members would individually be eligible to receive such a grant.

"(3) ELIGIBILITY OF RPC HOSPITALS NOT LOCATED IN A STATE RECEIVING GRANT.—A facility designated as a rural primary care hospital by the Secretary under subsection (i)(2)(C) shall be eligible to receive a grant under subsection (a)(2).

"(d) ACTIVITIES FOR WHICH GRANTS MAY BE USED.—

"(1) GRANTS TO STATES.—A State shall use a grant received under subsection (a)(1) to carry out the demonstration program established under this section in the State. Such grant may be used for engaging in activities relating to planning and implementing a rural health care plan and rural health networks, designating hospitals or facilities in the State as essential access community hospitals or rural primary care hospitals, and developing and supporting communication and emergency transportation systems.

"(2) GRANTS TO HOSPITALS, FACILITIES, AND CONSORTIA.—A hospital or facility shall use a grant received under subsection (a)(2) to finance the costs it incurs in converting itself to a rural primary care hospital or an essential access community hospital or in becoming part of a rural health network in the State in which it is located, including capital costs, costs incurred in the development of necessary communications systems, and costs incurred in the development of an emergency transportation system. A consortium shall use a grant received under subsection (a)(2) to finance the costs it incurs in converting hospitals or facilities that are part of the consortium into rural primary care hospitals or in developing and implementing a rural health network consisting of its members in the State in which it is located, including capital costs, costs incurred in the development of necessary communications systems, and costs incurred in the development of an emergency transportation system.

"(e) DESIGNATION BY STATE OF ESSENTIAL ACCESS COMMUNITY HOSPITALS.—A State may designate a hospital as an essential access community hospital only if the hospital—

"(1) is located in a rural area (as defined in section 1886(d)(2)(D));

"(2)(A) is located more than 35 miles from any hospital that either (i) has been designated as an essential access community hospital, (ii) is classified by the Secretary as a rural referral center under section 1886(d)(5)(C), or (iii) is located in an urban area that meets the criteria for classification as a regional referral center under such section, or (B) meets such other criteria relating to geographic location as the State may impose with the approval of the Secretary;

"(3) has at least 75 inpatient beds or is located more than 35 miles from any other hospital;

"(4) has in effect an agreement to provide emergency and medical backup services to rural primary care hospitals participating in the rural health network of which it is a member and throughout its service area;

"(5) has in effect an agreement, with each rural primary care hospital participating in the rural health network of which it is a member, to accept patients transferred from such primary care hospitals, to receive data from and transmit data to such primary care hospitals, and to provide staff privileges to physicians providing care at such primary care hospitals; and

"(6) meets any other requirements imposed by the State with the approval of the Secretary.

"(f) DESIGNATION BY STATE OF RURAL PRIMARY CARE HOSPITALS.—

"(1) CRITERIA FOR DESIGNATION.—A State may designate a facility as a rural primary care hospital only if the facility—

"(A) is located in a rural area (as defined in section 1886(d)(2)(D));

"(B) at the time such facility applies to the State for designation as a rural primary care hospital, is a hospital with a participation agreement in effect under section 1866(a) and had not been found, on the basis of a survey under section 1864, to be in violation of any requirement to participate as a hospital under this title;

"(C) has ceased, or agrees (upon the approval of such application) to cease, providing inpatient care (except as required under subparagraph (F));

"(D) in the case of a facility that is a member of a rural health network, has in effect an agreement to participate with other hospitals and facilities in the communications system of such network, including the network's system for the electronic sharing of patient data, including telemetry and medical records, if the network has in operation such a system;

"(E) makes available 24-hour emergency care;

"(F) provides not more than 6 inpatient beds (meeting such conditions as the Secretary may establish) for providing inpatient care for a period not to exceed 72 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions) to patients requiring stabilization before discharge or transfer to a hospital;

"(G) meets such staffing requirements as would apply under section 1861(e) to a hospital located in a rural area, except that—

"(i) the facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open, except insofar as the facility is required to provide emergency care on a 24-hour basis under subparagraph (E),

"(ii) the facility may provide any services otherwise required to be provided by a full-time, on-site dietician, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off-site basis, and

"(iii) the inpatient care described in subparagraph (F) may be provided by a physician's assistant or nurse practitioner, subject to the oversight of a physician; and

"(H) meets the requirements of subparagraphs (C) through (J) of paragraph (2) of section 1861(aa) and of clauses (ii) and (iv) of the second sentence of that paragraph.

"(2) PREFERENCE GIVEN TO HOSPITALS OR FACILITIES PARTICIPATING IN RURAL HEALTH NETWORK.—In designating facilities as rural primary care hospitals under paragraph (1), the State shall give preference to hospitals or facilities participating in a rural health network.

"(3) PERMITTING RURAL PRIMARY CARE HOSPITALS TO MAINTAIN SWING BEDS.—Nothing in this subsection shall be construed to prohibit a State from designating a facility as a rural primary care hospital solely because the facility has entered into an agreement with the Secretary under section 1883 under which the facility's inpatient hospital facilities may be used for the furnishing of extended care services.

"(g) RURAL HEALTH NETWORK DEFINED.—For purposes of this section, the term 'rural health network' means, with respect to a State, an organization—

"(1) consisting of—

"(A) at least 1 hospital that—

"(i) the State has designated or plans to designate as an essential access community hospital under subsection (b)(1)(C),

"(ii) is classified by the Secretary as rural referral center under section 1886(d)(5)(C), or

"(iii) is located in an urban area and meets the criteria for classification as a regional referral center under such section, and

"(B) at least 1 facility that the State has designated or plans to designate as a rural primary care hospital, and

"(2) the members of which have entered into agreements regarding—

"(A) patient referral and transfer,

"(B) the development and use of communications systems, including (where feasible) telemetry systems and systems for electronic sharing of patient data, and

"(C) the provision of emergency and nonemergency transportation among the members.

"(h) LIMIT ON AMOUNT OF GRANT TO HOSPITAL OR FACILITY.—A grant made to a hospital or facility under subsection (a)(2) may not exceed $200,000.

"(i) ELIGIBILITY OF HOSPITALS OR FACILITIES FOR DESIGNATION BY SECRETARY.—

"(1) ESSENTIAL ACCESS COMMUNITY HOSPITAL.—(A) The Secretary shall designate a hospital as an essential access community hospital if the hospital—

"(i) is located in a State receiving a grant under subsection (a)(1);

"(ii) is designated as an essential access community hospital by the State in which it is located (except as provided in subparagraph (B)); and

"(iii) meets such other criteria as the Secretary may require.

"(B) In the case of a hospital that is not eligible for designation as an essential access community hospital under this paragraph solely because it is not designated as an essential access community hospital by the State in which it is located, the Secretary may designate such hospital as an essential access community hospital under this paragraph if the hospital is not so designated by the State in which it is located solely because of its failure to meet the criteria described in paragraph (3) of subsection (e).

"(2) RURAL PRIMARY CARE HOSPITAL.—(A) The Secretary shall designate a facility as a rural primary care hospital if the facility—

"(i) is located in a State receiving a grant under subsection (a)(1);

"(ii) is designated as a rural primary care hospital by the State in which it is located (except as provided in subparagraph (B)); and

"(iii) meets such other criteria as the Secretary may require.

"(B) In the case of a facility that is not eligible for designation as a rural primary care hospital under this paragraph solely because it is not designated as a rural primary care hospital by the State in which it is located, the Secretary may designate such facility as a rural primary care hospital under this paragraph if the facility is not so designated by the State in which it is located solely because of its failure to meet the criteria de-

scribed in subparagraphs (C), (F), or (G) of subsection (f)(1).

"(C) The Secretary may designate not more than 15 facilities as rural primary care hospitals under this paragraph that do not meet the requirements of clauses (i) and (ii) of subparagraph (A) if such a facility meets the criteria described in subparagraphs (A), (B), and (E) of subsection (f)(1), except that nothing in this subparagraph shall be construed to prohibit the Secretary from designating a facility as a rural primary care hospital solely because the facility has entered into an agreement with the Secretary under section 1883 under which the facility's inpatient hospital facilities may be used for the furnishing of extended care services.

"(j) WAIVER OF CONFLICTING PART A PROVISIONS.—The Secretary is authorized to waive such provisions of this part as are necessary to conduct the program established under this section.

"(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Federal Hospital Insurance Trust Fund for each of the fiscal years 1990, 1991, and 1992—

"(1) $10,000,000 for grants to States under subsection (a)(1); and

"(2) $15,000,000 for grants to hospitals, facilities, and consortia under subsection (a)(2).".

(B) MODIFICATION OF RURAL HEALTH CARE TRANSITION GRANT PROGRAM.—(i) Section 4005(e) of the Omnibus Budget Reconciliation Act of 1987 is amended—

(I) in paragraph (1), by adding at the end the following new sentence: "Grants under this paragraph may be used to provide instruction and consultation (and such other services as the Administrator determines appropriate) via telecommunications to physicians in such rural areas (within the meaning of section 1886(d)(2)(D) of the Social Security Act) as are designated either class 1 or class 2 health manpower shortage areas under section 332(a)(1)(A) of the Public Health Service Act.",

(II) in paragraph (3)(A), by striking "an application to the Governor" and inserting "an application to the Administrator and a copy of such application to the Governor",

(III) in paragraph (3)(B), by striking "any application" and all that follows through "accompanied by" and inserting "to the Administrator, within a reasonable time after receiving a copy of an application pursuant to subparagraph (A),",

(IV) in paragraph (6), by striking "2 years" and inserting "3 years",

(V) in paragraph (7)(A), by striking "(D)" and inserting "(B)",

(VI) in paragraph (7)(C), by striking the period at the end and inserting the following: ", except that this limitation shall not apply with respect to a grant used for the purposes described in subparagraph (D).",

(VII) by adding at the end of paragraph (7) the following new subparagraph:

"(D) A hospital may use a grant received under this subsection to develop a plan for converting itself to a rural primary care hospital (as described in section 1820 of the Social Security Act) or to develop a rural health network (as defined in section 1820(g) of such Act) in the State in which it is located if the State is receiving a grant under section 1820(a)(1).", and

(VIII) in paragraph (9), by striking "each of the fiscal years 1989 and 1990" and inserting "fiscal year 1989 and $25,000,000 for each of the fiscal years 1990, 1991, and 1992".

(ii) The amendments made by clause (i) shall apply with respect to applications for grants under the Rural Health Care Transition Grant Program described in section 4005(e) of the Omnibus Budget Reconciliation Act of 1987 submitted on or after October 1, 1989, except that the amendments made by subclauses (V) and (VII) of such clause shall take effect on the date of the enactment of this Act.

(2) TREATMENT OF ESSENTIAL ACCESS COMMUNITY HOSPITALS AS SOLE COMMUNITY HOSPITALS.—Section 1886(d)(5)(D) of such Act (42 U.S.C. 1395ww(d)(5)(D)) (as redesignated and amended by subsection (e)(1)(A)) is further amended—

(A) in clause (iii)—

(i) in subclause (I), by striking "or",

(ii) in subclause (II), by striking the period at the end and inserting ", or", and

(iii) by adding at the end the following new subclause:

"(III) that is designated by the Secretary as an essential access community hospital under section 1820(i)(1).", and

(B) by adding at the end the following new clause:

"(iv) If the Secretary determines that, in the case of a hospital designated by the Secretary as an essential access community hospital under section 1820(i)(1), the hospital has incurred increases in reasonable costs during a cost reporting period as a result of becoming a member of a rural health network (as defined in section 1820(g)) in the State in which it is located, and in incurring such increases, the hospital will increase its costs for subsequent cost reporting periods, the Secretary shall increase the hospital's target amount under subsection (b)(3)(C) to account for such incurred increases.".

(3) COVERAGE OF, AND PAYMENT FOR, INPATIENT RURAL PRIMARY CARE HOSPITAL SERVICES.—

(A) DEFINITIONS.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"Rural Primary Care Hospital; Rural Primary Care Hospital Services

"(mm)(1) The term 'rural primary care hospital' means a facility designated by the Secretary as a rural primary care hospital under section 1820(i)(2).

"(2) The term 'inpatient rural primary care hospital services' means items and services, furnished to an inpatient of a rural primary care hospital by such a hospital, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.".

(B) COVERAGE AND PAYMENT.—(i) Section 1812(a)(1) of such Act (42 U.S.C. 1395d(a)(1)) is amended by inserting "and inpatient rural primary care hospital services" after "inpatient hospital services".

(ii) Section 1814(a) of such Act (42 U.S.C. 1395f(a)) is amended—

(I) by striking "and" at the end of paragraph (6),

(II) by striking the period at the end of paragraph (7) and inserting "; and", and

(III) by inserting after paragraph (7) the following new paragraph:

"(8) in the case of inpatient rural primary care hospital services, a physician certifies that such services were required to be immediately furnished on a temporary, inpatient basis.".

(iii) Section 1814 of such Act is further amended—

(I) in subsection (b), by inserting ", other than a rural primary care hospital providing inpatient rural primary care hospital services," after "providing hospice care", and

(II) by adding at the end the following new subsection:

"Payment for Inpatient Rural Primary Care Hospital Services

"(l)(1) The amount of payment under this part for inpatient rural primary care hospital services—

"(A) in the case of the first 12-month cost reporting period for which the facility operates as such a hospital, is the reasonable costs of the facility in providing inpatient rural primary care hospital services during such period, as such costs are determined on a per diem basis, and

"(B) in the case of a later reporting period, is the per diem payment amount established under this paragraph for the preceding 12-month cost reporting period, increased by the applicable percentage increase under section 1886(b)(3)(B)(i) for that particular cost reporting period applicable to hospitals located in a rural area.

The payment amounts otherwise determined under this paragraph shall be reduced, to the extent necessary, to avoid duplication of any payment made under section 1820(a)(2) (or under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987) to cover the provision of inpatient rural primary care hospital services.

"(2) The Secretary shall develop a prospective payment system for determining payment amounts for inpatient rural primary care hospital services under this part furnished on or after January 1, 1993.".

(C) TREATMENT OF RURAL PRIMARY CARE HOSPITALS AS PROVIDERS OF SERVICES.—(i) Section 1861(u) of such Act (42 U.S.C. 1395x(u)) is amended by inserting "rural primary care hospital," after "hospital,".

(ii) Section 1863 of such Act (42 U.S.C. 1395z) is amended by striking "and (jj)(3)" and inserting "(jj)(3), and (mm)(1)".

(iii) The first sentence of section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended by inserting ", a rural primary care hospital, as defined in section 1861(mm)(1)," after "1861(aa)(2)".

(iv) The third sentence of section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended by striking "or 1861(dd)(2)" and inserting "1861(dd)(2), or 1861(mm)(1)".

(D) CONFORMING AMENDMENTS.—(i) Section 1128A(b)(1) of such Act (42 U.S.C. 1320a-7a(b)(1)) is amended by striking "hospital" and inserting "hospital or a rural primary care hospital".

(ii) Section 1128B(c) of such Act (42 U.S.C. 1320a-7b(c)) is amended by inserting "rural primary care hospital," after "hospital,".

(iii) Section 1134 of such Act (42 U.S.C. 1320b-4) is amended by striking "hospitals" each place it appears and inserting "hospitals or rural primary care hospitals".

(iv) Section 1138(a)(1) of such Act (42 U.S.C. 1320b-8(a)(1)) is amended by striking "hospital" each place it appears in the matter preceding clause (i) of subparagraph (A) and inserting "hospital or rural primary care hospital".

(v) Section 1164(e) of such Act (42 U.S.C. 1320c-13(e)) is amended by inserting "rural primary care hospitals," after "hospitals,".

(vi) Section 1816(c)(2)(C) of such Act (42 U.S.C. 1395h(c)(2)(C)) is amended by inserting "rural primary care hospital," after "hospital,".

(vii) Section 1833 of such Act (42 U.S.C. 1395l) is amended—

(I) in subsection (h)(5)(A)(iii), by striking "hospital," each place it appears and insert-

ing "hospital or a rural primary care hospital,";

(II) in subsection (i)(1)(A), by inserting ", rural primary care hospital," after "1832(a)(2)(F)(i))";

(III) in subsection (i)(3)(A), by inserting "or rural primary care hospital services" after "facility services";

(IV) in subsection (l)(5)(A), by inserting "rural primary care hospital," after "hospital,"; and

(V) in subsection (l)(5)(C), by striking "hospital" each place it appears and inserting "hospital or rural primary care hospital".

(viii) Section 1835(c) of such Act (42 U.S.C. 1395n(c)) is amended by adding at the end the following: "A rural primary care hospital shall be considered a hospital for purposes of this subsection.".

(ix) Section 1842(b)(6)(A)(ii) of such Act (42 U.S.C. 1395u(b)(6)(A)(ii)) is amended by inserting "rural primary care hospital," after "hospital,".

(x) Section 1861 of such Act (42 U.S.C. 1395x) is amended—

(I) in subsection (e), by adding at the end the following: "The term 'hospital' does not include, unless the context otherwise requires, a rural primary care hospital (as defined in section 1861(mm)(1)).",

(II) in subsection (w)(1), by inserting "rural primary care hospital," after "hospital,", and

(III) in subsection (w)(2), by striking "hospital" each place it appears and inserting "hospital or rural primary care hospital".

(xi) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by striking "hospital" each place it appears and inserting "hospital or rural primary care hospital".

(xii) Section 1866(a)(1) of such Act (42 U.S.C. 1395cc(a)(1)) is amended—

(I) in subparagraph (F)(ii), by inserting "rural primary care hospitals," after "hospitals,";

(II) in subparagraph (H), by inserting after "this title" the first place it appears the following: "and in the case of rural primary care hospitals which provide rural primary care hospital services";

(III) in subparagraph (I), by inserting "and in the case of a rural primary care hospital" after "hospital"; and

(IV) in subparagraph (N), by striking "hospitals" and "hospital," and inserting "hospitals and rural primary care hospitals" and "hospital or rural primary care hospital,", respectively.

(xiii) Section 1866(a)(3) of such Act (42 U.S.C. 1395cc(a)(3)) is amended—

(I) by striking "hospital," each place it appears in subparagraphs (A) and (B) and inserting "hospital, rural primary care hospital,", and

(II) in subparagraph (C)(ii)(II), by striking "facilities" each place it appears and inserting "facilities, rural primary care hospitals,".

(xiv) Section 1867(e) of such Act (42 U.S.C. 1395dd(e)) is amended by adding at the end the following new paragraph:

"(6) The term 'hospital' includes a rural primary care hospital (as defined in section 1861(mm)(1)).".

(4) AVOIDING DUPLICATIVE PAYMENTS TO HOSPITALS PARTICIPATING IN RURAL HEALTH CARE TRANSITION GRANTS.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

"(i) AVOIDING DUPLICATIVE PAYMENTS TO HOSPITALS PARTICIPATING IN RURAL DEMONSTRATION PROGRAMS.—The Secretary shall reduce any payment amounts otherwise determined under this section to the extent necessary to avoid duplication of any payment made under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987.".

(h) GEOGRAPHIC CLASSIFICATION OF HOSPITALS.—

(1) ESTABLISHMENT OF MEDICARE GEOGRAPHICAL CLASSIFICATION BOARD.—Section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) is amended by adding at the end the following new paragraph:

"(10)(A) There is hereby established the 'Medicare Geographical Classification Review Board' (hereinafter in this paragraph referred to as the 'Board').

"(B)(i) The Board shall be composed of 5 members appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Two of such members shall be representatives of subsection (d) hospitals located in a rural area under paragraph (2)(D). At least 1 member shall be a member of the Prospective Payment Assessment Commission, and at least 1 member shall be knowledgeable in the field of analyzing costs with respect to the provision of inpatient hospital services.

"(ii) The Secretary shall make all appointments to the Board as provided in this paragraph within 180 days after the date of the enactment of this paragraph.

"(C)(i) The Board shall consider the application of any subsection (d) hospital requesting that the Secretary change the hospital's geographic classification for purposes of determining for a fiscal year—

"(I) the hospital's average standardized amount under paragraph (2)(D), or

"(II) the area wage index applicable to such hospital under paragraph (3)(E).

"(ii) A hospital requesting a change in geographic classification under clause (i) for a fiscal year shall submit its application to the Board not later than the first day of the preceding fiscal year.

"(iii)(I) The Board shall render a decision on an application submitted under clause (i) not later than 180 days after the deadline referred to in clause (ii).

"(II) A decision of the Board shall be final unless the unsuccessful applicant appeals such decision to the Secretary by not later than 15 days after the Board renders its decision. The Secretary in considering the appeal of an applicant shall receive no new evidence but shall consider the record as a whole as such record appeared before the Board. The Secretary shall issue a decision on such an appeal not later than 90 days after the appeal is filed. The decision of the Secretary shall be final and shall not be subject to judicial review.

"(D)(i) The Secretary shall publish guidelines to be utilized by the Board in rendering decisions on applications submitted under this paragraph, and shall include in such guidelines the following:

"(I) Guidelines for comparing wages, taking into account occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified.

"(II) Guidelines for determining whether the county in which the hospital is located should be treated as being a part of a particular Metropolitan Statistical Area.

"(III) Guidelines for considering information provided by an applicant with respect to the effects of the hospital's geographic classification on access to inpatient hospital services by medicare beneficiaries.

"(IV) Guidelines for considering the appropriateness of the criteria used to define New England County Metropolitan Areas.

"(ii) The Secretary shall publish the guidelines described in clause (i) by July 1, 1990.

"(E)(i) The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this title or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this paragraph. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 205 with respect to subpoenas shall apply to the Board to the same extent as such provisions apply to the Secretary with respect to title II.

"(ii) The Board is authorized to engage such technical assistance and to receive such information as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

"(F)(i) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. Each member of the Board who is an officer or employee of the United States shall serve without compensation in addition to that received for service as an officer or employee of the United States.

"(ii) Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.".

(2) EFFECT OF DECISIONS OF BOARD ON PAYMENTS TO HOSPITALS.—Section 1886(d)(8) of such Act (42 U.S.C. 1395ww(d)(8)) is amended—

(A) in subparagraph (C)(i), by striking "subparagraph (B)" each place it appears and inserting "subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),", and

(B) in subparagraph (D), by striking "(B) and (C)" each place it appears and inserting "(B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),".

(3) REVISION OF RULES FOR TREATMENT OF RECLASSIFIED HOSPITALS.—Section 1886(d)(8)(C) of such Act is amended to read as follows:

"(C)(i) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by treating hospitals located in a rural county or counties as being located in an urban area—

"(I) reduces the wage index for that urban area (as applied under this subsection) by 1 percentage point or less, the Secretary, in calculating such wage index under this subsection, shall exclude those hospitals so treated, or

"(II) reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to

hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if each affected rural county were a separate urban area),

"(ii) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by reclassifying a county from a rural to an urban area or by reclassifying an urban county from one urban area to another urban area.

"(I) reduces the wage index for the urban area within which the county or counties is reclassified by 1 percentage point or less (as applied under this subsection), the Secretary, in calculating such wage index under this subsection, shall exclude those counties so reclassified, or

"(II) reduces the wage index for the urban area within which the county or counties is reclassified by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so reclassified) and to hospitals located in the counties so reclassified (as if each affected county were a separate area).

"(iii) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by treating hospitals located in a rural county or counties as not being located in the rural area in a State, reduces the wage index for that rural area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection as if the hospitals so treated had not been excluded from calculation of the wage index for that rural area.".

(4) FLOOR FOR AREA WAGE INDICES.—Section 1886(d)(8)(C) of such Act (as amended by paragraph (3)) is further amended by adding at the end the following new clause:

"(iv) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) may not result in the reduction of any county's wage index to a level below the the wage index for rural areas in the State in which the county is located.".

(5) ADDITIONAL PAYMENT RESULTING FROM CORRECTIONS OF ERRONEOUSLY DETERMINED WAGE INDEX.—

(A) IN GENERAL.—If the Secretary of Health and Human Services (hereafter referred to as the "Secretary") discovers an error with respect to the determination, adjustment, or computation of the area wage index described in section 1886(d)(3)(E) of the Social Security Act and subsequently corrects such error, the Secretary shall make an additional payment under title XVIII of such Act to a hospital affected by such error for inpatient hospital discharges occurring during the period when the erroneously determined, adjusted, or computed wage index was in effect.

(B) CONDITIONS FOR ADDITIONAL PAYMENT.—A hospital is eligible for an additional payment under subparagraph (A) only if—

(i) the error resulted from the submission of erroneous data, except that a hospital is not eligible for such additional payment if it submitted such erroneous data;

(ii) the error was made with respect to the survey of the 1984 wages and wage-related costs of hospitals in the United States conducted under section 1886(d)(4)(E) of the Social Security Act; and

(iii) the correction of the error resulted in an adjustment to the area wage index of not less than 3 percentage points.

(C) PERIOD OF APPLICABILITY.—A hospital may not receive an additional payment under subparagraph (A) for discharges occurring after October 1, 1990.

(6) UPDATES TO WAGE INDEX SURVEY.—Section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)) is amended—

(A) by striking "October 1, 1990 (and at least every 36 months thereafter)" and inserting in lieu thereof "October 1, 1990, and October 1, 1993 (and at least every 12 months thereafter)", and

(B) by adding at the end the following new sentence: "Any adjustments or updates made under this subparagraph for a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment.".

(7) EFFECTIVE DATE.—The amendments made by paragraphs (3) and (4) shall apply to discharges occurring on or after April 1, 1990.

(i) LEGISLATIVE PROPOSAL ELIMINATING SEPARATE AVERAGE STANDARDIZED AMOUNTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (hereafter referred to as the "Secretary") shall design a legislative proposal eliminating the system of determining separate average standardized amounts for subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) classified as being located in large urban, other urban, or rural areas under section 1886(d)(2)(D) of such Act, and shall include in such proposal the following:

(A) A transition period beginning in fiscal year 1992 during which a single rate for determining payment to hospitals in all areas shall be phased in with such single rate to be completely in effect by fiscal year 1995.

(B) Recommendations, where appropriate, for modifying or maintaining additional payments or adjustments made under title XVIII of the Social Security Act for teaching hospitals, rural referral centers, sole community hospitals, disproportionate share hospitals, and outlier cases, and for creating additional payments or adjustments where deemed appropriate by the Secretary.

(C) Recommendations with respect to recalculating standardized amounts to reflect information from more recent cost reporting periods.

(5) Recommendations, where appropriate, for modifying reimbursement for hospitals that are not subsection (d) hospitals under title XVIII of such Act.

(6) A recommendation for a methodology to reflect the severity of illness of different patients within the same diagnosis related group (as determined in section 1886(d)(4)(B) of such Act).

(2) REPORT TO CONGRESS AND PROPAC.—(A) Not later than October 1, 1990, the Secretary shall submit the proposal described in paragraph (1) and an accompanying analysis of the impact of the proposed elimination of separate average standardized amounts on various categories of hospitals to Congress and the Prospective Payment Assessment Commission.

(B) Not later than February 1, 1991, the Prospective Payment Assessment Commission and the Director of the Congressional Budget Office shall each prepare and submit to Congress a report analyzing the legislative proposal submitted under subparagraph (A), and shall include in such report an analysis of the probable impact of such legislation on hospitals participating in the medicare program.

(j) PROPAC STUDY OF PAYMENTS TO RURAL SOLE COMMUNITY HOSPITALS AND SMALL RURAL HOSPITALS.—

(1) STUDY.—The Prospective Payment Assessment Commission (hereafter referred to as the "Commission") shall conduct a study of the feasibility and desirability of—

(A) using a cost-based reimbursement system to determine the amount of payments to be made under the medicare program to small rural hospitals and rural sole community hospitals for the operating costs of inpatient hospital services;

(B) developing and applying alternative definitions of market share for use in determining the eligibility of hospitals for classification as sole community hospitals under section 1886(d)(5) of the Social Security Act; and

(C) developing and applying a method for accounting for decreases in the number of inpatients served in determining payment to small rural hospitals under section 1886(d) of the Social Security Act or the operating costs of inpatient hospital services.

(2) REPORT.—By not later than May 1, 1990, the Commission shall submit a report to Congress on the study conducted under paragraph (1).

SEC. 6004. PPS-EXEMPT HOSPITALS.

(a) EXEMPTION OF CANCER HOSPITALS FROM PROSPECTIVE PAYMENT SYSTEM.—

(1) IN GENERAL.—Section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) is amended—

(A) in clause (iii), by striking "or";

(B) in clause (iv), by striking the semicolon at the end and inserting ", or"; and

(C) by inserting after clause (iv) the following new clause:

"(v) a hospital that the Secretary has classified, at any time on or before December 31, 1990, (or, in the case of a hospital that, as of the date of the enactment of this clause, is located in a State operating a demonstration project under section 1814(b), on or before December 31, 1991) for purposes of applying exceptions and adjustments to payment amounts under this subsection, as a hospital involved extensively in treatment for or research on cancer, ;".

(2) CONFORMING AMENDMENT.—Section 1886(d)(5)(H) of such Act (as redesignated by section 10102(f)(1)(B)) is amended by striking "(including" and all that follows through "cancer)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to cost reporting periods beginning on or after October 1, 1989, except that—

(A) in the case of a hospital classified by the Secretary of Health and Human Services as a hospital involved extensively in treatment for or research on cancer under section 1886(d)(5)(H) of the Social Security Act (as redesignated by section 6003(e)(1)(A)) after the date of the enactment of this Act, such amendments shall apply with respect to cost reporting periods beginning on or after the date of such classification,

(B) in the case of a hospital that is not described in subparagraph (A), such amendments shall apply with respect to portions of cost reporting periods or discharges occurring during and after fiscal year 1987 for purposes of section 1886(g) of the Social Security Act, and

(C) such amendments shall take effect 30 days after the date of the enactment of this Act for purposes of determining the eligibil-

ity of a hospital to receive periodic interim payments under section 1815(e)(2) of the Social Security Act.

(b) REBASING FOR CANCER HOSPITALS.—

(1) IN GENERAL.—Section 1886(b)(3) of such Act (42 U.S.C. 1395ww(b)(3)), as amended by subsections (e)(1)(B) and (f)(2) of section 6003, is further amended—

(A) in subparagraph (A), by striking "(C) and (D)" and inserting "(C), (D), and (E)",

(B) in subparagraph (B)(ii), by striking "For purposes of subparagraph (A)" and inserting "For purposes of subparagraphs (A) and (E)", and

(C) by adding at the end the following new subparagraph:

"(E) In the case of a hospital described in clause (v) of subsection (d)(1)(B), the term 'target amount' means—

"(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

"(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4)) recognized under this title for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the 'base cost reporting period') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

"(II) the sum of the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

"(ii) with respect to a later cost reporting period, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(ii) for that later cost reporting period.

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to cost reporting periods beginning on or after April 1, 1989.

SEC. 6005. PAYMENTS FOR HOSPICE CARE.

(a) INCREASE IN CURRENT RATES.—Section 1814(i)(1) of the Social Security Act (42 U.S.C. 1395f(i)(1)) is amended—

(A) in subparagraph (A), by inserting "and except as otherwise provided in this paragraph" after "1813(a)(4)", and

(B) by striking subparagraph (C) and inserting the following:

"(C)(i) With respect to routine home care and other services included in hospice care furnished during fiscal year 1990, the payment rates for such care and services shall be 120 percent of such rates in effect as of September 30, 1989.

"(ii) With respect to routine home care and other services included in hospice care furnished during a subsequent fiscal year, the payment rates for such care and services shall be the payment rates in effect under this subparagraph during the previous fiscal year increased by the market basket percentage increase (as defined in section 1886(b)(3)(B)(iii)) otherwise applicable to discharges occurring in the fiscal year.".

(b) REQUIREMENT OF CERTIFICATION OF TERMINAL ILLNESS FOR HOSPICE CARE MODIFIED.—Section 1814(a)(7)(A)(i) of the Social Security Act (42 U.S.C. 1395f(a)(7)(A)(i)) is amended by striking "certify," and all that follows through "initiated," and inserting the following: "certify in writing, not later than 2 days after hospice care is initiated (or, if each certify verbally not later than 2 days after hospice care is initiated, not later than 8 days after such care is initiated),".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective with respect to care and services furnished on or after January 1, 1990.

### Subpart B—Technical and Miscellaneous Provisions

SEC. 6011. PASS THROUGH PAYMENT FOR HEMOPHILIA INPATIENTS.

(a) PASS THROUGH PAYMENT FOR HEMOPHILIA INPATIENTS.—The second sentence of section 1886(a)(4) of the Social Security Act (42 U.S.C. 1395ww(d)(4)) is amended—

(1) by striking "or,"; and

(2) by striking "October 1, 1987)" and inserting "October 1, 1987), or costs with respect to administering blood clotting factors to individuals with hemophilia".

(b) DETERMINING PAYMENT AMOUNT.—The Secretary of Health and Human Services shall determine the amount of payment made to hospitals under part A of title XVIII of the Social Security Act for the costs of administering blood clotting factors to individuals with hemophilia by multiplying a predetermined price per unit of blood clotting factor (determined in consultation with the Prospective Payment Assessment Commission) by the number of units provided to the individual.

(c) RECOMMENDATIONS ON PAYMENTS.—The Prospective Payment Assessment Commission and the Health Care Financing Administration shall develop recommendations with respect to payments to hospitals under part A of title XVIII of the Social Security Act for the costs of administering blood clotting factors to individuals with hemophilia, and shall submit such recommendations to Congress not later than 18 months after the date of enactment of this Act.

(d) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to items furnished 6 months after the date of enactment of this Act and shall expire 2 years after the date of enactment of this Act.

SEC. 6012. MEDICARE BUY-IN FOR CONTINUED BENEFITS FOR DISABLED INDIVIDUALS.

(a) IN GENERAL.—Title XVIII of the Social Security Act is amended—

(1) in the heading of section 1818, by inserting "ELDERLY" after "UNINSURED"; and

(2) by inserting after section 1818 the following new section:

"HOSPITAL INSURANCE BENEFITS FOR DISABLED INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLEMENT

"SEC. 1818A. (a) Every individual who—

"(1) has not attained the age of 65;

"(2)(A) has been entitled to benefits under this part under section 226(b), and

"(B)(i) continues to have the disabling physical or mental impairment on the basis of which the individual was found to be under a disability or to be a disabled qualified railroad retirement beneficiary, or (ii) is blind (within the meaning of section 216(i)(1)), but

"(C) whose entitlement under section 226(b) ends due solely to the individual having earnings that exceed the SGA amount (as defined in section 226(h)(6)(C)); and

"(3) is not otherwise entitled to benefits under this part,

shall be eligible to enroll in the insurance program established by this part.

"(b)(1) An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

"(2) The individual's initial enrollment period shall begin with the month in which the individual receives notice that the individual's entitlement to benefits under section 226(b) will end due solely to the individual having earnings that exceed the SGA amount (as defined in section 226(h)(6)(C)) and shall end 7 months later.

"(3) There shall be a general enrollment period during the period beginning on January 1 and ending on March 31 of each year (beginning with 1990).

"(c)(1) The period (in this subsection referred to as a 'coverage period') during which an individual is entitled to benefits under the insurance program under this part shall begin on whichever of the following is the latest:

"(A) In the case of an individual who enrolls under subsection (b)(2) before the month in which the individual first satisfies subsection (a), the first day of such month.

"(B) In the case of an individual who enrolls under subsection (b)(2) in the month in which he first satisfies subsection (a), the first day of the month following the month in which he so enrolls.

"(C) In the case of an individual who enrolls under subsection (b)(2) in the month following the month in which the individual first satisfies subsection (a), the first day of the second month following the month in which he so enrolls.

"(D) In the case of an individual who enrolls under subsection (b)(2) more than one month following the month in which the individual first satisfies subsection (a), the first day of the third month following the month in which he so enrolls.

"(E) In the case of an individual who enrolls under subsection (b)(3), the July 1 following the month in which the individual so enrolls.

"(2) An individual's coverage period under this section shall continue until the individual's enrollment is terminated as follows:

"(A) As of the month following the month in which the Secretary provides notice to the individual that the individual no longer meets the condition described in subsection (a)(2)(B).

"(B) As of the month following the month in which the individual files notice that the individual no longer wishes to participate in the insurance program established by this part.

"(C) As of the month before the first month in which the individual becomes eligible for hospital insurance benefits under section 226(a) or 226A.

"(D) As of a date, determined under regulations of the Secretary, for nonpayment of premiums.

The regulations under subparagraph (D) may provide a grace period of not longer than 90 days, which may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period. Termination of coverage under this section shall result in simultaneous termination of any coverage affected under any other part of this title.

"(3) The provisions of subsections (h) and (i) of section 1837 apply to enrollment and nonenrollment under this section in the same manner as they apply to enrollment

and nonenrollment and special enrollment periods under section 1818.

"(d)(1)(A) Premiums shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe, and shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

"(B)(i) Subject to clause (ii), such premiums shall be payable for the period commencing with the first month of an individual's coverage period and ending with the month in which the individual dies or, if earlier, in which the individual's coverage period terminates.

"(ii) Such premiums shall not be payable for any month in which the individual is eligible for benefits under this part pursuant to section 226(b).

"(C) For purposes of applying section 1839(g) of this title and section 59B(f)(1)(B)(i) of the Internal Revenue Code of 1986, any reference to section 1818 shall be deemed to include a reference to this section.

"(2) The provisions of subsections (d) through (f) of section 1818 (relating to premiums) shall apply to individuals enrolled under this section in the same manner as they apply to individuals enrolled under that section.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, but shall not apply so as to provide for coverage under part A of title XVIII of the Social Security Act for any month before July 1990.

SEC. 6013. BUY-IN UNDER PART A FOR QUALIFIED MEDICARE BENEFICIARIES.

(a) IN GENERAL.—Section 1818 of the Social Security Act (42 U.S.C. 1395i-2) is amended by adding at the end the following:

"(g)(1) The Secretary shall, at the request of a State made after 1989, enter into a modification of an agreement entered into with the State pursuant to section 1843(a) under which the agreement provides for enrollment in the program established by this part of qualified medicare beneficiaries (as defined in section 1905(p)(1)).

"(2)(A) Except as provided in subparagraph (B), the provisions of subsections (c), (d), (e), and (f) of section 1843 shall apply to qualified medicare beneficiaries enrolled, pursuant to such agreement, in the program established by this part in the same manner and to the same extent as they apply to qualified medicare beneficiaries enrolled, pursuant to such agreement, in part B.

"(B) For purposes of this subsection, section 1843(d)(1) shall be applied by substituting 'section 1818' for 'section 1839' and 'subsection (c) (with reference to subsection (b) of section 1839' for 'subsection (b).'.".

(b) CONFORMING AMENDMENT.—Section 1843 of such Act (42 U.S.C. 1395v) is amended by adding at the end the following:

"(i) For provisions relating to enrollment of qualified medicare beneficiaries under part A, see section 1818(g).".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective January 1, 1990.

SEC. 6014. PROPAC STUDY ON MEDICARE DEPENDENT HOSPITALS.

(a) STUDY.—The Prospective Payment Assessment Commission shall conduct a study of the appropriateness of making an adjustment to the methodology for determining the amount of payment to hospitals for which individuals entitled to benefits under part A of title XVIII of the Social Security Act represent a high proportion of discharges.

(b) REPORT.—Not later than June 1, 1990, the Commission shall include a report on the study conducted under subsection (a) in its annual report submitted to Congress.

SEC. 6015. PROVISIONS RELATING TO TARGET AMOUNT ADJUSTMENTS.

(a) INCLUDING NEW BASE PERIOD IN TARGET ADJUSTMENTS.—Section 1886(b)(4)(A) of the Social Security Act (42 U.S.C. 1395ww(b)(4)(A)) is amended by striking "deems appropriate," and inserting in lieu thereof "deems appropriate, including the assignment of a new base period which is more representative, as determined by the Secretary, of the reasonable and necessary cost of inpatient services and".

(b) PUBLICATION OF INSTRUCTIONS RELATING TO EXCEPTIONS AND ADJUSTMENTS IN TARGET AMOUNTS.—By not later than 180 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish instructions specifying the application process to be used in providing exceptions and adjustments under section 1886(b)(4)(A) of the Social Security Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to cost reporting periods beginning on or after April 1, 1990.

SEC. 6016. STUDY OF METHODS TO COMPENSATE HOSPICES FOR HIGH-COST CARE.

(a) STUDY.—The Secretary of Health and Human Services shall—

(1) conduct a study of high-cost hospice care provided to medicare beneficiaries under the medicare program, and evaluate the ability of hospice programs participating in the medicare program to provide such high-cost care to such patients; and

(2) based on such study, develop methods to compensate such programs for providing such high-cost care.

(b) REPORT TO CONGRESS.—Not later than April 1, 1991, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study conducted under subsection (a) and shall include in the report any recommendations developed by the Secretary to compensate hospice programs for providing high-cost hospice care to medicare beneficiaries.

SEC. 6017. PROHIBITION ON NURSING HOME BALANCE BILLING.

Section 1866(a)(2)(B) of the Social Security Act (42 U.S.C. 1395ww(a)(2)(B)) is amended—

(1) in clause (i), by striking "(i)"; and

(2) by striking clause (ii).

SEC. 6018. HOSPITAL ANTI-DUMPING PROVISIONS.

(a) HOSPITAL OBLIGATIONS WITH RESPECT TO TREATMENT OF EMERGENCY MEDICAL CONDITIONS AND INDIGENT CARE.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) by amending subparagraph (I) to read as follows:

"(I) in the case of a hospital or rural primary care hospital—

"(i) to adopt and enforce a policy to ensure compliance with the requirements of section 1867,

"(ii) to maintain medical and other records related to individuals transferred to or from the hospital for a period of five years from the date of the transfer, and

"(iii) to maintain a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition;"; and

(2) in subparagraph (N)—

(A) by striking "and" at the end of clause (i),

(B) by striking "and" at the end of clause (ii), and

(C) by adding at the end the following new clauses:

"(iii) to post conspicuously in any emergency department a sign (in a form specified by the Secretary) specifying rights of individuals under section 1867 with respect to examination and treatment for emergency medical conditions and women in labor, and

"(iv) to post conspicuously (in a form specified by the Secretary) information indicating whether or not the hospital participates in the medicaid program under a State plan approved under title XIX, and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act, without regard to whether regulations to carry out such amendments have been promulgated by such date.

SEC. 6019. RELEASE AND USE OF HOSPITAL ACCREDITATION SURVEYS.

(a) REQUIRING ALL INSTITUTIONS AND JCAHO TO RELEASE SURVEYS TO SECRETARY.—Section 1865(a)(2) of the Social Security Act (42 U.S.C. 1395bb(a)(2)) is amended—

(1) by striking "(2) such institution" and inserting "(2)(A) such institution";

(2) by striking "(if it is included within a survey described in section 1864(c))";

(3) by striking the comma at the end and inserting the following: ", together with any other information directly related to the survey as the Secretary may require (including corrective action plans),"; and

(4) by adding at the end the following new subparagraph:

"(B) such Commission releases such a copy and any such information to the Secretary,".

(b) AUTHORIZING SECRETARY TO RELEASE CERTAIN INFORMATION.—Section 1865(a) of such Act is further amended by striking the period at the end of the last sentence and inserting the following: ", except that the Secretary may disclose such a survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary.".

(c) PERMITTING SECRETARY TO WITHDRAW HOSPITAL'S STATUS BASED UPON INFORMATION OTHER THAN SURVEYS.—Section 1865(b) of such Act is amended by striking "following a survey made pursuant to section 1864(c)".

(d) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by subsection (a) shall take effect 6 months after the date of the enactment of this Act.

SEC. 6020. INTERMEDIATE SANCTIONS FOR PSYCHIATRIC HOSPITALS.

Section 1866 of the Social Security Act (42 U.S.C. 1395cc) is amended by adding at the end the following new subsection:

"(i)(1) If the Secretary determines that a psychiatric hospital which has an agreement in effect under this section no longer meets the requirements for a psychiatric hospital under this title and further finds that the hospital's deficiencies—

"(A) immediately jeopardize the health and safety of its patients, the Secretary shall terminate such agreement; or

"(B) do not immediately jeopardize the health and safety of its patients, the Secretary may terminate such agreement, or provide that no payment will be made under this title with respect to any individual ad-

mitted to such hospital after the effective date of the finding, or both.

"(2) If a psychiatric hospital, found to have deficiencies described in paragraph (1)(B), has not complied with the requirements of this title—

"(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the Secretary shall provide that no payment will be made under this title with respect to any individual admitted to such hospital after the end of such 3-month period, or

"(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no payment may be made under this title with respect to any individual in the hospital until the Secretary finds that the hospital is in compliance with the requirements of this title.".

SEC. 6021. ELIGIBILITY OF MERGED OR CONSOLIDATED HOSPITALS FOR PERIODIC INTERIM PAYMENTS.

(a) IN GENERAL.—Section 1815(e) of the Social Security Act (42 U.S.C. 1395g(e)) is amended by adding at the end the following new paragraph:

"(4) A hospital created by the merger or consolidation of 2 or more hospitals or hospital campuses shall be eligible to receive periodic interim payment on the basis described in paragraph (1)(B) if—

"(A) at least one of the hospitals or campuses received periodic interim payment on such basis prior to the merger or consolidation; and

"(B) the merging or consolidating hospitals or campuses would each meet the requirement of paragraph (1)(B)(i) if such hospitals or campuses were treated as independent hospitals for purposes of this title.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payments made for discharges occurring on or after the expiration of the 30-day period that begins on the date of the enactment of this Act, regardless of the date of the merger or consolidation involved.

SEC. 6022. EXTENSION OF WAIVER FOR FINGER LAKES AREA HOSPITAL CORPORATION.

Section 1886(c)(4) of the Social Security Act (42 U.S.C. 1395ww(c)(4)) is amended in the second sentence by striking "the aggregate payment or payments" and all that follows and inserting "the aggregate rate of increase from October 1, 1984, to the most recent date for which annual data are available.".

SEC. 6023. CLARIFICATION OF CONTINUATION OF AUGUST 1987 HOSPITAL BAD DEBT RECOGNITION POLICY.

(a) IN GENERAL.—Section 4008(c) of the Omnibus Budget Reconciliation Act of 1987 is amended by adding at the end the following: "The Secretary may not require a hospital to change its bad debt collection policy if a fiscal intermediary, in accordance with the rules in effect as of August 1, 1987, with respect to criteria for indigency determination procedures, record keeping, and determining whether to refer a claim to an external collection agency, has accepted such policy before that date, and the Secretary may not collect from the hospital on the basis of an expectation of a change in the hospital's collection policy.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

SEC. 6024. USE OF MORE RECENT DATA REGARDING ROUTINE SERVICE COSTS OF SKILLED NURSING FACILITIES.

The Secretary of Health and Human Services shall determine mean per diem routine service costs for freestanding and hospital based skilled nursing facilities under section 1888(a) of the Social Security Act for cost reporting periods beginning on or after October 1, 1989, in accordance with regulations published by the Secretary that require the use of cost reports submitted by skilled nursing facilities for cost reporting periods beginning not earlier than October 1, 1985.

SEC. 6025. PERMITTING DENTIST TO SERVE AS HOSPITAL MEDICAL DIRECTOR.

Notwithstanding the requirement that the responsibility for organization and conduct of the medical staff of an institution be assigned only to a doctor of medicine or osteopathy in order for the institution to participate as a hospital under the medicare program, an institution that has a doctor of dental surgery or of dental medicine serving as its medical director shall be considered to meet such requirement if the laws of the State in which the institution is located permit a doctor of dental surgery or of dental medicine to serve as the medical staff director of a hospital.

SEC. 6026. GAO STUDY OF HOSPITAL-BASED AND FREESTANDING SKILLED NURSING FACILITIES.

(a) STUDY.—The Comptroller General shall conduct a study to assess the differences in costs and case-mix between hospital-based and freestanding skilled nursing facilities participating in the medicare program.

(b) REPORT.—By not later than June 1, 1990, the Comptroller General shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study conducted under paragraph (1) and shall include in the report any recommendations, including recommendations regarding the payment differential between hospital-based and freestanding skilled nursing facilities, the Comptroller General considers appropriate.

SEC. 6027. MASSACHUSETTS MEDICARE REPAYMENT.

The Secretary of Health and Human Services may not, on or after the date of the enactment of this Act and before May 1, 1990, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the statewide hospital reimbursement demonstration project conducted in that State between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972. Interest shall not accrue on any such alleged overpayments during the period beginning on the date of the enactment of this Act and ending on May 1, 1990.

SEC. 6028. ALLOWING CERTIFICATIONS AND RECERTIFICATIONS BY NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS FOR CERTAIN SERVICES.

Section 1814(a) of the Social Security Act (42 U.S.C. 1395f(a)) is amended—

(1) in paragraph (2) by striking "(2) a physician" and inserting in lieu thereof "(2) a physician, or, in the case of services described in subparagraph (B), a physician, or a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility but is working in collaboration with a physician,"; and

(2) in the matter following the final paragraph by striking "a physician makes" and inserting in lieu thereof "a physician, nurse practitioner, or clinical nurse specialist (as the case may be) makes".

## PART 2—PROVISIONS RELATING TO PART B

### Subpart A—General Provisions

SEC. 6101. EXTENSION OF REDUCTIONS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act, other than section 6201), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on October 16, 1989, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through March 31, 1990, with respect to payments for items and services under part B of such title.

SEC. 6102. PHYSICIAN PAYMENT REFORM.

(a) IN GENERAL.—Part B of title XVIII of the Social Security Act is amended by adding at the end the following new section:

"PAYMENT FOR PHYSICIANS' SERVICES

"SEC. 1848. (a) PAYMENT BASED ON FEE SCHEDULE.—

"(1) IN GENERAL.—Effective for all physicians' services (as defined in subsection (j)(3)) furnished under this part during a year (beginning with 1992) for which payment is otherwise made on the basis of a reasonable charge or on the basis of a fee schedule under section 1834(b), payment under this part shall instead be based on the lesser of—

"(A) the actual charge for the service, or

"(B) subject to the succeeding provisions of this subsection, the amount determined under the fee schedule established under subsection (b) for services furnished during that year (in this subsection referred to as the 'fee schedule amount').

"(2) TRANSITION TO FULL FEE SCHEDULE.—

"(A) LIMITING REDUCTIONS AND INCREASES TO 15 PERCENT IN 1992.—

"(i) LIMIT ON INCREASE.—In the case of a service in a fee schedule area (as defined in subsection (j)(2)) for which the adjusted historical payment basis (as defined in subparagraph (D)) is less than 85 percent of the fee schedule amount for services furnished in 1992, there shall be substituted for the fee schedule amount an amount equal to the adjusted historical payment basis plus 15 percent of the fee schedule amount otherwise established (without regard to this paragraph).

"(ii) LIMIT IN REDUCTION.—In the case of a service in a fee schedule area for which the adjusted historical payment basis exceeds 115 percent of the fee schedule amount for services furnished in 1992, there shall be substituted for the fee schedule amount an amount equal to the adjusted historical payment basis minus 15 percent of the fee schedule amount otherwise established (without regard to this paragraph).

"(B) SPECIAL RULE FOR 1993, 1994, AND 1995.—If a physicians' service in a fee schedule area is subject to the provisions of subparagraph (A) in 1992, for physicians' services furnished in the area—

"(i) during 1993, there shall be substituted for the fee schedule amount an amount equal to the sum of—

"(I) 75 percent of the fee schedule amount determined under subparagraph (A), adjusted by the update established under subsection (d)(3) for 1993, and

"(II) 25 percent of the fee schedule amount determined under paragraph (1) for 1993 without regard to this paragraph;

"(ii) during 1994, there shall be substituted for the fee schedule amount an amount equal to the sum of—

"(I) 67 percent of the fee schedule amount determined under clause (i), adjusted by the update established under subsection (d)(3) for 1994, and

"(II) 33 percent of the fee schedule amount determined under paragraph (1) for 1994 without regard to this paragraph; and

"(iii) during 1995, there shall be substituted for the fee schedule amount an amount equal to the sum of—

"(I) 50 percent of the fee schedule amount determined under clause (ii) adjusted by the update established under subsection (d)(3) for 1995, and

"(II) 50 percent of the fee schedule amount determined under paragraph (1) for 1995 without regard to this paragraph.

"(C) SPECIAL RULE FOR ANESTHESIA SERVICES.—With respect to physicians' services which are anesthesia services, the Secretary shall provide for a transition in the same manner as a transition is provided for other services under subparagraph (B).

"(D) ADJUSTED HISTORICAL PAYMENT BASIS DEFINED.—

"(i) IN GENERAL.—In this paragraph, the term 'adjusted historical payment basis' means, with respect to a physicians' service furnished in a fee schedule area, the weighted average prevailing charge applied in the area for the service in 1991 (as determined by the Secretary without regard to physician specialty and as adjusted to reflect payments for services with customary charges below the prevailing charge or other payment limitations imposed by law or regulation) adjusted by the update established under subsection (d)(3) for 1992.

"(ii) APPLICATION TO RADIOLOGY SERVICES.—In applying clause (i) in the case of physicians' services which are radiology services (including radiologist services, as defined in section 1834(b)(6)), there shall be substituted for the weighted average prevailing charge the amount provided under the fee schedule established for the service for the fee schedule area under section 1834(b).

"(3) INCENTIVES FOR PARTICIPATING PHYSICIANS.—In applying paragraph (1)(B) in the case of a nonparticipating physician, the fee schedule amount shall be 95 percent of such amount otherwise applied under this subsection (without regard to this paragraph).

"(b) ESTABLISHMENT OF FEE SCHEDULES.—

"(1) IN GENERAL.—Before January 1 of each year beginning with 1992, the Secretary shall establish, by regulation, fee schedules that establish payment amounts for all physicians' services furnished in all fee schedule areas (as defined in subsection (j)(2)) for the year. Except as provided in paragraph (2), each such payment amount for a service shall be equal to the product of—

"(A) the relative value for service (as determined in subsection (c)(2)(B)),

"(B) the conversion factor (established under subsection (d)) for the year, and

"(C) the geographic adjustment factor (established under subsection (e)(2)) for the service for the fee schedule area.

"(2) TREATMENT OF RADIOLOGY SERVICES AND ANESTHESIA SERVICES.—

"(A) RADIOLOGY SERVICES.—With respect to radiology services (including radiologist services, as defined in section 1834(b)(6)), the Secretary shall base the relative values on the relative value scale developed under section 1834(b)(1)(A), with appropriate modifications of the relative values to assure that the relative values established for radiology services which are similar or related to other physicians' services are consistent with the relative values established for those similar or related services.

"(B) ANESTHESIA SERVICES.—In establishing the fee schedule for anesthesia services for which a relative value guide has been established under section 4048(b) of the Omnibus Budget Reconciliation Act of 1987, the Secretary shall use, to the extent practicable, such relative value guide, with appropriate adjustment of the conversion factor, in a manner to assure that the fee schedule amounts for anesthesia services are consistent with the fee schedule amounts for other services determined by the Secretary to be of comparable value. In applying the previous sentence, the Secretary shall adjust the conversion factor by geographic adjustment factors in the same manner as such adjustment is made under paragraph (1)(C).

"(C) CONSULTATION.—The Secretary shall consult with the Physician Payment Review Commission and organizations representing physicians or suppliers who furnish radiology services and anesthesia services in applying subparagraphs (A) and (B).

"(c) DETERMINATION OF RELATIVE VALUES FOR PHYSICIANS' SERVICES.—

"(1) DIVISION OF PHYSICIANS' SERVICES INTO COMPONENTS.—In this section, with respect to a physicians' service:

"(A) WORK COMPONENT DEFINED.—The term 'work component' means the portion of the resources used in furnishing the service that reflects physician time and intensity in furnishing the service. Such portion shall—

"(i) include activities before and after direct patient contact, and

"(ii) be defined, with respect to surgical procedures, to reflect a global definition including pre-operative and post-operative physicians' services.

"(B) PRACTICE EXPENSE COMPONENT DEFINED.—The term 'practice expense component' means the portion of the resources used in furnishing the service that reflects the general categories of expenses (such as office rent and wages of personnel, but excluding malpractice expenses) comprising practice expenses. In this subparagraph, the term 'practice expenses' includes all expenses for furnishing physicians' services, excluding malpractice expenses, physician compensation, and other physician fringe benefits.

"(C) MALPRACTICE COMPONENT DEFINED.—The term 'malpractice component' means the portion of the resources used in furnishing the service that reflects malpractice expenses in furnishing the service.

"(2) DETERMINATION OF RELATIVE VALUES.—

"(A) IN GENERAL.—

"(i) COMBINATION OF UNITS FOR COMPONENTS.—The Secretary shall develop a methodology for combining the work, practice expense, and malpractice relative value units, determined under subparagraph (C), for each service in a manner to produce a single relative value for that service.

"(ii) EXTRAPOLATION.—The Secretary may use extrapolation and other techniques to determine the number of relative value units for physicians' services for which specific data are not available and shall take into account recommendations of the Physician Payment Review Commission and the results of consultations with organizations representing physicians who provide such services.

"(B) PERIODIC REVIEW AND ADJUSTMENTS IN RELATIVE VALUES.—

"(i) PERIODIC REVIEW.—The Secretary, not less often than every 5 years, shall review the relative values established under this paragraph for all physicians' services.

"(ii) ADJUSTMENTS.—

"(I) IN GENERAL.—The Secretary shall, to the extent the Secretary determines to be necessary and subject to subclause (II), adjust the number of such units to take into account changes in medical practice, coding changes, new data on relative value components, or the addition of new procedures. The Secretary shall publish an explanation of the basis for such adjustments.

"(II) LIMITATION ON ANNUAL ADJUSTMENTS.—The adjustments under subclause (I) for a year may not cause the amount of expenditures under this part for the year to differ by more than $20,000,000 from the amount of expenditures under this part that would have been made if such adjustments had not been made.

"(iii) CONSULTATION.—The Secretary, in making adjustments under clause (ii), shall consult with the Physician Payment Review Commission and organizations representing physicians.

"(C) COMPUTATION OF RELATIVE VALUE UNITS FOR COMPONENTS.—For purposes of this section for each physicians' service—

"(i) WORK RELATIVE VALUE UNITS.—The Secretary shall determine a number of work relative value units for the service based on the relative resources incorporating physician time and intensity required in furnishing the service.

"(ii) PRACTICE EXPENSE RELATIVE VALUE UNITS.—The Secretary shall determine a number of practice expense relative value units equal to the product of—

"(I) the base allowed charges (as defined in subparagraph (D)) for the service, and

"(II) the practice expense percentage for the service (as determined under paragraph (3)(A)).

"(iii) MALPRACTICE RELATIVE VALUE UNITS.—The Secretary shall determine a number of malpractice relative value units equal to the product of—

"(I) the base allowed charges (as defined in subparagraph (D)) for the service, and

"(II) the malpractice percentage for the service (as determined under paragraph (3)(A)).

"(D) BASE ALLOWED CHARGES DEFINED.—In this paragraph, the term 'base allowed charges' means, with respect to a physician's service, the national average allowed charges for the service under this part for services furnished during 1991, as estimated by the Secretary using the most recent data available.

"(3) COMPONENT PERCENTAGES.—For purposes of paragraph (2), the Secretary shall determine a work percentage, a practice expense percentage, and a malpractice percentage for each physician's service as follows:

"(A) DIVISION OF SERVICES BY SPECIALTY.—For each physician's service or class of physicians' services, the Secretary shall determine the average percentage of each such service or class of services that is performed, nationwide, under this part by physicians in each of the different physician specialties (as identified by the Secretary).

"(B) DIVISION OF SPECIALTY BY COMPONENT.—The Secretary shall determine the average percentage division of resources, among the work component, the practice expense component, and the malpractice component, used by physicians in each of such specialties in furnishing physicians' services. Such percentages shall be based on national data that describe the elements of physician practice costs and revenues, by physician specialty. The Secretary may use extrapolation and other techniques to deter-

mine practice costs and revenues for specialties for which adequate data are not available.

"(C) DETERMINATION OF COMPONENT PERCENTAGES.—

"(i) WORK PERCENTAGE.—The work percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

"(I) the average percentage division for the work component for each physician specialty (determined under subparagraph (B)), multiplied by

"(II) the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

"(ii) PRACTICE EXPENSE PERCENTAGE.—The practice expense percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

"(I) the average percentage division for the practice expense component for each physician specialty (determined under subparagraph (B)), multiplied by

"(II) by the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

"(iii) MALPRACTICE PERCENTAGE.—The malpractice percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

"(I) the average percentage division for the malpractice component for each physician specialty (determined under subparagraph (B)), multiplied by

"(II) by the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

"(D) PERIODIC RECOMPUTATION.—The Secretary may, from time to time, provide for the recomputation of work percentages, practice expense percentages, and malpractice percentages determined under this paragraph.

"(3) ANCILLARY POLICIES.—The Secretary may establish ancillary policies (with respect to the use of modifiers, local codes, and other matters) as may be necessary to implement this subsection.

"(4) CODING.—The Secretary shall establish a uniform procedure coding system for the coding of all physicians' services. The Secretary shall provide for an appropriate coding structure for visits and consultations. The Secretary may incorporate the use of time in the coding for visits and consultations only for services furnished on or after January 1, 1993. The Secretary, in establishing such coding system, shall consult with the Physician Payment Review Commission and other organizations representing physicians.

"(5) NO VARIATION FOR SPECIALISTS.—The Secretary may not vary the conversion factor or the number of relative value units for a physicians' service based on whether the physician furnishing the service is a specialist or based on the type of specialty of the physician.

"(d) CONVERSION FACTORS.—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—The conversion factor for each year shall be the conversion factor established under this subsection for the previous year (or, in the case of 1992, specified in subparagraph (B)) adjusted by the update (established under subparagraph (C)) for the year involved.

"(B) SPECIAL PROVISION FOR 1992.—For purposes of subparagraph (A), the conversion factor specified in this subparagraph is a conversion factor (determined by the Secretary) which, if this section were to apply during 1991 using such conversion factor, would result in the same aggregate amount of payments under this part for physicians' services as the estimated aggregate amount of the payments under this part for such services in 1991.

"(C) PUBLICATION.—The Secretary shall cause to have published in the Federal Register, during the last 15 days of October of—

"(i) 1991, the conversion factor (or factors) which will apply to physicians' services for 1992, and the update (or updates) determined under paragraph (3) for 1992; and

"(ii) each succeeding year, the update (or updates) determined under paragraph (3) for the following year.

"(2) RECOMMENDATION OF UPDATE.—

"(A) IN GENERAL.—Not later than April 15 of each year (beginning with 1991), the Secretary shall transmit to the Congress a report that includes a recommendation on the appropriate update (or updates) in the conversion factor (or factors) for all physicians' services in the following year. The Secretary may recommend a uniform update or different updates for different categories or groups of services. In making the recommendation, the Secretary shall consider—

"(i) the percentage change in the medicare economic index (described in the fourth sentence of section 1842(b)(3)) for that year;

"(ii) the percentage by which actual expenditures for all physicians' services (as defined in subsection (f)(5)(A)) under this part for the fiscal year ending in the year preceding the year in which such recommendation is made were greater or less than actual expenditures for all such physicians' services in the fiscal year ending in the second preceding year;

"(iii) the relationship between the percentage determined under clause (ii) for a fiscal year and the performance standard rate of increase (established under subsection (f)(2)) for that fiscal year;

"(iv) changes in volume or intensity of services;

"(v) access to services; and

"(vi) other factors that may contribute to changes in volume or intensity of services or access to services.

For purposes of making the comparison under clause (iii), the Secretary shall adjust the performance standard rate of increase for a fiscal year to reflect changes in the actual proportion of HMO enrollees (as defined in subsection (f)(5)(B)) in that fiscal year compared with such proportion for the previous fiscal year.

"(B) ADDITIONAL CONSIDERATIONS.—In making recommendations under subparagraph (A), the Secretary may also consider—

"(i) unexpected changes by physicians in response to the implementation of fee schedule;

"(ii) unexpected changes in outlay projections;

"(iii) change in the quality or appropriateness of care; and

"(iv) any other relevant factors not measured in the resource-based payment methodology.

"(C) SPECIAL RULE FOR 1992 UPDATE.—In considering the update for 1992, the Secretary shall make a separate determination of the percentage and relationship described in clauses (ii) and (iii) of subparagraph (A) with respect to the category of surgical services (as defined by the Secretary pursuant to subsection (j)(1)).

"(D) EXPLANATION OF UPDATE.—The Secretary shall include in each report under subparagraph (A)—

"(i) the update recommended for each category of physicians' services (established by the Secretary under subsection (j)(1)) and for each of the following groups of physicians' services: nonsurgical services, visits, consultations, and emergency room services;

"(ii) the rationale for the recommended update (or updates) for each category and group of services described in clause (i); and

"(iii) the data and analyses underlying the update (or updates) recommended.

"(E) COMPUTATION OF BUDGET-NEUTRAL ADJUSTMENT.—

"(i) IN GENERAL.—The Secretary shall include in the report made under subparagraph (A) in a year a statement of the percentage by which (I) the actual expenditures for physicians' services under this part (during the fiscal year ending in the preceding year, as set forth in most recent annual report made pursuant to section 1841(b)(2)), exceeded, or was less than (II) the expenditures projected for the fiscal year under clause (ii).

"(ii) PROJECTED EXPENDITURES.—For purposes of clause (i), the expenditures projected under this clause for a fiscal year is the actual expeditures for physicians' services made under this part in the second preceding fiscal year—

"(I) increased by the weighted average percentage increase permitted under this part for physicians' services in the preceding fiscal year;

"(II) adjusted to reflect the percentage change in the average number of individuals enrolled under this part (who are not enrolled with a risk-sharing contract under section 1876) for the preceding fiscal year compared with the second preceding fiscal year;

"(III) adjusted to reflect the average annual percentage growth in the volume and intensity of physicians' services under this part for the five-fiscal-year period ending with the second preceding fiscal year; and

"(IV) adjusted to reflect the percentage change in expenditures for physicians' services under this part in the preceding fiscal year (compared with the second preceding fiscal year) which result from changes in law or regulations.

"(F) COMMISSION REVIEW.—The Physician Payment Review Commission shall review the report submitted under subparagraph (A) in a year and shall submit to the Congress, by not later than May 15 of the year, a report including its recommendations respecting the update (or updates) in the conversion factor (or factors) for the following year.

"(3) UPDATE.—

"(A) BASED ON INDEX.—

"(i) IN GENERAL.—Unless Congress otherwise provides, subject to subparagraph (B), for purposes of this section the update for a year is equal to the Secretary's estimate of the percentage increase in the appropriate update index (as defined in clause (ii)) for the year.

"(ii) APPROPRIATE UPDATE INDEX DEFINED.—In clause (i), the term 'appropriate update index' means—

"(I) for services for which prevailing charges in 1989 were subject to a limit under the fourth sentence of section 1842(b)(3), the medicare economic index (referred to in that sentence), and

"(II) for other services, such index (such as the consumer price index) that was applicable under this part in 1989 to increases in the payment amounts recognized under this part with respect to such services.

"(B) ADJUSTMENT IN UPDATE.—

"(i) IN GENERAL.—The update for a year provided under subparagraph (A) shall, subject to clause (ii), be increased or decreased by the same percentage by which (I) the percentage increase in the actual expenditures for physicians' services (as defined in section (f)(5)(A)) in the second previous fiscal year over the third previous fiscal year, was less or greater, respectively, than the performance standard rate of increase (established under subsection (f)) for such category of services for the second previous fiscal year.

"(ii) RESTRICTIONS ON ADJUSTMENT.—The adjustment made under clause (i) for a year may not result in a decrease of—

"(I) more than 2 percentage points for the update for 1992 or 1993,

"(II) 2 ½ percentage points for the update for 1994 or 1995, and

"(III) 3 percentage points for the update for any succeeding year.

"(e) GEOGRAPHIC ADJUSTMENT FACTORS.—

"(1) ESTABLISHMENT OF GEOGRAPHIC INDICES.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall establish—

"(i) an index which reflects the relative costs of the mix of goods and services comprising practice expenses (other than malpractice expenses) in the different fee schedule areas compared to the national average of such costs,

"(ii) an index which reflects the relative costs of malpractice expenses in the different fee schedule areas compared to the national average of such costs, and

"(iii) an index which reflects ¼ of the difference between the relative value of physicians' work effort in each of the different fee schedule areas and the national average of such work effort.

"(B) CLASS-SPECIFIC GEOGRAPHIC COST-OF-PRACTICE INDICES.—The Secretary may establish more than one index under subparagraph (A)(i) in the case of classes of physicians' services, if, because of differences in the mix of goods and services comprising practice expenses for the different classes of services, the application of a single index under such clause to different classes of such services would be substantially inequitable.

"(2) COMPUTATION OF GEOGRAPHIC ADJUSTMENT FACTOR.—For purposes of subsection (b)(1)(C), for all physicians' services for each fee schedule area the Secretary shall establish a geographic adjustment factor equal to the sum of the geographic cost-of-practice adjustment factor (specified in paragraph (3)), the geographic malpractice adjustment factor (specified in paragraph (4)), and the geographic physician work adjustment factor (specified in paragraph (5)) for the service and the area.

"(3) GEOGRAPHIC COST-OF-PRACTICE ADJUSTMENT FACTOR.—For purposes of paragraph (2), the 'geographic cost-of-practice adjustment factor', for a service for a fee schedule area, is the product of—

"(A) the proportion of the total relative value for the service that reflects the relative value units for the practice expense component, and

"(B) the geographic cost-of-practice index value for the area for the service, based on the index established under paragraph (1)(A)(i) or (1)(B) (as the case may be).

"(4) GEOGRAPHIC MALPRACTICE ADJUSTMENT FACTOR.—For purposes of paragraph (2), the 'geographic malpractice adjustment factor', for a service for a fee schedule area, is the product of—

"(A) the proportion of the total relative value for the service that reflects the relative value units for the malpractice component, and

"(B) the geographic malpractice index value for the area, based on the index established under paragraph (1)(A)(ii).

"(5) GEOGRAPHIC PHYSICIAN WORK ADJUSTMENT FACTOR.—For purposes of paragraph (2), the 'geographic physician work adjustment factor', for a service for a fee schedule area, is the product of—

"(A) the proportion of the total relative value for the service that reflects the relative value units for the work component, and

"(B) the geographic physician work index value for the area, based on the index established under paragraph (1)(A)(iii).

"(f) MEDICARE VOLUME PERFORMANCE STANDARD RATES OF INCREASE.—

"(1) PROCESS FOR ESTABLISHING MEDICARE VOLUME PERFORMANCE STANDARD RATES OF INCREASE.—

"(A) SECRETARY'S RECOMMENDATION.—By not later than April 15 of each year (beginning with 1990), the Secretary shall transmit to the Congress a recommendation on performance standard rates of increase for all physicians' services and for each category of such services for the fiscal year beginning in such year. In making the recommendation, the Secretary shall confer with organizations representing physicians and shall consider—

"(i) inflation,

"(ii) changes in numbers of enrollees (other than HMO enrollees) under this part,

"(iii) changes in the age composition of enrollees (other than HMO enrollees) under this part,

"(iv) changes in technology,

"(v) evidence of inappropriate utilization of services,

"(vi) evidence of lack of access to necessary physicians' services, and

"(vii) such other factors as the Secretary considers appropriate.

"(B) COMMISSION REVIEW.—The Physician Payment Review Commission shall review the recommendation transmitted during a year under subparagraph (A) and shall make its recommendation to Congress, by not later than May 15 of the year, respecting the performance standard rates of increase for the fiscal year beginning in that year.

"(C) PUBLICATION OF PERFORMANCE STANDARD RATES OF INCREASE.—The Secretary shall cause to have published in the Federal Register, in the last 15 days of October of each year (beginning with 1990), the performance standard rates of increase for all physicians' services and for each category of physicians' services for the fiscal year beginning in that year. The Secretary shall cause to have published in the Federal Register, by not later than January 1, 1990, the performance standard rate of increase under subparagraph (D) for fiscal year 1990.

"(D) PERFORMANCE STANDARD RATE OF INCREASE FOR FISCAL YEAR 1990.—The performance standard rate of increase for fiscal year 1990 is equal to the sum of—

"(i) the Secretary's estimate of the weighted average percentage increase in the reasonable charges for physicians' services (as defined in subsection (f)(5)(A)) under this part for calendar years included in fiscal year 1990,

"(ii) the Secretary's estimate of the percentage increase or decrease in the average number of individuals enrolled under this part (other than HMO enrollees) from fiscal year 1989 to fiscal year 1990,

"(iii) the Secretary's estimate of the average annual percentage growth in volume and intensity of physicians' services under this part for the 5-fiscal-year period ending with fiscal year 1989 (based upon information contained in the most recent annual report made pursuant to section 1841(b)(2)) by the Trustees of the calculated by the Trust, and

"(iv) the Secretary's estimate of the percentage increase or decrease in expenditures for physicians' services (as defined in subsection (f)(5)(A)) in fiscal year 1990 (compared with fiscal year 1989) which will result from changes in law or regulations and which is not taken into account in the percentage increase described in clause (i),

reduced by ½ percent.

"(2) SPECIFICATION OF PERFORMANCE STANDARD RATES OF INCREASE FOR SUBSEQUENT FISCAL YEARS.—

"(A) IN GENERAL.—Unless Congress otherwise provides, subject to paragraph (4), each performance standard rates of increase for a fiscal year (beginning with fiscal year 1991) shall be equal to the sum of—

"(i) the Secretary's estimate of the weighted average percentage increase in the fees for physicians' services (as defined in subsection (f)(5)(A)) under this part for calendar years included in the fiscal year involved,

"(ii) the Secretary's estimate of the percentage increase or decrease in the average number of individuals enrolled under this part (other than HMO enrollees) from the previous fiscal year to the fiscal year involved,

"(iii) the Secretary's estimate of the average annual percentage growth in volume and intensity of physicians' services under this part for the 5-fiscal-year period ending with the preceding fiscal year (based upon information contained in the most recent annual report made pursuant to section 1841(b)(2)), and

"(iv) the Secretary's estimate of the percentage increase or decrease in expenditures for physicians' services (as defined in subsection (f)(5)(A)) in the fiscal year (compared with the preceding fiscal year) which will result from changes in law or regulations and which is not taken into account in the percentage increase described in clause (i),

reduced by the performance standard factor (specified in subparagraph (B)). In clause (i), the term 'fees' means, with respect to 1991, reasonable charges and, with respect to any succeeding year, fee schedule amounts.

"(B) PERFORMANCE STANDARD FACTOR.—For purposes of subparagraph (A), the performance standard factor—

"(i) for 1991 is 1 percentage point,

"(ii) for 1992 is 1½ percentage points, and

"(iii) for each succeeding year is 2 percentage points.

"(3) QUARTERLY REPORTING.—The Secretary shall establish procedures for providing, on a quarterly basis to the Physician Payment Review Commission, the Congressional Budget Office, the Congressional Research Service, the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate, information on compliance with performance standard rates of increase established under this subsection.

"(4) SEPARATE-GROUP SPECIFIC PERFORMANCE STANDARD RATES OF INCREASE.—

"(A) IMPLEMENTATION OF PLAN.—Subject to paragraph (B), the Secretary shall after completion of the study required under section 6102(e)(3) of the Omnibus Budget Reconciliation Act of 1989, but not before October 1,

1991, implement a plan under which qualified physician groups could elect annually separate performance standard rates of increase other than the performance standard rate of increase established for the year under paragraph (1) for such physicians. The Secretary shall develop criteria to determine which physician groups are eligible to elect to have applied to such groups separate performance standard rates of increase and the methods by which such group-specific performance standard rates of increase would be accomplished. The Secretary shall report to the Congress on the criteria and methods by April 15, 1991. The Physician Payment Review Commission shall review and comment on such recommendations by May 15, 1991. Before implementing group specific performance standard rates of increase, the Secretary shall provide for notice and comment in the Federal Register and consult with organizations representing physicians.

"(B) APPROVAL.—The Secretary may not implement the plan described in subparagraph (A), unless Congress specifically approves the plan.

"(5) DEFINITIONS.—In this subsection:

"(A) SERVICES INCLUDED IN PHYSICIANS' SERVICES.—The term 'physicians' services' includes other items and services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed or furnished by a physician or in a physician's office, but does not include services furnished to an HMO enrollee under a risk-sharing contract under section 1876.

"(B) HMO ENROLLEE.—The term 'HMO enrollee' means, with respect to a fiscal year, an individual enrolled under this part who is enrolled with an entity under a risk-sharing contract under section 1876 in the fiscal year.

"(g) LIMITATION ON BENEFICIARY LIABILITY.—

"(1) LIMITATION ON ACTUAL CHARGES FOR UNASSIGNED CLAIMS.—If a nonparticipating physician knowingly and willfully bills on a repeated basis for physicians' services (furnished with respect to an individual enrolled under this part on or after January 1, 1991) an actual charge in excess of the limiting charge described in paragraph (2) and for which payment is not made on an assignment-related basis under this part, the Secretary may apply sanctions against such physician in accordance with section 1842(j)(2).

"(2) LIMITING CHARGE DEFINED.—

"(A) FOR 1991.—For physicians' services of a physician furnished during 1991, the 'limiting charge' shall be the same percentage (or, if less, 25 percent) above the recognized payment amount under this part with respect to the physician (as a nonparticipating physician) as the percentage by which—

"(i) the maximum allowable actual charge (as determined under section 1842(j)(1)(C) as of December 31, 1990, or, if less, the maximum actual charge otherwise permitted for the service under this part as of such date) for the service of the physician, exceeds

"(ii) the recognized payment amount for the service of the physician (as a nonparticipating physician) as of such date.

"(B) FOR 1992.—For physicians' services furnished during 1992, the 'limiting charge' shall be the same percentage (or, if less, 20 percent) above the recognized payment amount under this part for nonparticipating physicians as the percentage by which—

"(i) the limiting charge (as determined under subparagraph (A) as of December 31, 1991) for the service, exceeds

"(ii) the recognized payment amount for the service for nonparticipating physicians as of such date.

"(C) AFTER 1992.—For physicians' services furnished in a year after 1992, the 'limiting charge' shall be 115 percent of the recognized payment amount under this part for nonparticipating physicians.

"(D) RECOGNIZED PAYMENT AMOUNT.—In this section, the term 'recognized payment amount' means, for services furnished on or after January 1, 1992, the fee schedule amount determined under subsection (a), and, for services furnished during 1991, the applicable percentage (as defined in section 1842(b)(4)(A)(iv)) of the prevailing charge (or fee schedule amount) for nonparticipating physicians for that year.

"(3) LIMITATION ON CHARGES FOR MEDICARE BENEFICIARIES ELIGIBLE FOR MEDICAID BENEFITS.—

"(A) IN GENERAL.—Payment for physicians' services furnished on or after April 1, 1990, to an individual who is enrolled under this part and eligible for any medical assistance (including as a qualified medicare beneficiary, as defined in section 1905(p)(1)) with respect to such services under a State plan approved under title XIX may only be made on an assignment-related basis.

"(B) PENALTY.—A person may not bill for physicians' services subject to subparagraph (A) other than on an assignment-related basis. If a person knowingly and willfully bills for physicians' services in violation of the previous sentence, the Secretary may apply sanctions against the person in accordance with section 1842(j)(2).

"(4) PHYSICIAN SUBMISSION OF CLAIMS.—

"(A) IN GENERAL.—For services furnished on or after September 1, 1990, within 1 year after the date of providing a service for which payment is made under this part on a reasonable charge or fee schedule basis, a physician, supplier, or other person (or an employer or facility in the cases described in section 1842(b)(6)(A))—

"(i) shall complete and submit a claim for such service on a standard claim form specified by the Secretary to the carrier on behalf of a beneficiary, and

"(ii) may not impose any charge relating to completing and submitting such a form.

"(B) PENALTY.—(i) With respect to an assigned claim wherever a physician, provider, supplier or other person (or an employer or facility in the cases described in section 1842(b)(6)(A)) fails to submit such a claim as required in subparagraph (A), the Secretary shall reduce by 10 percent the amount that would otherwise be paid for such claim under this part.

"(ii) If a physician, supplier, or other person (or an employer or facility in the cases described in section 1842(b)(6)(A)) fails to submit a claim required to be submitted under subparagraph (A) or imposes a charge in violation of such subparagraph, the Secretary shall apply the sanction with respect to such a violation in the same manner a sanction may be imposed under section 1842(p)(3) for a violation of section 1842(p)(1).

"(5) ELECTRONIC BILLING, DIRECT DEPOSIT.—The Secretary shall encourage and develop a system providing for expedited payment for claims submitted electronically. The Secretary shall also encourage and provide incentives allowing for direct deposit as payments for services furnished by participating physicians. The Secretary shall provide physicians with such technical information as necessary to enable such physicians to submit claims electronically. The Secretary shall submit a plan to Congress on this paragraph by May 1, 1990.

"(6) MONITORING OF CHARGES.—

"(A) IN GENERAL.—The Secretary shall monitor—

"(i) the actual charges of nonparticipating physicians for physicians' services furnished on or after January 1, 1991, to individuals enrolled under this part, and

"(ii) changes (by specialty, type of service, and geographic area) in (I) the proportion of expenditures for physicians' services provided under this part by participating physicians, (II) the proportion of expenditures for such services for which payment is made under this part on an assignment-related basis, and (III) the amounts charged above the recognized payment amounts under this part.

"(B) REPORT.—The Secretary shall, by not later than April 15 of each year (beginning in 1992), report to the Congress regarding the changes described in subparagraph (A)(ii).

"(C) PLAN.—If the Secretary finds that there has been a significant decrease in the proportions described in subclauses (I) and (II) of subparagraph (A)(ii) or an increase in the amounts described in subclause (III) of that subparagraph, the Secretary shall develop a plan to address such a problem and transmit to Congress recommendations regarding the plan. The Physician Payment Review Commission shall review the Secretary's plan and recommendations and transmit to Congress its comments regarding such plan and recommendations.

"(7) MONITORING OF UTILIZATION AND ACCESS.—

"(A) IN GENERAL.—The Secretary shall monitor—

"(i) changes in the utilization of and access to services furnished under this part within geographic, population, and service related categories,

"(ii) possible sources of inappropriate utilization of services furnished under this part which contribute to the overall level of expenditures under this part, and

"(iii) factors underlying these changes and their interrelationships.

"(B) REPORT.—The Secretary shall by not later than April 15, of each year (beginning with 1991) report to the Congress on the changes described in subparagraph (A)(i) and shall include in the report an examination of the factors (including factors relating to different services and specific categories and groups of services and geographic and demographic variations in utilization) which may contribute to such changes.

"(C) RECOMMENDATIONS.—The Secretary shall include in each annual report under subparagraph (B) recommendations—

"(i) addressing any identified patterns of inappropriate utilization,

"(ii) on utilization review,

"(iii) on physician education or patient education,

"(iv) addressing any problems of beneficiary access to care made evident by the monitoring process, and

"(v) on such other matters as the Secretary deems appropriate.

The Physician Payment Review Commission shall comment on the Secretary's recommendations and in developing its comments, the Commission shall convene and consult a panel of physician experts to evaluate the implications of medical utilization patterns for the quality of and access to patient care.

"(h) SENDING INFORMATION TO PHYSICIANS.—Before the beginning of each year (beginning with 1992), the Secretary shall send to each physician furnishing physicians' services under this part, for services commonly performed by the physician, information on fee schedule amounts that apply for the year in the fee schedule area for participating and non-participating physicians, and the maximum amount that may be charged consistent with subsection (g)(2). Such information shall be transmitted in conjunction with notices to physicians under section 1842(h) (relating to the participating physician program) for a year.

"(i) MISCELLANEOUS PROVISIONS.—

"(1) RESTRICTION ON ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review under section 1869 or otherwise of—

"(A) the determination of the historical payment basis (as defined in subsection (a)(2)(C)(i)),

"(B) the determination of relative values and relative value units under subsection (c),

"(C) the determination of conversion factors under subsection (d),

"(D) the establishment of geographic adjustment factors under subsection (e), and

"(E) the establishment of the system for the coding of physicians' services under this section.

"(j) DEFINITIONS.—In this section:

"(1) CATEGORY.—The term 'category' means, with respect to physicians' services, surgical services, and all physicians' services other than surgical services, and such other category or categories of physicians' services as the Secretary, from time to time, defines in regulation. The Secretary shall define surgical services and publish such definition in the Federal Register no later than May 1, 1990, after consultation with organizations representing physicians.

"(2) FEE SCHEDULE AREA.—The term 'fee schedule area' means a locality used under section 1842(b) for purposes of computing payment amounts for physicians' services.

"(3) PHYSICIANS' SERVICES.—The term 'physicians' services' includes items and services described in paragraphs (1), (2)(A), (2)(D), (3), and (4) of section 1861(s) (other than clinical diagnostic laboratory tests and such other items and services as the Secretary may specify).

"(4) PRACTICE EXPENSES.—The term 'practice expenses' includes all expenses for furnishing physicians' services, excluding malpractice expenses, physician compensation, and other physician fringe benefits.".

(c) REQUIREMENTS FOR CARRIERS TO PROFILE PHYSICIANS.—Section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)) is amended—

(1) by striking "and" at the end of subparagraph (J),

(2) by inserting "and" at the end of subparagraph (K), and

(3) by inserting after subparagraph (K) the following new subparagraph:

"(L) will monitor and profile physicians' billing patterns within each area or locality and provide comparative data to physicians whose utilization patterns vary significantly from other physicians in the same payment area or locality;".

(d) RURAL AND INNER-CITY ACCESS ADJUSTMENTS.—

(1) ADJUSTMENTS.—Section 1833(m) of such Act (42 U.S.C. 1395l(m)) is amended—

(A) by striking "class 1 or class 2", and

(B) by striking "5 percent" and inserting "10 percent".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to services furnished on or after January 1, 1991.

(e) STUDIES.—

(1) GAO STUDY OF ALTERNATIVE PAYMENT METHODOLOGY FOR MALPRACTICE COMPONENT.—The Comptroller General shall provide for—

(A) a study of alternative ways of paying, under section 1848 of the Social Security Act, for the malpractice component for physicians' services, in a manner that would assure, to the extent practicable, payment for medicare's share of malpractice insurance premiums, and

(B) a study to examine alternative resolution procedures for malpractice claims respecting professional services furnished under the medicare program.

The examination under subparagraph (B) shall include review of the feasibility of establishing procedures that involve no-fault payment or that involve mandatory arbitration. By not later than April 1, 1991, the Comptroller General shall submit a report to Congress on the results of the studies.

(2) STUDY OF PAYMENTS TO RISK-CONTRACTING PLANS.—The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall conduct a study of how payments under section 1848 of the Social Security Act may affect payments to eligible organizations with risk-sharing contracts under section 1876 of such Act. By not later than April 1, 1990, the Secretary shall submit a report to Congress on such study and shall include in the report such recommendations for such changes in the methodology for payment under such risk-sharing contracts as the Secretary deems appropriate.

(3) STUDY OF VOLUME PERFORMANCE STANDARD RATES OF INCREASE BY GEOGRAPHY, SPECIALTY, AND TYPE OF SERVICE.—The Secretary shall conduct a study of the feasibility of establishing, under section 1848(f) of the Social Security Act, separate performance standard rates of increase for services furnished by or within each of the following (including combinations of the following):

(A) Geographic area (such as a region, State, or other area).

(B) Specialty or group of specialties of physicians.

(C) Type of services (such as primary care, services of hospital-based physicians, and other inpatient services).

Such study shall also include the scope of services included within, or excluded from, the rate of increase in expenditure system. By not later than July 1, 1990, the Secretary shall submit a report to Congress on such study and shall include in the report such recommendations respecting the feasibility of establishing separate target rates of increase in expenditures as it deems appropriate.

(4) HHS VISIT CODE MODIFICATION STUDY.—The Secretary shall conduct a study of the desirability of including time as a factor in establishing visit codes. By not later than July 1, 1991, the Secretary shall consult with the Physician Payment Review Commission, and submit a report to Congress on such study and shall include in the report recommendations respecting the desirability of modifying the number of visit codes, whether greater coding uniformity would result from including time in visit codes when compared with clarifying the clinical descriptions of existing codes, and the ability to audit physician time accurately.

(5) COMMISSION STUDY OF PAYMENT FOR PRACTICE EXPENSES.—The Physician Payment Review Commission shall conduct a study of—

(A) the extent to which practice costs and malpractice costs vary by geographic locality (including region, State, Metropolitan Statistical Areas, or other areas and by specialty),

(B) the extent to which available geographic practice-cost indices accurately reflect practice costs and malpractice costs in rural areas,

(C) which geographic units would be most appropriate to use in measuring and adjusting practice costs and malpractice costs,

(D) appropriate methods for allocating malpractice expenses to particular procedures which could be incorporated into the determination of relative values for particular procedures using a consensus panel and other appropriate methodologies,

(E) the effect of alternative methods of allocating malpractice expenses on Medicare expenditures by specialty, type of service, and by geographic area, and

(F) the special circumstances of rural independent laboratories in determining the geographic cost-of-practice index.

By not later than July 1, 1991, the Commission shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the study and shall include in the report such recommendations as it deems appropriate.

(6) COMMISSION STUDY OF GEOGRAPHIC PAYMENT AREAS.—The Physician Payment Review Commission shall conduct a study of the feasibility and desirability of using Metropolitan Statistical Areas or other payment areas for purposes of payment for physicians' services under part B of title XVIII of the Social Security Act. By not later than July 1, 1991, the Commission shall submit a report to Congress on such study and shall include in the report recommendations on the desirability of retaining current carrier-wide localities, changing to a system of statewide localities, or adopting Metropolitan Statistical Areas or other payment areas for purposes of payment under such part B.

(7) COMMISSION STUDY OF PAYMENT FOR NON-PHYSICIAN PROVIDERS OF MEDICARE SERVICES.—The Physician Payment Review Commission shall conduct a study of the implications of a resource-based fee schedule for physicians' services for non-physician practitioners, such as physician assistants, clinical psychologists, nurse midwives, and other health practitioners whose services can be billed under the medicare program on a fee-for-service basis. The study shall address (A) what the proper level of payment should be for these practitioners, (B) whether or not adjustments to their payments should be subject to the medicare volume performance standard process, and (C) what update to use for services outside the medicare volume performance standard rates of increase. The Commission shall submit a report to Congress on such study by not later than July 1, 1991.

(8) COMMISSION STUDY OF PHYSICIAN FEES UNDER MEDICAID.—The Physician Payment Review Commission shall conduct a study on physician fees under State medicaid programs established under title XIX of the Social Security Act. The Commission shall specifically examine in such study the adequacy of physician reimbursement under such programs, physician participation in such programs, and access to care by medicaid beneficiaries. By no later than July 1, 1991, the Commission shall submit a report to Congress on such study and shall include

such recommendations as the Commission deems appropriate.

(9) GAO STUDY ON PHYSICIAN ANTI-TRUST ISSUES.—The Comptroller General shall conduct a study of the effect of anti-trust laws on the ability of physicians to act in groups to educate and discipline peers of such physicians in order to reduce and eliminate ineffective practice patterns and inappropriate utilization. The study shall further address anti-trust issues as they relate to the adoption of practice guidelines by third-party payers and the role that practice guidelines might play as a defense in malpractice cases. By no later than July 1, 1991, the Comptroller General shall submit a report to Congress on such study and shall make such recommendations as the Comptroller General deems appropriate.

(f) MISCELLANEOUS CONFORMING AMENDMENTS.—

(1) REFERENCE TO NEW PAYMENT RULES.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 13951(a)(1)) is amended by—

(A) striking "and" before clause (M), and

(B) by inserting before the period the following new clause: "and (N) with respect to expenses incurred for physicians' services (as defined in section 1848(j)(3)), the amounts paid shall be 80 percent of the payment basis determined under section 1848(a)(1)".

(2) CHANGING REFERENCES TO MAXIMUM ALLOWABLE ACTUAL CHARGES.—Section 1842(b)(3)(G) of such Act (42 U.S.C. 1395u(b)(3)(G)) is amended by striking "maximum allowable actual charges (established under subsection (j)(1)(C))" and inserting "limiting charges established under subsection (j)(1)(C)".

(3) DIFFERENTIAL FOR PARTICIPATING PHYSICIANS.—Effective for physicians' services furnished on or after January 1, 1992, the first sentence of section 1842(b)(4)(A)(iv) of such Act (42 U.S.C. 1395u(b)(4)(A)(iv)) is amended by inserting "and before January 1, 1992," after "January 1, 1987,".

(4) PAYMENT FOR PHYSICIAN ASSISTANTS.—Section 1842(b)(12)(A)(ii)(II) of such Act (42 U.S.C. 1395u(b)(12)(A)(ii)(II)) is amended by inserting "(or, for services furnished on or after January 1, 1992, the fee schedule amount specified in section 1848, as the case may be)" after "prevailing charge rate for such services".

(5) PAYMENT FOR CERTIFIED REGISTERED NURSE ANESTHETISTS.—Section 1833(a)(1)(H) of such Act (42 U.S.C. 1395l(a)(1)(H)) is amended by inserting "(or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1848, as the case may be)" after "prevailing charge that would be recognized".

(6) PAYMENT FOR RADIOLOGIST SERVICES.—(A) Section 1833(a)(1)(J) of such Act (42 U.S.C. 1395l(a)(1)(J)) is amended by inserting "subject to section 1848," before "the amounts".

(B) Section 4049(b)(2) of the Omnibus Budget Reconciliation Act of 1987 is amended by striking ", and until" and all that follows through "Social Security Act".

(7) PAYMENT FOR NURSE MIDWIVES.—Section 1833(a)(1)(K) of the Social Security Act (42 U.S.C. 1395l(a)(1)(K)) is amended by inserting ", or, for services furnished on or after January 1, 1992, 65 percent of the fee schedule amount provided under section 1848 for the same service performed by a physician" after "for the same service performed by a physician".

(8) PHYSICIANS' SERVICES FOR INDIVIDUALS WITH END STAGE RENAL DISEASE.—Section 1881(b)(3)(A) of such Act (42 U.S.C. 1395rr(b)(3)(A)) is amended by inserting "or, for services furnished on or after January 1, 1992, on the basis described in section 1848" after "comparable services".

(9) EXTENSION OF MAXIMUM ALLOWABLE ACTUAL CHARGE LIMITS.—Subparagraphs (B)(ii) and (D)(v) of section 1842(j)(1) of such Act (42 U.S.C. 1395u(j)(1)) are each amended by striking all that follows "after" and inserting "December 31, 1990.".

(10) TREATMENT OF CERTAIN EYE EXAMINATION VISITS AS PRIMARY CARE SERVICES.—In applying section 1842(i)(4) of the Social Security Act for services furnished on or after January 1, 1990, intermediate and comprehensive office visits for eye examinations and treatments (codes 92002 and 92004) shall be considered to be primary care services.

(11) DISTRIBUTION OF MODEL FEE SCHEDULE.—By September 1, 1990, the Secretary shall develop a Model Fee Schedule, using the methodology set forth in section 1848 of the Social Security Act. The Model Fee Schedule shall include as many services as the Secretary concludes can be assigned valid relative values. The Secretary shall submit the Model Fee Schedule to the appropriate committees of Congress and make it generally available to the public.

(g) PAYMENT FOR PATHOLOGY SERVICES.—

(1) FEE SCHEDULE.—Section 1834 of the Social Security Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(f) FEE SCHEDULE FOR PHYSICIAN PATHOLOGY SERVICES.—

"(1) APPLICATION.—Subject to section 1848, the Secretary shall provide for application of a fee schedule with respect to physician pathology services. Subject to paragraph (2), such fee schedule shall be based on relative values developed by the Secretary, in consultation with organizations representing physicians performing such services. Such fee schedule shall be designed so as to result in expenditures under this part for services covered under the schedule in an amount that would not exceed the amount of such expenditures which would otherwise occur. In developing such fee schedule the Secretary shall take into account the special circumstances of rural independent laboratories.

"(2) GEOGRAPHIC AREA ADJUSTMENT.—The Secretary shall provide for a geographic area adjustment of the conversion factors in a manner comparable to the geographic area adjustment applied to physicians' services under section 1848 during the year in which the services are furnished.".

(2) PAYMENT ON BASIS OF FEE SCHEDULE.—Section 1833(a)(1)(J) of such Act (42 U.S.C. 1395l(a)(1)(J)) is amended—

(A) by inserting "or physician pathology services" after "1834(b)(6))", and

(B) by inserting "or section 1834(f), respectively" after "1834(b)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1991.

(h) EFFECTIVE DATE.—Except as otherwise provided in this section, this section, and the amendments made by this section, shall take effect on the date of the enactment of this Act.

SEC. 6103. ESTABLISHMENT OF AGENCY FOR HEALTH CARE POLICY AND RESEARCH.

(a) IN GENERAL.—The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by inserting after title VIII the following new title:

"TITLE IX—AGENCY FOR HEALTH CARE POLICY AND RESEARCH

"PART A—ESTABLISHMENT AND GENERAL DUTIES

"SEC. 901. ESTABLISHMENT.

"(a) IN GENERAL.—There is established within the Service an agency to be known as the Agency for Health Care Policy and Research.

"(b) PURPOSE.—The purpose of the Agency is to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

"(c) APPOINTMENT OF ADMINISTRATOR.—There shall be at the head of the Agency an official to be known as the Administrator for Health Care Policy and Research. The Administrator shall be appointed by the Secretary. The Secretary, acting through the Administrator, shall carry out the authorities and duties established in this title.

"SEC. 902. GENERAL AUTHORITIES AND DUTIES.

"(a) IN GENERAL.—In carrying out section 901(b), the Administrator shall conduct and support research, demonstration projects, evaluations, training, guideline development, and the dissemination of information, on health care services and on systems for the delivery of such services, including activities with respect to—

"(1) the effectiveness, efficiency, and quality of health care services;

"(2) subject to subsection (d), the outcomes of health care services and procedures;

"(3) clinical practice, including primary care and practice-oriented research;

"(4) health care technologies, facilities, and equipment;

"(5) health care costs, productivity, and market forces;

"(6) health promotion and disease prevention;

"(7) health statistics and epidemiology; and

"(8) medical liability.

"(b) REQUIREMENTS WITH RESPECT TO RURAL AREAS AND UNDERSERVED POPULATIONS.—In carrying out subsection (a), the Administrator shall undertake and support research, demonstration projects, and evaluations with respect to—

"(1) the delivery of health care services in rural areas (including frontier areas); and

"(2) the health of low-income groups, minority groups, and the elderly.

"(c) MULTIDISCIPLINARY CENTERS.—The Administrator may provide financial assistance to public or nonprofit private entities for meeting the costs of planning and establishing new centers, and operating existing and new centers, for multidisciplinary health services research, demonstration projects, evaluations, training, policy analysis, and demonstrations respecting the matters referred to in subsection (b).

"(d) RELATION TO CERTAIN AUTHORITIES REGARDING SOCIAL SECURITY.—Activities authorized in this section may include, and shall be appropriately coordinated with, experiments, demonstration projects, and other related activities authorized by the Social Security Act and the Social Security Amendments of 1967. Activities under subsection (a)(2) of this section that affect the programs under titles XVIII and XIX of the Social Security Act shall be carried out consistent with section 1142 of such Act.

"SEC. 903. DISSEMINATION.

"(a) IN GENERAL.—The Administrator shall—

"(1) promptly publish, make available, and otherwise disseminate, in a form understandable and on as broad a basis as practicable so as to maximize its use, the results of research, demonstration projects, and evaluations conducted or supported under this title and the guidelines, standards, and review criteria developed under this title;

"(2) promptly make available to the public data developed in such research, demonstration projects, and evaluations;

"(3) provide indexing, abstracting, translating, publishing, and other services leading to a more effective and timely dissemination of information on research, demonstration projects, and evaluations with respect to health care to public and private entities and individuals engaged in the improvement of health care delivery and the general public, and undertake programs to develop new or improved methods for making such information available; and

"(4) as appropriate, provide technical assistance to State and local government and health agencies and conduct liaison activities to such agencies to foster dissemination.

"(b) PROHIBITION AGAINST RESTRICTIONS.—Except as provided in subsection (c), the Administrator may not restrict the publication or dissemination of data from, or the results of, projects conducted or supported under this title.

"(c) LIMITATION ON USE OF CERTAIN INFORMATION.—No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under this title may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose. Such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Secretary) to its publication or release in other form.

"(d) CERTAIN INTERAGENCY AGREEMENT.—The Administrator and the Director of the National Library of Medicine shall enter into an agreement providing for the implementation of subsection (a)(3).

"SEC. 904. HEALTH CARE TECHNOLOGY AND TECHNOLOGY ASSESSMENT.

"(a) IN GENERAL.—In carrying out section 901(b), the Administrator shall promote the development and application of appropriate health care technology assessments—

"(1) by identifying needs in, and establishing priorities for, the assessment of specific health care technologies;

"(2) by developing and evaluating criteria and methodologies for health care technology assessment;

"(3) by conducting and supporting research on the development and diffusion of health care technology;

"(4) by conducting and supporting research on assessment methodologies; and

"(5) by promoting education, training, and technical assistance in the use of health care technology assessment methodologies and results.

"(b) SPECIFIC ASSESSMENTS.—

"(1) IN GENERAL.—In carrying out section 901(b), the Administrator shall conduct and support specific assessments of health care technologies.

"(2) CONSIDERATION OF CERTAIN FACTORS.—In carrying out paragraph (1), the Administrator shall consider the safety, efficacy, and effectiveness, and, as appropriate, the cost-effectiveness, legal, social, and ethical implications, and appropriate uses of such technologies, including consideration of geographic factors.

"(c) INFORMATION CENTER.—

"(1) IN GENERAL.—There shall be established at the National Library of Medicine an information center on health care technologies and health care technology assessment.

"(2) INTERAGENCY AGREEMENT.—The Administrator and the Director of the National Library of Medicine shall enter into an agreement providing for the implementation of paragraph (1).

"(d) RECOMMENDATIONS WITH RESPECT TO HEALTH CARE TECHNOLOGY.—

"(1) IN GENERAL.—The Administrator shall make recommendations to the Secretary with respect to whether specific health care technologies should be reimbursable under federally financed health programs, including recommendations with respect to any conditions and requirements under which any such reimbursements should be made.

"(2) CONSIDERATION OF CERTAIN FACTORS.—In making recommendations respecting health care technologies, the Administrator shall consider the safety, efficacy, and effectiveness, and, as appropriate, the cost-effectiveness and appropriate uses of such technologies.

"(3) CONSULTATIONS.—In carrying out this subsection, the Administrator shall cooperate and consult with the Director of the National Institutes of Health, the Commissioner of Food and Drugs, and the heads of any other interested Federal department or agency.

"PART B—FORUM FOR QUALITY AND EFFECTIVENESS IN HEALTH CARE

"SEC. 911. ESTABLISHMENT OF OFFICE.

"There is established within the Agency an office to be known as the Office of the Forum for Quality and Effectiveness in Health Care. The office shall be headed by a director, who shall be appointed by the Administrator.

"SEC. 912. DUTIES.

"(a) ESTABLISHMENT OF FORUM PROGRAM.—The Administrator, acting through the Director, shall establish a program to be known as the Forum for Quality and Effectiveness in Health Care. For the purpose of promoting the quality, appropriateness, and effectiveness of health care, the Director, using the process set forth in section 913, shall arrange for the development and periodic review and updating of—

"(1) clinically relevant guidelines that may be used by physicians, educators, and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically; and

"(2) standards of quality, performance measures, and medical review criteria through which health care providers and other appropriate entities may assess or review the provision of health care and assure the quality of such care.

"(b) CERTAIN REQUIREMENTS.—Guidelines, standards, performance measures, and review criteria under subsection (a) shall—

"(1) be based on the best available research and professional judgment regarding the effectiveness and appropriateness of health care services and procedures;

"(2) be presented in formats appropriate for use by physicians, health care practitioners, providers, medical educators, and medical review organizations and in formats appropriate for use by consumers of health care; and

"(3) include treatment-specific or condition-specific practice guidelines for clinical treatments and conditions in forms appropriate for use in clinical practice, for use in educational programs, and for use in reviewing quality and appropriateness of medical care.

"(c) AUTHORITY FOR CONTRACTS.—In carrying out this part, the Director may enter into contracts with public or nonprofit private entities.

"(d) DATE CERTAIN FOR INITIAL GUIDELINES AND STANDARDS.—The Administrator, by not later than January 1, 1991, shall assure the development of an initial set of guidelines, standards, performance measures, and review criteria under subsection (a) that includes not less than 3 clinical treatments or conditions described in section 1142(a)(3) of the Social Security Act.

"(e) RELATIONSHIP WITH MEDICARE PROGRAM.—To assure an appropriate reflection of the needs and priorities of the program under title XVIII of the Social Security Act, activities under this part that affect such program shall be conducted consistent with section 1142 of such Act.

"SEC. 913. PROCESS FOR DEVELOPMENT OF GUIDELINES AND STANDARDS.

"(a) DEVELOPMENT THROUGH CONTRACTS AND PANELS.—The Director shall—

"(1) enter into contracts with public and nonprofit private entities for the purpose of developing and periodically reviewing and updating the guidelines, standards, performance measures, and review criteria described in section 912(a); and

"(2) convene panels of appropriately qualified experts (including practicing physicians with appropriate expertise) and health care consumers for the purpose of—

"(A) developing and periodically reviewing and updating the guidelines, standards, performance measures, and review criteria described in section 912(a); and

"(B) reviewing the guidelines, standards, performance measures, and review criteria developed under contracts under paragraph (1).

"(b) AUTHORITY FOR ADDITIONAL PANELS.—The Director may convene panels of appropriately qualified experts (including practicing physicians with appropriate expertise) and health care consumers for the purpose of—

"(1) developing the standards and criteria described in section 914(b); and

"(2) providing advice to the Administrator and the Director with respect to any other activities carried out under this part or under section 902(a)(2).

"(c) SELECTION OF PANEL MEMBERS.—In selecting individuals to serve on panels convened under this section, the Director shall consult with a broad range of interested individuals and organizations, including organizations representing physicians in the general practice of medicine and organizations representing physicians in specialties and subspecialties pertinent to the purposes of the panel involved. The Director shall seek to appoint physicians reflecting a variety of practice settings.

"SEC. 914. ADDITIONAL REQUIREMENTS.

"(a) PROGRAM AGENDA.—

"(1) IN GENERAL.—The Administrator shall provide for an agenda for the development of the guidelines, standards, performance measures, and review criteria described in section 912(a), including—

"(A) with respect to the guidelines, identifying specific diseases, disorders, and other health conditions for which the guidelines are to be developed and those that are to be given priority in the development of the guidelines; and

"(B) with respect to the standards, performance measures, and review criteria, identifying specific aspects of health care for which the standards, performance measures, and review criteria are to be developed and those that are to be given priority in the development of the standards, performance measures, and review criteria.

"(2) CONSIDERATION OF CERTAIN FACTORS IN ESTABLISHING PRIORITIES.—

"(A) Factors considered by the Administrator in establishing priorities for purposes of paragraph (1) shall include consideration of the extent to which the guidelines, standards, performance measures, and review criteria involved can be expected—

"(i) to improve methods of prevention, diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;

"(ii) to reduce clinically significant variations among physicians in the particular services and procedures utilized in making diagnoses and providing treatments; and

"(iii) to reduce clinically significant variations in the outcomes of health care services and procedures.

"(B) In providing for the agenda required in paragraph (1), including the priorities, the Administrator shall consult with the Administrator of the Health Care Financing Administration and otherwise act consistent with section 1142(b)(3) of the Social Security Act.

"(b) STANDARDS AND CRITERIA.—

"(1) PROCESS FOR DEVELOPMENT, REVIEW, AND UPDATING.—The Director shall establish standards and criteria to be utilized by the recipients of contracts under section 913, and by the expert panels convened under such section, with respect to the development and periodic review and updating of the guidelines, standards, performance measures, and review criteria described in section 912(a).

"(2) AWARD OF CONTRACTS.—The Director shall establish standards and criteria to be utilized for the purpose of ensuring that contracts entered into for the development or periodic review or updating of the guidelines, standards, performance measures, and review criteria described in section 912(a) will be entered into only with appropriately qualified entities.

"(3) CERTAIN REQUIREMENTS FOR STANDARDS AND CRITERIA.—The Director shall ensure that the standards and criteria established under paragraphs (1) and (2) specify that—

"(A) appropriate consultations with interested individuals and organizations are to be conducted in the development of the guidelines, standards, performance measures, and review criteria described in section 912(a); and

"(B) such development may be accomplished through the adoption, with or without modification, of guidelines, standards, performance measures, and review criteria that—

"(i) meet the requirements of this part; and

"(ii) are developed by entities independently of the program established in this part.

"(4) IMPROVEMENTS OF STANDARDS AND CRITERIA.—The Director shall conduct and support research with respect to improving the standards and criteria developed under this subsection.

"(c) DISSEMINATION.—The Director shall promote and support the dissemination of the guidelines, standards, performance measures, and review criteria described in section 912(a). Such dissemination shall be carried out through organizations representing health care providers, organizations representing health care consumers, peer review organizations, accrediting bodies, and other appropriate entities.

"(d) PILOT TESTING.—The Director may conduct or support pilot testing of the guidelines, standards, performance measures, and review criteria developed under section 912(a). Any such pilot testing may be conducted prior to, or concurrently with, their dissemination under subsection (c).

"(e) EVALUATIONS.—The Director shall conduct and support evaluations of the extent to which the guidelines, standards, performance standards, and review criteria developed under section 912 have had an effect on the clinical practice of medicine.

"(f) RECOMMENDATIONS TO ADMINISTRATOR.—The Director shall make recommendations to the Administrator on activities that should be carried out under section 902(a)(2) and under section 1142 of the Social Security Act, including recommendations of particular research projects that should be carried out with respect to—

"(1) evaluating the outcomes of health care services and procedures;

"(2) developing the standards and criteria required in subsection (b); and

"(3) promoting the utilization of the guidelines, standards, performance standards, and review criteria developed under section 912(a).".

(b) OUTCOMES OF HEALTH CARE SERVICES AND PROCEDURES.—

(1) ESTABLISHMENT OF PROGRAM OF RESEARCH.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"RESEARCH ON OUTCOMES OF HEALTH CARE SERVICES AND PROCEDURES

"SEC. 1142. (a) ESTABLISHMENT OF PROGRAM.—

"(1) IN GENERAL.—The Secretary, acting through the Administrator for Health Care Policy and Research, shall—

"(A) conduct and support research with respect to the outcomes, effectiveness, and appropriateness of health care services and procedures in order to identify the manner in which diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clincially; and

"(B) assure that the needs and priorities of the program under title XVIII are appropriately reflected in the development and periodic review and updating (through the process set forth in section 913 of the Public Health Service Act) of treatment-specific or condition-specific practice guidelines for clinical treatments and conditions in forms appropriate for use in clinical practice, for use in educational programs, and for use in reviewing quality and appropriateness of medical care.

"(2) EVALUATIONS OF ALTERNATIVE SERVICES AND PROCEDURES.—In carrying out paragraph (1), the Secretary shall conduct or support evaluations of the comparative effects, on health and functional capacity, of alternative services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions.

"(3) INITIAL GUIDELINES.—

"(A) In carrying out paragraph (1)(B) of this subsection, and section 912(d) of the Public Health Service Act, the Secretary shall, by not later than January 1, 1991, assure the development of an initial set of the guidelines specified in paragraph (1)(B) that shall include not less than 3 clinical treatments or conditions that—

"(i)(I) account for a significant portion of expenditures under title XVIII; and

"(II) have a significant variation in the frequency or the type of treatment provided; or

"(ii) otherwise meet the needs and priorities of the program under title XVIII, as set forth under paragraph (b)(3).

"(B)(i) The Secretary shall provide for the use of guidelines developed under subparagrah (A) to improve the quality, effectiveness, and appropriateness of care provided under title XVIII. The Secretary shall determine the impact of such use on the quality, appropriateness, effectiveness, and cost of medical care provided under such title and shall report to the Congress on such determination by not later than January 1, 1993.

"(ii) For the purpose of carrying out clause (i), the Secretary shall expend, from the amounts specified in clause (iii), $1,000,000 for fiscal year 1990 and $1,500,000 for each of the fiscal years 1991 and 1992.

"(iii) For each fiscal year, for purposes of expenditures required in clause (ii)—

"(I) 60 percent of an amount equal to the expenditure involved is appropriated from the Federal Hospital Insurance Trust Fund (established under section 1817); and

"(II) 40 percent of an amount equal to the expenditure involved is appropriated from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841).

"(b) PRIORITIES.—

"(1) IN GENERAL.—The Secretary shall establish priorities with respect to the diseases, disorders, and other health conditions for which research and evaluations are to be conducted or supported under subsection (a). In establishing such priorities, the Secretary shall, with respect to a disease, disorder, or other health condition, consider the extent to which—

"(A) improved methods of prevention, diagnosis, treatment, and clinical management can benefit a significant number of individuals;

"(B) there is significant variation among physicians in the particular services and procedures utilized in making diagnoses and providing treatments or there is significant variation in the outcomes of health care services or procedures due to different patterns of diagnosis or treatment;

"(C) the services and procedures utilized for diagnosis and treatment result in relatively substantial expenditures; and

"(D) the data necessary for such evaluations are readily available or can readily be developed.

"(2) PRELIMINARY ASSESSMENTS.—For the purpose of establishing priorities under paragraph (1), the Secretary may, with respect to services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions, conduct or support assessments of the extent to which—

"(A) rates of utilization vary among similar populations for particular diseases, disorders, and other health conditions;

"(B) uncertainties exist on the effect of utilizing a particular service or procedure; or

"(C) inappropriate services and procedures are provided.

"(3) RELATIONSHIP WITH MEDICARE PROGRAM.—In establishing priorities under paragraph (1) for research and evaluation, and under section 914(a) of the Public Health Service Act for the agenda under such section, the Secretary shall assure that such priorities appropriately reflect the needs and priorities of the program under title XVIII, as set forth by the Administrator of the Health Care Financing Administration.

"(c) METHODOLOGIES AND CRITERIA FOR EVALUATIONS.—For the purpose of facilitating research under subsection (a), the Secretary shall—

"(1) conduct and support research with respect to the improvement of methodologies and criteria utilized in conducting research with respect to outcomes of health care services and procedures;

"(2) conduct and support reviews and evaluations of existing research findings with respect to such treatment or conditions;

"(3) conduct and support reviews and evaluations of the existing methodologies that use large data bases in conducting such research and shall develop new research methodologies, including data-based methods of advancing knowledge and methodologies that measure clinical and functional status of patients, with respect to such research;

"(4) provide grants and contracts to research centers, and contracts to other entities, to conduct such research on such treatment or conditions, including research on the appropriate use of prescription drugs;

"(5) conduct and support research and demonstrations on the use of claims data and data on clinical and functional status of patients in determining the outcomes, effectiveness, and appropriateness of such treatment; and

"(6) conduct and support supplementation of existing data bases, including the collection of new information, to enhance data bases for research purposes, and the design and development of new data bases that would be used in outcomes and effectiveness research.

"(d) STANDARDS FOR DATA BASES.—In carrying out this section, the Secretary shall develop—

"(1) uniform definitions of data to be collected and used in describing a patient's clinical and functional status;

"(2) common reporting formats and linkages for such data; and

"(3) standards to assure the security, confidentiality, accuracy, and appropriate maintenance of such data.

"(e) DISSEMINATION OF RESEARCH FINDINGS AND GUIDELINES.—

"(1) IN GENERAL.—The Secretary shall provide for the dissemination of the findings of research and the guidelines described in subsection (a), and for the education of providers and others in the application of such research findings and guidelines.

"(2) COOPERATIVE EDUCATIONAL ACTIVITIES.—In disseminating findings and guidelines under paragraph (1), and in providing for education under such paragraph, the Secretary shall work with professional associations, medical specialty and subspecialty organizations, and other relevant groups to identify and implement effective means to educate physicians, other providers, consumers, and others in using such findings and guidelines, including training for physician managers within provider organizations.

"(f) EVALUATIONS.—The Secretary shall conduct and support evaluations of the activities carried out under this section to determine the extent to which such activities have had an effect on the practices of physicians in providing medical treatment, the delivery of health care, and the outcomes of health care services and procedures.

"(g) RESEARCH WITH RESPECT TO DISSEMINATION.—The Secretary may conduct or support research with respect to improving methods of disseminating information on the effectiveness and appropriateness of health care services and procedures.

"(h) REPORT TO CONGRESS.—Not later than February 1 of each of the years 1991 and 1992, and of each second year thereafter, the Secretary shall report to the Congress on the progress of the activities under this section during the preceding fiscal year (or preceding 2 fiscal years, as appropriate), including the impact of such activities on medical care (particularly medical care for individuals receiving benefits under title XVIII).

"(i) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

"(A) $50,000,000 for fiscal year 1990;

"(B) $75,000,000 for fiscal year 1991;

"(C) $110,000,000 for fiscal year 1992;

"(D) $148,000,000 for fiscal year 1993; and

"(E) $185,000,000 for fiscal year 1994.

"(2) SPECIFICATIONS.—For the purpose of carrying out this section, for each of the fiscal years 1990 through 1992 an amount equal to two-thirds of the amounts authorized to be appropriated under paragraph (1), and for each of the fiscal years 1993 and 1994 an amount equal to 70 percent of such amounts, are to be appropriated in the following proportions from the following trust funds:

"(A) 60 percent from the Federal Hospital Insurance Trust Fund (established under section 1817).

"(B) 40 percent from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841).

"(3) ALLOCATIONS.—

"(A) For each fiscal year, of the amounts transferred or otherwise appropriated to carry out this section, the Secretary shall reserve appropriate amounts for each of the purposes specified in clauses (i) through (iv) of subparagraph (B).

"(B) The purposes referred to in subparagraph (A) are—

"(i) the development of guidelines, standards, performance measures, and review criteria;

"(ii) research and evaluation;

"(iii) data-base standards and development; and

"(iv) education and information dissemination.".

(2) REPORT ON LINKAGE OF PUBLIC AND PRIVATE RESEARCH-RELATED DATA.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall report to the Congress on the feasibility of linking research-related data described in section 1142(d) of the Social Security Act (as added by subsection (a) of this section) with similar data collected or maintained by non-Federal entities and by Federal agencies other than the Department of Health and Human Services (including the Departments of Defense and Veterans Affairs and the Office of Personnel Management).

(3) TECHNICAL AND CONFORMING PROVISIONS.—

(A) Effective for fiscal years beginning after fiscal year 1990, subsection (c) of section 1875 of the Social Security Act (42 U.S.C. 1395ll) is repealed.

(B) Section 1862(a)(1)(E) of the Social Security Act (42 U.S.C. 1395y(a)(1)(E)) is amended by striking "section 1875(c)" and inserting "section 1142".

(c) ADDITIONAL AUTHORITIES AND DUTIES WITH RESPECT TO AGENCY FOR HEALTH CARE POLICY AND RESEARCH.—

(1) ADVISORY COUNCIL, PEER REVIEW, ADMINISTRATIVE AUTHORITIES, AND OTHER GENERAL PROVISIONS.—Title IX of the Public Health Service Act, as added by subsection (a) of this section, is amended by adding at the end the following new part:

"PART C—GENERAL PROVISIONS

"SEC. 921. ADVISORY COUNCIL FOR HEALTH CARE POLICY, RESEARCH, AND EVALUATION.

"(a) ESTABLISHMENT.—There is established an advisory council to be know as the National Advisory Council for Health Care Policy, Research, and Evaluation.

"(b) DUTIES.—

"(1) IN GENERAL.—The Council shall advise the Secretary and the Administrator with respect to activities to carry out the purpose of the Agency under section 901(b).

"(2) CERTAIN RECOMMENDATIONS.—Activities of the Council under paragraph (1) shall include making recommendations to the Administrator regarding priorities for a national agenda and strategy for—

"(A) the conduct of research, demonstration projects, and evaluations with respect to health care, including clinical practice and primary care;

"(B) the development and application of appropriate health care technology assessments;

"(C) the development and periodic review and updating of guidelines for clinical practice, standards of quality, performance measures, and medical review criteria with respect to health care;

"(D) the conduct of research on outcomes of health care services and procedures.

"(c) MEMBERSHIP.—

"(1) IN GENERAL.—The Council shall, in accordance with this subsection, be composed of appointed members and ex officio members. All members of the Council shall be voting members, other than officials designated under paragraph (3)(B) as ex officio members of the Council.

"(2) APPOINTED MEMBERS.—The Secretary shall appoint to the Council 17 appropriately qualified representatives of the public who are not officers or employees of the United States. The Secretary shall ensure that the appointed members of the Council, as a group, are representative of professions and entities concerned with, or affected by, activities under this title and under section 1142 of the Social Security Act. Of such members—

"(A) 8 shall be individuals distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care;

"(B) 3 shall be individuals distinguished in the practice of medicine;

"(C) 2 shall be individuals distinguished in the health professions;

"(D) 2 shall be individuals distinguished in the fields of business, law, ethics, economics, and public policy; and

"(E) 2 shall be individuals representing the interests of consumers of health care.

"(3) EX OFFICIO MEMBERS.—The Secretary shall designate as ex officio members of the Council—

"(A) the Director of the National Institutes of Health, the Director of the Centers for Disease Control, the Administrator of the Health Care Financing Administration, the

Assistant Secretary of Defense (Health Affairs), the Chief Medical Officer of the Department of Veterans Affairs; and

"(B) such other Federal officials as the Secretary may consider appropriate.

"(d) SUBCOUNCIL ON OUTCOMES AND GUIDELINES.—

"(1) ESTABLISHMENT.—For the purpose of carrying out the duties specified in subparagraphs (C) and (D) of subsection (b)(2), the Secretary shall establish a subcouncil of the Council and shall designate the membership of the subcouncil in accordance with paragraph (2).

"(2) MEMBERSHIP.—The subcouncil established pursuant to paragraph (1) shall consist of—

"(A) 6 individuals from among the individuals appointed to the Council under subparagraphs (A) through (C) of subsection (c)(2);

"(B) 2 individuals from among the individuals appointed to the Council under subparagraphs (D) and (E) of such subsection; and

"(C) each of the officials designated as ex officio members of the Council under subsection (c)(3)(A).

"(e) TERMS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), members of the Council appointed under subsection (c)(2) shall serve for a term of 3 years.

"(2) STAGGERED ROTATION.—Of the members first appointed to the Council under subsection (c)(2), the Secretary shall appoint 5 members to serve for a term of 3 years, 5 members to serve for a term of 2 years, and 5 members to serve for a term of 1 year.

"(3) SERVICE BEYOND TERM.—A member of the Council appointed under subsection (c)(2) may continue to serve after the expiration of the term of the member until a successor is appointed.

"(f) VACANCIES.—If a member of the Council appointed under subsection (c)(2) does not serve the full term applicable under subsection (e), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

"(g) CHAIR.—The Administrator shall, from among the members of the Council appointed under subsection (c)(2), designate an individual to serve as the chair of the Council.

"(h) MEETINGS.—The Council shall meet not less than once during each discrete 4-month period and shall otherwise meet at the call of the Administrator or the chair.

"(i) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—

"(1) APPOINTED MEMBERS.—Members of the Council appointed under subsection (c)(2) shall receive compensation for each day (including traveltime) engaged in carrying out the duties of the Council. Such compensation may not be in an amount in excess of the maximum rate of basic pay payable for GS-18 of the General Schedule.

"(2) EX OFFICIO MEMBERS.—Officials designated under subsection (c)(3) as ex officio members of the Council may not receive compensation for service on the Council in addition to the compensation otherwise received for duties carried out as officers of the United States.

"(j) STAFF.—The Administrator shall provide to the Council such staff, information, and other assistance as may be necessary to carry out the duties of the Council.

"(k) DURATION.—Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Council shall continue in existence until otherwise provided by law.

"SEC. 922. PEER REVIEW WITH RESPECT TO GRANTS AND CONTRACTS.

"(a) REQUIREMENT OF REVIEW.—

"(1) IN GENERAL.—Appropriate technical and scientific peer review shall be conducted with respect to each application for a grant, cooperative agreement, or contract under this title.

"(2) REPORTS TO ADMINISTRATOR.—Each peer review group to which an application is submitted pursuant to paragraph (1) shall report its finding and recommendations respecting the application to the Administrator in such form and in such manner as the Administrator shall require.

"(b) APPROVAL AS PRECONDITION OF AWARDS.—The Administrator may not approve an application described in subsection (a)(1) unless the application is recommended for approval by a peer review group established under subsection (c).

"(c) ESTABLISHMENT OF PEER REVIEW GROUPS.—

"(1) IN GENERAL.—The Administrator shall establish such technical and scientific peer review groups as may be necessary to carry out this section. Such groups shall be established without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and without regard to the provisions of chapter 51, and subchapter III of chapter 53, of such title that relate to classification and pay rates under the General Schedule.

"(2) MEMBERSHIP.—The members of any peer review group established under this section shall be appointed from among individuals who are not officers or employees of the United States and who by virtue of their training or experience are eminently qualified to carry out the duties of such peer review group.

"(3) DURATION.—Notwithstanding section 14(a) of the Federal Advisory Committee Act, peer review groups established under this section shall continue in existence until otherwise provided by law.

"(d) CATEGORIES OF REVIEW.—

"(1) IN GENERAL.—With respect to technical and scientific peer review under this section, such review of applications with respect to research, demonstration projects, or evaluations shall be conducted by different peer review groups than the peer review groups that conduct such review of applications with respect to dissemination activities or the development of research agendas (including conferences, workshops, and meetings).

"(2) AUTHORITY FOR PROCEDURAL ADJUSTMENTS IN CERTAIN CASES.—In the case of applications described in subsection (a)(1) for financial assistance whose direct costs will not exceed $50,000, the Administrator may make appropriate adjustments in the procedures otherwise established by the Administrator for the conduct of peer review under this section. Such adjustments may be made for the purpose of encouraging the entry of individuals into the field of research, for the purpose of encouraging clinical practice-oriented research, and for such other purposes as the Administrator may determine to be appropriate.

"(e) REGULATIONS.—The Secretary shall issue regulations for the conduct of peer review under this section.

"SEC. 923. CERTAIN PROVISIONS WITH RESPECT TO DEVELOPMENT, COLLECTION, AND DISSEMINATION OF DATA.

"(a) STANDARDS WITH RESPECT TO UTILITY OF DATA.—

"(1) IN GENERAL.—With respect to data developed or collected by any entity for the purpose described in section 901(b), the Administrator shall, in order to assure the utility, accuracy, and sufficiency of such data for all interested entities, establish guidelines for uniform methods of developing and collecting such data. Such guidelines shall include specifications for the development and collection of data on the outcomes of health care services and procedures.

"(2) RELATIONSHIP WITH MEDICARE PROGRAM.—In any case where guidelines under paragraph (1) may affect the administration of the program under title XVIII of the Social Security Act, the guidelines shall be in the form of recommendations to the Secretary for such program.

"(b) STATISTICS.—The Administrator shall—

"(1) take such action as may be necessary to assure that statistics developed under this title are of high quality, timely, and comprehensive, as well as specific, standardized, and adequately analyzed and indexed; and

"(2) publish, make available, and disseminate such statistics on as wide a basis as is practicable.

"SEC. 924. ADDITIONAL PROVISIONS WITH RESPECT TO GRANTS AND CONTRACTS.

"(a) REQUIREMENT OF APPLICATION.—The Administrator may not, with respect to any program under this title authorizing the provision of grants, cooperative agreements, or contracts, provide any such financial assistance unless an application for the assistance is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Administrator determines to be necessary to carry out the program involved.

"(b) PROVISION OF SUPPLIES AND SERVICES IN LIEU OF FUNDS.—

"(1) IN GENERAL.—Upon the request of an entity receiving a grant, cooperative agreement, or contract under this title, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the entity in carrying out the project involved and, for such purpose, may detail to the entity any officer or employee of the Department of Health and Human Services.

"(2) CORRESPONDING REDUCTION IN FUNDS.—With respect to a request described in paragraph (1), the Secretary shall reduce the amount of the financial assistance involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Administrator. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

"(c) APPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO CONTRACTS.—Contracts may be entered into under this part without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

"SEC. 925. CERTAIN ADMINISTRATIVE AUTHORITIES.

"(a) DEPUTY ADMINISTRATOR AND OTHER OFFICERS AND EMPLOYEES.—

"(1) DEPUTY ADMINISTRATOR.—The Administrator may appoint a deputy administrator for the Agency.

"(2) OTHER OFFICERS AND EMPLOYEES.—The Administrator may appoint and fix the compensation of such officers and employees as may be necessary to carry out this title. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

"(b) FACILITIES.—The Secretary, in carrying out this title—

"(1) may acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise through the Administrator of General Services, buildings or portions of buildings in the District of Columbia or communities located adjacent to the District of Columbia for use for a period not to exceed 10 years; and

"(2) may acquire, construct, improve, repair, operate, and maintain laboratory, research, and other necessary facilities and equipment, and such other real or personal property (including patents) as the Secretary deems necessary.

"(c) PROVISION OF FINANCIAL ASSISTANCE.—The Administrator, in carrying out this title, may make grants to, and enter into cooperative agreements with, public and nonprofit private entities and individuals, and when appropriate, may enter into contracts with public and private entities and individuals.

"(d) UTILIZATION OF CERTAIN PERSONNEL AND RESOURCES.—

"(1) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The Administrator, in carrying out this title, may utilize personnel and equipment, facilities, and other physical resources of the Department of Health and Human Services, permit appropriate (as determined by the Secretary) entities and individuals to utilize the physical resources of such Department, and provide technical assistance and advice.

"(2) OTHER AGENCIES.—The Administrator, in carrying out this title, may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, or of any foreign government, with or without reimbursement of such agencies.

"(e) CONSULTANTS.—The Secretary, in carrying out this title, may secure, from time to time and for such periods as the Administrator deems advisable but in accordance with section 3109 of title 5, United States Code, the assistance and advice of consultants from the United States or abroad.

"(f) EXPERTS.—

"(1) IN GENERAL.—The Secretary may, in carrying out this title, obtain the services of not more than 50 experts or consultants who have appropriate scientific or professional qualifications. Such experts or consultants shall be obtained in accordance with section 3109 of title 5, United States Code, except that the limitation in such section on the duration of service shall not apply.

"(2) TRAVEL EXPENSES.—

"(A) Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a)(1), 5724a(a)(3), and 5726(c) of title 5, United States Code.

"(B) Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless and until the expert agrees in writing to complete the entire period of assignment, or one year, whichever is shorter, unless separated or reassigned for reasons that are beyond the control of the expert or consultant and that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a debt of the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

"(g) VOLUNTARY AND UNCOMPENSATED SERVICES.—The Administrator, in carrying out this title, may accept voluntary and uncompensated services.

"SEC. 926. FUNDING.

"(a) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this title, there are authorized to be appropriated $35,000,000 for fiscal year 1990, $50,000,000 for fiscal year 1991, and $70,000,000 for fiscal year 1992.

"(b) EVALUATIONS.—In addition to amounts available pursuant to subsection (a) for carrying out this title, there shall be made available for such purpose, from the amounts made available pursuant to section 2611 of this Act (relating to evaluations), an amount equal to 40 percent of the maximum amount authorized in such section 2611 to be made available.

"SEC. 927. DEFINITIONS.

"For purposes of this title:

"(1) The term 'Administrator' means the Administrator for Health Care Policy and Research.

"(2) The term 'Agency' means the Agency for Health Care Policy and Research.

"(3) The term 'Council' means the National Advisory Council on Health Care Policy, Research, and Evaluation.

"(4) The term 'Director' means the Director of the Office of the Forum for Quality and Effectiveness in Health Care.".

(d) GENERAL PROVISIONS.—

(1) TERMINATIONS.—

(A) The National Center for Health Services Research and Health Care Technology Assessment is terminated, and part A of title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by striking section 305.

(B) The council on health care technology established under section 309 of the Public Health Service Act is terminated, and part A of title III of such Act is amended by striking such section 309.

(2) CONTRACT FOR TEMPORARY ASSISTANCE TO SECRETARY WITH RESPECT TO HEALTH CARE TECHNOLOGY ASSESSMENT.—

(A) The Secretary of Health and Human Services shall request the Institute of Medicine of the National Academy of Sciences to enter into a contract—

(i) to develop and recommend to the Secretary priorities for the assessment of specific health care technologies under section 904 of the Public Health Service Act (as added by subsection (a) of this section); and

(ii) to assist the Administrator for Health Care Policy and Research, and the Director of the National Library of Medicine, in establishing the information center required under subsection (c)(1) of such section 904.

(B) In carrying out section 904(c)(1) of the Public Health Service Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall, as appropriate, provide for the transfer to the Secretary of any information and materials developed by the council on health care technology under section 309(c)(1)(A) of the Public Health Service Act (as such section was in effect on the day before the effective date of this section).

(C) The Secretary of Health and Human Services shall ensure that the contract under subparagraph (A) specifies that the activities described in clauses (i) and (ii) of such subparagraph shall be completed not later than 1 year after the date on which the Secretary enters into the contract.

(D) For the purpose of carrying out the contract under subparagraph (A), there is authorized to be appropriated $300,000 for fiscal year 1990.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION 304.—Section 304 of the Public Health Service Act (42 U.S.C. 242b) is amended—

(A) in subsection (a)—

(i) by striking paragraphs (1) and (2); and

(ii) by striking the paragraph designation in paragraph (3);

(B) in subsection (a) (as amended by subparagraph (A) of this paragraph—

(i) by striking "the National Center for Health Services Research and Health Care Technology Assessment" and inserting "the Agency for Health Care Policy and Research"; and

(ii) by striking "in sections 305, 306, and 309" and inserting "in section 306 and in title IX";

(C) in subsection (b), in the matter preceding paragraph (1), by striking "subsection (a)," and inserting "subsection (a) and section 306,"; and

(D) in subsection (c)—

(i) in paragraph (1), in the second sentence, by striking "the National Center for Health Services Research and Health Care Technology Assessment" and inserting "the Agency for Health Care Policy and Research"; and

(ii) in paragraph (2), by striking "the National Center for Health Services Research and Health Care Technology Assessment" and inserting "the Agency for Health Care Policy and Research".

(2) SECTION 306.—Section 306 of the Public Health Service Act (42 U.S.C. 242k) is amended—

(A) in subsection (a), by adding at the end the following new sentence: "The Secretary, acting through the Center, shall conduct and support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.";

(B) in subsection (b), in the matter preceding paragraph (1), by striking "section 304(a)," and inserting "subsection (a),"; and

(C) by adding at the end the following new subsection:

"(m) For health statistical and epidemiological activities undertaken or supported under this section, there are authorized to be appropriated $55,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989 and 1990.".

(3) SECTION 307.—Section 307(a) of the Public Health Service Act (42 U.S.C. 242l(a)) is amended by striking "sections 304, 305, 306, and 309" and inserting "section 306 and by title IX".

(4) SECTION 308.—Section 308 of the Public Health Service Act (42 U.S.C. 242m) is amended—

(A) in the section heading, by striking "SECTIONS" and all that follows and inserting the following: "EFFECTIVENESS, EFFICIENCY, AND QUALITY OF HEALTH SERVICES";

(B) in subsection (a)—

(i) in paragraph (1)(A)(i), by striking "sections 304 through 307 and section 309" and inserting "sections 304, 306, and 307 and title IX"; and

(ii) in paragraph (2), by striking "the National Center for Health Services Research and Health Care Technology Assessment" and inserting "the Agency for Health Care Policy and Research";

(C) in subsection (b)—

(i) in paragraph (1), by striking "sections 304, 305, 306, 307, and 309" and inserting "section 304, 306, or 307";

(ii) in subparagraph (A) of paragraph (2)—

(I) in the first sentence, by striking "under section 304 or 305," and inserting "under section 306";

(II) by striking the second sentence; and

(III) by amending the last sentence to read as follows: "The Director of the National Center for Health Statistics shall establish such peer review groups as may be necessary to provide for such an evaluation of each such application.";

(iii) in subparagraph (B) of paragraph (2), by striking "the Director involved," and inserting "the Director of the National Center for Health Statistics,";

(iv) in subparagraph (C) of paragraph (2), by striking "the Directors," and inserting "the Director of the National Center for Health Statistics,"; and

(v) in paragraph (3), in the first sentence—

(I) by striking "section 304, 305, or 306" the first place such term appears and inserting "section 306"; and

(II) by striking "section 304, 305, or 306" the second place such term appears and inserting "any of such sections";

(D) in subsection (d)—

(i) in the matter preceding paragraph (1), by striking "section 304, 305, 306, 307, or 309" and inserting "section 304, 306, or 307";

(ii) in paragraph (1), by striking "in other form, and" and inserting "in other form." and by striking the paragraph designation; and

(ii) by striking paragraph (2);

(E) in subsection (e)—

(i) in paragraph (1), by striking "section 304, 305, 306, 307, or 309" and inserting "section 304, 306, or 307"; and

(ii) in paragraph (2), in the matter preceding subparagraph (A), by striking "section 304, 305, 306, 307, or 309" and inserting "section 304, 306, or 307";

(F) in subsection (f), by striking "section 304, 305, 306, or 309" and inserting "section 304 or 306";

(G) in subsection (g)—

(i) in paragraph (1), by striking the matter after and below subparagraph (C); and

(ii) in paragraph (2), by striking "sections 304, 305, 306, and 309" and inserting "sections 304 and 306";

(H) in subsection (h)(1)—

(i) by striking "section 304, 305, 306, or 309" the first place such term appears and inserting "section 306"; and

(ii) by striking "section 304, 305, 306, or 309" the second place such term appears and inserting "any of such sections"; and

(I) by striking subsection (i).

(5) SECTION 330.—Section 330(e)(3)(G)(i) of the Public Health Service Act (42 U.S.C. 254c(e)(3)(G)(i)) is amended by inserting after "(i)" the following: "except in the case of an entity operated by an Indian tribe or tribal or Indian organization under the Indian Self-Determination Act,".

(6) SECTION 402.—Section 402 of the Public Health Service Amendments of 1987 is amended—

(A) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Such Act is amended in section 411(c)(2) by striking subparagraph (B), by striking 'subparagraphs (A) and (B)' in subparagraph (C), and by redesignating subparagraph (C) as subparagraph (B). Such Act is amended in section 415(a) by inserting before the period at the end the following: 'or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this part'"; and

(B) in subsection (d)(1) (as so redesignated), by striking "subsection (a)" and inserting "subsections (a) and (c)".

(7) SECTION 487.—Section 487(d)(3)(B) of the Public Health Service Act (42 U.S.C. 288(d)(3)(B)) is amended by striking "National Center" and all that follows through "Assessment" and inserting "Agency for Health Care Policy and Research".

(f) TRANSITIONAL AND SAVINGS PROVISIONS.—

(1) TRANSFER OF PERSONNEL, ASSETS, AND LIABILITIES.—Personnel of the Department of Health and Human Services employed on the date of the enactment of this Act in connection with the functions vested in the Administrator for Health Care Policy and Research pursuant to the amendments made by this section, and assets, property, contracts, liabilities, records, unexpended balances of appropriations, authorizations, allocations, and other funds, of such Department arising from or employed, held, used, or available on such date, or to be made available after such date, in connection with such functions shall be transferred to the Administrator for appropriate allocation. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) SAVINGS PROVISIONS.—With respect to functions vested in the Administrator for Health Care Policy and Research pursuant to the amendments made by this section, all orders, rules, regulations, grants, contracts, certificates, licenses, privileges, and other determinations, actions, or official documents, of the Department of Health and Human Services that have been issued, made, granted, or allowed to become effective in the performance of such functions, and that are effective on the date of the enactment of this Act, shall continue in effect according to their terms unless changed pursuant to law.

SEC. 6104. REDUCTION IN PAYMENTS FOR CERTAIN PROCEDURES.

(a) IN GENERAL.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:

"(14)(A) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during the 9-month period beginning on April 1, 1990, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for 1989 reduced by 15 percent or, if less, ½ of the percent (if any) by which the prevailing charge otherwise applied in the locality in 1989 exceeds the locally-adjusted reduced prevailing amount (as determined under subparagraph (B)(i)) for the service.

"(B) For purposes of this paragraph:

"(i) The 'locally-adjusted reduced prevailing amount' for a locality for a physicians' service is equal to the product of—

"(I) the reduced national weighted average prevailing charge for the service (specified under clause (ii)), and

"(II) the adjustment factor (specified under clause (iii)) for the locality.

"(ii) The 'reduced national weighted average prevailing charge' for a physicians' service is equal to the national weighted average prevailing charge for the service (specified in subparagraph (C)(ii)) reduced by the percentage change (specified in subparagraph (C)(iii)) for the service.

"(iii) The 'adjustment factor', for a physicians' service for a locality, is the sum of—

"(I) the practice expense ratio for the service (specified in Table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i)), multiplied by the geographic practice cost index value (specified in subparagraph (C)(iv)) for the locality, and

"(II) 1 minus the practice expense ratio.

"(C) For purposes of this paragraph:

"(i) The physicians' services specified in this clause are the physicians' services specified in Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress, which specification is of physicians' services that have been identified as overvalued by at least 10 percent based on a comparison of payments for such services under a resource-based relative value scale and of the national average prevailing charges under this part.

"(ii) The 'national weighted average prevailing charge' specified in this clause, for a physicians' service specified in clause (i), is the national weighted average prevailing charge for the service in 1989 as determined by the Secretary using the best data available.

"(iii) The 'percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in Table #2 in the Joint Explanatory Statement referred in clause (i).

"(iv) The geographic practice cost index value specified in this clause for a locality is such value specified for the locality in Table #3 in the Joint Explanatory Statement referred to in clause (i).

"(D) In the case of a reduction in the prevailing charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D).".

(b) SPECIAL LIMITS ON ACTUAL CHARGES.—Section 1842(j)(1)(D) of such Act is amended—

(1) in clause (ii)(II), by inserting "or (b)(14)(A)" after "(b)(10)(A)", and

(2) in clause (iii)(II), by striking "or (b)(11)(C)(i)" and inserting "(b)(11)(C)(i), or (b)(14)(A)".

SEC. 6105. REDUCTION IN PAYMENTS FOR RADIOLOGY SERVICES.

(a) FEE SCHEDULES FOR RADIOLOGIST SERVICES REDUCED.—Section 1834(b)(4) of the Social Security Act (42 U.S.C. 1395m(b)(4)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) 1990 FEE SCHEDULES.—For radiologist services (other than portable X-ray services) furnished under this part during 1990, after March 31 of such year, the conversion factors used under this subsection shall be 96 percent of the conversion factors that applied under this subsection as of December 31, 1989.".

(b) SPECIAL RULE FOR NUCLEAR MEDICINE PHYSICIANS.—In applying section 1834(b) of the Social Security Act with respect to nuclear medicine services furnished by a physician for whom nuclear medicine services account for at least 80 percent of the total amount of charges made under part B of title XVIII of the Social Security Act—

(1) during 1990, after April 1, 1990, there shall be substituted for the fee schedule otherwise applicable a fee schedule based ⅓ on the fee schedule computed under such section (without regard to this subsection) and ⅔ on 101 percent of the 1988 prevailing charge for such services; and

(2) during 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based ⅔ on the fee schedule computed under such section (without regard to this subsection) and ⅓ on 101 percent of the 1988 prevailing charge for such services.

(c) INTERVENTIONAL RADIOLOGISTS.—In applying section 1834(b) of the Social Security Act to radiologist services furnished in 1990, the exception for "split billing" set forth at section 5262J of the Medicare Carriers Manual shall apply to services furnished in 1990 in the same manner and to the same extent as the exception applied to services furnished in 1989.

SEC. 6106. ANESTHESIA SERVICES.

(a) COUNTING ACTUAL TIME UNITS FOR ANESTHESIA SERVICES AND CODIFICATION OF PREVIOUS AUTHORITY.—Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

"(q)(1) The Secretary, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services furnished under this part. Such guide shall be designed so as to result in expenditures under this title for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.

"(2) For purposes of payment for anesthesia services (whether furnished by physicians or by certified registered nurse anesthetists) under this part, the time units shall be counted based on actual time rather than rounded to full time units.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after April 1, 1990.

SEC. 6107. DELAY IN UPDATE AND REDUCTION IN PERCENTAGE INCREASE IN THE MEDICARE ECONOMIC INDEX.

(a) DELAYING UPDATES UNTIL APRIL 1.—

(1) IN GENERAL.—Subject to the amendments made by this section, any increase or adjustment in customary, prevailing, or reasonable charges, fee schedule amounts, maximum allowable actual charges, and other limits on actual charges with respect to physicians' services and other items and services described in paragraph (2) under part B of title XVIII of the Social Security Act which would otherwise occur as of January 1, 1990, shall be delayed so as to occur as of April 1, 1990, and, notwithstanding any other provision of law, the amount of payment under such part for such items and services which are furnished during the period beginning on January 1, 1990, and ending on March 31, 1990, shall be determined on the same basis as the amount of payment for such services furnished on December 31, 1989.

(2) ITEMS AND SERVICES COVERED.—The items and services described in this paragraph are items and services (other than ambulance services and clinical diagnostic laboratory services) for which payment is made under part B of title XVIII of the Social Security Act on the basis of a reasonable charge or a fee schedule.

(3) EXTENSION OF PARTICIPATION AGREEMENTS AND RELATED PROVISIONS.—Notwithstanding any other provision of law—

(A) subject to the last sentence of this paragraph, each participation agreement in effect on December 31, 1989, under section 1842(h)(1) of the Social Security Act shall remain in effect for the 3-month period beginning on January 1, 1990;

(B) the effective period for such agreements under such section entered into for 1990 shall be the 9-month period beginning on April 1, 1990, and the Secretary of Health and Human Services shall provide an opportunity for physicians and suppliers to enroll as participating physicians and suppliers before April 1, 1990;

(C) instead of publishing, under section 1842(h)(4) of the Social Security Act, at the beginning of 1990, directories of participating physicians and suppliers for 1990, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1990, of such directories of participating physicians and suppliers for such period; and

(D) instead of providing to nonparticipating physicians under section 1842(b)(3)(G) of the Social Security Act at the beginning of 1990, a list of maximum allowable actual charges for 1990, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1990, such physicians such a list for such 9-month period.

An agreement with a participating physician or supplier described in subparagraph (A) in effect on December 31, 1989, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician or supplier requests on or before December 31, 1989, that the agreement be terminated.

(b) PERCENTAGE INCREASE IN MEI FOR 1990.—Section 1842(b)(4)(E) of the Social Security Act (42 U.S.C. 1395u(b)(4)(E)) is amended by adding at the end the following new clause:

"(iv) For purposes of this part for items and services furnished in 1990, after March 31, 1990, the percentage increase in the MEI is—

"(I) 0 percent for radiology services, for anesthesia services, and for other services specified in Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress,

"(II) 2 percent for other services (other than primary care services), and

"(III) such percentage increase in the MEI (as defined in subsection (i)(3)) as would be otherwise determined for primary care services (as defined in subsection (i)(4)).".

SEC. 6108. MISCELLANEOUS PROVISIONS RELATING TO PAYMENT FOR PHYSICIANS' SERVICES.

(a) CUSTOMARY CHARGE FOR NEW PHYSICIANS.—

(1) PHASE-IN TO PREVAILING CHARGE LEVEL.—Section 1842(b)(4)(F) of the Social Security Act (42 U.S.C. 1395u(b)(4)(F)) is amended—

(A) by inserting "furnished during a calendar year" after "physicians' services", and

(B) by adding at the end the following: "For the first calendar year during which the preceding sentence no longer applies, the Secretary shall set the customary charge at a level no higher than 85 percent of the prevailing charge for the service.".

(2) EFFECTIVE DATE.—(A) Subject to subparagraph (B), the amendments made by paragraph (1) apply to services furnished in 1990 which were subject to the first sentence of section 1842(b)(4)(F) of the Social Security Act in 1989.

(B) The amendments made by paragraph (1) shall not apply to services furnished in 1990 before April 1, 1990. With respect to physicians' services furnished during 1990 on and after April 1, such amendments shall be applied as though any reference, in the matter inserted by such amendments, to the "first calendar year during which the preceding sentence no longer applies" were deemed a reference to the remainder of 1990.

(b) LIMITATION ON AMOUNTS FOR CERTAIN SERVICES FURNISHED BY MORE THAN ONE SPECIALTY.—

(1) IN GENERAL.—Section 1842(b) of such Act (42 U.S.C. 1395u(b)), as amended by section 6102(a) of this subtitle, is amended by adding at the end the following:

"(15)(A) In determining the reasonable charge for surgery, radiology, and diagnostic physicians' services which the Secretary shall designate (based on their high volume of expenditures under this part) and for which the prevailing charge (but for this paragraph) differs by physician specialty, the prevailing charge for such a service may not exceed the prevailing charge or fee schedule amount for that specialty of physicians that furnish the service most frequently nationally.

"(B) In the case of a reduction in the prevailing charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of the reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D).".

(2) SPECIAL LIMITS ON ACTUAL CHARGES.—Section 1842(j)(1)(D) of such Act (42 U.S.C. 1395u(j)(1)(D)) is amended—

(A) in clause (ii)(IV), by inserting "or (b)(15)(A)" before the comma at the end, and

(B) in clause (iii)(II), by striking "or (b)(14)(A)" and inserting "(b)(14)(A), or (b)(15)(A)".

(3) EFFECTIVE DATE.—The amendments made by this subsection apply to procedures performed after March 31, 1990.

SEC. 6109. WAIVER OF LIABILITY LIMITING RECOUPMENT IN CERTAIN CASES.

In the case where more than the correct amount may have been paid to a physician or individual under part B of title XVIII of the Social Security Act with respect to services furnished during the period beginning on July 1, 1985, and ending on March 31, 1986, as a result of a carrier's establishing statewide fees for certain procedure codes while the carrier was in the process of implementing the national common procedure coding system of the Health Care Financing Administration, the provisions of section 1870(c) of the Social Security Act shall apply, without the need for affirmative action by such a physician or individual, so as to prevent any recoupment, or other decrease in subsequent payments, to the physician or individual. The previous sentence shall apply to claims for items and services which were reopened by carriers on or after July 31, 1987.

SEC. 6110. REDUCTION IN CAPITAL PAYMENTS FOR OUTPATIENT HOSPITAL SERVICES.

Section 1861(v)(1)(S) of the Social Security Act (42 U.S.C. 1395x(v)(1)(S)) is amended—

(1) by inserting "(i)" after "(S)", and

(2) by adding at the end the following new clause:

"(ii)(I) Such regulations shall provide that, in determining the amount of the payments that may be made under this title with respect to all the capital-related costs

of outpatient hospital services, the Secretary shall reduce the amounts of such payments otherwise established under this title by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1990.

"(II) Subclause (I) shall not apply to payments with respect to the capital-related costs of any hospital that is a sole community hospital (as defined in section 1886(d)(5)(C)(ii)).

"(III) In applying subclause (I) to services for which payment is made on the basis of a blend amount under section 1833(i)(3)(A)(ii) or 1833(n)(1)(A)(ii), capital-related costs reflected in the amounts described in sections 1833(i)(3)(B)(i)(I) and 1833(n)(1)(B)(i)(I), respectively, shall be reduced in accordance with such subclause.".

SEC. 6111. CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) REDUCTION OF LIMITATION AMOUNT ON PAYMENT AMOUNT.—Section 1833(h) of the Social Security Act (42 U.S.C. 1395l(h)) is amended—

(1) in subparagraphs (B) and (C) of paragraph (1), by striking "during the period" and all that follows through "established on a nationwide basis" and inserting "on or after July 1, 1984";

(2) in paragraph (4)(B)(i), by striking "or" at the end;

(3) in paragraph (4)(B)(ii)—

(A) by striking "and so long as a fee schedule for the test has not been established on a nationwide basis,",

(B) by inserting "and before January 1, 1990," after "March 31, 1988,", and

(C) by striking the period at the end and inserting ", and"; and

(4) by adding at the end of paragraph (4)(B) the following new clause:

"(iii) after December 31, 1989, is equal to 93 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).".

(b) RESTRICTION ON PAYMENT TO REFERRING LABORATORY.—

(1) IN GENERAL.—Section 1833(h)(5)(A)(ii) of such Act (42 U.S.C. 1395l(h)(5)(A)(ii)) is amended by striking "referring laboratory, and" and inserting "referring laboratory but only if—

"(I) the referring laboratory is located in, or is part of, a rural hospital,

"(II) the referring laboratory is a wholly-owned subsidiary of the entity performing such test, the referring laboratory wholly owns the entity performing such test, or both the referring laboratory and the entity performing such test are wholly-owned by a third entity, or

"(III) not more than 30 percent of the clinical diagnostic laboratory tests for which such referring laboratory submits bills or requests for payment in any year are performed by another laboratory, and".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to clinical diagnostic laboratory tests performed on or after January 1, 1990.

SEC. 6112. DURABLE MEDICAL EQUIPMENT.

(a) DELAY IN AND REDUCTION OF UPDATE FOR 1990.—

(1) INEXPENSIVE AND ROUTINELY PURCHASED DURABLE MEDICAL EQUIPMENT AND ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—Paragraphs (2)(B)(i) and (3)(B)(i) of section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) are each amended by striking "in 1989" and inserting "in 1989 and in 1990".

(2) MISCELLANEOUS DEVICES AND ITEMS AND OTHER COVERED ITEMS.—Paragraph (8)(A)(ii) of such section is amended—

(A) in subclause (I), by striking "1989" and inserting "1989 and 1990", and

(B) in subclause (II), by striking "1990, 1991," and inserting "1991".

(3) OXYGEN AND OXYGEN EQUIPMENT.—Paragraph (9)(A)(ii) of such section is amended—

(A) in subclause (I), by striking "1989" and inserting "1989 and 1990", and

(B) in subclause (II), by striking "1990, 1991," and inserting "1991".

(4) CONFORMING AMENDMENTS.—Such section is further amended—

(A) in paragraph (7)(A)(i), by striking "this subparagraph" and inserting "this clause";

(B) in paragraph (7)(B)(i), by inserting "in" after "rental of the item"; and

(C) in paragraph (7)(B)(ii), by striking "the payment amount" and all that follows and inserting "clause (i) shall apply in the same manner as it applies to items furnished during 1989.".

(b) RENTAL PAYMENTS FOR ENTERAL AND PARENTERAL PUMPS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any monthly rental payment under part B of title XVIII of the Social Security Act for an enteral or parenteral pump furnished on or after April 1, 1990, shall be determined in accordance with the methodology under which monthly rental payments for such pumps were determined during 1989.

(2) CAP ON RENTAL PAYMENTS, SERVICING, AND REPAIRS.—In the case of an enteral or parenteral pump described in paragraph (1) that is furnished on a rental basis during a period of medical need—

(A) monthly rental payments shall not be made under part B of title XVIII of the Social Security Act for more than 15 months during such period, and

(B) after monthly rental payments have been made for 15 months during such period, payment under such part shall be made for maintenance and servicing of the pump in such amounts as the Secretary of Health and Human Services determines to be reasonable and necessary to ensure the proper operation of the pump.

(c) REDUCTION IN FEE SCHEDULES FOR SEAT-LIFT CHAIRS AND TRANSCUTANEOUS ELECTRICAL NERVE STIMULATORS.—Paragraph (1) of such section is amended by adding at the end the following new subparagraph:

"(D) REDUCTION IN FEE SCHEDULES FOR CERTAIN ITEMS.—With respect to a seat-lift chair or transcutaneous electrical nerve stimulator furnished on or after April 1, 1990, the Secretary shall reduce the payment amount applied under subparagraph (B)(ii) for such an item by 15 percent.".

(d) TREATMENT OF POWER DRIVEN WHEELCHAIRS.—

(1) AS ROUTINELY PURCHASED.—Section 1834(a)(2)(A) of the Social Security Act (42 U.S.C. 1395m(a)(2)(A)) is amended—

(A) by striking "or" at the end of clause (i),

(B) by adding "or" at the end of clause (ii), and

(C) by inserting after clause (ii) the following new clause:

"(iii) which is a power-driven wheelchair (other than a customized wheelchair that is classified as a customized item under paragraph (4) pursuant to criteria specified by the Secretary),".

(2) AS CUSTOMIZED ITEM.—The Secretary of Health and Human Services shall by regulation specify criteria to be used by carriers in making determinations on a case-by-case basis as whether to classify power-driven wheelchairs as a customized item (as described in section 1834(a)(4) of the Social Security Act) for purposes of reimbursement under title XVIII of such Act.

(e) OSTOMY SUPPLIES AS PART OF HOME HEALTH SERVICES.—

(1) SPECIFIC INCLUSION IN HOME HEALTH SERVICES.—Section 1861(m)(5) of the Social Security Act (42 U.S.C. 1395x(m)(5)) is amended to read as follows:

"(5) medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care, but excluding drugs and biologicals) and durable medical equipment while under such a plan;".

(2) EXCLUSION FROM COVERED ITEMS.—Section 1834(a)(13) of such Act (42 U.S.C. 1395m(a)(13)) is amended by inserting after "intraocular lenses" the following: "or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1861(m)(5)".

(3) REQUIRING PROVISION AS PART OF HOME HEALTH SERVICES.—Section 1866(a)(1) of such Act (42 U.S.C. 1395cc(a)(1)) is amended—

(A) by striking "and" at the end of subparagraph (N),

(B) by striking the period at the end of subparagraph (O) and inserting "; and",

(C) and by inserting after subparagraph (O) the following new subparagraph:

"(P) in the case of home health agencies which provide home health services to individuals entitled to benefits under this title who require ostomy supplies (described in section 1861(m)(5)), to offer to furnish such supplies to such individual as part of their furnishing of home health services.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to items furnished on or after January 1, 1990.

SEC. 6113. MENTAL HEALTH SERVICES.

(a) ELIMINATING RESTRICTION ON PSYCHOLOGISTS' SERVICES TO SERVICES FURNISHED AT COMMUNITY MENTAL HEALTH CENTERS.—Section 1861(ii) of the Social Security Act (42 U.S.C. 1395x(ii)) is amended by striking "on-site at a community mental health center" and all that follows through "because of similar circumstances of the individual,".

(b) CLINICAL SOCIAL WORKERS.—

(1) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) by striking "and" at the end of subparagraph (L);

(B) by adding "and" at the end of subparagraph (M); and

(C) by adding at the end the following new subparagraph:

"(N) clinical social worker services (as defined in subsection (hh)(2));".

(2) DEFINITIONS.—Section 1861 of such Act (42 U.S.C. 1395x) is amended—

(A) in subsection (s)(2)(H)(ii), by striking "(hh)" and inserting "(hh)(2)", and

(B) in subsection (hh)—

(i) by amending the heading to read as follows:

"Clinical Social Worker; Clinical Social Worker Services",

(ii) by redesignating clauses (i) and (ii) of paragraph (3)(B) as subclauses (I) and (II), respectively,

(iii) by redesignating subparagraphs (A) and (B) of paragraph (3) as clauses (i) and (ii), respectively,

(iv) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively,

(v) by striking "(hh)" and inserting "(hh)(1)", and

(vi) by adding at the end the following new paragraph:

"(2) The term 'clinical social worker services' means services performed by a clinical social worker (as defined in paragraph (1)) for the diagnosis and treatment of mental illnesses (other than services furnished to an inpatient of a hospital and other than services furnished to an inpatient of a skilled nursing facility which the facility is required to provide as a requirement for participation) which the clinical social worker is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed as would otherwise be covered if furnished by a physician or as an incident to a physician's professional service.".

(3) PAYMENT BASIS.—Section 1833 of such Act (42 U.S.C. 1395l) is amended—

(A) by inserting after clause (E) of subsection (a)(1) the following new clause: "(F) with respect to clinical social worker services under section 1861(s)(2)(N), the amounts paid shall be 80 percent of the lesser of (i) the actual charge for the services or (ii) 75 percent of the amount determined for payment of a psychologist under clause (L),"; and

(B) in subsection (p)—

(i) by striking "1861(s)(2)(L) and" and by inserting "1861(s)(2)(L),", and

(ii) by inserting "and in the case of clinical social worker services for which payment may be made under this part only pursuant to section 1861(s)(2)(N)," after "1861(s)(2)(M),".

(c) DEVELOPMENT OF CRITERIA REGARDING CONSULTATION WITH A PHYSICIAN.—The Secretary of Health and Human Services shall, taking into consideration concerns for patient confidentiality, develop criteria with respect to payment for qualified psychologist services for which payment may be made directly to the psychologist under part B of title XVIII of the Social Security Act under which such a psychologist must agree to consult with a patient's attending physician in accordance with such criteria.

(d) ELIMINATING DOLLAR LIMITATION ON MENTAL HEALTH SERVICES.—Section 1833(d)(1) of the Social Security Act (42 U.S.C. 1395l(d)(1)) is amended by striking "whichever" and all that follows and inserting "62½ percent of such expenses.".

(e) EFFECTIVE DATE.—The amendments made by this section, and the provisions of subsection (c), shall apply to services furnished on or after July 1, 1990, and the amendments made by subsection (d) shall apply to expenses incurred in a year beginning with 1990.

SEC. 6114. COVERAGE OF NURSE PRACTITIONER SERVICES IN NURSING FACILITIES.

(a) SERVICES COVERED.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (J), and

(2) in subparagraph (K)—

(A) in clause (i), by striking "and" at the end,

(B) in clause (ii), by striking "to such services" and inserting "to services described in clause (i) or (ii)",

(C) by redesignating clause (ii) as clause (iii), and

(D) by inserting after clause (i) the following new clause:

"(ii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a nurse practitioner (as defined in subsection (aa)(3)) working in collaboration (as defined in subsection (aa)(4)) with a physician (as defined in subsection (r)(1)) in a skilled nursing facility or nursing facility (as defined in section 1919(a)) which the nurse practitioner is legally authorized to perform by the State in which the services are performed, and".

(b) DETERMINATION OF PAYMENT AMOUNT.—Section 1842(b)(12)(A) of such Act (42 U.S.C. 1395u(b)(12)(A)) is amended by striking "physician assistant acting under the supervision of a physician" and inserting "physician assistants and nurse practitioners".

(c) PAYMENT TO EMPLOYER; PAYMENT FOR ROUTINE VISITS BY MEMBERS OF A TEAM.—Section 1842(b) of such Act (42 U.S.C. 1395u(b)) is amended—

(1) in clause (C) of the first sentence of paragraph (6), by inserting "or nurse practitioner" after "physician assistant", and

(2) by adding at the end of paragraph (2), the following new subparagraph:

"(C) In the case of residents of nursing facilities who receive services described in clause (i) or (ii) of section 1861(s)(2)(K) performed by a member of a team, the Secretary shall instruct carriers to develop mechanisms which permit routine payment under this part for up to 1.5 visits per month per resident. In the previous sentence, the term 'team' refers to a physician and includes a physician assistant acting under the supervision of the physician or a nurse practitioner working in collaboration with that physician, or both.".

(d) DEFINITION OF COLLABORATION.—Section 1861(aa) of such Act (42 U.S.C. 1395x(aa)) is amended by adding at the end the following new paragraph:

"(4) The term 'collaboration' means a process in which a nurse practitioner works with a physician to deliver health care services within the scope of the practitioner's professional expertise, with medical direction and appropriate supervision as provided for in jointly developed guidelines or other mechanisms as defined by the law of the State in which the services are performed.".

(e) STATE DEMONSTRATION PROJECTS ON APPLICATION OF LIMITATION ON VISITS PER MONTH PER RESIDENT ON AGGREGATE BASIS FOR A TEAM.—The Secretary of Health and Human Services shall provide for at least 1 demonstration project under which, in the application of section 1842(b)(2)(C) of the Social Security Act (as added by subsection (c)(2) of this section) in one or more States, the limitation on the number of visits per month per resident would be applied on an average basis over the aggregate total of residents receiving services from members of the team.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after April 1, 1990.

SEC. 6115. COVERAGE OF SCREENING PAP SMEARS.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x), as amended by section 6003(g)(3)(A) of this subtitle, is amended—

(1) in subsection (s)—

(A) by striking "and" at the end of paragraph (12),

(B) by striking the period at the end of paragraph (13) and inserting "; and",

(C) by redesignating paragraphs (14) and (15) as paragraphs (15) and (16), respectively, and

(D) by inserting after paragraph (13) the following new paragraph;

"(14) screening pap smear."; and

(2) by adding at the end the following new subsection:

"Screening Pap Smear

"(nn) The term 'screening pap smear' means a diagnostic laboratory test consisting of a routine exfoliative cytology test (Papanicolaou test) provided to a woman for the purpose of early detection of cervical cancer and includes a physician's interpretation of the results of the test, if the individual involved has not had such a test during the preceding 3 years (or such shorter period as the Secretary may specify in the case of a woman who is at high risk of developing cervical cancer (as determined pursuant to factors identified by the Secretary)).".

(b) REVISION OF EXCLUSION GROUNDS.—Section 1862(a)(1)(F) of such Act (42 U.S.C. 1395y(a)(1)(F)) is amended by inserting before the semicolon at the end the following: ", and, in the case of screening pap smear, which is performed more frequently than is provided under 1861(nn)".

(c) CONFORMING AMENDMENTS.—Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C. 1395aa(a), 1395bb(a), 1396(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking "paragraphs (14) and (15)" and inserting "paragraphs (15) and (16)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to screening pap smears performed on or after July 1, 1990.

SEC. 6116. COVERAGE UNDER, AND PAYMENT FOR, OUTPATIENT RURAL PRIMARY CARE HOSPITAL SERVICES UNDER PART B.

(a) COVERAGE.—

(1) Section 1861(mm) of the Social Security Act (42 U.S.C. 1395x(mm)), as added by section 6003(g)(3)(A) of this subtitle, is amended by adding at the end the following:

"(3) The term 'outpatient rural primary care hospital services' means medical and other health services furnished by a rural primary care hospital.".

(2) Section 1832(a)(2) of such Act (42 U.S.C. 1395k(a)(2)) is amended—

(A) in subparagraph (F), by striking "and" at the end,

(B) in subparagraph (G) by striking the period at the end and inserting "; and", and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) outpatient rural primary care hospital services (as defined in section 1861(mm)(3)).".

(b) PAYMENT.—

(1) Section 1833(a) of such Act (42 U.S.C. 1395l(a)) is amended—

(A) in paragraph (2), in the matter before subparagraph (A), by striking "and (G)" and inserting "(G), and (H)",

(B) in paragraph (4), by striking "and" at the end,

(C) in paragraph (5), by striking the period at the end and inserting "; and", and

(D) by inserting after paragraph (5) the following new paragraph:

"(6) in the case of outpatient rural primary care hospital services, the amounts described in section 1834(f).".

(2) Section 1834 of such Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(f) PAYMENT FOR OUTPATIENT RURAL PRIMARY CARE HOSPITAL SERVICES.—

"(1) IN GENERAL.—The amount of payment for outpatient rural primary care hospital services provided during a year before 1993 in a rural primary care hospital under this part shall be determined by one of the 2 following methods, as elected by the rural primary care hospital:

"(A) COST-BASED FACILITY FEE PLUS PROFESSIONAL CHARGES.—

"(i) FACILITY FEE.—With respect to facility services, not including any services for which payment may be made under clause (ii), there shall be paid amounts equal to the amounts described in section 1833(a)(2)(B) (describing amounts paid for hospital outpatient services).

"(ii) REASONABLE CHARGES FOR PROFESSIONAL SERVICES.—In electing treatment under this subparagraph, payment for professional medical services otherwise included within outpatient rural primary care hospital services shall be made under such other provisions of this part as would apply to payment for such services if they were not included in outpatient rural primary care hospital services.

"(B) ALL-INCLUSIVE RATE.—With respect to both facility services and professional medical services, there shall be paid amounts equal to the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, less the amount the hospital may charge as described in clause (i) of section 1866(a)(2)(A), but in no case may the payment for such services (other than for items and services described in section 1861(s)(10)(A) and for items and services furnished in connection with obtaining a second opinion required under section 1164(c)(2), or a third opinion, if the second opinion was in disagreement with the first opinion) exceed 80 percent of such costs.

"(2) DEVELOPMENT AND IMPLEMENTATION OF ALL INCLUSIVE, PROSPECTIVE PAYMENT SYSTEM.—Not later than January 1, 1993, the Secretary shall develop and implement a prospective payment system for determining payments under this part for outpatient rural primary care hospital services using a methodology that includes all costs in providing all such services (including related professional medical services) and that determines the payment amount for such services on a prospective basis.".

### Subpart B—Technical and Miscellaneous Provisions

SEC. 6131. MODIFICATION OF PAYMENT FOR THERAPEUTIC SHOES FOR INDIVIDUALS WITH SEVERE DIABETIC FOOT DISEASE.

(a) PERMITTING ADDITIONAL INSERTS.—

(1) IN GENERAL.—Section 1833(o) of the Social Security Act (42 U.S.C. 1395l(o)) is amended—

(A) by amending subparagraph (A) of paragraph (1) to read as follows:

"(A) no payment may be made under this part, with respect to any individual for any year, for the furnishing of—

"(i) more than one pair of custom molded shoes (including inserts provided with such shoes) and 2 additional pairs of inserts for such shoes, or

"(ii) more than one pair of extra-depth shoes (not including inserts provided with such shoes) and 3 pairs of inserts for such shoes, and";

(B) in paragraphs (1)(B) and (2)(A), by striking "limit" and inserting "limits";

(C) in the second sentence of paragraph (1), by inserting "(or inserts)" after "shoes" each place it appears;

(D) by amending clause (i) of paragraph (2)(A) to read as follows:

"(i) for the furnishing of—

"(I) one pair of custom molded shoes (including any inserts that are provided initially with the shoes) is $300, and

"(II) any additional pair of inserts with respect to such shoes is $50; and"; and

(E) in paragraph (2)(A)(ii)(II), by inserting "any pairs of" after "$50 for".

(2) CONFORMING AMENDMENT.—Section 1861(s)(12) of such Act (42 U.S.C. 1395x(s)(12)) is amended by inserting "with inserts" after "custom molded shoes".

(b) PERMITTING SUBSTITUTION OF SHOE MODIFICATIONS FOR INSERTS.—Section 1833(o)(2) of such Act is amended by adding at the end the following new subparagraph:

"(D) In accordance with procedures established by the Secretary, an individual entitled to benefits with respect to shoes described in section 1861(s)(12) may substitute modification of such shoes instead of obtaining one (or more, as specified by the Secretary) pairs of inserts (other than the original pair of inserts with respect to such shoes). In such case, the Secretary shall substitute, for the limits established under subparagraph (A), such limits as the Secretary estimates will assure that there is no net increase in expenditures under this subsection as a result of this subparagraph.".

(c) EFFECTIVE DATE.—

(1) The amendments made by this section shall apply with respect to therapeutic shoes and inserts furnished on or after July 1, 1989.

(2) In applying the amendments made by this section, the increase under subparagraph (C) of section 1833(o)(2) of the Social Security Act shall apply to the dollar amounts specified under subparagraph (A) of such section (as amended by this section) in the same manner as the increase would have applied to the dollar amounts specified under subparagraph (A) of such section (as in effect before the date of the enactment of this Act).

SEC. 6132. PAYMENTS TO CERTIFIED REGISTERED ANESTHETISTS.

(a) EXTENSION AND EXPANSION OF CRNA PASS-THROUGH.—Section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as added by section 608(c)(2) of the Family Support Act of 1988, is amended—

(1) by striking "250" each place it appears and inserting "500";

(2) in paragraph (1)—

(A) by striking "1989, 1990, and 1991" and inserting "a year (beginning with 1989)", and

(B) by striking "before April 1, 1989," and inserting "at any time before the year";

(3) in paragraph (2)—

(A) by striking "1990 or 1991" and inserting "in a year (after 1989)", and

(B) by striking "each respective year" and inserting "the year"; and

(4) by striking paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1990.

SEC. 6133. INCREASE IN PAYMENT LIMIT FOR PHYSICAL AND OCCUPATIONAL THERAPY SERVICES.

(a) IN GENERAL.—Section 1833(g) of the Social Security Act (42 U.S.C 1395l(g)) is amended by striking "$500' each place it appears and inserting "$750".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1990.

SEC. 6134. STUDY OF PAYMENT FOR PORTABLE X-RAY SERVICES.

The Secretary of Health and Human Services shall conduct a study of the costs of furnishing, and payments for, portable x-ray services under part B of title XVIII of the Social Security Act. Not later than 1 year after the date of the enactment of this Act, the Secretary shall report to Congress on the results of such study and shall include a recommendation respecting whether payment for such services should be made in the same manner as for radiologists' services or on the basis of a separate fee schedule.

SEC. 6135. EXTENSION OF MUNICIPAL HEALTH SERVICE DEMONSTRATION PROJECTS.

Section 9215 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) by striking ", for a period of three additional years," and inserting "through December 31, 1993,"; and

(2) by adding at the end the following: "The Secretary shall submit a report to Congress on the waiver program with respect to the quality of health care, beneficiary costs, and such other factors as may be appropriate.".

SEC. 6136. STUDY OF REIMBURSEMENT FOR AMBULANCE SERVICES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the adequacy and appropriateness of payment amounts under title XVIII of the Social Security Act for ambulance services. Such study shall examine at least the following:

(1) The effect of payment amounts on the provision of ambulance services in rural areas.

(2) The relationship of such payment amounts to the direct and indirect costs of providing ambulance services. Such relationship shall be examined separately—

(A)(i) for tax-subsidized, municipally-owned and operated services, (ii) for volunteer services, (iii) for private, for-profit services, and (iv) for hospital-owned services, and

(B) for different levels (such as basic life support and advanced life support) of such services.

(3) How such payment amounts compare to the payment amounts made for ambulance services under medicaid plans under title XIX of such Act.

(b) REPORT.—By not later than one year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the results of the study conducted under subsection (a) and shall include in the report such recommendations for changes in medicare payment policy with respect to ambulance services as may be needed to ensure access by medicare beneficiaries to quality ambulance services in metropolitan and rural areas.

SEC. 6137. PROPAC STUDY OF PAYMENTS FOR SERVICES IN HOSPITAL OUTPATIENT DEPARTMENTS.

(a) IN GENERAL.—The Prospective Payment Assessment Commission shall conduct a study and submit a report to Congress by no later than July 1, 1990, on payment under title XVIII of the Social Security Act for hospital outpatient services. Such study shall include an examination of—

(1) the sources of growth in spending for hospital outpatient services;

(2) the differences between the costs of delivering services in a hospital outpatient department as opposed to providing similar services in other appropriate settings (including ambulatory surgery centers and physician offices);

(3) the effects on outpatient hospital costs of the step-down method used to allocate hospital capital between inpatient and outpatient departments and the extent to which hospital outpatient costs were affected by the implementation of the prospective payment system of payment for inpatient hospi-

tal services and by increased review of such services by peer review organizations; and

(4) alternative methods for reimbursing hospitals for services in outpatient departments under the medicare program, including prospective payment methods, fee schedules, and such other methods as the Commission may consider appropriate.

(b) REPORTS.—(1) By not later than July 1, 1990, the Commission shall submit a report to Congress on the study conducted under subsection (a) with respect to the portions of the study described in paragraphs (1), (2), and (3) of such subsection, and shall include in the report such recommendations as the Commission deems appropriate.

(2) By not later than March 1, 1991, the Commission shall submit a report to Congress on the study conducted under subsection (a) with respect to the portions of the study described in paragraph (4) of such subsection, and shall include in the report such recommendations as the Commission deems appropriate.

SEC. 6138. PHYSPRC STUDY OF PAYMENTS FOR ASSISTANTS AT SURGERY.

(a) STUDY; CONTENTS.—The Physician Payment Review Commission shall conduct a study of the payments made under title XVIII of the Social Security Act for assistants at surgery. Such study shall examine—

(1) the necessity and appropriateness of using an assistant at surgery;

(2) the use of physician and non-physician assistants at surgery;

(3) the appropriateness of providing for payments, and the appropriate level of payment, under title XVIII of the Social Security Act for assistants at surgery; and

(4) the effect of the amendments made by section 9338 of the Omnibus Budget Reconciliation Act of 1986 on the employment of registered nurses as assistants at surgery, and whether or not the reductions described in subsection (d) of such section have been implemented.

(b) REPORT.—By not later than April 1, 1991, the Commission shall submit a report to Congress on the study conducted under subsection (a), and shall include in the report such recommendations as it deems appropriate.

SEC. 6139. GAO STUDY OF STANDARDS FOR USE OF AND PAYMENT FOR ITEMS OF DURABLE MEDICAL EQUIPMENT.

(a) STUDY.—The Comptroller General shall conduct a study of the appropriate uses of items of durable medical equipment and of the appropriate criteria for making determinations of medical necessity under title XVIII of the Social Security Act for such items, with particular emphasis on items (including seat-lift chairs) that may be subject to abusive billing practices. Such study shall include an analysis of—

(1) the appropriate use of forms in making medical necessity determinations for items of durable medical equipment under such title; and

(2) procedures for identifying items of durable medical equipment that should no longer be covered under such title.

(b) USE OF PANEL IN CONDUCTING STUDY.—The Comptroller General shall conduct such study with a panel convened by the Comptroller General consisting of—

(1) specialists in the disciplines of orthopedic medicine, rehabilitation, arthritis, and geriatric medicine;

(2) representatives of consumer organizations; and

(3) representatives of carriers under the medicare program.

(c) REPORT.—Not later than April 1, 1991, the Comptroller General shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the study conducted under subsection (a), and shall include in such report such recommendations as the Comptroller General deems appropriate.

SEC. 6140. NARROWING OF RANGE OF AMOUNTS RECOGNIZED FOR ITEMS OF DURABLE MEDICAL EQUIPMENT.

Paragraphs (8) and (9) of section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) are each amended in subparagraph (D)—

(1) in clause (i), by striking "1991" and all that follows through "80 percent" and inserting "1991, may not exceed 125 percent, and may not be lower than 85 percent"; and

(2) in clause (ii), by striking "125 percent" and all that follows through "85 percent" and inserting "120 percent, and may not be lower than 90 percent".

SEC. 6141. PHYSICIAN OFFICE LABS.

(a) IN GENERAL.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is amended—

(1) in the matter following paragraph (13), by striking "which is independent" and all that follows through "per year," and inserting the following: ", including a laboratory that is part of";

(2) by redesignating paragraph (15) as subparagraph (B); and

(3) by inserting immediately after paragraph (14) the following:

"(15)(A) meets the certification requirements under the Clinical Laboratory Improvement Act of 1988; and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 6142. STUDY OF REIMBURSEMENT FOR BLOOD CLOTTING FACTOR FOR HEMOPHILIA PATIENTS.

The Secretary of Health and Human Services shall review the current methodology for reimbursing for blood clotting factor for hemophilia patients under part B of title XVIII of the Social Security Act and shall evaluate the effect of such methodology on the accessibility and affordability of such factor to medicare beneficiaries. By not later than 6 months after the date of the enactment of this Act, the Secretary shall report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review and shall include in such report such recommendations as the Secretary deems appropriate.

## PART 3—PROVISIONS RELATING TO PARTS A AND B

### Subpart A—General Provisions

SEC. 6201. REDUCTIONS UNDER ORIGINAL SEQUESTER ORDER AND APPLICABILITY OF NEW SEQUESTER ORDER FOR HEALTH MAINTENANCE ORGANIZATIONS.

Notwithstanding any other provision of law (including section 11002 or any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on October 16, 1989, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through December 31, 1989, with respect to payments under section 1833(a)(1)(A) or 1876 of the Social Security Act, section 402 of the Social Security Amendments of 1967, or section 222 of the Social Security Amendments of 1972. Each such payment made during fiscal year 1990 after such date shall be increased by 1.42 percent above what it would otherwise be under this Act.

SEC. 6202. MEDICARE AS SECONDARY PAYER.

(a) IDENTIFICATION OF MEDICARE SECONDARY PAYER SITUATIONS.—

(1) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION FOR VERIFICATION OF EMPLOYMENT STATUS OF MEDICARE BENEFICIARY AND SPOUSE OF MEDICARE BENEFICIARY.—

(A) IN GENERAL.—Subsection (l) of section 6103 of the Internal Revenue Code of 1986 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end thereof the following new paragraph:

"(12) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION FOR VERIFICATION OF EMPLOYMENT STATUS OF MEDICARE BENEFICIARY AND SPOUSE OF MEDICARE BENEFICIARY.—

"(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary shall, upon written request from the Commissioner of Social Security, disclose to the Commissioner available filing status and taxpayer identity information from the individual master files of the Internal Revenue Service relating to whether any medicare beneficiary identified by the Commissioner was a married individual (as defined in section 7703) for any specified year after 1986, and, if so, the name of the spouse of such individual and such spouse's TIN.

"(B) RETURN INFORMATION FROM SOCIAL SECURITY ADMINISTRATION.—The Commissioner of Social Security shall, upon written request from the Administrator of the Health Care Financing Administration, disclose to the Administrator the following information:

"(i) The name and TIN of each medicare beneficiary who is identified as having received wages (as defined in section 3401(a)) from a qualified employer in a previous year.

"(ii) For each medicare beneficiary who was identified as married under subparagraph (A) and whose spouse is identified as having received wages from a qualified employer in a previous year—

"(I) the name and TIN of the medicare beneficiary, and

"(II) the name and TIN of the spouse.

"(iii) With respect to each such qualified employer, the name, address, and TIN of the employer and the number of individuals with respect to whom written statements were furnished under section 6051 by the employer with respect to such previous year.

"(C) DISCLOSURE BY HEALTH CARE FINANCING ADMINISTRATION.—With respect to the information disclosed under subparagraph (B), the Administrator of the Health Care Financing Administration may disclose—

"(i) to the qualified employer referred to in such subparagraph the name and TIN of each individual identified under such subparagraph as having received wages from the employer (hereinafter in this subparagraph referred to as the 'employee') for purposes of determining during what period such employee or the employee's spouse may be (or have been) covered under a group health plan of the employer and what benefits are or were covered under the plan (including the name, address, and identifying number of the plan),

"(ii) to any group health plan which provides or provided coverage to such an employee or spouse, the name of such employee and the employee's spouse (if the spouse is a

medicare beneficiary) and the name and address of the employer, and, for the purpose of presenting a claim to the plan—

"(I) the TIN of such employee if benefits were paid under title XVIII of the Social Security Act with respect to the employee during a period in which the plan was a primary plan (as defined in section 1862(b)(2)(A) of the Social Security Act), and

"(II) the TIN of such spouse if benefits were paid under such title with respect to the spouse during such period, and

"(iii) to any agent of such Administrator the information referred to in subparagraph (B) for purposes of carrying out clauses (i) and (ii) on behalf of such Administrator.

"(D) SPECIAL RULES.—

"(i) RESTRICTIONS ON DISCLOSURE.—Information may be disclosed under this paragraph only for purposes of, and to the extent necessary in, determining the extent to which any medicare beneficiary is covered under any group health plan.

"(ii) TIMELY RESPONSE TO REQUESTS.—Any request made under subparagraph (A) or (B) shall be complied with as soon as possible but in no event later than 120 days after the date the request was made.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) MEDICARE BENEFICIARY.—The term 'medicare beneficiary' means an individual entitled to benefits under part A, or enrolled under part B, of title XVIII of the Social Security Act, but does not include such an individual enrolled in part A under section 1818.

"(ii) GROUP HEALTH PLAN.—The term 'group health plan' means—

"(I) any group health plan (as defined in section 5000(b)(1)), and

"(II) any large group health plan (as defined in section 5000(b)(2)).

"(iii) QUALIFIED EMPLOYER.—The term 'qualified employer' means, for a calendar year, an employer which has furnished written statements under section 6051 with respect to at least 20 individuals for wages paid in the year.

"(F) TERMINATION.—Subparagraphs (A) and (B) shall not apply to—

"(i) any request made after September 30, 1991, and

"(ii) any request made before such date for information relating to—

"(I) 1990 or thereafter in the case of subparagraph (A), or

"(II) 1991 or thereafter in the case of subparagraph (B)."

(B) SAFEGUARDS.—

(i) Paragraph (3) of section 6103(a) of such Code is amended by inserting "(l)(12)," after "(e)(1)(D)(iii),".

(ii) Subparagraph (A) of section 6103(p)(3) of such Code is amended by striking "or (11)" and inserting "(11), or (12)".

(iii) Paragraph (4) of section 6103(p) of such Code is amended in the material preceding subparagraph (A) by striking "or (9) shall" and inserting "(9), or (12) shall".

(iv) Clause (ii) of section 6103(p)(4)(F) of such Code is amended by striking "or (11)" and inserting "(11), or (12)".

(v) The next to the last sentence of paragraph (4) of section 6103(p) of such Code is amended by inserting "or which receives any information under subsection (l)(12)(B) and which discloses any such information to any agent" before ", this paragraph".

(C) PENALTY.—Paragraph (2) of section 7213(a) of such Code is amended by striking "or (10)" and inserting "(10), or (12)".

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on the date of the enactment of this Act.

(2) RESPONSIBILITIES OF HCFA.—

(A) IN GENERAL.—Section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)), as amended by subsection (b)(1) of this section, is amended by inserting after paragraph (4) the following new paragraph:

"(5) IDENTIFICATION OF SECONDARY PAYER SITUATIONS.—

"(A) REQUESTING MATCHING INFORMATION.—

"(i) COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security shall, not less often than annually, transmit to the Secretary of the Treasury a list of the names and TINs of medicare beneficiaries (as defined in section 6103(l)(12) of the Internal Revenue Code of 1986) and request that the Secretary disclose to the Commissioner the information described in subparagraph (A) of such section.

"(ii) ADMINISTRATOR.—The Administrator of the Health Care Financing Administration shall request, not less often than annually, the Commissioner of the Social Security Administration to disclose to the Administrator the information described in subparagraph (B) of section 6103(l)(12) of the Internal Revenue Code of 1986.

"(B) DISCLOSURE TO FISCAL INTERMEDIARIES AND CARRIERS.—In addition to any other information provided under this title to fiscal intermediaries and carriers, the Administrator shall disclose to such intermediaries and carriers (or to such a single intermediary or carrier as the Secretary may designate) the information received under subparagraph (A) for the purposes of carrying out this subsection.

"(C) CONTACTING EMPLOYERS.—

"(i) IN GENERAL.—With respect to each individual (in this subparagraph referred to as an 'employee') who was furnished a written statement under section 6051 of the Internal Revenue Code of 1986 by a qualified employer (as defined in section 6103(l)(12)(D)(iii) of such Code), as disclosed under subparagraph (B), the appropriate fiscal intermediary or carrier shall contact the employer in order to determine during what period the employee or employee's spouse may be (or have been) covered under a group health plan of the employer and the nature of the coverage that is or was provided under the plan (including the name, address, and identifying number of the plan).

"(ii) EMPLOYER RESPONSE.—Within 30 days of the date of receipt of the inquiry, the employer shall notify the intermediary or carrier making the inquiry as to the determinations described in clause (i). An employer (other than a Federal or other governmental entity) who willfully or repeatedly fails to provide timely and accurate notice in accordance with the previous sentence shall be subject to a civil money penalty of not to exceed $1,000 for each individual with respect to which such an inquiry is made. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(iii) SUNSET ON REQUIREMENT.—Clause (ii) shall not apply to inquiries made after September 30, 1991.".

(B) DEADLINE FOR FIRST REQUEST.—The Commissioner of Social Security shall first—

(i) transmit to the Secretary of the Treasury information under paragraph (5)(A)(i) of section 1862(b) of the Social Security Act (as inserted by subparagraph (A)), and

(ii) request from the Secretary disclosure of information described in section 6013(l)(12)(A) of the Internal Revenue Code of 1986,

by not later than 14 days after the date of the enactment of this Act.

(b) UNIFORM ENFORCEMENT AND COORDINATION OF BENEFITS.—

(1) IN GENERAL.—Section 1862 of the Social Security Act (42 U.S.C. 1395y) is amended—

(A) in the heading, by adding at the end the following: "AND MEDICARE AS SECONDARY PAYER"; and

(B) by amending subsection (b) to read as follows:

"(b) MEDICARE AS SECONDARY PAYER.—

"(1) REQUIREMENTS OF GROUP HEALTH PLANS.—

"(A) WORKING AGED UNDER GROUP HEALTH PLANS.—

"(i) IN GENERAL.—A group health plan—

"(I) may not take into account, for any item or service furnished to an individual 65 years of age or older at the time the individual is covered under the plan by reason of the current employment of the individual (or the individual's spouse), that the individual is entitled to benefits under this title under section 226(a), and

"(II) shall provide that any employee aged 65 or older, and any employee's spouse age 65 or older, shall be entitled to the same benefits under the plan under the same conditions as any employee, and the spouse of such employee, under age 65.

"(ii) EXCLUSION OF GROUP HEALTH PLAN OF A SMALL EMPLOYER.—Clause (i) shall not apply to a group health plan unless the plan is sponsored by or contributed to by an employer that has 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or the preceding calendar year.

"(iii) EXCEPTION FOR SMALL EMPLOYERS IN MULTIEMPLOYER OR MULTIPLE EMPLOYER GROUP HEALTH PLANS.—Clause (i) also shall not apply with respect to individuals enrolled in a multiemployer or multiple employer group health plan if the coverage of the individuals under the plan is by virtue of employment with an employer that does not have 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or the preceding calendar year; except that the exception provided in this clause shall only apply if the plan elects treatment under this clause.

"(iv) EXCEPTION FOR INDIVIDUALS WITH END STAGE RENAL DISEASE.—Clause (i) shall not apply to an item or service furnished in a month to an individual if for the month the individual is, or would upon application be, entitled to benefits under section 226A.

"(v) GROUP HEALTH PLAN DEFINED.—In this subparagraph, and subparagraph (C), the term 'group health plan' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986.

"(B) DISABLED ACTIVE INDIVIDUALS IN LARGE GROUP HEALTH PLANS.—

"(i) IN GENERAL.—A large group health plan (as defined in clause (iv)(II)) may not take into account that an active individual (as defined in clause (iv)(I)) is entitled to benefits under this title under section 226(b).

"(ii) EXCEPTION FOR INDIVIDUALS WITH END STAGE RENAL DISEASE.—Clause (i) shall not apply to an item or service furnished in a month to an individual if for the month the individual is, or would upon application be, entitled to benefits under section 226A.

"(iii) SUNSET.—Clause (i) shall only apply to items and services furnished on or after January 1, 1987, and before January 1, 1992.

"(iv) DEFINITIONS.—In this subparagraph:

"(I) ACTIVE INDIVIDUAL.—The term 'active individual' means an employee (as may be defined in regulations), the employer, self-employed individual (such as the employer), an individual associated with the employer in a business relationship, or a member of the family of any of such persons.

"(II) LARGE GROUP HEALTH PLAN.—The term 'large group health plan' has the meaning given such term in section 5000(b)(2) of the Internal Revenue Code of 1986.

"(C) INDIVIDUALS WITH END STAGE RENAL DISEASE.—A group health plan (as defined in subparagraph (A)(v))—

"(i) may not take into account that an individual is entitled to benefits under this title solely by reason of section 226A during the 12-month period which begins with the earlier of—

"(I) the month in which a regular course of renal dialysis is initiated, or

"(II) in the case of an individual who receives a kidney transplant, the first month in which he would be eligible for benefits under part A (if he had filed an application for such benefits) under the provisions of section 226A(b)(1)(B); and

"(ii) may not differentiate in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner;

except that clause (ii) shall not prohibit a plan from taking into account that an individual is entitled to benefits under this title solely by reason of section 226A after the end of the 12-month period described in clause (i).

"(2) MEDICARE SECONDARY PAYER.—

"(A) IN GENERAL.—Payment under this title may not be made, except as provided in subparagraph (B), with respect to any item or service to the extent that—

"(i) payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under paragraph (1), or

"(ii) payment has been made, or can reasonably be expected to be made promptly (as determined in accordance with regulations) under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.

In this subsection, the term 'primary plan' means a group health plan or large group health plan, to the extent that clause (i) applies, and a workmen's compensation law or plan, an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance, to the extent that clause (ii) applies.

"(B) CONDITIONAL PAYMENT.—

"(i) PRIMARY PLANS.—Any payment under this title with respect to any item or service to which subparagraph (A) applies shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when notice or other information is received that payment for such item or service has been or could be made under such subparagraph.

"(ii) ACTION BY UNITED STATES.—In order to recover payment under this title for such an item or service, the United States may bring an action against any entity which is required or responsible under this subsection to pay with respect to such item or service (or any portion thereof) under a primary plan (and may, in accordance with paragraph (3)(A) collect double damages against that entity), or against any other entity (including any physician or provider) that has received payment from that entity with respect to the item or service, and may join or intervene in any action related to the events that gave rise to the need for the item or service.

"(iii) SUBROGATION RIGHTS.—The United States shall be subrogated (to the extent of payment made under this title for such an item or service) to any right under this subsection of an individual or any other entity to payment with respect to such item or service under a primary plan.

"(iv) WAIVER OF RIGHTS.—The Secretary may waive (in whole or in part) the provisions of this subparagraph in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the program established under this title.

"(3) ENFORCEMENT.—

"(A) PRIVATE CAUSE OF ACTION.—There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with such paragraphs (1) and (2)(A).

"(B) REFERENCE TO EXCISE TAX WITH RESPECT TO NONCONFORMING GROUP HEALTH PLANS.—For provision imposing an excise tax with respect to nonconforming group health plans, see section 5000 of the Internal Revenue Code of 1986.

"(4) COORDINATION OF BENEFITS.—Where payment for an item or service by a primary plan is less than the amount of the charge for such item or service and is not payment in full, payment may be made under this title (without regard to deductibles and coinsurance under this title) for the remainder of such charge, but—

"(A) payment under this title may not exceed an amount which would be payable under this title for such item or service if paragraph (2)(A) did not apply; and

"(B) payment under this title, when combined with the amount payable under the primary plan, may not exceed—

"(i) in the case of an item or service payment for which is determined under this title on the basis of reasonable cost (or other cost-related basis) or under section 1886, the amount which would be payable under this title on such basis, and

"(ii) in the case of an item or service for which payment is authorized under this title on another basis—

"(I) the amount which would be payable under the primary plan (without regard to deductibles and coinsurance under such plan), or

"(II) the reasonable charge or other amount which would be payable under this title (without regard to deductibles and coinsurance under this title),

whichever is greater.".

(2) ENFORCEMENT THROUGH EXCISE TAX.—Section 5000 of the Internal Revenue Code of 1986 is amended—

(A) by striking "LARGE" in the heading;

(B) in subsection (a), by striking "large" each place it appears; and

(C) by amending subsections (b) and (c) to read as follows:

"(b) GROUP HEALTH PLAN AND LARGE GROUP HEALTH PLAN.—For purposes of this section—

"(1) GROUP HEALTH PLAN.—The term 'group health plan' means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees.

"(2) LARGE GROUP HEALTH PLAN.—The term 'large group health plan' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year.

"(c) NONCONFORMING GROUP HEALTH PLAN.—For purposes of this section, the term 'nonconforming group health plan' means a group health plan or large group health plan that at any time during a calendar year does not comply with the requirements of subparagraphs (A) and (C) or subparagraph (B), respectively, of section 1862(b)(1) of the Social Security Act.".

(3) REPEAL OF CERTAIN ALTERNATIVE ENFORCEMENT PROVISIONS.—

(A) DENIAL OF DEDUCTION FOR GROUP HEALTH PLANS.—Subsection (i) of section 162 of such Code (relating to group health plans) is repealed.

(B) CONFORMING AMENDMENT.—Section 4980B(g)(2) of such Code is amended by striking "162(i)" and inserting "5000(b)(1)".

(C) AGE DISCRIMINATION IN EMPLOYMENT ACT.—The Age Discrimination in Employment Act of 1967 is amended—

(i) by striking subsection (g) of section 4, and

(ii) in section 12(a), by striking "(except the provisions of section 4(g))".

(4) CLERICAL AND CONFORMING AMENDMENTS.—

(A) Chapter 47 of the Internal Revenue Code of 1986 is amended—

(i) in the heading, by striking "LARGE", and

(ii) in the table of sections, by striking "large".

(B) The item in the table of chapters of subtitle D of such Code relating to chapter 47 is amended by striking "large".

(C) Sections 1837(i) and 1839(b) of the Social Security Act (42 U.S.C. 1395p(i), 1395r(b)) are each amended by striking "1862(b)(3)(A)(iv)" and "1862(b)(4)(B)" each place each appears and inserting "1862(b)(1)(A)(vi)" and "1862(b)(1)(B)(iv)", respectively.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to items and services furnished after the date of the enactment of this Act.

(c) SPECIAL ENROLLMENT PERIOD FOR DISABLED EMPLOYEES.—

(1) IN GENERAL.—Section 1837(i) of the Social Security Act (42 U.S.C. 1395p(i)) is amended—

(A) in paragraph (1)—

(i) by striking subparagraph (A),

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively, and

(iii) in the second sentence, by inserting "not described in the previous sentence" after "In the case of an individual"; and

(B) in paragraph (2)—

(i) in subparagraph (B)(i), by striking "(1)(B)" and inserting "(1)(A)",

(ii) by striking subparagraph (A),

(iii) by redesignating subparagraphs (B) through (D) as subparagraphs (A) and (C), respectively, and

(iv) in the second sentence, by inserting "not described in the previous sentence" after "In the case of an individual".

(2) CONFORMING AMENDMENT.—The second sentence of section 1839(b) of such Act (42 U.S.C. 1395r(b)) is amended by striking "during which the individual has attained the age of 65 and".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to enrollments occurring after, and premiums for months after, the second calendar quarter beginning after the date of the enactment of this Act.

(d) NO MATCHING BASED ON PRIVATE ACTIVITIES REQUIRED IN FISCAL INTERMEDIARY AGREEMENTS AND CARRIER CONTRACTS.—

(1) FISCAL INTERMEDIARY AGREEMENTS.—Section 1816(c)(1) of the Social Security Act (42 U.S.C. 1395h(c)(1)) is amended by adding at the end the following: "The Secretary may not require, as a condition of entering into or renewing an agreement under this section or under section 1871, that a fiscal intermediary match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which the provisions of section 1862(b) may apply.".

(2) CARRIER CONTRACTS.—Section 1842(b)(2)(A) of such Act (42 U.S.C. 1395u(b)(2)(A)) is amended by adding at the end the following: "The Secretary may not require, as a condition of entering into or renewing a contract under this section or under section 1871, that a carrier match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which section 1862(b) may apply.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to agreements and contracts entered into or renewed on or after the date of the enactment of this Act.

(e) TREATMENT OF EMPLOYMENT AS A MEMBER OF A RELIGIOUS ORDER.—

(1) IN GENERAL.—Section 1862(b)(1) of the Social Security Act (42 U.S.C. 1395y(b)(1)), as amended by subsection (b)(1) of this section, is amended by adding at the end the following new subparagraph:

"(D) TREATMENT OF CERTAIN MEMBERS OF RELIGIOUS ORDERS.—In this subsection, an individual shall not be considered to be employed, or an employee, with respect to the performance of services as a member of a religious order which are considered employment only by virtue of an election made by the religious order under section 3121(r) of the Internal Revenue Code of 1986.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items and services furnished on or after October 1, 1989.

SEC. 6203. PAYMENT FOR END STAGE RENAL DISEASE SERVICES.

(a) MAINTENANCE OF CURRENT COMPOSITE RATE.—

(1) IN GENERAL.—Section 9335(a)(1) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(A) by striking "and before October 1, 1988" and inserting "and before October 1, 1990", and

(B) by adding at the end the following: "No change may be made in the base rate in effect as of September 30, 1990, unless the Secretary makes such change in accordance with notice and comment requirements set forth in section 1871(b)(1).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(b) REQUIREMENTS FOR PATIENTS DEALING DIRECTLY WITH MEDICARE.—

(1) LIMITATION ON AMOUNT OF PAYMENT GENERALLY.—Section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) is amended by inserting after the second sentence the following new sentence: "The amount of a payment made under any method other than a method based on a single composite weighted formula may not exceed the amount (or, in the case of continuous cycling peritoneal dialysis, 130 percent of the amount) of the median payment that would have been made under the formula for hospital-based facilities.".

(2) AGREEMENTS WITH PROVIDERS OF SERVICES.—Section 1881(b)(4) of such Act (42 U.S.C. 1395rr(b)(4)) is amended—

(A) by striking "(4)" and inserting "(4)(A)", and

(B) by adding at the end the following new subparagraph:

"(B) The Secretary shall make payments to a supplier of home dialysis supplies and equipment furnished to a patient whose self-care home dialysis is not under the direct supervision of an approved provider of services or renal dialysis facility only in accordance with a written agreement under which—

"(i) the patient certifies that the supplier is the sole provider of such supplies and equipment to the patient,

"(ii) the supplier agrees to receive payment for the cost of such supplies and equipment only on an assignment-related basis, and

"(iii) the supplier certifies that it has entered into a written agreement with an approved provider of services or renal dialysis facility under which such provider or facility agrees to furnish to such patient all self-care home dialysis support services and all other necessary dialysis services and supplies, including institutional dialysis services and supplies and emergency services.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to dialysis services, supplies, and equipment furnished on or after February 1, 1990.

SEC. 6204. PHYSICIAN OWNERSHIP OF, AND REFERRAL TO, HEALTH CARE ENTITIES.

(a) PROHIBITION OF CERTAIN FINANCIAL ARRANGEMENTS BETWEEN REFERRING PHYSICIANS AND CLINICAL LABORATORIES.—Title XVIII of the Social Security Act is amended by inserting after section 1876 the following new section:

"LIMITATION ON CERTAIN PHYSICIAN REFERRALS

"SEC. 1877. (a) PROHIBITION OF CERTAIN REFERRALS.—

"(1) IN GENERAL.—Except as provided in subsection (b), if a physician (or immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then—

"(A) the physician may not make a referral to the entity for the furnishing of clinical laboratory services for which payment otherwise may be made under this title, and

"(B) the entity may not present or cause to be presented a claim under this title or bill to any individual, third party payor, or other entity for clinical laboratory services furnished pursuant to a referral prohibited under subparagraph (A).

"(2) FINANCIAL RELATIONSHIP SPECIFIED.—For purposes of this section, a financial relationship of a physician (or immediate family member) with an entity specified in this paragraph is—

"(A) except as provided in subsections (c), (d), and (e), an ownership or investment interest in the entity; or

"(B) except as provided in subsection (e), a compensation arrangement (as defined in subsection (h)(1)(A)) between the physician (or immediate family member) and the entity.

An ownership or investment interest described in subparagraph (A) may be through equity, debt, or other means.

"(b) GENERAL EXCEPTIONS TO BOTH OWNERSHIP AND COMPENSATION ARRANGEMENT PROHIBITIONS.—Subsection (a)(1) shall not apply in the following cases:

"(1) PHYSICIANS' SERVICES.—In the case of physicians' services (as defined in section 1861(q)) provided personally by (or under the personal supervision of) another physician in the same group practice (as defined in subsection (h)(4)) as the referring physician.

"(2) IN-OFFICE ANCILLARY SERVICES.—In the case of services—

"(A) that are furnished—

"(i) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are employed by such physician or group practice and who are personally supervised by the physician or by another physician in the group practice, and

"(ii)(I) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of clinical laboratory services, or

"(II) in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice for the centralized provision of the group's clinical laboratory services, and

"(B) that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member, or by an entity that is wholly owned by such physician or such group practice,

if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(3) PREPAID PLANS.—In the case of services furnished—

"(A) by an organization with a contract under section 1876 to an individual enrolled with the organization,

"(B) by an organization described in section 1833(a)(1)(A) to an individual enrolled with the organization, or

"(C) by an organization receiving payments on a prepaid basis, under a demonstration project under section 402(a) of the Social Security Amendments of 1967 or under section 222(a) of the Social Security Amendments of 1972, to an individual enrolled with the organization.

"(5) OTHER PERMISSIBLE EXCEPTIONS.—In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

"(c) GENERAL EXCEPTION RELATED ONLY TO OWNERSHIP OR INVESTMENT PROHIBITION FOR OWNERSHIP IN PUBLICLY-TRADED SECURITIES.—Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) which were purchased on terms generally available to the public and which are in a corporation that—

"(1) is listed for trading on the New York Stock Exchange or on the American Stock Exchange, or is a national market system security traded under an automated inter-

dealer quotation system operated by the National Association of Securities Dealers, and

"(2) had, at the end of the corporation's most recent fiscal year, total assets exceeding $100,000,000,

shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A).

"(d) ADDITIONAL EXCEPTIONS RELATED ONLY TO OWNERSHIP OR INVESTMENT PROHIBITION.—The following, if not otherwise excepted under subsection (b), shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A):

"(1) HOSPITALS IN PUERTO RICO.—In the case of clinical laboratory services provided by a hospital located in Puerto Rico.

"(2) RURAL PROVIDER.—In the case of clinical laboratory services if the laboratory furnishing the services is in a rural area (as defined in section 1886(d)(2)(D)).

"(3) HOSPITAL OWNERSHIP.—In the case of clinical laboratory services provided by a hospital (other than a hospital described in paragraph (1)) if—

"(A) the referring physician is authorized to perform services at the hospital, and

"(B) the ownership or investment interest is in the hospital itself (and not merely in a subdivision thereof).

"(e) EXCEPTIONS RELATING TO OTHER COMPENSATION ARRANGEMENTS.—The following shall not be considered to be a compensation arrangement described in subsection (a)(2)(B):

"(1) RENTAL OF OFFICE SPACE.—Payments made for the rental or lease of office space if—

"(A) there is a written agreement, signed by the parties, for the rental or lease of the space, which agreement—

"(i) specifies the space covered by the agreement and dedicated for the use of the lessee,

"(ii) provides for a term of rental or lease of at least one year;

"(iii) provides for payment on a periodic basis of an amount that is consistent with fair market value;

"(iv) provides for an amount of aggregate payments that does not vary (directly or indirectly) based on the volume or value of any referrals of business between the parties; and

"(v) would be considered to be commercially reasonable even if no referrals were made between the parties;

"(B) in the case of rental or lease of office space in which a physician who is an interested investor (or an interested investor who is an immediate family member of the physician) has an ownership or investment interest, the office space is in the same building as the building in which the physician (or group practice of which the physician is a member) has a practice; and

"(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(2) EMPLOYMENT AND SERVICE ARRANGEMENTS WITH HOSPITALS.—An arrangement between a hospital and a physician (or immediate family member) for the employment of the physician (or family member) or for the provision of administrative services, if—

"(A) the arrangement is for identifiable services;

"(B) the amount of the remuneration under the arrangement—

"(i) is consistent with the fair market value of the services, and

"(ii) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician;

"(C) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the hospital; and

"(D) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(3) OTHER SERVICE ARRANGEMENTS.—Remuneration from an entity (other than a hospital) under an arrangement if—

"(A) the arrangement is—

"(i) for specific identifiable services as the medical director or as a member of a medical advisory board at the entity pursuant to a requirement of this title,

"(ii) for specific identifiable physicians' services to be furnished to an individual receiving hospice care if payment for such services may only be made under this title as hospice care,

"(iii) for specific physicians' services furnished to a nonprofit blood center, or

"(iv) for specific identifiable administrative services (other than direct patient care services), but only under exceptional circumstances specified by the Secretary in regulations;

"(B) the requirements described in subparagraphs (B) and (C) of paragraph (2) are met with respect to the entity in the same manner as they apply to a hospital; and

"(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(4) PHYSICIAN RECRUITMENT.—In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if—

"(A) the physician is not required to refer patients to the hospital,

"(B) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and

"(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(5) ISOLATED TRANSACTIONS.—In the case of an isolated financial transaction, such as a one-time sale of property, if—

"(A) the requirements described in subparagraphs (B) and (C) of paragraph (2) are met with respect to the entity in the same manner as they apply to a hospital, and

"(B) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(6) SALARIED PHYSICIANS IN A GROUP PRACTICE.—A compensation arrangement involving payment by a group practice of the salary of a physician member of the group practice.

"(f) REPORTING REQUIREMENTS.—Each entity providing covered items or services for which payment may be made under this title shall provide the Secretary with the information concerning the entity's ownership arrangements, including—

"(1) the covered items and services provided by the entity, and

"(2) the names and all of the medicare provider numbers of the physicians who are interested investors or who are immediate relatives of interested investors.

Such information shall be provided in such form, manner, and at such times as the the Secretary shall specify. Such information shall first be provided not later than 1 year after the date of the enactment of this section.

"(g) SANCTIONS.—

"(1) DENIAL OF PAYMENT.—No payment may be made under this title for a clinical laboratory service which is provided in violation of subsection (a)(1).

"(2) REQUIRING REFUNDS FOR CERTAIN CLAIMS.—If a person collects any amounts that were billed in violation of subsection (a)(1), the person shall be liable to the individual for, and shall refund on a timely basis to the individual, any amounts so collected.

"(3) CIVIL MONEY PENALTY AND EXCLUSION FOR IMPROPER CLAIMS.—Any person that presents or causes to be presented a bill or a claim for a service that such person knows or should know is for a service for which payment may not be made under paragraph (1) or for which a refund has not been made under paragraph (2) shall be subject to a civil money penalty of not more than $15,000 for each such service. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(4) CIVIL MONEY PENALTY AND EXCLUSION FOR CIRCUMVENTION SCHEMES.—Any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a civil money penalty of not more than $100,000 for each such arrangement or scheme. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(5) FAILURE TO REPORT INFORMATION.—Any person who is required, but fails, to meet a reporting requirement of subsection (f) is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made.

"(h) DEFINITIONS.—For purposes of this section:

"(1) COMPENSATION ARRANGEMENT; REMUNERATION.—(A) The term 'compensation arrangement' means any arrangement involving any remuneration between a physician (or immediate family member) and an entity.

"(B) The term 'remuneration' includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

"(2) EMPLOYEE.—An individual is considered to be 'employed by' or an 'employee' of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

"(3) FAIR MARKET VALUE.—The term 'fair market value' means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the

case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

"(4) GROUP PRACTICE.—The term 'group practice' means a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association—

"(A) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides (including medical care, consultation, diagnosis, or treatment) through the joint use of shared office space, facilities, equipment, and personnel;

"(B) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group;

"(C) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group; and

"(D) which meets such other standards as the Secretary may impose by regulation.

In the case of a faculty practice plan associated with a hospital with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group (as well as perform other tasks such as research), the previous sentence shall be applied only with respect to the services provided within the faculty practice plan.

"(5) INTERESTED INVESTOR; DISINTERESTED INVESTOR.—The term 'interested investor' means, with respect to an entity, an investor who is a physician in a position to make or to influence referrals or business to the entity (or who is an immediate family member of such an investor), and the term 'disinterested investor' means an investor other than an interested investor.

"(6) REFERRAL; REFERRING PHYSICIAN.—

"(A) PHYSICIANS' SERVICES.—Except as provided in subparagraph (C), in the case of a clinical laboratory service which under law is required to be provided by (or under the supervision of) a physician, the request by a physician for the service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a 'referral' by a 'referring physician'.

"(B) OTHER ITEMS.—Except as provided in subparagraph (C), in the case of another clinical laboratory service, the request or establishment of a plan of care by a physician which includes the provision of the clinical laboratory service constitutes a 'referral' by a 'referring physician'.

"(C) CLARIFICATION RESPECTING CERTAIN SERVICES INTEGRAL TO A CONSULTATION BY CERTAIN SPECIALISTS.—A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, if such services are furnished by (or under the supervision of) such pathologist pursuant to a consultation requested by another physician does not constitute a 'referral' by a 'referring physician'.".

(b) REQUIRING REQUESTS FOR PAYMENT TO INCLUDE INFORMATION ON REFERRING PHYSICIAN.—Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(q)(1) Each request for payment, or bill submitted, for an item or service furnished by an entity for which payment may be made under this part and for which the entity knows or has reason to believe there has been a referral by a referring physician (within the meaning of section 1877) shall include the name and provider number for the referring physician and indicate whether or not the referring physician is an interested investor (within the meaning of section 1877(h)(5)).

"(2)(A) In the case of a request for payment for an item or service furnished by an entity under this part on an assignment-related basis and for which information is required to be provided under paragraph (1) but not included, payment may be denied under this part.

"(B) In the case of a request for payment for an item or service furnished by an entity under this part not submitted on an assignment-related basis and for which information is required to be provided under paragraph (1) but not included—

"(i) if the entity knowingly and willfully fails to provide such information promptly upon request of the Secretary or a carrier, the entity may be subject to a civil money penalty in an amount not to exceed $2,000, and

"(ii) if the entity knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection to provide the information required under paragraph (1), the entity may be subject to exclusion from participation in the programs under this Act for a period not to exceed 5 years, in accordance with the procedures of subsections (c), (f), and (g) of section 1128.

The provisions of section 1128A (other than subsections (a) and (b)) shall apply to civil money penalties under clause (i) in the same manner as they apply to a penalty or proceeding under section 1128A(a).".

(c) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall become effective with respect to referrals made on or after January 1, 1992.

(2) The reporting requirement of section 1877(f) of the Social Security Act shall take effect on October 1, 1990.

(d) DEADLINE FOR CERTAIN REGULATIONS.—The Secretary of Health and Human Services shall publish final regulations to carry out section 1877 of the Social Security Act by not later than October 1, 1990.

(e) GAO STUDY OF OWNERSHIP BY REFERRING PHYSICIANS.—The Comptroller General shall conduct a study of the ownership of hospitals and other providers of medicare services by referring physicians. Such study shall investigate—

(1) the types of such ownership arrangements and types of services offered under such arrangements,

(2) the returns generally earned by physician investors in such arrangements,

(3) the effect of such arrangements on (A) the utilization of items and services by medicare beneficiaries, (B) medicare expenditures, and (C) other entities providing items and services in the communities served,

(4) the effect of such arrangements on independent providers of similar services, and

(5) the effect on the provision of in-office clinical laboratory services of the limitation on payment for certain referrals contained in section 1877 of the Social Security Act.

By not later than February 1, 1991, the Comptroller General shall report to Congress on the results of such study.

(f) QUARTERLY REPORTS TO CONGRESS ON COMPARATIVE UTILIZATION.—The Secretary of Health and Human Services shall submit to the Congress and the Comptroller General, not later than 90 days after the end of each calendar quarter, a report which provides a statistical profile (by State and type of item or service) comparing utilization of items and services by medicare beneficiaries served by entities in which the referring physician has a direct or indirect financial interest and by medicare beneficiaries served by other entities.

SEC. 6205. COSTS OF NURSING AND ALLIED HEALTH EDUCATION.

(a) RECOGNITION OF COSTS OF CERTAIN HOSPITAL-BASED NURSING SCHOOLS.—

(1) IN GENERAL.—(A) The reasonable costs incurred by a hospital in training students of a hospital-based nursing school shall be allowable as reasonable costs under title XVIII of the Social Security Act and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated educational program (other than an approved graduate medical education program) if, before June 15, 1989, and thereafter, the hospital demonstrates that for each year, it incurs at least 50 percent of the costs of training nursing students at such school, the nursing school and the hospital share some common board members, and all instruction is provided at the hospital or, if in another building, a building on the immediate grounds of the hospital.

(B) Section 8411(b) of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "1989, 1990, and" and inserting "1986 through".

(2) EFFECTIVE DATE.—Paragraph (1)(A) shall apply with respect to cost reporting periods beginning on or after the date of the enactment of this Act and on or before the date on which the Secretary issues regulations pursuant to subsection (b)(2)(A).

(b) DELAY IN RECOUPMENT OF CERTAIN NURSING AND ALLIED EDUCATION COSTS.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall not, before October 1, 1990, recoup from, or otherwise reduce or adjust payments under title XVIII of the Social Security Act to, hospitals because of alleged overpayments to such hospitals under such title due to a determination that costs which were reported by a hospital on its Medicare cost reports relating to approved nursing and allied health education programs were allowable costs and are included in the definition of "operating costs of inpatient hospital services" pursuant to section 1886(a)(4) of such Act, so that no pass-through of such costs were permitted under that section.

(2)(A) Before July 1, 1990, the Secretary shall issue regulations respecting payment of costs described in paragraph (1).

(B) In issuing such regulations—

(i) the Secretary shall allow a comment period of not less than 60 days,

(ii) the Secretary shall consult with the Prospective Payment Assessment Commission, and

(iii) any final rule shall not be effective prior to October 1, 1990, or 30 days after publication of the final rule in the Federal Register, whichever is later.

(C) Such regulations shall specify—

(i) the relationship required between an approved nursing or allied health education

program and a hospital for the program's costs to be attributed to the hospital;

(ii) the types of costs related to nursing or allied health education programs that are allowable by Medicare;

(iii) the distinction between costs of approved educational activities as recognized under section 1886(a)(3) of the Social Security Act and educational costs treated as operating costs of inpatient hospital services; and

(iv) the treatment of other funding sources for the program.

SEC. 6206. DISCLOSURE OF ASSUMPTIONS IN ESTABLISHING AAPCC; ELIMINATION OF COORDINATED OPEN ENROLLMENT REQUIREMENT.

(a) DISCLOSURE OF ASSUMPTIONS IN ESTABLISHING AAPCC.—

(1) IN GENERAL.—Section 1876(a)(1) of the Social Security Act (42 U.S.C. 1395mm(a)(1)) is amended by adding at the end the following new subparagraph:

"(F)(i) At least 45 days before making the announcement under subparagraph (A) for a year (beginning with the announcement for 1991), the Secretary shall provide for notice to eligible organizations of proposed changes to be made in the methodology or benefit coverage assumptions from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.

"(ii) In each announcement made under subparagraph (A) for a year (beginning with the announcement for 1991), the Secretary shall include an explanation of the assumptions (including any benefit coverage assumptions) and changes in methodology used in the announcement in sufficient detail so that eligible organizations can compute per capita rates of payment for classes of individuals located in each county (or equivalent area) which is in whole or in part within the service area of such an organization.".

(2) Before July 1, 1990, the Secretary of Health and Human Services shall provide for notice to eligible organizations of the methodology used in making the announcement under section 1876(a)(1)(A) of the Social Security Act for 1990.

(b) ELIMINATION OF COORDINATED OPEN ENROLLMENT REQUIREMENT.—

(1) IN GENERAL.—Section 1876(c)(3)(A) of such Act (42 U.S.C. 1395mm(c)(3)(A)) is amended—

(A) in clause (i), by striking "30-day period" and inserting "period or periods", and

(B) by striking clause (ii) and inserting the following:

"(ii)(I) If a risk-sharing contract under this section is not renewed or is otherwise terminated, eligible organizations with risk-sharing contracts under this section and serving a part of the same service area as under the terminated contract are required to have an open enrollment period for individuals who were enrolled under the terminated contract as of the date of notice of such termination. If a risk-sharing contract under this section is renewed in a manner that discontinues coverage for individuals residing in part of the service area, eligible organizations with risk-sharing contracts under this section and enrolling individuals residing in that part of the service area are required to have an open enrollment period for individuals residing in the part of the service area who were enrolled under the contract as of the date of notice of such discontinued coverage.

"(II) The open enrollment periods required under subclause (I) shall be for 30 days and shall begin 30 days after the date that the Secretary provides notice of such requirement.

"(III) Enrollment under this clause shall be effective 30 days after the end of the open enrollment period, or, if the Secretary determines that such date is not feasible, such other date as the Secretary specifies.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect 60 days after the date of the enactment of this Act.

SEC. 6207. EXTENSION OF EXPIRING AUTHORITIES.

(a) DELAY IN EFFECTIVE DATE IN PHYSICIAN INCENTIVE RULES.—Section 9313(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 4016 of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "April 1, 1990" and inserting "April 1, 1991".

(b) EXTENSION OF PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR.—Section 4039(d) of the Omnibus Budget Reconciliation Act of 1987, as amended by section 426(e) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) by striking "October 15, 1989" and inserting "October 15, 1990", and

(2) by inserting "or in fiscal year 1991" after "fiscal year 1990".

### Subpart B—Technical and Miscellaneous Provisions

SEC. 6211. MEDICARE HOSPITAL PATIENT PROTECTION AMENDMENTS.

(a) SCOPE OF HOSPITAL RESPONSIBILITY FOR SCREENING.—Subsection (a) of section 1867 of the Social Security Act (42 U.S.C. 1395dd) is amended by striking "department" the third place it appears and inserting the following: "department, including ancillary services routinely available to the emergency department,".

(b) INFORMED REFUSALS OF TREATMENT OR TRANSFERS.—Subsection (b) of such section is amended—

(1) in paragraph (2)—

(A) by inserting "and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment," after "in that paragraph",

(B) by striking "or treatment" and inserting "and treatment", and

(C) by adding at the end the following new sentence: "The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment."; and

(2) in paragraph (3)—

(A) by inserting "and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer," after "with subsection (c)", and

(B) by adding at the end the following new sentence: "The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.".

(c) AUTHORIZATION FOR TRANSFERS.—

(1) INFORMED CONSENT FOR TRANSFERS AT INDIVIDUAL REQUEST.—Subsection (c)(1)(A)(i) of such section is amended by striking "requests that the transfer be effected" and inserting "after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility".

(2) CLARIFYING PHYSICIAN AUTHORIZATION FOR TRANSFERS.—Subsection (c)(1)(A) of such section is amended—

(A) by striking "or" at the end of clause (i);

(B) in clause (ii)—

(i) by striking ", or other qualified medical personnel when a physician is not readily available in the emergency department,", and

(ii) by inserting "of transfer" after "information available at the time";

(C) by striking "; and" at the end of clause (ii) and inserting ", or", and

(D) by adding at the end the following new clause:

"(iii) if a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as defined by the Secretary in regulations) has signed a certification described in clause (ii) after a physician (as defined in section 1861(r)(1)), in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and".

(3) STANDARD FOR AUTHORIZING TRANSFER.—Subsection (c)(1)(A)(ii) of such section is amended—

(A) by striking ", based upon the reasonable risks and benefits to the patient, and", and

(B) by striking "individual's medical condition" and inserting "individual and, in the case of labor, to the unborn child".

(4) INCLUSION OF SUMMARY OF RISKS AND BENEFITS IN CERTIFICATE OF TRANSFER.—Subsection (c)(1) of such section is amended by adding at the end the following: "A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.".

(5) PROVISION OF SERVICES PENDING TRANSFER.—Subsection (c)(2) of such section is amended—

(A) by redesignating subparagraphs (A) through (D) as subparagraphs (B) through (E), respectively, and

(B) by inserting before subparagraph (B), as so redesignated, the following new subparagraph:

"(A) in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;".

(d) REQUIRING MAINTENANCE OF RECORDS OF TRANSFERS.—Subsection (c)(2)(C) of such section, as redesignated by subsection (c)(5)(A) of this section, is amended—

(1) by striking "provides" and inserting "sends to", and

(2) by striking "with appropriate medical records" and all that follows through "transferring hospital" and inserting "all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(2)(C)) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment".

(e) PHYSICIAN LIABILITY.—Subsection (d)(2) of such subsection is amended—

(1) by amending subparagraph (B) to read as follows:

"(B) Subject to subparagraph (C), any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of such an individual, and who knowingly violates a requirement of this section, including a physician who—

"(i) signs a certification under subsection (c)(1)(A) that the medical benefits reasonably to be expected from a transfer to another facility outweigh the risks associated with the transfer, if the physician knew or should have known that the benefits did not outweigh the risks, or

"(ii) misrepresents an individual's condition or other information, including a hospital's obligations under this section,

is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is knowing and willful or negligent, to exclusion from participation in this title and State health care programs. The provisions of section 1128A (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to a civil money penalty and exclusion under this subparagraph in the same manner as such provisions apply with respect to a penalty, exclusion, or proceeding under section 1128A(a)."; and

(2) by striking subparagraph (C) and inserting the following:

"(C) If, after an initial examination, a physician determines that the individual requires the services of a physician listed by the hospital on its list of on-call physicians (required to be maintained under section 1866(a)(1)(I)) and notifies the on-call physician and the on-call physician fails or refuses to appear within a reasonable period of time, and the physician orders the transfer of the individual because the physician determines that without the services of the on-call physician the benefits of transfer outweigh the risks of transfer, the physician authorizing the transfer shall not be subject to a penalty under subparagraph (B). However, the previous sentence shall not apply to the hospital or to the on-call physician who failed or refused to appear.".

(f) ADDITIONAL OBLIGATIONS.—Such section is amended by adding at the end the following new subsections:

"(g) NONDISCRIMINATION.—A participating hospital that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as identified by the Secretary in regulation) shall not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

"(h) NO DELAY IN EXAMINATION OR TREATMENT.—A participating hospital may not delay provision of an appropriate medical screening examination required under subsection (a) or further medical examination and treatment required under subsection (b) in order to inquire about the individual's method of payment or insurance status.

"(i) WHISTLEBLOWER PROTECTIONS.—A participating hospital may not penalize or take adverse action against a physician because the physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized.".

(g) CHANGE IN "PATIENT" TERMINOLOGY.—

(1) Subsection (c) of such section is amended—

(A) by striking "PATIENT" and inserting "INDIVIDUAL", and

(B) by striking "a patient" "the patient", "patient's", and "patients" each place each appears and inserting "an individual", "the individual", "individual's", and "individuals", respectively.

(2) Subsection (e)(5) of such section is amended by striking "a patient" each place it appears and inserting "an individual".

(h) CLARIFICATION OF "EMERGENCY MEDICAL CONDITION" DEFINITION.—

(1) IN GENERAL.—Subsection (e) of such section (as amended by section 6003(g)(3)(D)(xiv)) is amended—

(A) in paragraph (1), by striking "means" and all that follows and inserting the following:

"means—

"(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

"(ii) serious impairment to bodily functions, or

"(iii) serious dysfunction of any bodily organ or part; or

"(B) with respect to a pregnant woman who is having contractions—

"(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or

"(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.";

(B) by striking paragraph (2);

(C) in paragraph (4)(A)—

(i) by inserting "described in paragraph (1)(A)" after "emergency medical condition",

(ii) by inserting "or occur during" after "likely to result from",

(iii) by inserting before the period at the end the following: ", or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta)";

(D) in paragraph (4)(B)—

(i) by inserting "described in paragraph (1)(A)" after "emergency medical condition",

(ii) by inserting "or occur during" after "to result from", and

(iii) by inserting before the period at the end the following: ", or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta)"; and

(E) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively.

(2) CONFORMING AMENDMENTS.—Such section is further amended—

(A) in the heading, by striking "ACTIVE";

(B) in subsection (a), by striking "or to determine if the individual is in active labor (within the meaning of section (e)(2))";

(C) in the heading of subsection (b), by striking "ACTIVE";

(D) in subsection (b)(1)—

(i) by striking "or is in active labor", and

(ii) in subparagraph (A), by striking "or to provide for treatment of the labor"; and

(E) in subsection (c)(1), by striking "(e)(4)(B)) or is in active labor" and inserting "(e)(3)(B))".

(i) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act, without regard to whether regulations to carry out such amendments have been promulgated by such date.

SEC. 6212. HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

(a) TEMPORARY WAIVER FOR WATTS HEALTH FOUNDATION.—Section 9312(c)(3)(D) of the Omnibus Budget Reconciliation Act of 1986, as added by section 4018(d) of the Omnibus Budget Reconciliation Act of 1987, is amended—

(1) in clause (i), by striking "January 1, 1990" and inserting "January 1, 1994"; and

(2) by amending clauses (ii) and (iii) to read as follows:

"(ii) beginning on January 1, 1990, the Secretary of Health and Human Service shall conduct an annual review of the organization to determine the organization's compliance with the quality assurance requirements of section 1876(c)(6) of such Act; and

"(iii) after January 1, 1990, if the organization receives an unfavorable review under clause (ii), the Secretary, after notice to the organization of the unfavorable review and an opportunity to correct any deficiencies identified during the review, may provide for the sanction described in section 1876(f)(3) of such Act effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization that the organization is not in compliance with the requirements of section 1876(c)(6) of such Act.".

(b) LIMIT ON CHARGES FOR EMERGENCY SERVICES AND OUT-OF-AREA COVERAGE.—

(1) IN GENERAL.—Section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by adding at the end the following new subsection:

"(j)(1)(A) In the case of physicians' services described in paragraph (2) which are furnished by a participating physician to an individual enrolled with an eligible organization under this section and enrolled under part B, the participation agreement under section 1842(h)(1) is deemed to provide that the physician will accept as payment in full from the eligible organization the amount that would be payable to the physician under part B and from the individual under such part, if the individual were not enrolled with an eligible organization under this section.

"(B) In the case of physicians' services described in paragraph (2) which are furnished by a nonparticipating physician, the limitations on actual charges for such services otherwise applicable under part B (to services furnished by individuals not enrolled with an eligible organization under this section) shall apply in the same manner as such limitations apply to services furnished to individuals not enrolled with such an organization.

"(2) The physicians' services described in this paragraph are physicians' services which—

"(A) are emergency services or out-of-area coverage (described in clauses (iii) and (iv) of subsection (b)(2)(A)), and

"(B) are furnished to an enrollee of an eligible organization under this section by a person who is not under a contract with the organization.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services furnished on or April 1, 1990.

(c) MAKING AUTHORITY FOR BENEFIT STABILIZATION FUND PERMANENT.—

(1) REPEAL ON LIMITATION ON ESTABLISHMENT OF A FUND.—Section 2350(b) of the Deficit Re-

duction Act of 1984 (Public Law 98-369) is amended by striking paragraphs (3) and (4).

(2) REPEAL ON LIMITING PERIOD OF USE.—Section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)) is amended by striking "and during a period of not longer than four years".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 6213. RURAL HEALTH CLINIC SERVICES.

(a) STAFFING REQUIREMENTS; INCLUSION OF NURSE-MIDWIFE SERVICES.—Section 1861(aa)(2) of the Social Security Act (42 U.S.C. 1395x(aa)(2)) is amended—

(1) by striking "; and" at the end of subparagraph (I) and inserting a semicolon;

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

"(J) has a nurse practitioner, a physician assistant, or a certified nurse-midwife (as defined in subsection (gg)) available to furnish patient care services not less than 50 percent of the time the clinic operates; and".

(b) COVERAGE OF SOCIAL WORKER SERVICES.—Section 1861(aa)(1)(B) of such Act (42 U.S.C. 1395x(aa)(1)(B)) is amended—

(1) by striking "or" before "by"; and

(2) by inserting "or by a clinical social worker (as defined in subsection (hh)(1))," after "Secretary)".

(c) EXPANSION OF ELIGIBLE AREAS.—The second sentence of section 1861(aa)(2) of such Act is amended—

(1) by striking "designated by the Secretary" and inserting "designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services, or that is designated by the Secretary";

(2) by striking "section 1302(7) of the Public Health Service Act or" and inserting "sections 330(b)(3) or 1302(7) of the Public Health Service Act,"; and

(3) by striking "medical care manpower," and inserting the following: "medical care manpower, (III) as a high impact area described in section 329(a)(5) of that Act, or (IV) as an area which includes a population group which the Secretary determines has a health manpower shortage under section 332(a)(1)(B) of that Act,".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) through (c) of this section shall take effect October 1, 1989.

(e) DISSEMINATION OF RURAL HEALTH CLINIC INFORMATION.—

(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with the Director of the Office of Rural Health Policy, shall disseminate to health care facilities and to the chief executive officer, chief health officer, and chief human services officer of each State, applications and other necessary information to enable such a facility to apply for designation as a rural health clinic for the purposes of titles XVIII and XIX of the Social Security Act.

(2) DEFINITIONS.—For purposes of this subsection:

(A) The term "health care facility" means a community health center or a migrant health center, or a hospital, home health agency, or skilled nursing facility participating in a program established under title XVIII or title XIX of the Social Security Act.

(B) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(f) TREATMENT OF CERTAIN FACILITIES AS RURAL HEALTH CLINICS.—The Secretary of Health and Human Services shall not deny certification of a facility as a rural health clinic under section 1861(aa)(2) of the Social Security Act if the facility is located on an island and would otherwise be qualified to be certified as such a facility but for the requirement that the services of a physician assistant or nurse practitioner be provided in the facility.

(g) EXPANSION OF FUNCTIONS OF OFFICE OF RURAL HEALTH POLICY.—Section 711(b) of the Social Security Act (42 U.S.C. 912(b)) is amended—

(1) in paragraph (2)(A), by striking "health care issues" and inserting "health care issues, including rural mental health, rural infant mortality prevention, and rural occupational safety and preventive health promotion";

(2) in paragraph (2)(C), by striking "rural areas" and inserting "rural areas, including programs providing community-based mental health services, pre-natal and infant care services, and rural occupational safety and preventive health education and promotion"; and

(3) in paragraph (4), by striking "rural health care" and inserting "rural health care, including activities relating to rural mental health, rural infant mortality, and rural occupational safety and preventive health promotion".

SEC. 6214. DETERMINING ELIGIBILITY OF HOME HEALTH AGENCIES FOR WAIVER OF LIABILITY FOR DENIED CLAIMS.

(a) SCOPE OF WAIVER AND DETERMINATION OF DENIED CLAIM.—Section 1879(f) of the Social Security Act (42 U.S.C. 1395pp(f)) is amended—

(1) in paragraph (1), by striking "with respect to" and all that follows and inserting a period; and

(2) in paragraph (4), by striking "(4) The requirement" and inserting "(4)(A) The requirement", and by adding at the end the following new subparagraph:

"(B) For purposes of determining the rate of denial of bills for a home health agency under subparagraph (A), a bill shall not be considered to be denied until the expiration of the 60-day period that begins on the date such bill is denied by the fiscal intermediary, or, with respect to such a denial for which the agency requests reconsideration, until the fiscal intermediary issues a decision denying payment for such bill.".

(b) MONITORING OF DENIED CLAIMS.—Section 1879(f) of such Act (42 U.S.C. 1395pp(f)) is amended by adding at the end the following new paragraph:

"(6) The Secretary shall monitor the proportion of denied bills submitted by home health agencies for which reconsideration is requested, and shall notify Congress if the proportion of denials reversed upon reconsideration increases significantly.".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to determinations for quarters beginning on or after the date of the enactment of this Act.

SEC. 6215. EXTENSION OF AUTHORITY TO CONTRACT WITH FISCAL INTERMEDIARIES AND CARRIERS ON OTHER THAN A COST BASIS.

(a) IN GENERAL.—Section 2326(a) of the Deficit Reduction Act of 1984 is amended—

(1) in the first sentence, by striking "fiscal year 1989" and inserting "fiscal year 1993",

(2) in the second sentence, by striking "over a period of time" and inserting "over a 2-year period of time", and

(3) by inserting after the second sentence, the following: "In addition, during such period the Secretary may enter into such additional agreements and contracts without regard to such cost reimbursement provisions if the fiscal intermediary or carrier involved and the Secretary agree to waive such provisions, but the Secretary may not take any action that has the effect of requiring that the intermediary or carrier agree to waive such provisions, including requiring such a waiver as a condition for entering into or renewing such an agreement or contract.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply beginning with fiscal year 1990.

SEC. 6216. EXPANSION OF RURAL HEALTH MEDICAL EDUCATION DEMONSTRATION PROJECT.

(a) NUMBER OF PROJECTS.—Section 4038(a) of the Omnibus Budget Reconciliation Act of 1987 is amended by striking "four sponsoring hospitals" and inserting "10 sponsoring hospitals".

(b) SELECTION OF NEW PROJECTS.—Section 4038(c) of such Act is amended—

(1) by striking "In selecting" and inserting "(1) In selecting";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B); and

(3) by adding at the end the following new paragraph:

"(2) The provisions of paragraph (1) shall not apply with respect to applications submitted as a result of amendments made by section 355 of the Medicare Catastrophic Coverage Repeal Act of 1989.".

(c) COMMENCEMENT OF NEW PROJECTS.—Section 4038(e) of such Act is amended by inserting "(or the date of the enactment of the Medicare Catastrophic Coverage Repeal Act of 1989, in the case of a project conducted as a result of the amendments made by section 355 of such Act)" after "this Act".

SEC. 6217. INNER-CITY HOSPITAL TRIAGE DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a demonstration project in a public hospital that is located in a large urban area and that has established a triage system, under which the Secretary shall make payments for 3 years to reimburse the hospital for the reasonable costs of operating the system, including costs—

(1) to train hospital personnel to operate and participate in the system; and

(2) to provide services to patients who might otherwise be denied appropriate and prompt care.

(b) LIMITATIONS ON PAYMENT.—(1) The Secretary may not make payment under the demonstration project established under subsection (a) for costs that the Secretary determines are not reasonable.

(2) The amount of payment made under the demonstration project during a single year may not exceed $500,000.

SEC. 6218. GAO STUDY OF ADMINISTRATIVE COSTS OF MEDICARE PROGRAM.

(a) STUDY.—The Comptroller General shall conduct a study of the administrative burden of medicare regulations and program requirements on providers of services, fiscal intermediaries, and carriers, and shall include in such study—

(1) an assessment of current administrative costs to such entities and of trends in such administrative costs since 1982; and

(2) a comparison of the administrative burden to such entities in providing services to individuals who are not medicare beneficiaries.

For purposes of such assessment, administrative costs shall include personnel costs, training costs, the costs of data and communications systems as affected by changes in requirements of the medicare program, and costs to such entities of non-compliance with such requirements resulting from the failure of the Secretary of Health and Human Services to provide entities with adequate notice of changes in program requirements.

(b) REPORT.—Not later than March 31, 1990, the Comptroller General shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the study conducted under subsection (a).

SEC. 6219. PROVISIONS RELATING TO END STAGE RENAL DISEASE SERVICES.

(a) FLEXIBILITY IN FUNDING ESRD NETWORK ORGANIZATIONS.—The last sentence of section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) is amended by striking "network adminstrative" and all that follows and inserting the following: "organizations (designated under subsection (c)(1)(A)) for such organizations' necessary and proper administrative costs incurred in carrying out the responsibilities described in subsection (c)(2). The Secretary shall provide that amounts paid under this paragraph shall be distributed to the organizations described in subsection (c)(1)(A) to ensure equitable treatment of all such network organizations. The Secretary in distributing any such payments to network organizations shall take into account—

"(A) the geographic size of the network area;

"(B) the number of providers of end stage renal disease services in the network area;

"(C) the number of individuals who are entitled to end stage renal disease services in the network area; and

"(D) the proportion of the aggregate administrative funds collected in the network area.".

(b) LIABILITY PROTECTION FOR ESRD NETWORK ORGANIZATIONS AND PROHIBITION AGAINST DISCLOSURE OF INFORMATION.—Section 1881(c) of such Act (42 U.S.C. 1395rr(c)) is amended by adding at the end the following new paragraph:

"(8) The provisions of sections 1157 and 1160 shall apply with respect to network administrative organizations (including such organizations as medical review boards) with which the Secretary has entered into agreements under this subsection.".

(c) REPORT ON PAYMENT FOR ERYTHROPOIETIN (EPO).—Not later than April 1, 1990, the Secretary of Health and Human Services shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate and to the Comptroller General on the methodology and rationale used to establish a payment rate for the drug erythropoietin (EPO) under title XVIII of the Social Security Act and shall include in the report (A) a summary of information provided to the Secretary by the manufacturer of EPO and used by the Secretary to establish such rate and (B) a plan for ensuring the appropriateness of rates in the future.

SEC. 6220. AMENDMENTS RELATING TO THE UNITED STATES BIPARTISAN COMMISSION ON COMPREHENSIVE HEALTH CARE.

(a) COMMISSION NAME.—Section 401 of the Medicare Catastrophic Coverage Act of 1988 is amended by inserting before the period at the end the following: "and also to be known as the 'Claude Pepper Commission' or the 'Pepper Commission' ".

(b) 4 VICE CHAIRMEN.—Section 403(b) of such Act is amended—

(1) by striking "VICE CHAIRMAN" and inserting "VICE CHAIRMEN"; and

(2) by striking "vice chairman" and inserting "4 vice chairmen".

(c) ADDITIONAL MAILING PRIVILEGE.—Section 405(f) of such Act is amended by inserting before the period at the end the following: ", and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code".

(d) PRINTING OF REPORTS.—Section 405 of such Act is further amended by adding at the end the following new subsection:

"(j) PRINTING.—For purposes of costs relating to printing and binding, including the costs of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of the Congress.".

(e) REPORT DEADLINES.—Section 406 of such Act is amended—

(1) in each of subsections (a) and (b), by striking ", not later than" and all that follows through "for the Commission,"; and

(2) by adding at the end the following new subsection:

"(c) DEADLINES.—The two reports required under this section shall be submitted concurrently by not later than November 9, 1989.".

SEC. 6221. NATIONAL COMMISSION ON CHILDREN.

Section 1139 of the Social Security Act (42 U.S.C. 1320b-9) is amended—

(1) in subsection (d)—

(A) by striking "September 30, 1988" and inserting "March 31, 1990"; and

(B) by striking "March 31, 1989" and inserting "March 31, 1991";

(2) in subsection (e), by striking "March 31, 1989" and inserting "March 31, 1991";

(3) in subsection (j), by striking "such sums" and inserting "through fiscal year 1991, such sums"; and

(4) by adding at the end thereof the following new subsections:

"(k)(1) The Commission is authorized to accept donations of money, property, or personal services. Funds received from donations shall be deposited in the Treasury in a separate fund created for this purpose. Funds appropriated for the Commission and donated funds may be expended for such purposes as official reception and representation expenses, public surveys, public service announcements, preparation of special papers, analyses, and documentaries, and for such other purposes as determined by the Commission to be in furtherance of its mission to review national issues affecting children.

"(2) For purposes of Federal income, estate, and gift taxation, money and other property accepted under paragraph (1) of this subsection shall be considered as a gift or bequest to or for the use of the United States.

"(3) Expenditure of appropriated and donated funds shall be subject to such rules and regulations as may be adopted by the Commission and shall not be subject to Federal procurement requirements.

"(l) The Commission is authorized to conduct such public surveys as it deems necessary in support of its review of national issues affecting children and, in conducting such surveys, the Commission shall not be deemed to be an "agency" for the purpose of 44 U.S.C. 3502.".

SEC. 6222. CONTINUED USE OF HOME HEALTH WAGE INDEX IN EFFECT PRIOR TO JULY 1, 1989, UNTIL AFTER JULY 1, 1991.

Notwithstanding the requirement of section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary of Health and Human Services shall in determining the limits of or reasonable costs under title XVIII of the Social Security Act with respect to services furnished by home health agencies, continue to utilize the wage index that was in effect for cost reporting periods beginning before July 1, 1989, until cost reporting periods beginning on or after July 1, 1991.

SEC. 6223. HCFA PERSONNEL STUDY.

(a) IN GENERAL.—The Secretary of Health and Human Services shall (subject to subsection (c)) enter into an agreement with the National Academy of Public Administration (hereafter in this subsection referred to as the "Academy") to—

(1) study personnel administration at the Health Care Financing Administration (hereafter in this section referred to as "HCFA");

(2) assess the adequacy of HCFA staffing; and

(3) recommend any needed changes with respect to HCFA staffing to the Secretary of Health and Human Services and the Congress.

(b) REQUIREMENTS OF STUDY.—In conducting the study, the Academy shall interview management officials at HCFA and other appropriate agencies. The study shall include consideration of—

(1) the average years in service, years to retirement and average age of various categories of HCFA personnel;

(2) the adequacy of HCFA practices to recruit personnel to replace persons who retire or resign and train new employees in the intricacies of HCFA programs;

(3) the grade structure of various categories of HCFA personnel, and the need for additional nonsupervisory positions at the GS 13, 14, and 15 levels for particularly skilled and expert personnel needed for HCFA to carry out its missions;

(4) the grade structure at HCFA with Federal agencies of similar size and responsibilities;

(5) whether bonus payments or other incentives are needed for HCFA to recruit and retain specialized personnel;

(6) particular problems in hiring personnel that may prevent recruitment and retention of qualified staff;

(7) Office of Personnel Management rules that may be burdensome to the hiring process; and

(8) how HCFA can more appropriately address the priorities of both Congress and the executive branch of Government.

(c) ARRANGEMENTS FOR STUDY.—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(d) DATE OF REPORT.—The results of the study shall be reported to Congress and the

Secretary of Health and Human Services no later than December 31, 1990.

SEC. 6224. PEER REVIEW ORGANIZATIONS.

(a) PEER REVIEW OF NON-PHYSICIAN SERVICES.—

(1) IN GENERAL.—Section 1154(a)(1) of the Social Security Act (42 U.S.C. 1320c-3(a)(1)) is amended by adding at the end the following:

"If the organization performs such reviews with respect to a type of health care practitioner other than medical doctors, the organization shall establish procedures for the involvement of health care practitioners of that type in such reviews.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts entered into after the date of the enactment of this Act.

(b) PROVIDER AND PRACTITIONER RIGHT TO RECONSIDERATION OF PRO DETERMINATION BEFORE NOTICE TO BENEFICIARY.—

(1) IN GENERAL.—Section 1154(a)(3) of the Social Security Act (42 U.S.C. 1320c-3(a)(3)) is amended—

(A) in subparagraph (A), by striking "subparagraph (B)" and inserting "subparagraphs (B) and (D)",

(B) in subparagraph (B), by inserting "with respect to services or items disapproved by reason of subparagraph (A) or (C) of paragraph (1)" after "under subparagraph (A)", and

(C) by adding at the end the following new subparagraphs:

"(D) The notification under subparagraph (A) with respect to services or items disapproved by reason of paragraph (1)(B) shall not occur until after—

"(i) the organization has notified the practitioner or provider involved of the determination and of the practitioner's or provider's right to a formal reconsideration of the determination under section 1155, and

"(ii) if the provider or practitioner requests such a reconsideration, the organization has made such a reconsideration.

If a provider or practitioner is provided a reconsideration, such reconsideration shall be in lieu of any subsequent reconsideration to which the provider or practitioner may be otherwise entitled under section 1155, but shall not affect the right of a beneficiary from seeking reconsideration under such section of the organization's determination (after any reconsideration requested by the provider or physician under clause (ii)).

"(E) In the case of services and items disapproved by reason of paragraph (1)(B), the notice to the patient shall state the following: 'In the judgment of the peer review organization, the medical care received was not acceptable under the medicare program. The reasons for the denial have been discussed with your physician and hospital.'.".

(2) CONFORMING AMENDMENT.—Section 1155 of such Act (42 U.S.C. 1320c-5) is amended by inserting ", subject to section 1154(a)(3)(D)," before "any practitioner or provider".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1154(a)(3)(B) of the Social Security Act more than 30 days after the date of the enactment of this Act.

### PART 4—PART B PREMIUM

SEC. 6301. PART B PREMIUM.

Section 1839(e) of the Social Security Act (42 U.S.C. 1395r(e)) is amended by striking "1990" each place it appears and inserting "1991".

### Subtitle B—Medicaid

### PART 1—GENERAL PROVISIONS

SEC. 6401. MANDATORY COVERAGE OF CERTAIN LOW-INCOME PREGNANT WOMEN AND CHILDREN.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(10)(A)(i)—

(A) by striking "or" at the end of subclause (IV),

(B) by striking the semicolon at the end of subclause (V) and inserting ", or", and

(C) by adding at the end the following new subclause:

"(VI) who are described in subparagraph (C) of subsection (l)(1) and whose family income does not exceed the income level the State is required to establish under subsection (l)(2)(B) for such a family;";

(2) in subsection (a)(10)(A)(ii)(IX), by inserting "or clause (i)(VI)" after "clause (i)(IV)";

(3) in subsection (l)(1)—

(A) by striking "and" at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following:

"(C) who have attained one year of age but have not attained 6 years of age, and

"(D) at the option of the State, children born after September 30, 1983, who have attained 6 years of age but have not attained 7 or 8 years of age (as selected by the State),";

(4) in subsection (l)(2)(A)—

(A) in clause (ii), by amending subclause (II) to read as follows:

"(II) April 1, 1990, 133 percent, or, if greater, the percentage provided under clause (iv).''; and

(B) by adding at the end the following new clause:

"(iv) In the case of a State which, as of the date of the enactment of this clause, has established under clause (i), or has enacted legislation authorizing, or appropriating funds, to provide for, a percentage (of the income official poverty line) that is greater than 133 percent, the percentage provided under clause (ii) for medical assistance on or after April 1, 1990, shall not be less than—

"(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of the date of the enactment of this clause, or

"(II) if no such percentage is specified as of the date of the enactment of this clause, the percentage established under the State's authorizing legislation or provided for under the State's appropriations.";

(5) in subparagraph (B) of subsection (l)(2)—

(A) by striking ", or , if less, the percentage established under subparagraph (A)", and

(B) by redesignating such subparagraph as subparagraph (C);

(6) in subsection (l)(2), by inserting after subparagraph (A) the following new subparagraph:

"(B) For purposes of paragraph (1) with respect to individuals described in subparagraph (C), the State shall establish an income level which is equal to 133 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.";

(6) in subsection (l)(3)—

(A) by inserting ", (a)(10)(A)(i)(VI)," after "(a)(10)(A)(i)(IV)", and

(B) in subparagraph (C), by striking "or (C)" and inserting ", (C), or (D)";

(7) in subsection (l)(4)—

(A) in subparagraph (A), by inserting "and for children described in subsection (a)(10)(A)(i)(VI)" after "(a)(10)(A)(i)(IV)", and

(B) in subparagraph (B), by inserting "or (a)(10)(A)(i)(VI)" after "(a)(10)(A)(i)(IV)";

(8) in subsection (e)(7), by striking "or (C)" and inserting ", (C) or (D)"; and

(9) in subsection (r)(2)(A), by inserting "(a)(10)(A)(i)(VI)," after "(a)(10)(A)(i)(IV),".

(b) CONFORMING AMENDMENT.—Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting "1902(a)(10)(A)(i)(VI)," after "1902(a)(10)(A)(i)(IV),".

(c) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after April 1, 1990, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 6402. PAYMENT FOR OBSTETRICAL AND PEDIATRIC SERVICES.

(a) CODIFICATION OF ADEQUATE PAYMENT LEVEL PROVISIONS.—Section 1902(a)(30)(A) of the Social Security Act (42 U.S.C. 1396a(a)(30)(A)) is amended by inserting before the semicolon at the end the following: "and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area".

(b) ASSURING ADEQUATE PAYMENT LEVELS FOR OBSTETRICAL AND PEDIATRIC SERVICES.—Title XIX of such Act, as amended by section 303 of the Family Support Act of 1988, is amended by redesignating section 1926 as section 1927 and by inserting after section 1925 the following new section:

"ASSURING ADEQUATE PAYMENT LEVELS FOR OBSTETRICAL AND PEDIATRIC SERVICES

"SEC. 1926. (a)(1) A State plan under this title shall not be considered to meet the requirement of section 1902(a)(30)(A) with respect to obstetrical services (as defined in paragraph (4)(A)), as of July 1 of each year (beginning with 1990), unless, by not later than April 1 of such year, the State submits to the Secretary an amendment to the plan that specifies the payment rates to be used for such services under the plan in the succeeding period and includes in such submission such additional data as will assist the Secretary in evaluating the State's compliance with such requirement, including data relating to how rates established for payments to health maintenance organizations under section 1903(m) take into account such payment rates.

"(2) A State plan under this title shall not be considered to meet the requirement of section 1902(a)(30)(A) with respect to pediatric services (as defined in paragraph (4)(B)), as of July 1 of each year (beginning with 1990), unless, by not later than April 1 of such year, the State submits to the Secretary an amendment to the plan that specifies, by pediatric procedure, the payment rates to be used for such services under the plan in the succeeding period and includes in such submission such additional data as will assist the Secretary in evaluating the State's compliance with such requirement, including data relating to how rates established for payments to health maintenance organizations under section 1903(m) take into account such payment rates.

"(3) The Secretary, by not later than 90 days after the date of submission of a plan amendment under paragraph (1) or (2), shall—

"(A) review each such amendment for compliance with the requirement of section 1902(a)(30)(A), and

"(B) approve or disapprove each such amendment.

If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

"(4) In this section:

"(A) The term 'obstetrical services' means services relating to pregnancy covered under the State plan provided by an obstetrician, obstetrician-gynecologist, family practitioner, certified nurse midwife, or certified family nurse practitioner and does not include inpatient or outpatient hospital services or other institutional services.

"(B) The term 'pediatric services' means services covered under the State plan provided by a pediatrician, family practitioner, or certified pediatric nurse practitioner to children under 18 years of age and does not include inpatient or outpatient hospital services or other institutional services.

"(b) For amendments submitted under subsection (a)(1) in 1992 and thereafter, the data submitted under such subsection must include, for the second previous year, at least the statewide average payment rates under the State plan for obstetrical services furnished by obstetricians, obstetrician-gynecologists, family practitioners, certified family nurse practitioners, and certified nurse midwives, by procedure. Such information shall be provided separately for providers located in each metropolitan statistical area (or similar area) in the State and in the remainder of the State.

"(c) For amendments submitted under subsection (a)(2) in 1992 and thereafter, the data submitted under such subsection must include, for the second previous year, at least the statewide average payment rates under the State plan for pediatric services furnished by pediatricians, family practitioners, and certified pediatric nurse practitioners by procedure. Such information shall be provided separately for providers located in each metropolitan statistical area (or similar area) in the State and in the remainder of the State.

"(d) Nothing in this title (including section 1902(a)(30)(A)) shall be construed as preventing a State from establishing payment levels for obstetrical or pediatric services that are higher for those services furnished in rural areas than those furnished in metropolitan statistical areas.".

(c) PAYMENT FOR CERTAIN SERVICES IN CERTAIN FEDERALLY-FUNDED HEALTH CENTERS.—

(1) COVERAGE.—Section 1905(a)(2) of the Social Security Act (42 U.S.C. 1396d(a)(2)) is amended by striking "and" before "(B)" and by inserting before the semicolon at the end the following: ", and (C) ambulatory services offered by a health center receiving funds under section 329, 330, or 340 of the Public Health Service Act to a pregnant woman or individual under 18 years of age".

(2) PAYMENT AMOUNTS.—Section 1902(a)(13)(E) of such Act (42 U.S.C. 1396a(a)(13)(E)) is amended by inserting ", and for payment for services described in section 1905(a)(2)(C) under the plan," after "provided by a rural health clinic under the plan".

(d) EFFECTIVE DATE.—(1) The amendments made by subsections (a) and (b) (except as otherwise provided in such amendments) shall take effect on the date of the enactment of this Act.

(2)(A) The amendments made by subsection (c) apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (c), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 6403. EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES DEFINED.

(a) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

"(r) The term 'early and periodic screening, diagnostic, and treatment services' means the following items and services:

"(1) Screening services—

"(A) which are provided—

"(i) at intervals which meet reasonable standards of medical and dental practice, as determined by the State after consultation with recognized medical and dental organizations involved in child health care, and

"(ii) at such other intervals, indicated as medically necessary, to determine the existence of certain physical or mental illnesses or conditions; and

"(B) which shall at a minimum include—

"(i) a comprehensive health and developmental history (including assessment of both physical and mental health development),

"(ii) a comprehensive unclothed physical exam,

"(iii) appropriate immunizations according to age and health history,

"(iv) laboratory tests (including lead blood level assessment appropriate for age and risk factors), and

"(v) health education (including anticipatory guidance).

"(2) Vision services—

"(A) which are provided—

"(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

"(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

"(B) which shall at a minimum include diagnosis and treatment for defects in vision, including eyeglasses.

"(3) Dental services—

"(A) which are provided—

"(i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and

"(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

"(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

"(4) Hearing services—

"(A) which are provided—

"(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

"(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

"(B) which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.

"(5) Such other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.

Nothing in this title shall be construed as limiting providers of early and periodic screening, diagnostic, and treatment services to providers who are qualified to provide all of the items and services described in the previous sentence or as preventing a provider that is qualified under the plan to furnish one or more (but not all) of such items or services from being qualified to provide such items and services as part of early and periodic screening, diagnostic, and treatment services. ".

(b) REPORT ON PROVISION OF EPSDT.—Section 1902(a)(43) of such Act (42 U.S.C. 1396a(a)(43)) is amended—

(1) by striking "and" at the end of subparagraph (B),

(2) by striking the semicolon at the end of subparagraph (C) and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(D) reporting to the Secretary (in a uniform form and manner established by the Secretary, by age group and by basis of eligibility for medical assistance, and by not later than April 1 after the end of each fiscal year, beginning with fiscal year 1990) the following information relating to early and periodic screening, diagnostic, and treatment services provided under the plan during each fiscal year:

"(i) the number of children provided child health screening services,

"(ii) the number of children referred for corrective treatment (the need for which is disclosed by such child health screening services),

"(iii) the number of children receiving dental services, and

"(iv) the State's results in attaining the participation goals set for the State under section 1905(r);".

(c) ANNUAL PARTICIPATION GOALS.—Section 1905(r) of such Act, as added by subsection (a), is amended by adding at the end the following: "The Secretary shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this title in early and periodic screening, diagnostic, and treatment services.".

(d) CONFORMING AMENDMENTS.—(1) Section 1902(a)(43)(A) of such Act (42 U.S.C. 1396a(a)(43)(A)) is amended by striking "and treatment services as described in section 1905(a)(4)(B)" and inserting "and treatment services as described in section 1905(r)".

(2) Section 1905(a)(4) of such Act (42 U.S.C. 1396d(a)(4)) is amended by amending clause (B) to read as follows: "(B) early and periodic screening, diagnostic, and treatment services (as defined in subsection (r)) for individuals who are eligible under the plan and are under the age of 21; and".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 6404. PAYMENT FOR FEDERALLY-QUALIFIED HEALTH CENTER SERVICES.

(a) COVERAGE.—Section 1905(a)(2) of the Social Security Act (42 U.S.C. 1396d(a)(2)) is amended—

(1) by striking "and" before "(B)",

(2) by striking "subsection (l)" and inserting "subsection (l)(1)", and

(3) by inserting before the semicolon at the end the following: ", and (C) Federally-qualified health center services (as defined in subsection (l)(2)) and any other ambulatory services offered by a Federally-qualified health center and which are otherwise included in the plan".

(b) TERMS DEFINED.—Section 1905(l) of such Act is amended—

(1) by redesignating clauses (1) and (2) as clauses (A) and (B),

(2) by inserting "(1)" after "(l)", and

(3) by adding at the end the following new paragraph:

"(2)(A) The term 'Federally qualified health center services' means services of the type described in subparagraphs (A) through (C) of section 1861(aa)(1) when furnished to an individual as an outpatient of a Federally qualified health center and, for this purpose, any reference to a rural health clinic or a physician described in section 1861(aa)(2)(B) is deemed a reference to a Federally qualified health center or a physician at the center, respectively.

"(B) The term 'Federally qualified health center' means a facility which—

"(i) is receiving a grant under section 329, 330, or 340 of the Public Health Service Act, or

"(ii) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant.

In applying clause (ii), the Secretary may waive any requirement referred to in such clause for up to 2 years for good cause shown.".

(c) PAYMENT AMOUNTS.—Section 1902(a)(13)(E) of such Act (42 U.S.C. 1396a(a)(13)(E)) is amended by striking "section 1905(a)(2)(B) provided by a rural health clinic" and inserting "clause (B) or (C) of section 1905(a)(2)".

(d) EFFECTIVE DATE.—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after April 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 6405. REQUIRED COVERAGE OF NURSE PRACTITIONER SERVICES.

(a) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(1) in paragraph (20), by striking "and";

(2) by redesignating paragraph (21) as paragraph (22); and

(3) by inserting at the end of paragraph (20) the following new paragraph:

"(21) services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner (as defined by the Secretary) which the certified pediatric nurse practitioner or certified family nurse practitioner is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified pediatric nurse practitioner or certified family nurse practitioner is under the supervision of, or associated with, a physician or other health care provider;".

(b) CONFORMING AMENDMENT.—Section 1902(a)(10)(A) of such Act (42 U.S.C. 1396a(a)(10)(A)) is amended by striking "(1) through (5) and (17)" and by inserting in lieu thereof "(1) through (5), (17) and (21)".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner on or after July 1, 1990.

SEC. 6406. REQUIRED MEDICAID NOTICE AND COORDINATION WITH SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC).

(a) STATE PLAN REQUIREMENTS OF NOTICE AND COORDINATION.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (11), by striking "and" before "(B)" and by inserting before the semicolon at the end the following: ", and (C) provide for coordination of the operations under this title with the State's operations under the special supplemental food program for women, infants, and children under section 17 of the Child Nutrition Act of 1966";

(2) by striking "and" at the end of paragraph (51);

(3) by striking the period at the end of paragraph (52) and inserting "; and"; and

(4) by inserting after paragraph (52) the following new paragraph:

"(53) provide—

"(A) for notifying in a timely manner all individuals in the State who are determined to be eligible for medical assistance and who are pregnant women, breastfeeding or postpartum women (as defined in section 17 of the Child Nutrition Act of 1966), or children below the age of 5, of the availability of benefits furnished by the special supplemental food program under such section, and

"(B) for referring any such individual to the State agency responsible for administering such program.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on July 1, 1990, without regard to whether regulations to carry out such amendments have been promulgated by such date.

SEC. 6407. DEMONSTRATION PROJECTS TO STUDY THE EFFECT OF ALLOWING STATES TO EXTEND MEDICAID TO PREGNANT WOMEN AND CHILDREN NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS.

(a) IN GENERAL.—In order to allow States to develop and carry out innovative programs to extend health insurance coverage to pregnant women and children under age 20 who lack insurance and to encourage workers to obtain health insurance for themselves and their children, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with several States submitting applications in accordance with subsection (b) for the purpose of conducting demonstration projects to study the effect on access to health care, private insurance coverage, and costs of health care when such States are allowed to extend benefits under title XIX of the Social Security Act, either directly, in the same manner, or otherwise as alternative assistance authorized in section 1925(b)(4)(D) of such Act, to pregnant women and children under 20 who are not otherwise qualified to receive benefits under such section.

(b) PROJECT REQUIREMENTS.—(1) Each State applying to participate in the demonstration project under subsection (a) shall assure the Secretary that eligibility shall be limited to pregnant women and children who have not attained 20 years of age who are in families with income below 185 percent of the income official poverty line (referred to in subsection (c)(1)).

(2) The Secretary shall further provide in conducting demonstration projects under this section that if one or more of such demonstration projects utilizes employer coverage as allowed under section 1925(b)(4)(D) of the Social Security Act that such project shall require an employer contribution.

(c) PREMIUMS.—In the case of pregnant women and children eligible to participate in such demonstration projects whose family income level is—

(1) below 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved, there shall be no premium charged; and

(2) between 100 and 185 percent of such income official poverty line, there shall be a premium equal to—

(A) an amount based on a sliding scale relating to income, or

(B) 3 percent of the family's average gross monthly earnings,

whichever is less.

(d) DURATION.—Each demonstration project under this section shall be conducted for a period not to exceed 3 years.

(e) WAIVER.—The Secretary where he deems appropriate may waive the statewideness requirement described in section 1902(a)(1).

(f) LIMIT ON EXPENDITURES.—The Secretary in conducting the demonstration projects described in this section shall limit the amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act to $10,000,000 in each of fiscal years 1990, 1991, and 1992.

(g) EVALUATION AND REPORT.—(1) For each demonstration project conducted under this section, the Secretary shall assure that an evaluation is conducted on the effect of the project with respect to—

(A) access to health care;

(B) private health care insurance coverage;

(C) costs with respect to health care; and

(D) developing feasible premium and cost-sharing policies.

(2) The Secretary shall submit to Congress an interim report containing a summary of the evaluations conducted under paragraph (1) not later than January 1, 1992, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than January 1, 1994.

SEC. 6408. OTHER MEDICAID PROVISIONS.

(a) INSTITUTIONS FOR MENTAL DISEASES.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of—

(A) the implementation, under current provisions, regulations, guidelines, and regulatory practices under title XIX of the Social Security Act, of the exclusion of coverage of services to certain individuals residing in institutions for mental diseases, and

(B) the costs and benefits of providing services under title XIX of the Social Security Act in public subacute psychiatric facilities which provide services to psychiatric patients who would otherwise require acute hospitalization.

(2) REPORT.—By not later than October 1, 1990, the Secretary shall submit a report to Congress on the study and shall include in the report recommendations respecting—

(A) modifications in such provisions, regulations, guidelines, and practices, if any, that may be appropriate to accommodate changes that may have occurred since 1972 in the delivery of psychiatric and other mental health services on an inpatient basis to such individuals, and

(B) the continued coverage of services provided in subacute psychiatric facilities under title XIX of the Social Security Act.

(3) MORATORIUM ON TREATMENT OF CERTAIN FACILITIES.—Any determination by the Secretary that Kent Community Hospital Complex in Michigan or Saginaw Community Hospital in Michigan is an institution for mental diseases, for purposes of title XIX of the Social Security Act shall not take effect until 180 days after the date the Congress receives the report required under paragraph (2).

(b) EXTENSION OF TEXAS PERSONAL CARE SERVICES WAIVER.—Section 9523(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 4115(d) of the Omnibus Budget Reconciliation Act of 1987 (added by section 411(k)(9)(C) of the Medicare Catastrophic Coverage Act of 1988), is amended by striking "January 1, 1990" and inserting "July 1, 1990".

(c) HOSPICE PAYMENT FOR ROOM AND BOARD.—

(1) IN GENERAL.—Section 1902(a)(13)(D) of the Social Security Act (42 U.S.C. 1396a(a)(13)(D)) is amended—

(A) by striking "in the same amounts, and using the same methodology, as used" and inserting "in amounts no lower than the amounts, using the same methodology, used", and

(B) by striking "a separate rate may be paid for" and inserting "in the case of", and

(C) by striking "to take into account the room and board furnished by such facility" and inserting "there shall be paid an additional amount, to take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual".

(d) MEDICARE BUY-IN FOR PREMIUMS OF CERTAIN WORKING DISABLED.—

(1) IN GENERAL.—Section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)), as amended by 6403(a) of this subtitle, is amended—

(A) by inserting "(i)" after "(E)",

(B) by striking the semicolon at the end and inserting ", and", and

(C) by adding at the end the following new clause:

"(ii) for making medical assistance available for payment of medicare cost-sharing described in section 1905(p)(3)(A)(i) for qualified disabled and working individuals described in section 1905(t);".

(2) ELIGIBILITY.—Section 1905 of such Act (42 U.S.C. 1396d), as amended by section 6403(a) of this subtitle, is amended by adding at the end the following new subsection:

"(s) The term 'qualified disabled and working individual' means an individual—

"(1) who is entitled to enroll for hospital insurance benefits under part A of title XVIII under section 1818A (as added by 6012 of the Omnibus Budget Reconciliation Act of 1989);

"(2) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed 200 percent of the official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved;

"(3) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual or a couple (in the case of an individual with a spouse) have and obtain benefits for supplemental security income benefits under title XVI; and

"(4) who is not otherwise eligible for medical assistance under this title.".

(3) PREMIUM PAYMENTS REQUIRED FOR CERTAIN INDIVIDUALS.—Section 1916 of such Act (42 U.S.C. 1396o) is amended—

(A) in subsection (a), by striking "(E)" and inserting "(E)(i)",

(B) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and

(C) by inserting after subsection (c) the following new subsection:

"(d) With respect to a qualified disabled and working individual described in section 1905(s) whose income (as determined under paragraph (3) of that section) exceeds 150 percent of the official poverty line referred to in that paragraph, the State plan of a State may provide for the charging of a premium (expressed as a percentage of the medicare cost-sharing described in section 1905(p)(3)(A)(i) provided with respect to the individual) according to a sliding scale under which such percentage increases from 0 percent to 100 percent, in reasonable increments (as determined by the Secretary), as the individual's income increases from 150 percent of such poverty line to 200 percent of such poverty line.".

(4) CONFORMING AMENDMENTS.—

(A) Section 1905(p)(3) of such Act (42 U.S.C. 1396d(p)(3)) is amended—

(e) CONFORMING AMENDMENTS.—(1) Section 1905(p)(3) of such Act (42 U.S.C. 1396(p)(3))—

(i) by amending subparagraph (A) to read as follows:

"(A)(i) premiums under section 1818, and

"(ii) premiums under section 1839,", and

(ii) in subparagraph (A), by striking "section 1818" and inserting "section 1818 or 1818A".

(B) Section 1905(p)(1)(A) of such Act is amended by inserting ", but not including an individual entitled to such benefits only pursuant to an enrollment under section 1818A" after "1818".

(C) Section 1902(f) of such Act (42 U.S.C. 1396a(f)) is amended by inserting ", except with respect to qualified disabled and working individuals (described in section 1905(s)," after "1619(b)(3)".

(5) EFFECTIVE DATE.—

(A) The amendments made by this subsection apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

## PART 2—TECHNICAL AND MISCELLANEOUS PROVISIONS

SEC. 6411. MISCELLANEOUS MEDICAID TECHNICAL AMENDMENTS.

(a) TECHNICAL CORRECTION TO MEDICARE BUY-IN FOR THE ELDERLY.—

(1) CLARIFICATION WITH RESPECT TO "SECTION 209(B)" STATES.—The first sentence of section 1902(f) of the Social Security Act (42 U.S.C. 1396a(f)) is amended by inserting "and except with respect to qualified medicare beneficiaries, qualified severely impaired individuals, and individuals described in subsection (m)(1)" before ", no State".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if it had been included in the enactment of the Medicare Catastrophic Coverage Act of 1988.

(b) EXTENSION OF DELAY IN ISSUANCE OF CERTAIN FINAL REGULATIONS.—Section 8431 of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "May 1, 1989" and inserting "December 31, 1990".

(c) DISPROPORTIONATE SHARE HOSPITALS.—

(1) SPECIAL RULE FOR NEW JERSEY UNCOMPENSATED CARE TRUST FUND.—Section 1923(e)(1) of the Social Security Act (42 U.S.C. 1396r-4(e)(1)) is amended—

(A) by inserting "(A)(i)" after "without regard to the requirement of subsection (a) if", and

(B) by striking "and if" and inserting "or (ii) the plan as of January 1, 1987, provided for payment adjustments based on a statewide pooling arrangement involving all acute care hospitals and the arrangement provides for reimbursement of the total amount of uncompensated care provided by each participating hospital, and (B)".

(2) CONFORMING AMENDMENT.—Section 1915(b)(4) of such Act (42 U.S.C. 1396n(b)(4)) is amended by inserting "shall be consistent with the requirements of section 1923 and" after "which standards".

(3) TRANSITION RULE.—The State of Missouri shall be treated as having met the requirement of section 1902(a)(13)(A) of the Social Security Act (insofar as it requires payments to hospitals to take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs) for the period beginning with July 1, 1988, and ending with (and including) June 30, 1990, if the total amount of such payments for such period is not less than the total of such payments otherwise required by law for such period.

(4) EFFECTIVE DATE.—The amendment made by paragraph (2) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(d) FRAUD AND ABUSE TECHNICAL AMENDMENTS.—

(1) TREATMENT OF LOSS OF RIGHT TO RENEW LICENSE.—Section 1128(b)(4)(A) of the Social Security Act (42 U.S.C. 1396a-7(b)(4)(A)) is amended by inserting "or the right to apply for or renew such a license" after "lost such a license".

(2) CLARIFICATION WITH RESPECT TO EMERGENCY TREATMENT.—Sections 1862(e)(1) and 1903(i)(2) of such Act (42 U.S.C. 1395y(e)(1), 1396b(i)(2)) are each amended by inserting ", not including items or services furnished in an emergency room of a hospital" after "emergency item or service".

(3) CLARIFICATION OF EXCLUSION WITH RESPECT TO EMPLOYMENT BY HEALTH MAINTENANCE ORGANIZATIONS.—(A) Section 1876(i)(6)(A) of the Social Security Act (42 U.S.C. 1395mm(i)(6)(A)) is amended—

(i) by striking "or" at the end of clause (v),

(ii) by adding "or" at the end of clause (vi), and

(iii) by inserting after clause (vi) the following new clause:

"(vii) in the case of a risk-sharing contract, employs or contracts with any individual or entity that is excluded from participation under this title under section 1128 or 1128A for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;".

(B) Section 1902(p)(2) of Act (42 U.S.C. 1396a(p)(2)) is amended—

(i) by striking "or" at the end of subparagraph (A),

(ii) by striking the period at the end of subparagraph (B) and inserting ", or", and

(iii) by adding at the end the following new subparagraph:

"(C) employs or contracts with any individual or entity that is excluded from participation under this title under section 1128 or 1128A for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services.".

(4) EFFECTIVE DATES.—The amendments made by paragraphs (1) and (2) shall take effect on the date of the enactment of this Act.

(B) The amendments made by paragraph (3) shall apply to employment and contracts as of 90 days after the date of the enactment of this Act.

(e) SPOUSAL IMPOVERISHMENT.—

(1) EQUAL TREATMENT OF TRANSFERS BY COMMUNITY SPOUSE BEFORE INSTITUTIONALIZATION.—Section 1917(c) of the Social Security Act (42 U.S.C. 1396p(c)) is amended—

(A) in paragraph (1), by inserting "or whose spouse," after "an institutionalized individual (as defined in paragraph (3)) who,", and

(B) in paragraph (2)(B)—

(i) by amending clause (i) to read as follows: "(i) to or from (or to another for the sole benefit of) the individual's spouse, or", and

(ii) by striking ", or (iii)" and all that follows through "fair market value".

(2) CLARIFYING APPLICATION TO "SECTION 209(B)" STATES.—Section 1902(f) of such Act (42 U.S.C. 1396a(f)) is amended by inserting "and section 1924" after "1619(b)(3)".

(3) CLARIFICATION OF APPLICATION OF INCOME RULES TO REDETERMINATIONS.—Subsections (b)(2) and (d) of section 1924 of such Act are amended by inserting "or redetermined" after "determined".

(4) EFFECTIVE DATES.—

(A) SPOUSAL TRANSFERS.—The amendments made by paragraph (1) shall apply to transfers occurring after the date of the enactment of this Act.

(B) OTHER AMENDMENTS.—Except as provided in subparagraph (A), the amendments made by this subsection shall apply as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988.

(f) EXTENSION OF WAIVER FOR HEALTH INSURING ORGANIZATION.—The Secretary of Health and Human Services shall continue to waive, through June 30, 1992, the application of section 1903(m)(2)(A)(ii) of the Social Security Act to the Tennessee Primary Care Network, Inc., under the same terms and conditions as applied to such waiver as of July 1, 1989.

(g) DAY HABILITATION AND RELATED SERVICES.—

(1) PROHIBITION OF DISALLOWANCE PENDING ISSUANCE OF REGULATIONS.—Except as specifically permitted under paragraph (3), the Secretary of Health and Human Services may not—

(A) withhold, suspend, disallow, or deny Federal financial participation under section 1903(a) of the Social Security Act for day habilitation and related services under paragraph (9) or (13) of section 1905(a) of such Act on behalf of persons with mental retardation or with related conditions pursuant to a provision of its State plan as approved on or before June 30, 1989, or

(B) withdraw Federal approval of any such State plan provision.

(2) REQUIREMENTS FOR REGULATION.—A final regulation described in this paragraph is a regulation, promulgated after a notice of proposed rulemaking and a period of at least 60 days for public comment, that—

(A) specifies the types of day habilitation and related services that a State may cover under paragraph (9) or (13) of section 1905(a) of the Social Security Act on behalf of persons with mental retardation or with related conditions, and

(B) any requirements respecting such coverage.

(3) PROSPECTIVE APPLICATION OF REGULATION.—If the Secretary promulgates a final regulation described in paragraph (2) and the Secretary determines that a State plan under title XIX of the Social Security Act does not comply with such regulation, the Secretary shall notify the State of the determination and its basis, and such determination shall not apply to day habilitation and related services furnished before the first day of the first calendar quarter beginning after the date of the notice to the State.

(h) MORATORIUM ON ISSUANCE OF FINAL REGULATION ON MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES.—The Secretary of Health and Human Services may not issue in final form, before December 31, 1990, any regulation implementing the proposed regulation published on September 26, 1989 (54 Federal Register 39421) insofar as such regulation changes the method for establishing the medically needy income level for single individuals in any State (including the proposed change to section 435.1007(a)(1) to title 42, Code of Federal Regulations).

(i) TECHNICAL CORRECTIONS CONCERNING TRANSITIONAL COVERAGE.—

(1) CLARIFICATION OF TERMINATION WHEN NO CHILD IN HOUSEHOLD.—Subsections (a)(3)(A) and (b)(3)(A)(i) of section 1925 of the Social Security Act (42 U.S.C. 1396r-6) are each amended by striking "who is" and inserting ", whether or not the child is".

(2) EFFECTIVE DATE FOR TERMINATION OF CURRENT 9-MONTH EXTENSION.—Section 303(f)(2)(A) of the Family Support Act of 1988 is amended by inserting before the period at the end the following: ", but such amendment shall not apply with respect to families that cease to be eligible for aid under part A of title IV of the Social Security Act before such date".

(3) CORRECTION OF REFERENCES.—Subsections (a)(3)(C) and (b)(3)(C)(i) of section 1925 of the Social Security Act (42 U.S.C. 1396r-6) are each amended by striking "or (v) of section 1905(a)" and inserting "of section 1905(a) or clause (i)(IV), (i)(VI), or (ii)(IX) of section 1902(a)(10)(A)".

(4) EFFECTIVE DATE.—The amendments made by this section shall be effective as if included in the enactment of the Family Support Act of 1988.

(j) MINNESOTA PREPAID MEDICAID DEMONSTRATION PROJECT EXTENSION.—Section 507 of the Family Support Act of 1988 is amended by striking "1990" and inserting "1991".

### Subtitle C—Maternal and Child Health Block Grant Program

SEC. 6501. INCREASE IN AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 501 of the Social Security Act (42 U.S.C. 701) is amended—

(1) by amending subsection (a) to read as follows:

"(a) To improve the health of all mothers and children consistent with the applicable

health status goals and national health objectives established by the Secretary under the Public Health Service Act for the year 2000, there are authorized to be appropriated $686,000,000 for fiscal year 1990 and each fiscal year thereafter—

"(1) for the purpose of enabling each State—

"(A) to provide and to assure mothers and children (in particular those with low income or with limited availability of health services) access to quality maternal and child health services;

"(B) to reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, to reduce the need for inpatient and long-term care services, to increase the number of children (especially preschool children) appropriately immunized against disease and the number of low income children receiving health assessments and follow-up diagnostic and treatment services, and otherwise to promote the health of mothers and infants by providing prenatal, delivery, and postpartum care for low income, at-risk pregnant women, and to promote the health of children by providing preventive and primary care services for low income children;

"(C) to provide rehabilitation services for blind and disabled individuals under the age of 16 receiving benefits under title XVI, to the extent medical assistance for such services is not provided under title XIX; and

"(D) to provide and to promote family-centered, community-based, coordinated care (including care coordination services, as defined in subsection (b)(3)) for children with special health care needs and to facilitate the development of community-based systems of services for such children and their families;

"(2) for the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development), for genetic disease testing, counseling, and information development and dissemination programs, for grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age, and for the screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services; and

"(3) subject to section 502(b) for the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for developing and expanding the following—

"(A) maternal and infant health home visiting programs in which case management services as defined in subparagraphs (A) and (B) of subsection (b)(4), health education services, and related social support services are provided in the home to pregnant women or families with an infant up to the age of one by an appropriate health professional or by a qualified nonprofessional acting under the supervision of a health care professional,

"(B) projects designed to increase the participation of obstetricians and pediatricians under the program under this title and under state plans approved under title XIX,

"(C) integrated maternal and child health service delivery systems (of the type described in section 1136 and using, once developed, the model application form developed under section 6506(a) of the Omnibus Budget Reconciliation Act of 1989),

"(D) maternal and child health centers which (I) provide prenatal, delivery, and postpartum care for pregnant women and preventive and primary care services for infants up to age one and (II) operate under the direction of a not-for-profit hospital,

"(E) maternal and child health projects to serve rural populations, and

"(F) outpatient and community based services programs (including day care services) for children with special health care needs whose medical services are provided primarily through inpatient institutional care.".

(2) by adding at the end of subsection (b) the following new paragraphs:

"(3) The term 'care coordination services' means services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special health care needs and their families.

"(4) The term 'case management services' means—

"(A) with respect to pregnant women, services to assure access to quality prenatal, delivery, and postpartum care; and

"(B) with respect to infants up to age one, services to assure access to quality preventive and primary care services.".

(b) CONFORMING AMENDMENT.—Section 505(2)(c)(ii) of such Act (42 U.S.C. 705(2)(C)(ii) is amended by striking "paragraphs (1) through (3) of section 501(a)" and inserting " subparagraphs (A) through (D) of section 501(a)(1)".

SEC. 6502. ALLOTMENTS TO STATE AND FEDERAL SET-ASIDES.

(a) IN GENERAL.—Section 502 of the Social Security Act (42 U.S.C. 702) is amended—

(1) by amending the first sentence of paragraph (1) of subsection (a) to read as follows: "Of the amounts appropriated under section 501(a) for a fiscal year that are not in excess of 600,000,000, the Secretary shall retain an amount equal to 15 percent for the purpose of carrying out activities described in section 501(a)(2).";

(2) in subsection (a)(3), by inserting "or subsection (b)" after "this subsection";

(3) by striking subsection (c), by redesignating subsection (b) as subsection (c), and by inserting after subsection (a) the following new subsection:

"(b)(1)(A) Of the amounts appropriated under section 501(a) for a fiscal year in excess of $600,000,000 the Secretary shall retain an amount equal to 12¾ percent thereof for the projects described in subparagraphs (A) through (F) of section 501(a)(3).

"(B) Any amount appropriated under section 501(a) for a fiscal year in excess of $600,000,000 that remains after the Secretary has retained the applicable amount (if any) under subparagraph (A) shall be retained by the Secretary in accordance with subsection (a) and allocated to the States in accordance with subsection (c).

"(2)(A) Of the amounts retained for the purpose of carrying out activities described in section 501(a)(3)(A), (B), (C), (D) and (E), the Secretary shall provide preference to qualified applicants which demonstrate that the activities to be carried out with such amounts shall be in areas with a high infant mortality rate (relative to the average infant mortality rate in the United States or in the State in which the area is located).

"(B) In carrying out activities described in section 501(a)(3)(D), the Secretary shall not provide for developing or expanding a maternal and child health center unless the Secretary has received satisfactory assurances that there will be applied, towards the costs of such development or expansion, non-Federal funds in an amount at least equal to the amount of funds provided under this title toward such development or expansion."; and

(4) in subsection (c), as redesignated by paragraph (2)—

(A) by striking "$478,000,000" and inserting "$600,000,000", and

(B) by amending paragraph (2) to read as follows:

"(2) Each such State shall be allotted for each fiscal year an amount equal to the sum of—

"(A) the amount of the allotment to the State under this subsection in fiscal year 1983, and

"(B) the State's proportion (determined under paragraph (1)(B)(ii)) of the amount by which the allotment available under this subsection for all the States for that fiscal year exceeds the amount that was available under this subsection for allotment for all the States for fiscal year 1983.".

(b) CONFORMING AMENDMENTS.—Sections 503(a) and 508(b) of such Act (42 U.S.C. 703(a), 708(b)) are amended by striking "502(b)" each place it appears and inserting "502(c)".

SEC. 6503. USE OF ALLOTMENT FUNDS AND APPLICATION FOR BLOCK GRANT FUNDS.

(a) EXPANDING USE OF FUNDS AND LIMITATION ON USE OF FUNDS FOR ADMINISTRATIVE COSTS.—Section 504 of the Social Security Act (42 U.S.C. 704) is amended—

(1) in subsection (a), by inserting "and including payment of salaries and other related expenses of National Health Service Corps personnel" after "education, and evaluation", and

(2) by adding at the end the following new subsection:

"(d) Of the amounts paid to a State under section 503 from an allotment for a fiscal year under section 502(c), not more than 10 percent may be used for administering the funds paid under such section.".

(b) APPLICATION.—Section 505 of such Act (42 U.S.C. 705) is amended—

(1) by amending the heading to read as follows:

"APPLICATION FOR BLOCK GRANT FUNDS";

(2) by inserting "(a)" after "SEC. 505.";

(3) in the matter before paragraph (1), by inserting "an application (in a standardized form specified by the Secretary) that" after "must prepare and transmit to the Secretary";

(4) by striking paragraph (1) and redesignating paragraph (2) as paragraph (5) and by inserting before paragraph (5), as redesignated, the following new paragraphs:

"(1) contains a statewide needs assessment (to be conducted every 5 years) that shall identify (consistent with the health status goals and national health objectives referred to in section 501(a)) the need for—

"(A) preventive and primary care services for pregnant women, mothers, and infants up to age one;

"(B) preventive and primary care services for children; and

"(C) services for children with special health care needs (as specified in section 501(a)(1)(D)); and

"(2) includes for each fiscal year—

"(A) a plan for meeting the needs identified by the statewide needs assessment under paragraph (1); and

"(B) a description of how the funds allotted to the State under section 502(c) will be used for the provision and coordination of

services to carry out such plan that shall include—

"(i) subject to paragraph (3), a statement of the goals and objectives consistent with the health status goals and national health objectives referred to in section 501(a) for meeting the needs specified in the State plan described in subparagraph (A);

"(ii) an identification of the areas and localities in the state in which services are to be provided and coordinated;

"(iii) an identification of the types of services to be provided and the categories or characteristics of individuals to be served; and

"(iv) information the State will collect in order to prepare reports required under section 506(a);

"(3) except as provided under subsection (b), provides that the State will use—

"(A) at least 30 percent of such payment amounts for preventive and primary care services for children, and

"(B) at least 30 percent of such payment amounts for services for children with special health care needs (as specified in section 501(a)(1)(D)); and

"(4) provides that a State receiving funds for maternal and child health services under this title shall maintain the level of funds being provided solely by such State for maternal and child health programs at a level at least equal to the level that such State provided for such programs in fiscal year 1989."; and

(5) in paragraph (5), as redesignated by paragraph (4) of this subsection—

(A) by striking "a statement of assurances that represents to the Secretary" and inserting "provides";

(B) in subparagraph (A), by striking "will provide" and inserting "will establish";

(C) by amending subparagraph (C)(i) to read as follows:

"(C)(i) special consideration will be given (where appropriate) to the continuation of the funding of special projects in the State previously funded under this title (as in effect before August 31, 1981);";

(D) in subparagraph (D), by striking "and" at the end;

(E) by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following new subparagraph:

"(E) the State agency (or agencies) administering the State's program under this title will provide for a toll-free telephone number (and other appropriate methods) for the use of parents to access information about health care providers and practitioners who provide health care services under this title and title XIX and about other relevant health and health-related providers and practitioners;"; and

(F) in subparagraph (F) (as redesignated by subparagraph (E))—

(i) by striking "participate" before clause (i),

(ii) in clause (i), by striking "diagnosis" and inserting "diagnostic",

(iii) in clause (i), by striking "title XIX" and inserting "section 1905(a)(4)(B) (including the establishment of periodicity and content standards for early and periodic screening, diagnostic, and treatment services)",

(iv) by inserting "participate" after "(i)", after "(ii)", and after "(iii)",

(v) by striking "and" at the end of clause (ii),

(vi) by striking the period at the end of clause (iii) and inserting ", and", and

(vii) by adding after clause (iii) the following new clause:

"(iv) provide, directly and through their providers and institutional contractors, for services to identify pregnant women and infants who are eligible for medical assistance under subparagraph (A) or (B) of section 1902(l)(1) and, once identified, to assist them in applying for such assistance; and"; and

(6) by striking the last 2 sentences and inserting the following: "The application shall be developed by, or in consultation with, the State maternal and child health agency and shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development and after its transmittal.".

(7) by adding at the end the following new subsection:

"(b) The Secretary may waive the requirement under subsection (a)(3) that a State's application for a fiscal year provide for the use of funds for specific activities if for that fiscal year—

"(1) the Secretary determines—

"(A) on the basis of information provided in the State's most recent annual report submitted under section 506(a)(1), that the State has demonstrated an extraordinary unmet need for one of the activities described in subsection (a)(3), and

"(B) that the granting of the waiver is justified and will assist in carrying out the purposes of this title; and

"(2) the State provides assurances to the Secretary that the State will provide for the use of some amounts paid to it under section 503 for the activities described in subparagraphs (A) and (B), of subsection (a)(3) and specifies the percentages to be substituted in each of such subparagraphs.".

(c) CONFORMING AMENDMENTS.—(1) Section 502(c) of such Act (42 U.S.C. 702(c)), as redesignated by section 6502(a)(3) of this subtitle, is amended by striking "a description of intended activities and statement of assurances" and inserting "an application".

(2) Section 504(a) of such Act (42 U.S.C. 704(a)) is amended by striking "its description of intended expenditures and statement of assurances" and insert "its application".

(3) Section 506(a)(1) of such Act (42 U.S.C. 706(a)(1)) is amended by striking "description and statement" and inserting "application".

(4) Sections 502(b), 502(d)(1), 503(c), 504(a), 506(a)(1)(C), and 509(a)(6) of such Act (42 U.S.C. 702(b), 702(d)(1), 703(c), 704(a), 706(a)(1)(C), and 709(a)(6)) are each amended by striking "505" each place it appears and inserting "505(a)".

SEC. 6504. REPORTS.

(a) STATE REPORTS.—Subsection (a) of section 506 of the Social Security Act (42 U.S.C. 706) is amended—

(1) in paragraph (1)—

(A) by inserting after the first sentence the following: "Each such report shall be prepared by, or in consultation with, the State maternal and child health agency.",

(B) by striking "be in such form and contain such information" and inserting "be in such standardized form and contain such information (including information described in paragraph (2))", and

(C) by striking "and of the progress made toward achieving the purposes of this title, and (C)" and inserting ", (C) to describe the extent to which the State has met the goals and objectives it set forth under section 505(a)(2)(B)(i) and the national health objectives referred to in section 501(a).";

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) Each annual report under paragraph (1) shall include the following information:

"(A)(i) The number of individuals served by the State under this title (by class of individuals).

"(ii) The proportion of each class of such individuals which has health coverage.

"(iii) The types (as defined by the Secretary) of services provided under this title to individuals within each such class.

"(iv) The amounts spent under this title on each type of services, by class of individuals served.

"(B) Information on the status of maternal and child health in the State, including—

"(i) information (by county and by racial and ethnic group) on—

"(I) the rate of infant mortality, and

"(II) the rate of low-birth-weight births;

"(ii) information (on a State-wide basis) on—

"(I) the rate of maternal mortality,

"(II) the rate of neonatal death,

"(III) the rate of perinatal death,

"(IV) the number of children with chronic illness and the type of illness,

"(V) the proportion of infants born with fetal alcohol syndrome,

"(VI) the proportion of infants born with drug dependency,

"(VII) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and

"(VIII) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B; and

"(iii) information on such other indicators of maternal, infant, and child health care status as the Secretary may specify.

"(C) Information (by racial and ethnic group) on—

"(i) the number of deliveries in the State in the year, and

"(ii) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this title or were entitled to benefits with respect to such deliveries under the State plan under title XIX in the year.

"(D) Information (by racial and ethnic group) on—

"(i) the number of infants under one year of age who were in the State in the year, and

"(ii) the number of such infants who were provided services under this title or were entitled to benefits under the State plan under title XIX at any time during the year.

"(E) Information on the number of—

"(i) obstetricians,

"(ii) family practitioners,

"(iii) certified family nurse practitioners,

"(iv) certified nurse midwives,

"(v) pediatricians, and

"(vi) certified pediatric nurse practitioners,

who were licensed in the State in the year.

For purposes of subparagraph (A), each of the following shall be considered to be a separate class of individuals: pregnant women, infants up to age one, children with special health care needs, other children under age 22, and other individuals.".

(b) SECRETARIAL REPORT.—Paragraph (3) of subsection (a) of such section, as redesignated by subsection (a)(2) of this section, is amended to read as follows:

"(3) The Secretary shall annually transmit to the Committee on Energy and Commerce

of the House of Representatives and the Committee on Finance of the Senate a report that includes—

"(A) a description of each project receiving funding under paragraph (2) or (3) of section 502(a), including the amount of Federal funds provided, the number of individuals served or trained, as appropriate, under the project, and a summary of any formal evaluation conducted with respect to the project;

"(B) a summary of the information described in paragraph (2)(A) reported by States;

"(C) based on information described in paragraph (2)(B) supplied by the States under paragraph (1), a compilation of the following measures of maternal and child health in the United States and in each State:

"(i) Information on—

"(I) the rate of infant mortality, and

"(II) the rate of low-birth-weight births.

Information under this clause shall also be compiled by racial and ethnic group.

"(ii) Information on—

"(I) the rate of maternal mortality, and

"(II) the rate of neonatal death,

"(III) the rate of perinatal death,

"(IV) the proportion of infants born with fetal alcohol syndrome,

"(V) the proportion of infants born with drug dependency,

"(VI) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and

"(VII) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B.

"(iii) Information on such other indicators of maternal, infant, and child health care status as the Secretary has specified under paragraph (2)(B)(iii).

"(iv) Information on (by racial and ethnic group)—

"(I) the number of deliveries in the State in the year, and

"(II) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this title or were entitled to benefits with respect to such deliveries under the State plan under title XIX in the year;

"(D) based on information described in subparagraphs (C), (D), and (E) of paragraph (2) supplied by the States under paragraph (1), a compilation of the following information in the United States and in each State:

"(i) Information on—

"(I) the number of deliveries in the year, and

"(II) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this title or were entitled to benefits with respect to such deliveries under a State plan under title XIX in the year.

Information under this clause shall also be compiled by racial and ethnic group.

"(ii) Information on—

"(I) the number of infants under one year of age in the year, and

"(II) the number of such infants who were provided services under this title or were entitled to benefits under a State plan under title XIX at any time during the year.

Information under this clause shall also be compiled by racial and ethnic group.

"(iii) Information on the number of—

"(I) obstetricians,

"(II) family practitioners,

"(III) certified family nurse practitioners,

"(IV) certified nurse midwives,

"(V) pediatricians, and

"(VI) certified pediatric nurse practitioners,

who were licensed in a State in the year; and

"(E) an assessment of the progress being made to meet the health status goals and national health objectives referred to in section 501(a).".

SEC. 6505. FEDERAL ADMINISTRATION AND ASSISTANCE.

Section 509(a) of such Act (42 U.S.C. 709(a)) is amended—

(1) in paragraph (4) by inserting before the semicolon at the end the following: "and in developing consistent and accurate data collection mechanisms in order to report the information required under section 506(a)(2)";

(2) in paragraph (5) by striking "and" at the end thereof;

(3) in paragraph (6) by striking the period and inserting in lieu thereof "; and" and

(4) by adding at the end thereof the following new paragraphs:

"(7) assisting States in the development of care coordination services (as defined in section 501)(b)(3)); and

"(8) developing and making available to the State agency (or agencies) administering the State's program under this title a national directory listing by State the toll-free number described in section 505(a)(5)(E).".

SEC. 6506. DEVELOPMENT OF MODEL APPLICATIONS.

(a) FOR MATERNAL AND CHILD ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall develop, by not later than one year after the date of the enactment of this Act and in consultation with the Secretary of Agriculture, a model application form for use in applying, simultaneously, for assistance for a pregnant woman or a child less than 6 years of age under maternal and child assistance programs (as defined in paragraph (3)). In developing such form, the Secretary is not authorized to change any requirement with respect to eligibility under any maternal and child assistance program.

(2) DISSEMINATION OF MODEL FORM.—The Secretary shall provide for publication in the Federal Register of the model application form developed under paragraph (1) and shall send a copy of such form to each State agency responsible for administering a maternal and child assistance program.

(3) MATERNAL AND CHILD ASSISTANCE PROGRAM DEFINED.—In this subsection, the term "maternal and child assistance program" means any of the following programs:

(A) The maternal and child health block grant program under title V of the Social Security Act.

(B) The medicaid program under title XIX of the Social Security Act.

(C) The migrant and community health centers programs under sections 329 and 330 of the Public Health Service Act.

(D) The grant program for the homeless under section 340 of the Public Health Service Act.

(E) The "WIC" program under section 17 of the Child Nutrition Act of 1966.

(F) The head start program under the Head Start Act.

(b) FOR MEDICAID PROGRAM.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall, by not later than 1 year after the date of the enactment of this Act, develop a model application form for use in applying for benefits under title XIX of the Social Security Act for individuals who are not receiving cash assistance under part A of title IV of the Social Security Act, and who are not institutionalized. In developing such model application form, the Secretary is not authorized to require that such form be adopted by States as part of their State medicaid plan.

(2) DISSEMINATION OF MODEL FORM.—The Secretary shall provide for publication in the Federal Register of the model application form developed under paragraph (1), and shall send a copy of such form to each State agency responsible for administering the State medicaid plan.

SEC. 6507. RESEARCH ON INFANT MORTALITY AND MEDICAID SERVICES.

The Secretary of Health and Human Services shall develop a national data system for linking, for any infant up to age one—

(1) the infant's birth record,

(2) any death record for the infant, and

(3) information on any claims submitted under title XIX of the Social Security Act for health care furnished to the infant or with respect to the birth of the infant.

SEC. 6508. DEMONSTRATION PROJECT ON HEALTH INSURANCE FOR MEDICALLY UNINSURABLE CHILDREN.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") may conduct not more than 4 demonstration projects to provide health insurance coverage (as defined by the Secretary) through an eligible plan (as defined in subsection (b)) to medically uninsurable children (as defined by the Secretary) under the age of 19.

(b) ELIGIBILITY.—In this section, the term "eligible plan" means—

(1) a school-based plan;

(2) a plan operated under the direction of not-for-profit entities offering health insurance; and

(3) a plan operated by not-for-profit hospitals.

(c) REQUIREMENTS.—A demonstration project conducted under subsection (a) may only be conducted under an agreement between the Secretary and an eligible plan which provides that—

(1) health insurance coverage will be made available under the project for at least 2 years, and, if the eligible plan fails to provide such coverage during such period, the Secretary will guarantee the provision of such coverage;

(2) non-Federal funds will be made available to fund the project at a level not less than—

(A) 50 percent in the first year of such agreement,

(B) 65 percent in the second year of such agreement, and

(C) 80 percent in the third or subsequent year of such agreement;

(3) the plan may not—

(A) restrict health insurance coverage on the basis of a child's medical condition, or

(B) impose waiting periods or exclusions for preexisting conditions;

(4) any premium imposed under the project shall be disclosed in advance of enrollment and shall be varied by the income of individuals; and

(5) that with respect to a plan which at the time of entering into such agreement is conducting a project similar to the one described in this paragraph that such plan must maintain its current level of non-Federal funding at such current level unless such level is less than the applicable level described in paragraph (2).

(d) APPLICATION.—No funds may be made available by the Secretary under this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and contain and be accompanied by such information as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under this section.

(e) EVALUATION AND REPORT.—

(1) EVALUATION.—The Secretary shall provide for an evaluation of the effects of the demonstration projects conducted under subsection (a) on—

(A) access to health services by previously medically uninsurable children,

(B) the availability of insurance coverage to participating medically uninsurable children,

(C) the demographic characteristics and health status of participating medically uninsurable children and their families, and

(D) out-of-pocket health care costs for such families.

(2) REPORT.—The Secretary shall submit a report on the demonstration projects conducted under subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate, and shall include in such report a summary of the evaluation described in paragraph (1).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000, for each of fiscal years 1991, 1992, and 1993.

SEC. 6509. MATERNAL AND CHILD HEALTH HANDBOOK.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Secretary shall develop a maternal and child health handbook in consultation with the National Commission to Prevent Infant Mortality and public and private organizations interested in the health and welfare of mothers and children.

(2) FIELD TESTING AND EVALUATION.—The Secretary shall complete publication of the handbook for field testing by July 1, 1990, and shall complete field testing and evaluation by June 1, 1991.

(3) AVAILABILITY AND DISTRIBUTION.—The Secretary shall make the handbook available to pregnant women and families with young children, and shall provide copies of the handbook to maternal and child health programs (including maternal and child health clinics supported through either title V or title XIX of the Social Security Act, community and migrant health centers under sections 329 and 330 of the Public Health Service Act, the grant program for the homeless under section 340 of the Public Health Service Act, the "WIC" program under section 17 of the Child Nutrition Act of 1966, and the head start program under the Head Start Act) that serve high-risk women. The Secretary shall coordinate the distribution of the handbook with State maternal and child health departments, State and local public health clinics, private providers of obstetric and pediatric care, and community groups where applicable. The Secretary shall make efforts to involve private entities in the distribution of the handbook under this paragraph.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of fiscal years 1991, 1992, and 1993, for carrying out the purposes of this section.

SEC. 6510. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle shall apply to appropriations for fiscal years beginning with fiscal year 1990.

(b) APPLICATION AND REPORT.—The amendments made—

(1) by subsections (b) and (c) of section 6503 shall apply to payments for allotments for fiscal years beginning with fiscal year 1991, and

(2) by section 6504 shall apply to annual reports for fiscal years beginning with fiscal year 1991.

*Subtitle D—Vaccine Compensation Technicals*

SEC. 6601. VACCINE INJURY COMPENSATION TECHNICALS.

(a) REFERENCE.—Whenever in this section an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

(b) PUBLICATION OF PROGRAM.—Section 2110 (42 U.S.C. 300aa-10) is amended by adding at the end thereof the following:

"(c) PUBLICITY.—The Secretary shall undertake reasonable efforts to inform the public of the availability of the Program.".

(c) PETITIONS.—

(1) Section 2111(a)(1) (42 U.S.C. 300aa-11(a)(1)) is amended—

(A) by striking out "filing of a petition" and inserting in lieu thereof "filing of a petition containing the matter prescribed by subsection (c)", and

(B) by inserting at the end of paragraph (1) "The clerk of the United States Claims Court shall immediately forward the filed petition to the chief special master for assignment to a special master under section 2112(d)(1).".

(2) Section 2111(a)(2)(A)(i) (42 U.S.C. 300aa-11(a)(2)(A)(i)) is amended by striking out "under subsection (b)".

(3) Section 2111(a)(5) (42 U.S.C. 300aa-11(a)(5)) is amended—

(A) in subparagraph (A), by striking out "elect to withdraw such action" and inserting in lieu thereof "petition to have such action dismissed without prejudice or costs", and

(B) in subparagraph (B), by striking out "on the effective date of this part had pending" and inserting in lieu thereof "has pending" and by striking out "does not withdraw the action under subparagraph (A)".

(4) Section 2111(a)(6) (42 U.S.C. 300aa-11(a)(6)) is amended by striking out "the effective date of this part" each place it occurs and inserting in lieu thereof "November 15, 1988".

(5) Section 2111(a) (42 U.S.C. 300aa-11(a)) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following:

"(8) If on the effective date of this part there was pending an appeal or rehearing with respect to a civil action brought against a vaccine administrator or manufacturer and if the outcome of the last appellate review of such action or the last rehearing of such action is the denial of damages for a vaccine-related injury or death, the person who brought such action may file a petition under subsection (b) for such injury or death.".

(6) Section 2111(c) (42 U.S.C. 300aa-11(c)) is amended—

(A) in paragraph (1), by inserting "except as provided in paragraph (3)," after "(1)" and in paragraph (2), by inserting "except as provided in paragraph (3)," after "(2)",

(B) by redesignating paragraph (2) as subsection (d), by expanding the margin of the paragraph to full measure, and by striking out "all available" and inserting in lieu thereof "(d) ADDITIONAL INFORMATION.—A petition may also include other available", by striking out "(including autopsy reports, if any)", and by striking out "and an identification" and all that follows and inserting in lieu thereof a period,

(C) by adding after paragraph (1) the following new paragraphs:

"(2) except as provided in paragraph (3), maternal prenatal and delivery records, newborn hospital records (including all physicians' and nurses' notes and test results), vaccination records associated with the vaccine allegedly causing the injury, pre- and post-injury physician or clinic records (including all relevant growth charts and test results), all post-injury inpatient and outpatient records (including all provider notes, test results, and medication records), if applicable, a death certificate, and if applicable, autopsy results, and

"(3) an identification of any records of the type described in paragraph (1) or (2) which are unavailable to the petitioner and the reasons for their unavailability.", and

(D) by redesignating paragraph (3), as in effect on the date of the enactment, as subsection (e), by expanding the margin of the paragraph to full measure, and by striking out "appropriate" and inserting in lieu thereof "(e) SCHEDULE.—The petitioner shall submit in accordance with a schedule set by the special master assigned to the petition".

(7) The margin on paragraph (9) of section 2111(a) (as so redesignated) is indented two ems.

(8) Section 2115(e)(2) (42 U.S.C. 300aa-15(e)(2)) is amended—

(A) by striking out "and elected under section 2111(a)(4) to withdraw such action" and inserting in lieu thereof "and petitioned under section 2111(a)(5) to have such action dismissed", and

(B) by striking out "the judgment of the court on such petition may include" and inserting in lieu thereof "in awarding compensation on such petition the special master or court may include".

(d) JURISDICTION.—Section 2112(a) (42 U.S.C. 300aa-12(a)) is amended—

(1) by striking out "shall have jurisdiction (1)" and inserting in lieu thereof "and the United States Claims Court special masters shall, in accordance with this section, have jurisdiction",

(2) by striking out ", and (2) to issue" and inserting in lieu thereof a period and the following: "The United States Claims Court may issue", and

(3) by striking out "deem" and inserting in lieu thereof "deems".

(e) SPECIAL MASTERS ESTABLISHED.—Section 2112 (42 U.S.C. 300aa-12) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively,

(2) by inserting after subsection (b) the following new subsection:

"(c) UNITED STATES CLAIMS COURT SPECIAL MASTERS.—

"(1) There is established within the United States Claims Court an office of special masters which shall consist of not more than 8 special masters. The judges of the United States Claims Court shall appoint the special masters, 1 of whom, by designa-

tion of the judges of the United States Claims Court, shall serve as chief special master. The appointment and reappointment of the special masters shall be by the concurrence of a majority of the judges of the court.

"(2) The chief special master and other special masters shall be subject to removal by the judges of the United States Claims Court for incompetency, misconduct, or neglect of duty or for physical or mental disability or for other good cause shown.

"(3) A special master's office shall be terminated if the judges of the United States Claims Court determine, upon advice of the chief special master, that the services performed by that office are no longer needed.

"(4) The appointment of any individual as a special master shall be for a term of 4 years, subject to termination under paragraphs (2) and (3). Individuals serving as special masters upon the date of the enactment of this subsection shall serve for 4 years from the date of their original appointment, subject to termination under paragraphs (2) and (3). The chief special master in office on the date of the enactment of this subsection shall continue to serve as chief special master for the balance of the master's term, subject to termination under paragraphs (2) and (3).

"(5) The compensation of the special masters shall be determined by the judges of the United States Claims Court, upon advice of the chief special master. The salary of the chief special master shall be the annual rate of basic pay for level IV of the Executive Schedule, as prescribed by section 5315, title 5, United States Code. The salaries of the other special masters shall not exceed the annual rate of basic pay of level V of the Executive Schedule, as prescribed by section 5316, title 5, United States Code.

"(6) The chief special master shall be responsible for the following:

"(A) Administering the office of special masters and their staff, providing for the efficient, expeditious, and effective handling of petitions, and performing such other duties related to the Program as may be assigned to the chief special master by a concurrence of a majority of the United States Claims Court judges.

"(B) Appointing and fixing the salary and duties of such administrative staff as are necessary. Such staff shall be subject to removal for good cause by the chief special master.

"(C) Managing and executing all aspects of budgetary and administrative affairs affecting the special masters and their staff, subject to the rules and regulations of the Judicial Conference of the United States. The Conference rules and regulations pertaining to United States magistrates shall be applied to the special masters.

"(D) Coordinating with the United States Claims Court the use of services, equipment, personnel, information, and facilities of the United States Claims Court without reimbursement.

"(E) Reporting annually to the Congress and the judges of the United States Claims Court on the number of petitions filed under section 2111 and their disposition, the dates on which the vaccine-related injuries and deaths for which the petitions were filed occurred, the types and amounts of awards, the length of time for the disposition of petitions, the cost of administering the Program, and recommendations for changes in the Program.".

(f) PARTIES.—Section 2112(b) (42 U.S.C. 300aa-12(b)) is amended—

(1) by amending the first sentence to read as follows: "In all proceedings brought by the filing of a petition under section 2111(b), the Secretary shall be named as the respondent, shall participate, and shall be represented in accordance with section 518(a) of title 28, United States Code.", and

(2) by striking out the second sentence.

(g) SPECIAL MASTER FUNCTIONS.—Section 2112(d) (42 U.S.C. 300aa-12(d)) (as so redesignated by subsection (e)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) Following the receipt and filing of a petition under section 2111, the clerk of the United States Claims Court shall forward the petition to the chief special master who shall designate a special master to carry out the functions authorized by paragraph (3).", and

(2) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) The special masters shall recommend rules to the Claims Court and, taking into account such recommended rules, the Claims Court shall promulgate rules pursuant to section 2071 of title 28, United States Code. Such rules shall—

"(A) provide for a less-adversarial, expeditious, and informal proceeding for the resolution of petitions,

"(B) include flexible and informal standards of admissibility of evidence,

"(C) include the opportunity for summary judgment,

"(D) include the opportunity for parties to submit arguments and evidence on the record without requiring routine use of oral presentations, cross examinations, or hearings, and

"(E) provide for limitations on discovery and allow the special masters to replace the usual rules of discovery in civil actions in the United States Claims Court.

"(3)(A) A special master to whom a petition has been assigned shall issue a decision on such petition with respect to whether compensation is to be provided under the Program and the amount of such compensation. The decision of the special master shall—

"(i) include findings of fact and conclusions of law, and

"(ii) be issued as expeditiously as practicable but not later than 240 days, exclusive of suspended time under subparagraph (C), after the date the petition was filed.

The decision of the special master may be reviewed by the United States Claims Court in accordance with subsection (e).

"(B) In conducting a proceeding on a petition a special master—

"(i) may require such evidence as may be reasonable and necessary,

"(ii) may require the submission of such information as may be reasonable and necessary,

"(iii) may require the testimony of any person and the production of any documents as may be reasonable and necessary,

"(iv) shall afford all interested persons an opportunity to submit relevant written information—

"(I) relating to the existence of the evidence described in section 2113(a)(1)(B), or

"(II) relating to any allegation in a petition with respect to the matters described in section 2111(c)(1)(C)(ii),

"(v) may conduct such hearings as may be reasonable and necessary.

There may be no discovery in a proceeding on a petition other than the discovery required by the special master.

"(C) In conducting a proceeding on a petition a special master shall suspend the proceedings one time for 30 days on the motion of either party. After a motion for suspension is granted, further motions for suspension by either party may be granted by the special master, if the special master determines the suspension is reasonable and necessary, for an aggregate period not to exceed 150 days.

"(4)(A) Except as provided in subparagraph (B), information submitted to a special master or the court in a proceeding on a petition may not be disclosed to a person who is not a party to the proceeding without the express written consent of the person who submitted the information.

"(B) A decision of a special master or the court in a proceeding shall be disclosed, except that if the decision is to include information—

"(i) which is trade secret or commercial or financial information which is privileged and confidential, or

"(ii) which are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy,

and if the person who submitted such information objects to the inclusion of such information in the decision, the decision shall be disclosed without such information.".

(h) ACTION BY THE UNITED STATES CLAIMS COURT.—Section 2112(e) (42 U.S.C. 300aa-12(e)) (as so redesignated by subsection (e)) is amended to read as follows:

"(e) ACTION BY THE UNITED STATES CLAIMS COURT.—

"(1) Upon issuance of the special master's decision, the parties shall have 30 days to file with the clerk of the United States Claims Court a motion to have the court review the decision. If such a motion is filed, the other party shall file a response with the clerk of the United States Claims Court no later than 30 days after the filing of such motion.

"(2) Upon the filing of a motion under paragraph (1) with respect to a petition, the United States Claims Court shall have jurisdiction to undertake a review of the record of the proceedings and may thereafter—

"(A) uphold the findings of fact and conclusions of law of the special master and sustain the special master's decision,

"(B) set aside any findings of fact or conclusion of law of the special master found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and issue its own findings of fact and conclusions of law, or

"(C) remand the petition to the special master for further action in accordance with the court's direction.

The court shall complete its action on a petition within 120 days of the filing of a response under paragraph (1) excluding any days the petition is before a special master as a result of a remand under subparagraph (C). The court may allow not more than 90 days for remands under subparagraph (C).

"(3) In the absence of a motion under paragraph (1) respecting the special master's decision or if the United States Claims Court takes the action described in paragraph (2)(A) with respect to the special master's decision, the clerk of the United States Claims Court shall immediately enter judgment in accordance with the special master's decision.".

(i) APPEALS.—Section 2112(f) (42 U.S.C. 300aa-12(f)) (as so redesignated by subsection (e)) is amended by inserting before the period the following: "within 60 days of the date of entry of the United States Claims

Court's judgment with such court of appeals".

(j) DETERMINATION OF ELIGIBILITY AND COMPENSATION.—Section 2113 (42 U.S.C. 300aa-13) is amended—

(1) by striking "court" each place it appears and inserting in lieu thereof "special master or court", and

(2) by inserting before "United States Claims Court" in subsection (c) "special masters of".

(k) TABLE.—

(1) The table contained in section 2114(a) (42 U.S.C. 300aa-14(a)) is amended by striking out "(c)(2)" each place it appears and inserting in lieu thereof "(b)(2)".

(2) Section 2114(b)(3)(B) (42 U.S.C. 300aa-14(b)(3)(B)) is amended by striking out "2111(b)" and inserting in lieu thereof "2111".

(l) COMPENSATION.—

(1) Section 2115(b) (42 U.S.C. 300aa-15(b)) is amended by striking out "may not include" and all that follows and inserting in lieu thereof "may include the compensation described in paragraphs (1)(A) and (2) of subsection (a) and may also include an amount, not to exceed a combined total of $30,000, for—

"(1) lost earnings (as provided in paragraph (3) of subsection (a)),

"(2) pain and suffering (as provided in paragraph (4) of subsection (a)), and

"(3) reasonable attorneys' fees and costs (as provided in subsection (e)).".

(2) Section 2115(e) (42 U.S.C. 300aa-15(b)) is amended—

(A) in the first sentence of paragraph (1), by striking out "The judgment of the United States Claims Court on a petition filed under section 2111 awarding compensation shall include an amount to cover" and inserting in lieu thereof "In awarding compensation on a petition filed under section 2111 the special master or court shall also award as part of such compensation an amount to cover",

(B) in the second sentence of paragraph (1), by striking out "civil action" each place it appears and inserting in lieu thereof "petition",

(C) in the second sentence of paragraph (1), by striking out "may include in the judgment an amount to cover" and inserting in lieu thereof "may award an amount of compensation to cover" and by striking out "court" each place it appears and inserting in lieu thereof "special master or court",

(D) in paragraph (2), by striking out "the judgment of the court on such petition may include an amount" and inserting in lieu thereof "the special master or court may also award an amount of compensation", and

(E) in paragraph (3), by striking out "included under paragraph (1) in a judgment on such petition" and inserting in lieu thereof "awarded as compensation by the special master or court under paragraph (1)".

(3) Section 2115(f) (42 U.S.C. 300aa-15(f)) is amended—

(A) in paragraph (3), by inserting after "Payments of compensation" the following: "under the Program and the costs of carrying out the Program",

(B) in paragraph (4)(A), by striking out "made in a lump sum" and by adding after "compensation" the second time it appears the following: "and shall be paid from the trust fund in a lump sum of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner", and

(C) in paragraph (4)(B), by striking out "paid in 4 equal annual installments." and inserting in lieu thereof "determined on the basis of the net present value of the elements of compensation and paid in 4 equal annual installments of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner. Any reasonable attorneys' fees and costs shall be paid in a lump sum.".

(4) Section 2115 (42 U.S.C. 300aa-15) is amended—

(A) in subsection (g), by inserting "(other than under title XIX of the Social Security Act)" after "State health benefits program", and

(B) in subsection (h), by inserting before the period at the end the following: ", except that this subsection shall not apply to the provision of services or benefits under title XIX of the Social Security Act".

(5) Section 2115(i)(1) (42 U.S.C. 300aa-15(i)(1)) is amended by striking out "(i)" and inserting in lieu thereof "(j)".

(6) The first sentence of section 2115(j) (42 U.S.C. 300aa-15(j)) is amended by striking out "and" after "1991," and by inserting before the period a comma and "$80,000,000 for fiscal year 1993".

(m) TECHNICALS.—

(1) Section 2116(c) (42 U.S.C. 300aa-16(c)) is amended by striking out "2111(b)" and inserting in lieu thereof "2111".

(2) Section 2117(b) (42 U.S.C. 300aa-17(b)) is amended by striking out "the trust fund which has been established to provide compensation under the Program" and inserting in lieu thereof "the Vaccine Injury Compensation Trust Fund established under section 9510 of the Internal Revenue Code of 1986".

(n) ELECTION.—

(1) Section 2121(a) (42 U.S.C. 300aa-21(a)) is amended—

(A) in the first sentence, by striking out "After the judgment of the United States Claims Court under section 2111 on a petition filed for compensation under the Program for a vaccine-related injury or death has become final, the person who filed the petition shall file with the court" and inserting in lieu thereof: "After judgment has been entered by the United States Claims Court or, if an appeal is taken under section 2112(f), after the appellate court's mandate is issued, the petitioner who filed the petition under section 2111 shall file with the clerk of the United States Claims Court", and

(B) by amending the last sentence to read as follows: "For limitations on the bringing of civil actions, see section 2111(a)(2).".

(2) Section 2121(b) (42 U.S.C. 300aa-21(b)) is amended—

(A) in the first sentence, by striking out "within 365 days" and inserting in lieu thereof "within 420 days (excluding any period of suspension under section 2112(d) and excluding any days the petition is before a special master as a result of a remand under section 2112(e)(2)(C))", and

(B) by amending the second sentence to read as follows: "An election shall be filed under this subsection not later than 90 days after the date of the entry of the Claims Court's judgment or the appellate court's mandate with respect to which the election is to be made.".

(o) TRIAL.—Section 2123(e) (42 U.S.C. 300aa-23(e)) is amended—

(1) by striking out "finding" and inserting in lieu thereof "finding of fact or conclusion of law",

(2) by striking out "master appointed by such court" and inserting in lieu thereof "special master", and

(3) by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court and subsequent appellate review".

(p) VACCINE INFORMATION.—Section 2126(c)(9) (42 U.S.C. 300aa-26(c)(9)) is amended to read as follows:

"(9) a summary of—

"(A) relevant Federal recommendations concerning a complete schedule of childhood immunizations, and

"(B) the availability of the Program, and".

(q) SAFER VACCINES.—Section 2127 (42 U.S.C. 300aa-27) is amended by redesignating subsection (b) as subsection (c) and by adding after subsection (a) the following:

"(b) TASK FORCE.—

"(1) The Secretary shall establish a task force on safer childhood vaccines which shall consist of the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, and the Director of the Centers for Disease Control.

"(2) The Director of the National Institutes of Health shall serve as chairman of the task force.

"(3) In consultation with the Advisory Commission on Childhood Vaccines, the task force shall prepare recommendations to the Secretary concerning implementation of the requirements of subsection (a).".

(r) AUTHORIZATIONS.—

(1) For administering part A of subtitle 2 of title XXI of the Public Health Service Act there is authorized to be appropriated from the Vaccine Injury Compensation Trust Fund established under section 9510(c) of the Internal Revenue Code of 1986 to the Secretary of Health and Human Services $1,500,000 for each of the fiscal years 1990 and 1991.

(2) For administering part A of subtitle 2 of title XXI of the Public Health Service Act there is authorized to be appropriated from the Vaccine Injury Compensation Trust Fund to the Attorney General $1,500,000 for each of the fiscal years 1990 and 1991.

(3) For administering part A of subtitle 2 of title XXI of the Public Health Service Act there is authorized to be appropriated from the Vaccine Injury Compensation Trust Fund to the United States Claims Court $1,500,000 for each of the fiscal years 1990 and 1991.

(s) APPLICABILITY AND EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply as follows:

(A) Petitions filed after the date of enactment of this section shall proceed under the National Vaccine Injury Compensation Program under title XXI of the Public Health Service Act as amended by this section.

(B) Petitions currently pending in which the evidentiary record is closed shall continue to proceed under the Program in accordance with the law in effect before the date of the enactment of this section, except that if the United States Claims Court is to review the findings of fact and conclusions of law of a special master on such a petition, the court may receive further evidence in conducting such review.

(C) Petitions currently pending in which the evidentiary record is not closed shall proceed under the Program in accordance with the law as amended by this section.

All pending cases which will proceed under the Program as amended by this section shall be immediately suspended for 30 days to enable the special masters and parties to prepare for proceeding under the Program as amended by this section. In determining the 240-day period prescribed by section 2112(d) of the Public Health Service Act, as amended by this section, or the 420-day period prescribed by section 2121(b) of such Act, as so amended, any period of suspension under the preceding sentence shall be excluded.

(2) The amendments to section 2115 of the Public Health Service Act shall apply to all pending and subsequently filed petitions.

(t) STUDY.—The Secretary of Health and Human Services shall evaluate the National Vaccine Injury Compensation Program under title XXI of the Public Health Service Act and shall report the results of such study to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than January 1, 1992.

SEC. 6602. SEVERABILITY.

Section 322 of the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa-1 note) is amended to read as follows:

"SEC. 322. SEVERABILITY.

"(a) IN GENERAL.—Except as provided in subsection (b), if any provision of title XXI of the Public Health Service Act, as added by section 311(a), or the application of such a provision to any person or circumstance is held invalid by reason of a violation of the Constitution, such title XXI shall be considered invalid.

"(b) SPECIAL RULE.—If any amendment made by section 6601 of the Omnibus Budget Reconciliation Act of 1989 to title XXI of the Public Health Service Act or the application of such a provision to any person or circumstance is held invalid by reason of the Constitution, subsection (a) shall not apply and such title XXI of the Public Health Service Act without such amendment shall continue in effect.".

### Subtitle E—Provisions With Respect to COBRA Continuation Coverage

### PART 1—EXTENSION OF COVERAGE FOR DISABLED EMPLOYEES

SEC. 6701. EXTENSION, UNDER INTERNAL REVENUE CODE, OF COVERAGE FROM 18 TO 29 MONTHS FOR THOSE WITH A DISABILITY AT TIME OF TERMINATION OF EMPLOYMENT.

(a) IN GENERAL.—Paragraph (2)(B) of section 4980B(f) of the Internal Revenue Code of 1986, as added by section 3011(a) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647), (relating to maximum required period of continuation coverage), is amended—

(1) in clause (i) by adding after and below subclause (IV) the following new sentence:

"In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in paragraph (3)(B), any reference in subclause (I) or (II) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under paragraph (6)(C) before the end of such 18 months."; and

(2) by adding at the end the following new clause:

"(v) TERMINATION OF EXTENDED COVERAGE FOR DISABILITY.—In the case of a qualified beneficiary who is disabled at the time of a qualifying event described in paragraph (3)(B), the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act that the qualified beneficiary is no longer disabled.".

(b) INCREASED PREMIUM PERMITTED.—Paragraph (2)(C) of such section (relating to premium requirements) is amended by adding at the end the following new sentence: "In the case of an individual described in the last sentence of subparagraph (B)(i), any reference in clause (i) of this subparagraph to '102 percent' is deemed a reference to '150 percent' for any month after the 18th month of continuation coverage described in subclause (I) or (II) of subparagraph (B)(i).".

(c) NOTICES REQUIRED.—Paragraph (6)(C) of such section (relating to certain notices to plan administrator) is amended by inserting before the period at the end the following: "and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in paragraph (3)(B) is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days of the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after the date of the enactment of this Act, regardless of whether the qualifying event occurred before, on, or after such date.

SEC. 6702. EXTENSION, UNDER PUBLIC HEALTH SERVICE ACT, OF COVERAGE FROM 18 TO 29 MONTHS FOR THOSE WITH A DISABILITY AT TIME OF TERMINATION OF EMPLOYMENT.

(a) IN GENERAL.—Section 2202(2) of the Public Health Service Act (42 U.S.C. 300bb-2) is amended—

(1) in subparagraph (A), by adding after and below clause (iii) the following new sentence:

"In the case of an individual who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 2203(2), any reference in clause (i) or (ii) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under section 2206(3) before the end of such 18 months."; and

(2) by adding at the end the following new subparagraph:

"(E) TERMINATION OF EXTENDED COVERAGE FOR DISABILITY.—In the case of a qualified beneficiary who is disabled at the time of a qualifying event described in section 2203(2), the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act that the qualified beneficiary is no longer disabled.".

(b) INCREASED PREMIUM PERMITTED.—Section 2202(3) of the Public Health Service Act (42 U.S.C. 300bb-3) is amended in the matter after and below subparagraph (B) by adding at the end the following new sentence: "In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to '102 percent' is deemed a reference to '150 percent' for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).".

(c) NOTICES REQUIRED.—Section 2206(3) of such Act (42 U.S.C. 300bb-6(3)) (relating to certain notices to plan administrator) is amended by inserting before the comma the following: "and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 2203(2) is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after the date of the enactment of this Act, regardless of whether the qualifying event occurred before, on, or after such date.

SEC. 6703. EXTENSION, UNDER ERISA, OF COVERAGE FROM 18 TO 29 MONTHS FOR THOSE WITH A DISABILITY AT TIME OF TERMINATION OF EMPLOYMENT.

(a) IN GENERAL.—Section 602(2) of the Employee Retirement Income Security Act of 1974 (42 U.S.C. 1162(2)) is amended—

(1) in subparagraph (A), by adding after and below clause (iv) the following new sentence:

"In the case of an individual who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 603(2), any reference in clause (i) or (ii) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under section 606(3) before the end of such 18 months."; and

(2) by adding at the end the following new subparagraph:

"(E) TERMINATION OF EXTENDED COVERAGE FOR DISABILITY.—In the case of a qualified beneficiary who is disabled at the time of a qualifying event described in section 603(2), the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act that the qualified beneficiary is no longer disabled.".

(b) INCREASED PREMIUM PERMITTED.—Section 602(3) of such Act (42 U.S.C. 1162(3)) is amended in the matter after and below subparagraph (B) by adding at the end the following new sentence: "In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to '102 percent' is deemed a reference to '150 percent' for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).".

(c) NOTICES REQUIRED.—Section 606(3) of such Act (42 U.S.C. 1166(3)) (relating to certain notices to plan administrator) is amended by inserting before the comma the following: "and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 603(2) is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after the date of the enactment of this Act, regardless of whether

the qualifying event occurred before, on, or after such date.

*Part 2—Miscellaneous Amendments*

*SEC. 6801. PUBLIC HEALTH SERVICE ACT.*

*(a) SECTION 2201.—*

*(1) SUBSECTION (b).—Section 2201(b) of the Public Health Service Act (42 U.S.C. 300bb-1(b)) is amended by striking the matter after and below paragraph (2).*

*(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to years beginning after December 31, 1986.*

*(b) SECTION 2202.—*

*(1) PARAGRAPH (2)(A).—*

*(A) IN GENERAL.—Section 2202(2)(A) of the Public Health Service Act (42 U.S.C. 300bb-2(2)(A)) is amended by adding at the end the following new clause:*

*"(iv) QUALIFYING EVENT INVOLVING MEDICARE ENTITLEMENT.—In the case of an event described in section 2203(4) (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act."*

*(B) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to plan years beginning after December 31, 1989.*

*(2) PARAGRAPH (2)(D).—*

*(A) IN GENERAL.—Section 2202(2)(D) of the Public Health Service Act (42 U.S.C. 300bb-2(2)(D)) is amended—*

*(i) in the heading for such paragraph, by striking "ELIGIBILITY" and inserting "ENTITLEMENT"; and*

*(ii) in clause (i), by inserting before the comma the following: "which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary".*

*(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply to—*

*(i) qualifying events occurring after December 31, 1989, and*

*(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such).*

*(3) PARAGRAPH (3).—*

*(A) IN GENERAL.—Section 2202(3) of the Public Health Service Act (42 U.S.C. 300bb-2(3)) is amended by amending the matter after and below subparagraph (B) to read as follows:*

*"In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage.".*

*(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to plan years beginning after December 31, 1989.*

*(c) SECTION 2208.—*

*(1) PARAGRAPH (2).—Section 2208(2) of the Public Health Service Act (42 U.S.C. 300bb-8(2)) is amended by striking "the individual's employment or previous employment with an employer" and inserting "the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of the Internal Revenue Code of 1986)".*

*(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to plan years beginning after December 31, 1989.*

*Subtitle F—Technical and Miscellaneous Provisions Relating to Nursing Home Reform*

*SEC. 6901. MEDICARE AND MEDICAID TECHNICAL CORRECTIONS RELATING TO NURSING HOME REFORM.*

*(a) MORATORIUM ON IMPLEMENTATION OF FEBRUARY 2, 1989 REGULATION.—The regulations promulgated by the Secretary of Health and Human Services on February 2, 1989 (54 Federal Register 5315 et seq., relating to requirements for long-term care facilities) shall not be effective before October 1, 1990, insofar as such regulations apply to skilled nursing facilities and intermediate care facilities under title XVIII or XIX of the Social Security Act.*

*(b) NURSE AIDE TRAINING.—*

*(1) DELAY IN REQUIREMENT.—Sections 1819(b)(5) and 1919(b)(5) of the Social Security Act (42 U.S.C. 1395i-3(b)(5), 1396r(b)(5)) are each amended—*

*(A) in subparagraph (A), by striking "January 1, 1990" and inserting "October 1, 1990", and*

*(B) in subparagraph (B), by striking "July 1, 1989" and "January 1, 1990" and inserting "January 1, 1990" and "October 1, 1990", respectively.*

*(2) PUBLICATION OF PROPOSED REGULATIONS.—The Secretary of Health and Human Services shall issue proposed regulations to establish the requirements described in sections 1819(f)(2) and 1919(f)(2) of the Social Security Act by not later than 90 days after the date of the enactment of this Act.*

*(3) REQUIREMENTS FOR TRAINING AND EVALUATION PROGRAMS.—Sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Social Security Act (42 U.S.C. 1395i-3(f)(2)(A), 1396r(f)(2)(A)) are each amended—*

*(A) in clause (i)(I), by inserting "care of cognitively impaired residents," after "social service needs,";*

*(B) in clause (ii), by striking "cognitive, behavioral and social care" and by inserting "recognition of mental health and social service needs, care of cognitively impaired residents";*

*(C) by striking the period at the end of clause (iii) and inserting "; and"; and*

*(D) by adding at the end the following new clause:*

*"(iv) requirements, under both such programs, that—*

*"(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)), and*

*"(II) prohibit the imposition on a nurse aide of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program.".*

*(4) DELAY AND TRANSITION IN 75-HOUR TRAINING PROGRAM REQUIREMENT.—*

*(A) Sections 1819(f)(2)(B)(ii) and 1919(f)(2)(B)(ii) of such Act (42 U.S.C. 1395i-3(f)(2)(B)(ii), 1396r(f)(2)(B)(ii)) are each amended by striking "January 1, 1989" and inserting "July 1, 1989".*

*(B) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act), if such aide would have satisfied such requirement as of July 1, 1989, if a number of hours (not less than 60 hours) were substituted for "75 hours" in sections 1819(f)(2) and 1919(f)(2) of such Act, respectively, and if such aide had received, before July 1, 1989, at least the difference in the number of such hours in supervised practical nurse aide training or in regular in-service nurse aide education.*

*(C) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act), if such aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.*

*(D) With respect to the nurse aide competency evaluation requirements described in sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act, a State may waive such requirements with respect to an individual who can demonstrate to the satisfaction of the State that such individual has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before the date of the enactment of this Act.*

*(5) CLARIFICATION OF TEMPORARY ENHANCED FEDERAL FINANCIAL PARTICIPATION FOR NURSE AIDE TRAINING BY NURSING FACILITIES.—*

*(A) IN GENERAL.—Section 1903(a)(2)(B) of such Act (42 U.S.C. 1396b(a)(2)(B)) is amended—*

*(i) by inserting "(including the costs for nurse aides to complete such competency evaluation programs)" after "1919(e)(1)", and*

*(ii) by inserting "(or, for calendar quarters beginning on or after July 1, 1988, and before July 1, 1990, the lesser of 90 percent or the Federal medical assistance percentage plus 25 percentage points)" after "50 percent".*

*(B) NO ALLOCATION OF COSTS BEFORE OCTOBER 1, 1990.—In making payments under section 1903(a)(2)(B) of the Social Security Act for amounts expended for nurse aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such Act, in the case of activities conducted before October 1, 1990, the Secretary of Health and Human Services shall not take into account, or allocate amounts on the basis of, the proportion of residents of nursing facilities that is entitled to benefits under title XVIII or XIX of such Act.*

*(6) EFFECTIVE DATES.—*

*(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.*

*(B) EXCEPTION.—The amendments made by paragraph (3) shall apply to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after the end of the 90-day period beginning on the date of the enactment of this Act, but shall not affect competency evaluations conducted under programs offered before the end of such period.*

*(c) PUBLICATION OF PROPOSED REGULATIONS RESPECTING PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW.—The Secretary of Health and Human Services shall issue proposed regulations to establish the criteria described in section 1919(f)(8)(A) of the Social Security Act by not later than 90 days after the date of the enactment of this Act.*

(d) OTHER AMENDMENTS.—

(1) CLARIFICATION OF APPLICABILITY OF ENFORCEMENT RULES TO DUALLY-CERTIFIED FACILITIES.—Section 1919(h)(8) of such Act (42 U.S.C. 1396r(h)(8)) is amended by adding at the end the following: "The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of title XVIII.".

(2) CLARIFICATION OF FEDERAL MATCHING RATE FOR SURVEY AND CERTIFICATION ACTIVITIES.—During the period before October 1, 1990, the Federal percentage matching payment rate under section 1903(a) of the Social Security Act for so much of the sums expended under a State plan under title XIX of such Act as are attributable to compensation or training of personnel responsible for inspecting public or private skilled nursing or intermediate care facilities to individuals receiving medical assistance to determine compliance with health or safety standards shall be 75 percent.

(3) MEDICARE WAIVER AUTHORITY FOR CERTAIN DEMONSTRATION PROJECTS.—(A) The Secretary of Health and Human Services may waive the survey and certification requirements of sections 1819(g) and 1864(a) of the Social Security Act to the extent the Secretary determines is required to carry out a demonstration project in New York (relating to testing an approved alternative survey and certification process), which has been approved as of the date of the enactment of this Act. Such waiver shall apply only during the period beginning on November 1, 1988, and ending on October 31, 1991.

(B) The Secretary also may waive the survey and certification requirements described in subparagraph (A) to the extent the Secretary determines is required carry out a pilot demonstration project in Wisconsin (relating to testing an approved alternative survey and certification process). Such waiver shall apply only during the one-year period beginning on the date of implementation of the project.

(4) MISCELLANEOUS TECHNICAL CORRECTIONS.—Sections 1819 and 1919 of such Act are each further amended—

(A) in subsection (c)(1)(A)(ii)(II), by striking the closing parenthesis after "Secretary" and inserting a closing parenthesis after "obtained",

(B) in subsection (c)(1)(A)(v)(I), by striking "accommodations" and inserting "accommodation",

(C) in subsection (f)(2)(A)(i), by striking ", content of the curriculum" and inserting "and content of the curriculum", and

(D) in subsection (h)(2)(C) (of section 1819) and in subsection (h)(3)(D) (of section 1919), by inserting "after the effective date of the findings" after "6 months".

(5) ADDITIONAL MISCELLANEOUS TECHNICAL CORRECTION.—Section 1910 of such Act (42 U.S.C. 1396i) is amended—

(A) by inserting "AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED" after "RURAL HEALTH CLINICS",

(B) in subsection (b)(1), by striking "skilled nursing or intermediate care facility" and inserting "intermediate care facility for the mentally retarded",

(C) in subsection (b)(1), as amended by section 411(l)(6)(F) of the Medicare Catastrophic Coverage Act of 1988, by striking "1902(a)(28) or section 1919 or section 1905(c) and inserting "1902(a)(31) or section 1905(d)", and

(D) in subsections (b)(1) and (b)(2), by striking "skilled nursing facility or intermediate care facility" each place it appears and inserting "intermediate care facility for the mentally retarded".

(6) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) EXCEPTION.—The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

### Subtitle G—Public Health Service Act

SEC. 6911. ESTABLISHMENT OF AGENCY FOR HEALTH CARE POLICY AND RESEARCH.

For amendments establishing the Agency for Health Care Policy and Research and creating a new title IX in the Public Health Service Act, see section 6103 of this Act.

## TITLE VII—REVENUE MEASURES

SEC. 7001. SHORT TITLE; ETC.

(a) SHORT TITLE.—This title may be cited as the "Revenue Reconciliation Act of 1989".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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**Subtitle A—Extension of Expiring Tax Provisions**

SEC. 7101. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) EXTENSION.—

(1) IN GENERAL.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking "December 31, 1988" and inserting "September 30, 1990".

(2) SPECIAL RULE.—In the case of any taxable year beginning in 1990, only amounts paid before October 1, 1990, by the employer for educational assistance for the employee shall be taken into account in determining the amount excluded under section 127 of the Internal Revenue Code of 1986 with respect to such employee for such taxable year.

(b) CERTAIN OTHERWISE TAXABLE EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE MAY BE EXCLUDIBLE AS WORKING CONDITION FRINGE.—Subsection (h) of section 132 is amended by adding at the end thereof the following new paragraph:

"(9) APPLICATION OF SECTION TO OTHERWISE TAXABLE EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.—Amounts which would be excludible from gross income under section 127 but for subsection (a)(2) thereof or the last sentence of subsection (c)(1) thereof shall be excluded from gross income under this section if (and only if) such amounts are a working condition fringe."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

SEC. 7102. EMPLOYER-PROVIDED GROUP LEGAL SERVICES.

(a) EXTENSION.—

(1) IN GENERAL.—Subsection (e) of section 120 (relating to group legal services plans) is amended by striking "ending after December 31, 1988" and inserting "beginning after September 30, 1990".

(2) SPECIAL RULE.—In the case of any taxable year beginning in 1990, only amounts paid before October 1, 1990, by the employer for coverage for the employee, his spouse, or his dependents under a qualified group legal services plan for periods before October 1, 1990, shall be taken into account in determining the amount excluded under section 120 of the Internal Revenue Code of 1986 with respect to such employee for such taxable year.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after December 31, 1988.

SEC. 7103. EXTENSION AND MODIFICATION OF TARGETED JOBS CREDIT.

(a) EXTENSION.—Paragraph (4) of section 51(c) (relating to termination) is amended by striking "December 31, 1989" and inserting "September 30, 1990".

(b) EXTENSION OF AUTHORIZATION.—Paragraph (2) of section 261(f) of the Economic Recovery Tax Act of 1981 is amended by striking "and 1989" and inserting "1989, and 1990".

(c) MODIFICATION OF REQUEST FOR CERTIFICATION.—

(1) IN GENERAL.—Paragraph (16) of section 51(d) is amended by adding at the end thereof the following new subparagraph:

"(C) EMPLOYER REQUEST MUST SPECIFY POTENTIAL BASIS FOR ELIGIBILITY.—In any request for a certification of an individual as a member of a targeted group, the employer shall—

"(i) specify each subparagraph (but not more than 2) of paragraph (1) by reason of which the employer believes that such individual is such a member, and

"(ii) certify that a good faith effort was made to determine that such individual is such a member."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to individuals who begin work for the employer after December 31, 1989.

SEC. 7104. EXTENSION OF QUALIFIED MORTGAGE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 143(a)(1) (defining qualified mortgage bond) is amended by striking "December 31, 1989" each place it appears and inserting "September 30, 1990".

(b) MORTGAGE CREDIT CERTIFICATES.—Subsection (h) of section 25 is amended by striking "for any calendar year after 1989" and inserting "for any period after September 30, 1990".

SEC. 7105. EXTENSION OF QUALIFIED SMALL ISSUE BONDS.

Subparagraph (B) of section 144(a)(12) is amended by striking "substituting '1989' for '1986'" and inserting "substituting 'September 30, 1990' for 'December 31, 1986'".

SEC. 7106. EXTENSION OF ENERGY INVESTMENT CREDIT FOR SOLAR, GEOTHERMAL, AND OCEAN THERMAL PROPERTY.

The table contained in section 46(b)(2)(A) (relating to energy percentage) is amended by striking "Dec. 31, 1989" in clauses (viii), (ix), and (x) and inserting "Sept. 30, 1990".

SEC. 7107. EXTENSION OF SPECIAL RULES FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) EXTENSION.—

(1) GENERAL RULE.—Paragraph (5) of section 162(1) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "December 31, 1989" and inserting "September 30, 1990".

(2) SPECIAL RULE.—In the case of any taxable year beginning in 1990—

(A) only amounts paid before October 1, 1990, by the individual for insurance coverage for periods before October 1, 1990, shall be taken into account in determining the amount deductible under section 162(l) of the Internal Revenue Code of 1986 with respect to such individual for such taxable year, and

(B) for purposes of section 162(l)(2)(A) of such Code, the amount of the earned income described in such paragraph taken into account for such taxable year shall be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before October 1,1990, bears to the number of months in such taxable year.

(b) SPECIAL RULE FOR CERTAIN S CORPORATION SHAREHOLDERS.—Subsection (1) of section 162 (as amended by subsection (a)) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) TREATMENT OF CERTAIN S CORPORATION SHAREHOLDERS.—This subsection shall apply in the case of any individual treated as a partner under section 1372(a), except that—

"(A) for purposes of this subsection, such individual's wages (as defined in section 3121) from the S corporation shall be treated as such individual's earned income (within the meaning of section 401(c)(1)), and

"(B) there shall be such adjustments in the application of this subsection as the Secretary may by regulations prescribe."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

SEC. 7108. EXTENSION AND MODIFICATION OF LOW-INCOME HOUSING CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Subsection (n) of section 42 (relating to low-income housing credit) is amended to read as follows—

"(n) TERMINATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), for any calendar year after 1990—

"(A) clause (i) of subsection (h)(3)(C) shall not apply, and

"(B) subsection (h)(4) shall not apply to any building placed in service after 1990.

"(2) EXCEPTION FOR BOND-FINANCED BUILDINGS IN PROGRESS.—For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1990 if—

"(A) the bonds with respect to such building are issued before 1990,

"(B) such building is constructed, reconstructed, or rehabilitated by the taxpayer,

"(C) more than 10 percent of the reasonably anticipated cost of such construction, reconstruction, or rehabilitation has been incurred as of January 1, 1990, and some of such cost is incurred on or after such date, and

"(D) such building is placed in service before January 1, 1992."

(2) SPECIAL RULE.—In the case of calendar year 1990, section 42(h)(3)(C)(i) of the Internal Revenue Code of 1986 (as amended by subsection (b)(1)) shall be applied by substituting "$.9375" for "$1.25".

(b) 1-YEAR CARRYOVER OF UNUSED CREDIT AUTHORITY, ETC.—

(1) IN GENERAL.—Section 42(h)(3) (relating to housing credit dollar amount for agencies) is amended by redesignating subparagraphs (D), (E), and (F) as subparagraphs (E), (F), and (G), respectively, and by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) STATE HOUSING CREDIT CEILING.—The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

"(i) $1.25 multiplied by the State population,

"(ii) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

"(iii) the amount of State housing credit ceiling returned in the calendar year, plus

"(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (ii), the unused State housing credit ceiling for any calendar year is the excess (if any) of the amount described in clause (i) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

"(D) UNUSED HOUSING CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN STATES.—

"(i) IN GENERAL.—The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

"(ii) UNUSED HOUSING CREDIT CARRYOVER.—For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of the unused State housing credit ceiling for such year (as defined in subparagraph (C)(ii)) over the excess (if any) of—

"(I) the aggregate housing credit dollar amount allocated for such year, over

"(II) the amount described in clause (i) of subparagraph (C).

"(iii) FORMULA FOR ALLOCATION OF UNUSED HOUSING CREDIT CARRYOVERS AMONG QUALIFIED STATES.—The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

"(iv) QUALIFIED STATE.—For purposes of this subparagraph, the term 'qualified State' means, with respect to a calendar year, any State—

"(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

"(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii)."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (E) of section 42(h)(5) is amended by striking "subparagraph (E)" and inserting "subparagraph (F)".

(B) Paragraph (6) of section 42(h) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(c) BUILDINGS ELIGIBLE FOR CREDIT ONLY IF MINIMUM LONG-TERM COMMITMENT TO LOW-INCOME HOUSING.—

(1) IN GENERAL.—Section 42(h) (relating to limitation on aggregate credit allowable with respect to projects located in a State) is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) BUILDINGS ELIGIBLE FOR CREDIT ONLY IF MINIMUM LONG-TERM COMMITMENT TO LOW-INCOME HOUSING.—

"(A) IN GENERAL.—No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

"(B) EXTENDED LOW-INCOME HOUSING COMMITMENT.—For purposes of this paragraph, the term 'extended low-income housing commitment' means any agreement between the taxpayer and the housing credit agency—

"(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement,

"(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement of clause (i),

"(iii) which is binding on all successors of the taxpayer, and

"(iv) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

"(C) ALLOCATION OF CREDIT MAY NOT EXCEED AMOUNT NECESSARY TO SUPPORT COMMITMENT.—

"(i) IN GENERAL.—The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

"(ii) BUILDINGS FINANCED BY TAX-EXEMPT BONDS.—If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

"(D) EXTENDED USE PERIOD.—For purposes of this paragraph, the term 'extended use period' means the period—

"(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

"(ii) ending on the later of—

"(I) the date specified by such agency in such agreement, or

"(II) the date which is 15 years after the close of the compliance period.

"(E) EXCEPTIONS IF FORECLOSURE OR IF NO BUYER WILLING TO MAINTAIN LOW-INCOME STATUS.—

"(i) IN GENERAL.—The extended use period for any building shall terminate—

"(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure), or

"(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

"(ii) EVICTION, ETC. OF EXISTING LOW-INCOME TENANTS NOT PERMITTED.—The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

"(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

"(II) any increase in the gross rent with respect to such unit.

"(F) QUALIFIED CONTRACT.—For purposes of subparagraph (E), the term 'qualified contract' means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of—

"(i) the sum of—

"(I) the outstanding indebtedness secured by, or with respect to, the building,

"(II) the adjusted investor equity in the building, plus

"(III) other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

"(ii) cash distributions from (or available for distribution from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including regulations to prevent the manipulation of the amount determined under the preceding sentence.

"(G) ADJUSTED INVESTOR EQUITY.—

"(i) IN GENERAL.—For purposes of subparagraph (E), the term 'adjusted investor equity' means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to—

"(I) such amount, multiplied by

"(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for 'calendar year 1987'.

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

"(ii) COST-OF-LIVING INCREASES IN EXCESS OF 5 PERCENT NOT TAKEN INTO ACCOUNT.—Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i).

"(iii) BASE CALENDAR YEAR.—For purposes of this subparagraph, the term 'base calendar year' means the calendar year with or within which the 1st taxable year of the credit period ends.

"(H) LOW-INCOME PORTION.—For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

"(I) PERIOD FOR FINDING BUYER.—The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

"(J) SALES OF LESS THAN LOW-INCOME PORTION OF BUILDING.—In the case of a sale or exchange of only a portion of the low-income portion of the building, only the same portion (as the portion sold or exchanged) of the amount determined under subparagraph (F) shall be taken into account thereunder.

"(K) EFFECT OF NONCOMPLIANCE.—If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

"(L) PROJECTS WHICH CONSIST OF MORE THAN 1 BUILDING.—The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary."

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 42(b)(3) is amended by striking "subsection (h)(6))" and inserting "subsection "(h)(7)".

(d) CREDIT FOR ACQUISITION OF EXISTING BUILDING TO APPLY ONLY IF BUILDING TO BE REHABILITATED; INCREASE IN REQUIRED REHABILITATION EXPENDITURES.—

(1) IN GENERAL.—Subparagraph (B) of section 42(d)(2) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end thereof the following new clause:

"(iv) except as provided in subsection (f)(5), a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building."

(2) CREDIT PERIOD FOR EXISTING BUILDINGS NOT TO BEGIN BEFORE REHABILITATION CREDIT ALLOWED.—Subsection (f) of section 42 (relating to definition and special rules relating to credit period), as amended by subtitle H, is amended by adding at the end thereof the following new paragraph:

"(5) CREDIT PERIOD FOR EXISTING BUILDINGS NOT TO BEGIN BEFORE REHABILITATION CREDIT ALLOWED.—

"(A) IN GENERAL.—The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

"(B) ACQUISITION CREDIT ALLOWED FOR CERTAIN BUILDINGS NOT ALLOWED A REHABILITATION CREDIT.—

"(i) IN GENERAL.—In the case of a building described in clause (ii)—

"(I) subsection (d)(2)(B)(iv) shall not apply, and

"(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II).

"(ii) BUILDING DESCRIBED.—A building is described in this clause if—

"(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

"(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if subsection (e)(3)(A)(ii)(II) were applied by substituting '$2,000' for '$3,000'."

(3) INCREASE IN REQUIRED REHABILITATION EXPENDITURES.—Paragraph (3) of section 42(e) is amended by redesignating subparagraph (B) as subparagraph (C) and by striking so much of such paragraph as precedes such subparagraph and inserting the following:

"(3) MINIMUM EXPENDITURES TO QUALIFY.—

"(A) IN GENERAL.—Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

"(i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

"(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

"(I) The requirement of this subclause is met if such amount is not less than 10 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

"(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is $3,000 or more.

"(B) EXCEPTION FROM 10 PERCENT REHABILITATION.—In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii)."

(e) CHANGES IN RULES RELATING TO RENT RESTRICTIONS.—

(1) RENT RESTRICTION DETERMINED ON BASIS OF NUMBER OF BEDROOMS.—

(A) Section 42(g)(2) is amended by redesignating subparagraph (C) as subparagraph (E) and by inserting after subparagraph (B) the following new subparagraphs:

"(C) IMPUTED INCOME LIMITATION APPLICABLE TO UNIT.—For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

"(i) In the case of a unit which does not have a separate bedroom, 1 individual.

"(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the

imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

"(D) TREATMENT OF UNITS OCCUPIED BY INDIVIDUALS WHOSE INCOMES RISE ABOVE LIMIT.—

"(i) IN GENERAL.—Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation.

"(ii) NEXT AVAILABLE UNIT MUST BE RENTED TO LOW-INCOME TENANT IF INCOME RISES ABOVE 140 PERCENT OF INCOME LIMIT.—If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation."

(B) Subparagraph (A) of section 42(g)(2) is amended by striking "the income limitation under paragraph (1) applicable to individuals occupying such unit" and inserting "the imputed income limitation applicable to such unit".

(2) REDUCTION IN AREA MEDIAN GROSS INCOME NOT TO REQUIRE REDUCTION OF RENT.—Subparagraph (A) of section 42(g)(2) (relating to rent-restricted units) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project."

(3) EXCLUSION WITH RESPECT TO CONTINUING CARE FACILITIES NOT TO APPLY IN DETERMINING INCOME.—Subparagraph (B) of section 142(d)(2) is amended by adding at the end thereof the following:

"Section 7872(g) shall not apply in determining the income of individuals under this subparagraph."

(f) ADDITIONAL BUILDINGS ELIGIBLE FOR WAIVER OF 10-YEAR PERIOD APPLICABLE TO ACQUISITIONS OF EXISTING BUILDINGS.—Paragraph (6) of section 42(d) is amended by redesignating subparagraph (C) as subparagraph (E) and by inserting after subparagraph (B) the following new subparagraphs:

"(C) LOW-INCOME BUILDINGS WHERE MORTGAGE MAY BE PREPAID.—A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to a federally-assisted building described in clause (ii) or (iii) of subparagraph (B) if—

"(i) the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of the application for such a waiver,

"(ii) the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and

"(iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

"(D) BUILDINGS ACQUIRED FROM INSURED DEPOSITORY INSTITUTIONS IN DEFAULT.—A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution."

(g) INCREASE IN CREDIT FOR BUILDINGS IN HIGH COST AREAS.—Paragraph (5) of section 42(d) (relating to eligible basis) is amended by adding at the end thereof the following new subparagraph:

"(D) INCREASE IN CREDIT FOR BUILDINGS IN HIGH COST AREAS.—

"(i) IN GENERAL.—In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph—

"(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and

"(II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.

"(ii) QUALIFIED CENSUS TRACT.—

"(I) IN GENERAL.—The term 'qualified census tract' means any census tract in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income.

"(II) LIMIT ON MSA's DESIGNATED.—The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

"(III) DETERMINATION OF AREAS.—For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

"(iii) DIFFICULT DEVELOPMENT AREAS.—

"(I) IN GENERAL.—The term 'difficult development areas' means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

"(II) LIMIT ON AREAS DESIGNATED.—The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

"(iv) SPECIAL RULES AND DEFINITIONS.—For purposes of this subparagraph—

"(I) population shall be determined on the basis of the most recent decennial census for which data are available,

"(II) area median gross income shall be determined in accordance with subsection (g)(4),

"(III) the term 'metropolitan statistical area' has the same meaning as when used in section 143(k)(2)(B), and

"(IV) the term 'nonmetropolitan area' means any county (or portion thereof) which is not within a metropolitan statistical area."

(h) CHANGES IN RULES RELATING TO BUILDINGS FOR WHICH CREDIT MAY BE ALLOWED.—

(1) SINGLE-ROOM OCCUPANCY UNITS RENTED ON A MONTHLY BASIS.—Subparagraph (B) of section 42(i)(3) (relating to low income unit) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis."

(2) SPECIAL NEEDS HOUSING.—Subparagraph (B) of section 42(g)(2) (relating to gross rent) is amended—

(A) in clause (i), by striking "and" at the end,

(B) in clause (ii), by striking the period at the end and inserting ", and", and

(C) by adding at the end the following:

"(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services.

For purposes of clause (iii), the term 'supportive service' means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing."

(3) SCATTERED SITE PROJECTS.—Section 42(g) (relating to qualified low-income housing project) is amended by adding at the end thereof the following new paragraph:

"(7) SCATTERED SITE PROJECTS.—Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units."

(4) OWNER-OCCUPIED BUILDINGS HAVING 4 OR FEWER UNITS ELIGIBLE FOR CREDIT WHERE DEVELOPMENT PLAN.—Section 42(i)(3) (defining low-income unit), as amended by subtitle H, is amended by adding at the end thereof the following new subparagraph:

"(E) OWNER-OCCUPIED BUILDINGS HAVING 4 OR FEWER UNITS ELIGIBLE FOR CREDIT WHERE DEVELOPMENT PLAN.—

"(i) IN GENERAL.—Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

"(ii) LIMITATION ON CREDIT.—In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

"(iii) CERTAIN UNRENTED UNITS TREATED AS OWNER-OCCUPIED.—In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented."

(5) BUILDINGS RECEIVING SECTION 8 MODERATE REHABILITATION ASSISTANCE OR SIMILAR ASSISTANCE NOT ELIGIBLE FOR CREDIT.—Section 42(b)(1) (relating to applicable percentage for buildings placed in service during 1987) is amended by adding at the end thereof the following new flush sentence:

"A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937."

(i) APPLICATION OF CREDIT TO TRANSITIONAL HOUSING FOR THE HOMELESS; DENIAL OF CREDIT FOR SUBSTANDARD HOUSING.—

(1) IN GENERAL.—Subparagraph (B) of section 42(i)(3) (defining low-income unit) is amended to read as follows:

"(B) EXCEPTIONS.—

"(i) IN GENERAL.—A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

"(ii) SUITABILITY FOR OCCUPANCY.—For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

"(iii) TRANSITIONAL HOUSING FOR HOMELESS.—For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—

"(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

"(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

"(iv) SINGLE-ROOM OCCUPANCY UNITS.—For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis."

(2) QUALIFIED BASIS TO INCLUDE PORTION OF BUILDING USED TO PROVIDE SUPPORTIVE SERVICES.—Paragraph (1) of section 42(c) is amended by adding at the end thereof the following new subparagraph:

"(E) QUALIFIED BASIS TO INCLUDE PORTION OF BUILDING USED TO PROVIDE SUPPORTIVE SERVICES FOR HOMELESS.—In the case of a qualified low-income building described in subsection (i)(3)(B)(iii), the qualified basis of such building for any taxable year shall be increased by the lesser of—

"(i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or

"(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph)."

(j) VOLUME CAP NOT TO APPLY WHERE 50 PERCENT OR MORE OF BUILDING IS FINANCED WITH TAX-EXEMPT BONDS.—Subparagraph (B) of section 42(h)(4) is amended by striking "70 percent" each place it appears and inserting "50 percent".

(k) BUILDING NOT TREATED AS FEDERALLY SUBSIDIZED BY REASON OF COMMUNITY DEVELOPMENT BLOCK GRANT.—Subparagraph (D) of section 42(i)(2) (defining below market Federal loan) is amended by adding at the end thereof the following new sentence: "Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence)."

(l) ELIGIBLE BASIS FOR NEW BUILDINGS TO INCLUDE EXPENDITURES BEFORE CLOSE OF 1ST YEAR OF CREDIT PERIOD.—

(1) NEW BUILDINGS.—Paragraph (1) of section 42(d) (relating to eligible basis for new buildings) is amended by inserting before the period "as of the close of the 1st taxable year of the credit period".

(2) EXISTING BUILDINGS.—Subparagraph (A) of section 42(d)(2) (relating to eligible basis for existing buildings) is amended by striking "subparagraph (B)" and all that follows through the end of clause (i) and inserting "subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and".

(3) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 42(d)(2) is amended by striking "ACQUISITION COST" in the heading and inserting "ADJUSTED BASIS" and by striking "cost" in the text and inserting "adjusted basis".

(B) Paragraph (5) of section 42(d), as amended by subsection (g), is further amended by striking subparagraph (A), by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively, and by striking the paragraph heading and inserting the following:

"(5) SPECIAL RULES FOR DETERMINING ELIGIBLE BASIS.—".

(C) Paragraph (5) of section 42(e) is amended by striking "subsection (d)(2)(A)(i)(II)" and inserting "subsection (d)(2)(A)(i)".

(m) HOUSING CREDIT MAY BE ALLOCATED ON PROJECT BASIS.—

(1) IN GENERAL.—Section 42(h)(1) (relating to credit may not exceed credit amount allocated to building) is amended by adding at the end thereof the following new subparagraph:

"(F) ALLOCATION OF CREDIT ON A PROJECT BASIS.—

"(i) IN GENERAL.—In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

"(I) the allocation is made to the project for a calendar year during the project period,

"(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

"(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

"(ii) PROJECT PERIOD.—For purposes of clause (i), the term 'project period' means the period—

"(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

"(II) ending with the calendar year the last building is placed in service as part of such project."

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 42(h)(1) is amended by striking "or (E)" and inserting "(E), or (F)".

(3) PROJECTS WITH MORE THAN 1 BUILDING MUST BE IDENTIFIED.—Section 42(g)(3) (relating to date for meeting requirements) is amended by adding at the end thereof the following new subparagraph:

"(D) PROJECTS WITH MORE THAN 1 BUILDING MUST BE IDENTIFIED.—For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide."

(n) CHANGES IN RULES RELATED TO DEEP RENT SKEWED PROJECTS.—

(1) Clause (iii) of section 142(d)(4)(B) (relating to deep rent skewed project) is amended by striking "1/3" and inserting "1/2".

(2) Section 42(g)(4) (relating to certain rules made applicable) is amended by striking "(other than section 142(d)(4)(B)(iii))".

(o) INCREASED RESPONSIBILITIES FOR HOUSING CREDIT AGENCIES.—Section 42 is amended by redesignating subsections (m) and (n) as subsections (n) and (o), respectively, and by inserting after subsection (l) the following new subsection:

"(m) RESPONSIBILITIES OF HOUSING CREDIT AGENCIES.—

"(1) PLANS FOR ALLOCATION OF CREDIT AMONG PROJECTS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless—

"(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part, and

"(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project.

"(B) QUALIFIED ALLOCATION PLAN.—For purposes of this paragraph, the term 'qualified allocation plan' means any plan—

"(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

"(ii) which gives the highest priority to those projects as to which the highest percentage of the housing credit dollar amount is to be used for project costs other than the cost of intermediaries unless granting such priority would impede the development of projects in hard-to-develop areas,

"(iii) which also gives preference in allocating housing credit dollar amounts among selected projects to—

"(I) projects serving the lowest income tenants, and

"(II) projects obligated to serve qualified tenants for the longest periods, and

"(iv) which provides a procedure that the agency will follow in notifying the Internal Revenue Service of noncompliance with the provisions of this section which such agency becomes aware of.

"(C) CERTAIN SELECTION CRITERIA MUST BE USED.—The selection criteria set forth in a qualified allocation plan must include—

"(i) project location,

"(ii) housing needs characteristics,

"(iii) project characteristics,

"(iv) sponsor characteristics,

"(v) participation of local tax-exempt organizations,

"(vi) tenant populations with special housing needs, and

"(vii) public housing waiting lists.

"(D) APPLICATION TO BOND FINANCED PROJECTS.—Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

"(2) CREDIT ALLOCATED TO BUILDING NOT TO EXCEED AMOUNT NECESSARY TO ASSURE PROJECT FEASIBILITY.—

"(A) IN GENERAL.—The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

"(B) AGENCY EVALUATION.—In making the determination under subparagraph (A), the housing credit agency shall consider—

"(i) the sources and uses of funds and the total financing planned for the project, and

"(ii) any proceeds or receipts expected to be generated by reason of tax benefits.

Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

"(C) DETERMINATION MADE WHEN CREDIT AMOUNT APPLIED FOR AND WHEN BUILDING PLACED IN SERVICE.—

"(i) IN GENERAL.—A determination under subparagraph (A) shall be made as of each of the following times:

"(I) The application for the housing credit dollar amount.

"(II) The allocation of the housing credit dollar amount.

"(III) The date the building is placed in service.

"(ii) CERTIFICATION AS TO AMOUNT OF OTHER SUBSIDIES.—Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

"(D) APPLICATION TO BOND FINANCED PROJECTS.—Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B)."

(o) APPLICATION OF AT-RISK RULES WITH RESPECT TO CERTAIN FINANCING PROVIDED BY QUALIFIED NONPROFIT ORGANIZATIONS.—Subparagraph (D) of section 42(k)(2) (relating to application of at-risk rules) is amended by adding at the end thereof the following new flush sentence:

"In the case of a qualified nonprofit organization which is not described in section 46(c)(8)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto."

(p) TIME FOR CERTIFICATION.—Section 42(l)(1) (relating to certification with respect to 1st year of credit period) is amended—

(1) by striking "Not later than the 90th day following" and inserting "Following", and

(2) by inserting "at such time and" before "in such form".

(q) IMPACT OF TENANT'S RIGHT OF 1ST REFUSAL TO ACQUIRE PROPERTY.—Subsection (i) of section 42 is amended by adding at the end thereof the following new paragraph:

"(8) IMPACT OF TENANT'S RIGHT OF 1ST REFUSAL TO ACQUIRE PROPERTY.—

"(A) IN GENERAL.—No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants of such building to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

"(B) MINIMUM PURCHASE PRICE.—For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of—

"(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

"(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii)."

(r) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989.

(2) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS.—Except as otherwise provided in this subsection, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, the amendments made by this section shall apply to buildings placed in service after December 31, 1989.

(3) 1-YEAR CARRYOVER OF UNUSED CREDIT AUTHORITY, ETC.—The amendments made by subsection (b) shall apply to calendar years after 1989, but clauses (ii), (iii), and (iv) of section 42(h)(3)(C) of such Code (as added by this section) shall be applied without regard to allocations for 1989 or any preceding year.

(4) ADDITIONAL BUILDINGS ELIGIBLE FOR WAIVER OF 10-YEAR RULE.—The amendments made by subsection (f) shall take effect on the date of the enactment of this Act.

(5) CERTIFICATIONS WITH RESPECT TO 1ST YEAR OF CREDIT PERIOD.—The amendment made by subsection (p) shall apply to taxable years ending on or after December 31, 1989.

(6) CERTAIN RULES WHICH APPLY TO BONDS.—Paragraphs (1)(D) and (2)(D) of section 42(m) of such Code, as added by this section, shall apply to obligations issued December 31, 1989.

(7) CLARIFICATIONS.—The amendments made by the following provisions of this section shall apply as if included in the amendments made by section 252 of the Tax Reform Act of 1986:

(A) Paragraph (1) of subsection (h) (relating to units rented on a monthly basis).

(B) Subsection (l) (relating to eligible basis for new buildings to include expenditures before close of 1st year of credit period).

(8) GUIDANCE ON DIFFICULT DEVELOPMENT AREAS AND POSTING OF BOND TO AVOID RECAPTURE.—Not later than 180 days after the date of the enactment of this Act—

(A) the Secretary of Housing and Urban Development shall publish initial guidance on the designation of difficult development areas under section 42(d)(5)(C) of such Code, as added by this section, and

(B) the Secretary of the Treasury shall publish initial guidance under section 42(j)(6) of such Code (relating to no recapture on disposition of building (or interest therein) where bond posted).

SEC. 7109. LOW-INCOME HOUSING CREDIT EXEMPT FROM INCOME PHASEOUT OF $25,000 EXEMPTION FROM PASSIVE LOSS RULES.

(a) IN GENERAL.—Paragraph (3) of section 469(i) (relating to phase-out of exemption) is amended by redesignating subparagraph (D) as subparagraph (E) and by striking subparagraphs (B) and (C) and inserting the following new subparagraphs:

"(B) SPECIAL PHASE-OUT OF REHABILITATION CREDIT.—In the case of any portion of the passive activity credit for any taxable year which is attributable to the rehabilitation investment credit (within the meaning of section 48(o)), subparagraph (A) shall be applied by substituting '$200,000' for '$100,000'.

"(C) EXCEPTION FOR LOW-INCOME HOUSING CREDIT.—Subparagraph (A) shall not apply to any portion of the passive activity credit for any taxable year which is attributable to any credit determined under section 42.

"(D) ORDERING RULES TO REFLECT EXCEPTION AND SEPARATE PHASE-OUT.—If subparagraph (B) or (C) applies for any taxable year, paragraph (1) shall be applied—

"(i) first to the passive activity loss,

"(ii) second to the portion of the passive activity credit to which subparagraph (B) or (C) does not apply,

"(iii) third to the portion of such credit to which subparagraph (B) applies, and

"(iv) then to the portion of such credit to which subparagraph (C) applies."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1989, in taxable years ending after such date.

(2) SPECIAL RULE WHERE INTEREST HELD IN PASS-THRU ENTITY.—In the case of a taxpayer who holds an indirect interest in property described in paragraph (1), the amendments made by this section shall apply only if such interest is acquired after December 31, 1989.

SEC. 7110. EXTENSION AND MODIFICATION OF RESEARCH CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Subsection (h) of section 41 (relating to termination), as redesignated by subtitle H, is amended—

(A) by striking "December 31, 1989" each place it appears and inserting "December 31, 1990", and

(B) by striking "January 1, 1990" each place it appears and inserting "January 1, 1991".

(2) SPECIAL RULES.—

(A) In the case of any taxable year which begins before October 1, 1990, and ends after September 30, 1990, the amount treated as the qualified research expenses for such taxable year for purposes of section 41 of the Internal Revenue Code of 1986 shall be the amount which bears the same ratio to the amount which would have been determined for such taxable year without regard to this subparagraph as the number of days in such taxable year before October 1, 1990, bears to the total number of days in such taxable year before January 1, 1991.

(B) In the case of a taxable year described in subparagraph (A), paragraph (2) of section 41(h) of such Code, as so redesignated, shall be applied by substituting "October 1, 1990" for "January 1, 1991" each place it appears and by substituting "September 30, 1990" for "December 31, 1990".

(3) CONFORMING AMENDMENT.—Subparagraph (D) of section 28(b)(1) is amended by striking "December 31, 1989" and inserting "December 31, 1990".

(b) CHANGES IN COMPUTATION OF INCREMENTAL CREDIT.—

(1) IN GENERAL.—Subsection (c) of section 41 is amended to read as follows:

"(c) BASE AMOUNT.—

"(1) IN GENERAL.—The term 'base amount' means the product of—

"(A) the fixed-base percentage, and

"(B) the average annual gross receipts of the taxpayer for the 4 taxable years preceding the taxable year for which the credit is being determined (hereinafter in this subsection referred to as the 'credit year').

"(2) MINIMUM BASE AMOUNT.—In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

"(3) FIXED-BASE PERCENTAGE.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

"(B) START-UP COMPANIES.—

"(i) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The fixed-base percentage shall be determined under this subparagraph if there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

"(ii) FIXED-BASE PERCENTAGE.—In a case to which this subparagraph applies, the fixed-base percentage is 3 percent.

"(iii) TREATMENT OF DE MINIMIS AMOUNTS OF GROSS RECEIPTS AND QUALIFIED RESEARCH EXPENSES.—The Secretary may prescribe regulations providing that de minimis amounts of gross receipts and qualified research expenses shall be disregarded under clause (i).

"(C) MAXIMUM FIXED-BASE PERCENTAGE.—In no event shall the fixed-base percentage exceed 16 percent.

"(D) ROUNDING.—The percentages determined under subparagraph (A) shall be rounded to the nearest 1/100th of 1 percent.

"(4) CONSISTENT TREATMENT OF EXPENSES REQUIRED.—

"(A) IN GENERAL.—Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

"(B) PREVENTION OF DISTORTIONS.—The Secretary may prescribe regulations to prevent distortions in calculating a taxpayer's qualified research expenses or gross receipts caused by a change in accounting methods used by such taxpayer between the current year and a year taken into account in computing such taxpayer's fixed-base percentage.

"(5) GROSS RECEIPTS.—For purposes of this subsection, gross receipts for any taxable year shall be reduced by returns and allowances made during the taxable year. In the case of a foreign corporation, there shall be taken into account only gross receipts which are effectively connected with the conduct of a trade or business within the United States."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 41(a)(1) is amended to read as follows:

"(B) the base amount, and".

(B) Clause (ii) of section 41(e)(7)(C) is amended by striking "base period research expenses" and inserting "base amount".

(C) Paragraph (1) of section 41(f) (relating to aggregation of expenditures) is amended by striking "proportionate share of the increase in qualified research expenses" each place it appears and inserting "proportionate shares of the qualified research expenses and basic research payments".

(D) Subparagraph (A) of section 41(f)(3) is amended—

(i) by striking "June 30, 1980" and inserting "December 31, 1983", and

(ii) by inserting before the period ", and the gross receipts of the taxpayer for such periods shall be increased by so much of the gross receipts of such predecessor with respect to the acquired trade or business as is attributable to such portion".

(E) Subparagraph (B) of section 41(f)(3) is amended—

(i) by striking "June 30, 1980" and inserting "December 31, 1983", and

(ii) by inserting before the period ", and the gross receipts of the taxpayer for such periods shall be decreased by so much of the gross receipts as is attributable to such portion".

(F)(i) Subparagraph (C) of section 41(f)(3) is amended by striking "for the base period" and all that follows and inserting "for the taxable years taken into account in computing the fixed-base percentage shall be increased by the lesser of—

"(i) the amount of the decrease under subparagraph (B) which is allocable to taxable years so taken into account, or

"(ii) the product of the number of taxable years so taken into account, multiplied by the amount of the reimbursement described in this subparagraph."

(ii) The heading for such subparagraph (C) is amended to read as follows:

"(C) CERTAIN REIMBURSEMENTS TAKEN INTO ACCOUNT IN DETERMINING FIXED-BASE PERCENTAGE.—".

(G) Paragraph (4) of section 41(f) is amended by inserting "and gross receipts" after "qualified research expenses".

(H) Paragraph (2) of section 41(h), as redesignated by subtitle H, is amended—

(i) by striking "BASE PERIOD EXPENSES" in the heading and inserting "BASE AMOUNT", and

(ii) by striking "any amount for any base period" and all that follows through "such base period" and inserting "the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph)".

(b) TRADE OR BUSINESS REQUIREMENT DISREGARDED FOR IN-HOUSE RESEARCH EXPENSES OF CERTAIN STARTUP VENTURES.—Subsection (b) of section 41 (defining qualified research expenses) is amended by adding at the end thereof the following new paragraph:

"(4) TRADE OR BUSINESS REQUIREMENT DISREGARDED FOR IN-HOUSE RESEARCH EXPENSES OF CERTAIN STARTUP VENTURES.—In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of paragraph (1) if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business—

"(A) of the taxpayer, or

"(B) of 1 or more other persons who with the taxpayer are treated as a single taxpayer under subsection (f)(1)."

(c) FULL DISALLOWANCE OF DEDUCTION FOR QUALIFIED RESEARCH EXPENSES.—

(1) Subsection (c) of section 280C, as amended by subtitle H, is further amended by striking "50 percent of" each place it appears.

(2) Paragraph (2) of section 196(d) is amended by inserting before the period "for a taxable year beginning before January 1, 1990".

(d) ONLY REASONABLE RESEARCH EXPENDITURES ELIGIBLE FOR SECTION 174.—Section 174 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) ONLY REASONABLE RESEARCH EXPENDITURES ELIGIBLE.—This section shall apply to a research or experimental expenditure only to the extent that the amount thereof is reasonable under the circumstances."

(e) EFFECTIVE DATE.—The amendments made by this section (other than subsection (a)) shall apply to taxable years beginning after December 31, 1989.

SEC. 7111. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

Section 864 (relating to definitions and special rule) is amended by adding at the end thereof the following new subsection:

"(f) ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.—

"(1) IN GENERAL.—For purposes of sections 861(b), 862(b), and 863(b), qualified research and experimental expenditures shall be allocated and apportioned as follows:

"(A) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

"(B) In the case of any qualified research and experimental expenditures (not allocated under subparagraph (A)) to the extent—

"(i) that such expenditures are attributable to activities conducted in the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

"(ii) that such expenditures are attributable to activities conducted outside the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

"(C) The remaining portion of qualified research and experimental expenditures (not allocated under subparagraphs (A) and (B)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall at least be 30 percent of the amount which would be so apportioned on the basis of gross sales.

"(2) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section, the term 'qualified research and experimental expenditures' means amounts which are research and experimental expenditures within the meaning of section 174. For purposes of this paragraph, rules similar to the rules of subsection (c) of section 174 shall apply. Any qualified research and experimental expenditures treated as deferred expenses under subsection (b) of section 174 shall be taken into account under this sub-

section for the taxable year for which such expenditures are allowed as a deduction under such subsection.

"(3) SPECIAL RULES FOR EXPENDITURES ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN SPACE, ETC.—

"(A) IN GENERAL.—Any qualified research and experimental expenditures described in subparagraph (B)—

"(i) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

"(ii) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

"(B) DESCRIPTION OF EXPENDITURES.—For purposes of subparagraph (A), qualified research and experimental expenditures are described in this subparagraph if such expenditures are attributable to activities conducted—

"(i) in space,

"(ii) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

"(iii) in Antarctica.

"(4) AFFILIATED GROUP.—

"(A) Except as provided in subparagraph (B), the allocation and apportionment required by paragraph (1) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5)) were a single corporation.

"(B) For purposes of the allocation and apportionment required by paragraph (1)—

"(i) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E)), and

"(ii) dividends from an electing corporation,

shall not be taken into account, except that this subparagraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) is not in effect.

"(C) The qualified research and experimental expenditures taken into account for purposes of paragraph (1) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I)).

"(D) The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by subparagraph (C).

"(E) Paragraph (6) of subsection (e) shall not apply to qualified research and experimental expenditures.

"(5) YEAR TO WHICH RULE APPLIES.—

"(A) IN GENERAL.—Except as provided in this paragraph, this subsection shall apply to the taxpayer's first taxable year beginning after August 1, 1989, and before August 2, 1990.

"(B) REDUCTION.—Notwithstanding subparagraph (A), this subsection shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in subparagraph (A) which bears the same ratio to the total amount of such expenditures as—

"(i) the lesser of 9 months or the number of months in the taxable year, bears to

"(ii) the number of months in the taxable year."

### Subtitle B—Corporate Provisions

SEC. 7201. LIMITATION ON USE OF GROUP LOSSES TO OFFSET INCOME OF SUBSIDIARY PAYING PREFERRED DIVIDENDS.

(a) GENERAL RULE.—Section 1503 (relating to computation and payment of tax) is amended by adding at the end thereof the following new subsection:

"(f) LIMITATION ON USE OF GROUP LOSSES TO OFFSET INCOME OF SUBSIDIARY PAYING PREFERRED DIVIDENDS.—

"(1) IN GENERAL.—In the case of any subsidiary distributing during any taxable year dividends on any applicable preferred stock—

"(A) no group loss item shall be allowed to reduce the disqualified separately computed income of such subsidiary for such taxable year, and

"(B) no group credit item shall be allowed against the tax imposed by this chapter on such disqualified separately computed income.

"(2) GROUP ITEMS.—For purposes of this subsection—

"(A) GROUP LOSS ITEM.—The term 'group loss item' means any of the following items of any other member of the affiliated group which includes the subsidiary:

"(i) Any net operating loss and any net operating loss carryover or carryback under section 172.

"(ii) Any loss from the sale or exchange of any capital asset and any capital loss carryover or carryback under section 1212.

"(B) GROUP CREDIT ITEM.—The term 'group credit item' means any credit allowable under part IV of subchapter A of chapter 1 (other than section 34) to any other member of the affiliated group which includes the subsidiary and any carryover or carryback of any such credit.

"(3) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) DISQUALIFIED SEPARATELY COMPUTED INCOME.—The term 'disqualified separately computed income' means the portion of the separately computed taxable income of the subsidiary which does not exceed the dividends distributed by the subsidiary during the taxable year on applicable preferred stock.

"(B) SEPARATELY COMPUTED TAXABLE INCOME.—The term 'separately computed taxable income' means the separate taxable income of the subsidiary for the taxable year determined—

"(i) by taking into account gains and losses from the sale or exchange of a capital asset and section 1231 gains and losses,

"(ii) without regard to any net operating loss or capital loss carryover or carryback, and

"(iii) with such adjustments as the Secretary may prescribe.

"(C) SUBSIDIARY.—The term 'subsidiary' means any corporation which is a member of an affiliated group filing a consolidated return other than the common parent.

"(D) APPLICABLE PREFERRED STOCK.—The term 'applicable preferred stock' means stock described in section 1504(a)(4) in the subsidiary which is—

"(i) issued after November 17, 1989, and

"(ii) held by a person other than a member of the same affiliated group as the subsidiary.

"(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection, including regulations—

"(A) to prevent the avoidance of this subsection through the transfer of built-in losses to the subsidiary,

"(B) to provide rules for cases in which the subsidiary owns (directly or indirectly) stock in another member of the affiliated group, and

"(C) to provide for the application of this subsection where dividends are not paid currently, where the redemption and liquidation rights of the applicable preferred stock exceed the issue price for such stock, or where the stock is otherwise structured to avoid the purposes of this subsection."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years ending after November 17, 1989.

(2) BINDING CONTRACT EXCEPTION.—For purposes of section 1503(f)(3)(D) of the Internal Revenue Code of 1986, stock issued after November 17, 1989, pursuant to a written binding contract in effect on November 17, 1989, and at all times thereafter before such issuance, shall be treated as issued on November 17, 1989.

(3) SPECIAL RULE WHEN SUBSIDIARY LEAVES GROUP.—If, by reason of a transaction after November 17, 1989, a corporation ceases to be, or becomes, a member of an affiliated group, the stock of such corporation shall be treated, for purposes of section 1503(f)(3)(D) of such Code, as issued on the date of such cessation or commencement, unless such transaction is of a kind which would not result in the recognition of any deferred intercompany gain under the consolidated return regulations by reason of the acquisition of the entire group.

(4) RETIRED STOCK.—

(A) Except as provided in subparagraph (B), if stock issued before November 18, 1989, (or described in paragraph (2)), is retired or acquired after November 17, 1989, by the corporation or another member of the same affiliated group, such stock shall be treated, for purposes of section 1503(f)(3)(D) of such Code, as issued on the date of such retirement or acquisition.

(B) Subparagraph (A) shall not apply to any retirement or acquisition pursuant to an obligation to reissue under a binding written contract in effect on November 17, 1989, and at all times thereafter before such retirement or acquisition.

(5) AUCTION RATE PREFERRED.—For purposes of section 1503(f)(3)(D) of such Code, auction rate preferred stock shall be treated as issued when the contract requiring the auction became binding.

(6) SPECIAL RULE FOR CERTAIN AUCTION RATE PREFERRED.—For purposes of section 1503(f)(3)(D) of the Internal Revenue Code of 1986, any auction rate preferred stock shall be treated as issued before November 18, 1989, if—

(A) a subsidiary was incorporated before July 10, 1989 for the special purpose of issuing such stock,

(B) a rating agency was retained before July 10, 1989, and

(C) such stock is issued before the date 30 days after the date of the enactment of this Act.

SEC. 7202. TREATMENT OF CERTAIN HIGH YIELD ORIGINAL ISSUE DISCOUNT OBLIGATIONS.

(a) GENERAL RULE.—Subsection (e) of section 163 (relating to interest deductions on original issue discount obligations) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) SPECIAL RULES FOR ORIGINAL ISSUE DISCOUNT ON CERTAIN HIGH YIELD OBLIGATIONS.—

"(A) IN GENERAL.—In the case of an applicable high yield discount obligation issued by a corporation—

"(i) no deduction shall be allowed under this chapter for the disqualified portion of the original issue discount on such obligation, and

"(ii) the remainder of such original issue discount shall not be allowable as a deduction until paid.

For purposes of clause (ii), rules similar to the rules of subsection (i)(3)(B) shall apply in determining the time when the original issue discount is paid.

"(B) DISQUALIFIED PORTION TREATED AS STOCK DISTRIBUTION FOR PURPOSES OF DIVIDEND RECEIVED DEDUCTION.—

"(i) IN GENERAL.—Solely for purposes of sections 243, 245, 246, and 246A, the dividend equivalent portion of any amount includible in gross income of a corporation under section 1272(a) in respect of an applicable high yield discount obligation shall be treated as a dividend received by such corporation from the corporation issuing such obligation.

"(ii) DIVIDEND EQUIVALENT PORTION.—For purposes of clause (i), the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation is the portion of the amount so includible—

"(I) which is attributable to the disqualified portion of the original issue discount on such obligation, and

"(II) which would have been treated as a dividend if it had been a distribution made by the issuing corporation with respect to stock in such corporation.

"(C) DISQUALIFIED PORTION.—

"(i) IN GENERAL.—For purposes of this paragraph, the disqualified portion of the original issue discount on any applicable high yield discount obligation is the lesser of—

"(I) the amount of such original issue discount, or

"(II) the portion of the total return on such obligation which bears the same ratio to such total return as the disqualified yield on such obligation bears to the yield to maturity on such obligation.

"(ii) DEFINITIONS.—For purposes of clause (i), the term 'disqualified yield' means the excess of the yield to maturity on the obligation over the sum referred to in subsection (i)(1)(B) plus 1 percentage point, and the term 'total return' is the amount which would have been the original issue discount on the obligation if interest described in the parenthetical in section 1273(a)(2) were included in the stated redemption price at maturity.

"(D) EXCEPTION FOR S CORPORATIONS.—This paragraph shall not apply to any obligation issued by any corporation for any period for which such corporation is an S corporation.

"(E) EFFECT ON EARNINGS AND PROFITS.—This paragraph shall not apply for purposes of determining earnings and profits; except that, for purposes of determining the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation, no reduction shall be made for any amount attributable to the disqualified portion of any original issue discount on such obligation.

"(F) CROSS REFERENCE.—

**"For definition of applicable high yield discount obligation, see subsection (i)."**

(b) APPLICABLE HIGH YIELD DISCOUNT OBLIGATION.—Section 163 is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) APPLICABLE HIGH YIELD DISCOUNT OBLIGATION.—

"(1) IN GENERAL.—For purposes of this section, the term 'applicable high yield discount obligation' means any debt instrument if—

"(A) the maturity date of such instrument is more than 5 years from the date of issue,

"(B) the yield to maturity on such instrument equals or exceeds the sum of—

"(i) the applicable Federal rate in effect under section 1274(d) for the calendar month in which the obligation is issued, plus

"(ii) 5 percentage points, and

"(C) such instrument has significant original issue discount.

For purposes of subparagraph (B)(i), the Secretary may by regulation permit a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such higher rate is based on the same principles as the applicable Federal rate and is appropriate for the term of the instrument.

"(2) SIGNIFICANT ORIGINAL ISSUE DISCOUNT.—For purposes of paragraph (1)(C), a debt instrument shall be treated as having significant original issue discount if—

"(A) the aggregate amount which would be includible in gross income with respect to such instrument for periods before the close of any accrual period (as defined in section 1272(a)(5)) ending after the date 5 years after the date of issue, exceeds—

"(B) the sum of—

"(i) the aggregate amount of interest to be paid under the instrument before the close of such accrual period, and

"(ii) the product of the issue price of such instrument (as defined in sections 1273(b) and 1274(a)) and its yield to maturity.

"(3) SPECIAL RULES.—For purposes of determining whether a debt instrument is an applicable high yield discount obligation—

"(A) any payment under the instrument shall be assumed to be made on the last day permitted under the instrument, and

"(B) any payment to be made in the form of another obligation (or stock) of the issuer (or a related person within the meaning of section 453(f)(1)) shall be assumed to be made when such obligation (or stock) is required to be paid in cash or in property other than such obligation (or stock).

"(4) DEBT INSTRUMENT.—For purposes of this subsection, the term 'debt instrument' means any instrument which is a debt instrument as defined in section 1275(a).

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection and subsection (e)(5), including—

"(A) regulations providing for modifications to the provisions of this subsection and subsection (e)(5) in the case of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, conversion rights, or other circumstances where such modifications are appropriate to carry out the purposes of this subsection and subsection (e)(5), and

"(B) regulations to prevent avoidance of the purposes of this subsection and subsection (e)(5) through the use of issuers other than C corporations, agreements to borrow amounts due under the debt instrument, or other arrangements."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to instruments issued after July 10, 1989.

(2) EXCEPTIONS.—

(A) The amendments made by this section shall not apply to any instrument if—

(i) such instrument is issued in connection with an acquisition—

(I) which is made on or before July 10, 1989,

(II) for which there was a written binding contract in effect on July 10, 1989, and at all times thereafter before such acquisition, or

(III) for which a tender offer was filed with the Securities and Exchange Commission on or before July 10, 1989,

(ii) the term of such instrument is not greater than—

(I) the term specified in the written documents described in clause (iii), or

(II) if no term is determined under subclause (I), 10 years, and

(iii) the use of such instrument in connection with such acquisition (and the maximum amount of proceeds from such instrument) was determined on or before July 10, 1989, and such determination is evidenced by written documents—

(I) which were transmitted on or before July 10, 1989, between the issuer and any governmental regulatory bodies or prospective parties to the issuance or acquisition, and

(II) which are customarily used for the type of acquisition or financing involved.

(B) The amendments made by this section shall not apply to any instrument issued pursuant to the terms of a debt instrument issued on or before July 10, 1989, or described in subparagraph (A) or (D).

(C) The amendments made by this section shall not apply to any instrument issued to refinance an original issue discount debt instrument to which the amendments made by this section do not apply if—

(i) the maturity date of the refinancing instrument is not later than the maturity date of the refinanced instrument,

(ii) the issue price of the refinancing instrument does not exceed the adjusted issue price of the refinanced instrument,

(iii) the stated redemption price at maturity of the refinancing instrument is not greater than the stated redemption price at maturity of the refinanced instrument, and

(iv) the interest payments required under the refinancing instrument before maturity are not less than (and are paid not later than) the interest payments required under the refinanced instrument.

(D) The amendments made by this section shall not apply to instruments issued after July 10, 1989, pursuant to a reorganization plan in a title 11 or similar case (as defined in section 368(a)(3) of the Internal Revenue Code of 1986) if the amount of proceeds of such instruments, and the maturities of such instruments, do not exceed the amount or maturities specified in the last reorganization plan filed in such case on or before July 10, 1989.

SEC. 7203. SECURITIES TREATED AS BOOT UNDER SECTION 351.

(a) GENERAL RULE.—Section 351(a) (relating to nonrecognition in cases of transfers to corporations controlled by transferor) is amended by striking "or securities".

(b) CONFORMING AMENDMENTS.—

(1) Subsections (b), (d), and (e)(2) of section 351 are each amended by striking "or securities".

(2) Paragraph (2) of section 351(g) is amended by striking "stock, securities, or property" and inserting "stock or property".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to transfers after October 2, 1989, in taxable years ending after such date.

(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before such transfer.

(3) CORPORATE TRANSFERS.—In the case of property transferred (directly or indirectly through a partnership or otherwise) by a C corporation, paragraphs (1) and (2) shall be applied by substituting "July 11, 1989" for "October 2, 1989". The preceding sentence shall not apply where the corporation meets the requirements of section 1504(a)(2) of the Internal Revenue Code of 1986 with respect to the transferee corporation (and where the transfer is not part of a plan pursuant to which the transferor subsequently fails to meet such requirements).

SEC. 7204. PROVISIONS RELATED TO REGULATED INVESTMENT COMPANIES.

(a) REQUIREMENT TO DISTRIBUTE 98 PERCENT OF ORDINARY INCOME.—

(1) IN GENERAL.—Subparagraph (A) of section 4982(b)(1) (defining required distribution) is amended by striking "97 percent" and inserting "98 percent".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to calendar years ending after July 10, 1989.

(b) TREATMENT OF CERTAIN MUTUAL FUND LOAD CHARGES.—

(1) IN GENERAL.—Section 852 (relating to taxation of regulated investment companies and their shareholders) is amended by adding at the end thereof the following new subsection:

"(f) TREATMENT OF CERTAIN LOAD CHARGES.—

"(1) IN GENERAL.—If—

"(A) the taxpayer incurs a load charge in acquiring stock in a regulated investment company and, by reason of incurring such charge or making such acquisition, the taxpayer acquires a reinvestment right,

"(B) such stock is disposed of before the 91st day after the date on which such stock was acquired, and

"(C) the taxpayer subsequently acquires stock in such regulated investment company or in another regulated investment company and the otherwise applicable load charge is reduced by reason of the reinvestment right,

the load charge referred to in subparagraph (A) (to the extent it does not exceed the reduction referred to in subparagraph (C)) shall not be taken into account for purposes of determining the amount of gain or loss on the disposition referred to in subparagraph (B). To the extent such charge is not taken into account in determining the amount of such gain or loss, such charge shall be treated as incurred in connection with the acquisition referred to in subparagraph (C) (including for purposes of reapplying this paragraph).

"(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) LOAD CHARGE.—The term 'load charge' means any sales or similar charge incurred by a person in acquiring stock of a regulated investment company. Such term does not include any charge incurred by reason of the reinvestment of a dividend.

"(B) REINVESTMENT RIGHT.—The term 'reinvestment right' means any right to acquire stock of 1 or more regulated investment companies without the payment of a load charge or with the payment of a reduced charge.

"(C) NONRECOGNITION TRANSACTIONS.—If the taxpayer acquires stock in a regulated investment company from another person in a transaction in which gain or loss is not recognized, the taxpayer shall succeed to the treatment of such other person under this subsection."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to charges incurred after October 3, 1989, in taxable years ending after such date.

(c) REGULATED INVESTMENT COMPANIES REQUIRED TO ACCRUE DIVIDENDS ON THE EX-DIVIDEND DATE.—

(1) IN GENERAL.—Subsection (b) of section 852 (relating to treatment of companies and shareholders) is amended by adding at the end thereof the following new paragraph:

"(9) DIVIDENDS TREATED AS RECEIVED BY COMPANY ON EX-DIVIDEND DATE.—For purposes of this title, if a regulated investment company is the holder of record of any share of stock on the record date for any dividend payable with respect to such stock, such dividend shall be included in gross income by such company as of the later of—

"(A) the date such share became ex-dividend with respect to such dividend, or

"(B) the date such company acquired such share."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to dividends in cases where the stock becomes ex-dividend after the date of the enactment of this Act.

SEC. 7205. LIMITATION ON THRESHOLD REQUIREMENT UNDER SECTION 382 BUILT-IN GAIN AND LOSS PROVISIONS.

(a) GENERAL RULE.—Clause (i) of section 382(h)(3)(B) (relating to threshold requirement) is amended to read as follows:

"(i) IN GENERAL.—If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than the lesser of—

"(I) 15 percent of the amount determined for purposes of subparagraph (A)(i)(I), or

"(II) $10,000,000,

the net unrealized built-in gain or net unrealized built-in loss shall be zero."

(b) CONFORMING AMENDMENT TO ADJUSTED CURRENT EARNINGS PREFERENCE.—Subparagraph (H) of section 56(g)(4) (relating to treatment of certain ownership changes) is amended by striking clause (ii) and all that follows and inserting the following:

"(ii) there is a net unrealized built-in loss (within the meaning of section 382(h)) with respect to such corporation,

then the adjusted basis of each asset of such corporation (immediately after the ownership change) shall be its proportionate share (determined on the basis of respective fair market values) of the fair market value of the assets of such corporation (determined under section 382(h)) immediately before the ownership change."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to ownership changes and acquisitions after October 2, 1989, in taxable years ending after such date.

(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any ownership change or acquisition pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before such change or acquisition.

(3) BANKRUPTCY PROCEEDINGS.—In the case of a reorganization described in section 368(a)(1)(G) of the Internal Revenue Code of 1986, or an exchange of debt for stock in a title 11 or similar case (as defined in section 368(a)(3) of such Code), the amendments made by this section shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before October 3, 1989.

(4) SUBSIDIARIES OF BANKRUPT PARENT.—The amendments made by this section shall not apply to any built-in loss of a corporation which is a member (on October 2, 1989) of an affiliated group the common parent of which (on such date) was subject to title 11 or similar case (as defined in section 368(a)(3) of such Code). The preceding sentence shall apply only if the ownership change or acquisition is pursuant to the plan approved in such proceeding and is before the date 2 years after the date on which the petition which commenced such proceeding was filed.

SEC. 7206. DISTRIBUTIONS ON CERTAIN PREFERRED STOCK TREATED AS EXTRAORDINARY DIVIDENDS.

(a) GENERAL RULE.—Section 1059 (relating to corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends) is amended by striking subsection (f) and inserting the following:

"(f) TREATMENT OF DIVIDENDS ON CERTAIN PREFERRED STOCK.—

"(1) IN GENERAL.—Any dividend with respect to disqualified preferred stock shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held the stock.

"(2) DISQUALIFIED PREFERRED STOCK.—For purposes of this subsection, the term 'disqualified preferred stock' means any stock which is preferred as to dividends if—

"(A) when issued, such stock has a dividend rate which declines (or can reasonably be expected to decline) in the future,

"(B) the issue price of such stock exceeds its liquidation rights or its stated redemption price, or

"(C) such stock is otherwise structured—

"(i) to avoid the other provisions of this section, and

"(ii) to enable corporate shareholders to reduce tax through a combination of dividend received deductions and loss on the disposition of the stock.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations—

"(1) providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions and in the case of stock held by pass-thru entities, and

"(2) providing that the rules of subsection (f) shall apply in the case of stock which is not preferred as to dividends in cases where stock is structured to avoid the purposes of this section."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to stock issued after July 10, 1989, in taxable years ending after such date.

(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any stock issued pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the stock is issued.

SEC. 7207. REPEAL OF ELECTION TO REDUCE EXCESS LOSS ACCOUNT RECAPTURE BY REDUCING BASIS OF INDEBTEDNESS.

(a) GENERAL RULE.—Subsection (e) of section 1503 (relating to special rule for determining adjustment to basis) is amended by adding at the end thereof the following new paragraph:

"(4) ELIMINATION OF ELECTION TO REDUCE BASIS OF INDEBTEDNESS.—Nothing in the regulations prescribed under section 1502 shall permit any reduction in the amount otherwise included in gross income by reason of an excess loss account if such reduction is on account of a reduction in the basis of indebtedness."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to dispositions after July 10, 1989, in taxable years ending after such date.

(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any disposition pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before such disposition.

SEC. 7208. OTHER PROVISIONS RELATING TO TREATMENT OF STOCK AND DEBT; ETC.

(a) CLARIFICATION OF REGULATORY AUTHORITY UNDER SECTION 385.—

(1) IN GENERAL.—Subsection (a) of section 385 (relating to treatment of certain interests in corporations as stock or indebtedness) is amended by inserting "(or as in part stock and in part indebtedness)" before the period at the end thereof.

(2) REGULATIONS NOT TO BE APPLIED RETROACTIVELY.—Any regulations issued pursuant to the authority granted by the amendment made by paragraph (1) shall only apply with respect to instruments issued after the date on which the Secretary of the Treasury or his delegate provides public guidance as to the characterization of such instruments whether by regulation, ruling, or otherwise.

(b) REPORTING OF CERTAIN ACQUISITIONS OR RECAPITALIZATIONS.—

(1) IN GENERAL.—Section 6043 is amended by striking subsection (c) and inserting the following new subsections:

"(c) CHANGES IN CONTROL AND RECAPITALIZATIONS.—If—

"(1) control (as defined in section 304(c)(1)) of a corporation is acquired by any person (or group of persons) in a transaction (or series of related transactions), or

"(2) there is a recapitalization of a corporation or other substantial change in the capital structure of a corporation,

when required by the Secretary, such corporation shall make a return (at such time and in such manner as the Secretary may prescribe) setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction.

"(d) CROSS REFERENCES.—

"For provisions relating to penalties for failure to file—

"(1) a return under subsection (b), see section 6652(c), or

"(2) a return under subsection (c), see section 6652(l)."

(2) PENALTY.—Section 6652 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) FAILURE TO FILE RETURN WITH RESPECT TO CERTAIN CORPORATE TRANSACTIONS.—In the case of any failure to make a return required under section 6043(c) containing the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to file such return, an amount equal to $500 for each day during which such failure continues, but the total amount imposed under this subsection with respect to any return shall not exceed $100,000."

(3) CONFORMING AMENDMENTS.—

(A) The subsection heading for subsection (a) of section 6043 is amended by striking "CORPORATIONS" and inserting "CORPORATE LIQUIDATING, ETC., TRANSACTIONS".

(B) The section heading for section 6043 is amended to read as follows:

"SEC. 6043. LIQUIDATING; ETC., TRANSACTIONS."

(C) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6043 and inserting the following:

"Sec. 6043. Liquidating; etc., transactions."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transactions after March 31, 1990.

SEC. 7209. ESTIMATED TAX PAYMENTS REQUIRED FOR S CORPORATIONS.

(a) IN GENERAL.—Subsection (g) of section 6655 (relating to failure by corporation to pay estimated income tax) is amended by adding at the end thereof the following new paragraph:

"(4) APPLICATION OF SECTION TO CERTAIN TAXES IMPOSED ON S CORPORATIONS.—In the case of an S corporation, for purposes of this section—

"(A) The following taxes shall be treated as imposed by section 11:

"(i) The tax imposed by section 1374(a) (or the corresponding provisions of prior law).

"(ii) The tax imposed by section 1375(a).

"(iii) Any tax for which the S corporation is liable by reason of section 1371(d)(2).

"(B) Paragraph (2) of subsection (d) shall not apply.

"(C) Clause (ii) of subsection (d)(1)(B) shall be applied as if it read as follows:

"'(ii) the sum of—

"'(I) the amount determined under clause (i) by only taking into account the taxes referred to in clauses (i) and (iii) of subsection (g)(4)(A), and

"'(II) 100 percent of the tax imposed by section 1375(a) which was shown on the return of the corporation for the preceding taxable year.'

"(D) The requirement in the last sentence of subsection (d)(1)(B) that the return for the preceding taxable year show a liability for tax shall not apply.

"(E) Any reference in subsection (e) to taxable income shall be treated as including a reference to the net recognized built-in gain or the excess passive income (as the case may be)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1989.

SEC. 7210. LIMITATION ON DEDUCTION FOR CERTAIN INTEREST PAID TO RELATED PERSON.

(a) GENERAL RULE.—Section 163 (as amended by section 7202) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) LIMITATION ON DEDUCTION FOR CERTAIN INTEREST PAID BY CORPORATION TO RELATED PERSON.—

"(1) LIMITATION.—

"(A) IN GENERAL.—If this subsection applies to any corporation for any taxable year, no deduction shall be allowed under this chapter for disqualified interest paid or accrued by such corporation during such taxable year. The amount disallowed under the preceding sentence shall not exceed the corporation's excess interest expense for the taxable year.

"(B) DISALLOWED AMOUNT CARRIED TO SUCCEEDING TAXABLE YEAR.—Any amount disallowed under subparagraph (A) for any taxable year shall be treated as disqualified interest paid or accrued in the succeeding taxable year.

"(2) CORPORATIONS TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any corporation for any taxable year if—

"(i) such corporation has excess interest expense for such taxable year, and

"(ii) the ratio of debt to equity of such corporation as of the close of such taxable year (and on such other days during the taxable year as the Secretary may by regulations prescribe) exceeds 1.5 to 1.

"(B) EXCESS INTEREST EXPENSE.—

"(i) IN GENERAL.—For purposes of this subsection, the term 'excess interest expense' means the excess (if any) of—

"(I) the corporation's net interest expense, over

"(II) the sum of 50 percent of the adjusted taxable income of the corporation plus any excess limitation carryforward under clause (ii).

"(ii) EXCESS LIMITATION CARRYFORWARD.—If a corporation has an excess limitation for any taxable year, the amount of such excess limitation shall be an excess limitation carryforward to the 1st succeeding taxable year and to the 2nd and 3rd succeeding taxable years to the extent not previously taken into account under this clause. The amount of such a carryforward taken into account for any such succeeding taxable year shall not exceed the excess interest expense for such succeeding taxable year (determined without regard to the carryforward from the taxable year of such excess limitation).

"(iii) EXCESS LIMITATION.—For purposes of clause (i), the term 'excess limitation' means the excess (if any) of—

"(I) 50 percent of the adjusted taxable income of the corporation, over

"(II) the corporation's net interest expense.

"(C) RATIO OF DEBT TO EQUITY.—For purposes of this paragraph, the term 'ratio of debt to equity' means the ratio which the total indebtedness of the corporation bears to the sum of its money and all other assets less such total indebtedness. For purposes of the preceding sentence—

"(i) the amount taken into account with respect to any asset shall be the adjusted basis thereof for purposes of determining gain,

"(ii) the amount taken into account with respect to any indebtedness with original issue discount shall be its issue price plus the portion of the original issue discount previously accrued as determined under the rules of section 1272 (determined without regard to subsection (a)(7) or (b)(4) thereof), and

"(iii) there shall be such other adjustments as the Secretary may by regulations prescribe.

"(3) DISQUALIFIED INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'disqualified interest' means any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest.

"(B) EXCEPTION FOR CERTAIN EXISTING INDEBTEDNESS.—The term 'disqualified interest' does not include any interest paid or accrued under indebtedness with a fixed term—

"(i) which was issued on or before July 10, 1989, or

"(ii) which was issued after such date pursuant to a written binding contract in effect on such date and all times thereafter before such indebtedness was issued.

"(4) RELATED PERSON.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'related person' means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

"(B) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—

"(i) IN GENERAL.—Any interest paid or accrued to a partnership which (without regard to this subparagraph) is a related person shall not be treated as paid or accrued to a related person if less than 10 percent of the profits and capital interests in such partnership are held by persons with respect to whom no tax is imposed by this subtitle on such interest. The preceding sentence shall not apply to any interest allocable to any partner in such partnership who is a related person to the taxpayer.

"(ii) SPECIAL RULE WHERE TREATY REDUCTION.—If any treaty between the United States and any foreign country reduces the rate of tax imposed by this subtitle on a partner's share of any interest paid or accrued to a partnership, such partner's interests in such partnership shall, for purposes of clause (i), be treated as held in part by a tax-exempt person and in part by a taxable person under rules similar to the rules of paragraph (5)(B).

"(5) SPECIAL RULES FOR DETERMINING WHETHER INTEREST IS SUBJECT TO TAX.—

"(A) TREATMENT OF PASS-THRU ENTITIES.—In the case of any interest paid or accrued to a partnership, the determination of whether any tax is imposed by this subtitle on such interest shall be made at the partner level. Rules similar to the rules of the preceding sentence shall apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

"(B) INTEREST TREATED AS TAX-EXEMPT TO EXTENT OF TREATY REDUCTION.—If any treaty between the United States and any foreign country reduces the rate of tax imposed by this subtitle on any interest paid or accrued by the taxpayer to a related person, such interest shall be treated as interest on which no tax is imposed by this subtitle to the extent of the same proportion of such interest as—

"(i) the rate of tax imposed without regard to such treaty, reduced by the rate of tax imposed under the treaty, bears to

"(ii) the rate of tax imposed without regard to the treaty.

"(6) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) ADJUSTED TAXABLE INCOME.—The term 'adjusted taxable income' means the taxable income of the taxpayer—

"(i) computed without regard to—

"(I) any deduction allowable under this chapter for the net interest expense,

"(II) the amount of any net operating loss deduction under section 172, and

"(III) any deduction allowable for depreciation, amortization, or depletion, and

"(ii) computed with such other adjustments as the Secretary may by regulations prescribe.

"(B) NET INTEREST EXPENSE.—The term 'net interest expense' means the excess (if any) of—

"(i) the interest paid or accrued by the taxpayer during the taxable year, over

"(ii) the amount of interest includible in the gross income of such taxpayer for such taxable year.

The Secretary may by regulations provide for adjustments in determining the amount of net interest expense.

"(C) TREATMENT OF AFFILIATED GROUP.—All members of the same affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including—

"(A) such regulations as may be appropriate to prevent the avoidance of the purposes of this subsection,

"(B) regulations providing such adjustments in the case of corporations which are members of an affiliated group as may be appropriate to carry out the purposes of this subsection, and

"(C) regulations for the coordination of this subsection with section 884."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to interest paid or accrued in taxable years beginning after July 10, 1989.

(2) SPECIAL RULE FOR DEMAND LOANS, ETC.—In the case of any demand loan (or other loan without a fixed term) which was outstanding on July 10, 1989, interest on such loan to the extent attributable to periods before September 1, 1989, shall not be treated as disqualified interest for purposes of section 163(j) of the Internal Revenue Code of 1986 (as added by subsection (a)).

SEC. 7211. LIMITATIONS ON REFUNDS DUE TO NET OPERATING LOSS CARRYBACKS OR EXCESS INTEREST ALLOCABLE TO CORPORATE EQUITY REDUCTION TRANSACTIONS.

(a) IN GENERAL.—Paragraph (1) of section 172(b) (relating to years to which loss may be carried) is amended by adding at the end thereof the following new subparagraph:

"(M) EXCESS INTEREST LOSS.—

"(i) IN GENERAL.—If—

"(I) there is a corporate equity reduction transaction, and

"(II) an applicable corporation has a corporate equity reduction interest loss for any loss limitation year ending after August 2, 1989,

then the corporate equity reduction interest loss shall be a net operating loss carryback and carryover to the taxable years described in subparagraphs (A) and (B), except that such loss shall not be carried back to a taxable year preceding the taxable year in which the corporate equity reduction transaction occurs.

"(ii) LOSS LIMITATION YEAR.—For purposes of clause (i) and subsection (m), the term 'loss limitation year' means, with respect to any corporate equity reduction transaction, the taxable year in which such transaction occurs and each of the 2 succeeding taxable years.

"(iii) APPLICABLE CORPORATION.—For purposes of clause (i), the term 'applicable corporation' means a C corporation—

"(I) which acquires stock, or the stock of which is acquired, in a major stock acquisition,

"(II) a corporation making distributions with respect to, or redeeming, its stock in connection with an excess distribution, or

"(III) any successor corporation of a corporation described in subclause (I) or (II).

"(iv) OTHER DEFINITIONS.—

**"For definitions of terms used in this subparagraph, see subsection (m)."**

(b) CORPORATE EQUITY REDUCTION INTEREST LOANS AND CORPORATE EQUITY REDUCTION TRANSACTION DEFINED.—Section 172 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) CORPORATE EQUITY REDUCTION INTEREST LOSSES.—For purposes of this section—

"(1) IN GENERAL.—The term 'corporate equity reduction interest loss' means, with respect to any loss limitation year, the excess (if any) of—

"(A) the net operating loss for such taxable year, over

"(B) the net operating loss for such taxable year determined without regard to any allocable interest deductions otherwise taken into account in computing such loss.

"(2) ALLOCABLE INTEREST DEDUCTIONS.—

"(A) IN GENERAL.—The term 'allocable interest deductions' means deductions allowed under this chapter for interest on the portion of any indebtedness allocable to a corporate equity reduction transaction.

"(B) METHOD OF ALLOCATION.—Except as provided in regulations and subparagraph (E), indebtedness shall be allocated to a corporate equity reduction transaction in the manner prescribed under clause (ii) of section 263A(f)(2)(A) (without regard to clause (i) thereof).

"(C) ALLOCABLE DEDUCTIONS NOT TO EXCEED INTEREST INCREASES.—Allocable interest deductions for any loss limitation year shall not exceed the excess (if any) of—

"(i) the amount allowable as a deduction for interest paid or accrued by the taxpayer during the loss limitation year, over

"(ii) the average of such amounts for the 3 taxable years preceding the taxable year in which the corporate equity reduction transaction occurred.

"(D) DE MINIMIS RULE.—A taxpayer shall be treated as having no allocable interest deductions for any taxable year if the amount of such deductions (without regard to this subparagraph) is less than $1,000,000.

"(E) SPECIAL RULE FOR CERTAIN UNFORESEEABLE EVENTS.—If an unforeseeable extraordinary adverse event occurs during a loss limitation year but after the corporate equity reduction transaction—

"(i) indebtedness shall be allocated in the manner described in subparagraph (B) to unreimbursed costs paid or incurred in connection with such event before being allocated to the corporate equity reduction transaction, and

"(ii) the amount determined under subparagraph (C)(i) shall be reduced by the amount of interest on indebtedness described in clause (i).

"(F) TRANSITION RULE.—If any of the 3 taxable years described in subparagraph (C)(ii) end on or before August 2, 1989, the taxpayer may substitute for the amount determined under such subparagraph an amount equal to the interest paid or accrued (determined on an annualized basis) during the taxpayer's taxable year which includes August 3, 1989, on indebtedness of the taxpayer outstanding on August 2, 1989.

"(3) CORPORATE EQUITY REDUCTION TRANSACTION.—

"(A) IN GENERAL.—The term 'corporate equity reduction transaction' means—

"(i) a major stock acquisition, or

"(ii) an excess distribution.

"(B) MAJOR STOCK ACQUISITION.—

"(i) IN GENERAL.—The term 'major stock acquisition' means the acquisition by a corporation pursuant to a plan of such corporation (or any group of persons acting in concert with such corporation) of stock in another corporation representing 50 percent or more (by vote or value) of the stock in such other corporation,

"(ii) EXCEPTIONS.—The term 'major stock acquisition' shall not include—

"(I) a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies, or

"(II) except as provided in regulations, an acquisition in which a corporation acquires stock of another corporation which, immediately before the acquisition, was a member of an affiliated group (within the meaning of section 1504(a)) other than the common parent of such group.

"(C) EXCESS DISTRIBUTION.—The term 'excess distribution' means the excess (if any) of—

"(i) the aggregate distributions (including redemptions) made during a taxable year by a corporation with respect to its stock, over

"(ii) the greater of—

"(I) 150 percent of the average of such distributions during the 3 taxable years immediately preceding such taxable year, or

"(II) 10 percent of the fair market value of the stock of such corporation as of the beginning of such taxable year.

"(D) RULES FOR APPLYING SUBPARAGRAPH (B).—For purposes of subparagraph (B)—

"(i) PLANS TO ACQUIRE STOCK.—All plans referred to in subparagraph (B) by any corporation (or group of persons acting in concert with such corporation) with respect to another corporation shall be treated as 1 plan.

"(ii) ACQUISITIONS DURING 24-MONTH PERIOD.—All acquisitions during any 24-month period shall be treated as pursuant to 1 plan.

"(E) RULES FOR APPLYING SUBPARAGRAPH (C).—For purposes of subparagraph (C)—

"(i) CERTAIN PREFERRED STOCK DISREGARDED.—Stock described in section 1504(a)(4), and distributions (including redemptions) with respect to such stock, shall be disregarded.

"(ii) ISSUANCE OF STOCK.—The amounts determined under clauses (i) and (ii)(I) of subparagraph (C) shall be reduced by the aggregate amount of stock issued by the corporation during the applicable period in exchange for money or property other than stock in the corporation.

"(4) OTHER RULES.—

"(A) ORDERING RULE.—For purposes of paragraph (1), in determining the allocable interest deductions taken into account in computing the net operating loss for any taxable year, taxable income for such taxable year shall be treated as having been computed by taking allocable interest deductions into account after all other deductions.

"(B) COORDINATION WITH SUBSECTION (B)(2).—In applying paragraph (2) of subsection (b), the corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated.

"(C) MEMBERS OF AFFILIATED GROUPS.—Except as provided by regulations, all members of an affiliated group filing a consolidated return under section 1501 shall be treated as 1 taxpayer for purposes of this subsection and subsection (b)(1)(M).

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

"(A) for applying this subsection to successor corporations and in cases where a taxpayer becomes, or ceases to be, a member of an affiliated group filing a consolidated return under section 1501,

"(B) to prevent the avoidance of this subsection through related parties, pass-through entities, and intermediaries, and

"(C) for applying this subsection where more than 1 corporation is involved in a corporate equity reduction transaction.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to corporate equity reduction transactions occurring after August 2, 1989, in taxable years ending after August 2, 1989.

(2) EXCEPTIONS.—In determining whether a corporate equity reduction transaction has occurred after August 2, 1989, there shall not be taken into account—

(A) acquisitions or redemptions of stock, or distributions with respect to stock, occurring on or before August 2, 1989,

(B) acquisitions or redemptions of stock after August 2, 1989, pursuant to a binding written contract (or tender offer filed with the Securities and Exchange Commission) in effect on August 2, 1989, and at all times thereafter before such acquisition or redemption, or

(C) any distribution with respect to stock after August 2, 1989, which was declared on or before August 2, 1989.

Any distribution to which the preceding sentence applies shall be taken into account under section 172(m)(3)(C)(ii)(I) of the Internal Revenue Code of 1986 (relating to base period for distributions).

## Subtitle C—Employee Benefit Provisions

## PART I—EMPLOYEE STOCK OWNERSHIP PLANS

### SEC. 7301. LIMITATIONS ON PARTIAL EXCLUSION OF INTEREST ON LOANS USED TO ACQUIRE EMPLOYER SECURITIES.

(a) EXCLUSION AVAILABLE ONLY WHERE EMPLOYEES RECEIVE SIGNIFICANT OWNERSHIP INTEREST.—Subsection (b) of section 133 (defining securities acquisition loans) is amended by adding at the end thereof the following new paragraph:

"(6) PLAN MUST HOLD MORE THAN 50 PERCENT OF STOCK AFTER ACQUISITION OR TRANSFER.—

"(A) IN GENERAL.—A loan shall not be treated as a securities acquisition loan for purposes of this section unless, immediately after the acquisition or transfer referred to in subparagraph (A) or (B) of paragraph (1), respectively, the employee stock ownership plan owns more than 50 percent of—

"(i) each class of outstanding stock of the corporation issuing the employer securities, or

"(ii) the total value of all outstanding stock of the corporation.

"(B) FAILURE TO RETAIN MINIMUM STOCK INTEREST.—

"(i) IN GENERAL.—Subsection (a) shall not apply to any interest received with respect to a securities acquisition loan which is allocable to any period during which the employee stock ownership plan does not own stock meeting the requirements of subparagraph (A).

"(ii) EXCEPTION.—To the extent provided by the Secretary, clause (i) shall not apply to any period if, within 90 days of the first date on which the failure occurred (or such longer period not in excess of 180 days as the Secretary may prescribe), the plan acquires stock which results in its meeting the requirements of subparagraph (A).

"(C) STOCK.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'stock' means stock other than stock described in section 1504(a)(4).

"(ii) TREATMENT OF CERTAIN RIGHTS.—The Secretary may provide that warrants, options, contracts to acquire stock, convertible debt interests and other similar interests be treated as stock for 1 or more purposes under subparagraph (A).

"(D) AGGREGATION RULE.—For purposes of determining whether the requirements of subparagraph (A) are met, an employee stock ownership plan shall be treated as owning stock in the corporation issuing the employer securities which is held by any other employee stock ownership plan which is maintained by—

"(i) the employer maintaining the plan, or

"(ii) any member of a controlled group of corporations (within the meaning of section 409(l)(4)) of which the employer described in clause (i) is a member."

(b) TERM OF LOAN MAY NOT EXCEED 15 YEARS.—Paragraph (1) of section 133(b) is amended by adding at the end thereof the following new sentence: "The term 'securities acquisition loan' shall not include a loan with a term greater than 15 years."

(c) VOTING RIGHTS.—Subsection (b) of section 133, as amended by subsection (a), is amended by adding at the end thereof the following new paragraph:

"(7) VOTING RIGHTS OF EMPLOYER SECURITIES.—A loan shall not be treated as a securities acquisition loan for purposes of this section unless—

"(A) the employee stock ownership plan meets the requirements of section 409(e)(2) with respect to all employer securities acquired by, or transferred to, the plan in connection with such loan (without regard to whether or not the employer has a registration-type class of securities), and

"(B) no stock described in section 409(l)(3) is acquired by, or transferred to, the plan in connection with such loan unless—

"(i) such stock has voting rights equivalent to the stock to which it may be converted, and

"(ii) the requirements of subparagraph (A) are met with respect to such voting rights.".

(d) TAX ON DISPOSITION OF SECURITIES BY EMPLOYEE STOCK OWNERSHIP PLANS.—

(1) IN GENERAL.—Chapter 43 is amended by inserting after section 4978A the following new section:

"SEC. 4978B. TAX ON DISPOSITION OF EMPLOYER SECURITIES TO WHICH SECTION 133 APPLIED.

"(a) IMPOSITION OF TAX.—In the case of an employee stock ownership plan which has acquired section 133 securities, there is hereby imposed a tax on each taxable event in an amount equal to the amount determined under subsection (b).

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be equal to 10 percent of the amount realized on the disposition to the extent allocable to section 133 securities under section 4978(b)(2).

"(2) DISPOSITIONS OTHER THAN SALES OR EXCHANGES.—For purposes of paragraph (1), in the case of a disposition of employer securities which is not a sale or exchange, the amount realized on such disposition shall be

the fair market value of such securities at the time of disposition.

"(c) TAXABLE EVENT.—For purposes of this section, the term 'taxable event' means any of the following dispositions:

"(1) DISPOSITIONS WITHIN 3 YEARS.—Any disposition of any employer securities by an employee stock ownership plan within 3 years after such plan acquired section 133 securities if—

"(A) the total number of employer securities held by such plan after such disposition is less than the total number of employer securities held after such acquisition, or

"(B) except to the extent provided in regulations, the value of employer securities held by such plan after the disposition is 50 percent or less of the total value of all employer securities as of the time of the disposition.

For purposes of subparagraph (B), the aggregation rule of section 133(b)(6)(D) shall apply.

"(2) STOCK DISPOSED OF BEFORE ALLOCATION.—Any disposition of section 133 securities to which paragraph (1) does not apply if—

"(A) such disposition occurs before such securities are allocated to accounts of participants or their beneficiaries, and

"(B) the proceeds from such disposition are not so allocated.

"(d) SECTION NOT TO APPLY TO CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—This section shall not apply to any disposition described in paragraph (1), (3), or (4) of section 4978(d).

"(2) CERTAIN REORGANIZATIONS.—For purposes of this section, any exchange of section 133 securities for employer securities of another corporation in any reorganization described in section 368(a)(1) shall not be treated as a disposition, but the employer securities received shall be treated as section 133 securities and as having been held by the plan during the period the securities which were exchanged were held.

"(3) FORCED DISPOSITION OCCURRING BY OPERATION OF STATE LAW.—Any forced disposition of section 133 securities by an employee stock ownership plan occurring by operation of a State law shall not be treated as a disposition. This paragraph shall only apply to securities which, at the time the securities were acquired by the plan, were regularly traded on an established securities market.

"(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) LIABILITY FOR PAYMENT OF TAXES.—The tax imposed by this section shall be paid by the employer.

"(2) SECTION 133 SECURITIES.—The term 'section 133 securities' means employer securities acquired by an employee stock ownership plan in a transaction to which section 133 applied, except that such term shall not include—

"(A) qualified securities (as defined in section 4978(e)(2)), or

"(B) qualified employer securities (as defined in section 4978A(f)(2), as in effect on the day before the date of the enactment of this section).

"(3) DISPOSITION.—The term 'disposition' includes any distribution.

"(4) ORDERING RULES.—For ordering rules for dispositions of employer securities, see section 4978(b)(2)."

(2) CONFORMING AMENDMENT.—The table of sections for chapter 43 is amended by inserting after the item relating to section 4978A the following new item:

"Sec. 4978B. Tax on disposition of employer securities to which section 133 applied.".

(e) REPORTING REQUIREMENTS.—Section 6047 (relating to information reports relating to certain trusts or annuity plans) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EMPLOYEE STOCK OWNERSHIP PLANS.—The Secretary shall require—

"(1) any employer maintaining, or the plan administrator (within the meaning of section 414(g)) of, an employee stock ownership plan—

"(A) which acquired stock in a transaction to which section 133 applies, or

"(B) which holds stock with respect to which section 404(k) applies to dividends paid on such stock,

"(2) any person making or holding a loan to which section 133 applies, or

"(3) both such employer or plan administrator and such person,

to make returns and reports regarding such plan, transaction, or loan to the Secretary and to such other persons as the Secretary may prescribe. Such returns and reports shall be made in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe."

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to loans made after July 10, 1989.

(2) BINDING COMMITMENT EXCEPTIONS.—

(A) The amendments made by this section shall not apply to any loan—

(i) which is made pursuant to a binding written commitment in effect on June 6, 1989, and at all times thereafter before such loan is made, or

(ii) to the extent that the proceeds of such loan are used to acquire employer securities pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on June 6, 1989, and at all times thereafter before such securities are acquired.

(B) The amendments made by this section shall not apply to any loan to which subparagraph (A) does not apply which is made pursuant to a binding written commitment in effect on July 10, 1989, and at all times thereafter before such loan is made. The preceding sentence shall only apply to the extent that the proceeds of such loan are used to acquire employer securities pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on July 10, 1989, and at all times thereafter before such securities are acquired.

(C) The amendments made by this section shall not apply to any loan made on or before July 10, 1992, pursuant to a written agreement entered into on or before July 10, 1989, if such agreement evidences the intent of the borrower on a periodic basis to enter into securities acquisition loans described in section 133(b)(1)(B) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act). The preceding sentence shall apply only if one or more securities acquisition loans were made to the borrower on or before July 10, 1989.

(3) REFINANCINGS.—The amendments made by this section shall not apply to loans made after July 10, 1989, to refinance securities acquisition loans (determined without regard to section 133(b)(2) of the Internal Revenue Code of 1986) made on or before such date or to refinance loans described in this paragraph or paragraph (2), (4), or (5) if—

(A) such refinancing loans meet the requirements of such section 133 of such Code (as in effect before such amendments) applicable to such loans,

(B) immediately after the refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), and

(C) the term of such refinancing loan does not extend beyond the later of—

(i) the last day of the term of the original securities acquisition loan, or

(ii) the last day of the 7-year period beginning on the date the original securities acquisition loan was made.

For purposes of this paragraph, the term "securities acquisition loan" shall include a loan from a corporation to an employee stock ownership plan described in section 133(b)(3) of such Code.

(4) COLLECTIVE BARGAINING AGREEMENTS.—The amendments made by this section shall not apply to any loan to the extent such loan is used to acquire employer securities for an employee stock ownership plan pursuant to a collective bargaining agreement which sets forth the material terms of such employee stock ownership plan and which was agreed to on or before June 6, 1989, by one or more employers and employee representatives (and ratified on or before such date or within a reasonable period thereafter).

(5) FILINGS WITH UNITED STATES.—The amendments made by this section shall not apply to any loan the aggregate principal amount of which was specified in a filing with an agency of the United States on or before June 6, 1989, if—

(A) such filing specifies such loan is to be a securities acquisition loan for purposes of section 133 of the Internal Revenue Code of 1986 and such filing is for the registration required to permit the offering of such loan, or

(B) such filing is for the approval required in order for the employee stock ownership plan to acquire more than a certain percentage of the stock of the employer.

(6) 30-PERCENT TEST SUBSTITUTED FOR 50-PERCENT TEST IN CASE OF CERTAIN LOANS.—In the case of a loan to which the amendments made by this section apply—

(A) which is made before November 18, 1989, or

(B) with respect to which such amendments would not apply if paragraph (2)(A) were applied by substituting "November 17, 1989" for "June 6, 1989" each place it appears,

section 133(b)(6)(A) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall be applied by substituting "at least 30 percent" for "more than 50 percent" and section 4978B(c)(1)(B) of such Code (as added by subsection (d)) shall be applied by substituting "less than 30 percent" for "50 percent or less". The preceding sentence shall apply to any loan which is used to refinance a loan described in such sentence if the requirements of subparagraphs (A), (B), and (C) of paragraph (3) are met with respect to the refinancing loan.

SEC. 7302. LIMITATIONS ON DEDUCTIONS FOR DIVIDENDS PAID ON EMPLOYER SECURITIES.

(a) IN GENERAL.—Subsection (k) of section 404 is amended to read as follows:

"(k) DEDUCTION FOR DIVIDENDS PAID ON CERTAIN EMPLOYER SECURITIES.—

"(1) GENERAL RULE.—In the case of a corporation, there shall be allowed as a deduction

for a taxable year the amount of any applicable dividend paid in cash by such corporation during the taxable year with respect to applicable employer securities. Such deduction shall be in addition to the deductions allowed under subsection (a).

"(2) APPLICABLE DIVIDEND.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable dividend' means any dividend which, in accordance with the plan provisions—

"(i) is paid in cash to the participants in the plan or their beneficiaries,

"(ii) is paid to the plan and is distributed in cash to participants in the plan or their beneficiaries not later than 90 days after the close of the plan year in which paid, or

"(iii) is used to make payments on a loan described in subsection (a)(9) the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

"(B) LIMITATION ON CERTAIN DIVIDENDS.—A dividend described in subparagraph (A)(iii) which is paid with respect to any employer security which is allocated to a participant shall not be treated as an applicable dividend unless the plan provides that employer securities with a fair market value of not less than the amount of such dividend are allocated to such participant for the year which (but for subparagraph (A)) such dividend would have been allocated to such participant.

"(3) APPLICABLE EMPLOYER SECURITIES.—For purposes of this subsection, the term 'applicable employer securities' means, with respect to any dividend, employer securities which are held on the record date for such dividend by an employee stock ownership plan which is maintained by—

"(A) the corporation paying such dividend, or

"(B) any other corporation which is a member of a controlled group of corporations (within the meaning of section 409(l)(4)) which includes such corporation.

"(4) TIME FOR DEDUCTION.—

"(A) IN GENERAL.—The deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which the dividend is paid or distributed to a participant or his beneficiary.

"(B) REPAYMENT OF LOANS.—In the case of an applicable dividend described in clause (iii) of paragraph (2)(A), the deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which such dividend is used to repay the loan described in such clause.

"(5) OTHER RULES.—For purposes of this subsection—

"(A) DISALLOWANCE OF DEDUCTION.—The Secretary may disallow the deduction under paragraph (1) for any dividend if the Secretary determines that such dividend constitutes, in substance, an evasion of taxation.

"(B) PLAN QUALIFICATION.—A plan shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7), or as engaging in a prohibited transaction for purposes of section 4975(d)(3), merely by reason of any payment or distribution described in paragraph (2)(A).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) EMPLOYER SECURITIES.—The term 'employer securities' has the meaning given such term by section 409(l).

"(B) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' has the meaning given such term by section 4975(e)(7). Such term includes a tax credit employee stock ownership plan (as defined in section 409)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to employer securities acquired after August 4, 1989.

(2) SECURITIES ACQUIRED WITH CERTAIN LOANS.—The amendment made by this section shall not apply to employer securities acquired after August 4, 1989, which are acquired—

(A) with the proceeds of any loan which was made pursuant to a binding written commitment in effect on August 4, 1989, and at all times thereafter before such loan is made, and

(B) pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on August 4, 1989, and at all times thereafter before such securities are acquired.

SEC. 7303. 3-YEAR HOLDING PERIOD REQUIRED BEFORE SECTION 1042 SALE.

(a) IN GENERAL.—Section 1042(b) (relating to requirements to qualify for nonrecognition) is amended by adding at the end thereof the following new paragraph:

"(4) 3-YEAR HOLDING PERIOD.—The taxpayer's holding period with respect to the qualified securities is at least 3 years (determined as of the time of the sale)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales after July 10, 1989.

SEC. 7304. REPEAL OF CERTAIN PROVISIONS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS.

(a) ESTATE TAX DEDUCTION.—

(1) IN GENERAL.—Section 2057 (relating to sales of employer securities to employee stock ownership plans or worker-owned corporations) is hereby repealed.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 409(n) is amended—

(i) by striking "or section 2057" each place it appears,

(ii) by striking "or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies" in subparagraph (A)(i) thereof, and

(iii) by striking "or the decedent" in subparagraph (A)(ii) thereof.

(B) Paragraphs (2)(C)(i) and (3)(A)(ii) of section 409(n) are each amended by striking "or section 2057".

(C)(i) Section 4978A is hereby repealed.

(ii) Section 4978(b)(2) is amended by striking "(determined as if such securities were disposed of in the order described in section 4978A(e))." and inserting "determined as if such securities were disposed of—

"(A) first, from section 133 securities (as defined in section 4978B(e)(2)) acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(B) second, from section 133 securities (as so defined) acquired before such 3-year period unless such securities (or proceeds from the disposition) have been allocated to accounts of participants or beneficiaries."

"(C) third, from qualified securities to which section 1042 applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

"(D) then from any other employer securities.

If subsection (d) or section 4978B(d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence."

(iii) The table of sections for chapter 43 is amended by striking the item relating to section 4978A.

(D) Section 4979A is amended—

(i) by striking "or section 2057" in subsection (b)(1), and

(ii) by striking "or section 2057(d)" in subsection (c)(2).

(E) The table of sections for part IV of subchapter A of chapter 11 is amended by striking the item relating to section 2057.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying after the date of the enactment of this Act.

(b) LIABILITY FOR PAYMENT OF ESTATE TAX.—

(1) IN GENERAL.—Section 2210 (relating to liability for payment in case of transfer of employer securities) is hereby repealed.

(2) CONFORMING AMENDMENTS.—

(A) Section 2002 is amended by striking "Except as provided in section 2210, the" and inserting "The".

(B) Section 6018 is amended by striking subsection (c).

(C) The table of sections for subchapter C of chapter 11 is amended by striking the item relating to section 2210.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to estates of decedents dying after July 12, 1989.

(c) LIMITATIONS ON DEFINED CONTRIBUTION PLANS.—

(1) IN GENERAL.—Paragraph (6) of section 415(c) is amended to read as follows:

"(6) SPECIAL RULE FOR EMPLOYEE STOCK OWNERSHIP PLANS.—If no more than one-third of the employer contributions to an employee stock ownership plan (as described in section 4975(e)(7)) for a year which are deductible under paragraph (9) of section 404(a) are allocated to highly compensated employees (within the meaning of section 414(q)), the limitations imposed by this section shall not apply to—

"(A) forfeitures of employer securities (within the meaning of section 409) under such an employee stock ownership plan if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A)), or

"(B) employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) and charged against the participant's account."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning after July 12, 1989.

(d) SPECIAL RULES RELATING TO NET OPERATING LOSSES.—

(1) IN GENERAL.—Section 382(l)(3) is amended by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to acquisitions of employer securities after July 12, 1989, except that such amendments shall not apply to acquisitions after July 12, 1989, pursuant to a written binding contract in effect on July 12, 1989, and at all times thereafter before such acquisition.

PART II—SECTION 401(H) ACCOUNTS

SEC. 7311. LIMITATION ON CONTRIBUTIONS TO SECTION 401(h) ACCOUNTS.

(a) IN GENERAL.—Section 401(h) is amended by adding at the end thereof the following new sentence: "In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual

contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to contributions after October 3, 1989.

(2) TRANSITION.—The amendment made by this section shall not apply to contributions made before January 1, 1990, if—

(A) the employer requested before October 3, 1989, a private letter ruling or determination letter with respect to the qualification of the plan maintaining the account under section 401(h) of the Internal Revenue Code of 1986,

(B) the request sets forth a method under which the amount of contributions to the account are to be determined on the basis of cost,

(C) such method is permissible under section 401(h) of such Code under the provisions of General Counsel Memorandum 39785, and

(D) the Internal Revenue Service issued before October 4, 1989, a private letter ruling, determination letter, or other letter providing that the specific plan involved qualifies under section 401(a) of such Code when such method is used, that contributions to the account are deductible, or acknowledging that the account would not adversely affect the qualified status of the plan (contingent on all phases of the particular plan being approved).

*Subtitle D—Foreign Provisions*

SEC. 7401. TAXABLE YEAR OF CERTAIN FOREIGN CORPORATIONS.

(a) GENERAL RULE.—Subpart D of part II of subchapter N of chapter 1 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 898. TAXABLE YEAR OF CERTAIN FOREIGN CORPORATIONS.

"(a) GENERAL RULE.—For purposes of this title, the taxable year of any specified foreign corporation shall be the required year determined under subsection (c).

"(b) SPECIFIED FOREIGN CORPORATION.—For purposes of this section—

"(1) IN GENERAL.—The term 'specified foreign corporation' means any foreign corporation—

"(A) which is—

"(i) treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, or

"(ii) a foreign personal holding company (as defined in section 552), and

"(B) with respect to which the ownership requirements of paragraph (2) are met.

"(2) OWNERSHIP REQUIREMENTS.—

"(A) IN GENERAL.—The ownership requirements of this paragraph are met with respect to any foreign corporation if a United States shareholder owns, on each testing day, more than 50 percent of—

"(i) the total voting power of all classes of stock of such corporation entitled to vote, or

"(ii) the total value of all classes of stock of such corporation.

"(B) OWNERSHIP.—For purposes of subparagraph (A), the rules of subsections (a) and (b) of section 958 and sections 551(f) and 554, whichever are applicable, shall apply in determining ownership.

"(3) UNITED STATES SHAREHOLDER.—

"(A) IN GENERAL.—The term 'United States shareholder' has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).

"(B) FOREIGN PERSONAL HOLDING COMPANIES.—In the case of any foreign personal holding company (as defined in section 552) which is not a specified foreign corporation by reason of paragraph (1)(A)(i), the term 'United States shareholder' means any person who is treated as a United States shareholder under section 551.

"(c) DETERMINATION OF REQUIRED YEAR.—

"(1) CONTROLLED FOREIGN CORPORATIONS.—

"(A) IN GENERAL.—In the case of a specified foreign corporation described in subsection (b)(1)(A)(i), the required year is—

"(i) the majority U.S. shareholder year, or

"(ii) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

"(B) 1-MONTH DEFERRAL ALLOWED.—A specified foreign corporation may elect, in lieu of the taxable year under subparagraph (A)(i), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

"(C) MAJORITY U.S. SHAREHOLDER YEAR.—

"(i) IN GENERAL.—For purposes of this subsection, the term 'majority U.S. shareholder year' means the taxable year (if any) which, on each testing day, constituted the taxable year of—

"(I) each United States shareholder described in subsection (b)(2)(A), and

"(II) each United States shareholder not described in subclause (I) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such subclause.

"(ii) TESTING DAY.—The testing days shall be—

"(I) the first day of the corporation's taxable year (determined without regard to this section), or

"(II) the days during such representative period as the Secretary may prescribe.

"(2) FOREIGN PERSONAL HOLDING COMPANIES.—In the case of a foreign personal holding company described in subsection (b)(3)(B), the required year shall be determined under paragraph (1), except that subparagraph (B) of paragraph (1) shall not apply."

(b) TREATMENT OF DIVIDENDS PAID AFTER CLOSE OF TAXABLE YEAR.—

(1) IN GENERAL.—Section 563 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) FOREIGN PERSONAL HOLDING COMPANY TAX.—

"(1) IN GENERAL.—In the determination of the dividends paid deduction for purposes of part III, a dividend paid after the close of any taxable year and on or before the 15th day of the 3rd month following the close of such taxable year shall, to the extent the company designates such dividend as being taken into account under this subsection, be considered as paid during such taxable year. The amount allowed as a deduction by reason of the application of this subsection with respect to any taxable year shall not exceed the undistributed foreign personal holding company income of the corporation for the taxable year computed without regard to this subsection.

"(2) SPECIAL RULES.—In the case of any distribution referred to in paragraph (1)—

"(A) paragraph (1) shall apply only if such distribution is to the person who was the shareholder of record (as of the last day of the taxable year of the foreign personal holding company) with respect to the stock for which such distribution is made,

"(B) the determination of the person required to include such distribution in gross income shall be made under the principles of section 551(f), and

"(C) any person required to include such distribution in gross or distributable net income shall include such distribution in income for such person's taxable year in which the taxable year of the foreign personal holding company ends."

(2) CONFORMING AMENDMENT.—Subsection (d) of section 563 (as redesignated by paragraph (1)) is amended by striking "subsection (a) or (b)" and inserting "subsection (a), (b), or (c)".

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part II of subchapter N of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 898. Taxable year of certain foreign corporations."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after July 10, 1989.

(2) SPECIAL RULES.—If any foreign corporation is required by the amendments made by this section to change its taxable year for its first taxable year beginning after July 10, 1989—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate, and

(C) if, by reason of such change, any United States person is required to include in gross income for 1 taxable year amounts attributable to 2 taxable years of such foreign corporation, the amount which would otherwise be required to be included in gross income for such 1 taxable year by reason of the short taxable year of the foreign corporation resulting from such change shall be included in gross income ratably over the 4-taxable-year period beginning with such 1 taxable year.

SEC. 7402. LIMITATION ON USE OF DECONSOLIDATION TO AVOID FOREIGN TAX CREDIT LIMITATIONS.

(a) GENERAL RULE.—Section 904 (relating to limitations on foreign tax credit) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) LIMITATION ON USE OF DECONSOLIDATION TO AVOID FOREIGN TAX CREDIT LIMITATIONS.—If 2 or more domestic corporations would be members of the same affiliated group if—

"(1) section 1504(b) were applied without regard to the exceptions contained therein, and

"(2) the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a),

the Secretary may by regulations provide for resourcing the income of any of such corporations or for modifications to the consolidated return regulations to the extent that such resourcing or modifications are necessary to prevent the avoidance of the provisions of this subpart."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after July 10, 1989.

SEC. 7403. INFORMATION WITH RESPECT TO CERTAIN FOREIGN-OWNED CORPORATIONS.

(a) 25-PERCENT FOREIGN-OWNED CORPORATIONS REQUIRED TO REPORT.—

(1) Paragraph (2) of section 6038A(a) is amended to read as follows:

"(2) is 25-percent foreign-owned,".

(2) Subsection (c) of section 6038A is amended to read as follows:

"(c) DEFINITIONS.—For purposes of this section—

"(1) 25-PERCENT FOREIGN-OWNED.—A corporation is 25-percent foreign-owned if at least 25 percent of—

"(A) the total voting power of all classes of stock of such corporation entitled to vote, or

"(B) the total value of all classes of stock of such corporation,

is owned at any time during the taxable year by 1 foreign person (hereinafter in this section referred to as a '25-percent foreign shareholder').

"(2) RELATED PARTY.—The term 'related party' means—

"(A) any 25-percent foreign shareholder of the reporting corporation,

"(B) any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the reporting corporation or to a 25-percent foreign shareholder of the reporting corporation, and

"(C) any other person who is related (within the meaning of section 482) to the reporting corporation.

"(4) FOREIGN PERSON.—The term 'foreign person' means any person who is not a United States person. For purposes of the preceding sentence, the term 'United States person' has the meaning given to such term by section 7701(a)(30), except that any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States shall not be treated as a United States person.

"(5) RECORDS.—The term 'records' includes any books, papers, or other data.

"(6) SECTION 318 TO APPLY.—Section 318 shall apply for purposes of paragraphs (1) and (2), except that—

"(A) '10 percent' shall be substituted for '50 percent' in section 318(a)(2)(C), and

"(B) subparagraphs (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person."

(b) U.S. RECORDKEEPING REQUIREMENTS.—Subsection (a) of section 6038A is amended by inserting before the period at the end thereof the following: "and such corporation shall maintain (in the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine the correct treatment of transactions with related parties as the Secretary shall by regulations prescribe (or shall cause another person to so maintain such records)".

(c) INCREASE IN PENALTY.—Subsection (d) of section 6038A is amended to read as follows:

"(d) PENALTY FOR FAILURE TO FURNISH INFORMATION OR MAINTAIN RECORDS.—

"(1) IN GENERAL.—If a reporting corporation—

"(A) fails to furnish (within the time prescribed by regulations) any information described in subsection (b), or

"(B) fails to maintain (or cause another to maintain) records as required by subsection (a),

such corporation shall pay a penalty of $10,000 for each taxable year with respect to which such failure occurs.

"(2) INCREASE IN PENALTY WHERE FAILURE CONTINUES AFTER NOTIFICATION.—If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the reporting corporation, such corporation shall pay a penalty (in addition to the amount required under paragraph (1)) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period.

"(3) REASONABLE CAUSE.—For purposes of this subsection, the time prescribed by regulations to furnish information or maintain records (and the beginning of the 90-day period after notice by the Secretary) shall be treated as not earlier than the last day on which (as shown to the satisfaction of the Secretary) reasonable cause existed for failure to furnish the information or maintain the records."

(d) ENFORCEMENT OF INFORMATION REQUESTS.—Section 6038A is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) ENFORCEMENT OF REQUESTS FOR CERTAIN RECORDS.—

"(1) AGREEMENT TO TREAT CORPORATION AS AGENT.—The rules of paragraph (3) shall apply to any transaction between the reporting corporation and any related party who is a foreign person unless such related party agrees (in such manner and at such time as the Secretary shall prescribe) to authorize the reporting corporation to act as such related party's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine records or produce testimony related to any such transaction or with respect to any summons by the Secretary for such records or testimony. The appearance of persons or production of records by reason of the reporting corporation being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of any transaction between the reporting corporation and such related party.

"(2) RULES WHERE INFORMATION NOT FURNISHED.—If—

"(A) for purposes of determining the correct treatment under this title of any transaction between the reporting corporation and a related party who is a foreign person, the Secretary issues a summons to such corporation to produce (either directly or as agent for such related party) any records or testimony,

"(B) such summons is not quashed in a proceeding begun under paragraph (4) and is not determined to be invalid in a proceeding begun under section 7604(b) to enforce such summons, and

"(C) the reporting corporation does not substantially comply in a timely manner with such summons and the Secretary has sent by certified or registered mail a notice to such reporting corporation that such reporting corporation has not so substantially complied,

the Secretary may apply the rules of paragraph (3) with respect to such transaction (whether or not the Secretary begins a proceeding to enforce such summons). If the reporting corporation fails to maintain (or cause another to maintain) records as required by subsection (a), and by reason of that failure, the summons is quashed in a proceeding described in subparagraph (B) or the reporting corporation is not able to provide the records requested in the summons, the Secretary may apply the rules of paragraph (3) with respect to any transaction to which the records relate.

"(3) APPLICABLE RULES IN CASES OF NONCOMPLIANCE.—If the rules of this paragraph apply to any transaction—

"(A) the amount of the deduction allowed under subtitle A for any amount paid or incurred by the reporting corporation to the related party in connection with such transaction, and

"(B) the cost to the reporting corporation of any property acquired in such transaction from the related party (or transferred by such corporation in such transaction to the related party),

shall be the amount determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise.

"(4) JUDICIAL PROCEEDINGS.—

"(A) PROCEEDINGS TO QUASH.—Notwithstanding any law or rule of law, any reporting corporation to which the Secretary issues a summons referred to in paragraph (2)(A) shall have the right to begin a proceeding to quash such summons not later than the 90th day after such summons was issued. In any such proceeding, the Secretary may seek to compel compliance with such summons.

"(B) REVIEW OF SECRETARIAL DETERMINATION OF NONCOMPLIANCE.—Notwithstanding any law or rule of law, any reporting corporation which has been notified by the Secretary that the Secretary has determined that such corporation has not substantially complied with a summons referred to in paragraph (2) shall have the right to begin a proceeding to review such determination not later than the 90th day after the day on which the notice referred to in paragraph (2)(C) was mailed. If such a proceeding is not begun on or before such 90th day, such determination by the Secretary shall be binding and shall not be reviewed by any court.

"(C) JURISDICTION.—The United States district court for the district in which the person (to whom the summons is issued) resides or is found shall have jurisdiction to hear any proceeding brought under subparagraph (A) or (B). Any order or other determination in such a proceeding shall be treated as a final order which may be appealed.

"(D) SUSPENSION OF STATUTE OF LIMITATIONS.—If the reporting corporation brings an action under subparagraph (A) or (B), the running of any period of limitations under section 6501 (relating to assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to any transaction to which the summons relates shall be suspended for the period during which such proceeding, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such proceeding."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after July 10, 1989.

SEC. 7404. REPEAL OF SPECIAL TREATMENT OF INTEREST ON CERTAIN FOREIGN LOANS.

(a) GENERAL RULE.—Paragraph (2) of section 1201(e) of the Tax Reform Act of 1986 is hereby repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to taxable years beginning after December 31, 1989.

(c) EXCEPTION FOR CERTAIN TAXPAYERS WITH SUBSTANTIAL LOAN LOSS RESERVES.—

(1) IN GENERAL.—The repeal made by subsection (a) shall not apply to any taxpayer if, on any financial statement filed by such

taxpayer for regulatory purposes with respect to any quarter ending during the period beginning on March 31, 1989 and ending on December 31, 1989, such taxpayer showed loss reserves against its qualified loans equal to at least 25 percent of the amount of such loans.

(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) QUALIFIED LOAN.—The term "qualified loan" has the meaning given such term by section 1201(e)(2)(H) of the Tax Reform Act of 1986 (as in effect before its repeal by subsection (a)).

(B) PARENT-SUBSIDIARY CONTROLLED GROUPS.—In the case of any taxpayer which is a member of a parent-subsidiary controlled group (as defined in section 585(c)(5)(A)), this subsection shall be applied by treating all members of such group as 1 taxpayer.

**Subtitle E—Excise Tax Provisions**

SEC. 7501. 1-YEAR SUSPENSION OF AUTOMATIC REDUCTION IN AVIATION-RELATED TAXES.

(a) IN GENERAL.—Subsection (a) of section 4283 (relating to reduction in aviation-related taxes in certain cases) is amended by striking "1990" and inserting "1991".

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 4283(b)(1)(A) is amended by striking "1988 and 1989" and inserting "1989 and 1990".

(2) Paragraph (3) of section 4283(b) is amended—

(A) by striking "1990" and inserting "1991", and

(B) by striking "1989" and inserting "1990".

(3) Subsection (q) of section 6427 is amended by striking "1990" each place it appears and inserting "1991".

SEC. 7502. ACCELERATION OF DEPOSIT REQUIREMENTS FOR AIRLINE TICKET TAX.

(a) IN GENERAL.—Section 6302 (relating to mode or time of collection) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TIME FOR DEPOSIT OF TAXES ON AIRLINE TICKETS.—If, under regulations prescribed by the Secretary, a person is required to make deposits of any tax imposed by subsection (a) or (b) of section 4261 with respect to amounts considered collected by such person during any semimonthly period, such deposit shall be made not later than the 3rd day (not including Saturdays, Sundays, or legal holidays) after the close of the 1st week of the 2nd semimonthly period following the period to which such amounts relate."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payments of taxes considered collected for semimonthly periods beginning after June 30, 1990.

SEC. 7503. INCREASE IN INTERNATIONAL AIR PASSENGER DEPARTURE TAX.

(a) IN GENERAL.—Section 4261(c) (relating to tax on use of international travel facilities) is amended by striking "$3" and inserting "$6".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to transportation beginning after December 31, 1989, which was not paid for before such date.

SEC. 7504. SHIP PASSENGERS INTERNATIONAL DEPARTURE TAX.

(a) IN GENERAL.—Chapter 36 (relating to certain other excise taxes) is amended by inserting after subchapter A the following new subchapter:

**"Subchapter B—Transportation by Water**

"Sec. 4471. Imposition of tax.

"Sec. 4472. Definitions and special rules.

"SEC. 4471. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed a tax of $3 per passenger on a covered voyage.

"(b) BY WHOM PAID.—The tax imposed by this section shall be paid by the person providing the covered voyage.

"(c) TIME OF IMPOSITION.—The tax imposed by this section shall be imposed only once for each passenger on a covered voyage, either at the time of first embarkation or disembarkation in the United States.

"SEC. 4472. DEFINITIONS.

"For purposes of this subchapter—

"(1) COVERED VOYAGE.—

"(A) IN GENERAL.—The term 'covered voyage' means a voyage of—

"(i) a commercial passenger vessel which extends over 1 or more nights, or

"(ii) a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States,

during which passengers embark or disembark the vessel in the United States. Such term shall not include any voyage on any vessel owned or operated by the United States, a State, or any agency or subdivision thereof.

"(B) EXCEPTION FOR CERTAIN VOYAGES ON PASSENGER VESSELS.—The term 'covered voyage' shall not include a voyage of a passenger vessel of less than 12 hours between 2 ports in the United States.

"(2) PASSENGER VESSEL.—The term 'passenger vessel' means any vessel having berth or stateroom accommodations for more than 16 passengers."

(b) CLERICAL AMENDMENTS.—The table of subchapters for chapter 36 is amended by inserting after the item relating to subchapter A the following new item:

"SUBCHAPTER B. Transportation by water."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to voyages beginning after December 31, 1989, which were not paid for before such date.

(2) NO DEPOSITS REQUIRED BEFORE APRIL 1, 1990.—No deposit of any tax imposed by subchapter B of chapter 36 of the Internal Revenue Code of 1986, as added by this section, shall be required to be made before April 1, 1990.

SEC. 7505. OIL SPILL LIABILITY TRUST FUND TAX TO TAKE EFFECT ON JANUARY 1, 1990.

(a) TAX TO TAKE EFFECT ON JANUARY 1, 1990.—

(1) IN GENERAL.—Subsection (f) of section 4611 (relating to application of Oil Spill Liability Trust Fund financing rate) is amended to read as follows:

"(f) APPLICATION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1989, and before January 1, 1995.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS $1,000,000,000.—The Oil Spill Liability Trust Fund financing rate shall not apply during any calendar quarter if the Secretary estimates that as of the close of the preceding calendar quarter the unobligated balance in the Oil Spill Liability Trust Fund exceeds $1,000,000,000."

(b) 5 CENT RATE OF TAX.—Subparagraph (B) of section 4611(c)(2) is amended by striking "1.3 cents" and inserting "5 cents".

(c) CREDIT AGAINST OIL SPILL TAX FOR EXCESS AMOUNTS IN THE TRANS-ALASKA PIPELINE LIABILITY FUND.—Subsection (d) of section 4612 is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall also apply to amounts paid by the taxpayer into the Trans-Alaska Pipeline Liability Fund to the extent of amounts transferred from such Fund into the Oil Spill Liability Trust Fund. Amounts may be transferred from the Trans-Alaska Pipeline Liability Fund into the Oil Spill Liability Trust Fund only to the extent the administrators of the Trans-Alaska Pipeline Liability Fund determine that such amounts are not needed to satisfy claims against such Fund."

(d) OIL SPILL LIABILITY TRUST FUND TO BE OPERATING FUND.—

(1) IN GENERAL.—For purposes of sections 8032(d) and 8033(c) of the Omnibus Budget Reconciliation Act of 1986, the commencement date is January 1, 1990.

(2) CONFORMING AMENDMENTS.—

(A) Section 9509 (relating to Oil Spill Liability Trust Fund) is amended by adding at the end thereof the following new subsection:

"(f) REFERENCES TO COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT.—For purposes of this section, references to the Comprehensive Oil Pollution Liability and Compensation Act shall be treated as references to any law enacted before December 31, 1990, which is substantially identical to subtitle E of title VI, or subtitle D of title VIII, of H.R. 5300 of the 99th Congress as passed by the House of Representatives."

(B) Paragraph (3) of section 9509(b) is amended by striking "(on the 1st day the Oil Spill Liability Trust Fund financing rate under section 4611(c) applies)" and inserting "(on January 1, 1990)".

(C) Paragraph (1) of section 9509(c) is amended by striking the last sentence.

SEC. 7506. EXCISE TAX ON SALE OF CHEMICALS WHICH DEPLETE THE OZONE LAYER AND OF PRODUCTS CONTAINING SUCH CHEMICALS.

(a) IN GENERAL.—Chapter 38 (relating to environmental taxes) is amended by adding at the end thereof the following new subchapter:

**"Subchapter D—Ozone-Depleting Chemicals, Etc.**

"Sec. 4681. Imposition of tax.

"Sec. 4682. Definitions and special rules.

"SEC. 4681. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on—

"(1) any ozone-depleting chemical sold or used by the manufacturer, producer, or importer thereof, and

"(2) any imported taxable product sold or used by the importer thereof.

"(b) AMOUNT OF TAX.—

"(1) OZONE-DEPLETING CHEMICALS.—

"(A) IN GENERAL.—The amount of the tax imposed by subsection (a) on each pound of ozone-depleting chemical shall be an amount equal to—

"(i) the base tax amount, multiplied by

"(ii) the ozone-depletion factor for such chemical.

"(B) BASE TAX AMOUNT FOR YEARS BEFORE 1995.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1995 is the amount determined under the following table for such calendar year:

| "Calendar year: | Base tax amount |
|---|---|
| 1990 or 1991 | $1.37 |
| 1992 | 1.67 |

"Calendar year: Base tax amount
1993 or 1994 ..... 2.65.

"(C) BASE TAX AMOUNT FOR YEARS AFTER 1994.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year after 1994 shall be the base tax amount for 1994 increased by 45 cents for each year after 1994.

"(2) IMPORTED TAXABLE PRODUCT.—

"(A) IN GENERAL.—The amount of the tax imposed by subsection (a) on any imported taxable product shall be the amount of tax which would have been imposed by subsection (a) on the ozone-depleting chemicals used as materials in the manufacture or production of such product if such ozone-depleting chemicals had been sold in the United States on the date of the sale of such imported taxable product.

"(B) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (3) of section 4671(b) shall apply.

"SEC. 4682. DEFINITIONS AND SPECIAL RULES.

"(a) OZONE-DEPLETING CHEMICAL.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'ozone-depleting chemical' means any substance—

"(A) which, at the time of the sale or use by the manufacturer, producer, or importer, is listed as an ozone-depleting chemical in the table contained in paragraph (2), and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) OZONE-DEPLETING CHEMICALS.—

| "Common name: | Chemical nomenclature: |
|---|---|
| CFC-11 | trichlorofluoromethane |
| CFC-12 | dichlorodifluoromethane |
| CFC-113 | trichlorotrifluoroethane |
| CFC-114 | 1,2-dichloro-1,1,2,2-tetrafluoroethane. |
| CFC-115 | chloropentafluoroethane |
| Halon-1211 | bromochlorodifluoromethane. |
| Halon-1301 | bromotrifluoromethane |
| Halon-2402 | dibromotetrafluoroethane. |

"(b) OZONE-DEPLETION FACTOR.—For purposes of this subchapter, the term 'ozone-depletion factor' means, with respect to an ozone-depleting chemical, the factor assigned to such chemical under the following table:

| "Ozone-depleting chemical: | Ozone-depletion factor: |
|---|---|
| CFC-11 | 1.0 |
| CFC-12 | 1.0 |
| CFC-113 | 0.8 |
| CFC-114 | 1.0 |
| CFC-115 | 0.6 |
| Halon-1211 | 3.0 |
| Halon-1301 | 10.0 |
| Halon-2402 | 6.0 |

"(c) IMPORTED TAXABLE PRODUCT.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'imported taxable product' means any product (other than an ozone-depleting chemical) entered into the United States for consumption, use, or warehousing if any ozone-depleting chemical was used as material in the manufacture or production of such product.

"(2) DE MINIMIS EXCEPTION.—The term 'imported taxable product' shall not include any product specified in regulations prescribed by the Secretary as using a de minimis amount of ozone-depleting chemicals as materials in the manufacture or production thereof. The preceding sentence shall not apply to any product in which any ozone-depleting chemical is used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components.

"(d) EXCEPTIONS.—

"(1) RECYCLING.—No tax shall be imposed by section 4681 on any ozone-depleting chemical which is diverted or recovered in the United States as part of a recycling process (and not as part of the original manufacturing or production process).

"(2) USE IN FURTHER MANUFACTURE.—

"(A) IN GENERAL.—No tax shall be imposed by section 4681—

"(i) on the use of any ozone-depleting chemical in the manufacture or production of any other chemical if the ozone-depleting chemical is entirely consumed in such use,

"(ii) on the sale by the manufacturer, producer, or importer of any ozone-depleting chemical—

"(I) for a use by the purchaser which meets the requirements of clause (i), or

"(II) for resale by the purchaser to a second purchaser for a use by the second purchaser which meets the requirements of clause (i).

Clause (ii) shall apply only if the manufacturer, producer, and importer, and the first and second purchasers (if any), meet such registration requirements as may be prescribed by the Secretary.

"(B) CREDIT OR REFUND.—Under regulations prescribed by the Secretary, if—

"(i) a tax under this subchapter was paid with respect to any ozone-depleting chemical, and

"(ii) such chemical was used (and entirely consumed) by any person in the manufacture or production of any other chemical,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4681.

"(3) EXPORTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), rules similar to the rules of section 4662(e) (other than section 4662(e)(2)(A)(ii)(II)) shall apply for purposes of this subchapter.

"(B) LIMIT ON BENEFIT.—

"(i) IN GENERAL.—The aggregate tax benefit allowable under subparagraph (A) with respect to ozone-depleting chemicals manufactured or produced by any person during a calendar year shall not exceed the sum of—

"(I) the amount equal to the 1986 export percentage of the aggregate tax imposed by this subchapter with respect to ozone-depleting chemicals manufactured or produced by such person during such calendar year (other than chemicals with respect to which subclause (II) applies), and

"(II) the aggregate tax imposed by this subchapter with respect to any additional production allowance granted to such person with respect to ozone-depleting chemicals manufactured or produced by such person during such calendar year by the Environmental Protection Agency under 40 CFR Part 82 (as in effect on September 14, 1989).

"(ii) 1986 EXPORT PERCENTAGE.—A person's 1986 export percentage is the percentage equal to the ozone-depletion factor adjusted pounds of ozone-depleting chemicals manufactured or produced by such person during 1986 which were exported during 1986, divided by the ozone-depletion factor adjusted pounds of all ozone-depleting chemicals manufactured or produced by such person during 1986. The percentage determined under the preceding sentence shall be based on data published by the Environmental Protection Agency.

"(e) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) IMPORTER.—The term 'importer' means the person entering the article for consumption, use, or warehousing.

"(2) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(f) SPECIAL RULES.—

"(1) FRACTIONAL PARTS OF A POUND.—In the case of a fraction of a pound, the tax imposed by this subchapter shall be the same fraction of the amount of such tax imposed on a whole pound.

"(2) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by this subchapter.

"(g) PHASE-IN OF TAX ON CERTAIN SUBSTANCES.—

"(1) TREATMENT FOR 1990.—

"(A) HALONS.—The term 'ozone-depleting chemical' shall not include halon-1211, halon-1301, or halon-2402 with respect to any sale or use during 1990.

"(B) CHEMICALS USED IN RIGID FOAM INSULATION.—No tax shall be imposed by section 4681—

"(i) on the use during 1990 of any substance in the manufacture of rigid foam insulation,

"(ii) on the sale during 1990 by the manufacturer, producer, or importer of any substance—

"(I) for use by the purchaser in the manufacture of rigid foam insulation, or

"(II) for resale by the purchaser to a second purchaser for such use by the second purchaser, or

"(iii) on the sale or use during 1990 by the importer of any rigid foam insulation.

Clause (ii) shall apply only if the manufacturer, producer, and importer, and the first and second purchasers (if any) meet such registration requirements as may be prescribed by the Secretary.

"(2) TREATMENT FOR 1991, 1992, AND 1993.—

"(A) HALONS.—The tax imposed by section 4681 during 1991, 1992, or 1993 by reason of the treatment of halon-1211, halon-1301, and halon-2402 as ozone-depleting chemicals shall be the applicable percentage (determined under the following table) of the amount of such tax which would (but for this subparagraph) be imposed.

| "In the case of: | The applicable percentage is: For sales or use during 1991 | For sales or use during 1992 | For sales or use during 1993 |
|---|---|---|---|
| Halon-1211 ..... | 6.0 | 5.0 | 3.3 |
| Halon-1301 ..... | 1.8 | 1.5 | 1.0 |
| Halon-2402 ..... | 3.0 | 2.5 | 1.6. |

"(B) CHEMICALS USED IN RIGID FOAM INSULATION.—In the case of a sale or use during 1991, 1992, or 1993 on which no tax would have been imposed by reason of paragraph (1)(B) had such sale or use occurred during 1990, the tax imposed by section 4681 shall be the applicable percentage (determined in accordance with the following table) of the amount of such tax which would (but for this subparagraph) be imposed.

| "In the case of sales or use during: | The applicable percentage is: |
|---|---|
| 1991 | 18 |
| 1992 | 15 |
| 1993 | 10. |

"(3) OVERPAYMENTS WITH RESPECT TO CHEMICALS USED IN RIGID FOAM INSULATION.—If any substance on which tax was paid under this subchapter is used during 1990, 1991, 1992, or 1993 by any person in the manufacture of rigid foam insulation, credit or refund (without interest) shall be allowed to such person an amount equal to the excess of—

"(A) the tax paid under this subchapter on such substance, over

"(B) the tax (if any) which would be imposed by section 4681 if such substance were used for such use by the manufacturer, producer, or importer thereof on the date of its use by such person.

"Amounts payable under the preceding sentence with respect to uses during the taxable year shall be treated as described in section 34(a) for such year unless claim therefor has been timely filed under this paragraph.

"(h) IMPOSITION OF FLOOR STOCKS TAXES.—

"(1) JANUARY 1, 1990, TAX.—On any ozone-depleting chemical which on January 1, 1990, is held by any person (other than the manufacturer, producer, or importer thereof) for sale or for use in further manufacture, there is hereby imposed a floor stocks tax in an amount equal to the tax which would be imposed by section 4681 on such chemical if the sale of such chemical by the manufacturer, producer, or importer thereof had occurred during 1990.

"(2) OTHER TAX-INCREASE DATES.—

"(A) IN GENERAL.—If, on any tax-increase date, any ozone-depleting chemical is held by any person (other than the manufacturer, producer, or importer thereof) for sale or for use in further manufacture, there is hereby imposed a floor stocks tax.

"(B) AMOUNT OF TAX.—The amount of the tax imposed by subparagraph (A) shall be the excess (if any) of—

"(i) the tax which would be imposed under section 4681 on such substance if the sale of such chemical by the manufacturer, producer, or importer thereof had occurred on the tax-increase date, over

"(ii) the prior tax (if any) imposed by this subchapter on such substance.

"(C) TAX-INCREASE DATE.—For purposes of this paragraph, the term 'tax-increase date' means January 1 of 1991, 1992, 1993, and 1994.

"(3) DUE DATE.—The taxes imposed by this subsection on January 1 of any calendar year shall be paid on or before April 1 of such year.

"(4) APPLICATION OF OTHER LAWS.—All other provisions of law, including penalties, applicable with respect to the taxes imposed by section 4681 shall apply to the floor stocks taxes imposed by this subsection."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 is amended by adding at the end thereof the following new item:

"SUBCHAPTER D. Ozone-depleting chemicals, etc."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1990.

(2) NO DEPOSITS REQUIRED BEFORE APRIL 1, 1990.—No deposit of any tax imposed by subchapter D of chapter 38 of the Internal Revenue Code of 1986, as added by this section, shall be required to be made before April 1, 1990.

(3) NOTIFICATION OF CHANGES IN INTERNATIONAL AGREEMENTS.—The Secretary of the Treasury or his delegate shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of changes in the Montreal Protocol and of other international agreements to which the United States is a signatory relating to ozone-depleting chemicals.

SEC. 7507. ACCELERATION OF DEPOSIT REQUIREMENTS FOR GASOLINE EXCISE TAX.

(a) IN GENERAL.—Section 6302 (relating to mode or time of collection), as amended by section 7502, is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) TIME FOR DEPOSIT OF TAXES ON GASOLINE.—

"(1) GENERAL RULE.—Notwithstanding section 518 of the Highway Revenue Act of 1982, any person whose liability for tax under section 4081 is payable with respect to semimonthly periods shall, not later than September 27, make deposits of such tax for the period beginning on September 16 and ending on September 22.

"(2) SPECIAL RULE WHERE DUE DATE FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this paragraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or holiday in the District of Columbia, such due date shall be deemed to be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payments of taxes for tax periods beginning after December 31, 1989.

SEC. 7508. TAXATION OF BULK CIGAR IMPORTS.

(a) IN GENERAL.—Subsection (c) of section 5704 (relating to tobacco products and cigarette papers and tubes released in bond from customs custody) is amended by inserting "or to a manufacturer of tobacco products or cigarette papers and tubes if such articles are not put up in packages," after "export warehouse,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles imported or brought into the United States after the date of the enactment of this Act.

### Subtitle F—Miscellaneous Provisions

### PART I—LIMITATION ON NONRECOGNITION FOR CERTAIN EXCHANGES

SEC. 7601. LIKE KIND EXCHANGES BETWEEN RELATED PERSONS.

(a) SPECIAL RULES FOR EXCHANGES BETWEEN RELATED PERSONS, ETC.—Section 1031 (relating to exchange of property held for productive use or investment) is amended by adding at the end thereof the following new subsections:

"(f) SPECIAL RULES FOR EXCHANGES BETWEEN RELATED PERSONS.—

"(1) IN GENERAL.—If—

"(A) a taxpayer exchanges property with a related person,

"(B) there is nonrecognition of gain or loss to the taxpayer under this section with respect to the exchange of such property (determined without regard to this subsection), and

"(C) before the date 2 years after the date of the last transfer which was part of such exchange—

"(i) the related person disposes of such property, or

"(ii) the taxpayer disposes of the property received in the exchange from the related person which was of like kind to the property transferred by the taxpayer,

there shall be no nonrecognition of gain or loss under this section to the taxpayer with respect to such exchange; except that any gain or loss recognized by the taxpayer by reason of this subsection shall be taken into account as of the date on which the disposition referred to in subparagraph (C) occurs.

"(2) CERTAIN DISPOSITIONS NOT TAKEN INTO ACCOUNT.—For purposes of paragraph (1)(C), there shall not be taken into account any disposition—

"(A) after the earlier of the death of the taxpayer or the death of the related person,

"(B) in a compulsory or involuntary conversion (within the meaning of section 1033) if the exchange occurred before the threat or imminence of such conversion, or

"(C) with respect to which it is established to the satisfaction of the Secretary that neither the exchange nor such disposition had as one of its principal purposes the avoidance of Federal income tax.

"(3) RELATED PERSON.—For purposes of this subsection, the term 'related person' means any person bearing a relationship to the taxpayer described in section 267(b).

"(4) TREATMENT OF CERTAIN TRANSACTIONS.—This section shall not apply to any exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection.

"(g) SPECIAL RULE WHERE SUBSTANTIAL DIMINUTION OF RISK.—

"(1) IN GENERAL.—If paragraph (2) applies to any property for any period, the running of the period set forth in subsection (f)(1)(C) with respect to such property shall be suspended during such period.

"(2) PROPERTY TO WHICH SUBSECTION APPLIES.—This paragraph shall apply to any property for any period during which the holder's risk of loss with respect to the property is substantially diminished by—

"(A) the holding of a put with respect to such property,

"(B) the holding by another person of a right to acquire such property, or

"(C) a short sale or any other transaction.

"(h) SPECIAL RULE FOR FOREIGN REAL PROPERTY.—For purposes of this section, real property located in the United States and real property located outside the United States are not property of a like kind."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transfers after July 10, 1989, in taxable years ending after such date.

(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the transfer.

### PART II—MINIMUM TAX PROVISIONS

SEC. 7611. SIMPLIFICATION OF ADJUSTED CURRENT EARNINGS PREFERENCE.

(a) ELIMINATION OF BOOK LIMITATIONS APPLICABLE TO DEPRECIATION.—

(1) IN GENERAL.—

(A) Clause (i) of section 56(g)(4)(A) (relating to depreciation) is amended to read as follows:

"(i) PROPERTY PLACED IN SERVICE AFTER 1989.—The depreciation deduction with respect to any property placed in service in a taxable year beginning after 1989 shall be determined under the alternative system of section 168(g)."

(B) Subparagraph (A) of section 56(g)(4) is amended by striking clauses (v) and (vi) and by redesignating clause (vii) as clause (v).

(2) TECHNICAL AMENDMENT.—Clause (iii) of section 56(g)(4)(A) is amended by inserting "and which is placed in service in a taxable year beginning before 1990" after "thereof) applies".

(b) TREATMENT OF CERTAIN EARNINGS AND PROFITS ADJUSTMENTS.—Subparagraph (D) of section 56(g)(4) is amended to read as follows:

"(D) CERTAIN OTHER EARNINGS AND PROFITS ADJUSTMENTS.—

"(i) INTANGIBLE DRILLING COSTS.—The adjustments provided in section 312(n)(2)(A) shall apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1989.

"(ii) CERTAIN AMORTIZATION PROVISIONS NOT TO APPLY.—Sections 173 and 248 shall not apply to expenditures paid or incurred in taxable year beginning after December 31, 1989.

"(iii) LIFO INVENTORY ADJUSTMENTS.—The adjustments provided in section 312(n)(4) shall apply.

"(iv) INSTALLMENT SALES.—In the case of any installment sale in a taxable year beginning after December 31, 1989, adjusted current earnings shall be computed as if the corporation did not use the installment method. The preceding sentence shall not apply to the applicable percentage (as determined under section 453A) of the gain from any installment sale with respect to which section 453A(a)(1) applies."

(c) ELIMINATION OF BOOK LIMITATION ON DEPLETION.—Subparagraph (G) of section 56(g)(4) is amended to read as follows:

"(G) DEPLETION.—The allowance for depletion with respect to any property placed in service in a taxable year beginning after 1989 shall be cost depletion determined under section 611."

(d) TREATMENT OF CERTAIN DIVIDENDS.—Clause (ii) of section 56(g)(4)(C) is amended to read as follows:

"(ii) SPECIAL RULE FOR CERTAIN DIVIDENDS.—

"(I) IN GENERAL.—Clause (i) shall not apply to any deduction allowable under section 243 or 245 for any dividend which is a 100-percent dividend or which is received from a 20-percent owned corporation (as defined in section 243(c)(2)), but only to the extent such dividend is attributable to income of the paying corporation which is subject to tax under this chapter (determined after the application of sections 936 and 921).

"(II) 100-PERCENT DIVIDEND.—For purposes of the subclause (I), the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the amount allowable as a deduction under section 243 or 245 with respect to such dividend is 100 percent."

(e) SPECIAL RULE FOR CERTAIN DIVIDENDS RECEIVED BY COOPERATIVES.—Subparagraph (C) of section 56(g)(4) is amended by adding at the end thereof the following new clause:

"(iv) SPECIAL RULE FOR CERTAIN DIVIDENDS RECEIVED BY CERTAIN COOPERATIVES.—In the case of a cooperative described in section 927(a)(4), clause (i) shall not apply to any amount allowable as a deduction under section 245(c)."

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Clause (i) of section 56(g)(4)(H) is amended by striking "after the date of the enactment of the Tax Reform Act of 1986" and inserting "in a taxable year beginning after 1989".

(2) Clause (i) of section 56(g)(4)(B) is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply in the case of any amount excluded from gross income under section 108 (or the corresponding provisions of prior law)."

(3) Clause (iii) of section 56(g)(4)(B) is hereby repealed.

(4) Paragraph (5) of section 56(g) is amended by striking subparagraphs (A) and (C) and by redesignating subparagraphs (B) and (D) as subparagraphs (A) and (B), respectively.

(5)(A) Clause (ii) of section 312(n)(2)(A) is amended by striking "in which the production from the well begins" and inserting "in which such amount was paid or incurred".

(B) Paragraph (1) of section 59(e) is amended by inserting before the period at the end thereof: "(or, in the case of a qualified expenditure described in paragraph (2)(C), over the 60-month period beginning with the month in which such expenditure was paid or incurred)".

(6) Subsection (i) of section 59 is amended—

(A) by striking "interest shall" and inserting "any amount shall", and

(B) by striking "INTEREST" in the subsection heading and inserting "AMOUNTS".

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1989.

(2) INTANGIBLE DRILLING COSTS.—The amendments made by subsection (f)(5) shall apply to costs paid or incurred in taxable years beginning after December 31, 1989.

(3) REGULATIONS ON EARNINGS AND PROFITS RULES.—Not later than March 15, 1991, the Secretary of the Treasury or his delegate shall prescribe initial regulations providing guidance as to which items of income are included in adjusted current earnings under section 56(g)(4)(B)(i) of the Internal Revenue Code of 1986 and which items of deduction are disallowed under section 56(g)(4)(C) of such Code.

SEC. 7612. OTHER MODIFICATIONS TO MINIMUM TAX.

(a) MODIFICATION TO CORPORATE MINIMUM TAX CREDIT.—

(1) IN GENERAL.—Subparagraph (B) of section 53(d)(1) (relating to credit not allowed for exclusion preferences) is amended by adding at the end thereof the following new clause:

"(iv) CREDIT ALLOWABLE FOR EXCLUSION PREFERENCES OF CORPORATIONS.—In the case of a corporation—

"(I) the preceding provisions of this subparagraph shall not apply, and

"(II) the adjusted net minimum tax for any taxable year is the amount of the net minimum tax for such year increased by the amount of any credit not allowed under section 29 solely by reason of the application of section 29(b)(5)(B)."

(2) CONFORMING AMENDMENT.—Clause (ii) of section 53(d)(1)(B) is amended—

(A) by striking "subsections (b)(1) and (c)(3)" and inserting "subsection (b)(1)", and

(B) by striking the last sentence.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply for purposes of determining the adjusted net minimum tax for taxable years beginning after December 31, 1989.

(b) ADJUSTMENT FOR DISALLOWED PORTION OF ORPHAN DRUG CREDIT.—

(1) IN GENERAL.—Clauses (iii) and (iv) of section 53(d)(1)(B) (as amended by subsection (a)) are each amended by inserting after "section 29(d)(5)(B)" the following: "or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply for purposes of determining the amount of the minimum tax credit for taxable years beginning after December 31, 1989; except that, for such purposes, section 53(b)(1) of the Internal Revenue Code of 1986 shall be applied as if such amendment had been in effect for all prior taxable years.

(c) EXEMPTION FOR CERTAIN HOME CONSTRUCTION CONTRACTS.—

(1) IN GENERAL.—Paragraph (3) of section 56(a) (relating to treatment of certain long-term contracts) is amended by striking "with respect to which the requirements of clauses (i) and (ii) of section 460(e)(1)(B) are met".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts entered into in taxable years beginning after September 30, 1990.

(d) TREATMENT OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—

(1) IN GENERAL.—Paragraph (2) of section 56(b) (relating to circulation and research and experimental expenditures) is amended by adding at the end thereof the following new subparagraph:

"(D) EXCEPTION FOR CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—If the taxpayer materially participates (within the meaning of section 469(h)) in an activity, this paragraph shall not apply to any amount allowable as a deduction under section 174(a) for expenditures paid or incurred in connection with such activity."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1990.

(e) 90-PERCENT LIMITATION ON FOREIGN TAX CREDIT NOT TO APPLY TO CERTAIN CORPORATIONS.—

(1) IN GENERAL.—Paragraph (2) of section 59(a) (relating to limitation of foreign tax credit to 90-percent of tax) is amended by adding at the end thereof the following new subparagraph:

"(C) EXCEPTION.—Subparagraph (A) shall not apply to any domestic corporation if—

"(i) more than 50 percent of the stock of such domestic corporation (by vote and value) is owned by United States persons who are not members of an affiliated group (as defined in section 1504 of such Code) which includes such corporation,

"(ii) all of the activities of such corporation are conducted in 1 foreign country with which the United States has an income tax treaty in effect and such treaty provides for the exchange of information between such foreign country and the United States,

"(iii) all of the current earnings and profits of such corporation are distributed at least annually (other than current earnings and profits retained for normal maintenance or capital replacements or improvements of an existing business), and

"(iv) all of such distributions by such corporation to United States persons are used by such persons in a trade or business conducted in the United States."

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to taxable years beginning after March 31, 1990.

(B) SPECIAL RULE FOR YEAR WHICH INCLUDES MARCH 31, 1990.—In the case of any taxable year (of a corporation described in subparagraph (C) of section 59(a)(2) of the Internal Revenue Code of 1986 (as added by paragraph (1))) which begins after December 31, 1989, and includes March 31, 1990, the amount determined under clause (ii) of section 59(a)(2)(A) of such Code shall be an

amount which bears the same ratio to the amount which would have been determined under such clause without regard to this subparagraph as the number of days in such taxable year on or before March 31, 1990, bears to the total number of days in such taxable year.

(f) STUDY OF DEPRECIATION TREATMENT OF CERTAIN VEHICLES.—

(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study on the proper class life for cars and light trucks.

(2) REPORT.—Not later than the day 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the report conducted under paragraph (1), together with such recommendations as he may deem advisable.

### PART III—ACCOUNTING PROVISIONS

SEC. 7621. REPEAL OF COMPLETED CONTRACT METHOD OF ACCOUNTING FOR LONG-TERM CONTRACTS.

(a) IN GENERAL.—Subsection (a) of section 460 (relating to special rules for long-term contracts) is amended to read as follows:

"(a) REQUIREMENT THAT PERCENTAGE OF COMPLETION METHOD BE USED.—In the case of any long-term contract, the taxable income from such contract shall be determined under the percentage of completion method (as modified by subsection (b))."

(b) ELECTION TO USE MODIFIED PERCENTAGE OF COMPLETION METHOD.—Subsection (b) of section 460 (as amended by subsection (c)(1)) is amended by adding at the end thereof the following new paragraph:

"(5) ELECTION TO USE 10-PERCENT METHOD.—

"(A) GENERAL RULE.—In the case of any long-term contract with respect to which an election under this paragraph is in effect, the 10-percent method shall apply in determining the taxable income from such contract.

"(B) 10-PERCENT METHOD.—For purposes of this paragraph—

"(i) IN GENERAL.—The 10-percent method is the percentage of completion method, modified so that any item which would otherwise be taken into account in computing taxable income with respect to a contract for any taxable year before the 10-percent year is taken into account in the 10-percent year.

"(ii) 10-PERCENT YEAR.—The term '10-percent year' means the 1st taxable year as of the close of which at least 10 percent of the estimated total contract costs have been incurred.

"(C) ELECTION.—An election under this paragraph shall apply to all long-term contracts of the taxpayer which are entered into during the taxable year in which the election is made or any subsequent taxable year.

"(D) COORDINATION WITH OTHER PROVISIONS.—

"(i) SIMPLIFIED METHOD OF COST ALLOCATION.—This paragraph shall not apply to any taxpayer which uses a simplified procedure for allocation of costs under paragraph (3)(A).

"(ii) LOOK-BACK METHOD.—The 10-percent method shall be taken into account for purposes of applying the look-back method of paragraph (2) to any taxpayer making an election under this paragraph."

(c) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 460 is amended by striking paragraph (1) and by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(2) Paragraph (1) of section 460(b), as redesignated by paragraph (1), is amended—

(A) by striking "paragraph (4)" and inserting "paragraph (3)", and

(B) by striking "paragraph (3)" and inserting "paragraph (2)".

(3) Paragraph (3) of section 460(b), as redesignated by paragraph (1), is amended by striking "Paragraph (2)(B) and subsection (a)(2)" and inserting "Paragraph (1)(B)".

(4) Subparagraph (A) of section 460(b)(4), as redesignated by paragraph (1), is amended—

(A) by striking "paragraph (3)" each place it appears and inserting "paragraph (2)",

(B) by striking "paragraph (3)(B)" and inserting "paragraph (2)(B)", and

(C) by striking "paragraph (3)(A)" and inserting "paragraph (2)(A)".

(5) Paragraph (5) of section 460(e) is amended by striking so much of such paragraph as precedes subparagraph (A) and inserting the following:

"(5) SPECIAL RULE FOR RESIDENTIAL CONSTRUCTION CONTRACTS WHICH ARE NOT HOME CONSTRUCTION CONTRACTS.—In the case of any residential construction contract which is not a home construction contract, subsection (a) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1989) shall apply except that such subsection shall be applied—".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contracts entered into on or after July 11, 1989.

(2) BINDING BIDS.—The amendments made by this section shall not apply to any contract resulting from the acceptance of a bid made before July 11, 1989. The preceding sentence shall apply only if the bid could not have been revoked or altered at any time on or after July 11, 1989.

(3) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—The amendments made by this section shall not apply in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987).

SEC. 7622. CHANGES IN TREATMENT OF TRANSFERS OF FRANCHISES, TRADEMARKS, AND TRADE NAMES.

(a) CONTINGENT PAYMENTS.—Paragraph (1) of section 1253(d) (relating to treatment of payments by transferee) is amended to read as follows:

"(1) CONTINGENT SERIAL PAYMENTS.—

"(A) IN GENERAL.—Any amount described in subparagraph (B) which is paid or incurred during the taxable year on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name shall be allowed as a deduction under section 162(a) (relating to trade or business expenses).

"(B) AMOUNTS TO WHICH PARAGRAPH APPLIES.—An amount is described in this subparagraph if it—

"(i) is contingent on the productivity, use, or disposition of the franchise, trademark, or trade name, and

"(ii) is paid as part of a series of payments—

"(I) which are payable not less frequently than annually throughout the entire term of the transfer agreement, and

"(II) which are substantially equal in amount (or payable under a fixed formula)."

(b) $100,000 LIMITATION ON CERTAIN PAYMENTS.—

(1) IN GENERAL.—Paragraph (2) of section 1253(d) is amended by adding at the end thereof the following new subparagraph:

"(B) $100,000 LIMITATION ON DEDUCTIBILITY OF PRINCIPAL SUM.—Subparagraph (A) shall not apply if the principal sum referred to in such subparagraph exceeds $100,000. For purposes of the preceding sentence, all payments which are part of the same transaction (or a series of related transactions) shall be taken into account as payments with respect to each such transaction."

(2) CONFORMING AMENDMENTS.—Paragraph (2) of section 1253(d) is amended—

(A) by striking all that precedes "If" and inserting:

"(2) CERTAIN PAYMENTS IN DISCHARGE OF PRINCIPAL SUMS.—

"(A) IN GENERAL.—", and

(B) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and by redesignating clauses (i) and (ii) of subparagraph (B) as subclauses (I) and (II), respectively.

(c) OTHER PAYMENTS, ETC.—Section 1253(d) is amended by adding at the end thereof the following new paragraphs:

"(3) OTHER PAYMENTS.—

"(A) IN GENERAL.—Any amount paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name to which paragraph (1) or (2) does not apply shall be treated as an amount chargeable to capital account.

"(B) ELECTION TO RECOVER AMOUNTS OVER 25 YEARS.—

"(i) IN GENERAL.—If the taxpayer elects the application of this subparagraph, an amount chargeable to capital account—

"(I) to which paragraph (1) would apply but for subparagraph (B)(ii) thereof, or

"(II) to which paragraph (2) would apply but for subparagraph (B) thereof,

shall be allowed as a deduction ratably over the 25-year period beginning with the taxable year in which the transfer occurs.

"(ii) CONSISTENT TREATMENT.—An election under clause (i) shall apply to all amounts which are part of the same transaction (or a series of related transactions).

"(4) RENEWALS, ETC.—For purposes of determining the term of a transfer agreement or any period of amortization under this subsection, there shall be taken into account all renewal options (and any other period for which the parties reasonably expect the agreement to be renewed).

"(5) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of section 168(i)(7) shall apply for purposes of this subsection.".

(b) TECHNICAL AMENDMENTS.—

(1) DEPRECIATION ALLOWABLE.—Subsection (r) of section 167 is hereby repealed.

(2) DEDUCTION SUBJECT TO RECAPTURE.—

(A) Subparagraph (C) of section 1245(a)(2) is amended by striking "or 193" and inserting "193, or 1253(d) (2) or (3)".

(B) The material preceding subparagraph (A) of section 1245(a)(3) is amended by striking "section 185" and inserting "section 185 or 1253(d) (2) or (3)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transfers after October 2, 1989.

(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before the transfer.

### PART IV—EMPLOYMENT TAX PROVISIONS

SEC. 7631. TREATMENT OF AGRICULTURAL WORKERS UNDER WAGE WITHHOLDING.

(a) IN GENERAL.—Paragraph (2) of section 3401(a) (defining wages) is amended to read as follows:

"(2) for agricultural labor (as defined in section 3121(g)) unless the remuneration paid for such labor is wages (as defined in section 3121(a)); or".

(b) CREW LEADER RULES TO APPLY.—Section 3401 is amended by adding at the end thereof the following new subsection:

"(h) CREW LEADER RULES TO APPLY.—Rules similar to the rules of section 3121(o) shall apply for purposes of this chapter."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration paid after December 31, 1989.

SEC. 7632. ACCELERATION OF DEPOSIT REQUIREMENTS.

(a) IN GENERAL.—Section 6302 (relating to mode or time for collection), as amended by this title, is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DEPOSITS OF SOCIAL SECURITY TAXES AND WITHHELD INCOME TAXES.—

"(1) IN GENERAL.—If, under regulations prescribed by the Secretary, a person is required to make deposits of taxes imposed by chapters 21 and 24 on the basis of eighth-month periods, such person shall, for the years specified in paragraph (2), make deposits of such taxes on the applicable banking day after any day on which such person has $100,000 or more of such taxes for deposit.

"(2) SPECIFIED YEARS.—For purposes of paragraph (1)—

| "In the case of: | "The applicable banking day is: |
|---|---|
| 1990 | 1st |
| 1991 | 2d |
| 1992 | 3rd |
| 1993 | 1st |
| 1994 | 1st." |

(b) EFFECTIVE DATE.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to amounts required to be deposited after July 31, 1990.

(2) RULE FOR 1995 AND THEREAFTER.—For calendar year 1995 and thereafter, the Secretary of the Treasury shall prescribe regulations with respect to the date on which deposits of such taxes shall be made in order to minimize the unevenness in the revenue effects of the amendment made by subsection (a).

## PART V—OTHER PROVISIONS

SEC. 7641. LIMITATION ON SECTION 104 EXCLUSION.

(a) GENERAL RULE.—Section 104(a) (relating to compensation for injuries or sickness) is amended by adding at the end thereof the following new sentence: "Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to amounts received after July 10, 1989, in taxable years ending after such date.

(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any amount received—

(A) under any written binding agreement, court decree, or mediation award in effect on (or issued on or before) July 10, 1989, or

(B) pursuant to any suit filed on or before July 10, 1989.

SEC. 7642. TREATMENT OF DISTRIBUTIONS BY PARTNERSHIPS OF CONTRIBUTED PROPERTY.

(a) GENERAL RULE.—Subsection (c) of section 704 (relating to contributed property) is amended to read as follows:

"(c) CONTRIBUTED PROPERTY.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary—

"(A) income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and

"(B) if any property so contributed is distributed by the partnership (other than to the contributing partner) within 5 years of being contributed—

"(i) the contributing partner shall be treated as recognizing gain or loss (as the case may be) from the sale of such property in an amount equal to the gain or loss which would have been allocated to such partner under subparagraph (A) by reason of the variation described in subparagraph (A) if the property had been sold at its fair market value at the time of the distribution,

"(ii) the character of such gain or loss shall be determined by reference to the character of the gain or loss which would have resulted if such property had been sold by the partnership to the distributee, and

"(iii) appropriate adjustments shall be made to the adjusted basis of the contributing partner's interest in the partnership and to the adjusted basis of the property distributed to reflect any gain or loss recognized under this subparagraph.

"(2) SPECIAL RULE FOR DISTRIBUTIONS WHERE GAIN OR LOSS WOULD NOT BE RECOGNIZED OUTSIDE PARTNERSHIPS.—Under regulations prescribed by the Secretary, if—

"(A) property contributed by a partner (hereinafter referred to as the 'contributing partner') is distributed by the partnership to another partner, and

"(B) other property of a like kind (within the meaning of section 1031) is distributed by the partnership to the contributing partner not later than the earlier of—

"(i) the 180th day after the date of the distribution described in subparagraph (A), or

"(ii) the due date (determined with regard to extensions) for the contributing partner's return of the tax imposed by this chapter for the taxable year in which the distribution described in subparagraph (A) occurs,

then to the extent of the value of the property described in subparagraph (B), paragraph (1)(B) shall be applied as if the contributing partner had contributed to the partnership the property described in subparagraph (B).

"(3) OTHER RULES.—Under regulations prescribed by the Secretary, rules similar to the rules of paragraph (1) shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items. Any reference in paragraph (1) or (2) to the contributing partner shall be treated as including a reference to any successor of such partner."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of property contributed to the partnership after October 3, 1989, in taxable years ending after such date.

SEC. 7643. DEPRECIATION TREATMENT OF CELLULAR TELEPHONES.

(a) GENERAL RULE.—Subparagraph (A) of section 280F(d)(4) (defining listed property) is amended by striking "and" at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

"(v) any cellular telephone (or other similar telecommunications equipment), and".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property placed in service or leased in taxable years beginning after December 31, 1989.

SEC. 7644. ELIMINATION OF RETROACTIVE CERTIFICATION OF EMPLOYEES FOR WORK INCENTIVE JOBS CREDIT.

(a) IN GENERAL.—So much of subparagraph (A) of section 50B(h)(1) of the Internal Revenue Code of 1954 (as in effect for taxable years beginning before January 1, 1982) as precedes clause (i) thereof is amended to read as follows:

"(A) who has been certified (or for whom a written request for certification has been made) on or before the day the individual began work for the taxpayer by the Secretary of Labor or by the appropriate agency of State or local government as—".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of credits first claimed after March 11, 1987.

SEC. 7645. DISALLOWANCE OF DEPRECIATION FOR CERTAIN TERM INTERESTS.

(a) GENERAL RULE.—Section 167 (as amended by section 7622) is amended by inserting after subsection (q) the following new subsection:

"(r) CERTAIN TERM INTERESTS NOT DEPRECIABLE.—

"(1) IN GENERAL.—No depreciation deduction shall be allowed under this section (and no depreciation or amortization deduction shall be allowed under any other provision of this subtitle) to the taxpayer for any term interest in property for any period during which the remainder interest in such property is held (directly or indirectly) by a related person.

"(2) COORDINATION WITH SECTION 273.—This subsection shall not apply to any term interest to which section 273 applies.

"(3) BASIS ADJUSTMENTS.—If, but for this subsection, a depreciation or amortization deduction would be allowable to the taxpayer with respect to any term interest in property—

"(A) the taxpayer's basis in such property shall be reduced by any depreciation or amortization deductions disallowed under this subsection, and

"(B) the basis of the remainder interest in such property shall be increased by the amount of such disallowed deductions (properly adjusted for any depreciation deductions allowable under subsection (h) to the taxpayer).

"(4) SPECIAL RULES.—

"(A) DENIAL OF INCREASE IN BASIS OF REMAINDERMAN.—No increase in the basis of the remainder interest shall be made under paragraph (3)(B) for any disallowed deductions attributable to periods during which the term interest was held—

"(i) by an organization exempt from tax under this subtitle, or

"(ii) by a nonresident alien individual or foreign corporation but only if income from the term interest is not effectively connected with the conduct of a trade or business in the United States.

"(B) COORDINATION WITH SUBSECTION (h).—If, but for this subsection, a depreciation or amortization deduction would be allowable to any person with respect to any term interest in property, the principles of subsection (h) shall apply to such person with respect to such term interest.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) TERM INTEREST IN PROPERTY.—The term 'term interest in property' has the meaning given such term by section 1001(e)(2).

"(B) RELATED PERSON.—The term 'related person' means any person bearing a relationship to the taxpayer described in subsection (b) or (e) of section 267.

"(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through cross-ownership arrangements or otherwise."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interests created or acquired after July 27, 1989, in taxable years ending after such date.

SEC. 7646. REPORTING OF POINTS ON MORTGAGE LOANS.

(a) GENERAL RULE.—Paragraph (2) of section 6050H(b) (relating to form and manner of returns) is amended by striking "and" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) the amount of points on the mortgage received during the calendar year and whether such points were paid directly by the borrower, and".

(b) TECHNICAL AMENDMENTS.—

(1) Subparagraph (B) of section 6050H(b)(1) is amended by inserting "(other than points)" after "such interest".

(2) Paragraph (2) of section 6050H(d) is amended—

(A) by inserting "(other than points)" after "subsection (a)(2)", and

(B) by inserting before the period at the end thereof the following: "(and the information required under subsection (b)(2)(C))".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which (determined without regard to extensions) is after December 31, 1991.

SEC. 7647. TREATMENT OF CERTAIN INVESTMENT-ORIENTED LIFE INSURANCE CONTRACTS.

(a) GENERAL RULE.—Subsection (c) of section 7702A (relating to computational rules) is amended by adding at the end thereof the following new paragraph:

"(6) TREATMENT OF CERTAIN CONTRACTS WITH MORE THAN ONE INSURED.—If—

"(A) a contract provides a death benefit which is payable only upon the death of 1 insured following (or occurring simultaneously with) the death of another insured, and

"(B) there is a reduction in such death benefit below the lowest level of such death benefit provided under the contract during the 1st 7 contract years,

this section shall be applied as if the contract had originally been issued at the reduced benefit level."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contracts entered into on or after September 14, 1989.

## PART VI—TAX-EXEMPT BOND PROVISIONS

SEC. 7651. TREATMENT OF HEDGE BONDS.

(a) IN GENERAL.—Section 149 (relating to bonds must be registered to be tax-exempt; other requirements) is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF HEDGE BONDS.—

"(1) IN GENERAL.—Section 103(a) shall not apply to any hedge bond unless, with respect to the issue of which such bond is a part—

"(A) the requirement of paragraph (2) is met, and

"(B) the requirement of subsection (f)(3) is met.

"(2) REASONABLE EXPECTATIONS AS TO WHEN PROCEEDS WILL BE SPENT.—An issue meets the requirement of this paragraph if the issuer reasonably expects that—

"(A) 10 percent of the spendable proceeds of the issue will be spent for the governmental purposes of the issue within the 1-year period beginning on the date the bonds are issued,

"(B) 30 percent of the spendable proceeds of the issue will be spent for such purposes within the 2-year period beginning on such date,

"(C) 60 percent of the spendable proceeds of the issue will be spent for such purposes within the 3-year period beginning on such date, and

"(D) 85 percent of the spendable proceeds of the issue will be spent for such purposes within the 5-year period beginning on such date.

"(3) HEDGE BOND.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'hedge bond' means any bond issued as part of an issue unless—

"(i) the issuer reasonably expects that 85 percent of the spendable proceeds of the issue will be used to carry out the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued, and

"(ii) not more than 50 percent of the proceeds of the issue are invested in nonpurpose investments (as defined in section 148(f)(6)(A)) having a substantially guaranteed yield for 4 years or more.

"(B) EXCEPTION FOR INVESTMENT IN TAX-EXEMPT BONDS NOT SUBJECT TO MINIMUM TAX.—

"(i) IN GENERAL.—Such term shall not include any bond issued as part of an issue 95 percent of the net proceeds of which are invested in bonds—

"(I) the interest on which is not includible in gross income under section 103, and

"(II) which are not specified private activity bonds (as defined in section 57(a)(5)(C)).

"(ii) AMOUNTS IN BONA FIDE DEBT SERVICE FUND.—Amounts in a bona fide debt service fund shall be treated as invested in bonds described in clause (i).

"(iii) INVESTMENT EARNINGS HELD PENDING REINVESTMENT.—Investment earnings held for not more than 30 days pending reinvestment shall be treated as invested in bonds described in clause (i).

"(C) EXCEPTION FOR REFUNDING BONDS.—

"(i) IN GENERAL.—A refunding bond shall be treated as meeting the requirements of this subsection only if the original bond met such requirements.

"(ii) GENERAL RULE FOR REFUNDING OF PRE-EFFECTIVE DATE BONDS.—A refunding bond shall be treated as meeting the requirements of this subsection if—

"(I) this subsection does not apply to the original bond,

"(II) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

"(III) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

"(iii) REFUNDING OF PRE-EFFECTIVE DATE BONDS ENTITLED TO 5-YEAR TEMPORARY PERIOD.—A refunding bond shall be treated as meeting the requirements of this subsection if—

"(I) this subsection does not apply to the original bond,

"(II) the issuer reasonably expected that 85 percent of the spendable proceeds of the issue of which the original bond is a part would be used to carry out the governmental purposes of the issue within the 5-year period beginning on the date the original bonds were issued but did not reasonably expect that 85 percent of such proceeds would be so spent within the 3-year period beginning on such date, and

"(III) at least 85 percent of the spendable proceeds of the original issue (and all other prior original issues issued to finance the governmental purposes of such issue) were spent before the date the refunding bonds are issued.

"(4) SPECIAL RULES.—For purposes of this subsection—

"(A) CONSTRUCTION PERIOD IN EXCESS OF 5 YEARS.—The Secretary may, at the request of any issuer, provide that the requirement of paragraph (2) shall be treated as met with respect to the portion of the spendable proceeds of an issue which is to be used for any construction project having a construction period in excess of 5 years if it is reasonably expected that such proceeds will be spent over a reasonable construction schedule specified in such request.

"(B) RULES FOR DETERMINING EXPECTATIONS.—The rules of subsection (f)(2)(B) shall apply.

"(5) REGULATIONS.—The Secretary may prescribe regulations to prevent the avoidance of the rules of this subsection, including through the aggregation of projects within a single issue."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) shall apply to bonds issued after September 14, 1989.

(2) BONDS SOLD BEFORE SEPTEMBER 15, 1989.—The amendment made by subsection (a) shall not apply to any bond sold before September 15, 1989, and issued before October 15, 1989.

(3) BONDS WITH RESPECT TO WHICH PRELIMINARY OFFERING MATERIALS MAILED.—The amendment made by subsection (a) shall not apply to any issue issued after the date of the enactment of this Act if the preliminary offering materials with respect to such issue were mailed (or otherwise delivered) to members of the underwriting syndicate before September 15, 1989.

(4) CERTAIN OTHER BONDS.—In the case of a bond issued before January 1, 1991, with respect to which official action was taken (or a series of official actions were taken), or other comparable preliminary approval was given, before November 18, 1989, demonstrating an intent to issue such bonds in a maximum specified amount for such issue or with a maximum specified amount of net proceeds of such issue, the issuer may elect to apply section 149(g)(2) of the Internal Revenue Code of 1986 (as added by this section) by substituting "15 percent" for "10 percent" in subparagraph (A) and "50 percent" for "60 percent" in subparagraph (C).

(5) BONDS ISSUED TO FINANCE SELF-INSURANCE FUNDS.—The amendment made by subsection (a) shall not apply to any bonds issued before July 1, 1990, to finance a self-insurance fund if official action was taken (or a series of official actions were taken), or other comparable preliminary approval was given, before September 15, 1989, demonstrating an intent to issue such bonds in a maximum specified amount for such issue or with a maximum specified amount of net proceeds of such issue.

SEC. 7652. EXCEPTIONS FROM ARBITRAGE REBATE REQUIREMENT.

(a) IN GENERAL.—Clause (i) of section 148(f)(4)(B) (relating to temporary investments) is amended to read as follows:

"(i) IN GENERAL.—An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if—

"(I) the gross proceeds of such issue are expended for the governmental purposes for which the issue was issued no later than the day which is 6 months after the date of issuance of the issue, and

"(II) the requirements of paragraph (2) are met after such 6 months with respect to earnings on amounts in any reasonably required reserve or replacement fund.

Gross proceeds which are held in a bona fide debt service fund or a reasonably required reserve or replacement fund shall not be considered gross proceeds for purposes of this subparagraph only."

(b) CONSTRUCTION BONDS.—Subparagraph (B) of section 148(f)(4) (relating to temporary investments) is amended by adding at the end thereof the following new clause:

"(iv) 2-YEAR PERIOD FOR CERTAIN CONSTRUCTION BONDS.—

"(I) IN GENERAL.—In the case of an issue described in subclause (IV), clause (i) shall be applied by substituting '2 years' for '6 months' each place it appears.

"(II) PROCEEDS MUST BE SPENT WITHIN CERTAIN PERIODS.—Subclause (I) shall not apply to any issue if less than 10 percent of the net proceeds of the issue are spent for the governmental purposes of the issue within the 6-month period beginning on the date the bonds are issued, less than 45 percent of such proceeds are spent for such purposes within the 1-year period beginning on such date, less than 75 percent of such proceeds are spent for such purposes within the 18-month period beginning on such date, or less than 100 percent of such proceeds are spent for such purposes within the 2-year period beginning on such date. For purposes of the preceding sentence, the term 'net proceeds' includes investment proceeds earned before the close of the period involved on the investment of the sale proceeds of the issue.

"(III) EXCEPTION FOR REASONABLE RETAINAGE.—For purposes of subclause (II), 100 percent of the net proceeds of an issue shall be treated as spent for the governmental purposes of the issue within the 2-year period beginning on the date the bonds are issued if such requirement is met within the 3-year period beginning on such date and such requirement would have been met within such 2-year period but for a reasonable retainage (not exceeding 5 percent of the net proceeds of the issue).

"(IV) ISSUES TO WHICH SUBCLAUSE (I) APPLIES.—An issue is described in this subclause if at least 75 percent of the net proceeds of the issue are to be used for construction expenditures with respect to property which is owned by a governmental unit or a 501(c)(3) organization. For purposes of the preceding sentence, the term 'construction' includes reconstruction and rehabilitation, and section 142(b)(1) shall apply. An issue is not described in this subclause if any bond which is part of such issue is a bond other than a qualified 501(c)(3) bond, a bond which is not a private activity bond, or a private activity bond to finance property to be owned by a governmental unit or a 501(c)(3) organization.

"(V) ELECTION TO PAY PENALTY IN LIEU OF REBATE.—In the case of an issue described in subclause (IV) which fails to meet the requirements of subclause (II), if the issuer elected the application of this subclause, the requirements of paragraph (2) shall be treated as met if the issuer pays the penalty under paragraph (7) or pays a penalty with respect to the close of each 6 month period after the date the bonds are issued equal to 1½ percent of the amount of the net proceeds of the issue which, as of the close of such period, are not spent as required by subclause (II). The penalty under this subclause shall cease to apply only after the bonds (including any refunding bonds with respect thereto) are no longer outstanding.

"(VI) ELECTION TO REBATE ON EARNINGS ON RESERVE.—If the issuer so elects, the term 'net proceeds' for purposes of subclause (II) shall not include earnings on any reasonably required reserve or replacement fund and the requirements of paragraph (2) shall apply to such earnings.

"(VII) POOLED FINANCING BONDS.—At the election of the issuer of an issue the proceeds of which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons, the periods described in clause (i) and this clause shall begin on the date the loan is made in the case of loans made within the 1-year period after the date the bonds were issued. In the case of loans made after such 1-year period, the periods described in clause (i) and this clause shall begin at the close of such 1-year period.

"(VIII) PORTIONS OF ISSUE MAY BE TREATED SEPARATELY.—If only a portion of an issue is to be used for construction expenditures referred to in subclause (IV), such portion and the other portion of such issue may, at the election of the issuer, be treated as separate issues for purposes of this clause and clause (i).

"(IX) ELECTIONS.—Any election under this clause shall be made on or before the date the bonds are issued; and, once made, shall be irrevocable."

(c) POOLED FINANCING BONDS.—Subparagraph (A) of section 148(c)(2) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) BONDS USED TO PROVIDE CONSTRUCTION FINANCING.—In the case of an issue described in subparagraph (A) any portion of which is used to make or finance loans for construction expenditures (within the meaning of subsection (f)(4)(B)(iv)(IV))—

"(i) rules similar to the rules of subsection (f)(4)(B)(iv)(VIII) shall apply, and

"(ii) subparagraph (A) shall be applied with respect to such portion by substituting '2 years' for '6 months'."

(d) CONFORMING AMENDMENT.—Subclause (I) of section 148(f)(4)(B)(ii) is amended by inserting "each place it appears" after "'6 months'".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

### Subtitle G—Revision of Civil Penalties

SEC. 7701. SHORT TITLE.

This subtitle may be cited as the "Improved Penalty Administration and Compliance Tax Act".

### PART I—DOCUMENT AND INFORMATION RETURN PENALTIES

SEC. 7711. UNIFORM PENALTIES FOR FAILURES TO COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS.

(a) GENERAL RULE.—Part II of subchapter B of chapter 68 (relating to failure to file certain information returns or statements) is amended to read as follows:

"PART II—FAILURE TO COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS

"Sec. 6721. Failure to file correct information returns.

"Sec. 6722. Failure to furnish correct payee statements.

"Sec. 6723. Failure to comply with other information reporting requirements.

"Sec. 6724. Waiver; definitions and special rules.

"SEC. 6721. FAILURE TO FILE CORRECT INFORMATION RETURNS.

"(a) IMPOSITION OF PENALTY.—

"(1) IN GENERAL.—In the case of a failure described in paragraph (2) by any person with respect to an information return, such person shall pay a penalty of $50 for each return with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $250,000.

"(2) FAILURES SUBJECT TO PENALTY.—For purposes of paragraph (1), the failures described in this paragraph are—

"(A) any failure to file an information return with the Secretary on or before the required filing date, and

"(B) any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

"(b) REDUCTION WHERE CORRECTION IN SPECIFIED PERIOD.—

"(1) CORRECTION WITHIN 30 DAYS.—If any failure described in subsection (a)(2) is corrected on or before the day 30 days after the required filing date—

"(A) the penalty imposed by subsection (a) shall be $15 in lieu of $50, and

"(B) the total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed $75,000.

"(2) FAILURES CORRECTED ON OR BEFORE AUGUST 1.—If any failure described in subsection (a)(2) is corrected after the 30th day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs—

"(A) the penalty imposed by subsection (a) shall be $30 in lieu of $50, and

"(B) the total amount imposed on the person for all such failures during the calendar year which are so corrected shall not exceed $150,000.

"(c) EXCEPTION FOR DE MINIMIS FAILURES TO INCLUDE ALL REQUIRED INFORMATION.—

"(1) IN GENERAL.—If—

"(A) an information return is filed with the Secretary,

"(B) there is a failure described in subsection (a)(2)(B) (determined after the application of section 6724(a)) with respect to such return, and

"(C) such failure is corrected on or before August 1 of the calendar year in which the required filing date occurs,

for purposes of this section, such return shall be treated as having been filed with all of the correct required information.

"(2) LIMITATION.—The number of information returns to which paragraph (1) applies for any calendar year shall not exceed the greater of—

"(A) 10, or

"(B) one-half of 1 percent of the total number of information returns required to be filed by the person during the calendar year.

"(d) LOWER LIMITATIONS FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN $5,000,000.—

"(1) IN GENERAL.—If any person meets the gross receipts test of paragraph (2) with respect to any calendar year, with respect to failures during such taxable year—

"(A) subsection (a)(1) shall be applied by substituting '$100,000' for '$250,000',

"(B) subsection (b)(1)(B) shall be applied by substituting '$25,000' for '$75,000', and

"(C) subsection (b)(2)(B) shall be applied by substituting '$50,000' for '$150,000'.

"(2) GROSS RECEIPTS TEST.—

"(A) IN GENERAL.—A person meets the gross receipts test of this paragraph for any calendar year if the average annual gross receipts of such person for the most recent 3 taxable years ending before such calendar year do not exceed $5,000,000.

"(B) CERTAIN RULES MADE APPLICABLE.—For purposes of subparagraph (A), the rules of paragraphs (2) and (3) of section 448(c) shall apply.

"(e) PENALTY IN CASE OF INTENTIONAL DISREGARD.—If 1 or more failures described in subsection (a)(2) are due to intentional disregard of the filing requirement (or the correct information reporting requirement), then, with respect to each such failure—

"(1) subsections (b), (c), and (d) shall not apply,

"(2) the penalty imposed under subsection (a) shall be $100, or, if greater—

"(A) in the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050J, 6050K, or 6050L, 10 percent of the aggregate amount of the items required to be reported correctly, or

"(B) in the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate amount of the items required to be reported correctly, and

"(3) in the case of any penalty determined under paragraph (2)—

"(A) the $250,000 limitation under subsection (a) shall not apply, and

"(B) such penalty shall not be taken into account in applying such limitation (or any similar limitation under subsection (b)) to penalties not determined under paragraph (2).

"SEC. 6722. FAILURE TO FURNISH CORRECT PAYEE STATEMENTS.

"(a) GENERAL RULE.—In the case of each failure described in subsection (b) by any person with respect to a payee statement, such person shall pay a penalty of $50 for each statement with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $100,000.

"(b) FAILURES SUBJECT TO PENALTY.—For purposes of subsection (a), the failures described in this subsection are—

"(1) any failure to furnish a payee statement on or before the date prescribed therefor to the person to whom such statement is required to be furnished, and

"(2) any failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information.

"(c) PENALTY IN CASE OF INTENTIONAL DISREGARD.—If 1 or more failures to which subsection (a) applies are due to intentional disregard of the requirement to furnish a payee statement (or the correct information reporting requirement), then, with respect to each failure—

"(1) the penalty imposed under subsection (a) shall be $100, or, if greater—

"(A) in the case of a payee statement other than a statement required under section 6045(b), 6041A(e) (in respect of a return required under section 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6050L(c), 10 percent of the aggregate amount of the items required to be reported correctly, or

"(B) in the case of a payee statement required under section 6045(b), 6050K(b), or 6050L(c), 5 percent of the aggregate amount of the items required to be reported correctly, and

"(2) in the case of any penalty determined under paragraph (1)—

"(A) the $100,000 limitation under subsection (a) shall not apply, and

"(B) such penalty shall not be taken into account in applying such limitation to penalties not determined under paragraph (1).

"SEC. 6723. FAILURE TO COMPLY WITH OTHER INFORMATION REPORTING REQUIREMENTS.

"In the case of a failure by any person to comply with a specified information reporting requirement on or before the time prescribed therefor, such person shall pay a penalty of $50 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $100,000.

"SEC. 6724. WAIVER; DEFINITIONS AND SPECIAL RULES.

"(a) REASONABLE CAUSE WAIVER.—No penalty shall be imposed under this part with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

"(b) PAYMENT OF PENALTY.—Any penalty imposed by this part shall be paid on notice and demand by the Secretary and in the same manner as tax.

"(c) SPECIAL RULE FOR FAILURE TO MEET MAGNETIC MEDIA REQUIREMENTS.—No penalty shall be imposed under section 6721 solely by reason of any failure to comply with the requirements of the regulations prescribed under section 6011(e)(2), except to the extent that such a failure occurs with respect to more than 250 information returns.

"(d) DEFINITIONS.—For purposes of this part—

"(1) INFORMATION RETURN.—The term 'information return' means—

"(A) any statement of the amount of payments to another person required by—

"(i) section 6041(a) or (b) (relating to certain information at source),

"(ii) section 6042(a)(1) (relating to payments of dividends),

"(iii) section 6044(a)(1) (relating to payments of patronage dividends),

"(iv) section 6049(a) (relating to payments of interest),

"(v) section 6050A(a) (relating to reporting requirements of certain fishing boat operators),

"(vi) section 6050N(a) (relating to payments of royalties), or

"(vii) section 6051(d) (relating to information returns with respect to income tax withheld), and

"(B) any return required by—

"(i) section 6041A(a) or (b) (relating to returns of direct sellers),

"(ii) section 6045(a) or (d) (relating to returns of brokers),

"(iii) section 6050H(a) (relating to mortgage interest received in trade or business from individuals),

"(iv) section 6050I(a) (relating to cash received in trade or business),

"(v) section 6050J(a) (relating to foreclosures and abandonments of security),

"(vi) section 6050K(a) (relating to exchanges of certain partnership interests),

"(vii) section 6050L(a) (relating to returns relating to certain dispositions of donated property),

"(viii) section 6052(a) (relating to reporting payment of wages in the form of group-life insurance),

"(ix) section 6053(c)(1) (relating to reporting with respect to certain tips),

"(x) section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions), or

"(xi) subparagraph (A) or (C) of subsection (c)(4), or subsection (e), of section 4093 (relating to information reporting with respect to tax on diesel and aviation fuels).

Such term also includes any form, statement, or schedule required to be filed with the Secretary with respect to any amount from which tax was required to be deducted and withheld under chapter 3 (or from which tax would be required to be so deducted and withheld but for an exemption under this title or any treaty obligation of the United States).

"(2) PAYEE STATEMENT.—The term 'payee statement' means any statement required to be furnished under—

"(A) section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities),

"(B) section 6039(a) (relating to information required in connection with certain options),

"(C) section 6041(d) (relating to information at source),

"(D) section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales),

"(E) section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits),

"(F) section 6044(e) (relating to returns regarding payments of patronage dividends),

"(G) section 6045(b) or (d) (relating to returns of brokers),

"(H) section 6049(c) (relating to returns regarding payments of interest),

"(I) section 6050A(b) (relating to reporting requirements of certain fishing boat operators),

"(J) section 6050H(d) relating to returns relating to mortgage interest received in trade or business from individuals),

"(K) section 6050I(e) (relating to returns relating to cash received in trade or business),

"(L) section 6050J(e) (relating to returns relating to foreclosures and abandonments of security),

"(M) section 6050K(b) (relating to returns relating to exchanges of certain partnership interests),

"(N) section 6050L(c) (relating to returns relating to certain dispositions of donated property),

"(O) section 6050N(b) (relating to returns regarding payments of royalties),

"(P) section 6051 (relating to receipts for employees),

"(Q) section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance),

"(R) section 6053(b) or (c) (relating to reports of tips), or

"(S) section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels).

Such term also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax was required to be deducted and withheld under chapter 3 (or from which tax would be required to be so deducted and withheld but for an exemption under this title or any treaty obligation of the United States).

"(3) SPECIFIED INFORMATION REPORTING REQUIREMENT.—The term 'specified information reporting requirement' means—

"(A) the notice required by section 6050K(c)(1) (relating to requirement that transferor notify partnership of exchange),

"(B) any requirement contained in the regulations prescribed under section 6109 that a person—

"(i) include his TIN on any return, statement, or other document (other than an information return or payee statement),

"(ii) furnish his TIN to another person, or

"(iii) include on any return, statement, or other document (other than an information return or payee statement) made with respect to another person the TIN of such person,

"(C) any requirement contained in the regulations prescribed under section 215 that a person—

"(i) furnish his TIN to another person, or

"(ii) include on his return the TIN of another person, and

"(D) the requirement of section 6109(e) that a person include the TIN of any dependent on his return.

"(4) REQUIRED FILING DATE.—The term 'required filing date' means the date prescribed for filing an information return with the Secretary (determined with regard to any extension of time for filing)."

(b) TECHNICAL AMENDMENTS.—

(1) Sections 6017A, 6676, and 6687 are hereby repealed.

(2) Subsection (b) of section 7205 is amended to read as follows:

"(b) BACKUP WITHHOLDING ON INTEREST AND DIVIDENDS.—If any individual willfully makes a false certification under paragraph (1) or (2)(C) of section 3406(d), then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both."

(3) The table of sections for subpart B of part II of subchapter A of chapter 61 is amended by striking the item relating to section 6017A.

(4) The table of sections for part I of subchapter B of chapter 68 is amended by striking the items relating to sections 6676 and 6687.

(5) The table of parts for subchapter B of chapter 68 is amended by striking the item relating to part II and inserting the following:

"Part II. Failure to comply with certain information reporting requirements."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which (determined without regard to extensions) is after December 31, 1989.

SEC. 7712. INFORMATION REQUIRED WITH RESPECT TO CERTAIN FOREIGN CORPORATIONS.

(a) CLARIFICATION OF REPORTING REQUIREMENTS UNDER SECTION 6038.—

(1) Subsection (a) of section 6038 (relating to information with respect to certain foreign corporations) is amended by adding at the end thereof the following new paragraph:

"(4) INFORMATION REQUIRED FROM CERTAIN SHAREHOLDERS IN CERTAIN CASES.—If any foreign corporation is treated as a controlled foreign corporation for any purpose under subpart F of part III of subchapter N of chapter 1, the Secretary may require any United States person treated as a United States shareholder of such corporation for any purpose under subpart F to furnish the information required under paragraph (1)."

(2) Paragraph (1) of section 6038(a) is amended by inserting before the period at the end of the second sentence the following: "or which the Secretary determines to be appropriate to carry out the provisions of this title."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to returns and statements the due date for which (determined without regard to extensions) is after December 31, 1989.

SEC. 7713. UNIFORM REQUIREMENTS FOR RETURNS ON MAGNETIC MEDIA.

(a) GENERAL RULE.—Subsection (e) of section 6011 (relating to regulations requiring returns on magnetic tape, etc.) is amended to read as follows:

"(e) REGULATIONS REQUIRING RETURNS ON MAGNETIC MEDIA, ETC.—

"(1) IN GENERAL.—The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

"(2) REQUIREMENTS OF REGULATIONS.—In prescribing regulations under paragraph (1), the Secretary—

"(A) shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and

"(B) shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1989.

SEC. 7714. STUDY OF PROCEDURES TO PREVENT MISMATCHING.

(a) GENERAL RULE.—The Comptroller General (in consultation with the Secretary of the Treasury or his delegate) shall conduct a study on procedures to resolve, with the least disclosure of return information possible, discrepancies between taxpayer-identity information shown on information returns and such information in the records of the Internal Revenue Service.

(b) REPORT.—Not later than June 1, 1990, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable.

SEC. 7715. STUDY OF SERVICE BUREAUS.

(a) GENERAL RULE.—The Comptroller General (in consultation with the Secretary of the Treasury or his delegate) shall conduct a study of whether persons engaged in the business of transmitting information returns or other documents to the Internal Revenue Service on behalf of other persons should be subject to registration or other regulation.

(b) REPORT.—Not later than July 1, 1990, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable.

## PART II—REVISION OF ACCURACY-RELATED PENALTIES

SEC. 7721. REVISION OF ACCURACY-RELATED PENALTIES.

(a) GENERAL RULE.—Subchapter A of chapter 68 (relating to additions to the tax and additional amounts) is amended by striking section 6662 and inserting the following:

"PART II—ACCURACY-RELATED AND FRAUD PENALTIES

"Sec. 6662. Imposition of accuracy-related penalty.

"Sec. 6663. Imposition of fraud penalty.

"Sec. 6664. Definitions and special rules.

"SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY.

"(a) IMPOSITION OF PENALTY.—If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.

"(b) PORTION OF UNDERPAYMENT TO WHICH SECTION APPLIES.—This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:

"(1) Negligence or disregard of rules or regulations.

"(2) Any substantial understatement of income tax.

"(3) Any substantial valuation overstatement under chapter 1.

"(4) Any substantial overstatement of pension liabilities.

"(5) Any substantial estate or gift tax valuation understatement.

This section shall not apply to any portion of an underpayment on which a penalty is imposed under section 6663.

"(c) NEGLIGENCE.—For purposes of this section, the term 'negligence' includes any failure to make a reasonable attempt to comply with the provisions of this title, and the term 'disregard' includes any careless, reckless, or intentional disregard.

"(d) SUBSTANTIAL UNDERSTATEMENT OF INCOME TAX.—

"(1) SUBSTANTIAL UNDERSTATEMENT.—

"(A) IN GENERAL.—For purposes of this section, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of—

"(i) 10 percent of the tax required to be shown on the return for the taxable year, or

"(ii) $5,000.

"(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), paragraph (1) shall be applied by substituting "$10,000" for "$5,000".

"(2) UNDERSTATEMENT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'understatement' means the excess of—

"(i) the amount of the tax required to be shown on the return for the taxable year, over

"(ii) the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2)).

"(B) REDUCTION FOR UNDERSTATEMENT DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—The amount of the understatement under subparagraph (A) shall be reduced by that portion of the understatement which is attributable to—

"(i) the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or

"(ii) any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

"(C) SPECIAL RULES IN CASES INVOLVING TAX SHELTERS.—

"(i) IN GENERAL.—In the case of any item attributable to a tax shelter—

"(I) subparagraph (B)(ii) shall not apply, and

"(II) subparagraph (B)(i) shall not apply unless (in addition to meeting the requirements of such subparagraph) the taxpayer reasonably believed that the tax treatment of such item by the taxpayer was more likely than not the proper treatment.

"(ii) TAX SHELTER.—For purposes of clause (i), the term 'tax shelter' means—

"(I) a partnership or other entity,

"(II) any investment plan or arrangement, or

"(III) any other plan or arrangement,

if the principal purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

"(D) SECRETARIAL LIST.—The Secretary shall prescribe (and revise not less frequently than annually) a list of positions—

"(i) for which the Secretary believes there is not substantial authority, and

"(ii) which affect a significant number of taxpayers.

Such list (and any revision thereof) shall be published in the Federal Register.

"(e) SUBSTANTIAL VALUATION OVERSTATEMENT UNDER CHAPTER 1.—

"(1) IN GENERAL.—For purposes of this section, there is a substantial valuation overstatement under chapter 1 if the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 200 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be).

"(2) LIMITATION.—No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation overstatements under chapter 1 exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542)).

"(f) SUBSTANTIAL OVERSTATEMENT OF PENSION LIABILITIES.—

"(1) IN GENERAL.—For purposes of this section, there is a substantial overstatement of pension liabilities if the actuarial determination of the liabilities taken into account for purposes of computing the deduction under paragraph (1) or (2) of section 404(a) is 200 percent or more of the amount determined to be the correct amount of such liabilities.

"(2) LIMITATION.—No penalty shall be imposed by reason of subsection (b)(4) unless the portion of the underpayment for the taxable year attributable to substantial overstatements of pension liabilities exceeds $1,000.

"(g) SUBSTANTIAL ESTATE OR GIFT TAX VALUATION UNDERSTATEMENT.—

"(1) IN GENERAL.—For purposes of this section, there is a substantial estate or gift tax valuation understatement if the value of any property claimed on any return of tax imposed by subtitle B is 50 percent or less of the amount determined to be the correct amount of such valuation.

"(2) LIMITATION.—No penalty shall be imposed by reason of subsection (b)(5) unless the portion of the underpayment attributable to substantial estate or gift tax valuation understatements for the taxable period (or, in the case of the tax imposed by chapter 11, with respect to the estate of the decedent) exceeds $5,000.

"(h) INCREASE IN PENALTY IN CASE OF GROSS VALUATION MISSTATEMENTS.—

"(1) IN GENERAL.—To the extent that a portion of the underpayment to which this section applies is attributable to one or more gross valuation misstatements, subsection (a) shall be applied with respect to such portion by substituting '40 percent' for '20 percent'.

"(2) GROSS VALUATION MISSTATEMENTS.—The term 'gross valuation misstatements' means—

"(A) any substantial valuation overstatement under chapter 1 as determined under subsection (e) by substituting '400 percent' for '200 percent',

"(B) any substantial overstatement of pension liabilities as determined under subsection (f) by substituting '400 percent' for '200 percent', and

"(C) any substantial estate or gift tax valuation understatement as determined under subsection (g) by substituting '25 percent' for '50 percent'.

"SEC. 6663. IMPOSITION OF FRAUD PENALTY.

"(a) IMPOSITION OF PENALTY.—If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.

"(b) DETERMINATION OF PORTION ATTRIBUTABLE TO FRAUD.—If the Secretary establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes (by a preponderance of the evidence) is not attributable to fraud.

"(c) SPECIAL RULE FOR JOINT RETURNS.—In the case of a joint return, this section shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse.

"SEC. 6664. DEFINITIONS AND SPECIAL RULES.

"(a) UNDERPAYMENT.—For purposes of this part, the term 'underpayment' means the amount by which any tax imposed by this title exceeds the excess of—

"(1) the sum of—

"(A) the amount shown as the tax by the taxpayer on his return, plus

"(B) amounts not so shown previously assessed (or collected without assessment), over

"(2) the amount of rebates made.

For purposes of paragraph (2), the term 'rebate' means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in paragraph (1) over the rebates previously made.

"(b) PENALTIES APPLICABLE ONLY WHERE RETURN FILED.—The penalties provided in this part shall apply only in cases where a return of tax is filed (other than a return prepared by the Secretary under the authority of section 6020(b)).

"(c) REASONABLE CAUSE EXCEPTION.—

"(1) IN GENERAL.—No penalty shall be imposed under this part with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

"(2) SPECIAL RULE FOR CERTAIN VALUATION OVERSTATEMENTS.—In the case of any underpayment attributable to a substantial or gross valuation overstatement under chapter 1 with respect to charitable deduction property, paragraph (1) shall not apply unless—

"(A) the claimed value of the property was based on a qualified appraisal made by a qualified appraiser, and

"(B) in addition to obtaining such appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) CHARITABLE DEDUCTION PROPERTY.—The term 'charitable deduction property' means any property contributed by the taxpayer in a contribution for which a deduction was claimed under section 170. For purposes of paragraph (2), such term shall not include any securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

"(B) QUALIFIED APPRAISER.—The term 'qualified appraiser' means any appraiser meeting the requirements of the regulations prescribed under section 170(a)(1).

"(C) QUALIFIED APPRAISAL.—The term 'qualified appraisal' means any appraisal meeting the requirements of the regulations prescribed under section 170(a)(1).

"PART III—APPLICABLE RULES

"Sec. 6665. Applicable rules.

"SEC. 6665. APPLICABLE RULES.

"(a) ADDITIONS TREATED AS TAX.—Except as otherwise provided in this title—

"(1) the additions to the tax, additional amounts, and penalties provided by this chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes; and

"(2) any reference in this title to 'tax' imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by this chapter.

"(b) PROCEDURE FOR ASSESSING CERTAIN ADDITIONS TO TAX.—For purposes of subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes), subsection (a) shall not apply to any addition to tax under section 6651, 6654, or 6655; except that it shall apply—

"(1) in the case of an addition described in section 6651, to that portion of such addition which is attributable to a deficiency in tax described in section 6211; or

"(2) to an addition described in section 6654 or 6655, if no return is filed for the taxable year."

(b) REPEAL OF INCREASE IN INTEREST ON CERTAIN SUBSTANTIAL UNDERPAYMENTS.—Subsection (c) of section 6621 (relating to interest on substantial underpayments attributable to tax motivated transactions) is hereby repealed.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 6653 is amended to read as follows:

"SEC. 6653. FAILURE TO PAY STAMP TAX.

"Any person (as defined in section 6671(b)) who—

"(1) willfully fails to pay any tax imposed by this title which is payable by stamp, coupons, tickets, books, or other devices or methods prescribed by this title or by regulations under the authority of this title, or

"(2) willfully attempts in any manner to evade or defeat any such tax or the payment thereof,

shall, in addition to other penalties provided by law, be liable for a penalty of 50 percent of the total amount of the underpayment of the tax."

(2) Sections 6659, 6659A, 6660, and 6661 are hereby repealed.

(3) Subsection (b) of section 5684 is amended—

(A) by striking "6662(a)" and inserting "6665(a)", and

(B) by striking "6662" in the subsection heading and inserting "6665".

(4) Subsection (a) of section 5761 is amended by striking "or 6653" and inserting "or 6653 or part II of subchapter A of chapter 68".

(5) Subsection (c) of section 5761 is amended—

(A) by striking "6662(a)" and inserting "6665(a)", and

(B) by striking "6662" in the subsection heading and inserting "6665".

(6) Subparagraph (A) of section 6013(b)(5) is amended—

(A) by striking "section 6653" and inserting "part II of subchapter A of chapter 68", and

(B) by striking "SECTION 6653" in the subparagraph heading and inserting "PART II OF SUBCHAPTER A OF CHAPTER 68".

(7) Subsection (d) of section 6222 is amended by striking "section 6653(a)" and inserting "part II of subchapter A of chapter 68".

(8) Paragraph (2) of section 6601(e) is amended by striking "section 6651(a)(1), 6653, 6659, 6660, or 6661" each place it appears and inserting "section 6651(a)(1) or 6653 or under part II of subchapter A of chapter 68".

(9) Subsection (a) of section 6672 is amended by striking "under section 6653" and inserting "under section 6653 or part II of subchapter A of chapter 68".

(10) Subparagraph (C) of section 461(i)(3) is amended by striking "section 6662(b)(2)(C)(ii)" and inserting "section 6662(d)(2)(C)(ii)".

(11) Clause (i) of section 1274(b)(3)(B) is amended by striking "section 6661(b)(2)(C)(ii)" and inserting "section 6662(d)(2)(C)(ii)".

(12) Subparagraph (B) of section 7519(f)(4) is amended by striking "section 6653" and inserting "part II of subchapter A of chapter 68".

(13) Subchapter A of chapter 68 is amended by inserting after the subchapter heading the following:

"Part I. General provisions.

"Part II. Accuracy-related and fraud penalties.

"Part III. Applicable rules.

"PART I—GENERAL PROVISIONS".

(14) The table of sections for part I of subchapter A of chapter 68 (as amended by paragraph (1)) is amended—

(A) by striking out the items relating to sections 6659, 6659A, 6660, and 6661, and

(B) by striking the item relating to section 6653 and inserting:

"Sec. 6653. Failure to pay stamp tax."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1989.

## PART III—PREPARER, PROMOTER, AND PROTESTER PENALTIES

SEC. 7731. PENALTY FOR INSTITUTING PROCEEDINGS BEFORE TAX COURT PRIMARILY FOR DELAY, ETC.

(a) GENERAL RULE.—Section 6673 (relating to damages assessable for instituting proceedings before the Tax Court primarily for delay, etc.) is amended to read as follows:

"SEC. 6673. SANCTIONS AND COSTS AWARDED BY COURTS.

"(a) TAX COURT PROCEEDINGS.—

"(1) PROCEDURES INSTITUTED PRIMARILY FOR DELAY, ETC.—Whenever it appears to the Tax Court that—

"(A) proceedings before it have been instituted or maintained by the taxpayer primarily for delay,

"(B) the taxpayer's position in such proceeding is frivolous or groundless, or

"(C) the taxpayer unreasonably failed to pursue available administrative remedies,

the Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in excess of $25,000.

"(2) COUNSEL'S LIABILITY FOR EXCESSIVE COSTS.—Whenever it appears to the Tax Court that any attorney or other person admitted to practice before the Tax Court has multiplied the proceedings in any case unreasonably and vexatiously, the Tax Court may require—

"(A) that such attorney or other person pay personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct, or

"(B) if such attorney is appearing on behalf of the Commissioner of Internal Revenue, that the United States pay such excess costs, expenses, and attorneys' fees in the same manner as such an award by a district court.

"(b) PROCEEDINGS IN OTHER COURTS.—

"(1) CLAIMS UNDER SECTION 7433.—Whenever it appears to the court that the taxpayer's position in the proceedings before the court instituted or maintained by such taxpayer under section 7433 is frivolous or groundless, the court may require the taxpayer to pay to the United States a penalty not in excess of $10,000.

"(2) COLLECTION OF SANCTIONS AND COSTS.—In any civil proceeding before any court (other than the Tax Court) which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, any monetary sanctions, penalties, or costs awarded by the court to the United States may be assessed by the Secretary and, upon notice and demand, may be collected in the same manner as a tax.

"(3) SANCTIONS AND COSTS AWARDED BY A COURT OF APPEALS.—In connection with any appeal from a proceeding in the Tax Court or a civil proceeding described in paragraph (2), an order of a United States Court of Appeals or the Supreme Court awarding monetary sanctions, penalties or court costs to the United States may be registered in a district court upon filing a certified copy of such order and shall be enforceable as other district court judgments. Any such sanctions, penalties, or costs may be assessed by the Secretary and, upon notice and demand, may be collected in the same manner as a tax."

(b) CLARIFICATION OF AUTHORITY TO IMPOSE PENALTIES BY APPELLATE COURTS.—Paragraph (4) of section 7482(c) (relating to power to impose damages) is amended to read as follows:

"(4) TO IMPOSE PENALTIES.—The United States Court of Appeals and the Supreme Court shall have the power to require the taxpayer to pay to the United States a penalty in any case where the decision of the Tax Court is affirmed and it appears that the appeal was instituted or maintained primarily for delay or that the taxpayer's position in the appeal is frivolous or groundless."

(c) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6673 and inserting the following:

"Sec. 6673. Sanctions and costs awarded by courts."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to positions taken after December 31, 1989, in proceedings which are pending on, or commenced after such date.

SEC. 7732. MODIFICATIONS TO PENALTIES ON RETURN PREPARERS FOR CERTAIN UNDERSTATEMENTS.

(a) GENERAL RULE.—Subsections (a) and (b) of section 6694 (relating to understatement of taxpayer's liability by income tax return preparer) are amended to read as follows:

"(a) UNDERSTATEMENTS DUE TO UNREALISTIC POSITIONS.—If—

"(1) any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there was not a realistic possibility of being sustained on its merits,

"(2) any person who is an income tax return preparer with respect to such return or claim knew (or reasonably should have known) of such position, and

"(3) such position was not disclosed as provided in section 6662(d)(2)(B)(ii) or was frivolous,

such person shall pay a penalty of $250 with respect to such return or claim unless it is shown that there is reasonable cause for the understatement and such person acted in good faith.

"(b) WILLFUL OR RECKLESS CONDUCT.—If any part of any understatement of liability with respect to any return or claim for refund is due—

"(1) to a willful attempt in any manner to understate the liability for tax by a person who is an income tax return preparer with respect to such return or claim, or

"(2) to any reckless or intentional disregard of rules or regulations by any such person,

such person shall pay a penalty of $1,000 with respect to such return or claim. With respect to any return or claim, the amount of the penalty payable by any person by reason of this subsection shall be reduced by the amount of the penalty paid by such person by reason of subsection (a)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to documents prepared after December 31, 1989.

SEC. 7733. MODIFICATIONS TO OTHER ASSESSABLE PENALTIES WITH RESPECT TO RETURN PREPARERS.

(a) FAILURE TO FURNISH COPY TO TAXPAYER.—Subsection (a) of section 6695 is amended—

(1) by striking "$25" and inserting "$50", and

(2) by adding at the end thereof the following new sentence: "The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed $25,000."

(b) FAILURE TO SIGN RETURN.—Subsection (b) of section 6695 is amended—

(1) by striking "$25" and inserting "$50", and

(2) by adding at the end thereof the following new sentence: "The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed $25,000."

(c) FAILURE TO FURNISH IDENTIFYING NUMBER.—Subsection (c) of section 6695 is amended—

(1) by striking "$25" and inserting "$50", and

(2) by adding at the end thereof the following new sentence: "The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed $25,000."

(d) FAILURE TO FILE CORRECT INFORMATION RETURNS.—Subsection (e) of section 6695 is amended to read as follows:

"(e) FAILURE TO FILE CORRECT INFORMATION RETURNS.—Any person required to make a return under section 6060 who fails to comply with the requirements of such section shall pay a penalty of $50 for—

"(1) each failure to file a return as required under such section, and

"(2) each failure to set forth an item in the return as required under section,

unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to any return period shall not exceed $25,000."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after December 31, 1989.

SEC. 7734. MODIFICATIONS TO PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS, ETC.

(a) GENERAL RULE.—Subsection (a) of section 6700 is amended—

(1) by inserting "(directly or indirectly)" after "participates" in paragraph (1)(B),

(2) by inserting "or causes another person to make or furnish" after "makes or furnishes" in paragraph (2), and

(3) by striking the material following paragraph (2) and inserting the following:

"shall pay, with respect to each activity described in paragraph (1), a penalty equal to the $1,000 or, if the person establishes that it is lesser, 100 percent of the gross income derived (or to be derived) by such person from such activity. For purposes of the preceding sentence, activities described in paragraph (1)(A) with respect to each entity or arrangement shall be treated as a separate activity and participation in each sale described in paragraph (1)(B) shall be so treated."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to activities after December 31, 1989.

SEC. 7735. MODIFICATIONS TO PENALTIES FOR AIDING AND ABETTING UNDERSTATEMENT OF TAX LIABILITY.

(a) GENERAL RULE.—Subsection (a) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended—

(1) by striking "in connection with any matter arising under the internal revenue laws" in paragraph (1),

(2) by striking "who knows" in paragraph (2) and inserting "who knows (or has reason to believe)", and

(3) by striking "will result" in paragraph (3) and inserting "would result".

(b) COORDINATION WITH PENALTY UNDER SECTION 6700.—

(1) IN GENERAL.—Subsection (f) of section 6701 is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH SECTION 6700.—No penalty shall be assessed under section 6700 on any person with respect to any document for which a penalty is assessed on such person under subsection (a)."

(2) TECHNICAL AMENDMENT.—Paragraph (1) of section 6701(f) is amended by striking "paragraph (2)" and inserting "paragraphs (2) and (3)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on December 31, 1989.

SEC. 7736. MODIFICATION TO PENALTY FOR FRIVOLOUS INCOME TAX RETURN.

(a) REQUIREMENT OF FULL PAYMENT OF PENALTY.—Subsection (c) of section 6703 is amended by striking "section 6700, 6701, or 6702" each place it appears and inserting "section 6700 or 6701".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to returns filed after December 31, 1989.

SEC. 7737. AUTHORITY TO COUNTERCLAIM FOR BALANCE OF PENALTY IN PARTIAL REFUND SUITS.

(a) GENERAL RULE.—Sections 6672(b)(1), 6694(c)(1), and 6703(c)(1) are each amended by adding at the end thereof the following new sentence: "Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 7738. REPEAL OF BONDING REQUIREMENT UNDER SECTION 7407.

(a) GENERAL RULE.—Subsection (c) of section 7407 (relating to bond to stay injunction) is hereby repealed.

(b) CONFORMING AMENDMENT.—Subsection (a) of section 7407 is amended by striking "Except as provided in subsection (c), a civil" and inserting "A civil".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions commenced after December 31, 1989.

SEC. 7739. CERTAIN DISCLOSURES OF INFORMATION BY PREPARERS PERMITTED.

(a) GENERAL RULE.—Paragraph (3) of section 7216(b) (relating to exceptions) is amended by adding at the end thereof the following new sentence: "Such regulations shall permit (subject to such conditions as such regulations shall provide) the disclosure or use of information for quality or peer reviews."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

PART IV—FAILURES TO FILE OR PAY

SEC. 7741. INCREASE IN PENALTY FOR FRAUDULENT FAILURE TO FILE.

(a) GENERAL RULE.—Section 6651 (relating to failure to file tax return or pay tax) is amended by adding at the end thereof the following new subsection:

"(f) INCREASE IN PENALTY FOR FRAUDULENT FAILURE TO FILE.—If any failure to file any return is fraudulent, paragraph (1) of subsection (a) shall be applied—

"(1) by substituting '15 percent' for '5 percent' each place it appears, and

"(2) by substituting '75 percent' for '25 percent'."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of failures to file returns the due date for which (determined without regard to extensions) is after December 31, 1989.

SEC. 7742. FAILURE TO MAKE DEPOSIT OF TAXES.

(a) GENERAL RULE.—Section 6656 (relating to failure to make deposit of taxes or overstatement of deposits) is amended to read as follows:

"SEC. 6656. FAILURE TO MAKE DEPOSIT OF TAXES.

"(a) UNDERPAYMENT OF DEPOSITS.—In the case of any failure by any person to deposit (as required by this title or by regulations of the Secretary under this title) on the date prescribed therefor any amount of tax imposed by this title in such government depository as is authorized under section 6302(c) to receive such deposit, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty equal to the applicable percentage of the amount of the underpayment.

"(b) DEFINITIONS.—For purposes of subsection (a)—

"(1) APPLICABLE PERCENTAGE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'applicable percentage' means—

"(i) 2 percent if the failure is for not more than 5 days,

"(ii) 5 percent if the failure is for more than 5 days but not more than 15 days, and

"(iii) 10 percent if the failure is for more than 15 days.

"(B) SPECIAL RULE.—In any case where the tax is not deposited on or before the earlier of—

"(i) the day 10 days after the date of the first delinquency notice to the taxpayer under section 6303, or

"(ii) the day on which notice and demand for immediate payment is given under section 6861 or 6862 or the last sentence of section 6331(a),

the applicable percentage shall be 15 percent.

"(2) UNDERPAYMENT.—The term 'underpayment' means the excess of the amount of the tax required to be deposited over the amount, if any, thereof deposited on or before the date prescribed therefor."

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 68 (as amended by title II) is amended by striking the item relating to section 6656 and inserting the following:

"Sec. 6656. Failure to make deposit of taxes."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to deposits required to be made after December 31, 1989.

SEC. 7743. EFFECT OF PAYMENT OF TAX BY RECIPIENT ON CERTAIN PENALTIES.

(a) GENERAL RULE.—Section 1463 (relating to tax paid by recipient of income) is amended to read as follows:

"SEC. 1463. TAX PAID BY RECIPIENT OF INCOME.

"If—

"(1) any person, in violation of the provisions of this chapter, fails to deduct and withhold any tax under this chapter, and

"(2) thereafter the tax against which such tax may be credited is paid,

the tax so required to be deducted and withheld shall not be collected from such person; but this subsection shall in no case relieve such person from liability for interest or any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to failures after December 31, 1989.

Subtitle H—Technical Corrections

SEC. 7801. DEFINITIONS; COORDINATION WITH OTHER SUBTITLES.

(a) DEFINITIONS.—For purposes of this subtitle—

(1) 1988 ACT.—The term "1988 Act" means the Technical and Miscellaneous Revenue Act of 1988.

(2) 1987 ACT.—The term "1987 Act" means the Revenue Act of 1987.

(b) COORDINATION WITH OTHER SUBTITLES.—For purposes of applying the amendments

made by any subtitle of this title other than this subtitle, the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles.

PART I—AMENDMENTS RELATED TO TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988

SEC. 7811. AMENDMENTS RELATED TO TITLE I OF THE 1988 ACT.

(a) AMENDMENTS RELATED TO SECTION 1002 OF THE 1988 ACT.—

(1) The heading for subparagraph (C) of section 42(d)(5) is amended by inserting "SECTION" before "167(k)".

(2) Clause (ii) of section 42(h)(5)(D) is amended by striking "clause (ii)" and inserting "clause (i)".

(b) AMENDMENTS RELATED TO SECTION 1003 OF THE 1988 ACT.—

(1) Subparagraph (C) of section 643(a)(6) is amended by striking "(i)" and by striking ", and (ii)" and all that follows and inserting a period.

(2) Paragraph (6) of section 643(a) is amended by striking subparagraph (D).

(c) AMENDMENTS RELATED TO SECTION 1006 OF THE 1988 ACT.—

(1) Subparagraphs (C) and (D) of section 26(b)(2) are amended to read as follows:

"(C) subsection (m)(5)(B), (q), (t), or (v) of section 72 (relating to additional taxes on certain distributions),

"(D) section 143(m) (relating to recapture of proration of Federal subsidy from use of mortgage bonds and mortgage credit certificates),".

(2) Paragraph (2) of section 26(b) is amended by striking subparagraph (K) and all that follows and inserting the following new subparagraphs:

"(K) sections 871(a) and 881 (relating to certain income of nonresident aliens and foreign corporations),

"(L) section 860E(e) (relating to taxes with respect to certain residual interests), and

"(M) section 884 (relating to branch profits tax)."

(3) Subparagraph (B) of section 6724(d)(1) is amended by striking clause (viii) and all that follows and inserting the following:

"(viii) section 6052(a) (relating to reporting payment of wages in the form of group-term life insurance),

"(ix) section 6053(c)(1) (relating to reporting with respect to certain tips),

"(x) section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions), or

"(xi) subparagraph (A) or (C) of subsection (c)(4), or subsection (e), of section 4093 (relating to information reporting with respect to tax on diesel and aviation fuel)."

(4) Clause (i) of section 1374(d)(2)(A) is amended by striking "(except as provided in subsection (b)(2))".

(5)(A) Paragraph (6) of section 382(h) is amended—

(i) by striking "during the recognition period" in subparagraph (B) and inserting "during the recognition period (determined without regard to any carryover)", and

(ii) by striking "treated as recognized built-in gains or losses under this paragraph" in subparagraph (C) and inserting "which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period".

(B) Paragraph (5) of section 1374(d) is amended—

(i) by striking "during the recognition period" in subparagraph (B) and inserting "during the recognition period (determined without regard to any carryover)", and

(ii) by striking "treated as recognized built-in gains or losses under this paragraph" in subparagraph (C) and inserting "which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period".

(6) Subparagraph (B) of section 1361(b)(2) is amended to read as follows:

"(B) a financial institution to which section 585 applies (or would apply but for subsection (c) thereof) or to which section 593 applies,".

(7) Paragraph (2) of section 1366(f) is amended to read as follows:

"(2) TREATMENT OF TAX IMPOSED ON BUILT-IN GAINS.—If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a), the amount so imposed shall be treated as a loss sustained by the S corporation during such taxable year. The character of such loss shall be determined by allocating the loss proportionately among the recognized built-in gains giving rise to such tax."

(8) Subparagraph (B) of section 1374(b)(3) is amended by adding at the end the following new sentence: "A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation."

(9) The last sentence of section 860G(a)(3) is amended by striking "this subparagraph" and inserting "subparagraph (A)".

(d) AMENDMENTS RELATED TO SECTION 1007 OF THE 1988 ACT.—

(1)(A) Subsection (g) of section 59 is amended by striking "for any taxable year" and inserting "for the taxable year for which the item is taken into account or for any other taxable year".

(B) The repeal of section 58(h) of the Internal Revenue Code of 1954 by the Tax Reform Act of 1986 shall be effective only with respect to items of tax preference arising in taxable years beginning after December 31, 1986.

(2) Subclause (II) of section 53(d)(1)(B)(i) is amended by inserting before the period at the end the following: "and if section 59(a)(2) did not apply".

(3) Paragraph (3) of section 56(b) is amended—

(A) by inserting after the first sentence the following new sentence: "Section 422A(c)(2) shall apply in any case where the disposition and the inclusion for purposes of this part are within the same taxable year and such section shall not apply in any other case.", and

(B) by striking "the preceding sentence" and inserting "this paragraph".

(e) AMENDMENTS RELATED TO SECTION 1008 OF THE 1988 ACT.—

(1) Paragraph (2) of section 460(a) is amended by inserting "(or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account)" after "any long-term contract".

(2) Subparagraph (B) of section 460(b)(2) is amended—

(A) by striking "any amount received or accrued" and inserting "any amount properly taken into account", and

(B) by striking "is so received or accrued" and inserting "is so properly taken into account".

(3) Paragraph (3) of section 460(b) is amended—

(A) by striking "any amount received or accrued" in the second sentence and inserting "any amount properly taken into account", and

(B) by striking "such amount was received or accrued" in the second sentence and inserting "such amount was properly taken into account".

(4) Paragraph (2) of section 460(b) is amended by adding at the end the following new sentence:

"In the case of any long-term contract with respect to which the percentage of completion method is used, except for purposes of applying the look-back method of paragraph (3), any income under the contract (to the extent not previously includible in gross income) shall be included in gross income for the taxable year following the taxable year in which the contract was completed."

(5) Paragraph (2) of section 460(e) is amended by striking "and" at the end of subparagraph (A), by inserting "and" at the end of subparagraph (B), and by inserting after subparagraph (B) the following new subparagraph:

"(C) any predecessor of the taxpayer or a person described in subparagraph (A) or (B),".

(6) Paragraph (2) of section 460(b) is amended by adding at the end the following new sentence:

"For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under subparagraph (B) shall be treated as an increase in the tax imposed by this chapter for the taxable year in which the contract is completed (or, in the case of interest payable with respect to any amount properly taken into account after completion of the contract, for the taxable year in which the amount is so properly taken into account)."

(f) AMENDMENTS RELATED TO SECTION 1009 OF THE 1988 ACT.—

(1) Subparagraph (A) of section 643(a)(6) is amended by striking "section 265(1)" and inserting "section 265(a)(1)".

(2) Subparagraph (B) of section 1009(b)(3) of the 1988 Act is amended by striking "section 265(b)(3)(B)(iii)" and inserting "section 265(b)(3)(B)(i)(III)".

(g) AMENDMENT RELATED TO SECTION 1011 OF THE 1988 ACT.—

(1) Subsection (a) of section 401 is amended by moving paragraph (30) from the end and inserting it after paragraph (29).

(2) The last sentence of section 402(g)(3) is amended by inserting "involving a one-time irrevocable election" after "similar arrangement".

(3) The heading of sections 406(c) and 407(c) are each amended by striking "PURPOSES LIMITATION" and inserting "PURPOSES OF LIMITATION".

(4) Clause (iii) of section 457(d)(1)(A) is amended by striking the period at the end and inserting ", and".

(5) Subclause (I) of section 457(d)(2)(B)(i) is amended by adding "and" at the end.

(h) AMENDMENTS RELATED TO SECTION 1011B OF THE 1988 ACT.—

(1) Paragraph (5) of section 409(l) is amended by striking "the last sentence" and inserting "the second sentence".

(2) Subsection (a) of section 129 is amended by striking the sentence following paragraph (2)(C) and preceding subsection (b).

(3) Paragraph (1) of section 1011B(j) of the 1988 Act is amended by striking "401(a)(28)(B)" and inserting "401(a)(28)(B)(ii)".

(i) AMENDMENTS RELATED TO SECTION 1012 OF THE 1988 ACT.—

(1) Subparagraph (H) of section 904(d)(1) is amended by striking "qualified interest and carrying charges (as defined in section 245(c))" and inserting "interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b))".

(2) Sections 861(a)(6), 862(a)(6), 863(b)(2), and 863(b)(3) are each amended by striking "865(h)(1)" and inserting "865(i)(1)".

(3) Subparagraph (A) of section 954(c)(3) is amended—

(A) by striking "is created" in clause (i) and inserting "is a corporation created",

(B) by striking "from a related person" in clause (ii) and inserting "from a corporation which is a related person", and

(C) by adding at the end the following:

"To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership."

(4) Paragraph (5) of section 1297(b) is amended—

(A) by inserting "STOCK" after "WHERE" in the paragraph heading,

(B) by striking "any disposition of" in subparagraph (A)(ii) and inserting "any distribution of", and

(C) by striking "treated as a disposition to" in subparagraph (A) and inserting "treated as a disposition by, or distribution to".

(5) Subparagraph (B) of section 1012(q)(1) of the 1988 Act is amended—

(A) by striking "1021(e)(2)(C)" and inserting "1021(c)(2)(C)", and

(B) by striking "823(b)(4)(C)" and inserting "832(b)(4)(C)".

(6)(A) Subparagraph (B) of section 1446(b)(2) is amended by striking "section 11(b)" and inserting "section 11(b)(1)".

(B) Paragraph (2) of section 1446(d) is amended to read as follows:

"(2) CREDIT TREATED AS DISTRIBUTED TO PARTNER.—Except as provided in regulations, a foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the earlier of—

"(A) the day on which such tax was paid by the partnership, or

"(B) the last day of the partnership's taxable year for which such tax was paid."

(C) Subsection (f) of section 1446 is amended to read as follows:

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including—

"(1) regulations providing for the application of this section in the case of publicly traded partnerships, and

"(2) regulations providing—

"(A) that, for purposes of section 6655, the withholding tax imposed under this section shall be treated as a tax imposed by section 11 and any partnership required to pay such tax shall be treated as a corporation, and

"(B) appropriate adjustments in applying section 6655 with respect to such withholding tax."

(7) Subsection (a) of section 988 is amended by inserting after the subsection heading the following: "Notwithstanding any other provision of this chapter—".

(8)(A) Subsection (b) of section 887 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) EXCEPTION FOR CERTAIN INCOME TAXABLE IN POSSESSIONS.—The term 'United States source gross transportation income' does not include any income taxable in a possession of the United States under the provisions of this title as made applicable in such possession."

(B) Paragraph (1) of section 887(b) is amended by striking "paragraph (2)" and inserting "paragraphs (2) and (3)".

(C) Subsection (b) of section 872 is amended by adding at the end the following new paragraph:

"(7) TREATMENT OF POSSESSIONS.—To the extent provided in regulations, a possession of the United States shall be treated as a foreign country for purposes of this subsection."

(D) Paragraph (4) of section 883(a) is amended by striking "(5) and (6)" and inserting "(5), (6), and (7)".

(9) Paragraph (4) of section 887(b) (as redesignated by paragraph (8) is amended by striking "transportation income" the first two places it appears and inserting "United States source gross transportation income".

(10) Subsection (a) of section 883 is amended by adding at the end the following new paragraph:

"(5) SPECIAL RULE FOR COUNTRIES WHICH TAX ON RESIDENCE BASIS.—For purposes of this subsection, there shall not be taken into account any failure of a foreign country to grant an exemption to a corporation organized in the United States if such corporation is subject to tax by such foreign country on a residence basis pursuant to provisions of foreign law which meets such standards (if any) as the Secretary may prescribe."

(11) Paragraph (2) of section 4371 is amended by striking ", unless the insurer is subject to tax under section 842(b)".

(12) Subsection (g) of section 995 is amended by striking "section 511" and inserting "section 511 (or any other person otherwise subject to tax under section 511)".

(13) Effective with respect to taxable years ending after the date of the enactment of this Act (or, at the election of the taxpayer, beginning after December 31, 1986), subsection (e) of section 402 is amended by adding at the end the following new paragraph:

"(7) COORDINATION WITH FOREIGN TAX CREDIT LIMITATIONS.—Subsections (a), (b), and (c) of section 904 shall be applied separately with respect to any lump sum distribution on which tax is imposed under paragraph (1), and the amount of such distribution shall be treated as the taxable income for purposes of such separate application."

(14) Paragraph (2)(A) of section 1012(l) of the 1988 Act is amended by striking "section 245" and inserting "section 245(a)".

(j) AMENDMENTS RELATED TO SECTION 1014 OF THE 1988 ACT.—

(1) The subparagraph (C) of section 1(i)(3) added by section 1014(e)(7) of the 1988 Act is redesignated as subparagraph (D).

(2) Paragraph (1) of section 2654(a) is amended by adding at the end the following new sentence: "The preceding shall be applied after any basis adjustment under section 1015 with respect to the transfer."

(3) Subsection (g) of section 642 is amended by inserting after the first sentence the following new sentence: "Rules similar to the rules of the preceding sentence shall apply to amounts which may be taken into account under 2621(a)(2) or 2622(b)."

(4) Paragraphs (1) and (3) of section 2642(b) are each amended by striking "a timely filed gift tax return required by section 6019" and inserting "a gift tax return filed on or before the date prescribed by section 6075(b)".

(5) Paragraph (1) of section 6654(l) is amended by striking "this subsection shall" and inserting "this section shall".

(6) Clause (ii) of section 6654(l)(2)(B) is amended by inserting before the period at the end the following: "(or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration)".

(7) The heading for subparagraph (D) of section 59(j)(2) is amended by striking "OTHERS" and inserting "OTHER".

(k) AMENDMENTS RELATED TO SECTION 1015 OF THE 1988 ACT.—

(1) Paragraph (3) of section 1015(r) of the 1988 Act is amended by striking "section 6211" and inserting "section 6213".

(2) The last sentence of section 6502(a) is amended by striking "enforceable" and inserting "unenforceable".

(l) AMENDMENT RELATED TO SECTION 1016 OF THE 1988 ACT.—The subparagraph (E) of section 514(c)(9) added by section 1016 of the 1988 Act is redesignated as subparagraph (F).

(m) AMENDMENTS RELATED TO SECTION 1018 OF THE 1988 ACT.—

(1) The subsection (f) of section 2503 added by section 1018 of the 1988 Act is redesignated as subsection (g).

(2) Paragraph (4) of section 1018(d) of the 1988 Act is amended by inserting "the first place it appears" before "and inserting".

(3) Paragraph (20) of section 1018(u) of the 1988 Act is amended by striking "section 9507(b)" and inserting "section 9509(b)".

(4) Subparagraph (B) of section 72(q)(2) is amended by striking "subsection (s)(6)(B))" and inserting "subsection (s)(6)(B)))".

(5) Paragraph (10) of section 414(p) is amended by inserting "section" before "403(b)".

(6) Paragraph (2) of section 1018(l) of the 1988 Act is amended by striking "paragraph (2) and (3)" and inserting "paragraphs (2) and (3)".

(7) Subsections (a)(6) and (b)(3) of section 408 are each amended by striking "(without regard to subparagraph (C)(ii) thereof)".

SEC. 7812. AMENDMENTS RELATED TO TITLE II OF THE 1988 ACT.

(a) AMENDMENT RELATED TO SECTION 2001 OF THE 1988 ACT.—Subparagraph (C) of section 2001(d)(7) of the 1988 Act is amended by striking "section 6427(g)(1)" and inserting "section 6427(f)(1)".

(b) AMENDMENT RELATED TO SECTION 2002 OF THE 1988 ACT.—Subsection (d) of section 2002 of the 1988 Act is amended by striking "this section" and inserting "subsections (b) and (c)" and by inserting before the period ", and the amendment made by subsection (a)(2) shall take effect as if included in the amendment made by section 521(a)(3) of the Superfund Revenue Act of 1986".

(c) AMENDMENTS RELATED TO SECTION 2004 OF THE 1988 ACT.—

(1) Paragraph (1) of section 384(e) is amended by striking "build-in gain" and inserting "built-in gain".

(2) Paragraph (3) of section 453A(b) is amended by striking "(5)." and inserting "(5)).".

(d) AMENDMENT RELATED TO SECTION 2005 OF THE 1988 ACT.—Section 2005(e) of the 1988 Act is amended by inserting before the period ", except that the amendment made by subsection (a)(1) shall take effect as if included in the amendment made by section 1131(c) of the Tax Reform Act of 1986".

SEC. 7813. AMENDMENTS RELATED TO TITLE III OF THE 1988 ACT.

(a) AMENDMENT RELATED TO SECTION 3001 OF THE 1988 ACT.—Paragraph (2) of section 6724(d) is amended by redesignating subparagraph (U) as subparagraph (S), by striking "or" at the end of subparagraph (Q), and by striking the period at the end of subparagraph (R) and inserting ", or".

(b) AMENDMENTS RELATED TO SECTION 3011 OF THE 1988 ACT.—Paragraphs (4) and (5) of section 3011(b) of the 1988 Act are each amended—

(1) by striking "111B(a)" and inserting "1011B(a)", and

(2) by striking "162(k)(2)" and inserting "162(k)".

SEC. 7814. AMENDMENTS RELATED TO TITLE IV OF THE 1988 ACT.

(a) AMENDMENT RELATED TO SECTION 4001 OF THE 1988 ACT.—Subsection (c) of section 127 is amended by striking paragraph (8).

(b) AMENDMENT RELATED TO SECTION 4002 OF THE 1988 ACT.—Subparagraph (A) of section 125(e)(2) is amended by striking "includable" and inserting "includible".

(c) AMENDMENTS RELATED TO SECTION 4005 OF THE 1988 ACT.—

(1) The paragraph (3) of section 6045(e) added by section 4005 of the 1988 Act is redesignated as paragraph (4).

(2) Clause (ii) of section 148(d)(3)(E) is amended by striking "a qualified mortgage bond or".

(d) AMENDMENT RELATED TO SECTION 4006 OF THE 1988 ACT.—Section 4006 of the 1988 Act is amended—

(1) by striking "December 31, 1988" and inserting "Dec. 31, 1988", and

(2) by striking "December 31, 1989" and inserting "Dec. 31, 1989".

(e) AMENDMENTS RELATED TO SECTION 4008 OF THE 1988 ACT.—

(1) Subsection (d) of section 196 is amended by striking "substituting" and all that follows through "in the case of—" and inserting "substituting 'an amount equal to 50 percent of' for 'an amount equal to' in the case of—".

(2)(A) Subsection (c) of section 280C is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) ELECTION OF REDUCED CREDIT.—

"(A) IN GENERAL.—In the case of any taxable year for which an election is made under this paragraph—

"(i) paragraphs (1) and (2) shall not apply, and

"(ii) the amount of the credit under section 41(a) shall be the amount determined under subparagraph (B).

"(B) AMOUNT OF REDUCED CREDIT.—The amount of credit determined under this subparagraph for any taxable year shall be the amount equal to the excess of—

"(i) the amount of credit determined under section 41(a) without regard to this paragraph, over

"(ii) the product of—

"(I) 50 percent of the amount described in clause (i), and

"(II) the maximum rate of tax under section 11(b)(1).

"(C) ELECTION.—An election under this paragraph for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Such an election, once made, shall be irrevocable."

(B) In the case of a taxable year for which the last date for making the election under section 280C(c)(3) of the Internal Revenue Code of 1986 (as added by subparagraph (A)) is on or before the date which is 75 days after the date of the enactment of this Act, such an election for such year may be made—

(i) at any time before the date which is 75 days after such date of enactment, and

(ii) in such form and manner as the Secretary of the Treasury or his delegate may prescribe.

(C) Section 41 is amended by striking subsection (h) and by redesignating subsection (i) as subsection (h).

(D) Paragraph (4) of section 196(c) is amended by inserting "(other than such credit determined under section 280C(c)(3))" after "section 41(a)".

(E) Subsection (n) of section 6501 is amended by striking ", 41(h),".

(f) AMENDMENT RELATED TO SECTION 4011 OF THE 1988 ACT.—Subsection (c) of section 67 is amended by striking paragraph (4).

SEC. 7815. AMENDMENTS RELATED TO TITLE V OF THE 1988 ACT.

(a) AMENDMENTS RELATED TO SECTION 5012 OF THE 1988 ACT.—

(1) Subparagraph (B) of section 7702A(c)(3) is amended to read as follows:

"(B) TREATMENT OF CERTAIN BENEFIT INCREASES.—For purposes of subparagraph (A), the term 'material change' includes any increase in the death benefit under the contract or any increase in, or addition of, a qualified additional benefit under the contract. Such term shall not include—

"(i) any increase which is attributable to the payment of premiums necessary to fund the lowest level of the death benefit and qualified additional benefits payable in the 1st 7 contract years (determined after taking into account death benefit increases described in subparagraph (A) or (B) of section 7702(e)(2)) or to crediting of interest or other earnings (including policyholder dividends) in respect of such premiums, and

"(ii) to the extent provided in regulations, any cost-of-living increase based on an established broad-based index if such increase is funded ratably over the remaining period during which premiums are required to be paid under the contract."

(2) Paragraph (2) of section 5012(e) of the 1988 Act is amended by striking "continues to make level annual premium payments over the life of the contract" and inserting "makes at least 7 level annual premium payments".

(3) Subparagraph (A) of section 72(e)(11) is amended by adding at the end the following new sentence:

"The preceding sentence shall not apply to any contract described in paragraph (5)(D)."

(4) Paragraph (4) of section 7702A(c) is amended—

(A) by striking "UNDER $10,000" in the paragraph heading and inserting "OF $10,000 OR LESS", and

(B) by striking "the same insurer" and inserting "the same policyholder".

(5) Section 72(e)(11)(A) is amended by striking "12-month period" and inserting "calendar year".

(b) AMENDMENT RELATED TO SECTION 5021 OF THE 1988 ACT.—Subsection (e) of section 5021 of the 1988 Act is amended by striking "no provision in any law (whether enacted before, on, or after the date of the enactment of this Act)" and inserting "no provision in any law enacted after the date of the enactment of this Act".

(c) AMENDMENT RELATED TO SECTION 5032 OF THE 1988 ACT.—Subsection (b) of section 2101 is amended by adding at the end the following new sentence:

"For purposes of the preceding sentence, there shall be appropriate adjustments in the application of section 2001(c)(3) to reflect the difference between the amount of the credit provided under section 2102(c) and the amount of the credit provided under section 2010."

(d) AMENDMENTS RELATED TO SECTION 5033 OF THE 1988 ACT.—

(1)(A) Paragraph (2) of section 2523(i) is amended by striking "made by the donor to such spouse" and inserting "which are made by the donor to such spouse and with respect to which a deduction would be allowable under this section but for paragraph (1)".

(B) The amendment made by subparagraph (A) shall apply with respect to gifts made after June 29, 1989.

(2) Subsection (a) of section 2523 is amended by striking "who is a citizen or resident".

(3) Paragraph (3) of section 2106(a) is amended by striking "ALLOWED WHERE SPOUSE IS CITIZEN".

(4)(A) Subparagraph (B) of section 2056(d)(2) is amended to read as follows:

"(B) SPECIAL RULE.—If any property passes from the decedent to the surviving spouse of the decedent, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if—

"(i) such property is transferred to such a trust before the date on which the return of the tax imposed by this chapter is made, or

"(ii) such property is irrevocably assigned to such a trust under an irrevocable assignment made on or before such date which is enforceable under local law."

(B) In the case of the estate of a decedent dying before the date of the enactment of this Act, the period during which the transfer (or irrevocable assignment) referred to in section 2056(d)(2)(B) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) may be made shall not expire before the date 1 year after such date of enactment.

(5) Subsection (d) of section 2056 is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULE WHERE RESIDENT SPOUSE BECOMES CITIZEN.—Paragraph (1) shall not apply if—

"(A) the surviving spouse of the decedent becomes a citizen of the United States before the day on which the return of the tax imposed by this chapter is made, and

"(B) such spouse was a resident of the United States at all times after the date of the death of the decedent and before becoming a citizen of the United States."

(6) Paragraph (3) of section 2056(d) is amended—

(A) by striking "section 2001" and inserting "this chapter", and

(B) by inserting before the period at the end the following: "and without regard to subsection (d)(3) of such section".

(7)(A) Subsection (a) of section 2056A is amended—

(i) by amending paragraph (1) to read as follows:

"(1) the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation and that no distribution from the trust may be made without the approval of such a trustee,", and

(ii) by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(B) Subsection (b) of section 2056A is amended by redesignating paragraphs (3) through (8) as paragraphs (4) through (9), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) CERTAIN LIFETIME DISTRIBUTIONS EXEMPT FROM TAX.—

"(A) INCOME DISTRIBUTIONS.—No tax shall be imposed by paragraph (1)(A) on any distribution of income to the surviving spouse.

"(B) HARDSHIP EXEMPTION.—No tax shall be imposed by paragraph (1)(A) on any distribution to the surviving spouse on account of hardship."

(C) Subparagraph (A) of section 2056A(b)(1) is amended by striking "other than a distribution of income required under subsection (a)(2)".

(D) Paragraph (4) of section 2056A(b) (as redesignated by subparagraph (B)) is amended to read as follows:

"(4) TAX WHERE TRUST CEASES TO QUALIFY.—If any qualified domestic trust ceases to meet the requirements of paragraphs (1) and (2) of subsection (a), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date of such cessation."

(8) Subsection (d) of section 2056 is amended by adding at the end the following new paragraph:

"(4) REFORMATIONS PERMITTED.—

"(A) IN GENERAL.—In the case of any property with respect to which a deduction would be allowable under subsection (a) but for this subsection, the determination of whether a trust is a qualified domestic trust shall be made—

"(i) as of the date on which the return of the tax imposed by this chapter is made, or

"(ii) if a judicial proceeding is commenced on or before the due date (determined with regard to extensions) for filing such return to change such trust into a trust which is a qualified domestic trust, as of the time when the changes pursuant to such proceeding are made.

"(B) STATUTE OF LIMITATIONS.—If a judicial proceeding described in subparagraph (A)(ii) is commenced with respect to any trust, the period for assessing any deficiency of tax attributable to any failure of such trust to be a qualified domestic trust shall not expire before the date 1 year after the date on which the Secretary is notified that the trust has been changed pursuant to such judicial proceeding or that such proceeding has been terminated."

(9) Subsection (b) of section 2056A is amended by adding at the end the following new paragraphs:

"(10) CERTAIN BENEFITS ALLOWED.—

"(A) IN GENERAL.—If any property remaining in the qualified domestic trust on the date of the death of the surviving spouse is includible in the gross estate of such spouse for purposes of this chapter (or would be includible if such spouse were a citizen or resident of the United States), any benefit which is allowable (or would be allowable if such spouse were a citizen or resident of the United States) with respect to such property to the estate of such spouse under section 2032, 2032A, 2055, 2056, or 6166 shall be allowed for purposes of the tax imposed by paragraph (1)(B).

"(B) SECTION 303.—If the estate of the surviving spouse meets the requirements of section 303 with respect to any property described in subparagraph (A), for purposes of section 303, the tax imposed by paragraph (1)(B) with respect to such property shall be treated as a Federal estate tax payable with respect to the estate of the surviving spouse.

"(C) SECTION 6161(a)(2).—The provisions of section 6161(a)(2) shall apply with respect to the tax imposed by paragraph (1)(B), and the reference in such section to the executor shall be treated as a reference to the trustees of the trust.

"(11) SPECIAL RULE WHERE DISTRIBUTION TAX PAID OUT OF TRUST.—For purposes of this subsection, if any portion of the tax imposed by paragraph (1)(A) with respect to any distribution is paid out of the trust, an amount equal to the portion so paid shall be treated as a distribution described in paragraph (1)(A).

"(12) SPECIAL RULE WHERE SPOUSE BECOMES CITIZEN.—If the surviving spouse of the decedent becomes a citizen of the United States and if—

"(A) such spouse was a resident of the United States at all times after the date of the death of the decedent and before such spouse becomes a citizen of the United States,

"(B) no tax was imposed by paragraph (1)(A) with respect to any distribution before such spouse becomes such a citizen, or

"(C) such spouse elects—

"(i) to treat any distribution on which tax was imposed by paragraph (1)(A) as a taxable gift made by such spouse for purposes of—

"(I) section 2001, and

"(II) determining the amount of the tax imposed by section 2501 on actual taxable gifts made by such spouse during the year in which the spouse becomes a citizen or any subsequent year, and

"(ii) to treat any reduction in the tax imposed by paragraph (1)(A) by reason of the credit allowable under section 2010 with respect to the decedent as a credit allowable to such surviving spouse under section 2505 for purposes of determining the amount of the credit allowable under section 2505 with respect to taxable gifts made by the surviving spouse during the year in which the spouse becomes a citizen or any subsequent year,

paragraph (1)(A) shall not apply to any distributions after such spouse becomes such a citizen (and paragraph (1)(B) shall not apply).

"(13) COORDINATION WITH SECTION 1015.—For purposes of section 1015, any distribution on which tax is imposed by paragraph (1)(A) shall be treated as a transfer by gift, and any tax paid under paragraph (1)(A) shall be treated as a gift tax."

(10) Paragraph (2) of section 2056A(c) is amended by striking "The term" and inserting "Except as provided in regulations, the term".

(11) Clause (ii) of section 2056A(b)(2)(B) is amended by striking "as a credit or refund" and inserting "as a credit or refund (with interest)".

(12) Paragraph (2) of section 2056A(b) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULE WHERE DECEDENT HAS MORE THAN 1 QUALIFIED DOMESTIC TRUST.—If there is more than 1 qualified domestic trust with respect to any decedent, the amount of the tax imposed by paragraph (1) with respect to such trusts shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death (and the provisions of paragraph (3)(B) shall not apply) unless, pursuant to a designation made by the decedent's executor, there is 1 person—

"(i) who is an individual citizen of the United States or a domestic corporation and is responsible for filing all returns of tax imposed under paragraph (1) with respect to such trusts and for paying all tax so imposed, and

"(ii) who meets such requirements as the Secretary may by regulations prescribe."

(13) Section 2056A is amended by adding at the end the following new subsection:

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations under which there may be treated as a qualified domestic trust any annuity or other payment which is includible in the decedent's gross estate and is by its terms payable for life or a term of years."

(14) In the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of the 1988 Act shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions. In the case of the estate of an individual dying before the date 3 years after the date of the enactment of this Act, or a gift by an individual before the date 3 years after the date of the enactment of this Act, the requirement of the preceding sentence that the individual not be a citizen or resident of the United States shall not apply.

(15) Paragraph (5) of section 2056A(b) (as redesignated by paragraph (7)(B) of this subsection) is amended to read as follows:

"(5) DUE DATE.—

"(A) TAX ON DISTRIBUTIONS.—The estate tax imposed by paragraph (1)(A) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs; except that the estate tax imposed by paragraph (1)(A) on distributions during the calendar year in which the surviving spouse dies shall be due and payable not later than the date on which the estate tax imposed by paragraph (1)(B) is due and payable.

"(B) TAX AT DEATH OF SPOUSE.—The estate tax imposed by paragraph (1)(B) shall be due and payable on the date 9 months after the date of such death."

(16) For purposes of applying section 2040(a) of the Internal Revenue Code of 1986 with respect to any joint interest to which section 2040(b) of such Code does not apply solely by reason of section 2056(d)(1)(B) of such Code, any consideration furnished before July 14, 1988, by the decedent for such interest to the extent treated as a gift to the spouse of the decedent for purposes of chapter 12 of such Code shall be treated as consideration originally belonging to such spouse and never acquired by such spouse from the decedent.

(e) AMENDMENTS RELATED TO SECTION 5041 OF THE 1988 ACT.—

(1) Subparagraph (A) of section 460(e)(6) is amended—

(A) by striking "the building, construction, reconstruction, or rehabilitation of" and inserting "activities referred to in paragraph (4) with respect to", and

(B) by striking clause (i) and inserting the following:

"(i) dwelling units (as defined in section 167(k)) contained in buildings containing 4 or fewer dwelling units (as so defined), and".

(2)(A) Paragraph (4) of section 5041(b) of the 1988 Act is amended by inserting ", as

amended by title I of this Act," after "1986 Code".

(B) Paragraph (3) of section 56(a) is amended by striking "The preceding sentence shall not" and inserting "The first sentence of this paragraph shall not".

(3) Subparagraph (C) of section 5041(e)(1) of 1988 Act is amended by striking "subsections (a), (b), and (c)" and inserting "subsections (a) and (b)".

(4) Clause (i) of section 56(g)(4)(D) is amended by adding "and" at the end of subclause (III) and by striking subclauses (IV) and (V) and inserting the following new subclause:

"(IV) paragraphs (6), (7), and (8) shall not apply."

(f) AMENDMENT RELATED TO SECTION 5053 OF THE 1988 ACT.—Subsection (d) of section 145 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) CERTAIN PROPERTY TREATED AS NEW PROPERTY.—Solely for purposes of determining under paragraph (2)(A) whether the 1st use of property is pursuant to tax-exempt financing—

"(A) IN GENERAL.—If—

"(i) the 1st use of property is pursuant to taxable financing,

"(ii) there was a reasonable expectation (at the time such taxable financing was provided) that such financing would be replaced by tax-exempt financing, and

"(iii) the taxable financing is in fact so replaced within a reasonable period after the taxable financing was provided,

then the 1st use of such property shall be treated as being pursuant to the tax-exempt financing.

"(B) SPECIAL RULE WHERE NO OPERATING STATE OR LOCAL PROGRAM FOR TAX-EXEMPT FINANCING.—If, at the time of the 1st use of property, there was no operating State or local program for tax-exempt financing of the property, the 1st use of the property shall be treated as pursuant to the 1st tax-exempt financing of the property.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) TAX-EXEMPT FINANCING.—The term 'tax-exempt financing' means financing provided by tax-exempt bonds.

"(ii) TAXABLE FINANCING.—The term 'taxable financing' means financing which is not tax-exempt financing."

(g) AMENDMENT RELATED TO SECTION 5076 OF THE 1988 ACT.—Paragraph (3) of section 453A(b) is amended to read as follows:

"(3) EXCEPTION FOR PERSONAL USE AND FARM PROPERTY.—An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

"(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

"(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e) (4) or (5))."

(h) AMENDMENT RELATED TO SECTION 5077 OF THE 1988 ACT.—Clause (ii) of section 382(l)(3)(C) is amended by striking "for purposes of subclause (III)," and inserting "For purposes of subclause (III),".

SEC. 7816. AMENDMENTS RELATED TO TITLE VI OF THE 1988 ACT.

(a) AMENDMENT RELATED TO SECTION 6003 OF THE 1988 ACT.—Paragraph (2) of section 274(n) is amended—

(1) by striking so much of such paragraph as follows subparagraph (D) and precedes subparagraph (F) and inserting the following:

"(E) in the case of an employer who pays or reimburses moving expenses of an employee, such expenses are includible in the income of the employee under section 82, or", and

(2) by adding at the end the following new sentence: "In the case of the employee, the exception of subparagraph (A) shall not apply to expenses described in subparagraph (E)."

(b) AMENDMENT RELATED TO SECTION 6006 OF THE 1988 ACT.—Subparagraph (A) of section 1(i)(7) is amended by inserting "(other than for purposes of this paragraph)" after "shall be treated".

(c) AMENDMENTS RELATED TO SECTION 6009 OF THE 1988 ACT.—

(1) Paragraph (2) of section 6009(c) of the 1988 Act is amended by striking "Clause (i)" and inserting "Clause (ii)".

(2) Paragraph (1) of section 135(d) is amended by striking "subsection (a) respect to" and inserting "subsection (a) with respect to".

(d) AMENDMENTS RELATED TO SECTION 6026 OF THE 1988 ACT.—

(1) Subparagraph (D) of section 263A(h)(3) is amended to read as follows:

"(D) TREATMENT OF CERTAIN CORPORATIONS.—

"(i) IN GENERAL.—If—

"(I) substantially all of the stock of a corporation is owned by a qualified employee-owner and members of his family (as defined in section 267(c)(4)), and

"(II) the principal activity of such corporation is performance of personal services directly related to the activities of the qualified employee-owner and such services are substantially performed by the qualified employee-owner,

this subsection shall apply to any expense of such corporation which directly relates to the activities of such employee-owner in the same manner as if such expense were incurred by such employee-owner.

"(ii) QUALIFIED EMPLOYEE-OWNER.—For purposes of this subparagraph, the term 'qualified employee-owner' means any individual who is an employee-owner of the corporation (as defined in section 269A(b)(2)) and who is a writer, photographer, or artist."

(2) Subparagraph (B) of section 6026(d)(2) of the 1988 Act is amended by striking "the taxpayer made" and inserting "a taxpayer engaged in a farming business involving the production of animals having a preproductive period of more than 2 years made".

(e) AMENDMENTS RELATED TO SECTION 6028 OF THE 1988 ACT.—

(1) Paragraph (5) of section 168(b) is amended by striking "paragraph (2)(B)" and inserting "paragraph (2)(C)".

(2) Paragraph (2) of section 168(c) is amended by striking "subsection (b)(2)(B)" and inserting "subsection (b)(2)(C)".

(f) AMENDMENT RELATED TO SECTION 6029 OF THE 1988 ACT.—The subparagraph (D) of section 168(b)(3) added by section 6029 of the 1988 Act is redesignated as subparagraph (E).

(g) AMENDMENT RELATED TO SECTION 6033 OF THE 1988 ACT.—Subsection (b) of section 6033 of the 1988 Act is amended by striking "paragraph (1)" and inserting "subsection (a)".

(h) AMENDMENT RELATED TO SECTION 6054 OF THE 1988 ACT.—Paragraph (1) of section 6054(b) of the 1988 Act is amended by striking "subsection apply" and inserting "section shall apply".

(i) AMENDMENT RELATED TO SECTION 6061 OF THE 1988 ACT.—Section 6061 of the 1988 Act is amended—

(1) by striking "section 111B(h)(5)(A)" and inserting "section 1011B(h)(5)(A)", and

(2) by striking "section 111B(h)" and inserting "section 1011B(h)".

(j) AMENDMENT RELATED TO SECTION 6064 OF THE 1988 ACT.—Paragraph (13) of section 457(e) is amended to read as follows:

"(13) SPECIAL RULE FOR CHURCHES.—The term 'eligible employer' shall not include a church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B))."

(k) AMENDMENT RELATED TO SECTION 6067 OF THE 1988 ACT.—Subsection (c) of section 6067 of the 1988 Act is amended by striking "section 205(c)" and inserting "section 2005(c)".

(l) AMENDMENT RELATED TO SECTION 6071 OF THE 1988 ACT.—Paragraph (2) of section 6071(b) of the 1988 Act is amended by striking "electric plan" and inserting "electric cooperative plan".

(m) PROVISION RELATED TO SECTION 6076 OF THE 1988 ACT.—If, for the 1st taxable year beginning on or after January 1, 1987, a qualified group self-insurers' fund changes its treatment of policyholder dividends to take into account such dividends no earlier than the date that the State regulatory authority determines the amount of the policyholder dividend that may be paid, then such change shall be treated as a change in a method of accounting and no adjustment under section 481(a) of the Internal Revenue Code of 1986 shall be made with respect to such change in method of accounting.

(n) AMENDMENTS RELATED TO SECTION 6077 OF THE 1988 ACT.—

(1) Paragraph (1) of section 847 is amended—

(A) by striking "separate estimated tax" and inserting "special estimated tax", and

(B) by striking "after December 31, 1986" and inserting "in taxable years beginning after December 31, 1986".

(2) The first sentence of section 847(2) is amended to read as follows: "The deduction under paragraph (1) shall be allowed only to the extent that such deduction would result in a tax benefit for the taxable year for which such deduction is allowed or any carryback year and only to the extent that special estimated tax payments are made in an amount equal to the tax benefit attributable to such deduction on or before the due date (determined without regard to extensions) for filing the return for the taxable year for which the deduction is allowed."

(3) Paragraph (5) of section 847 is amended by adding at the end the following new sentence:

"To the extent that any amount added to the special loss discount account is not subtracted from such account before the 15th year after the year for which the amount was so added, such amount shall be subtracted from such account for such 15th year and included in gross income for such 15th year."

(4) Paragraph (9) of section 847 is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) providing for the application of this section in cases where the deduction allowed under paragraph (1) for any taxable year is less than the excess referred to in paragraph (1) for such year."

(5) Section 847 (as amended by paragraph (4)) is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following new paragraph:

"(9) EFFECT ON EARNINGS AND PROFITS.—In determining the earnings and profits.—

"(A) any special estimated tax payment made for any taxable year shall be treated as a payment of income tax imposed by this title for such taxable year, and

"(B) any deduction or inclusion under this section shall not be taken into account.

Nothing in the preceding sentence shall be construed to affect the application of section 56(g) (relating to adjustments based on adjusted current earnings)."

(6) Paragraph (8) of section 847 is amended by adding at the end the following new sentence: "The limitations on consolidation contained in section 1503(c) shall not apply to the deduction allowed under paragraph (1)."

(o) AMENDMENTS RELATED TO SECTION 6105 OF THE 1988 ACT.—

(1) The subsection (c) of section 5276 added by section 6105 of the 1988 Act is amended—

(A) by striking "(c) EXEMPTION" and inserting "(d) EXCEPTION",

(B) by striking "section 5271(a)(2)" in paragraph (1) and inserting "section 5271", and

(C) by striking "specially denatured distilled spirits" in paragraph (2) and inserting "distilled spirits free of tax".

(2) Subsection (a) of section 5276 is amended by striking "Except as provided in subsection (c)," and inserting "Except as otherwise provided in this section,".

(p) AMENDMENT RELATED TO SECTION 6135 OF THE 1988 ACT.—Paragraph (3) of section 953(d) is amended by striking "(as defined in section 1503(d))" and inserting "for purposes of section 1503(d) without regard to paragraph (2)(B) thereof".

(q) AMENDMENT RELATED TO SECTION 6152 OF THE 1988 ACT.—Subparagraph (C) of section 2056(b)(7) is amended by striking "an annuity" and inserting "an annuity included in the gross estate of the decedent under section 2039".

(r) AMENDMENT RELATED TO SECTION 6177 OF THE 1988 ACT.—Subclause (III) of section 148(f)(4)(B)(iii) is amended by striking "such date of issuance. or the date" and inserting "such date of issuance or the date".

(s) AMENDMENTS RELATED TO SECTION 6180 OF THE 1988 ACT.—

(1) Paragraph (1) of section 142(i) is amended by inserting "IN GENERAL.—" after "(1)".

(2) The paragraph (3) of section 146(g) added by section 6180 of the 1988 Act is redesignated as paragraph (4).

(3) Paragraph (3) of section 147(c) is amended by inserting a comma after "mass commuting facility" each place it appears.

(t) AMENDMENTS RELATED TO SECTION 6183 OF THE 1988 ACT.—Subclause (II) of section 148(f)(4)(C)(ii) is amended by striking "on behalf of" and inserting "to make loans to".

(u) AMENDMENTS RELATED TO SECTION 6228 OF THE 1988 ACT.—

(1) The section 7520 added by section 6228 of the 1988 Act is redesignated as section 7521.

(2) The table of sections for chapter 77 is amended by striking the item added by section 6228 of the 1988 Act and inserting the following:

"Sec. 7521. Procedures involving taxpayer interviews."

(v) AMENDMENTS RELATED TO SECTION 6242 OF THE 1988 ACT.—

(1) The section 6712 added by section 6242 of the 1988 Act is redesignated as section 6713.

(2) The table of sections for part I of subchapter B of chapter 68 is amended by striking the item added by section 6242 of the 1988 Act and inserting the following:

"Sec. 6713. Disclosure or use of information by preparers of returns."

(w) AMENDMENT RELATED TO SECTION 6253 OF THE 1988 ACT.—Section 6253 of the 1988 Act is amended by inserting ", as amended by title I of this Act," after "1986 Code".

SEC. 7817. EFFECTIVE DATE.

Except as otherwise provided in this part, any amendment made by this part shall take effect as if included in the provision of the 1988 Act to which such amendment relates.

## PART II—AMENDMENTS RELATED TO REVENUE ACT OF 1987

SEC. 7821. AMENDMENTS RELATED TO SUBTITLE B.

(a) AMENDMENTS RELATED TO SECTION 10202 OF THE 1987 ACT.—

(1) Subparagraph (B) of section 453A(b)(2) is amended by striking "all obligations of the taxpayer described in paragraph (1)" and inserting "all such obligations held by the taxpayer".

(2) Subparagraph (B) of section 453A(d)(2) is amended by striking "before such secured indebtedness was incurred" and inserting "before the later of the times referred to in subparagraph (A) or (B) of paragraph (1)".

(3) Subparagraph (B) of section 453A(d)(1) is amended by inserting "the time" before the "the proceeds".

(4)(A) Paragraph (2) of section 26(b) (as amended by section 11811) is amended by striking "and" at the end of subparagraph (L), by striking the period at the end of subparagraph (M) and inserting ", and", and by adding at the end the following new subparagraph:

"(N) sections 453(l)(3) and 453A(c) (relating to interest on certain deferred tax liabilities)."

(B) Subsection (c) of section 453A is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) TREATMENT AS INTEREST.—Any amount payable under this subsection shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during the taxable year."

(5) In the case of taxable years beginning in 1987, the reference to section 453 contained in section 56(a)(6) of the Internal Revenue Code of 1986 shall be treated as including a reference to section 453A.

(b) AMENDMENTS RELATED TO SECTION 10206 OF THE 1987 ACT.—Effective with respect to taxable years beginning after 1988, the last sentence of section 7519(d)(4) is amended—

(1) by striking "for taxable years beginning after 1987,",

(2) by striking "if more than 50 percent" and inserting "unless more than 50 percent", and

(3) by striking "who would not have been entitled" and inserting "who would have been entitled".

(c) AMENDMENT RELATED TO SECTION 10222 OF THE 1987 ACT.—Clause (ii) of section 1503(e)(2)(A) is amended by striking "another member" and inserting "another corporation which is or was a member".

(d) AMENDMENTS RELATED TO SECTION 10242 OF THE 1987 ACT.—

(1) The item relating to section 842 in the table of sections for part III of subchapter L of chapter 1 is amended by striking "corporations" and inserting "companies".

(2) The heading for paragraph (4) of section 842(c) is amended by striking "YEILDS" and inserting "YIELDS".

SEC. 7822. AMENDMENTS RELATED TO SUBTITLE C AND FOLLOWING SUBTITLES.

(a) AMENDMENT RELATED TO SECTION 10301 OF THE 1987 ACT.—Paragraph (1) of section 6655(e) is amended by striking "section (d)(1)" and inserting "subsection (d)(1)".

(b) AMENDMENTS RELATED TO SECTION 10502 OF THE 1987 ACT.—

(1) Paragraph (1) of section 6427(i) is amended by striking "subsection (a)" and all that follows through "by any person" and inserting "subsection (a), (b), (c), (d), (e), (g), (h), (l), or (q) by any person".

(2) Clause (i) of section 6427(i)(2)(A) is amended to read as follows:

"(i) $1,000 or more is payable under subsections (a), (b), (d), (e), (g), (h), and (q), or".

(3) Subparagraph (B) of section 6427(i)(2) is amended to read as follows:

"(B) SPECIAL RULE.—If the requirements of subparagraph (A)(ii) are met by any person for any quarter but the requirements of subparagraph (A)(i) are not met by such person for such quarter, such person may file a claim under subparagraph (A) for such quarter only with respect to amounts referred to in subparagraph (A)(ii)."

(4) The subsection of section 6427 relating to payments for taxes imposed by section 4041(d) is redesignated as subsection (p).

(5) Paragraph (3) of section 9502(b) is amended by striking ", and" and inserting "; and".

(6) Subparagraph (A) of section 9503(b)(4) is amended by striking "sections 4041(d)" and inserting "section 4041(d)".

(7) Subsections (b)(3) and (c)(2)(A) of section 9508 are each amended by striking "Storage Trust Fund" and inserting "Storage Tank Trust Fund".

(c) AMENDMENT RELATED TO SECTION 10611 OF THE 1987 ACT.—The table of sections for part II of subchapter B of chapter 1 is amended by inserting "Illegal" before "Federal" in the item relating to section 90.

(d) AMENDMENTS RELATED TO SECTION 10713 OF THE 1987 ACT.—

(1) Subparagraph (G) of section 10713(b)(2) of the 1987 Act is amended to read as follows:

"(G) Paragraph (3) of section 7611(i) is amended by striking all that follows 'income tax)' and inserting ', section 6852 (relating to termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations), or section 6861 (relating to jeopardy assessments of income taxes, etc.),'."

(2) Clause (iii) of section 10713(b)(2)(E) of the 1987 Act is amended to read as follows:

"(iii) by striking '6851(a) nor 6861(a)' in subsection (b)(3)(A)(iii) and inserting '6851(a), 6852(a), nor 6861(a)'."

SEC. 7823. EFFECTIVE DATE.

Except as otherwise provided in this part, any amendment made by this part shall take effect as if included in the provision of the 1987 Act to which such amendment relates.

## PART III—AMENDMENTS RELATED TO TAX REFORM ACT OF 1986

SEC. 7831. AMENDMENTS RELATED TO TAX REFORM ACT OF 1986.

(a) AMENDMENT RELATED TO SECTION 101 OF THE 1986 ACT.—Subparagraph (B) of section 1(f)(6) (relating to rounding of inflation adjustments for married individuals filing separately) is amended by striking "(other than with respect to section 63(c)(4))" and inserting the following: "(other than with respect to subsection (c)(4) of section 63 (as it applies to subsections (c)(5)(A) and (f) of such section) and section 151(d)(3))".

(b) AMENDMENT RELATED TO SECTION 201 OF THE 1986 ACT.—Paragraph (5) of section 1250(b) is amended—

(1) by striking "in the case of recovery property" in subparagraph (A) and inserting "in the case of property to which section 168 applies", and

(2) by striking "in the case of any property which is not recovery property" in subparagraph (B) and inserting "in the case any property to which section 168 does not apply".

(c) AMENDMENTS RELATED TO SECTION 252 OF THE 1986 ACT.—

(1) Subparagraph (B) of section 42(i)(3) (defining low-income unit) is amended by inserting "(as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes)" after "suitable for occupancy".

(2) Paragraph (3) of section 42(i) is amended by adding at the end the following new subparagraph:

"(D) STUDENTS IN GOVERNMENT-SUPPORTED JOB TRAINING PROGRAMS NOT TO DISQUALIFY UNIT.—A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws."

(3) Subsection (i) of section 42 (relating to special rules) is amended by adding at the end the following new paragraph:

"(6) APPLICATION TO ESTATES AND TRUSTS.—In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each."

(4) Subsection (f) of section 42 is amended by adding at the end the following new paragraph:

"(4) DISPOSITIONS OF PROPERTY.—If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j)."

(5) Subsection (m) of section 42 (relating to regulations) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding at the end the following new paragraph:

"(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary."

(6) Subparagraph (A) of section 42(d)(7) is amended by inserting "(or interest therein)" after "a building described in subparagraph (B)".

(d) AMENDMENTS RELATED TO SECTION 803 OF THE 1986 ACT.—

(1) Subparagraph (A) of section 803(d)(4) of the Tax Reform Act of 1986 is amended by striking so much of such subparagraph as precedes clause (i) thereof and inserting the following:

"(A) TRANSITION PROPERTY EXEMPTED FROM INTEREST CAPITALIZATION.—Section 263A of the Internal Revenue Code of 1986 (as added by this section) and the amendment made by subsection (b)(1) shall not apply to interest costs which are allocable to any property—".

(2) If any interest costs incurred after December 31, 1986, are attributable to costs incurred before January 1, 1987, the amendments made by section 803 of the Tax Reform Act of 1986 shall apply to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of the Tax Reform Act of 1986) or, if applicable, section 266 of such Code.

(e) APPLICATION OF FUTURE LEGISLATION TO TRANSITIONED BONDS.—Section 1318 of the Tax Reform Act of 1986 is amended by adding at the end the following new paragraph:

"(8) APPLICATION OF FUTURE LEGISLATION TO TRANSITIONED BONDS.—In the case of any bond to which the amendments made by section 1301 do not apply by reason of a provision of this Act, any amendment of the 1986 Code (and any other provision applicable to such Code) included in any law enacted after October 22, 1986, shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code with respect to such bond unless—

"(A) such law expressly provides that such amendment (or other provision) shall not apply to such bond, or

"(B) such amendment (or other provision) applies to a provision of the 1986 Code—

"(i) for which there is no corresponding provision in section 103 and section 103A (as appropriate) of the 1954 Code, and

"(ii) which is not otherwise treated as included in such sections 103 and 103A with respect to such bond."

(f) AMENDMENT RELATED TO SECTION 1114 OF THE 1986 ACT.—Subparagraphs (A) and (B) of section 1114(b)(9) of the Tax Reform Act of 1986 are each amended by striking "consist of supervising" and inserting "consist in supervising".

(g) EFFECTIVE DATE.—Any amendment made by this section shall take effect as if included in the provision of the Tax Reform Act of 1986 to which such amendment relates.

### PART IV—MISCELLANEOUS CHANGES

SEC. 7841. MISCELLANEOUS CHANGES.

(a) AMENDMENT RELATED TO TRANSFERS INCIDENT TO DIVORCE OR SEPARATION.—

(1) Paragraph (6) of section 408(d) is amended by striking "his former spouse under a divorce decree or under a written instrument incident to such divorce" and inserting "his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2)".

(2) Subsection (p) of section 414 is amended by redesignating paragraph (11) as paragraph (12) and by inserting after paragraph (10) the following new paragraph:

"(11) APPLICATION OF RULES TO GOVERNMENTAL AND CHURCH PLANS.—For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A)."

(3) The amendments made by this subsection shall apply to transfers after the date of the enactment of this Act in taxable years ending after such date.

(b) AMENDMENT RELATED TO SINGLE-EMPLOYER PENSION PLAN AMENDMENTS ACT OF 1986.—

(1) Section 404(g)(1) is amended by inserting "4041(b)," before "4062".

(2) The amendment made by paragraph (1) shall apply to payments made after January 1, 1986, in taxable years ending after such date.

(c) DEFINITION OF COMPENSATION.—

(1) Paragraph (1) of section 219(f) (defining compensation) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6).

(2) The amendment made by paragraph (1) shall apply to contributions after the date of the enactment of this Act in taxable years ending after such date.

(d) MISCELLANEOUS CLERICAL CHANGES.—

(1) Paragraph (1) of section 6103(d) is amended by striking "45,".

(2) Section 6871 is amended by striking "44, or 45" each place it appears and inserting "or 44".

(3) Paragraph (5) of section 691(c) is amended by striking "paragraph (1)(D)" and inserting "paragraph (1)(C)".

(4) The table of chapters for subtitle D is amended by striking the comma in the item relating to chapter 42 and inserting a semicolon.

(5) Section 6652 is amended—

(A) by redesignating the subsection relating to information with respect to includible employee benefits as subsection (k), and

(B) by redesignating the subsection relating to alcohol and tobacco taxes as subsection (l).

(6) Paragraph (2) of section 410(a) is amended by striking the comma before the period.

(7) The heading of paragraph (1) of section 132(h) is amended by striking "OFFICERS, ETC.," and inserting "HIGHLY COMPENSATED EMPLOYEES".

(8) Paragraph (1) of section 66(d) is amended by striking "section 911(b)" and inserting "section 911(d)(2)".

(9) Subsection (e) of section 861 is amended by striking "section 826(a)" and inserting "section 862(a)".

(10) Paragraph (27) of section 381(a) (relating to credit under section 53) is redesignated as paragraph (26).

(11) Subclause (III) of section 382(l)(3)(B)(i) is amended by striking "divorce," and inserting "divorce),".

(12) The last sentence of section 6157(a) is amended by striking "subsections (c) and (d)" and inserting "subsection (c)".

(13) Clause (i) of section 42(d)(6)(A) is amended by striking "Farmers' Home Administration" and inserting "Farmers Home Administration".

(14) Clause (ii) of section 42(d)(7)(A) is amended by striking "subsection (a)" and inserting "subsection (a)".

(15) Subparagraph (A) of section 42(e)(2) is amended by striking "captial account" and inserting "capital account".

(16) Paragraph (2) of section 844(a) is amended by striking "for the taxable year" and inserting "for a prior taxable year".

(17) Subsection (c) of section 4221 is amended by striking "or 4083".

(18) Clause (i) of section 274(n)(2)(F) is amended by inserting "any" before "Federal".

(19) Subparagraph (B) of section 132(f)(2) is amended by striking "section 151(e)(3)" and inserting "section 151(c)(3)".

(20) Sections 6420(e)(2), 6421(g)(2), and 6427(j)(2) are each amended by striking "section 7602" and inserting "section 7602(a)".

(e) AMENDMENT RELATED TO TREATMENT OF TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED.—

(1) Section 597(b)(2) is amended by striking "to reflect such treatment" and inserting "in connection with such assistance".

(2) The amendment made by this subsection shall apply as if included in the amendments made by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(f) AMENDMENT RELATED TO ALCOHOL, TOBACCO, AND FIREARMS RETURNS.—Paragraph (6) of section 6091(b) is amended by inserting "section 4181 or" before "subtitle E".

(g) AUTHORITY TO PAY ADMINISTRATIVE EXPENSES FROM VACCINE INJURY COMPENSATION TRUST FUND.

(1) IN GENERAL.—Paragraph (1) of section 9510(c) (relating to expenditures from Vaccine Injury Compensation Trust Fund) is amended by inserting before the period at the end thereof the following: ", or for the payment of all expenses of administration (but not in excess of $6,000,000 for any fiscal year) incurred by the Federal Government in administering such subtitle".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to fiscal years beginning after September 30, 1989.

### PART V—AMENDMENTS RELATED TO PENSION PROVISIONS

SEC. 7851. DEFINITIONS.

For purposes of this part—

(1) REFORM ACT.—Except where incompatible with the intent, the term "Reform Act" means the Tax Reform Act of 1986.

(2) ERISA.—The term "ERISA" means the Employee Retirement Income Security Act of 1974.

### Subpart A—Amendments Related to Tax Reform Act of 1986

SEC. 7861. AMENDMENTS RELATED TO TITLE XI OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1113 OF THE REFORM ACT.—

(1) Section 203(a)(2) of ERISA is amended—

(A) by striking "following" the first place it appears, and

(B) by striking "414(f)(1)(B)" in subparagraph (C)(ii)(I) and inserting "3(37)(A)(ii)".

(2) Section 1113(e)(3) of the Reform Act is amended by striking "Section 202(B)(i)" and inserting "Section 202(a)(1)(B)(i)".

(3) The second subsection (e) of section 1113 of the Reform Act is redesignated as subsection (f).

(4) Section 1113(f) of the Reform Act, as redesignated by paragraph (3), is amended by adding at the end thereof the following new paragraph:

"(4) REPEAL OF CLASS YEAR VESTING.—If a plan amendment repealing class year vesting is adopted after October 22, 1986, such amendment shall not apply to any employee for the 1st plan year to which the amendments made by subsections (b) and (e)(2) apply (and any subsequent plan year) if—

"(A) such plan amendment would reduce the nonforfeitable right of such employee for such year, and

"(B) such employee has at least 1 hour of service before the adoption of such plan amendment and after the beginning of such 1st plan year.

This paragraph shall not apply to an employee who has 5 consecutive 1-year breaks in service (as defined in section 411(a)(6)(A) of the Internal Revenue Code of 1986) which include the 1st day of the 1st plan year to which the amendments made by subsection (b) and (e)(2) apply. A plan shall not be treated as failing to meet the requirements of section 401(a)(26) of such Code by reason of complying with the provisions of this paragraph."

(5)(A) Section 411(a)(3) is amended by adding at the end thereof the following new subparagraph:

"(G) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION.—A matching contribution (within the meaning of section 401(m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B), an excess deferral under section 402(g)(2)(A), or an excess aggregate contribution under section 401(m)(6)(B).".

(B) Paragraph (3) of section 203(a) of ERISA is amended by adding at the end thereof the following new subparagraph:

"(F) A matching contribution (within the meaning of section 401(m) of the Internal Revenue Code of 1986) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B) of such Code, an excess deferral under section 402(g)(2)(A) of such Code, or an excess aggregate contribution under section 401(m)(6)(B) of such Code.".

(6)(A) Section 411(a)(4)(A) is amended to read as follows:

"(A) years of service before age 18,".

(B) Subparagraph (A) of section 203(b)(1) of ERISA is amended to read as follows:

"(A) years of service before age 18,".

(b) AMENDMENT RELATED TO SECTION 1132 OF THE ACT.—

(1) Notwithstanding any other provision of law, in the case of any qualified pension plan and welfare benefit plan described in paragraph (2), the assets of such pension plan in excess of its liabilities may be transferred to such welfare benefit plan upon the termination of such pension plan if such assets are to be used to provide retiree health benefits.

(2) For purposes of paragraph (1), a qualified pension plan and welfare benefit plan are described in this paragraph if—

(A) both such plans are jointly administered pursuant to a collective bargaining agreement between the employer maintaining such plans and one or more employee representatives,

(B) the welfare benefit plan provides retiree health benefits, and

(C) the qualified pension plan has assets in excess of liabilities (determined on a termination basis) and the welfare benefit plan has assets which are less than the present value of the benefits to be provided under the plan (determined as of the time of termination of the pension plan).

(3) For purposes of the Internal Revenue Code of 1986, any transfer of assets to which paragraph (1) applies shall be treated as a reversion of such assets to the employer maintaining the plan which is includible in the gross income of such employer and subject to the tax imposed by section 4980 of such Code.

(c) AMENDMENTS RELATED TO SECTION 1140 OF THE REFORM ACT.—

(1) Subsection (a) of section 1140 of the Reform Act is amended by striking "or subtitle C" and inserting ", subtitle C, or title XVIII of this Act".

(2) Section 1140(c) of the Reform Act is amended by striking all after "the first plan year beginning" and inserting "after the later of—

"(1) December 31, 1988, or

"(2) the earlier of—

"(A) December 31, 1990, or

"(B) the date on which the last of such collective bargaining agreements terminate (without regard to any extension after February 28, 1986)."

(3) Section 1140(c) is amended by adding at the end thereof the following new flush sentence:

"For purposes of paragraph (1)(B) and any other provision of this title, an agreement shall not be treated as terminated merely because the plan is amended pursuant to such agreement to meet the requirements of any amendment made by this title or title XVIII of this Act.".

(d) AMENDMENTS RELATED TO SECTION 1145 OF THE REFORM ACT.—

(1) Subsection (f) of section 303 of the Retirement Equity Act of 1984 is amended by striking "July 24, 1984" and inserting "July 17, 1984".

(2) Paragraph (3) of section 205(b) of ERISA, as added by section 1145(b) of the Reform Act, is redesignated as paragraph (4).

SEC. 7862. AMENDMENTS RELATED TO TITLE XVIII OF THE REFORM ACT.

(a) AMENDMENT RELATED TO SECTION 1852 OF THE REFORM ACT.—Paragraph (1) of section 4402(h) of ERISA is amended by striking "January 12, 1982" the second place it appears and inserting "January 16, 1982".

(b) AMENDMENT RELATED TO SECTION 1879 OF THE REFORM ACT.—

(1) Subsection (u) of section 1879 of the Reform Act is amended—

(A) by striking "206(h)" each place it appears in paragraphs (1) and (4)(B) and inserting "204(h)",

(B) by redesignating paragraph (4) as paragraph (5), and

(C) by inserting after paragraph (3) the following:

"(4) CORRECTION OF CROSS REFERENCE.—Section 4218(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1398(1)(A)) is amended by striking 'section 4062(d)' and inserting 'section 4069(b)'."

(2) So much of section 204(h)(2) of ERISA as precedes subparagraph (A) thereof is amended by adjusting the left-hand margination thereof to full measure.

(c) AMENDMENTS RELATED TO SECTION 1895 OF THE REFORM ACT.—

(1)(A) Section 106(b)(2) (relating to exception to certain plans) is amended by striking the last sentence thereof.

(B) Section 601(b) of ERISA is amended by striking the last sentence thereof.

(C) The amendments made by this paragraph shall apply to years beginning after December 31, 1986.

(2)(A) Section 607(2) of ERISA is amended by striking "the individual's employment or previous employment with an employer" and inserting "the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of the Internal Revenue Code of 1986)".

(B) Section 4980B(f)(7), as added by the Technical and Miscellaneous Revenue Act of 1988, is amended by striking "the individual's employment or previous employment with an employer" and inserting "the performance of services by the individual for 1 or more persons maintaining the plan (in-

cluding as an employee defined in section 401(c)(1))".

(C) The amendments made by this paragraph shall apply to plan years beginning after December 31, 1989.

(3)(A) Clause (iv) of section 162(k)(2)(B) is amended—

(i) by striking "ELIGIBILITY" in the heading and inserting "ENTITLEMENT", and

(ii) by inserting "which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary" after "or otherwise)" in subclause (I).

(B) Section 602(2)(D) of ERISA is amended—

(i) by striking "ELIGIBILITY" in the heading and inserting "ENTITLEMENT", and

(ii) by inserting "which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary" after "or otherwise)" in clause (i).

(C) Clause (iv) of section 4980B(f)(2)(B), as added by the Technical and Miscellaneous Revenue Act of 1988, is amended—

(i) by striking "ELIGIBILITY" in the heading and inserting "ENTITLEMENT", and

(ii) by inserting "which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary" after "or otherwise)" in subclause (I).

(D) The amendments made by this paragraph shall apply to—

(i) qualifying events occurring after December 31, 1989, and

(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such).

(4)(A) The last sentence of section 602(3) of ERISA is amended to read as follows:

"In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(B) The last sentence of section 4980B(f)(2)(C) of the 1986 Code (as added by the Technical and Miscellaneous Revenue Act of 1988) is amended to read as follows:

"In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(C) The amendments made by this paragraph shall apply to plan years beginning after December 31, 1989.

(5)(A) Clause (i) of section 4980B(f)(2)(B) is amended by adding at the end thereof the following new subclause:

"(V) QUALIFYING EVENT INVOLVING MEDICARE ENTITLEMENT.—In the case of an event described in paragraph (3)(D) (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act."

(B) Section 602(2)(A) of ERISA is amended by adding at the end thereof the following new clause:

"(v) QUALIFYING EVENT INVOLVING MEDICARE ENTITLEMENT.—In the case of an event described in section 603(4) (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act."

(C) The amendments made by this paragraph shall apply to plan years beginning after December 31, 1989.

(6)(A) Section 3011(b)(6) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647) is repealed.

(B) Subparagraph (A) shall be effective as if included in the enactment of section 3011(b) of the Technical and Miscellaneous Revenue Act of 1988.

(d) AMENDMENTS RELATED TO SECTION 1898 OF THE REFORM ACT.—

(1)(A) Clause (ii) of section 417(a)(3)(B) (defining applicable period) is amended by striking subclause (V) and inserting at the end thereof the following new flush sentence:

"In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.".

(B) Clause (ii) of section 205(c)(3)(B) of ERISA is amended by striking subclause (V) and inserting at the end thereof the following new flush sentence:

"In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.".

(2) Section 1898(b)(8) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to distributions after the date of the enactment of this Act.".

(3) Section 205(h) of ERISA is amended—

(A) in paragraph (1), by striking "the term" and inserting "The term", and by striking "benefit," and inserting "benefit."; and

(B) in paragraph (3), by striking "the term" and inserting "The term".

(4) Subparagraph (B) of section 1898(d)(1) of the Reform Act is amended by striking "Paragraph (1)" and inserting "Subsection (e)(1)".

(5) Section 203(e)(1) of ERISA (as amended by section 1898(d)(1) of the Tax Reform Act of 1986) is further amended to read as follows:

"(e)(1) If the present value of any nonforfeitable benefit with respect to a participant in a plan exceeds $3,500, the plan shall provide that such benefit may not be immediately distributed without the consent of the participant.".

(6) Subclause (IV) of section 205(c)(3)(B)(ii) of ERISA is amended by striking "401(a)(11)" and inserting "205".

(7) Subparagraph (B) of section 1898(b)(7) of the Reform Act is amended by striking "Subparagraph (C) of section 205(b)(1)" and inserting "Clause (i) of section 205(b)(1)(C)".

(8) Section 205(e)(2) of ERISA is amended by striking "nonforfeitable accrued benefit" and inserting "nonforfeitable right (within the meaning of section 203)".

(9)(A) Subparagraph (B) of section 1898(b)(14) of the Reform Act is amended by inserting "(as amended by section 1145(b))" after "1974".

(B) Paragraph (3) of section 205(b) of ERISA (as added by section 1898(b)(14)(B) of the Reform Act) is redesignated as paragraph (4).

(10) Section 203(e)(1) of ERISA is amended by striking "vested accrued benefit" and inserting "nonforfeitable benefit".

SEC. 7863. EFFECTIVE DATE.

Except as otherwise provided in this subpart, any amendment made by this subpart shall take effect as if included in the provision of the Reform Act to which such amendment relates.

### Subpart B—Amendments Related to Omnibus Budget Reconciliation Act of 1986

SEC. 7871. AMENDMENTS RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1986.

(a) AMENDMENTS RELATED TO SECTION 9202 OF THE ACT.—

(1) Section 411(b)(2) of the Internal Revenue Code of 1986 and section 204(b)(2) of ERISA are each amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(2) Section 411(b)(2)(C), as redesignated by paragraph (1), is amended by striking "subparagraph" and inserting "paragraph".

(3) Section 204(b)(2)(C) of ERISA, as redesignated by paragraph (1), is amended by striking "(C) and (D)" and inserting "(B) and (C)".

(4) The amendments made by this subsection shall take effect as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986.

(b) AMENDMENTS RELATED TO SECTION 9203 OF THE ACT.—

(1) Section 411(a)(8)(B) is amended to read as follows:

"(B) the later of—

"(i) the time a plan participant attains age 65, or

"(ii) the 5th anniversary of the time a plan participant commenced participation in the plan."

(2) Section 3(24)(B) of ERISA is amended to read as follows:

"(B) the later of—

"(i) the time a plan participant attains age 65, or

"(ii) the 5th anniversary of the time a plan participant commenced participation in the plan."

(3) The amendments made by this subsection shall take effect as if included in the amendments made by section 9203 of the Omnibus Budget Reconciliation Act of 1986.

(c) AMENDMENT RELATING TO SECTION 9501.—Section 602(2)(A)(iii) of ERISA is amended by inserting "section" before "603(6)".

### Subpart C—Amendments Related to Pension Protection Act

SEC. 7881. AMENDMENTS RELATED TO PENSION PROTECTION ACT.

(a) AMENDMENTS RELATED TO SECTION 9303.—

(1)(A) Subclause (II) of section 412(l)(3)(C)(ii) is amended by inserting "(but not below zero)" after "reducing".

(B) Subclause (II) of section 302(d)(3)(C)(ii) of ERISA is amended by inserting "(but not below zero)" after "reducing".

(2)(A) Clause (i) of section 412(l)(4)(B) is amended by inserting "and the unamortized portion of the unfunded existing benefit increase liability" after "liability".

(B) Clause (i) of section 302(d)(4)(B) of ERISA is amended by inserting "and the unamortized portion of the unfunded existing benefit increase liability" after "liability".

(3)(A) Section 412(l)(5)(C) is amended by striking "October 17, 1987" and inserting "the first plan year beginning after December 31, 1988".

(B) Section 302(d)(5)(C) of ERISA is amended by striking "October 17, 1987" and

inserting "the first plan year beginning after December 31, 1988".

(4)(A) Section 412(l)(7)(D) is amended—

(i) by striking "and" at the end of clause (iii)(I), by striking the period at the end of clause (iii)(II) and inserting ", and", and by adding at the end of clause (iii) the following new subclause:

"(III) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.", and

(ii) by adding at the end thereof the following new clause:

"(iv) ELECTION.—An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary.".

(B) Section 302(d)(7)(D) of ERISA is amended—

(i) by striking "and" at the end of clause (iii)(I), by striking the period at the end of clause (iii)(II) and inserting ", and", and by adding at the end of clause (iii) the following new subclause:

"(III) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.", and

(ii) by adding at the end thereof the following new clause:

"(iv) ELECTION.—An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary of the Treasury.".

(5)(A) Section 412(l)(8) is amended—

(i) by striking "reduced by any credit balance in the funding standard account" in subparagraph (A)(ii), and

(ii) by adding at the end thereof the following new subparagraph:

"(E) DEDUCTION FOR CREDIT BALANCES.—For purposes of this subsection, the amount determined under subparagraph (A)(ii) shall be reduced by any credit balance in the funding standard account. The Secretary may provide for such reduction for purposes of any other provision which references this subsection.".

(B) Section 302(d)(8) of ERISA is amended—

(i) by striking "reduced by any credit balance in the funding standard account" in subparagraph (A)(ii), and

(ii) by adding at the end thereof the following new subparagraph:

"(E) DEDUCTION FOR CREDIT BALANCES.—For purposes of this subsection, the amount determined under subparagraph (A)(ii) shall be reduced by any credit balance in the funding standard account. The Secretary of the Treasury may provide for such reduction for purposes of any other provision which references this subsection.".

(6)(A) Section 412(c)(9) is amended—

(i) by striking "3 years" and inserting "year", and

(ii) by striking "3-YEAR" in the heading and inserting "ANNUAL".

(B) Section 302(c)(9) of ERISA is amended by striking "3 years" and inserting "year".

(7) Subclause (II) of section 9303(e)(3)(C)(ii) of the Pension Protection Act is amended by inserting "(and any income allocable to such amount)" after "clause (i)".

(b) AMENDMENTS RELATED TO SECTION 9304.—

(1)(A) Subparagraph (A) of section 412(c)(10) is amended—

(i) by inserting "defined benefit" before "plan other", and

(ii) by striking "PLANS" in the heading and inserting "DEFINED BENEFIT PLANS".

(B) Subparagraph (A) of section 302(c)(10) of ERISA is amended by inserting "defined benefit" before "plan other".

(2)(A) Subparagraph (B) of section 412(c)(10) is amended—

(i) by striking "multiemployer plan" and inserting "plan not described in subparagraph (A)", and

(ii) by striking "MULTIEMPLOYER" in the heading and inserting "OTHER".

(B) Subparagraph (B) of section 302(c)(10) of ERISA is amended by striking "multiemployer plan" and inserting "plan not described in subparagraph (A)".

(3)(A) Section 412(m)(1) is amended by inserting "defined benefit" before "plan (other".

(B) Section 302(e)(1) of ERISA is amended by inserting "defined benefit" before "plan (other".

(4)(A) Subparagraph (D) of section 412(m)(4) is amended to read as follows:

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan to which subsection (1) applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

"(i) LIABILITIES NOT TAKEN INTO ACCOUNT.—Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).

"(ii) INCREASE IN INSTALLMENTS.—Each required installment shall be increased by the greater of—

"(I) the unfunded percentage of the amount of benefits described in subsection (l)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (l)(5)(A)(ii) for the plan year.

"(iii) UNFUNDED PERCENTAGE.—For purposes of clause (ii)(I), the term 'unfunded percentage' means the percentage determined under subsection (l)(5)(A)(i)(I) for the plan year.

"(iv) LIMITATION ON INCREASE.—In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (l)(8)(B)) for the plan year to 100 percent.".

(B) Subparagraph (D) of section 302(e)(4) of ERISA is amended to read as follows:

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan to which subsection (d) applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

"(i) LIABILITIES NOT TAKEN INTO ACCOUNT.—Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).

"(ii) INCREASE IN INSTALLMENTS.—Each required installment shall be increased by the greater of—

"(I) the unfunded percentage of the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) for the plan year.

"(iii) UNFUNDED PERCENTAGE.—For purposes of clause (ii)(I), the term 'unfunded percentage' means the percentage determined under subsection (d)(5)(A)(i)(I) for the plan year.

"(iv) LIMITATION ON INCREASE.—In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (d)(8)(B)) for the plan year to 100 percent.".

(5)(A) Section 101(d)(1) of ERISA is amended by striking "an employer of a plan" and inserting "an employer maintaining a plan".

(B) Section 502(c) of ERISA is amended by adding at the end thereof the following new paragraph:

"(3) Any employer maintaining a plan who fails to meet the notice requirement of section 101(d) with respect to any participant or beneficiary may in the court's discretion be liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure, and the court may in its discretion order such other relief as it deems proper.".

(C) Section 9304(d) of the Pension Protection Act is amended by striking "Section" and inserting "Effective with respect to plan years beginning after December 31, 1987, section".

(6)(A)(i) Subparagraph (B) of section 412(m)(1) is amended to read as follows:

"(B) the rate of interest used under the plan in determining costs (including adjustments under subsection (b)(5)(B)).".

(ii) Clause (ii) of section 412(d)(1)(A) is amended by inserting "(including adjustments under subsection (b)(5)(B))" after "costs".

(B)(i) Subparagraph (B) of section 302(e)(1) of ERISA is amended to read as follows:

"(B) the rate of interest used under the plan in determining costs (including adjustments under subsection (b)(5)(B)).".

(ii) Section 303(a)(1)(B) of ERISA (as redesignated by subsection (e)(2)) is amended by inserting "(including adjustments under section 302(b)(5)(B))" after "costs".

(7) Section 303(a) of ERISA (as amended by section 9306(c)(2)(A) of the Pension Protection Act) is amended—

(A) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively, and by adjusting the left-hand margination thereof 4 ems to the left;

(B) in paragraph (1) (as redesignated), by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(C) in paragraph (2) (as redesignated), by inserting "of such Code" after "section 6621(b)".

(8) Subsection (f) of section 303 of ERISA (as so redesignated by section 9306(a)(2) of the Pension Protection Act) is transferred to immediately after subsection (e) of such section.

(c) AMENDMENTS RELATED TO SECTION 9306.—

(1) The last sentence of section 412(f)(4)(A) is amended by striking "the benefit liabilities" and inserting "for benefit liabilities".

(2) The last sentence of section 303(e)(1) of ERISA is amended by striking "the benefit liabilities" and inserting "for benefit liabilities".

(3) Section 9306(f)(3) of the Pension Protection Act is amended to read as follows:

"(3) SUBSECTION (b).—The amendments made by subsection (b) shall apply to waivers for plan years beginning after December 31, 1987. For purposes of applying such amendments, the number of waivers which may be granted for plan years after December 31, 1987, shall be determined without regard to any waivers granted for plan years beginning before January 1, 1988.".

(d) AMENDMENTS RELATED TO SECTION 9307.—

(1)(A) Clause (iii) of section 412(b)(5)(B) is amended by striking "for purposes of this section and for purposes of determining current liability,".

(B) Clause (iii) of section 302(b)(5)(B) of ERISA is amended by striking "for purposes

of this section and for purposes of determining current liability,".

(2)(A) Section 302(b)(5)(B) of ERISA is amended by inserting the following matter after the heading and before clause (i): "For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 302(d) for any plan year—".

(B) Section 302(b)(5) of ERISA is amended by striking the matter following the heading thereof and preceding subparagraph (A).

(C) Subclause (I) of section 302(b)(5)(B)(ii) of ERISA is amended by striking "average rate" and inserting "the weighted average of the rates".

(3) Section 9307(f) of the Pension Protection Act is amended to read as follows:

"(f) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 1987.

"(2) AMORTIZATION OF GAINS AND LOSSES.—Sections 412(b)(2)(B)(iv) and 412(b)(3)(B)(ii) of the Internal Revenue Code of 1986 and sections 302(b)(2)(B)(iv) and 302(b)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 (as amended by paragraphs (1)(A) and (2)(A) of subsection (a)) shall apply to gains and losses established in years beginning after December 31, 1987. For purposes of the preceding sentence, any gain or loss determined by a valuation occurring as of January 1, 1988, shall be treated as established in years beginning before 1988, or at the election of the employer, shall be amortized in accordance with Internal Revenue Service Notice 89-52.".

(4) Subparagraphs (A) and (B) of section 302(c)(3) of ERISA are each amended by adjusting the left-hand margination thereof, and of each subdivision thereof, 2 ems to the left.

(e) AMENDMENTS RELATED TO SECTION 9311.—

(1) Section 9311(a)(2) of the Pension Protection Act is amended by striking "plan assets to the employer for purposes of section 4044(d)(1)(C) of the Employee Retirement Income Security Act of 1974" and inserting "residual plan assets upon termination".

(2) Section 9311(d) of the Pension Protection Act is amended—

(A) by striking "section 4041(c)" and inserting "section 4041" in paragraph (1), and

(B) by adding at the end thereof the following new flush sentence:

"Except as provided in subsection (a)(2), the amendments made by subsection (a) shall apply to any provision of the plan or plan amendment adopted after December 17, 1987."

(3) Section 9311(b)(2) of the Pension Protection Act is amended by striking "subsection (c)(1)" and inserting "subsection (a)(1)".

(4) Section 9311(a)(2) of the Pension Protection Act is amended—

(A) by striking "1 year after the effective date of such amendments made by paragraph (1)" and inserting "December 17, 1988"; and

(B) by striking the last sentence.

(f) AMENDMENTS RELATED TO SECTION 9312.—

(1) Section 9312(b)(3)(B)(i) of the Pension Protection Act is amended—

(A) by striking "section 4022(c)(1)" in subclause (I) and inserting "section 4022(c)(3)", and

(B) by striking "subparagraph (B) of section 4022(c)(1)" and inserting "subparagraph (C) of section 4022(c)(3)".

(2) Section 4062(a) of ERISA is amended—

(A) by inserting "and" at the end of paragraph (1);

(B) by striking paragraph (2);

(C) by redesignating paragraph (3) as paragraph (2); and

(D) in paragraph (2) (as so redesignated), by striking "subsection (d)" and inserting "subsection (c)".

(3)(A) Section 4064(b) of ERISA is amended by striking "and clauses (i)(II) and (ii) of section 4062(b)(1)(A)" and inserting "and section 4068(a)".

(B) Section 4068(a) of ERISA is amended by striking the last sentence.

(4) Section 4022(c)(1) of ERISA is amended by striking "(in the case of a deceased participant)".

(5) Section 4022(c)(3)(B)(ii) of ERISA is amended by inserting ", and during the 5-Federal fiscal year period ending with the fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate with respect to the plan termination for which the recovery ratio is being determined" after "1987".

(6) Section 9312(b)(3)(B) of the Pension Protection Act is amended by striking clause (ii).

(7) Section 4041(c) of ERISA is amended—

(A) by striking "(or its designee under section 4049(b))" in paragraph (2)(A)(iii)(II),

(B) by striking "section 4049" in paragraph (2)(A)(iii)(II) and inserting "section 4022(c)", and

(C) by striking the last sentence of paragraph (3)(C)(i).

(8) Section 4070(a) of ERISA is amended by striking "4049,".

(9) Section 9312(d)(1) of the Pension Protection Act is amended by striking "section 4041(c)" and inserting "section 4041".

(10)(A) Section 4062(b)(2)(B) of ERISA is amended by striking "the liability under paragraph (1)(A)(ii)" and inserting "so much of the liability under paragraph (1)(A) as exceeds 30 percent of the collective net worth of all persons described in subsection (a) (including interest)".

(B) Section 9312(b)(2)(B)(ii) of the Pension Protection Act is amended to read as follows:

"(ii) Section 4062(d) of ERISA (as redesignated by paragraph (1)(B)) is amended by striking out paragraph (3).".

(C) Section 4068 of ERISA is amended by adding at the end the following new subsection:

"(f) DEFINITIONS.—For purposes of this section—

"(1) The collective net worth of persons subject to liability in connection with a plan termination shall be determined as provided in section 4062(d)(1).

"(2) The term 'pre-tax profits' has the meaning provided in section 4062(d)(2).".

(11) Section 4022(c)(1) of ERISA is amended by striking "section 4044(a), to such participant" and inserting "section 4044(a). Such payment shall be made to such participant".

(12) Subsection (a) of section 4068 of ERISA is amended—

(A) by striking "to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 4062(a)" the first place it appears; and

(B) by striking "to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 4062(a)" the second place it appears and all that follows and inserting the following: "in the amount of such liability (including interest) upon all property and rights to property, whether real or personal, belonging to such person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 4062(a)".

(13) The table of contents in section 1 of ERISA is amended by striking the item relating to section 4049.

(g) AMENDMENTS RELATED TO SECTION 9313.—

(1) Section 4041(d)(1) of ERISA is amended by striking "sufficient for benefit commitments" and inserting "sufficient for benefit liabilities".

(2) Section 4041(c)(2)(B) of ERISA is amended by inserting "proposed" before "termination" in the parenthetical in the second sentence.

(3) Clause (ii) of section 4041(c)(2)(A) of ERISA is amended—

(A) by inserting "unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 4062," before "certification",

(B) by inserting "and, if applicable, the proposed distribution date" after "termination date" in subclause (I), and

(C) by striking "date" and inserting "dates" in subclauses (II) through (V).

(4) Subparagraph (B) of section 4041(b)(3) of ERISA is amended by adding a period at the end.

(5) Section 9313(b)(3) of the Pension Protection Act is amended by inserting "each place it appears" before the period.

(6) Section 4041(b)(2)(A) of ERISA is amended by adjusting the left-hand margination of the last sentence two ems to the right.

(7) The first subsection (b) of section 9314 of the Pension Protection Act is amended by striking "Section 4042" and inserting "Section 4042(a)", and by striking "third sentence" and inserting "last sentence".

(8) Section 9314(c)(1) of the Pension Protection Act is amended by inserting "title IV of" after "Subtitle D of".

(h) AMENDMENT RELATED TO SECTION 9331.—

(1) Subparagraph (E) of section 4006(a)(3) of ERISA is amended by adding at the end thereof the following new clause:

"(v) No premium shall be determined under this subparagraph for any plan year if, as of the close of the preceding plan year, contributions to the plan for the preceding plan year were not less than the full funding limitation for the preceding plan year under section 412(c)(7) of the Internal Revenue Code of 1986.".

(2) Clause (iii) of section 4006(c)(1)(A) of ERISA is amended by adjusting the left-hand margination thereof 2 ems to the left.

(i) AMENDMENTS RELATED TO SECTION 9341.—

(1)(A) Section 401(a)(29)(C)(i)(II) is amended by inserting "and any other plan amendments adopted after December 22, 1987, and before such plan amendment" after "amendment".

(B) Section 307(c)(1)(B) of ERISA is amended by inserting "and any other plan amendments adopted after December 22, 1987, and before such plan amendment".

(2) Section 307(d) of ERISA is amended by inserting "of the Treasury" after "Secretary".

(3)(A) Section 307 of ERISA is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) NOTICE.—A contributing sponsor which is required to provide security under subsection (a) shall notify the Pension Benefit Guaranty Corporation within 30 days after the amendment requiring such security takes effect. Such notice shall contain such information as the Corporation may require.".

(B) Section 4071 of ERISA is amended—

(i) by striking "or subtitle A, B, or C" and inserting ", subtitle A, B, or C, as section 302(f)(4) or 307(e)", and

(ii) by inserting "or such section" after "such subtitle".

(4)(A) Clause (i) of section 401(a)(29)(A) is amended by inserting "to which the requirements of section 412 apply" after "multiemployer plan)".

(B) Section 307(a)(1) of ERISA is amended by inserting "to which the requirements of section 302 apply" after "multiemployer plan)".

(5) Section 9341(c) of the Pension Protection Act is amended by inserting "(without regard to any extension, amendment, or modification of such agreements on or after such date of enactment)" after "ratified before the date of enactment".

(j) AMENDMENTS RELATED TO SECTION 9342.—

(1) Paragraph (11) of section 103(d) of ERISA is amended—

(A) by striking "60 percent" and inserting "70 percent", and

(B) by striking "such percentage" and inserting "the percentage which such value is of such liability.".

(2) Section 502(a)(6) of ERISA is amended by striking "subsection (i)" and inserting "subsection (c)(2) or (i)".

(3) Section 502(c)(2) of ERISA is amended—

(A) by inserting "against any plan administrator" after "civil penalty", and

(B) by striking "a plan administrator's" and inserting "such plan administrator's".

(4) Paragraph (2) of section 413 of ERISA is amended by striking the comma.

(k) AMENDMENT RELATED TO SECTION 9343.—Section 403(c) of ERISA is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(l) AMENDMENTS RELATED TO SECTION 9345.—

(1) Section 407(d)(3)(C) of ERISA is amended by adjusting the left-hand margination thereof 2 ems to the left.

(2) Section 407(d)(9) of ERISA is amended—

(A) by striking "such arrangement" and inserting "such individual account plan"; and

(B) by adjusting the left-hand margination thereof 2 ems to the right.

(3) Section 407(f) of ERISA is amended—

(A) in paragraph (1), by striking "this subsection" and inserting "this paragraph"; and

(B) by striking paragraph (3).

(4) Section 407(f)(1) of ERISA is amended by inserting ", immediately following the acquisition of such stock" after "if".

(5) Section 408(b) of ERISA is amended by adding at the end the following new paragraph:

"(12) The sale by a plan to a party in interest on or after December 18, 1987, of any stock, if—

"(A) the requirements of paragraphs (1) and (2) of subsection (e) are met with respect to such stock,

"(B) on the later of the date on which the stock was acquired by the plan, or January 1, 1975, such stock constituted a qualifying employer security (as defined in section 407(d)(5) as then in effect), and

"(C) such stock does not constitute a qualifying employer security (as defined in section 407(d)(5) as in effect at the time of the sale).".

(m) AMENDMENTS RELATED TO SECTION 9346.—

(1)(A) Clause (iii) of section 411(c)(2)(C) is amended to read as follows:

"(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

"(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) for the period beginning with the 1st plan year to which subsection (a)(2) applies (by reason of the applicable effective date) and ending with the date on which the determination is being made, and

"(II) at the interest rate which would be used under the plan under section 417(e)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.".

(B) Subparagraph (B) of section 411(c)(2) is amended to read as follows:

"(B) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) (as of the determination date).".

(C) Section 411(c)(2) is amended by striking subparagraph (E).

(D) Section 411(a)(7) is amended by adding at the end thereof the following new subparagraph:

"(D) ACCRUED BENEFIT ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—The accrued benefit of an employee shall not be less than the amount determined under subsection (c)(2)(B) with respect to the employee's accumulated contributions.".

(2)(A) Clause (iii) of section 204(c)(2)(C) of ERISA is amended to read as follows:

"(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

"(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of a plan year for the period beginning with the 1st plan year to which subsection (a)(2) applies by reason of the applicable effective date) and ending with the date on which the determination is being made, and

"(II) at the interest rate which would be used under the plan under section 205(g)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.".

(B) Subparagraph (B) of section 204(c)(2) of ERISA is amended to read as follows:

"(B) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 205(g)(3) (as of the determination date).".

(C) Section 204(c)(2) of ERISA is amended by striking subparagraph (E).

(D) Paragraph (23) of section 3 of ERISA is amended by adding at the end thereof the following new flush sentence:

"The accrued benefit of an employee shall not be less than the amount determined under section 204(c)(2)(B) with respect to the employee's accumulated contribution."

(3) If—

(A) during the period beginning December 22, 1987, and ending June 21, 1988, a plan was amended to reflect the amendments made by section 9346 of the Pension Protection Act, and

(B) such plan is amended to reflect the amendments made by this subsection,

any plan amendment described in subparagraph (B) shall not be treated as reducing accrued benefits for purposes of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of ERISA.

SEC. 7882. EFFECTIVE DATE.

Except as otherwise provided in this subpart, any amendment made by this subpart shall take effect as if included in the provision of the Pension Protection Act to which such amendment relates.

**Subpart D—Additional Pension Provisions**

SEC. 7891. AMENDMENTS RELATING TO THE TAX REFORM ACT OF 1986.

(a) AMENDMENTS RELATED TO SECTION 2.—

(1) Titles I, III, and IV of ERISA (other than sections 3(37)(E), 301(a)(7), and 308, the last sentence of section 408(d), and sections 414(c), 4001(a)(3)(ii), and 4303) are each amended by striking "Internal Revenue Code of 1954" each place it appears and inserting "Internal Revenue Code of 1986".

(2) The last sentence of section 408(d) of ERISA (as amended by section 7894(e)(4)(A)(i)) is further amended—

(A) by striking "section 408 of the Internal Revenue Code of 1954" and inserting "section 408 of the Internal Revenue Code of 1986"; and

(B) by striking "section 408(c) of such Code" and inserting "section 408(c) of the Internal Revenue Code of 1986".

(b) AMENDMENTS RELATED TO SECTION 1139.—

(1) Paragraphs (2)(A) and (2)(B) of section 203(e) of ERISA are each amended by adjusting the margination thereof, and of each subdivision thereof, 2 ems to the left.

(2) Subparagraph (B) of section 203(e)(2) of ERISA is amended by striking "APPLICABLE INTEREST RATE.—".

(3) Paragraph (3)(A) of section 205(g) of ERISA is amended by adjusting the left-hand margination thereof, and of each subdivision thereof, 2 ems to the left.

(c) AMENDMENT RELATED TO SECTION 1145.—Paragraph (3) of section 205(b) of ERISA (as added by section 1145(b) of the Reform Act) is amended by adjusting the left-hand margination thereof 2 ems to the left.

(d) AMENDMENTS RELATED TO SECTION 1895.—

(1)(A)(i) Section 606 of ERISA is amended—

(I) in paragraph (2), by inserting after "30 days" the following: "(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)"; and

(II) in the first sentence following paragraph (4), by inserting after "14 days" the following: "(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)".

(ii) Section 606 of ERISA is amended—

(I) by inserting "(a) IN GENERAL.—" before "In accordance";

(II) by striking "For purposes of paragraph (4)," and inserting the following:

"(c) RULES RELATING TO NOTIFICATION OF QUALIFIED BENEFICIARIES BY PLAN ADMINISTRATOR.—For purposes of subsection (a)(4),"; and

(III) by inserting after subsection (a)(4) (as so designated by the amendment made by subclause (I)) the following new subsection:

"(b) ALTERNATIVE MEANS OF COMPLIANCE WITH REQUIREMENT FOR NOTIFICATION OF MULTIEMPLOYER PLANS BY EMPLOYERS.—The requirements of subsection (a)(2) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (2) of section 603 if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator.".

(B)(i) Section 4980B(f)(6) of the 1986 Code (as added by the Technical and Miscellaneous Revenue Act of 1988) is amended—

(I) in subparagraph (B), by inserting after "30 days" the following: "(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)"; and

(II) in the first sentence following subparagraph (D), by inserting after "14 days" the following: "(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)".

(ii) Section 4980B(f)(6) of the 1986 Code (as added by the Technical and Miscellaneous Revenue Act of 1988) is amended by inserting, after and below subparagraph (D), the following new flush sentence:

"The requirements of subparagraph (B) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (3)(B) if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator.".

(C) The amendments made by this paragraph shall apply with respect to plan years beginning on or after January 1, 1990.

(2)(A) Section 4980B(f) of the 1986 Code (as added by the Technical and Miscellaneous Revenue Act of 1988) is amended by adding at the end the following new paragraph:

"(8) OPTIONAL EXTENSION OF REQUIRED PERIODS.—A group health plan shall not be treated as failing to meet the requirements of this subsection solely because the plan provides both—

"(A) that the period of extended coverage referred to in paragraph (2)(B) commences with the date of the loss of coverage, and

"(B) that the applicable notice period provided under paragraph (6)(B) commences with the date of the loss of coverage.".

(B)(i) Section 607 of ERISA is amended—

(I) in the heading, by inserting "AND SPECIAL RULES" after "DEFINITIONS"; and

(II) by adding at the end the following new paragraph:

"(5) OPTIONAL EXTENSION OF REQUIRED PERIODS.—A group health plan shall not be treated as failing to meet the requirements of this part solely because the plan provides both—

"(A) that the period of extended coverage referred to in section 602(2) commences with the date of the loss of coverage, and

"(B) that the applicable notice period provided under section 606(a)(2) commences with the date of the loss of coverage.".

(ii) The item relating to section 607 in the table of contents in section 1 of ERISA is amended by inserting "and special rules" after "Definitions".

(C) The amendments made by this paragraph shall apply with respect to plan years beginning on or after January 1, 1990.

(e) AMENDMENTS RELATED TO SECTION 1898.—Section 205(h) of ERISA is amended—

(1) in paragraph (1), by striking "the term" and inserting "The term", and by striking "benefit," and inserting "benefit."; and

(2) in paragraph (3), by striking "the term" and inserting "The term".

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, any amendment made by this section shall take effect as if included in the provision of the Reform Act to which such amendment relates.

SEC. 7892. AMENDMENTS RELATING TO THE PENSION PROTECTION ACT.

(a) AMENDMENT RELATED TO SECTION 9203.—Section 202(a)(2) of ERISA is amended by striking the comma.

(b) AMENDMENT RELATED TO SECTION 9301.—Paragraph (7) of section 302(c) of ERISA is amended by adjusting the left-hand margination thereof, and of each subdivision thereof, 2 ems to the left.

(c) EFFECTIVE DATE.—Any amendment made by this section shall take effect as if included in the provision of the Omnibus Budget Reconciliation Act of 1987 or Pension Protection Act to which such amendment relates.

SEC. 7893. AMENDMENTS RELATING TO THE SINGLE-EMPLOYER PENSION PLAN AMENDMENTS ACT OF 1986.

(a) AMENDMENT RELATED TO SECTION 11004.—Section 3(37)(B) of ERISA is amended by striking "section 4001(c)(1)" and inserting "section 4001(b)(1)".

(b) AMENDMENT RELATED TO SECTION 11005.—Subparagraph (B) of section 4022A(f)(2) of ERISA is amended by striking "the the enactment" and inserting "the enactment".

(c) AMENDMENT RELATED TO SECTION 11008.—Subparagraph (B) of section 4041(b)(2) of ERISA is amended by adjusting the margination of the sentence following clause (ii)(V) 2 ems to the left.

(d) AMENDMENTS RELATED TO SECTION 11009.—

(1) Subparagraph (D) of section 4041(c)(3) of ERISA is amended by adjusting the margination thereof, and of each subdivision thereof, 2 ems to the right.

(2) Subclause (I) of section 4041(c)(3)(D)(ii) of ERISA is amended by striking "of" and inserting "under".

(e) AMENDMENT RELATED TO SECTION 11010.—Section 4042(a) of ERISA is amended, in the matter following paragraph (4), by inserting a period after "terms of the plan".

(f) AMENDMENT RELATED TO SECTION 11013.—Subparagraph (A) of section 4218(1) of ERISA is amended by striking "section 4062(d)" and inserting "section 4069(b)".

(g) AMENDMENTS RELATED TO SECTION 11016.—

(1) Section 4047 of ERISA is amended, in the first sentence, by striking "under this subtitle".

(2) Section 4066 of ERISA is amended by inserting "any" before "contributing sponsor" the first place it appears.

(3) Section 11016(a)(6)(A)(ii) of the Single-Employer Pension Plan Amendments Act of 1986 is amended to read as follows:

"(ii) by striking 'employers' and inserting 'contributing sponsors and members of their controlled groups'; and".

(h) EFFECTIVE DATE.—Any amendment made by this section shall take effect as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986 to which such amendment relates.

SEC. 7894. OTHER AMENDMENTS TO ERISA.

(a) AMENDMENTS RELATED TO SECTION 3.—

(1)(A) Section 3(33)(D)(iii) of ERISA is amended by inserting "of the Treasury" after "Secretary" each place it appears.

(B) The amendments made by subparagraph (A) shall take effect as if included in section 407 of the Multiemployer Pension Plan Amendments Act of 1980.

(2)(A) Section 3(37)(F) of ERISA (as added by section 136 of Public Law 100-202 (101 Stat. 1329-441)) is amended—

(i) in clause (i)(II), by striking "such Code" and inserting "the Internal Revenue Code of 1986";

(ii) in clause (ii)(I), by inserting "of such Code" after "section 501(c)"; and

(iii) in clause (ii)(II), by inserting "of such Code" after "section 170(b)(1)(A)(ii)".

(B) The amendment made by this paragraph shall take effect as if included in section 136 of Public Law 100-202.

(3) Section 3(39) of ERISA is amended by inserting a comma after "mean" and by inserting "the" before "calendar".

(4) Section 3 of ERISA is amended by adding at the end the following new paragraph:

"(41) SINGLE-EMPLOYER PLAN.—The term 'single-employer plan' means an employee benefit plan other than a multiemployer plan.".

(b) AMENDMENTS RELATED TO PART 1 OF SUBTITLE B OF TITLE I.—

(1) The heading for part 1 of subtitle B of title I of ERISA is amended by striking "Part I" and inserting "Part 1".

(2) Section 101(a)(2) of ERISA is amended by striking "section" and inserting "sections".

(3) Section 104(a)(5)(B) of ERISA is amended by striking the period and inserting a comma.

(4) Section 104(b)(1) of ERISA is amended by striking the comma after "summary".

(5) Section 105(b) of ERISA is amended by striking "12 month" and inserting "12-month".

(6) Section 106(b) of ERISA is amended by striking "section" and inserting "sections".

(7) Section 108 of ERISA is amended by striking "act of omission" and inserting "act or omission".

(c) AMENDMENTS RELATED TO PART 2 OF SUBTITLE B OF TITLE I.—

(1)(A) Section 201 of ERISA is amended—

(i) in paragraph (6), by striking "or" at the end;

(ii) in paragraph (7), by striking "plan." and inserting "plan; or"; and

(iii) in paragraph (8), by striking "Any" and inserting "any".

(B) The amendments made by subparagraph (A) shall take effect as if included in section 411 of the Multiemployer Pension Plan Amendments Act of 1980.

(2)(A) Section 202(a)(1)(B)(ii) of ERISA is amended by striking "institution" and inserting "organization".

(B) Section 202(b)(2) of ERISA is amended by striking "the plan" and inserting "a plan".

(3) Section 203(a)(3)(D)(v) of ERISA is amended by striking "nonforfeitably" and inserting "nonforfeitability".

(4) Section 204(b)(1)(A) of ERISA is amended in the last sentence by striking "suparagraph" and inserting "subparagraph".

(5) Section 204(b)(1)(E) of ERISA is amended by striking "years" in the last sentence and inserting "year".

(6) Section 204(d) of ERISA is amended, in the matter following paragraph (2), so as to remove the indentation of the term "Paragraph" the first place it appears.

(7)(A) Section 205(c)(6) of ERISA is amended by striking "act" and inserting "Act".

(B) The amendment made by subparagraph (A) shall take effect as if included in section 103 of the Retirement Equity Act of 1984 in reference to the new section 205(c)(5) of ERISA as added by such section 3113.

(8) Section 206(a)(1) of ERISA is amended by inserting "occurs" after "(1)".

(9)(A) Section 206(d)(3)(I) of ERISA is amended by striking "act" and inserting "Act".

(B) The amendment made by subparagraph (A) shall take effect as if included in section 104 of the Retirement Equity Act of 1984.

(10) Section 210(c) of ERISA is amended by striking "such code" and inserting "such Code".

(11)(A) Section 201(6) of ERISA is amended by striking "section 409 of such Code" and inserting "section 409 of the Internal Revenue Code of 1954 (as effective for obligations issued before January 1, 1984)".

(B) The amendment made by subparagraph (A) shall take effect as if originally included in section 491(b) of Public Law 98-369.

(d) AMENDMENT RELATED TO PART 3 OF SUBTITLE B OF TITLE I.—

(1)(A) Section 301(a) of ERISA is amended—

(i) in paragraph (8), by striking "or" at the end;

(ii) in paragraph (9), by striking "plan." and inserting "plan; or"; and

(iii) in paragraph (10), by striking "Any" and inserting "any".

(B) The amendments made by subparagraph (A) shall take effect as if included in section 411 of the Multiemployer Pension Plan Amendments Act of 1980.

(2) Clause (iii) of section 302(b)(3)(B) of ERISA is amended by striking the period and inserting a comma.

(3) Subparagraph (A) of section 304(b)(2) of ERISA is amended by striking the period and inserting a comma.

(4)(A) Section 301(a)(7) of ERISA is amended by striking "section 409 of such Code" and inserting "section 409 of the Internal Revenue Code of 1954 (as effective for obligations issued before January 1, 1984)".

(B) The amendment made by subparagraph (A) shall take effect as if originally included in section 491(b) of Public Law 98-369.

(5) Paragraph (6) of section 302(c) of ERISA is amended by striking "subsection (g)" and inserting "section 305".

(e) AMENDMENTS RELATED TO PART 4 OF SUBTITLE B OF TITLE I.—

(1)(A) Subsection (c) of section 403 of ERISA is amended—

(i) in paragraph (2)(A), by striking "part iv" and inserting "title IV", and

(ii) by inserting "if such contribution or payment is" after "(i)" and "(ii)", respectively.

(B) The amendments made by subparagraph (A) shall take effect as if included in section 410 of the Multiemployer Pension Plan Amendments Act of 1980.

(2) Section 407(d)(6)(A) of ERISA is amended—

(A) by inserting "plan" after "money purchase"; and

(B) by striking "employee securities" and inserting "employer securities".

(3) Paragraph (3) of section 403(b) of ERISA is amended—

(A) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively;

(B) by striking ", to the extent" and all that follows through "applicable" in subparagraph (B) (as so redesignated); and

(C) by adding at the end, after and below subparagraph (B) (as redesignated), the following:

"to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of such Code, whichever is applicable.".

(4)(A) Section 408(d) of ERISA is amended, in the last sentence—

(i) by striking "individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of the Internal Revenue Code of 1954)" and inserting "individual retirement account or individual retirement annuity described in section 408 of the Internal Revenue Code of 1954 or a retirement bond described in section 409 of the Internal Revenue Code of 1954 (as effective for obligations issued before January 1, 1984)"; and

(ii) by striking "section 408(c) of such code" and inserting "section 408(c) of such Code".

(B) The amendments made by subparagraph (A) shall take effect as if originally included in section 491(b) of the Deficit Reduction Act of 1984.

(5) Section 413 of ERISA is amended by striking "(a)".

(6) Section 414(c)(2) of ERISA is amended by striking "1954)" and inserting "1986", and by striking "prior law" and inserting "prior law)".

(f) AMENDMENTS RELATED TO PART 5 OF SUBTITLE B OF TITLE I.—

(1) Section 502(b)(1) of ERISA is amended by striking "respct" and inserting "respect".

(2)(A) Section 514(b)(5)(C) of ERISA (as amended by section 301 of Public Law 97-473 (96 Stat. 2611)) is amended by striking "such parts" the second place it appears and inserting "such parts 1 and 4 and the preceding sections of this part".

(B) The amendment made by this paragraph shall take effect as if included in section 301 of Public Law 97-473.

(3)(A) Section 514(b)(6)(B) of ERISA (as amended by section 302 of Public Law 97-473 (96 Stat. 2612)) is amended by striking "section 3(l)" and inserting "section 3(1)".

(B) The amendments made by this paragraph shall take effect as if included in section 302 of Public Law 97-473.

(g) AMENDMENTS TO TITLE IV.—

(1) Section 4022(b)(2) of ERISA is amended by striking "60 month" and inserting "60-month".

(2) Paragraph (1) of section 4044(a) of ERISA is amended by striking "accured" and inserting "accrued".

(3)(A) Section 4021(a) of ERISA is amended by striking "this section" and inserting "this title".

(B) Section 4022(a) of ERISA is amended by striking "section 4021" and inserting "this title".

(C)(i) Section 4022A(a)(1) of ERISA is amended by striking "section 4021" and inserting "this title".

(ii) The amendment made by clause (i) shall take effect as if originally included in section 102 of the Multiemployer Pension Plan Amendments Act of 1980.

(4)(A) Paragraph (2) of section 4068(c) of ERISA is amended by striking "section 3466 of the Revised Statutes (31 U.S.C. 191)" and inserting "section 3713 of title 31 of the United States Code".

(B) The amendment made by subparagraph (A) shall take effect as if originally included in section 3 of Public Law 97-258.

(h) AMENDMENTS CLARIFYING APPLICABILITY OF ORIGINAL EFFECTIVE DATE PROVISIONS.—

(1) Section 111 of ERISA is amended by adding at the end the following new subsection:

"(d) Subsections (b) and (c) shall not apply with respect to amendments made to this part in provisions enacted after the date of the enactment of this Act.".

(2) Section 211 of ERISA is amended by adding at the end the following new subsection:

"(f) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after the date of the enactment of this Act.".

(3) Section 308 of ERISA is amended by adding at the end the following new subsection:

"(f) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after the date of the enactment of this Act.".

(4) Section 414 of ERISA is amended by adding at the end the following new subsection:

"(e) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after the date of the enactment of this Act.".

(5)(A) Section 4402 of ERISA is amended by adding at the end the following new subsection:

"(i) The preceding provisions of this section shall not apply with respect to amendments made to this title in provisions enacted after the date of the enactment of the Tax Reform Act of 1986.".

(B) The amendment made by subparagraph (A) shall take effect as if originally included in the Reform Act.

(i) EFFECTIVE DATE.—Except as otherwise provided in this section, any amendment made by this section shall take effect as if originally included in the provision of the Employee Retirement Income Security Act of 1974 to which such amendment relates.

## TITLE VIII—HUMAN RESOURCE AND INCOME SECURITY PROVISIONS

SEC. 8000. TABLE OF CONTENTS; AMENDMENT OF SOCIAL SECURITY ACT.

(a) TABLE OF CONTENTS.—

Sec. 8000. Table of contents; amendment of Social Security Act.
Sec. 8001. Extension of authority to transfer foster care funds to child welfare services.
Sec. 8002. Extension of independent living initiatives program.
Sec. 8003. Permanent extension of medicaid eligibility extension due to collection of child or spousal support.
Sec. 8004. New AFDC quality control system.
Sec. 8005. Emergency assistance and AFDC special needs.
Sec. 8006. Increase in reimbursement for foster and adoptive parent training.

Sec. 8007. Case plans to include health and education records and to be reviewed and updated at the time of each placement.
Sec. 8008. Establishment and conduct of outreach program for children.
Sec. 8009. Eligibility for benefits of children of Armed Forces personnel residing overseas.
Sec. 8010. Rule for deeming to children the income and resources of their parents waived for certain disabled children.
Sec. 8011. Exclusion from income of domestic commercial transportation tickets received as gifts.
Sec. 8012. Reduction in time during which income and resources of separated couples must be treated as jointly available.
Sec. 8013. Exclusion of accrued income with respect to purchase of certain burial spaces.
Sec. 8014. Exclusion from resources of all income-producing property.
Sec. 8015. Demonstration of effectiveness of Minnesota Family Investment Plan.
Sec. 8016. Increase in funding for title XX social services block grant.

(b) AMENDMENT OF SOCIAL SECURITY ACT.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

SEC. 8001. EXTENSION OF AUTHORITY TO TRANSFER FOSTER CARE FUNDS TO CHILD WELFARE SERVICES.

(a) 3-YEAR EXTENSION.—Subsections (b)(1), (b)(2)(B), (b)(4)(B), (b)(5)(A), (b)(5)(A)(ii), (c)(1), and (c)(2) of section 474 (42 U.S.C. 674) are each amended by striking "1989" and inserting "1992".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1989.

SEC. 8002. EXTENSION OF INDEPENDENT LIVING INITIATIVES PROGRAM.

(a) PROGRAM EXTENDED FOR 3 YEARS.—Section 477 (42 U.S.C. 677) is amended—

(1) in each of subsections (a)(1) and (e)(1), by striking ", 1988, and 1989" and inserting "through 1992"; and

(2) in subsection (c), by striking "the fiscal year 1988 or 1989" and inserting "any of the fiscal years 1988 through 1992".

(b) ENTITLEMENT INCREASED.—Section 477(e)(1) (42 U.S.C. 677(e)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking "The amount" and inserting "The basic amount";

(3) by striking "and 1989" and inserting "1989, 1990, 1991, and 1992";

(4) by striking "$45,000,000" and inserting "the basic ceiling for such fiscal year"; and

(5) by adding after and below such provision the following:

"(B) The maximum additional amount to which a State shall be entitled under section 474(a)(4) for fiscal years 1991 and 1992 shall be an amount which bears the same ratio to the additional ceiling for such fiscal year as the basic amount of such State bears to $45,000,000."; and

"(C) As used in this section:

"(i) The term 'basic ceiling' means—

"(I) for fiscal year 1990, $50,000,000; and

"(II) for each fiscal year other than fiscal year 1990, $45,000,000.

"(ii) The term 'additional ceiling' means—

"(I) for fiscal year 1991, $15,000,000; and

"(II) for fiscal year 1992, $25,000,000.".

(c) MATCHING PAYMENTS TO STATES.—Section 474(a)(4) (42 U.S.C. 674(a)(4)) is amended to read as follows:

"(4) an amount equal to the sum of—

"(A) so much of the amounts expended by such State to carry out programs under section 477 as do not exceed the basic amount for such State determined under section 477(e)(1); and

"(B) the lesser of—

"(i) one-half of any additional amounts expended by such State for such programs; or

"(ii) the maximum additional amount for such State under such section 477(e)(1).".

(d) STUDY BY THE SECRETARY OF HHS; REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall study the programs authorized under section 477 of the Social Security Act for the purposes of evaluating the effectiveness of the programs. The study shall include a comparison of outcomes of children who participated in the programs and a comparable group of children who did not participate in the programs.

(2) REPORT.—Upon completion of the study, the Secretary shall issue a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b) and (c) shall take effect October 1, 1989.

SEC. 8003. PERMANENT EXTENSION OF MEDICAID ELIGIBILITY EXTENSION DUE TO COLLECTION OF CHILD OR SPOUSAL SUPPORT.

(a) ELIMINATION OF SUNSET ON APPLICABILITY OF MEDICAID ELIGIBILITY EXTENSION.—Section 20(b) of the Child Support Enforcement Amendments of 1984 (Public Law 98-378) is amended by striking "and before October 1, 1989".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1989.

SEC. 8004. NEW AFDC QUALITY CONTROL SYSTEM.

(a) IN GENERAL.—Part A of title IV (42 U.S.C. 601 et seq.) is amended by inserting after section 407 the following:

"SEC. 408. AFDC QUALITY CONTROL SYSTEM.

"(a) IN GENERAL.—In order to improve the accuracy of payments of aid to families with dependent children, the Secretary shall establish and operate a quality control system under which the Secretary shall determine, with respect to each State, the amount (if any) of the disallowance required to be repaid to the Secretary due to erroneous payments made by the State in carrying out the State plan approved under this part.

"(b) REVIEW OF CASES.—

"(1) STATE REVIEW.—

"(A) IN GENERAL.—Each State with a plan approved under this part shall for each fiscal year, in accordance with the time schedule and methodology prescribed in regulations issued under paragraphs (1) and (2) of subsection (h)—

"(i) review a sample of cases in the State with respect to which a payment has been made under such plan during the fiscal year; and

"(ii) determine the level of erroneous payments for the State for the fiscal year.

"(B) EFFECTS OF FAILURE TO COMPLETE REVIEW IN A TIMELY MANNER.—

"(i) SECRETARY CONDUCTS REVIEW.—If a State fails to conduct and complete, on a timely basis, a review required by subparagraph (A), or otherwise fails to cooperate with the Secretary in implementing this subsection, the Secretary, directly or through contractual or such other arrangements as the Secretary may find appropriate, shall conduct the review and establish the error rate for the State for the fiscal year on the basis of the best data reasonably available to the Secretary, in accordance with the statistical methods that would apply if the review were conducted by the State.

"(ii) STATE INCURS COSTS OF REVIEW.—The amount that would otherwise be payable under this part to a State for which the Secretary conducts a review under clause (i) shall be reduced by the costs incurred by the Secretary in conducting the review.

"(2) REVIEW BY THE SECRETARY.—The Secretary shall review a subsample of the cases reviewed by the State, or by the Secretary with respect to the State, under paragraph (1).

"(3) NOTIFICATION OF DIFFERENCE CASES.—Upon completion of the review under paragraph (2), the Secretary shall notify the State of any case in the subsample which the Secretary finds involves erroneous payments, and which the State's review determined to be correct (in this section referred to as a 'difference case').

"(4) ESTABLISHMENT OF QUALITY CONTROL REVIEW PANEL.—The Secretary shall by regulation establish a Quality Control Review Panel to review difference cases.

"(5) RESOLUTION OF DIFFERENCE CASES.—

"(A) IN GENERAL.—The State may seek review by the Panel of any difference case, within the time period prescribed in regulations issued under subsection (h)(3).

"(B) PROCEDURAL RULES.—The State and the Secretary may submit such documentation to the Panel as the State or the Secretary finds appropriate to substantiate its position. The findings of the Panel shall be made on the record, within the time period prescribed in regulations issued under subsection (h)(4).

"(C) STATUS OF DECISIONS OF THE QUALITY CONTROL REVIEW PANEL.—The decisions of the Panel shall constitute the decisions of the Secretary for purposes of establishing the State's error rate for the fiscal year.

"(D) APPEALABILITY OF DECISIONS OF THE QUALITY CONTROL REVIEW PANEL.—The decisions of the Panel shall not be appealable, except as provided in subsection (k).

"(c) IDENTIFICATION OF ERRONEOUS PAYMENTS.—

"(1) APPLY PROVISIONS OF STATE PLAN.—Except as provided in paragraph (2), in determining whether a payment is an erroneous payment, the State and the Secretary shall apply all relevant provisions of the State plan approved under this part.

"(2) TREATMENT OF PROVISIONS OF STATE PLAN THAT ARE INCONSISTENT WITH FEDERAL LAW.—

"(A) IN GENERAL.—If a provision of a State plan approved under this part is inconsistent with a provision of Federal law or regulations, and the Secretary has notified the State of the inconsistency, the provision of Federal law or regulations shall control.

"(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to a payment of the State if—

"(i) it is necessary for the State to enact a law in order to remove an inconsistency described in subparagraph (A), the Secretary has advised the State that the State will be allowed a reasonable period in which to enact such a law, and the payment was made during such period; or

"(ii) the State agency made the payment in compliance with a court order.

"(3) CERTAIN PAYMENTS NOT CONSIDERED ERRONEOUS.—For purposes of this section, a

payment by a State shall not be considered an erroneous payment if the payment is in error solely by reason of—

"(A) the State's failure to implement properly changes in Federal statute within 6 months after the effective date of such changes or, if later, 6 months after the issuance of final regulations (including regulations in interim final form) if such regulations are reasonably necessary to construe or apply the Federal statutory change;

"(B) the State's reliance upon and correct use of erroneous information provided by the Secretary about matters of fact;

"(C) the State's reliance upon and correct use of written statements of Federal policy provided to the State by the Secretary;

"(D) the occurrence of an event in the State that—

"(i) results in the declaration by the President or the Governor of the State of a state of emergency or major disaster; and

"(ii) directly affects the State agency's ability to make correct payments under the State plan approved under this part; or

"(E) the failure of a family to submit monthly reports to the State pursuant to section 402(a)(14), if the failure did not affect the amount of the payment.

"(4) CERTAIN PAYMENTS CONSIDERED ERRONEOUS.—Notwithstanding any other provision of this section, a payment shall be considered an erroneous payment if the payment is made to a family—

"(A) which has failed without good cause to assign support rights as required by section 402(a)(26); or

"(B) any member of which is a recipient of aid under a State plan approved under this part and does not have a social security account number (unless an application for a social security account number for the family member has been filed within 30 days after the date of application for such aid).

"(d) DETERMINATION OF ERROR RATES.—

"(1) IN GENERAL.—The Secretary shall, in accordance with this subsection, determine an error rate for each State for the fiscal year involved, based on the reviews under paragraphs (1) and (2) of subsection (b) and the decisions of the Quality Control Review Panel under subsection (b)(5).

"(2) ERROR RATE FORMULA.—Except as provided in paragraph (3), the State's error rate for a fiscal year is—

"(A) the ratio of—

"(i) the erroneous payments of the State for the fiscal year; to

"(ii) the total payments of aid under the State plan approved under this part for the fiscal year; reduced by

"(B) the amount by which—

"(i) the national average underpayment rate for the fiscal year; exceeds

"(ii) the underpayment rate of the State for the fiscal year.

"(3) APPLICATION OF REDUCTION TO SUBSEQUENT FISCAL YEAR.—At the request of a State, the Secretary shall apply the reduction described in paragraph (2)(B) in determining the State's error rate for either of the 2 following fiscal years instead of in determining the State's error rate for the fiscal year to which the reduction would otherwise apply.

"(e) NOTIFICATION TO STATES OF ERROR RATES.—The Secretary shall notify each State of the error rate of the State determined under subsection (d), within the time period prescribed in regulations issued under subsection (h)(5).

"(f) IMPOSITION OF DISALLOWANCES.—If a State's error rate for a fiscal year exceeds the national average error rate for the fiscal year, the Secretary shall impose a disallowance on the State for the fiscal year in an amount equal to—

"(1) the product of—

"(A) the State's total payments of aid to families with dependent children for the fiscal year;

"(B) the Federal medical assistance percentage applicable to the State for purposes of section 1118;

"(C) the lesser of—

"(i) the ratio of—

"(I) the amount by which the State's error rate for the fiscal year exceeds the national average error rate for the fiscal year; to

"(II) the national average error rate for the fiscal year; or

"(ii) 1; and

"(D) the amount by which the State's error rate for the fiscal year exceeds the national average error rate for the fiscal year;

reduced by

"(2) the product of—

"(A) the ratio of—

"(i) the amount by which the State's error rate for the fiscal year exceeds the national average error rate for the fiscal year; and

"(ii) the State's error rate for the fiscal year;

"(B) the overpayments recovered by the State in the fiscal year; and

"(C) the Federal medical assistance percentage applicable to the State for purposes of section 1118;

and further reduced by

"(3) the product of—

"(A) the calculation described in paragraphs (1) and (2); and

"(B) the percentage by which—

"(i) the State's rate of child support collections for the fiscal year; exceeds

"(ii) the lesser of—

"(I) the national average rate of child support collections for the fiscal year; or

"(II) the average of the State's child support collection rates for each of the 3 fiscal years preceding the fiscal year.

"(g) NOTIFICATION TO STATES OF AMOUNTS OF DISALLOWANCES.—The Secretary shall notify each State on which the Secretary imposes a disallowance the amount of the disallowance, within the time period prescribed in regulations issued under subsection (h)(6).

"(h) REGULATIONS.—The Secretary, after consultation with the chief executives of the States, shall by regulation prescribe—

"(1) the periods within which—

"(A) the reviews required by paragraphs (1) and (2) of subsection (b) are to begin and be completed; and

"(B) the results of the review required by subsection (b)(1) are to be reported to the Secretary;

"(2) matters relating to the selection and size of the samples to be reviewed under paragraphs (1) and (2) of subsection (b), and the methodology for making statistically valid estimates of each State's error rate;

"(3) the period within which a State may seek review by the Quality Control Review Panel of a difference case;

"(4) the period within which a difference case appealed by a State is to be resolved by the Quality Control Review Panel;

"(5) the period, after the completion of the reviews required by paragraphs (1) and (2) of subsection (b) and the resolution by the Quality Control Review Panel of any difference cases appealed by a State, within which the Secretary is to notify the State of the error rate of the State for the fiscal year involved; and

"(6) the period within which the Secretary is to notify a State of any disallowance.

"(i) PAYMENT OF DISALLOWANCES.—

"(1) PAYMENT OPTIONS.—Within 45 days after the date a State is notified of a disallowance pursuant to subsection (g), the State shall, at the option of the State—

"(A) pay the Secretary the amount of the disallowance; or

"(B) enter into an agreement with the Secretary under which the State will make quarterly payments to the Secretary over a period not to exceed 30 months beginning not later than the first quarter beginning after the date the State receives the notice, in amounts sufficient to repay the disallowance with interest by the end of such period.

"(2) AUTHORITY TO ADJUST STATE MATCHING PAYMENTS.—If a State fails to pay the amount of a disallowance imposed on the State, in the manner required by the applicable subparagraph of paragraph (1), the Secretary shall reduce the amount to be paid to the State under section 403(a) by amounts sufficient to recover the amount of the disallowance with interest.

"(3) INTEREST ON UNPAID DISALLOWANCES.—

"(A) RATE OF INTEREST.—Interest on the unpaid amount of a disallowance shall accrue at the overpayment rate established under section 6621(a)(1) of the Internal Revenue Code of 1986.

"(B) ACCRUAL OF INTEREST.—

"(i) IN GENERAL.—Except as provided in clause (ii), interest on the unpaid amount of a State's disallowance shall accrue beginning 45 days after the date the State receives notice of the disallowance.

"(ii) EXCEPTION.—If the State appeals the imposition of a disallowance under this section to the Departmental Appeals Board and the Board does not decide the appeal within 90 days after the date of the State's notice of appeal, interest shall not accrue on the unpaid amount of the disallowance during the period beginning on such 90th day and ending on the date of the Board's final decision on the appeal, except to the extent that the Board finds that the State caused or requested the delay.

"(j) ADMINISTRATIVE REVIEW OF DISALLOWANCES.—

"(1) IN GENERAL.—Within 60 days after the date a State receives notice of a disallowance imposed under this section, the State may appeal the imposition of the disallowance, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services, by filing an appeal with the Board.

"(2) PROCEDURAL RULES.—The Board shall consider a State's appeal on the basis of such documentation as the State may submit and as the Board may require to support the final decision of the Board. In deciding whether to uphold a disallowance or any portion thereof, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. In rendering its final decision, the Board shall incorporate by reference any findings of the Quality Control Review Panel that were made in connection with the determination of the error rate and the amount of the disallowance, and such findings shall not be reviewable by the Board.

"(k) JUDICIAL REVIEW OF DISALLOWANCES.—

"(1) IN GENERAL.—Within 90 days after the date of a final decision by the Departmental Appeals Board with respect to the imposition of a disallowance on a State under this section, the State may obtain judicial review of the final decision (and the findings of the Quality Control Review Panel incorporated into the final decision) by filing an action in—

"(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or

"(B) the United States District Court for the District of Columbia.

"(2) PROCEDURAL RULES.—The district court in which an action is filed shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5, United States Code. The review shall be on the basis of the documents and supporting data submitted to the Board (or to the Quality Control Review Panel, in the case of any finding by the Panel which is at issue in the appeal).

"(l) REFUND OF DISALLOWANCES IMPOSED IN ERROR.—If the Secretary, directly or indirectly, receives from a State part or all of the amount of a disallowance imposed on the State under this section, and part or all of the disallowance is finally determined to have been imposed in error, the Secretary shall refund to the State the amount received by reason of the error, with interest which shall accrue from the date of receipt at the rate described in subsection (i)(3)(A).

"(m) DEFINITIONS.—As used in this section:

"(1) NATIONAL AVERAGE ERROR RATE.—The term 'national average error rate' for a fiscal year means the greater of—

"(A) the ratio of—

"(i) the total amount of erroneous payments made by all States for the fiscal year; to

"(ii) the total amount of aid paid by all the States for the fiscal year under plans approved under this part; or

"(B) 4 percent.

"(2) UNDERPAYMENT RATE.—The term 'underpayment rate', with respect to a State for a fiscal year, means the ratio of—

"(A) the total amounts of aid that should have been but were erroneously not paid for a fiscal year to recipients of aid under the State plan approved under this part; to

"(B) the total amount of aid paid under such plan for the fiscal year.

"(3) NATIONAL AVERAGE UNDERPAYMENT RATE.—The term 'national average underpayment rate' for a fiscal year means the ratio of—

"(A) the total amounts of aid that should have been but were erroneously not paid for a fiscal year to all recipients of aid under State plans approved under this part; to

"(B) the total amount of aid paid for the fiscal year under all State plans approved under this part.

"(4) CHILD SUPPORT COLLECTION RATE.—The term 'child support collection rate', with respect to a State for a fiscal year, means the ratio of—

"(A) the sum of the number of cases reported by the agency administering the State plan approved under part D for each quarter in the fiscal year for which—

"(i) an assignment was made under section 402(a)(26); and

"(ii) a collection was made under the State's plan approved under part D; to

"(B) the sum of the number of cases reported by such agency for each quarter in the fiscal year under which an assignment was made under section 402(a)(26).

"(5) NATIONAL CHILD SUPPORT COLLECTION RATE.—The term 'national child support collection rate' for a fiscal year means the ratio of—

"(A) the sum of the number of cases described in paragraph (4)(A) reported by all States for quarters in the fiscal year; to

"(B) the sum of the number of cases described in paragraph (4)(B) reported by all States for quarters in the fiscal year.

"(6) ERRONEOUS PAYMENTS.—The term 'erroneous payments' means the sum of overpayments to eligible families and payments to ineligible families made in carrying out a plan approved under this part.".

(b) CONFORMING REPEALS.—Effective October 1, 1990, subsections (i) and (j) of section 403 are hereby repealed.

(c) APPLICABILITY OF NEW QUALITY CONTROL SYSTEM.—The amendment made by subsection (a) shall apply to erroneous payments made in any fiscal year after fiscal year 1990.

(d) NO SANCTIONS WITH RESPECT TO DISALLOWANCES BEFORE FISCAL YEAR 1991.—No disallowance or other similar sanction shall be applied to a State for any fiscal year before fiscal year 1991 under section 403(i) of the Social Security Act or any predecessor statutory or regulatory provision relating to disallowances for erroneous payments made in carrying out a State plan approved under part A of title IV of such Act.

(e) IMPLEMENTATION.—The Secretary of Health and Human Services shall take all actions necessary to assure that adequate numbers of staff are available to perform the functions required by the amendments made by this section.

(f) ANNUAL REPORTS.—The Secretary of Health and Human Services shall annually submit to the Committee on Finance of the Senate, and to the Committee on Ways and Means of the House of Representatives a report on whether the time periods contained in the regulations prescribed pursuant to section 408 of the Social Security Act (as added by subsection (a)) have been or will be met. The first such report shall be submitted not later than January 1, 1992.

(g) STUDY OF NEGATIVE CASE ACTIONS.—

(1) IN GENERAL.—Not later than October 1, 1992, the Secretary of Health and Human Services shall report and make recommendations to the Congress on the results of a study of negative case actions under the program of aid to families with dependent children under State plans approved under part A of title IV of the Social Security Act.

(2) NEGATIVE CASE ACTIONS DEFINED.—As used in paragraph (1), the term "negative case actions" means termination of assistance under part A of title IV of the Social Security Act, denial of an application for assistance under such part, or other action with respect to an application under such part without a determination of eligibility for assistance under such part.

SEC. 8005. EMERGENCY ASSISTANCE AND AFDC SPECIAL NEEDS.

(a) IMPLEMENTATION OF PROPOSED REGULATIONS PROHIBITED.—Except as provided in subsection (b), the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall not—

(1) implement in whole or in part the proposed regulation published in the Federal Register on December 14, 1987, (52 F.R. 47420) with respect to emergency assistance and the need for and amount of assistance under the program of aid to families with dependent children; or

(2) before October 1, 1990, change any policy in effect immediately before the date of the enactment of this Act with respect to any of the matters addressed in the proposed regulation.

(b) REVISED PROPOSED REGULATION.—Notwithstanding subsection (a), the Secretary may issue a revised proposed regulation concerning the use of emergency assistance under the program of aid to families with dependent children under title IV of the Social Security Act that incorporates the recommendations included in the report entitled "Use of the Emergency Assistance and AFDC Programs to Provide Shelter to Families" that the Secretary submitted to the Congress on July 3, 1989.

(c) ESTABLISHMENT OF EFFECTIVE DATES FOR PROPOSED RULES.—Any final regulation which would change any policy in effect immediately before the date of the enactment of this Act with respect to the use of emergency assistance or special needs funds under the program of aid to families with dependent children under part A of title IV of the Social Security Act shall not take effect before October 1, 1990.

(d) REPORTING REQUIREMENTS.—With respect to any calendar quarter beginning on or after January 1, 1990, a financial report by a State submitted to the Secretary to fulfill reporting requirements under the program of aid to families with dependent children under part A of title IV of the Social Security Act shall identify any emergency assistance and special needs funds expended by the State under the program and used to pay for housing in hotels or similar temporary living arrangements (as defined by the Secretary) that house recipients of such aid.

SEC. 8006. INCREASE IN REIMBURSEMENT FOR FOSTER AND ADOPTIVE PARENT TRAINING.

(a) IN GENERAL.—Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following:

"(B) 75 percent of so much of such expenditures (including travel and per diem expenses) as are for the short-term training of current or prospective foster or adoptive parents and the members of the staff of State-licensed or State-approved child care institutions providing care to foster and adopted children receiving assistance under this part, in ways that increase the ability of such current or prospective parents, staff members, and institutions to provide support and assistance to foster and adopted children, whether incurred directly by the State or by contract, and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to expenditures made on or after October 1, 1989, and before October 1, 1992.

SEC. 8007. CASE PLANS TO INCLUDE HEALTH AND EDUCATION RECORDS AND TO BE REVIEWED AND UPDATED AT THE TIME OF EACH PLACEMENT.

(a) INCLUSION OF HEALTH AND EDUCATION RECORDS.—Section 475(1) (42 U.S.C. 675(1)) is amended—

(1) by inserting "(A)" before "A description";

(2) by striking "472(a)(1); and a" and inserting "472(a)(1), (B) A";

(3) by indenting subparagraphs (A) and (B) (as so amended by paragraphs (1) and (2) of this subsection) 4 ems to the right of the left margin;

(4) by inserting after and below subparagraph (B) (as so amended and indented) the following:

"(C) To the extent available and accessible, the health and education records of the child, including—

"(i) the names and addresses of the child's health and educational providers;

"(ii) the child's grade level performance;

"(iii) the child's school record;

"(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

"(v) a record of the child's immunizations;

"(vi) the child's known medical problems;

"(vii) the child's medications; and

"(viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency."; and

(5) by setting the last sentence flush with the left margin of the paragraph.

(b) REVIEW AND UPDATE OF HEALTH AND EDUCATION RECORD AT TIME OF PLACEMENT.—Section 475(5) (42 U.S.C. 675(5)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on April 1, 1990.

SEC. 8008. ESTABLISHMENT AND CONDUCT OF OUTREACH PROGRAM FOR CHILDREN.

(a) IN GENERAL.—Part B of title XVI (42 U.S.C. 1383 et seq.) is amended by adding at the end the following:

"SEC. 1635. OUTREACH PROGRAM FOR CHILDREN.

"(a) ESTABLISHMENT.—The Secretary shall establish and conduct an ongoing program of outreach to children who are potentially eligible for benefits under this title by reason of disability or blindness.

"(b) REQUIREMENTS.—Under this program, the Secretary shall—

"(1) aim outreach efforts at populations for whom such efforts would be most effective; and

"(2) work in cooperation with other Federal, State, and private agencies, and nonprofit organizations, which serve blind or disabled individuals and have knowledge of potential recipients of supplemental security income benefits, and with agencies and organizations (including school systems and public and private social service agencies) which focus on the needs of children.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 3 months after the date of the enactment of this Act.

SEC. 8009. ELIGIBILITY FOR BENEFITS OF CHILDREN OF ARMED FORCES PERSONNEL RESIDING OVERSEAS.

(a) IN GENERAL.—Section 1611(f) (42 U.S.C. 1382(f)) is amended by inserting "(other than a child described in section 1614(a)(1)(B)(ii))" after "no individual".

(b) CONFORMING AMENDMENT.—Section 1614(a)(1) (42 U.S.C. 1382c(a)(1)) is amended—

(1) in subparagraph (B)—

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(B) by inserting "(i)" after "(B)"; and

(C) by striking the period and inserting ", or"; and

(2) by adding after and below subparagraph (B) the following:

"(ii) is a child who is a citizen of the United States, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States, and who, during the month before the parent reported for such assignment, was receiving benefits under this title.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to benefits for months after March 1990.

SEC. 8010. RULE FOR DEEMING TO CHILDREN THE INCOME AND RESOURCES OF THEIR PARENTS WAIVED FOR CERTAIN DISABLED CHILDREN.

(a) IN GENERAL.—Section 1614(f)(2) (42 U.S.C. 1382c(f)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following:

"(B) Subparagraph (A) shall not apply in the case of any child who has not attained the age of 18 years who—

"(i) is disabled;

"(ii) received benefits under this title, pursuant to section 1611(e)(1)(B), while in an institution described in section 1611(e)(1)(B);

"(iii) is eligible for medical assistance under a State home care plan approved by the Secretary under the provisions of section 1915(c) relating to waivers, or authorized under section 1902(e)(3); and

"(iv) but for this subparagraph, would not be eligible for benefits under this title.".

(b) PERSONAL NEEDS ALLOWANCE.—Section 1611(e)(1)(B) (42 U.S.C. 1382(e)(1)(B)) is amended by inserting "or an eligible individual is a child described in section 1614(f)(2)(B)," before "the benefit under this title".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the 1st day of the 6th calendar month beginning after the date of the enactment of this Act.

SEC. 8011. EXCLUSION FROM INCOME OF DOMESTIC COMMERCIAL TRANSPORTATION TICKETS RECEIVED AS GIFTS.

(a) EXCLUSION FROM INCOME.—Section 1612(b) (42 U.S.C. 1382a(b)) is amended—

(1) by striking "and" at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting "; and"; and

(3) by adding at the end the following:

"(15) the value of any commercial transportation ticket, for travel by such individual (or spouse) among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by such individual (or such spouse) and is not converted to cash.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the 1st day of the 3rd calendar month beginning after the date of the enactment of this Act.

SEC. 8012. REDUCTION IN TIME DURING WHICH INCOME AND RESOURCES OF SEPARATED COUPLES MUST BE TREATED AS JOINTLY AVAILABLE.

(a) IN GENERAL.—Section 1614(b) (42 U.S.C. 1382c(b)) is amended by striking the 1st sentence and inserting "For purposes of this title, the term 'eligible spouse' means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual, and who, in a month, is living with such aged, blind, or disabled individual on the first day of the month or, in any case in which either spouse files an application for benefits or requests restoration of eligibility under this title during the month, at the time the application or request is filed.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1990.

SEC. 8013. EXCLUSION OF ACCRUED INCOME WITH RESPECT TO PURCHASE OF CERTAIN BURIAL SPACES.

(a) EXCLUSION FROM INCOME.—Section 1612(b) (42 U.S.C. 1382a(b)), as amended by section 8011(a) of this Act, is amended—

(1) by striking "and" at the end of paragraph (14);

(2) by striking the period at the end of paragraph (15) and inserting "; and"; and

(3) by adding at the end the following:

"(16) interest accrued on the value of an agreement entered into by such individual (or such spouse) representing the purchase of a burial space excluded under section 1613(a)(2)(B), and left to accumulate.".

(b) EXCLUSION FROM RESOURCES.—Section 1613(a)(2)(B) (42 U.S.C. 1382b(a)(2)(B)) is amended by inserting "or agreement (including any interest accumulated thereon) representing the purchase of a burial space" after "the value of any burial space".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the 1st day of the 4th month beginning after the date of the enactment of this Act.

SEC. 8014. EXCLUSION FROM RESOURCES OF ALL INCOME-PRODUCING PROPERTY.

(a) IN GENERAL.—Section 1613(a)(3) (42 U.S.C. 1382b(a)(3)) is amended to read as follows:

"(3) other property which is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion, as determined in accordance with and subject to limitations prescribed by the Secretary, except that the Secretary shall not establish a limitation on property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is used in a trade or business or by such individual as an employee;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 1st day of the 5th calendar month beginning after the date of the enactment of this Act.

SEC. 8015. DEMONSTRATION OF EFFECTIVENESS OF MINNESOTA FAMILY INVESTMENT PLAN.

(a) IN GENERAL.—Upon written application of the State of Minnesota (in this section referred to as the "State") within 24 months after the date of the enactment of this Act, and after the Secretary of Health and Human Services approves the application as meeting the requirements set forth in subsection (b), the State may conduct a demonstration project to determine whether the State family investment plan helps families to become self-supporting and enhances the ability of families to care for their children more effectively than does the State program of aid to families with dependent children under part A of title IV of the Social Security Act.

(b) PROJECT REQUIREMENTS.—In an application submitted under subsection (a), the State shall provide that the following terms and conditions shall be in effect under the demonstration project:

(1) FIELD TRIALS.—The project will consist of 2 field trials, conducted as follows:

(A) URBAN FIELD TRIAL.—1 field trial will be conducted in 1 or more of the following counties in the State:

(i) Anoka.

(ii) Carver.

(iii) Dakota.

(iv) Hennepin.

(v) Scott.

(vi) Washington.

(B) RURAL FIELD TRIAL.—1 field trial will be conducted in 1 or more counties in the State not specified in subparagraph (A).

(C) NUMBER OF FAMILIES INVOLVED.—The field trials will not involve more than a total of 6,000 families at any one time, excluding families whose sole involvement is as members of control groups needed to evaluate the project.

(2) AUTHORITY TO IMPLEMENT FIELD TRIALS DIFFERENTLY.—The implementation of the family investment plan in 1 field trial may be different from the implementation of such plan in the other field trial.

(3) WAIVERS REQUIRED BEFORE PROJECT BEGINS.—The project will not begin before all waivers required as described in subsection (e) have been granted.

(4) BEGINNING OF PROJECT.—

(A) IN GENERAL.—The project will begin during the first month of a calendar quarter.

(B) BEGIN DEFINED.—For purposes of this section, the project begins when the first family receives assistance under the project.

(5) PROJECT TO BE OPERATED IN ACCORDANCE WITH CERTAIN MINNESOTA LAWS.—The project will be operated in accordance with the 1989 Minnesota Laws, sections 6 through 11, 13, 130, and 132 of article 5 of chapter 282, and all amendments to the Laws of Minnesota, to the extent that such laws and amendments are consistent with the goals of the project and this subsection.

(6) PROJECT PARTICIPANTS INELIGIBLE FOR AFDC.—Each family which participates in the project will not be eligible for aid under the State plan approved under section 402(a) of the Social Security Act.

(7) MEDICAID ELIGIBILITY RULES APPLICABLE TO PROJECT.—

(A) ELIGIBILITY OF PARTICIPANTS.—

(i) IN GENERAL.—Each family which participates in the project and would (but for such participation) be eligible for aid under the State plan approved under section 402(a) of the Social Security Act will be treated as receiving such aid for purposes of the State plan approved under section 1902(a) of such Act.

(ii) ELIGIBILITY EXTENDED FOR PROJECT PARTICIPANTS WITH INCREASED EMPLOYMENT INCOME.—Each family which participates in the project and, during such participation, would (but for such participation) become ineligible for aid under the State plan approved under section 402(a) of the Social Security Act by reason of increased income from employment will, for purposes of section 1925 of such Act, be treated as a family that has become ineligible for such aid.

(B) ELIGIBILITY EXTENDED FOR PERSONS LEAVING PROJECT BECAUSE OF INCREASED RECEIPT OF CHILD SUPPORT.—Each family whose participation in the project is terminated by reason of the collection or increased collection of child support under part D of title IV of the Social Security Act will be treated as a recipient of aid to families with dependent children for purposes of title XIX of such Act for an additional 4 calendar months beginning with the month in which the termination occurs.

(8) AFDC RULES TO APPLY GENERALLY.—

(A) IN GENERAL.—Except where inconsistent with this subsection, the requirements of the State plan approved under section 402(a) of the Social Security Act will apply to the project, unless waived by the Secretary of Health and Human Services in accordance with subsection (d).

(B) RULES RELATING TO PARTICIPATION IN EDUCATION, EMPLOYMENT, AND TRAINING ACTIVITIES.—

(i) PARTICIPATION GENERALLY NOT REQUIRED.—Except as provided in clause (ii), the State will not require any individual who applies for or receives assistance under the project to comply with any education, employment, or training requirement of title IV of the Social Security Act, unless required to do so under a contract entered into under the project.

(ii) AUTHORITY TO REQUIRE PARTICIPATION OF PARENT OF CHILD AGE 1 OR OLDER.—The State may require any individual to comply with any education, employment, or training requirement imposed under the project if the State plan approved under section 402(a) of the Social Security Act does not prohibit the State from requiring such compliance, and the individual—

(I) receives assistance under the project;

(II) is the parent or relative of a child who has attained the age of 1 year; and

(III) is personally providing care for the child.

(9) AVAILABILITY OF EDUCATION, EMPLOYMENT, AND TRAINING SERVICES.—The education, employment, and training services available under the State plan approved under part F of title IV of the Social Security Act will be made available to each family required to enter into a contract with a county agency under the 1989 Minnesota Laws, section 10 of article 5 of chapter 282.

(10) ASSISTANCE UNDER PROJECT NOT LESS THAN UNDER AFDC AND FOOD STAMP PROGRAM.—

(A) ESTABLISHMENT OF POLICIES AND STANDARDS.—The State will establish policies and standards to ensure that families participating in the project receive cash assistance under the project in an amount not less than the aggregate value of the assistance that such families would have received under the State plan approved under section 402(a) of such Act and under the food stamp program established under the Food Stamp Act of 1977 in the absence of the project.

(B) IDENTIFICATION OF CHARACTERISTICS OF PARTICIPANTS WHO MIGHT RECEIVE LESS BENEFITS THAN UNDER AFDC AND FOOD STAMP PROGRAM.—The State will identify the set or sets of characteristics of families that (but for this paragraph) might receive benefits under the project in an amount less than the amount required under subparagraph (A) to be provided to such family.

(C) DETERMINATION OF BENEFIT LEVEL FOR PARTICIPANTS WITH IDENTIFIED CHARACTERISTICS.—The State will establish a mechanism to determine, for each family with any set of characteristics identified under subparagraph (B), whether the family would (but for this paragraph) receive benefits under the project in an amount less than the amount required under subparagraph (A) to be provided to such family.

(D) ASSISTANCE UNDER PROJECT INCREASED WHERE NECESSARY.—The State will, for each family which would (but for this paragraph) receive benefits under the project in an amount less than the amount required under subparagraph (A) to be provided to such family, increase the amount of such benefits to such family to the amount so required.

(11) TERMINATION OF PROJECT.—The project will terminate at the end of the 5-year period beginning on the first day of the month during which the project begins, or, if earlier—

(A) 180 days after the State notifies the Secretary of Health and Human Services that the State intends to terminate the project;

(B) 180 days after the Secretary of Health and Human Services, after 30 days written notice to the State and opportunity for a hearing, determines that the State has materially failed to comply with this section; or

(C) on agreement by the State and the Secretary of Health and Human Services.

(c) FUNDING.—

(1) IN GENERAL.—If an application submitted under subsection (a) by the State complies with the requirements specified in subsection (b) and contains an evaluation plan which meets the requirements of subsection (g), and the Secretary of Health and Human Services approves the application, then the Secretary shall, from amounts made available under parts A and F of title IV of the Social Security Act—

(A) pay the State for each calendar quarter, pursuant to section 403 of such Act, the amounts that would have been payable to the State during such calendar quarter, in the absence of the demonstration project, for cash assistance, child care, education, employment and training, and administrative expenses under the State plan approved under section 402(a) of such Act;

(B) reimburse the State at the rate of 50 percent, for expenses of evaluating the effects of the project.

(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed to prevent the State from claiming and receiving reimbursement for additional persons who would qualify for assistance under the State plan approved under section 402(a) of the Social Security Act, for costs attributable to increases in the State's payment standard under such plan, or for any other benefits and services for which Federal matching funds are available under part A of title IV of such Act.

(d) WAIVER AUTHORITY.—

(1) AFDC WAIVERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary of Health and Human Services shall, with respect to the demonstration project under this section, waive any requirement of part A or F of title IV of the Social Security Act that, if applied, would prevent the State from (i) carrying out the project in accordance with subsection (b), or (ii) effectively achieving its purposes, but only to the extent necessary to enable the State to carry out the project.

(B) LIMITATIONS.—The Secretary of Health and Human Services may not, with respect to the demonstration project under this section—

(i) waive any requirement of section 402(a)(4) or 482(h) of the Social Security Act;

(ii) permit the State to provide cash assistance to any family under the project in an amount less than the aggregate value of the assistance that would have been provided to such family under the State plan approved under section 402(a) of such Act and under the food stamp program established under the Food Stamp Act of 1977 in the absence of the project; or

(iii) waive any requirement of section 402(a)(19)(C) of such Act.

(2) OTHER WAIVERS.—If, under this section, the Secretary of Health and Human Services approves an application by the State to conduct a demonstration project relating to the State family investment plan, the Secretary of Health and Human Services shall, in order to enable the State to implement the demonstration project—

(A)(i) require that the State treat each family participating in the project as individuals eligible for medical assistance under

section 1902(a)(10)(A) of the Social Security Act,

(ii) require that the State treat, for purposes of section 1925 of such Act, each family whose participation in the project is terminated by reason of increased income from employment as a family that has become ineligible for aid under the State plan approved under part A of title IV of such Act, and

(iii) require that the State treat each family whose participation in the project is terminated by reason of the collection or increased collection of child support under part D of title IV of the Social Security Act as a recipient of aid to families with dependent children for purposes of title XIX of such Act for an additional 4 calendar months beginning with the month in which such termination occurs; and

(B) make payment, under section 1903 of such Act, for medical assistance and administrative expenses for families participating in the project in the same manner as such payments may be made for medical assistance and administrative expenses for individuals entitled to benefits under title XIX of such Act, except that the aggregate amount of such payments may not exceed the aggregate amount of payments that would have been made for those families in the absence of such project.

(e) DEFINITIONS OF CERTAIN TERMS.—As used in this section, the terms "family" and "contract" shall have the meaning given such terms by the 1989 Minnesota Laws, sections 6 through 11, 13, 130, and 132 of article 5 of chapter 282.

(f) QUALITY CONTROL.—Cases participating in the demonstration project under this section during a fiscal year shall be excluded from any sample taken for purposes of determining under section 403(i) or 408 of the Social Security Act, whichever is applicable, the rate at which the State made overpayments under part A of title IV of such Act for the fiscal year. For purposes of such sections 403(i) and 408, payments made by the State under the project shall be treated as payments made under the State plan approved under section 402(a) of such Act.

(g) EVALUATION OF PROJECT.—

(1) EVALUATION PLAN.—The State shall develop and implement an evaluation plan designed to provide reliable information on the impact and implementation of the demonstration project. The evaluation plan shall include groups of project participants and control groups assigned at random in the field trial conducted in accordance with subsection (b)(1)(A).

(2) EVALUATION.—The evaluation conducted under the evaluation plan shall measure the extent to which the project increases family employment and income, prevents long-term dependency, moves families toward self-support, reduces total assistance payments, and simplifies the welfare system.

(3) REPORTS.—The State shall issue an interim report and a final report on the results of the evaluation described in paragraph (2) to the Secretary of Health and Human Services at such times as the Secretary shall require.

(h) REPORT TO CONGRESS.—Within 3 months after receipt of the final report issued pursuant to subsection (g)(3), the Secretary of Health and Human Services shall report to the Congress the results of the evaluation described in subsection (g)(2).

SEC. 8016. INCREASE IN FUNDING FOR TITLE XX SOCIAL SERVICES BLOCK GRANT.

Section 2003(c) (42 U.S.C. 1397b(c)) is amended—

(1) in paragraph (3), by striking "and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and" and inserting "1987, and 1989;";

(2) in paragraph (4), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(5) $2,800,000,000 for each fiscal year after fiscal year 1989.".

## TITLE IX—OFFSHORE OIL POLLUTION COMPENSATION FUND

SEC. 9001. PAYMENTS TO THE OFFSHORE OIL POLLUTION COMPENSATION FUND.

(a) IN GENERAL.—(1) Section 302(d)(1) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1812(d)(1)) is amended by striking out "not to exceed".

(2) Section 302(d)(2) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1812(d)(2)) is amended by striking out "not less than $100,000,000 and not more than" and adding in lieu thereof "not more than or less than".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

## TITLE X—MISCELLANEOUS AND TECHNICAL SOCIAL SECURITY ACT AMENDMENTS

SECTION 10000. SHORT TITLE; TABLE OF CONTENTS.

This title may be cited as the "Miscellaneous and Technical Social Security Act Amendments of 1989".

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### Subtitle A—Time-Sensitive Provisions

SEC. 10101. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 of the Social Security Act (42 U.S.C. 423(g)) is amended—

(1) in paragraph (1)(iii), by striking "June 1990" and inserting "June 1991"; and

(2) in paragraph (3)(B), by striking "January 1, 1990" and inserting "January 1, 1991".

SEC. 10102. TRANSFER TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended by striking "1989" and inserting "1990".

SEC. 10103. EXTENSION OF DISABILITY INSURANCE PROGRAM DEMONSTRATION PROJECT AUTHORITY.

(a) IN GENERAL.—Section 505 of the Social Security Disability Amendments of 1980 (Public Law 96-265), as amended by section 12101 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), is further amended—

(1) in paragraph (3) of subsection (a), by striking "June 10, 1990" and inserting "June 10, 1993";

(2) in paragraph (4) of subsection (a), by striking "in each of the years 1986, 1987, 1988, and 1989" and inserting "in 1986 and each of the succeeding years through 1992"; and

(3) in subsection (c), by striking "June 9, 1990" and inserting "June 9, 1993".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

*Subtitle B—Technical Provisions*

*SEC. 10201. PROHIBITION OF TERMINATION OF COVERAGE OF U.S. CITIZENS AND RESIDENTS EMPLOYED ABROAD BY A FOREIGN AFFILIATE OF AN AMERICAN EMPLOYER.*

*(a) IN GENERAL.—Subsection (l) of section 3121 of the Internal Revenue Code of 1986 (relating to agreements entered into by American employers with respect to foreign affiliates) is amended—*

*(1) in paragraph (2), by adding at the end the following: "Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign entity shall terminate at the end of any calendar quarter in which the foreign entity, at any time in such quarter, ceases to be a foreign affiliate as defined in paragraph (6).";*

*(2) by striking paragraphs (3), (4), and (5);*

*(3) by inserting after paragraph (2) the following new paragraph:*

*"(3) NO TERMINATION OF AGREEMENT.—No agreement under this subsection may be terminated, either in its entirety or with respect to any foreign affiliate, on or after June 15, 1989."; and*

*(4) by redesignating paragraphs (6) through (10) as paragraphs (4) through (8), respectively.*

*(b) CONFORMING AMENDMENTS.—(1) Subsection (a) of section 210 of the Social Security Act (42 U.S.C. 410(a)) and subsection (a) of section 406 of the Internal Revenue Code of 1986 (relating to treatment of employees of American employer) are each amended by striking "section 3121(l)(8)" and inserting "section 3121(l)(6)".*

*(2) Paragraph (3) of section 406(c) of the Internal Revenue Code of 1986 (relating to termination of status as deemed employee not be treated as separation from service for purposes of limitation of tax) is amended by striking "section 3121(l)(8)(B)" and inserting "section 3121(l)(6)(B)".*

*(3) Paragraph (1) of section 3121(l) of such Code (relating to agreements entered into by American employers with respect to foreign affiliates) is amended, in the matter preceding subparagraph (A), by striking "paragraph (8)" and inserting "paragraph (6)".*

*(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any agreement in effect under section 3121(l) of the Internal Revenue Code of 1986 on or after June 15, 1989, with respect to which no notice of termination is in effect on such date.*

*SEC. 10202. EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY THE EMPLOYERS.*

*(a) OLD-AGE, SURVIVORS, AND DISABILITY, AND HOSPITAL INSURANCE PROGRAMS.—For purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.*

*(b) RAILROAD RETIREMENT PROGRAM.—For purposes of chapter 22 of the Internal Revenue Code of 1986, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.*

*(c) FEDERAL UNEMPLOYMENT PROGRAMS.—*

*(1) FEDERAL UNEMPLOYMENT TAX.—For purposes of chapter 23 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.*

*(2) RAILROAD UNEMPLOYMENT CONTRIBUTIONS.—For purposes of the Railroad Unemployment Insurance Act, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.*

*(3) RAILROAD UNEMPLOYMENT REPAYMENT TAX.—For purposes of chapter 23A of the Internal Revenue Code of 1986, the term "rail wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.*

*(d) REPORTING REQUIREMENTS.—Any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988 shall be reported to the Secretary of the Treasury or his delegate and to the person to whom such refund is made in such manner as the Secretary of the Treasury or his delegate shall prescribe.*

*(e) EFFECTIVE DATE.—This section shall apply with respect to refunds provided on or after January 1, 1989.*

*SEC. 10203. ELIMINATION OF ANY CARRYOVER REDUCTION IN RETIREMENT OR DISABILITY BENEFITS DUE TO RECEIPT OF WIDOW'S OR WIDOWER'S BENEFITS BEFORE ATTAINING AGE 62.*

*(a) IN GENERAL.—Section 202(q)(3) of the Social Security Act (42 U.S.C. 402(q)(3)) is amended—*

*(1) by striking subparagraphs (E), (F), and (G); and*

*(2) by redesignating subparagraph (H) as subparagraph (E).*

*(b) EFFECTIVE DATE.—The amendments made by this section shall apply—*

*(1) in the case of any individual's old-age insurance benefit referred to in section 202(q)(3)(E) of the Social Security Act (as in effect before the amendments made by this section), only if such individual attains age 62 on or after January 1, 1990, and*

*(2) in the case of any individual's disability insurance benefit referred to in section 202(q)(3) (F) or (G) of such Act (as so in effect), only if such individual both attains age 62 and becomes disabled on or after such date.*

*SEC. 10204. CLARIFICATION OF RULES GOVERNING TAXATION UNDER FICA AND SECA OF INDIVIDUALS OF CERTAIN RELIGIOUS FAITHS.*

*(a) EXEMPTION FROM SECA TAXATION FOR CERTAIN EMPLOYEES EXEMPT FROM FICA TAXATION.—*

*(1) IN GENERAL.—Paragraph (3) of section 1402(g) of the Internal Revenue Code of 1986 (relating to inapplicability of exemption to certain church employees) is amended—*

*(A) in the heading, by striking "NOT TO APPLY" and inserting "TO APPLY"; and*

*(B) by striking "shall not" and inserting "shall".*

*(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to taxable years beginning after December 31, 1989.*

*(b) TECHNICAL AMENDMENT CLARIFYING INCLUSION OF PARTNERSHIPS AMONG EMPLOYERS ELIGIBLE FOR RELIGIOUS EXEMPTION FROM FICA.—*

*(1) IN GENERAL.—Section 3127 of the Internal Revenue Code of 1986 (relating to exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs) is amended—*

*(A) in subsection (a)(1), by inserting "(or, if the employer is a partnership, each partner therein)" after "an employer";*

*(B) in subsection (a), in the matter following paragraph (2), by striking "his employees" and inserting "the employees thereof";*

*(C) in subsection (b), by inserting "(or a partner)" after "an employer";*

*(D) in subsection (c), by striking "his employees" and inserting "the employees thereof";*

*(E) in subsection (c)(1), by inserting "(or, if the employer is a partnership, each partner therein)" after "such employer"; and*

*(F) in subsection (c)(2), by striking "such employer or the employee involved ceases to meet" and inserting "such employer (or, if the employer is a partnership, any partner therein) or the employee involved does not meet", and by inserting "(or, if the employer is a partnership, any partner therein)" after "such employer" the second place it appears.*

*(2) EFFECTIVE DATE.—The amendments made by this subsection shall be effective as if they were included in the amendments made by section 8007(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3781).*

*SEC. 10205. TREATMENT OF GROUP-TERM LIFE INSURANCE UNDER RAILROAD RETIREMENT TAXES.*

*(a) IN GENERAL.—The second sentence of section 3231(e)(1) of the Internal Revenue Code of 1986 (defining compensation) is amended by striking ", (ii) tips" and inserting "or death, except that this clause does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee, (ii) tips".*

*(b) EFFECTIVE DATE.—*

*(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to—*

*(A) group-term life insurance coverage in effect after December 31, 1989, and*

*(B) remuneration paid before January 1, 1990, which the employer treated as compensation when paid.*

*(2) EXCEPTION.—The amendment made by subsection (a) shall not apply with respect to payments by the employer (or a successor of such employer) for group-term life insurance for such employer's former employees who separated from employment with the employer on or before December 31, 1989, to the extent that such payments are not for coverage for any such employee for any period for which such employee is employed by such employer (or a successor of such employer) after the date of such separation.*

*(3) BENEFIT DETERMINATIONS TO TAKE INTO ACCOUNT REMUNERATION ON WHICH TAX PAID.—The term "compensation" as defined in section 1(h) of the Railroad Retirement Act of 1974 includes any remuneration which is included in the term "compensation" as defined in section 3231(e)(1) of the Internal Revenue Code of 1986 by reason of the amendment made by subsection (a).*

*SEC. 10206. TREATMENT OF CERTAIN DEFERRED COMPENSATION AND SALARY REDUCTION ARRANGEMENTS UNDER RAILROAD RETIREMENT TAXES.*

*(a) IN GENERAL.—The second sentence of section 3231(e)(1) of the Internal Revenue Code of 1986 (defining compensation) is amended by striking "or (iii)" and inserting "(iii)" and by inserting before the period ", or (iv) any remuneration which would not (if chapter 21 applied to such remuneration) be treated as wages (as defined in section 3121(a)) by reason of section 3121(a)(5)".*

*(b) TREATMENT OF CERTAIN DEFERRED COMPENSATION AND SALARY REDUCTION ARRANGEMENTS.—Subsection (e) of section 3231 of such Code is amended by adding at the end thereof the following new paragraph:*

*"(9) TREATMENT OF CERTAIN DEFERRED COMPENSATION AND SALARY REDUCTION ARRANGEMENTS.—*

"(A) CERTAIN EMPLOYER CONTRIBUTIONS TREATED AS COMPENSATION.—Nothing in any paragraph of this subsection (other than paragraph (2)) shall exclude from the term 'compensation' any amount described in subparagraph (A) or (B) of section 3121(v)(1).

"(B) TREATMENT OF CERTAIN NONQUALIFIED DEFERRED COMPENSATION.—The rules of section 3121(v)(2) which apply for purposes of chapter 21 shall also apply for purposes of this chapter."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to remuneration paid after December 31, 1989.

(2) SUBSECTION (b).—Except as otherwise provided in this subsection—

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to—

(i) remuneration paid after December 31, 1989, and

(ii) remuneration paid before January 1, 1990, which the employer treated as compensation when paid.

(B) BENEFIT DETERMINATIONS TO TAKE INTO ACCOUNT REMUNERATION ON WHICH TAX PAID.—The term "compensation" as defined in section 1(h) of the Railroad Retirement Act of 1974 includes any remuneration which is included in the term "compensation" as defined in section 3231(e)(1) of the Internal Revenue Code of 1986 by reason of the amendment made by subsection (b).

(3) SPECIAL RULE FOR CERTAIN PAYMENTS.—For purposes of applying the amendment made by subsection (b) to remuneration paid after December 31, 1989, which would have been taken into account before January 1, 1990, if such amendments had applied to periods before January 1, 1990, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

(4) EXCEPTION FOR CERTAIN 401(k) CONTRIBUTIONS.—The amendment made by subsection (b) shall not apply to employer contributions made during 1990 and attributable to services performed during 1989 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of the arrangement as in effect on June 15, 1989—

(A) the employee makes an election with respect to such contributions before January 1, 1990, and

(B) the employer identifies the amount of such contribution before January 1, 1990.

(5) SPECIAL RULE WITH RESPECT TO NONQUALIFIED DEFERRED COMPENSATION PLANS.—In the case of an agreement in existence on June 15, 1989, between a nonqualified deferred compensation plan (as defined in section 3121(v)(2)(C) of such Code) and an individual, the amendment made by subsection (b) shall apply with respect to services performed by the individual after December 31, 1989. The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies.

SEC. 10207. TREATMENT OF ROWAN DECISION UNDER RAILROAD RETIREMENT TAXES.

(a) EXCLUSION OF MEALS AND LODGING.—Subsection (e) of section 3231 of the Internal Revenue Code of 1986 is further amended by adding at the end the following new paragraph:

"(10) MEALS AND LODGING.—The term 'compensation' shall not include the value of meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119."

(b) INCOME TAX WITHHOLDING REGULATIONS NOT TO APPLY.—Paragraph (1) of section 3231(e) of such Code is amended by adding at the end the following new sentence: "Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from 'wages' as used in such chapter shall be construed to require a similar exclusion from 'compensation' in regulations prescribed for purposes of this chapter."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration paid after December 31, 1989.

SEC. 10208. INCLUSION OF CERTAIN DEFERRED COMPENSATION IN DETERMINATION OF WAGE-BASED ADJUSTMENTS.

(a) IN GENERAL.—Section 209 of the Social Security Act (42 U.S.C. 409) is amended by adding at the end the following new subsection:

"(k)(1) For purposes of sections 203(f)(8)(B)(ii), 213(d)(2)(B), 215(a)(1)(B)(ii), 215(b)(3)(A)(ii), 224(f)(2)(B), and 230(b)(2) (and 230(b)(2) as in effect immediately prior to the enactment of the Social Security Amendments of 1977), the term 'deemed average total wages' for any particular calendar year means the product of—

"(A) the SSA average wage index (as defined in section 215(i)(1)(G) and promulgated by the Secretary) for the calendar year preceding such particular calendar year, and

"(B) the quotient obtained by dividing—

"(i) the average of total wages (as defined in regulations of the Secretary and computed without regard to the limitation specified in subsection (a)(1) and by including deferred compensation amounts) reported to the Secretary of the Treasury or his delegate for such particular calendar year, by

"(ii) the average of total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year preceding such particular calendar year.

"(2) For purposes of paragraph (1), the term 'deferred compensation amount' means—

"(A) any amount excluded from gross income under chapter 1 of the Internal Revenue Code of 1986 by reason of section 402(a)(8), 402(h)(1)(B), or 457(a) of such Code or by reason of a salary reduction agreement under section 403(b) of such Code,

"(B) any amount with respect to which a deduction is allowable under chapter 1 of such Code by reason of a contribution to a plan described in section 501(c)(18) of such Code, and

"(C) to the extent provided in regulations of the Secretary, deferred compensation provided under any arrangement, agreement, or plan referred to in subsection (i) or (j).".

(b) CONFORMING AMENDMENTS.—

(1) Sections 203(f)(8)(B)(ii), 215(b)(3)(A)(ii), and 230(b)(2)(a) of the Social Security Act (42 U.S.C. 403(f)(8)(B)(ii)(I), 415(b)(3)(A)(ii)(I), and 430(b)(2)(A)), as amended by subsection (d)(2)(A)(i), are each further amended—

(A) by striking "the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)(1)) reported to the Secretary of the Treasury or his delegate" and inserting "the deemed average total wages (as defined in section 209(k)(1))";

(B) by striking "the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate" and inserting "the deemed average total wages (as so defined)"; and

(C) in section 215(b)(3)(A)(ii)(I), by striking "(after 1976)".

(2) Sections 213(d)(2)(B), 215(b)(1)(B)(ii), and 224(f)(2)(B) of such Act (42 U.S.C. 413(d)(2)(B), 415(a)(1)(B)(ii), and 424a(f)(2)(B)), as amended by subsection (d)(2)(A)(i), as each further amended—

(A) by striking "the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)(1)) reported to the Secretary of the Treasury or his delegate" and inserting "the deemed average total wages (as defined in section 209(k)(1))";

(B) in section 213(d)(2)(B) and 215(a)(1)(B)(ii)(II), by striking "(as so defined and computed)" and inserting "(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)(1))"; and

(C) in section 224(f)(2)(B)(ii), by inserting "(I)" after "(ii)", by striking "as so defined and computed)" and inserting "(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)(1))", and by inserting after "disability)" the following: ", if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 209(k)(1)) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990".

(3) Section 215(i)(1)(G) of such Act (42 U.S.C. 415(i)(1)(G)) is amended by striking "the average of the total wages reported to the Secretary of the Treasury or his delegate as determined for purposes of subsection (b)(3)(A)(ii)" and inserting "the amount determined for such calendar year under subsection (b)(3)(A)(ii)(I)".

(4) Section 215(a)(1)(C)(ii) of such Act (42 U.S.C. 415(a)(1)(C)(ii) is amended by striking "change." and inserting "change (except that, for purposes of subsection (b)(2)(A) of such section 230 as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wages (within the meaning of section 209(k)(1)) for such calendar year).".

(5) Section 230(d) of such Act (42 U.S.C. 430(d)) is amended by striking "change." and inserting "change (except that, for purposes of subsection (b)(2)(A) of such section 230 as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wage (within the meaning of section 209(k)(1)) for such calendar year).".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall apply with respect to the computation of average total wage amounts (under the amended provisions) for calendar years after 1990.

(2) TRANSITIONAL RULE.—For purposes of determining the contribution and benefit base for 1990, 1991, and 1992 under section 230(b) of the Social Security Act (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977)—

(A) the average of total wages for 1988 shall be deemed to be equal to the amount which would have been determined with regard to this paragraph, plus 2 percent of the amount which has been determined to be the average of total wages for 1987,

(B) the average of total wages for 1989 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which would have been determined to the average of total wages for 1988 without regard to subparagraph (A), and

(C) the average of total wages reported to the Secretary of the Treasury for 1990 shall be deemed to be equal to the product of—

(i) the SSA average wage index (as defined in section 215(i)(1)(G) of the Social Security Act and promulgated by the Secretary) for 1989, and

(ii) the quotient obtained by dividing—

(I) the average of total wages (as defined in regulations of the Secretary and computed without regard to the limitations of section 209(a)(1) of the Social Security Act and by including deferred compensation amounts, within the meaning of section 209(k)(2) of such Act as added by this section) reported to the Secretary of the Treasury or his delegate for 1990, by

(II) the average of total wages (as so defined and computed without regard to the limitations specified in such section 209(a)(1) and by excluding deferred compensation amounts within the meaning of such section 209(k)(2)) reported to the Secretary of the Treasury or his delegate for 1989.

(3) DETERMINATION OF CONTRIBUTION AND BENEFIT BASE FOR 1993.—For purposes of determining the contribution and benefit base for 1993 under section 230(b) of the Social Security Act (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977), the average of total wages for 1990 shall be determined without regard to subparagraph (C) of paragraph (2).

(4) REVISED DETERMINATION UNDER SECTION 230 OF THE SOCIAL SECURITY ACT.—As soon as possible after the enactment of this Act, the Secretary of Health and Human Services shall revise and publish, in accordance with the provisions of this Act and the amendments made thereby, the contribution and benefit base under section 230 of the Social Security Act with respect to remuneration paid after 1989 and taxable years beginning after calendar year 1989.

(d) CLERICAL AMENDMENTS.—

(1) DESIGNATION OF UNDESIGNATED PROVISIONS.—Section 209 of the Social Security Act is further amended—

(A) by redesignating paragraphs (1) through (9) of subsection (a) as subparagraphs (A) through (I), respectively;

(B) by redesignating clauses (1) through (3) of subsection (b) as clauses (A) through (B), respectively;

(C) by redesignating clauses (1) through (9) of subsection (e) as clauses (A) through (I), respectively;

(D) by redesignating paragraphs (1) and (2) of subsection (f) as subparagraphs (A) and (B), respectively;

(E) by redesignating paragraphs (1), (2), and (3) of subsection (g) as subparagraph (A), (B), and (C), respectively;

(F) in subsection (h), by redesignating clauses (1), (ii), and (iii) as clauses (I), (II), and (III), respectively, by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii), respectively, and by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(G) by redesignating paragraphs (1) and (2) of subsection (1) as subparagraphs (A) and (B), respectively;

(H) by redesignating paragraphs (1) and (2) of subsection (m) as subparagraphs (A) and (B), respectively;

(I) by redesignating paragraphs (1) and (2) of subsection (p) as subparagraphs (A) and (B), respectively;

(J) by redesignating subsections (a) (b), (d), (e), (f), (g), (h), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), and (t) (in the matter preceding subsection (k) added by subsection (a) of this section, and as amended by the preceding provisions of this paragraph) as paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (18), respectively;

(K) by inserting "(a)" after "SEC. 209.";

(L) by striking "Nothing in the regulations" and inserting the following:

"(b) Nothing in the regulations";

(M) in the undesignated paragraph commencing with "For purposes of this title, in the case of domestic service", by inserting "(c)" at the beginning thereof, and by striking "subsection (g)(2)" each place it appears and inserting "subsection (a)(6)(B)";

(N) in the undesignated paragraph commencing with "For purposes of this title, in the case of an individual performing service, as a member", by inserting "(d)" at the beginning thereof, and by striking "subsection (a)" and inserting "subsection (a)(1)";

(O) by inserting "(e)" at the beginning of the undesignated paragraph commencing with "For purposes of this title, in the case of an individual performing service, as a volunteer";

(P) by inserting "(f)" at the beginning of the undesignated paragraph commencing with "For purposes of this title, tips received";

(Q) by inserting "(g)" at the beginning of the undesignated paragraph commencing with "For purposes of this title, in any case where";

(R) by inserting "(h)" at the beginning of the undesignated paragraph commencing with "For purposes of this title, in the case of an individual performing service under the provisions";

(S) by inserting "(i)" at the beginning of the undesignated paragraph commencing with "Nothing in any of the foregoing"; and

(T) by inserting "(j)" at the beginning of the undesignated paragraph commencing with "Any amount deferred".

(2) CONFORMING AMENDMENTS.—

(A) Title II of such Act is amended—

(i) in sections 203(f)(8)(B)(ii)(I), 213(d)(2)(B), 215(a)(1)(B)(ii)(I), 215(b)(3)(A)(ii)(I), 224(f)(2)(B)(i), and 230(b)(2)(A) (42 U.S.C. 403(f)(8)(B)(ii)(I), 413(d)(2)(B), 415(a)(1)(B)(ii)(I), 415(b)(3)(A)(ii)(I), 424a(f)(2)(B)(i), and 430(b)(2)(A)), by striking "section 209(a)" and inserting "section 209(a)(1)";

(ii) in section 203(f)(5)(C), by striking "subsections (a), (g)(2), (g)(3), (h)(2), and (j) of section 209" and inserting "paragraphs (1), (6)(B), (6)(C), (7)(B), and (8) of section 209(a)";

(iii) in clauses (B) and (C) of the last sentence of section 224(a), by striking "209(a)" and inserting "209(a)(1)";

(iv) in section 217(b)(1), by striking "209(e)(2)" and inserting "209(a)(4)(B)";

(v) in section 218(c)(5) by striking "paragraph (2) of section 209(h)" and inserting "subparagraph (B) of section 209(a)(7)"; and

(vi) in section 203(f)(5)(C)(ii), by striking "209(m)(2)" and inserting "209(a)(11)(B)".

(B)(i) Section 6(f)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(f)(1)) is amended by striking "209(g) and inserting "209(a)(6)".

(ii) Section 1(h)(5)(iii) of the Railroad Retirement Act of 1974 (45 U.S.C. 231(h)(5)(iii) is amended by striking "the third paragraph of section 209" and inserting "section 209(d)".

### Subtitle C—Additional Amendments

SEC. 10301. ELIMINATION OF THE DEPENDENCY TEST APPLICABLE TO CERTAIN ADOPTED CHILDREN.

(a) IN GENERAL.—Section 202(d)(8)(D) of the Social Security Act (42 U.S.C. 402(d)(8)(D)) is amended—

(1) by adding "and" after the comma at the end of clause (i); and

(2) by striking clauses (ii) and (iii) and inserting the following new clause:

"(ii) in the case of a child who attained the age of 18 prior to the commencement of proceedings for adoption, the child was living with or receiving at least one-half of the child's support from such individual for the year immediately preceding the month in which the adoption is decreed.".

(b) CONFORMING AMENDMENT.—Paragraph (8) of section 202(d) of such Act is further amended by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits payable for months after December 1989, but only on the basis of applications filed on or after January 1, 1990.

SEC. 10302. AUTHORITY FOR SECRETARY TO TAKE INTO ACCOUNT MISINFORMATION PROVIDED TO APPLICANTS IN DETERMINING DATE OF APPLICATION FOR BENEFITS.

(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—

(1) IN GENERAL.—Section 202(j) of the Social Security Act (42 U.S.C. 402(j)) is amended by adding at the end the following new paragraph:

"(5) In any case in which it is determined to the satisfaction of the Secretary that an individual failed as of any date to apply for monthly insurance benefits under this title by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this title, such individual shall be deemed to have applied for such benefits on the later of—

"(A) the date on which such misinformation was provided to such individual, or

"(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to misinformation furnished after December 1982 and to benefits for months after December 1982.

(b) SUPPLEMENTAL SECURITY INCOME.—

(1) IN GENERAL.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended by adding at the end the following new paragraph:

"(5) In any case in which it is determined to the satisfaction of the Secretary that an individual failed as of any date to apply for benefits under this title by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this title, such individual shall be deemed to have applied for such benefits on the later of—

"(A) the date on which such misinformation was provided to such individual, or

"(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to misinformation furnished on or after the date of the enactment of this Act and to benefits for months after the month in which this Act is enacted.

SEC. 10303. SAME-DAY PERSONAL INTERVIEWS AT FIELD OFFICES OF THE SOCIAL SECURITY ADMINISTRATION IN CERTAIN CASES WHERE TIME IS OF THE ESSENCE.

(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—Section 205 of the Social Security Act (42 U.S.C. 405) is amended by adding at the end the following new subsection:

"Same-Day Personal Interviews at Field Offices in Cases Where Time Is of the Essence

"(t) In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

"(1) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

"(2) the theft, loss, or nonreceipt of a benefit payment under this title,

the Secretary shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.".

(b) SUPPLEMENTAL SECURITY INCOME.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended by adding after the paragraph added by section 10302(b)(1) of this Act the following new paragraph:

"(6) In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

"(1) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

"(2) the theft, loss, or nonreceipt of a benefit payment under this title,

the Secretary shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to visits to field offices of the Social Security Administration on or after January 1, 1990.

SEC. 10304. AUTHORITY TO AMEND WAGE RECORDS AFTER EXPIRATION OF TIME LIMITATION.

Subparagraph (H) of section 205(c)(5) of the Social Security Act (42 U.S.C. 405(c)(5)(H)) is amended by striking "if" and all that follows through "period".

SEC. 10305. STANDARDS APPLICABLE IN CERTAIN DETERMINATIONS OF GOOD CAUSE, FAULT, AND GOOD FAITH.

(a) GOOD CAUSE FOR FAILURE TO MAKE EARNINGS REPORTS TIMELY.—Section 203(l) of the Social Security Act (42 U.S.C. 403(l)) is amended in the last sentence by striking "Secretary" and inserting "Secretary, except that in making any such determination, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language)".

(b) WAIVERS OF RECOVERY OF OVERPAYMENTS.—Section 204(b) of such Act (42 U.S.C. 404(b)) is amended by adding at the end the following new sentence: "In making for purposes of this subsection any determination of whether any individual is without fault, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).".

(c) STANDARD OF REVIEW IN TERMINATION OF DISABILITY BENEFITS.—Section 223(f) of such Act (42 U.S.C. 423(f)) is amended by inserting after the first sentence in the matter following paragraph (4) the following new sentence: "In making for purposes of the preceding sentence any determination relating to fraudulent behavior by any individual or failure by any individual without good cause to cooperate or to take any required action, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).".

(d) CONTINUATION OF BENEFITS PENDING APPEAL.—Section 223(g)(2)(B) of such Act (42 U.S.C. 423(g)(2)(B)) is amended by adding at the end the following new sentence: "In making for purposes of this subparagraph any determination of whether any individual's appeal is made in good faith, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).".

(e) SUPPLEMENTAL SECURITY INCOME.—Section 1631(c)(1) of such Act (42 U.S.C. 1383(c)(1)) is amended by adding at the end the following: "The Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation of such individual (including any lack of facility with the English language) in determining, with respect to the eligibility of such individual for benefits under this title, whether such individual acted in good faith or was at fault, and in determining fraud, deception, or intent.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made on or after July 1, 1990.

SEC. 10306. NOTICE REQUIREMENTS.

(a) APPLICABILITY TO BLIND BENEFICIARIES UNDER TITLE II OF NOTICE STANDARDS CURRENTLY APPLICABLE TO BLIND BENEFICIARIES UNDER TITLE XVI.—

(1) IN GENERAL.—Section 221 of the Social Security Act (42 U.S.C. 421) is amended by adding at the end the following new subsection:

"(l)(1) In any case where an individual who is applying for or receiving benefits under this title on the basis of disability by reason of blindness is entitled to receive notice from the Secretary of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this title, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Secretary and agreed to by the individual.

"(2) The election under paragraph (1) may be made at any time, but an opportunity to make such an election shall in any event be given, to every individual who is an applicant for benefits under this title on the basis of disability by reason of blindness, at the time of his or her application. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this title until such time as it is revoked or changed.".

(2) APPLICATION TO CURRENT RECIPIENTS.—Not later than July 1, 1990, the Secretary of Health and Human Services shall provide every individual receiving benefits under title II of the Social Security Act on the basis of disability by reason of blindness an opportunity to make an election under section 221(l)(1) of such Act (as added by paragraph (1)).

(3) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to notices issued on or after July 1, 1990.

(b) REPORT REGARDING NOTICES IN LANGUAGES OTHER THAN ENGLISH.—Not later than January 1, 1991, the Secretary of Health and Human Services shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth—

(1) the procedures of the Social Security Administration currently in effect for issuing notices in languages other than English to individuals who have a limited capacity to communicate with such Administration in English, and

(2) reasonable options for expanding the use of notices in languages other than English.

SEC. 10307. REPRESENTATION OF CLAIMANTS.

(a) RECORDING OF IDENTITY OF REPRESENTATIVES IN ELECTRONIC INFORMATION RETRIEVAL SYSTEM.—

(1) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—Section 206(a) of the Social Security Act (42 U.S.C. 406(a)) is amended by adding at the end the following new sentence: "The Secretary shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this subsection.".

(2) SUPPLEMENTAL SECURITY INCOME.—Section 1631(d)(2) of such Act (42 U.S.C. 1383(d)(2)) is amended by adding at the end the following new sentence: "The Secretary shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this paragraph.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect June 1, 1991.

(b) NOTIFICATION OF OPTIONS FOR OBTAINING ATTORNEYS.—

(1) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—Section 206 of such Act (42 U.S.C. 406) is further amended by adding at the end the following new subsection:

"(c) The Secretary shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Secretary. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.".

(2) SUPPLEMENTAL SECURITY INCOME.—Section 1631(d)(2) of such Act (42 U.S.C. 1383(d)(2)) is amended—

(A) by inserting "(A)" after "(2)"; and

(B) by adding at the end the following new subparagraph:

"(B) The Secretary shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Secretary. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to adverse determinations made on or after January 1, 1991.

SEC. 10308. EARNINGS AND BENEFIT STATEMENTS.

Part A of title XI of the Social Security Act is amended by adding at the end thereof the following new section:

"SOCIAL SECURITY ACCOUNT STATEMENTS

"Provision Upon Request

"SEC. 1142. (a)(1) Beginning not later than October 1, 1990, the Secretary shall provide upon the request of an eligible individual a social security account statement (hereinafter referred to as the 'statement').

"(2) Each statement shall contain—

"(A) the amount of wages paid to and self-employment income derived by the eligible individual as shown by the records of the Secretary at the date of the request;

"(B) an estimate of the aggregate of the employee and self-employment contributions of the eligible individual for old-age, survivors, and disability insurance as shown by the records of the Secretary on the date of the request;

"(C) a separate estimate of the aggregate of the employee and self-employment contributions of the eligible individual for hospital insurance as shown by the records of the Secretary on the date of the request; and

"(D) an estimate of the potential monthly retirement, disability, survivor, and auxiliary benefits payable on the eligible individual's account together with a description of the benefits payable under the medicare program of title XVIII.

"(3) For purposes of this section, the term 'eligible individual' means an individual who—

"(A) has a social security account number,

"(B) has attained age 25 or over, and

"(C) has wages or net earnings from self-employment.

"Notice to Eligible Individuals

"(b) The Secretary shall, to the maximum extent practicable, take such steps as are necessary to assure that eligible individuals are informed of the availability of the statement described in subsection (a).

"Mandatory Provision of Statements

"(c)(1) By not later than September 30, 1995, the Secretary shall provide a statement to each eligible individual who has attained age 60 by October 1, 1994, and who is not receiving benefits under title II and for whom a current mailing address can be determined through such methods as the Secretary determines to be appropriate. In fiscal years 1995 through 1999 the Secretary shall provide a statement to each eligible individual who attains age 60 in such fiscal years and who is not receiving benefits under title II and for whom a current mailing address can be determined through such methods as the Secretary determines to be appropriate. The Secretary shall provide with each statement to an eligible individual notice that such statement is updated annually and is available upon request.

"(2) Beginning not later than October 1, 1999, the Secretary shall provide a statement on a biennial basis to each eligible individual who is not receiving benefits under title II and for whom a mailing address can be determined through such methods as the Secretary determines to be appropriate. With respect to statements provided to eligible individuals who have not attained age 50, such statements need not include estimates of monthly retirement benefits. However, if such statements provided to eligible individuals who have not attained age 50 do not include estimates of retirement benefit amounts, such statements shall include a description of the benefits (including auxiliary benefits) that are available upon retirement.".

### Subtitle D—Human Resource and Income Security Provisions

SEC. 10401. INCREASE IN AUTHORIZATION FOR CHILD WELFARE SERVICES UNDER TITLE IV-B OF THE SOCIAL SECURITY ACT.

(a) IN GENERAL.—Sections 420(a), 427(b), 474(c)(4)(B), and 474(c)(4)(C) of the Social Security Act (42 U.S.C. 620(a), 627(b), 674(c)(4)(B), and 674(c)(4)(C)) are each amended by striking "$266,000,000" and inserting "$325,000,000".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1989.

SEC. 10402. EXTENSION AND PERMANENT INCREASE IN FOSTER CARE CEILING.

(a) PERMANENT INCREASE IN APPROPRIATIONS LEVEL WHICH TRIGGERS FOSTER CARE CEILING.—Section 474(b)(2)(A) of the Social Security Act (42 U.S.C. 674(b)(2)(A)) is amended—

(1) by striking "and" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting "; and"; and

(3) by adding at the end the following new clause:

"(iv) with respect to each fiscal year succeeding the fiscal year 1989, only if $325,000,000 is appropriated under section 420 for such succeeding fiscal year.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1989.

SEC. 10403. MISCELLANEOUS TECHNICAL CORRECTIONS.

(a) TECHNICAL CORRECTIONS RELATING TO THE FAMILY SUPPORT ACT OF 1988.—

(1) CORRECTIONS TAKING EFFECT RETROACTIVELY.—

(A)(i) Section 407(b)(1)(B)(iii)(I) of the Social Security Act (42 U.S.C. 607(b)(1)(B)(iii)(I)), as amended by section 202(b)(8)(A), and redesignated by section 401(b)(1), of the Family Support Act of 1988, is amended by striking "409(a)(19)(C)" and inserting "402(a)(19)(C)".

(ii) The amendment made by clause (i) shall take effect as if such amendment had been included in section 202(b)(8)(A) of the Family Support Act of 1988 on the date of the enactment of such Act.

(B)(i) Sections 402(a)(30) and 452(d)(2)(B) of the Social Security Act (42 U.S.C. 602(a)(30) and 652(d)(2)(B)) are each amended by striking "automatic" and inserting "automated".

(ii) The amendments made by clause (i) shall take effect as if such amendments had been included in section 123(d) of the Family Support Act of 1988 on the date of the enactment of such Act.

(C)(i) Section 402(g)(1)(A) of the Social Security Act (42 U.S.C. 602(g)(1)(A)) is amended—

(I) in clause (iv), by striking "includes a child who is (or, if needy," and inserting "received aid to families with dependent"; and

(II) in clause (v), by striking the first comma.

(ii) The amendments made by clause (i) shall take effect as if such amendments had been included in section 302(c) of the Family Support Act of 1988 on the date of the enactment of such Act.

(2) CORRECTION TAKING EFFECT PROSPECTIVELY.—Effective September 30, 1998, section 407(d)(1) of the Social Security Act (42 U.S.C. 607(d)(1)) is amended by striking "participated" and all that follows and inserting "participated in a program under part F".

(b) TECHNICAL CORRECTION RELATING TO THE TAX REFORM ACT OF 1986.—

(1) CORRECTION.—Section 422(b)(1)(A) of the Social Security Act (42 U.S.C. 622(b)(1)(A)) is amended by striking "the individual or agency designated pursuant to section 2003(d)(1)(C) to administer or supervise the administration of the State's services program" and inserting "the individual or agency that administers or supervises the administration of the State's services program under title XX".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if such amendment had been included in section 1883(e)(1) of the Tax Reform Act of 1986 on the date of the enactment of such Act.

(c) TECHNICAL CORRECTION RELATING TO SECTION 474(b)(2)(b) OF THE SOCIAL SECURITY ACT.—

(1) CORRECTION.—Section 4(a)(1) of Public Law 98-617 is amended to read as follows:

"(1)(A) in paragraphs (1) and (4)(B), by striking out '1981 through 1984' and inserting in lieu thereof '1981 through 1985'; and

"(B) in paragraph (2)(B), by striking out '1982 through 1984' and inserting in lieu thereof '1981 through 1985'.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) of this subsection shall take effect as if included in section 4 of Public Law 98-617 at the time such section became law.

SEC. 10404. DEMONSTRATION PROJECT.

(a) NUMBER OF PROJECTS.—In order to determine whether, and if so, the extent to which, the use of volunteer senior aides to provide basic medical assistance and support to families with moderately or severely disabled or chronically ill children contributes to reducing the costs of care for such children, not more than 10 communities may conduct demonstration projects under this section.

(b) DUTIES OF THE SECRETARY.—

(1) CONSIDERATION OF APPLICATIONS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall consider all applications received from communities desiring to conduct demonstration projects under this section.

(2) APPROVAL OF CERTAIN APPLICATIONS.—The Secretary shall approve not more than 10 applications to conduct projects which appear likely to contribute significantly to the achievement of the purpose of this section.

(3) GRANTS.—The Secretary shall make grants to each community the application of which to conduct a demonstration project under this section is approved by the Secre-

*tary to assist the community in carrying out the project.*

*(c) REQUIREMENTS.—Each community receiving a grant with respect to a demonstration project under this section shall conduct the project in accordance with such requirements as the Secretary may prescribe.*

*(d) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—For grants under this section, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed—*

*(1) $1,000,000 for each of the fiscal years 1990 and 1991; and*

*(2) $2,000,000 for each of the fiscal years 1992, 1993, and 1994.*

*(e) EFFECTIVE DATE.—This section shall take effect on October 1, 1989.*

*SEC. 10405. AGENT ORANGE SETTLEMENT PAYMENTS EXCLUDED FROM COUNTABLE INCOME AND RESOURCES UNDER FEDERAL MEANS-TESTED PROGRAMS.*

*(a) IN GENERAL.—*

*(1) TREATMENT OF PAYMENTS.—The payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.), shall not be considered income or resources in determining eligibility for the amount of benefits under any Federal or federally assisted program described in paragraph (2).*

*(2) PROGRAMS INVOLVED.—The program benefits described in this paragraph are—*

*(A) benefits under the supplemental security income program under title XVI of the Social Security Act;*

*(B) aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;*

*(C) medical assistance under a State plan approved under section 1902(a) of the Social Security Act;*

*(D) benefits under title XX of the Social Security Act;*

*(E) benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977);*

*(F) benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;*

*(G) benefits under section 336 of the Older Americans Act;*

*(H) benefits under the National School Lunch Act;*

*(I) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;*

*(J) benefits under the Low-Income Home Energy Assistance Act of 1981;*

*(K) benefits under part A of the Energy Conservation in Existing Buildings Act of 1976;*

*(L) benefits under any educational assistance grant or loan program which is administered by the Secretary of Education; and*

*(M) benefits under a State plan approved under title I, X, XIV, or XVI of the Social Security Act.*

*(b) EFFECTIVE DATE.—Subsection (a) shall take effect on January 1, 1989.*

*SEC. 10406. TREATMENT OF TRIENNIAL REVIEWS OF STATE FOSTER CARE PROTECTIONS FOR FISCAL YEARS BEFORE OCTOBER 1, 1990.*

*The Secretary of Health and Human Services shall not, before October 1, 1990, reduce any payment to, withhold any payment from, or seek any repayment from, any State under part B or E of title IV of the Social Security Act, by reason of a determination made in connection with any triennial review of State compliance with the foster care protections of section 427 of such Act for any Federal fiscal year preceding fiscal year 1991.*

*TITLE XI—MISCELLANEOUS*

*SEC. 11001. SECTION 202(b) EXCEPTION.*

*Any transfer of outlays, receipts, or revenues from one fiscal year to an adjacent fiscal year that occurs pursuant to any provision of this Act or any amendment made by this Act shall be considered a necessary (but secondary) result of a significant policy change as provided in section 202(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.*

*SEC. 11002. RESTORATION OF FUNDS SEQUESTERED.*

*(a) ORDER RESCINDED.—(1) Upon the issuance of a new final order by the President under subsection (b)(3), the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is rescinded.*

*(2) Except as otherwise provided in sections 6001, 6101, and 6201, and subject to subsection (b), any action taken to implement the order issued by the President on October 16, 1989, shall be reversed, and any sequesterable budgetary resource that has been reduced or sequestered by such order is restored, revived, or released and shall be available to the same extent and for the same purpose is if an order had not been issued.*

*(3) For purposes of section 702(d) and 1101(c) of the Ethics Reform Act of 1989, the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is deemed to be rescinded on January 31, 1990.*

*(b) ADJUSTED REDUCTION.—*

*(1) Before the close of the fifteenth calendar day beginning after the date of enactment of this Act, the Director of OMB shall issue a revised report using the exact budget baseline set forth in the report of October 16, 1989, and following the requirements, specifications, definitions, and calculations required by the Balanced Budget and Emergency Deficit Control Act of 1985 for the final report issued under section 251(c)(2) for fiscal year 1990, except that the aggregate outlay reduction to be achieved shall be an amount equal to $16.1 billion multiplied by 130 divided by 365. Calculations made to carry out the preceding sentence shall take into account the reductions and cancellations achieved by paragraphs (2) and (3) and shall not be affected by subsection (d).*

*(2) Notwithstanding any provision of law other than this paragraph, the reductions and cancellations in the student loan programs described in section 256(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 achieved by the order issued by the President on October 16, 1989, shall remain in effect through December 31, 1989, and no reductions or cancellations in such programs shall be made by the order issued under paragraph (4).*

*(3) Notwithstanding any provision of law other than this paragraph, any automatic spending increase suspended or cancelled by the order issued by the President on October 16, 1989, shall be paid at a rate that is 130/365ths less than the rate that would have been paid under the laws providing for such automatic spending increase.*

*(4) On the date that the Director submits a revised report to the President under paragraph (1) for fiscal year 1990, the President shall issue a new final order to make all of the reductions and cancellations specified in such report in conformity with section 252(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985. Such order shall be deemed to have become effective on October 16, 1989.*

*(c) COMPLIANCE REPORT BY COMPTROLLER GENERAL.—Before the close of the thirtieth day beginning after the date the President issues a new final order under subsection (b)(4), the Comptroller General shall submit to the Congress and the President a compliance report setting forth the information required under section 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 with respect to such order.*

*(d) NO DOUBLE REDUCTION IN MEDICARE.—With respect to items and services described in section 6001(a), 6101, or 6201(a) for periods for which reductions are made pursuant to the respective sections, no reduction shall be made under subsection (b).*

And the Senate agree to the same.

From the Committee on the Budget, for consideration of the House bill (except title XI and sections 10181 through 10191), and the Senate amendment (except title VI), and modifications committed to conference, and as exclusive conferees with respect to any proposal to report in total disagreement:

LEON E. PANETTA,
RICHARD A. GEPHARDT,
MARTY RUSSO,
MARVIN LEATH,
CHARLES E. SCHUMER,
BARBARA BOXER,
JIM SLATTERY,
BILL FRENZEL,
BILL GRADISON,
BILL GOODLING,

From the Committee on the Budget, for consideration of title XI and sections 10181 through 10191 of the House bill, and title VI of the Senate amendment, and modifications committed to conference:

LEON E. PANETTA,
RICHARD A. GEPHARDT,
MARTY RUSSO,
ED JENKINS,
FRANK GUARINI,
BILL FRENZEL,
BILL GRADISON,
WM. THOMAS,

From the Committee on Agriculture, for consideration of title I of the House bill, and title I of the Senate amendment, and modifications committed to conference:

E DE LA GARZA,
DAN GLICKMAN,
CHARLES STENHOLM,
JERRY HUCKABY,
GEORGE E. BROWN, Jr.,
GLENN ENGLISH,
GARY CONDIT,
EDWARD MADIGAN,
E. THOMAS COLEMAN,
ARLAN STANGELAND,
BILL SCHUETTE,

From the Committee on Agriculture, for consideration of subtitle B of title VI (except section 6131) of the House bill, and modifications committed to conference:

E DE LA GARZA,
JERRY HUCKABY,
JIM OLIN,
RICHARD H. STALLINGS,
CLAUDE HARRIS,
BILL SARPALIUS,
RON MARLENEE,
SID MORRISON,
ROBERT F. SMITH,

From the Committee on Banking, Finance and Urban Affairs, for consideration of title

II of the House bill, and title II of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
FRANK ANNUNZIO,
WALTER E. FAUNTROY,
BRUCE A. MORRISON,
BEN ERDREICH,
PAUL E. KANJORSKI,
CHALMERS P. WYLIE,
DOUG BEREUTER,
BILL PAXON,

From the Committee on Education and Labor, for consideration of sections 3000 through 3009 of the House bill, and subtitle B of title VIII of the Senate amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
PAT WILLIAMS,
WILLIAM D. FORD,
MAJOR R. OWENS,
CHARLES A. HAYES,
CARL C. PERKINS,
TOM COLEMAN,
STEVE GUNDERSON,
PAUL HENRY,
PETER SMITH,

From the Committee on Education and Labor, for consideration of sections 3051 through 3201 and 11851 through 11894 of the House bill, and subtitle A of title VIII of the Senate amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM CLAY,
WILLIAM D. FORD,
DALE E. KILDEE,
GEO. MILLER,
CHARLES A. HAYES,
MAJOR R. OWENS,

From the Committee on Education and Labor, for consideration of subtitles D and E of title III of the House bill and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
GEORGE MILLER,
DALE E. KILDEE,
PAT WILLIAMS,
MAJOR R. OWENS,
TOM SAWYER,
NITA M. LOWEY,
TOM TAUKE,
TOM PETRI,
STEVE GUNDERSON,
HARRIS W. FAWELL,
FRED GRANDY,

From the Committee on Energy and Commerce, for consideration of subtitles A through E of title IV, subtitle B of title X (except sections 10101 through 10112, 10171, 10181, and 10182), and sections 10003, 10005 (except subsection (c)), 10077(d), 10226, 10233, and 10248 of the House bill, and sections 4001 through 4013, 5201 through 5401, 5501, and 5601 (insofar as it relates to title XIX of the Social Security Act) of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
JAMES H. SCHEUER,
RON WYDEN,
TERRY L. BRUCE,
NORMAN F. LENT,
EDWARD R. MADIGAN,
BOB WHITTAKER
(except for subtitles C and D of title IV and sections 10183 through 10191, 10226, 10233, and 10248 of the House bill, and section 5501 of the Senate amendment),

Provided that Mr. Tauke is appointed in place of Mr. Dannemeyer for consideration of sections 4001 and 10123 of the House bill, and Mr. Bilirakis is appointed in place of Mr. Whittaker for consideration of sections 10183 through 10191 of the House bill, and Mr. Nielson of Utah is appointed in place of Mr. Whittaker for consideration of subtitles C and D of title IV and sections 10226, 10233, and 10248 of the House bill and section 5501 of the Senate amendment:

THOMAS J. TAUKE,
HOWARD C. NIELSON,

From the Committee on Energy and Commerce, for consideration of subtitle F of title IV and section 6001 of the House bill, and section 4101 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHIL SHARP,
DOUG WALGREN,
BILLY TAUZIN,
JIM COOPER,
BILL RICHARDSON,
JOHN BRYANT,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
BILL DANNEMEYER,
JACK FIELDS,

From the Committee on Energy and Commerce, for consideration of subtitles G and H of title IV of the House bill, and section 301 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
ED MARKEY,
AL SWIFT,
CARDISS COLLINS,
DENNIS E. ECKART,
RICK BOUCHER,
THOMAS J. MANTON,
NORMAN F. LENT,
MATT RINALDO,
TOM TAUKE
(except for subtitle G of title IV of the House bill),
THOMAS J. BLILEY, Jr.
(except for subtitle G of title IV of the House bill),

From the Committee on Government Operations, for consideration of title V and section 8001 of the House bill, and section 7001 of the Senate amendment, and modifications committed to conference:

JOHN CONYERS,
CARDISS COLLINS,
STEVE NEAL,
BEN ERDREICH,
ALBERT G. BUSTAMANTE,
GERALD D. KLECZKA,
BARBARA BOXER,
CHRISTOPHER SHAYS,
PETER SMITH,
BILL CLINGER,

From the Committee on Interior and Insular Affairs, for consideration of subtitle F of title IV and title VI of the House bill, and section 4101 of the Senate amendment, and modifications committed to conference:

MORRIS K. UDALL,
GEO. MILLER,
ED MARKEY,
AUSTIN J. MURPHY,
BRUCE F. VENTO,
PAT WILLIAMS
(except for subtitles B and C of title VI of the House bill),
DON YOUNG,
JAMES V. HANSEN,

Provided that Mr. Sharp is appointed in place of Mr. Williams for consideration of subtitles B and C of title VI of the House bill:

PHIL SHARP,

From the Committee on Interior and Insular Affairs, for consideration of section 4201 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEORGE MILLER,
DON YOUNG,

From the Committee on Merchant Marine and Fisheries, for consideration of title VII of the House bill, and sections 302(b), 303, and 4201 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
GERRY STUDDS,
BILL HUGHES,
BILLY TAUZIN,
TOM FOGLIETTA,
D.M. HERTEL,
ROY DYSON,
BOB DAVIS,
DON YOUNG,

From the Committee on Post Office and Civil Service, for consideration of titles V and VIII and sections 10004(a) and 10004(b) of the House bill, and title VII of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
WILLIAM CLAY,
PAT SCHROEDER,
MARY ROSE OAKAR,
GERRY SIKORSKI,
FRANK MCCLOSKEY,
GARY L. ACKERMAN,
BEN GILMAN,
FRANK HORTON,
DON YOUNG,
TOM RIDGE,

From the Committee on Public Works and Transportation, for consideration of sections 302(a), 304, and 4301 of the Senate amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. POE,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY J. NOWAK,
DOUG APPLEGATE,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND,
BILL CLINGER,

From the Committee on Veterans' Affairs, for consideration of title IX and section 11650 (except subsection (a)) of the House bill, and title IX of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
DON EDWARDS,
DOUG APPLEGATE,
LANE EVANS,
TIMOTHY J. PENNY,
HARLEY O. STAGGERS, Jr.,
J. ROY ROWLAND,
BOB STUMP,
JOHN PAUL HAMMERSCHMIDT,
CHALMERS P. WYLIE,
BOB MCEWEN,

From the Committee on Ways and Means, for consideration of subtitle B of title III and title XI (except sections 11901 through 11903) of the House bill, and the third item listed under miscellaneous charges in the fee schedules set forth in section 301(a)(1), title VI, and sections 302, 4004 through

4013, and 8001 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
HAROLD FORD,
TOM DOWNEY,
GUY VANDER JAGT,
RICHARD T. SCHULZE,

From the Committee on Ways and Means, for consideration of subtitle A of title IV, sections 4101 (insofar as it relates to section 1142 of the Social Security Act), 4111, and 4121 (insofar as it relates to section 1142 of the Social Security Act), and title X (except sections 10181 through 10191) of the House bill, and title V (except section 5501) of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
ANDREW JACOBS, Jr.,
TOM DOWNEY,

From the Committee on Ways and Means, for consideration of sections 10181 through 10191 of the House bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
PETE STARK,
BRIAN DONNELLY,
WILLIAM J. COYNE,
J.J. PICKLE,
BILL ARCHER,
GUY VANDER JAGT,

From the Committee on Ways and Means, for consideration of sections 11901 through 11903 of the House bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
TOM DOWNEY,
HAROLD FORD,
ROBERT T. MATSUI,
BARBARA KENNELLY,
MICHAEL ANDREWS,
RICHARD T. SCHULZE,
E. CLAY SHAW,

From the Committee on Ways and Means, for consideration of section 304 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
TOM DOWNEY,
RAY MCGRATH,

*Managers on the Part of the House.*

From the Committee on the Budget:

JIM SASSER,
DON RIEGLE,
FRANK R. LAUTENBERG,
PAUL SIMON,
TERRY SANFORD,
WYCHE FOWLER, Jr.,
CHRISTOPHER DODD,
PETE DOMENICI,
CHUCK GRASSLEY,
BOB KASTEN,

From the Committee on Agriculture, Nutrition, and Forestry:

PATRICK LEAHY,
DAVID PRYOR,
DAVID L. BOREN,
RICHARD G. LUGAR,
BOB DOLE,

From the Committee on Armed Services:

SAM NUNN,
J.J. EXON,
JOHN WARNER,

From the Committee on Banking, Housing, and Urban Affairs:

DON RIEGLE,
ALAN CRANSTON,
PAUL SARBANES,
CHRIS DODD,
JIM SASSER,
ALFONSE D'AMATO,
PHIL GRAMM,

From the Committee on Commerce, Science, and Transportation:

DANIEL K. INOUYE,
WENDELL H. FORD,

From the Committee on Energy and Natural Resources:

J. BENNETT JOHNSTON,
DALE BUMPERS,
BILL BRADLEY,
TIMOTHY E. WIRTH,
JAMES A. MCCLURE,
MALCOLM WALLOP,
FRANK H. MURKOWSKI,

From the Committee on Environment and Public Works:

QUENTIN N. BURDICK,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
JOHN BREAUX,
ALAN K. SIMPSON,
DAVE DURENBERGER,

From the Committee on Finance:

LLOYD BENTSEN,
SPARK MATSUNAGA,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
GEORGE MILLER,
DON RIEGLE,
JOHN D. ROCKEFELLER,
BOB PACKWOOD,
BOB DOLE,
JOHN DANFORTH,
JOHN H. CHAFEE,
JOHN HEINZ,

From the Committee on Governmental Affairs:

JOHN GLENN,
DAVID PRYOR,
JIM SASSER,
TED STEVENS,

From the Committee on Labor and Human Resources:

EDWARD M. KENNEDY,
CLAIBORNE PELL,
HOWARD M. METZENBAUM,
ORRIN G. HATCH,
NANCY LANDON KASSEBAUM,

From the Committee on Veterans' Affairs:

ALAN CRANSTON,
SPARK MATSUNAGA,
FRANK H. MURKOWSKI,

*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3299) to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—AGRICULTURE AND RELATED PROGRAMS

JOINT EXPLANTORY STATEMENT OF THE COMMITTEE OF CONFERENCE AGRICULTURAL RECONCILIATION

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to Title I of the bill (H.R. 3299) to provide for agricultural reconciliation pursuant to the concurrent resolution on the budget for the fiscal year 1990, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House and the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. SHORT TITLE

The Senate amendment provides that title I may be cited as the "Agricultural Reconciliation Act of 1989".

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Sec. 1001(a)).

2. SOYBEAN, SUNFLOWER, AND SAFFLOWER PLANTING PROGRAM AND FEED GRAIN ACREAGE LIMITATION PROGRAM

The House bill would amend section 504(e) of the Agricultural Act of 1949, effective for the 1990 crops, by replacing it with a new section 504(e) that, notwithstanding any other provision of the Agricultural Act of 1949, will require the Secretary, effective only for the 1990 crops, to permit producers on a farm to plant soybeans, sunflowers, or safflowers on a portion (specified by the producer, but in any event not more than 25 percent) of the producers' 1990 wheat, feed grain, upland cotton, extra long staple cotton, and rice permitted acreage, as determined by the Secretary.

Under the House bill, the Secretary must—

(1) establish a sign-up period during which the producers on a farm, participating in the 1990 crop wheat, feed grain, upland cotton, extra long staple cotton, or rice price support and production adjustment program, must state their intentions regarding use of the increased planting provision under the new section 504(e)(1);

(2) after termination of the sign-up period, estimate whether, based on the anticipated additional soybean, sunflower, and safflower plantings for the crop, the average market price for the 1990 crop of soybeans will be below 115 percent of the loan rate established for the 1989 crop of soybeans;

(3) reduce the percentage of permitted acreage on the farm that may be planted to soybeans, sunflowers, and safflowers to a level, or prohibit such plantings, as neces-

sary to ensure that the average soybean market price does not fall below 115 percent of such loan rate, if the Secretary estimates that the average market price for the 1990 crop of soybeans will be below 115 percent of the loan rate; and

(4) submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a statement setting forth the reasons for any reduction in the permitted planting percentage, or prohibition on such plantings, under this paragraph.

For the purposes of determining the farm acreage base or the crop acreage bases for the farm, any acreage on the farm on which soybeans, sunflowers, or safflowers are planted under new section 504(e) will be considered to be planted to the program crop for which soybeans, sunflowers, or safflowers are substituted.

In addition, the Secretary—

(1) may not make program benefits other than soybean or sunflower seed price support loans and purchases available to producers with respect to acreage planted to soybeans, sunflowers, or safflowers under new section 504(e), and

(2) must ensure that the crop acreage bases established for the farm and the farm acreage base are not increased due to such plantings. (Sec. 1001(a))

The House bill would also amend, effective only for the 1990 crop of feed grains, section 105C(f)(1)(C) of the Agricultural Act of 1949 by adding a new clause (ii) to provide that, in the case of the 1990 crop of feed grains, if the Secretary estimates, not later than September 30, 1989, that the quantity of corn on hand in the United States on the first day of the marketing year for that crop (not including any quantity of corn of that crop) will be—

(1) more than 2,000,000,000 bushels, the Secretary must provide for an acreage limitation program (as described in section 105C(f)(2)) under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base for the farm for the crop reduced by not less than 12½ percent nor more than 20 percent;

(2) less than 2,000,000,000 bushels but more than 1,800,000,000 bushels, the Secretary must provide for an acreage limitation program (as described in section 105C(f)(2)) under which the acreage planted to feed grains for harvest on a farm would be limited to feed grain crop acreage base for the farm for the crop reduced by not less than 10 percent nor more than 12½ percent, or

(3) 1,800,000,000 bushels or less, the Secretary may provide for an acreage limitation program (as described in section 105C(f)(2)) under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base for the farm for the crop reduced by not more than 10 percent (Sec. 1001(b))

The Senate amendment contains a similar provision. (Sec. 1104)

The Conference substitute adopts the House provision with an amendment that would strike "115 percent" every place it appears and replace it with "110 percent". (Sec. 1002)

The Managers remain concerned about any potentially detrimental effects on soybean producers' incomes if additional plantings cause soybean prices to fall below the trigger level. The Managers believe that if, after implementing the program, soybean prices fall below 120 percent of the loan rate established for the 1989 crop of soybeans, or $5.43 per bushel, the Secretary of Agriculture should further promote the export of vegetable oil through the Export Enhancement Program or other programs in order to boost the demand for oilseeds.

3. DEFICIENCY PAYMENTS FOR 1990 CROPS

(a) The House bill would amend, effective only for the 1990 crop of wheat, feed grains and rice, sections 101A(c)(1)(A), and 107D(a)(4) of the Agricultural Act of 1949 to require the Secretary of Agriculture to—

(1) at the end of the first 5 months of the marketing year for the 1990 crops of wheat, feed grains, and rice, estimate the total amount of deficiency payments due to producers for the 1990 crop, and

(2) make available to producers no later than the end of the first 6 months of the marketing year for the crop an interim deficiency payment in an amount not less than the amount determined by multiplying such estimate by 80 percent and then subtracting any advance deficiency payments paid to the producer pursuant to section 107C for such crop.

If the total deficiency payment payable to the producer for a crop of wheat, food grains, and rice, as finally determined by the Secretary under the Agricultural Act of 1949, is less than the amount paid to the producer as an advance deficiency payment under section 107C and an interim deficiency payment for the crop, the producer must refund an amount equal to the difference between the amounts paid and the amount finally determined by the Secretary to be payable to the producer as a deficiency payment for the crop. If the Secretary determines that deficiency payments will not be made, available to producers on a crop with respect to which interim deficiency payments already have been made the producers who received such interim payments must refund the payments. (Secs. 1002(a), 1002(b), and 1002(c))

In addition, the House bill will amend—

(1) section 101A(c)(1)(C) of the Agricultural Act of 1949 to require that the payment rate for rice be the amount by which the established price for the crop of rice exceeds the higher of—

(A) the national average market price received by producers during the marketing year for such crop, as determined by the Secretary, or

(B) the loan level determined for the crop (Sec. 1002(a)(3));

(2) section 105C(c)(1)(C) of the Agricultural Act of 1949 to require that the payment rate for corn be the amount by which the established price for the crop of corn exceeds the higher of—

(A) the national weighted average market price received by producers during the marketing year for the crop, as determined by the Secretary, or

(B) the loan level determined for the crop, prior to any adjustment made under section 105C(a)(3) for the marketing year for the crop of corn (Sec. 1002(b)(1)(B));

(3) section 107D(c)(1)(D)(i) of the Agricultural Act of 1949 to require the payment rate for wheat be the amount by which the established price for the crop of wheat exceeds the higher of—

(A) the national weighted average market price received by producers during the marketing year for such crop, as determined by the Secretary, or

(B) the loan level determined for such crop, prior to any adjustment made under subsection 107D(a)(4) for the marketing year for the crop of wheat. (Sec. 1002(c)(3))

The Senate amendment would amend the Agricultural Act of 1949 by adding a new section 425 to provide that the amount of deficiency payments made available to producers of the 1990 crop of wheat, feed grains, upland cotton, and rice under sections 107D(c), 105C(c), 103A(c), and 101A(c) of the Agricultural Act of 1949 shall be reduced as follows:

(1) 2.33 cents per bushel for wheat;

(2) 2.33 cents per bushel for corn (and a comparable amount for other feed grains, as determined by the Secretary);

(3) .515 cent per pound for upland cotton; and

(4) 5.15 cents per hundredweight for rice.

In addition the Senate amendment would require the Secretary, to the extent practicable, to apply this reduction in payments to any advance deficiency payment made available to producers of the 1990 crops under section 107C of the Agricultural Act of 1949. (Sec. 1103(a))

The Senate amendment would also amend section 107C(a)(2)(G) of the Agricultural Act of 1949 to require the Secretary, in calculating any refund that might be owed by a producer under that section, to take into consideration any reduction in the payment made under new section 425. (Sec. 1103(b))

The Conference substitute adopts the Senate provision. (Sec. 1003(a))

(b) The House bill would make a technical correction in a cross reference in section 105C(c)(1)(D)(i) of the Agricultural Act of 1949 (7 U.S.C. 1444e(c)(1)(D)(i)), effective for the 1986 through 1990 crops of feed grains, by striking "(a)(4)" and inserting "(a)(3)". (Sec. 1002 (b)(2))

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Sec. 1003(b))

4. RICE AND UPLAND COTTON OPTIONAL ACREAGE DIVERSION

The House bill would amend, effective only for the 1990 crop of rice and upland cotton, sections 101A(c)(1)(B) and 103A(c)(1)(B) of the Agricultural Act of 1949 to provide that producers, notwithstanding any other provision of section 101A or 103A, respectively, of the Agricultural Act of 1949, who elect to devote all or a portion of the permitted rice or upland cotton acreage of the farm to conservation uses (or other uses as provided in the Act) will receive deficiency payments on the acreage that is considered to be planted to rice or upland cotton, as the case may be, and will be eligible for payments under section 101A(c)(1)(B) or section 103A(c)(1)(B), respectively, for the crop.

Such payments may not be established at less than the projected deficiency payment rate for the crop, as determined by the Secretary. The projected payment rate for the crop must be announced by the Secretary prior to the period during which rice and upland cotton producers may agree to participate in the production adjustment program for the crop.

The Secretary must implement these provisions in such a manner as to minimize the adverse effect on agribusiness and other agriculturally related economic interests within any county, State, or region. In carrying out these provisions, the Secretary is authorized to restrict the total amount of rice or upland cotton acreage that may be taken out of production under the "0/92 program", taking into consideration the total amount of acreage that has or will be removed from production under other price

support, production adjustment, or conservation program activities.

No restrictions on the amount of acreage that may be taken out of production in accordance with the "0/92 program" in a crop year shall be imposed in the case of a county in which producers were eligible to receive disaster emergency loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) as a result of a disaster that occurred during the crop year.

In addition, the *House bill* will make conforming amendments to sections 101A(c)(1)(B)(iv) and 103A(c)(1)(B)(iv) of such Act to provide that the rice and upland cotton crop acreage bases and farm program payment yields of the farm will not be reduced due to the fact that such portion (or all) of the permitted acreage of the farm was devoted to conserving uses (except as provided in section 101A(c)(1)(G), or section 103A(c)(1)(G)) under the "0/92 program". (Secs. 1003(a) and 1003(b))

The *House bill* will also require the Secretary of Agriculture, not later than 180 days after the date of enactment of the Act, to issue regulations implementing the amendments made by section 1003. These regulations must ensure, to the maximum extent practicable, that the programs authorized under section 1003 will not adversely affect the relationships between landlords and tenants, regarding any crop acreage base entered into such programs, in existence on the date of enactment of the Act. (Sec. 1003(c))

The *Senate amendment* contains no comparable provision.

The *Conference substitute* deletes the House provision.

5. REPAYMENT OF ADVANCE DEFICIENCY PAYMENTS

The *House bill* would amend section 201(b)(4) of the Disaster Assistance Act of 1988 to provide that for the 1988 crops of wheat, feed grains, upland cotton, and rice, notwithstanding the provisions of section 107C(a)(2)(I) of the Agricultural Act of 1949, if the Secretary determines that any portion of the advance deficiency payment made to producers for the 1988 crop under section 107C of the Agricultural Act of 1949 must be refunded, the refund must not be required prior to December 31, 1989, for producers of 1988 or 1989 crop wheat, feed grains, upland cotton, or rice if such producers suffered losses of 1988 or 1989 crops due to a natural disaster in 1988 or 1989. (Sec. 1004)

The *Senate amendment* contains no comparable provision.

The *Conference substitute* adopts the House provision with a technical amendment. Under the *Conference substitute*, producers would not have to refund any 1988 deficiency payments until—

(1) December 31, 1989, if such producers suffered losses of 1988 or 1989 crops due to a natural disaster in 1988 or 1989; or

(2) July 31, 1990, for that portion of the crop for which a disaster payment is made under the Disaster Assistance Act of 1988. (Sec. 1004)

6. MORATORIUM ON CONSERVATION RESERVE PROGRAM

The *House bill* would amend section 1231(a) of the Food Security Act of 1985 by extending the conservation reserve program through the 1992 crop and adding a new provision that will prohibit the Secretary of Agriculture from entering into contracts to assist owners and operators of highly erodible cropland in conserving and improving the soil and water resources of their farms or ranches during the period beginning on October 1, 1989 through December 31, 1990.

In addition, the *House bill* would amend section 1231(b) of the Food Security Act of 1985 to provide that the Secretary must enter into contracts with owners and operators of farms and ranches containing highly erodible cropland to place in the conservation reserve—

(1) during the 1986 through 1989 crop years, a total of not less than 30, nor more than 45, million acres, and

(2) during the 1986 through 1992 crop years, a total of not less than 40, nor more than 45, million acres. (Sec. 1005)

The *Senate amendment* contains no comparable provision.

The *Conference substitute* deletes the House provision.

7. REDUCTION OF EXPENDITURES UNDER EXPORT ENHANCEMENT PROGRAM AND FOR TARGETED EXPORT ASSISTANCE

(a) The *House bill* would prohibit, during the fiscal year ending September 30, 1989, the Commodity Credit Corporation, except to the extent provided for under section 4301 of the Agricultural Competitiveness and Trade Act of 1988, from making available to exporters, processors, or foreign importers under the authority of section 5(f) of the Commodity Credit Corporation Charter Act more than $523,000,000 in commodities of the Corporation to enhance the export of United States commodities by making the price of such commodities competitive in the world market. (Sec. 1006(a)(1))

The *Senate amendment* contains a similar provision except that expenditures under such program are limited to $650,000,000 for fiscal year 1990. (Sec. 1201)

The *Conference substitute* adopts the *House bill* with an amendment providing for a limitation of $566,000,000 on the expenditures under such program for fiscal year 1990. (Sec. 1005(a))

(b) The *House bill* would require, during each of the fiscal years ending September 30, 1990, September 30, 1991, and September 30, 1992, the Commodity Credit Corporation, in carrying out the export enhancement program established pursuant to section 5(f) of the Commodity Credit Corporation Charter Act, to promote the export of the United States meat, including poultry products, to commissaries on military installations in the European Community.

The Corporation must make available for this purpose—

(1) not less than $14,000,000 in funds or commodities for the fiscal year ending September 30, 1990,

(2) not less than $9,300,000 in funds or commodities for the fiscal year ending September 30, 1991, and

(3) not less than $4,600,000 in funds or commodities for the fiscal year ending September 30, 1992.

However, funds or commodities will be made available under this provision only to the extent that funds are made available by the Department of Defense for the costs of transporting the meat to the commissaries. In addition, section 4 of the Act will not apply to services performed, losses sustained, operating costs incurred, or commodities purchased or delivered by the Commodity Credit Corporation pursuant to these provisions. (Sec. 1006(a)(2))

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(c) The House bill would amend section 1124(a) of the Food Security Act of 1985 regarding targeted export assistance to require the Secretary of Agriculture, for export activities authorized to be carried out by the Secretary or the Commodity Credit Corporation, to use under section 1124 for the 1990 fiscal year $200,000,000 of the funds of, or commodities owned by, the Corporation. (Sec. 1006(b))

The Senate amendment contains a similar provision except that expenditures under the TEA program are limited to $225,000,000 for the 1990 fiscal year. (Sec. 1202)

The Conference substitute adopts the House bill. (Sec. 1005(b))

8. EXTENSION ON SALE OF RURAL DEVELOPMENT LOANS

The House bill would amend section 1001 of the Omnibus Budget Reconciliation Act of 1986 by adding a new subsection (h) to require the Secretary of Agriculture, notwithstanding the provisions of section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 to offer to the issuer of any unsold note or other obligation described in new subsection 1001(h)(2)(A) for which such issuer made the good faith deposit described in section 1001(h)(2)(A) the opportunity to purchase such note or other obligation consistent with the provisions of section 1001(h) and sections 1001(f)(2) and 1001(f)(3).

The provisions of new section 1001(h) will apply only to those issuers who:

(1) on or before March 9, 1989 made a good faith deposit with the Secretary to purchase a note or other obligation held in the Rural Development Insurance Fund; and

(2) otherwise meet all applicable eligibility criteria, as the criteria existed prior to May 9, 1989, at the time such purchase occurs under this subsection.

The opportunity to purchase any such note or other obligation will be held open, under the policies and procedures in effect under sections 1001(f)(2) and 1001(f)(3) immediately prior to May 9, 1989, for 150 days after the date of enactment of new section 1001(h). In addition, the Secretary—

(1) is prohibited from requiring any further good faith deposit from issuers who qualify under new section 1001(h),

(2) must notify eligible issuers of the opportunity afforded under new section 1001(h) within thirty days after enactment of section 1001(h), and

(3) may require such issuers to express an intention to purchase their note or other obligation by a date certain. (Sec. 1007)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

9. FARM CREDIT

(a) The House bill would amend section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 to exempt interest payments from the Secretary of the Treasury to the Farm Credit System Financial Assistance Corporation from reduction under any order issued under part C—Emergency Powers To Eliminate Deficits In Excess Of Maximum Deficit Amount. (Sec. 1008(a))

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(b) The House bill would repeal section 646 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989, and retain the off budget status of the Farm Credit System Financial Assistance Corporation. (Sec. 1008(b))

The Senate amendment would delay the effective date of amendments made to the Farm Credit Act of 1971 by section 646 of the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1989 until October 1, 1992.

In addition, the Senate amendment would provide that, until October 1, 1992, the Financial Assistance Corporation shall pay, out of the Trust Fund established under section 6.25 of the Farm Credit Act of 1971, to each of the institutions of the Farm Credit System that purchased stock in the Financial Assistance Corporation under section 6.29 of the Farm Credit Act of 1971, four annual payments.

The annual payments provided for by this provision shall be made available as soon as practicable after October 1 of each of the calendar years 1989 through 1992.

The first annual payment made available under this section shall be in an amount equal to—

(1) a percentage equal to 1.5 times the average rate of interest received by the Financial Assistance Corporation from March 30, 1988 through September 30, 1989; times

(2) the difference between $177,000,000 and 4.4 percent of the cumulative amount of the bonds issued by the Financial Assistance Corporation through September 30, 1989.

The second, third, and fourth payments made available under this subsection will be in an amount equal to—

(1) a percentage equal to the average rate of interest received by the Financial Assistance Corporation during each of the fiscal yeas 1990 through 1992; times

(2) the difference between, $177,000,000 and 4.4 percent of the cumulative amount of the bonds issued through September 30 of each of such fiscal years.

Annual payments due under this provision shall be made available to each institution described in paragraph (1) in an amount equal to the total amount of annual payments to be made available times the ratio of the amount of stock each institution purchased divided by $177,000,000. (Sec. 1301)

The Conference substitute adopts the Senate provision. (Sec. 1006)

#### 10. SENSE OF CONGRESS REGARDING THE NATIONAL FINANCE CENTER

The House bill provides that it is the sense of Congress that the Secretary of Agriculture should examine carefully the working capital fund established pursuant to 7 U.S.C. 2235 as it relates to the National Finance Center to determine—

(1) the appropriate level at which the working capital fund should be funded; and

(2) if the working capital fund is currently funded at an excessive level. (Sec. 1009)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

#### 11. LIMITATION ON OUTLAYS OF DISASTER ASSISTANCE ACT OF 1989

The House bill would amend the Disaster Assistance Act of 1989 to provide for a specified reduction in deficiency payments for the 1990 crop of wheat, feed grains, upland cotton, and rice if the area planted in the U.S. to the 1989 crop of barley is greater than 9,290,000 acres and to 1989 crop of oats is greater than 12,500,000 acres as reported in USDA's October crop production report. To the extent practicable, the reduction is to be applied to advance deficiency payments for the 1990 crop.

Deficiency payments are to be reduced as follows:

(1) 9.7 cents per bushel for corn (a comparable amount for other feed grains, as determined by the Secretary);

(2) 9.7 cents per bushel for wheat;

(3) 2.2 cents per pound for upland cotton; and

(4) 21.6 cents per cwt. for rice. (Sec. 1010)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

#### 12. COTTON ACREAGE REDUCTION PROGRAM

The Senate amendment would authorize the Secretary, if 1990 cotton stocks are estimated to be over 7 million bales, to establish a maximum acreage reduction program for the 1990 crop of upland cotton of up to 30%. (Sec. 1101)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

#### 13. PURCHASE PRICE FOR NON-FAT DRY MILK AND BUTTER

The Senate amendment would amend section 201(d) of the Agricultural Act of 1949 to require the Secretary, in carrying out the price support program for milk during the 1990 calendar year, to offer to purchase butter for not less than $1.10 per pound and to purchase non-fat dry milk for not less than $0.8475 per pound. The Secretary is authorized to allocate the rate of price support between the purchase prices for nonfat dry milk and butter in such manner as the Secretary determines will result in the lowest level of expenditures by the Commodity Credit Corporation, and must notify the House Agriculture Committee and the Senate Committee on Agriculture, Nutrition, and Forestry of such determination.

The Senate amendment would amend section 201(d)(1) of the Agricultural Act of 1949 to eliminate the 50 cent reduction in the support price of milk in calendar year 1990 that would occur if the Secretary estimated that the level of purchases of milk and the products of milk will exceed 5,000,000,000 pounds (milk equivalent) on January 1, 1990. (Sec. 1102)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment with an amendment. The Conference substitute would amend section 201(d) of the Agricultural Act of 1949 to require the Secretary, in carrying out this paragraph during calendar year 1990, to offer to purchase butter for not more than $1.10 per pound, except that the Secretary may allocate the rate of price support between the purchase prices for nonfat dry milk and butter in such manner as the Secretary determines will result in the lowest level of expenditures by the Commodity Credit Corporation and shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of such determination.

The Conference substitute would also amend section 201(d)(1)(D)(i) of the Agricultural Act of 1949 to make the mandatory 50 cent price support cut discretionary. (Sec. 1007)

The Managers of the Conference direct the Secretary of Agriculture, when making the determination required under section 201(d)(1)(D)(i), to calculate purchases on both a fat solids and total solids basis and report these calculations to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

The Managers note that on March 29, 1989, Congress enacted P.L. 101-7 which resulted in budget savings in the dairy program of $25,000,000. These savings are included in the reconciliation savings for agriculture and related programs.

#### 14. CALCULATION OF PREMIUMS BY FARM CREDIT SYSTEM INSURANCE CORPORATION

The Senate amendment would amend section 5.55 of the Farm Credit Act of 1971 to provide that until the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the annual premium due from any insured system bank for any calendar year shall be equal to the sum of—

(1) the annual average principal outstanding (as adjusted below) for such year on loans made by the bank that are in accrual status multipled by 0.0015; and

(2) the annual average principal outstanding (as adjusted below) for such year on loans made by the bank that are in non-accrual status multiplied by 0.0025.

The Corporation under procedures and criteria establishing by regulation, shall adjust downward the annual average principal outstanding for a bank during a year to exclude from the calculation of premiums all or a portion of any principal outstanding on Government-guaranteed loans made by the bank, as appropriate on an actuarial basis to more accurately reflect the reduced risks associated with such loans for the holders of insured obligations of insured System banks.

The amendments made by this section are to become effective on January 1, 1989. (Sec. 1302)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

## TITLE II—STUDENT LOAN AND PENSION FIDUCIARY AMENDMENTS

### Student Loan Provisions

#### SECTION 2003. CHANGES IN THE SUPPLEMENTAL LOANS FOR STUDENTS PROGRAM

This section denies SLS eligibility to any undergraduate student attending an institution with a cohort default rate greater than or equal to 30 percent. In addition, this section instructs the Secretary to promulgate regulations designed to prevent an institution from evading the limitations imposed by this section. The Conferees are aware that, in the past, institutions have attempted to modify their default rates through the use of such measures as branching, or consolidation, and that the Department has taken steps to prevent this practice. By requiring the Secretary to promulgate regulations, the Conferees do not intend to interfere with any authority that the Department may already have to prevent such actions. However, the Conferees are aware that under the current practices of the Department, an institution could modify its default rate through a change in ownership or control. This section is intended to prevent that practice.

This section also requires all Ability-to-Benefit students to receive a General Equivalency Diploma (G.E.D.) or a high school diploma before being eligible for a

Supplemental Loan (SLS). It is the Conferees' view that the ability of a student to earn a reasonable income is dependent on acquisition of basic skills as well as the more specialized training one might receive in post-secondary education. The Conferees are concerned that without these basic skills, students will not be able to obtain employment that will supply them with income sufficient to meet their student loan obligations. This loan restriction applies of Ability-to-Benefit students to participate in any of the other Title IV need-based programs.

In making certain that this provision serves to strengthen the educational programs of Ability-to-Benefit (ATB) students, the Conference agreement requires all schools that participate in the SLS Program and admit Ability-to-Benefit students to make a G.E.D. program available to such students. This does not mean that schools have to develop their own G.E.D. program, but rather make such programs available to students. It is the Conferees' intent that such programs would be those of proven success in preparing students for obtaining a G.E.D. Current regulations by the Secretary set forth acceptable requirements for completion of a G.E.D.

It is also not the intent of the Conferees to force ATB students who do not wish to pursue a G.E.D. to do so. This requirement applies only to those wishing to receive a SLS. Also, many students who have not completed high school obtain a certificate of high school equivalency without any specialized preparation. Such students would meet the requirements of this section as would those who choose to return to school to complete a more traditional program of high school studies.

SECTION 2004. ADDITIONAL REQUIREMENTS WITH RESPECT TO DISBURSEMENT OF STUDENT LOANS

This bill also requires first-time students to have been in school 30 days before Supplemental Loans for Students (SLS) funds are received. This provision is to apply to any student who has never before completed a period of enrollment at an eligible institution and to all institutions participating in federal student aid programs. The conferees are very concerned about situations in which students enrolled in post-secondary programs for the first time, quickly discover that they have made a wrong choice, leave school, and are left with a student loan obligation they cannot repay. These borrowers are less likely to find jobs that will enable them to meet their loan repayment obligation and are at high risk of default. This situation can be particularly bad for a person who may not have had a great deal of academic success and, in leaving school, faces yet another failure and the additional burden of student loan indebtedness.

The choice of 30 days is based upon evidence that most dropouts occur within the first 21 days of class. It is the Conferees' intent that loans may be endorsed as early as the 30th day after the start of study. The Conferees do not intend to affect current disbursement regulations and practices concerning non first-time borrowers.

In addition to delaying the disbursement of funds to students for 30 days, this provision requires that institutions certify that the student is enrolled and is making satisfactory progress towards a degree or certificate at the end of that 30-day period. While this provision is silent concerning enforcement provisions, the Conferees note that, as with all provisions of this Title, such certifications are subject to the criminal penalties for fraud amounting to fines of up to $10,000 and imprisonment of up to five years under Section 490 of the Act. In addition, under Section 487, the Secretary is authorized to impose civil penalties of up to $25,000 per violation upon institutions failing to carry out the provisions of the law.

SECTION 2007. EFFECT OF LOSS OF ACCREDITATION

Of great importance to the Conferees are new rules on accreditation. It is the Conferees' view that many of the worst cases of administrative abuse in student aid programs are caused by schools whose actions call into question their worthiness to remain accredited. Such actions have cast a shadow on an entire sector of institutions, many of which do an excellent job of providing education and training programs to the citizens of this nation.

This legislation provides for the loss of eligibility under the Higher Education Act for any institution that has had its institutional accreditation withdrawn or who withdraws from its accrediting association when it becomes clear that its accreditation is at risk. An exception is made for schools whose accreditations are subsequently restored by the same association.

In using the term "institutional accreditation", the Conferees intend that such action should apply only to accreditation that covers the entire institution and is conducted by a nationally or regionally recognized agency. This provision would not apply, for example, to a large university whose nursing school lost one of its professional nursing accreditations if the university remained in good standing with its regional accrediting association.

The Conferees also recognize that the accreditation process involves a very complex and comprehensive review of every facet of a school's operation. It is possible, for example, for a school to lose its accreditation because it does not have enough books in its library. For this reason, this legislation provides for the Secretary to make exceptions to the termination of eligibility rule whenever he believes that the school has submitted evidence of its academic integrity.

SECTION 2008. REVISION OF NATIONAL STUDENT LOAN DATA SYSTEM

Over the past three years there has been a stalemate preventing the establishment of the National Student Loan Data System. The Administration has refused to implement a System if the Department of Education could not require all guarantees to be precleared to assure that a System be in place and validated before preclearance was considered, in order to avoid errors and inordinate delay in processing of student loans.

The Conference compromise amends existing law with a requirement that the Secretary and his Department consult in depth with the Guaranteed Student Loan community, including guaranty agencies, lenders, and schools, to develop a cost-effective and workable model for a National Student Loan Data System. The language of the law is silent as to frequency of reporting, whether a centralized or decentralized system is preferable, and responsibilities of each party because the Conferees believe that the Department and the community have the expertise available to develop the best possible proposal. the Conferees expect the Department to fully involve guaranty agencies, lenders, schools, and any other relevant program participants in all elements of planning for the System, so that the ultimate System will have the active support of all entities affected. Nothing in this section shall preclude the Secretary from initially operating this System without the full complement of data elements prescribed by law for the purposes of developing and testing the System. However, the Conferees intend that the system shall not be considered fully operational until all data elements prescribes are developed.

SECTION 2009. INFORMATION USED IN EXERCISE OF FINANCIAL AID OFFICER DISCRETION

The Conferees have recently become aware of an inappropriate use of financial aid officer discretion on the part of certain institutions. Financial aid officer discretion is a critical aspect of the overall system that determines a student's eligibility for federal grants and loans. Without such discretion the student needs analysis systems become inflexible and often unfair, particularly to students facing unusual circumstances. In establishing this practice, Congress clearly intended that such discretion would be used on a case-by-case basis only, to either lower or raise an individual student's expected contribution.

In no way had Congress intended that financial aid officer discretion be used by an institution to replace certain aspects of the Congressional or Pell Grant methodology for everyone. Yet Congress has learned that this is being done on certain campuses. For example, one inappropriate practice that has come to the attention of the Conferees involves schools determining projected year income for all freshman students and substituting this figure in place of the base year income required in the Congressional Methodology. The Conferees are well aware of the difficult policy questions surrounding the use of base year income. However, it is wholly unfair to allow freshmen on certain campuses to divert this requirement while holding their peers at other schools to a different standard.

This legislation prohibits such practice by prohibiting financial aid officers from using financial aid officer discretion to substitute data elements for whole classes of students. The provision also clarifies that financial aid officer discretion is only to be used on a case-by-case basis. In using the term "classes" the Conferees mean groups of students who do not necessarily distinguish themselves from their peers by means of special circumstances that have an effect on their ability to pay for college. For example, in the case cited previously, being a freshman at a certain university does not imply that one necessarily has special circumstances.

However, the Conferees also recognize that there are certain students who face similar financial problems not met by Congressional or Pell methodology who might have their special circumstances addresssed in similar ways. When documented on a case-by-case basis, this has always been and continues to be an appropriate use of financial aid officer discretion. For example, students whose family incomes are less than the standard maintenance allowance commonly have their expected contributions adjusted. Similarly, victims of the recent hurricanes in the Caribbean and South Carolina or the earthquake in California might have need for special consideration when determining eligibility for student aid. Such consideration is well within the intention of law and would not be affected in any manner by this provision.

PENSION PROVISIONS

1. LIMITATIONS ON EMPLOYER ACCESS TO PENSION PLAN ASSETS

*Present law*

Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code) currently prohibit an employer from directly or indirectly gaining access to pension plan assets in an ongoing pension plan. Both statutes require that pension plan assets be used for the exclusive benefit of plan participants and beneficiaries. Thus, an employer cannot use or transfer pension plan assets for any purpose other than paying retirement benefits to such participants and beneficiaries. On plan termination, however, if the plan explicitly provides for it, assets in excess of benefit liabilities may generally revert to an employer. The employer reversion is subject to a 15% excise tax and ordinary income tax.

Current law permits pension plans to contain a separate account to which assets may be contributed to pay retiree health benefits provided certain conditions are met (a section 401(h) account).

*House bill*

Sections 3051 and 3052 of the House bill amend the fiduciary rules of title I of ERISA to preclude an employer from recovering plan assets when a single-employer defined benefit plan terminates.

An employer would, however, be permitted to transfer amounts above 150% of the amount necessary to pay currently accrued benefits from an ongoing pension plan to a special retiree health benefit account within the pension plan (a section 401(h) account) without violating ERISA's fiduciary rules. These transferred funds could be used only to pay health benefits for former employees (and their spouses and dependents) who are participants in the pension plan from which the funds are transferred and who had retired under the plan as of the date of the transfer.

Advance notice of the transfer must be given to the Secretary of Labor, the union representing employees covered under the plan (if any), and each participant. In addition, participants under the pension plan would be automatically vested in their accrued benefits after the transfer.

Certain protections for retirees are required as a condition of the transfer. For instance, employers would not be permitted to reduce health benefits in the future for the group of retirees whose benefits would be paid out of the section 401(h) account. In addition, in order to avoid anticipatory reductions in benefits prior to the transfer, the House bill provides for a 3-year lookback with respect to retiree cost-sharing provisions (i.e., premium sharing, copayments and deductibles).

No changes in the Internal Revenue Code are made, thus, current tax rules would continue to apply to the amounts that may be transferred under this provision.

The provisions permitting transfers of pension assets from an ongoing plan to pay retiree health benefits would take effect 6 months from the date on which the Secretary of Labor issues regulations necessary to carry out the transfer.

*Senate amendment*

Retains current law.

*Conference agreement*

House recedes.

2. MISCELLANEOUS ERISA AMENDMENTS

*House bill*

The House bill contains substantially the same provisions as those of a bipartisan bill, H.R. 2794, the Miscellaneous ERISA Amendments Act of 1989, introduced June 29, 1989. Sections 3501 through 3155, as reported by the Committee on Education and Labor, contain primarily technical, conforming, correcting and clarifying changes to several recent tax and budget bills and ERISA itself. Similar provisions, as reported by the Committee on Ways and Means, appear as sections 11851 through 11894.

*Senate amendment*

Retains current law.

*Conference agreement*

Senate recedes to the House provisions contained in sections 11851 through 11894, with modifications. In general, provisions common to both sets of corrections are included. A further description of the conference agreement is contained in the explanation of the Committee on Ways and Means.

3. PENSION BENEFIT GUARANTY CORPORATION (PBGC) PREMIUM AND ERISA CIVIL PENALTIES

*Present law*

The Pension Benefit Guaranty Corporation (PBGC) guarantees retirement benefits under defined benefit pension plans. The PBGC is financed entirely by the employers who receive this federal insurance. The main source of financing is an annual premium paid by employers based upon the number of participants in a covered plan. Currently all covered single-employer plans pay an annual premium of $16 a participant. Plans that are not fully funded are required to pay an additional variable rate premium.

Under present law, both the Secretary of Labor and the Secretary of the Treasury are empowered to enforce ERISA in a coordinated manner. The Secretary of Labor has discretionary authority to assess civil monetary penalties for certain violations of ERISA. For example, under section 502(i), the Secretary may assess a civil penalty of up to 5 percent of the amount involved in any prohibited transaction. The Secretary of the Treasury retains separate authority under section 4975 of the Code to assess an excise tax on prohibited transactions.

*House bill*

Retains current law.

*Senate amendment*

The Senate amendment increases the premium paid by all covered single-employer plans to the PBGC from $16 to $18 a participant a year.

*Conference agreement*

In lieu of the premium increase, the conferees agreed to strengthen the Secretary of Labor's authority to enforce ERISA by providing for a mandatory civil penalty for certain violations. This ERISA civil penalty had originally been adopted as part of the Senate Committee on Labor and Human Resources' budget reconciliation recommendation, but was deleted under the bipartisan Senate agreement to streamline the bill.

Under new section 502(1), the Secretary must assess a penalty equal to 20 percent of the amount recovered as a result of a settlement agreement or a judicial proceeding involving a breach of fiduciary duty under part 4 of ERISA. The Secretary has sole i.e., nonreviewable discretion to waive or reduce the penalty if the Secretary makes a written determination that the action was taken reasonably and in good faith or that it is reasonable to expect that the fiduciary will not be able to restore all losses to the plan without severe financial hardship.

The penalty is reduced by any penalty or tax imposed by the Secertary of Labor under section 502(i) of ERISA or by the Secretary of the Treasury under section 4975 of the Code. The conferees assume that the Secretaries will continue their longstanding practice of coordinating their enforcement activities with respect to the prohibited transaction rules contained in both ERISA and the Code. Thus, if the Internal Revenue Service has collected a tax under section 4975 of the Code or otherwise has finalized activity with respect to a transaction prohibited under that section, the Department of Labor will not impose a civil penalty under section 502(1). However, the conferees expect that in all circumstances the Department of Labor will take all necessary actions to restore assets lost to the plan as a result of a fiduciary breach.

The conferees adopted this civil penalty structure, rather than an increase in the PBGC premium for two primary reasons. First, although we remain concerned about the financial stability of the PBGC, the premium has been recently increased. In addition, the termination insurance program has been significantly revised twice within the past four years, thus substantially reducing the potential for abuse of the PBGC program by employers seeking to shift their pension obligations to the PBGC.

Second, escalating concern has been expressed over the need for stronger enforcement of ERISA. Since the enactment of ERISA, there has been continual criticism of the Department of Labor's ability to protect the pension and welfare benefits promised to workers and guaranteed under ERISA.

The Department has broad authority to monitor employee benefit plans and deter violations of the law. Although the Department oversees approximately 5.5 million employee benefit plans, the Department only has the resources to investigate less than 3000 plans a year. Fiduciary violations are found in one-fourth of the plans reviewed. Employee benefit plans currently contain $2 trillion in assets.

In recent years, these benefits have grown in importance to workers, retirees and their families. But, as plan assets have multiplied and the number of plans has increased, the Department of Labor has become increasingly less able to fulfill its responsibility to detect and deter abuse of plan assets. The Department's resources have not kept pace with these increases, inevitably straining their capabilities to protect plan participants. In fact, the Department's own inspector general has recently made the point that, given its limited resources, the Department must restructure its enforcement efforts to emphasize deterrence.

For these reasons, it has become apparent that the Department must use its enforcement powers more vigorously to make the protection of ERISA meaningful. The conferees believe strengthened civil penalties will better enable the Department to protect participants and beneficiaries. The conferees further believe that the need for strengthened enforcement and deterrence of violations of ERISA applies not only to the Department of Labor, but to judicial oversight of private rights of action affecting employee benefit plans. It remains the intent of Congress that the courts use their power of fashion legal and equitable remedies that not only protect participants and beneficiaries but deter violations of the law

as well. The conferees expect that the executive agencies and the courts will use their substantial authority to achieve these goals and to safeguard the rights of plan participants.

## TITLE III—AGENCY FEES

### SUBTITLE A—FCC FEES

#### SCHEDULE OF CHANGES

Section 3001 of the Conference Report amends section 8 of the Communications Act of 1934 (47 U.S.C. 158) by revising the Schedule of Charges implemented by the Federal Communications Commission (FCC). These charges are imposed upon members of the public who either request authority to operate as broadcast, common carrier and private radio permittees and licensees or require FCC actions that allow them to continue as such. In addition, applicants for radio operator examinations and ship owners receiving inspections are also assessed charges.

These fees are intended to recover a portion of the FCC's operating budget. The Conferees believe that the individuals and companies who utilize the FCC's processes should be assessed some of the costs of operating the agency. The fees represent a fair approximation as to how these costs should be distributed. To that end, the Conferees concur in the FCC's current practice of retaining the fees irrespective of its decision on the underlying request, except in limited instances as determined by the FCC.

The Schedule of Charges shall take effect immediately upon enactment. The Conferees intend that any entities subjected to new or higher fees under the new schedule will not be required to pay these fees until the FCC revises its rules to implement these new fees. The FCC is required to revise its rules no later than five months after the date of enactment of this new schedule. Until that time the FCC will continue to collect charges based upon the existing Schedule of Charges.

Because the charges made in the new fee schedule represent changes in the existing schedule, the Conferees believe that the new schedule can be implemented without a new rulemaking procedure, which would only serve to delay the implementation of the new schedule, and reduce the level of revenue received by the Government.

The Conferees therefore instruct the Commission to implement the new schedule as expeditiously as possible, and avoid undertaking a full-blown rulemaking prior to implementing the fees.

The Conferees endorse the use of the most cost-effective cash management techniques, as jointly determined by the Department of the Treasury and the FCC, to ensure that government revenues are maximized and collection costs minimized.

The following sections explain specific sections of the Conference Report in greater detail.

*Minimum fee level*

The House bill includes a minimum fee for certain services of $30. The Senate bill includes a minimum fee of $35. Both bills recognize that some minimum fee is necessary to ensure that the costs of collecting the fee do not exceed the potential revenues from the fee. The House recedes to the Senate minimum fee of $35.

*Amateur fees*

Both the House bill and the Senate bill include fees on licensees in the amateur radio service. The Conference Report strikes all of the fees for amateur radio licensees. The Conferees recognize that amateur licensees do not operate for profit and can play an important public safety role in times of disaster or emergency.

*FCC form 740*

The Senate bill requires importers of radio frequency devices to pay a fee of $35 each time they file a copy of Form 740. This form certifies that the frequency device complies with FCC rules regarding frequency interference. The House bill contains no such fee. The Senate recedes to the House position and agrees to remove the fee from the Schedule of Charges.

*Non-commercial broadcasters*

The House bill would assess fees against all broadcasting licensees; the Senate version proposes to exclude all non-commercial broadcasters. Non-commercial broadcasters were excluded from the initial Schedule of Charges passed in 1985. The House recedes to the Senate position and agrees to continue to exclude non-commercial broadcasters from the Schedule of Charges.

*Special emergency and public safety*

The House bill would assess fees against special emergency and public safety licensees; the Senate bill would continue the exemption contained in the initial fee schedule for these licensees. The Conferees recognize that licensees, in the special emergency and public safety services provide a valuable public service. The Conferees also recognize, however, that some entities licensed in the special emergency and public safety services use these licenses for commercial purposes, such as for private beach patrol or ambulance services. The Conferees agree to continue the exemption for governmental entities or non-profit entities possessing these licenses and to assess fees against all other licensees in these services.

*Technical changes*

After the texts of both the Senate and House bills had been passed out of each body, the FCC suggested making some technical corrections to the fee schedule in order to aid the FCC in implementing it. These technical changes involve, for instance, changing the specified event which triggers the payment of the fee (i.e. per frequency, per transmitter, per system). These technical changes also involve the deletion of a few fees where the FCC's rules do not permit or require such an activity. For instance, the fee for transferring control of a ship station license was deleted because the FCC's rules do not permit transfers involving these licenses. These technical corrections have been included in the Conference Report.

#### FINES AND PENALTIES

Section 3002 of the Conference Report amends several sections of the Communications Act of 1934 (47 U.S.C. 151 et seq.) in order to increase the fines and penalties that licensees must pay for violations of the Act. The existing fines and penalties have not been increased since 1934. The Conferees intend that the increases contained in this subsection will strengthen the FCC's enforcement activities and restore their deterrent effect to the level contemplated in 1934. These increases are identical in both the Senate and the House bills. The Conferees accept the increased fines and penalties in these bills.

The amendments to Section 503 of the Communications Act alter the general forfeiture provisions. The amendment to section 503(b)(2) increases the permissible forfeiture limitations and the aggregate limitations for broadcasters, cable television operators, common carriers and others. These increases are needed to recognize that penalties must be significant if they are expected to serve both as a meaningful sanction to the wrongdoer and a deterrent to others. This amendment also clarifies and confirms the FCC's authority to impose forfeitures on applicants who engage in misconduct during the application process.

In addition, section 503(b) is amended to clarify the manner in which the limits on total forfeiture amounts apply to each act or omission sanctioned thereby. The language makes clear that forfeiture limits (in addition to the maximum per day or per violation amounts) would apply to one-time continuing violations (i.e., a violation the action of which constitutes a "one-time" offense that continues over the duration of the violation), while actions repeated on successive days that each constitute a separate violation or continuing violations that do not result from a "one-time" act or failure to act are not subject to a forfeiture limit (other than the maximum per day or per violation amounts).

For example, if an unauthorized transfer of control of a broadcast license is accomplished by the sale of stock, the sale is a one-time, continuing violation for each day that the parties fail to obtain the necessary authorization. In this case, the $250,000 cap would apply. However, if a licensee broadcasts on a frequency for which it has no authorization, causing interference on an emergency frequency for one hour on each of 15 days, the licensee could be fined $25,000 for each day, or a total of $375,000 (15 x $25,000).

#### DIAL-A-PORN

The House bill contains several amendments to Section 223 of the Communications Act concerning the making of obscene or indecent communications by means of the telephone (so-called "dial-a-porn" services). The Senate bill contains no such provision. The House recedes to the Senate position.

#### FAIRNESS DOCTRINE

The House bill contains an amendment to the Communications Act affecting the obligations of broadcasters (the so-called "Fairness Doctrine"). The Senate bill contains no such provision. The House recedes to the Senate position.

### SUBTITLE B—NRC USER FEES

Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) requires the Nuclear Regulatory Commission to collect annual charges from its licensees. The amount of the charges:

(A) when added to other amounts collected by the Commission, may not exceed 33 percent of the Commission's costs; and

(B) must be reasonably related to the regulatory service provided by the Commission and fairly reflect the cost to the Commission of providing the service.

Section 5601 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) amended the 1985 law by increasing the amount of the Commission's costs recovered by the annual charges from 33 to 45 percent for two years, fiscal years 1988 and 1989.

Section 4101 of the Senate amendment to H.R. 3299 amends section 7601 of the 1985 law to increase the amount of the Commission's costs recovered by the annual charges to 45 percent for an additional year, fiscal year 1990.

Sections 4501 and 6001 of the House bill repeal section 7601 of the 1985 law and replace it with new, permanent user fee authority. The House provisions require the Commission to recover 100 percent of its costs through fees and annual charges. The amount of the annual charges are to be determined by the Commission and shall have a reasonable relationship to the cost of providing regulatory services.

The House recedes to the Senate.

OTHER MATTERS

The House bill contained short-term increases in Securities and Exchange Commission (SEC) statutory fees, a permanent expansion of some SEC fees, and a long-term plan for moving the SEC towards a greater equalization of expenditures and fees to help reduce the federal deficit in the short-term, and assure in the long-term that the SEC would receive the budget resources needed to police the securities markets effectively.

First, the House bill met the requisite budget reconciliation instructions to fiscal year 1990 and 1991 by raising roughly $50 million each year in higher fees on the purchase or sale of securities and for filings for tender offers and proxy solicitations. It also, for the first time, applied the securities transaction fees to over-the-counter transactions, which had been exempted previously. Secondly, the House bill established a contingency fee increase which would have raised the fees on filings associated with the issuance of new securities. The increase was contingent upon appropriation of additional funds over the next two fiscal years for the SEC in an amount roughly equal to this fee increase, thus precisely offsetting the increases requested in appropriated funds. Without this contingency fee rise, the SEC would be funded at precisely the level Congress appropriated in fiscal year 1989, a situation which the SEC stated would result in employee furlough, reductions in force, and other "severe cost saving measures." The House bill also granted the SEC the authority after fiscal year 1991 to adjust its fees on an annual basis to assure that the federal government received fees equivalent to meet the SEC's budget requirements. Finally, the House bill reauthorized the SEC at the level of $178,023,000 for fiscal year 1990 and $212,609,000 for fiscal year 1991.

The Senate bill contained no comparable provision.

The conference agreement contains no provisions with respect to the SEC.

## TITLE IV—CIVIL SERVICE AND POSTAL SERVICE PROGRAMS

### BUDGETARY TREATMENT OF THE POSTAL SERVICE FUND

*House bill*

Section 8001 of the House bill amends title 39, United States Code, to add a new section 2009a, relating to the budgetary treatment of the Postal Service Fund (Fund). The Fund is a revolving fund established by law in the Treasury of the United States which is available to the Postal Service without fiscal year limitation to carry out its operations (39 U.S.C. 2003(a)). New section 2009a provides that receipts and disbursements of the Fund shall not be considered as part of the congressional and executive budget process and shall not be taken into account in making calculations under the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings). The Congressional Budget Office (CBO) estimates that enactment of new section 2009a will reduce the fiscal year 1990 deficit by $1.77 billion.

*Senate amendment*

Section 7001 of the Senate amendment is identical to section 8001 of the House bill except for minor stylistic differences and reference in subsection 7001(b) of the Senate amendment to "oversight authority of the Congress . . . with respect to the budget and operations of the United States Postal Service." Section 8001(b) of the House bill refers to "oversight responsibilities of the Congress . . . with respect to the budget of the United States Postal Service."

*Conference agreement*

The conference agreement includes the House provision amended to include a reference to "oversight authority and responsibilities of the Congress . . . with respect to the budget and operations of the United States Postal Service."

### FUNDING OF COST-OF-LIVING ADJUSTMENTS FOR POSTAL SERVICE ANNUITANTS AND SURVIVOR ANNUITANTS

*House bill*

Section 8002 of the House bill amends section 8348 of title 5, United States Code, by adding a new subsection (m) at the end of that section. New subsection (m) sets forth the liability of the United States Postal Service for cost-of-living adjustments under the Civil Service Retirement System for certain Postal Service annuitants and survivor annuitants.

The House bill provides that the Postal Service shall be liable for that portion of any increase in the unfunded liability of the Civil Service Retirement and Disability Fund (Retirement Fund) which is attributable to any benefits payable from the Retirement Fund to former employees of the Postal Service who first become annuitants by reason of separation from the Postal Service on or after October 1, 1986, or to their survivors, or to the survivors of individuals who die on or after October 1, 1986, when that increase in the unfunded liability results from cost-of-living adjustments under section 8340 of title 5, United States Code. The House bill further provides that in determining the amount for which the Postal Service is liable in cases in which the benefits involved are based on the service of an individual who performed one or more forms of service besides employment with the Postal Service, the amount of the Postal Service's liability shall be prorated to reflect only that portion of total service which is attributable to employment with the Postal Service. The Postal Service is required to pay the amount so determined in 15 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System. The first payment is due at the end of the fiscal year in which the cost-of-living adjustment with respect to which the payment relates becomes effective. Finally, the House bill specifies the payments which are attributable to cost-of-living adjustments which occurred in fiscal years 1987, 1988, and 1989. The CBO estimates that enactment of the House provision will reduce the fiscal year 1990 deficit by $70 million.

*Senate amendment*

Section 7002 of the Senate amendment is similar to section 8002 of the House bill except that it applies with respect to retirees and survivors who first become annuitants on or after October 1, 1990. Further, section 7002(a) provides that the Postal Service shall deposit in the Retirement Fund an amount equal to $400 million at the end of fiscal year 1990.

*Conference agreement*

The conference agreement includes the House provision with an amendment that provides that in determining the amount for which the Postal Service is liable, the amount of the Postal Service's liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed after June 30, 1971 (the effective date of the Postal Reorganization Act of 1970). The conferees understand it is the position of the Office of Personnel Management that the proration rule included in the conference agreement is more practical to administer than that specified in the House bill and the Senate amendment. They further understand that adoption of the new proration rule will have no significant effect on the savings from enactment of the provision.

### FUNDING OF HEALTH BENEFIT PREMIUMS FOR SURVIVORS OF EMPLOYEES AND FORMER EMPLOYEES OF THE POSTAL SERVICE

*House bill*

Section 8003(a) of the House bill amends section 8906(2) of title 5, United States Code, by inserting "or for a survivor of such an individual or of an individual who died on or after October 1, 1986, while employed by the United States Postal Service," after "1986". The effect of this amendment is to require the Postal Service to pay the employer's share of health insurance premiums for survivors of postal employees who retire on or after October 1, 1986, and survivors of postal employees who die on or after that date. Pursuant to the amendments made by section 15202(b) of the Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) the Postal Service is required to pay the employer's share of health insurance premiums for postal employees who retire on or after October 1, 1986, but not for survivors of those employees.

*Senate amendment*

Section 7003 of the Senate amendment is identical to section 8003 of the House bill.

*Conference agreement*

The conference agreement includes a provision which is identical to the provisions in the House bill and the Senate amendment. To the conferees' knowledge, the Postal Service is the only governmental entity that makes any payment for the health insurance premiums of its retirees or their survivors. The conferees understand the cost to the Postal Service for retiree and survivor health insurance premiums will exceed $190 million in fiscal year 1990, and will exceed $2 billion over the period fiscal year 1990 through 1994.

### AMENDMENTS RELATING TO LIMITATION ON BORROWING AUTHORITY

*House bill*

Section 8004 of the House bill amends section 2005(a) of title 39, United States Code, relating to limitations on borrowing authority of the Postal Service. Existing section 2005(a) authorizes the Postal Service to borrow funds to finance capital projects and to defray operating expenses. Total obligations outstanding at any one time may not exceed $10 billion, and the annual net increase in obligations outstanding may not exceed $1.5 billion for capital needs or $500 million for operating purposes. According to the Postal Service, under its pending Capital Investment Plan, the $10 billion borrow-

ing ceiling will be reached in fiscal year 1991.

Section 8004 amends section 2005 to increase the annual limit for capital borrowing to $3 billion and the annual limit for borrowing for operating purposes to $1 billion. The maximum amounts allowable are: for each of fiscal years 1990 and 1991, $15,000,000,000; for each of fiscal years 1992 and 1993, $20,000,000,000; for each of fiscal years 1994 and 1995, $25,000,000,000; and for fiscal year 1996 and each fiscal year thereafter, $30,000,000,000.

*Senate amendment*

The Senate amendment has no comparable provision.

*Conference agreement*

The House recedes to the Senate.

REDIRECTION OF POSTAL SERVICE BORROWING, INVESTMENTS, AND DEPOSITS

*House bill*

Section 8005 of the House bill addresses the relationship between the Postal Service and the Department of Treasury by prohibiting the Postal Service from borrowing from the Federal Financing Bank and permitting it to borrow from private credit markets, invest its funds in United States Government securities, and deposit its funds in private sector institutions.

*Senate amendment*

The Senate amendment has no comparable provision.

*Conference agreement*

The House recedes to the Senate.

POSTAL SERVICE PAYMENTS TO THE EMPLOYEE'S COMPENSATION FUND

*House bill*

Section 8006 of the House bill provides that the Postal Service shall make the payments required by subsections (b) and (c) of section 8147 of title 5, United States Code, no later than thirty days following the date on which the Secretary of Labor notifies the Postmaster General of the amount of the liability. The CBO estimates that enactment of these provisions will reduce the fiscal year 1990 deficit by $330 million.

*Senate amendment*

The Senate amendment has no comparable provision.

*Conference agreement*

The conference agreement includes the House provision.

AMENDMENTS RELATING TO PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT

*House bill*

Section 8007 of the House bill continues for two years, with some modification, section 6001 of the Omnibus Budget Reconciliation Act of 1987 which provides for deferred payments of the lump-sum credit for certain employees.

Under the terms of section 8007, an employee whose eligibility for an annuity commences after September 30, 1989, and before October 1, 1991, would receive 50 percent of the amount of the lump-sum credit which employee elects at the time of retirement, and the remaining 50 percent of the amount of the lump-sum credit, plus interest, on the date 12 months after the date on which the lump-sum credit would otherwise have been paid.

Section 8007 further amends section 6001 of the Omnibus Budget Reconciliation Act of 1987 to permit election of the deferred payment schedule by employees who are involuntarily separated for reasons other than cause, and individuals to whom the application of the deferred payment schedule would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting them. The 1987 Act strictly excepted these individuals from application of the deferred payment schedule.

*Senate amendment*

Except for stylistic differences and the two substantive differences noted below, the section 7004 of the Senate amendment is substantively the same as the corresponding House provision. The substantive differences are: (1) the Senate amendment applies for one year (as opposed to the House provision which applies for two years); and (2) the Senate amendment does not permit employees who are involuntarily separated to elect the deferred payment arrangement.

*Conference agreement*

The conference agreement includes the provisions of the Senate amendment with amendments to permit employees who are otherwise denied the deferred payment option to elect that option, and to make the provision effective with respect to annuities commencing after December 2, 1989. The conferees note that the provisions of law providing for a 60/40 split of the lump-sum payment which would otherwise have expired on September 30, 1989, were extended through December 2, 1989, by Public Law 101-103, enacted September 30, 1989.

COORDINATION

*House bill*

Section 8008 of the House bill provides that for purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987, any transfer resulting from any provision of title VIII or any of the amendments made by that title is a necessary (but secondary) result of a significant policy change (within the meaning of section 202(b) of such Act). The report accompanying the House bill (H. Rept. 101-297) states: "Although the [Post Office and Civil Service] committee does not believe that section 8008 is necessary, it has been included to ensure proper scorekeeping of the savings provisions of title VIII.

*Senate amendment*

The Senate amendment has no comparable provision.

*Conference agreement*

The conference agreement includes the House provision.

## TITLE V—VETERANS PROGRAMS

EXTENSION OF LOAN FEE

*Current law*

Under section 1829(c) of title 38, United States Code, the 1-percent fee on loans guaranteed, made, or insured by the Department of Veterans Affairs and the 0.5-percent fee on assumptions of VA-guaranteed or -insured loans may not be collected on loans closed after September 30, 1989. Public Law 101-110, enacted on October 6, 1989, extended the Department's authority to collect the fees on loans closed before December 1, 1989.

*House bill*

Section 5001 would (a) establish a Veterans' Mortgage Indemnity Fund (VMIF) to serve as a revolving fund for loans guaranteed, made, or insured after September 30, 1989; (b) replace the 1-percent fee on VA-guaranteed loans with a permanent 1.25-percent mortgage-indemnity fee; (c) make permanent the 1-percent fee on vendee loans (extensions of credit from the Department to finance an individual's purchase of a home the Department acquired upon foreclosure of a loan it had guaranteed) and the 0.5-percent fee on assumptions; and (d) generally indemnify individuals for guaranty payments made by the Department on their behalf in connection with a loan guaranteed by the department. This section is substantively identical to section 2 of H.R. 1415 as passed by the House of Representatives on June 6, 1989; on October 3, 1989, the Senate passed similar provisions in title IV of S. 13 as incorporated into H.R. 901.

*Senate amendment*

Section 5001(a) would extend the loan fees through September 30, 1990.

*Conference agreement*

Section 5001 follows the Senate amendment by extending the loan fees through September 30, 1990.

The conferees stress that the House conferees were willing to agree to an extension of the 1-percent fee in the absence of the House-passed revisions of the loan guaranty program only if the Senate conferees agreed to the provision, described below, relating to the crediting of the proceeds of vendee loan sales.

POSTPONEMENT OF RESTRICTIONS ON WITHOUT-RECOURSE VENDEE LOAN SALES

*Current law*

Section 1833(a)(3) of title 38 allows the Department to sell vendee loans without recourse only if it receives at least the unpaid balance ("par value") of the loan. Section 1833(a)(6) sets an expiration date of October 1, 1990, for that provision and for other provisions of section 1833(a) that (a) establish limits on the proportions of the sales of homes acquired by the Department upon foreclosure that may be made for cash and may be financed with vendee loans; (b) generally require a 5-percent downpayment on vendee loans; (c) allow additional vendee-loan financing for the costs of rehabilitating the property; and (d) allow below-market interest rates on vendee loans.

*House bill*

Section 5002(a) (1)(A) and (2) would postpone until October 1, 1991, the par-value requirement for without-recourse sales and extend until that date the provisions of section 1833(a) relating to the Department's sales of properties it has acquired upon foreclosure. It would also reinstate until that date the section 1833(a)(3) requirements, which expired on September 30, 1989, that the Secretary (a) decide whether to sell vendee loans with or without recourse only after determining which type of sale would be in the best interest of the Department's loan guaranty program, taking into account a detailed cost-effectiveness comparison; and (b) report to the House and Senate Committees on Veterans' Affairs with respect to each sale.

*Senate amendment*

Section 5001(b) contains substantively identical provisions except that the par-value provisions and the provisions relating to the financing of the Department's sales of properties acquired upon foreclosure would expire on October 1, 1990, instead of October 1, 1991. On October 3, 1989, the Senate passed identical provisions in section 404 of S. 13 as incorporated into H.R. 901.

*Conference agreement*

Section 5002 follows the Senate amendment by (a) postponing until October 1,

1990, the par-value requirement, and (b) reinstating the requirements that the Secretary by that date (1) decide whether to sell vendee loans with or without recourse based on a determination as to which type of sale is in the best interest of the loan guaranty program, and (2) report to the Committees with respect to each sale.

CREDITING OF PROCEEDS FROM VENDEE LOAN SALES

*Current law*

In 1987, the Office of Management and Budget, and later the Congressional Budget Office, adopted a new approach to counting, for budget purposes, the proceeds of with-recourse sales of vendee loan assets. Instead of counting the proceeds of with-recourse sales as offsetting collections of the Loan Guaranty Revolving Fund, OMB and CBO now consider a with-recourse sale as the equivalent of a loan from the purchaser to the government. Loans sold without recourse continue to be scored as offsetting collections.

*House bill*

Section 5002(a)(1)(B) would reverse the current OMB and CBO rules for counting the proceeds of certain with-recourse sales by requiring that (a) the proceeds from such sales be credited as offsetting collections of either the current Loan Guaranty Revolving Fund (LGRF) or the VMIF, depending on which fund received the fee for the original guaranteed loan secured by the same property securing the vendee loan sold; (b) the crediting be made without reduction and for the fiscal year in which the amount involved was received; and (c) all amounts so credited offset outlays of the respective fund during the fiscal year in question.

*Senate amendment*

No provision.

*Conference agreement*

Section 5003 follows the House bill by providing that, notwithstanding any other provision of law (such as Public Laws 93-344 and 100-119), (a) the proceeds of with-recourse sales be credited as offsetting collections of the LGRF or a subsequently established revolving fund when it receives the fee for the original guaranteed loan; (b) the crediting be made without reduction and for the fiscal year in which the proceeds were received; and (c) all amounts so credited for a fiscal year offset outlays of such revolving fund during that fiscal year.

## TITLE VI—MEDICARE, MEDICAID, MATERNAL AND CHILD HEALTH, AND OTHER HEALTH PROVISIONS

### SUBTITLE B—MEDICAID

#### *1. Infant Mortality Provisions*

Sections 4201 through 4206 of the House bill.

**(A) PHASED-IN COVERAGE OF PREGNANT WOMEN AND INFANTS UP TO 185 PERCENT OF POVERTY LEVEL.**

*(1) In general*

*Present law*

MCCA requires States to offer Medicaid coverage to pregnant women and infants under one year old with family incomes below 75 percent of the Federal poverty line by July 1, 1989, and to those with family incomes below 100 percent of the poverty line by July 1, 1990. OBRA (1987) permits States to establish a higher income standard for pregnant women and infants, up to 185 percent of the poverty line.

*House bill (section 4201)*

Requires States to offer Medicaid coverage to pregnant women and infants with family incomes up to 130 percent of the poverty line by April 1, 1990; up to 150 percent of the poverty line by July 1, 1992; and up to 185 percent of the poverty line by July 1, 1993. Provides that a State that, as of the date of enactment, has already opted for an income standard higher than 130 percent, or has authorized or appropriated funds in anticipation of adopting such a standard, must continue to use the higher standard after April 1, 1990. Applies to payments for calendar quarters beginning on or after April 1, 1990, regardless of whether implementing regulations have been promulgated by that date.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill, with a modification requiring all States (including Arizona) to cover pregnant women and infants with family incomes of up to 133 percent of the Federal poverty level.

The conferees wish to underscore the contribution made by the late Representative Mickey Leland (D-Texas) to the inclusion of this provision (and the related Medicaid child health amendments) in the conference agreement. As the primary sponsor of the Medicaid Infant Mortality Amendments of 1989, H.R. 800, from which the conference agreement is derived, Mickey Leland was unrelenting in his efforts to lower this Nation's infant mortality rate and give those of its children born in poverty a healthy start in life. For the welfare of these children, and in his memory, the conferees agree to this provision and urge its enactment.

The conference agreement contains an additional modification directing the Secretary to enter into agreements with several States to conduct demonstrations of alternatives for extending Medicaid coverage, or alternative coverage, to pregnant women and children under age 20 who are otherwise ineligible for Medicaid and whose family incomes are below 185 percent of the Federal poverty level. Alternative coverage may include, but is not limited to, such options as enrollment under employer plans, the State's plan for its own employees, a State uninsured plan, or an HMO. If a project includes enrollment under employer plans, it must require an employer contribution. Projects must provide for premiums to be charged to families with incomes above 100 percent of the poverty level. The premium must be equal to the lesser of a sliding scale or 3 percent of family income. Demonstrations are to be conducted for not longer than 3 years. The Secretary is authorized to waive the requirement that State Medicaid plans operate uniformly throughout the State. Federal Medicaid matching funds participation in the projects is limited to $10 million per year in each of FY 1990, FY 1991, and FY 1992. Costs of services are to be matched at each State's regular Federal matching rate for services, and costs for administrative expenses are to be matched at the rate appropriate to the administrative function. The Secretary is required to submit an interim evaluation of the projects to Congress by January 1, 1991, and a final report by January 1, 1994.

*(2) Flexibility in income methodology and deduction of child care in computation of income*

*Present law*

In determining family income for pregnant women and infants with family incomes below the Federal poverty level, a State must use the same methodology used in its Aid to Families with Dependent Children (AFDC) program, except that it may not deem as available to the applicant income of relatives other than a spouse or parent, and may not subtract from income costs for medical care.

*House bill*

Provides that a State may adopt a less restrictive income methodology for pregnant women and infants than that used in determining eligibility for AFDC. Requires that States exclude from income the costs of child care necessary for the employment of the pregnant woman or the infant's caretaker.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(3) Prohibiting application of resource test*

*Present law*

In determining eligibility for pregnant women and infants, a State may impose a resource standard; that is, a limit on allowable assets. For pregnant women, this standard must be no more restrictive than that used in determining eligibility for Supplemental Security Income (SSI). For infants and children, it must be no more restrictive than that used for AFDC.

*House bill*

Prohibits the use of any resource standard or methodology in determining eligibility for pregnant women and infants.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(4) Report and transition on errors in eligibility determinations*

*Present law*

States are required to maintain a Medicaid quality control system, which identifies Medicaid payments made as a result of erroneous eligibility determinations. If a State's error rate (erroneous Medicaid payments as a percent of total Medicaid payments) exceeds 3 percent, it may be subject to a reduction in Federal matching funds.

*House bill*

Requires the Secretary to report to Congress by July 1, 1990, on State error rates in determining eligibility for pregnant women and infants. Provides that the calculation of State error rates and financial penalties is to exclude Medicaid payments made on behalf of pregnant women and infants on or after July 1, 1989, and before the first calendar quarter beginning more than 12 months after the Secretary submits the required report.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(B) PRESUMPTIVE ELIGIBILITY

*Present law*

*(1) Extension of presumptive eligibility period.*—States have the option of establishing "presumptive eligibility" for low-income pregnant women. Certain providers may make a preliminary determination that a pregnant woman seeking treatment is potentially eligible for Medicaid. The woman may then receive services related to the pregnancy for up to 45 days, or until the State completes an eligibility review, whichever is earlier. If a woman who has been determined by a provider to be presumptively eligible for Medicaid services fails to apply for Medicaid within 14 days after the determination is made, presumptive eligibility ceases.

*(2) Flexibility in application.*—States design their own application forms for Medicaid benefits. In the case of pregnant women, some States may use different forms for the presumptive eligibility determination and the final eligibility determination, while others may use the same form for both. Current law has no provision on this subject.

*House bill (section 4202)*

*(1) Extension of presumptive eligibility period.*—Extends the time limit for filing a Medicaid application to the last day of the month following the month in which the provider makes an initial determination of presumptive eligibility, and continues eligibility to that date in the case of a woman who fails to apply. In the case of a woman who applies within the time limit, continues presumptive eligibility until the date the State completes its eligibility determination.

*(2) Flexibility in application.*—Provides that the Medicaid application form to be filed by women who have been determined presumptively eligible may be the form used by the State for applications by women potentially eligible solely because of pregnancy.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(C) OPTIONAL COVERAGE OF PRENATAL AND POSTPARTUM HOME VISITATION SERVICES

*Present law*

No provision.

*House bill (section 4203)*

Provides that States may cover as an optional Medicaid service home visitation services, as prescribed by a physician, to high-risk pregnant women and/or to high-risk infants under 1 year old. Effective July 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(D) PAYMENT FOR OBSTETRICAL AND PEDIATRIC SERVICES

*Present law*

States establish their own payment levels for Medicaid services. Medicaid regulations (42 C.F.R. 447.204) provide that payments must be sufficient to enlist enough providers so that covered services will be available to Medicaid beneficiaries to at least the extent that such services are available to the general population.

*House bill (section 4204)*

*(1) Codification and enforcement of adequate payment level provisions.*—Incorporates the regulatory provision in the Medicaid statute, with the additional specification that the test of comparative availability of services may be applied to specific geographic areas. Provides that a State Medicaid plan will not be considered to meet this requirement unless, by April 1 of 1990 and each succeeding year, the State submits an amendment to the plan specifying the payment rates for non-institutional obstetrical and pediatric services to be effective during the period beginning July 1 of that year. The amendment must include data on how these payment rates are taken into account in developing the payment rates for HMOs with Medicaid contracts, along with additional data that will assist the Secretary in evaluating the State's compliance with the minimum payment requirement. Requires the Secretary to review and approve or disapprove the amendment within 90 days; in the event of disapproval, the State must immediately submit a revised amendment that complies with the payment requirement.

Provides that, beginning in 1992, data submitted by the State with the amendment must include information on average Medicaid payments, by procedure, for obstetrical and pediatric services during the second previous year; requires that information be provided separately for providers in each metropolitan statistical area (or similar area) in the State and for the remainder of the State. Further provides that no provision of Medicaid law shall be construed as prohibiting a State from making higher payments for obstetrical and pediatric services in rural areas than in urban ones.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill, with an additional modification: effective July 1, 1990, States are required to cover under their Medicaid programs services of certified pediatric or family nurse practitioners practicing with the scope of State law, regardless of whether they are under the supervision of, or associated with, a physician or other provider. This requirement is effective July 1, 1990.

*(2) Payment for certain services in certain federally-funded health centers*

*Present law*

States are permitted, but not required, to cover services in community and migrant health centers and providers of health care to the homeless receiving Federal grants under the Public Health Service Act. States that cover such services establish their own reimbursement methodologies.

*House Bill (section 4204)*

Requires States to cover ambulatory services to pregnant women and children under age 18 in Federally-funded community and migrant health centers and providers of health care to the homeless. Provides that payment for such services must be equal to 100 percent of the facilities' reasonable costs for providing the services; reasonableness may be subject to tests developed by the Secretary for Medicare purposes or specifically for Medicaid. Effective July 1, 1990, regardless of whether implementing regulations have been promulgated.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with a modification requiring States to include in their Medicaid benefit package Federally-qualified health center services and any other ambulatory services offered by a Federally-qualified health center and which are otherwise included in the plan. These services would be available to all program beneficiaries, not just pregnant women and children. Federally-qualified health centers are facilities which (1) are receiving grants under sections 329, 330, or 340 of the Public Health Service Act, or (2) are determined by the Secretary (based on the recommendation of the Health Resources and Services Administrator within the Public Health Service) to meet the requirements for receiving such a grant (subject to a waiver for up to 2 years for good cause shown). This requirement is effective April 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated.

(E) ROLE IN PATERNITY DETERMINATIONS

*Present law*

Applicants for Medicaid are required, as a condition of eligibility, to cooperate in establishing the paternity of children born out of wedlock and in obtaining child support, unless there is good cause for non-cooperation.

*House Bill (section 4205)*

Exempts women qualifying only for Medicaid coverage under the special eligibility standards for pregnant women from the requirement that they cooperate in establishing paternity and obtaining child support. Effective on enactment

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(F) REQUIRED MEDICAID NOTICE AND COORDINATION WITH SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

*Present law*

The WIC program provides supplemental food to certain low-income mothers and young children, along with nutritional counseling and some health-related services. Although many persons qualifying for WIC are also eligible for Medicaid, there is currently no coordination between the two programs.

*House Bill (section 4206)*

Requires State Medicaid plans to provide for coordination between the Medicaid and WIC programs. Requires the State to notify Medicaid beneficiaries who are pregnant, postpartum or breastfeeding women, or children under age 5, of the availability of WIC benefits and to refer such persons to the State agency administering the WIC program. Effective July 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill.

*2. Child Health Amendments*

Sections 4211-4217 of House Bill.

(A) PHASED-IN MANDATORY COVERAGE OF CHILDREN UP TO 100 PERCENT OF POVERTY LEVEL

*Present law*

*(1) In general.*—States are permitted to cover children who are over 1 year old and less than 2, 3, 4, 5, 6, 7, or 8 years old (at the State's option), in families with incomes below a State-established income level which may be as high as 100 percent of the Federal poverty level. In determining family income for these children, a State must use the same methodology used in its AFDC program, except that it may not deem as available to the applicant income of relatives other than a spouse or parent, and may not subtract from income costs for medical care. A State may impose a resource standard that is not more restrictive than that used in determining eligibility for AFDC.

*(2) Applications using outreach locations.*—States determine the sites at which applications for Medicaid will be accepted. For persons applying for Medicaid only, and not for cash assistance, a State may use the same application form used for the cash assistance programs or may develop a different form.

*House Bill (section 4211)*

*(1) In general.*—Requires States to cover children born after September 30, 1983, who are over 1 year old but under 18 years old, with family incomes up to 100 percent of the Federal poverty level. Prohibits the use of a resource standard for these children, and permits the State to adopt an income methodology less restrictive than that used for AFDC. Requires that States exclude from income the costs of child care necessary for the employment of the child's caretaker. Provides that a State that operates a medical assistance program for low-income persons under a Federal demonstration waiver in lieu of Medicaid (as Arizona now does) must comply with the new requirements at the same time as other States. Applies to payments for calendar quarters beginning on or after July 1, 1990, regardless of whether implementing regulations have been promulgated by that date. Delay is permitted where State legislation is required to comply. Texas is not required to comply with the new requirements until September 1, 1991.

*(2) Applications using outreach locations.*—Requires States to accept applications by pregnant women and children under 18 at sites other than those used for AFDC applications. Alternate sites could include hospitals or clinics. If health facilities are used, the State is prohibited from discriminating between public and private facilities. Requires the State to use an application form different from the AFDC form for pregnant women and children under 18 applying for Medicaid only. Effective July 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

*(1) In general.*—The conference agreement follows the House bill with the following modifications: (1) States are required to extend Medicaid coverage to all children born after September 30, 1990, up to age 6, in families with incomes below 133 percent of the Federal poverty level; and (2) the requirement is effective April 1, 1990, in all States (including Arizona).

*(2) Applications using outreach locations.*—The conference agreement does not include the House bill.

(B) EXTENSION OF MEDICAID TRANSITION COVERAGE

*Present law*

(1) Effective April 1, 1990, States will be required to continue Medicaid benefits for 6 months after a family loses AFDC benefits because of increased earnings or hours of employment, if the family received AFDC benefits in 3 of the 6 months preceding the termination. The State must also offer an additional 6 months of coverage when the initial 6-month period ends; the State may require that the family pay a premium for coverage in this second period, may limit benefits to acute care, and may substitute enrollment in an alternative insurance plan for standard Medicaid coverage. These new transition coverage provisions, added by the Family support Act of 1988 (P.L. 100-485), expire September 30, 1998.

(2) Transitional Medicaid coverage is subject to early termination if the family no longer includes a child who meets (or would meet if needy) the AFDC definition of dependency.

(3) Before enactment of the Family Support Act, States were required to continue Medicaid for 6 months for families losing AFDC because they ceased to qualify for income disregards, temporary exclusions of earned income from the total income used in determining AFDC eligibility. A State could, at its option, provide up to 9 months of additional coverage after the initial 6 months, for a total of 15 months. The Family Support Act suspended this provision for families losing AFDC between April 1, 1990, and September 30, 1998; these families will instead receive the 12-month transition coverage established by the Act.

*House bill (section 4212)*

(1) Permits a State to offer up to one full year of additional coverage, beyond the year provided by the Family Support Act; coverage in the optional second year is subject to the same rules as coverage in the last 6 months of the mandatory first year. Makes the new transition coverage provisions added by the Family Support Act permanent. Effective April 1, 1990.

(2) Provides that coverage is not subject to early termination if the family still includes a child, whether or not the child meets the AFDC definition of dependency. Effective April 1, 1990.

(3) Provides that the suspension of the 6-month/9-month extension does not apply to families that lose AFDC eligibility before April 1, 1990 (and who may therefore be in the middle of a 15-month extension at the time the 12-month provision takes effect). Effective as if included in the Family Support Act of 1988.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes items (2) and (3) of the House bill.

(C) EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES DEFINED

*Present law*

States are required to cover early and periodic screening, diagnostic, and treatment (EPSDT) services for most groups of Medicaid beneficiaries under age 12. Medicaid regulations provide the EPSDT screenings must include a health and development history, a comprehensive physical exam, vision and hearing testing, appropriate laboratory tests, and dental screening for children over 3 years old (or over 5 years old, with the Secretary's approval). The regulations require that States establish, in consultation with medical and dental organizations, a "periodicity schedule" for screenings, specifying services applicable at each stage of the beneficiary's life. States must also provide treatment for problems or conditions identified during screening. The regulations provide that, in addition to any treatment services normally covered under the State Medicaid plan, the State must provide dental care, appropriate immunizations, and vision and hearing treatment, including eyeglasses and hearing aids.

*House bill (Section 4213)*

Codifies the current regulations on minimum components of EPSDT screening and treatment, with minor changes. Provides that screenings must include blood testing when appropriate, as well as health education. Eliminates the option of delaying dental screening to age 5. Requires distinct periodicity schedules for screening, vision, dental and hearing services, and provides that services be furnished at intervals other than those specified in the periodicity schedule when medically necessary to identify and treat a suspected illness or condition. Provides that nothing in Medicaid law should be construed as limiting EPSDT providers to those that can furnish all the required EPSDT services or preventing providers qualified to furnish only a part of the EPSDT package from participating in the program. Requires States to report annually to the Secretary, by April 1 after the end of each fiscal year (beginning with FY 90), on the number of children receiving EPSDT screens, the number referred for follow-up treatment, and the number receiving dental services, by age and basis of Medicaid eligibility. Effective on enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with the following modifications: (1) States are required to provide any service that a State is allowed to cover with Federal matching funds under Medicaid that is required to treat a condition identified during a screen, whether or not the service is included in the State's Medicaid plan; (2) the Secretary is required to develop, by July 1, 1990, and every 12 months thereafter, EPSDT participation goals for each State, and States are required to include data on the extent to which they comply with these goals; in their annual reports to the Secretary; and (3) the provision is effective April 1, 1990.

(D) EXTENSION OF PAYMENT PROVISIONS FOR MEDICALLY NECESSARY SERVICES TO CHILDREN IN DISPROPORTIONATE SHARE HOSPITALS

*Present law*

(1) States may establish reasonable durational limits on coverage of inpatient hospital services, but may not impose these limits on medically necessary services provided to children under 1 year old in hospitals serving a disproportionate number of low-income patients with special needs.

(2) If the State pays for inpatient services on a prospective basis (under which payment rates are established in advance and may not reflect the hospital's actual costs for covered services), the State must provide additional payment to disproportionate share hospitals for patients under 1 year old who are "outliers," that is, who incur exceptionally high costs or have long hospital stays.

*House bill (Section 4214)*

(1) Requires States to waive durational limits for medically necessary inpatient services provided by disproportionate share hospitals to children under age 18. Applies to payments for calendar quarters beginning on or after July 1, 1990.

(2) Requires States with prospective payment systems to submit to the Secretary, by April 1, 1990, a State plan amendment providing for payment adjustments for services provided by disproportionate share hospitals after July 1, 1990, to children over age 1 but under age 18 who are outlier cases.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(E) REQUIRING "SECTION 209(B)" STATES TO PROVIDE MEDICAL ASSISTANCE TO DISABLED CHILDREN RECEIVING SSI BENEFITS

*Present law*

States are ordinarily required to provide Medicaid to any aged, blind, or disabled person receiving cash assistance under the Supplementary Security Income (SSI) program. However, section 209(b) of the Social Security Amendments of 1972 (P.L. 92-603) provided that a State could use more restrictive eligibility standards for Medicaid than those used for SSI if the State was using those standards for Medicaid on January 1, 1972.

*House bill (section 4215)*

Requires all States to provide Medicaid to persons under 18 who are receiving SSI benefits. Effective July 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(F) MANDATORY CONTINUATION OF COVERAGE FOR CHILDREN

*Present law*

An individual who ceases to qualify for Medicaid benefits on one basis may still qualify on some other basis. For example, a family that is no longer financially eligible for AFDC (and hence for automatic Medicaid benefits) might still be eligible for Medicaid under a higher income standard used for the "medically needy." Under current law, States are not required, when terminating Medicaid eligibility in such a case, to determine whether the beneficiary might qualify for benefits on some other basis. Instead, the individual may be required to reapply for Medicaid benefits.

*House bill (section 4216)*

Requires States, before terminating Medicaid benefits for any child under age 18, to determine that the child does not qualify for Medicaid on any other basis. Provides that the calculation of State error rates and financial penalties under the Medicaid quality control system for quarters beginning on or after July 1, 1990, is to exclude Medicaid payments made on behalf of children who have been determined ineligible on one basis but for whom the determination of potential eligibility on other bases has not been completed. Applies to eligibility determinations on or after July 1, 1990, regardless of whether implementing regulations have been promulgated by that date.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(G) OPTIONAL MEDICAID COVERAGE FOR FOSTER CHILDREN

*Present law*

A State may provide Medicaid to a child in foster care or a group home, but only if the child's family meets the income and resource standards for Medicaid eligibility, which are generally tied to AFDC standards and are below 100 percent of the poverty level.

*House bill (section 4217)*

Provides that a State may offer Medicaid coverage to a child under 18 who is wholly or partially financially supported by a public agency, who resides in a foster home, group home, or private institution, and whose income does not exceed 100 percent of the Federal poverty level for a family of one. Provides that, if a State elects to cover such children, it may not impose a resource standard and must determine income using a method no more restrictive than that used under the State's plan for foster care and adoption assistance.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*3. Community and Facility Habilitation Services Amendments*

Sections 4220-4248 of House bill.

(A) COMMUNITY HABILITATION AND SUPPORTIVE SERVICES

*Present law*

*(1) Provision as optional statewide service.*—Medicaid law provides only limited coverage for home and community-based care for persons with mental retardation or related conditions: (1) under the 1915(c) waiver, States may cover habilitation and other community-based services, on a budget neutral basis, to persons at risk of institutionalization; (2) under the case management option, States may target case management services in designated areas; (3) some States use certain optional services, such as "other rehabilitative services" and "personal care services" as a means of offering certain home and community-based services to this population.

*(2) Definition of "community habilitation and supportive services".*—There is no present law definition comparable to "community habilitation and supportive services." However, the Medicaid 1915(c) waiver defines "habilitation services" as services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings, and includes prevocational, educational, and supported employment services. The term "habilitation services" does not include special education and related services and vocational rehabilitation services otherwise available under other Federal programs.

*(3) Individual with mental retardation or a related condition.*—Persons with mental retardation qualify for Medicaid on the basis of being disabled under the Federal Supplemental Security Income program (except in certain States using more restrictive standards), and meeting Medicaid income and resource eligibility standards. Persons with conditions related to mental retardation are defined in regulation as individuals who have a severe, chronic disability that is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation. The condition must result in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and must require treatment or services similar to those needed by such persons. The condition must be manifest prior to age 22, be likely to continue indefinitely, and result in substantial functional limitations.

*(4) Maintenance of effort.*—No provision.

*(5) Freedom of choice.*—States must allow beneficiaries of Medicaid services freedom to choose their providers of care. However, the Secretary may waive this requirement under certain specified circumstances.

*(6) Federal minimum requirements.*—The Medicaid statute contains a general requirement that a State's plan include a description of methods and standards used to assure that services are of high quality. In general, the Medicaid program allows States to follow their own procedures for certifying noninstitutional providers of care. For the 1915(c) waiver program, States are required to provide assurances that necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services.

*(7) State quality assurance program.*—Under their 1915(c) waivers, States must provide assurances that necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services. For other noninstitutional providers of Medicaid covered services, States generally follow their own procedures for certifying that providers deliver quality care. Ordinarily the State Medicaid agency relies on findings of the applicable licensing agency or board for the particular provider.

*(8) Survey and certification.*—No provision.

*(9) Enforcement process.*—No provision.

*(10) Secretarial responsibilities.*—No provision.

*House bill (sections 4221-4224)*

*(1) Provision as optional, statewide service.*—Establishes "community habilitation and supportive services" as a new optional service that States may cover under their Medicaid plans. The service is limited to individuals with mental retardation or a related condition, regardless of whether they have been discharged from an institution.

*(2) Definition of "community habilitation and supportive services".*—Defines "community habilitation and supprotive services" to mean services designed to assist individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to function successfully in a home or community-based setting, or to assist individuals in participating in community or other activities. States choosing to cover the new optional service are required to include case management services, respite care services, and personal attendant care. States may also include prevocational services, education services, supported employment services, day habilitation and related services, transportation, assistive technologies, and other supportive services needed to achieve independence, productivity and integration into the community. The term does not include: special education and related services otherwise available under the Education of

the Handicapped Act; vocational rehabilitation services otherwise available under the Rehabilitation Act; room and board (other than those used in the provision of covered services); and payments to members of the beneficiary's family.

*(3) Individual with mental retardation or a related condition.*—Establishes in statute the current regulatory definition of persons with conditions related to mental retardation.

*(4) Maintenance of effort.*—Requires States that elect to cover this optional benefit to report to the Secretary the amount of non-Federal funds obligated by the State (and its localities) for community habilitation and supportive services in FY 1989. (Waiver services not required to be included.) In reporting non-Federal amounts expended for such services in subsequent years, the FY 1989 amount would be subtracted. The difference would be subject to FFP.

*(5) Freedom of choice.*—Provides that amendments are not to be construced to allow States to abrogate the beneficiary's freedom of choice in the provision of community habilitation and supportive services.

*(6) Federal minimum requirements.*—Establishes minimum Federal requirements for community habilitation and supportive services and for residential settings in which those services are provided. Specifies that minimum Federal requirements are to be set forth in regulation by the Secretary. Federal requirements are limited to those needed for the protection of the health, and welfare of clients.

For States providing habilitation and supportive services under a section 1115 waiver, requires the State to meet Federal minimum requirements as if it has elected to cover community services as an optional benefit. Federal minimum requirements do not apply to 1915(c) waivers in effect before July 1, 1990, until the date of the next renewal or, if later, the end of the 30-day period beginning on the date the Secretary promulgates interim regulations.

Specifies that community habilitation and supportive services must: (1) be aimed at expanding opportunities for independence, productivity, and community integration; (2) be provided in accordance with an individual habilitation plan based on a comprehensive assessment of the beneficiary's needs; (3) meet minimum Federal requirements governing personnel qualifications, fair compensation for care givers, and client rights.

Requirements for residential settings are related to client rights, administration, life safety, disclosure of ownership, and other matters. Client rights include: (1) freedom from physical, verbal, sexual abuse, corporal or psychological punishment, aversive stimuli, and involuntary seclusion (except timeout periods of less than one hour); (2) freedom from physical or medical restraints used for discipline or staff convenience; (3) privacy; (4) confidentiality; (5) dignity; (6) voicing of grievances; (7) free choice regarding medical care and treatment; (8) appropriate use of psychopharmacologic drugs. Requirements for residential settings do not apply to settings in which fewer than 3 unrelated adults reside, such as a client's home.

*(7) State quality assurance program.*—Requires States to establish a program for assuring the quality of community habilitation and supportive services and for protecting the rights of clients receiving these services. The quality assurance program must include publication of standards for services and client rights, periodic monitoring, enforcement of standards, public participation, and educational progams regarding quality standards. The State program does not authorize Secretarial approval if the program, on its face, meets the above requirements. No Federal Medicaid payments can be made for the State quality assurance program.

*(8) Survey and certification.*—States would be responsible for certifying compliance of providers, and of residential settings, with Federal minimum requirements, at least once every 12 months. State certification of residential settings would be done through unannounced surveys based on a Federal protocol, and would be subject to Federal "look behind" surveys of a sample of settings in each State. State certification of providers must be based on a periodic review of a provider's performance. In the case of State providers or State residential settings, the Secretary would have exclusive survey and certification responsibility.

*(9) Enforcement process.*—Requires States to establish the following remedies for noncompliance with Federal residential standards: (1) denial of Medicaid payments for all new clients; (2) civil money penalties; (3) appointment of temporary management; and (4) emergency authority to close a facility or transfer clients. Grants the Secretary independent authority to impose civil monetary penalties and, in the case of residential facilities, appoint temporary management. Where noncompliance immediately jeopardizes the health and safety of participants, the State (or the Secretary) would be required to correct the deficiency and/or terminate the Medicaid participation of the provider. Where noncompliance does not jeopardize client health or safety, the State (or the Secretary) could apply any of the remedies listed above, but at a minimum would be required to impose a civil money penalty for each day of noncompliance.

*(10) Secretarial responsibilities.*—Requires the Secretary to issue interim regulations governing the above minimum requirements by July 1, 1990. Requires this rule to assure that persons receiving community habilitation and supportive services are protected from neglect, physical and sexual abuse, and financial exploitation. Requires final regulations by October 1, 1991. After October 1, 1991, prohibits Federal Medicaid matching payments where provider or residential setting does not meet minimum requirements. Limits Federal regulations to the protection of the health, safety, and welfare of clients receiving community services.

Authorizes the Secretary to provide technical assistance for the implementation of quality assurance requirements, including the development and operation of State quality assurance programs. Requires the Secretary to report to Congress annually regarding the extent to which providers of community habilitation and supportive services and residential settings in which such services are provided are complying with quality assurance standards. Requires the Secretary to report to Congress by January 1, 1992, regarding the use of outcome-oriented instruments to evaluate and assure the quality of community services.

Effective July 1, 1990 (except as otherwise noted) without regard to whether final regulations have been promulgated. No payment may be made after October 1, 1991, if minimum requirements are not met.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not contain the House bill.

(B) QUALITY ASSURANCE FOR HABILITATION FACILITY SERVICES

*Present law*

*(1) Definition of "habilitation facility".*—The term "habilitation facility" is not used in statute. However, the term "intermediate care facility for the mentally retarded" (ICF/MR) means an institution, or part thereof, for the mentally retarded or persons with related conditions, the primary purpose of which is to provide health or rehabilitative services. Active treatment must be provided. ICFs/MR must meet standards prescribed by the Secretary.

*(2) Requirements related to provision of services in habilitation facilities.*—Requirements relating to care in ICFs/MR are specified in regulations that establish "conditions of participation" focused on governing body and management, client protections, facility staffing, active treatment services, client behavior and facility practices, health care services, physical environment, and dietetic services. Each condition of participation is composed of a number of standards by which quality can be assessed. All conditions of participation must be met, but institutions will not be decertified if some of the standards within those conditions are not met, if a plan of correction is accepted by the Secretary.

*(3) Requirements related to client's rights in habilitation facilities.*—Current regulations specify conditions of participation regarding client protections and enumerate standards in areas of client rights; client finances; communication with clients, parents, and guardians; and staff treatment of clients.

*(4) Requirements relating to administration and other matters.*—Current regulations specify conditions of participation regarding facility management; health, safety, and sanitation requirements; and compliance with Federal, State, and local laws.

*(5) Responsibilities of Secretary related to habilitation facility requirements.*—No specific comparable provisions.

*(6) Survey and certification process.*—States are responsible for surveying and certifying compliance by ICFs/MR with Federal standards. The Secretary has the authority to validate State survey and certification findings through "look behind" surveys. ICFs/MR are subject to annual inspections of care to assure that services are adequate and to determine whether alternatives to institutional care are appropriate.

*(7) Enforcement process.*—Only certain remedies are available to the States and/or the Secretary in the event of noncompliance by an ICF/MR with the regulatory standards: (1) if the facility's deficiencies immediately jeopardize the health and safety of its clients, the facility's participation in Medicaid may be terminated; (2) if the facility's deficiencies do not immediately jeopardize the health and safety of its clients, payment for new admissions can be denied; (3) if the deficiencies do not immediately jeopardize the health and safety of clients, and upon application by the State, a plan of correction can be implemented under which all staffing and plant deficiencies are corrected within 6 months; (4) upon application by the State, a reduction plan can be implemented under which a facility (with deficiencies that do not jeopardize the health or safety of its clients) may permanently reduce the number of certified beds over a

36-month period while continuing to receive Federal Medicaid payments. The Secretary may not approve more than 15 reduction plans in any one year (with certain exceptions). Secretary's authority to approve correction or reduction plans expires on January 1, 1990.

*(8) Annual report.*—No provision.

*House bill (section 4231-4235)*

*(1) Definition of "habilitation facility".*—Renames ICFs/MR "habilitation facilities" and defines "habilitation facility" as an institution which is primarily engaged in providing health or habilitation services to individuals with mental retardation or a related condition, and is not primarily for the care and treatment of mental diseases. Provides that habilitation facilities meet the requirements specified below.

*(2) Requirements related to provision of services in habilitation facilities.*—Incorporates regulatory provisions into the statute by establishing "requirements" that must be met. Specifies that, to qualify for Medicaid payments, habilitation facilities must: (1) maintain or enhance the quality of life, independence, productivity, and integration into the community of each client; (2) provide continuous active treatment to each client in accordance with an individual program plan (IPP) coordinated and monitored by a qualified mental retardation professional; (3) provide, as needed to fulfill client IPP's, health and health-related services by qualified personnel, including physician, nursing, dental, and professional program services needed to implement the active treatment plan; (4) assure that health care is provided under supervision of a physician; and (5) maintain records.

*(3) Requirements related to clients' rights in habilitation facilities.*—Establishes specific "requirements" for client rights in place of current regulatory "conditions of participation" and "standards" regarding client protections. Requires habilitation facilities to protect and promote the rights of each client, including: (1) freedom from physical, verbal, sexual abuse, corporal or psychological punishment, aversive stimuli, and involuntary seclusion (except time-out periods of less than one hour); (2) freedom from physical or medical restraints used for discipline or staff convenience; (3) rights regarding privacy, confidentiality, and dignity; (4) reasonable accommodation of individual needs; (5) voicing of grievances to facility management; (6) participation in client groups and in community activities; (7) free choice regarding medical care and treatment; and (8) freedom from compulsion to perform services for the facility. Establishes limits on use of psychopharmacologic drugs. Identifies circumstances under which transfer or discharge of a client is permissible. Defines access and visitation rights. Requires facility, upon request of client, to manage and account for client's personal funds.

*(4) Requirements relating to administration and other matters.*—Requires that habilitation facilities: (1) be administered in a manner that promotes or maintains quality of life, independence, productivity, and integration into the community for each client; (2) meet applicable provisions of the Life Safety Code of the National Fire Protection Association (or comparable State requirements), except that the Secretary may waive specific provisions that would result in unreasonable hardship, but only if client health and safety were not adversely affected; (3) maintain infection control programs and be equipped to protect the health and safety of clients, personnel, and the general public; and (4) operate services in compliance with all applicable Federal, State, and local laws and regulations and with accepted professional standards.

*(5) Responsibilities of Secretary related to habilitation facility requirements.*—Requires the Secretary to assure that the requirements which govern the provision of care in habilitation facilities, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of clients and to promote the effective and efficient use of public monies. Requires the Secretary to publish, not later than January 1, 1991, an operational definition to "continuous active treatment." Requires the Secretary to establish, by July 1, 1990, minimum guidelines for a State appeals process for transfers and discharges from habilitation facilities.

*(6) Survey and certification process.*—States would be responsible for surveying and certifying compliance by habilitation facilities (other than State facilities) with Federal requirements. Surveys would be unannounced and conducted on an annual basis. The Secretary would be responsible for conducting surveys of State-operated facilites and for conducting "look behind" reviews of a representative sample of non-State facilities. States with substandard survey performance would be subject to a reduction in related Federal administrative payments. Requires States and the Secretary to investigate allegations of client abuse and neglect as well as violations of the statutory requirements.

*(7) Enforcement process.*—Requires States to terminate a facility's participation in the Medicaid program or to correct the deficiencies through temporary management if it is found that the clients' health and safety are in immediate jeopardy. Where immediate jeopardy is not evidenced, a State could terminate or, in lieu of termination, impose one or more of the following sanctions: (1) denial of payments for new admissions; (2) civil money penalties; or (3) appointment of a temporary management. Authorizes the Secretary to impose the same sanctions and gives Secretary primary enforcement authority in the case of State-operated facilities. In the case of any facility which fails to meet the requirements for three consecutive surveys, the State would be required to monitor the facility, impose civil monetary penalties, and deny payments for new admissions until compliance was achieved. Permanently authorizes correction and reduction plans and removes the limit on the number of reduction plans the Secretary is authorized to approve during any given year. Authorizes States to establish a program to reward habilitation facilities that provide highest quality care. The reward could include public recognition and/or incentive payments. Reward program would be considered an administrative expense.

*(8) Annual report.*—Requires the Secretary to report to Congress annually on the extent to which habilitation facilities are complying with quality assurance provisions and the number and types of enforcement actions taken.

Effective January 1, 1991, for habilitation facility requirements and survey and certification requirements, except as otherwise provided, without regard to whether regulations have been promulgated. Enforcement provisions effective on date of enactment, without regard to whether regulations have been promulgated.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(C) APPROPRIATE PLACEMENT FOR INDIVIDUALS WITH MENTAL RETARDATION OR A RELATED CONDITION

*Present law*

Physicians are required to conduct initial certification and periodic recertification of each resident's need for ICF/MR care, develop plans for the care of each resident, and operate an approved utilization review program to assess such care. The State must also provide for external reviews known as inspections of care to assure that services are adequate and to determine whether alternatives to institiutional care are appropriate.

*House bill (sections 4241-4242)*

Repeals existing requirements governing utilization review, including physician certification and inspections of care. In place of those provisions, requires States to establish a preadmission screening program applicable to all habilitation facility applicants, although screening of private pay patients would be delayed until 24 hours after conversion of Medicaid eligibility. Also requires States to annually review each habilitation facility resident entitled to Medicaid benefits to determine if he or she requires the level of care provided in a habilitation facility or requires community habilitation and supportive services. States would use criteria developed by the Secretary to make these determinations. Any client found no longer to require habilitation facility services would be oriented and discharged, with community habilitation and supportive services provided (or arranged for) by the State where necessary. Requires States to establish appeals procedures (that comply with required guidelines to be developed by the Secretary) regarding the transfer of individuals out of habilitation facilities. Requires Secretary to monitor the States' compliance with requirements. The preadmission screening program would have to be established by January 1, 1991.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(D) PAYMENT FOR COMMUNITY HABILITATION AND SUPPORTIVE SERVICES AND HABILITATION FACILITY SERVICES

*Present law*

Generally, States have discretion in setting payment rates, but the payments must be "consistent with efficiency, economy, and quality of care." The Secretary has by regulation required that States provide assurances to the Secretary that their payment methodology for ICFs/MR will not result in payments that exceed, in the aggregate, the estimated amounts that would be paid if Medicare reimbursement principles were applied.

*House bill (section 4244)*

Requires that payment for community habilitation and supportive services and habilitation facility services be reasonable and adequate to meet the costs of providing services efficiently and economically in conformity with applicable State and Federal laws, regulations, and quality and safety

standards. Payment methods must not distinguish between State-operated service providers and other providers. Would prohibit use of capitation or other risk-based payment methodologies, and would deny Federal Medicaid payments for reimbursement of civil money penalties. Effective July 1, 1990, for payments for community habilitation and supportive services, or if later, 30 days after the date of publication of interim regulations. Effective January 1, 1991, for payments for habilitation facility services.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(E) EMPLOYEE PROTECTIONS AND MISCELLANEOUS

*Present law*

*(1) Employee protections.*—Any ICF/MR reduction plan must provide for the protection of the interests of affected employees, including training and retraining where necessary, redeployment to community settings, and maximum efforts to guarantee employment.

*(2) State administration.*—Each State must designate a single agency to administer its Medicaid program.

*House bill (sections 4247-4248)*

*(1) Employee protections.*—Requires States to protect the interests of employees whose jobs would be jeopardized by a closure of, or reduction in the number of beds in an habilitation facility, whether the facility is State-operated or private. Requires: (1) the preservation of rights, privileges and benefits under existing collective bargaining agreements; (2) the continuation of collective bargaining rights through any certified representative; (3) the protection of individual employees against a worsening of their job situation during the period of closure or reduction of a facility; (4) assurance of employment for affected habilitation facility employees, including the maintenance of same compensation (including benefits) and comparable job responsibility (in the case of State-operated facilities, employees must be offered employment with a provider of community services or residential setting); (5) paid training or retraining to qualify for community services jobs; (6) a grievance procedure which gives an affected employee the choice of binding arbitration or a hearing before a State agency. These provisions do not entitle an affected employee to lifetime employment, protect employees against discharge for good cause, or supercede or abrogate any collective bargaining agreement that contains such protections.

*(2) State administration.*—Permits States to assign Medicaid administrative functions related to the provision of services to persons with mental retardation or a related condition to a State agency responsible for developmentally disabled individuals.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*4. Frail Elderly Community Care Amendments*

Section 4251 of House bill.

*Present law*

Under special waiver authorities (sections 1915(c) and 1915(d) of Medicaid law), States may cover a variety of home and community-based long-term care services for elderly persons who would otherwise require institutional care whose cost could be reimbursed by Medicaid. States define the services they wish to cover for a targeted population from a broad range of medical and nonmedical social services that are specified in law. These include case management, homemaker/home health aide services, personal care, adult, day health, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based setting. States may provide such services, however, only after they have demonstrated to the Secretary of HHS that coverage of these services would be budget neutral.

*House bill*

(A) COMMUNITY CARE AS OPTIONAL, STATEWIDE SERVICE

Establishes "community care for functionally disabled elderly individuals" as a new optional service that States may cover under their Medicare plans without demonstrating budget neutrality.

(B) COMMUNITY CARE DEFINED

Defines "community care" as one or more of the following services furnished, according to an individual community care plan, to an individual who has been determined, after an assessment, to be a functionally disabled elderly individual: (1) homemaker/home health aide services; (2) chore services; (3) personal care services; (4) nursing care services (other than continuous 24-hour nursing care services) provided by, or under the supervision of, a registered nurse; (5) respite care; (6) training for family members in managing the individual; (7) adult day health services; (8) in the case of an individual with chronic mental illness, day treatment or other partial hospitalization, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility); (9) such other home and community-based services (other than room and and board) as the Secretary may approve. Requires that the first four services, if covered, be provided in a place of residence used as the individual's home.

(C) FUNCTIONALLY DISABLED ELDERLY INDIVIDUAL DEFINED

Defines an eligible "functionally disabled elderly individual" as a person who (1) is 65 years of age or older; (2) is determined to be functionally disabled; and (3) is eligible for Medicaid in the community because of low income and resources or because of large medical expenses (that result in a person "spending down" to quality as "medically needy"). Provides that States may use a 6-month period for projecting medical expenses and income, in determining eligibility of medically needy persons of optional community care services.

In the event that a State discontinues a 1915(c) or 1915(d) waiver, specifies that States would be able to continue to cover under the optional community care benefit those elderly persons who received home and community-based sevices under these waivers, so long as they would be eligible for community care benefits, except for the income and resources standards used in the State for determining eligibility for persons living in the community. Allows Texas, which is providing personal care services to functionally disabled persons under a special demonstration project waiver authority (section 1115 of the Social Security Act), to extend community care services to aged and disabled persons who meet the waiver's test of functional disability and who meet the State's higher institutional income standard.

(D) FUNCTIONAL DISABILITY DEFINED

Defines as "functionally disabled" persons who (1) are unable, due solely to physical impairment or due solely to mental illness, to perform without substantial assistance from another individual at least 2 (or, at the option of the State, 3 or 4) of the following activities of daily living: bathing, dressing, toileting, transferring, and eating, or (2) have a primary or secondary diagnosis of Alzheimer's disease. Specifies that a person is considered to have a "mental illness" if the individual has a primary or secondary diagnosis of mental disorder as defined in the Diagnostic and Statistical Manual Disorders, 3rd edition.

(E) ASSESSMENTS OF FUNCTIONAL DISABILITY

Requires States, upon the request of an elderly person eligible for Medicaid, to provide a comprehensive functional assessment to determine whether or not an individual is functionally disabled. Requires that the assessment be based on a uniform minimum data set specified by the Secretary and be conducted using an instrument specified by the State and approved by the Secretary.

*(1) Specification of assessment data set and instruments.*—By July 1, 1990, requires the Secretary to specify a minimum data set of core elements and common definitions for use in conducting assessments and to establish guidelines for use of the data set. Also requires the Secretary, by July 1, 1990, to identify one or more instruments for use by a State in conducting comprehensive functional assessments. Requires that States use one of the instruments identified by the Secretary or an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines.

*(2) Periodic review.*—Requires that individuals qualifying for community care services have their assessments periodically reviewed and revised not less often than once every 12 months.

*(3) Conduct of assessment by interdisciplinary teams.*—Requires that assessments and reviews be conducted by an interdisciplinary team designated by the States. Requires that the Secretary permit a State to provide for assessments and reviews through teams under contract with State or local agencies or with nonprofit or public organizations which do not provide and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides community care or nursing services. Requires that interdisciplinary teams (1) identify functional disabilities and need for community care (based on social, cognitive, and other relevant factors), and (2) determine, on the basis of the assessment, whether the individual is (or continues to be) functionally disabled.

*(4) Appeals procedures.*—Requires that each State electing to cover community care services as an optional benefit have in effect an appeals process for individuals adversely affected by eligibility determinations of the multidisciplinary team.

(F) INDIVIDUAL COMMUNITY CARE PLAN (ICCP)

Requires that community care be provided according to an individual community care plan (ICCP). Defines an "ICCP" as a written plan which (1) is established by a qualified community care case manager in face-

to-face consultation with the individual and is based on a visit to the individual's residence and the most recent comprehensive functional assessment of the individual; (2) is periodically reviewed and revised by the case manager in face-to-face consultation with the individual and is based on a visit to the individual's residence and most recent assessment; (3) reflects the needs and preferences of the individual, consistent with coverage under the State's Medicaid plan, and, to the extent feasible, allows for and promotes the direction and oversight of community care by the individual; (4) specifies the community care to be provided, within any amount, duration, and scope limitation imposed on community care covered under the State Medicaid plan; (5) does not include community care for which payment is made by the individual or on the individual's behalf; and (6) may specify services (other than those to be provided under the plan) required by the individual. Specifies that neither an ICCP or the State could restrict the specific persons or individual (who are competent to provide community care under the State plan) that will provide care.

*(1) Qualified community care case manager defined.*—Defines a "qualified community care case manager" as a nonprofit or public agency or organization which (a) has experience in establishing, periodically reviewing, and revising assessments or ICCPs and in providing case management services to the elderly; (b) is responsible for assuring that community care covered under the State plan and specified in the ICCP is being provided and for visiting each individual receiving care at the individual's residence not less often than once every 90 days; (c) in the case of non-public organization, does not provide, and does not have a direct or indirect ownership or control interest in, or direct or individual affiliation or relationship with, an entity that provides, community care or nursing facility services; (d) has procedures for assuring the quality of case management services it provides; (e) meets other than standards established by the Secretary to assure that the case manager is competent to perform case management functions and the individuals whose care they manage are not at risk of financial exploitation; and (f) meets other standards established by the State.

*(2) Appeals procedures.*—Requires States to have in effect an appeals process for individuals who disagree with the ICCP.

(G) CEILING ON PAYMENT AMOUNTS AND MAINTENANCE OF EFFORT

*(1) Ceiling on payment amounts.*—Specifies that Federal Medicaid matching payments to a State for community care provided in any calendar quarter could not exceed 30 percent of the product of the following: (1) the average number of individuals receiving community care in the quarter, (2) the average per diem rate of payment for Medicare skilled nursing facility care in that State for the quarter, and (3) the number of days in the quarter.

*(2) Maintenance of effort.*—Requires States covering community care to report to the Secretary, in a format developed or approved by the Secretary, the amount of non-Federal funds obligated by the State (and its localities) for the provision of community care to functionally disabled elderly individuals in FY 1989 (other than its expenditures for services provided under 1915(c) waivers for home and community-based care). Requires the Secretary, in determining the amount of Federal Medicaid matching funds to be paid to a State for community care beginning in FY 1990, to reduce the total amount expended by a State (and its localities) for such services by the amount of expenditures reported by the State for FY 1989.

*(3) Direct payment to providers of community care.*—Provides that States are not authorized to permit payment for community care through a qualified community care case manager.

(H) MINIMUM REQUIREMENTS FOR COMMUNITY CARE

Requires that community care meet requirements for individuals' rights and quality published or developed by the Secretary, including (1) a requirement that individuals providing community care be competent to provide care; (2) guidelines for minimum compensation for persons providing care to assure the availability and continuity of competent persons providing care, and (3) specification of individuals' rights (including the right to free choice about care and treatment; freedom from restraints; privacy; confidentiality of personal and clinical records; voice grievances about treatment and care).

(I) MINIMUM REQUIREMENTS FOR COMMUNITY CARE SETTINGS

*(1) Community care setting defined.*—Defines "community care setting" as a setting in which community care is provided and which are either nonresidential, or residential (including foster homes, board-and-care facilities, or other group living arrangements, but not including a nursing facilities) in which more than 2 unrelated adults reside and in which personal services (other than merely room and board) are provided.

*(2) Minimum requirements.*—Provided that a community care setting must meet certain requirements including requirements (1) developed by the Secretary to assure that individuals receiving community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and incompetent caregivers; (2) relating to individuals' rights (including use of psychopharmocological drugs, access and visitation, and protection of resident funds); (3) for informing individuals of their rights; and (4) pertaining to licensing, Life Safety Code, sanitary and infection control and other physical environment standards.

*(3) Disclosure of ownership and control interests and exclusion of repeated violators.*—Provides that community care settings must disclose persons with an ownership or control interest in the setting. Specifies that a community care setting may not have as a person with an ownership or control interest any person who has been excluded from participation in Medicaid or who has had an ownership or control interest in settings which have been found repeatedly to be substandard or to have failed to meet the minimum requirements for settings specified in this section.

(J) SURVEY AND CERTIFICATION PROCESS

*(1) Certifications.*—Requires that States be responsible for certifying the compliance of providers of community care and community care settings with the minimum requirements. Requires the Secretary to be responsible for certifying the compliance of State providers and State community care settings with these same requirements. Requires that certification of providers and settings occur no less frequently than once every 12 month.

*(2) Reviews of providers.*—Requires that certification of a provider of community care be based on a periodic review of the provider's performance in providing care. Specifies that these periodic reviews be conducted annually by an agency other than the State Medicaid agency and be based on information that includes the views of case managers whose clients have received community care from the provider and from a sample of individuals receiving community care. If the Secretary has reason to question the compliance of a provider of community care with certification requirements, the Secretary could conduct a review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets requirements.

*(3) Surveys of community care settings.*—Requires that certification of community care settings be based on a survey conducted without prior notice. Authorizes a civil money penalty of up to $2,000 for persons who notify a community care setting of the time or date of the survey and requires the Secretary to review each State's procedures for avoiding giving notice of surveys. Requires that surveys be based on a protocol developed by the Secretary. Prohibits the use on survey teams of persons who are serving (or have served within the previous 2 years) as members of the staff of, or as a consultant to, the community care setting being surveyed, or who have a personal or familial financial interest in the setting. Requires the Secretary to conduct onsite surveys of a representative sample of community care settings in each State, within 2 months of the State survey, in a sufficient number to allow inferences about the adequacy of each State's survey. Provides that if the State has determined that a setting meets the requirements for certification, but the Secretary determines that the setting does not, then the Secretary's determination is binding and supersedes the State's. If the Secretary has reason to question the compliance of a setting with the certification requirements, the Secretary could conduct a survey of the setting, and on the basis of the survey, make an independent and binding determination about the extent to which the setting meet the requirements.

*(4) Investigation of complaints and monitoring of providers and settings.*—Requires the States and the Secretary to maintain procedures and adequate staff to investigate complaints of violations of certification requirements for providers of community care and community care settings.

*(5) Investigation of allegations of neglect and abuse.*—Requires States to provide for a process for receiving, reviewing, and investigating allegations of individual neglect and abuse (including injuries of unknown source) and misappropriation of individual property. Requires States to make a finding as to the accuracy of the allegations and to provide for public disclosure of findings.

*(6) Disclosure of results of inspections and activities.*—Requires the States and the Secretary to make available to the public information on all surveys, reviews, and certifications, including statements of deficiencies, copies of cost reports (if any) of providers and settings, copies of statements of ownership, and information about owners and other persons convicted of certain offenses. Requires the State to notify an individual receiving care and an immediate family member of a finding of substandard care. Requires each State to provide its Medicaid fraud and abuse control unit with access to information of the State agency responsible for surveys, reviews, and certifications.

(K) ENFORCEMENT PROCESS FOR PROVIDERS OF COMMUNITY CARE

Where the State or Secretary finds that a provider no longer meets the requirements and that its deficiencies immediately jeopardize the health or safety of individuals, the State or Secretary must take action to remove the jeopardy and correct the deficiency or terminate the provider's participation and may, in addition provide for a civil money penalty. For providers of community care that no longer meet certification requirements and have deficiencies that do not immediately jeopardize the health and safety of individuals, authorizes the States and the Secretary to terminate the provider's participation in the program, and, in addition, to impose civil money penalties for each day the provider is out of compliance. Requires that the criteria for imposing civil money penalties be designed so as to minimize the time between the identification of violations and final imposition of the penalties and provide for incrementally more severe penalties for repeated or uncorrected deficiencies. The Secretary would exercise the State's authority with respect to State providers.

(L) SECRETARIAL RESPONSIBILITIES

Requires the Secretary to publish by July 1, 1990, interim regulations for community care and for community care settings, including regulations for functional assessments, qualifications of community care case managers, minimum requirements for community care, minimum requirements for community care settings, and survey protocols. Requires the Secretary to develop final requirements, and survey protocols and methods for evaluating and assuring the quality of community care, by October 1, 1991. Provides that interim and final requirements assure, through methods other than reliance on State licensure processes, that individuals receiving community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by persons who are not competent to provide this care. Specifies that States could impose, if they choose, requirements that are more stringent than the requirements published by the Secretary.

(M) APPLICABILITY IN STATES OPERATING UNDER DEMONSTRATION PROJECTS

For States providing community care under a section 1115 waiver, requires the State to meet requirements for community care as if it had elected to cover community care as an optional benefit.

(N) PAYMENT FOR COMMUNITY CARE

Requires States to pay for community care at rates which are reasonable and adequate (and which may not be established on a capitation basis or any other risk basis) to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards.

Prohibits Federal Medicaid matching payments form being used to pay for the costs of a civil money penalty or for the legal expenses in defense of a civil money penalty or for exclusion from the program, if there is no reasonable legal ground for the provider's case.

Also prohibits Federal matching payments for community care (1) which does not meet requirements published by the Secretary, or (2) which is furnished in a community care setting that is found to be substandard, does not meet certification requirements, or to which the State after January 1, 1992, has not applied protocols and methods for assuring quality as developed by the Secretary. Provides that Federal matching payments for care provided in a community care setting found to be substandard or out of compliance with the minimum requirements could continue to be made, once and only once, if the setting is changed within 3 months and meets the requirements.

Prohibits Federal matching payments for community care provided by members of the family of the individual receiving care. Also prohibits Federal matching payments to the extent care is paid for by other programs.

(O) CONFORMING AMENDMENTS

Makes a number of conforming amendments in Medicaid law to accommodate new community care optional benefit. Also extends to July 1, 1990, waivers for the demonstration project, "Modification of the Texas System of Care for the Elderly: Alternatives to the Institutionalized Aged."

*Effective date*

In general, provisions establishing community care as an optional Medicaid benefit effective July 1, 1990. Provisions for Federal Medicaid matching payments for community care effective July 1, 1990, or 30 days after the publication of interim regulations by the Secretary setting forth minimum requirements for community care providers and community care settings. Provision prohibiting Federal matching payments to be used for civil money payments and provider's legal expenses in defense of civil money payments and exclusion from the program, effective for penalties imposed after the date of enactment. Waives the application of the Paperwork Reduction Act and Executive order 12291 to regulations required for community care.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill and provides for an extension, until July 1, 1990, of section 1115 waivers for the demonstration project, "Modification of the Texas System of Care for the Elderly: Alternatives to the Institutionalized Aged."

*5. Hospice Coverage*

Section 4261 of House bill.

(A) MANDATING HOSPICE COVERAGE

*Present law*

Under their Medicaid programs, States may cover hospice care as an optional benefit for terminally ill individuals who voluntarily elect to receive hospice care in lieu of certain other benefits. Hospice care includes the services covered under Medicare's hospice benefit: nursing care; physical or occupational therapy or speech-language pathology; medical social services; home health aide and homemaker services; medical supplies (including drugs and biologicals) and medical appliances; physician services; short-term inpatient care (including both respite care and procedures necessary for pain control and acute and chronic symptom management); and counseling. In States covering hospice, a beneficiary's election of hospice is for a period or periods the State decides to cover. Hospice programs under Medicaid are required to meet Medicaid's requirements for organization and operation. According to the National Governors' Association survey of March 1989, 20 States offered hospice coverage under their Medicaid programs.

*House bill*

Requires that States cover hospice care under their Medicaid programs. Effective for payments for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations have been promulgated by that date. Permits delay where State legislation is required to comply.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(B) PAYMENT FOR HOSPICE CARE

*Present law*

Medicaid law requires States covering hospice care to pay for hospice care in the same amounts, and according to the same methodology, as under Medicare. Medicare uses a prospective payment system to pay for hospice care. Under this payment system, hospices are paid one of four predetermined rates for each day a beneficiary is under the care of the hospice. The rates vary according to the level of care furnished to the beneficiary. The rates are as follows: (1) routine home care—$63.17; (2) continuous home care—up to $368.67; (3) inpatient respite care—$65.33; and (4) general inpatient care—$281.00.

For Medicaid-eligible residents of skilled nursing facilities (SNFs) and intermediate care facilities (ICFs), Medicaid law also permits a separate rate to be paid to the hospice program to take into account the room and board furnished by the facility, including performance of personal care services.

*House bill*

Requires States, in paying for hospice care, to pay amounts no lower than the amounts paid under Medicare, and to use the same methodology as Medicare's. For terminally ill SNF and ICF residents electing hospice, requires States to pay the hospice an additional amount equal to at least 95 percent of the rate that would have been paid by the State to that facility for the Medicaid beneficiary.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill.

(C) CLARIFYING EFFECT OF HOSPICE ELECTION

*Present law*

Medicaid law requires terminally ill beneficiaries electing hospice to waive payment for services that are determined by the Secretary to be related to the treatment of the individual's terminally ill condition or that are duplicative of hospice care. Medicaid also specifies that election procedures must be consistent with those under Medicare. Medicare does not cover certain non-skilled services that States may cover under their Medicaid programs, e.g., personal care services.

*House bill*

Adds to Medicaid law a clarification that, in electing hospice care, a Medicaid beneficiary waives payment for services for which payment may otherwise be made under Medicare.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

(D) CONFORMING AMENDMENTS

*House bill*

Makes conforming amendments for changes described above.

*Senate amendments*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*6. Amendments Relating to Nursing Home Reform*

Section 4271 of House bill; section 5501 of Senate amendment.

(A) MORATORIUM ON IMPLEMENTATION OF FEB. 2, 1989 REGULATION

*Present law*

On February 2, 1989, HCFA published final regulations that revise and consolidate requirements that nursing homes must meet in order to participate in Medicare and/or Medicaid. These final regulations incorporate revisions to an October 1987 proposed regulation that represented HCFA's response to recommendations of the Institute of Medicine report, "Improving the Quality of Care in Nursing Homes." The proposed regulations were published prior to the enactment of the nursing home reform provisions of OBRA 87 in December of that year. The final regulations also include provisions that apply to certain new requirements contained in OBRA 87. As published in February, most of the provisions of the final regulations would have become effective August 1, 1989, although OBRA 87 specified an effective date of October 1, 1990, for similar provisions. In July, HCFA issued notice in the Federal Register that it would delay implementation of the February 1989 regulations from August 1, 1989, to January 1, 1990.

*House bill*

Requires that HCFA's February 2 regulation on requirements for nursing homes participating in Medicare and/or Medicaid not be effective before October 1, 1990, insofar as these regulations apply to facilities participating under Medicaid.

*Senate amendment*

No provisions.

*Conference agreement*

The conference agreement includes the House bill.

(B) NURSE AIDE TRAINING

*Present law*

Effective January 1, 1990, OBRA 87 prohibits nursing facilities participating in Medicaid from using (on a full-time, temporary, per diem, or other basis) persons as nurse aides, for more than 4 months, unless the individual (a) has completed a training and/or a competency evaluation program approved by the State; and (b) is competent to provide nursing or nursing related services. OBRA 87 also prohibits a nursing facility from using persons as nurse aides unless it has consulted the State nurse aide registry to determine whether the person has satisfactorily completed a training and/or competency evaluation program and if the person has been involved in resident neglect or abuse.

OBRA 87 required the Secretary to establish requirements for state approval of nurse aide training and competency evaluation programs by September 1, 1988, and to specify in these requirements areas to be covered in programs, content of curriculum, minimum hours of initial (75 hours) and ongoing training and retraining, qualifications of instructors, and procedures for determining competency. HCFA has not yet published regulations for these requirements, although it has issued an interim guidance document, effective May 12, 1989, setting out approval criteria for the States.

OBRA 87 also authorized federal matching payments for State activities required in connection with nurse aid training and competency evaluation programs, regardless of whether the programs are conducted in or outside nursing facilities or of the skill of the personnel involved in the programs. For the 8 calendar quarters beginning July 1, 1988, OBRA authorized enhanced Federal matching payments (the Federal matching rate for a State plus 25 percentage points, not to exceed 90 percent) for these activities. In subsequent years, the rate becomes 50 percent.

*House bill*

Includes a number of amendments to the OBRA 87 nurse aide training and competency evaluation requirements:

*(1) Delay in requirement.*—Delays from January 1, 1990, until October 1, 1990, the date by which nurse aides must complete training and/or competency evaluation programs and must be determined to be competent to provide services.

*(2) No compliance actions before effective date of guidelines.*—Prohibits the Secretary from taking (or continuing) any compliance action against a State for its failure to meet the law's requirements for nurse aide training and competency evaluation programs before the effective date of HCFA guidelines for such programs (May 12, 1989), if the State had made a good faith effort to meet the requirements.

*(3) Publication of proposed regulations.*—Requires the Secretary to issue proposed regulations on nurse aide training and competency evaluation programs not later than 90 days after enactment of this Act.

*(4) Clarification of grace period for nurse aide training of individuals.*—Specifies that training and competency evaluation requirements apply to all persons who have worked (on a full-time, temporary, or per diem basis) as nurse aides for 90 days or more in any nursing facility.

*(5) Requirements for training and evaluation programs.*—Adds to requirements that the Secretary must establish for approval of nurse aide training and competency evaluation programs a requirement that programs cover the care of cognitively impaired residents, and amends the specifications for competency programs to require such programs to cover, among other things, recognition of mental health and social service needs of residents. Provides that nurse aides may establish competency (1) through procedures or methods other than the passing of a written examination and (2) at the nursing facility at which the aide is (or will be) employed, unless the facility is out of compliance with requirements for participation. Prohibits the imposition on nurse aides of any charges (including any charges for textbooks and other required course materials) for training and competency programs. Applies to programs offered on or after the end of the 90-day period beginning on the date of enactment, but shall not affect competency evaluations conducted under programs offered before the end of this period.

*(6) Delay and transition in 75-hour training program requirement.*—Provides that nurse aides shall be considered to have completed a training and competency evaluation program, if, as of July 1, 1989, the aide had received 60 hours of initial training, and at least 15 hours of supervised practical nurse aide training or regular in-service education.

*(7) Clarification of State responsibility to determine competency.*—Prohibits States from using subcontracts or other devices to make final nurse aide competency determinations.

*(8) Clarification of temporary enhanced Federal financial participation for nurse aide training by nursing facilities.*—Clarifies that Federal matching payments for nurse aide training and competency evaluation programs, including enhanced Federal matching, are available for the costs of nurse aides to complete competency evaluation programs. Also prohibits the Secretary from taking into account or allocating amounts expended for nurse aide training and competency evaluation activities conducted before October 1, 1990, on the basis of the proportion of nursing facility residents entitled to Medicare or Medicaid.

*Senate amendment (section 5501)*

Includes a number of amendments to the OBRA 87 nurse aide training and competency evaluation requirements:

*(1) Delay in requirement.*—Identical provision.

*(2) No compliance actions before effective date of guidelines.*—No provision.

*(3) Publication of proposed regulations.*—No provision.

*(4) Clarification of grace period for nurse aide training of individuals.*—No provision.

*(5) Requirements for training and evaluation programs.*—No provision.

*(6) Delay and transition in 75-hour training program requirement.*—Requires States to waive training and competency evaluation requirements for nurse aides who (1) were hired as aides before January 1, 1990, (2) can demonstrate to the satisfaction of the State that they served as an aide at one or more facilities of the same employer in the State for at least 24 consecutive months, and (3) have completed a 15-hour course of instruction in basic skills designated by the State. Also requires States to waive training and competency evaluation requirements for persons who (1) were employed as a nurse aide before January 1, 1990, (2) can demonstrate to the satisfaction of the State that they have served as a nurse aide in the State in the preceding 24-month period, and (3) have completed a nurse aide training program that was required by the State and established before December 22, 1987.

*(7) Clarification of State responsibility to determine competency.*—No provision.

*(8) Clarification of temporary enhanced Federal financial participation for nurse aide training by nursing facilities.*—No provision.

*Conference agreement*

*(1) Delay in requirement.*—The conference agreement includes the House bill.

*(2) No compliance actions before effective date of guidelines.*—The conference agreement does not include the House bill.

*(3) Publication of proposed regulations.*—The conference agreement does not include the House bill.

*(4) Clarification of grace period for nurse aide training of individuals.*—The conference agreement does not include the House bill.

*(5) Requirement for training and evaluation programs.*—The conference agreement includes the House bill.

*(6) Delay and transition in 75-hour training program requirement.*—The conference agreement includes the House bill with the following additional modifications. A nurse aide is considered to have completed an approved training and competency evaluation program if the aide had completed a training course of at least 100 hours and was found competent (whether of not by the State) before July 1, 1989. In addition, States are authorized to waive the competency evaluation (but not the training) requirements with respect to individuals who can demonstrate that he or she has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before the date of enactment.

*(7) Clarification of State responsibility to determine competency.*—The conference agreement does not include the House bill.

*(8) Clarification of temporary enhanced Federal financial participation for nurse aide training by nursing facilities.*—The conference agreement includes the House bill.

(C) PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW

*Present law*

OBRA 87 requires States, effective January 1, 1989, to establish preadmission screening programs to determine for mentally ill or mentally retarded individuals seeking admission to a nursing home whether they require the level of services provided by a nursing home and, if so, whether they require active treatment. Effective January 1, 1989, nursing facilities participating in Medicaid must not admit any new resident who is mentally ill or mentally retarded, unless the State has determined, prior to admission, that the prospective resident requires the level of services provided by the nursing facility, and whether he or she requires active treatment. OBRA 87 also requires States to review, on an annual basis, all residents who are mentally ill or mentally retarded to determine whether their continued placement is appropriate and whether they require active treatment. The first of these annual reviews must be completed by April 1, 1990. These preadmission screening and annual resident review requirements are often referred to as PASARR requirements. The law requires that certain residents be discharged if their placement in a nursing facility is found to be inappropriate. OBRA 87 authorizes the Secretary and States to enter into agreements, prior to April 1, 1989, that specify alternative disposition plans (ADPs) for persons who must be discharged from the facility. ADPs provide additional time for the States to arrange for the disposition of persons who must be discharged.

OBRA 87 required the Secretary to issue, by not later than October 1, 1988, minimum criteria for States to use in making determinations as to whether a mentally ill or mentally retarded individual requires the level of services provided by a nursing facility. In May 1989, HCFA issued interim guidelines (effective May 26) to the States for use in making determinations, but indicated that it intends to use the formal rule-making process, with a comment period, before making the guidelines' criteria binding on the States.

*House Bill*

Includes a number of amendments to OBRA 87 PASARR requirements:

*(1) No compliance actions before effective date of guidelines.*—Prohibits the Secretary from taking (or continuing) any compliance action against a State for failure to meet the law's requirements for preadmission screening, if the State had made a good faith effort to comply with the requirements before the effective date of HCFA's guidelines for these programs (May 26, 1989).

*(2) Publication of proposed regulations.*—Requires the Secretary to issue proposed regulations on PASARR requirements not later than 90 days after enactment of this Act.

*(3) Clarification with respect to admissions and readmission from a hospital.*—Specifies that preadmission screening requirements do not apply to nursing facility residents who are being readmitted to the nursing facility after a hospital stay. Also provides that preadmission screening requirements do not apply to persons (1) who are admitted to the nursing facility directly from a hospital after receiving acute inpatient care at the hospital; (2) who require nursing facility services for the condition for which the individual received care in the hospital; and (3) whose attending physician has certified, before admission to the facility, that the person is likely to require less than 30 days of nursing facility services.

*(4) Charges applicable in cases of certain Medicaid eligible individuals.*—Provides that nursing facility residents who are Medicaid eligible, but for whom Medicaid payments are not being made because their income exceeds State payments for this care, may not be charged more than the Medicaid rate for their nursing facility care.

*(5) Delay in application to private pay residents.*—Provides that preadmission screening and annual resident review requirements do not apply to mentally ill or mentally retarded persons who are not eligible for Medicaid until such time as they become entitled to benefits (with preadmission screening required to be done within 24 hours after eligibility is established). Specifies that this amendment shall not prohibit a State from imposing preadmission screening and annual resident review requirements on persons who are not Medicaid eligible at the time of admission to a nursing facility. Prohibits the Secretary from imposing any sanction on States which have failed to apply the preadmission requirements to persons who are not Medicaid eligible at the time of their admission.

*(6) Denial of payments for certain residents not requiring nursing facility services.*—Prohibits Federal matching payments for nursing facility services for persons who do not require the level of services provided by the nursing facility (other than for persons who have resided in the facility for at least 30 months and who are determined not to need such care).

*(7) No delegation of authority to conduct screening and reviews.*—Prohibits State mental health authorities and State mental retardation or developmental disability authorities from delegating (by subcontract or otherwise) their PASARR responsibilities to nursing facilities (or entities that have a direct or indirect affiliation or relationship with these facilities).

*(8) Annual reports.*—Requires States to report to the Secretary annually on the number and disposition of residents who are discharged from nursing facilities (1) because they do not require nursing facility care, have resided in the facility for less than 30 months and require active treatment; and (2) because they do not require nursing facility care and do not require active treatment. Also requires the Secretary's annual report on nursing facility compliance with new requirements and enforcement actions to include a summary of information reported by States on the disposition of residents discharged from nursing homes.

*(9) Revision of alternative disposition plans.*—Authorizes States to revise their agreements for alternative disposition plans before October 1, 1990, subject to the approval of the Secretary, but only if under the revised agreement all residents who do not require nursing facility care are discharged from the facility by not later than April 1, 1994.

*(10) Definition of mentally ill.*—Modifies the definition of mental illness from "a primary or secondary diagnosis of mental disorder (as defined in DSM-III)" to a "serious mental illness as defined by the Secretary."

*(11) Substitution of "specialized services" for "active treatment".*—Substitutes the term "specialized services" for the term "active treatment."

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes item (2) of the House bill.

(D) OTHER AMENDMENTS

*(1) Assurance of appropriate payment amounts*

*Present law*

OBRA 87 requires States to take into account in their payments to nursing facilities the costs of complying with new requirements relating to the provision of services, residents' rights, and administration. OBRA also requires that each State submit to the Secretary a State plan amendment to provide for an appropriate adjustment in payment amounts for nursing facility services.

*House bill*

Provides that States also take into account in their payments to nursing facilities the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for Medicaid. Also requires that State plan amendments include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(2) Disclosure of information of quality assessment and assurance committees*

*Present law*

OBRA 87 requires that nursing facilities maintain a quality assessment and assurance committee which (1) meets at least quarterly to identify quality assessment and assurance issues, and (2) develops and implements appropriate plans of action to correct identified quality deficiencies.

*House bill*

Provides that a State or the Secretary may not require disclosure of the records of the quality assessment and assurance committee, except for determining the facility's compliance with the requirement for maintaining the committee.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(3) Period for resident assessment*

*Present law*

OBRA 87 requires that nursing facilities conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be performed promptly upon, but no later than 4 days after, admission to the facility.

*House bill*

Extends the time limit for a resident's assessment from 4 days to 14 days after admission.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(4) Clarification of responsibility for services for mentally ill and mentally retarded*

*Present law*

OBRA 87 requires nursing facilities to provide nursing and related services and specialized rehabilitative services, medically-related social services, pharmaceutical services, dietary services, an ongoing program of activities, and certain dental services.

*House bill*

Requires that facilities also provide treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(5) Residents' rights to refuse transfers*

*Present law*

The Medicare Catastrophic Coverage Act of 1988 amended Medicare's coverage of skilled nursing facility services, effective January 1, 1989. Among other things, this legislation eliminated a prior hospitalization requirement that persons had to meet in order to qualify for benefits. It also modified coverage by authorizing up to 150 days of care per calendar year. As a result of these changes, many Medicaid-eligible nursing facility residents are now eligible for Medicare coverage of their care. However, a resident must occupy a Medicare-certified bed in order for a facility to receive Medicare payment. In order to occupy such a bed, a resident may have to be moved. Medicare regulations provide that a resident can be transferred or discharged only for medical reasons or for his welfare or that of other patients or for non-payment of his stay.

*House bill*

Adds to residents' rights established under OBRA 87 a new right for residents to refuse a transfer to another room within a facility, if a purpose of the transfer is to relocate the resident from a non-Medicare certified portion of the facility to a Medicare-certified portion of the facility. Provides that a resident's refusal to be transferred will not affect the resident's eligibility for Medicaid or the State's entitlement to Federal matching payments for the resident's care.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(6) Resident access to clinical records*

*Present law*

OBRA 87 requires nursing facilities to assure the confidentiality of a resident's personal and clinical records.

*House bill*

Adds to this requirement the right of the resident to have access to current clinical records promptly, upon request.

*Conference agreement*

The conference agreement does not include the House bill.

*(7) Inclusion of State notice of rights in facility notice of rights*

*Present law*

Among the residents' rights established under OBRA 87 is the requirement that nursing facilities make available to each resident, upon reasonable request, a written statement of rights of the resident in the facility.

*House bill*

Requires facilities to include in the written statement of rights that they are currently required to provide residents, a copy of the State notice of the rights and obligations of residents (and spouses of residents) under Medicaid.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(8) Removal of duplicative requirement for qualifications of nursing home administrators*

*Present law*

OBRA 87 requires the administrator of a nursing facility to meet standards established by the Secretary.

*House bill*

Repeals other requirements in Medicaid law pertaining to State programs for the licensing of nursing home administrators.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(9) Clarification on findings of neglect*

*Present law*

OBRA 87 requires States (through their agencies responsible for surveys and certification of nursing facilities) to review, investigate, and make findings regarding allegations of resident neglect and abuse and misappropriation of resident property by a nurse aide or another individual used by the facility to provide services.

*House bill*

Provides that a State can not make a finding of neglect by an aide or individual, if the aide or individual demonstrates that neglect was caused by factors beyond the control of the individual.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(10) Timing of public disclosure of survey results*

*Present law*

OBRA 87 requires States and the Secretary to make available to the public information on all surveys and certifications of nursing facilities, including statements of deficiencies and plans of correction.

*House bill*

Requires that survey and certification information be made available to the public within 14 calendar days after this information is made available to the facilities.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(11) Clarification of applicability of enforcement rules to dually-certified facilities*

*Present law*

For nursing homes found to be out of compliance with the requirements for participation, OBRA 87 establishes enforcement procedures that are to be applied to (1) skilled nursing facilities participating in Medicare, and (2) nursing facilities participating in Medicaid. OBRA did not specifically address, however, the procedures and process by which enforcement actions are to be taken against nursing facilities that are certified to participate in both Medicaid and Medicare.

*House bill*

Provides that the enforcement rules for facilities participating in Medicaid apply also to those facilities participating in both Medicaid and Medicare.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill.

*(12) Clarification of Federal matching rate for survey and certification activities*

*Present law*

Beginning in FY 1991, OBRA provides enhanced Federal matching payments for State survey and certification activities. These will be at the rate of 90 percent in FY 1991, 85 percent in FY 1992, 80 percent in FY 1993, and 75 percent in FY 1994 and thereafter.

*House bill*

Clarifies that during the period before October 1, 1990, the Federal matching rate for survey and certification is the current 75 percent.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill.

*(13) Miscellaneous technical corrections*

*House bill*

Makes a number of miscellaneous technical corrections.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(14) Delay in requirement for remedies*

*Present law*

OBRA 87 revises and expands the sanctions that States and the Secretary may impose against nursing facilities found to be out of compliance with the requirements for participation. OBRA 87 required States to amend their Medicaid plans by October 1, 1989, to include certain sanctions that they could use to impose noncompliant nursing facilities. OBRA 87 also required the Secretary to provide guidance to the states on these sanctions by October 1, 1988, but specified that the failure of the Secretary to provide this guidance did not relieve a State of its responsibility for establishing the sanctions by the statutory deadline. The Secretary has not yet issued regulations providing this guidance.

*House bill*

No provision.

*Senate amendment*

Delays until April 1, 1991, the requirement that States establish certain sanctions to be imposed against noncompliant nursing facilities. Effective as if included in OBRA 87.

*Conference agreement*

The conference agreement does not include the Senate amendment.

*7. Miscellaneous and Technical Provisions*

Sections 4272 through 4276 of the House bill.

(A) MEDICARE BUY-IN PROVISIONS

*(1) Medicare buy-in for premiums of certain working disabled*

*Present law*

No provision.

*House bill (section 4272)*

Requires States to pay Medicare premiums and cost-sharing for certain working disabled persons who are eligible for Medicare as a result of the new section 1818A of the Act, as added by section 10112(b) of the House bill, whose income does not exceed 200 percent of the Federal poverty line, and who are not otherwise eligible for Medicaid. Permits States to require individuals with incomes above 150 percent of the poverty line to contribute to the cost of their own Mediare premiums and cost-sharing, in the form of a premium to be set on a sliding scale from 0 percent (at 150 percent of poverty) to 100 percent (at 200 percent of poverty). Applies to payments for calendar quarters beginning on or after July 1, 1990, regardless of whether implementing regulations have been promulgated by that date. Delay permitted where State legislation required.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with the following modifications: (1) coverage would be limited to Medicare part A premiums, and (2) individuals would be subject to a resource test of twice the SSI level.

*(2) Technical corrections to Medicare buy-in for the elderly*

*Present law*

MCCA require States to pay Medicare cost-sharing for "qualified Medicare beneficiaries," those with incomes below 100 percent of the poverty line and resources no more than twice the amount permissible under the SSI program. Eligibility for this assistance begins in the month following the month during which the individual applies. The coverage requirement is being phased in on a timetable that began January 1, 1989, and ends January 1, 1993.

*House bill*

Permits States to grant retroactive eligibility for certain qualified Medicare beneficiaries. For a person determined to be a qualified Medicare beneficiary before October 1989, eligibility may begin with the earliest month in 1989 during which the person would have been eligible if he or she had applied in the preceding month. Makes a technical correction in a provision relating to coverage in section 209(b) States, to clarify that these States are not exempt from the rules governing eligibility standards for qualified Medicare beneficiaries. Effective as if included in MCCA.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes only that provision of the House bill clarifying the application of Medicare "buy-in" rules to 209(b) States.

(B) STATE MATCHING PAYMENTS THROUGH VOLUNTARY CONTRIBUTIONS AND STATE TAXES

*Present law*

States must contribute from 17 to 50 percent of the cost of providing Medicaid benefits; the State share rises in proportion to the State's per capita income. (A portion of this responsibility may be passed on to localities.) Some States have financed part of the State share of Medicaid costs through voluntary donations of funds by hospitals participating in the program. Others have used dedicated taxes imposed on hosptial revenues. The Administration has contested some of these State actions in administrative proceedings and has indicated its intention to modify Medicaid regulations to restrict the use of donations or provider-paid taxes. The Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) prohibited the Secretary from issuing final regulations before May 1, 1989, that would change the treatment of voluntary contributions or provider-paid taxes used by State to claim Federal matching funds.

*House bill (section 4273)*

Permits States to use hosptial donations to finance up to 10 percent of the State's share of Medicaid costs in a fiscal year, provided the funds are subject to the unrestricted control of the State and the funds donated by or on behalf of a particular hospital account for no more than 10 percent of the hosptial's revenues in a year (not counting revenues from Medicare, Medicaid, or the Maternal and Child Health block grant). Provides that a transfer of funds from a hospital to a State may be regarded as a donation even if the hospital benefits from it, unless the benefit is directly related to the transfer in timing and amount. Prohibits the Secretary from limiting payments to a State on the grounds that State spending was financed by taxes on provider services. The provision relating to donated funds applies to funds donated on or after May 1, 1989; the provision relating to State taxes is effective May 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement extends until December 31, 1990, the moratorium on the publication of final regulations changing the treatment of voluntary contributions or provider-paid taxes used by the States to receive Federal Medicaid matching funds.

(C) DISPROPORTIONATE SHARE HOSPITALS

*Present law*

(1) States are required to make additional payments for inpatient services to hosptials serving a disproportionate number of low-income patients with special needs. A hospital may qualify for the payment adjustments if its Medicaid inpatient utilization rate is at least one standard deviation above the mean rate for all Medicaid-participating hosptial in the State; the rate is calculated as Medicaid inpatient days divided by total inpatient days. (A hospital may instead qualify on the basis of its dependence on Medicaid and State and local indigent care funding and the amount of charity care it furnishes.) The Secretary is prohibited from limiting the amount of payment adjustments made by States to disproportionate share hospitals.

(2) A State may be deemed to have met the requirement for payment adjustments if, on January 1, 1984, the State's Medicaid plan provided for adjustments based on a pooling arrangement covering a majority of Medicaid-participating hospitals (the provision describes New York). The exception applies only if the State's aggregate payment adjustments are at least equal to those that would have been made if the State complied with the disproportionate share requirements.

(3) Section 2175 of OBRA 81 permitted a State to obtain a waiver of certain Medicaid requirements in order to establish a system of selective contracting with providers of services. Under a waiver, the State may restrict the providers from whom beneficiaries may obtain non-emergency care to those who meet the State's reimbursement, quality, and utilization standards, if those standards are consistent with access, quality, and efficient and economic provision of care.

*House bill (section 4274)*

(1) Provides that the computation of the Medicaid inpatient utilization rate shall include days spent by patients (including newborns) in specialized wards or while waiting for placement outside the hospital. Provides that the prohibition against limitation by the Secretary of payment adjustments to disproportionate share hospitals also applies to pass-through payments for those hospitals' capital costs. Effective July 1, 1990.

(2) Provides a similar exception for a State (such as New Jersey) whose Medicaid plan provided, as of January 1, 1987, for adjustments based on a Statewide pooling arrangement under which all acute hospitals were reimbursed for the total amount of the uncompensated care they furnished. Again, the exception applies only if the State's aggregate payment adjustments are at least equal to those that would have been made if the State complied with the disproportionate share requirements. Effective as if included in OBRA 81.

(3) Provides that a State with a selective contracting waiver must conform to the requirements for additional payments to disproportionate share hospitals. Effective as if included in OBRA 87.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows items (2) and (3) of the House bill with a modification relating to application of the disproportionate share adjustment in the State of

Missouri during the period July 1, 1988 through June 30, 1990. The agreement provides that the State is to be treated as having met the requirement if, in phasing in adjustments by group of facility, the total amount of disproportionate share adjustment payments during the period is not less than the total of such payments otherwise required for such period.

(D) MEDICAID PROVISIONS RELATING TO DEMONSTRATION OF EFFECTIVENESS OF MINNESOTA FAMILY INVESTMENT PLAN

*House bill (section 4275)*

Section 10265 of the House bill, relating to the AFDC program, permits Minnesota to conduct with the approval of the Secretary, a demonstration of an alternative program designed to assist families in becoming self-supporting and caring for their childern more effectively. Section 4275 of the House bill provides that, in the event the Secretary approves the Minnesota demonstration, the Secretary shall require the State to: (a) treat participating families as categorically eligible for Medicaid; (b) grant extended Medicaid coverage to families terminated from the project as a result of increased employment income, as provided under the Family Support Act of 1988; and (c) provide 12 months of additional Medicaid coverage to a family terminated from the project as a result of collection or increased collection of child support. Requires Federal matching payments for medicaid costs for participating families, provided that aggregate payments are not greater than those that would have been made for the same families in the absence of the project.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with a modification providing for a 4 month extension of coverage in the case of a family terminated as a result of collection or increased collection of child support.

(E) MISCELLANEOUS PROVISIONS

*(1) Fraud and abuse technical amendments*

*Present law*

The Secretary may exclude from Medicare and Medicaid a provider whose license has been revoked, suspended, or otherwise lost for reasons related to competence, performance, or financial integrity. Providers excluded from Medicare and/or Medicaid may still be paid for emergency services to beneficiaries.

*House bill (section 4276(a))*

Permits exclusion of a provider who has lost the right to apply for or renew a license on the same grounds. Provides that the exception permitting payment for emergency services by excluded providers does not apply to services furnished in a hospital emergency room.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with a modification clarifying that HMOs with Medicare risk-sharing contracts or Medicaid prepaid plans may not employ or contract with (1) individuals or entities excluded from participation in Medicare or Medicaid for the provision of health care, utilization review, medical social work, or administrative services, or (2) any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services.

*(2) Psychiatric hospitals*

*Present law*

(A) The Deficit Reduction Act of 1984 (DEFRA, P.L. 98-369) provided that a State may cover inpatient psychiatric hospital services to beneficiaries under age 21 only if the facility (or part of a facility) meets the Medicare definition of a psychiatric hospital.

(B) Current law provides for intermediate sanctions to be imposed on nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR) that fail to meet the requirements for participation, but has no such provisions for inpatient psychiatric hospitals. Section 4231 of the House bill redesignates ICFs/MR as "habilitation facilities" and establishes a new section 1927 of the act setting forth standards and enforcement procedures for these facilities.

*House bill (section 4276(b))*

(A) Allows the Secretary to specify in regulations alternative settings in which inpatient psychiatric services may be covered. Effective as if included in DEFRA.

(B) Replaces current provisions relating to intermediate sanctions for ICFs/MR (rendered obsolete by section 4231 of the House bill) with new sanction provisions for inpatient psychiatric hospitals, as follows:

(i) If a State finds that a psychiatric hospital fails to meet certification requirements then, if the deficiencies immediately jeopardize the health and safety of patients, the State must terminate the hospital's Medicaid participation. If there is no such immediate jeopardy, the State may choose to terminate participation, deny payment for individuals admitted after the date of the finding, or both.

(ii) If non-compliance continues for 3 months, the State must deny payment for new admissions; if it continues for 6 months, Federal funding for services in the hospital is denied until the hospital achieves compliance. Federal funding may be continued during the 6-month period if the State has an approved plan for corrective action, provided the State agrees to repay the funds if the plan is not complied with.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(3) Clarification of application of 133 percent income limit to medically needy*

*Present law*

(A) States may not provide Medicaid to persons with a countable family income greater than 133⅓ percent of the State's maximum AFDC for a family of the same size. The restriction does not apply to target groups of pregnant women and children, qualified Medicare beneficiaries, persons receiving or eligible for cash assistance (or who would be eligible if they were not in an institution), and persons in an institution meeting an income standard to no higher than 300 percent of the maximum SSI benefit. Although the 133⅓ percent limit has been understood as applying only to the "medically needy," Congress has added a number of additional mandatory or optional Medicaid coverage groups without specifying whether the limit was intended to apply to them.

(B) In determining eligibility for the aged, blind, and disabled, section 209(b) States may use more restrictive income and resource standards than those used for SSI. MCCA provided that 209(b) States may not use more restrictive methodologies in determining income and resources than those used under SSI, but did not modify a conflicting existing provision of law.

*House bill (section 4276(c))*

(A) Clarifies that the income limit applies only to the "medically needy" (and not to a variety of other optional or mandatory coverage groups not explicitly exempt from the limit under current law).

(B) Modifies the conflicting provision to clarify that methodologies used by section 209(b) States in determining income and resources for the aged, blind, and disabled may be less restrictive, but not more restrictive, than those used under SSI.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill. The conference agreement prohibits the Secretary from issuing, before December 31, 1990, a final regulation implementing the proposed regulation published on September 26, 1989, 54 Fed. Reg. 39421, insofar as it changes in any way the methods for establishing the medically needy income level for a single individual currently used by the States of Arkansas, California, Kansas, Maine, Maryland, Montana, North Dakota, Oklahoma, Pennsylvania, Rhode Island, and Virginia.

*(4) Health maintenance organizations*

*Present law*

(A) States may generally enter into Medicaid risk contracts only with HMO's or similar organizations no more than 75 percent of whose enrollment consists of Medicare or Medicaid beneficiaries. The requirement may be modified or waived for an HMO that is a public entity if the Secretary determines that special circumstances warrant the modification and the HMO is making reasonable efforts to enroll persons other than Medicare/Medicaid beneficiaries.

(B) Medicaid beneficiaries enrolling in Federally qualified HMOs (those determined by the Secretary to meet the requirements of Title XIII of the Public Health Service Act) or certain organizations receiving Federal grant funds may be required to remain enrolled for a period of up to 6 months; the State may agree to continue payments to the HMO on behalf of an enrollee for up to 6 months even if the enrollee loses Medicaid eligibility (these provisions are known as "lock-in" and "guaranteed enrollment period," respectively).

(C) A Medicaid beneficiary may lose eligibility for a short interval and then be determined eligible again. In some States, if such an individual was enrolled under a Medicaid HMO contract at the time eligibility was terminated, the State will automatically reenroll the individual in the same HMO when eligibility is reestablished. This practice is not explicitly authorized by law.

(D) Before 1981, States could contract with an HMO only if the HMO was Federally qualified or "provisionally qualified," having applied for Federal qualification and awaiting final determination. OBRA 81 permitted States to make their own determinations that an HMO was eligible for a contract, rendering the "provisionally qualified" category obsolete.

*House bill (section 4276(d))*

(A) Deletes the requirement that the Secretary determine that special circumstances warrant a modification before modifying the 75 percent rule for a public entity.

(B) Extends the lock-in and guaranteed enrollment period options to "competitive medical plans," organizations which are not Federally qualified HMOs but which have entered into a risk-sharing contract with the Medicaid program; lock-in for such an organization is permissible if it complies with the 75 percent Medicare/Medicaid enrollment maximum.

(C) Authorizes automatic HMO reenrollment for individuals whose period of ineligibility is no longer than 2 months, provided that the individual retains the right to request disenrollment from the organization.

(D) Eliminates provisions relating ot provisionally qualified HMOs.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not contain the House bill. The conference agreement extends the Minnesota Prepaid Medicaid Demonstration Project from June 30, 1990 to June 30, 1991.

*(5) Personal care service*

*Present law*

Some State Medicaid programs cover personal care services, such as bathing and grooming, which can assist individuals who might otherwise require institutional care to remain at home. Although personal care services are not among the optional Medicaid services set forth in the statute, the Secretary has authorized coverage of personal care services in a beneficiary's home under a general authority to approve the inclusion of additional medical or remedial services in a State Medicaid plan. The services are defined in Medicaid regulations as those provided by a qualified person who is supervised by a registered nurse and who is not a member of the individual's family, pursuant to a plan of treatment prescribed by a physician.

*House bill (section 4276(e))*

Adds personal care services to the statutory list of optional Medicaid services. Incorporates the current regulatory definition in the statute, but provides that services may be furnished in settings other than a beneficiary's home (but not a hospital or nursing facility). Effective on enactment and applies to personal care services furnished before enactment pursuant to regulations in effect July 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(6) Supervision of health care of residents of nursing facilities by nurse practitioners and clinical nurse specialists acting in collaboration with physicians*

*Present law*

Health care for residents of nursing facilities must be provided under the supervision of a physician.

*House bill (section 4276(f))*

Permits care for residents of nursing facilities to be provided under the supervision of a nurse practitioner or clinical nurse specialist who is not employed by the facility but who is working in collaboration with a physician. Applies to nursing facility services furnished on or after October 1, 1990, regardless of whether implementing regulations have been promulgated.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(7) Codification of coverage of rehabilitation services*

*Present law*

Rehabilitative services are among the optional Medicaid benefits States are permitted to offer. Medicaid regulations define these as medical or remedial services recommended by a physician or other licensed practitioner and designed to reduce physical or mental disability and restore an individual to the best possible functional level.

*House bill (section 4276(g))*

Incorporates the regulatory definition in the statute, with minor changes.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(8) Institutions for mental diseases*

*Present law*

The Social Security Amendments of 1972 (P.L. 92-603) permitted States to provide Medicaid benefits to persons aged 65 or over in institutions for mental diseases (IMDs); other residents of IMDs are ineligible for Medicaid. States may also cover services in inpatient psychiatric hospitals for persons under age 21.

*House bill (section 4276(h))*

Requires the Secretary to study the current implementation of the exclusion of IMD residents under age 65 and to submit a report to Congress by October 1, 1990, including recommendations for any changes in current policies or guidelines that may be appropriate in the light of any changes since 1972 in the delivery of inpatient mental health services.

Provides that any determination by the Secretary that Kent Community Hospital Complex or Saginaw Community Hospital (both in Michigan) is an IMD shall not take effect until 180 days after the report is submitted.

Requires the Secretary to study the costs and benefits of Medicaid coverage of public subacute psychiatric facilities as an alternative to care in acute psychiatric facilities, including an examination of cost differences between subacute and acute facilities, the effectiveness of subacute facilities in preventing hospitalization, and their impact on access and quality. Requires the Secretary to submit a report to Congress by October 1, 1990, with recommendations on continued coverage of subacute facilities.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with a modification consolidating the studies of IMDs and subacute psychiatric facilities.

*(9) Timely payment under waivers of freedom of choice of hospital services*

*Present law*

Section 2175 of OBRA 81 permitted a State to obtain a waiver of certain Medicaid requirements, including the beneficiary's right to choose a provider of services, in order to establish a system of selective contracting with providers. Medicaid law includes requirements that States pay health care practitioners, such as physicians, on a timely basis, but makes no such provision for other types of providers, such as hospitals.

*House bill (section 4276(i))*

Extends prompt payment requirements to any type of provider participating under a selective contracting waiver. Effective as of first quarter beginning more than 30 days after enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(10) Home and community-based services waivers*

*Present law*

(A) Section 2176 of OBRA 81 permitted States to obtain waivers of certain Medicaid requirements in order to establish a home and community-based service program for a defined population (such as the aged or the mentally retarded) of persons who would otherwise require long-term institutional care. Costs for room and board are excluded from those which a State may include as Medicaid costs under a waiver.

(B) In order to obtain a Section 2176 waiver, the State must demonstrate that average per capita Medicaid costs for waiver participants are no greater than would have been incurred in the absence of the waiver.

(C) One of the services that may be furnished under a home and community-based services waiver is respite care, services that allow family or other voluntary caregivers to take time away from their responsibility for a patient's care.

(D) OBRA 87 established requirements for screening of mentally retarded or mentally ill patients before admission to a nursing facility, to determine whether alternative treatment is more appropriate; the requirements apply to all persons admitted on or after January 1, 1989.

*House bill (section 4276(j))*

(A) Provides that the "room and board" exclusion does not apply to the share of rent and food costs attributable to an unrelated caregiver who is residing with a waiver participant and without whom the participant would require institutional care. Applies to services furnished on or after enactment.

(B) Provides that, in estimating per capita costs in the absence of a waiver for persons with mental retardation or a related condition who are residents of an ICF-MR whose Medicaid participation has been terminated, the State may use the costs that would have been incurred if the facility has not been terminated.

(C) Provides that, so long as the State meets the cost-effectiveness test for a waiver, the Secretary may not limit the hours or days respite care that may be provided.

(D) Provides that, in the case of a waiver program for the mentally retarded, a State may revise its per capita cost estimates to take into account increases in ICF-MR or habilitation facility costs resulting from implementation of the pre-admission screening requirement.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(11) Spousal impoverishment*

*Present law*

(A) MCCA required States to provide for a period of Medicaid ineligibility for persons in nursing facilities who dispose of assets for less than fair market value within 30 months before entering the facility or applying for Medicaid, whichever is later. The restriction does not apply to disposal of assets by an institutionalized individual's spouse, even if the resources disposed of might otherwise have been available to contribute to the cost of the institutionalized individual's care. Applies to transfers occurring after enactment.

(B) MCCA specified that its provisions relating to treatment of income and resources of institutionalized spouses superseded any contrary provision in the law relating to section 209(b) States. However, MCCA also left in place an existing provision relating to 209(b) States that could potentially be construed as allowing them to continue using more restrictive standards. Effective as if included in MCCA.

(C) MCCA limited the extent to which resources of an individual remaining in the community are deemed to be available for the care of a spouse entering a nursing facility for the purpose of determining the institutionalized spouse's Medicaid eligibility. When one member of the couple begins a continuous period of institutionalization on or after October 1, 1989, the total resources of both members are assessed and allocated to the community and institutionalized spouses according to formulas established by the Act.

*House bill (section 4276(k))*

(A) Applies the restriction on eligibility after a transfer of assets to cases in which the transfer was made by the spouse of the institutionalized person.

(B) Modifies the potentially conflicting provision relating to section 209(b) States to clarify that they are subject to the new MCCA standards.

(C) Provides that the assessment and allocation of a couple's resources is to occur only at the beginning of the first continuous period of institutionalization beginning after September 30, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes items (B) and (C) of the House bill. The agreement also clarifies that rules for treatment of income set forth in section 1924(b) of the Social Security Act apply after the institutionalized spouse has been determined to be eligible for Medicaid, and with respect to all subsequent redeterminations of eligibility, regardless of any State laws relating to community property or the division of marital property.

*(12) State utilization review systems*

*Present law*

OBRA 86 prohibited the Secretary from promulgating regulations requiring States to establish mandatory second surgical opinion programs or inpatient hospital preadmission review until 180 days after the Secretary submitted to the Congress a report on the extent to which such programs impede access to care and a variety of related issues concerning Medicaid beneficiaries' access to high volume or high cost procedures. The report was submitted in June 1989. The Administration's FY 1990 budget proposal indicated that the Administration plans to proceed with requirements that States implement second opinion and preadmission review programs, and also plans to require that States implement two additional utilization control approaches. The first would require substitution of ambulatory and same-day surgery for inpatient surgery. The second would require that medical tests ordinarily performed at the start of an inpatient hospital admission be performed on an outpatient basis before the admission.

*House bill (section 4276(l))*

Makes permanent that prohibition against requiring States to establish mandatory second surgical opinion or preadmission screening programs. Requires the Secretary to report to Congress by January 1, 1992, for a representative sample of States, an analysis of procedures for which ambulatory or same-day surgery or preadmission testing are appropriate for Medicaid patients, and the effects of such programs on access, quality, and costs. Prohibits the Secretary from promulgating regulations requiring States to implement such programs until 180 days after submitting the report.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

*(13) Health insuring organizations*

*Present law*

Before 1986, certain HMO-like entities known as "health insuring organizations" (HIOs) were determined by the Secretary to be exempt from statutory requirements for Medicaid HMO contractors, such as the 75 percent limit on Medicare/Medicaid enrollment and the requirement that enrollees be permitted to disenroll without cause. OBRA subjected HIOs to the HMO requirements, but allowed a temporary continuation of contracts with HIOs that were under development or operational on January 1, 1986, and for which the Secretary had granted Medicaid waivers under Section 2175 of OBRA 81.

*House bill (section 4276(m))*

Exempts up to 3 county-operated HMOs designated by the State of California from statutory requirements for Medicaid HMO contracts. The HIOs must be subject to California's own regulatory system for prepaid plans, must enroll all the Medicaid beneficiaries in the county (except qualified Medicare beneficiaries), must assure a reasonable choice of providers, and must comply with the requirements for payment adjustments for disproportionate share hospitals. The exemption applies only if the HIOs enroll no more than 10 percent of all Medicaid beneficiaries in California (not counting qualified Medicare beneficiaries).

Requires the Secretary to continue to waive the 75 percent Medicare/Medicaid enrollment limit for the Tennessee Primary Care Network, Inc., until June 30, 1992, under the same terms that applied to the waiver as of July 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill extension of the waiver of the 75 percent enrollment limitation for the Tennessee Primary Care Network.

*(14) Day habilitation and related services*

*Present law*

Among the optional Medicaid benefits a State may provide are clinic services and habilitation services. Some States have used one or the other of these options to provide day habilitation services to mentally retarded beneficiaries.

*House bill (section 4276(n))*

Prohibits the Secretary from denying Federal funding for day habilitation and related services if such services were an approved part of a State's Medicaid plan on or before June 30, 1989, and prohibits withdrawal of Federal approval of such a State plan provision, unless the Secretary promulgates regulations, with opportunity for public comment, specifying the types of day habilitation and related services a State may cover and any requirements applicable to those services. Provides that, if the Secretary promulgates such regulations, the Secretary may determine that a State's plan is not in compliance; however, the determination would apply only to services furnished on or after the first day of the first quarter following notice to the State of the determination and its basis.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill.

SUBTITLE C—MATERNAL AND CHILD HEALTH BLOCK GRANT PROGRAM

*1. Increase in Authorization of Appropriations*

Section 4301 of the House bill.

(A) AUTHORIZATION

*Present law*

The Maternal and Child Health Services Block Grant, under Title V of the Social Security Act, supports activities, through formula grants to the States and project grants, to improve the health status of mothers and children. Appropriations of $561 million are authorized for the program for FY 1989 and each year thereafter.

*House bill*

Authorizes $661 million for FY 1990 and each fiscal year thereafter to improve the health of all mothers and children consistent with the applicable health status goals and national health objectives established by the Secretary under the Public Health Service Act for the year 2000.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with a modification to authorize $686 million for FY 1990 and each fiscal year thereafter.

(B) USE OF FUNDS BY STATES

*Present law*

Funds are used for the purpose of enabling States—

(A) to assure mothers and children (particularly those with low income or with limited availability of health services) access to quality maternal and child health services;

(B) to reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, to reduce the need for inpatient and long-term care services, to increase the number of children appropriately immunized and the number of low income children receiving health assessments and follow-up diagnostic and treatment services, and otherwise to promote the health of mothers and children (especially by providing preventive and pri-

mary care services for low income children, and prenatal, delivery, and postpartum care for low income mothers);

(C) to provide rehabilitation services for blind and disabled individuals under age 16 receiving benefits under Title XVI of the Social Security Act; and

(D) to provide services for locating, and for medical, surgical, corrective, and other services, and care for, and facilities for diagnosis, hospitalization, and aftercare for, children who are "children with special health care needs" or who are suffering from conditions leading to such status.

*House bill*

Amends some provisions on services a State may provide to groups and individuals. Authorizes funds to be used to provide, as well as assure, access to quality services. Authorizes rehabilitation services for blind and disabled children under age 16 to be provided to the extent that medical assistance for such services is not provided under Medicaid.

For services for children with special health care needs, authorizes States to provide and promote family-centered, community-based, coordinated care (including care coordination services) for children with special health care needs and to facilitate the development of community-based systems of services. Defines "care coordination services" to mean services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special health care needs and their families.

*Senate amendment*

No provision.

*Conference agreements*

The conference agreement includes the House bill.

(C) FEDERAL SET-ASIDES

*Present law*

Up to 15% of appropriated funds are set aside to enable the Secretary to provide for—

(A) special projects of regional and national significance (SPRANS); (B) research, and training with respect to maternal and child health and children with special health care needs; (C) genetic disease testing, counseling, and information development and dissemination programs; and (D) grants relating to hemophilia.

*House bill*

Retains set-aside for SPRANS, maternal and child health training and research, genetic diseases, and hemophilia grants. Provides that maternal and child health training and research for children with special health care needs will include early intervention training and services development. Provides that grants relating to hemophilia will include funding for comprehensive hemophilia diagnostic and treatment centers.

Authorizes a new set-aside to enable the Secretary (through grants, contracts, and otherwise) to provide for developing and expanding each of the following:

(A)(i) maternal and infant health home visiting programs, in which, among other services, case management services are provided in the home;

(ii) integrated maternal and child health service delivery systems;

(iii) maternal and child health centers operated under the direction of a not-for-profit hospital; and

(iv) projects designed to increase the participation of obstetricians and pediatricians under Title V and under State plans approved under the Medicaid program; and

(B)(i) projects for the screening of newborns for sickle cell anemia and other genetic disorders and follow-up services; and

(ii) maternal and child health projects to serve rural populations.

Defines "case management services" as used in this section to mean (A) with respect to pregnant women, services to assure access to quality prenatal, delivery, and postpartum care; and (B) with respect to infants up to age one, services to assure access to qualitys preventive and primary care services.

*Senate amendment*

No provision.

*Conference agreement.*

The conference agreement includes the House bill with a modification to include within the projects to be funded through the 15% secretarial set-aside, projects for the screening of newborns with sickle cell anemia and other genetic disorders and follow-up services.

In addition, the conference agreement establishes a new Federal set-aside to support (A) maternal and infant home visiting programs; (B) projects designed to increase the participation of obstetricians and pediatricians under both the MCH Block Grant and Medicaid programs; (C) integrated maternal and child health service delivery sytems; (D) maternal and infant centers operated under the director of not-for-profit hospitals; (E) maternal and infant child health projects to serve rural populations; and (F) outpatient and community based services programs for children with special health care needs. Funds would not be made available to support these programs and projects, however, until the level of appropriations for the Title V program exceeds $600 million. Once that level is achieved, the conference agreement provides that 12.75 percent of the amount of funds appropriated above $600 million is to be retained by the Secretary for the purpose of carrying out the activities (A) through (F)) specified above. Of the balance remaining (after the Secretary has retained 12.75 percent of the funds appropriated above $600 million), 85 percent is to be allotted to the States and 15 percent is to be retained by the Secretary, in accordance with the requirements of the Title V program.

The conference agreement further provides that the Secretary may conduct up to four demonstration projects to provide health insurance coverage (as defined by the Secretary) through eligible plans to medically uninsurable children (as defined by the Secretary). Such plans include those that are (A) school-based; (B) operated under the auspices of not-for-profit entities offering health insurance; and (C) operated by not-for-profit hospitals. Projects may only be conducted under an agreement with the Secretary which among other requirements, must provide that an eligible plan will provide health insurance coverage for at least two years and that the Secretary will guarantee such coverage if an eligible plan fails to meet this mandate. Under the conference agreement, these demonstration projects are authorized at a funding level of $5 million for each of fiscal years 1991, 1992, and 1993.

*2. Allotments to States and Federal Set-Asides*

Section 4302 of the House bill.

*Present law*

Funds appropriated under the MCH block grant are allocated in accordance with the following formula: Of the amount appropriated each year, at least 10 percent and not more than 15 percent is retained by the Secretary for SPRANS, maternal and children training and research, genetic disease projects, and hemophilia grants. In those years in which the appropriation exceeds $478 million, the Secretary retains an additional 9 percent of fund projects for screening of newborns for sickle cell anemia and other genetic disorders. Two-thirds of the balance of the amount exceeding $478 million after the 9 percent set-aside is allocated are used by the Secretary for additional SPRANS projects and by the States for various maternal and child health services. One-third is allocated to the Secretary and to the States for primary care services for children, and for community-based service networks and case management services for children with special health care needs.

*House bill*

Authorizes changes in the allocation formula. Requires that a full 15 percent of the appropriation be allocated for the original SPRANS and related set-aside projects. Authorizes an additional 12.75 percent of the appropriation to be allocated for the new infant mortality, newborn genetic screening, and rural services set-aside. Provides that two-thirds of the funds in this set-aside will be used to support infant mortality initiatives and one-third will be targeted for newborn genetic screening projects and maternal and child health programs in rural areas.

Provides that preference for project support for infant mortality initiatives will be given to applicants which demonstrate that project activities will be carried out in areas with higher than average infant mortality rates. Requires that funds will not be provided for developing or expanding a maternal and child health center under this set-aside without assurances of the provisions of non-Federal funds at least equalling the Federal grant support. Provides that at least 25 percent of the amount targeted in the new set-aside for newborn genetic screening projects and for rural projects must be used for each.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with modifications regarding the establishment of a new Federal set-aside as specified in section (1)(c) above.

*3. Use of Allotment Funds*

Section 4303(a) of the House bill.

*Present law*

States may use MCH block grant funds for the provision health services and related activities (including planning, administration, education, and evaluation).

*House bill*

Provides that States may use MCH block grants funds for payment of salaries and other related expenses of National Health Service Corps personnel. Limits the amount of a State's block grant allocation that can be used for administration of its program to not more than 10 percent.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill.

*4. Application for Block Grant Funds*

Section 4303(b) of the House bill.

*Present law*

In order to receive their MCH block grant funds, States must submit to the Secretary a report that describes their intended use of the payments, and a statement of assurances that is designed to certify States' compliance with certain specified conditions.

*House bill*

Requires that States, in order to receive MCH block grant funds, submit an application (in a standardized form specified by the Secretary). Requires the application to be developed by, or in consultation with, the State MCH agency and be made public for comment during its development and after its transmittal.

Requires that State use at least 30 percent of their block grant allotments for preventive and primary care services for pregnant women, mothers, and infants up to age one; 30 percent for preventive and primary care services for children; and at least 30 percent for services for children with special health care needs. Provides for a waiver of this allocation if the Secretary determines that (A)(i) on the basis of its most recent annual report to the Secretary, the State has demonstrated, in its application, an extraordinary unmet need for services for one of the designated classes of individuals; (ii) the granting of a waiver is justified and will assist in carrying out the purposes of the block grant; and (B) the State provides assurances that each class of individuals will receive some services and specifies the percentages that are to be substituted for those mandated.

Requires that each State's application specify the State's block grant goals and objectives consistent with the health status goals and national health objectives for the year 2000. Requires that applications specify the information that States will collect in order to prepared annual report (See Item #5, below)

Provides for application standards that relate to the Medicaid program, ensuring coordination of activities among Medicaid, the MCH block grant, and other related Federal programs. Requires State MCH block grant agencies to provide for services to identify pregnant women and infants eligible for services under the State's Medicaid program and to assist them in applying for Medicaid assistance. Requires each provider or practitioner providing health care services under the block grant to enter into a participation agreement to deliver services to individuals entitled to care under a State's Medicaid plan.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with a modification to require that State applications contain a statewide needs assessment (to be conducted every five years) that identifies (consistent with the applicable health status goals and national health objectives established by the Secretary for the year 2000) the need for (A) preventive and primary care services for pregnant women, mothers, and infants up to age one; (B) preventive and primary care services for children; and (C) services for children with special health care needs. The conference agreement further requires that State applications include (for each fisca' year for which an application is submitted) a plan for meeting the needs identified by the statewide needs assessment as well as a description of how the State intends to use its block grant funds for the provision and coordination of services to carry out such a plan.

The conference agreement also includes a modification to require States to use at least 30 percent of their block grant funds for preventive and primary care services for children and at least 30 percent of their block grant funds for children with special health care needs. The remaining 40 percent of funds is to be dedicated—at the State's discretion—to either of these groups or to other appropriate maternal and child health services, including preventive and primary care services for pregnant women, mothers, and infants up to age one.

In addition, the conference agreement provides that States must maintain the level of funds which they provide solely for maternal and child health programs in FY 1989. Under the conference agreement, States must also provide for a toll-free telephone number (and other appropriate methods) for the use of parents to obtain information about health care providers and practitioners participating in either the Title V or Medicaid program as well as information on other relevant health and health-related providers and practitioners.

*5. State Reports*

Section 4304(a) of the House bill.

*Present law*

Each State is required to prepare and submit to the Secretary annual reports on its activities under the Title V program.

*House bill*

Requires that each State's report be prepared by, or in consultation with, the State MCH agency; that the report be prepared and submitted for review in such standardized form as specified by the Secretary; and include a description of the extent to which the State has met the goals and objectives set forth in its block grant application.

Requires that State annual reports on the block grant contain certain information and data, as follows:

(A) Number of individuals (by class of individuals: pregnant women, infants up to age one; children with special health care needs; other children under the age of 2; and other individuals) served under Title V; the proportion of each class of such individuals with health coverage; the types of services provided to individuals in each class; and the amounts spent under Title V on each type of services, by each class of individual served;

(B) Information on the status of maternal and child health in the State, including information (by county, and by racial and ethnic group) on the rate of infant mortality and the rate of low birth weight births; information (on a statewide basis) on maternal mortality, neonatal deaths, perinatal deaths, infants born with fetal alcohol syndrome, infants born with drug dependency, the proportion of women who do not receive prenatal care during their first trimester of pregnancy, and the proportion of children who, at their second birthday, have been vaccinated against measles, mumps, reubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitus B; and information on such other indicators of maternal, infant, and child health care status as the Secretary may specify;

(C) Information (by racial and ethnic group) on the number of deliveries in the State in the year, and the number of deliveries to such pregnant women who were provided prenatal, delivery, or postpartum care under the MCH block grant or who were entitled to benefits with respect to such deliveries under the Medicaid State plan in the year;

(D) Information (by racial and ethnic group) on the number of infants under one year of age who were in the State in the year, and the number of such infants who were provided services under the MCH block grant or were entitled to benefits under the Medicaid State plan at any time during the year; and

(E) Information on the number of obstetricians, family practitioners, certified family nurse practitioners, certified nurse midwives, pediatricians, and certified pediatric nurse practitioners who were licensed in the State in the year.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with a modification to require States to include within their annual report, information (by county and by racial and ethnic group) on the number of children in the State with chronic illness and the type of illness.

*6. Secretarial Report*

Section 4304(b) of the House bill.

*Present law*

The Secretary is required to report annually to the Congress on activities funded under the SPRANS set-aside.

*House bill*

Requires the Secretary to report annually to the House Committee on Energy and Commerce and the Senate Committee on Finance. Requires the report to include a description of the projects funded under the two set-asides; a summary of the information provided by the States in their annual reports to the Secretary; a compilation of maternal and child health indicators based on the data supplied by the States to the Secretary; information on the number of pregnant women and infants receiving services under either the MCH block grant or Medicaid programs; and an assessment of the progress being made to meet the health status goals and national health objectives for the year 2000.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill.

*7. Federal Assistance in Data Collection Mechanisms*

Section 4305 of the House bill.

*Present law*

The Secretary is required to designate an administrative unit to be responsible for MCH block grant support activities, including technical assistance to the States in such areas as program planning, establishment of goals and objectives, standards of care, and evaluation.

*House bill*

Includes in areas of technical assistance provided to the States the development of consistent and accurate data collection mechanisms to comply with the new annual reporting requirements.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with a modification to include among the Federal Bureau of Maternal and Child Health's support activities, assistance to the States in the development of care coordination activities. In addition, the conference agreement provides that the Federal MCH Bureau shall develop and make available to State Title V agencies, a national directory which lists the toll-free telephone numbers States are required to provide for the use of parents to access information about health and health-related providers and practitioners. (See Item #4, above)

*8. Development of Model Application Form for Maternal and Child Assistance Programs*

Section 4306 of the House bill.

*Present law*

No provision.

*House bill*

Requires the Secretary to develop and disseminate within one year of the date of enactment (in consultation with the Secretary of Agriculture) a model application form for use in applying, simultaneously, for assistance for a pregnant women or a child under age 6 under the following maternal and child assistance programs: the MCH block grant, Medicaid, the migrant and community health centers programs under sections 329 and 330 of the Public Health Service Act, the grant for the homeless under section 340 of the Public Health Service Act, the WIC program of the Child Nutrition Act of 1966, and the Head Start program. In developing such a form, the Secretary may not change any requirement with respect to eligibility under any of the programs.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with a modification to require that the Secretary also develop, within one year after enactment, a model application form for use in applying for Medicaid benefits by non-institutionalized individuals. Such model application form is to be published in the Federal Register and is to be distributed to each State agency responsible for administering the Medicaid program. Under the conference agreement, however, States may not be required to adopt the model application form as part of their State Medicaid plans.

The conference agreement includes an additional modification to require the Secretary to develop and make available to pregnant women and families with young children, a maternal and child health handbook. Under the conference agreement, the handbook is to be made available through public programs such as maternal and child health clinics (supported through either the block grant or the Medicaid program), community and migrant health centers, WIC clinics, Head Start, and the grants projects for the homeless, and is to be targeted on high-risk women.

*9. Research on Infant Mortality and Medicaid Services*

Section 4307 of the House bill.

*Present law*

No provision.

*House bill*

Requires the Secretary, through the National Center for Health Statistics, to develop a national system for linking, for any infant up to age one, the infant's birth record; any death record for the infant; and information on any claims submitted under Medicaid for health care furnished to the infant or with respect to the birth of the infant.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with a modification to require that the Secretary develop the national data system.

*10. Effective Date*

Section 4208 of the house bill.

*House bill*

Applies to fiscal years beginning FY 1990, except that provisions relating to State applications for block grant funds and to State and Secretarial reports on the block grant apply for fiscal years beginning with FY 1991.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill.

SUBTITLE D—VACCINE COMPENSATION TECHNICALS

*A. Vaccine Compensation Technicals*

VACCINE INJURY COMPENSATION TECHNICALS

Section 4402 of the House bill.

*Present law*

*(a) Petitions.*—The Vaccine Injury Compensation Program provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the U.S. Claims Court.

The Act provides that a petitioner with a civil action pending on the effective date of the Act concerning a vaccine-related injury or death may elect to withdraw the action without prejudice and enter the compensation system. Any such petitioner who does not withdraw an action is prohibited from entering the compensation system.

The Act requires a petition to contain, among other things, appropriate assessments, evaluations, and prognoses and other necessary records and documents for the determination of compensation to be paid.

*(b) Special masters.*—The Act provides for the designation of Special Masters with powers to require such evidence as may be needed to determine whether compensation should be awarded and if so, the amount of compensation to be awarded. The Act provides that the master may require the submission of relevant evidence and information, conduct hearings, and submit to the court proposed findings of fact and conclusions of law.

*(c) De novo proceedings.*—The Act provides that, upon objection by the petitioner or respondent to proposed findings of fact or conclusions of law by the special master or upon the court's own motion, the court shall undertake a review of the records of the proceedings and may thereafter make a de novo determination of any matter and issue its judgment accordingly, including findings of fact and conclusions of law, or remand for further proceedings.

*(d) Time for judgment.*—The Act requires the court to render its judgment on any petition filed under the Program as expeditiously as practicable but not later than 365 days after the date on which the petition was filed.

*(e) Compensation.*—The Act provides for the amount of compensation to be awarded to petitioners under the program. The Act also provides that the judgment of the Claims Court awarding compensation on a petition filed under the Program shall include reasonable attorneys' fees and other costs.

*(f) Technical.*—The Act provides that if a petition is filed under the Program for vaccine-related injury or death, limitations of actions under State law shall be stayed with respect to a civil action brought for such injury or death for the period beginning on the date the petition was filed and ending on the date a final judgment is entered on the petition. The Act also provides that, after the final judgment of the claims court on a petition has been entered, the person who filed the petition shall file with the court within 90 days a written election to accept the judgment or file a civil action for damages.

*(g) Vaccine information.*—The Act requires the Secretary to develop and disseminate certain information materials on each vaccine in the Vaccine Injury Table under the Program to parents and guardians of children receiving immunizations. Among other things such information shall include a summary of relevant State and Federal laws concerning the vaccine, including information on the number of vaccinations required for school attendance and the schedule recommended for such vaccinations.

*(h) Authorizations.*—The Act provides no authorization for appropriations for administrative expenses related to the Vaccine Compensation Program.

*(i) Rules changes.*—No provision.

*(j) Study.*—No provision.

*House bill*

*(a) Petitions.*—Provides that certain information must be included in the original petition to the Claims Court to initiate a compensation proceeding. Provides that the information include minimum supportive materials, such as maternal and infant doctor and hospital records and, if applicable, autopsy records. Allow petitioners to submit an identification of records that are unavailable (and the reasons for such unavailability) in lieu of submitting the materials.

Clarifies the ability of a petitioner with a civil action pending to enter the compensation system. Provides that a petitioner must petition to have his or her action dismissed in order to enter the compensation system. Provides that a petitioner whose court action is still pending may not enter the compensation system. Amends the date after which anyone who brings a civil action is prohibited from entering the compensation system to Nov. 15, 1988.

Provides that a person with a pending appeal or rehearing of a civil action as of the effective date may, if damages are denied as a result of the appeal or rehearing, enter the compensation system.

Provides that materials required to determine the amount of compensation need not be submitted until the petitioner is determined eligible for compensation.

*(b) Special masters.*—Provides that a hearing may be conducted only if the petitioner or respondent requests a hearing. Requires, rather than permits, the master to submit proposed findings of fact and conclusions of law. Makes minor technical changes to the description of the master's functions.

*(c) De novo proceedings.*—Permits the court, upon objection by the petitioner or respondent, instead of remanding for fur-

ther proceedings, to receive further evidence or recommit the matter to a special master with instructions.

*(d) Time for judgment.*—Extends the time for judgment on a petition filed with respect to a vaccine administered before the effective date of this part (Oct. 1, 1988) to not later than 18 months after the petition was filed.

*(e) Compensation.*—Makes technical amendments concerning compensation that is allowed in cases involving injuries associated with a vaccine administered before the effective date of the Act (Oct. 1, 1988). Provides that such allowable compensation shall include actual unreimbursable injury-related expenses incurred from the date of judgment, death benefits, and a total amount up to $30,000 for the combined amounts of lost earnings, pain and suffering, and attorneys' fees and costs. Amends provision concerning awarding of attorneys' fees to specify that the award is to be made only after the proceeding is complete.

*(f) Technical.*—Deletes the word "final" before "judgment" in both provisions to clarify that judgments of the court are entered only when all appeals have been resolved and are therefore final.

*(g) Vaccine information.*—Amends requirement of information to be provided to substitute for a summary of relevant State and Federal laws a summary of relevant Federal recommendations concerning a complete schedule of childhood immunizations.

*(h) Authorizations.*—Authorizes appropriations of $1.5 million from the Vaccine Injury Compensation Trust Fund for each of FY 1990 and 1991 to each of the Secretary of HHS, the Attorey General, and the U.S. Claims Courts for administrative expenses related to the Program.

*(i) Rules changes.*—Requires the U.S. Claims Court to review its rules for proceedings under the Vaccine Compensation Program and to make revisions in such rules to provide for a non-adversarial, expeditious, and informal process for the resolution of petitions filed under the Program and reissue the rules as revised in accordance with applicable Federal law governing the issuance of rules by the Claims Court.

*(j) Study.*—Requires the Secretary of HHS to evaluate the Vaccine Compensation Program and report the results to the House Committee on Energy and Commerce and the Senate Committee on Labor and Human Resources not later than January 1, 1992.

*(k) Effective date.*—Amendments made by this section apply to petitions filed after the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill with several modifications as described below.

BACKGROUND AND NEED FOR LEGISLATION

The National Childhood Vaccine Injury Act of 1986 (P.L. 99-660) created a system for compensating children for injuries received from routine pediatric immunizations. The Vaccine Compensation Amendments of 1987 (P.L. 100-203) provided for a source of payment for such compensation and began the functioning of the system.

Since that time the U.S. Claims Court, which was designed as the forum for the resolution of these vaccine injury claims, has received more than a hundred petitions for compensation for injuries associated with vaccines administered before October 1, 1988, the effective date of the program. No claims for compensation for injuries associated with vaccines administered after the effective date have yet been received.

In addition, vaccine prices, which had skyrocketed as much as 2,000 percent before the enactment of the compensation system, have stabilized. Indeed, some manufacturers have demonstrated renewed interest in the U.S. vaccine market.

Several problems have, however, emerged in the system as it has been begun. Some are technical in nature and are easily corrected.

Others are problems created by unforeseen circumstance, such as the delay in initial receipt of claims. These difficulties, while not technical, are also easily corrected.

But most important are other, more fundamental problems—principally in the nature of the adjudication of petitions—which cannot be remedied by statutory change alone. Correction of these problems will require revision of the vaccine compensation process of the Special Masters and U.S. Claims Court and a re-dedication of all parties to the creation of an expeditious, less adversarial, and fair system.

The Conferees propose statutory amendments to address these difficulties with serious concern about the situation that has arisen since the receipt of the first claims. The Report accompanying the original Act (H. Rept. No. 99-908, 99th Cong., 2d Sess., Sept. 26, 1986) makes clear that the Congress intended a quick, flexible, and streamlined system. That Report called for a compensation procedure that administered awards "quickly, easily, and with certainty and generosity." The system was intended to be "fair, simple, and easy to administer" and "to compensate persons with recognized vaccine injuries without requiring the difficult individual determinations of causation of injury." The powers of discovery within the proceeding were given over to the special master, with "neither party . . . given to power to cross-examine witnesses, file interrogatories, or take depositions" in order "to replace the usual rules of discovery in civil actions in Federal Courts."

The Conferees have come to understand that rather than establishing such a system, all participants have, to some degree, maintained their traditional adversarial litigation postures. The Claims Court has issued rules for vaccine proceedings that force proceedings to be formal and that virtually foreclose any opportunity for petitioners or respondents to proceed without litigators at their sides. Petitioners have failed to include adequate information in initial petitions and have pursued traditional rights of exclusion of evidence. Respondents have withheld sufficient personnel and administrative support and mounted defenses incompatible with a no-fault system of compensation.

In reaching this agreement, the Conferees reiterate their intent that the vaccine injury compensation system be informal, flexible, and expeditious, and that all participants proceed accordingly. The re-invention of the adversarial process will serve neither to compensate injured children nor maintain the stability of the immunization programs of the U.S.

The Conferees also reiterate their expectation that the Special Master and the powers given to the Master will allow the proceedings to be direct and straightforward. The Master should be able to require from petitioners and respondents information sufficient to evaluate the petition without resort to complex proceedings.

With such re-dedication to the original goals of the program, the Conferees anticipate that all participants will benefit. The system will provide compensation, eliminate the need for litigation and assure the continued availability of and public confidence in immunizations in the U.S.

SECTION-BY-SECTION ANALYSIS

*(a) Reference.*—(a) Subsection (a) established that all references are made to the Public Health Service Act.

*(b) Publication of program.*—Subsection (b) requires that the Secretary of Health and Human Services (DHHS) publicize the availability of the program.

*(c) Petitions.*—Paragraph (1)(A) clarifies that certain information must be included in the original petition to the Claims Court in order to initiate a compensation proceeding. The Conferees have received reports from the HHS and the Department of Justice (DOJ) that petitions have been accepted containing little or none of the information needed to review the claim for compensation. The Conferees have also heard from representatives of petitioners that the granting of the authority to initiate claims of compensation to the respondents would work a hardship on petitioners and could result in delay. The Conferees acknowledge that the current content required by all of section 2111(c) could form the basis for delay. While the Court has been responsive in its promulgation of General Order 24, which allowed a suspension of proceedings while medical records were completed, the Conferees believes it necessary to set a clear standard of petition contents. The Conferees have, therefore, set forth a list of basic records that must be included and have retained the broader list of records that should also be made available if needed for considering the petition for compensation. The Conferees anticipate that petitions for compensation can be reviewed by the Court for completeness under these standards and that the statutory time frame for compensation proceedings will commence from the receipt of a petition containing the specified materials. As specified below, materials not available to petitioners at the time of filing the petition may be described in lieu of provision, although the Conferees would expect respondents and the Court to evaluate the compensability of a petition on the basis of information received. The Conferees do not intend to preclude filings from being deemed adequate because of minor, inadvertent omissions or when material is unavailable to the petitioner.

Paragraph 1(B) makes a conforming amendment to direct the clerk of the Claims Court to forward petitions to the Chief Special Master for assignment.

Paragraph 2 makes a technical amendment.

Paragraph 3 provides technical clarification of the ability of a petitioner with a civil court action pending to enter the compensation system. Subparagraph (A) clarifies that a petitioner must petition to have his or her action dismissed and may not simply allow the action to lie dormant during the compensation proceeding. Subparagraph (B) clarifies that a plaintiff in such an action whose action is still pending may not enter the compensation system. In keeping with the purposes of the Act and this conference agreement, the Conferees intend that plaintiffs in pending actions who wish to have such actions dismissed without prejudice so

that they may enter the compensation system be allowed to do so without prejudice or other disincentives.

Paragraph 4 amends the Act's restrictions on entry into the compensation system. The Act prohibits anyone who brings a civil action after the effective date (October 1, 1988) from entering the compensation system. The Conferees have received information, however, that the Claims Court did not accept petitions for compensation until November 15, 1988. Persons who chose between a civil action and a petition during that six-week period did not, therefore, have a true choice. Rather than statutorily barring such persons from the system, the Conferees intend to allow such persons to petition to have their civil actions dismissed (as provided in Section 2111(a)(5)) and to enter into the compensation system.

Paragraph 5 inserts a new paragraph to allow petitions to be brought by persons who had appeals of civil actions pending on the effective date of the Act. Under the Act, plaintiffs in a civil action who were denied damages before October 1, 1988, are allowed to file petitions for compensation. Similarly, plaintiffs in a civil action pending on October 1, 1988, may petition to have such action dismissed before judgment and may file petitions for compensation. Conversely, plaintiffs who have civil actions pending on October 1, 1988 and do not have their civil actions dismissed may not file a compensation petition. Finally, if a person brings a civil action after deadline (originally October 1, 1988; amended by Paragraph (3) above to be November 15, 1988), he or she may not file a compensation petition. In crafting these original transition rules, the situation was not anticipated in which a person had an appeal of a civil action pending on October 1, 1988, and did not have such action dismissed. The conference agreement would amend the Act to allow such a person to file a petition for compensation if damages were ultimately denied in the civil action (whether in the original trial verdict or in any appeals of the trial verdict).

Paragraph (6) adds a new paragraph to the Act to specify (as described above at Paragraph 1) the minimum supportive materials that must be supplied in order to initiate a compensation proceeding. Minimum materials include maternal and infant doctor and hospital records and, if applicable, autopsy results. The conference agreement would also add a new paragraph to allow petitioners to submit an identification of records that are unavailable (and the reasons for their unavailability) in lieu of submitting the materials. The Conferees intend for the parties and the Court to construe this provision broadly so as to require the submission of a meaningful file of information but not so as to hold up proceedings unreasonably if petitioner makes a good faith effort to supply records and name unavailable ones. The Conferees intend that petitioner also make every effort to continue to obtain unavailable records and that petitioners submit records as they become available.

Paragraph 7 is a very technical amendment.

Paragraph 8 makes a conforming amendment to make a reference parallel to that established by Paragraph 3 above.

*(d) Jurisdiction.*—Subsection (d) clarifies that the Special Masters of the U.S. Claims Court have jurisdiction over the vaccine compensation proceedings.

*(e) Special masters established.*—Subsection (e) establishes in statute the Office of Special Masters, whose responsibility is to conduct the proceedings on vaccine compensation proceedings. There are to be no more than eight special masters and each master is to be appointed by a majority of the court and may be removed for cause. Terms are to be for four years and current masters are to serve out such a term. Compensation is established. The chief special master is to be responsible for administration of the office and is to report annually to the Congress on the Program.

The Conferees would note their concern that special masters be well-advised on matters of health, medicine, and public health. No-fault vaccine compensation proceedings raise fewer legal issues than issues of medicine and masters need not be lawyers by training. Masters with health training and background should be considered for appointment and those without such training should be encouraged to seek independent experts to provide information.

*(f) Parties.*—Subsection (f) requires that the Secretary of HHS participate in proceedings and that the Attorney General represent HHS in such proceedings. The Conferees are disturbed by the recent absences of parties representing the government in such actions and have provided for funds (described below) to allow fuller participation. Concomitantly, the Conferees have chosen to require that both government agencies involved in these actions participate in them.

*(g) Special master functions.*—Subsection (g) provides the description of the basic functions of the special master in the vaccine compensation proceedings.

The special masters are to recommend to the Court for its promulgation rules for proceedings in a manner conforming to the applicable law regarding issuance of rules and opportunity for public comment and consultation. The Conferees intend that the revisions provide for a less adversarial, expeditious, and informal proceedings. The Conferees have received reports that the current rules of the Court are formal rules akin to those of the Federal courts for civil litigation. The Conferees once more reiterate their desire that the vaccine proceedings be made as swift and uncomplicated as possible.

The Act provides the master with powers to require such evidence as he or she may need to determine whether compensation should be awarded and, if so, the amount of compensation to be awarded. The Act, however, provided these powers in a non-parallel fashion, giving all authorities in determining whether to award and not explicitly providing some in determining how much the award should be and setting a standard of "appropriate" in one authority and "reasonable and necessary" in others.

The conference agreement revises these authorities to make them parallel and consistent. All authority granted to the master may be exercised in the determination of whether compensation should be awarded and in the determination of how much the award should be. All authority is to be used when reasonable and necessary to achieve these results.

The Conferees reiterate their concern that these authorities not be used to re-create an adversarial process before the special masters. The system is intended to allow the proceedings to be conducted in what has come to be known as an "inquisitorial" formal, with the master conducting discovery (as needed), cross-examination (as needed), and investigation. As was stated in the Report accompanying the original Act, "In order to expedite the proceedings, the power of the special master is intended to replace the usual rules of discovery in civil actions in Federal courts." The parties are, of course, free to request that the Master develop the record by obtaining necessary information. (For example, the master might be asked to subpoena further records.)

The Conferees also believe that the masters may, in some cases, be well-advised to retain independent medical experts to assist in the evaluation of medical issues associated with eligibility for compensation and the amounts of compensation to be awarded. In cases where petitioners assert a theory of vaccine causation of injury and respondents claim other causation, the master may find it most expeditious to receive outside advice rather than attempt a full adversarial proceeding on the question of causation. The Act authorizes such action by the master and the Conferees would encourage its use as appropriate.

Special masters are to make their decision on the award and amount of vaccine compensation within 240 days, exclusive of suspended time granted, as described below. The decision is to include findings of fact and conclusions of law and may be reviewed by the Claims Court, under the conditions described below.

The conference agreement allows for the first time a suspension of time during the proceedings that is not to count in the aggregate time allowed for compensation actions to proceed. The master may, at the request of either party, allow one automatic 30-day suspension of proceedings. If the master determines that further time is necessary for the action on the petition to proceed, the master is also authorized to allow additional suspensions, although the aggregate time period is not to exceed 150 days in total.

*(h) Action by the United States Claims Court.*—The conference agreement provides for an appeal of the master's decision to the U.S. Claims Court under very limited circumstances. If such a motion for review is filed within the applicable time limits, the Court is then to decide to do one of three things: It may uphold the master's decision; it may set aside any part of the master's decision that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and may issue its own findings and conclusions; or it may remand the petition for further proceedings by the master. In any event, the court is to conclude its actions on the petition within 120 days, exclusive of up to 90 days that may be used by masters for remands. The Conferees have provided for a limited standard for appeal from the master's decision and do not intend that this procedure be used frequently but rather in those cases in which a truly arbitrary decision has been made.

*(i) Appeals.* Subsection (i) specifies that appeals from the judgment of the Claims Court are to be made within 60 days.

*(j) Determination of eligibility and compensation.*—Subsection (j) makes conforming changes.

*(k) Table.*—Subsection (k) makes a technical correction in references in the Vaccine Injury Table.

*(l) Compensation.*—Paragraph (1) of Subsection (g) makes technical changes to clarify the compensation that is to be allowed in cases involving injuries associated with a vaccine administered before the effective date of the Act (October 1, 1988). The Con-

ferees are aware that there may be some confusion about the allowable compensation and intend that pre-enactment injuries be eligible for actual unreimbursable expenses incurred from the date of judgment (as provided in 2115(a)(1)(A) of the Act), death benefits (as provided in 2115(a)(2)) and a total amount up to $30,000 for the combined amounts of lost earnings (as provided in 2115(a)(3)), pain and suffering (as provided in 2115(a)(4)), and attorneys' fees and costs (as provided in 2115(e)). This represents no change in policy from the Act—allowing only one award of attorney's fees to be determined by the special master and entered as the Court's judgment—and is only intended to clarify the amount of damages.

Paragraph (2) makes technical and conforming changes to clarify that the special master's or Claims Court award for amounts to cover attorney's fees and costs is to be included after proceedings are complete.

Paragraph (3) clarifies that in any awards the special master may order the purchase of an annuity or use awarded compensation in a manner determined to be in the best interests of the petitioner. In cases of injuries associated with vaccines administered after the effective date of the program, awards are to be paid in four installments, except that any attorneys' fees and costs that are awarded may be paid in a lump sum.

Paragraph (4) amends the Act to specify that Medicaid is to be considered a second payor for health care costs to the Vaccine Injury Compensation Trust Fund. Medicaid serves as second payor to all other sources of payment for health care, including private litigation, and the compensation program is amended to follow that precedent.

Paragraph 5 makes a technical amendment.

Paragraph 6 adds an additional year of authorization of appropriations for making payments for compensation for injuries associated with vaccines administered before the effective date.

*(m) Technicals.*—Subsection (m) makes corrections in citation and cross-references.

*(n) Election.*—Subsection (n) clarifies that a petitioner need not make the election to accept or reject compensation until after the mandate of any appellate court has been issued. The section also clarifies any possible ambiguity about the ability of a petitioner who has accepted compensation to bring a tort action in court: The Conferees do not intend that a petitioner who accepts compensation be allowed the opportunity to enter court against a manufacturer or an administrator and the Conferees believe that the law is clear on this point in the provisions of 2111(a)(2).

Paragraph 2 makes conforming amendments regarding time limitations.

*(o) Trial.*—Subsection (o) makes conforming amendments.

*(p) Vaccine information.*—Subsection (p) amends the Act's requirement of vaccine information materials to be provided to parents and guardians of children receiving immunizations. The Act provided for these materials to include a summary of relevant State and Federal laws on vaccination requirements. The conference agreement substitutes a summary of relevant Federal recommendations concerning the schedule of childhood immunizations.

*(q) Safer vaccines.*—Subsection (q) establishes a task force on safer childhood vaccines.

*(r) Authorizations.*—The Act provides no authorizations for administrative expenses related to the Compensation Program. Section 4402(j) authorizes funds to be used for administrative expenses for FY 90 and 91 for DHHS, DOJ, and the Claims Court. The Conferees are concerned by the inadequate support and personnel the DHHS and DOJ have committed to the system and are disturbed by the failure of DOJ to make appearances and act as a representative of DHHS in these cases and the Conferees expect DOJ to return to its responsibilities to represent the government in these cases (to the extent that the government may require representation). The Conferees do not intend that these funds be used to substitute for existing resources devoted to these programs and expect DHHS and DOJ to continue to provide at least the current level of support in addition to these authorizations. As is made clear by other sections of this report, the Conferees also do not intend that any of the three recipients of these authorized funds use them to prolong proceedings in a legalistic or unnecessarily detailed manner. These funds are provided to expedite the review and processing of information in order to simplify proceedings and allow for a quick resolution of claims.

*(s) Applicability and effective date.*—Subsection (s) provides for transition rules to allow for the implementation of changes made by these amendments. Petitions filed after the date of enactment of this section are to be filed in conformance with these amendments. Petitions pending in which the evidentiary record is closed are to proceed under the Act as in effect before the enactment of these amendments, except that the Claims Court may receive further evidence in conducting its review of the proposed findings and conclusions of a master. Petitions currently pending in which the evidentiary record is not closed are to proceed under the terms of these amendments.

The Conferees recognize that some disruption of proceedings is certain to occur in action on some petitions as a result of these amendments. To allow for a smoother transition, the conference agreement provides for an immediate, 30-day suspension of all proceedings. This 30-day period is not to count against any time limitations of the Act or the amendments. The Conferees recognize that even with this transition period, complications will occur in a few cases, and the Conferees would encourage the masters and the Court, as well as the parties, to pursue flexible solutions to allow for the equitable resolution of difficulties as they arise.

*(t) Study.*—Subsection (t) requires that DHHS evaluate the National Vaccine Injury Compensation Program and report the results to the Committee on Energy and Commerce of the House and Committee on Labor and Human Resources of the Senate.

*(u) Severability.*—The conference agreement further provides for a severability rule for consideration of these amendments as distinct from the original Act. The Act provides for a non-severability clause, specifying that if any portion of the Act were found to be a violation of the Constitution, the entire system of compensation and tort change would fall. The severability provisions of these amendments makes no change in that original clause, but specifies that, if changes made by these amendments are found to be a violation of the Constitution, only that amendment is to be considered invalid and the Act itself is to continue in effect.

*B. Other Health Related Provisions*

*1. Congressional Access to Information*

Section 4401 of the House bill.

*Present law*

Section 301(j) of the Federal Food, Drug and Cosmetic Act prohibits the release of certain information.

*House bill*

Amends section 301(j) of the Federal Food, Drug and Cosmetic Act to clarify that the section does not authorize the withholding of information from either the House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee or any joint committee of Congress, or any subcommittee on such joint committee. Effective date: enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House bill.

*2. Study by GAO With Respect to Loss By Retired Individuals of Health Benefits Due to Liquidation of Employer in Bankruptcy*

Section 4403 of House bill.

*Present law*

Many employers include post-retirement health benefits (retiree health benefits) in their employee benefit packages. These benefits may be the only source of health insurance for a retiree until he or she achieves Medicare eligibility. Once on Medicare, the benefits are used to supplement Medicare coverage. However, the future of post-retirement health benefits is growing increasingly uncertain as employers attempt to adjust to their rising costs. Some companies have attempted to eliminate their liability for retiree health benefits through Chapter 11 reorganization under the U.S. Bankruptcy Code. COBRA of 1985 included a requirement that employers with 20 or more employees that offer a group health insurance plan offer qualified employees and their families the option of continued health insurance under the employer's group plan when faced with the loss of coverage because of certain events. In COBRA of 1986, Congress added as a qualifying event under Title X of COBRA a proceeding in the case under the bankruptcy provisions of Chapter 11 of the U.S. Code, commencing on or after July 1, 1986. In such cases, a loss of coverage includes a substantial elimination of the beneficiary's health insurance coverage within a year before or after the date the bankruptcy proceedings commenced. In addition, under the Retiree Benefits Bankruptcy Protection Act (P.L. 100-334), Congress added a new section to the Bankruptcy Code governing the rights of retirees of a corporation undergoing a Chapter 11 reorganization.

Consequently, under a chapter 11 bankruptcy, employees have a source of continued health coverage and certain protections in the case of reorganization. Under chapter 7 bankruptcy, however, companies liquidate and pay off certain creditors, and employers do not have to provide continued health insurance coverage to retirees.

*House bill*

*(a) In general.*—Requires the GAO to conduct a study for the purpose of (1) identifying methods for providing health benefits to any retired individual whose employed-provided health benefits have been or may be terminated as a result of the employer receiving a discharge [of debt obligations] under chapter 7 of the Bankruptcy Code, (2) determining the number of such individuals and the extent to which such individ-

uals have experienced, as a result of such discharge, a reduction in health benefits; (3) determining the extent to which employer-provided health benefits for retired individuals have been reduced since 1984 for retired individuals; and (4) determining the projected trend for the reduction of health benefits for retired individuals.

*(b) Consideration of certain methods.*—Requires that in carrying out the study described above, the GAO shall consider the feasibility of the following: (1) expanding the authority of the Pension Benefit Guaranty Corporation to include the provision of health benefits to retirees of firms receiving a discharge under chapter 7, or alternatively, establishing a separate corporation for that purpose; (2) providing for the eligibility of such individuals for benefits under Medicare or Medicaid, including eligibility through income-related cost-sharing methods; (3) the establishment by the States of insurance programs to provide health benefits for such retirees; (4) the use of excess pension funds to establish funds for the provision of health benefits to such retirees; (5) with respect to the group health benefits of the involved employers, providing for the mandatory conversion of the group plan to an individual plan, with continuation of the group premium rate; and (6) such other methods as the Comptroller General determines to be appropriate.

*(c) Costs and extent of benefits.*—Provides that in carrying out subsection (b) as described above, the GAO shall determine, for each of the methods considered under the section: (1) the cost to the Federal Government and the Governments of the States; (2) the cost to individuals; (3) the extent, scope, and duration of health benefits to be provided; and (4) the administrative structure required for implementation and the cost of such administrative structure. Effective date: enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill.

## TITLE VII—REVENUE RECONCILIATION PROVISIONS

### A. Extensions of Certain Expiring Tax Provisions

#### *1. Exclusion of Employer-Provided Educational Assistance*

*Present law*

Under present law, employer-provided educational assistance is generally excludable from gross income if the education is job-related. Prior to 1989, employer-provided educational assistance was excludable from an employee's gross income for income and employment tax purposes regardless of whether the education was job-related. The amount of the exclusion was limited to $5,250 per year and did not apply to graduate-level courses. This exclusion expired for taxable years beginning after December 31, 1988.

*House bill*

Under the House bill, the exclusion for educational assistance is restored retroactively to the date of expiration and is extended so that it expires for taxable years beginning after December 31, 1991. The prior-law dollar limit and graduate-level course restriction continue to apply. The bill also clarifies the treatment of educational assistance under the working condition fringe benefit rules.

The provision is effective for taxable years beginning after December 31, 1988.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, except that the exclusion is extended so that it expires for taxable years beginning after September 30, 1990. For taxable years beginning in 1990, the exclusion is limited to amounts paid by the employer on or before September 30, 1990.

#### *2. Exclusion for Employer-Provided Group Legal Services*

*Present law*

Under present law, amounts contributed by an employer to a group legal services plan on behalf of an employee generally are includible in the employee's gross income.

Under prior law, amounts contributed by an employer to a qualified group legal services plan for an employee (or the employee's spouse or dependents) were excluded from the employee's gross income and employment tax purposes (sec. 120). The exclusion also applied to any services received by an employee or any amounts paid to an employee under such a plan as reimbursement for the cost of legal services for the employee (or the employee's spouse or dependents). The maximum amount that could be excluded from gross income was $70 per year. The exclusion for group legal services benefits expired for taxable years ending after December 31, 1988.

In addition, under prior law, an organization, the exclusive function of which was to provide legal services or indemnification against costs of legal services as part of a qualified group legal services plan, was entitled to tax-exempt status (sec. 501(c)(20)). The tax exemption for such an organization expired for years ending after December 31, 1988.

The Deficit Reduction Act of 1984 required that employers file information returns with respect to qualified group legal services plans (sec. 6039D). The purpose of this requirement was to collect data with respect to the use of such plans so as to provide Congress with a means to evaluate the effectiveness of the exclusion.

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

The exclusion for employer-provided group legal services and the tax exemption for group legal services organizations are retroactively reinstated and extended so that they expire for taxable years beginning after September 30, 1990. For taxable years beginning in 1990, the exclusion is limited to amounts paid for group legal services coverage provided on or before September 30, 1990.

The provision is effective for group legal services provided in taxable years ending after December 31, 1988, or taxable years of group legal services organizations ending after December 31, 1988.

#### *3. Targeted Jobs Tax Credit*

*Present law*

A tax credit is available on an elective basis to employers of individuals described in at least one of nine targeted groups. The nine groups consist of individuals who are either recipients of payments under means-tested transfer programs, economically disadvantaged (as measured by family income), or disabled. The credit generally is equal to 40 percent of the first $6,000 of qualified first year wages. A credit equal to 40 percent of up to $3,000 of wages to any disadvantaged summer youth employees is also allowed. The employer's deduction for wages must be reduced by the amount of the credit. The credit is scheduled to expire December 31, 1989.

Present law also authorizes appropriations for administrative and publicly expenses relating to the credit through September 30, 1989. These monies are to be used by the Internal Revenue Service (IRS) and Department of Labor to inform employers of the credit program.

*House bill*

The credit is extended for two years, through December 31, 1991, with one modification. The modification would require that employers: (1) specifically identify the categories (but not to exceed two) for which the individual is believed to be eligible when requesting certification and (2) indicate that a good faith effort was made to determine that the individual is eligible for the credit.

The authorization for appropriations is extended for two years, October 1, 1989–September 30, 1991.

The provision applies with respect to targeted-group individuals who begin work for the employer after December 31, 1989, and before January 1, 1992. Under the provision, the credit does not apply with respect to individuals who begin work for trhe employer after December 31, 1991.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, except that the credit is extended for nine months. The provision applies with respect to targeted-group individuals who begin work for the employer after December 31, 1989, and before October 1, 1990. Under the provision, the credit does not apply with respect to individuals who begin work for the employer after September 30, 1990.

The authorization for appropriations is extended for one year, October 1, 1989–September 30, 1990.

#### *4. Mortgage Revenue Bonds and Mortgage Credit Certificates*

*Present law*

Qualified mortgage reveune bonds (MRBs) generally are used to finance the purchase or qualifying rehabilitation or improvement of single family, owned-occupied homes. The (MRBs) must meet purchase price, income eligibility limitations and other restrictions.

Qualified governmental units may elect to exchange qualified mortgage bond authority for authority to issue mortgage credit certificates (MCCs). MCCs entitle homebuyers to nonrefundable income tax credits (not to exceed $2,000 per year) for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, and MCC remains in effect as long as the residence being financed continues to be the certificate-recipient's principal residence. MCCs generally are subject to the same eligibility requirements as qualified mortgage bonds.

The authority to issue (MRBs) and to exchange (MCCs) with respect to qualified bonds is scheduled to expire on December 31, 1989.

*House bill*

The House bill extends the MRB and MCC programs for two additional years (i.e., until December 31, 1991).

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, except that the MRB and MCC programs are extended for nine months (i.e., until September 30, 1990).

*5. Qualified Small-Issue Bonds*

*Present law*

Interest on certain small issues of private activity bonds is exempt from tax if at least 95 percent of the net proceeds of the bonds is to be used to finance manufacturing facilities or certain land or property for first-time farmers ("qualified small-issue bonds").

To issue a qualified small-issue bond, the issuer must received an allocation from the State private activity volume cap. Authority to issue qualified small-issue bonds expires December 31, 1989.

*House bill*

The House bill extends authority to issue qualified small-issue bonds for two years (through December 31, 1991).

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, except that the provision is extended for nine months, through September 30, 1990.

*6. Business Energy Tax Credit for Certain Property*

*Present law*

The energy investment tax credit for solar and geothermal properties is 10 percent. The credit for ocean thermal property is 15 percent. These credits are scheduled to expire after December 31, 1989.

*House bill*

The energy investment tax credit is extended only for geothermal, property for two years, i.e., through December 31, 1991, at the current 10-percent credit rate.

The extension is effective after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with modifications to extend the expiring credits through September 30, 1990, for solar, geothermal, and ocean thermal energy properties at the present-law credit rates.

*7. Deduction for Health Insurance Expenses of Self-Employed Individuals*

*Present law*

Under present law, a self-employed individual may deduct 25 percent of the health insurance expenses of the individual and the individual's spouse and dependents. Also under present law, a more than 2-percent shareholder of an S corporation is treated as a partner in a partnership for purposes of the employee fringe benefit provisions of the Code. The 25-percent deduction expires for taxable years beginning after December 31, 1989.

*House bill*

Under the House bill, the 25-percent deduction for health insurance expenses of self-employed individuals is extended so that it expires for taxable years beginning after December 31, 1991. The House bill also provides rules for applying the deduction in the case of more than 2-percent shareholders of S corporations. The provision is effective for taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, with the modification that the 25-percent deduction expires for taxable years beginning after September 30, 1990. In addition, in the case of taxable years beginning in 1990, only expenses for health insurance coverage for periods on or before September 30, 1990, are to be taken into account in determining the amount deductible, and the amount of earned income for an individual for the portion of the 1990 taxable year ending October 1, 1990, shall be determined on a pro rata basis.

*8. Low-Income Rental Housing Tax Credit*

The Senate amendment contains no provision for the extension or modification of the low income housing tax credit. However, the Finance Committee amendment to the Revenue Reconciliation bill did contain certain provisions which were agreed to by the conference committee.

A. EXTENSION OF CREDIT

*Present law*

Under present law, authority to allocate low-income housing tax credits expires December 31, 1989.

*House bill*

The House bill provides for a permanent extension of the low-income housing tax credit.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement extends the credit for one year (through December 31, 1990); however the State housing credit ceiling applicable to any State will equal $0.9375 multiplied by the State population. The conference agreement also permits the credit to be claimed for eligible property financed with tax-exempt bonds provided that: (i) the property so financed is placed in service within two years after the bonds are issued; and (ii) at least ten percent of the estimated project costs are incurred by the close of the calendar year in which the bonds are issued.

B. CARRYOVER OF CREDIT AUTHORITY

*Present law*

Unused credit authority may not be carried forward, nor may one State's credit authority be made available for projects in another State.

*House bill*

The House bill allows a one-year carryforward of unused credit authority by allocating agencies.

*Senate amendment*

No provision.

*Conference agreement*

The Conference agreement follows the House bill, with an amendment which increases an allocating agency's credit volume cap by the amount of credit previously allocated to a project that does not become a qualified low-income housing project within specified time limits. In addition, any authority unused, by the allocating agency, after the one-year carryforward provided in the House bill, is reallocated to other States through a national pool of unused authority. The conferees intend that State housing credit allocations are made to projects only when there is a reasonable expectation that the project will be placed in service within the required time period.

C. PAYMENT OF CREDIT

*Present law*

The owner of a qualifying property receives the credit over 10 years but must maintain compliance with low-income restrictions for 15 years.

*House bill*

The House bill generally retains present law, but allows the taxpayer to elect to extend the period over which the credit is received to 15 years so that it coincides with the compliance period.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision. The conferees direct Treasury to issue guidance on recapture within 6 months after the date of enactment of this legislation.

D. CREDIT RECAPTURE

*Present law*

The accelerated portion of the credit is recaptured if the qualified basis is reduced or if the property is disposed of without posting a bond satisfactory to Treasury.

*House bill*

The House bill eliminates recapture if election of the 15-year credit period is made. If noncompliance occurs, in addition to elimination of future credits, owners must pay penalty equal to one year's credit.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision. The conferees direct Treasury to issue guidance on recapture within 6 months after the date of this legislation.

E. EXTENDED LOW-INCOME USE AND RIGHTS OF FIRST REFUSAL

*Present law*

A building for which the owner receives a credit allocation is subject to a 15-year compliance period during which that part of the building for which the credits are claimed must be rented to low-income tenants at restricted rents.

*House bill*

The House bill provides that at the end of the initial compliance period: (1) the owner may not evict low-income tenants and (2) the rents of low-income tenants must remain at the levels which would be permissible if the building was still subject to the rules in effect during the compliance period.

Also, the House bill provides that the allowance by the owner of certain rights of first refusal to low-income tenants will not affect tax benefits associated with the credit.

*Senate amendment*

No provision.

*Conference agreement.*

The conference agreement does not include the House bill provision. Instead, the conference agreement requires a 30-year ex-

tended low-income use agreement for credit eligibility. If the taxpayer is unable to transfer property at the end of the initial (15-year) compliance period for continued low-income use, the allocating agency, upon being given written notice of the taxpayer's intent to dispose of the property, is allowed one year to find an eligible buyer at a specified price based on outstanding indebtedness and investor equity contributions. The taxpayer may trigger this one-year period any time after the 14th year of the compliance period. If no such buyer is located, the property may be converted to market rate use with the qualification that existing low-income tenants may not be evicted within three years after the end of the compliance period. The conference agreement follows the House bill on rights of first refusal.

F. ALLOWANCE OF CREDIT FOR ACQUISITION OF EXISTING PROPERTY AND SUBSTANTIAL REHABILITATION

*Present law*

A 70-percent present value credit may be claimed for the taxpayer's basis in both (1) new construction and (2) qualified substantial rehabilitation expenditures provided that the property is not federally subsidized.

A 30-percent present value credit may be claimed for the taxpayer's basis in qualified acquisition property. To qualify for the acquisition credit, substantial rehabilitation need not be undertaken. The 30-percent credit is also available to federally subsidized buildings.

*House bill*

Under the House bill, no credit is allowed for acquired properties unless substantial rehabilitation is done. If there is substantial rehabilitation, then all rehabilitation expenditures qualify for a 70-percent credit, and other eligible acquisition costs qualify for a 30-percent credit.

The rehabilitation expenditures must be on the low-income units or common areas substantially benefiting them.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill. The conferees intend that no credit be allocated to an existing building which is not in need of substantial rehabilitation.

*(1) Minimum qualifying expenditure*

*Present Law*

To qualify as substantial rehabilitation, qualifying expenditures must average at least $2,000 of qualified basis per low-income unit, but need not be made on the low-income units. Expenses may be incurred over a 24-month period.

*House Bill*

Increases the minimum qualifying expenditure for substantial rehabilitation from $2,000 of qualified basis per low-income unit to the greater of $3,000 of qualified basis per low-income unit or 10% of unadjusted basis. Requires that expenditures be allocable to low-income units. Credit period for existing buildings does not begin before the first taxable year of the credit period for the rehabilitation expenditure.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

*(2) Exception for buildings owned by governmental units*

*House bill*

Buildings which were owned by, or on behalf of, a governmental unit may continue to qualify for the 30-percent present value credit on both qualified acquisition property and rehabilitation expenses if rehabilitation expenditures average at least $3,000 of qualified basis per low-income unit. Alternatively, these properties will be eligible for the 70-percent present value credit on rehabilitation expenses, if they satisfy the $3,000/10 percent rule.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

G. PASSIVE LOSS RESTRICTION ON CREDIT USE

*Present law*

Credits from passive activities generally are limited to the tax attributable to the passive activities. A special $25,000 allowance is provided in the case of passive activity losses and the deduction equivalent amount of credits attributable to rental real estate activities. In the case of low-income housing and rehabilitation tax credits, the $25,000 (deduction equivalent) amount is allowed regardless of whether the taxpayer actively participates in the activity, and is phased out ratably as the taxpayer's adjusted gross income, with certain modifications, increases from $200,000 to $250,000.

*House bill*

The $25,000 deduction equivalent allowance is modified by removing the $200,000 to $250,000 adjusted gross income phaseout, in the case of low-income housing tax credits.

*Senate agreement*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

H. TAX-EXEMPT BOND FINANCED PROPERTY: ANNUAL CREDIT LIMITATION

*Present law*

When 70 percent or more of the aggregate basis of a building and the land on which it is located is financed with the proceeds of tax-exempt bonds which are subject to the State's bond volume cap the owner may claim the 30-percent present value credit for the entire eligible basis of the building without receiving an allocation under the State's annual credit cap.

*House bill*

The House bill expands the present-law exception from the credit allocation requirement to properties where 50 percent or more of the aggregate basis of the building and the land on which it is located is financed by bonds subject to the State bond volume cap.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

I. HIGH-COST AREAS

*Present law*

A maximum 70-percent present value credit is available for new construction and substantial rehabilitation expenditures.

*House bill*

The House bill permits the State allocating agency to increase the maximum credit (up to 91 percent present value) available for buildings in certain high-cost areas.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with respect to high-cost areas, with a modification which extends the Secretary of HUD's authority to designate, as difficult-to-develop areas, certain qualified census tracts. Within such qualified census tracts, the eligible basis of a new building or the eligible basis of rehabilitation expenditures in the case of an existing building undergoing substantial rehabilitation for depreciation, as is the case for high cost areas.

A qualified census tract is any census tract of a metropolitan statistical area in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income. No more than 20 percent of the population of a metropolitan statistical area may be designated as satisfying the requirements of a qualified census tract.

J. 10-YEAR RULE

*Present law*

Generally, properties placed in service within the last 10 years are ineligible for the credit.

Exceptions are provided for buildings transferred in which the new owner retains the basis of the previous owner. When the transferor is a qualified tax-exempt organization or a governmental entity, the 10-year rule is applied by looking to the placed-in-service date of the most recent taxable owner.

In addition, exceptions to the 10-year rule are provided (sec. 42(d)) for certain federally assisted properties, a default on which would result in a Federal Government budget outlay.

*House bill*

The House bill grants two new exceptions from the 10-year rule:

(1) for low-income buildings the mortgages on which are subject to repayment if the exception is necessary to avert conversion of the properties to market rate use; and

(2) for certain buildings acquired from failed financial institutions.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill. The conferees intend to clarify that the Resolution Trust Corporation may satisfy the conservator or receiver requirement in the conference agreement.

K. CREDIT AND HUD SECTION 8 PROGRAMS

*Present law*

The credit is available to qualifying properties which also receive direct Federal assistance under HUD Section 8 programs.

*House bill*

The House bill provides that only the 30-percent credit is available to property receiving assistance under the HUD Section 8 Moderate Rehabilitation program.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement denies any credit to property receiving assistance under the HUD Section 8 Moderate Rehabilitation program.

L. COMPLIANCE WITH LOCAL BUILDING AND HEALTH REGULATIONS

*Present law*

No sanction is imposed for credit properties in violation of State or local health or building codes or regulations.

*House bill*

The House bill provides that the credit is not available to properties in violation of State and local health or building rules or regulations. If the violation is corrected within a specified period of its report, the building is treated as having been in compliance notwithstanding the temporary violation.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

M. SINGLE ROOM OCCUPANCY UNITS, TRANSITIONAL HOUSING FOR THE HOMELESS

*Present law*

A low-income unit must not be used on a transient basis. A single room occupancy unit is not considered transient if the unit is subject to at least a six-month lease.

*House bill*

The House bill expands availability of the credit to certain transitional housing for the homeless by including the portion of a building used to provide supportive services in qualified basis.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, with an amendment to clarify that month-to-month leases do not disqualify single room occupancy for the credit.

N. FOUR-UNIT, OWNER-OCCUPIED STRUCTURES

*Present law*

Owner-occupied buildings with four or fewer units are ineligible for the credit.

*House bill*

The House bill expands eligibility for the credit to owner-occupied buildings having four or fewer units. The expansion only applies to acquisition and rehabilitation of buildings pursuant to a development plan sponsored by a State or local government or qualified non-profit.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

O. SPECIAL NEEDS SERVICES

*Present law*

Non-housing services may be provided to tenants in rent-restricted units on an optional basis. If such services are mandatory and paid for by the tenant, charges for them are deemed added to rental charges and are subject to the 30-percent gross rent restriction.

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement amends the definition of gross rent to exclude certain fees for supportive services which are paid to the owner of the unit by a government program or 501(c)(3) organization. To qualify for the exclusion (1) the fees must be paid under a program which provides assistance for rent and (2) the amount of the assistance provided for rent is not separable from the amount of the assistance provided for supportive services.

P. SCATTERED SITE PROJECTS

*Present law*

All units in a project must be located on contiguous geographic sites.

*House bill*

The House bill treats scattered site housing as one project if 100 percent of dwelling units are qualified low-income units and there is common plan of financing.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

Q. CREDITS ALLOCATED TO PROJECTS

*Present law*

Credits are allocated to buildings, although compliance is determined on a project basis.

*House bill*

The House bill allows an allocation of credit on a project, rather than a building, basis.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill. The conferees intend that each building will still be assigned a separate building identification number (B.I.N.) and a separate Form 8609.

R. DETERMINATION OF ELIGIBLE BASIS

*Present law*

For the new construction credit, eligible basis is determined when the property is placed-in-service. For the acquisition and substantial rehabilitation credits, eligible basis is determined at the end of the first taxable year of the credit period. This determination will be made before depreciation is taken into account.

*House bill*

The House bill provides that the determination of eligible basis for all credits is made at the end of the first taxable year of the credit period. This determination will be made before depreciation is taken into account.

Eligible basis includes proceeds of loans made through HUD Community Development Block Grants.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, with an amendment to make the provision relating to determination of eligible basis effective as if included in the Tax Reform Act of 1986. The conference agreement follows the House bill on the treatment of HUD Community Development Block Grants.

S. DETERMINATION OF RENT FOR RENT-RESTRICTED UNITS

*Present law*

Maximum allowable rents for rent-restricted units are determined by 30 percent of qualifying income limitation adjusted for family size.

*House bill*

The House bill uses apartment size rather than family size of occupants for determination of gross rent limitation. Also, actual family size is used as the basis for determination of qualification as a low-income tenant.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

T. RENT FLOORS

*Present law*

For rent-restricted units, the rent is determined by taking 30 percent of the qualifying income limitation. Annually, as the qualifying income limitation changes, the allowable rent may change.

*House bill*

The House bill sets the initial monthly rental payment as the minimum rental payment for the compliance period at the owner's option.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill provision.

U. RENTS FOR PREVIOUSLY QUALIFYING TENANTS WHOSE INCOMES NOW EXCEED THE QUALIFYING INCOME LIMITATIONS

*Present law*

A tenant who qualified for a rent-restricted unit may continue to be deemed to qualify even if his or her income grows to as much as 140 percent of the qualifying income limitation. When the income of a tenant in a qualified rent restricted unit exceeds 140 percent of the qualifying income limitation that unit ceases to be a qualified low-income unit and the rent restrictions under the credit no longer apply.

The maximum allowable rent on rent restricted units is determined by 30 percent of the qualifying income limitation.

*House bill*

For tenants of rent restricted units with incomes in excess of 100 percent but less than 140 percent of the qualifying income limitation, rents may exceed 30 percent of the qualifying income limitation by 10 cents for each dollar of the tenants income in excess the qualifying income limitation.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement provides that when the income of a tenant in a qualified rent-restricted unit exceeds 140 percent of the qualifying income limitation that unit ceases to be a qualified low-income unit, but the rent restriction under the credit will continue to apply until the tenant vacates the unit.

V. DETERMINATION OF GROSS INCOME

*Present law*

Section 7872 recharacterizes certain loans with below-market interest rates for Federal

income tax purposes. A certain non-interest bearing deposit by a tenant with a continuing care facility generally would be, but for an exception to section 7872, treated by the tenant as a debt obligation on which the tenant receives taxable interest income.

*House bill*

The House bill provides that income excluded under the special exception to the below-market rate interest rules for deposits in qualified continuing care facilities is to be taken into account in determining the income of the tenant for purposes of the income eligibility rules of the low-income housing credit.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

W. DEEP RENT SKEWING

*Present law*

To qualify under the deep rent skewing exception, at least 15 percent of the low-income units must be occupied by tenants whose incomes do not exceed 40 percent of area median income, the rents on such units must be restricted to 30 percent of the qualifying income limitation, and rents on the market rate units must be at least 300 percent of rents charged on comparable rent restricted units.

*House bill*

The House bill liberalizes the deep rent skewing rules by changing 300 percent to 200 percent.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

X. AT-RISK RULE FOR QUALIFIED NONPROFIT ORGANIZATIONS

*Present law*

Present law treats as an amount at-risk certain nonrecourse financing provided by a qualified nonprofit organization, provided that certain requirements are met, including that the financing is repaid within 90 days after the end of the 15-year compliance period.

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement expands the present law at-risk rules for property financed by qualified nonprofit organizations by delaying the deadline for full repayment of such financing to conform to extended use period (desribed in 8.e. above).

Y. STATE PLANS

*Present law*

Credits are allocated by State allocating agencies.

*House bill*

The House bill mandates the development of a plan of allocation by State allocating agencies.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

Z. ALLOCATION OF ONLY NECESSARY CREDITS

*Present law*

For new or substanatially rehabilitated property, allocating agencies may allocate up to a 70-percent present value credit. For acquisition property and Federally-subsidized property, the allocating agency may allocate up to a 3.-percent present value credit.

*House bill*

The House bill mandates that credit allocations to a building not exceed the level necessary for the financial feasibility of the project.

*Senate amendment*

No provision.

*Conference agreement*

The conferene agreement follows the House bill. The conferees intend allocating agencies use good faith efforts to allocate credits only to projects which can be reasonably expected to utilize such credits.

AA. PROJECT EVALUATION

*Present law*

Allocating agencies may use any guidelines they choose to allocate credits to eligible properties.

*House bill*

The House bill mandates State allocating agency evaluation of each credit project according to pre-established criteria. Qualified allocation plan must give highest priority to projects with the lowest percentage of costs attributable to intermediaries.

*Senate amedment*

No provision.

*Conference agreement*

The conference agreement generally follows the House bill, with three amendments: (1) the House bill selection criteria are expanded to include consideration of local tax-exempt organizations, and the preferential treatment of persons on a public housing waiting list; (2) allocation plans should give the highest priority to projects with the lowest percentage of intermediary costs unless granting this priority would impede the development of projects in certain hard-to-develop areas. Hard-to-develop areas include certain urban areas where costs of intermediation might reasonably be higher than elsewhere. The conferees recoginize that evaluating projects for feasibility and long-term viability in awarding the credit is not an exact science. Credit agencies are expected to exercise sound judgement based on the information available in determining the amount of credit to be awarded. This determination is not a warranty that the project should be undertaken by the developer or involves no risk to the investor. The conferees also intend that if an allocating agency becomes aware that a project is not in compliance, the agency shall report this noncompliance to the IRS.

BB. SEMIANNUAL DETERMINATION OF CREDIT PERCENTAGE

*Present law*

Credit percentages are determined monthly by the Secretary.

*House bill*

The House bill determines credit percentages on a semi-annual, rather than a monthly, basis.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

CC. ADMINISTRATION PROVISONS.

*Present law*

Present law requires that credit forms be filed within 90 days after the end of each taxable year in the credit period.

*House bill*

The House bill allows the taxpayer to file credit forms on the same day as required for filing tax returns.

*Senate amendment*

No provision.

*Conference ageeement*

The conference agreement follows the House bill.

DD. EFFECTIVE DATE

*Present law*

The credit is scheduled to expire after December 31, 1989.

*House bill*

The House bill is generally effective for determinations made under section 42 of the IRC with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989. For projects not subject to the credit allocation limits, the provision generally applies to buildings placed in service after December 31, 1989.

The provision relating to the $25,000 allowance under the passive loss rules is effective for property placed in service after December 31, 1989. If the property is held through a partnership or other passthrough entity, the taxpayer's interest in the partnership or other passthrough entity, the taxpayer's interest in the partnership or other passthrough entity must have been acquired after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, with an amendment that the provision relating to determinatin of eligible basis is effective as if passed as part of the Tax Reform Act of 1986.

*9. Research and Experimentation Tax Credit*

*Present law*

INCREMENTAL CREDIT

*General rule.*—A 20-percent tax credit is allowed for qualified research expenditures incurred by a taxpayer in carrying on a trade or business. Except for certain university basic research payments, the credit applies only to the extent that the taxpayer's qualified research expenditures for the current taxable year exceed the average amount of the taxpayer's yearly qualified research expenditures in the "base period," meaning the preceding three taxable years.

The credit is scheduled to expire after December 31, 1989.

*Base limitation.*—The amount of base-period research expenditures is treated as equal to at least 50 percent of the taxpayer's qualified research expenditures for the current year.

*Trade or business limitation.*—Research expenditures of a taxpayer are eligible for the credit only if paid or incurred in a particular trade or business already being carried on by the taxpayer.

*Eligible expenditures.*—Research expenditure eligible for the 20-percent incremental credit consist of (1) "in-house" expenditures by the taxpayer for research wages and supplies used in research; (2) certain time-shar-

ing costs for computer use in research; and (3) 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf.

Expenditures attributable to research which is conducted outside the United States do not enter into the credit computation. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

*Aggregation rules and changes in business ownership.*—To prevent artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related persons, research expenditures of the taxpayer are aggregated with research expenditures of certain related persons for purposes of computing any allowable credit.

Special rules apply for computing the credit when a business changes hands, under which qualified research expenditures for periods prior to the change of ownership generally are treated as transferred with the trade or business which gave rise to those expenditures.

UNIVERSITY BASIC RESEARCH CREDIT

In addition to the 20-percent incremental credit, there is a 20-percent tax credit for certain corporate expenditures for university basic research. This credit applies to the excess of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for university basic research over (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch given to universities by the corporation as compared to such given during a fixed-base period, as adjusted for inflation.

This credit also is scheduled to expire after December 31, 1989.

RELATION OF CREDIT TO SECTION 174 DEDUCTION

For taxable years beginning after 1988, the amount of any deduction allowable to a taxpayer under section 174 or any other provision for qualified research expenditures is reduced by an amount equal to 50 percent of the taxpayer's research credit determined for that year.

*House bill*

INCREMENTAL CREDIT: SALES RATIO R&E TAX CREDIT

*General rule*

A 20-percent tax credit is allowed to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit is made permanent.

The base amount for the current year is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the three preceding years.

*Fixed-base percentage*

*Existing firms.*—If a taxpayer both incurred qualified research expenses and had gross receipts [1] during each of at least three years from 1983 to 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenses for any five years selected by the taxpayer during the 1983–88 period bears to its total gross receipts for the five years selected (subject to a maximum ratio of .20, as described below).

*Start-up companies.*—If a taxpayer did not both incur qualified research expenses and have gross receipts during each of at least three years between 1983–1988, then for each of its first five taxable years after 1989 in which it incurs qualified research expenses, the taxpayer is assigned a fixed-base percentage of .03.

After its first five taxable years after 1989 in which it incurs qualified research expenses, a start-up firm's fixed-base percentage is computed as follows: (1) for the firm's sixth year, its fixed-base percentage is equal to one-sixth of its qualified research-to-gross receipts ratio for its fourth and fifth years; (2) for the firm's seventh year, its fixed-base percentage is one-third of its ratio for its fifth and sixth years; (3) for the firm's eighth year, its fixed-base percentage is one-half of its ratio for its fifth through seventh years; (4) for the firm's ninth year, its fixed-base percentage is two-thirds of its ratio for its fifth through eighth years; (5) for the firm's tenth year, its fixed-base percentage is five-sixths of its ratio for its fifth through ninth years; and (6) after a firm's tenth year, its fixed-base percentage is its actual qualified research-to-gross receipts ratio for five years selected by the firm from its fifth through tenth years.

*Maximum fixed-base percentage.*—In no event will a taxpayer's fixed-base percentage exceed .20.

*Base limitation*

As under current law, a taxpayer's base may not be less than a certain percentage of current-year qualified research expenditures. The base limitation percentage is 50 percent for taxable years beginning in 1990; 55 percent for taxable years beginning in 1991; 60 percent for taxable years beginning in 1992; 65 percent for taxable years beginning in 1993; 70 percent for taxable years beginning in 1994; and 75 percent for taxable years beginning in 1995 or later.[2]

*Trade or business limitation*

A taxpayer is treated as meeting the trade or business requirement with respect to in-house research expenses if, at the time such in-house research expenses are incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business of the taxpayer or certain related taxpayer.

*Consistent treatment of research expenses*

Qualified research expenses taken into account in computing a taxpayer's fixed-base percentage are to be determined on a basis which is consistent with the determination of qualified research expenses for the current year.

*Treasury Department study*

The Treasury Department is required to conduct a study during each 5-year period beginning on January 1, 1990, to determine whether revenue losses from the credit are consistent with the projections, to evaluate whether the rules for computing the base for start-up firms are appropriate in view of actual trends in qualified research expenditures and gross receipts of those firms, and to analyze the effectiveness of the credit in promoting research.

*Eligible expenditures*

The expenditures eligible for the credit are the same as under present law.

*Aggregation rules anc changes in business ownership*

The rules relating to aggregation of related persons and changes in business ownership are the same as under present law, with the modification that when a business changes hands, qualified research expenses and gross receitps for periods prior to the change of ownership are treated as transfered with the trade or business which gave rise to those expenditures and receipts for purposes of recomputing a taxpayer's fixed-base percentage.

In addition, the bill provides that a foregin affiliate's gross receipts which are no effectively connected with the conduct of a trade or business in the United States do not enter into the computation of the credit.

UNIVERSITY BASIC RESEARCH CREDIT

The university basic research credit is permanently extended.

*relation of credit to section 174 deduction*

The amount of any deduction allowable to a taxpayer under section 174 or any other provision for qualified research expenditures is reduced by an amount equal to 100 percent of the taxpayer's research credit determined for that year.

The bill clarifies that research expenses are deductible under section 174 only to the extent that they are reasonable under the circumstances.

*Effective date*

The provisions are effective for taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement generally follows the House bill, with the following modifications:

INCREMENTAL CREDIT: SALES RATIO R&E TAX CREDIT

*General rule*

A 20-percent tax credit is allowed to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit will not apply to amounts paid or incurred after December 31, 1990, and a special rule applies in the case of any taxable year which begins before October 1, 1990, and ends after September 30, 1990. Under this rule, the amount treated as a taxpayer's qualified research expenses for the taxable year is the amount which bears the same ratio to the amount otherwise constituting qualified research expenses as the number of days in such taxable year before October 1, 1990, bears to the total number of days in such taxable year before January 1, 1991.

The base amount for the current year is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years.

*Fixec-base percentage*

*Existing firms.*—If a taxpayer both incurred qualified research expenses and had

[1] The Treasury Department is authorized to prescribe regulations providing that de minimus amounts of qualified research expenses and gross receipts may be disregarded (including under the start-up company rules described infra.)

[2] Start-up firms (i.e., firms deemed to have a fixed-base percentage of .03) are subject to a base limitation of 65 percent for taxable years beginning in 1990 through 1993, 70 percent for taxable years beginning in 1994; and 75 percent for taxable years beginning in 1995 or later.

gross receipts [3] during each of at least three years from 1984 to 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenses for the 1984–88 period bears to its total gross receipts for this period (subject to a maximum ratio of .16, as described below).

*Start-up companies.*—If a taxpayer did not both incur qualified research expenses and have gross receipts during each of at least three years between 1984–1988, then it is assigned a fixed-base percentage of .03.

*Maximum fixed-base percentage.*—In no event will a taxpayer's fixed-base percentage exceed .16.

*Base limitation*

As under current law, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

*Trade or business limitation*

The conference agreement follows the House bill.

*Consistent treatment of research expenses*

The conference agreement follows the House bill, with the modification that the Treasury Department is granted authority to prescribe regulations to prevent distortions in calculating a taxpayer's qualified research expenses or gross receipts dur to a change in accounting methods used by the taxpayer between the current year and a year taken into account in computing the taxpayer's fixed-base percentage.

*Treasury Department study*

The coference agreement does not provide for a Treasury Department study.

*Eligible expenditures*

The conference agreement follows the House bill.

*Aggregation rules and changes in business ownership*

The conference agreement follows the House bill.

UNIVERSITY BASIC RESEARCH CREDIT

The university basic research credit is extended through December 31, 1990.

RELATION OF CREDIT TO SECTION 174 DEDUCTION

The conference agreement follows the House bill.

*Effective date*

The provisions are effective for taxable years beginning after December 31, 1989.

*10. Allocation and Apportionment of Research and Experimental Expenditures*

*Present law*

Pursuant to Treasury regulations which were promulgated in 1977, research and experimental expenditures are generally allocated as follows: (1) expenses for research that is undertaken solely to meet legal requirements imposed by a government and which cannot reasonably be expected to generate income (beyond de minimis amounts) outside that government's jurisdiction are allocated solely to income from sources within that jurisdiction; and (2) remaining research expenses are generally apportioned to foreign source income based on either (a) gross sales, except that a taxpayer using this method may first apportion at least 30 percent of such expenses exclusively to the source where over 50% of the taxpayer's research is performed; or (b) gross income, except that expenses apportioned to U.S. and foreign income, except that expenses apportioned to U.S. and foreign source income using a gross income method can not be less than 50% of the respective portions that would be apportioned to each income grouping using a combination of the sales and place-of-performance methods.

*House bill*

The House bill generally allocates research and experimental expenditures as follows: (1) expenses for research that is undertaken solely to meet legal requirements imposed by a government are allocated in the same manner as under present law; (2) remaining research expenses which are conducted in the United States are allocated 64 percent to U.S. source income, and such expenses which are conducted outside of the United States are allocated 64 percent to foreign source income; and (3) remaining research expenses are allocated and apportioned on the basis of either sales or gross income. If gross income is used, however, the amount apportioned to foreign source income can be less than 30 percent of the amount that would be so apportioned under the sales method.

Research expenses incurred by U.S. persons for activities conducted in space, in Antarctica, or on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, U.S. possession, or the United States, are allocated and apportioned in the same manner as if they were attributable to activities conducted in the United States. Such expenses incurred by foreign persons are allocated and apportioned as if they were attributable to activities conducted outside the United States.

The provision is effective for taxable years beginning after August 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, except that the provision is effective only for the taxpayer's first taxable year beginning after August 1, 1989 and before August 2, 1990, and applies only to that portion of research expenses treated as having been paid or incurred during the first nine months of the first taxable year beginning after August 1, 1989 and before August 2, 1990. In determining which research expenses for that year are treated as paid or incurred in the first nine months of the year, research expenses are treated as if paid or incurred ratably throughout the taxable year.

B. CORPORATE PROVISIONS

*1. Treatment of Distributions by Certain Corporations Filing Consolidated Returns*

*Present law*

A distribution from a corporation is generally treated as a dividend to the extent of the distributing corporation's current or accumulated earnings and profits. A dividend received by a corporation is generally eligible for the dividends received deduction.

Under the consolidated return regulations, the taxable income of a group of affiliated corporations is generally computed as the sum of the taxable incomes and losses of all members of the group. However, the earnings and profits of each member of the group generally is computed on a separate company basis (and adjusted for that member's allocable share of the undistributed earnings and profits of lower tier members).

Thus, a distribution to a nonmember shareholder from a member corporation that joins in the filing of a consolidated return may be a dividend (because such distribution is from the distributor's separate company earnings and profits), even though such earnings were not subject to Federal income tax (because such earnings were offset by losses from other members of the group).

*House bill*

*General description*

The House bill requires earnings and profits to be computed on a consolidated basis for purposes of determining whether any distribution from a member of the group to a nonmember shareholder is a dividend.

*Determination whether a distribution is a dividend*

A distritbution to a nonmember shareholder by a member of an affiliated group of corporations filing a consolidated return with respect to stock issued after July 10, 1989, will be considered a dividend to the extent such distribution is from the consolidated earnings and profits of the group for periods after July 10, 1989, or the separately computed earnings and profits of the distributing corporation. For this purpose, separately computed earnings and profits means (1) the pre-July 10, 1989 affiliated earnings and profits of the distributor and (2) the earnings and profits of the distributor before it became a member of the group.

*Effective date*

The provision is generally effective for distributions after July 10, 1989, but does not apply to distributions with respect to subsidiary stock issued before that date, or after that date pursuant to a binding written contract. Auction rate preferred stock is not considered issued at the time of each auction.

The provision does not apply to auction rate preferred stock issued no later than 30 days after enactment of the provision if the issuing subsidiary was incorporated and a rating agency was retained for the purpose of issuing such stock, prior to July 10, 1989.

Grandfathered stock ceases to be grandfathered in the case of certain transactions in which the subsidiary leaves the group. An election is available to recompute earnings and profits for periods prior to July 11, 1989.

*Senate amendment*

*General description*

The Senate amendment provides that a portion of certain dividends from the current earnings and profits of a subsidiary of an affiliated group filing a consolidated return will not be eligible for the dividends received deduction to the extent the earnings of such subsidiary were not subject to tax because of losses or credits of other members of the group. The provision applies only to dividends on subsidiary nonvoting preferred stock that is not treated as stock in measuring whether the group's stock ownership is sufficient to permit a consolidated return to be filed ("section 1504(a)(4) stock").

*Determination whether a dividend is eligible for the dividends received deduction*

The portion of a dividend with respect to the section 1504(a)(4) stock of a subsidiary member of an affiliated group filing a consolidated return that is not eligible for the dividends received deduction is determined by applying a fraction to the lesser of (1)

[3] The Treasury Department is authorized to prescribe regulations providing that de minimis amounts of qualified research expenses and gross receipts may be disregarded.

the amount of the dividend from the current earnings and profits of the distributor or (2) the consolidated loss offset. The numerator of the faction is the consolidated loss offset and the denominator is the separately computed taxable income of the distributor.

For this purpose, the consolidated loss offset is the sum of certain losses and deduction equivalents of certain credits (not including the foreign tax credit) from other members of the group that offset the separately computed taxable income of the distributor.

The separately computed taxable income of the distributing corporation is the income of that corporation computed as if it were not a member of an affiliated group.

*Effective date*

The provision is effective for distributions after October 2, 1989, with respect to subsidiary section 1504(a)(4) stock issued after that date unless pursuant to a binding written contract in effect on such date. Auction rate preferred stock is not considered issued at the time of each auction.

Grandfathered stock ceases to be grandfathered in certain cases where the issuing corporation leaves or joins a consolidated group or where stock is retired or repurchased unless pursuant to a binding contract to reissue.

*Conference agreement*

*Overview*

The conference agreement generally follows the approach of the Senate amendment, with modifications.

Instead of denying the dividends received deduction where income with respect to amounts distributed on section 1504(a)(4) stock of a subsidiary is not subject to tax because of offsets by losses or credits of other group members, the conference agreement provides that the group must compute its tax without permitting such offsets. The agreement adopts this modification in part because of concern that denying the dividends received deduction under the approach of the Senate amendment may be difficult to administer where the payor and payee corporations have different taxable years or there are subsequent audit adjustments to the payor's tax liability. For example, where the payee's tax return is due prior to the payor's return, the payee would be required under the Senate amendment to determine and report the treatment of its dividend income prior to the time that the payor group can determine whether losses or credits of other group members have offset the payor's separate income.

In addition, the conferees believe that when a subsidiary corporation pays a dividend to a nonmember shareholder on nonvoting preferred stock described in section 1504(a)(4), it is appropriate to treat the amount paid as income that is in effect committed to nonmember shareholders of the subsidiary and that such income should not be considered income eligible to be sheltered from tax by attributes of other group members.

It is intended that the role limiting the use of losses or credits of other members will apply when losses or credits of other members would not have been used by the group in the current year but for the presence of subsidiary taxable income that was distributed to nonmembers with respect to subsidiary section 1504(a)(4) stock.

*General description*

Under the conference agreement, if in any taxable year a subsidiary distributes dividends on section 1504(a)(4) stock held by a nonmember and subject to the provision ("applicable preferred stock"), no group loss item may reduce the disqualified separately computed income of the subsidiary for that taxable year, and no group credit item is allowed against the tax imposed on such disqualified separately computed income.

Disqualified separately computed income is the portion of the separately computed taxable income of the subsidiary which does not exceed the dividends distributed by the subsidiary during the taxable year on the applicable preferred stock. Thus, the amount of separately computed taxable income of the subsidiary in excess of the disqualified separately computed income, if any, may be offset by group loss or credit items.

A group loss item is any of the following items of (or allocable to) any member of the group other than the distributing subsidiary: any net oprating loss and any net operating loss carryover or carryback under section 172; and any loss from the sale or exchange of any capital asset and any capital loss carryover or carryback under section 1212.

A group credit item is any credit allowable under part IV of subchapter A of the Code (other than the gasoline and special fuels credit under section 34) to (or allocable to) any member of the group other than the distributing subsidiary. Foreign tax credits are included as group credit items.

*Separately computed taxable income*

Under the conference agreement, for purposes of determining the separately computed taxable income of the distributing corporation, that corporation continues to be treated as a member of the affiliated group. The conference agreement defines separately computed taxable income as the separate taxable income of the subsidiary (as defined in the consolidated return regulations (Treas. Reg. sec. 1.1502-12)) for the taxable year, modified to take into account gains and losses from the sale or exchange of a capital asset and section 1231 gains and losses, with such further adjustments as the Secretary may prescribe. Except as the Treasury Department may otherwise prescribe, separately computed taxable income will be adjusted to reflect any dividends received deduction available with respect to dividends received by the distributing corporation, as well as other deductions properly allocable to the distributing corporation that are excluded from the computation of separate taxable income under the definition in the consolidated return regulations of present law. Separately computed income is determined without regard to net operating loss carryovers or carrybacks, or capital loss carryovers or carrybacks.

*Ordering rules*

The conference agreement clarifies and modifies the Senate amendment ordering rules that apply to determine when losses or credits of other group members offset income of the subsidiary. It is intended that the present law ordering rules affecting the use of losses or credits will generally apply. In addition, it is intended that the provision operate so that losses and credits of all other group members may be used against income of all other group members, and also against the separately computed taxable income of the distributing subsidiary to the extent such income is not disqualified separately computed income, to the extent permitted by the normal carryover and carryback rules. In addition, to the extent the distributing corporation has loss or credit carryovers or carrybacks, these may offset its disqualified separately computed income.

*Anti-abuse rules*

As under the Senate amendment, the Treasury Departyment is directed to provide anti-abuse rules.

It is expected that regulations will prevent avoidance of the rules through the contribution of built-in loss assets or other direction of losses or credits to the subsidiary by other members of the group. Expect as the Treasury Department may otherwise provide, it is expected that losses or deductions of the distributing corporation that are attributable to any decline in value of property that occurred prior to the transfer of such property to the distributing corporation by another member of the group, or that are otherwise attributable to periods prior to the transfer of such property by another group member, as well as other built-in deduction items, will not be treated as losses or deductions of the distributing corporation for purposes of this provision.

Except as the Treasury Department may otherwise provide, it is also expected that regulations will provide that the separately computed taxable income of any distributing corporation for purposes of this provision shall include an allocable portion of the separately computed taxable income of any other member of the group whose stock the distributing corporation holds directly or indirectly, as necessary to prevent the avoidance of the provision.

In addition, it is expected that regulations will treat income as disqualified separately computed income in appropriate cases even if it is not distributed in the current year where all or any portion of dividends on the applicable preferred stock are not paid currently, including cases where such stock permits or requires deferred distributions, where the dividends paid currently are less than the yield to maturity of the stock, or where redemption or liquidation rights of such stock exceed the issue price paid for such stock.

The regulations described above are expected to be effective as of the effective date of the provision.

*Additional regulatory authority*

In addition to anti-abuse rules, the Treasury Department is directed to prescribe such regulations as may be necessary or appropriate to carry out the provisions of the conference agreement. For example, it is expected that regulations will reflect the intent that losses or credits of other members of the group that may not be used against disqualified separately computed income under this provision may be carried back or forward against income not affected by this provision.

As another example, in cases where additional tax is paid for a taxable year as a result of the provision, it is expected that the Treasury Department will provide guidance regarding the effect of such tax on the earnings and profits of the members of the group.

*Examples*

The following examples illustrate the application of the provision:

*Example 1.*—An affiliated group filing a consolidated return consists of P (the parent corporation) and S (its subsidiary). S issues section 1504(a)(4) stock subject to the provision. For the taxable year, P has a $100x loss. S has $100x of separately com-

puted taxable income and pays a dividend of $60x on the applicable preferred stock.

In computing the group's tax for the taxable year, P's $100x loss may not offset S disqualified separately computed income—i.e., the portion of S separately computed taxable income that does not exceed $60x (the amount of the dividend paid on the applicable preferred stock). However, P's loss may offset the remaining S taxable income to the extent otherwise permitted under existing law. Accordingly, $40x of P's loss may offset $40x of S taxable income. The remaining $60x of P loss may be carried back or forward in accordance with the normal operation of the net operating loss carryback and carryover rules, provided it may not be used to offset S previous year (or subsequent year) disqualified separately computed income.

*Example 2.*—The facts are the same as in Example 1 except that S also has a $100x net operating loss carryforward from a prior taxable year.

In accordance with the operation of the normal ordering rule that losses of a current year are used before loss carryforwards of a prior year, as in Example 1 P's loss offsets only $40x of S taxable income for the taxable year. However $60x of the S net operating loss carryforward may be used to offset the remainder of the S income for the year. Thereafter, the S net operating loss carryforward is reduced by $60x.

*Example 3.*—P and S are formed in year 1 and are an affiliated group filing a consolidated return. In year 1, S issues applicable preferred stock. S has $100x of taxable income; P has no income or loss. S pays a dividend of $60x on the applicable preferred stock. In year 2, S again has $100x of taxable income and P has a loss of $100x. S again pays a dividend of $60x on the applicable preferred stock.

For year 2, P's loss may not offset the amount of S separately computed taxable income that does not exceed $60x. Accordingly, P's loss may offset the remaining $40x of S separately computed taxable income. The group pays tax on $60x of S separately computed taxable income. The $60x remainder of P's loss may be carried back to year 1 but may offset only $40x of S income for that year. It may not offset the $60x which constitutes S previous year disqualified separately computed income.

*Example 4.*—An affiliated group filing a consolidated return consists of the parent (P) and two brother-sister subsidiaries of parent (S1 and S2). S1 issues applicable preferred stock. For the taxable year, P has a loss of $100x, S1 has taxable income of $100x and pays a dividend of $60x on the applicable preferred stock, and S2 has income of $100x.

As in Example 1, P's loss may not offset the $60x of S1 disqualified separately computed income. However, the remaining taxable income of the group is $140x. The group will pay no additional tax as a result of the provision because P can use its $100x loss to reduce the remaining $140x of income.

*Effective date*

The conference agreement is generally effective for distributions after November 17, 1989. However, it does not apply to distributions with respect to subsidiary stock issued on or before that date, or issued after that date pursuant to a binding written contract in effect on that date and at all times thereafter before such stock is issued, so long as certain transactions described below do not occur.

Otherwise grandfathered stock ceases to be grandfathered if the issuing corporation ceases to be a member of the affiliated group of which it was a member at that time the stock was issued (or at the time the contract to issue such stock became binding), or becomes a member of any group, unless such event occurs in a transaction that would not result in the recognition of any deferred intercompany gain under the consolidated return regulations by reason of the acquistion of the entire group.[1] Grandfathered stock also ceases to be grandfathered if such stock is retired or acquired after November 17, 1989 by the issuer or by any member of the affiliated group of which the issuer is a member, unless the retirement or acquisition is pursuant to an obligation to reissue under a binding written contract (which may be evidenced by the terms of the stock that has been issued by the corporation) in effect on November 17, 1989 and at all times thereafter until such stock is reissued.

Auction rate preferred stock is treated for this purpose as issued when the contract requiring the auction became binding and is not considered issued at the time of each auction conducted pursuant to such commitment. The contract requiring the auction for this purpose is the contract (which may be evidenced by the terms of the stock that has been issued by the corporation) committing the corporation to provide for the conduct of auctions with respect to the stock. Thus, auction rate preferred stock that was issued on or before November 17, 1989, or after that date in accordance with the terms of a binding written contract to issue such stock in effect on that date and at all times hereafter until such stock is issued, does not cease to be grandfathered merely because auctions pursuant to the terms of such original issuance or pursuant to the terms of such binding contract are conducted after November 17, 1989.

Solely in the case of auction rate preferred stock issued on or before 30 days after enactment of this provision, such stock will be considered issued before November 18, 1989 if the subsidiary was incorporated before July 10, 1989 for the special purpose of issuing such stock and a rating agency was retained before July 10, 1989 for the purpose of rating such stock.

For purposes of these transition rules, stock that has been issued but has never been held by a person not a member of the group is not considered to have been issued.

*2. Treatment of Certain High-yield Original Issue Discount (OID) Obligations*

*Present law*

Original issue discount ("OID") is the excess of the stated redemption price at maturity over the issue price of a debt instrument. The issuer of a debt instrument with OID generally accures and deducts the discounts, as interest, over the life of the obligation even though the amount of such interest is not paid until the debt matures. The holder of such a debt instrument also generally includes the OID in income as it accures as interest on an accrual basis.

A corporation generally cannot deduct distributions made with respect to its stock. In certain circumstances, a corporation is entitled to a deduction equal to a percentage of dividends received from a corporation (secs. 243, 245, 246 and 246A) (the "dividends received deduction").

[1] *See* Treas. Reg. sec. 1.1502-14(f).

The determination of whether an interest in a corporation constitutes a debt instrument or stock for tax purposes generally is made under principles developed in case law. This determination is made by analyzing and weighing the relevant facts and circumstances. Characteristics of debt include the following: a preference over, or lack of subordination to, other interests in the corporation, insulation from risk of the corporation's business; and an expectation of repayment.

*House bill*

Certain obligations issued by corporations are treated as preferred stock. Issuers and holders alike are subject to this treatment. The provision does not apply to debt instruments issued by a cooperative housing corporation, exempt organization, or S corporation.

The provision applies to any debt instrument that has a term of more than five years, significant OID, and a yield that equals or exceeds the sum of 5 percentage points plus the applicable Federal rate (applicable instruments).

The provision generally is effective for instruments issued after July 10, 1989. The provision does not apply to an instrument issued after Juy 10, 1989, in connection with an acquisition completed (or for which there was a commitment to complete) before July 11, 1989, so long as the significant terms of such instrument were determined before July 11, 1989, in a written document transmitted to a government regulatory agency or prospective party to the issuance or acquisition.

In addition, the provision does not apply to instruments issued as interest payments on an instrument excepted from the provision. Finally, an instrument excepted from the provision can be refinanced without being subject to the provision so long as its term, issue price, and redemption price are not increased (and periodic interest payments not reduced) by the refinancing.

*Senate amendment*

The interest deduction of corporations for OID with respect to certain instruments is deferred until actually paid. The holder, however, continues to include such discount, as interest, in income as it accrues.

The provision applies to the same instruments covered by the House bill.

The effective date is generally the same as the House bill, except that a maturity date not otherwise determined is considered determined so long as the actual term of the instrument does not exceed 10 years. In addition, the provision does not apply to an instrument issued after July 10, 1989, pursuant to a bankruptcy reorganization plan, so long as the significant terms of the instrument do not exceed the terms specified in the last plan filed before such date.

*Conference agreement*

The conference agreement generally follows the Senate amendment, with modifications that incorporate aspects of the House bill. This combined approach is adopted because the conferees believe that a portion of the return on certain high-yield OID obligations is similar to a distribution of corporate earnings with respect to equity. Thus, the conference agreement bifurcates the yield on applicable instruments, creating an interest element that is deductible when paid and a return on equity element for which no deduction is granted and for which the dividends received deduction may be allowed.

The provision applies to any applicable high-yield obligation issued by a corporation, but not for any period during which the corporation is an S corporation. The conferees intend that if a C corporation issues an applicable instrument and subsequently converts to S corporation status, previously accrued but deferred interest will be deductible when paid.

A portion of the OID ("the disqualified portion") on an applicable instrument is afforded special treatment. The issuer is allowed no deduction with respect to the disqualified portion. The holder, however, is allowed a dividends received deduction for that part of the disqualified portion that would have been treated as a dividend had it been distributed by the issuing corporation with respect to stock.

In general, the disqualified portion of OID is the portion of the total return on the obligation that bears the same ratio to the total return as the disqualified yield bears to the total yield to maturity on the instrument. The term "disqualified yield" means that portion of the yield that exceeds the applicable Federal rate for the month in which the obligation is issued (the "AFR") plus six percentage points. If the yield to maturity on the obligation determined by disregarding the OID exceeds the AFR plus six percentage points, then the disqualified portion is the entire amount of the OID. Thus, deductions will not be disallowed for amounts that qualify as qualified periodic interest payments (within the meaning of Prop. reg. sec. 1.1273-1(b)(ii)(A)). The remainder of the OID on the instrument (the portion other than the disqualified portion) is not deductible until paid in property other than stock or obligations of the issuer.

*Example 1.*—Assume a corporation issues an applicable instrument at the beginning of the year with an issue price of $100 and a yield to maturity of 20 percent in a month when the AFR is 9 percent. The AFR plus 6 percentage points is 15 percent. The return on the instrument in the first year is $20 ($100 issue price times the 20 percent yield to maturity) and the adjusted issue price is $120 at the end of the year. The return on the instrument in the second year is $24 ($120 adjusted issue price times the 20 percent yield to maturity). The ratio of the disallowed portion of the yield to the yield is 25 percent ((20 percent yield to maturity minus 15 percent) divided by 20 percent yield to maturity). The amount of the disqualified portion in the first year is $5 ($20 return for the year times 25 percent). The ratio of the disallowed portion of the yield to the yield is constant throughout the term of the instrument (in this case, 25 percent). Thus, the disallowed portion in the second year is $6 ($24 return for the year times 25 percent).

The allocation of payments of OID made under a debt instrument before maturity between the disqualified portion and the remainder is to be made pursuant to Treasury regulations. The conferees expect such regulations to provide that such payments will be allocated on a pro rata basis between accrued but unpaid OID treated as interest, and the accrued but unpaid disqualified portion of the OID.

*Example 2.*—Assume the same facts as in Example 1 above. If the issuer distributes, in cash, $12 with respect to the instrument at the end of the second year, $3 (12 times 25 percent) will be considered to be a payment of the accrued but unpaid disqualified portion, and the issuer will be allowed a deduction of $9 ($12 minus $3).

The provision generally does not apply for purposes of determining earnings and profits. In determining the amount of the disqualified portion which is characterized as a dividend for any year, however, earnings and profits are not reduced by any amount attributable to the disqualified portion for that year. For purposes of determining earnings and profits in subsequent years, however, this special rule does not apply.

*Example 3.*—Assume a corporation accrues $1,000 of interest with respect to an applicable instrument held by another corporation for a taxable year; $800 of such amount is treated as interest for which a deduction is allowed when aid and $200 is the disqualified portion. None of the interest is paid during the year. The corporation has $1,100 of earnings and profits before the accrued interest on the instrument is taken into account. Thus, the issuing corporation has earnings and profits of $100 for purposes other than determining the character of the portion of the yield that is treated as a distribution with respect to stock and has $300 of earnings and profits for purposes of determining the character of the portion of the yield that is treated as a distribution with respect to stock. The $300 earnings and profits is reduced by $200 for purposes of determining earnings and profits in subsequent years.

Under the provision, the Secretary of the Treasury is required to prescribe regulations as may be appropriate to carry out the purpose of the provision. These regulations may include modifications in the case of conversion rights, among other items. The conferees expect that for purposes of determining the maturity of an obligation, such regulations would provide that the right to convert an applicable instrument into the stock of the issuer may be disregarded if such right is solely in the hands of the holder and the exercise price is the fair market value, at the date of conversion, of the amount of stock received.

The effective date of the provision is the same as provided in the Senate amendment. The conferees intend that, for purposes of determining the transition relief granted to certain parties related to issuers of applicable instruments, related parties shall include a brother-sister controlled group (as defined by section 1563(a)(2) of the Code).

*3. Limit Nonrecognition Treatment When Securities Are Received in Certain Section 351 Transactions*

*Present law*

No gain or loss is recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation and immediately thereafter such person or persons are in control of the corporation (sec. 351). Accordingly, a transferor may transfer appreciated property to a corporation in exchange for stock and a debt obligation of the corporation that is a security, without recognition of gain.

Debt obligations that are not considered to be securities under section 351 are treated as "boot." A transferor who receives boot is taxed on the lesser of the amount of the boot or the gain realized on the exchange.

Under the corporate reorganization provisions, if a taxpayer transfers property in a reorganization and receives securities with a principal amount in excess of any securities surrendered, such excess is treated as boot. Such a taxpayer must recognize gain, if any, to the extent of the boot received in the exchange.

The receipt of any debt obligation constituting boot generally qualifies for installment sale treatment.

*House bill*

*In general*

Securities received in certain section 351 transactions are treated as boot.

*Nature of consideration received*

In the case of both corporate and noncorporate transferors, securities received in section 351 transactions are treated as boot where either (1) the holder of the securities is substantially protected against the risks of the issuer's business, or (2) the fair market value of stock received is less than 25 percent of the total fair market value of all property received in the exchange.

*Nature of transferor*

In the case of property transferred by a corporation, all securities received in a section 351 transaction are treated as boot, unless (1) the exchange is pursuant to a plan of reorganization, (2) the stock or securities received are distributed in a section 355 transaction, or (3) the transferor, immediately after the exchange, owns 80 percent of the stock in the transferee (provided that the transfer is not part of a plan to reduce the transferor's interest below the 80-percent level).

*Effective date*

The provision generally applies to transfers after July 10, 1989 (other than transfers pursuant to a written binding contract in effect on that date and at all times thereafter before such transfer). The provision with respect to corporate transferors, however, applies to transfers after July 11, 1989 (other than transfers pursuant to a written binding contract in effect on that date and at all times thereafter before such transfer).

*Senate amendment*

*In general.*

The Senate amendment is the same as the House bill, with the exceptions noted below.

*Nature of consideration received*

No provision.

*Nature of transferor*

The Senate amendment is the same as the House bill, with the following exceptions: (1) the general rule (i.e., that all securities received in a section 351 transaction are treated as boot) is applied to all transferors, both corporate and noncorporate; and (2) there is no exception for transfers where a corporate transferor owns 80 percent of the transferee immediately after the exchange.

*Effective date*

The provision applies to all transfers after October 2, 1989, unless the transfer was pursuant to a written binding contract in effect on that date and at all times thereafter before such transfer. In addition, the provision applies to transfers made by C corporations after July 11, 1989 and before October 3, 1989, other than (1) transfers where (a) the transferor, immediately after the transfer, owns 80 percent of the transferee's stock and (b) the transfer was the 80-percent level, and (2) transfers pursuant to a written binding contract in effect on July 11, 1989 and at all times thereafter before such transfer.

*Conference agreement*

The conference agreement generally follows the Senate amendment. However, the agreement deletes the provision in the Senate amendment providing that transferors are permitted to receive securities with-

out the recognition of gain or loss under section 351 in the case of (1) any exchange in pursuance of a plan of reorganization, or (2) any exchange where the stock or securities received are distributed in a transaction to which section 355 (or so much of section 356 as relates to section 355) applies. Thus, under the agreement, securities are treated as boot for purposes of section 351 in all cases. However, the agreement does not change the present-law rules governing which provision or provisions apply where an exchange is described in both section 351 and another nonrecognition provision.

*4. Provisions Relating to Regulated Investment Companies*

A. REQUIRE MUTUAL FUNDS TO DISTRIBUTE 98 PERCENT OF ORDINARY INCOME

*Present law*

In order to avoid a penalty excise tax, a regulated investment company (RIC), commonly called a "mutual fund," generally must distribute before January 1 of any year, at least 97 percent of its ordinary income earned during the prior calendar year and 98 percent of its capital gain net income for the 12-month period ending on October 31 of that year (Code sec. 4982). The penalty excise tax is equal to 4 percent of the excess (if any) of the required distribution for the calendar year over the actual distributed amount for such year.

*House bill*

Under the House bill, the distribution required to avoid the penalty excise tax is increased to 98 percent of ordinary income. The provision is effective for calendar years ending after July 10, 1989.

*Senate amendment*

The Senate amendment is the same as the House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

B. ADJUST BASIS FOR MUTUAL FUND LOAD CHARGE ONLY IF SHAREHOLDER HOLDS SHARES FOR SPECIFIED PERIOD

*Present law*

A shareholder's basis in shares purchased in a regulated investment company ("mutual fund") includes an advance charge for sales fees ("load charge") upon purchase of the shares.

*House bill*

A load charge would not be taken into account in determining a shareholder's basis in mutual fund shares that are sold or exchanged within thirty days if the shareholder subsequently acquires mutual fund shares pursuant to a reinvestment right. A reinvestment right is the right to reinvest the proceeds from the sale or exchange of the shares at a reduced charge in one or more mutual funds.

The provision is effective for load charges incurred after July 10, 1989, in taxable years ending after such date.

*Senate amendment*

The Senate amendment is generally the same as the House bill, except that the required holding period before which the load charge is taken into account in determining basis is six months.

The Senate amendment is effective for load charges incurred after October 3, 1989, in taxable years ending after such date.

*Conference agreement*

The conference agreement follows the Senate amendment, except that the required holding period before which the load charge is taken into account in determining basis is ninety days. The agreement clarifies that a reinvestment right includes the right to reinvest the proceeds from the sale or exchange from shares in the original mutual fund.

C. REQUIRE MUTUAL FUNDS TO INCLUDE DIVIDEND INCOME ON EX-DIVIDEND DATE

*Present law*

Dividends from stock owned by a regulated investment company (RIC), commonly called a "mutual fund," are includible in the company's income when received.

*House bill*

The House bill requires that a mutual fund include a dividend received by it in income when the stock becomes ex-dividend with respect to the dividend.

The bill is effective for dividends on stock becoming ex-dividend after date of enactment.

*Senate amendment*

The Senate amendment is generally the same as the House bill, except that if a mutual fund receiving a dividend did not own the stock when the stock became ex-dividend, the dividend is includible in income on the date the fund acquired the stock.

*Conference agreement*

The conference agreement follows the Senate amendment, except that the provision applies to stock held by the RIC on the record date for the dividend. Accordingly, under the conference agreement, a mutual fund holding stock on the record date for a dividend is required to include the dividend in income on the later of the ex-dividend date or date of acquisition. Such inclusion is required even if the dividend is not received. The conferees anticipate that the RIC would receive a loss when it is established that the dividend will not be received.

*5. Reduce Built-in Gain and Loss Threshold for Sections 382 and 384*

*Present law*

Sections 382 and 384 of the Code restrict the use of built-in losses and built-in gains of a corporation when there are certain changes in the control of a corporation. These rules apply only if the new unrealized built-in loss or built-in gain exceeds 25 percent of the fair market value of the assets of the corporation.

Under the minimum tax adjusted current earnings regime, built-in losses are limited, without a threshold, if there is a change of ownership under section 382.

*House bill*

The restrictions in sections 382 and 384 on the use of built-in gains and built-in losses of a corporation will apply if the built-in loss or built-in gain exceeds the lesser of (1) 15 percent of the fair market value of the assets of the company or (2) $10 million. A corresponding threshold is provided for built-in losses under the minimum tax adjusted current earnings regime.

The provisions are generally effective for ownership changes and acquisitions after July 10, 1989. The provision does not apply to any ownership change or acquisition pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter.

*Senate amendment*

The Senate amendment is generally the same as the House bill, except that the restrictions will apply if the built-in gain or built-in loss exceeds the lesser of the company or (2) $25 million.

The provisions are generally effective for ownership changes and acquisitions after October 2, 1989. The provision does not apply to any ownership change or acquisition pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter. In addition, the provision does not apply to any ownership change or acquisition of a corporation resulting from a bankruptcy reorganization of such corporation if the petition was filed with the court before October 3, 1989.

*Conference agreement*

The conference agreement follows the House bill with the following modifications.

The provisions are generally effective for ownership changes and acquisitions after October 2, 1989.[1] The provision does not apply to any ownership change or acquisition pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter. The provision does not apply to any ownership change or acquisition of a corporation resulting from a bankruptcy reorganization of such corporation if the petition was filed with the court before October 3, 1989. In addition, the provision does not apply to any built-in loss of a corporation which is a member, on October 2, 1989, of an affiliated group the common parent of which (on such date) was subject to a bankruptcy proceeding, if such ownership change or acquisition is pursuant to the plan approved in such proceeding and is before the date 2 years after the filing of the bankruptcy petition.

*6. Require Basis Reduction for Nontaxed Portion of Dividends on Self-liquidating Stock*

*Present law*

In general, corporations are entitled to a deduction equal to 70 percent (80 percent and 100 percent in certain cases) of the dividends received from a domestic corporation. A corporate shareholder's basis in stock is reduced by the portion of a dividend eligible for the dividends received deduction if the dividend is "extraordinary" (sec. 1059).

*House bill*

The provision treats dividends with respect to certain preferred stock as extraordinary dividends (regardless of holding period), thus requiring reduction in stock basis. The provision applies to dividends with respect to preferred stock if (1) when issued, such stock has a dividend rate which declines (or reasonably can be expected to decline) in the future, (2) the issue price of such stock exceeds its liquidation rights of its stated redemption price, or (3) such stock is otherwise structured to enable corporate shareholders to reduce tax through a combination of dividend received deductions and loss on the disposition of the stock.

*Senate amendment*

The Senate amendment is the same as the House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

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[1] For purposes of determining when the testing period commences in the case of a loss corporation that first has a net unrealized built-in loss as of the effective date of the provision as a result of the lowering of the threshold under the provision, such loss shall be deemed to have first accrued within the meaning of Treas. Reg. sec. 1.382-2T(d)(3)(ii)(A) no earlier than the taxable year that includes the effective date of the provision.

*7. Modify Excess Loss Account Recapture Rules To Prevent Shifting of Basis to Debt*

*Present law*

Under the consolidated return regulations, in general, a parent corporation must reduce its basis in the stock of a subsidiary with which it files a consolidated return by the amount of distributions the parent receives from the subsidiary and the amount of any deficit in earnings and profits of the subsidiary. Similarly, a parent corporation increases its basis in the stock of a subsidiary by the amount of contributions to the subsidiary and earnings and profits of the subsidiary. In general, when distributions and losses from the subsidiary exceed the contributions to and earnings of the subsidiary, an "excess loss account" is created. This amount is generally included in the income of the parent on certain dispositions of the stock of the subsidiary.

Under the present consolidated return regulations, a parent corporation that has an excess loss account in the stock of a subsidiary can, on disposition of the subsidiary's stock, elect to apply the excess loss account to reduce the basis of other stock or debt held by the parent in the subsidiary after the disposition.

*House bill*

The provision modifies the excess loss account recapture rules to prevent the reallocation of the excess loss account to reduce the basis of debt in the subsidiary held by the parent corporation after a disposition.

The Treasury Department is directed to reexamine in certain cases the consolidated return rules permitting reallocation of the excess loss account to reduce the basis of other stock held by the parent corporation in the subsidiary corporation.

The provision generally is effective for dispositions after July 10, 1989, in taxable years ending after such date. The provision, however, does not apply to any disposition pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before such disposition.

*Senate amendment*

The Senate amendment is the same as the House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

*8. Clarify Treasury Regulation Authority Relating to Debt-equity*

*Present law*

The characterization of an investment in a corporation as debt or equity for Federal income tax purposes generally is determined by reference to numerous factors that are deemed to reflect aspects of the economic substance of the investor's interest in the corporation. Generally, there has been a tendency by the courts to characterize an instrument entirely as debt or entirely as equity.

*House bill*

Section 385 is amended to allow the Treasury Department to characterize an instrument having significant debt and equity characteristics as part debt and part equity.

*Senate amendment*

The Senate amendment is the same as the House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

*9. Require Reporting to the IRS of Certain Acquisition and Recapitalization Transactions*

*Present law*

There is no requirement under present law that the parties to an acquisition or recapitalization transaction report information to the Treasury Department or the Internal Revenue Service with respect to such transaction, except as incident to the filing of Federal income tax returns.

*House bill*

The Treasury Department is directed to require information reporting, in general, when: (1) one or more persons acquire control of a corporation in a transaction (or series of related transactions) or (2) there is a recaptitalization of a corporation or other substantial change in the capital structure of a corporation. The information to be reported includes the identity of the parties to the transaction, the fees involved, any changes in the capital structure of the corporation, and such other additional information as the Treasury Department may require to be reported with respect to such transaction.

Non-compliance with the reporting requirement is subject to penalities of $500 per day for each day that the information return is overdue, up to a maximum penalty of $100,000. In addition, the criminal penalty provisions of present law apply (see Code secs. 7203, 7206 and 7207).

The committee intends that the Treasury Department will exempt small transactions from any reporting requirement hereunder.

The provision is effective for transactions after March 31, 1990.

*Senate amendment*

The Senate amendment is the same as the House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

*10. Treasury Study of "Debt vs. Equity" and Integration Issues*

*Present law*

Interest on debt is generally deductible by the issuer and is includible in the income of the holder. In the case of tax-exempt or foreign holders, however, the interest is not taxable with the result that neither the issuer nor the holders pay any tax on income with respect to amounts distributed as interest.

The U.S. income tax system is not integrated, i.e., corporations and their shareholders are generally treated as separate taxable entities. Thus, income earned by a corporation and distributed to shareholders may be taxed twice: once at the corporate level when earned and again at the shareholder level when such income is distributed to shareholders.

*House bill*

The Treasury Department is required to study the following: (1) whether the present law distinctions between debt and equity are meaningful and whether there are cases in which it would be appropriate to recharacterize currently deductible interest expense, in whole or in part, as nondeductible dividends or vice versa; (2) the policy and revenue implications of proposals that would integrate the corporate and individual income tax systems; and, (3) the policy and revenue implications of the current tax treatment of corporate distributions with respect to debt and equity owned by tax-exempt entities and foreign persons.

The Treasury Department is required to report to the Ways and Means Committee and Finance Committee no later than one year following the date of enactment.

The provision is effective on the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*11. Require Corporate Estimated Tax Payments of Tax Liabilities for Certain S Corporation Income*

*Present law*

Under present law, estimated tax payments of the taxes imposed on S corporations are not required.

*House bill*

The House bill required estimated tax payments of certain taxes imposed on S corporations to be paid, effective for taxable years beginning after December 31, 1989.

*Senate amendment*

The Senate amendment is the same as the House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

*12. Limit Interest Deductions for Earnings Stripping Payments to Related Tax-exempt Parties*

*Present law*

Interest expenses of a U.S. corporate taxpayer are generally deductible, whether or not the interest is paid to a related party and whether or not the interest income is subject to U.S. taxation as received by the recipient.

*House bill*

The House bill disallows deductions for interest paid to related parties that are not subject to U.S. tax on the interest received, generally to the extent that such interest exceeds 50 percent of the payor's pre-net-interest-deduction taxable income. It permits disallowed amounts to be carried over to subsequent years. The bill treats interest recipients that are subject to a reduced rate of taxation, e.g. under a tax treaty, as partially subject to U.S. tax and partially not subject to U.S. tax.

The provision is effective generally for interest paid or accrued after July 10, 1989, in taxable years beginning after that date, except (1) on debt instruments with fixed terms that were outstanding on that date, and (2) until September 1, 1989, on demand loans that were outstanding on July 10, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with substantial modifications. Under the conference agreement, a corporation's interest deductions for a taxable year may not be denied under the provision unless that corporation has excess interest expense for the taxable year, and the ratio of debt to equity of the corporation as of the close of the taxable year (and on such other days during the taxable year as the Secretary may by regulations prescribe) exceeds 1.5 to 1.

For this purpose, the term "excess interest expense" means the excess, if any, of the corporation's net interest expense, over the

sum of 50 percent of the adjusted taxable income of the corporation plus any excess limitation carryforward. The term excess limitation means the excess (if any) of 50 percent of the adjusted taxable income (as defined under the conference agreement) of the corporation over the corporation's net interest expense. If a corporation has an excess limitation for a taxable year, that amount becomes an excess limitation carryforward to the first succeeding taxable year; to the extent not taken into account for that first year, it is carried forward to the second succeeding taxable year, and, to the extent not taken into account for that second year, to the third succeeding taxable year. The amount of carryforwards taken into account for a year succeeding the excess limitation year, however, will not exceed the excess interest expense for that succeeding year (determined without regard to carryforwards from taxable years that had excess limitation). In the case of a year following two or three prior years with respect to which excess limitations potentially may be carried forward, the conferees intend that the excess limitation available from the earlier of the prior years be used first.

The operation of the provision may be illustrated as follows. Assume that for 1990 a corporation has $150 of adjusted taxable income and $60 of net interest expense. Under the conference agreement, this corporation is not subject to disallowance of interest deductions for 1990 under the provision. Moreover, it has excess limitation for 1990 of $15. Assume that for 1991 the corporation has $100 of adjusted taxable income and again $60 of net interest expense. For 1991 the sum of 50 percent of adjusted taxable income ($50), plus the excess limitation carryforward from 1990 that may be taken into account for 1991, equals $60 (i.e., $50 plus $10). Therefore the corporation is not subject to disallowance of interest deductions for 1991 under the provision. Assume that for 1992 the corporation again has $100 of adjusted taxable income and $60 of net interest expense. For 1992 the sum of 50 percent of adjusted taxable income, plus the excess limitation carryforward from 1990 that may be taken into account for 1992, equals $55 (i.e., $50 plus $5). Therefore the corporation may be subject to disallowance of up to $5 of interest deductions for 1992 under the provision, assuming that it has paid or incurred disqualified interest for 1992 and assuming that its debt-equity ratio for that year exceeds 1.5 to 1.

Under the conference agreement, the ratio of debt to equity means the ratio which the total indebtedness of the corporation bears to the sum of its money and all other assets less such total indebtedness. For this purpose, the amount taken into account with respect to any asset is that asset's adjusted basis for purposes of determining gain. Where a debt obligation has original issue discount, the amount taken into account is its issue price plus the portion of the original issue discount previously accrued as determined under the rules of section 1272.[1]

The conference agreement modifies the definition of adjusted taxable income. Under the agreement, adjusted taxable income means the taxable income computed without regard to net interest expense, net operating loss carryovers, or any deduction allowable for depreciation, amortization, or depletion. Thus in the case of a corporation that claims a deduction for depletion, the amounts disregarded in applying the provision include any cost depletion or percentage depletion amounts actually allowed.

The conference agreement also modifies the determination of whether interest is paid to a related person in the case of a payment of interest to a partnership. Under the agreement, payments of interest to a partnership which would otherwise be a related person will generally not be treated as payments to a related person if partners with respect to whom no U.S. tax is imposed on their distributive shares of interest income of the partnership from the payer own in the aggregate less than 10 percent of the profits and capital interest in the partnership. As an exception to this general rule, payments to such a partnership will be treated as payments to a related person to the extent such interest is allocable to any partner who is a related person to the payer of the interest.[2] For these purposes, the conference agreement provides a rule to account for the partnership interests of partners with respect to whom, under a treaty, reduced U.S. tax is imposed on their distributive shares of interest income of the partnership from the payer. In this case, the partnership interest of such a partner will be treated as held in part by a tax-exempt person and in part by a taxable person. The division will be made under rules similar to the rules for determining the portion of each interest payment from a U.S. corporation to such a person that would be deemed to be exempt from tax.

These rules may be illustrated by the following example. Assume that a partnership owns all of the stock of a U.S. corporation and that the partnership receives interest payments from the corporation. Assume that over 90 percent of the interests in the partnership are owned by two or more unrelated taxable U.S. persons, and that no partner has more than a 50-percent interest in partnership profits or capital. Under the conference agreement, all payments of interest to the partnership by the corporation are treated as payments to unrelated persons for purposes of the provision. On the other hand, if 10 percent or more of the capital or profits interest in the partnership are held by organizations exempt from all U.S. tax on their distributive share of interest income of the partnership from the corporation, then under the conference agreement (as under the House bill) interest paid by the corporation to the partnership is treated as paid to a related party, and subject to the other rules of the provision.

Under the conference agreement, the Treasury has the authority to issue regulations, to carry out the purposes of the provision, that would alter the definition of adjusted taxable income, set rules for computing the ratio of debt to equity, and adjust the measurement of net interest expense in appropriate circumstances. In granting Treasury authority to amend the adjusted taxable income definition, the conferees intend that any modified definition will add back non-cash deductions to earnings generated by operations, but would disregard, for example, the proceeds of certain capital asset dispositions. In granting Treasury authority to adjust the measurement of net interest expense, the conferees understand that regulations could reduce net interest expense where all or a portion of income items not denominated as interest are appropriately characterized, in the Treasury's view, as equivalent to interest income. The conferees expect that an amount would not be so characterized unless it predominantly reflects the time value of money or is a payment in substance for the use or forbearance of money. Similarly, the conferees understand that Treasury might choose to increase net interest expense, under regulations, by all or a portion of expense items not denominated interest but appropriately characterized as equivalent to interest expense.

Some have argued that the House report's discussion of parent-guaranteed debt would potentially have made ordinary third-party financing transactions subject to the disallowance rule, in view of the common practice of having parents guarantee the debt of their subsidiaries in order to reduce the cost of third-party borrowings. The conferees intend to clarify that the provision is not to be interpreted generally to subject third-party interest to disallowance under the rule whenever such a guarantee is given in the ordinary course. On the other hand, the conferees do not intend to preclude Treasury from disallowing interest on a guaranteed third-party debt, in appropriate circumstances where the use of guaranteed third-party debt is a device for avoiding the operation of the earnings stripping rules, just as Treasury is not precluded from disallowing interest on a back-to-back loan. In the event that Treasury issues regulations that would treat as related party interest the interest paid on debt of a U.S. corporation to an unrelated third party, which debt is guaranteed (or otherwise supported) by a related person, the conferees expect that any such regulations would not apply to debt outstanding prior to notice of the rule if and to the extent that the regulations depart from positions the Service and Treasury might properly take under analogous principles of present law that would recharacterize guaranteed debt as equity. However, this grant of authority is not intended to restrict Treasury's ability under current law to recharacterize certain guaranteed loans as equity.[3]

The conferees took account of several concerns regarding the statutory language of the House bill, and the conferees believe that the conference agreement adequately addresses those concerns. Some have argued that the House provision would deny interest deductions in cases where net interest expense exceeds the income threshold not because the corporation is thinly capitalized, but because of year-to-year changes in profitability or in the amount of depreciation, amortization, or depletion. The conference changes should serve to ameliorate these concerns. For example, the conferees expect that the interest deductions of many corporations will not be affected by the provision because many corporations with what can fairly be called typical capital structures have debt-equity ratios below the safe harbor ratio in the bill. The conferees understand that the median debt-equity ratio for U.S. corporations is generally measured as less than 1.5 to 1. Where a corporation both incurs related party debt and acquires

[1] For this purpose, adjustments for acquisition premiums paid by any holder (secs. 1272(a)(7) and (b)(4)) are irrelevant.

[2] Note that applying section 267(b), relatedness to a corporation is determined based on stock held directly or indirectly, including stock held indirectly through a partnership (sec. 267(c)(1) and (5)).

[3] Cf. *Plantation Patterns, Inc.* v. *Commissioner*, 462 F.2d 712 (5th Cir.), cert. denied, 409 U.S. 1076 (1972).

assets subject to depreciation, amortization or depletion, the adjustment to taxable income to disregard such deductions should insure that the resulting non-cash deductions do not adversely affect interest deductibility. Finally, where profits are temporarily low relative to existing debt-service requirements, the corporation may receive deductions for net interest not only up to 50 percent of current year's adjusted taxable income, but also up to the amounts of any excess limitation carried forward from the three prior years. This modification also responds to concerns that taxpayers would potentially have been harmed by not knowing whether related party interest would be deductible at the time it was incurred because the relevant dollar threshold might not be known until after the taxable year in which the interest costs were incurred.

Finally, some have argued that, contrary to the view of the Ways and Means Committee, the House bill provision would violate treaties. The conferees believe that the conference agreement does not violate treaties. This belief is based on several factors. First, the conferees believe that because the provision treats similarly situated persons similarly, there is no discrimination under treaties. For this purpose the conferees believe that the determination of which persons are similarly situated is properly made by reference to the U.S. tax those persons do or do not bear on interest income from U.S. corporations.[4] This is consistent with the view that payments leaving U.S. taxing jurisdiction may in appropriate circumstances, consistent with treaties, be subjected by the United States to tax that would not be imposed on a payment to a U.S. person. E.g., Notice 87-66, 1987-2 C.B. 376.

Some have argued that under present law, foreign persons may be treated for some purposes more favorably than similarly situated U.S. persons. For example, the unrelated business income tax rules impose a tax on earnings stripping amounts (i.e., interest, annuities, royalties, and rents) received by any tax-exempt organization that individually owns 80 percent or more of a U.S. subsidiary (sec. 512(b)(13)). No similar rule applies to foreign persons. As another example, it has been argued that some foreign persons can afford to pay more for U.S. companies than prospective U.S. buyers because a foreign person can borrow to acquire in its home country where interest deductions are beneficial, and may in some cases be able to use the capital in a tax haven finance subsidiary to generate interest income from a U.S. acquisition vehicle (deductible against income of the target) that is subject to little or no current tax.[5]

The conferees believe that for these purposes related and unrelated lenders need not be treated as similarly situated. Allowance of unlimited deductions for related party interest permits an economic unit that consists of more than one legal entity to contract with itself at the expense of the government.

The nature of the contracting parties' relationship can affect debt equity decisions even when there is not a complete commonality of interest between the parties. The close connection between a corporation and its major creditors may facilitate renegotiation and reduce conflicts between lender and borrower. These relations may provide some of the flexibility needed for adjusting to macroeconomic disturbances, which flexibility might otherwise be lacking in a company burdened by debt owed to purely unrelated lenders. It has been argued that debt-equity ratios are higher in certain countries (such as Japan and Germany) because the financial institutions that supply debt in those countries typically participate in the equity or management of the borrower firms.[6]

The conferees also believe that the provisions of the bill are generally consistent with the United State's obligations under its treaties because the bill sets forth standards for determining thin capitalization in an arm's length fashion. Thus, whether the standards apply solely to foreign lenders or to foreign and domestic lenders equally is, in the conferees' view, irrelevant. See, e.g., Committee on Fiscal Affairs, OECD, *Thin Capitalisation* para. 87 (1987).

The conferees believe, however, that there is a difference between the application of arm's length concepts to ordinary sales or licensing transactions, on the one hand, and capitalization transactions, on the other. In the case of an ordinary transfer price for goods, services, or rights to use property, the mechanism for properly dividing taxing jurisdiction over income should generally, in the conferees' view, be the market price. In a transaction where every additional dollar paid by the buyer inures to the benefit of an unrelated seller, the price set should be a fairly reliable guide to the contributions of each party to the transaction. In the case of a debtor-creditor relationship, on the other hand, the fact that unrelated parties may have entered into a transaction involving the same "thinness" of capitalization is not a sufficient criterion. Absent any tax advantages, investors acting at arm's length may not care, as an economic matter, whether the return on their investment is denominated interest, dividends, or capital gains. Moreover, if interest is both deductible to the payer and free of source taxation to the lender, while dividends are not deductible, and not free from source country tax, both investor and issuer may be benefited by characterizing the instrument issued in return for the capital as debt. Even though there may be a U.S. corporation that is thinly capitalized with unrelated party debt that pays a very high rate of interest, the conferees believe it is incorrect to draw the conclusion that a similarly structured transaction between related persons (the lender of which bears no U.S. tax on the interest income) leaves the United States with adequate tax jurisdiction over the earnings generated through the corporation. Thus, the committee believes that the use of the term "arm's length" in this context does not mean that the tax treatment of a particular capital structure cannot be adjusted consistent with a treaty whenever it can be demonstrated that such a structure exists in a situation involving junk bonds and unrelated lenders and borrowers. This may be different from the ordinary use of the term "arm's length" under Code section 482.

The conferees believe that the provisions of the conference agreement meet the arm's length standard that is relevant in the debt-equity context. The conferees believe that thin capitalization rules based on averages among firms and typical or normally observed patterns, are consistent with what it views as "arm's-length" standards. As described above, the conferees believe that a safe harbor for companies capitalized at debt-equity ratios of no greater than 1.5 to 1 would excuse many U.S. corporations with typical capital structures from any potential disallowance under the rule. In addition, the conferees understand that on average, net interest payments can generally be expected to be well under the threshold set by the bill.[7] Moreover, because of the particular lack of constraints on related party financings discussed above, the conferees believe it is inappropriate to assume that a thinly capitalized controlled corporation would have been capitalized as thinly as the market would allow had the financing come from unrelated parties. A more plausible inference, in view of the hypothetical nature of the inquiry, would be to assume that more typical debt-equity ratios and interest coverage ratios would be observed.

The conferees are aware of the complexity of the legal issues involved in this matter and the possible evolution of the international standards for identifying thin capitalization. The conferees have therefore granted authority to the Treasury to make appropriate adjustments, by regulation, to the definitions applicable to debt equity, net interest expense, and adjusted taxable income so that the application of the statute will be consistent with the concept of thin capitalization as described above.

If the adjustments made pursuant to this regulatory authority are determined by Treasury to be inadequate to permit the application of the thin capitalization rules consistent with appropriate arm's length standards as described above, the conferees intend that Treasury will report to the Finance Committee and the Ways and Means Committee so that Congress may make such adjustments to this provision as it may find appropriate to remedy such inadequacy.

*13. Limitation on Carrybacks of Certain Net Operating Losses of C Corporations*

*Present law*

A corporation that incurs net operating losses (NOLs) generally can carry the NOLs back 3 taxable years and forward 15 taxable years. Carrying the NOLs back against prior taxable income allows a corporation to recognize currently the benefit of those losses by obtaining a refund.

*House bill*

The ability of C corporations to carry back NOLs is limited in cases where the NOLs are created by interest deductions allocable to certain corporate equity-reducing transactions (CERTs). A CERT is either a major stock acquisition (of at least 50 percent of the vote or value of another corporation) or an excess distribution (defined generally as the excess of the aggregate distribution and redemptions made by a corporation with respect to its stock over 150 percent of the average of such distributions for the previous 3 years).

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[4] Thus the provision makes no distinction between foreign lenders on the basis of whether or not their interest income is subject to tax in their residence country.

[5] See, e.g., Committee on Fiscal Affairs, OECD, *Thin Capitalisation* para. 15 (1987).

[6] See, e.g., Gertler & Hubbard, "Taxation, Corporate Capital Structure, and Financial Distress," paper presented to the National Bureau of Economic Research, Inc. conference on Tax Policy and the Economy, November 14, 1989.

[7] See, e.g., the discussion in the January 18 pamphlet prepared by the staff of the Joint Committee on Taxation entitled Federal Income Tax Aspects of Corporate Financial Structures." See also, Wall St. J., November 6, 1989, p. 1, col. 6 ("Interest payments are absorbing a record 25% of the cash flow [net income plus depreciation] of nonfinancial corporations," quoting Merrill Lynch's chief economist).

The portion of the NOL carryback that is limited is the lesser of (1) the corporation's interest expense that is allocable to the CERT, or (2) the excess of the corporation's interest expense in the loss limitation year over the average of the corporation's interest expense for the 3 taxable years prior to the taxable year in which the CERT occurred. The provision does not apply if the lesser of these two amounts is less than than $1 million.

*Senate amendment*

The Senate amendment is the same as the House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

*14. Exempt From Corporate Level Tax Certain Distributions Made by Cooperative Housing Corporations*

*Present law*

*Distribution of appreciated property by corporations*

In general, gain is recognized by a corporation if appreciated property is distributed to shareholders in a liquidating or nonliquidating distribution. No gain or loss is recognized to a cooperative housing corporation, however, when property that qualifies as a principal residence is distributed to a tenant-stockholder, to the extent the exchange qualifies for nonrecognition at the shareholder level under section 1034 of the Code (sec. 216(e)).

*Deductions claimed against non-member income*

In the case of a taxable memberhip organization, deductions attributable to furnishing services, insurance, goods, or other items of value to members are allowed only to the extent of income derived from members (sec. 277). In *Concord Consumers Housing Cooperative* v. *Commissioner,* 89 T.C. 105 (1987), the Tax Court applied this rule in the case of a cooperative housing corporation [1] and concluded that interest income on reserves was not income derived from members.

*House bill*

*Distribution of appreciated property by corporations*

No gain or loss is recognized to a cooperative housing corporation on the distribution of a dwelling unit to a tenant-stockholder regardless of whether the stockholder is entitled to defer recognition of the gain, if any, on the distribution. The provision does not apply, however, to the distribution of any retail or commercial space by a cooperative housing corporation.

*Deductions claimed against non-tenant-stockholder income*

If a cooperative housing corporation distributes a dwelling unit to a stockholder, it must recognize ordinary income in an amount equal to any deductions with respect to the distributed dwelling unit claimed against income other than income from tenant-stockholders.

[1] In this case, both parties assumed that section 277 applied and no issue regarding its application was raised. The Tax Court did not determine whether the taxpayer was a section 216 housing cooperative. The Tax Court thus did not specifically reach the issue whether section 277 applies to a section 216 housing cooperative. The Tax Court thus did not specifically reach the issue whether section 277 applies to a section 216 housing cooperative. The conferees wish to make clear that no inference one way or the other is intended by reference to this particualr case.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*15. Treatment of Safe Harbor Leases of Rural Electric Cooperatives*

*Present law*

Membership organizations may not use deductions arising from providing goods and services to members to offset income from nonmembers. In a safe harbor lease, the lessee both receives interest income and has rental expenses.

*House bill*

The House bill provides that interest income and rental expenses of safe harbor leases of rural electric cooperatives are first netted and the difference is then allocated between member and nonmember income. The provision is effective for all open taxable years.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

C. EMPLOYEE BENEFITS PROVISIONS

*1. Repeal of section 89 nondiscrimination rules*

*Present law*

*Section 89*

Under present law, section 89 imposes nondiscrimination rules on group-term life insurance plans and health plans. Section 89 also imposes minimum qualification standards on certain types of employee benefit plans. Prior to the enactment of section 89 as part of the Tax Reform Act of 1986, other nondiscrimination rules applied to certain employee benefit plans.

*Dependent care assistance programs*

Under present law, gross income does not include benefits received under an employer-provided dependent care assistance program. Dependent care assistance programs are subject to certain nondiscrimination rules, including a benefits test. If these rules are not satisfied then all employees must include in income the benefits received under the program.

*Line of business rules*

Under present law, if an employer has separate lines of business or maintains separate operating units, each separate line of business or operating unit may be tested separately under the nondiscrimination rules applicable to qualified plans by taking into account only those employees in that line of business or operating unit.

*House bill*

*Repeal of section 89*

The House bill repeals section 89. The provision is effective as if included in the Tax Reform Act of 1986.

*Reinstatement of prior law*

The House bill generally reinstates the nondiscrimination rules in effect prior to the Tax Reform Act of 1986. The provision is effective as if included in the Tax Reform Act of 1986.

*Dependent care assistance programs*

The House bill provides that, if the nondiscrimination rules relating to dependent care assistance programs are not satisfied, only the highly compensated employees in the program must include in income the value of benefits received under the program. The provision is effective for years beginning after December 31, 1988.

*Line of business rules*

Under the House bill, in the case of any plan year beginning on or before the date the Secretary issues guidelines under section 414(r)(2)(C) (and begins issuing determination letters with respect to such section), an employer meeting the requirements of section 414(r)(2) (A) and (B) with respect to a line of business may treat it as a separate line of business if the employer reasonably determines it to be separate. The provision is effective for years beginning after December 31, 1986.

*Senate amendment*

No provision.

*Conference agreement*

No provision. (Provisions similar to those of the House bill were included in Public Law No. 101-140, providing for an increase in the public debt.)

*2. Provisions Relating to Employee Stock Ownership Plans (ESOPS)*

*Present law*

*Partial interest exclusion for ESOP loans*

Under present law, banks and certain other financial institutions may exclude from gross income 50 percent of the interest received with respect to a securities acquisition loan (sec. 133). Under Revenue Ruling 89-76, a lender may qualify for the partial interest exclusion regardless of whether the original lender was a qualified lender or whether each prior lender was a qualified lender.

*Dividends paid deduction*

In certain circumstances, present law permits an employer to deduct dividends paid on securities held by an ESOP to the extent the dividends are (1) paid out currently to plan participants or (2) used to repay a loan used to acquire employer securities (sec. 404(k)).

*Deferral of gain on certain sales of stock to an ESOP*

If certain requirements are satisfied, present law permits a taxpayer to elect to defer recognition of gain on the sale of qualified securities to an ESOP to the extent that the taxpayer reinvests the proceeds in qualified replacement property within a replacement period (sec. 1042).

*Limits on contributions and benefits under an ESOP*

In general, under present law, the maximum annual additions that can be made to the account of plan participants under a defined contribution plan is the lesser of (1) 25 percent of the participant's compensation, or (2) $30,000. If no more than ⅓ of the employer contributions to an ESOP for a year are allocated to highly compensated employees, then the dollar limit on annual additions to the ESOP is equal to the sum of (1) the regularly applicable dollar limit, and (2) the lesser of such dollar limit or the amount of employer securities contributed, or purchased with cash contributed to, the ESOP (sec. 415(c)(6)).

*Payment of estate tax liability by an ESOP*

Under present law, the executor of a decedent's estate is relieved of estate tax liability, and an ESOP is required to pay the liability, if qualified employer securities are acquired from the decedent by the ESOP and certain requirements are satisfied. The

plan administrator must consent to the assumption of estate tax liability and the employer maintaining the ESOP must guaranty the payment of the liability (sec. 2210).

*Estate tax deduction for sales to an ESOP*

If certain requirements are satisfied, present law permits a deduction from the gross estate equal to 50 percent of the qualified proceeds from a qualified sale to an ESOP of employer securities that are includible in the decedent's estate (sec. 2057). The deduction may not exceed 50 percent of the otherwise taxable estate and cannot reduce the estate taxes by more than $750,000. The estate tax deduction expires for sales after December 31, 1991.

*Relief from net operating loss provisions*

In general, under present law, if there is more than a 50 percent change in the ownership of a corporation that has net operating losses, the use of the corporation's prechange losses and credits is limited following that ownership change. Employer securities acquired by certain ESOPs are not taken into account in determining whether an ownership change has occurred (sec. 382(1)(3)(C)).

*House bill*

*Partial interest exclusion for ESOP loans*

Under the House bill, the partial interest exclusion applies with respect to a securities acquisition loan only during periods in which the ESOP owns at least 30 percent of each class of outstanding stock of the corporation that issued the employer securities or 30 percent of the total value of all outstanding stock of the corporation. The Secretary is authorized to provide that limited failures to meet this 30-percent requirement will not result in loss of the exclusion if the failure is corrected within 90 days. The Secretary may extend the correction period for an additional 90 days.

The House bill overrides Revenue Ruling 89-76 by providing that the partial interest exclusion is not available to a lender unless the loan originated with a qualified lender and each prior lender is a qualified lender.

The provision generally applies to loans made after July 10, 1989.

The provision does not apply to any loan made pursuant to a written binding commitment in effect on July 10, 1989, and at all times thereafter before such loan is made to the extent that the proceeds of such loan are used to acquire employer securities pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on July 10, 1989, and at all times thereafter before such securities are acquired.

The provision does not apply to any loan made pursuant to a written agreement entered into on or before July 10, 1989, if such agreement evidence the intent of the borrower on a periodic basis to enter into immediate allocation securities acquisition loans, and one or more securities acquisition loans were made to the borrower on or before July 10, 1989.

The provision does not apply to loans made after July 10, 1989, to refinance securities acquisition loans made on or before such date or to refinance loans grandfathered under the provision if (1) such loans meet the requirements of section 133 (as in effect before the amendments made by the provision) applicable to such loans, (2) immediately after the refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), (3) the term of the loan does not extend beyond the later of (a) the last day of the term of the original securities acquisition loan or (b) the last day of the 7-year period beginning on the date the original securities acquisition loan was made, and (4) the original loan was originated by a qualified lender.

*Dividends paid deduction*

The 30-percent ownership requirement that applies to the partial interest exclusion under the bill also applies to the dividends paid deduction. In addition, the dividends paid deduction is limited to dividends paid on employer securities acquired with a securities acquisition loan to which the partial interest exclusion applies. Dividends may be used to repay an acquisition loan only if those dividends are paid with respect to employer securities acquired with that loan.

The provision applies to employer securities acquired after July 10, 1989, other than securities acquired with the proceeds of a loan that meets the requirements for the grandfather from modifications of section 133 (whether or not the loan actually qualified under section 133).

*Deferral of gain on certain sales of stock to an ESOP*

Under the House bill, the deferral of recognition of gain on the sale of qualified securities to an ESOP is available only if, in addition to the present-law requirements, the taxpayer holds the securities for at least 3 years before the sale of stock to an ESOP. The provision is effective for sales to an ESOP after July 10, 1989.

*Limits on contributions and benefits under an ESOP*

The special dollar limitation for annual additions to an ESOP is repealed, effective for years beginning after December 31, 1989.

*Payment of estate tax liability by an ESOP*

The House bill repeals the provision permitting an ESOP to assume estate tax liability, effective for estates of decedents dying after July 12, 1989.

*Estate tax deduction for sales to an ESOP*

The House bill repeals the estate tax deduction for certain sales of employer securities to an ESOP, effective for estates of decedents dying after July 12, 1989.

*Relief from net operating loss provisions*

The House bill repeals the provision providing that certain employer securities are not taken into account in determining whether an ownership change has occurred for purposes of the net operating loss rules, effective for acquisitions of employer securities after July 12, 1989, other than acquisitions pursuant to a binding written contract in effect on July 12, 1989, and at all times thereafter before such acquisition.

*Senate amendment*

*Partial interest exclusion for ESOP loans*

Under the Senate amendment, the partial interest exclusion does not apply to a loan unless (1) immediately after the acquisition of the securities acquired with the loan proceeds (or transfer of securities to the ESOP in the case of an immediate allocation loan) the ESOP owns at least 30 percent of each class of outstanding stock of the corporation issuing the securities, or 30 percent of the total value of all outstanding stock of the corporation, (2) the term of the loan does not exceed 15 years, and (3) participants are entitled to direct how the employer securities acquired with the loan (or transferred to the ESOP) and allocated to their account are to be voted. The 30-percent limit is calculated as under the House bill except that options held by the ESOP are taken into account in determining the percentage of stock held by the ESOP.

Under the amendment, a 10-percent excise tax is imposed on the employer maintaining the ESOP if, within 3 years after the securities are acquired (or transferred) (1) the total number of employer securities held by the ESOP after the disposition is less than the total number of employer securities held after the acquisition (or transfer), or (2) except to the extent provided in regulations, the value of employer securities held by the ESOP after the disposition is less than 30 percent of the total value of all employer securities as of the time of the disposition. The excise tax is also imposed if the employer securities are disposed of before being allocated to the accounts of plan participants. Certain distributions to employees and certain exchanges of employer securities are not taken into account for purposes of the excise tax provisions.

The provision generally applies to loans made after June 6, 1989.

The provision does not apply to any loan (1) which is made pursuant to a binding written commitment in effect on June 6, 1989, and at all times thereafter before such loan is made, or (2) to the extent that the proceeds of such loan are used to acquire employer securities pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on June 6, 1989, and at all times thereafter before such securities are acquired.

The provision does not apply to a loan to the extent made to finance the acquisition of employer securities by an ESOP pursuant to a collective bargaining agreement between employee representatives and one or more employers which was agreed to on or before June 6, 1989, and ratified before such date or within a reasonable period thereafter and which agreement sets forth the material terms of the ESOP.

The provision does not apply to loans with respect to which a filing was made with an agency of the United States on or before June 6, 1989, which specifies the aggregate principal amount of the loan if (1) such filing specifies that the loan is intended to be a securities acquisition loan and is for registration required to permit the offering of such loan, or (2) such filing is for approval required in order for the ESOP to acquire more than a certain percentage of the stock of the employer.

The provision does not apply to loans made after June 6, 1989, to refinance securities acquisition loans (determined without regard to sec. 133(b)(2)) made on or before such date to refinance loans grandfathered under the provision (1) the refinancing loans meet the requirements of section 133 (as in effect before amended by the provision), (2) immediately after refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), and (3) the term of such refinancing loan does not extend beyond the later of (a) the last day of the term of the original securities acquisition loan, or (b) the last day of the 7-year period beginning on the date the original securities acquisition loan was made. For purposes of this transition rule, "securities acquisition loan" includes a loan before a corporation to an ESOP described in section 133(b)(3) (relating to back-to-back loans).

*Dividends paid deduction*

No provision.

*Deferral of gain on certain sales of stock to an ESOP*

No provision.

*Limits on contributions and benefits under an ESOP*

No provision.

*Payment of estate tax liability by an ESOP*

No provision.

*Estate tax deduction for sales to an ESOP*

No provision.

*Relief from net operating loss provisions*

No provision.

*Conference agreement*

*Partial interest exclusion for ESOP loans*

The conference agreement follows the House bill and the Senate amendment, with modifications. Under the conference agreement, the partial interest exclusion is not available unless the ESOP owns more than 50 percent of (1) each class of outstanding stock of the corporation issuing the employer securities, or (2) the total value of all outstanding stock of the corporation. The amount of stock of the corporation held by the ESOP is determined as under the House bill. Thus, options held by the ESOP are not counted toward the 50-percent requirement.

As under the House bill, the partial interest exclusion does not apply to interest allocable to any period during which ESOP does not meet the more than 50 percent requirement. In addition, the House bill provision relating to reporting requirements is included. The provisions of the Senate bill relating to voting rights, the 15-year limitation on the term of securities acquisition loans, and excise taxes also apply. The conference agreement does not adopt the provision of the House bill that overrides Revenue Ruling 89-76. Under the conference agreement, the more than 50 percent requirement may be satisfied by counting all stock in any ESOP maintained by the employer (or other member of the employer's controlled group).

As under the Senate amendment, it is intended that during the period the excise tax relating to securities to which section 2057 applied is in effect, any disposition of employer securities will be treated as having been made in the following order: first, from securities described in section 4978A(d)(1); second, from securities described in section 4978A(d)(2); third, from section 133 securities acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired; fourth, from section 133 securities acquired before such 3-year period unless such securities (or proceeds from the disposition) have been allocated to accounts of participants or beneficiaries; fifth, from securities described in section 4978A(d)(3); and last from securities described in section 4978(d)(4).

The provision is generally effective for loans made after July 10, 1989. In addition, the conference agreement adopts the transition rules of both the House bill and the Senate amendment. Thus, under the conference agreement, the provision does not apply to a loan made after July 10, 1989, (1) if the loan is made pursuant to a written binding commitment in effect on July 10, 1989, to the extent the proceeds of such loan are used to acquire employer securities pursuant to a written binding contract (or tender offer) in effect on July 10, 1989; (2) the loan is an immediate allocation securities acquisition loan made on or before July 10, 1992, pursuant to a written agreement entered into on or before July 10, 1989, and certain requirements are satisfied; (3) if the loan is made pursuant to a written binding commitment in effect on June 6, 1989, or to the extent that the proceeds of the loan are used to acquire employer securities pursuant to a written binding contract (or tender offer) in effect on June 6, 1989; (4) to the extent the loan is used to acquire employer securities pursuant to a collective bargaining agreement setting forth the material terms of the ESOP (or referencing an existing ESOP) which was agreed to on or before June 6, 1989, by one or more employers and employee representatives (and ratified on or before such date or within a reasonable period thereafter); or (5) with respect to which certain governmental filings were made on or before June 6, 1989. As under the Senate amendment, the grandfather with respect to certain governmental filings relates only to governmental filings required in order for the ESOP debt to be issued or for a certain percentage of the corporation's stock to be acquired by the ESOP and, thus, for example, the rule is not satisfied by a request for a determination letter from the Internal Revenue Service that the ESOP is a qualified plan.

A special effective date applies to loans not otherwise grandfathered under the provision with respect to a plan that does not satisfy the more than 50 percent requirement of the provision, but would have satisfied the provisions of the House bill and the Senate amendment. Under the provision, the more than 50 percent requirement does not apply in the case of a loan made after July 10, 1989, if (1) the requirements of the provision are satisfied by substituting at least 30 percent for more than 50 percent and (2) the loan is made (a) on or before November 17, 1989, (b) the loan is made after November 17, 1989, pursuant to a binding written commitment in effect on November 17, 1989 or (c) to the extent that the proceeds of the loan are used to acquire employer securities pursuant to a written binding contract (or tender offer) in effect on November 17, 1989.

In addition, the provision does not apply to a loan made after July 10, 1989, to refinance securities acquisition loans (determined without regard to sec. 133(b)(2)) made on or before such date or to refinance loans grandfathered under the provision if (1) such refinancing loan meets the requirements of section 133 (as in effect before the amendment made by the provision, (2) the outstanding principal amount of the loan is not increased, and (3) the term of such loan does not extend beyond the later of (a) the last day of the term of the original securities acquisition loan, or (b) the last day of the 7-year period beginning on the date the original securities acquisition loan was made. These refinancing rules apply in the case of a securities acquisition loan that consists of a loan to the employer with a corresponding loan to the ESOP (a back-to-back or mirror loan) (see sec. 133(b)(3)), if the loan is restructured so that the loan is directly from the financial institution to the ESOP with a guarantee from the employer rather than a loan from the employer. The refinancing rules also apply to a series of refinancings. The conference agreement does not contain the provision of the House bill requiring that the original lender must have been a qualified lender.

The conferees intend that the written binding commitment rule apply to the extent that a loan made pursuant to a written binding commitment that otherwise satisfies the requirements of the grandfather rule is used to replace or refinance a loan the proceeds of which were used to acquire employer securities before the applicable grandfather date. Such a grandfathered loan may be refinanced without loss of the grandfather if the requirements relating to refinancings are otherwise met.

The conferees understand that ESOP loan transactions are not identical, and that the course of events leading up to the conclusion of a transaction differs from case to case. Thus, with respect to the grandfather rules for loans made pursuant to a written binding commitment, the conferees recognize that whether there is a written binding loan commitment depends on all the facts and circumstances and that the existence of such a commitment can be demonstrated in a variety of ways.

It is not necessary that the final loan documents be executed by the parties in order to demonstrate the existence of a written binding loan commitment. The existence of such a commitment can be demonstrated, for example, by any combination of documents which include some or all of documentation of the lender, written communications by the borrower or the borrower's agent (e.g., an investment banker or broker), and documentation of the borrower showing that the loan was approved by the lender and that the offer to make the loan was received by the borrower. No one particular document is necessary to qualify for the grandfather.

The documentation would have to include the principal terms of the loan, such as the principal amount, interest rate or spread or formula pursuant to which the interest rate will be set, and maturity of the loan. It is intended that the grandfather will not fail to be met if the loan commitment is for a specified amount and the borrower borrows less than the full amount. In addition, the grandfather will not fail to be met merely because the interest rate is to be set in accordance with rates prevailing at the time the loan is made, or because the only modification in the loan terms is a reduction in the interest rate that occurs before the loan is made. The grandfather will also not fail to be met merely because a loan commitment that met the conditions of the grandfather had an expiration date and the commitment was extended before the expiration date without change in the material terms of the commitment.

The written binding commitment grandfather rules apply to all types of securities acquisition loans. Thus, for example, immediate allocation loans, as well as other types of securities acquisition loans, would be grandfathered under the provision if a binding written commitment to make a securities acquisition loan existed on June 6, 1989, and at all times thereafter before the loan is made. Of course, such loans may also qualify under the special rule for immediate allocation loans.

The conferees also intend that a grandfathered loan will not lose the benefit of the grandfather merely because the interest rate on the loan is adjusted periodically by an independent (e.g., unrelated to the ESOP, its trustee or the sponsor of the ESOP) remarketing and interest-setting agent, or when the debt is remarketed.

In general, the rules for determining whether a written binding commitment exists are the same under all the ESOP grandfather rules. However, for purposes of

the June 6, 1989, binding commitment rule only, a loan is treated as being made pursuant to a written binding commitment in effect on June 6, 1989, if the loan would have met the conditions necessary to satisfy the June 6, 1989, binding commitment transition rule, except for the fact that the commitment lapsed after June 6, 1989, provided that the loan was closed on or before November 17, 1989, on substantially the same terms as contained in the original written commitment.

*Dividends paid deduction*

The conference agreement follows the Senate amendment, except that the conference agreement includes the provision in the House bill that dividends may be used to repay an acquisition loan only if the dividends are on employer securities acquired with the loan. The effective date of the provision is the same as the House bill, except that August 4, 1989, is substituted for July 10, 1989. Thus, the provision is effective for securities acquired by the ESOP after August 4, 1989, other than securities acquired with the proceeds of a loan made pursuant to a written binding commitment in effect on August 4, 1989, to the extent the proceeds of such loan are used to acquire employer securities pursuant to a written binding contract (or tender offer) in effect on August 4, 1989. Employer securities are not considered to have been acquired by an ESOP on or before August 4, 1989, for example, if the securities were acquired by a qualified plan on or before August 4, 1989, but the plan was not an ESOP until after August 4, 1989.

As under present law, a loan does not have to qualify as a securities acquisition loan under section 133 in order for the dividend deduction to apply to dividends used to repay the loan.

As under the House bill, no inference is intended as to the scope of the dividend deduction prior to the effective date of the provision. In addition, no inference is intended with respect to the permissible sources of payments on exempt loans under Title I of the Employee Retirement Income Security Act of 1974.

*Deferral of gain on certain sales of stock to an ESOP*

The conference agreement follows the House bill.

*Limits on contributions and benefits under an ESOP*

The conference agreement follows the House bill.

*Payment of estate tax liability by an ESOP*

The conference agreement follows the House bill.

*Estate tax deduction for sales to an ESOP*

The conference agreement follows the House bill, with the modification that the provision applies to estates of decedents dying after the date of enactment.

*Relief from net operating loss provisions*

The conference agreement follows the House bill.

*3. Modification of Full Funding Limitation*

*Present law*

Under present law, subject to certain limitations, an employer may make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the excess, if any, of (1) the lesser of (a) 150 percent of the plan's current liability or (b) the accrued liability under the plan (including normal cost), over (2) the value of the plan's assets. For plan years beginning before Janaury 1, 1988, the 150 percent of current liability limitation did not apply.

The Secretary may, under regulations, adjust the 150-percent figure contained in the full funding limitation to take into account the average age (and length of service, if appropriate) of the participants in the plan (weighted by the value of their benefits under the plan). In addition, the Secretary is authorized to prescribe regulations that apply, in lieu of the 150 percent of current liability limitation, a different full funding limitation based on factors other than current liability. The Secretary may exercise this authority only in a manner so that in the aggregate, the effect on Federal budget receipts is substantially identical to the effect of the 150-percent full funding limitation.

*House bill*

Certain employers may elect to apply the present-law full funding limitation without regard to the 150 percent of current liability limitation. The Secretary is directed to adjust the full funding limitation for all plans (other than those subject to such an election) in a specified manner in response to employer elections under the provision so that the provision has a negligible effect on Federal budget receipts.

An employer may elect to use the alternative full funding limitation if (1) as of the first day of the plan year in which the election is made the accrued liability of participants accruing benefits under all defined benefit pension plans of the employer (and controlled group members) is at least 90 percent of the aggregate total accrued liability under all such plans and (2) no defined benefit pension plan maintained by the employer (or by any controlled group member) is a top-heavy plan (within the meaning of section 416(g)) for the plan year in which such election is made or the two immediately preceding plan years.

If the accrued liability ratio described above falls below 90 percent for any plan year for which the election is in effect, the alternative full funding limitation is phased out for the remainder of the period for which the election is in effect under rules to be prescribed by the Secretary. If a plan becomes a top-heavy plan during any plan year in the period for which the election is in effect, the alternative full funding limitation ceases to apply. In addition, if either the 90-percent requirement or top-heavy restriction is violated during the election period, the employer is precluded from making a subsequent election to use the alternative full funding limitation for 10 plan years following the election period.

In determining whether the accrued liability with respect to a participant may be aggregated with the accrued liability of other participants in order to meet the 90-percent requirement (i.e., whether the participant is accruing benefits under the plan), only active employees who have accrued benefits in the current year may be considered. Specifically, the Secretary is to issue guidance with respect to determining when a participant has accrued a benefit in the current year. Under such guidance, for example, for purposes of this provision, a participant in a plan where the employer has frozen accruals will not be considered to accrue benefits in the current year. In addition, a participant is not considered to accrue benefits solely because the participant's accrued benefit is increased by reason of a cost-of-living increase or similar feature in the plan.

It is intended that the Secretary will limit the availability of this provision where one or more plans of the employer have been terminated or amended in a manner that significantly increases the likelihood that the employer will be eligible to make an election under this provision (e.g., where a plan has undergone a termination/reestablishment or a spin-off/termination within the preceding 10 plan years).

The Secretary is required to adjust the full funding limitation applicable to other defined benefit pension plans on an annual basis in response to elections to use the alternative full funding limit.

The adjustment made by the Secretary is first made by substituting, with respect to inactive participants, a percentage between 140 percent and 150 percent for the "150 percent" in the 150-percent of current liability full funding limitation. Thus, the full funding limit will be applied to the plan by multiplying the current liability attributable to active participants accruing benefits by 150 percent and by multiplying the current liability attributable to other participants by a percentage between 140 and 150 percent as determined by the Secretary.

To the extent that additional adjustments are necessary, the full funding limitation is to be adjusted by multiplying the accrued liability of the plan (sec. 412(c)(7)(A)(i)(II)) for all participants in the plan by a percentage less than 100 percent, but in no event by reducing this liability below 140 percent of current liability.

The provision is effective as of the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*4. Transfer of excess pension plan assets to pay current retiree health benefits*

*Present law*

Under present law, pension plan assets may not revert to an employer prior to the termination of the plan and the satisfaction of all plan liabilities. Any assets that revert to the employer upon such termination are included in the gross income of the employer and are subject to an excise tax (sec. 4980).

Subject to certain limitations, an employer may make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan or (b) 150 percent of the plan's current liability over (2) the lesser of (a) the fair market value of the plan's assets, or (b) the actuarial value of the plan's assets.

Under present law, a pension plan may provide medical benefits to retirees through a section 401(h) account that is part of such plan. The assets of a pension plan may not be transferred to a section 401(h) account without disqualifying the pension plan and subjecting the amounts transferred to income tax and the excise tax on reversions.

*House bill*

*In general*

Under the provision, a transfer of certain assets is permitted from the pension portion of a defined pension plan (other than a multiemployer plan) to the section 401(h) account that is a part of such plan.

The assets transferred are not includible in the gross income of the employer and are not subject to the excise tax on reversions. The defined benefit pension plan does not fail to satisfy the qualification requirements (sec. 401(a)) or violate the present-law requirements applicable to a section 401(h) account solely on account of the transfer or any other action permitted under the provision.

*Frequency and timing of permissible transfer*

Only one transfer is permitted. The transfer must occur before January 1, 1992, and in a plan year beginning after December 31, 1989.

*Requirements with respect to plan benefits*

Vesting and annuitization of accrued retirement benefits is required as if the plan terminated immediately before the transfer.

*Pension plan assets available for transfer*

The maximum amount of pension plan assets available for transfer is the lesser of (1) the plan's qualified current retiree health liabilities or (2) the value of assets in excess of the lesser of (a) 140 percent of the plan's current liability, or (b) the accrued liability (including normal cost) under the plan (as determined under sec. 412(c)(7) for pension funding purposes).

*Qualified current retiree health liabilities*

Qualified current retiree health liabilities are defined as the amount of retiree health benefits (excluding administrative expenses) estimated to be paid by the employer during the employer's 1990 or 1991 tax year with respect to covered employees who have retired on or before the date of the transfer. Liabilities that were paid by the employer before the date of the transfer may not be reimbursed. The retired employees who may be covered are not limited to pension plan participants. In estimating current retiree health liabilities, an employer is required to assume that the medical benefits provided during the 1990 and 1991 tax years will have the same cost as medical benefits currently provided to retirees. Therefore, for example, medical cost inflation, changes in the level of utilization, or changes in coverage provided or funded through the account cannot be taken into account unless such changes occur prior to the date of the transfer.

*Treatment of unexpended transferred amounts*

Transferred amounts not used for qualified current retiree health liabilities are required to be returned to the general assets of the plan and treated as distributed to the employer on the last day of the employer's last taxable year beginning in 1991. Such amounts are includible in the employer's income and subject to the excise tax on reversions. Payments of qualified current retiree health benefits are treated as paid first out of income on transferred amounts and then out of transferred amounts.

*Limitations on other contributions*

The employer is not entitled to a deduction for amounts transferred into the section 401(h) account or when such amounts (or income on such amounts) are used to pay retiree health benefits. An employer is not allowed a dedication for 1990 or 1991 for the provision or funding of qualified current retiree health benefits (whether directly, through a section 401(h) account, or a welfare benefit fund) except to the extent that the total of such payments for qualified current retiree health liabilities exceed the amount transferred to the section 401(h) account (including any income thereon) less qualified retiree health liabilities paid from such amounts.

In addition, no contribution may be made (whether directly, through a section 401(h) account or a welfare benefit fund) with respect to qualified current retiree health liabilities that are required to be paid out of transferred assets.

*Affect on full funding limitation*

If an employer transfers assets under the provision, then the employer is subject to a modified definition of full funding for the plan year in which the transfer occurs, and for the immediately succeeding 4 plan years. Under this modified definition, the full funding limit with respect to the plan from which the assets were transferred is modified by substituting 140 percent for 150 percent of the plan's current liability.

*Effective date*

The provision applies to plan years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*5. Limitation on Contributions to Section 401(h) Accounts*

*Present law*

Under present law, a defined benefit pension plan may provide medical benefits to retirees through a separate account that is part of the plan (a section 401(h) account.) These medical benefits, when added to any life insurance protection provided under the plan, are required to be incidental or subordinate to the retirement benefits provided under the plan. Under Treasury regulations, the medical benefits are considered incidental or subordinate to the retirement benefits if, at all times, the aggregate of employer contributions (made after the date on which the plan first includes such medical benefits) to provide such medical benefits and any life insurance protection does not exceed 25 percent of the aggregate pension contributions made after such date, other than contributions to fund past service credits. The IRS has taken the position that the 25-percent limitation may be applied based on plan cost rather than actual contributions.

*House bill*

The House bill codifies the 25-percent rule relating to whether retiree medical benefits are incidental or subordinate and requires that this determination be made on the basis of actual contributions to the plan rather than on plan costs. The provision is effective for plan years beginning after December 31, 1989.

*Senate amendment*

The Senate amendment is the same as the House bill, except that the provision is effective for contributions after October 3, 1989.

*Conference agreement*

The conference agreement follows the Senate amendment, except that the provision does not apply to contributions made to a section 401(h) account on or before December 31, 1989, if (1) before October 3, 1989, the employer requested a private letter ruling or determination letter with respect to the qualification of the plan containing the section 401(h) account or the deductibility of contributions to the account, (2) the request sets forth that the method by which the plan meets the subordination requirement is based upon cost rather than actual contributions, (3) the method under which such contributions are to be determined is permissible under section 401(h) as interpreted by General Counsel Memorandum 39785, and (4) on or before October 3, 1989, the Internal Revenue Service issued a private letter ruling, determination letter, or other letter providing that the plan including the account is qualified under section 401(a) or that the contributions to the account are deductible, or acknowledging that the account would not adversely affect the qualified status of the particular plan, contingent on all phases of the plan being approved.

*6. Treatment of Lump-sum Distributions From Certain Pension Plans*

*Present law*

The Tax Reform Act of 1986 amended the rules relating to the taxation of distributions from qualified pension plans. The 1986 Act provided that, in the case of an employee who receives a distribution from a terminated plan which was maintained by Frontier Airlines, the employee may treat a lump sum distribution received from the plan before June 30, 1987, as if it were received in 1986.

*House bill*

The House bill extends the date by which the distribution must be received in order to receive this special treatment from June 30, 1987, to the earlier of (1) the date which is 180 days after the date of the resolution of a declaratory judgment action relating to the plan termination or (2) the date on which the period of limitation expires with respect to the employee's taxable year beginning in 1986.

The provision is effective upon enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

D. FOREIGN PROVISIONS

*1. Taxable Years of Controlled Foreign Corporations and Foreign Personal Holding Companies*

A. IN GENERAL

*Present law*

The taxable year of a controlled foreign corporation or a foreign personal holding company is generally its annual accounting period for the purpose of computing its income in keeping its books and records. Generally, neither a controlled foreign corporation nor a foreign personal holding company is required to conform its taxable year to the taxable year of its shareholders who are U.S. persons.

*House bill*

The House bill generally requires the taxable year of a controlled foreign corporation or a foreign personal holding company to be the majority U.S. shareholder year, which is defined as the taxable year of its U.S. shareholders who own a majority of the value of the U.S.-owned stock of the corporation and who have identical taxable years. If no group of U.S. shareholders with identical taxable years owns a majority of the U.S. owned stock of the corporation, then the corporation must adopt the required taxable year as the Secretary may prescribe in regulations.

*Senate amendment*

The Senate amendment generally is the same as the House bill, except that the provision only applies to a controlled foreign corporation or a foreign personal holding company, more than 50 percent of the total voting power or value of the U.S.-owned stock of which is treated as owned by a single U.S. shareholder, and only takes into account the taxable years of such U.S. shareholders (and certain related persons) in determining the majority U.S. shareholder year. Additionally, a controlled foreign corporation that has a majority U.S. shareholder year may elect to use as its taxable year, a taxable year that begins one month earlier than the majority U.S. shareholder year.

*Conference agreement*

The conference agreement follows the Senate amendment with certain clarifications.

The conference agreement clarifies that a specified foreign corporation that changes its taxable year to a taxable year required by this provision will be treated as having made such change with the consent of the Secretary or his delegate only if the change is for the corporation's first taxable year beginning after July 10, 1989.

The conference agreement also clarifies that with respect to the special rule of this provision that in certain cases allows a U.S. shareholder to spread the inclusion of certain income that is deemed distributed from a specified foreign corporation over a four-year period, such income will be taken into account ratably over the four-taxable-year period beginning with the taxable year of the U.S. shareholder during which, absent the four-year spread, such shareholder would be required to include the entire amount of such income in gross income.

Finally, with respect to the authority granted under this provision to the Treasury to promulgate regulations necessary to address various problems which may arise as a result of a specified foreign corporation having different taxable year-ends for U.S. and foreign tax purposes, the conference agreement clarifies that such authority is not specifically limited only to situations involving a corporation that is precluded (for example, by foreign law) from changing its taxable year for foreign tax purposes to conform to its U.S. taxable year, but may also apply, to the extent provided in regulations, to cases where a corporation may be able to make a conforming taxable year change for foreign tax purposes, but chooses not to do so.

B. DISTRIBUTIONS BY FOREIGN PERSONAL HOLDING COMPANIES

*Present law*

A U.S. shareholder of a foreign personal holding company is generally required to include in gross income his or her pro rata share of the company's undistributed foreign personal holding company income for the taxable year. Distributions made by the company subject to the close of the taxable year do not reduce the amount of its undistributed foreign personal holding company income for such year.

*House bill*

The House bill allows a foreign personal holding company to treat a distribution that is made on or before the fifteenth day of the third month after the close of its taxable year as having been made during such year, but only to the extent that such distribution would offset its undistributed foreign personal holding company income for such year. The amount of the distribution which is deemed to have been made during the foreign personal holding company's previous taxable year is to be included in the gross income of the recipient U.S. shareholder (generally disregarding any foreign entity which actually holds the stock of the foreign personal holding company) for such U.S. shareholder's taxable year in which the taxable year of the foreign personal holding company ends.

The provision is effective for taxable years of controlled foreign corporations and foreign personal holding companies beginning after July 10, 1989. In the case of a corporation that is required by this provision to change its taxable year for its first taxable year beginning after July 10, 1989, each shareholder that would otherwise be required to include income from more than one taxable year of such corporation in any one of its taxable years would take into account the income for the corporation's short taxable year ratably over a period not to exceed four years, beginning with its taxable year within which the short taxable year of the corporation ends.

*Senate amendment*

The Senate amendment generally is the same as the House bill, except that a qualifying distribution by a foreign personal holding company would be included not only in the gross income of the recipient U.S. shareholder, but also in the gross or distributable net income of any foreign entity that actually receives such distribution.

*Conference agreement*

The conference agreement follows the Senate amendment.

*2. Resourcing income to prevent avoidance of foreign tax credit limitation rules relating to foreign losses*

*Present law*

Members of an affiliated group of corporations may file (or be required to file) consolidated returns. To be a member of an affiliated group for this purpose, a corporation must be an "includible corporation," and a controlling percentage of the stock of the corporation," (unless it is the common parent) must be owned by an "includible corporation." Under section 1504(b), foreign corporations and certain other types of corporations do not qualify as includible corporations.

Each foreign tax credit limitation to which a consolidated group is subject varies directly with the ratio of (1) the foreign source taxable income of the group subject to that limitation, to (2) the entire taxable income of the group. Under foreign tax credit limitation rules relating to foreign losses, a net loss in a separate foreign tax credit limitation category or in the general limitation category reduced positive foreign source taxable income in each of the other categories.

*House bill*

The House bill gives the Treasury authority to resource the income of any member of an affiliated group of corporations (defined to include certain groups that would otherwise not be treated as affiliated because stock of includible corporations is owned indirectly, rather than directly, by other includible corporations), or to modify the consolidated return regulations, to the extent such resourcing or modification is necessary to prevent avoidance of the purposes of the foreign tax credit limitation rules. For example, where an includible corporation indirectly controls another includible corporation through a corporation that is not includible, the Treasury would be authorized to recharacterize by regulation foreign source income of the includible corporations as U.S. source income, so that the aggregate U.S. tax liability of those corporations is no less than the tax that would be imposed if, for foreign tax credit purposes, the includible corporations had joined in filing a consolidated return.

The provision is effective for taxable years beginning after July 10, 1989.

*Senate amendment*

The Senate amendment is the same as the House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

*3. Improve Information Reporting by U.S. Subsidiaries and Branches of Foreign Corporations*

*Present law*

Any corporation (U.S. or foreign) that conducts a trade or business in the United States and that is 50-percent owned by a foreign person is required to file an information return reporting all transactions ("reportable transactions") with related foreign persons (sec. 6038A). Relatedness for this purpose is defined as relatedness within the meaning of sections 267(b), 707(b)(1), or 482. Noncompliance with the reporting requirements of section 6038A is sanctioned by an initial penalty of $1000, plus additional $1000 penalties (maximum $24,000) for each 30-day period (after 90 days after IRS notification) that the failure remains outstanding.

*House bill*

*In general*

The House bill expands the scope of the reporting requirements, adds a U.S record maintenance requirement, enhances the enforceability of IRS summonses, and modifies penalties for noncompliance. The provisions are effective for taxable years of reporting corporations beginning after July 10, 1989.

*Reporting*

The House bill expands the class of corporations subject to reporting under section 6038A ("reporting corporations") to include corporations 25-percent owned by 10-percent foreign shareholders. The bill also expands the class of persons treated as related (with whom transactions are therefore reportable) to include 10-percent foreign shareholders.

*Recordkeeping*

Under the House bill, to the extent provided in regulations, records that pertain to reportable transactions are required to be maintained in the United States.

*Summonses*

Under the House bill, a related foreign person is generally required to designate the reporting corporation or another U.S. person as its agent to receive IRS summonses in connection with reportable transactions.

*Sanctions*

The House bill increases the existing $1000 penalty to $10,000, and also increases each addition to that penalty from $1000 to $10,000. The bill deletes the $24,000 ceiling on such additions. Moreover, for failure to designate a U.S. agent to accept service of

process, or for failure to comply with a summons pertaining to a reportable transaction, the bill authorizes the IRS to (i) disallow all deductions for payments to the related party and (ii) treat as zero the cost of goods sold of any property acquired from the related party or transferred to the related party, in connection with any reportable transaction.

*Senate amendment*

*In general*

The Senate amendment is generally the same as the House bill, with exceptions noted below.

*Reporting*

As compared to present law, the Senate amendment expands the class of corporations subject to reporting under section 6038A to include only corporations with at least one 25-percent foreign shareholder. (This is in contrast to the House bill's inclusion of all corporations that are 25-percent owned by 10-percent foreign shareholders.) The Senate amendment also expands the class of persons treated as related (with whom transactions are therefore reportable) to include 25-percent foreign shareholders, rather than 10-percent foreign shareholders as under the House bill.

*Recordkeeping*

The Senate amendment provides that each reporting corporation shall maintain, in the location, in the manner, and to the extent prescribed by regulations, records that pertain to reportable transactions.

*Summonses*

The Senate amendment is the same as the House bill, except that it clarifies that the designation of a U.S. agent by a related foreign party applies solely for purposes of IRS summonses. Thus, it is intended to be clarified that the designation does not apply for any other purpose under Federal or State laws.

*Sanctions*

The Senate amendment is the same as the House bill, except that for failure to designate a U.S. agent to accept service of process, or for failure to comply with a summons pertaining to a reportable transaction, the IRS is authorized to allow deductions and cost of goods, sold in accordance with determinations made, in its sole discretion, from its own knowledge or from such information as it may obtain through testimony or otherwise. The Senate amendment also clarifies that this sanction applies to the failure to comply with an IRS summons as a result of a failure to maintain required records.

*Conference agreement*

The conference agreement follows the Senate amendment, with modifications and clarifications. The conference agreement provides for judicial review of a determination by the Secretary that a reporting corporation and a foreign person related thereto have failed to substantially comply in a timely manner with an IRS summons in connection with the examination of a reportable transaction, which is the factual predicate for the Secretary to apply the noncompliance rule under the bill. Under the agreement, as a condition precedent to the application of the noncompliance rule for failure to substantially comply with a summons, the Secretary shall be required to send a notice to the person summoned indicating the determination of the Secretary that substantial compliance has not occurred. The person summoned may bring a proceeding in the Federal district court for the district in which the person summoned resides, within 90 days after the issuance of such notice, for judicial review of such determination by the Secretary. The question of substantial compliance, once established with finality in such proceeding (including any appeals) or by the lapse of the 90-day period during which a petition for review may be filed, shall not be subsequently reexamined (for example, in any consideration by the U.S. Tax Court of Federal income tax liability for the year at issue). However, in order to give the person summoned an additional opportunity to fully comply, the conferees expect that the Secretary will provide the person summoned with informal notice of noncompliance, in appropriate cases, prior to the issuance of a statutory notice of noncompliance.

Under the conference agreement, the Treasury would be authorized to permit records to be maintained outside the United States where it is satisfied that any such records would be submitted to the Internal Revenue Service promptly upon request.[1] The conferees anticipate that the Treasury will authorize record maintenance outside the United States in such cases.

Under the conference agreement, any materials required to be maintained in the United States would be treated as present in the United States solely for the purpose of determining the tax consequences of transactions involving the reporting corporation, and would not be subject (solely by reason of its presence for U.S. tax purposes) to legal process in connection with nontax litigation involving a related foreign corporation that is not otherwise present in the United States.[2] In addition, the conference agreement provides that individuals who are present in the United States solely pursuant to summons under the authority of this provision would not be subject to legal process in connection with nontax litigation involving an individual or related foreign corporation that is not otherwise present in the United States.

The conference agreement also provides further statutory clarification that the scope of the designation of a U.S. agent by a related foreign party is limited to requests by the Secretary to examine records or produce testimony related to reportable transactions and summonses by the Secretary for such records or testimony, and does not apply for any other purpose under Federal or State law.

Moreover, the conferees recognize the inconvenience that could be caused by a summons served on a reporting corporation for the testimony of employees of a related foreign party. Accordingly, the conferees expect that the Secretary will act in good faith in attempting to obtain information from the testimony of individuals present in the United States before attempting to obtain the same information by issuing a summons for the testimony of foreign-based employees.

With regard to the effect of foreign laws in IRS summonses, the conferees intend to follow the Finance Committee explanation.[3]

The conference agreement under this provision is not intended to influence the outcome of any dispute under existing law, including any matters in litigation regarding issues outside the scope of section 6038A as amended by the agreement.

Under the conference agreement, in cases of noncompliance, the amount of any deduction for any amount paid or incurred to the related party by the reporting corporation, or the cost of property transferred between such persons, shall be determined by the Secretary in the Secretary's sole discretion, based on the Secretary's own knowledge or from such information as the Secretary may choose to obtain. The conferees intend that, where this noncompliance penalty applies, the Secretary shall consider any information or materials that have been submitted by the reporting corporation or the related party unless, in the Secretary's sole discretion, such information or materials are insufficiently probative of the relevant facts.

The conferees wish to clarify that the exercise of the Secretary's sole discretion to establish allowable amounts of deductions and the cost of goods sold in the event of noncompliance shall be subject only to limited judicial review. The conferees recognize that under the conditions where a penalty may be imposed for failure to comply with a summons, the Secretary must of necessity establish the amount of a deduction or the cost of goods sold in the absence of information the Secretary deems relevant to that determination. Accordingly, the amounts established by the Secretary cannot be overturned by a court on the basis that they diverge from actual costs or other amounts incurred, or on the basis that they do not clearly reflect income. The fact that amounts established by the Secretary can be proven to be clearly erroneous, by reference to information or materials that were not within the Secretary's knowledge or possession, would not alone, in the conferees' view, be sufficient cause for a court to redetermine allowable amounts of deductions and the cost of goods sold. In addition, the conferees do not expect a court to overturn a determination on grounds that the Secretary might have sought to obtain additional information but failed to do so.

The conferees intend that a taxpayer seeking judicial review of the exercise of the Secretary's sole discretion under the noncompliance rules shall bear the burden of proof by clear and convincing evidence that the Secretary abused that discretion. The conferees do not intend to foreclose a court from overturning a determination by the Secretary that was proven (by clear and convincing evidence) either to have been made with improper motive, or to have been clearly erroneous by reference to all reasonably credible interpretations or assumptions of facts. On the other hand, the conferees do not expect a court to overturn a determination unless it could do so even after accepting as true all allegations and inferences that may support the Secretary's position.

Similarly, the exercise of the Secretary's sole discretion in determining how much weight, if any, to give to any individual document or other item of information that has been submitted is subject to the same scope of review, i.e., proof by clear and convincing evidence that the Secretary abused that discretion, while accepting as true all allegations and inferences that may support the Secretary's position.

Under present law, determinations by the Secretary as to the proper allocation or apportionment of items of income and expense

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[1] "Explanation of Provisions Approved by the Committee on October 3, 1989," Senate Finance Committee Print, 101st Cong., 1st Sess. 111, 114 (October 12, 1989) (hereinafter "Finance Committee explanation").

[2] See Finance Committee explanation, at 115.

[3] Id., at 119 n.42. Cf. H.R. Rep. No. 247, 101st Cong., 1st Sess. 1301 n.40 (1989).

under section 482 must be sustained absent a showing of abuse of the Commissioner's discretion.[4] The taxpayer thus bears the heavier-than-normal burden of proving that the Commissioner's allocations under section 482 are arbitrary, capricious or unreasonable in order for a court to redetermine the deficiency.[5] The conferees are informed, however, that some interpretations of that standard of review have been criticized for giving little deference to the Commissioner and permitting the court to effectively substitute its own judgment for that of the Commissioner.[6] The conferees intend that the standard of review applicable to the exercise of the Secretary's sole discretion under the conference agreement shall not permit a court to so substitute its own judgment, but rather shall accord a high degree of deference to the determination of the Secretary under this provision.

With regard to tax treaties, it has been suggested that provisons of the conference agreement may be inconsistent with restrictions imposed by the information-exchange provisions of tax treaties that prohibit the exchange of information that would "disclose any trade, business, industrial, commercial or professional secret or trade process." [7] Inasmuch as all tax return information is required to be kept strictly confidential by the Internal Revenue Service (sec. 6103), however, the conference agreement is not inconsistent with such confidentiality requirements.[8]

Finally, the conferees believe that the conference agreement does not violate any U.S. tax treaties, and they are informed that it is similarly the position of the Treasury Department that the conference agreement does not violate any U.S. tax treaties.

*4. Taxation of Certain Stock Gains of Foreign Persons*

*Present law*

Under the Code, foreign persons are generally not subject to U.S. tax on gain realized on the disposition of stock in a U.S. corporation (other than a U.S. real property holding corporation), unless the gain is effectively connected with the conduct of a trade or business in the United States. In addition, many U.S. income tax treaties contain provisions to preclude the imposition of U.S. tax on such gains realized by treaty-country residents.

*House bill*

Where a nonresident alien individual or foreign corporation is a 10-percent shareholder in a U.S. corporation, the House bill generally treats gain or loss of the foreign person from the disposition of any stock in the U.S. corporation as effectively connected with the conduct of a trade or business within the United States. In order to be a 10-percent shareholder, the foreign person must have owned (either directly or under attribution rules) more than 10 percent of the stock of the domestic corporation at some time during the prior 5-year period. The provision applies notwithstanding any nonrecognition provision, unless the Treasury provides that nonrecognition treatment applies. Withholding is imposed on proceeds of transactions subject to the tax, at the rate of 10 percent of the amount realized.

Generally, the provision applies to dispositions after December 31, 1989 unless pursuant to a binding written contract in effect on July 10, 1989 and at all times thereafter before the disposition. Withholding shall not apply to any disposition that occurs earlier 6 months after the date of enactment. In the case of gains protected by treaty and in the case of gains of certain qualified residents of countries with which the United States has a comprehensive income tax treaty, the provision does not apply until July 11, 1992. Beginning on that date, the provision overrides any contrary treaty provision in effect on date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*5. Repeal of Transition Rule for Certain High Withholding Tax Interest*

*Present law*

Generally, for taxable years beginning after December 31, 1986, interest income (other than export financing interest) subject to a foreign withholding tax or other gross basis tax of 5 percent or more is designated "high withholding tax interest" and subject to its own separate foreign tax credit limitation. A special transition rule applies, however, to certain interest on certain loans outstanding prior to, or as of, the close of the first taxable year of the taxpayer beginning after December 31, 1988, to any of 33 foreign countries (the "Baker 33") or to any resident of one of those countries for use in that country. The transition rule applies to taxable years beginning with the first taxable year beginning after December 31, 1986 and ending with the fourth taxable year beginning after December 31, 1989.

*House bill*

The House bill repeals the special transition rule for application of the separate foreign tax credit limitation with respect to high withholding tax interest received on loans involving the Baker 33 countries.

The provision is effective for taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement generally follows the House bill except for the following modification.

Under the conference agreement, the repeal of the special high withholding tax interest transition rule will not apply to a taxpayer if, on any quarterly financial statement filed by such taxpayer for regulatory purposes with respect to any quarter ended during the period beginning on March 31, 1989 and ending on December 31, 1989, such statement reflects loss reserves against its portfolio of Baker 33 country loans of at least 25 percent of the amount of such loans. For example, the high withholding tax interest transition rule will continue to apply with respect to a taxpayer who satisfies the 25-percent loss reserves threshold on any one of its quarterly regulatory financial statements as of March 31, 1989, June 30, 1989, September 30, 1989 or December 31, 1989. Alternatively, if on each of these financial statements the taxpayer has applicable loan loss reserves of less than 25 percent, then the high withholding tax interest transition rule will be repealed with respect to that taxpayer for its taxable years beginning after December 31, 1989.

The conference agreement provides that all members of a parent-subsidiary controlled group are treated as a single taxpayer in determining whether the 25-percent threshold is satisfied by that taxpayer. For this purpose, a parent-subsidiary controlled group includes any controlled group of corporations described in section 1563(a)(1).

Generally, when an addition to a reserve is established against a loan for regulatory accounting purposes, a corresponding deduction for the amount of the addition is not permitted for income tax purposes. However, the conferees understand that for certain purposes, taxpayers may be allowed to treat certain anticipated future tax benefits associated with the eventual write off of such loan as additional loan loss reserves. The conferees further understand that such additional reserve amounts are generally not reflected in regulatory financial statements. The conferees intend that if any portion of regulatory reserves is solely attributable to such anticipated future tax benefits, such portion shall be disregarded for purposes of determining whether a taxpayer meets the 25-percent threshold.

*6. Capitalization of Foreign Research and Experimental Expenditures*

*Present law*

Generally, a taxpayer is permitted to elect to deduct currently the amount of research and experimental expenditures incurred in connection with its trade or business. Alternatively, a taxpayer may elect to treat such expenses as deferred expenses and deduct them over a period of not less than five years on a straight-line basis, provided that such expenses are chargeable to capital account but are not chargeable to property of a character subject to an allowance for depreciation or depletion.

*House bill*

Expenditures for research conducted outside of the United States in connection with the taxpayer's trade or business that are otherwise chargeable to capital account may not be currently deducted, but rather must be capitalized and deducted over a period of not less than five years. The deduction of such costs commences with the month in which the costs are paid or incurred.

The provision is effective for amounts paid or incurred in taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*7. Allocation of Interest Expense in the Case of Certain Affiliated Groups*

*Present law*

Generally, an affiliated group is treated as if all members of the group were one taxpayer for purposes of allocating and apportioning interest expense. The term "affili-

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[4] *Paccar, Inc.* v. *Commissioner*, 85 T.C. 754, 787 (1985), aff'd 849 F.2d 393 (9th Cir. 1988), cited in *Bausch & Lomb, Inc.* v. *Commissioner*, 92 T.C. 525, 581 (1989).

[5] *Your Host, Inc.* v. *Commissioner*, 489 F.2d 957 (2d Cir. 1973); *G. D. Searle & Co.* v. *Commissioner*, 88 T.C. 252, 359 (1987); both cited in *Bausch & Lomb, Inc.* v. *Commissioner*, at 581.

[6] See, e.g., *Bausch & Lomb* v. *Commissioner*, at 597 (in which the court stated that the taxpayers "have adequately demonstrated the unreasonableness" of the Commissioner's adjustment, even though the court did not "completely embrace the approach or results arrived at by any of the experts." The court instead decided to "extract relevant findings from each [expert] in drawing [its] own conclusions.").

[7] O.E.C.D. Model Double Taxation Convention on Income and on Capital (1977), Art. 26(2)(c); U.S. Model Income Tax Treaty (1981), Art. 26(2)(c).

[8] See O.E.C.D. Commentary on Model Convention Article 26, paragraph 14.

ated group" does not include foreign corporations for this purpose.

*House bill*

The House bill allows certain financial services groups to take into account the interest expenses and assets of foreign subsidiaries for purposes of allocating and apportioning interest expenses between gross income from U.S. and foreign sources. In order to be eligible to use the rule, 90 percent or more of the activities of both the affiliated group and an expanded affiliated group must consist of the active conduct or a banking, insurance, financing, or similar business, and less than 50 percent of the activities of each group must consist of activities of an insurance business or activities of a bank or other financial institution described in section 864(e)(5)(C).

The provision is effective for taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*8. Treat Certain Foreign Corporate Dividends and Deemed Income Inclusions as Unrelated Business Taxable Income*

*Present law*

Under present law, unrelated business activities conducted by tax-exempt organizations are generally subject to one level of U.S. corporate tax, regardless of whether the activities are conducted directly by the tax-exempt organization itself or indirectly by a taxable domestic subsidiary. However, earnings from unrelated business activities conducted by a foreign subsidiary generally are not subject to current U.S. taxation and are exempt from U.S. tax when distributed to the tax-exempt organization.

*House bill*

The House bill treats dividends received by 10-percent shareholders from foreign corporations (and amounts deemed received under subpart F) as unrelated business taxable income (UBTI) generally to the extent that the earnings and profits (or the subpart F income) of the foreign corporation would be treated as UBTI if received directly by the domestic tax-exempt organization.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*9. Exclusion for Certain Overseas Allowances Received by Certain Department of Defense Personnel*

*Present law*

Civilian officers and employees of the State Department and Central Intelligence Agency (CIA) are exempt from tax on certain benefits received as allowances or otherwise (but not amounts received as post differentials) related to their overseas assignments. Comparable benefits may be received by civilian Defense Department employees assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices, or to special cryptologic activities, outside the United States. The Code does not provide a tax exemption for these amounts received by Department of Defense employees.

*House bill*

The House bill provides for exemption from tax of allowances and other items, comparable to those provided to State Department and CIA civilian employees, provided to civilian Department of Defense employees assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices, or to special cryptologic activities, outside the United States.

The provision applies to allowances received after December 31, 1988, in taxable years ending after that date.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

## E. Excise Tax Provisions

### *1. Aviation Excise Taxes*

#### A. SUSPENSION OF AUTOMATIC REDUCTION IN AIRPORT AND AIRWAY TRUST FUND TAXES

*Present law*

The excise taxes (except the international air passenger departure tax) which are dedicated to the Airport and Airway Trust Fund are scheduled to be reduced by 50 percent on January 1, 1990, because appropriations for trust fund expenditures for airport improvement, air navigational facilities and equipment, and research, engineering and development were less than 85 percent of authorized amounts for fiscal years 1988 and 1989.

The excise tax rates that would be halved by the automatic reduction are (1) the 8 percent passenger tax, (2) the 5 percent air freight tax, and (3) the noncommercial aviation fuels taxes, i.e., 12 cents per gallon gasoline and 14 cents per gallon jet fuels.

The aviation excise taxes are scheduled to expire after December 31, 1990.

*House bill*

The tax rate reduction trigger is suspended for one year, deferring its first possible effective date until January 1, 1991, instead of January 1, 1990.

The trigger will be activated on January 1, 1991, if appropriations for the applicable trust fund expenditures for fiscal years 1989 and 1990 are less than 85 percent of the amounts authorized for those fiscal years.

The tax rate reductions under the trigger are the same as in present law.

The suspension is effective on January 1, 1990.

*Senate amendment*

The tax rate reduction trigger is deferred until October 1, 1990.

The trigger will be activated on October 1, 1990, if appropriations for applicable trust fund expenditures for fiscal years 1989 and 1990 are less than 85 percent of the amounts authorized for those fiscal years.

The tax rate reductions under the trigger are the same as in present law.

The suspension is effective on January 1, 1990.

*Conference agreement*

The conference agreement follows the House bill.

#### B. MODIFICATION OF COLLECTION PERIOD FOR THE AIR PASSENGER TICKET TAX

*Present law*

The air passenger tax is billed to the customer in a semi-monthly period and is considered to be collected from the customer during the second following semi-monthly period. The tax must be deposited in a Federal Reserve Bank or other authorized depository within 3 banking days after the end of the semi-monthly period for which the tax is considered collected.

*House bill*

The air passenger tax is considered to be collected during the first week of the second following semi-monthly period. The tax is required to be deposited within 3 banking days after the end of the week for which such tax is considered to be collected.

The change in the payment schedule applies to taxes considered collected for semi-monthly periods beginning after June 30, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

#### C. INCREASE IN INTERNATIONAL AIR PASSENGER DEPARTURE TAX

*Present law*

The international air passenger departure tax is $3 per passenger, and it is imposed when the air transportation is purchased. Revenue from this tax is deposited in the Airport and Airway Trust Fund. The tax is scheduled to expire after December 31, 1990.

*House bill*

No provision.

*Senate amendment*

The departure tax on international air passenger transportation is increased by $3 per passenger to $6 per passenger.

The increase applies to transportation beginning after December 31, 1989.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification. The increased departure tax is effective on January 1, 1990, for transportation that begins after December 31, 1989, but only with respect to amounts paid after that date for such transportation.

#### D. INTERNATIONAL AIR PASSENGER DEPARTURE FEE

*Present law*

There is no charge imposed by the United States on international air passenger departures, other than the $3 per passenger international departure tax which is described above in item c.

*House bill*

No provision.

*Senate amendment*

An amendment by the Commerce, Science, and Transportation Committee would impose a $3 international departure fee for each passenger on commercial aircraft departing the United States on international flights during fiscal year 1990. This fee would be imposed in addition to the current $3 per passenger international departure tax, and as a result, the total charge per passenger for international departures would be $6.

Amounts received from the fee would be deposited in the general fund of the Treasury as offsetting receipts of the Department of Transportation and ascribed to activities of the Department of Transportation which relate to international air passenger operations.

The additional fee applies to international air passenger transportation after September 30, 1989, during fiscal year 1990. The Secretary of Transportation is to prescribe implementing regulations no later than 60 days after the date of enactment.

*Conference agreement*

The conference agreement does not include the Senate amendment.

*2. International Departure Tax/Fee on Ship Passengers*

A. DEPARTURE TAX

*Present law*

There are no Federal taxes or fees currently imposed as a departure tax on cruise or other ship passengers. Vessels which use U.S. harbors are taxed at .04 percent on the value of commercial cargo and passenger fares, and the revenues are deposited in the Harbor Maintenance Trust Fund.

Under special rules, no harbor maintenance tax applies to cruise ships loading or unloading with respect to cruises to or from Alaska, Hawaii, or a U.S. possession, unless the Alaska, Hawaii, or U.S possession port is only a stopover to a foreign destination.

*House bill*

No provision.

*Senate amendment*

The Senate amendment imposes a tax of $3 per passenger excise tax on a voyage on a commercial passenger vessel having berth or stateroom accommodations for more than 16 passengers that embarks from a United States port on a voyage that extends over one or more nights. The tax also is imposed on a vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial sea of the United States. The tax is assessed only once for each passenger on a covered voyage, either on initial embarkation or disembarkation in the United States.

The tax is not imposed on a vessel on a voyage of less than 12 hours between two points in the United States, or a vessel owned and operated by a State or a political subdivision of a State.

Revenues from this tax would be deposited in the general fund.

The provision is effective on January 1, 1990.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification. The cruise ship departure tax applies to transportation that begins after December 31, 1989, but only with respect to amounts paid after that date for such transportation.

B. DEPARTURE FEE

*Present law*

There are no Federal taxes or fees currently imposed as a departure tax on cruise or other ship passengers. (See a. "Departure tax," above, concerning Harbor Maintenance Trust Fund and tax.)

*House bill*

No provision.

*Senate amendment*

An amendment by the Commerce, Science, and Transportation Committee requires the Secretary of Transportation to impose a fee of $3 per passenger during fiscal year 1990 for each voyage on a passenger vessel having berth or stateroom accommodations for more than 16 passengers that embarks from a United States port on a voyage that extends over one or more nights. The fee also is imposed on a vessel transporting passengers engaged in gambling abroad the vessel beyond the territorial sea of the United States. The fee is assessed only once for each passenger on a covered voyage, either on initial embarkation or disembarkation in the United States.

Two-thirds of the revenues are to be deposited as offsetting receipts into the Harbor Maintenance Trust Fund, and one-third of the revenues are to be deposited into the general fund as offsetting receipts of Coast Guard operations. The passenger fees collected by a vessel with respect to its passengers is to be reduced by amounts equal to payments of the Harbor Maintenance Trust Fund tax and vehicle inspection fees charged by the Coast Guard.

The fee is to be imposed as of October 1, 1989. The Secretary of Transportation is instructed to issue regulations to implement this fee within 60 days of enactment.

*Conference agreement*

The conference agreement does not include the Senate amendment.

*3. Petroleum Excise Tax for Oilspill Liability Trust Fund*

*Present law*

The Code establishes an excise tax of 1.3 cents per barrel on domestic crude oil and imported petroleum products for funding the Oilspill Liability Trust Fund. The tax has not been imposed because qualified legislation authorizing expenditures for the Trust Fund has not yet been enacted. The tax expires on December 31, 1991, or earlier if $300 million will have been credited to the Trust Fund before January 1, 1992.

*House bill*

The House bill modifies present law to impose the petroleum excise tax at a rate of 3 cents per barrel and to commence collection of the tax without waiting for qualified authorizing legislation.

The House bill is effective for domestic crude oil received at a refinery and with respect to imported crude oil and imported petroleum products entering into the United States on or after October 1, 1989.

*Senate amendment*

The Senate amendment is the same as the House bill, except that the Senate amendment provides that for the purposes of making amounts available qualified authorizing legislation includes S. 686, "The Oil Pollution Liability and Compensation Act of 1989," as passed by the Senate on August 4, 1989.

The Senate amendment is effective for domestic crude oil received at a refinery and with respect to imported crude oil and imported petroleum products entering into the United States on or after January 1, 1990.

*Conference agreement*

The conference agreement follows both the House bill and Senate amendment with several modifications. The conferees agree to increase the Oilspill Liability Trust Fund financing rate to 5 cents per barrel. The conference agreement provides that the trust fund be made interest bearing and that any interest earned be credited to the fund balance. The conference agreement provides that at the end of each calendar quarter the Secretary will determine the unobligated balance of the Oilspill Liability Trust Fund. If the unobligated balance exceeds $1 billion, the Oilspill Liability Trust Fund financing rate will be zero for the following quarter. If the unobligated balance is less than $1 billion, the Oilspill Liability Trust Fund financing rate will be imposed beginning the quarter commencing 90 days after the date of the close of the quarter for which the calculation was made. The provision to impose the Oilspill Liability Trust Fund financing rate expires on January 1, 1995.

The conference agreement provides that when the trustee of the Trans Alaska Pipeline Liability ("TAPL") Fund certifies that all outstanding claims against the TAPL Fund have been resolved, the unobligated balance of the TAPL Fund is deposited in the Oilspill Liability Trust Fund. If the unobligated balance of the TAPL Fund may be deposited in the Oilspill Liability Trust Fund, the conference agreement provides that the owners of the TAPL Fund be provided a credit against their current tax liabilities under the Oilspill Liability Trust Fund rate for their pro rata share of amounts of the TAPL Fund deposited into the Oilspill Liability Trust Fund.

The conference agreement does not include S. 686 as qualified authorizing legislation and makes no changes to present law with respect to expenditure purposes, per incident limitation on expenditures from the Trust Fund, or the Trust Fund's authority to borrow.

With respect to the effective date, the conference agreement follows the Senate amendment.

*4. Excise Tax/Fee on Ozone-depleting Chemicals*

*Present law*

The use or manufacture of chemicals which deplete the earth's ozone layer is not subject to specific Federal taxes or fees.

*House bill*

*In general*

The House bill assesses an excise tax on the sale or use by a producer, manufacturer, or importer of certain ozone-depleting chemicals. The amount of tax is determined by multiplying a base tax amount by an "ozone-depleting factor."

*Chemicals subject to tax*

The specific chemicals subject to tax are CFC-11, CFC-12, CFC-113, CFC-114, CFC-115, Halon-1201, Halon-1301, and Halon-2402.

*Base tax amount*

For calendar years 1990 and 1991, the base tax amount is $1.10 per pound of ozone-depleting chemical; for 1992 the base tax amount is $1.60 per pound; for for 1993 and beyond, the base tax amount is $3.10 per pound. The base tax amount is indexed for inflation occurring after 1989.

*Ozone-depleting factors*

The ozone-depleting factors for the chemicals subject to tax are those specified in the Montreal protocol.

*Exemptions and reduced rates of tax*

The House bill provides exemptions for feedstock chemicals, recycled chemicals, and chemicals exported subject to Environmental Protection Agency regulations.

The House bill also exempts from tax in 1990 CFCs used in the production of rigid foam insulation and all halons.

The House bill provides for a reduced rate of tax in 1991 through 1993 for CFCs used in the production of rigid foam insulation and all halons.

*Imports*

The House bill applies the tax to any ozone-depleting chemical which is imported into the United States and to any product or substance imported into the United States in which a taxable ozone-depleting chemical was used in the manufacture or production.

*Effective date*

The House bill is effective for ozone-depleting chemicals sold or used after December 31, 1989. In addition, a floor stocks tax is imposed on ozone-depleting chemicals held

by a person other than the manufacturer or importer on January 1, 1990. A floor stocks tax is also imposed on each subsequent change in the tax rate for any taxable chemical. The initial deposits of taxes due need not be made until April 1, 1990.

*Senate amendment*

*In general*

The Senate amendment contains two provisions pertaining to the taxation of ozone-depleting chemicals: one reported by the Committee on Finance and the other reported by the Committee on the Environment and Public Works.

The Finance Committee provision is generally the same as the House bill.

The Environment and Public Works Committee provision imposes a fee on the production, importation or distribution of ozone-depleting chemicals. The fee does not depend upon the ozone-depleting factor of the chemical. The fee is generally related to profits earned on the production of such chemicals.

*Chemicals subject to tax*

The Finance Committee provision is identical to the House bill.

The Environment and Public Works Committee provision is the same as the House bill. In addition, the Environment and Public Works provision permits the Administrator of the Environmental Protection Agency to add chemicals to the list of chemicals subject to the fee.

*Base tax amount*

The Finance Committee provision imposes a base tax amount which is similar to the House bill. For calendar year 1990, the base tax amount is $1.07 per pound of ozone-depleting chemical; for 1991, the base tax amount is $1.12 per pound; for 1993, the base tax amount is $1.67 per pound; for 1994 and beyond, the base tax amount is $3.15. The base tax amount is not indexed for inflation.

The Environment and Public Works Committee provision imposes a fee. The fee is the greater of 60 cents per pound of taxed chemical or an amount equal to the profit earned on the sale of the chemical to the extent such profits exceed the profits earned on the sale of such chemical in 1987. The Administrator of the EPA determines the excess profit amount by comparing total revenues generated from the sale of taxed chemicals to an allowance for revenues generated from like sales in 1987. An offset for Federal and State income tax liability is permitted. Distributors of taxed chemicals are granted an additional exemption of 60 cents per pound from the excess profits tax.

*Ozone-depleting factors*

The Finance Committee provision is identical to the House bill.

The Environmental and Public Works Committee provision does not provide for an ozone-depleting factor.

*Exemptions and reduced rates of tax*

The Finance Committee provision is identical to the House bill.

The Environment and Public Works Committee provision is the same as the House bill with respect to exports and feedstock chemicals.

*Imports*

The Finance Committee provision is identical to the House bill.

The Environment and Public Works Committee provision imposes the fee on importation of taxed chemicals, but not on derivative products.

*Trust fund*

The Finance Committee provision does not establish a trust fund.

The Environment and Public Works Committee provision establishes within the Treasury an "Ozone Layer and Climate Protection Trust Fund." Fees collected are to be deposited in the trust fund. The proceeds of the fund are to be invested in interest-bearing obligations of the United States. Trust fund expenditure purposes include implementation of the Montreal protocol, research and development activities of the EPA, and to carry out the abatement and control activities of the EPA.

*Effective date*

The Finance Committee provision is identical to the House bill.

The Environmental and Public Works Committee provision is effective July 1, 1989, for chlorofluorocarbons, and is effective January 1, 1992, for halons. The Administrator of the EPA may, by regulation, change the effective dates.

*Conference agreement*

The conference agreement generally follows the House bill and the amendment of the Senate Finance Committee. The conference agreement does not include the amendment of the Senate Committee on the Environment and Public Works. With respect to the rate of tax, the conference agreement follows the Senate Finance Committee amendment with a modification. The rate of tax per pound of ozone-depleting chemical is not adjusted for future inflation. The base tax rate for 1990 and 1991 will be $1.37 per pound. The base tax rate for 1992 will be $1.67 per pound. The base tax rate for 1993 and 1994 will be $2.65 per pound. In each year after 1994, the base tax rate will be increased by 45 cents per pound.

In addition, the conference conforms the treatment of sales of feedstock chemicals to that of sales of ozone-depleting chemicals for use in rigid foam insulation. Pursuant to any registration requirements which the Secretary may prescribe, the purchaser of ozone-depleting chemicals for feedstock use may purchase ozone-depleting chemicals free of tax, rather than applying for a credit or refund. The conferees also agreed to permit purchasers of ozone-depleting chemicals for use in rigid foam insulation to apply for credit against their quarterly estimated corporate income tax.

The conferees intend to clarify that in collecting the tax on ozone-depleting chemicals upon the importation of derivative products which contain or were manufactured with such chemicals, the Secretary of the Treasury may calculate the tax liability on data provided by the importer, or when such data is insufficient or lacking, the Secretary of the Treasury may calculate the tax liability based on the standards of use of such chemicals in the equivalent domestic industry. Thus, for example, the Secretary of the Treasury in assessing the tax upon imported electronic devices need not calculate the precise amount of ozone-depleting chemicals required to manufacture the specific imported device, but rather may rely on standards of use of ozone-depleting chemicals in the domestic manufacture of generally similar electronic devices. The conferees understand that it is administratively difficult to determine the amount of ozone-depleting chemicals which were used in the manufacture of a wide variety of imported products, including those listed in the House of Representatives report,[1] and telecommunications equipment, electronic storage units, printers, monitors and medical and scientific instruments. Therefore, sufficient information for a particular product shall include reasonable and reliable estimates of the use of such ozone-depleting chemicals based on industry averages of product lines. If the Secretary of the Treasury establishes the amount of tax based upon the predominant method of production of such product, such amount of tax shall be based on industry averages of product lines. Lastly, if necessary, the Secretary of the Treasury may impose the tax at the rate of 5 percent on the value of the imported product.

Lastly, the conference agreement requires the Secretary of the Treasury to notify the House Committee on Ways and Means and the Senate Committee on Finance of any changes made to the Montreal protocol or any other international agreement on ozone-depleting chemicals to which the United States is signatory.

*5. Telephone Excise Tax*

A. EXTENSION OF TAX

*Present law*

A 3-percent excise tax is imposed on local and toll telephone service. The tax is scheduled to expire after December 31, 1990.

*House bill*

The 3-percent telephone excise tax is permanently extended. The provision is effective on January 1, 1991.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

B. COLLECTION OF TAX

*Present law*

Tax billed to the customer in a semi-monthly period is considered to be collected during the second following semi-monthly period. The tax must be deposited within 3 banking days after the end of the semi-monthly period for which the tax is considered collected.

*House bill*

The tax for a semi-monthly period is considered collected during the first week of the second following semi-monthly period. Deposit is required within 3 banking days after the end of the week for which the tax is considered to be collected.

The provision is effective for taxes considered collected for semi-monthly periods beginning after June 30, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

C. EXEMPTION CERTIFICATES

*Present law*

Those claiming exemption from the telephone excise tax generally must file annual exemption certificates.

*House bill*

Communications service recipients exempt from the tax by reason of being a qualified international organization, nonprofit hospital, nonprofit educational organization, or a

[1] House of Representatives, Report 101-247, pp. 135-6.

State or local government are relieved of filing a certificate of exemption annually after filing an initial certificate of exemption.

The provision is effective for any claim for exemptions made after the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*6. Collection of Gasoline Excise Tax*

A. IMPOSE GASOLINE EXCISE TAX ON ARRIVAL AT TERMINAL

*Present law*

The gasoline excise tax is 9.1 cents per gallon: 9.0 cents of which are deposited in the Highway Trust Fund, and 0.1 cent is deposited in the Leaking Underground Storage Tank Trust Fund.

The gasoline excise tax is imposed on the removal or the sale of gasoline by the refiner, importer, or the terminal operator. The bulk transfer of gasoline to a terminal by a refiner or importer is not considered a removal or sale of gasoline by the refiner or importer. Under proposed regulations, the tax is not imposed until the earlier of (1) a change of title within the terminal pursuant to a nonqualified sale, or (2) removal from the terminal in a transfer which is not by pipeline or marine vessel. The owner of the gasoline immediately before the sale is liable for the tax.

Persons subject to the gasoline and diesel fuel taxes are required to register with the Secretary before they incur any tax liability. The Secretary also may require such registrants to post bond. A terminal operator or gasohol blender (and any other registered taxpayer) must furnish a bond as a condition of registration, unless the district director determines that no bond is required on the basis of the registrant's tax history. For terminal operators and gasohol blenders, the amount of bond is the lesser of $1 million or the amount of tax that would be imposed on the expected gasoline flow through the registrant's facilities during an average one-month period.

*House bill*

*Tax imposed at terminal.*—The gasoline excise tax is imposed on receipt of gasoline at any terminal, or its earlier removal or sale by a refiner or importer in a manner other than a bulk transfer to a registered terminal. The owner of the terminal is primarily liable for the tax. The owner of the gasoline when it arrives at the terminal is secondarily liable for the tax. Any gasoline tax paid on gasoline previously subject to tax may be refunded or allowed as a credit against gasoline tax liabilities.

*Gasohol blenders.*—The seller of gasoline to a gasohol blender is treated as the person who paid the gasoline tax, and may apply for a refund of the amount of previously paid tax that exceeds the gasohol rate. Refund claims of $200 or more may be filed weekly, and interest is to be paid at the overpayment rate on refund claims for the period beginning on the date the claim is filed through the date the refund is paid.

*Registration requirements.*—Each person who is a refiner or importer of gasoline, a terminal owner, or a gasoline blender is required to register with the Secretary, according to procedures described in regulations prescribed by the Secretary.

The Secretary is authorized to publish the name and registration number of each registrant number of each registrant and the address of each terminal owned by a registrant who is subject to this tax.

The Secretary is permitted to require as a condition of registration that a registrant furnish an appropriate bond and agree to the imposition of a lien on the registrant's property used in the trade or business subject to registration. The Secretary shall release a lien in connnection with a transfer of the property, if a bond in an appropriate amount is furnished.

*Floor stocks tax.*—Gasoline removed from the refiner of importer in a bulk transfer before October 1, 1989, and on which no tax was imposed before then, is subject to a floor stocks tax.

*Effective date.*—Applies to gasoline removed by the refiner or importer after September 30, 1989. The floor stocks tax and the refund procedure for gasohol blenders are effective on October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the provision from the House bill.

B. ACCELERATION OF GASOLINE EXCISE TAX DEPOSITS

*Present law*

Deposits of gasoline excise tax liability are made monthly or semi-monthly, depending on the amount of tax to be deposited.

Taxpayers must make monthly deposits of tax for any month in which they are liable for more than $100 of taxes, and the monthly deposits are due by the last day of the following month. Taxpayers liable for more than $2,000 of excise taxes for any month of a calendar quarter must make semi-monthly deposits in the following quarter 9 days after the end of a semi-monthly period which ends on the 15th or last day of a month. Taxpayers who deposit taxes by electronic wire transfer to a government depository have until 14 days after the end of a simi-monthly period to make the transfer.

*House bill*

No provision.

*Senate amendment*

Taxpayers which have more than $100 of gasoline excise tax liability in any month of a calendar quarter are required to deposit taxes four times in a month.

Nine day and 14 day depositors would make tax deposits at those same intervals after the end of the tax period, but there would be four tax periods in each month, which end on the 7th, 14th, 21st, and last days of the month. Nine day taxpayers would deposit tax liabilities, with respect to the weekly tax periods on the 16th, 23rd, 30th days, respectively, of the same month and on the 9th day of the succeeding month. Fourteen-day taxpayers would make their deposits on the 21st and 28th days, respectively, of the current month and on the 7th and 14th days of the succeeding month.

In the event that a due date falls on a Saturday, Sunday, or holiday in the District of Columbia, the due date would be the immediately preceding day which is not a Saturday, Sunday, or holiday. In September 1990, the due date for the third tax period of the month for 9-day taxpayers and the due date for the second tax period of the month for 14 day taxpayers would be September 27, 1990.

The provision is effective for tax payments for tax periods beginning after December 31, 1989.

*Conference agreement*

The conference agreement follows the Senate amendment with modifications. The conference agreement retains the current semi-monthly deposit schedule, but that schedule is amended by the adoption of a provision which stipulates that September 27, will be the due date for the second tax period of September for 14-day taxpayers. If, for this purpose, the due date would fall on a Saturday, Sunday, or holiday in the District of Columbia, the due date will be deemed to be the immediately preceding day that is not a Saturday, Sunday, or such a holiday.

*7. Eliminate Excise Tax on Inactivated Polio Vaccines*

*Present law*

An excise tax is imposed on the sale of certain vaccines. The tax rate on polio vaccine, which includes inactivated polio vaccine, is 29 cents per dose.

The net revenues from the excise tax are deposited into the Vaccine Injury Compensation Trust Fund. The National Vaccine Injury Compensation program uses the fund to pay compensation for vaccine-related injuries and deaths.

*House bill*

At the time that vaccine-related injury and death resulting from inactivated polio vaccine are no longer eligible for compensation through the National Vaccine Injury Compensation program, such vaccine will no longer be subject to excise tax.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*8. Modify taxation of bulk cigar imports*

*Present law*

The Omnibus Budget Reconciliation Act of 1986 modified the provisions in the Internal Revenue Code relating to payment of the excise tax on imported distilled spirits and tobacco products, including bulk cigars. Prior to the 1986 change, cigars imported in bulk could be transferred in bond (without imposition of the tax) to a manufacturer's premises for repacking into consumer packages. Inadvertently, this type of "transfer in bond" was deleted from the Code. As a result, packaging bulk cigars into containers appropriate for sale to consumers has been halted, and bulk cigar imports virtually have ceased.

*House bill*

The excise tax on imported bulk cigars is imposed on shipment of cigars after repackaging appropriate for consumer sales. Imposition of the tax at this point allows transfer of bulk cigars under bond from a foreign trade zone to an importer's business site where repackaging occurs.

The provision is effective on the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the provision from the House bill.

F. LIMITATION ON LIKE-KIND EXCHANGES

*Present law*

*Property eligible for tax-free exhanges*

No gain or loss is recognized if property held for productive use in a trade or business or for investment is echanged solely for

property of a "like-kind" which is to be held either for productive use in a trade or business or for investment (sec. 1031). The like-kind standard contrasts with the standard under section 1033 providing for nonrecognition of a gain upon certain involuntary conversions. Other than upon a condemnation of real estate (to which the like-kind standard applies under section 1033(g)), section 1033 permits nonrecognition of gain only if the taxpayer acquires replacement property that is "similar or related in service or use" to the converted property. This standard is significantly narrower than the like-kind standard. For example, unimproved and improved real estate generally are not considered similar or related in service or use.

*Related party exchanges*

If related parties engage in a like-kind exchange, tax basis is shifted between properties, which may result in the reduction of tax upon the subsequent disposition of a property. There are no rules under present law with respect to these types of transactions.

*Holding period requirements*

In order to qualify for nonrecognition treatment under section 1031, both the property exchanged and the property received must be held either for productive use in a trade or business or for investment. In *Bolker* v. *Commissioner*, the Ninth Circuit held that these holding requirements were met where the taxpayer received property in the liquidation of a corporation and exchanged it shortly thereafter for like-kind property. In Rev. Rul. 77-337, however, the IRS reached a contrary conclusion under similar facts.

*House bill*

*Property eligible for tax-free exchanges*

*General rule.*—In order to qualify for nonrecognition treatment under section 1031 or 1033(g), the properties involved must be similar or related in service or use.

*Foreign real property.*—Foreign real property is treated as not similar or related in service or use to U.S. real property for purposes of sections 1031 and 1033.

*Related party exchanges*

If a taxpayer directly of indirectly exchanges property with a related party in a section 1031 exchange, and within 2 years either the related party or the taxpayer disposes of the property, the original exchange will not qualify for nonrecognition under section 1031. The committee report provides that a disposition generally includes nonrecognition transactions. However, dispositions due to death, involuntary conversion, or for non-tax avoidance purposes generally are disregarded.

*Holding period requirements*

The property that is relinguished must have been directly held by the taxpayer at all times during the one-year period ending on the date of the exchange, and the property that is received must be directly held by the taxpayer at all times during the one-year period immediately after the exchanges.

*Senate amendment*

*Property eligible for tax-free exchanges*

*General rule.*—No provision.

*Foreign real property.*—No provision.

*Related party exchanges*

The Senate amendment is the same as the House bill, except that the committee report provides that the non-tax avoidance exception generally will apply to (1) transactions involving certain exchanges of undivided interests, (2) dispositions in nonrecognition transactions, and (3) transactions that do not involved the shifting of basis between properties.

*Holding period requirements*

No provision.

*Conference agreement*

The conference agreement follows the Senate amendment, except that foreign real property and U.S. real property are not property of a like kind for purposes of section 1031. Although such properties are not of a like kind within the meaning of section 1031, this rule does not, however, apply for purposes of section 1033(g). No inference is intended to override or otherwise modify section 932 of the Code (involving the tax treatment of U.S. and Virgin Islands residents).

G. Accounting Provisions

*1. Repeal of Completed Contract Method of accounting for Long-term Contract*

*Present law*

Taxpayers engaged in the production of property under a long-term contract generally must compute income from the contract under either the percentage of completion method or the percentage of completion-capitalization cost method. However, exceptions to the these required accounting methods are provided for certain construction contracts or small businesses and certain home construction contracts.

Under the percentage of completion method, a taxpayer must include in gross income for any taxable year an amount that is based on the product of (1) the gross contract price and (2) the percentage of the contract completed as of the end of the taxable year. The percentage of the contract completed as of the end of a taxable year is determined by comparing costs incurred with respect to the contract as of the end of the year with the estimated total contract costs. In addition, under the percentage of completion method, costs allocable to the contract generally are taken into account for the taxable year in which incurred.

Under the percentage of completion-capitalized cost method, a taxpayer generally must take into account 90 percent of the items under the contract under the percentage of completion method. The remaining 10 percent of the items under the contract must be taken into account under the taxpayer's normal method of accounting (e.g., the completed contract method of accounting). Exceptions to the 90/10 requirement are provided for certain ship construction contracts (40 percent under the percentage of completion method and 60 percent under the taxpayer's normal method of accounting) and certain residential construction contracts other than home construction contracts (70 percent under the percentage of completion method and 30 percent under the taxpayer's normal method of accounting).

*House bill*

The House bill repeals the percentage of completion-capitalized cost method of accounting for long-term contracts. The present-law special rules and exceptions for certain construction contracts of small businesses, qualified ship contracts, home construction contracts and residential construction contracts are retained.

The provision applies to contracts entered into on or after July 11, 1989. However, the provision does not apply to any contract entered into pursuant to a written bid or proposal submitted by a taxpayer to the other party to the contract before July 11, 1989, if the bid or proposal could not have been revoked or amended by the taxpayer at any time during the period after July 10, 1989, and ending on the date that the contract was entered into.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with the following modification.

For purposes of the percentage of completion method of accounting, a taxpayer may elect not to recognize income under a long-term contract and not to take into account any costs allocable to such long-term contract for any taxable year if as of the end of the taxable year less than 10 percent of the estimated total contract costs have been incurred. For the first taxable year in which the 10-percent threshold is satisfied, all costs that have been incurred as of the end of the taxable year are to be taken into account in determining the percentage of the contract that has been completed and in determining the amount of allowable deductions under the contract.

The election not to recognize income under a long-term contract and not to take into account any costs allocable to such contract until the first taxable year as of the end of which at least 10 percent of the estimated total contract costs have been incurred is to apply for purposes of the look-back method,[1] in determining alternative minimum taxable income, and in determining adjusted current earnings under the alternative minimum tax. The election is not to apply, however, in determining whether an item normally requires more than 12 calendar months to compete for purposes of the definition of a long-term contract or in determining the production period for the allocation of interest.

The election is to apply to all long-term contracts of a taxpayer that are entered into during the taxable year that the election is made and any subsequent taxable year that the election is in effect.[2] the election, however, is not to apply to any long-term contract with respect to which the percentage of completion method of accounting is used only with respect to a portion of the items under the contract or with respect to which a simplified method of cost allocation is used. Once made, the election may be revoked only with the consent of the Secretary of the Treasury.

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[1] Consequently, in allocating income under the contract on the basis of actual contract price and actual contract costs for purposes of the look-back method, costs are not to be taken into account for any taxable year if as of the end of the taxable year less than 10 percent of the actual total contract costs have been incurred. In addition, unlike present law, deductions under a contract are to be allocated to a different taxable year for purposes of the look-back method if the first taxable year as of the close of which 10 percent of the actual total contract costs have been incurred differs from the first taxable year as of the close of which 10 percent of the estimated total contract costs have been incurred.

[2] It is anticipated that the Treasury Department will provide guidance on the time and manner of making the election. In addition, it is anticipated that a taxpayer will be required to obtain the consent of the Internal Revenue Service in order to discontinue the use of the election for any taxable year for contracts entered into during such year and any subsequent year.

In order to prevent taxpayers from unreasonably deferring income by reason of the election, the present-law rules which authorize the Internal Revenue Service to treat one agreement as several contracts or to treat several agreements as one contract are to apply.[3] It is anticipated that the internal Revenue Service will exercise the authority to treat one agreement as several contracts where the agreement artifically postpones the taxable year as of the end of which at least 10 percent of the estimated total contract costs have been incurred.

The election is to apply only to contracts that are entered into after December 31, 1989.

*2. Treatment of Franchies, Trademarks, and Trade Names*

*Present law*

A taxpayer that purchases an intangible asset (such as a patent, know-how, or a contract right) generally is allowed to deduct the purchase price over a period no shorter than the useful life of the asset. If the life is not determinable or is perpetual, no deduction generally is permitted. The useful life of an asset is a question of fact.

In the case of certain payments made on account of the transfer of a franchise, trademark, or trade name, special rules apply. For example, in the case of a single payment made in discharge of a fixed-sum amount where the tranferor is required to treat the payment as ordinary income rather than as capital gain, the payment by the transferee is deductible ratably over a period of no more than 10 taxable years.[1] In addition, any amount that is contingent on the productivity, use, or disposition of the franchise, trademark, or trade name is allowed as an ordinary and necessary business expense deduction.

Generally, amounts allowed as a deduction that reduce the basis of assets are recaptured as ordinary income if the asset is disposed of for an amount in excess of the reduced basis. It is unclear whether deductions allowed with respect to certain payments made to acquire a franchise, trademark, or trade name are required to be recaptured as ordinary income on the disposition of the franchise, trademark, or trade name.

No depreciation or amortization deduction is permitted for expenditures relating to the acquisition of a trademark or trade name. In addition, several courts have held that the cost of creating or acquiring a trademark or trade name is not amortizable on the grounds that a trademark or trade name is indistinguishable from goodwill and generally does not have a determinable useful life.

*House bill*

The House bill modifes the special rules that apply to the deduction of fixed-sum payments and contingent payments that are made on account of the transfer or a franchise, trademark, or trade name. First, the bill repeals the special treatment accorded payments in discharge of a fixed-sum amount where the fixed-sum amount for any transaction exceeds $100,000. This repeal applies regardless of whether the payments are made to a franchisor that is required to treat the payments as ordinary income or to any other person. for purposes of determining whether the $100,000 threshold has been exceeded, all payments that are part of the same transaction (or a series of related transactions) are aggregated.

In addition, the House bill modifies the rules that allow a deduction for contingent amounts that are paid or incurred on account of the transfer of a franchise, trademark, or trade name. Under the House bill, a deduction is allowed for contingent amounts only if (1) the contingent amounts are paid as part of a series of payments that are payable at least annually throughout the term of the transfer agreement,[2] and (2) the payments are substantially equal in amount (i.e., the agreement requires a continuing payment of a substantially equal amount annually throughout an unspecified period over which the use of the property will occur) or are payable under a fixed formula (i.e., a formula that provides for payment of an unvarying percentage of receipts over the entire term of the transfer agreement).

Any fixed-sum or contingent amount that is not deductible under the foregoing rules is chargeable to capital account and is to be amortized over the useful life of the franchise, trademark, or trade name, to the extent otherwise allowed under present law.

The House bill also provides that fixed-sum amounts that are allowed as a deduction are subject to recapture as ordinary income on disposition of the franchise, trademark, or trade name. Finally, the House bill repeals the provision of present law that prohibits a deduction for the cost of acquiring a trademark or trade name.

The provision generally applies to transfers that occur after July 10, 1989, unless pursuant to a binding written contract in effect on that date and all times thereafter until the transfer occurs. The limitation on the deductibility of contingent payments is effective for transfers that occur after August 4, 1989, unless pursuant to a binding written contract in effect on that date and at all times thereafter until the transfer occurs.

*Senate amentment*

The Senate amendment is the same as the House bill, except that a taxpayer may elect to amortize certain fixed-sum payments and contingent payments that are chargeable to capital account and that are part of the same transaction (or series of related transactions) over a 20-year period that begins with the taxable year in which the transfer occurs.

The provision contained in the Senate amendment applies to transfers that occur after October 2, 1989, unless pursuant to a binding written contract in effect on that date and at all times thereafter until the transfer occurs.

*Conference agreement*

The conference agreement follows the Senate amendment with the following modifications and clarifications.

First, the conference agreement provides that the elective amortization period is 25 years rather than 20 years as provided in the Senate amendment. This election applies only with respect to payments that are otherwise described in section 1253 but that no longer qualify for a 10-year write-off or a current contingent payment deduction under that section as amended by the provision. As under present law, other expenditures with respect to franchises, trademarks, or tradenames are not afforded any elective treatment.

As under the Senate amendment, under the conference agreement, a deduction is allowed for contingent amounts only if (1) the contingent amounts are paid as part of a series of payments that are payable at least annually throughout the term of the transfer agreement, and (2) the payments are substantially equal in amount or are payable under a fixed formula. The conferees wish to clarify that, for this purpose, a fixed formula generally includes a formula that provides for payments of a percentage of the annual gross receipts of the transferee (whether a single percentage of annual gross receipts or a series of percentages that apply each year to annual gross receipts up to or in excess of specified levels of gross receipts for each year) but only if the formula does not vary for any year of the transfer agreement. A fixed formula, however, does not include any formula that is likely to, or could potentially, distort the taxable income of the transferee either by front-loading or back-loading the contingent payments.

Finally, under the conference agreement, rules similar to the rules of section 168(i)(7) apply if a franchise, trademark, or trade name is transferred in a transaction described in section 332, 351, 361, 371(a), 374(a), 721, or 731, or a transaction between members of the same affiliated group during any taxable year for which a consolidated return is filed by such group. In such situations covered by section 168(i)(7), the transferee is to be treated as the transferor for purposes of computing the amount allowable as a deduction to the transferee under section 1253, but only with respect to the amount of the section 1253 payments made pursuant to the transferor's section 1253 agreement that do not exceed the payments of the transferor under that agreement that are otherwise deductible to the transferor under section 1253 and that have not been allowed as a deduction as of the date of the transfer.

*3. Installment Sales Treatment of Timeshares and Residential Lots Sold by C Corporations*

*Present law*

A taxpayer who disposes of a timeshare or a residential lot on the installment plan generally may report income derived from such a disposition on the installment method if the taxpayer elects to pay interest on the amount of deferred tax that is attributable to the use of the installment method. Under this election, interest is required to be paid for any taxable year that payments are received under the installment obligation (other than the taxable year in which the sale occurs). The interest is imposed for the period that begins on the date of the sale of the timeshare or the residential lot and ends on the date that each payment is received. The interest rate used for this purpose is the applicable Federal rate (compounded semiannually) in effect at the time of the sale for debt instruments with the same maturity as the installment obligation.

A taxpayer who elects to pay interest with respect to an installment sale of a timeshare or a residential lot may use the installment

[3] See Treas. Reg. sec. 1.451-3(e).

[1] 1As interpreted by the Internal Revenue Service, this provision also applies to a franchise that is transferred by a franchisee to another person, even though the transfer is considered the sale of a capital asset. Rev. Rul. 88-24. 1988-1 C.B. 306.

[2] The term of the transfer agreement for this purpose is the entire period over which the franchise, trademark, or tradename, or rights to use or benefit from the franchise, trademark, or trade name, are transferred. The term of the transfer agreement is to be determined by taking into account all renewal options and any other period for which the parties reasonably expect the agreement to be renewed.

method in determining alternative minimum taxable income. However, for purposes of the adjusted current earnings provision of the alternative minimum tax, the installment method may not be used in determining income derived from an installment sale (including a nondealer installment sale of property) even though interest is required to be paid with respect to all or a portion of the deferred tax that is attributable to the use of the installment method. The adjusted current earnings provision of the alternative minimum tax applies to C corporations for taxable years beginning after December 31, 1989.

*House bill*

The House bill modifies the amount of interest that is payable by a C corporation that elects to use the installment method with respect to an installment sale of a timeshare or a residential lot. Under the bill, the amount of interest for any taxable year is determined for all outstanding installment obligations with respect to which an election was made by multiplying the deferred tax with respect to all such obligations by the underpayment rate in effect for the month with or within which the taxable year ends. For any taxable year, the deferred tax for such obligations equals (1) the amount of gain under the obligations that has not been recognized as of the close of the taxable year, multiplied by (2) the maximum rate of tax in effect for such taxable year for C corporations.

The portion of the interest that is allocable to installment obligations that have not been outstanding for a two-year period as of the close of the taxable year or that are in default as of the close of the taxable year is not to result in an increase in tax for such taxable year. Instead, if such installment obligations are not in default at the close of any taxable year after the end of the two-year period, the amount of interest that was determined under the provision but was not added to tax is to be added to tax for such taxable year (together with additional interest at the underpayment rate for each year that the interest has not been added to tax). For this purpose, an installment obligation is to be considered in default if the installment obligation is considered to be wholly worthless under the bad debt provisions of section 166(a)(1) of the Code.

A C corporation that elects to pay interest under the provision with respect to an installment sale of a timeshare or a residential lot is allowed to use the installment method for purposes of the adjusted current earnings provision of the alternative minimum tax. In addition, for purposes of the adjusted current earnings provision of the alternative minimum tax, a taxpayer that is required to pay interest with respect to a nondealer disposition of property is allowed to use the installment method for the portion of the gain with respect to which interest is required to be paid.

The provision applies to dispositions occurring in taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

### H. Employment Tax Provisions

#### *1. Impose Income Tax Withholding on the Wages of Certain Agricultural Workers*

*Present law*

In general, wages paid by an employer to an employee are subject to income tax withholding. Wages paid for agricultural labor are, however, exempt from income tax withholding (sec. 3401(a)(2)).

Certain cash wages paid for agricultural labor are subject to withholding for Federal Insurance Contributions Act (FICA) taxes (sec. 3121(a)(8)). In general, agricultural workers are subject to FICA withholding if they earn at least $150 in annual cash remuneration or are covered because of the employer FICA withholding test. The employer FICA withholding test generally subjects employee wages to FICA withholding if the employer pays more than $2,500 during the year to all employees. Certain employees who are hand harvest laborers, are paid on a piece rate basis, commute daily to the farm from their permanent residence, and were employed in agriculture less than 13 weeks during the prior year, are exempt from FICA withholding.

*House bill*

If an agricultural worker's cash wages are subject to FICA withholding, the agricultural worker's cash wages are also subject to income tax withholding. In addition, crew leader rules parallel to those utilized for FICA withholding purposes are to apply for income tax purposes (these rules specify who is the employer of certain agricultural workers). The provision is effective for wages paid after December 31, 1989.

*Senate amendment*

The Senate amendment is the same as the House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

#### *2. Payroll Tax Deposit Speedup*

*Present law*

Treasury regulations have established the system under which employers deposit income taxes withheld from employees' wages and FICA taxes. The frequency with which these taxes must be deposited increases as the amount required to be deposited increases. Employers are required to deposit these taxes as frequently as eight times per month, provided that the amount to be deposited equals or exceeds $3,000. These deposits must be made within three banking days after the end of the eighth-monthly period.

*House bill*

Employers who are on the eighth-monthly system are required to deposit income taxes withheld from employees' wages and FICA taxes by the close of the next banking day (instead of by the close of the third banking day) after any day on which the business cumulates an amount to be deposited equal to or greater than $1 million (regardless of whether that day is the last day of an eighth-monthly period). The provision is effective for amounts required to be deposited after December 31, 1993.

*Senate amendment*

Employers who are on the eighth-monthly system are required to deposit income taxes withheld from employees' wages and FICA taxes by the close of the applicable banking day (instead of by the close of third banking day) after any day on which the business has an amount to be deposited equal to or greater than the threshold amount (regardless of whether that day is the last day of an eighth-monthly period).

For 1990, the applicable banking day is the first and the threshold amount is $1,950,000. For 1991, the applicable banking day is the third and the threshold amount is $1,500,000. For 1992, the applicable banking day is the third and the threshold amount is $1,600,000. For 1993, the applicable banking day is the first and the threshold amount is $1,700,000. For 1994, the applicable banking day is the second and the threshold amount is $1,775,000.

The provision is effective for amounts required to be deposited after July 31, 1990. The Treasury Department is given authority to issue regulations for 1995 and succeeding years to provide for similar modifications to the date by which deposits must be made in order to minimize unevenness in the receipts effects of the provision.

*Conference agreement*

The conference agreement generally follows the House bill and the Senate amendment, with the following modifications. The threshold amount is $100,000. For 1990, the applicable banking day is the first. For 1991, the applicable banking day is the second. For 1992, the applicable banking day is the third. For 1993 and 1994, the applicable banking day is the first.

The effective date and the regulatory authority are the same as the Senate amendment.

### I. Miscellaneous Provisions

#### *1. Exclusion for Damages Received for Personal Injury*

*Present law*

Under present law, damages received on account of personal injury are excludable from gross income. In some cases, courts have held that this exclusion is available even though there is no physical injury, for example, in cases involving employment discrimination.

*House bill*

Under the House bill, the exclusion for damages received for personal injury is limited to cases involving physical injury or sickness, effective for damages received after July 10, 1989, in taxable years ending after such date, other than amounts received under a written binding agreement, court decree, or mediation award in effect on July 10, 1989.

*Senate amendment*

No provision.

*Conference agreement*

Under the conference agreement, the exclusion for damages received for personal injury does not apply to punitive damages in cases not involving physical injury or sickness.

The provision is effective for punitive damages received after July 10, 1989, in taxable years ending after such date, other than amounts received under a written binding agreement, court decree, or mediation award in effect on or issued before July 10, 1989, or amounts received pursuant to suits filed on or before July 10, 1989.

#### *2. Tax Precontribution Gain on Certain Inkind Partnership Distributions*

*Present law*

Income, gain, loss, and deduction with respect to property contributed to a partnership by a partner is required to be shared among partners so as to take account of the variation between the basis of the property

to the partnership and its fair market value at the time of contribution. Thus, if appreciated property that was contributed to the partnership is sold by the partnership, gain recognized on the sale is required to be allocated to the contributing partner to the extent he has not previously taken the pre-contribution gain into account.

A partner generally does not, however, recognize gain on a distribution of partnership property (except on a distribution of money in excess of a partner's basis in his partnership interest). Thus, if appreciated property that was contributed by a partner is distributed to other partners (rather than sold by the partnership), the contributing partner may avoid recognizing the pre-contribution gain.

*House bill*

The House bill provides that, in the case of a distribution of contributed property, the contributing partner is treated as recognizing gain or loss. Gain or loss recognition is not required under the bill, however, to the extent partnership property is distributed to the partner who originally contributed the property to the partnership. When gain or loss recognition is required under the provision, the amount the contributing partner is treated as recognizing is equal to the amount he would have had to take into account by reason of the variation between basis and value upon contribution of the property, had the property been sold by the partnership at its fair market value at the time of the distribution.

The provision is effective with respect to property contributed to a partnership after July 10, 1989.

*Senate amendment*

The Senate amendment is the same as the House bill, except that it modifies the House bill in the following respects: (1) the Senate amendment applies only to distributions of property within 3 years following the time at which it was contributed; (2) the Senate amendment provides that, if property contributed by one partner is distributed to another partner, and other property of a like kind is distributed to the contributing partner within a limited time period, then, to the extent of the value of the property actually distributed to the contributing partner, the contributing partner is treated as receiving a distribution of property that he contributed; and (3) the Senate amendment is effective with respect to property contributed to a partnership after October 3, 1989.

*Conference agreement*

The conference agreement follows the Senate amendment, with a modification. The Senate amendment rule that the provision applies only to distributions of property within 3 years following the time at which the property was contributed is modified to provide for a 5-year rather than a 3-year period.

*3. Treatment of Cellular Telephones and Other Similar Telecommunications Equipment Used in a Trade or Business*

*Present law*

Under present law, special rules apply to costs incurred to purchase or lease certain listed property that is used in a trade or business. First, if for the taxable year that listed property is placed in service the use of the property for trade or business purposes does not exceed 50 percent of the total use of the property, then the depreciation deduction with respect to such property is determined under the alternative depreciation system. The alternative depreciation system generally requires the use of the straight-line method and a recovery period equal to the class life of the property.

Second, if an individual owns or leases listed property that is used by the individual in connection with the performance of services as an employee, no depreciation deduction, expensing allowance, or deduction for lease payments is available with respect to such use unless the use of the property is for the convenience of the employer and required as a condition of employment.

Third, no deduction is allowed with respect to listed property unless the taxpayer maintains adequate records or provides other sufficient evidence that establishes the amount of business use, investment use, and personal use of the listed property.

Listed property generally is defined as (1) any passenger automobile; (2) any other property used as a means of transportation; (3) any property of a type generally used for purposes of entertainment, recreation, or amusement; (4) any computer or peripheral equipment; and (5) any other property of a type specified in Treasury regulations.

*House bill*

The House bill expands the definition of listed property to include cellular telephones and other similar telecommunications equipment. The provision applies to property placed in service in taxable years beginning after December 31, 1989. In the case of lease payments, the provision applies to property leased in taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

*4. Denial of Retroactive Certification for Work Incentive (WIN) Tax Credit*

*Present law*

Under prior law, the work incentive (WIN) credit provided a tax credit to employers for the employment of certain qualified individuals. Prior to the Economic Recovery Tax Act of 1981 (ERTA), the WIN credit did not specifically require certification of an employee as a qualified individual prior to the date of employment. In 1981, ERTA modified the WIN credit by merging it with the targeted jobs credit. ERTA also required that certification of an individual as a member of a targeted group must be obtained or requested before the date an individual begins work. This change was made generally effective on July 23, 1981, to avoid the potential for substantial revenue losses.

The law is unclear as to whether the requirement that the request for certification be made contemporaneously with employment applies only to the new targeted jobs credit or to the prior separate WIN credit. In some instances, employers have attempted to claim the WIN credit either on audit or through amended returns several years after the eligible employee was hired. The Internal Revenue Service took the position that retroactive certifications under the prior-law WIN credit are not valid. The Tax Court recently held that retroactive certifications are valid for purposes of claiming the prior-law WIN credit.

*House bill*

The House bill clarifies that certifications for the WIN credit (sec. 50B(h)(1) of the Code as in effect taxable years beginning before January 1, 1982) must be made on or before the day the individual begins work. The provision is effective for WIN credits first claimed after March 11, 1987.

*Senate amendment*

The Senate amendment is the same as the House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

*5. Joint Purchase of Life Estate and Remainder Interest*

*Present law*

The purchaser of a term interest in property is, for income tax purposes, generally entitled to amortize the cost of the interest over its expected life. On the other hand, several courts have held that a person who divides an interest in property into temporal interests cannot create an amortizable asset where none previously existed. See, e.g., *Lomas Santa Fe, Inc.* v. *Commissioner*, 74 T.C. 662, 682-83 (1980). Nor can the holder of a life or terminable interest acquired by gift, bequest or inheritance amortize his interest (sec. 273).

In the case of property held by one person for life with remainder to another, the life tenant is allowed a depreciation deduction computed as if he were the absolute owner of the property.

*House bill*

No depreciation of amortization deduction is allowed for a term interest in property for any period during which the remainder interest in such property is held (directly or indirectly) by a related person. A term interest in property means a life interest in property, an interest in property for a term of years, or an income interest in a trust.

The taxpayer's basis in a term interest is reduced by the deductions disallowed by the provision, and the remainderman's basis in the remainder is increased by the amount of those disallowed deductions.

The provision is effective for interests acquired or created after July 27, 1989, in taxable years ending after such date.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, with the following modifications. First, the remainderman's basis in the remainder is not increased for any disallowed deductions attributable to periods during which the term interest was held by (1) an organization exempt from tax under subtitle A of the Code or (2) a nonresident alien individual or foreign corporation (but only if income from the term interest is not effectively connected with the conduct of a trade or business in the United States).

Second, the holder of an interest in property for a term of years whose amortization deduction would be allowed but for the provision is permitted a depreciation deduction computed as if he were absolute owner of the property. Thus, the provision does not allow such a depreciation deduction to a person whose amortization deduction is disallowed under present law.

Third, the increase in the remainderman's basis in his interest is reduced by any depreciation allowable to the term holder with respect to the underlying property.

Fourth, the provision does not apply to any term interest to which section 273 applies.

In addition, the conferees intend that the remainderman's basis in the property is increased only if the term holder's amortiza-

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tion deduction would be allowed but for the provision.

The conferees intend no inference regarding the divisibility of property for tax purposes under present law. Nor do they intend any inference regarding the character of income or gain property so divided.

*6. Information Reporting of Points on Mortgage Loans*

*Present law*

Any person who, in the course of a trade or business during a calendar year, receives from an individual $600 or more of interest on an obligation secured by real property must file an information return with the Internal Revenue Service and must provide a copy of that return to the payor.

The information return generally must include the name, address, and taxpayer identification number of the individual from whom the interest was received and the amount of the interest received for the calendar year. Treasury regulations provide that points are not to be treated as interest for purposes of this reporting requirement.[1]

*House bill*

The bill provides that any person required to file an information return with respect to mortgage interest must include on such return the amount of points received on the mortgage during the calendar year and indicate whether the points were paid directly by the borrower (as opposed to being withheld from the loan disbursement). The provision applies to returns and statements the due date for which (determined without regard to extensions) is after December 31, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, except that the provision applies to returns and statements the due date for which (determined without regard to extensions) is after December 31, 1991.

*7. Tax Exemption for Overseas Private Investment Corporation*

*Present law*

The Foreign Assistance Act of 1961 established the Overseas Private Investment Corporation (OPIC) as an agency of the United States under the foreign policy guidance of the Secretary of State. The purpose of OPIC is to facilitate the participation of United States private capital and skills in the economic development of less developed countries by conducting insurance, reinsurance, guarantee, and financing operations on a self-sustaining basis for OPIC-approved overseas investment projects of U.S. citizens. The Foreign Assistance Act of 1961, as amended, specifically provides that OPIC is exempt from all Federal, State, and local taxes (22 U.S.C. sec. 2199(J)).

The International Cooperation Act of 1989, H.R. 2655 (reported by the House Committee on Foreign Affairs on June 16, 1989, H. Rep. 101-90, and passed by the House on June 29, 1989), would amend and recodify the Foreign Assistance Act of 1961, including the provisions governing OPIC, but would not specifically provide that OPIC is exempt from Federal income taxes.

The Internal Revenue Code of 1986 provides that a corporation organized under an Act of Congress which is an instrumentality of the United States is exempt from Federal income tax only if the exemption is provided under such Act as amended and supplemented before July 18, 1984, or if the exemption is provided in the Internal Revenue Code or a Revenue Act (Internal Revenue Code sec. 501(c)(1)).

*House bill*

The Internal Revenue Code is amended to specifically provide that OPIC is exempt from Federal income taxes.

The provision is effective on the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*8. Access to Tax Information by the Department of Veterans Affairs*

*Present law*

The Internal Revenue Code prohibits disclosure of tax returns and return information of taxpayers, with exceptions for authorized disclosure to certain Governmental entities in certain enumerated instances (Code sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

Among the disclosures permitted under the Code is disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act or the Food Stamp Act of 1977. This disclosure, pursuant to a written request by the agency, is for the purpose of determining eligibility for, and the correct amount of benefits under, certain enumerated programs. Any authorized recipient of return information must maintain a system of safeguards to protect against unauthorized redisclosure of the information.

*House bill*

The House bill allows disclosure of certain tax return information to the Department of Veterans Affairs (DVA) to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs. Thus, the DVA will have direct access to information on the types and amounts of income received by veterans. The income tax returns filed by the veterans themselves will not be disclosed to DVA.

The DVA is required to comply with the safeguards presently contained in the Code and in section 1137(c) of the Social Security Act (governing the use of disclosed tax information). These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information. The provision is effective on the date of enactment. Information disclosed pursuant to this provision may not be used to reduce, deny, or otherwise affect any benefit provided before the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*9. IRS Notice to Taxpayers of Underreporting of Amounts Withheld*

*Present law*

Under procedures in effect for taxable years beginning before 1987, the Internal Revenue Service did not notify taxpayers or make adjustments on income tax returns when it was determined that the amount reported as withheld on an income tax return was less than the amount reported on an information return. On March 22, 1989, the Internal Revenue Service announced revisions in its procedures for the 1987 taxable year and thereafter. Under these revised procedures, discrepancies involving amounts reported as withheld on information returns will be adjusted in the same manner as discrepancies in amounts reported as withheld on Forms W-2 or W-2P. Such an adjustment may involve a correction of the return where information has been reported on the wrong part of the return. In other cases, the Internal Revenue Service contacts the taxpayer to inform the taxpayer of the discrepancy.

*House bill*

If, in connection with one or more information return matching programs, the Internal Revenue Service determines that the amount of tax shown on information returns as withheld for any taxable year exceeds by $5 or more the amount of tax shown on the income tax return as withheld for that taxable year, the taxpayers of such excess. The provision applies to all information return matching that occurs after the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*10. Treatment of Certain Investment-Oriented Life Insurance Contracts*

*Present law*

In order to discourage the purchase of life insurance as a tax-sheltered investment vehicle, the Technical and Miscellaneous Revenue Act of 1988 altered the Federal income tax treatment of loans and other amounts received under a class of life insurance contracts that are statutorily defined as "modified endowment contracts."

A modified endowment contract generally is defined as any contract that satisfies the definition of a life insurance contract but fails to satisfy a 7-pay test. A contract fails to satisfy the 7-pay test if the cumulative amount paid under the contract at any time during the first 7 contract years exceeds the sum of the net level premiums that would have been paid on or before such time had the contract provided for paid-up benefits after the payment of 7 level annual premiums.

*House bill*

In the case of any contract that qualifies as a life insurance contract and that provides a death benefit, that is payable only upon the death of one insured following, or simultaneously with, the death of another insured, if there is any reduction in such death benefit below the lowest level of such death benefit provided under the contract for the first 7 contract years, the 7-pay test is to be applied for the first 7 contract years as if the contract had originally been issued at the reduced death benefit.

If the contract fails to meet the 7-pay test, the contract is to be treated as a modified endowment contract for (1) distributions that occur during the contract year that the reduction in the death benefit occurs and during any subsequent contract year and (2) under Treasury regulations, distributions that occur in anticipation of the reduction in the death benefit. For this purpose, any

[1] Treas. Reg. sec. 1.6050H-1(e).

distribution that is made within 2 years before the reduction in the death benefit is to be treated as made in anticipation of such reduction.

The provision applies to contracts that are entered into or that are materially changed on or after September 14, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

*11. Increase in Refund Review Threshold for Reports Submitted to the Joint Committee on Taxation*

*Present law*

No refund or credit in excess of $200,000 of any income tax, estate or gift tax, or certain other specified taxes, may be made until 30 days after the date a report on the refund is provided to the Joint Committee on Taxation (sec. 6405). A report is also required in the case of certain tentative refunds. Additionally, the staff of the Joint Committee on Taxation conducts post-audit reviews of large deficiency cases and other select issues.

*House bill*

The threshold above which refunds must be submitted to the Joint Committee on Taxation for review is increased from $200,000 to $1,000,000. The provision is effective on the date of enactment, except that the higher threshold will not apply to a refund or credit with respect to which a report was made before the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*12. IRS Study of Private Letter Ruling Process*

*Present law*

In response to requests from taxpayers, the IRS issues private letter rulings that state the position of the IRS regarding the Federal tax treatment of a transaction.

*House bill*

The bill requires the IRS to report to the House Ways and Means Committee and the Senate Finance Committee on ways to strengthen and improve the private letter ruling process. The report should consider whether an overall increase in funding for the private letter ruling process would improve the issuance of rulings. In addition, the report should consider whether the user fees charged for rulings should be extended beyond the scheduled expiration date of September 30, 1990, and if so, (1) whether the current user fees should be increased and (2) whether the user fees should be available for use by the IRS for the ruling process instead of being deposited in the general fund of the Treasury.

The study must be provided to the House Ways and Means Committee and the Senate Finance Committee within six months of the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*13. Deferral of Recognition of Gains for Property Required To Be Divested by Federal Ethics Requirements*

*Present law*

Generally gain or loss is recognized on any sale, exchange or other disposition of property. Taxpayers may elect not to recognize gain realized on the involuntary conversion of certain property if property similar or related in service or use is acquired by the taxpayer within a specified replacement period (sec. 1033).

*House bill*

The House bill permits an individual required to divest himself of an asset pursuant to a certificate of divestiture issued pursuant to an executive order (relating to conflict-of-interest rules) in effect on the date of enactment to elect to roll over any gain realized upon sale to the extent that the individual purchases "permitted property" within 60 days.

Eligible individuals are those subject to an executive order (relating to conflict-of-interest rules) in effect on the date of enactment and the spouse or minor or dependent child of such individual.

Permitted property is limited to Treasury securities and any diversified investment fund approved under regulations.

The House bill is effective for divestments first required after the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*14. Alternative Recapture Method for Mutual Savings Banks and Other Thrift Institutions Changing From the Reserve Method to the Specific Charge-Off Method for Bad Debts*

*Present law*

A thrift institution is permitted a deduction for a reasonable addition to a reserve for bad debts if at least 60 percent of its assets are invested in qualified assets. The reasonable addition to a reserve for bad debts for a thrift institution is an amount computed under the experience method of an amount equal to 8 percent of its otherwise taxable income. The amount of bad debt reserves are recaptured if the thrift institution is liquidated in a taxable transaction or makes dividend distributions in excess of post-1951 earnings.

A bank whose average adjusted bases of all assets exceeds $500 million (i.e., a "big bank") is not permitted any deduction for an addition to a reserve for bad debts. Instead such banks may deduct specific bad debts only in the year in which they become worthless (the "specific charge-off method"). In addition, big banks are required to recapture their existing bad debt reserves under one of two methods. Under the first method (called the "4-year recapture method"), the balance of the reserve generally is recaptured at the following rates: 10 percent in the first year, 20 percent in the second year, 30 percent in the third year, and 40 percent in the fourth year. Under the second method (called the "cut-off method"), specific bad debts on loans made before the change in method are charged to the reserve. Then, the balance of the reserve is recaptured as the reserve balance exceeds the amount of pre-change loans that remain outstanding.

*House bill*

No provision.

*Senate amendment*

A thrift institution that changes from the reserve method of accounting for bad debts to the specific charge-off method may elect to recapture only the so-called "experience portion" of its bad debt reserves under the "4-year recapture method" applicable to commercial banks. However, if the sum of the specific bad debts at the end of any year on loans held by the taxpayer before the accounting method change exceeds the cumulative amount of reserves required to be recaptured by the end of that year, the excess is not deducted, but is charged to the unrecaptured portion of the bad debt reserves (similar to the "cut-off method"). In addition, any remaining bad debt reserves are recaptured when excessive dividends are paid by the thrift institution or upon partial or complete liquidation of the thrift institution.

The provision is effective for taxable years ending after the date of enactment.

*Conference agreement*

The conference agreement does not include the Senate amendment.

*15. Treatment of Certain Timber Activities Under the Passive Loss Rules*

*Present law*

Deductions from passive trade or business activities, to the extent they exceed income from all such passive activities (exclusive of portfolio income), generally may not be deducted against other income. Suspended losses are carried forward and treated as deductions from passive activities in the next year, and are allowed in full when the taxpayer disposes of his entire interest in the activity to an unrelated party in a transaction in which all realized gain or loss is recognized.

An activity generally is treated as passive if it is a rental activity, or if the taxpayer does not materially participate in it, i.e., the taxpayer is not involved in the operations of the activity on a basis which is regular, continuous, and substantial. The term passive activity does not, however, include a working interest in oil or gas property that the taxpayer does not limit the liability of the taxpayer with respect to such interest.

*House bill*

The House bill provides that passive activities do not include an interest in qualified timber property held by a natural person, directly or through an entity that does not limit the liability of such person with respect to such interest. Qualified timber property means a woodlot or other site located in the United States that will contain trees in significant commercial quantities and that is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.

The provision is effective for taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*16. Modification of Rehabitation Tax Credit Under Passive Loss Rule and for Certain Relocated Buildings.*

*Present law*

*In general*

An income tax credit is provided for certain expenditures incurred in rehabilitation of certified historic structures and certain

nonresidential buildings placed in service before 1936. The applicable rehabilitation tax credit percentage is 20 percent for certified historic structures and 10 percent for qualified rehabilitated buildings (other than certified historic structures) that are nonresidential and that were originally placed in service before 1936.

*Passive loss restrictions on credit use*

Credits from passive activities generally are limited to the tax attributable to the passive activities. A special $25,000 allowance is provided in the case of passive activity losses and the deduction equivalent amount of credits attributable to rental real estate activities. In the case of low-income housing and rehabilitation tax credits, the $25,000 (deduction equivalent) amount is allowed regardless of whether the taxpayer actively participates in the activity, and is phased out ratably as the taxpayer's adjusted gross income, which certain modifications, increases from $200,000 to $250,000.

*Treatment of certain relocated buildings*

Treasury regulations provide that certain relocated buildings are not eligible for the rehabilitation credit. This rule was stated in proposed regulations published June 28, 1985, interpreting the statute as amended by the Economic Recovery Tax Act of 1981. These regulations were finalized October 7, 1988.

*House bill*

*Passive loss restrictions on credit use*

Under the House bill, the $25,000 deduction equivalent allowance is modified by removing the $200,000 to $250,000 adjusted gross income phaseout, in the case of rehabilitation tax credits.

The provision is effective for property placed in service after December 31, 1989. If the property is held through a partnership or other passthrough entity, the taxpayer's interest in the partnership or other passthrough entity must have been acquired after December 31, 1989.

*Treatment of certain relocated buildings*

The House bill provides that the provision of the regulations stating that certain relocated buildings are not eligible for the rehabilitation credit is to be applied prospectively from June 28, 1985. Under the bill, 30-year and 40-year buildings that were physically relocated and for which rehabilitation had commenced after the effective date of the Economic Recovery Tax Act of 1981 and before June 28, 1985 and that otherwise qualified for the rehabilitation credit are eligible for the rehabilitation credit despite being relocated.

The provision is effective for buildings which had been relocated and with respect to which rehabilitation had commenced before June 28, 1985.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the provisions of the House bill.

J. TAX-EXEMPT BOND PROVISIONS

*1. Transitional Housing Bonds*

*Present law*

Bonds issued to finance qualified residential rental projects are tax-exempt qualified private activity bonds. Treasury regulations provide that qualifying property does not include living facilities which are to be used on a transient basis. Property does not fail to qualify as residential rental property merely because part of the building in which the property is located is used for purposes other than residential rental purposes. However, that part of the building used for non-residential purposes, unless the facilities are functionally related and subordinate to residential use may not be financed with the proceeds of tax-exempt bonds, except for an insubstantial portion of those proceeds.

*House bill*

The House bill provides that certain transitional housing for the homeless will not be deemed transient in nature and, accordingly, may qualify for tax-exempt financing under section 412(d). The bill further provides that certain non-housing areas of buildings that are used to provide transitional housing for the homeless will be eligible for tax-exempt bond financing.

The provision is effective for bonds issued after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*2. Rebate Election for Certain Mortgage Revenue Bonds*

*Present law*

A State or local government may issue tax-exempt qualified mortgage bonds under conditions specified in Code section 143. One requirement is that any arbitrage earnings and earnings thereon be credited or paid to the mortgagor. The issuer also may elect, before the date of issue, to pay the rebate amount to the United States in lieu of the mortgagors.

*House bill*

The House bill allows issuers of qualified mortgage bonds issued before January 1, 1989, to elect to rebate arbitrage earnings to the Federal Government. This election must be made within 12 months of the date of enactment and is only available for amounts required to be paid or credited after the date the election is made.

The provision is effective upon the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*3. Restrictions on the Issuance of Hedge Bonds*

*Present law*

Issuers of tax-exempt bonds are required to rebate to the Federal Government arbitrage earnings on the investments unrelated to the governmental purpose of the borrowing (Code sec. 148). While the arbitrage rules reduce incentives for early issuance, the Code does not specifically prohibit issuance of bonds for the purpose of hedging against potential future increases in interest rates.

*House bill*

The House bill provides that interest on hedge bonds is taxable unless two requirements are satisfied: (1) at least 95 percent of the reasonably expected costs of issuance for the payment of such costs is not contingent; (2) the issuer must reasonably expect to spend 15 percent of the spendable proceeds of the issue for the governmental purposes of the issue within 12 months after the date of issue, another 15 percent for such purposes within 24 months after the date of issue, another 20 percent for such purposes within 36 months after the date of issue, and an additional 35 percent for such purposes within 60 months after the date of issue.

A bond issued as part of an issue is a hedge bond unless: (1) the issue qualifies for the 3-year temporary period exception from the arbitrage rules, and (2) not more than 50 percent of the proceeds of the issue is invested in nonpurpose investments with a guaranteed yield for a period of 4 years or longer.

The House bill grants authority to the Secretary of the Treasury to promulgate regulations (1) to prevent circumvention of these rules and (2) to create an exception, if appropriate, from these rules for bonds issued to finance the reasonable self-insurance needs of the governmental agency issuing the bonds or the reasonable self-insurance needs of the subordinate governmental units of the issuer.

The provision is effective for bonds issued after September 14, 1989, unless sold on or before September 14, 1989, and issued before October 15, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement generally follows the House bill with modifications. The authority to issue regulations on self-insurance bonds granted to the Secretary of the Treasury is eliminated. A general exception from the definition of hedge bond is provided for issues substantially all of the proceed of which are invested in tax-exempt bonds the interest on which is not a preference item under the alternative minimum tax. Within the general exception described in the immediately preceding sentence, investments in taxable securities are permitted for amounts in bona fide debt service funds, investment earnings held during a 30-day period pending reinvestment, and 5 percent of the net proceeds of the bonds. The transition relief is expanded to cover issues which had their preliminary offering materials mailed or delivered to the members of the underwriting syndicate before September 15, 1989, and which are issued subsequent to the date of enactment. A transition rule is also provided for bonds for self-insurance funds issued pursuant to official action taken prior to September 15, 1989, if certain conditions are met.

The refunding bond rules in the House bill are clarified to provide that, (1) a refunding bond will satisfy the hedge bond rules if it does not increase the outstanding principal amount or extend the maturity of the original bond in the refunding, (2) a refunding bond will satisfy the hedge bond rules if the original bond being refunded would have been tax-exempt under the hedge bond rules, or (3) a refunding bond will satisfy the hedge bond rules if the original bond qualifies for a 5-year temporary period and at least 85 percent of the spendable proceeds of the issue and any issues issued prior to the refunding to finance the governmental purpose of the issue(s) were, in fact, spent prior to the date of the refunding.

The following percentages of reasonable expectations of actual expenditures are substituted for those in the House bill with respect to all bonds not subject to a transition rule or refunding exception: 10 percent within 12 months after the date of issue, 30 percent within 24 months after the date of issue, 60 percent within 36 months after the

date of issue, and 85 percent within 60 months after the date of issue. The conferees desire to provide added guidance as to the characterization of hedge bonds. Toward that end, footnote 70 to the House report [1] is modified to read as follows:

For example, an issuer may not combine in one bond issue the financing for a short-term project which satisfies the requirements of this provision with a long-term project which otherwise does not, if normal reasonable construction practices or State or local government laws would not support issuance of bonds for the long-term project until a significantly later date. This direction is not intended to preclude the issuance of bonds for a project the construction of which is expected to commence within a reasonable period of time of the construction of the first project, for example one year, if normal prudent financing practices, including reasonable economies of scale, would support such issuance. Nor is it intended to preclude the issuance of bonds, pursuant to State or local laws or normal prudent financing practices, for a project prior to the commencement of actual construction when the commencement of construction must be preceded by the preparation and issuance of a request for proposals, contract negotiations, or the preparation of detailed specifications. Additionally, the conferees intend that the financing of a city's general capital improvement program, a county- or region-wide highway improvement program, and general system improvements to a public utility system be considered examples of the financing of a single project.

*4. Extension of Six-Month Exception to Arbitrage Rebate Requirement*

*Present law*

The Internal Revenue Code restricts the ability to invest tax-exempt bond proceeds at yields higher than the yield on the issue.

Issuers of all tax-exempt bonds are required to rebate certain arbitrage profits earned on nonpurpose investments acquired with gross proceeds of tax-exempt bonds. Generally, the amount required to be rebated is determined, and paid, on an issue-by-issue basis at least once each five years.

Arbitrage profits are not required to be rebated with respect to an issue if all gross proceeds are expended for the governmental purpose of the issue within 6 months of the issue date.

*House bill*

The House bill expands the 6-month exception from the arbitrage rebate requirements to two years for certain bonds from which at least 75 percent of the net proceeds of the issue are to be used for construction. Qualifying bonds are (1) bonds which are not private activity bonds; (2) qualified 501(c)(3) bonds; or (3) private activity bonds for facilities owned by governmental units.

To satisfy the terms of the exception, not less than 10 precent of the net proceeds (including investment proceeds) of the issue must be spent within six months of the date of issue, not less than 50 percent of the net proceeds must be spent within one year of the date of issue, not less than 90 percent of the net proceeds must be spent within 18 months of the date of issue, and not less than 100 percent of the net proceeds must be spent within two years of the date of issue. The expenditure test is met only if the expenditures are for the purpose for which the bonds were issued. Arbitrage earned on a reasonably required reserve or replacement (4R) fund must be rebated after the 6-month or 2-year period, respectively. Failure to comply with either the six-month or the two-year exceptions results in the gross proceeds of the issue being subject to the regular rebate rules as of the date of issue.

The provision is effective for bonds issued after the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement generally follows the House bill with several modifications. The modifications include alteration of the required expenditure schedule of the House bill. The revised schedule would require that at least 10 percent of the net proceeds be spent within 6 months after the date of issue, at least 45 percent of the net proceeds be spent within 12 months after the date of issue, at least 75 percent of the net proceeds be spent within 18 months after the date of issue, at least 95 percent of the net proceeds be spent within 24 months of the date after issue, and 100 percent of the net proceeds be spent within 36 months after the date of issue. This last 5 percent (the difference between the 95-percent test at 24 months and the 100-percent test at 36 months) may represent only reasonably required retainage (e.g., to ensure compliance with the terms of construction contracts).

Failure to meet the expenditure schedule would have one of two possible outcomes which must be elected at the time of issuance of the bonds. The issuer could elect to comply with present law arbitrage rebate requirements or the issuer could elect to pay a penalty. The penalty would be calculated as the product of 1.5 percent and the semi-annual unspent proceeds. The semi-annual unspent proceeds are the difference between the unspent proceeds and the expenditure schedule, determined at the beginning of the relevant semi-annual period. For example, if an issuer issues $1 million of bonds, the issuer must have expended $450,000 within 12 months after the date of issue. If the issuer has expended only $400,000 by the end of 12 months, the semi-annual unspent proceeds are $50,000 ($450,000 minus $400,000). Any penalties owed by the issuer must be deposited with the Secretary of the Treasury within 90 days of the end of the relevant semi-annual period.

The conferees also agreed to permit the issuer of the bonds to make an election, at the time of issue, to rebate arbitrage from the date of issue on a 4R fund or expend the investment earnings on that fund for the project for which the bonds are issued. The conferees also intend that the issuer may treat an issue as bifurcated into two issues, and only two issues, for purposes of the application of the 6-month or 2-year rules. If bifurcation is elected, only one of the two issues which results from the bifurcation may elect the new 2-year expenditure test for construction bonds. For example, one portion of a bond issue may be intended for the purchase of real property and the issuer may choose to satisfy the 6-month exception, while the other portion is intended for construction and the issuer may choose to satisfy the 2-year exception permitted for bonds to finance construction.

The conference agreement makes modifications to enable the issuers of bond pools to more easily avail themselves of the 2-year exception permitted for bonds to finance construction. Issuers of pool bonds are permitted to elect to satisfy one of the following two requirements for the 2-year exception. Under the first requirement, the issuer of the pool bonds would rebate all arbitrage earned on bond proceeds prior to their being loaned to the ultimate borrowers Proceeds loaned to ultimate borrowers within 12 months of the date of issue of the bonds may be the subject of application by the issuer of either the 6-month or 2-year exception measured from the date of the loans. If proceeds are loaned to an ultimate borrower more than 12 months from the date of issue of the bonds, the issuer may apply either the 6-month or 2-year exception to the expenditure of the proceeds measuring the 6, 12, 18, 24, and 36-month periods from the date which is 12 months after the date of issue of the bonds. For example, if a loan were made to an ultimate borrower 15 months after the bonds were issued, and the issuer intends to satisfy the 2-year exception, then 10 percent of the bond proceeds would be required to be expended within 3 months of the date of the loan, that is within 18 months of the date of issue of the bonds (six months from the date which is 12 months after the date of issue of the bonds). The issuer is to elect whether failure to satisfy the expenditure tests will result in rebate of arbitrage earnings or payment of the 1.5-percent penalty described above. Under the second alternative requirement, the temporary period rules for pool bonds are modified to permit issuers of pool bonds to avail themselves of a 2-year temporary period should they elect to satisfy the 2-year exception permitted to bonds issued to finance construction.

*5. Modification of Placed-In-Service Date for Certain Tax-Exempt Bond-Financed Property*

A. CERTAIN QUALIFIED REDEVELOPMENT BONDS

*Present law*

Under a transition rule to the Tax Reform Act of 1986, a bond is a qualified redevelopment bond if it is issued for a project which is a part of the Kenosha Downtown Redevelopment project, and is located in an area bounded on the east by the east wall of the Army Corps of Engineers Confined Disposal Facility (extended), on the north by 48th Street (extended), on the west by the Chicago & Northwestern Railroad tracks, and on the south by the north line of Eichelman Park (extended). To be qualified bonds, the facilities to be financed must be identified at the time the bonds are issued. In addition, to be qualified bonds, the aggregate face amount of such bonds may not exceed $105,000,000. Authority to issue such bonds expires December 31, 1990.

*House bill*

The House bill amends present law to provide that the facilities which are to be part of the Kenosha Downtown Redevelopment project and which are to be financed with qualified bonds, need not be identified at the time the bonds are issued. In addition, the House bill provides that authority to issue such bonds expires on September 3, 1996.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

[1] House Report 101-247, p. 1378.

B. CERTAIN PROPERTY ELIGIBLE FOR PRIOR-LAW ACCELERATED COST RECOVERY

*Present law*

Under a transition rule to the Tax Reform Act of 1986, as amended by the Technical and Miscellaneous Revenue Act of 1988, property which is part of the Kenosha Downtown Redevelopment projects and is financed by certain redevelopment bonds (described above) may be eligible for accelerated cost recovery as in effect prior to 1986 Act. The property must be placed-in-service by January 1, 1989 or January 1, 1991 (depending on the class life of such property) to qualify for the provision.

*House bill*

The House bill extends the placed-in-service dates applicable to property which is part of the Kenosha Downtown Redevelopment project until September 3, 1999.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

K. CORPORATE ALTERNATIVE MINIMUM TAX PROVISIONS

*1. Adjusted Current Earnings (ACE)*

A. BOOK TREATMENT OF CERTAIN ITEMS

*Present law*

For taxable years beginning after December 31, 1989, a corporation's alternative minimum taxable income is increased by 75 percent of the amount by which the adjusted current earnings exceeds alternative minimum taxable income (computed without the ACE adjustment and without net operating loss deduction).

Depreciation, intangible drilling cost, depletion, and mining expenses cannot be written off under ACE faster than under the taxpayer's book method (determined by comparing the present value of deductions under the prescribed tax method and the book method).

*House bill*

The House bill repeals the provisions relating to book treatment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

B. DIVIDENDS-RECEIVED DEDUCTION

*Present law*

The only dividends-received deduction allowed for ACE is the 100-percent dividends-received deduction where the corporation receiving the dividend owns 80 percent of the payor corporation but is ineligible to file a consolidated return. The deduction is allowed only to the extent to which the earnings distributed were subject to tax.

*House bill*

The House bill allows the dividends-received deduction under ACE for any dividend for which the dividends-received deduction is 100 percent, to the extent the earnings subject to tax.

The House bill also allows the dividends-received deduction under ACE to dividends received from a 20-percent owned corporation, to the extent the earnings were subject to tax.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

C. FOREIGN SALES CORPORATION DIVIDENDS PAID TO CERTAIN COOPERATIVES

*Present law*

The dividends-received deduction is not allowed for dividends paid to a parent corporation out of earnings not subject to tax by reason of the foreign sales corporation rules.

*House bill*

The House bill allows the dividends-received deduction for dividends received from a foreign sales corporation by a qualified cooperative engaged in the marketing of agricultural or horticultural products.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

D. INCOME FROM THE DISCHARGE OF INDEBTEDNESS

*Present law*

Income from the discharge of indebtedness is included in ACE to the extent included in earnings and profits.

*House bill*

The House bill excludes income from the discharge of indebtedness from ACE to the extent excluded from taxable income.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

E. CAPITALIZATION OF CERTAIN EXPENSES

*Present law*

ACE follows the earnings and profits rules on capitalization.

*House bill*

The House bill repeals the ACE rules relating to capitalization of certain expenses.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

F. CHANGE OF OWNERSHIP OF CORPORATION

*Present law*

ACE eliminates built-in losses following the change in corporate ownership for changes after October 22, 1986.

*House bill*

The House bill makes the rules applicable only to changes of ownership occurring in taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

G. INTANGIBLE DRILLING COSTS (IDC'S)

*Present law*

For purposes of ACE (and earnings and profits), IDCs are amortized over the 60-month period beginning when production commences. Taxpayers may elect 10-year amortization for regular tax purposes, in lieu of incurring a minimum tax preference.

*House bill*

The House bill provides that amortization begins for purposes of ACE (and earnings and profits) when expenses are paid or incurred. Taxpayers (corporations and individuals) may elect this 60-month amortization for purposes of the regular tax.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

H. ANNUITIES

*Present law*

Income on annuity contracts is included in ACE. Annuity contracts held under a qualified annuity plan or which is a qualified funding asset are excepted.

*House bill*

The House bill repeals the ACE rules relating to annuities.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

I. INSTALLMENT SALES

*Present law*

Installment sale reporting is not allowed under ACE.

*House bill*

The House bill allows the installment sale method to be used for ACE with respect to gain for which interest is paid at the tax underpayment rate.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

J. TREASURY GUIDANCE

*House bill*

The House bill directs the Treasury to provide guidance on ACE by March 15, 1991.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

K. EFFECTIVE DATE

*House bill*

The House bill provisions are effective for taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

*2. Other Amendments to the Minimum Tax*

A. HOME CONSTRUCTION CONTRACTS

*Present law*

Small home construction contracts (average annual gross receipts of less than $10 million for the preceding three years) are excepted from the minimum tax rule requiring taxpayers to use the percentage of completion method of accounting.

*House bill*

The House bill excepts all home construction contracts from the minimum tax rule. The provision is effective for contracts entered into after September 30, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

B. RESEARCH EXPENDITURES

*Present law*

Research expenses of individuals must be amortized over a 10-year period for purposes of the minimum tax.

*House bill*

The House bill repeals the minimum tax adjustment for research expenses of individuals who materially participate in the activity in which research expenses are incurred. The provision is effective for taxable years beginning after December 31, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

C. FOREIGN TAX CREDIT

*Present law*

The foreign tax credit may not offset more than 90 percent of the taxpayer's pre-foreign tax credit tentative minimum tax.

*House bill*

The House bill eliminates the 90-percent limit in the case of corporations meeting certain specified requirements. The provision applies to taxable years beginning after March 31, 1990 (with a proration rule for certain years including that date).

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

D. ORPHAN DRUG TAX CREDIT

*Present law*

The orphan drug tax credit may not reduce a taxpayer's tax to less than the tentative minimum tax. No carryovers are permitted.

*House bill*

The House bill increases the minimum tax credit by the amount of the orphan drug credit not allowed solely by reason of the tentative minimum tax limitation. The provision applies to taxable years beginning after December 31, 1989, with respect to credits disallowed in taxable years beginning after December 31, 1986.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

E. MINIMUM TAX CREDIT

*Present law*

A minimum tax credit is allowed for minimum tax attributable to deferral items.

*House bill*

The House bill allows the minimum tax credit to corporations for the entire minimum tax liability. The provision applies to minimum tax credits arising in taxable years beginning after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

F. TREASURY STUDY

*House bill*

The House bill directs the Treasury Department to conduct a study of the proper class life for automobiles and light trucks. The study is to be submitted to the House Committee on Ways and Means and the Senate Finance Committee one year after date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

L. REVISION OF CIVIL PENALTIES

*1. Information Reporting Penalties*

*Present law*

*In general*

Any person who fails to file an information return with the Internal Revenue Service on or before the prescribed filing date is subject to a $50 penalty for each failure, with a maximum penalty of $100,000 per calendar year. Information returns relating to interest and dividends are subject to this $50 penalty for each failure, but without any cap on the total amount of penalty that may be imposed. In addition, any person who fails to provide a copy of an information return (a "payee statement") to a taxpayer on or before the prescribed due date is subject to a penalty of $50 for each failure, with a maximum penalty of $100,000 per calendar year. If a person fails to include all of the information required to be shown on an information return or a payee statement or includes incorrect information, then a penalty of $5 may be imposed with respect to each such failure, with a maximum penalty of $20,000 per calendar year. Stricter penalty provisions apply in the case of interest and dividend returns and in the case of intentional failures to comply with the information return requirements.

A penalty may also be imposed for each failure to include a correct taxpayer identification number on a return or statement and for each failure to furnish a correct taxpayer identification number to another person. The amount of the penalty that may be imposed is either $5 or $50 for each failure, depending on the nature of the failure.

*Foreign provisions*

*Income of foreign persons subject to withholding.*—Persons having control, receipt, custody, disposal, or payment of certain types of U.S. income of foreign persons are required to deduct and withhold U.S. tax from such income under chapter 3 of the Code's income tax provisions (secs. 1441-1464). Generally, any person required to serve as a withholding agent under chapter 3 must provide each income recipient an annual withholding statement (Form 1042S) and must file all required Forms 1042S with the IRS accompanied by a return (Form 1042) summarizing the information on the Forms 1042S (Reg. sec. 1.1461-2). As described above, the Code generally provides penalties for each failure to file a required information return with the IRS and each failure to provide a required payee statement. These penalties do not apply, however, to each failure with respect to Forms 1042S.

*Information reporting.*—Generally, every U.S. person is required to report certain information concerning any foreign corporation that such person controls and information relating to transactions between the corporation and certain specified persons. Failure to provide such information subjects the U.S. person to a monetary penalty plus a denial of foreign tax credits (sec. 6038). These information reporting requirements and this penalty do not specifically refer to all types of information needed to determine tax liabilities with respect to controlled foreign corporations.

*House bill*

*Overview*

The House bill modified the information return penalties provided under present law in order to encourage persons to file correct information returns even though such returns are filed after the prescribed filing date. The bill establishes a three-tier penalty structure in which the amount of the penalty varies with the length of time within which the taxpayer corrects the failure. The bill also provides that taxpayers may correct a de minimis number of errors and avoid penalties entirely. The bill makes uniform the reporting requirements applicable to magnetic media and requires a study of service bureaus, which file information documents on behalf of other persons.

The information reporting provisions of the bill generally apply to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989.

*Failure to file correct information returns*

Under the House bill, any person who fails to file a correct information return with the Internal Revenue Service on or before the prescribed filing date is subject to a penalty that varies based on when, if at all, the correct information return is filed. If a person files a correct information return after the prescribed filing date but on or before the date that is 30 days after the prescribed filing date, the amount, of the penalty is $15 per return, with a maximum penalty of $75,000 per calendar year. If a person files a correct information return after the date, that is after 30 days after the prescribed filing date but on or before August 1, the amount of penalty is $30 per return, with a maximum penalty of $150,000 per calendar year. If a correct information return is not filed on or before August 1 of any year, the amount of the penalty is $50 per return, with a maximum penalty of $250,000 per calendar year.

The House bill also provides a special rule for de minimis failures to include the required, correct information. This exception applies to incorrect information returns that are corrected on or before August 1. Under the exception, if an information return is originally filed without all of the required information or with incorrect information and the return is corrected on or before August 1, then the original return is treated as having been filed with all of the correct required information. The number of information returns that may qualify for this exception for any calendar year is limited to the greater of (1) 10 returns or (2) one-half of one percent of the total number of information returns that are required to be filed by the person during the calendar year.

In addition, the House bill provides special, lower maximum levels for this penalty for small businesses. Small businesses are defined as firms having average annual gross receipts for the most recent 3 taxable years that do not exceed $5 million. The maximum penalties for small businesses are: $25,000 (instead of $75,000) if the failures

are corrected on or before 30 days after the prescribed filing date; $50,000 (instead of $150,000) if the failures are corrected on or before August 1; and $100,000 (instead of $250,000) if the failures are not corrected on or before August 1.

*Failure to furnish correct payee statements*

Under the House bill, any person who fails to furnish a correct payee statement to a taxpayer on or before the prescribed due date is subject to a penalty (as under present law) of $50 per statement, with a maximum penalty of $100,000 per calendar year. If the failure to furnish a correct payee statement to a taxpayer is due to intentional disregard of the requirement, the bill generally provides a penalty of $100 per statement or, if greater, 10 percent[1] of the amount required to be shown on the statement, with no limitation on the maximum penalty per calendar year.

*Failure to comply with other information reporting requirements*

Under the House bill, any person who fails to comply with other specified information reporting requirements on or before the prescribed date is subject to a penalty of $50 for each failure, with a maximum penalty of $100,000 per calendar year. The information reporting requirements specified for this purpose include any requirement to include a correct taxpayer identification number on a return or a statement and any requirement to furnish a correct taxpayer identification number to another person. The bill coordinates this penalty with the penalty for failure to file correct information returns and the penalty for failure to file correct payee statements by making this penalty inapplicable to failures penalized under those provisions.

*Waiver, definitions, and special rules*

The House bill consolidates the waiver standards relating to information reporting into one provision. The bill provides that any of the information reporting penalties may be waived if it is shown that the failure to comply is due to reasonable cause and not to willful neglect. For this purpose, reasonable cause exists if significant mitigating factors are present, such as the fact that a person has an established history of complying with the information reporting requirements. The separate, higher waiver standard under present law for interest and dividends is repealed. Interest and dividend returns and statements are consequently subject to this general waiver standard.

*Foreign provisions*

*Penalties for failure to file withholding statements.*—The House bill integrates the penalty for failure to file Form 1042S and failure to provide Form 1042S to the payee into the general penalty structure. Thus, the bill treats each Form 1042S required to be filed with the IRS and provided to a payee as an information return and as a payee statement, respectively, as those terms are defined in section 6724. Accordingly, each failure to file any required Form 1042S will be subject to a separate penalty under section 6721, and each failure to provide a payee any required Form 1042S will be subject to a separate penalty under section 6722.

*Penalties for failure to report information with respect to certain foreign corporations.*—The House bill clarifies the reporting requirements and penalties imposed by section 6038 by expressly applying those provisions to failures to provide certain information with respect to related parties, such as controlled foreign corporations of which the person subject to the requirements is a U.S. shareholder.

*Uniform requirements for returns on magnetic media*

The House bill provides that uniform magnetic media requirements apply to all information returns filed during any calendar year. The bill accomplishes this by making statutory the requirement currently contained in IRS regulations that persons filing more than 250 information returns file those returns on magnetic media. The bill makes this requirement applicable to all types of information returns. Thus, the bill repeals the provision of present law that requires persons filing more than 50 information returns relating to payments of interest, dividends, and patronage dividends to file all such returns on magnetic media. The bill provides that the penalty for failing to file information returns on magnetic media when required to do so applies only to the number required to be so filed that exceeds 250. The penalties for failure to file on a timely basis correct information returns would apply to the first 250 returns.

*Study of procedures to prevent mismatching*

The House bill requires the General Accounting Office, in consultation with the Treasury Department, to conduct a study on whether, if the name and taxpayer identification number of any person that is set forth on an information return do not correspond to the name and taxpayer identification number of such person contained on the records of the IRS, the IRS should be permitted to disclose to the person that has filed such information return such information as may be necessary to determine the correct name and taxpayer identification number. A report on the study, together with any recommendations, is to be submitted to the tax-writing committees of the Congress by June 1, 1990.

*Study of service bureaus*

The House bill requires the General Accounting Office, in consultation with the Treasury Department, to conduct a study of whether service bureaus engaged in the business of transmitting information returns or other documents to the IRS on behalf of other persons should be subject to registration or other regulation. A report on the study, together with any recommendations, is to be submitted to the tax-writing committees of the Congress not later than July 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

*2. Accuracy Penalties*

*Present law*

*Negligence penalty*

If any part of an underpayment of tax required to be shown on a return is due to negligence or disregard of rules or regulations, a penalty may be imposed equal to 5 percent of the total amount of the underpayment. An underpayment of tax that is attributable to a failure to include on an income tax return an amount shown on an information return is treated as subject to the negligence penalty absent clear and convincing evidence to the contrary.

*Fraud penalty*

If any part of an underpayment of tax required to be shown on a return is due to fraud, a penalty may be imposed equal to 75 percent of the portion of the underpayment that is attributable to fraud.

*Substantial understatement penalty*

If the correct income tax liability of a taxpayer for a taxable year exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 ($10,000 in the case of most corporations), then a substantial understatement exists and a penalty may be imposed equal to 25 percent of the underpayment of tax attributable to the understatement. In determining whether a substantial understatement exists, the amount of the understatement is reduced by any portion attributable to an item if (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the return or on a statement attached to the return. Special rules apply to tax shelters.

*Valuation penalties*

If an individual, personal service corporation, or closely held corporation underpays income tax for any taxable year by $1,000 or more as a result of a valuation overstatement, then a penalty may be imposed with respect to the amount of the underpayment that is attributable to the valuation overstatement. A valuable overstatement exists if the valuation or adjusted basis of any property claimed on a return is 150 percent or more of the correct value or adjusted basis. The amount of the penalty that may be imposed increases from 10 to 20 to 30 percent of the underpayment attributable to the valuation overstatement as the percentage by which the valuation claimed exceeds the correct valuation increases. Similar penalties may be imposed with respect to (1) an underpayment of income tax that is attributable to an overstatement of pension liabilities and (2) an underpayment of estate or gift tax that is attributable to a valuation understatement.

*House bill*

*Overview*

The bill consolidates into one part of the Internal Revenue Code all of the generally applicable penalties relating to the accuracy of tax returns. The penalties that are consolidated are the negligence penalty, the substantial understatement penalty, and the valuation penalties. These consolidated penalties are also coordinated with the fraud penalty. The bill repeals the present-law versions of these penalties. The bill reorganizes the accuracy penalties into a new structure that operates to eliminate any stacking of the penalties.

The accuracy provisions of the bill generally apply to returns the due date for which (determined without regard to extensions) is after December 31, 1989.

*Accuracy-related penalty*

The accuracy-related penalty, which is imposed at a rate of 20 percent, applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation overstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement.

*(1) Negligence.*—If an underpayment of tax is attributable to negligence, the negligence penalty is to apply only to the portion

[1] Five percent for several types of statements.

of the underpayment that is attributable to negligence rather than, as under present law, to the entire underpayment of tax.

Negligence includes any careless, reckless, or intentional disregard of rules or regulations, as well as any failure to make a reasonable attempt to comply with the provisions of the Code. In addition, the House bill repeals the present-law presumption under which an underpayment is treated as attributable to negligence if the underpayment is due to a failure to include on an income tax return an amount shown on an information return.

*(2) Substantial understatement of income tax.*—The accuracy-related penalty that applies to the portion of an underpayment that is attributable to a substantial understatement of income tax is the same as the substantial understatement penalty provided under present law with three principal modifications. First, the rate is lowered to 20 percent. Second, the committee expands the list of authorities upon which taxpayers may rely (currently contained in Treasury regulations) to include proposed regulations, private letter rulings, technical advice memoranda, actions on decisions, general counsel memoranda, information or press releases, notices, and any other similar documents published by the IRS in the *Internal Revenue Bulletin.* In addition, the list of authorities is to include General Explanations of tax legislation prepared by the Joint Committee on Taxation (the "Blue Book"). Third, the House bill requires the IRS to publish not less frequently than annually a list of positions for which the IRS believes there is no substantial authority and which affect a significant number of taxpayers.

*(3) Substantial valuation overstatement.*—The penalty that is to apply to the portion of an underpayment that is attributable to a substantial valuation overstatement is generally the same as the valuation overstatement penalty provided under present law with five principal modifications. First, the House bill extends the penalty to all taxpayers. Second, a substantial valuation overstatement exists if the value or adjusted basis of any property claimed on a return is 200 percent or more of the correct value or adjusted basis. Third, the penalty is to apply only if the amount of the underpayment attributable to a valuation overstatement exceeds $5,000 ($10,000 in the case of most corporations). Fourth, the amount of the penalty for a substantial valuation overstatement is 20 percent of the amount of the underpayment if the value or adjusted basis claimed is 200 percent or more but less than 400 percent of the correct value or adjusted basis. Fifth, as explained below, the House bill provides that the rate of this penalty is doubled if the value or adjusted basis claimed is 400 percent or more of the correct value or adjusted basis. The House bill retains the special rules in present law that apply to charitable deduction property.

*(4) Substantial overstatement of pension liabilities.*—The accuracy-related penalty also applies to substantial overstatements of pension liabilities. This penalty is derived from the present-law penalty in section 6659A. The House bill modifies the present-law penalty by providing that the taxpayer is subject to this component of the accuracy-related penalty only if the actuarial determination of pension liabilities is 200 percent or more of the amount determined to be correct.

*(5) Substantial estate or gift tax valuation understatement.*—The accuracy-related penalty also applies to substantial estate or gift tax valuation understatements. This penalty is derived from the present-law penalty in section 6660. The House bill modifies the present-law penalty by providing that the taxpayer is subject to this penalty only if the value of any property claimed on an estate claimed on an estate or gift tax return is 50 percent or less of the amount determined to be correct. In addition, the House bill modifies the present-law penalty by increasing five-fold the threshold below which the penalty does not apply, from $1,000 to $5,000.

*(6) Gross valuation misstatement.*—The House bill provides that the rate of the general accuracy penalty is to be doubled (to 40 percent) in the case of gross valuation misstatements. There are three types of gross valuation misstatements. The first is the same as the substantial valuation overstatement component of the accuracy-related penalty, except that the doubling is to apply only to valuation overstatements claimed on a return that are 400 percent or more of the amount determined to be the correct amount. The second is the same as the substantial overstatement of pension liabilities component of the accuracy-related penalty, except that the doubling is to apply only to overstatements of pension liabilities that are 400 percent or more of the amount determined to be the correct amount. The third is the same as the substantial estate or gift tax valuation understatement component of the accuracy-related penalty, except that the doubling is to apply only to valuations claimed on the estate or gift tax return that are 25 percent or less of the amount determined to be the correct amount.

*Fraud penalty*

The fraud penalty, which is imposed at a rate of 75 percent, applies to the portion of any underpayment that is attributable to fraud.

Under the House bill, the accuracy-related penalty is not to apply to any portion of an underpayment on which the fraud penalty is imposed.

*Definitions and special rules*

The House bill provides special rules that apply to each of the penalties imposed under the new structure. First, the House bill provides standardized exception criteria for all of these accuracy-related penalties. The House bill provides that no penalty is to be imposed if it is shown that there was reasonable cause for an underpayment and the taxpayer acted in good faith.

Second, the House bill provides that an accuracy-related or fraud penalty is to be imposed only if a return has been filed. This is intended to improve the coordination between the accuracy-related penalties and the failure to file penalties.

Third, the House bill provides a standard definition of underpayment for all of the accuracy-related penalties.

*Repeal of present-law penalties*

The House bill repeals the present-law penalties for negligence and fraud, substantial understatements of liability, valuation overstatements, and valuation understatements for purposes of estate or gift taxes. The House bill also repeals the special negligence rules applicable to straddles and to amounts shown on information returns. Finally, the House bill repeals the higher interest rate that applies to substantial underpayments that are attributable to tax-motivated transactions.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

### *3. Preparer, Promoter, and Protester Penalties*

*Present law*

*Return preparer penalties*

An income tax return preparer is subject to a penalty of $100 if any part of an understatement of tax on a return or claim for refund is due to the return preparer's negligent or intentional disregard of rules and regulations. In addition, an income tax return preparer is subject to a penalty of $500 if any part of an understatement of tax on a return or claim for refund is due to the return preparer's willful attempt in any manner to understate tax. An income tax return preparer is also subject to a penalty of $25 for each failure to (1) furnish a copy of a return or claim for refund to the taxpayer; (2) sign the return or claim for refund; or (3) furnish his or her identifying number.

*Penalty for promoting abusive tax shelters*

Any person who organizes, assists in the organization of, or participates in the sale of any interest in, a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, is subject to a penalty if in connection with such activity the person makes or furnishes a false or fraudulent statement or a gross valuation overstatement. The amount of the penalty equals the greater of $1,000 or 20 percent of the gross income derived or to be derived by the person from the activity. It is unclear under present law whether the term "activity" refers to each sale of an interest in a tax shelter or whether it refers to the overall activity of promoting an abusive tax shelter.

*Penalty for aiding and abetting the understatement of tax liability*

Any person who aids, assists in, procures, or advises with respect to the preparation or presentation of any portion of a return or other document under the tax laws which (1) the person knows will be used in connection with any material matter arising under the tax laws, and (2) the person knows will (if so used) result in an understatement of the tax liability of another person is subject to a penalty equal to $1,000 for each return or other document ($10,000 in the case of returns and documents relating to the tax of a corporation).

*Frivolous income tax return penalty*

Any individual who files a frivolous income tax return is subject to a penalty of $500.

*Sanctions and costs awarded by courts*

If it appears to the Tax Court that (1) proceedings before it have been instituted or maintained primarily for delay, (2) the taxpayer's position is frivolous, or (3) the taxpayer has unreasonably failed to pursue administrative remedies, the Court may award damages not to exceed $5,000 to the United States.

*Authority to counterclaim for balance of penalty in partial refund suits*

Taxpayers may pay a portion of the penalties for failure to collect and pay over tax, for understatement of a taxpayer's liability by an income tax return preparer, for promoting abusive tax shelters, and for aiding and abetting the understatement of tax li-

ability. By doing so, they may obtain judicial review of the imposition of these penalties. Present law may prohibit the Federal Government from counterclaiming for the balance of the penalty in the same lawsuit.

*Bonding requirement*

Return preparers may post a bond, thereby preventing any proceeding by the Federal Government under section 7407 seeking to enjoin a return preparer from engaging in prohibited conduct.

*Disclosure of certain information by return preparers*

In general, return preparers are subject to penalty for disclosing tax return information that is furnished to the return preparer in connection with the preparation of tax returns. The IRS may by regulation provide exceptions to this general prohibition.

*House bill*

*Return preparer penalties*

The House bill revises the present-law penalties that apply in the case of an understatement of tax that is caused by an income tax return preparer. First, the House bill provides that if any part of an understatement of tax on a return or claim for refund is attributable to a position for which there was not a realistic possibility of being sustained on its merits and if any person who is an income tax return preparer with respect to such return or claim for refund knew (or reasonably should have known) of such position and such position was not disclosed or was frivolous, then that return preparer is subject to a penalty of $250. The penalty is not imposed if there is reasonable cause for the understatement and the return preparer acted in good faith.

In addition, the House bill provides that if any part of an understatement of tax on a return or claim for refund is attributable to a willful attempt by an income tax return preparer to understate the tax liability of another person or to any reckless or intentional disregard of rules or regulations by an income tax return preparer, then the income tax return preparer is subject to a penalty of $1,000.

The return preparer penalties that apply to each failure to (1) furnish a copy of a return or claim for refund to the taxpayer, (2) sign the return or claim for refund, (3) furnish his or her identifying number, and (4) file a correct information return, are made uniform. The penalty is $50 for each failure and the total penalties imposed for any single type of failure for any calendar year are limited to $25,000.

The modifications to the return preparer penalties apply to documents prepared after December 31, 1989.

*Penalty for promoting abusive tax shelters*

Under the House bill, the amount of the penalty imposed for promoting abusive tax shelters equals $1,000 (or, if the person establishes that it is less, 100 percent of the gross income derived or to be derived by the person from such activity). In calculating the amount of the penalty, the organizing of an entity, plan or arrangement and the sale of each interest in an entity, plan, or arrangement constitute separage activities. The modifications to the penalty for promoting abusive tax shelters apply to activities after December 31, 1989.

*Penalty for aiding and abetting the understatement of tax liability*

The House bill amends the penalty for aiding and abetting the understatement of tax liability by imposing the penalty in cases where the person aids, assists in, procures, or advises with respect to the preparation or presentation of any portion of a return or other document if (1) the person knows or has reason to believe that the return or other document will be used in connection with any material matter arising under the tax laws, and (2) the person knows that if the portion of the return or other document were so used, an understatement of the tax liability of another person would result. In addition, the House bill provides that a penalty for promoting abusive tax shelters is not to be imposed on any person with respect to any document if an aiding and abetting penalty is imposed on such person with respect to the same document. The modifications to the aiding and abetting penalty apply to activities after December 31, 1989.

*Frivolous income tax return penalty*

The House bill deletes the special provision in present law permitting taxpayers who contest the imposition of this penalty to pay 15 percent of the penalty, which halts further collection proceedings until final judicial resolution of the dispute. Thus, taxpayers who wish to contest imposition of this penalty must pay the full penalty before seeking judicial review of imposition of the penalty. The provision applies to returns filed after December 31, 1989.

*Sanctions and costs awarded by courts*

The House bill authorizes the Tax Court to impose a penalty not to exceed $25,000 if a taxpayer (1) institutes or maintains a proceeding primarily for delay, (2) takes a position that is frivolous, or (3) unreasonably fails to pursue available administrative remedies.

The House bill also authorizes the Tax Court to require any attorney or other person permitted to practice before the Court to pay excess costs, expenses, and attorney's fees that are incurred because the attorney or other person unreasonably and vexatiously multiplied any proceeding before the Court. If the attorney is appearing on behalf of the Commissioner of Internal Revenue, the United States is to pay these costs in the same manner as an award of these costs by a district court.

The modifications to the court-awarded sanctions apply to proceedings pending on, or commenced after December 31, 1989.

*Authority to counterclaim for balance of penalty in partial refund suits*

The House bill clarifies that, where taxpayers utilize the provisions of present law (other than with respect to frivolous income tax returns) that permit partial (rather than full) payment of certain penalties to obtain judicial review of the imposition of these penalties, the United States may counterclaim as part of the same lawsuit for the remainder of the penalty. This provision is effective on the date of enactment.

*Repeal of bonding requirement*

The House bill repeals the provision permitting return preparers to post a bond and thereby prevent any proceeding by the Federal Government under section 7407 seeking to enjoin a return preparer from engaging in prohibited conduct. This provision is effective for actions or proceedings commenced after December 31, 1989.

*Disclosure of certain information by return preparers*

The House bill provides that the IRS regulations relating to the use of tax information by return preparers are to provide that a return preparer may disclose tax information to another return preparer solely for purposes of quality or peer reviews. The House bill does not permit disclosure of this information by the IRS for these purposes. This provision is effective on the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

*4. Deliquency Penalties*

*Present law*

*Failure to file*

A taxpayer who fails to file a tax return on a timely basis is subject to a penalty equal of 5 percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 5 months or 25 percent. The net amount of tax due is the excess of the amount of the tax required to be shown on the return over the amount of any tax paid on or before the due date prescribed for the payment of tax.

*Failure to make timely deposits of tax*

If any person who is required to deposit taxes imposed by the Internal Revenue Code with a government depository fails to deposit such taxes on or before the prescribed date, a penalty may be imposed equal to 10 percent of the amount of the underpayment, unless it is shown that such failure is due to reasonable cause and not willful neglect. The amount of the underpayment for this purpose is the excess of the amount of the tax required to be deposited over the amount of the tax, if any, deposited on or before the prescribed date.

*Failure to withhold on income of foreign persons*

As described above, persons having control, receipt, custody, disposal, or payment of certain types of U.S. income of foreign persons are required to deduct and withhold U.S. tax from such income under chapter 3 of the Code's income tax provisions (secs. 1441-1464). The amount withheld is credited against the U.S. tax liability of the foreign income recipient.

Where a tax on the U.S. income of a foreign recipient was required to be withheld but the withholding agent failed to do so, and instead the tax is paid by the income recipient, a penalty may be imposed on the recipient or the withholding agent for failure to pay the tax only if the failure was fraudulent and for the purpose of evading payment (sec. 1463). By contrast, where a U.S. employer fails to withhold income tax from an employee's wages but the employee pays the tax due, the employer remains liable for any penalties and additions to tax otherwise applicable (sec. 3402(d)).

*House bill*

*Failure to file*

The House bill modifies present law by providing that the fraud and negligence penalties are not to apply in the case of a negligent or fraudulent failure to file a return. Instead, the House bill provides that in the case of a fraudulent failure to file a return, the failure to file penalty is to be increased to 15 percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 5 months or 75 percent. The burden of proof on the fraud element of this increased portion of the penalty is on the IRS (sec. 7454(a)).

The modification to the failure to file penalty applies to returns the due date for

which (determined without regard to extensions) is after December 31, 1989.

*Failure to make timely deposits of tax*

The House bill modifies the penalty for the failure to make timely deposits of tax in order to encourage depositors to correct their failures. The House bill establishes a four-tiered penalty structure in which the amount of the penalty varies with the length of time within which the taxpayer corrects the failure. Under the House bill, a depositor is subject to a penalty equal to 2 percent of the amount of the underpayment if the failure is corrected on or before the date that is 5 days after the prescribed due date. A depositor is subject to a penalty equal to 5 percent of the amount of the underpayment if the failure is corrected after the date that is 5 days after the prescribed due date but on or before the date that is 15 days after the prescribed due date. A depositor is subject to a penalty equal to 10 percent of the amount of the underpayment if the failure is corrected after the date that is 15 days after the due date but on or before the date that is 10 days after the date of the first delinquency notice to the taxpayer (under sec. 6303). Finally, a depositor is subject to a penalty equal to 15 percent of the amount of the underpayment if the failure is not corrected on or before the date that is 10 days after the date of the first delinquency notice to the taxpayer (under sec. 6303). In cases of jeopardy, the 15-percent rate applies if the taxes are not deposited on or before the date on which notice and demand for immediate payment is given under section 6861, section 6862, or the last sentence of section 6331(a).

The modification to the penalty for the failure to make timely deposits of tax applies to deposits that are required to be made after December 31, 1989.

*Failure to withhold on income of foreign persons*

The House bill provides that in cases where a tax on the U.S. income of a foreign person was required to be withheld under chapter 3 but was not in fact withheld, and the person who would have been entitled to a credit for any withholding tax paid instead satisfies its own proper tax liability, the withholding agent remains liable for any penalties and additions to tax otherwise applicable for failure to withhold. Thus, under the bill these withholding agents are subject to the same general approach applicable to U.S. employers who withhold income taxes from employees' wages.

The modification to the rules on liabilities of withholding agents applies to failures to deduct and withhold taxes after December 31, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

The conferees recognize that the late date of enactment of this bill, in conjunction with the January 1, 1990, effective date for the penalty for failure to make timely deposits of tax, may present severe administrative difficulties for the IRS. The conferees expect the IRS to implement the revisions to this penalty by that date, but the conferees also recognize that interim administrative procedures may be necessary for several months (but in no event beyond March 31, 1990) until the IRS can fully adjust its systems and train its employees concerning the revisions to this penalty. For example, the IRS might find it necessary, for a short period of time, to impose this penalty temporarily at a 10-percent rate for failures from day six until the IRS notice is provided and require taxpayers to apply for a rebate if they are entitled to avail themselves of the 5-percent rate (IRS must, to the extend feasible, notify taxpayers of this procedure). Alternatively, during this short period of time the IRS might apply the lower 5 percent rate (instead of the 10 percent rate) for such failures, or might waive the penalty altogether for such failures.

*5. Administrative Recommendations to the IRS*

*Present law*

The IRS is generally responsible for administration of the tax laws.

*House bill*

The House bill makes the following administrative recommendations to the Internal Revenue Service (IRS):

A. GENERAL ADMINISTRATIVE RECOMMENDATIONS

(1) The IRS should develop a policy statement emphasizing that civil tax penalties exist for the purpose of encouraging voluntary compliance.

(2) The IRS should develop a handbook on penalties for all employees. This handbook should be sufficiently detailed to serve as a practical guide for most issues of penalty administration.

(3) The IRS should provide clear guidance to its employees on how to compute penalties. This guidance should be incorporated into the penalty handbook.

(4) The IRS should revise existing training programs to reflect the purpose for penalties and their administration.

(5) The IRS should examine its communications with taxpayers (including penalty notices and publications) to determine whether these communications do the best possible job of explaining to taxpayers why the penalty was imposed and how taxpayers can avoid the penalty in the future. Penalty notices should also provide the telephone number of contract offices which taxpayers may call with questions and which have the authority to address disputed penalties.

(6) The IRS should finalize its review and analysis of the quality and clarity of machine-generated letters and notices used in the Adjustments and Correspondence Branches of the IRS service centers and report to Congress by July 1, 1990.

(7) The IRS should consider ways to develop better information concerning the administration and effects of penalties. The IRS should develop a master file database to provide statistical information regarding the administration of penalties. The IRS should continuously review information for the purpose of suggesting changes in compliance program, educational programs, penalty design and penalty administration.

(8) In the application of penalties, the IRS should make a correct substantive decision in the first instance rather than mechanically assert penalties with the idea that they will be corrected later.

B. INFORMATION REPORTING PENALTIES

(1) The IRS should adopt a clear policy of working with the third-party payor community to assure accurate and timely filing of information, in a format that is usable by the IRS and the taxpayer without unduly burdening the third party that is required to provide this information.

(2) The IRS should maintain an ongoing effort to develop, monitor, and revise programs designed to assist taxpayers in complying with legal requirements and avoiding penalties. The IRS should develop a publication for businesses, exempt organizations, and governmental units enumerating all information reporting requirements, sanctions for noncompliance, whom to call with questions, and where to file. The IRS should also provide speakers on information reporting to industry meetings and programs.

(3) The IRS should consider the creation of an advisory group comprised of representatives from the payor community and practitioners interested in the information reporting program that meets on a regular basis to discuss improvements to the system. This advisory group would be useful to discuss problems and the feasibility of complying with or the economic impact of rules and regulations affecting the reporting industry.

(4) The Information Returns Master File (IRMF) should be managed under the jurisdiction of a single function within the IRS. This function should have responsibility not only for the magnetic media filing program and the processing of data to the IRMF, but also for penalty assertion and abatement programs in this area, processing paper documents, payor education programs, and examination and other compliance programs. This function should also have operational responsibility for the issuance of related regulations and rulings.

(5) Penalty case work in the information reporting area, including administrative appeals, should be centralized and the procedures for handling the abatement of information reporting penalties should be streamlined.

(6) The IRS should better use its limited enforcement resources to ensure that taxpayers who continually fail to comply with reporting requirements are identified and penalized, rather than focusing only on taxpayers who are working with the IRS in an attempt to comply with the law.

(7) The IRS must provide to a taxpayer upon request, or to a financial institution with the taxpayer's authorization, within 30 days, a list of the names the IRS has (in its computer matching program file) under the taxpayer's identification number. This information could be used by the taxpayer to reconcile or determine the reason for any mismatches among the information the taxpayer has supplied a financial institution, the information the financial institution has supplied to the IRS, and the information the IRS has in its master file.

C. PREPARER, PROMOTER, AND PROTESTOR PENALTIES

(1) Disciplinary sanctions by the Director of Practice should not be viewed as a adjunct to the civil tax penalty system as it applies to tax return preparers. In matters involving non-willful conduct, the IRS should only refer cases to the Director of Practice in instances where the IRS can establish a pattern of failing to meet the required standards. An isolated instance in which a penalty may apply should not, in and of itself, require a referral unless willful conduct is involved.

(2) The Department of the Treasury should issue regulations related to the penalty for promoting abusive tax shelters (sec. 6700) and the penalty for aiding and abetting understatement of tax liability (sec. 6701), describing any application of these provisions to activities which could be subject to the tax return preparer penalties (secs. 6694 and 6695). Guidance on these

matters should be issued in a timely fashion.

(3) The IRS should instruct its employees that they cannot threaten the use of preparer penalties during an examination, Appeals conference, or other proceedings involving a tax advisor.

(4) The Director of Practice should publish more information about the basis for being disciplined and warnings in appropriate cases. Questions and Answers prepared in conjunction with input from practitioners would be helpful to the tax practitioner community.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

M. Individual Capital Gains

*1. Reduction in Capital Gains Tax Rate*

*Present law*

Net capital gain is taxed at the same rate as ordinary income.

*House bill*

*Reduction in tax for dispositions from September 14, 1989, through December 31, 1989*

The House bill provides a deduction of 30 percent of the net capital gain from the sale or exchange of assets for the period beginning September 14, 1989, and ending December 31, 1989. In addition this gain is not subject to the 5-percent tax known as the bubble". This results in a maximum regular tax rate of 19.6 percent.

The capital gains deduction is not allowed in computing the minimum tax.

Gain from the sale or exchange of collectibles is not eligible for the reduced capital gains rate.

All depreciation on real property is recaptured as ordinary income.

*28-percent maximum rate beginning January 1, 1992*

The House bill provides that after 1991, net capital gain is generally not subject to the 5-percent tax known as the "bubble". This results in a maximum tax rate of 28 percent. The treatment of collectibles and the recapture of depreciation on real property is the same as described above.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*2. Indexing of Basis of Certain Assets for Purposes of Determining Gain*

*Present law*

The adjusted basis of property taken into account in computing gain and loss in not adjusted to take account of inflation.

*House bill*

The House bill provides that an individual is allowed to index for inflation the basis of eligible assets (generally stock and tangible property which is a capital asset or a business asset) held for more than one year, for purposes of determining gain (but not loss). The provision applies to assets acquired after December 31, 1991.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

N. Technical Corrections

*1. Tax Technical Corrections*

*House bill*

The House bill contains technical, clerical, and conforming amendments to the Technical and Miscellaneous Revenue Act of 1988 and other recently enacted tax legislation.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with the following modifications:

*(1) Minimum tax.*—In lieu of the provision in the House bill relating to the prior law tax benefit rule, the conference agreement provides that the repeal of the prior law tax benefit rule (sec. 58(h)) by the Tax Reform Act of 1986 is effective for items of tax preference arising in taxable years beginning after December 31, 1986. However, the repeal of prior law section 58(h) does not prevent the issuance of regulations for tax years beginning after December 31, 1986, insofar as they relate to items of tax preference arising in taxable years beginning before 1987.

The conferees do not intend any change in the scope of the authority provided in section 58(h) of prior law. Thus, only those regulations which would have been valid under section 58(h) of prior law are valid under the conference agreement. No inference is intended as to whether the regulations issued by the Treasury Department are valid under section 58(h) or prior law.

*(2) Indirect deductions.*—The conference agreement provides that the disallowance of indirect miscellaneous itemized deductions through pass-through entities other than publicly offered regulated investment companies would continue to apply in taxable years beginning after December 31, 1989.

The conferees confirm their intention to exempt permanently shareholder expenses of publicly offered regulated investment companies from the application of the 2-percent floor under section 67 of the Internal Revenue Code. As a result, the 2-percent floor will not apply with respect to indirect deductions through such regulated investment companies. Nonetheless, the conferees believe that the procedure used in this instance for changing substantive provisions of the tax laws may be viewed as establishing an undesirable precedent because the revenue consequences of this substantive change were not taken into account in this year's reconciliation process. Accordingly, the conferees instruct the Joint Committee on Taxation, in consultation with the Budget Committees of the House and Senate and the Congressional Budget Office, to establish procedures that will assure current and accurate reporting of the revenue effects of substantive changes in the tax law that occur either by the action or inaction of the Congress.

*(3) Insurance provisions.*—The conference agreement provides that in determining whether an amount not received as an annuity under a modified endowment contract (or under an annuity contract) is includible in gross income, only those modified endowment contracts (or annuity contracts) that are issued by the same insurer (or affiliates) to the same policyholder during any calendar year are to be aggregated. The aggregation rules are not to apply to an immediate annuity contract. In addition, the conference agreement provides that Congress did not intend to address the treatment of "combination" or "split" annuities in providing the Treasury Department with the authority to provide regulations that are necessary or appropriate to prevent avoidance of the distribution rules contained in section 72(e). No inference is intended with respect to whether the Treasury Department may treat combination or split annuities as a single contract under its general authority to prescribe such rules and regulations as may be necessary to enforce the income tax laws.

*(4) Financial Institutions Reform, Recovery, and Enforcement Act of 1989.*—The conference agreement clarifies that, in the case of transactions other than taxable asset acquisitions, the Treasury Department has the regulatory authority to prescribe rules for appropriate adjustments to basis or other tax attributes to take into account collateral effects of the proper tax treatment of Federal financial assistance.

*(5) Definition of compensation for IRAs.*—The conference agreement provides that the definition of compensation for purposes of the deduction limits for individual retirement accounts (IRAs) includes earned income that is not subject to self-employment tax (SECA) because of the religious beliefs of the individual, effective for contributions after the date of enactment.

*(6) Tax treatment of transfers of interests in retirement plans incident to divorce.*—The House bill provides that the tax rules applicable to qualified domestic relations orders with respect to qualified plans also apply in the case of certain transfers of interests in individual retirement accounts and governmental plans incident to divorce or legal separation. The conference agreement also applies to church plans.

*(7) Required meals on commercial vessels.*—Under present law, expenses for food or beverages required by Federal law to be provided to crew members of a commercial vessel are fully deductible. The conference agreement clarifies that this rule applies to food or beverages required to be provided by any Federal law.

*(8) Tax-exempt bonds.*—Section 11815(f) of the House bill is revised to permit tax-exempt bond refinancings of certain taxable bridge financings, including those incurred when a State or local program of tax-exempt financing was not available.

*(9) Tax-exempt bonds.*—The conferees wish to make clear that the language "special-purpose structure" in the Treasury Regulations regarding convention or trade show facilities should be interpreted to include facilities which are part of a larger structure as long as such facilities are not subordinate to other nonexempt parts of the structure, such as a hotel. For example, trade show facilities which have a separate identity as a trade show center and attract visitors because of their trade show operations, but which are housed in a structure which also contains hotel space (where the trade show facilities are substantially larger in relation to the hotel than was the case in Revenue Ruling 85-94, have management separate from the hotel, and have revenues separate from the hotel that are sufficient to pay for the debt service and other costs associated with such facilities) should qualify as a "special-purpose structure".

*(10) Subpart F income exception for certain income received from related persons.*—The conference agreement revises section 11811 (h) (3) of the House bill to provide the Treasury authority to issue regulations which permit certain amounts paid by a partnership to qualify for the related person exception of section 954 (c)(3). The conferees anticipate that these regulations

will allow certain payments of interests, rents or royalties by a partnership with one or more corporate partners to be treaded as made by such partners in proportion to their respective interests in the partnership. For example, if one such corporate partner is related to, and is created or organized under the laws of the same foreign country as, the controlled foreign corporation that receives a payment of interest from the partnership, then the regulations may provide that the portion of the payment allocable to the corporate partner shall be treated as income received from a related person which is a corporation in applying the section 954 (c) (3) exception.

*(11) Firearms excise tax.*—Code section 6091 (b) (6) is amended so that the Bureau of Alcohol, Tobacco, and Firearms (BATF) will have responsibility for collection of as well as all other administrative responsibilities relating to, the firearms excise taxes. The amendment transfers this authority to BATF from the IRS, and completes the transfer which began in 1972 from IRS to BATF of all administrative authority over alcohol, tobacco, and firearms excise taxes.

*(12) Rounding inflation adjustment for separate returns filed by married individuals.*—The amendment corrects a technical error in the Tax Reform Act of 1986 which affects the rounding down adjustments on tax returns filed by married individuals filing separate returns. The amendment changes the rounding down to the next lowest $50 instead of the text lowest $25 as it applies to the personal exemption, the limitation on the standard deduction for certain dependents, and the additional standard deduction for aged and/or blind individuals because these deductions are independent of the filing status of the taxpayer. The requirement to round down to the next lowest $25 properly is applied to the standard deduction (which is split in half for each spouse) that is allowed for married individuals filing separate returns.

*2. Pension-Related Technical Corrections*

*House bill*

The House bill contains clerical, conforming, and clarifying amendments relating to the pension and employee benefit provisions of the Code and corresponding provisions of the Employee Income Security Act of 1974 (ERISA) as adopted by the House Ways and Means Commitee and Education and Labor Committee. The amendments relate to various Acts, including the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1986, and the Omnibus Budget Reconciliation Act of 1987, including the Pension Protection Act.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the Ways and Means Committee bill, with the following modifications.

A. AMENDMENTS RELATING TO THE TAX REFORM ACT OF 1986

*(1) Repeal of class-year vesting.*—The repeal of class-year vesting was not intended to adversely affect the vesting status of plan participants. The bill contains a special vesting rule to fulfill this intent. The rule applies to any employee who (a) has an hour of service before the adoption of any amendment eliminating class-year vesting, and (b) has an hour of service on or after the first day of the first plan year for which the repeal of class-year vesting is applicable to such employee. Under the conference agrement, this special rule is further limited to employees who have not incurred a 5-year break in service immediately before performing the hour of service described in (b). The conference agreement also provides that compliance with this special vesting rule will not result in a violation of the minimum participation rule.

*(2) Continuation health care coverage rules.*—The conference agreement also makes modifications to the continuation coverage rules in the case of individuals who are entitled to Medicare coverage. The conferees intend that if a covered employee has a qualifying event that results in 18 months of continuation coverage and the covered employee becomes entitled to Medicare coverage before the expiration of the 18 months, a qualified beneficiary (other than the covered employee) who is at that time covered under the group health plan is entitled to continuation coverage for a total of 36 months from the date of the original qualifying event. Thus, this rule is the same as if, for example, a reduction in hours were followed by the death of the employee. Failure to comply with this rule is not a good faith interpretation of the continuation coverage rules.

The conference agreement adopts the provision in the Ways and Means Committee bill regarding termination of continuation coverage in the case of preexisting conditions, with a modification to the effective date.

B. AMENDMENTS RELATING TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987 (INCLUDING THE PENSION PROTECTION ACT)

*Effective date of changes relating to amortization periods.*—The bill provides that the change in the amortization period for experience gains and losses applies to gains and losses established in years beginning after December 31, 1987, and provide a special transition rule for any experience gain or loss determined by a valuation occurring as of January 1, 1988. The conference agreement provides that the employer may elect to amortize gains and losses (a) in accordance with the general effective date, (b) in accordance with the special transition rule, or (c) in accordance with IRS Notice 89-52.

C. MISCELLANEOUS AMENDMENTS

The conference agreement contains miscellaneous clerical, conforming, and clarifying provisions contained in the Education and Labor Committee bill.

*3. Other Technical Involving Revenue Effect*

A. MARITAL DEDUCTION FOR PROPERTY PASSING TO NONCITIZEN SPOUSES

*Present law*

*In general*

The marital deduction generally is disallowed for the value of property passing to a noncitizen spouse. Property passing at death to a noncitizen spouse may, however, qualify for the marital deduction so long as it satisfies the normal requirements for a marital deduction and passes in a qualified domestic trust (QDT).

*Definition of a qualified domestic trust (QDT)*

In order to be a QDT, a trust must meet four conditions. First, the trust instrument must require that all trustees be U.S. citizens or domestic corporations. Second, the surviving spouse must be entitled to all the income from the property in the trust, payable annually or at more frequent intervals. Third, the trust must meet the requirements of Treasury regulations prescribed to ensure collection of the estate tax imposed upon the trust. Finally, the executor must elect to treat the trust as a QDT.

*Estate tax on QDT*

An estate tax is imposed upon distributions from a QDT made prior to the surviving spouse's death and upon the value of property remaining in a QDT upon that spouse's death. The tax is also imposed upon the trust property if a person other than a U.S. citizen or domestic corporation becomes a trustee of the trust or if the trust ceases to meet the requirements of Treasury regulations prescribed to ensure collection of the estate tax. The tax is not imposed on distributions of "income," as defined under local law.

*Relationship to treaties*

Statutory provisions generally supersede contrary existing statutory or treaty provisions.

*House bill*

*In general*

The marital deduction is allowed for property passing to an alien spouse if the spouse becomes a U.S. citizen before the date the estate tax return of the decedent spouse is filed, so long as the surviving spouse was a U.S. resident at the date of the decedent's death and at all times before becoming a U.S. citizen.

*Definition of QDT*

The rule that all the trustees of a QDT must be U.S. citizens or domestic corporations is modified to require that only one trustee be a U.S. citizen or domestic corporation, so long as that trustee's approval is required for all distributions made from the trust. Also the requirement that the surviving spouse be entitled to all the income from the QDT is deleted. Thus, a trust may qualify as a QDT even if the surviving alien spouse lacks an income interest in the trust if such trust would qualify for the marital deduction if it were for the benefit of a citizen spouse. In addition, a trust will qualify as a QDT if it is reformed to meet the QDT requirements before the filing of the estate tax return or as a result of a court proceeding initiated before that time. Finally, the Secretary of the Treasury is directed to prescribe regulations necessary or appropriate to carry out the purposes of the provisions, including regulations treating an annuity includible in a decedent's gross estate as a QDT.

*Estate tax on QDT*

The estate tax on a QDT ceases to be applicable after the surviving spouse becomes a U.S. citizen if either (1) the spouse was a U.S. resident at the date of the decedent's death and at all times before becoming a U.S. citizen, or (2) the spouse elects to reduce his unified credit and amounts subject to lower brackets by the amount or prior taxable distributions made from the trust.

Charitable and marital deductions, capital gains treatment of redemptions of stock to pay estate tax, alternative valuation, special use valuation, and extension of time to pay estate tax are allowed against the estate tax on QDT distributions if allowable to the estate of the surviving spouse.

The Secretary of the Treasury is granted regulatory authority to modify the definition of "income" to prevent avoidance of the estate tax on QDT distributions by ensuring that trust distributions are treated as distributions of corpus where appropriate. In addition, the rule excluding income distributions from the tax on distributions is

modified to exclude at least $100,000 in distributions annually (of either income or corpus) and all payments made for medical care on behalf of the surviving spouse to a person who provides the care.

*Relationship to treaties*

The denial of the marital deduction for certain property passing to noncitizens overrides a marital deduction that is granted by an existing treaty provision only for taxable years ending more than three years after date of enactment.

*Effective date*

The House bill provision is effective for decedents dying after November 10, 1988.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, except that corpus distributions are excluded from the estate tax on QDT distributions only if made on account of hardship.

The conferees intend that the regulatory authority to treat an annuity or other payment included in the gross estate which by its terms is payable over the life of the surviving spouse or a term of years (and which would otherwise qualify for the marital deduction) as a QDT be applied to property interests that cannot be transferred to a QDT under Federal law. Such interests include interests in a qualified plan or IRA.

The conferees intend that no inference be drawn from the provision regarding the existence or nonexistence of any rights of any U.S. persons under U.S. estate tax treaties with France and Germany or any other country.

B. COORDINATION OF FOREIGN TAX CREDIT AND TAX ON LUMP-SUM DISTRIBUTIONS

*Present law*

A lump-sum distribution from certain employees' trusts may be eligible for special 5-year averaging treatment, which allows the recipient to deduct the amount of the distribution from gross income and compute a separate tax on that distribution. Congress did not intend that the deduction of a foreign source lump sum distribution from gross income would have the effect of denying a foreign tax credit for foreign income taxes paid with respect to foreign source lump sum distributions.

*House bill*

The House bill provides that the foreign tax credit limitation is applied separately with respect to any lump sum distribution on which the separate tax of section 402(e)(1) is imposed, and the amount of the distribution is treated as taxable income for purposes of computing the limitation.

The provision is effective as if included in the provision of the 1988 Act to which it relates.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement generally follows the House bill with the following modification to the effect date. Under the agreement, the provision is effective for taxable years ending after the date of enactment. Additionally, at the election of the taxpayer, the provision is effective for taxable years beginning after December 31, 1986. A taxpayer may exercise an election to utilize this provision for any such taxable year adjustments to which are not barred by the statute of limitations, by filing a tax return (or amended return) for such year, which return reflects the application of this provision.

O. CHILD CARE AND EARNED INCOME TAX CREDIT PROVISIONS

*1. Expansion of the Title XX Social Services Block Grant for Child Care Services*

*Present law*

*(a) Funding*

Title XX is a capped entitlement; funds are currently limited to $2.7 billion annually. (Note: as part of its reconciliation bill, the House approved a separate increase in the entitlement ceiling; under the House bill, by 1993 the basic entitlement ceiling would reach $3.3 billion.) Allotments to a State for a fiscal year must be expended in such fiscal year or the succeeding fiscal year. Generally, State allotments are based on State population.

There is no provision for reallocation of unused funds.

*(b) Use of funds*

Funds must be used to provide services directed at achieving five goals: preventing or reducing dependency; achieving self-sufficiency; preventing or remedying neglect, abuse or exploitation of children and adults; preventing or reducing inappropriate institutional care; and providing services or referrals to individuals in institutions. Services include, but are not limited to: child care, home care, protective services for children and adults, services for children and adults in foster care, adult day care, transportation, family planning, training, employment, counseling, meals, and health support. A majority of States use some Title XX funds to provide child care services.

*(c) Child care reimbursement*

No provision.

*(d) Child care targeting provisions*

No specific provision, although services must conform to the Title XX goals to reduce dependency, etc. States providing child care through the Title XX grant have established income eligibility guidelines for child care services.

*(e) Reports*

Before expending its Title XX allocation, each State must report on the intended uses of the payment. Annually, each State must report on the actual uses of the payment, including certain specific information such as the number of children and adults receiving services, the amount spent for each type of service per recipient, methods by which services are provided, and eligibility criteria.

*(f) Child care standards*

The Title XX grant may not be used by any State to provide child day care services unless they meet applicable standards of State and local law.

*(g) State eligibility*

No provision.

*(h) Relative care issues*

No provision.

*(i) Training of child care providers*

No provision.

*Church/State issues*

Title XX law does not contain language relating to Church/State issues. Under Title XX, States have chosen a variety of mechanisms to deliver child care services, including contracts and grants with providers, and vouchers. The choice of mechanisms is a State decision.

*(k) Maintenance of effort for standards and licensing*

No provision.

*(l) Child care enforcement*

No provision.

*House bill*

*(a) Funding*

The House bill would permanently increase funds for Title XX of the Social Security Act by $200 million for fiscal year 1990, $350 million for fiscal year 1991 and $400 million for fiscal year 1992 and each subsequent year.

These additional funds would be earmarked for child care, are in addition to the basic increases approved by the House as part of the budget reconciliation legislation, and could not be used to supplant Federal and State funds currently used for child care. These funds would bring the Title XX funding total to $2.9 billion in fiscal year 1990, $3.250 billion in fiscal year 1991, $3.5 billion in fiscal year 1992, and $3.7 billion in fiscal year 1993 and thereafter (assuming the basic Title XX increases proposed by the House are also approved). States would have two fiscal years to expend a given fiscal year allocation. The State agency with primary responsibility for child care would administer these funds.

Unexpended funds earmarked for child care would be reallocated to other States.

*(b) Use of funds*

States would be required to use 80 percent of the earmarked monies for child care services; the remaining 20 percent would be used for child care-related administration and training as well as enforcement of child care standards.

*(c) Child care reimbursement*

Child care expenses would be reimbursed at market rates, with higher reimbursements for infants and toddlers, children with disabilities, and comprehensive child care programs for children of adolescent parents.

*(d) Child care targeting provisions*

States would be required to establish a sliding fee schedule for the delivery of child care services and must assure that such services are provided at no cost to families with incomes below the poverty level.

*(e) Reports*

Before expending the allocation, the State must report to the Secretary on the intended uses of the payment, and must make the report public so as to facilitate public comment. The State must notify the Secretary of the amount of any payment which the State does not intend to expend. Annually, beginning for FY 1992, each State must report to the Secretary on the child care activities actually carried out with Title XX funds including both earmarked and unearmarked funds. The report must provide certain specific information showing separately for center-based, group home, family and relative child care services: by geographical area, the number of children receiving services, grouped by family income as a percent of the poverty line; the average cost and market rate of child care services; out-of-pocket costs for services by family income level as a percent of the poverty line; the criteria applied in determining eligibility or priority for receiving services; the methods of service provision; child care standards; licensing and regulatory requirements; and enforcement policies and practices.

The Secretary must establish uniform reporting requirements for use by the States.

*(f) Child care standards*

A State that receives funds earmarked for child care under title XX must, beginning three years after enactment have in effect State child care standards that address all of the matters specified below. The standards must apply to all Title XX-funded child care and to any child care services delivered by providers that receive public funds for child care services. The present law rule would apply to States that do not use any of the additional, earmarked funds in any year.

The categories for State child care standards would be the following:

*(1) Center-based child care services*

Group size limits in terms of the number of caregivers and number and ages of children;

Maximum appropriate child/staff ratios;

Qualifications and background of child care personnel;

Requirements for inservice training;

Health and safety requirements, including requirements for the prevention and control of infectious diseases (including immunization and hand washing procedures), injury prevention and treatment, building and physical premises safety, general health and nutrition, children with special needs, and prevention of child abuse; and

Requirements for parental involvement in licensed and regulated child care services.

*(2) Family child care services*

Maximum number of children and maximum number of infants for whom child care services should be provided;

Minimum age of caregivers;

Requirements for inservice training or participation in a provider organization that addresses child development and management issues; and

Health and safety requirements (including those described above for center-based child care services, as are appropriate for family child care services).

*(3) Group home child care services*

Maximum appropriate child/staff ratios;

Maximum number of children and maximum number of infants for whom child care services should be provided;

Minimum age of caregivers;

Requirements for inservice training or participation in a provider organization that addresses child development and management issues; and

Health and safety requirements (including those described above for center-based child care services, as are appropriate for group home child care services).

Each provider who receives funds earmarked for child care under Title XX must also comply with all applicable State and local licensing or regulatory requirements (including registration requirements). The Committee does not consider child care to include camping.

*(g) State eligibility*

A State would be ineligible for the additional Title XX funds beginning three years after enactment unless it demonstrates that all Title XX-funded child care providers and all other providers that receive public funds for child care services are: (1) licensed or regulated as required by State and local law; (2) satisfy any applicable State standards; and (3) are subject to certain enforcement provisions (see below).

*(h) Relative care issues*

There would exist no requirement, or mandate on the States to require, the training or licensing of individuals who provide child care solely to members of their families.

*(i) Training of child care providers*

Beginning two years after enactment, any State that receives the earmarked Title XX funds must require that all Title XX child care providers and any other child care providers that receive any public funds for child care services, and the caregivers employed by such providers, complete an average of 15 hours of training annually. Such training must be tailored to the needs of the State and providers.

*(j) Church/State issues*

Retains current law; i.e., no language.

*(k) Maintenance of effort for standards and licensing*

The State may not reduce the categories of child care providers licensed or regulated by the State on the date of enactment, or reduce the level of standards applicable to child care services provided in the State, unless the State demonstrates, to the satisfication of the Secretary, that the reduction is: (1) based on positive developmental practice; or (2) necessary to increase access to and availability of child care providers and will not jeopardize the health and safety of children.

*(l) Child care enforcement*

Not later than three years after enactment, the State must have in effect enforcement policies and practices that would apply to all child care funded under Title XX and all child care services delivered by providers who receive public funds for child care services, including certain specific policies and practices that:

(1) Require personnel who perform inspection functions to receive training in child development, health and safety, child abuse prevention and detection, the needs of children with a disability, program management, and relevent law enforcement;

(2) Impose personnel requirements to ensure that individuals who are hired as licensing inspectors are qualified to inspect and, to the maximum extent feasible, have inspection responsibility exclusively for children's services;

(3) Require personnel who perform inspection functions to make (a) not less than 1 unannounced inspection annually of each center-based child care provider in the State; and (b) unannounced inspections annually, and during normal hours of operation, of not less than 25 percent of licensed and regulated family child care providers in the State;

(4) Require the ratio of licensing personnel to child care providers in the State to be maintained at a level sufficient to enable the State to conduct inspections on a timely basis;

(5) Require licensed or regulated child care providers (including registered providers) to (a) have written policies and program goals and to make a copy of such policies and goals available to parents, and (b) provide parents with unlimited access to their children;

(6) Implement a procedure to address complaints that will provide a reasonable opportunity for a parent or provider that is adversely affected by a decision to be heard by the State;

(7) Prohibit the operator of a facility to take any action against an employee that would adversely affect the employment, or terms or conditions of employment, of such employee because such employee communicates a failure of the operator to comply with any applicable licensing or regulatory requirement;

(8) Make consumer education information available to inform parents and the general public about licensing requirements, complaint procedures, and required policies and practices;

(9) Require a provider to post, on the premises where child care services are provided, the telephone number of the appropriate licensing or regulatory agency that parents may call regarding a failure of the provider to comply with any applicable licensing or regulatory requirement; and

(10) Require the State to maintain a record of parental complaints and to make information regarding substantiated parental complaints available to the public on request.

*(m) Effective date*

The provision is effective beginning fiscal year 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision. The conferees intend that an extension of the telephone excise tax shall be the exclusive and only required source of funding of child care legislation that may be enacted in the second session of the 101st Congress, except to the extent that the costs of such legislation exceed the costs of the child care provisions contained in Title XI of the House-passed reconciliation bill. It is the intent and understanding of the conferees that the revenues contained in this reconciliation bill are sufficient to cover any costs in excess of the telephone excise tax. The fencing off of these revenues does not prejudge in any way the substance or structure of the child care package.

*2. Child Care Standards Improvement Incentive Grant and Demonstation Project*

*Present law*

No provision.

*House bill*

*(a) Child care standards improvement incentive grant program*

Beginning with fiscal year 1990, the House bill would authorize a Child Care Standards Improvement Incentive Grant Program to assist States in improving child care standards. To be eligible to receive a grant, a State must provide:

(1) Assurance that the State will not require any private provider receiving Title XX funds to contribute in cash or kind to the required State share;

(2) Information describing the present level of standards in effect in the State, the prospective use of the grant, and the expected improvement in standards of the State;

(3) Assurance that the State will use any amounts received to specifically improve its child care standards; and

(4) Any other information that the Secretary determines appropriate.

The Secretary would award initial grants after considering the following criteria:

(1) The relative quality of the existing standards of the State in comparison to the standards of other States submitting applications;

(2) The level of standards that the State desires to adopt and the State plans for achieving this improved level; and

(3) The relative fiscal capacity of the State in comparison to other States submitting applications.

Subsequent grants would be awarded based on the compliance of a State with the application for the previous grant.

The amount of the grant would be equal to 80 percent of the costs to be incurred. Each State awarded a grant must pay 20 percent of the costs from non-Federal sources. Grants would be for a 2-year period with no State receiving more than 3 consecutive grants.

*(b) Child development systems demonstration program*

Also beginning in fiscal year 1990, the Secretary would be authorized to make grants for a Child Development Systems Demonstration Program. Under the program, grants would be made annually to not more than 10 eligible public or private entities, in urban and rural areas, to administer child development systems in which high quality child development centers become a mentor for a network of smaller community centers and family day care providers for the purpose of improving the quality of child care and assuring greater continuity and parental involvement.

Public agencies or private entities that apply must submit an application containing:

(1) Information demonstrating that the applicant has established, or will establish, a child development model;

(2) A detailed plan for recruiting, training, and supporting family child care satellites that will participate in the model;

(3) An assurance that each family child care satellite will be required (a) to pay the applicant a minimal annual fee, and (b) to enter into a contract with the applicant requiring the satellite to provide high quality child care services;

(4) A detailed plan for the continuing evaluation of the model and its satellites;

(5) A plan specifying in detail the expenditures the applicant will make, as part of administering a child development model, with the grant throughout a 2-year period.

(6) An assurance that resource materials acquired by the model will be made available to any child care provider in the community;

(7) An assurance that at least 1 participating satellite will provide services to (a) children who are ill but not terminally ill, (b) children who do not speak English as their primary language if there is a reasonable number of such children in the geographical area of the model, and (c) children who have a handicapping condition;

(8) An assurance that the applicant will recruit, train, monitor, and provide support for not fewer than 20 and not more than 35 family child care satellites;

(9) An assurance that the applicant will provide each satellite training with respect to (a) basic child development, (b) developmentally appropriate activities, (c) developmentally appropriate problem solving, and (d) providing family child care services as a business; and

(10) Information describing the demographics of the population in the geographical area.

Each grantee must evaluate each family child care satellite that participates in the model, including:

(1) A determination, based on making monthly visits (with and without advance notice) whether (a) the child care services are appropriate for the ages of the children, (b) the interaction of the staff with children is of good quality, and (c) the satellite is providing nutritional food to satisfy the needs of the children;

(2) A determination of the extent to which the community cluster of which the model is a part (a) expands the availability of quality child care for working families, (b) encourages quality and professionalism in child care, (c) encourages the emotional security of sustained relationships between children and child care providers, (d) serves as a model and information center for current and potential child care providers, and (e) educates family child care providers on matters relating to quality child care; and

(3) Such other information as the Secretary requires.

Expenditures of $75 million annually would be authorized for the Child Care Standards Improvement Incentive Grant Program, of which 2 percent would be earmarked for the Child Development Systems Demonstration Program. The authorization would extend through fiscal year 1998. The Federal matching rate would be 80 percent.

*(c) Effective date*

The provision is effective beginning in fiscal year 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

*3. Expansion of the Earned Income Tax Credit*

*Present law*

An individual who maintains a home for one or more children is allowed an advance refundable tax credit based on the taxpayer's earned income (sec. 32 of the Code). In 1989, the earned income credit (EITC) is equal to 14 percent of the first $6,500 of earned income. The credit is phased out at a rate of 10 percent of the amount of adjusted gross income (or, if greater, the earned income) that, in 1989, exceeds $10,240. The $6,500 and $10,240 amounts are adjusted annually for inflation, so that the maximum amount of credit and the maximum amount of income eligible for the credit increase with inflation.

*Eligibility*

The credit is available to: (1) married individuals filing a joint return who are entitled to a dependency exemption for a child, (2) a head of household, or (3) a surviving spouse. In order to be eligible to claim a dependency exemption, the taxpayer, in general, must provide over half of the support for the child, and the child must have the same principal place of abode as the taxpayer for a least half the year. Benefits under the Aid to Families with Dependent Children (AFDC) and other public assistance program are not considered support provided by the taxpayer. Thus, if more than half of the taxpayer's income is from AFDC or sources other than the taxpayer's own income, the earned income tax credit generally is not available.

*Advance payment*

An employee may elect to furnish a certificate of eligibility for the earned income tax credit to his or her employer. Every employee for whom a certificate is in effect must receive, at the time that wages are paid, an additional advance payment of the earned income credit. A certificate of eligibility has effect only for one calendar year and a new certificate must be filed annually to continue receipt of advance payments.

*Treatment of credit for means-tested programs*

The amount of the earned income tax credit is not treated as income for purposes of determining eligibility for benefits under the AFDC program or for certain other means-tested programs. Some means-tested programs, in particular housing assistance programs, treat the EITC as income for determining eligibility and benefits.

*House bill*

*Increase in credit*

The House bill increases the amount of the earned income tax credit and adjusts the credits for family size. Using the present law income breakpoints, the credit and phaseout percentages are increased according to the number of qualifying children of the individual as follows:

| Number of children | Credit percentage | Phaseout percentage |
|---|---|---|
| 1 | 17 | 12 |
| 2 | 21 | 15 |
| 3+ | 25 | 18 |

*Supplemental credit for families with young children*

Under the House bill an additional amount of credit is provided to eligible families that have a child under age 6 at the end of the taxable year. Using present law breakpoints of $6,500 and $10,240 (as adjusted for inflation), the supplemental young child credit provides an additional credit percentage of 6 perent and an increased phaseout percentage of 4.25 percent.

*Eligibility*

Solely for purposes of determining eligibility for the EITC, Federal means-tested transfer payments are treated as support provided by the individual in meeting the dependency requirement for the determination of a qualifying child. For example, AFDC payments received by a parent would be counted as support provided by the parent and may make the parent eligible for the EITC.

*Administration of advance payment certification*

Employers are required to obtain from all new employees certification indicating their eligibility for advance payments of the earned income tax credit. The certificates would remain in effect until changed. Employers also are required to obtain, on an annual basis, updated certifications of advance payment eligibility from those employees already receiving advance EITC payments.

*Treatment of credit for means-tested programs*

The House bill provides that the amount of the earned income tax credit not be treated as income for purposes of determining eligibility for Federal means-tested programs or for State and local means-tested programs financed in whole or in part with Federal funds. This provision is effective for determinations made after December 31, 1989.

*Effective date*

The provisions are generally effective for taxable years beginning after December 31, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House bill provision.

TITLE VIII—HUMAN RESOURCE AND INCOME SECURITY PROVISIONS

For explanatory matter with respect to Title VIII of the conference report, refer to Subtitle C, Title X, of the Joint Statement of Managers.

TITLE IX—OFFSHORE OIL POLLUTION COMPENSATION FUND

*Senate bill*

Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA) establishes the Offshore Oil Pollution Compensation Fund to assist in clean-up in the event of an oil spill associated with OCS operations. The Fund is supported by a charge of three cents per barrel of oil produced on OCS lands. The law provides for maintenance of a threshold balance within the fund of $100,000,000 and a ceiling of $200,000,000. The Secretary of Transportation suspended collection of payments to the Fund earlier this year when the balance was $133,300,000.

Section 4201 of the Senate amendment amends Title III of the OSCLAA to require maintenance of the Fund at $200,000,000. Reimposition of the three cent per barrel charge would occur at any time the balance in the Fund drops below that level.

*House bill*

The House bill contains no comparable provision.

*Conference agreement*

The House recedes to the Senate provision.

TITLE X—OUTLAY AND REVENUE PROVISIONS

SUBTITLE A—SOCIAL SECURITY ADMINISTRATION, OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE, AND RAILROAD RETIREMENT

*1. Establishment of the Social Security Administration (SSA) as a Separate and Independent Agency*

Sections 10001-10014 of the House bill.

*Present law*

*a. Status of agency.*—SSA is a component of the Department of Health and Human Services (HHS).

*b. Agency leadership and management.*—The Secretary of Health and Human Services (HHS) has responsibility for administration of the OASDI and SSI programs. Administration of these programs has been delegated to the Commissioner of Social Security. The Commissioner reports only to the Secretary.

*c. Deputy Commissioner of Social Security.*—Under current SSA practice, there are four deputy commissioners (for management, operations, policy and external affairs, and programs) and a chief financial officer who serve under the commissioner. None of these are statutory positions. None of the deputy commissioners is designated to serve as acting commissioner in the absence of the Commissioner.

*d. General counsel.*—SSA receives legal services from the Office of General Counsel of HHS through a component headed by a Chief Counsel for Social Security.

*e. Inspector general.*—The Inspector General of HHS is responsible for oversight of SSA.

*f. Beneficiary ombudsman.*—No formal position of this nature exists within SSA.

*g. Administrative law judges.*—The Social Security Act requires SSA to conduct hearings to consider appeals of SSA decisions by recipients. These hearings are conducted by administrative law judges (ALJs). Although not required by law, the agency follows the procedures of the Administrative Procedures Act (APA) with respect to the appointment of ALJs and the conduct of hearings. The ALJs are located organizationally within the Office of Hearings and Appeals, headed by an associate commissioner who reports to the Commissioner of SSA.

*h. Interim authority of the Commissioner.*—No provision.

*i. Personnel; budgetary matters; facilities and procurement; seal of office.*—No provision.

*j. Transfers and transitional rules.*—No provision.

*House bill*

*a. Status of agency.*—SSA would be made an independent agency in the executive branch of the Government, with responsibility for administration of the Old Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs.

*b. Agency leadership and management.*—SSA would be governed by a three-member, full-time Board, appointed by the President with the advice and consent of the Senate, and would serve 6-year terms, with no more than two members being from the same political party. Board members could be removed from office by the President only pursuant to a finding of neglect of duty or malfeasance in office. The terms of the first members would expire on June 30, 1993; June 30, 1995; and June 30, 1997.

Recommendations for persons to serve on the Board would be made by the Chairmen of the House Ways and Means and the Senate Finance Committees. A member may, at the request of the President, serve for up to a year after the member's term expires until a successor has taken office. A member can be appointed for additional terms.

The President would appoint one of the members to be chairperson of the Board for a 4-year term. The chairperson or two members could call a meeting of the Board with any two members constituting a quorum. Any member alone may hold a hearing.

Each member of the Board would be compensated at the rate provided in level II of the Executive Schedule. No member may engage in any other business, vocation, profession, or employment.

The Board would:

Govern OASDI and SSI by regulation;

Establish the Administration and oversee its efficient and effective operation;

Establish policy and devise long-range plans;

Appoint an Executive Director to act as the agency's chief operating officer;

Constitute three members of a new 7-member Board of Trustees of the social security trust funds, with the chairperson of the agency's Board serving as chairperson of the Board of Trustees (the Secretary of Labor would be dropped as a member of the Board of Trustees);

Make annual budgetary recommendations and defend them before the appropriate committees of each House of Congress;

Study and make recommendations to the Congress and President of the most effective methods of providing economic security through social insurance, SSI, and related programs and matters related to OASDI and SSI administration;

Provide the Congress and President with ongoing actuarial and other analyses; and

Conduct policy analysis and research.

The Board may prescribe rules and regulations. It may also establish, alter, consolidate, or discontinue organizational units and components of the agency. Further, it may assign duties and delegate (or authorize successive redelegations) to such officers and employees as it deems necessary.

An Executive Director would be appointed by the Board to serve as the agency's chief operating officer for a 4-year term (except that the individual first appointed would serve until September 30, 1995). The individual may serve up to one additional year until a successor has taken office (at the request of the chairperson of the Board), and may be appointed for additional terms. An Executive Director may be removed from office before completion of his or her term only for cause found by the Board. Compensation would be set at the rate provided in level II of the Executive Schedule.

The Executive Director would:

Be the chief operating officer responsible for administration;

Maintain an efficient and effective administrative structure;

Implement the long-term plans of the Board;

Report annually to the Board on the program costs of OASDI; make annual budgetary recommendations for the program costs of SSI and the administrative costs of SSI and OASDI; and defend budgetary recommendations before the Board;

Advise the Board and Congress of effects on administration of proposed legislative changes;

Serve as Secretary of the Board of Trustees (for OASDI);

Report to the Board in December of each year, for transmittal to Congress, on administrative endeavors and accomplishments; and

Carry out any additional duties as are assigned by the Board.

*c. Deputy Director of Social Security.*—A deputy director of social security would be appointed by and serve at the pleasure of the Executive Director.

The deputy would perform such duties and exercise such powers as are assigned by the Executive Director, and serve as acting executive director during the absence or disability of the Executive Director. The deputy would also serve as acting executive director in the event of a vacancy in the office of Executive Director unless the Board designates another official to fill this post. He or she would be compensated at the rate provided in level III of the Executive Schedule.

*d. General counsel.*—A General Counsel would be appointed by and serve at the pleasure of the Board as SSA's principal legal officer. He or she would be compensated at the rate provided in level IV of the Executive Schedule.

*e. Inspector general.*—An Office of Inspector General would be created within SSA, to be headed by an Inspector General appointed in accordance with the Inspector General Act of 1978. He or she would be compensated at the rate provided in level IV of the Executive Schedule.

*f. Beneficiary ombudsman.*—An Office of Beneficiary Ombudsman, headed by a beneficiary ombudsman appointed by the Board, would be created within SSA. The term of office would be 5 years, except for the first ombudsman whose term would end September 30, 1995. The ombudsman may serve up

to one additional year until a successor has taken office (at the request of the chairperson of the Board), and may be appointed for additional terms. The ombudsman may be removed from office before completion of his or her term only for cause found by the Board. Compensation would be set at the rate provided in level V of the Executive Schedule.

The beneficiary ombudsman would:

Represent the interests and concerns of program recipients within SSA's decision-making process;

Review SSA's policies and procedures for possible adverse effects on recipients;

Recommend within SSA's decision-making process changes in policies which have caused problems for recipients;

Help resolve problems for individual recipients in unusual or difficult circumstances, as determined by the Administration; and

Represent the views of recipients within SSA's decision-making process in the design of forms and the issuance of instructions.

The Board would assure that the Office of Beneficiary Ombudsman is sufficiently staffed in regional offices, program centers, and the central office.

The annual report of the Board would include a description of the activities of the beneficiary ombudsman.

*g. Administrative law judges.*—An Office of Chief Administrative Law Judge, headed by a chief ALJ appointed by the Board, would be created within SSA to administer the affairs of SSA's ALJs in a manner so as to ensure that hearings and other business are conducted in accordance with applicable law and regulations. The chief ALJ would report directly to the Board.

Notwithstanding any other provision of law, insofar as the requirements of section 205 of the Social Security Act apply to administrative appeal hearings under the Social Security Act, such hearings would be conducted by administrative law judges in the independent agency under procedures established by the Board acting as delegates of the Board or of the Secretary of HHS as appropriate. The Board would be required to consult with the Secretary of HHS on changes in procedures affecting such appeals. This provision would mean that certain hearings relating to medicare would continue to be heard by SSA Administrative Law Judges.

The Secretary of HHS (in consultation with the Board) and GAO would be required to report to the House Ways and Means and Senate Finance Committees by July 1, 1992 on the appropriateness of maintaining this arrangement for appeal hearings.

*h. Interim authority of the Commissioner.*—The President would be required to nominate appointments to the Board not later than April 1, 1990. If all members of the Board are not in office by July 1, 1990, the person then serving as Commissioner of Social Security would continue to serve as head of SSA, assuming the powers and duties of the Board and the Executive Director.

*i. Personnel; budgetary matters; facilities and procurement; seal of office.*—The Board would appoint additional officers and employees as it deems necessary (with compensation fixed in accordance with title 5 of the U.S. Code), except as otherwise provided by law, and could procure services of experts and consultants. The Director of the Office of Personnel Management (OPM) would be required to give SSA an allotment of Senior Executive Service (SES) positions that exceeds the number authorized for SSA immediately before enactment of this Act to the extent a larger number is specified in a comprehensive work plan developed by the Board. The total number of such positions could not be reduced at any time below the number SSA held immediately before enactment of this Act.

SSA also would be authorized 6 additional positions at level IV and 6 additional positions at level V of the Executive Schedule (i.e., beyond those provided for the Inspector General and Beneficiary Ombudsman).

On a demonstration basis (as soon as practicable after June 30, 1990), the Board and the Director of OPM would be required to implement one or more projects (after consultation with the affected personnel and their union representatives):

Permitting the Board to hire technical and professional employees without regard to the appointment and classification criteria and GS pay rates contained in title 5 of the U.S. Code as it pertains to appointments (but not to permit pay rates above level IV of the Executive Schedule) and chapter 51 and subchapter III of chapter 53 of that title; and

Delegating functions to the Board relating to recruitment and examination programs for entry-level positions, and classification and standards development systems and pay ranges for those jobs. The Comptroller General would be required to evaluate the readiness of the Board to assume permanent and full authority over these personnel functions and report to the House Ways and Means and Senate Finance Committees by June 30, 1994.

On a demonstration basis (as soon as practicable after June 30, 1990), the Board and the Administrator of GSA would be required to implement one or more projects delegating GSA functions to the Board for acquisition, operation, and maintenance of SSA facilities (GSA would retain authority over SSA's procurement and maintenance of telecommunications and automatic data processing equipment and services). The Comptroller General would be required to evaluate the readiness of the Board to assume permanent and full authority over these facilities management functions and report to the House Ways and Means and Senate Finance Committees by June 30, 1994.

Appropriation requests for SSA would be based on staffing and personnel requirements set out in periodically-revised comprehensive work plans developed by the Board. The amounts appropriated would be apportioned for the entire period covered by the appropriations act by the Office of Management and Budget without restriction or deduction (except that funds for contingency purposes would be apportioned only upon the occurrence of the stipulated contingency).

The Board would create a Seal of Office for SSA, and judicial notice would be taken of it.

*j. Transfers and transitional rules.*—Appropriate allocations of personnel and assets (as determined by the Board in consultation with the Secretary of HHS) would be transferred from HHS to SSA, and all orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements, recognitions of labor organizations, certificates, licenses, and privileges in effect at SSA at the time of the transition would remain in force at the agency until their expiration or modification in accordance with law. The transfer would not cause any full-time or part-time employee to be reduced in grade or compensation for one year after the transition, nor would the change alter any pending proceedings before the Secretary, suits, or penalties.

*Effective date*

In general, the provision would take effect July 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*2. Statement of Liabilities of the OASDI Trust Funds*

Section 10041 of the House bill.

*Present law*

Section 201(c) of the Social Security Act requires the Trustees to report annually on the "actuarial status of the Trust Funds." An actuarial opinion by the Chief Actuary of SSA is required certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions used and the resulting actuarial estimates are reasonable. By practice, Trustees' reports have included long-range projections of income, outgo, the size of the Trust Funds over a 75-year period, and the overall average actuarial balance of the system covering 25, 50, and 75-year periods into the future, expressed as percentages of taxable payroll. Recently, the projected actuarial balance of the system has been calculated using "present values" of taxable payroll, income, and outgo. Although the Trustees' reports have included dollar-denominated projections of income and outgo, and the size of the Trust Funds for selected years in the future, they have not shown the actuarial balance of the system in measures other than as percentages of taxable payroll.

*House bill*

Generally, requirements for determining the "actuarial status of the Trust Funds" would be defined in the law using projection periods (25, 50, and 75 years), measures, and criteria similar to those used under current practice. In addition, the actuarial analysis contained in the annual Trustees' reports would include a measure of the present value of the actuarial balance of the system calculated in dollar-denominated terms (in addition to percentage of taxable payroll).

For purposes of the analysis, the language defines "present value actuarial balance for a Trust Fund" over a period of calendar years to be "the difference between (i) the sum of the actuarial present value of expected future income to the Trust Fund during the period and the assets of the Trust Fund at the beginning of the period and, (ii) the actuarial present value of expected future disbursements from the Trust Fund during the period."

*Effective date*

Applies to Trustees' reports required beginning with the year 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*3. Elimination of Dependency Test Applicable to Certain Adopted Children*

Section 10051 of the House bill.

*Present law*

A child adopted before a worker becomes entitled to retirement or disability benefits is eligible for child's insurance benefits. A child (other than the worker's stepchild) adopted after a worker's entitlement is ineligible for social security benefits unless he or she was living with the worker, and dependent upon the worker for one-half of his or her support, for the year prior to the worker's entitlement.

*House bill*

A minor child adopted after a worker becomes entitled to retirement or disability benefits would be eligible for child's benefits regardless of whether he or she was living with and dependent upon the worker prior to the worker's entitlement.

*Effective date*

Applies with respect to benefits payable for months after December 1989, but only on the basis of applications filed on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference follows the House provision.

*4. Clarification of Rules Governing Taxation Under FICA and SECA of Individuals of Certain Religious Faiths*

Section 10052 of the House bill.

*Present law*

Self-employed workers may claim an exemption from social security coverage if (a) they are members of a religious sect or division that is conscientiously opposed to the acceptance of public or private insurance benefits, (b) they have waived all benefits under social security and medicare, (c) the sect or division has been in existence since December 31, 1950, and (d) the sect or division provides for the care of its dependent members. In addition, in cases where a self-employed individual has employees and both employer and employee meet the conditions described above, the employee may claim an exemption from social security coverage. This optional exemption applies to both the employer and employee portions of the social security tax. However, individuals who are employed by a church (or church-controlled organization), but are treated as self-employed under a separate provision of law, may not claim the exemption from social security coverage.

*House bill*

The religious exemption would be extended in two ways. First, it would be available to employees of partnerships in which each partner holds a religious exemption from social security coverage. Second, it would be available to workers in churches and church-controlled nonprofit organizations who are treated as self-employed because the employing church or organization had exercised its option not to pay the employer portion of the social security tax.

*Effective date*

The change in the exemption pertaining to partnership arrangements would be effective as if included in the Technical and Miscellaneous Revenue Act of 1988. The change in the exemption pertaining to employees of church organizations would be effective for tax years beginning on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House provision.

*5. Prohibition Against Termination of Coverage of U.S. Citizens and Residents Employed Abroad by a Foreign Affiliate of an American Employer*

Section 10053 of the House bill.

*Present law*

U.S. citizens and residents employed abroad by a foreign affiliate of an American employer are covered by social security at the option of the employer through an agreement between the employer and the Secretary of the Treasury. The employer can terminate this coverage by giving 2 years advance notice after the agreement has been in effect for at least 8 years.

*House bill*

American employers' option to terminate social security coverage of workers in their foreign affiliates would be eliminated.

*Effective date*

Applies with respect to any coverage agreement in effect on or after June 15, 1989, for which there is no notice of termination in effect on this date.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House provision.

*6. Work Incentives for Certain Adult Disabled Children*

Sections 10061–10064 of the House bill.

*Present law*

*a. Benefits for those attempting to work.*—Disabled social security beneficiaries who attempt to work are provided with a trial work period of up to 9 months, during which earnings cause no reduction in their benefits. By regulation, months which count toward completion of this trial work period are those in which a beneficiary earns $75 or more. If the Secretary determines that a beneficiary is engaging in Substantial Gainful Activity (SGA) in the month following completion of the trial work period, benefits are suspended two months later. (SGA is currently defined by regulation as earnings of $300 per month. However, the Secretary published a Notice of Proposed Rulemaking in July 1989 announcing that it would be raising SGA to $500 per month, effective in January 1990. In addition, the $75 trigger point for a month of trial work would be raised to $200.)

At the end of the trial work period, individuals who continue to have a disabling impairment enter a 36-month Extended Period of Eligibility (EPE). During this period, benefits are suspended, except that they can be reinstated without the need for a new application and disability determination for any month in which earnings drop below SGA. Medicare coverage continues for a minimum of 39 months, or a minimum of 3 months past the end of the EPE.

*b. Extended period for reapplication for Medicare.*—In general, disabled beneficiaries who have completed an extended period of entitlement and continue to work are technically no longer entitled to social security benefits—their entitlement has ceased. However, if they have a disabling impairment during the following 5-year period (i.e., after their entitlement ceases) and their earnings fall below SGA, they can reapply for benefits and return to the disability rolls without being subject to the 5-month waiting period for cash benefits and the 24-month waiting period for medicare benefits that are otherwise required for all newly disabled beneficiaries. Former disabled beneficiaries can reapply after this period but are again subject to a 5-month waiting period for cash benefits and, unless the impairment for the new period of disability is the same as (or directly related to) the impairment in the previous period, to a new 24-month medicare waiting period.

DACs are subject to different reapplication requirements. They can reapply without waiting periods for cash benefits (DACs are never subject to a waiting period for such benefits) and medicare benefits during a 7-year period following cessation of their entitlement. However, after this period, they can apply for DI benefits only on the basis of their own work records (i.e., they cannot reestablish their eligibility as DACs).

*House bill*

*a. New partial benefits system for those attempting to work.*—For Disabled Adult Child (DAC) beneficiaries the trial work period and EPE would be replaced with a system that gradually reduces benefits as earnings increase. Under this system, $85 per month in earnings plus impairment-related work expenses would be disregarded in determining monthly benefits. For earnings in excess of these disregarded amounts, benefits would be reduced $1 for each additional $2 earned. For DACs who also are entitled to DI benefits based on their own work record, the entire amount of benefits they receive (i.e., both the DAC and DI portions) would be subject to this system of partial benefit payments. This system would continue so long as the DAC's disabling impairment continues. Medicare coverage would continue for a minimum of 48 months past the first month in which the individual engages in SGA.

The provision would not apply to DACs who (1) are disabled by reason of blindness or (2) those entitled to benefits in June 1990 who have attempted to work but whose earnings have not reached SGA.

*b. Extended period for reapplication for Medicare.*—During the 5-year period following termination of medicare benefits, DACs who have a disabling impairment and whose earnings fall below SGA could reapply for medicare without being subject to a new 24-month waiting period and would continue to receive medicare so long as their earnings remain below SGA. (During this period they potentially could move in and out of medicare coverage status.) After this 5-year period, they also could reapply for medicare if their earnings fell below SGA and they became or remained impaired. If their impairment were the same as (or directly related to) the original impairment, a new 24-month waiting period would not have to be met; otherwise, it would. Months counting toward completion of this new waiting period would be those in which the individual received a DI benefit.

The provision would not apply to DACs who (1) are disabled by reason of blindness or (2) those entitled to benefits in June 1990 who have attempted to work but whose earnings have not reached SGA.

*Effective date*

Generally, applies to benefits for months after June 1990. For DAC beneficiaries engaged in trial work for 2 consecutive months as of June 1990, the provision would take effect beginning with the month following

such period of consecutive months of trial work.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*7. Continuation of Disability Benefits During Appeal*

Section 10071 of the House bill.

*Present law*

A DI beneficiary who is determined to be no longer disabled may appeal the determination sequentially through three appellate levels within SSA: (1) a reconsideration, usually conducted by the State disability determination service that rendered the initial unfavorable determination; (2) a hearing before a SSA administrative law judge (ALJ); and (3) a review by a member of SSA's Appeals Council.

The beneficiary has the option of having his or her benefits continued on an interim basis through the hearing stage of appeal. If the earlier unfavorable determinations are upheld by the ALJ, the benefits are subject to recovery by the agency. (If an appeal is made in good faith, recovery may be waived.) Medicare eligibility is also continued, but medicare benefits are not subject to recovery.

P.L. 98-460 provided interim benefits through the hearing stage on a temporary basis. This provision was subsequently extended, most recently by the Technical and Miscellaneous Revenue Act of 1988 (which applies to appeals of termination decisions made on or before December 31, 1989). Under this latest extension, payments may continue through June 30, 1990 (i.e., through the July 1990 check).

*House bill*

The current provision permitting the payment of benefits upon appeal through the hearing stage would be made permanent.

*Effective date*

Applies to unfavorable decisions made on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement provides a one-year extension of the provision.

*8. Elimination of Carryover Reduction in Retirement and Disability Benefits Due to Receipt of Widow's or Widower's Benefits Before Attaining Age 62*

Section 10072 of the House bill.

*Present law*

If a widow(er) receives actuarially reduced benefits before age 62 and then applies for retirement or disability benefits, the new benefit is subject to a "carryover" reduction. This reduction reflects the fact that social security benefits were already being paid at a reduced rate before the beneficiary filed for retirement or disability benefits. The widow(er) receives the retirement or disability benefit reduced by the carryover reduction, plus any additional widow(er)'s benefit necessary to bring the total benefit amount up to the level of the widow(er)'s benefit if it is larger than the retirement or disability benefit. Since the widow(er)'s benefit in most cases is larger than the retirement or disability benefit, the carryover reduction usually has no effect on the total benefit received.

*House bill*

The widow(er)'s carryover reduction would be eliminated, i.e., the retirement or disability benefit received by a widow(er) would not be subject to a carryover reduction.

*Effective date*

Applies to retirement benefits of individuals who attain age 62 on or after January 1, 1990. Applies to disability benefits of individuals who both attain age 62 and become disabled on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House provision.

*9. Modification of Preeffectuation Review Requirement Applicable to Disability Insurance Cases*

Section 10073 of the House bill.

*Present law*

The Social Security Amendments of 1980 require the Secretary of HHS to review 65 percent of favorable disability determinations made by State Disability Determination Services (DDSs) before the decision becomes effective. The review applies to favorable decisions on initial claims, reconsiderations, and continuing disability investigations.

*House bill*

The Secretary would be required to review 50 percent of DDS allowances and 25 percent of continuances. The 50 percent requirement would apply both to initial claims and reconsiderations. To the extent feasible, the reviews would focus on allowances and continuances that are likely to be incorrect.

*Effective date*

Applies to DDS determinations made in FY 1990 and thereafter.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*10. Recovery of OASDI Overpayments by Means of Reduction in Tax Refunds*

Section 10074 of the House bill.

*Present law*

A federal agency that is owed a past-due, legally enforceable debt, other than a social security overpayment, can collect it by having the Internal Revenue Service (IRS) withhold or reduce the debtor's income tax refund. To recover a debt through the tax system, the agency to which it is owed must:

(a) notify the individual of its intention to recover the debt through the tax system;

(b) provide the individual with at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable; and

(c) consider any evidence presented by the individual and make a final determination that the debt is in fact owed and legally enforceable.

After the agency notifies IRS of its final determination, IRS reduces the amount of the individual's income tax refund (if any); pays this amount to the agency; and notifies the individual of the amount by which the tax refund has been reduced to repay the debt.

*House bill*

SSA would be permitted to recover social security overpayments from former beneficiaries (individuals not currently receiving benefits) through arrangements with the IRS to offset the individual's tax refund. Notice of the recovery action would be given to all parties involved in a joint return of how to protect the refund of any individual not involved in the overpayment. The amounts recovered in this manner would be credited to the appropriate social security trust fund.

*Effective date*

The provision would take effect January 1, 1990 and would remain in effect as long as the existing, government-wide offset remains in effect (currently, until January 10, 1994).

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*11. Exemption of Certain Aliens Receiving Amnesty Under the Immigration Reform and Control Act from Liability for Misreporting of Earnings or Misuse of Social Security Account Numbers or Social Security Cards*

Section 10075 of the House bill.

*Present law*

The use of a false social security number or card or the misreporting of earnings covered by social security, with intent to deceive, is a felony under section 208 of the Social Security Act, punishable by a maximum cash penalty of up to $250,000, and up to 5 years imprisonment. The Immigration Reform and Control Act of 1986 (IRCA) extended amnesty and the opportunity to obtain legal status to certain aliens who had been resident and working in the U.S. for a substantial period of time. However, persons legalized under IRCA are still subject to prosecution for use of a false social security number or card under section 208.

*House bill*

Aliens who applied for and were granted legal status under IRCA and section 902 of the Foreign Relations Authorizations Act for Fiscal Years 1989 and 1990 would not be prosecuted for certain violations of section 208 of the Social Security Act. These violations are: 1) having used a false social security number or card with intent to deceive; and 2) having misreported earnings with intent to deceive.

The provision would not apply to those individuals whose violations consisted of: 1) selling a card that is or purports to be a social security card issued by the Secretary; 2) possessing a social security card with intent to sell it; and 3) counterfeiting a social security card with intent to sell it.

*Effective date*

Applies to cases of misuse alleged to have occurred prior to 30 days after enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*12. Adjustments in the Retirement Test Exempt Amount for Those Age 65-69*

Section 10076 of the House bill.

*Present law*

In 1989, social security beneficiaries age 65-69 who earn more than $8,880 in annual wages or self-employment income incur a reduction in their benefits. Beneficiaries

under age 65 incur a reduction when their earnings exceed $6,480. For each $2 of earnings in excess of these amounts, social security benefits are reduced by $1. These exempt amounts are automatically adjusted each year to reflect the change in the average wage in the economy. Beneficiaries age 70 and older can earn any amount without incurring a reduction in benefits.

Beginning in 1990, the reduction for workers age 65-69 will change from a $1 loss in benefits for each $2 of earnings over the exempt amount to a $1 loss in benefits for each $3 of earnings (no change in the reduction rate will occur for those under age 65).

The exempt amount for those age 65-69 will be $9,360 in 1990 and is projected to be $9,840 in 1991.

*House bill*

The exempt amount for beneficiaries age 65-69 would be raised $360 in 1990 and an additional $240 in 1991 above the levels that would occur under the automatic procedure. Together, the two increases would result in a $600 ad hoc adjustment to the exempt amounts. The resulting exempt amounts would be $9,720 in 1990 and a projected $10,440 in 1991. Automatic increases of the exempt amounts in future years would be calculated based on inclusion of these ad hoc increases.

CBO would be required to study: (a) the distribution of benefit increases by various earnings categories resulting from the elimination of, or alternative increases in, the retirement test, (b) the impact on the OASI trust fund of such alternatives, and (c) the impact on labor force participation of such alternatives.

*Effective date*

Applies to taxable years ending after 1989. The study would be due April 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*13. Increase in the Special Minimum Benefit*

Section 10077 of the House bill.

*Present law*

A "special minimum" social security benefit is available to workers who have many years of work at modest wages. The amount of this benefit is determined by an alternative benefit computation procedure that calculates the benefit based on the number of years of significant earnings, rather than on average lifetime earnings. It applies in cases where this computation procedure results in a higher benefit than that which would be derived under the regular social security benefit computation rules.

The special minimum benefit is computed by multiplying the number of years of special minimum coverage by a base amount. However, only those years in excess of 10 and up to 30 can be multiplied by the base amount (e.g., if an individual has 30 years of coverage toward the special minimum, only 20 of these years can be multiplied by the base amount to determine the benefit amount). In 1989, the base amount is $20.90. In 1990, it be $21.88. (A new base amount is not actually promulgated by the Secretary each year; rather, the base amounts used in this description are derived from the table of special minimum benefit amounts published by the Secretary each year. This table was established using the 1979 base amount, $11.50, and the benefit amounts are updated each year by the social security cost-of-living adjustment.) In 1990, a worker with 30 years of coverage would be eligible for $437.60 per month.

For the period 1937-1950, an individual's years of coverage toward the special minimum are determined by dividing the total amount of wages or self-employment income credited in that period by $900, although the number of years of coverage awarded cannot exceed 14. For later years, an individual qualifies for a year of coverage for each year in which earnings meet or exceed a minimum amount specified in law. For the years 1951-1978, the minimum amount is 25 percent of the taxable earnings base for that year. For years after 1978, the minimum amount is 25 percent of the "old-law" taxable earnings base for that year (i.e., the hypothetical earnings base that would be in effect if the ad hoc increases in the base enacted in 1977 were disregarded). In 1989, the amount of earnings required for a year of coverage toward the special minimum is $8,925. In 1990, it will be $9,375.

*House bill*

The special minimum benefit base amount would be increased, and the minimum amount of earnings needed to qualify for a year of coverage toward the special minimum would be reduced.

The special minimum base amount would be increased in 1990 by $1.70 — raising it from $21.88 to $23.58. Thus, in 1990, the benefit for a worker with 30 years of coverage would be $471.60 per month. As under current law, the special minimum benefit amounts as increased by this provision would be subject to future increases based on cost-of-living adjustments.

The amount of earnings needed to qualify for a year of coverage toward the special minimum would be reduced from 25 percent to 15 percent of the "old law" taxable earnings base. In 1990, the minimum amount of earnings would be $5,625, rather than $9,375 under present law.

Medicaid eligibility would be continued for those individuals who might otherwise lose it as a result of the higher special minimum benefit.

*Effective date*

The higher benefit amounts would become effective with respect to benefits for months after December, 1989. The reduction in the amount of earnings needed to qualify for a year of coverage under the special minimum would become effective for years of coverage earned after 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*14. Elimination of Eligibility for Retroactive Benefits for Certain Individuals Eligible for Reduced Benefits*

Section 10078 of the House bill.

*Present law*

Social security retirement and survivor benefits can be paid for up to 6 months prior to the month of application if the applicant were otherwise eligible for benefits during that period. Benefits based on disability can be paid for up to 12 months prior to the month of application.

However, retroactive benefits generally cannot be paid if doing so would cause a reduction in future monthly benefits (i.e., it would effectively mean that an individual would be filing for "early retirement," in which case an actuarial reduction in benefits is required). For example, if a retroactive application for retirement benefits were to cause a retiree's initial entitlement month to fall before the individual reached age 65, no retroactive benefits can be paid for the months prior to age 65. There are four exceptions to this rule which permit payment of retroactive benefits even though it causes an actuarial reduction in benefits:

(a) if an individual has dependents who would be entitled to unreduced benefits during the retroactive period;

(b) if an individual has excess earnings under the social security retirement test (i.e., earnings above the exempt amounts) that could be charged off against benefits for months prior to the month of application;

(c) if an individual is applying for widow(er)'s or surviving divorced spouse's benefits on the basis of disability for months prior to reaching age 60 (this exception is now inoperative because benefits are no longer further reduced for entitlements commencing prior to age 60); or

(d) if a widow(er) is applying for survivor benefits for the preceding month and the death of his or her spouse occurred in that month.

*House bill*

Eligibility for retroactive benefits would be eliminated for 2 categories of individuals eligible for actuarially reduced benefits:

(a) individuals who have dependents who would be entitled to unreduced benefits during the retroactive period; and

(b) individuals who have excess earnings under the social security retirement test (i.e., earnings above the exempt amounts) that could be charged off against benefits for months prior to the month of application.

*Effective date*

Applies with respect to applications for benefits filed on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*15. Treatment of Employer-Paid Life Insurance Premiums Under the Railroad Retirement Tax Act*

Section 10081 of the House bill.

*Present law*

Some forms of employee compensation are treated differently under the Railroad Retirement Tax Act (RRTA), which applies to the railroad retirement program, and the Federal Insurance Contributions Act (FICA), which applies to social security. Under FICA, employer-paid premiums for life insurance are generally not subject to the social security payroll tax. An exception is made for the value of employer-paid premiums for group-term life insurance coverage in excess of $50,000, which is included in the definition of wages and thus is subject to social security payroll taxes.

RRTA does not refer to life insurance. However, IRS regulations relating to RRTA exclude employer-paid life insurance premiums from the definition of taxable employee compensation.

*House bill*

The value of employer-paid premiums for group-term life insurance coverage in excess of $50,000 would be included in the definition of compensation under RRTA and would therefore be subject to railroad re-

tirement payroll taxes. Also, the provision would amend the RRTA to exclude generally the value of employer-paid life insurance premiums from the definition of compensation. These changes would bring into conformity the treatment of life insurance premiums under the social security and railroad retirement program.

*Effective date*

The provision would be effective with respect to coverage in effect after December 31, 1989, except in the case of former employees who separated from employment on or before December 31, 1989. Due to confusion about the taxable status of this remuneration, some employers may have withheld and paid payroll taxes on remuneration paid before January 1, 1990. Because these amounts would already have been credited for benefit purposes, and because it is likely that some employees would already have begun receiving benefits based on the crediting of such amounts, no refund of taxes paid on remuneration paid before January 1, 1990, would be made.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House provision.

*16. Treatment of Certain Deferred Compensation and Salary Reduction Arrangements Under the Railroad Retirement Tax Act*

Section 10082 of the House bill.

*Present law*

Under the Federal Insurance Contributions Act (FICA), employer-sponsored tax-qualified pension plans are generally excluded from the definition of wages and therefore are not subject to the social security payroll tax. There are two exceptions, both relating to deferred compensation, to this general exclusion.

The first exception is for qualified cash or deferred arrangements (described in section 401(k) of the Internal Revenue Code). Under a cash or deferred arrangement forming a part of a qualified profit-sharing or stock bonus plan, a covered employee may elect either to have the employer contribute an amount to the plan on the employee's behalf or to receive such amount directly in cash. Amounts contributed to the plan are treated as employer contributions, are includible in wages and are subject to the FICA tax.

The second exception is for deferred compensation plans other than those specifically provided for in the general exclusion for tax-qualified pension plans. They are referred to as "nonqualified deferred compensation plans." Amounts contributed to these types of plans are includible as wages and are taxable under FICA.

The Railroad Retirement Tax Act (RRTA) does not refer either to pensions or to deferred compensation arrangements in its definition of compensation subject to payroll taxation.

*House bill*

The RRTA would be amended to bring the treatment of deferred compensation arrangements, and pensions generally, into conformity with their treatment under FICA. Thus, employer-sponsored tax-qualified plans generally would be specifically excluded from the definition of compensation under RRTA and would therefore not be subject to railroad retirement payroll taxes. However, contributions to qualified 401(k) cash or deferred arrangements and contributions to nonqualified deferred compensation plans would both be included in compensation (and would therefore be subject to railroad retirement payroll taxes) to the same extent they are now included in wages for FICA tax purposes.

*Effective date*

With respect to pensions generally, the provision would be effective for remuneration paid after December 31, 1989. With respect to deferred compensation arrangements, the provision would be effective for remuneration paid after December 31, 1989, (including remuneration paid after December 31, 1989, which is for services performed before January 1, 1990) with the following two exceptions: (1) with respect to qualified 401(k) cash deferred arrangements, a transition rule is provided to exclude certain remuneration paid after December 31, 1989, if paid pursuant to certain elective deferrals made before January 1, 1990; and (2) in the case of certain agreements in existence on June 15, 1989, between a non-qualified deferred compensation plan and an individual, the provision would only apply to services performed after December 31, 1989. Due to confusion about the taxable status of this remuneration, some employers may have withheld and paid payroll taxes on remuneration paid before January 1, 1990. Because these amounts would already have been credited for benefit purposes, and because it is likely that some employees would already have begun receiving benefits based on the crediting of such amounts, no refund of taxes paid on remuneration paid before January 1, 1990, would be made.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House provision.

*17. Codification of Rowan with Respect to Railroad Retirement*

Section 10083 of the House bill.

*Present law*

In a 1981 case, *Rowan Companies, Inc.* v. *United States*, the Supreme Court ruled that the definition of "wages" for Federal Insurance Contributions Act (FICA) purposes must be interpreted in regulations in the same manner as for income-tax withholding purposes. At issue in the case was the treatment of meals and lodging provided for the convenience of the employer. The Social Security Act Amendments of 1983 codified Rowan with respect to meals and lodging, but in all other cases stated that nothing in the regulations prescribed for the purposes of income tax withholding which provides an exclusion from "wages" shall be construed to require a similar exclusion from "wages" in the regulations prescribed for the purposes of FICA. Similar language was not included in the Railroad Retirement Tax Act (RRTA).

*House bill*

The provision would amend the RRTA to state that, except in the case of meals and lodging provided for the convenience of the employer and excludible for purposes of income tax withholding, nothing in the regulations prescribed for purposes of income tax withholding which provides an exclusion from "wages" shall be construed to require a similar exclusion from "compensation" in the regulations prescribed for purposes of the RRTA.

*Effective date*

The provision would be effective for remuneration paid after 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House provision.

*18. General Fund Transfers to Railroad Retirement Tier II Trust Fund*

(Section 10084 of the House bill.

*Present law*

Proceeds from the income taxation of railroad retirement Tier II benefits received prior to October 1, 1989 are transferred from the general fund of the U.S. Treasury into the Railroad Retirement Account. Proceeds from the taxation of benefits received after this date will remain in the general fund.

*House bill*

The provision would extend the transfer of proceeds from the taxation of railroad retirement Tier II benefits from the general fund into the Railroad Retirement Account for one year, to apply to benefits received prior to October 1, 1990.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference includes the House provision.

*19. Inclusion of Certain Deferred Compensation in Calculation of Average Wages*

Section 10079 of the House bill.

*Present law*

The social security taxable earnings base, the benefit formula, and certain other social security program amounts are increased each year in accordance with the increase in the average of total wages reported to the Secretary of HHS (through a delegation from the Secretary of the Treasury) including wages that are not taxable for social security purposes (e.g., noncovered earnings and earnings above the taxable earnings base). By regulation, the Secretary of HHS has defined total wages for this calculation to be those that are reported for income tax purposes. Since various forms of deferred compensation are not subject to income tax at the time of the deferral (e.g., elective deferrals under a qualified cash or deferred arrangement as defined in section 401(k) of the Internal Revenue Code), they are not included in the calculation of average wages for Social Security purposes.

*House bill*

For purposes of measuring the annual increase in average wages, such wages would include certain deferred compensation, including 401(k) plans. A transition provision would provide that the inclusion of deferred compensation in average wages would be phased-in so that it would be included first for taxable earnings base purposes and subsequently for benefit and other program amount purposes.

*Effective date*

For purposes of determining the taxable earnings base, an estimate of deferred compensation would be included in average wages for 1988 and 1989, so that the 1990 taxable earnings base would reflect the inclusion of deferred compensation in average

total wages. Actual deferred compensation amounts would be used beginning with 1990 wages.

For purposes of benefit computations and other program amounts, actual deferred compensation amounts would be included beginning with 1990 wages and would be reflected in benefit computations and other program amounts beginning in 1993.

*Senate amendment*

No provision.

*Conference agreement*

The conference includes the House provision.

*20. Treatment of Refunds by Employers under the Medicare Catastrophic Coverage Act of 1988 for FICA and Social Security Benefit Purposes and for Other Purposes*

Section 10054 of the House bill.

*Present law*

The Medicare Catastrophic Coverage Act of 1988 includes a maintenance-of-effort provision which requires that employers who offer health insurance benefits which overlap the new medicare benefits must provide either additional benefits or a refund to individuals covered by the employer's plan during the first two years the Act is in effect.

*House bill*

Refunds to individuals by employers under the maintenance-of-effort provision of the Medicare Catastrophic Coverage Act of 1988 would be excluded from wages for FICA and FUTA tax purposes and from compensation for railroad retirement and railroad unemployment insurance tax purposes. Thus, these amounts would not be taken into account in calculating average wages for purposes of determining the social security contribution and benefit base, the railroad retirement contribution and benefit base, and other social security and railroad retirement amounts, and for purposes of the federal-state unemployment insurance system and the railroad unemployment insurance program.

*Effective date*

The provision would be effective for the 2 years that employers are required to make the refund payments, 1989 and 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference includes the House provision. It also includes an additional provision giving the Secretary of the Treasury authority to prescribe the manner in which these refunds would be reported.

*21. Extension of Disability Insurance Program Demonstration Project Authority*

*Present law*

Section 505(a) of the Social Security Disability Amendments of 1980 (P.L. 96-265), as extended by the Consolidated Omnibus Reconciliation Act of 1985 (P.L. 99-272), authorizes the Secretary to waive compliance with the benefit requirements of titles II and XVIII for the purpose of conducting work incentive demonstration projects to encourage beneficiaries to return to work. This authority will expire June 10, 1990.

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

The work incentive demonstration project authority would be extended for three years, through June 10, 1993.

*22. Earnings and Benefit Statements*

*Present law*

There is no statutory requirement that the Social Security Administration provide individuals with earnings and benefit statements. Upon request, SSA currently will provide an individual with such information.

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

Beginning not later than October 1, 1990, the Secretary would be required to provide individuals, aged 25 and older, who have a social security number and have wages or net self-employment income, with a social security account statement upon the request of the individual. These statements would show (1) the individual's earnings, (2) an estimate of the individual's contributions to the social security program (including a separate estimate for HI), and (3) an estimate of the individual's future benefits at retirement (including those of auxiliaries) and a description of medicare benefits. Starting in 1995, these statements would be automatically provided to all such individuals who attain age 60 (but are not yet receiving benefits) during that year and for whom the Secretary can determine a current address. Each statement sent to an eligible individual would include a notice stating that these statements are updated annually and are available upon request. Starting in 1999, these statements would be automatically provided on a biennial basis to those under age 60 as well (benefit estimates would not be required in the case of persons under age 50, although a general description of benefits would be required).

*Effective Date*

As previously described, the provision would be phased in gradually between October 1, 1990 and October 1, 1999.

PROVISIONS AFFECTING SOCIAL SECURITY AND SSI RECIPIENTS

*1. Improvements in Social Security Services*

Sections 10021-10030 of the House bill.

*Present law*

*a. Standards governing collection of overpayments.*—When a beneficiary is paid more than the correct amount of social security benefits, the Secretary must attempt to recover the overpayment by:

(i) requiring the individual or his or her estate to refund the amount;

(ii) decreasing any payment to which the individual is entitled;

(iii) decreasing any payment to his or her dependents or estate; or

(iv) using any combination of these measures. Repayment is waived if the individual is without fault in causing the overpayment and recovery would defeat the purposes of the program or would be against "equity and good conscience."

*b. Demonstration projects relating to accountability for telephone service center communications.*—The Social Security Act is silent regarding telephone service provided by SSA. In practice, SSA currently operates 37 teleservice centers (TSCs) that respond to inquiries from the public. In addition to providing general program information, these TSCs can schedule appointments at local offices and provide individual service, including discussing an individual's eligibility and taking specific actions regarding the individual's benefits. In recent years SSA has attempted to increase the amount of services and actions handled over the telephone by implementing a toll-free 800-number and reallocating staff resources to telephone service workstations, and by promoting its telephone service abilities with the public.

After the 800-number becomes fully operational local office numbers will no longer be listed in phone books and calls to these numbers will be diverted to it, thereby curtailing or eliminating telephone channels that the public has with local offices.

*c. Standards applicable in certain determinations of good cause, fault, and good faith.*—

*Good cause*—A Social Security beneficiary who (i) works for more than 45 hours during a month in noncovered employment outside the U.S., (ii) ceases to have a child in care, or (iii) has earnings in excess of the annual exempt amount under the retirement test, is subject to a penalty for failure to report these facts to SSA. However, if the individual can demonstrate to the satisfaction of the Secretary that he or she had good cause for failing to make a timely report, the penalty is waived. In addition, disability benefits are terminated when a beneficiary fails, without good cause, to cooperate with the Secretary in reviewing his or her entitlement or in following a treatment which is expected to restore his or her ability to work.

*Fault*—Overpayments to beneficiaries are waived in cases where the individual is without fault and recovery would defeat the purposes of the program or would be against "equity and good conscience." SSA regulations state that in determining whether an individual is without fault, consideration will be given to the individual's age, intelligence, education, and physical and mental capabilities.

*Good faith*—A beneficiary receiving benefits based on disability whom the Secretary determines is no longer disabled has the option of having his or her benefits continued through a hearing before an Administrative Law Judge (ALJ). Benefits paid during this period are considered overpayments if the beneficiary loses the appeal. However, if the beneficiary acted in good faith in pursuing the appeal, repayment can be waived. SSA regulations establish a presumption that appeals are made in good faith unless the beneficiary fails to cooperate with the agency during the appeal.

*d. Assistance to the homeless.*—SSA has participated in projects designed to assist the homeless in qualifying for social security or SSI benefits. No provision exists expressly delineating SSA responsibilities with regard to enrolling potentially eligible homeless people.

*e. Notice requirements.*—The Secretary must use understandable language in notifying individuals of a denial of disability benefits. The law is silent regarding the language of other notices.

Blind SSI applicants and recipients may opt to be informed by telephone of a decision or action affecting them within 5 days of the mailing of written notices of such action, to have such notices sent by certified mail, or to receive them through some other means established by the Secretary. These options are not available to blind social security applicants and recipients.

*f. Representation of claimants.*—Social security claimants and beneficiaries may use attorneys and legal assistance representatives in pursuit of their claims and in taking other action before the agency. The Secretary is not required to advise claimants or beneficiaries of options regarding their possible use of attorneys and legal aid representatives. When a claimant or a beneficiary decides to use one, SSA requires the individual to formally designate the representative. SSA is under no legal requirement to maintain an automated list of attorneys and legal aid representatives who have this written authorization to assist claimants and beneficiaries with their cases before the agency.

*g. Applicability of administrative res judicata; related notice requirements.*—If a claimant for social security or SSI disability benefits successfully appeals an adverse determination by the Secretary, benefits can be paid retroactively for up to 12 months prior to the date of the original application.

If, however, instead of appealing, the claimant reapplies and is subsequently found to be disabled as of the date originally alleged, there are circumstances where retroactive benefits would be limited to 12 months from the date of the subsequent application (rather than the date of the first). This occurs when SSA determines that it cannot reopen the original decision under its "reopening rules." (SSA's administrative policy permits a case to be reopened within 12 months of an initial determination for any reason; and within 4 years (2 years for SSI claims) if there is new and material evidence or the original evidence clearly shows on its face that an error was made in the original decision).

A reapplication, in lieu of an appeal, also could result in an outright denial of social security benefits without even considering an individual's medical evidence. This occurs when (i) the claimant's insured status ran out before the date of the original denial or the recency-of-work test cannot be satisfied since then, and (ii) there is no new and material evidence and no facts or issues that were not considered in making the prior decision. In this situation, SSA applies the legal principle of res judicata to deny the subsequent claim. Under this principle—the use of which is prescribed by SSA regulations—SSA will not consider the same claim over and over again.

Prior to May 1989, SSA's standard denial notice informed claimants that they could reapply at any time, but did not explain the potential adverse consequences of reapplying versus appealing a denial. A May 1989 modification of this notice informs claimants that reapplying may result in a loss of benefits, but does not mention the second problem described above, i.e., an outright denial of eligibility.

*h. Authority for Secretary to take into account misinformation provided to an applicant in determining date of application.*—By regulation, if an individual expresses his intention to file for Social Security or SSI benefits in a telephone call to SSA, the SSA representative is required to establish a protective application at the time of the call. These procedures enable an applicant to establish the date of the call as the filing date if the applicant subsequently qualifies for benefits. If the individual does not express his or her intention to file for benefits, a protective filing date is not assigned, even if failure to express such interest is caused by misinformation communicated in the call by the SSA representative.

*i. Same-day personal interviews at SSA field offices in cases where time is of the essence.*—Nothing in current law requires SSA offices to respond promptly to individuals who visit them on matters of personal urgency or under time deadlines imposed by the agency.

*j. Authority to amend wage records after expiration of time limitation.*—The Secretary is required to establish and maintain records of workers' wages and self-employment income. Errors in these records can be corrected at any time up to 3 years, 3 months, and 15 days after the year in which the earnings occurred. After this time, various revisions can be made including ones in which an employer neglected to report covered wages. However, no revision is permitted where an employer misreported the amount of the earnings.

*House bill*

*a. Standards governing collection of overpayments.*—Except in cases involving fraud, concealment, or willful misrepresentation, the Secretary would be required to recover any overpayment subject to recovery on a schedule that would not cause the beneficiary undue financial hardship. In cases where the beneficiary is also receiving SSI, the overpayment would be recovered by withholding 10 percent of the beneficiary's monthly social security check.

*Effective date*

Applies to adjustments made, and recoveries obtained, on or after January 1, 1990.

*Senate provision*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*b. Demonstration projects relating to accountability for telephone service center communications.*—The Secretary would be required to carry out demonstration projects testing a set of accountability procedures in at least 3 teleservice centers. Callers who provide adequate identifying information would be provided with written confirmation of the date and nature of their calls, including the name of the employee to whom they spoke, a description of any action the employee said would be taken, and any advice the caller was given. Routine communications (that is, calls that do not relate to potential or current eligibility for benefits) would be excluded.

The Secretary would be required to make periodic reports to the House Ways and Means and the Senate Finance Committees on the progress of these demonstrations, including costs and benefits, difficulties encountered, and an assessment of the feasibility of implementing the procedures nationally.

*Effective date*

These projects must begin within 6 months after enactment and continue for 1 to 3 years. Periodic reports are due 9 months after the projects' inception and final reports are due 90 days after termination. (Additional annual reports would be required if the demonstration projects extend more than one year).

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*c. Standards applicable in certain determinations of good cause, fault, and good faith.*—In making determinations of whether a title II beneficiary:

(i) is without fault in an overpayment,

(ii) has acted in good faith in appealing a termination of his disability benefits,

(iii) has good cause for having failed to make a timely report of overseas work, of earnings above the retirement test exempt amount, or of ceasing to have a child in care, or

(iv) has good cause for having failed to participate in a reassessment of his disability or in a program of treatment, the Secretary would be required to take into account any physical, mental, educational, or linguistic limitations that the individual has (including any lack of facility in the use of English).

Similar provisions apply with respect to SSI.

*Effective date*

Applies to determinations made on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House provision, except that it applies to determinations made on or after July 1, 1990.

*d. Assistance to the homeless.*—The Secretary would be required to establish a program to identify homeless individuals who may be eligible for social security or SSI benefits and to provide reasonable assistance to them in making application. In addition, the Secretary would be required to cooperate in joint projects to facilitate benefit applications on behalf of the homeless when requested by State or local government or nonprofit organizations, including making regular visits to facilities aiding the homeless. Annual report to the House Ways and Means and the Senate Finance Committees on this outreach effort would be required.

*Effective date*

The program of assistance to the homeless would be established no later than 180 days after enactment.

*Senate provision*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*e. Notice requirements.*—With regard to notices about social security and SSI benefits, the Secretary would be required to use clear and simple language. Notices generated by local offices would include the name, address, and telephone number of a responsible contact person. Other notices would include the name and address of the individual's local servicing office and the telephone number through which that office can be reached.

In addition, the Secretary would be required to submit a report to the House Ways and Means and the Senate Finance Committees on current procedures for providing social security and SSI notices in foreign languages and options for making greater use of them with individuals having limited English-speaking capacity.

With regard to the blind, the notification options currently available to SSI applicants and recipients would be extended to social security applicants and recipients.

*Effective date*

Applies to notices issued on or after January 1, 1990.

The required report on foreign language notices would be due July 1, 1990.

*Senate provision*

No provision.

*Conference agreement*

The Conference agreement includes the House provisions dealing with foreign language notices and notices to the blind but does not include the House provision dealing with general SSA notices. The report dealing with foreign language notices would be due January 1, 1991. The provision dealing with notices for the blind would be effective for notices issued on or after July 1, 1990.

*f. Representation of claimants.*—The Secretary would be required to maintain an up-to-date electronic record, accessible to SSA offices through the agency's computer system, of the identities of legal representatives of all social security claimants. In addition, the Secretary would be required to include in benefit denial notices information on options for obtaining legal representation before the agency. Such notices also would include information about the availability of legal service organizations that provide assistance free-of-charge to qualified claimants.

*Effective date*

The provision requiring an electronically retrievable list of legal representatives would be effective July 1, 1990; the provision requiring denial notices to contain options for legal representation would be effective on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House provision. The provision requiring an electronically retrievable list of legal representatives would be effective June 1, 1991; the provision requiring denial notices to contain a description of options for legal representation would be effective on or after January 1, 1991.

*g. Applicability of administrative res judicata; related notice requirements.*—When a claimant for social security or SSI benefits can demonstrate that he or she failed to appeal an adverse decision because of reliance on incorrect, incomplete, or misleading information provided by SSA, his or her failure to appeal could not serve as the basis for denial by the Secretary of a second application for any payment under this title. The Secretary also would be required to include in all notices of denial a clear, simple description of the effect on possible entitlement to benefits of reapplying rather than making an appeal.

*Effective date*

Applies to adverse determinations made on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*h. Authority for Secretary to take into account misinformation provided to an applicant in determining date of application.*—When an individual can demonstrate to the Secretary's satisfaction that he or she failed to file for social security or SSI benefits as a result of misinformation concerning eligibility provided by SSA, the individual would be deemed to have applied on the later of (i) the date the incorrect information was provided, or (ii) the date the individual met all the requirements for entitlement.

*Effective date*

Applies with respect to benefits for months after December 31, 1959.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House provision. With respect to social security, it would be effective for misinformation provided after December 1982 and for benefits for months after December 1982. With respect to SSI, it would be effective for misinformation provided on or after the date of enactment and for benefits for months after the date of enactment.

*i. Same-day personal interviews at SSA field offices in cases where time is of the essence.*—When an individual visits a field office during normal business hours in response to a time-limited notice for action sent by SSA or because his or her social security or SSI check was lost, stolen, or not received, the Secretary would be required to assure that the individual receives a face-to-face interview with an SSA employee before the close of the business day.

*Effective date*

Applies to visits to SSA field offices on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House provision. The conferees intend that nothing in this section should diminish what they regard as SSA's continuing responsibility to provide same-day interviews to other individuals who visit the office.

*j. Authority to amend wage records after expiration of time limitation.*—The current list of revisions to earnings records that can be made after 3 years, 3 months, and 15 days from the year of the earnings would be expanded to permit adding wages to a record where an entry for an employer is present but incorrect.

*Effective date*

The provision would be effective upon enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House provision.

*2. Representative Payee Reforms*

Sections 10031–10033 of the House bill.

*Present law*

*a. Procedures for Selection and Recruitment of Representative Payees.*—The Secretary may appoint a person to receive social security or SSI benefits on behalf of a beneficiary if it appears to be in the best interest of the beneficiary, regardless of the beneficiary's legal competence or incompetence. This representative payee can be a spouse, parent, other relative, or some other person (although the law precludes an individual convicted of a felony under sections 208 or 1632 of the Social Security Act from being a representative payee). The Secretary is required to investigate the representative payee either prior to or within 45 days of certifying payments to him or her. Present law is silent as to the content of the investigation.

SSA Programs Operation Manual System (POMS) lays out criteria for selecting and investigating a representative payee. These include:

Conducting a face-to-face interview with the representative payee applicant whenever possible,

Determining the capability of the representative payee applicant to carry out the duties of the payee,

Assessing the representative payee applicant's awareness of the beneficiary's situation and needs, and

Determining the representative payee applicant's relationship to the beneficiary and the extent to which he or she has demonstrated concern for the beneficiary's well-being.

*Direct payment to recipients.* Nothing in title II of the Social Security Act permits or prohibits the withholding benefits until a representative payee is found. Title XVI prohibits direct payment of SSI benefits to those medically determined to be alcoholics or drug addicts.

The Ninth Circuit Court of Appeals in *Briggs* v. *Sullivan,* (September, 1989) ordered the district court to enter an injunction requiring the Secretary to pay social security benefits or SSI benefits directly to adult beneficiaries in California when a suitable representative payee cannot be found. Two groups are excluded from this order: (1) SSI recipients receiving benefits on the basis of alcohol or drug-related disabilities; and (2) Social security beneficiaries and SSI recipients who have been declared legally incompetent.

*Compensation for qualified organizations that serve as representative payees.* Present law is silent regarding compensation for the costs incurred by the representative payee in providing representative payee services to social security and/or SSI recipients. SSA regulations permit a representative payee to deduct from the beneficiary's monthly check the actual out-of-pocket expenses of providing payee services, such as stamps, travel, and phone expenses.

In the recent past, SSA also permitted certain organizations providing representative payee services to collect a fee for services from the beneficiary's check. Citing a lack of statutory authority, SSA discontinued this practice.

*b. Accounting Procedures.*—Title II and title XVI of the Social Security Act, require the Secretary to establish a system of accountability monitoring in cases involving a representative payee whereby the representative payee reports not less often than annually with respect to the use of the payments. This requirement applies to payees who are not (i) the parent or spouse living in the same household with the beneficiary or (ii) a Federal or State institution. Further, the Secretary is required to establish statistically valid procedures for reviewing these reports to identify cases of improper use.

[NOTE: In 1984, a U.S. District Court ruled in Jordan v. Bowen that all representative payees must account for expenditures made on behalf of the beneficiary. This ruling, later upheld by an Appeals Court, included those who were parents or spouses of a beneficiary living in the same household. It did not apply to Federal and State institutions which are subject to periodic on-site review. Jordan was a nationally certified class action suit. The ruling was based on the

constitutional right to due process and therefore supersedes statute.]

In addition, the Secretary may require a report at any time from a representative payee if the Secretary has reason to believe that the representative payee is misusing such payments.

The law provides that a representative payee who knowingly and willfully uses payments to the beneficiary in ways that do not benefit him or her, will be guilty of a felony and subject to fines and imprisonment for up to 5 years (and permits the Court to require full or partial restitution in the event of a subsequent conviction).

*House bill*

*a. Procedures for Selection and Recruitment of Representative Payees.—*

*Representative payee investigations.* The Secretary would be required to investigate representative payees in advance of certifying payments to them. In conducting the investigation, SSA would be required to secure adequate evidence that designating a representative payee is in the best interest of the social security or SSI recipient; obtain documented proof of the representative payee's identity; verify his or her social security or employer identification number; determine whether he or she has been convicted of a social security felony under section 208 or 1632 or previously dismissed as a representative payee for misuse of funds. In general, benefit payments would not be certified to an individual who has previously been terminated for misuse of funds; however, in rare instances, the Secretary would be permitted to grant an exception to this prohibition on a case by case basis, if it would be in the interest of the beneficiary.

*Feasibility study.* As soon as practicable, the Secretary would be required to study, in consultation with the Attorney General and the Secretary of the Treasury, the feasibility of establishing and maintaining a list of the names and social security account numbers of individuals convicted of social security check fraud violations, and providing such a list to all local offices for use in representative payee investigations. A report would be due to the House Ways and Means and the Senate Finance Committees not later than July 1, 1990.

*Direct payment to recipients.* When the Secretary is unable to find a suitable representative payee, and the Secretary determines that it would be in the best interest of the social security or SSI recipient to withhold direct payment, the Secretary would be permitted to do so for up to two months.

After the two-month period, the Secretary would be required to begin making current monthly payments directly to the beneficiary unless that person had been declared legally incompetent or was under the age of 15.

Retroactive benefits would be paid either to the representative payee or to the beneficiary over such a period as the Secretary determines would be in the best interest of the beneficiary.

Direct payment of benefits to SSI recipients who receive benefits on the basis of alcohol or drug related disability would be prohibited.

*Compensation for qualified organizations that serve as representative payees.* Community-based nonprofit social service agencies (defined as agencies which are representative of communities or significant segments of communities and regularly provide services to those in need) that serve as payee for more than 5 social security or SSI recipients would be able to draw a fee from the benefits they administer for serving as representative payees (if they were not also creditors of the beneficiaries). The Secretary would define the maximum fee in regulations, which could not exceed the expenses incurred in providing services (including direct costs and overhead). Qualified organizations that charge or collect, or make arrangements to charge or collect, a fee in excess of the maximum fee, would be guilty of a misdemeanor punishable by a fine not exceeding $500, or imprisonment not exceeding one year, or both.

*Demonstrations relating to screening of individuals with criminal records.* The Secretary would be required to develop and implement demonstration projects in not fewer than two States, whereby all social security and SSI representative payee applicants would be screened for past convictions through the Federal Bureau of Investigation's Interstate Identification Index.

As part of the demonstration project, the Secretary would be required to determine: (1) the percentage of all representative payee applicants who have been convicted of felony or misdemeanor violations; (2) the type of representative payee applicant (if any) most likely to have a felony or misdemeanor conviction; (3) the suitability of individuals with prior convictions to serve as representative payees; and (4) the circumstances under which such applicants could be allowed to serve as representative payees. A report on the feasibility of implementing the screening procedures for all local offices would be due to the House Ways and Means and the Senate Finance Committees not later than July 1, 1991.

*b. Recordkeeping, Auditing, and Enforcement Requirements.—*

*Conditions for terminating representative payees.* The Secretary would be required to terminate payments to a representative payee where the Secretary found that the representative payee had misused the benefit payments.

In addition, the Secretary would be required to maintain a list of those terminated for misuse on or after July 1, 1990, and to provide such list to local field offices.

*Listing of representative payees.* (1) The Secretary would be required to maintain a computerized list, readily retrievable by field offices, of the social security numbers and addresses of all representative payees and the social security numbers and addresses of the social security and/or SSI recipients they serve. (2) The local servicing offices would be required to keep a list of all public and community-based nonprofit agencies which are qualified to serve as representative payees and operate in the area served by the local social security office.

*High-risk representative payees.* The Secretary would be required to study and make recommendations on the desirability and feasibility of adopting stricter accounting requirements for all high-risk representative payees, (serving social security and/or SSI recipients) which include: non-relatives who do not live with the beneficiary; non-relatives who serve 3 or more beneficiaries; and any other group the Secretary determines to be high risk. The provision does not apply to Federal or State governmental institutions.

*Demonstration projects relating to provision of information to local agencies providing child and adult protective services.* The Secretary would be required to implement demonstration projects in at least 2 states under which the Secretary would provide a list to the state of all addresses where OASDI and SSI benefits are sent to 5 or more individuals. The list would be given to the agency within the state with primary responsibility for regulating care facilities or for providing child and adult protective services. Reports to the House Ways and Means and Senate Finance Committees would be required of the Secretary, including an evaluation and recommendations on the feasibility and desirability of implementing these projects permanently.

*c. Report to Congress.*—The Secretary would be required to include information in SSA's annual report on the implementation of these representative payee provisions including the number of cases where representative payees were changed; the number of "misuse" cases discovered, how they were dealt with, and their final disposition (including any criminal penalties imposed); and any other information the Secretary determines to be appropriate.

*Effective date*

Generally, the provisions would be effective on July 1, 1990; those relating to procedures for selection and recruitment of representative payees would be effective for certifications of payment made on or after July 1, 1990. The report on high-risk payees would be due July 1, 1990. The report on the demonstration projects would be due July 1, 1991. Inclusion of representative payee information in SSA's annual report would be required for years after 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

## SUBTITLE B—MEDICARE

### PART A—PROVISIONS RELATING TO PART A OF THE MEDICARE PROGRAM

*1. Reduction in Payments for Capital-Related Costs of Inpatient Hospital Services*

Section 10101 of the House Bill, Section 5103 of the Senate Amendment.

*Present law*

*a. Reduction in payments for fiscal year 1990.*—Capital-related costs (including depreciation, leases and rentals, interest, and a return on equity for proprietary hospitals) are excluded from Medicare's prospective payment system (PPS) for inpatient hospital services for hospital cost reporting periods beginning before October 1, 1991, and are reimbursed on a reasonable cost basis. The Omnibus Budget Reconciliation Act (OBRA) of 1987 reduced the amounts otherwise payable for capital-related costs for inpatient hospital services by 12 percent for fiscal year 1988 (beginning January 1, 1988), and by 15 percent for fiscal year 1989. Sole community hospitals (SCHs) are exempt from capital payment reductions. Under current law, there will be no reduction in payments for capital-related costs for discharges or portions of cost reporting periods on or after October 1, 1989.

*(b) Study of effects of capital-related payments on hospital costs.*—No provision.

*House bill*

*(a) Reduction in payments for fiscal year 1990.*—Extends the 15 percent reduction in capital-related payments for portions of cost reporting periods or discharges occurring during fiscal year 1990. SCHs remain exempt from capital payment reductions.

*(b) Study of effects of capital-related payments on hospital costs.*—Requires the Gen-

eral Accounting Office (GAO) to report to Congress by October 1, 1990, the results of a study on the effects of low rates of hospital inpatient occupancy on Medicare costs. The report is to include an analysis of the relationship between fixed and variable hospital costs, and the extent to which closure of unneeded hospital beds or consolidation of inpatient services and facilities could result in savings to the Medicare program.

*Effective date*

Enactment.

*Senate amendment*

*(a) Reduction in payments for fiscal year 1990.—*

*Section 5103.*—Decreases the reduction in capital-related payments to 13.5 percent for portions of cost reporting periods or discharges occurring during fiscal year 1990. SCHs remain exempt from reductions in capital-related payments; exempts high disproportionate share hospitals eligible for periodic interim payments (PIP) (hospitals with an add-on of 5.1 percent or more in fiscal year 1987) from reductions in capital-related payments.

*(b) Study of effects of capital-related payments on hospital costs.*—No provision.

*Effective date*

Enactment.

*Conference agreement*

*(a) Reduction in payments for fiscal year 1990.*—The conference agreement includes the House provision.

*(b) Study of effects of capital-related payments on hospital costs.*—The conference agreement does not include the House provision.

*2. Prospective Payment Hospitals*

Section 10102 of the House bill; sections 5101 and 5102 of the Senate amendment.

*Present Law*

*(a) Reduction in hospital update factors.*—PPS payment rates are updated each year by the use of an "update factor." For FY 1988 and FY 1989, separate update factors have applied to hospitals according to location (large urban, rural, or other urban). Current law would end this distinction after FY 1989. For discharges occurring in FY 1990 and thereafter, the Secretary is required to increase the PPS payment rates by the projected increase in the market basket index, which measures changes in the costs of goods and services purchased by hospitals.

*(b) Annual recalibration of DRG weights on a budget neutral basis.*—The Secretary is required to adjust the DRG definitions and weighting factors each year beginning in FY 1988, to reflect changes in treatment patterns, technology, and other factors affecting the relative use of hospital resources. The payment rate for each DRG consists of a base payment amount for all DRGs, and a relative weighting factor for the particular DRG. The base payment amount is intended to represent the cost of a typical (average) Medicare inpatient case. The relative weighting factor represents the relative costliness of an average case in the particular DRG compared to the cost of the overall average Medicare case.

*(c) Increase in disproportionate share adjustment.*—P.L. 99-272 provided an additional payment to hospitals that serve a disproportionate share of low-income patients from May 1, 1986 to October 1, 1989. P.L. 100-647 extended the provision of such payments until September 30, 1995. The disproportionate patient percentage is defined as the hospital's total number of inpatient days attributable to Medicare beneficiaries who receive Supplemental Security Income (SSI) benefits divided by the total number of Medicare patient days, plus the number of Medicaid patient days divided by the total patient days, times 100.

Urban PPS hospitals with 100 or more beds and rural hospitals with 500 or more beds having a disproportionate patient percentage of at least 15 percent, receive an increase in PPS payments of 2.5 percent, plus 0.5 percentage points for each 1.0 percentage points by which the hospital's disproportionate patient percentage exceeds 15 percent, not to exceed a 15 percent adjustment. Urban hospitals with fewer than 100 beds and with a disproportionate patient percentage of at least 40 percent receive a payment adjustment of 5 percent. Rural hospitals with fewer than 500 beds and a disproportionate patient percentage of at least 45 percent receive a payment adjustment of 4 percent.

Urban hospitals with 100 or more beds that demonstrate that more than 30 percent of their revenues are derived from State and local government payments for indigent care (excluding payments from Medicare and Medicaid) receive a disproportionate share adjustment of 25 percent.

*(d) Increase in update factor for rural hospitals.*—See item (a) above.

*(e) 3-year extension of regional referral center classification.*—Rural hospitals meeting certain criteria may be classified as regional referral centers. Referral centers are paid according to the payment rates for "other" urban areas, rather than the rural rates, adjusted by the hospital's area wage index. The Secretary reviews the status of each referral center every 3 years to determine whether the hospital continues to meet the applicable criteria. OBRA 86 provided that certain hospitals classified as rural referral centers on October 21, 1986, would retain this status through cost reporting periods beginning before October 1, 1989.

*(f) Criteria and payment for sole community hospitals.*—Sole community hospitals (SCHs) are hospitals that are the sole source of inpatient services reasonably available in a geographic area due to factors such as isolated location, weather conditions, travel conditions, or the absence of other hospitals.

Payment to an SCH is equal to the sum of 25 percent of the Federal DRG rates for the census region in which the SCH is located and 75 percent of a target amount per discharge. The target amount is based on the SCH's costs per case during its cost reporting period beginning in FY 1982, updated to the current year by the update factors used for rural PPS rates.

For cost reporting periods beginning before October 1, 1990, a SCH may request additional payments if it experiences a decrease of more than 5 percent in its total inpatient discharges due to circumstances beyond its control. A hospital may receive such payments if it meets SCH criteria but is not being paid as a SCH; the total amount paid to such hospitals cannot exceed $5 million in FY 1988 and $10 million in FY 1989.

A SCH which experiences, in any cost reporting period after the cost reporting period which was used as the base for determining the target amount for payments for the hospital, a significant increase in operating costs attributable to the addition of new inpatient facilities or services, is provided with an adjustment to the payment amounts for such cost reporting period and subsequent cost reporting periods necessary to compensate such hospital for such increased costs.

*(g) Geographic classification of hospitals.*—A hospital is classified as urban if it is located within an area classified as a Metropolitan Statistical Area (MSA). OBRA 87 provided for the reclassification of a rural hospital as urban if the county in which the hospital is located is adjacent to two or more MSAs, meets certain other criteria, and meets criteria regarding commuting of its employees from the adjacent rural area to the MSAs. The Secretary has no discretion to modify the definition of urban and rural areas, although current law allows the Secretary the discretion to establish geographic areas for adjusting differentials in wage index levels.

If treating a hospital located in a rural county as being located in an urban area reduces the wage index for that urban area, the Secretary is required to calculate and apply a wage index separately to hospitals located in such urban area (excluding the reclassified hospital). If treating hospitals located in rural counties as not being located in the rural area in a State reduces the wage index for that rural area, the Secretary is required to calculate and apply a wage index as if the hospitals had not been excluded from that rural area. Both adjustments apply only for discharges in FY 1990 and FY 1991.

The Secretary is required to make proportional adjustments in payment rates for urban hospitals to assure that the OBRA 87 provisions do not result in aggregate PPS payments that are greater or less than would otherwise be made, and is further required to adjust payment rates for rural hospitals to ensure that aggregate payments to rural hospitals are not changed by the provisions.

*(h) Essential access community hospital demonstration program.—*

*(1) Establishment of the program.*—No provision.

*(2) Rural health care transition grants.*—OBRA 87 authorized appropriations from the Medicare Part A Trust Fund of $15 million a year for FY 1989 and 1990 for the Rural Transition Grant Program, which supports grants to private not-for-profit rural hospitals of up to $50,000 per year for up to two years for strengthening the financial and managerial ability of isolated and financially distressed rural hospitals. An application for a grant is submitted to the State Governor and is then forwarded, with the Governor's comments, to HCFA. No more than one-third of any grant may be spent for capital-related costs.

*(3) Treatment of EACHs as sole community hospitals.*—No provision.

*(4) Coverage of, and payment for, inpatient rural primary care hospital services.*—No provision.

*(5) Avoiding duplicative payments to hospitals participating in rural demonstration programs.*—No provision.

*(i) Study of differences in standardized amounts under the prospective payment system.*—The standardized amounts, which form the basis for DRG payment rates, are different for hospitals in large urban, other urban, and rural areas.

*(j) Uniform reporting requirements for certain hospitals.*—OBRA 87 directed the Secretary to develop a uniform hospital reporting demonstration project in two states (the Secretary selected California and Colorado). In those states, hospitals are required

to report hospital statistical and cost information using a uniform reporting format developed by the Secretary.

*(k) Reduction in indirect medical education payments.*—Under PPS, hospitals receive additional payments to compensate for the indirect costs associated with the presence of approved graduate medical education programs (residency training). Indirect costs may be due to factors such as extra demands placed on the hospital staff by the teaching activity, or additional tests and procedures that may be ordered by residents. Additional payment to teaching hospitals increases with increases in a hospital's ratio of interns and residents to bed size on a curvilinear basis, adding an average discharge adjustment of 7.65 percent for each 0.1 percent increase in the hospital's ratio of interns and residents to beds. The adjustment is scheduled to increase to 8.29 percent in FY 1996, when the disproportionate share adjustment is scheduled to expire.

*House bill*

*(a) Reduction in hospital update factors.*—Provides the following update factors for discharges occurring during FY 1990: for hospitals in rural areas, the market basket increase minus 0.75 percentage points, for hospitals in large urban areas, the market basket increase minus 1.25 percentage points, and for hospitals in other urban areas, the market basket increase minus 1.75 percentage points. (Item (d), below, changes the factor for rural hospitals to the market basket increase plus 2.0 percentage points.) Beginning in FY 1991, the update factor will be equal to the market basket increase.

*(b) Annual recalibration of DRG weights on a budget neutral basis.*—Requires the Secretary to recalibrate DRG weights for discharges in a fiscal year, beginning with fiscal year 1990, in a manner that does not increase or decrease aggregate PPS payments that would have been made if the DRG weights had not been adjusted.

*(c) Increase in disproportionate share adjustment.*—For urban hospitals with 100 or more beds and rural hospitals with 500 or more beds, increases the disproportionate share adjustment from 0.5 percentage points to 0.6 percentage points for each 1.0 percent by which the hospital's disproportionate patient percentage exceeds 15 percent. For hospitals with a disproportionate patient percentage of over 20.2, the disproportionate share adjustment is further increased to 0.7 percentage points for each 1.0 percent by which the hospital's disproportionate patient percentage exceeds 20.2 percent.

For rural referral centers (see item (e), below) with a disproportionate patient percentage greater than 45 percent, provides a payment adjustment of 4 percent plus 0.6 percentage points for each 1.0 percent by which the hospital's disproportionate patient percentage exceeds 45 percent. For a rural referral center with a disproportionate patient percentage greater than 50.2 percent, further increases the adjustment to 0.7 percentage points for each 1.0 percent by which its disproportionate patient percentage exceeds 50.2 percent.

For hospitals receiving disproportionate share adjustments based on revenue for indigent care from State and local government, provides a disproportionate share adjustment of 30 percent.

*(d) Increase in update factor for rural hospitals.*—Amends the update factor for rural hospitals established by item (a) above to equal the projected increase in the market basket index plus 2.0 percentage points.

*(e) 3-year extension of regional referral center classification.*—Extends the classification of regional referral center for all hospitals designated as such on the date of enactment of OBRA 86 (October 21, 1986) through cost reporting periods beginning before October 1, 1992.

*(f) Criteria and payment for sole community hospitals.*—Defines an SCH as any hospital that the Secretary determines is located more than 35 road miles from another hospital. Hospitals classified as SCHs on the date of enactment that do not meet the new criterion for classification as an SCH may continue to be so classified, but would be paid under the SCH payment provisions in effect prior to enactment.

Provides that payments to SCHs meeting the new criteria are to be determined on a prospective basis for cost reporting periods beginning on or after October 1, 1989, with payments equal to the higher of 100 percent of the SCH's target amount or the applicable PPS rates. Target amounts would be based on the SCH's costs during its cost reporting period beginning in FY 1982 or FY 1987, depending on which, after updating to the current period, produces the higher target amount.

Makes permanent the adjustment provided for SCHs experiencing a decrease of more than 5 percent in a hospital's total number of inpatient cases due to circumstances beyond its control.

Eliminates the adjustment provided for SCHs experiencing a significant increase in operating costs due to the addition of new inpatient facilities or services.

*(g) Geographic classification of hospitals.*—Requires the Secretary to establish a procedure for hospitals to submit an application requesting a change in the classification of the county in which the hospital is located from rural to urban, or from one urban area to another urban area, or requesting a change in the wage index for the county where the hospital is located. Requires the Secretary to publish instructions for application by hospitals for reclassification within six months of enactment, and approve or disapprove applications within 12 months after receipt from the hospital.

For counties reclassified as a result of the new procedure, provides for adjustments in wage indexes as follows. If reclassifying a county from rural to urban or reclassifying an urban county from one urban area to another urban area reduces the wage index for the area to which the county is reclassified by more than 2 percentage points, the Secretary is required to recalculate and apply separate wage indexes to the other counties located in the area and to the counties that are reclassified. If reclassifying a rural county as not being located in a rural area or reclassifying an urban county from one urban area to another reduces the wage index for the rural area or for other counties located in that urban area, the Secretary is required to calculate and apply the wage index as if the hospitals so reclassified had not been excluded from the calculation of the wage index for the area.

For hospitals reclassified under the OBRA 87 rules, retains the current provisions for adjustment of wage indexes, but provides that the adjustment of an urban area's wage index will apply only if the reclassification of a rural county into that area would reduce its wage index by more than 2 percentage points. (The adjustment provisions for these hospitals continue to apply only to discharges in FY 1990 and 1991; the provisions for hospitals reclassified under the new procedure are permanent.)

Requires the Secretary to make a proportional adjustment in the standardized payment amounts for hospitals located in an urban or rural area to assure that the provisions for reclassification of areas under the new application procedure do not result in aggregate PPS payments that are greater or less than those that would otherwise be made.

Establishes a floor for area wage indices so that the reclassification of hospitals under either the new procedure or the OBRA 87 rules cannot result in the reduction of any county's wage index below the wage index level for other rural areas within the same State.

*(h) Essential access community hospital demonstration program.*—

*(1) Establishment of the program.*—Requires the Secretary to establish an Essential Access Community Hospital (EACH) demonstration program providing grants to up to 10 states. Provides for grants to hospitals and facilities (or consortia of hospitals and facilities) located in States receiving grants for the costs of converting and developing facilities in accordance with the program's requirements. Requires the Secretary to designate hospitals and facilities located in States receiving grants as essential access community hospitals (EACHs) or rural primary care hospitals (RPCHs).

Requires a State grant application to contain assurances that the State is developing or has developed a rural health care plan, in consultation with the State hospital association and rural hospitals, that provides for the creation of one or more rural health networks, promotes regionalization of rural health services in the State, improves access to hospital and other health services for rural residents, and enhances the provision of emergency and other transportation services related to health care. States must designate or be in the process of designating rural non-profit or public hospitals or facilities as EACHs or RPCHs within such networks.

Provides that a hospital or other health facility is eligible to receive grants if it is located in a State receiving a grant and is designated as an EACH or RPCH, or is a member of a rural health network. The hospital must file an application with the State and the Secretary, and the State must certify that the receipt of such a grant by the hospital or facility is consistent with the State's rural health care plan. A consortium of hospitals or facilities each of which is part of the same rural health network is eligible to receive a grant if each member would be individually eligible to receive a grant.

Permits States to use grants to plan and implement a rural health care plan and rural health network, designate hospitals or facilities as EACHs or RPCHs, and develop and support communication and emergency transportation systems. Grants to hospitals or health facilities can be used to finance the costs of converting to a rural primary care hospital or becoming part of a rural health network, including capital costs, costs incurred in the development of necessary communications systems, and costs incurred in the development of an emergency transportation system. A consortium can use a grant to finance the costs it incurs in converting hospitals or facilities that are part of the consortium into rural primary

care hospitals or in developing and implementing a rural health network.

Provides that a State may designate a hospital as an EACH facility if it is located in a rural area, is more than 35 miles from any hospital designated as an EACH or a rural referral center, has at least 75 beds or is located more than 35 miles from any other hospital. An EACH must also agree to provide emergency and medical backup services to RPCHs participating in the rural health network of which the EACH is a member, provide staff privileges to RPCH physicians, and accept patients transferred from RPCHs.

Provides that a State may designate a facility as an RPCH only if the facility is located in a rural area, is in compliance with Medicare conditions of participation at the time it applies, and agrees to cease providing inpatient care except as specified below. An RPCH must also participate in the network's communication and data sharing systems, provide 24-hour emergency care, and have no more than 6 inpatient beds for providing temporary inpatient care for periods of 72 hours or less to patients requiring stabilization before discharge or transfer to another hospital. An RPCH is required to meet the staffing requirements of other rural hospitals, but need not meet standards for hours or days of operation, as long as it meets the requirement to provide 24-hour emergency care. Services of a dietician, pharmacist, laboratory technician, medical technologist, or radiological technologist may be furnished on a part-time, off-site basis, and required inpatient care may be provided by a physician's assistant or nurse practitioner, subject to oversight of a physician. An RPCH is required to maintain clinical records on all patients, make arrangements with one or more hospitals for the referral and admission of patients requiring services not available at the RPCH, have a physician, physician assistant or nurse practitioner available to provide services, provide routine diagnostic services, dispense drugs and biologicals in compliance with State and Federal law, have appropriate procedures for review of utilization of clinic services, and meet any other requirements the Secretary may determine are necessary.

Requires States to give preference to hospitals or facilities that are participating in a rural health network when designating facilities as rural primary care hospitals. Defines a rural health network as an organization consisting of at least one hospital that is an EACH, is a rural referral center, or is located in an urban area and meets the criteria for classification as a regional referral center, and at least one facility that is an RPCH. Requires members of a rural health network to have entered into agreements regarding patient referral and transfer, the development and use of communications systems, including (where feasible) telemetry systems and systems for electronic sharing of patient data, and the provision of emergency and non-emergency transportation among the members of the network.

Limits grants to a hospital or facility to $200,000.

Requires the Secretary to designate a hospital as an EACH if the hospital is located in a State receiving a grant, has been designated by the State as an EACH, and meets other criteria as the Secretary may require. Permits the Secretary to designate a hospital as an EACH if it would have been so designated by the State but for the fact that it has fewer than 75 beds or is within 35 miles of another hospital.

Requires the Secretary to designate a hospital as a rural primary care hospital if the facility is located in a State receiving a grant, is designated as a rural primary care hospital by the State, and meets such other criteria as the Secretary requires. A facility that is not eligible for designation as a rural primary care hospital solely because it is not designated as a rural primary care hospital by the State, may be so designated by the Secretary if it was not designated as a rural primary care hospital by the State solely because of its failure to meet one of the following criteria: ceasing or agreeing to cease providing inpatient care; providing not more than 6 inpatient beds for care not to exceed 72-hours to patients requiring stabilization; or, meeting minimum staffing requirements.

Authorizes appropriations from the Hospital Insurance Trust Fund of $15 million a year for grants to States and $15 million a year for grants to hospitals, facilities and consortia for FY 1990, 1991, and 1992.

*(2) Rural health care transition grants.*—Provides that hospitals receiving grants on or after October 1, 1989 under the Rural Health Care Transition Program may use the grant to develop a plan for converting to a RPCH or to develop a rural health network if located in a State receiving an EACH grant. Waives the capital expenditure limit when a grant is used for this purpose. Provides that a grant application is to be submitted directly to HCFA, with a copy to the State Governor for comment. Authorizes the appropriation of $10 million a year from the Hospital Insurance Trust Fund for grants to hospitals for FY 1990, 1991, and 1992.

*(3) Treatment of EACHs as sole community hospitals.*—Provides that a hospital designated by the Secretary as an EACH is to be treated as a sole community hospital for payment purposes. Provides that, if an EACH incurs increases in reasonable costs during a cost reporting period and will incur such increases in subsequent cost reporting periods as a result of becoming a member of a rural health network, the hospital's target amount will be increased to account for the increased costs.

*(4) Coverage of, and payment for, inpatient rural primary care hospital services.*—Includes inpatient RPCH services as a covered service under Part A of Medicare. Defines these services as inpatient services provided by a designated RPCHs that would be inpatient hospital services if provided by a hospital. Provides that payment maybe made only if a physician certifies that inpatient RPCH services were required to be immediately furnished on a temporary, inpatient basis.

Makes conforming amendments relating to development of conditions of participation for RPCHs and use of State licensing agencies or national accrediting bodies to determine RPCH compliance.

Provides that payment for inpatient RPCH services in the first 12-month cost reporting period of operation is the reasonable costs of the facility in providing such services determined on a per diem basis. Payment for later reporting periods is the per diem payment amount for the preceding 12-month cost reporting period, increased by the PPS update factor for rural hospitals. Requires the Secretary to develop a prospective payment system for inpatient rural primary care hospital services on or after January 1, 1993.

*(5) Avoiding duplicative payments to hospitals participating in rural demonstration programs.*—Requires the Secretary to reduce payment amounts to hospitals and RPCHs participating in EACH demonstrations to the extent necessary to avoid duplication of any payment made under demonstration grants or the Rural Health Care Transition Grant Program.

*(i) Study of Differences in Standardized Amounts Under the Prospective Payment System.*—Requires the Secretary to report to the House Committee on Ways and Means, Senate Committee on Finance, and Prospective Payment Assessment Commission (ProPAC) by October 1, 1990, on the results of a study analyzing the current differences in the standardized amounts under PPS among large urban, other urban, and rural areas, and evaluating whether the differences in the amounts could be eliminated by expanding or revising the current method used to determine or update such amounts.

The report is required to include recommendations regarding the establishment of a single national rate for PPS hospitals, the need for appropriate adjustments in payment rates to reflect severity of illness among patients classified in the same DRG or to reflect other differences in costs within a DRG, and other adjustments the Secretary deems appropriate.

Requires ProPAC to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance by April 1, 1991, evaluating the Secretary's recommendations.

*(j) Uniform reporting requirements for certain hospitals.*—Requires hospitals receiving disproportionate share adjustments, regional referral centers, sole community providers, and EACH facilities to report statistics and cost information using the uniform reporting format developed by the Secretary in the hospital reporting demonstration project created by OBRA 87.

*(k) Reduction in indirect medical education payments.*—No provision.

*Effective date*

(a), (b), (d), (e), (h), (i) enactment; (c) applies to discharges occurring on or after October 1, 1989; (f), (j) apply to cost reporting periods beginning on or after October 1, 1989; (g) is effective on enactment, except that the provision establishing a floor for area wage indices applies to payments for discharges occurring on or after October 1, 1989.

*Senate amendment*

*(a) Reduction in hospital update factors.*—*Section 5101.*—Provides the following update factors for discharges occurring during FY 1990: for hospitals in rural areas, the market basket increase plus 3.0 percentage points, for hospitals in large urban areas, the market basket increase minus 0.7 percentage points, for hospitals in other urban areas, the market basket minus 1.4 percentage points.

*(b) Annual recalibration of DRG weights on a budget neutral basis.*—No provision.

*(c) Increase in disproportionate share adjustment.*—No provision.

*(d) Increase in update factor for rural hospitals.*—Increases update factor for rural hospitals to equal the projected increase in the market basket index plus 3.0 percentage points; see item (a) above.

*(e) 3-year extension of regional referral center classification.*—No provision.

*(f) Criteria and payment for sole community hospitals.*—No provision.

*(g) Geographic classification of hospitals.*—No provision.

*(h) Essential access community hospital demonstration Program.*—No provision.

*(i) Study of differences in standardized amounts under the prospective payment system.*—No provision.

*(j) Uniform reporting requirements for certain hospitals.*—No provision.

*(k) Reduction in indirect medical education payments.*—Reduces the indirect medical education adjustment for FY90 to an average of 7.1 percent for each 0.1 percent increase in the hospital's ratio of interns and residents.

*Effective date*

(a) Enactment. (k) applies to payments for discharges occurring on or after October 1, 1989.

*Conference agreement*

*(a) Changes in hospital update factors.*—The conference agreement continues, for all Part A services, the reductions in payment imposed under the sequester order of October 16, 1989, pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) through December 31, 1989. The agreement provides that no additional reduction in payments under Part A would occur as a result of a new sequester order under Title 11 of the Act. This would be accomplished by increasing payments under Part A to providers for items or services provided on or after January 1, 1990 by a percentage amount (1.42%) equal to the amount of the reduction imposed pursuant to an order under Title 11 for those providers affected by the order.

The agreement provides the following update factors for discharges occurring on or after January 1, 1990, and before October 1, 1990: for hospitals in rural areas, the market basket increase plus 4.22 percent; for hospitals in large urban areas, the market basket increase plus 0.12 percent; for hospitals in other urban areas, the market basket increase minus 0.53 percent. For the purpose of computing payment rates for FY 1991 and later years, the update factors for FY 1990 will be deemed to have been those in effect beginning January 1, 1990.

The agreement provides for a PPS passthrough payment for the costs of administering blood clotting factors to individuals with hemophilia.

The Prospective Payment Assessment Commission is required to include as part of its June 1, 1990 report to Congress a study of the appropriateness of making an adjustment to the methodology for determining PPS payments for hospitals with a high proportion of Medicare discharges. The conferees also request that ProPAC include in its June 1 report an analysis of the financial status of high case mix hospitals, with special attention devoted to capital investment in these hospitals as compared with other hospitals.

*(b) Annual recalibration of DRG weights on a budget neutral basis.*—The conference agreement requires the Secretary to reduce the weighting factor for each DRG by 1.22 percent for discharges in FY 1990. As a result of this provision and the update factors, the net update in PPS payment rates effective January 1, 1990, will be as follows: for hospitals in rural areas, the market basket increase plus 3.0 percent; for hospitals in large urban areas, the market basket increase minus 1.1 percent; for hospitals in other areas, the market basket increase minus 1.75 percent. The provision prohibits Secretary of HHS from adjusting DRG weighting factors on other than a budget neutral basis effective in FY 91.

*(c) Increase in disproportionate share adjustment.*—The conference agreement includes the House provision, with amendments. The increase in the disproportionate share adjustment for urban hospitals with more than 100 beds and a disproportionate patient percentage of over 20.2 percent is set at 0.65 percentage points for each 1.0 percent by which the hospital's disproportionate patient percentage exceeds 20.2 percent. For rural hospitals with more than 10 beds and hospitals classified as sole community hospitals, the disproportionate patient percentage required to qualify for a payment adjustment is reduced to 30 percent. For sole community hospitals the amount of the payment adjustment is increased to 10 percent. The formula for rural referral centers is (P-30) (.6)+4.0. Hospitals that are classified as both sole community and rural referral centers will receive the higher of the applicable adjustments. The changes are effective for discharges occurring on or after April 1, 1990.

*(d) Increase in update factor for rural hospitals.*—See (a) above.

*(e) 3-year extension of regional referral center classification.*—The conference agreement includes the House provision, with an amendment to provide that the extension applies to all hospitals classified as regional referral centers as of September 30, 1989, including those so classified as a result of OBRA 1986.

*(f) Criteria and payment for sole community hospitals.*—The conference agreement includes the House provision, with amendments. The Secretary retains the authority to classify as an SCH a hospital that is fewer than 35 miles from another hospital but that meets other criteria established by the Secretary. The Secretary is required to develop and promulgate new criteria based on travel time. The new payment provisions established for SCHs that are more than 35 miles from another hospital are extended to apply to all SCHs. The hospital receives the higher of three rates as the basis for reimbursement: a target amount based on the hospital's 1982 costs, a target amount based on the hospital's 1987 costs, or the Federal PPS rate. The provisions apply to cost reporting periods beginning on or after April 1, 1990.

The agreement also applies the new payment provisions to rural hospitals that are not SCHs, but that have 100 or fewer beds and depend on Medicare for at least 60 percent of their patient days or discharges. for these hospitals, the payment provisions apply only to cost reporting periods beginning on or after April 1, 1990, and ending on or before March 31, 1993. These hospitals will also be eligible for the volume adjustment provided for SCHs. Eligibility for this provision will be determined based on data from cost reports beginning in fiscal year 1987.

The agreement also requires the Prospective Payment Assessment Commission (ProPAC) to study and report on the feasibility of returning small rural hospitals to cost-based reimbursement, developing alternative measures of market share for use in classifying sole community hospitals, and the feasibility of applying a volume adjustment to the payment of small rural hospitals.

*(g) Geographic classification of hospitals.*—The conference agreement includes the House provision with amendments to provide for a board to review and modify the geographic status of hospitals. The provision also amends the provisions for adjustment of wage indexes and standardized amounts to allow for the reclassification of hospitals under OBRA 1987, to provide that if the addition of hospitals located in a rural county to an urban area reduced the wage index for the urban area by more than one percentage point, the rural county would be treated as if it were a separate urban area. If the addition of the rural county to the urban area reduced the wage index of the urban area by less than one percentage point, the calculation of the wage index for the combined area would exclude the wage costs of the rural county. The amendment also provides that the wage index for a rural county affected by this provision could not be less than the rural wage index for the state in which the county was located. The amendment applies to discharges on or after April 1, 1990. The adjustments made by this section would be required to be made on a budget neutral basis.

The agreement further requires that the Secretary update the area wage index annually, beginning in FY 1993. Such updates will be budget neutral.

The agreement also provides for additional payment to hospitals adversely affected by errors in the computation of the area wage index resulting from erroneous data submitted by hospitals in response to the 1984 HCFA wage survey. A hospital will be eligible for the additional payment if it was not one of the hospitals that submitted erroneous data, and if correction of the error results in an adjustment of the wage index of at least 3 percentage points. Additional payment is available only for discharges during periods when the erroneously determined wage index was in effect.

*(h) Essential Access Community Hospital Demonstration Program.*—The conference agreement follows the House bill with amendments to reduce the number of grants to states to seven and reduce the authorization for grants to states to $10 million. The authorization for rural health care transition grants is increased to $25 million and telecommunications projects are added as a purpose for which grants may be awarded. The provision also authorizes the Secretary to designate up to 15 facilities as Rural Primary Care Hospitals in States which do not participate in the EACH program. In designating this group of facilities, the Secretary may waive the requirements that restrict the provision of inpatient care. The Secretary is further authorized to waive any provisions of Part A of Medicare in order to further the purposes of the program.

The conferees wish to clarify with respect to the rural health care transition grant program that the Secretary is authorized to set priorities among the several uses for grant funds authorized by law.

*(i) Study of differences in standardized amounts under the prospective payment system.*—The conference agreement includes the House provision with an amendment to require the Secretary to develop a legislative proposal regarding elimination of separate standardized amounts for rural, other urban, and large urban hospitals.

*(j) Uniform reporting requirements for certain hospitals.*—The conference agreement does not include the House provision.

*(k) Reduction in indirect medical education payments.*—The conference agreement does not include the Senate amendment.

*3. PPS-Exempt Hospitals*

Section 10103 of the House bill.

*Present law*

*(a) Exemption of cancer hospitals from prospective payment system.*—The Secretary is authorized to provide for exceptions or adjustments in PPS for hospitals extensively involved in treatment for and research on cancer. Currently, hospitals so designated may elect to be paid on a reasonable cost basis. However, they are treated similarly to PPS hospitals for purposes of periodic interim payments (PIP) and for capital-related payments.

*(b) Rebasing for certain non-PPS hospitals.*—PPS-exempt hospitals are reimbursed using a system of target amounts which are defined as the hospital's base-year costs inflated by a rate of increase limit. Hospitals below the target amount receive a bonus. The current base year for determining target amounts is generally cost reporting periods beginning in FY 1982.

*(c) Publication of instructions relating to exceptions and adjustments in target amounts.*—The Secretary is directed to provide an exemption from, or an exception and adjustment to a hospital's target rate if events beyond the hospital's control, or extraordinary circumstances, including changes in case mix, cause a distortion in the hospital's base year costs or annual cost increases.

*House bill*

*(a) Exemption of cancer hospitals from prospective payment system.*—Exempts from PPS hospitals classified before December 31, 1990, as extensively involved in treatment for or research on cancer.

*(b) Rebasing for certain non-PPS hospitals.*—Amends the base year for determining target amounts for cancer hospitals to be cost reporting periods beginning in FY 1987, unless the use of a 1982 base and the intervening updates between 1983 and 1987 creates a higher target amount. The higher target amount will be used as the base.

*(c) Publication of instructions relating to exceptions and adjustments in target amounts.*—Requires the Secretary to publish instructions within 180 days after enactment specifying the application process to be used in providing exceptions and adjustments in target amounts for hospitals.

*Effective date*

(a) applies to cost reporting periods beginning on or after October 1, 1989, in the case of hospitals already classified as cancer hospitals on the date of enactment. For such hospitals, changes in capital reimbursement apply to portions of cost reporting periods or discharges occurring during and after FY 1987; eligibility for PIP is effective 30 days after enactment. For hospitals classified as cancer hospitals after enactment, the provisions apply to cost reporting periods beginning on or after the date of such classification. (b) applies to cost reporting periods beginning on or after October 1, 1989. (c) Enactment.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Exemption of cancer hospitals from prospective payment system.*—The conference agreement includes the House provision, with an amendment. An exemption is also provided for any hospital classified as a cancer hospital before December 31, 1991, that is located in a State that has a PPS waiver under section 1814(b) as of the date of enactment.

*(b) Rebasing for certain non-PPS hospitals.*—The conference agreement includes the House provision, except that the changes apply to cost reporting periods beginning on or after April 1, 1989.

*(c) Publication of instructions relating to exceptions and adjustments in target amounts.*—The conference agreement includes the House provision with an amendment to authorize the Secretary to determine a hospital's target amount using a new base year.

*4. Payments for Hospice Care*

Section 10111 of House bill.

*Present Law*

Medicare Part A beneficiaries, who are certified as terminally ill by a physician within 2 days after their care is initiated, may elect to receive hospice benefits, in lieu of certain other Medicare covered services. Beneficiaries electing hospice are entitled to receive hospice services for two 90-day periods and one subsequent 30-day period, and another period beyond this total of 210 days of coverage so long as the beneficiary's physician or hospice medical director recertifies that the beneficiary is still terminally ill.

In implementing the hospice benefit, HHS established a prospective payment system for hospice care. Under this payment system, hospices are paid one of four predetermined rates for each day a Medicare beneficiary is under the care of the hospice. The rates vary according to the level of care furnished to the beneficiary. The rates are as follows: (1) routine home care—$63.17; (2) continuous home care—up to $368.67; (3) inpatient respite care day—$65.33; and (4) general inpatient care—$281.00.

These rates were increased to their present levels in 1986 by COBRA of 1985, P.L. 99-272. At that time, COBRA increased each of the four payment rates by $10 a day. COBRA also provided the Secretary of HHS an additional year (until October 1, 1986) for the first annual review and adjustment of hospice payment rates.

*House Bill*

*(a) Increase in current rates.*—Increases hospice payment rates by 20 percent effective October 1, 1989, and requires that payment rates be increased in subsequent fiscal years by increases in the hospital market basket.

*(b) Study of methods to compensate hospices for high-cost care.*—Requires the Secretary of HHS to conduct a study of high-cost hospice care provided to Medicare beneficiaries and to evaluate the ability of hospice programs participating in Medicare to provide this care. Based on this study, also requires the Secretary to develop methods to compensate hospices for high-cost care provided to Medicare beneficiaries. Requires the Secretary to report on the study and any recommendations for compensating hospice for high-cost care by October 1, 1990.

*Effective date*

Enactment.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Increase in current rates.*—The conference agreement includes the House provision, with an amendment. The requirement that persons be certified as terminally ill within 2 days after hospice care is initiated is amended to specify that certification occur not later than 8 days after care is initiated, if verbal certification is provided within 2 days. The provisions are effective for care and services furnished on or after January 1, 1990.

*(b) Study of methods to compensate hospices for high-cost care.*—The conference agreement includes the House provision.

*5. Miscellaneous Technical Provisions Relating to Part A*

Section 10112 of the House bill.

*Present law*

*(a) Hospital obligations with respect to treatment of emergency medical conditions and indigent care.*— As a condition of participation in Medicare, hospitals are required to comply, to the extent applicable, with requirements relating to the examination and treatment for emergency medical conditions and women in active labor. Hospitals are currently not required to inform patients of these obligations.

When transferring patients, hospitals are required to provide to the receiving facility the appropriate medical records (or copies of them) of the examination and treatment provided at the transferring hospital.

Medicare participating hospitals are not required to participate in the Medicaid program, nor inform patients if they participate in the Medicaid program.

The Prospective Payment Assessment Commission is required by law to collect and assess information on various aspects of health care. There is no requirement in current law that the Prospective Payment Assessment Commission determine the amount of uncompensated care provided by hospitals.

*(b) Medicare buy-in for continued benefits for disabled individuals.*—Social Security Disability Insurance (SSDI) beneficiaries who return to work, but do not medically recover, stop receiving cash benefits after a twelve month period, and stop receiving Medicare benefits after an additional thirty-six months of extended eligibility are exhausted.

*(c) Release and use of hospital accreditation surveys.*—A hospital may be deemed to meet Medicare's participation requirements if it is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). HCFA performs validation surveys of JCAHO approved hospitals on a sample basis or if allegations about quality problems at a specific hospital are made. A hospital must agree to authorize JCAHO to release a copy of the hospital's most current accreditation survey if the hospital is the subject of a validation survey by HCFA. The Secretary is prohibited from disclosing any accreditation survey made and released by JCAHO.

If the Secretary finds that a hospital has serious deficiencies in quality or safety following a validation survey, the hospital may no longer be deemed to meet Medicare's participation requirements and removed from the program.

*(d) Intermediate sanctions for psychiatric hospitals.*—Current law provides for intermediate sanctions to be imposed on skilled nursing facilities that fail to meet the requirements for participation, but has no such provisions for inpatient psychiatric hospitals.

*(e) Medical necessity certification of extended care services by nurse practitioners and clinical nurse specialists.*—Medicare specifies that payment for skilled nursing facility (SNF) care can be made only if a physician certifies (and recertifies where care is provided over a period of time) that an individual needs, on a daily basis, skilled nursing care or other skilled rehabilitation services that can only be provided in a SNF.

*(f) Eligibility of merged or consolidated hospitals for periodic interim payments.*—A PPS hospital may generally receive periodic interim payments (PIP) only if the hospital had a disproportionate share adjustment percentage of at least 5.1 during FY 1987 or was a rural hospital with less than 100 beds, and was receiving PIP as of June 30, 1987.

*(g) Extension of waiver for Finger Lakes Area Hospitals corporation.*—The Secretary may provide that payment with respect to services provided by a hospital in a State may be made in accordance with a hospital reimbursement control system in a State, rather than under Medicare's reimbursement system.

For State reimbursement systems approved by the Secretary prior to the enactment of the Social Security Amendments of 1983, the Secretary is required to continue to use the State system if the State so requests and, for the first three cost reporting periods beginning on or after October 1, 1983, the increase in payments for hospital inpatient care under the State system does not exceed the increase under the national system. After the three year period, the Secretary may choose to evaluate the State system based on whether, during 36-month periods, the amount of payments to hospitals under the State system will not exceed those which would have been made under Medicare's reimbursement system.

Currently, Maryland and New York have such waivers, although the New York waiver covers only the four counties participating in the Finger Lakes Area Hospitals Corporation (FLAHC) rural hospital payment demonstration.

*(h) Clarification of continuation of August 1987 hospital bad debt recognition policy.*—Under current regulations the Medicare program makes payments to hospitals to reimburse hospitals for Medicare bad debt, defined as unrecovered costs associated with unpaid Medicare deductible and coinsurance. The bad debt must be related to covered services furnished to a Medicare beneficiary in order to be considered bad debt and the hospital is required to meet certain collection criteria.

OBRA 87 directed the Secretary to continue payments for Medicare bad debt under policy in effect as of August 1, 1987. The Technical and Miscellaneous Revenue Act of 1988 further specified that criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency were among the elements of 1987 policy not subject to change.

*(i) Use of more recent data regarding routine service costs of skilled nursing facilities.*—Medicare law authorizes the Secretary of HHS to set limits on skilled nursing facility (SNF) routine service costs that will be recognized as reasonable and reimbursed under the program. The Secretary is required to establish separate per diem limits for freestanding and hospital-based SNFs as follows: For freestanding SNFs in urban and rural areas, the limits are set at 112 percent of the mean routine service costs of urban and rural freestanding facilities, respectively. Limits for urban and rural hospital-based facilities are set at the appropriate freestanding limit, plus 50 percent of the difference between the freestanding limit and 112 percent of the mean routine service costs for hospital-based facilities. An amount is added to the hospital-based facility limit to account for cost differences between hospital-based and freestanding SNFs that are attributable to excess overhead allocations resulting from Medicare reimbursement principles.

The current schedule of Medicare cost limits for SNFs is based on cost reports submitted by SNFs for cost reporting periods ending between October 1, 1982 and September 30, 1983.

*(j) Permitting dentist to serve as hospital medical director.*—Medicare regulations require as a condition of participation for hospitals that the responsibility for organization and conduct of the medical staff be assigned to a doctor of medicine or osteopathy.

*(k) GAO study of hospital-based and freestanding skilled nursing facilities.*—Medicare requires the Secretary of HHS to establish separate limits on the routine service costs of freestanding and hospital-based skilled nursing facilities (SNFs). For freestanding SNFs in urban and rural areas, the limits are set at 112 percent of the mean routine service costs of urban and rural freestanding facilities, respectively. Limits for urban and rural hospital-based facilities are set at the appropriate freestanding limit, plus 50 percent of the difference between the freestanding limit and 112 percent of the mean routine service costs for hospital-based facilities. An amount is added to the hospital-based facility limit to account for cost differences between hospital-based and freestanding SNFs that are attributable to excess overhead allocations resulting from Medicare reimbursement principles.

*House bill*

*(a) Hospital obligations with respect to treatment of emergency medical conditions and indigent care.*—

*(1) In general.*—Requires a hospital or rural primary care hospital participating in Medicare to: (a) adopt and enforce a policy to ensure compliance with requirements relating to the examination and treatment of emergency medical conditions and women in active labor; (b) maintain medical and other records related to individuals transferred to or from the hospital for a period of five years from the date of transfer; and (c) maintain a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition. Requires that each Medicare participating hospital post conspicuously in any emergency department a sign (in a form specified by the Secretary) specifying the rights of individuals to emergency treatment, and to post conspicuously (in a form specified by the Secretary) information indicating whether or not the hospital participates in Medicaid.

*(2) GAO survey.*—Requires the General Accounting Office to determine, through a survey or other appropriate means, for each hospital participating under the Medicare program, the hospital's policy regarding the treatment of individuals eligible for Medicaid benefits, and the percentage of the hospital's revenue attributable to Medicaid payments. Requires the Comptroller General to submit a report no later than one year after enactment to the House Ways and Means and Senate Finance Committees.

*(3) Determining uncompensated care.*—Requires that no later than one year after enactment, the Prospective Payment Assessment Commission develop a method for determining the amount of uncompensated care provided by a hospital and to submit a report describing such method to the House Ways and Means and Senate Finance Committees.

*Effective date*

(a)(1) is effective the first day of the first month that begins more than 180 days after enactment, without regard to whether implementing regulations have been promulgated by that date; (a) (2) and (3): enactment.

*(b) Medicare buy-in for continued benefits for disabled individuals.*—Provides disabled beneficiaries who are not yet 65 years old and continue to be disabled, and who are no longer entitled to benefits solely because of having earnings in excess of the amount permitted,' with the option of purchasing Medicare coverage after they have worked a full forty-eight months and have exhausted their extended period of Medicare eligibility.

Provides that an individual may only enroll during a 7-month enrollment period, that begins after an individual is notified that entitlement to benefits will end, or during a general annual enrollment period between January 1 and March 31 beginning in 1990. Entitlement to benefits begins based on when the individual becomes eligible to receive benefits and enrolls for such benefits. Entitlement is delayed for individuals enrolling after the first month in which they become eligible. An individual's coverage period continues until enrollment is terminated because the individual is no longer disabled, the individual files notice of no longer wishing to participate, the individual becomes otherwise eligible for hospital insurance coverage under Medicare, or the individual stops paying premiums. Permits the Secretary to establish a grace period before termination for non-payment.

Requires that premiums be paid as prescribed in regulations, and that premiums collected be deposited in the Treasury and credited to the Federal Hospital Insurance Trust Fund. Premiums are payable for the first month of an individual's enrollment and until the month of the individual's death or termination of an individual's coverage period. Requires the amount of monthly premiums to be the same as premiums charged for Medicare's hospital insurance benefits for uninsured individuals and provides that for purposes of Medicare catastrophic premiums, enrollees shall be treated in the same way as such uninsured individuals.

*Effective date*

Enactment, except that does not apply so as to provide hospital insurance coverage for any month before July 1990.

*(c) Release and use of hospital accreditation surveys.*—Provides that a hospital may be deemed to meet Medicare requirements on the basis of JCAHO accreditation only if JCAHO releases to the Secretary all copies of all accreditation surveys and other relevant information. Requires that JCAHO survey information be released even if the hospital is not the subject of a HCFA validation survey.

Authorizes the Secretary to disclose surveys and related information to the extent that such information relates to an enforcement action taken by the Secretary.

Permits the Secretary to determine that a hospital does not meet participation requirements on the basis of information other than information derived from a validation survey.

*Effective date*

Enactment, except that provisions relating to hospital and JCAHO release of information apply 6 months after enactment.

*(d) Intermediate sanctions for psychiatric hospitals.*—If the Secretary determines that a psychiatric hospital fails to meet Medicare's participation requirements and these deficiencies immediately jeopardize the health and safety of its patients, the Secretary is required to terminate the hospital's Medicare participation agreement. If there is no immediate jeopardy to the health and safety of the patients, the Secretary may choose to terminate Medicare's participation agreement with the hospital or deny Medicare payments for individuals admitted after the effective date of the finding, or both.

If non-compliance continues for 3 months after the initial finding, the Secretary must deny Medicare payments for new admissions. If the non-compliance continues for 6 months, the Secretary must deny Medicare payments until the hospital achieves compliance.

*Effective date*

Enactment.

*(e) Medical necessity certification of extended care services by nurse practitioners and clinical nurse specialists.*—Authorizes nurse practitioners and clinical nurse specialists working in collaboration with a physician to certify and recertify the need for SNF care.

*Effective date*

Enactment.

*(f) Eligibility of merged or consolidated hospitals for periodic interim payments.*—Provides that a hospital created by the merger or consolidation of 2 or more hospitals or hospital campuses shall be eligible to receive PIP if at least one of the hospitals or campuses received PIP prior to the merger or consolidation, and the merging or consolidating hospitals or campuses would each meet the requirement of having a disproportionate share adjustment percentage of at least 5.1 percent during FY 1987 if treated as independent hospitals.

*Effective date*

Applies to payments made for discharges occurring on or after October 1, 1989, regardless of the date of the merger or consolidation of the facilities involved.

*(g) Extension of waiver for Finger Lakes Area Hospitals Corporation.*—Requires the Secretary's test of the effectiveness of a State cost containment system to be based on the aggregate rate of increase from October 1, 1984, to the most recent date for which annual data are available.

*Effective date*

Enactment.

*(h) Clarification of continuation of August 1987 hospital bad debt recognition policy.*—Amends OBRA 87 by prohibiting the Secretary from requiring a hospital to change its bad debt collection policy if a fiscal intermediary accepted the policy in accordance with the rules in effect as of August 1, 1987, for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency. For such facilities, the Secretary also may not collect from the hospital on the basis of an expectation of a change in the hospital's collection policy.

*Effective date*

Effective as if included in the enactment of OBRA 87.

*(i) Use of more recent data regarding routine service costs of skilled nursing facilities.*—Requires the Secretary to use for SNF cost limits cost reports submitted by SNFs for cost reporting periods ending September 30, 1986.

*Effective date*

Enactment.

*(j) Permitting dentist to serve as hospital medical director.*—Permits a doctor of dental surgery or of dental medicine to serve as a hospital's medical staff director, if permitted under State law.

*Effective date*

Enactment.

*(k) GAO study of hospital-based and freestanding skilled nursing facilities.*—Requires GAO to conduct a study to assess the differences in costs and case-mix between hospital-based and freestanding SNFs participating in Medicare. Requires GAO to report to Congress on this study and its recommendations, including recommendations on the payment differential between hospital-based and freestanding SNFs, by June 1, 1990.

*Effective date*

Enactment.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Hospital obligations with respect to treatment of emergency medical conditions and indigent care.*—The conference agreement includes the House provision with an amendment to delete studies by the General Accounting Office and the Prospective Payment Assessment Commission.

*(b) Medicare buy-in for continued benefits for disabled individuals.*—The conference agreement includes the House provision.

The conference agreement also provides that the Secretary shall at the request of a State made after 1989, modify the buy-in agreement with the State to provide for State payment of Part A premiums for qualified Medicare beneficiaries.

*(c) Release and use of hospital accreditation surveys.*—The conference agreement includes the House provision.

*(d) Intermediate sanctions for psychiatric hospitals.*—The conference agreement includes the House provision.

*(e) Medicial necessity certification of extended care services by nurse practitioners and clinical nurse specialists.*—The conference agreement includes the House provision with an amendment to require that nurse practitioners or clinical nurse specialists not have a direct or indirect employment relationship with the facility.

*(f) Eligibility of merged or consolidated hospital for periodic interim payment.*—The conference agreement includes the House provision.

*(g) Extension of waiver for Finger Lakes Area Hospitals Corporation.*—The conference agreement includes the House provision.

The conference agreement also provides that no recoupment or reduction may be made in payments to Massachusetts hospitals on account of alleged overpayments prior to May 1, 1990.

*(h) Clarification of continuation of August 1987 hospital bad debt recognition policy.*—The conference agreement includes the House provision.

*(i) Use of more recent data regarding routine service costs of skilled nursing facilities.*—The conference agreement includes the House provision.

The conference agreement also includes a provision prohibiting balance billing by nursing homes to Medicare patients.

*(j) Permitting dentist to serve as hospital medical director.*—The conference agreement includes the House provision.

*(k) GAO study of hospital-based and freestanding skilled nursing facility.*—The conference agreement includes the House provision.

PART B—PROVISIONS RELATING TO PART B OF THE MEDICARE PROGRAM

*1. Physician Payment Reform*

Sections 10123 and 4001 of House bill.

*Present Law*

*(a) In general.*—Medicare pays for physicians' services on the basis of reasonable charges. The reasonable charge for a service cannot exceed the physician's actual charge, the physician's customary charge, or the prevailing charge for the service in the community. Customary and prevailing charge fee screens (i.e. benchmarks against which individual charges are compared) are updated annually. The increase in the prevailing charge screen is subject to a limitation known as the Medicare Economic Index (MEI). The MEI is a limitation on cumulative changes in prevailing charges since 1973. Recently, allowable MEI increases have been specified by law.

Medicare pays 80 percent of the reasonable charge after the beneficiary has met the $75 deductible. Medicare payments are made directly to the physician or the patient depending on whether the physician has accepted assignment for the claim. In the case of assigned claims, the physician bills the program directly and is paid an amount equal to 80 percent of the reasonable charge (less any deductible where applicable). The physician may not charge the beneficiary more than the applicable deductible and 20 percent coinsurance amounts. A physician may become a participating physician. A participating physician is one who voluntarily enters into an agreement with the Secretary to accept assignment on all claims for the forthcoming year. The MEI-adjusted prevailing charges for nonparticipating physicians are 95 percent of that for participating physicians.

*(b) Payment phase-in.*—No provision.

*(c) Establishment of fee schedule.*—No provision. (see (d) below.)

*(d) Treatment of radiologist and anesthesia services.*—OBRA-1987 required the Secretary to develop a fee schedule for payment for radiologist services beginning in 1989. Radiologist services are those performed by or under the supervision of a board certified or board eligible radiologist or for whom radiology services account for at least 50 percent of Part B billings. The law also required the Secretary to develop a relative value guide for payment for anesthesia services beginning in 1989.

*(e) Determination of relative values.*—The Secretary is required to develop a relative value scale and report to Congress on its development by July 1, 1989. In developing the scale the Secretary is required to take into account the recommendations of the PPRC.

*(f) Coding.*—HCFA has required carriers to use a national uniform common procedure coding system known as the HCFA Common Procedure Coding System (HCPCS).

*(g) Establishment of initial conversion factors.*—No provision.

*(h) Changes in conversion factors for subsequent years.*—No provision.

*(i) Geographic adjustments.*—No provision.

*(j) Target rates of increase in expenditures.*—No provision.

*(k) Limitation on beneficiary liability.*—OBRA-1986 placed a limit on actual charges of nonparticipating physicians which is known as the maximum allowable actual charge (MAAC). Nonparticipating physicians whose actual charge for a service in the preceding year equals or exceeds 115 percent of the current year's prevailing charge, may increase their charges by no more than one percent. Nonparticipating physicians whose actual charge for the preceding year is below 115 percent of the current year's prevailing charge may increase their actual charges over a four-year period, 1987-1990, such that in 1990 their MAAC may equal 115 percent of the prevailing charge. If a physician knowingly and willfully bills above his MAAC limit, the Secretary may apply sanctions including barring physicians from participating in Medicare for up to five years and/or imposing a civil monetary penalty or assessment.

*(l) Monitoring.*—No provision.

*(m) Sending information to physicians.*—Carriers are required, at the beginning of each year, to provide nonparticipating physicians with a list of the physician's MACCs for that physician's most commonly furnished services.

*(n) Restrictions on administrative and judicial review.*—Administrative and judicial review may not be made of determinations of prevailing charges for overpriced procedures or cataract surgical procedures.

*(o) Requirements for carriers.*—No provision.

*(p) Bonus payments for services furnished in health manpower shortage areas.*—OBRA-1987 provided for a bonus of 5 percent of the Medicare payment amount for physicians services provided in a rural area which is designated as a class 1 or class 2 health manpower shortage area.

*(q) Studies.*—

*(1) GAO study of alternative payment methodology for malpractice component.*—No provision.

*(2) GAO study examining alternative malpractice resolution systems.*—No provision.

*(3) Study of payments to risk contracting plans.*—Medicare makes payments to a qualfied health maintenance organization on the basis of the number of beneficiaries enrolled in the plan. The amount of the monthly capitation payment is based on the adjusted average per capita cost (AAPCC). The AAPCC reflects Medicare expenditures in each locality for services provided by physicians and providers billing on a fee-for-service basis.

*(4) Study of carve-out from target rate of increase in expenditures.*—No provision.

*(5) Study of electronic billing.*—The law authorizes carriers to develop direct lines for electronic receipt of claims from participating physicians.

*(6) Study of target rate of increase in expenditures or study of volume performance standards.*—No provision.

*(7) PPRC study of payment for overhead.*—No provision.

*(r) Conforming changes.*—The law sunsets the MAAC program on the earlier of December 31, 1990 or one year after the date the Secretary reports to Congress on the development of a relative value scale.

OBRA-1986 required development by HCFA of a common procedure coding system and required Part B payments to be made under this system by January 1, 1993.

*(s) Revision of participation periods.*—The participation period under the physician participation program is January 1-December 31 of each year.

*(t) Expedited procedures for initial implementation.*—No provision.

*(u) Role of PPRC.*—PPRC is required to make recommendations to the Secretary concerning development of a relative value scale.

*House Bill*

(A) IN GENERAL

*Section 10123.*—Amends Title XVIII of the Social Security Act by adding a new Section 1848, "Payment for Physicians' Services Based on a Resource-Based Relative Value Schedule." A new fee schedule is phased-in over the Oct. 1991-Jan. 1996 period. Beginning October 1, 1991, payments for physicians services are to be based on the lesser of: (1) the actual charge; or (2) the fee schedule amount (as established below.) The fee schedule amount for nonparticipating physicians is 95% of the amount otherwise determined. The term physicians services includes only those services provided by doctors of medicine or osteopathy and diagnostic tests and X-ray services (not including clinical diagnostic laboratory tests) furnished in connection with physician services.

Establishes expenditure targets for physicians services beginning in FY1990.

Phases-in new limits on actual charges beginning in 1991 so that the limit would equal 115% of the fee schedule amount in 1993.

*Section 4001.*—Amends Title XVIII of the Social Security Act by adding a new Section 1848, "Resource Based Relative Value Scale for Physicians Services." The current reasonable charge methodology is replaced by a fee schedule based on a relative value scale. The fee schedule is phased-in over 4 years beginning April 1, 1990. During 1990 and 1991, adjustments are to be made in current prevailing charges based on differences between prevailing charges and a reference fee schedule; during 1992, payments are made under an adjusted fee schedule. During 1990, the provision only applies to procedures specified by the Congress; beginning in 1991, the provision applies to all physicians services (including diagnostic tests and X-ray services, except clinical diagnostic laboratory tests furnished in connection with physician services.)

Specifies that the reform is to be carried out in a budget neutral fashion in each year of the transition.

Establishes, beginning in 1991, a maximum limit on the amount nonparticipating physicians can charge equal to 120% of the Medicare prevailing charge or fee schedule amount.

(B) PAYMENT PHASE-IN

*Section 10123.*—Limits reductions and increases to 15% in any year. Specifies that in the case of a service for which the historical payment basis is less than 85% of the fee schedule amount for 1991, the recognized fee schedule amount would be 115% of the historical payment basis in the last three months of 1991 and in 1992. For services furnished in 1993, 1994, or 1995 the recognized fee schedule amount would be 115% of the previous year's recognized amount; in no case could the recognized fee schedule amount exceed the applicable fee schedule amount.

Specifies that in the case of a service for which the historical payment basis exceeds 115% of the fee schedule amount for 1991, the recognized fee schedule amount would be 85% of the historical payment basis in the last three months of 1991 and in 1992. For services furnished in 1993, 1994, or 1995 the recognized fee schedule amount would be 85% of the previous year's recognized amount; in no case could the recognized fee schedule amount be less than the fee schedule amount.

Defines the historical payment basis as the weighted average prevailing charge for the service applied in a locality in 1991, adjusted to reflect payments for services with charges below the prevailing charge level. The historical payment basis is determined by the Secretary without regard to physician specialty. For purposes of these calculations, localities are the same as those used for payment purposes on the date of enactment.

*Section 4001.*—Requires the Secretary, for services provided from April 1990-December 1990, to provide for an adjustment in the prevailing charge otherwise applied equal to 1/5 of the difference between the reference fee schedule and the prevailing charge otherwise applied for the service. The adjusted prevailing charge will be treated for all subsequent periods as the prevailing charge applied in 1990. Evaluation and management services would all receive the same percentage increase (or decrease) in 1990 based on the weighted average that each such service would otherwise receive under the formula. Evaluation and management services are defined as primary care services (as the term is used under current law) and hospital medical services and consultations.

Requires the Secretary, for services provided in 1991, to provide for an adjustment in the prevailing charge equal to 1/4 of the difference between the reference fee schedule and the prevailing charge otherwise applied. The prevailing charge level is the 1990 level increased by the 1991 MEI without regard to customary charge levels. The adjusted prevailing charge is to be treated for all subsequent periods as the prevailing charge applied in 1991. Evaluation and managment services are treated in the same way as in 1990.

Provides that for 1992 payment is to be based on the lesser of the actual charge or the fee schedule amount. The Secretary is to adjust the fee schedule amount by 1/2 of the difference between the fee schedule amount and the prevailing charge level. The prevailing charge level is the adjusted 1991 level increased by the 1992 MEI. The Secretary will provide for construction of a proxy prevailing charge in the case of a physician's service which is reclassified or recoded and no prevailing charge exists for 1991. If the fee schedule area changes from 1991 to 1992, the Secretary is required to calculate the prevailing charge based on the weighted average of the prevailing charges that would otherwise have applied in the portions of the old fee schedule area included in the new fee schedule area.

Specifies that beginning in 1993 payments are made on the basis of the fee schedule without any adjustment for prevailing charges. The Secretary is prohibited from requiring carriers to recompute customary charges with respect to services furnished during or after 1992 or prevailing charges for services furnished after 1992.

(C) ESTABLISHMENT OF FEE SCHEDULE

*Section 10123.*—Requires the Secretary to establish a national fee schedule by October 1, 1991 that sets a payment amount for all physicians' services furnished in all physician payment areas in a year. A payment area is each urban area and the rural area

within each State as those areas are defined for payment purposes under the prospective payment system.

Specifies that the fee schedule amount is equal to the sum of the following:

(1) Work Payment Amount: the product of (A) work relative value units for the service, and (B) the work conversion factor for the year for the category of services;

(2) Overhead Payment Amount: the product of (A) the number of overhead relative value units for the service, (B) the overhead conversion value for the year for the category of services, and (C) the geographic overhead index value for services furnished in the payment area; and

(3) Malpractice Payment Amount: the product of (A) the number of malpractice relative value units for the service, (B) the malpractice conversion factor for the year for the category of services, and (C) the geographic malpractice index value for services furnished in the same payment area.

*Section 4001.*—Requires the Secretary to apply, for the period April-December 1990, a reference fee schedule covering each of the physicians services specified in Appendix A of the explanation of the Committee on Energy and Commerce to accompany the House Budget Report on OBRA-1989. This specification is based on available data and recommendations of the PPRC. The reference fee schedule in a fee schedule area represents the product of (1) the relative value for the service, (2) the national standard conversion factor, and (3) the geographic adjustment factor. Fee schedule areas are the same as localities currently used for payment purposes.

Requires the Secretary to establish a reference fee schedule covering each physicians service by October 1, 1990 for application in 1991. The reference fee schedule is the product of the relative value for the service, the national standard conversion factor and the geographic adjustment factor. Fee schedule areas are the same as localities currently used for payment purposes.

Requires the Secretary to establish a fee schedule covering each physicians service by October 1 of each year (beginning in 1991) for use in the following year. The fee schedule amount is the product of the relative value for the service, the national standard conversion factor and the geographic adjustment factor. Beginning in 1992, fee schedule areas are to be comprised of either (1) each State in its entirety, or (2) each metropolitan statistical area (or New England County Metropolitan area or comparable area recognized by the Secretary) and each portion of each State which is outside such area. The Secretary is to report to Congress by July 1, 1991 on which of these approaches should be used.

(D) TREATMENT OF RADIOLOGIST AND ANESTHESIA SERVICES

*Section 10123.*—Authorizes the Secretary to waive or adjust application of the fee schedule requirement in the case of radiologist services for which payment would otherwise be made under the OBRA-1987 fee schedule provision. A similar waiver or adjustment may be made in the case of anesthesia services for which a relative value guide has been established.

*Section 4001.*—Establishes a special provision for the establishment of a reference fee schedule in 1991 for anesthesia services for which a relative value guide has been established. Instead of relative values and the national standard conversion factor, the Secretary shall use, to the extent practicable, the relative value guide with appropriate adjustment of the conversion factor. This is to be done in a manner to assure that the reference fee schedule amounts for anesthesia services in fee schedule areas are consistent with reference fee schedule amounts for other services determined by the Secretary to be of comparable value in those areas. The Secretary is to adjust the reference fee schedule amounts by geographic adjustment factors in the same manner applicable to other services. The Secretary may provide for an overall percentage adjustment for anesthesia services in a manner similar to the overall percentage adjustment provided for evaluation and management services. The provisions relating to anesthesia services are also applicable for 1992 and subsequent years.

Requires the Secretary to base the relative value for radiology services (as defined for purposes of the OBRA-1987 fee schedule) on the relative value scale developed under the fee schedule with appropriate modifications to assure that relative values are consistent with relative values established for similar or related services.

(E) DETERMINATION OF RELATIVE VALUES

*(1) Components of physicians services*

*Section 10123.*—Divides physicians services into three components: work component, overhead component, and malpractice component.

Defines "work component" as that portion of the resources used in furnishing the service that reflects physician time and intensity. This portion includes activities before and after patient contact. For surgical procedures the term is to reflect a global definition including pre-and post-operative physicians services.

Defines "overhead component" as that portion of the resources used in furnishing the service that reflects the overhead (as defined by the Secretary) other than overhead associated with malpractice expenses, in furnishing the service.

Defines "malpractice component" as that portion of the resources used in furnishing the service that reflects malpractice expenses.

*Section 4001.*—Specifies that for 1990 the relative value for a physicians service is the sum of the relative values of the components for practice expenses and for physician work. These components are specified in Appendix A of the explanation of the House Energy and Commerce Committee bill included in the House Budget Committee report on OBRA-1989. The values are based on the relative resources used. Practice expenses are based on the relative expenses of furnishing services including malpractice expenses and items such as office rent, wages of personnel, etc.; physician compensation and other physician fringe benefits are excluded. The physician work component is based on such factors as relative time and effort.

Specifies that for 1991, the relative value for each physicians service is based on the relative resources used for the practice expense component and physician work component as described above. Beginning in 1992, the relative value for each physicians service is based on the sum of three components—general practice expenses, malpractice expenses, and physician work. The general practice expense component is defined the same way as the practice expense component was defined for earlier years, except that malpractice expenses are excluded. The malpractice expense component relates to relative malpractice expenses, based on the risk category of the class of services furnished (or the specialty of physicians providing the service.)

*(2) Determination of relative values for components of physicians services*

*Section 10123.*—Provides for a determination of relative value units for each component.

Requires the Secretary to determine a number of work relative value units for the service based on the relative resources used, incorporating physician time and intensity, in furnishing the service.

Specifies that the number of overhead relative value units is equal to the product of the base allowed charges for the service and the overhead percentage for the service.

Specifies that the number of malpractice value units is equal to the product of the base allowed charges for the service and the malpractice percentage for the service.

Defines base allowed charges as the national average allowed charges for the service for services furnished from Jan.-Sept. 1991, estimated by the Secretary using the most recent available data, consistent with practice cost data.

*Section 4001.*—Requires the Secretary to use the relative values as defined above for 1990. For 1991, the Secretary, using the best available information and taking into account the recommendations of the PPRC, is to determine the relative value for each physicians service based on the relative resources used for the practice expense component and physician work component as described above. The Secretary is to base the computation of the relative values for the practice expense component on the best readily available data, such as survey data. For 1992, the calculation of relative values is to be made in the same manner as for 1991 except that there are now three components for physicians services.

*(3) Extrapolation*

*Section 10123.*—Provides that the Secretary may use extrapolation and other techniques to determine the number of relative value units for low volume services and other services for which adequate data are not available. Such techniques may also be used to determine practice costs for specialties for which adequate practice cost data are not available. The Secretary may establish ancillary policies, such as those relating to modifiers and local codes, in order to implement the requirement for establishing relative value units.

*Section 4001.*—Provides that beginning for 1991, the Secretary may extrapolate relative values for physicians services for which specific data are not available. The extrapolation is to be based on related services for which such values are available. The Secretary is to specifically take into account recommendations of the PPRC and the results of consultations with organizations representing physicians who provide such services.

*(4) Adjustments*

*Section 10123.*—Authorizes the Secretary to adjust relative value units from time to time to take into account changes in medical practice, coding changes, or new data on relative value components. The Secretary may adjust relative value units for specific services or classes of such services based on a determination of excessive growth in volume or intensity or inadequate access.

*Section 4001.*—Authorizes the Secretary, for 1993 and succeeding years, to provide, from time to time, for the establishment of

relative values for physicians services for which values have not previously been established. The Secretary is to take into account recommendations made by the PPRC and the views of appropriate organizations representing physicians and other interested parties.

Authorizes the Secretary, as he deems appropriate, taking into account PPRC recommendations and views of appropriate physician organizations and other interested parties, to annually adjust relative values and geographic adjustment factors. The Secretary may not make such adjustments if they are intended to result in an overall increase or decrease in aggregate physician payments under Part B.

*(5) Determination of percentages*

*Section 10123.*—Requires the Secretary for each physicians service or class of services to determine a work percentage, an overhead percentage, and a malpractice percentage as follows.

(A) Requires the Secretary to determine the average percentage of each service or class of services that is performed nationwide under Medicare by physicians in each of the different physician specialties (as identified by the Secretary.)

(B) Requires the Secretary to determine the average percentage division of resources among the work component, the overhead component and the malpractice component which are used by physicians in each of the specialties in furnishing physicians services. The percentages are to be based on national data that describe the elements of physician practice costs and revenues by physician specialty.

(C) Specifies that the work percentage for a service is the sum (for all physician specialties) of the average percentage division for the work component for each physician specialty multipled by the proportion of such service (or services) performed by physicians in that specialty. Similar calculations are made for the overhead percentage and the malpractice percentage.

Specifies that the Secretary may from time to time provide for a recomputation of work percentages, overhead percentages, and malpractice percentages.

*Section 4001.*—No provision.

*(6) No variation for specialties*

*Section 10123.*—Prohibits the Secretary from varying the number of relative value units and conversion factors for the same physicians service either based on whether or not the physician is a specialist or on the type of specialty.

*Section 4001.*—Specifies that beginning in 1991, the Secretary may not vary the relative values for the same service based on whether the physician furnishing the service is a specialist or type of specialty of the physician.

*(f) coding*

*Section 10123.*—Requires the Secretary to establish a uniform procedure coding system for the coding of all physician services. The Secretary is to provide for an appropriate coding structure, which may incorporate the use of time, for visits and consultations.

*Section 4001.*—Requires the Secretary to make such changes in the classification and coding of physicians services furnished during or after 1992 as may be required to (1) provide for uniform classification and coding in all fee schedule areas, (2) classify and code related pre- and post-operative physicians services with a surgical procedure, and (3) take into account time in classifying and coding of evaluation and management services. In order to take into account changes in coding and fee schedule areas from 1991 to 1992, the Secretary may require that 1991 bills indicate the 1992 fee schedule areas and the 1992 classification and code.

*(g) Establishment of initial conversion factors*

*Section 10123.*—Requires the Secretary by September 1, 1991 to establish and report to the Congress concerning conversion factors to be used for categories of services furnished beginning October 1991. The conversion factors for each component will be established so that the aggregate amount of Part B payments for each component of physicians services furnished from Oct.-Dec. 1991 will be the same as that which would have been made if the section did not apply.

*Section 4001.*—Requires the Secretary to establish and report to the Congress by February 1, 1990 on the national standard conversion factor to be used for the 9-month period beginning April 1, 1990. The conversion factor is to be established to achieve budget neutrality in 1990. The Secretary is to provide appropriate adjustments to take into account changes in volume and distribution of services according to the instructions contained in Appendix B of the Energy and Commerce portion of the House Budget Commitee report on OBRA-1989.

*(h) Changes in conversion factors for subsequent years*

*Section 10123.*—(1) Requires the Secretary by February 1 of each year (beginning with 1991) to transmit to the Congress a recommendation on the appropriate change in the conversion factors for categories of physicians services (i.e. surgical services and such other category of services deemed appropriate by the Secretary.) In making the recommendation, the Secretary is required to consider the increase in the appropriate index (i.e., MEI or other update index applied to the same services that such indexes were applied in 1989), the actual increase in expenditures compared to the target rate of increase for the previous fiscal year, changes in volume or access to services, and other factors the Secretary deems appropriate. The Secretary may also recommend changes in the number of relative value units to be applied in the case of physicians services or classes of services for which the Secretary finds there has been an excessive growth in volume or intensity of services or inadequate access. The Secretary, in making recommendations, is required to consider how the rate of increase in expenditures for the category of services compares to the target rate of increase for such category.

(2) Requires the Physician Payment Review Commission to review the Secretary's recommendation and make its recommendations to Congress by May 1 regarding changes in conversion factors (and any changes in relative value units) for the following year.

(3) Requires the Secretary to publish in the Federal Register during the first 15 days of Novemeber each year (beginning with 1991) the conversion factors which will be in effect for the following year for each category of physicians services. Unless the Congress provides otherwise, such factor for a fiscal year for a category of services is the previous years conversion factor for the category modified as follows:

(A) Increased by the Secretary's estimate of the percentage increase in the appropriate index (i.e. MEI or other update index applied to the same services that such indexes were applied in 1989), for the following year;

(B) Increased or decreased by the same percentage by which the percentage increase in actual Part B expenditures for the category of services for the previous fiscal year was less than or greater than the expenditure target for that fiscal year; and

(C) Increased or decreased by such amount as the Secretary determines to be necessary to offset, with respect to total Part B payments, any increase or decrease in relative value units.

Provides that the Secretary may specify in the Federal Register changes to be made in relative value units for specific physicians services or classes of services. These are services for which the Secretary has determined there has been an excessive growth in volume or intensity or for which there is inadequate access.

*Section 4001.*—Requires the Secretary by October 1, 1990 to establish and report to the Congress on the national standard conversion factor to be used in 1991. The conversion factor is to be established to achieve budget neutrality in 1991. The Secretary, taking into account the recommendations of the PPRC, is to provide appropriate adjustments to take into account projected changes in volume and distribution of services. The Secretary's report must identify and evaluate components of changes and explain the basis for adjustments. The same requirements are applicable for establishment of the 1992 conversion factor.

Requires the Secretary by August 1 of each year (beginning in 1992) to establish and report to the Congress concerning the national standard conversion factor to be used the following year. The factor is the previous year's factor adjusted by the projected percentage change between the midpoint of the two years in an appropriate index. The index is to reflect the value of the resources (including practice expenses, malpractice expenses and physician work effort) used in furnishing physicians services. The Secretary is to establish the index taking into account recommendations of PPRC and views of appropriate organizations.

(I) GEOGRAPHIC ADJUSTMENTS

*(1) In general*

*Section 10123.*—Requires the Secretary to establish a geographic overhead index which establishes a numerical relationship between the costs of goods and services composing the overhead component in each physician payment area compared to the national average cost of such goods and services.

Requires the Secretary to establish a geographic malpractice index which establishes a numerical relationship between the costs of professional liability insurance in each physician payment area compared to the national average costs of professional liability insurance.

*Section 4001.*—Provides for a geographic adjustment factor for each physicians service for each fee schedule area in 1990 and requires the Secretary in subsequent years to establish such factors. Requires the Secretary for 1991, to establish (A) a practice cost index reflecting the relative costs of the mix of goods and services in the different fee schedule areas compared to the national average, and (B) an index reflecting half the difference between the relative value of physicians work effort in each fee

schedule area compared to the national average. The Secretary may establish class specific geographic cost of practice indices if the application of a single index would be substantially inequitable. Similar requirements are applicable for 1992, except that the practice cost index is to exclude malpractice expenses. A separate malpractice cost index is to be developed which reflects relative costs of malpractice expenses in the different fee schedule areas compared to the national average.

*(2) Calculation of geographic adjustment factor*

*Section 10123.*—No provision.

*Section 4001.*—Specifies that in 1990 and 1991 the geographic adjustment factor is equal to the sum of the geographic cost-of-practice adjustment factor and the geographic physician work adjustment factor. Beginning in 1992, the geographic adjustment factor is equal to the sum of the geographic cost of practice adjustment factor, the geographic malpractice cost adjustment factor and the geographic physician work adjustment factor.

Specifies that the geographic cost-of-practice adjustment factor for a service for a fee schedule area is the product of:

(A) the ratio of the relative value of the practice expense component of the service to the total relative value for the service; and

(B) the geographic cost-of-practice index value for the area for the service. For 1990, the elements in item (A) are specified in Appendix A of the Energy and Commerce Committee portion of the House Budget Committee .report on OBRA-1989. Beginning in 1991, the values are based on the Secretary's calculations. For 1990, the index value for the area for item (B) is based on the relative costs of a mix of goods and services composing practice expenses in the fee schedule for a typical physicians service compared to the national average for such service as specified in Appendix C of the report. Beginning in 1991, the index value for item (B) is based on the Secretary's calculations.

Specifies that in 1990 and 1991, the geographic physician work adjustment factor is the product of:

(A) 1 minus the ratio of the relative value of the practice expense component of the service to the total relative value for the service (as these items are defined for that year); and

(B) the geographic physician work index value for the area. For 1990, the value in item (B), which is based on half the difference between the relative value of physicians work effort in the fee schedule area and the national average, is specified in Appendix C of the report. Beginning in 1991, the index value for item (B) is based on the Secretary's calculations.

Specifies that beginning in 1992, the geographic physician work adjustment factor is the product of:

(A) 1 minus the sum of the ratios of the relative value of the practice expense component of the service and the relative value of the malpractice expense component for the service to the total relative value for the service; and

(B) the geographic physician work value for the area.

Defines the geographic malpractice adjustment factor as the product of:

(A) the ratio of the relative value of the malpractice expense component for the service to the total relative value for the service, and

(B) the geographic malpractice index value for the area.

(See (e)(4) above for budget neutrality requirement).

(J) TARGET RATES OF INCREASE IN EXPENDITURES

*(1) Initial target*

*Section 10123.*—Specifies that for FY 1990, the target rate of increase in expenditures for a category of services is equal to the Secretary's estimate of the current baseline percentage increase reduced by the OBRA-1989 percentage savings, further reduced by ½ percentage point. The current baseline percentage is defined as the Secretary's estimate (based on the law in effect before the enactment of OBRA-1989) of the percentage by which the total actual Part B expenditures for such category of services in FY 1990 will exceed such expenditures in FY 1989. The OBRA-1989 percentage savings is defined as the Secretary's estimate of the percentage by which the current baseline percentage increase for the category of services exceeds the increase which would occur if the estimate were based on the law in effect after enactment of OBRA-1989.

Specifies that the target rates of increase are to be adjusted so as to reflect the differences in the actual proportion of enrollees in HMOs with Medicare risk-sharing contracts in FY 1990 as compared with FY 1989.

*Section 4001.*—No provision.

*(2) Calculation for subsequent years*

*Section 10123.*—Requires the Secretary by February 1 of each year (beginning in 1990) to recommend to Congress the target rate of increase in expenditures for each category of services for the fiscal year beginning the following October. In making the recommendation, the Secretary is required to confer with associations representing the major physician specialties. The Secretary is to consider inflation, changes in number of Part B enrollees (other than HMO enrollees), changes in technology, evidence of unnecessary utilization of services, evidence of lack of access to necessary physicians services, and such other factors as the Secretary considers appropriate.

Requires the Physician Payment Review Commission to review the Secretary's recommendation and make recommendations to the Congress by May 1 respecting the target rates.

Requires the Secretary to publish in the Federal Register in September of each year (beginning in 1990) the target rate of increase for the fiscal year beginning in October. Unless otherwise provided by the Congress, each target rate is equal to the sum of the Secretary's estimate of (A) the percentage increase or decrease in the Consumer Price Index between the midpoint of the previous fiscal year to the midpoint of the fiscal year involved, and (B) the percentage increase or decrease in the average number of Part B enrollees (other than HMO enrollees) over the same time period.

*Section 4001.*—No provision.

*(3) Target categories*

*Section 10123.*—Requires the Secretary to determine a target rate of increase in expenditures separately for the category of surgical services and for the category of other physicians services (or for such other categories of services as the Secretary deems appropriate).

*Section 4001.*—No provision.

*(4) Budget baseline*

*Section 10123.*—Provides that for budget baseline purposes, notwithstanding any other provision of law, the target rate of increase for a category of services is not to be used. Instead, the actual percentage increase in Part B expenditures for the category of services during the fiscal year compared to the previous fiscal year is to be used.

*Section 4001.*—No provision.

*(5) Provision of information*

*Section 10123.*—Requires the Secretary to establish procedures for reporting information, required to be reported by the carriers on a monthly basis, concerning expenditures and volume of physicians services. The information is to be provided monthly to the Physician Payment Review Commission, the Congressional Budget Office, the Congressional Research Service, the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance.

*Section 4001.*—No provision.

*(6) Services included*

*Section 10123.*—Specifies that services included under the expenditure target includes physicians services and other items and services (such as laboratory tests and x-rays), specified by the Secretary that are commonly performed or furnished by a physician or in a physician's office. The term does not include services furnished to an HMO enrollee under a Medicare risk-sharing contract.

*Section 4001.*—No provision.

(K) LIMITATION ON BENEFICIARY LIABILITY

*(1) Sanctions*

*Section 10123.*—Permits the Secretary to impose sanctions against nonparticipating physicians who knowingly and willfully bill on a repeated basis in excess of the limiting charge for Part B physicians services furnished on or after January 1, 1991. Sanctions which may be imposed are the same as may be imposed for billing above the MAAC limits.

*Section 4001.*—Similar provision. Applies to billings in excess of actual permitted charge.

*(2) Extra billing limit for 1991*

*Section 10123.*—Specifies that for physicians with a MAAC limit at or below 125 percent of the recognized payment amount for nonparticipating physicians in 1990, the limit on actual charges in 1991 is the same percentage above the recognized payment amount as during 1990. For physicians with MAAC limits above 125 percent in 1990, the limit on actual charges in 1991 is 125 percent of the recognized payment amount for nonparticipating physicians.

*Section 4001.*—Specifies that the actual charge may not exceed 120 percent of the reference payment amount. The reference payment amount is ¼ of the difference between the prevailing charge and the applicable reference fee schedule amount.

*(3) Extra billing limit for 1992*

*Section 10123.*—Specifies that for physicians with limits on actual charges at or below 120 percent of the recognized payment amount for nonparticipating physicians in 1991, the limit on actual charges in 1992 is the same percentage above the recognized payment amount as during 1991. For physicians with limits on actual charges above 120 percent in 1991, the limit on actual charges in 1992 is 120 percent of the

recognized payment amount for nonparticipating physicians.

*Section 4001.*—Specifies that the actual charge may not exceed 120 percent of the reference payment amount. The reference payment amount is ½ of the difference between the prevailing charge and the fee schedule amount.

*(4) Extra billing limit after 1992*

*Section 10123.*—Specifies that the limiting charge is 115 percent of the recognized payment amount for nonparticipating physicians.

*Section 4001.*—Specifies that the actual charge may not exceed 120 percent of the fee schedule amount.

(L) MONITORING

*Section 10123.*—Requires the Secretary to monitor the actual charges of nonparticipating physicians for services furnished on or after January 1, 1991 to Part B enrollees. The Secretary is to monitor changes (by specialty, type of service, and geographic area) in the proportion of services provided by participating physicians, the proportion of services paid on assignment, and the amounts charged above recognized payment amounts. The Secretary is required to make an annual report to Congress regarding such changes. The Secretary is required to develop a plan and submit recommendations regarding the plan if he finds that there has been a significant decrease in participation and assignment rates or an increase in the amounts charged above recognized payment amounts. The Physician Payment Review Commission is required to review the Secretary's plan and recommendations and transmit its comments to the Congress.

*Section 4001.*—Requires the Secretary to monitor the effects of physician payment reform including the effects on volume, access, quality, percentage of participating physicians, percentage of claims paid on assignment, and the amount of balance billing.

(M) SENDING INFORMATION TO PHYSICIANS

*Section 10123*—Requires the Secretary to send to each physician furnishing Part B physicians services information on the 1991 fee schedule amount (and whether the phase-in provisions apply) for each of the physicians 30 most frequently furnished services. The information must also include an estimate of the fee schedule amounts that would apply for each of these services in 1992 and 1993 if no reduction were required by virtue of the expenditure targets. Information is to be transmitted in conjunction with notices sent to physicans regarding the participation program. For subsequent years the Secretary is required to provide information on the fee schedule amount for the year and whether the phase-in provisions continue to apply for these services.

*Section 4001.*—No provision.

(N) RESTRICTIONS ON ADMINISTRATIVE AND JUDICIAL REVIEW

*Section 10123.*—Specifies that there may be no administrative or judicial review of (1) the determination of the historical payment basis; (2) the determination of relative value units; (3) the determination of conversion factors; (4) the establishment of values in the geographic overhead index and the values in the geographic malpractice index; and (5) the establishment of the system for the coding of physicians services.

*Section 4001.*—Specifies that there may be no administrative or judicial review of the (1) percentage adjustments in prevailing charges for evaluation and management services for 1990 and 1991, (2) establishment of relative values and components of relative values, (3) national standard conversion factor, (4) geographic indices and adjustment factors, and (5) selection of fee schedule areas.

(O) REQUIREMENTS FOR CARRIERS

*Section 10123.*—Requires carriers to report to the Secretary monthly on expenditures and volume of physicians services by category of physicians services and physician specialty within each payment area. Included in the term physicians services are other items and services commonly furnished in physicians offices, excluding services furnished to HMO enrollees under a Medicare risk-sharing contract.

*Section 4001.*—No provision.

(P) BONUS PAYMENTS FOR SERVICES FURNISHED IN HEALTH MANPOWER SHORTAGE AREAS

*Section 10123.*—Limits bonus payments to primary care services.

*Section 4001.*—No provision.

(Q) STUDIES

*(1) GAO study of alternative payment methodology for malpractice component*

*Section 10123.*—Requires the GAO to study alternative ways of paying under the new Section 1848 (physician payment reform) for Medicare's share of malpractice expenses. The study must examine paying for the malpractice component using the following approach. Physicians would be required to submit periodic cost reports including detailed information for Medicare and other services on practice expenses, malpractice premiums, and charges imposed and revenues received. Under this approach payment would be paid quarterly or annually based on the proportion of each physicians malpractice premiums that corresponds to the portion of total revenues from Medicare covered services. The GAO is required to submit a report to Congress on the study by April 1, 1991.

*Section 4001.*—No provision.

*(2) GAO study examining alternative malpractice resolution systems*

*Section 10123.*—Requires the GAO to study alternative resolution procedures for malpractice claims respecting professional services furnished under Medicare. The examination is to include a review of the feasibility of establishing procedures that involve no-fault payment or that involve mandatory arbitration. GAO is required to submit a report on the study to Congress by April 1, 1991.

*Section 4001.*—No provision.

*(3) Study of payments to risk contracting plans*

*Section 10123.*—Requires the Secretary to conduct a study of how payments under the new physician payment reform provision may affect payments to Medicare risk-contracting plans. The Secretary is required to submit a report on this study, including recommendations for changes in the current payment methodology, to Congress by April 1, 1990.

*Section 4001.*—No provision.

*(4) Study of carve-out from target rate of increase in expenditures*

*Section 10123.*—Requires the Secretary to conduct a study on the feasibility and design of a carve-out for managed health care organizations from the expenditure target system. The study is to consider alternative definitions of such organizations and means to assure that such organizations do not underserve their patients or shift care outside of the organization (in order to exceed the target). The Secretary is required to report to Congress by May 1, 1991 on the study. The Secretary is required to include in the report a description of the impact of a carve-out policy on program expenditures and services.

*Section 4001.*—No provision.

*(5) Study of electronic billing*

*Section 10123.*—Requires the Secretary to conduct a study of the feasibility and costs of providing for electronic submission and payment of claims from participating physicians under Part B. The study is to consider (A) the feasibility of making payments on the next business day for clean claims or claims processed entirely by computer, (B) direct deposit of payments, (C) providing participating physicians with (or reimbursing them for) such electronic equipment, software, and technical assistance needed to submit claims electronically. The Secretary is required to report to Congress by January 1, 1991, on the study.

*Section 4001.*—No provision.

*(6) Study of target rate of increase in expenditures or study of volume performance standards*

*Section 10123.*—Requires the Physician Payment Review Commission to study the feasibility of establishing separate expenditure targets by geographic area (region, State, or other area), by specialty or group of specialties, by type of services (such as primary care, services of hospital-based physicians, and other inpatient services), or by combinations of these. PPRC is to include a study of the scope of services included in and excluded from the expenditure target system. PPRC is required to report to Congress by May 1, 1990 together with its recommendations concerning the feasibility of establishing separate target rates.

*Section 4001.*—No provision.

*(7) PPRC study of payment for overhead*

*Section 10123*—Requires PPRC to conduct a study on how payment for the overhead component for physicians services under the payment reform provision could vary for different procedures (or groups of procedures) and physician payment area. PPRC is required to report on the study together with its recommendations by May 1, 1990, to the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Commerce.

*Section 4001.*—No provision.

(R) CONFORMING CHANGES

*Section 10123*—Sunsets the MAAC program on December 31, 1990. Conforming changes are made to sections relating to payment for services of certified registered nurse anesthetists, radiologists, nurse midwives, and physicians assistants.

*Section 4001*—Delays the date for requiring the Secretary to consolidate codes under the common procedure coding system until January 1, 1993. Makes conforming changes in sections relating to differential for participating physicians, physicians services for persons with end stage renal disease, and payments for services of certified registered nurse anesthetists, radiologists, and nurse midwives. Makes changes in references to MAACs.

Includes, effective January 1, 1990, intermediate and comprehensive office visits for eye examinations and treatments within the definition of primary care services.

(S) REVISION OF PARTICIPATION PERIODS

*Section 10123.*—Revises participation periods for 1991 and 1992. The first period is January 1, 1991-September 30, 1991; the second period is October 1, 1991-December 31, 1992. The Secretary is required to provide an opportunity to enroll before October 1, 1991 and is required to publish directories of participating physicians at the beginning of the 15-month period beginning on that date.

*Section 4001*—Extends the 1989 participation period through March 31, 1990, except in the case of a participating physician who requests that the participation agreement be terminated; this request must be made before December 31, 1989. Physicians may not enroll as participating physicians for the three month period beginning January 1, 1990. The 1990 participation period is 9-months beginning April 1, 1990. The Secretary is required to provide an opportunity to enroll before that date and to publish directories of participating physicians at the beginning of the 9-month period beginning on that date. Specifies that the 1990 MAAC list must be provided to nonparticipating physicians by April 1, 1990.

(T) EXPEDITED PROCEDURES FOR INITIAL IMPLEMENTATION

*Section 10121.*—No provision.

*Section 4001*—Specifies that in order to implement the new requirements for 1990 and 1991 on a timely basis, the Secretary may provide for publication of regulations on an interim, final basis.

(U) ROLE OF PPRC

*Section 10123*—No provision. (See item (g) above.)

*Section 4001*—Deletes requirement for recommendations concerning a relative value scale. Requires recommendations concerning the new physician payment methodology, specifically including relative values established and adjustments to such values, the national conversion factors to be applied, and the geographic adjustment factors.

*Effective date*

*Section 10123*—Enactment, except: (o) relating to reporting requirements for carriers applies to contracts entered into on or after date of enactment; and (p) limiting bonus payments for services in health manpower shortage areas applies to services furnished on or after the first date which the physician payment reform provisions apply to such services.

*Section 4001*—Applies (except as otherwise specifically stated in the section) to physicians services furnished on or after April 1, 1990, except: (k) relating to limits on extra billing applies to services furnished after December 31, 1990, and (u) relating to PPRC's role to reports beginning with the 1990 report.

*Senate amendment*

No provision.

*Conference agreement*

*(a) In general.*—The conference agreement includes provisions included in Sections 10123 and 4001 of the House bill as well as provisions included in S. 1750 as reported by the Senate Finance Committee. The conference agreement provides that payments under Medicare are to be made under a fee schedule based on a resource-based relative value scale. The fee schedule is phased-in over the 1992-1996 period.

Volume performance standards are established by Congress for physicians' services beginning in 1990.

The new limits on actual charges are phased-in beginning in 1991 so that the limit would equal 115 percent of the fee schedule amount in 1993 and thereafter.

*(b) Payments phase-in.*—Includes portions of both House provisions with modifications. In the case of a service for which the historical payment basis is less than 85 percent of the fee schedule amount for 1992, the recognized basis of payment would be 115 percent of the historical payment basis in 1991 increased by the 1992 update and further increased by 15 percent of the fee schedule amount.

In the case of a service for which the historical payment basis exceeds 115 percent of the fee schedule amount for 1991, the recognized payment basis would be the historical payment basis in 1991 increased by the 1992 update and decreased by 15 percent of the fee schedule amount.

The historical payment basis is defined as the weighted average prevailing charge for the service applied in a locality in 1991, adjusted to reflect payments for services with charges below the prevailing charge level. The historical payment basis is determined by the Secretary without regard to physician specialty.

For the period 1993-1995, the remaining difference each year between the recognized payment amounts and the fee schedule amount is reduced by ¼ in 1993, ⅓ in 1994 and ½ in 1995. Beginning in 1996, all payments are made on the basis of the fee schedule.

*(c) Establishment of fee schedule.*—The conference agreement includes the House provision with an amendment. The Secretary is required by January 1 of each year (beginning in 1992) to provide for a national fee schedule for payment of physicians services in all localities. Payment under the fee schedule is equal to the product of the conversion factor for the year for all physicians services (or for each category of services) and a relative value for each service. A category of physicians services means surgical services, and all physicians services other than surgical services and such other category or categories as the Secretary from time to time defines in regulations. The Secretary is also required to publish a model fee schedule by September 1, 1990.

*(d) Treatment of radiologist and anesthesia services.*—The conference agreement includes Section 4001 with an amendment. The Secretary is required to base the relative values for radiology services (including radiology services paid under the current fee schedule) on the relative value scale developed for the current fee schedule. The Secretary is to make appropriate modifications to the relative values to assure that the relative values established for radiology services which are similar or related to other physicians services are consistent with the relative values established for comparative services. The conferees intend that aggregate expenditures for services for which the adjustment is made are budget neutral compared to expenditures which would otherwise be made for such services if payment were determined under the resource-based relative value scale.

The conference agreement provides that the Secretary, to the extent practiable, is to use the relative guide developed for anesthesia services pursuant to OBRA '87. The Secretary is to make appropriate adjustment to the conversion factor so as to assure that the fee schedule amounts for anesthesia services are consistent with the fee schedule amounts for other services determined by the Secretary to be of comparable value.

The Secretary, in making these adjustments, is required to consult with PPRC and organizations representing physicians or suppliers who furnish radiology and anesthesia services.

The Secretary is required to provide for a transition for these services simliar to the transition provided for other services.

*(e) Determination of relative values.*—

*(1) Components of physicians services.*—The conference agreement includes Section 10123 except that the term "practice expense component" replaces "overhead component."

*(2) Determination of relative values for components of physicians services.*—The conference agreement includes Section 10123 with an amendment. In developing relative value units, the Secretary is required to develop a methodology to add work, practice expense and malpractice relative values in such a manner that they produce a single relative value for each service in each locality.

*(3) Extrapolation.*—The conference agreement includes Section 10123 with technical changes.

*(4) Adjustments.*—The conference agreement includes the House provisions with a modification. The Secretary is required to provide for adjustments, a least every 5 years, of the relative value units to take into account changes in medical practice, coding changes, new data on relative value components, or the addition of new procedures. Adjustments in any year cannot change expenditures by more than $20 million from what they would otherwise have been. The Secretary is required, in making adjustments, to consult with the PPRC and physician organizations and to publish his methodology for making such adjustments.

*(5) Determination of percentage.*—The conference agreement includes the House provision.

*(6) No variation for specialities.*—The conference agreement includes Section 10123.

*(f) Coding.*—The conference agreement includes Section 10123 with an amendment. After January 1, 1993, the Secretary may incorporate the use of time for visits and consultations. This is 18 months after the due date for the study required on this issue. (See study requirements.) In establishing the coding system, the Secretary is required to consult with the PPRC and other organizations representing physicians.

*(g) Establishment of initial conversion factors.*—The conference agreement includes the House provision with an amendment. The Congress is to establish a conversion factor for each year, beginning in 1992. The conversion factor for each year after 1992 is the conversion factor established for the preceding year adjusted by the update for the year involved. For 1992 only, the initial conversion factor is a conversion factor (determined by the Secretary) which if the provision had applied during 1991 would result in budget neutrality for that year. The Secretary is to publish, during the last 15 days of October 1991, the conversion factor (or factors) which will apply in 1992 and the updates determined for 1992. During the last 15 days of each subsequent year, the Secretary is required to publish the update of updates.

In the absence of Congressional action the default update for all physicians services is set at the Secretary's estimate of the percentage increase in the appropriate update

index (the MEI or other appropriate index) plus or minus the performance adjustment. The maximum negative performance adjustment is 2 percent in 1992 and 1993; 3.5 percent in 1994 and 3 percent in 1995 and thereafter. The Secretary is required to publish a default update in November if the Congress has not established a factor by that date.

*(h) Changes in conversion factors for subsequent years.*—The conference agreement includes Section 10123, with an amendment, (See also (g) above). The Secretary's recommedation is transmitted by April 15. The recommendation must be based on actual performance compared to the performance standards. The performance standards are the second preceding year's expenditures increased by the weighted average increase in physician fees, the increase in the population, the 5-year historic change in the volume and intensity of services, and changes resulting from statutory and regulatory changes. The recommendation is also required to include an explicit calculation and reporting of conversion factors which would achieve budget neutrality.

The conference agreement requires the Secretary to transmit to Congress by April 15 of each year (beginning in 1991) a recommendation for the update in the conversion factor (or factors) for all physicians services, and for each category of physician services for the following year. In making the recommendation, the Secretary is required to consider the increase in the actual increase in expenditures, such increase compared to the volume performance standard for the previous fiscal year, changes in volume or intensity of services, access to services, and other factors the Secretary deems appropriate. The Secretary is authorized to recommend either a single update or differential updates (category of physician services, by procedures or groups of procedures) to the coversion factor or factors.

The Secretary in making recommendations may also consider unexpected changes by physicians in response to the fee schedule, unexpected changes in outlay projections, changes in beneficiary access, changes in quality or appropriateness of care, and any other relevant factors not measured in the resource-based payment methodology.

For 1992, the Secretary is to make a separate determination of the percentage increase in actual expenditures and the relationship of such percentage to the volume perfromance standard.

The Secretary is required to report (as part of his recommendation to Congress) (1) the update amount for each category of physicians services and for the categories of nonsurgical services, visits, consultations and emergency room services; (2) the rationale for the application of the update to each such category (regardless of whether or not the updates differ); and the data underlying the update recommendations.

*(i) Geographic adjustments.*—The conference agreement includes both House provisions with an amendment to specify that the physician work index reflects one-fourth of the difference between the relative value of physicians work effort in each fee schedule area compared to the national average. The conferees intend that the Secretary apply the general overhead index to the malpractice component until a separate malpractice index is developed.

*(j) Target rates of increase in expenditures or volume performance standards.*—The conference agreement provides for establishment of volume performance standards for fiscal years beginning with FY 1990. The standard is to be established by the Congress.

If the Congress fails to act, the Secretary is required to establish an overall standard as well as a standard for surgery and a standard for other services as specified below. The identical methodology would be used to establish each standard. Under the default, the volume performance standards for fiscal years after 1990 is the sum of (1) the estimated percentage change in physician fees, (2) the estimated change in the number of Part B enrollees (other than HMO enrollees), and (3) a budget neutral historic volume and intensity factor, (4) plus or minus any statutory changes or costs, and (5) minus the performance standard factor. The budget neutral historic volume and intensity factor is the historic volume increase, expressed as a percentage over the previous five year period. The performance standard factor is .5 percent in 1990, 1.0 percent in 1991, 1.5 percent in 1992, and 2.0 percent thereafter.

The Secretary is required to establish procedures for reporting information, required to be reported by the carriers on a monthly basis, concerning performance standard compliance (including expenditures and service volume by procedure, by category of service and by specialty within payment areas). The information is to be provided monthly to the Physician Payment Review Commission, the Congressional Budget Office, the Congressional Research Service, the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance.

*(k) Limitation on beneficiary liability.*—The conference agreement follows Section 10123. Further, assignment is mandated for all claims submitted for beneficiaries for whom Medicaid is required to pay Medicare cost-sharing charges.

Physicians, suppliers, and other persons (including employers or facilities to whom Part B payments are made) are required to submit all claims on behalf of beneficiaries on a standard claim form within 1 year of providing the service. The requirement applies to services rendered after September 1, 1990. If assigned claims are not submitted in accordance with the time requirement, payment is to be reduced by 10 percent. If nonassigned claims are not submitted in accordance with this requirement the Secretary shall impose sanctions.

The agreement further requires the Secretary to encourage and develop a system providing for expendited payment for claims submitted electronically. The Secretary is also encouraged to provide incentives allowing for direct deposit as payments for participating physicians. The Secretary is to provide physicians with necessary technical information to enable them to submit claims electronically. The Secretary is required to submit a plan to Congress on this provision by May 1, 1990.

*(l) Monitoring.*—The conference agreement follows Section 10123 for services furnished after January 1, 1990. Further, the Secretary is required to monitor (1) changes in the utilization of and access to Part B services within geographic, population, and service related categories, (2) possible sources of inappropriate utilization of Part B services which contribute to the overall level of Part B expenditures, and (3) factors underlying these changes and their interrelationships. The Secretary is required to report annually to Congress on changes under (1) above including an examination of factors listed in (3) which may contribute to the changes. The Secretary is to analyze the following factors which may contribute to the changes: utilization of Part B services by State, utilization of services in health manpower shortage areas, visits, surgical procedures, non-surgical procedures, emergency services, mental health services, specific frequently performed services, specific services for which medical practice guidelines are available, appropriateness of services delivered, and other categories or specific services the Secretary determines appropriate.

The Secretary is required to include in his annual report recommendations concerning any identified patterns of inappropriate utilization, utilization review, physician or patient education, problems of beneficiary access to care made evident by the monitoring process, and other factors deemed appropriate.

*(m) Sending information to physicians.*—Sending Information to Physicians.—The conference agreement includes the House provision with modifications.

*(n) Restrictions on administrative and judicial review.*—The conference agreement includes Section 10123 with amendments.

*(o) Requirements for carriers.*—The conference agreement includes the House provision with an amendment to require carriers to monitor and profile physicians billing patterns within each payment area and provide comparative data to physicians whose utilization patterns vary significantly from other physicians in the same payment.

*(p) Bonus payments for services furnished in health manpower shortage areas.*—The conference agreement includes the House provision with an amendment to provide a bonus of 10% of the payment amount for physicians services provided in all health manpower shortage areas.

*(q) Studies.*—(i) GAO Study of Alternative Payment Methodology for Malpractice Component.—The conference agreement includes the House provision.

(ii) GAO Study Examining Alternative Malpractice Resolution Systems.—The conference agreement includes the House provision.

(iii) Study of Payments to Risk Contracting Plans.—The conference agreement includes the House provision.

(iv) Study of Carve-Out From Target Rate of Increase in Expenditures.—No provision.

(v) Study of Electronic Billing.—The conference agreement includes the House provision.

(vi) Study of Target Rate of Increase in Expenditures or Study of Volume Performance Standards.—The conference agreement requires the Secretary to study the feasibility of establishing separate volume performance standards by geographic area (region, State, or other area), by specialty or group of specialties, by type of services (such as primary care, services of hospital-based physicians, and other inpatient services), or by combinations of these. The conferees intend that the report on the study of performance standard rates of increase include information on the need to adjust local performance standard for referral patterns and border crossings, whether each area should have its standard adjusted for prior utilization, whether the definition of services within the performance standard should be modified, and whether HCFA will be able to track expenditures by detailed areas, specialty and type of service.

(vii) PPRC Study of Payment for Overhead.—The conference agreement includes

the House provision, with an amendment to require the PPRC to conduct a study of practice expense items.

The conference agreement also requires the Secretary to report to Congress on the standards a qualified physician group must meet to be eligible for an annual election of a separate group performance standard.

The conference agreement requires PhysPRC to study the feasibility and desirability of using MSAs or other payment areas for purposes of Part B payment. PhysPRC is to submit the report to Congress by July 1, 1991. The report is to include recommendations on the desirability and feasibility of retaining current carrier-wide localities, changing to a system of statewide localities, or adopting MSAs or other payment areas for purposes of Part B payment.

The conference agreement also requires the Secretary to conduct a study of the desirability of including time as a factor in establishing visit codes. The Secretary is required to consult with PPRC and submit a report by July 1, 1991. The report is to include recommendations on the desirability of modifying the number of visit codes, whether greater coding uniformity would result from including time in visit codes as compared with clarifying clinical descriptions of existing codes, and ability to audit physician time accurately.

The conference agreement also requires GAO to conduct a study of the effect of anti-trust laws on the ability of physicians to act in groups to educate and discipline peers of physicians in order to reduce and eliminate ineffective practice patterns and inappropriate utilization. The study is to further address anti-trust issues as they relate to the adoption of practice guidelines by third-party payers and the role that practice guidelines might play as a defense in malpractice cases. The report, together with recommendations is to be submitted by July 1, 1991.

The conference agreement also requires the PPRC to undertake a study of the implications of a resource-based relative value scale for physicians services for non-physician practitioners such as physician assistants, clinical psychologists, nurse midwives, and other health practitioners who bill on a fee-for-service basis under Part B.

*(r) Conforming changes.*—The conference agreement includes the House provision with an amendment to sunset the MAAC program on December 31, 1991. The requirements for sending MAAC information are sunsetted effective for services furnished on or after January 1, 1992.

*(s) Revision of participation periods.*—The conference agreement includes no provision.

*(t) Expedited procedures for initial implementation.*—The conference agreement includes no provision.

*(u) Role of PPRC.*—The conference agreement includes no provision.

*2. Reductions in Payments for Identified Overpriced Procedures (Section 10121 of House Bill and Section 5202 of Senate Amendment)*

*Present law*

*(a) Reduction in payments for identified overpriced procedures.*—OBRA 87 reduced prevailing charges for selected overpriced procedures for a nine month period beginning April 1, 1988. The procedures, which had been identified by the Physician Payment Review Commission as overpriced included: coronary artery bypass surgery; transurethral prostatectomy; suprapubic prostatectomy; diagnostic and or therapeutic dilation and curretage; carpal tunnel neurolysis and/or transposition; pacemaker surgery; bronchoscopy; upper gastrointestinal endoscopy; knee arthroscopy; and knee arthroplasty. The prevailing charges were reduced by 2 percent, and then were further reduced by a sliding scale amount between 0 and 15 percent that is determined by a comparison of the local prevailing charge with the weighted national average prevailing charge. Prevailing charges exceeding 150 percent of the national average were reduced by 15 percent, while prevailing charges less than 85 percent of the national average were not reduced by the sliding scale. Prevailing charges between 85 percent and 150 percent of the national average were reduced by three-thirteenths of one percent for each percent of the prevailing charge exceeding 85 percent of the national average. In the year following the reduction, the maximum paid to nonparticipating physicians is the sum of their reduced prevailings plus one half of the difference between physicians' actual charges and the allowed prevailing charge. Judicial or administrative review of the Secretary's determinations of prevailing charge floors was prohibited.

*(b) Limits on actual charges of non-participating physicians.*—In 1988, actual charges for overpriced procedures provided by nonparticipating physicians are limited to halfway between 125 percent of the reduced prevailing charge and the previous year's limit on actual charges. Beginning in 1989, the limit is 125 percent of the reduced prevailing charge.

*House Bill*

*(a) Reduction in payments for identified overpriced procedures.*—Makes reductions of up to 15% in the prevailing charges of overpriced procedures for a nine month period beginning April 1, 1990. The list of procedures, which is more extensive that the overpriced procedures identified in OBRA 87, is found in Appendix A of the Ways and Means Committee portion of the House Budget Committee report on OBRA-1989. These are procedures which have been identified as being at least 15% overpriced based on a comparison of what payments would be under a resource based relative value scale and national average prevailing charges.

For overpriced procedures, the amount of the reduction would equal one half the difference between the 1989 prevailing charge and the locally-adjusted reduced prevailing amount up to a maximum of 15 percent. The locally adjusted reduced prevailing amount is defined as the reduced national weighted average prevailing charges multiplied by an adjustment factor. Reduced national weighted average prevailing charges are defined as 1989 national weighted average prevailing charges reduced by the percentage identified in Appendix A. The Secretary is directed to determine the national average weighted prevailing charges using the best data available. The adjustment factor for a locality is defined as .54 plus .46 multiplied by the geographic practice cost index contained in Appendix A.

*(b) Limits on actual charges of non-participating physicians.*—Limits actual charges of nonparticipating physicians to halfway between 125 percent of reduced prevailing charges plus one half of the difference between their reduced prevailing charges and their actual charges in 1990. In 1991, the special limit is 125 percent of the reduced prevailing charge.

*Effective date.*—Effective for services rendered on or after April 1, 1990.

*Senate amendment*

*(a) Reduction in payments for identified overpriced procedures.*—Similar provision, except that the amount of the reduction for overpriced procedures would equal one fourth of the difference between the 1989 prevailing charge and the locally-adjusted reduced prevailing amount up to a maximum of 15 percent.

*(b) Limits on actual charges of non-participating physicians.*—Identical provision

*Effective date.*—Enactment

*(a) Reduction in payments for identified overvalued procedures.*—The conference agreement includes the House provision with an amendment. The amount of the reduction equals one-third of the difference between the 1989 prevailing change and the locally adjusted reduced prevailing charge amount up to a maximum of 15 percent. The list of overvalued procedures appears in Table 2 in the Joint Explanatory Statement of the Committee of Conference. The list of procedures are those which have been identified as overvalued by at least 10 percent.

The adjustment factor is defined as the sum of the practice expense ratio for the service (specified in Table 1 in the Joint Explanatory Statement) multiplied by the geographic practice cost index value for the locality and 1 minus the practice expense ratio. The geographic practice cost index value is specified for each locality in Table 3 of the Joint Explanatory Statement.

*(b) Limits on actual charges of nonparticipating physicians.*—The conference agreement includes the House provision.

*3. Payments for radiology, anesthesiology and pathology services (section 10121 and section 4003, 4004(a) and 4005 of House bill and section 5203 and 5204 of Senate amendment)*

*Present law*

*(a) Payments for Radiology Services.*—OBRA 87 established a fee schedule for radiology services provided by board certified radiologists and for physicians for whom radiology services constitute half of their Medicare billings. The fee schedule is based on a relative value scale, which assigns a relative value to each procedure. The relative value scale is then converted into a fee schedule using a dollar conversion factor developed by each carrier. The fee schedule was to be implemented on January 1, 1989, but was not implemented until April 1, 1989. Reimbursement for 1989 was limited to 97 percent of the amount allowed by the fee schedule. Updates for succeeding years are based on the previous year's fee schedule, updated by the Medicare Economic Index.

Limits were placed on the amount that nonparticipating physicians subject to the fee schedule are permitted to charge. For 1989, the limit is 125% of the fee schedule amount. The limit is slated to be 120% in 1990, and 115% after 1990.

Carrier instructions permitted an exception for split billing for cardiovascular and interventional radiologists in 1989.

*(b) Payments for anesthesiology services.*—Currently, reasonable charges for anesthesiology services are based on relative value units (RVUs). RVUs measure the complexity and duration of effort required to provide anesthesiology services to a patient. The number of RVUs is summed and multiplied by a conversion factor to determine the reasonable charge. There are three types of RVUs: base units; time units; and

modifier units. Each surgical procedure is assigned a number of base units; the more complex the procedure, the higher the number of base units. Time units are determined from the length of the procedure. Typically, one time unit is recognized for each fifteen minutes the surgery lasts, if anesthesia is provided by an anesthesiologist. If it is provided by a certified registered nurse anethesist (CRNA), one time unit is allowed for every 30 minutes the surgery lasts. Modifier units can be used to take into account special complications such as the age or physical condition of the patient. Approximately sixty five percent of carriers recognize modifier units.

The reasonable charge for anesthesiology services is the lowest of the actual charge; the allowed relative value units multiplied by the physician's customary conversion factor; or the allowed relative value units multiplied by the prevailing conversion factor in the locality.

OBRA 87 reduced the base units (other than for specified procedures) recognized in determining the reasonable charge by 10 percent for 2 concurrent procedures, 25 percent for 3 concurrent procedures and 40 percent for 4 concurrent procedures. If more than 4 procedures are supervised concurrently, the physician may bill only for preanesthesia services personally furnished to the patient.

OBRA 87 also directed the Secretary to establish a regulation for a uniform relative value guide to be used in all carrier localities after January 1, 1989. HCFA published a proposed rule in January, 1989 that would use the 1988 American Society of Anesthesiologists' 1988 Relative Value Guide as the uniform guide. These rules have not been finally adopted yet.

*(c) Payment for pathology services.*—OBRA 87 required the Secretary to develop a fee schedule for payment of pathology services. The fee schedule is to be derived from a relative value scale (RVS) and conversion factors, and may be applied on a regional, State-wide or carrier service area basis. The Secretary is also to develop an index to adjust the fee schedule after 1990. In developing the fee schedule, the Secretary is required to consult with the Physician Payment Review Commission, the American College of Pathologists and other appropriate physician organizations. The Secretary is required to consider geographic variations in the costs of providing pathology services. No date is specified for implementing the fee schedule, but the Secretary was required to report to the appropriate Congressional committees on the development of the fee schedule by April 1, 1989. That report, which is to include recommendations for protecting beneficiaries against excess balance billings by pathologists, has not been submitted yet.

*House Bill*

*(a) Payments for radiology services.*—

*(1) Conversion Factor.—Section 10121(b).* Eliminates the MEI adjustment to the fee schedule for services provided on or after March 31, 1990. Defines a new conversion factor, a locally-adjusted conversion factor, as 92 percent of the national weighted average conversion factor for services furnished in 1989 multiplied by an adjustment factor. The adjustment factor is identical to the one used in making adjustments to overpriced procedures, which is defined as .54 plus .46 multiplied by a geographic practice cost index for the locality.

Specifies that if the base conversion factor in 1989 in a locality exceeds the locally-adjusted conversion factor, the base conversion factor is to be reduced to the locally-adjusted conversion factor, except that the reduction can not exceed 15 percent of the base conversion factor. Exempts portable X-ray services from any reduction attributed to locally-adjusted conversion factors.

*Section 4003.*—Specifies that the 1990 conversion factor used in a locality is the average of the 1989 conversion factor and a national average conversion factor adjusted for each locality by a geographic adjustment factor. For subsequent years, the Secretary is to establish a national average conversion factor, which is to be applied to a fee schedule area as adjusted by applicable geographic adjustment factors. The geographic adjustment factors are the same as those applied to physicians' services under the physician payment reform provisions of this bill.

*(2) Reasonable charge limits.—Section 10121.* Establishes a limit on reasonable charges for radiology services not subject to the fee schedule for the 9 month period beginning April 1, 1990. For these services, prevailing charges may not exceed the amount that would have been paid under the fee schedule. Imposes a special limit on actual charges for services provided by nonparticipating physicians. The limit specifies that actual charges for services can not exceed 125% of the reduced reasonable charge plus one half the difference between the previous year's maximum allowable actual charge and the reduced reasonable charge. In the second year, the limit is 125 percent of the reduced prevailing charge.

*Section 4003.*—No provision.

*(3) X-ray services.—Section 10121.* Directs the Secretary to conduct a study of the costs of furnishing and the payments for portable X-ray services under Part B. The Secretary is to report his findings to Congress not later than one year after enactment, along with a recommendation as to whether these services should be paid for according to the radiology fee schedule or on the basis of a separate fee schedule.

*Section 4003.*—No provision.

*(4) Nuclear physicians.—Section 10121.* No provision.

*Section 4003.*—Exempts from services subject to the fee schedule in 1990, services performed by, or under the direct supervision of physicians who are certified, or eligible to be certified, by the American Board of Nuclear Medicine or by the American Board of Radiology (with special competence in Nuclear Radiology).

*(5) Interventional radiologists.*—

*Section 10121.* No provision.

*Section 4004.*—No provision.

*(b) Payments for anesthesiology services*

*Section 10121.*—Includes OBRA 87 provision in Title XVIII. Directs the Secretary to establish a relative value guide for use in all localities in reimbursing physicians for anesthesia services. The Secretary is to establish this guide by regulation, and is directed to consult with physician groups in developing the regulation. Expenditures paid under the guide may not exceed expenditures that would have been paid otherwise. Specifies that the Secretary is not required to establish a relative value guide different from that established pursuant to OBRA 87.

Specifies that time units calculated under the relative value guide are to be counted based on actual time and not rounded up to full time units. Calculation of time units applies both to anesthesia services furnished by both physicians and certified registered nurse anesthetists.

*Section 4004.*—Specifies that time units used in computing the relative value unit are to be based on actual time (using fractional units) rather than rounding up to full time units. Calculation of time units applies both to anesthesia services furnished by both physicians and certified registered nurse anesthetists.

*(c) Payment for pathology services*

*Section 4005.*—Requires the Secretary to implement a fee schedule for pathology services using the relative value scale and conversion factors developed under the OBRA-87 provision. Requires that a geographic adjustment be incorporated in the conversion factor in a manner comparable to that applied under physician payment reform and that the geographic adjustment factor be the same as the one applied under the physician payment reform provisions of this bill.

*Effective date.*—Section 10121—Effective for services furnished on or after April 1, 1990. Sections 4003, 4004(a) and 4005—Effective for services furnished on or after January 1, 1990.

*Senate amendment*

*(a) Payments for radiology services*

*(1) Conversion factor.*—Eliminates the MEI adjustment to the fee schedule for the first three months of 1990. For the balance of 1990, specifies that the payment amount permitted under the fee schedule equals 95 percent of the amount permitted during 1989.

*(2) Reasonable charge limits.*—Similar provision, except that prevailing charges can not exceed 98 percent of the prevailing charge levels for services provided during 1989.

*(3) X-ray services.*—Eliminates the MEI adjustment for the first three months of 1990. Limits payments under the fee schedule for the balance of 1990 to 97 percent of the amount permitted under the fee schedule during 1989.

*(4) Nuclear physicians.*—Similar provision to Section 4003, except that the exemption from the fee schedule begins on April 1, 1990. Directs the Secretary to make necessary adjustments in the fee schedule to assure that the exclusion of these physicians does not result in either increases or decreases in the amount that would have been paid under the fee schedule in 1990 for radiologist services, including services excluded under this provision.

*(5) Interventional radiologists.*—Specifies that the exception, issued under carrier instructions, which permitted split billing for cardiovascular and interventional radiologists in 1989 continues for 1990.

*(b) Payments for anesthesiology services*

Identical provision to Section 10121 regarding calculation of time units under the relative value guide, i.e., that they are to be counted based on actual time and not rounded up to full time units.

*(c) Payment for pathology services*

No provision.

*Effective date.*—Enactment.

(a) *Payments for radiology services.*—(i) Conversion Factor.—The conference agreement includes the Senate amendment, with amendments. It eliminates the MEI adjustment to the fee schedule for the first three months of 1990. For the balance of 1990, it specifies that the conversion factors used to determine fee schedule payments equal 96 percent of the conversion factors that applied as of December 31, 1989.

(ii) Reasonable Charge Limits.—The conference agreement included no provision.

(iii) X-Ray Services.—The conference agreement includes the Senate amendment with an amendment. It specifies that, for portable X-ray services, for the first 3 months of 1990, the fee schedule adjustment is eliminated and that for the balance of 1990, the conversion factors used to determine payment amounts are 100 percent of the conversion factors that applied as of December 31, 1989.

(iv) Nuclear Physicians.—The conference agreement includes the Senate amendment, with an amendment. It specifies that, for nuclear medicine services furnished by a physician for whom nuclear medicine services account for at least 80 percent of the physician's Medicare billings, an alternate payment method is applied, beginning after April 1, 1990. In 1990, the alternate payment method is based on one third of the fee schedule applied to radiology services and two thirds on 101 percent of the 1988 prevailing charge for such services. In 1991, the alternate payment amount is based on two thirds of the fee schedule amount applied to radiology services and one third on 101 percent of the 1988 prevailing charge for such services.

(v) International Radiologists—The conference agreement includes the Senate amendment.

The conference agreement also includes the requirement that the Secretary conduct a study of portable X-ray services under Medicare Part B.

The provisions regarding radiology services apply upon enactment.

*(b) Payments for anesthesiology services.*—The conference agreement includes the House provision contained in Section 10121. In codifying the provision in the 1987 Omnibus Reconciliation Act requiring the Secretary to establish a relative value guide, the conferees do not intend for the Secretary to establish a new relative value guide different from the one established pursuant under that provision. The provision applies to services furnished on or after April 1, 1990.

*(c) Payment for pathology services.*—The conference agreement included no provision.

*4. Medicare Economic Index for 1990 (section 10122 and section 4002 of House bill and section 5201 of Senate amendment)*

*Present Law*

Under current law, physicians are reimbursed on the basis of reasonable charges, which are defined as the lowest of a physician's actual charge for a service, the physician's customary charge or the prevailing charge for the service in the community. Annual increases in prevailing charges are limited by the Medicare Economic Index (MEI), which reflects yearly increases in overhead costs for physicians and general changes in earnings levels. The MEI serves as a limit on cumulative changes in prevailing charges since 1973. In the absence of Congressional action, the Secretary is authorized to establish the MEI. In OBRA 87, Congress established the increase in the MEI for 1989 at 3 percent for primary care services and 1 percent for other services.

*House Bill*

*Section 10122.*—Delays the 1990 update for all reasonable charge fee screens, fee schedules, and maximum allowable actual charges for three months until April 1, 1990. Specifies that payment for services performed between January 1, 1990 and March 31, 1990 is to be determined on the same basis as in 1989. The delay applies to all services paid on a reasonable charge or fee schedule basis and subject to an MEI update, except for ambulance services.

Makes conforming changes to participation agreements. Stipulates that 1989 participating provider agreements will remain in effect through March, 1990 unless a physician requests that the agreement be terminated before December 31, 1989. Physicians are to be given an opportunity to become participating providers for 1990 before April, 1990. At the beginning of the 9 month period beginning April 1, 1990, the Secretary is to publish participating physician directories and provide nonparticipating physicians with lists of maximum allowable actual charges.

Specifies that the 1990 MEI increase will be 0 percent for radiology services, anesthesiology services and for other services specified in Appendix A (overpriced procedures); 2 percent for other services and the full MEI adjustment for primary care services.

*Section 4002.*— Specifies that the MEI adjustment for 1990 is 0 percent.

*Effective date.*—Section 10122—Enactment. Section 4002—Enactment.

*Senate amendment*

Similar provision to Section 10122 except that the zero percent MEI adjustment from April 1, 1990 to the end of 1990 applies only to radiology services. Primary care services will receive the full MEI increase, and all other services, other than primary care services, will receive a 2 percent increase .

*Effective date.*—Enactment.

*Conference agreement*

The conference agreement continues, for all Part B services, the reductions in payment imposed under the sequester order of October 16, 1989, pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings). For all Part B services, the reductions continue through March 31, 1990.

The conference agreement includes the House provisions contained in Section 10122 with amendments. It specifies that the exclusion from the delay in the MEI update also applies to clinical laboratory services and clarifies language regarding fee schedule payments subject to the MEI delay.

*5. Miscellaneous Provisions Relating to Payments for Physicians Services*

Sections 10124 and 4006 of House bill.

*Present law*

*(a) Customary charge for new physicians.*—OBRA 1987 specified that the customary charge screens for new physicians (who have not been in practice long enough to have sufficient actual charge data) are to be set at level no higher than 80 percent of the prevailing charge for the service. The provision does not apply to primary care services and services furnished in rural health manpower shortage areas.

*(b) Limitation on amounts for certain services furnished by more than one specialty.*—Calculations of prevailing charges take into account existing patterns of charges by different physician specialties. Many carriers have different prevailing charges for the same service when performed by different specilties.

*(c) Waiver of liability limiting recoupment in certain cases.*—In the mid-1980s, HCFA required carriers to use a national uniform system of coding known as the HCFA Common Procedure Coding System (HCPCS). Previously, carriers had used a variety of coding systems. The conversion caused a problem in a few areas. The Texas carrier responded by implementing statewide fees; HCFA concluded that was incorrect and that overpayments had been made.

Section 1870(c) limits recoveries of overpayments in certain cases where individuals are without fault.

*House bill*

*(a) Customary charge for new physicians.*—

*Section 10124.*—Provides for a phase-in to the prevailing charge level. For the physicians' first year, current law provisions apply. For the second year, i.e., the first year the provision is in effect, the Secretary is to set the customary charge at a level no higher than 85 percent of the prevailing charge level. The percentage is to be increased to 90 percent in the second year the provision is in effect and 95 percent in the third year the provision is in effect. The provision does not apply to services on or after the date the new physician payment reform provisions apply to such services.

*Section 4006.*—No provision.

*Effective date.*

Applies to services furnished in calendar years 1989, i.e. 1990. However, it is not effective until the effective date of the 1990 MEI increase as provided for under the bill (and all references to this year shall refer to the portion of the year beginning on such date.)

*(b) Limitation on amounts for certain services furnished by more than one specialty.*—

*Section 10124.*—Limits the prevailing charge for certain services to the prevailing charge (or fee schedule amount) applicable to the specialty, designated by the Secretary, that furnishes the service most frequently nationwide. The Secretary is to make designations for services with high Part B expenditures whose prevailing charges differ by specialty.

Specifies that nonparticipating physicans subject to a prevailing charge reductions as a result of this provision are subject to limits on actual charges. In the first year the physician may not charge more than 125% of the reduced prevailing charge plus one-half of the difference between the previous year's maximum allowable actual charge and such reduced prevailing charge; in the second year the limit is 125% of the reduced prevailing charge.

*Section 4006.*—No provision.

*Effective date*

Applies to procedures performed after March 31, 1990.

*(c) Waiver of liability limiting recoupment in certain cases.*—

*Section 10124.*—No provision.

*Section 4006.*—Provides that the provisions of Section 1870(c) are to apply where overpayments were made during July 1, 1985–March 31, 1986, as a result of a carrier establishing statewide fees during the process of implementing HCPCS. The Section 1870(c) provisions are to apply, without the need for affirmative action by the physician or an individual, so as to prevent recoupment or decrease in subsequent payments. The provision applies to claims reopened by carriers on or after July 31, 1987.

*Effective date*

Enactment.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Customary charge for new physicians.*—The conference agreement includes the Senate amendment.

*(b) Limitation on amounts for certain services furnished by more than one specialty.*—The conference agreement includes the House provision, with an amendment. It specifies that the limitation applies to surgery, radiology and diagnostic physicians' services.

*(c) Waiver of liability limiting recoupment in certain cases.*—The conference agreement includes the House provision.

*6. Payments for Hospital Outpatient Services*

Section 10131, 10137(e) and section 4013 of House bill and section 5223 of Senate amendment.

*Present law*

*(a) Payment of capital costs for outpatient hospital services.*—Hospitals' capital-related costs are paid according to reasonable cost principles. OBRA 87 applied a 15 percent reduction to capital payments for inpatient hospital services, but the reduction was not applied to hospital outpatient services.

*(b) Study of payments for services in hospital outpatient departments.*—OBRA 86 required the Secretary to submit an interim report to Congress by April 1, 1988 concerning development of a fully prospective payment system for ambulatory surgery and a final report by April 1, 1989. OBRA 87 modified this directive to the Secretary by requiring him to consult with the Prospective Payment Assessment Commission in preparing the final report. The interim report was submitted in June, 1988, but the final report has not been submitted yet.

*House bill*

*(a) Payment of capital costs for outpatient hospital services.*—

*Section 10131.*—Directs the Secretary to issue regulations reducing reimbursements for capital expenses for hospital outpatient department services by 15 percent for cost reporting periods beginning during fiscal 1990. Exempts sole community hospitals from this reduction. Specifies that when payments for hospital outpatient departments are paid on the basis of a blend, the cost portion of the blend includes allocated capital at 85 percent of costs.

*Section 4013.*—Similar provision, except that (a) applies to portions of cost reporting period occurring during FY 90 and (b) no mention is made of hospitals receiving blended rates under Section 1833(n).

*(b) Study of payments for services in hospital outpatient departments.*—

*Section 10137.*—Requires the Physician Payment Review Commission to conduct a two part study of factors related to rapid growth in Medicare payments for services in hospital outpatient departments. The first part of the study is to include consideration of the effects of the step-down method used to allocate hospital capital between inpatient and outpatient departments for outpatient hospital costs. It is also to include an assessment of the extent to which hospital outpatient costs were affected by the implementation of the prospective payment system for inpatient hospital services and by increased review of these services by peer review organizations. The Commission is required to submit a report on this part of the study to Congress by March 1, 1990.

Specifies that the second part of the study is to examine alternative Medicare reimbursement methods for services in hospital outpatient departments. The evaluation is to include prospective payment methods, fee schedules and other methods the Commission deems appropriate. This part of the study is to be submitted to Congress by March 1, 1991 with recommendations on how to reduce the rate of growth in Medicare expenditures for these services.

*Effective date*

*Section 10131.*—Enactment.

*Section 4013.*—Enactment.

*Section 10137.*—Enactment.

*Senate amendment*

*(a) Payment of capital costs for outpatient hospital services.*—

*Section 5232.*—Includes a similar provision to Section 10131, except that the amount of the reduction is 13.5 percent and the exemption also applies to a hospital which is eligible to be paid as a sole community hospital. Further, the reduction does not apply with respect to the capital-related costs of any hospital for a cost-reporting period if it is qualified for a disproportionate share adjustment of at least 5.1 percent in fiscal year 1987.

Provides that the reductions for hospitals paid on a blended rate applies only to that portion of the payment based on hospital costs.

*(b) Study of payments for services in hospital outpatient departments.*—No provision.

*Effective date*

Enactment.

*Conference agreement*

*(a) Payment of capital costs for outpatient costs for outpatient hospital service.*—The conference agreement includes the House provisions contained in Section 4013 with a clarification. It specifies that when payments for hospital outpatient departments are paid on the basis of a blend, the cost portion of the blend includes allocated capital at 85 percent of costs.

*(b) Study of payments for services in hospital outpatient department.*—The conference agreement includes the House provision with amendments. The agreement requires the Physician Review Commission to conduct a two part study of factors related to the rapid growth in Medicare payments for services in hospital outpatient departments.

*7. Durable Medical Equipment*

Section 10132 and 4011 of House bill and Section 5222 of Senate amendment.

*Present law*

*(a) Limitation of rental payments for miscellaneous items and other items of durable medical equipment.*—Under current law, monthly rental payments for "rental cap" items may be made for a maximum of 15 months. Each monthly payment is limited to 10 percent of the recognized purchase price. After 15 months, payment can only be made for maintenance and servicing.

In 1989 and 1990, the recognized purchase price is computed by calculating a base local purchase price and updating it for inflation. The base local purchase price is equal to the average of the purchase prices on claims submitted on an assigned basis for the unused item supplied during the six month period ending with December, 1986.

*(b) Payments for items requiring frequent and substantial servicing.*—Under current law, for items such as ventilators, aspirators, IPPB machines and nebulizers, which require frequent and substantial servicing in order to avoid risk to the patient's health, payments are made on a monthly basis for rental.

*(c) Delay in and reduction of price update for 1990.*—In current law, fees for five categories of durable medical equipment are scheduled to be updated by the same method in 1990. The categories of equipment are: (1) inexpensive and routinely purchased durable medical equipment; (2) items requiring frequent and substantial servicing; (3) miscellaneous items and other items of durable medical equipment; (4) other covered items, not including durable medical equipment; and (5) oxygen and oxygen equipment. The fee schedule for these items is to be updated in 1990 by the consumer price index for urban consumers (CPI-U) for the six month period ending December 1987.

*(d) Reduction in fee schedule for oxygen and oxygen equipment.*—In current law, reimbursement for oxygen and oxygen equipment during 1989 and 1990 equals 100 percent of the local average monthly payment. The local average monthly payment equals 95 percent of the base local payment amount updated for inflation. The base amount is defined as the total reasonable charges for the item during the 12 month period ending in December 1986 divided by the total number of months for all beneficiaries receiving the item in the area during the 12 month period for which the carrier made payment for the item.

*(e) National cap on fee schedules.*—In current law, six categories of durable medical equipment are established. The fee schedule for each category of equipment is determined using a method specific to each category of equipment, although there are similarities in the methods. There is no cap on fees.

*(f) Coverage of parenteral and enteral nutrition equipment.*—Under current law, parenteral and enteral nutrition nutrients, supplies and equipment, such as intravenous poles and infusion pumps, are excluded from items covered under the durable medical equipment provision.

*(g) Overpriced items.*—Under current law, the Secretary is authorized, effective January 1, 1991, to adjust fees for durable medical equipment using the inherent reasonableness guidelines applied to physicians' services.

*(h) Restrictions on suppliers.*—

*(1) Prohibitions against distribution by suppliers of forms documenting medical necessity.*—Physicians are required to certify that the durable medical equipment is medically necessary.

*(2) Requirements for disclosing ownership in or control of a durable medical equipment supplier.*—The law requires certain entities participating under Medicare to disclose ownership and related information.

*(3) Carrier review of suppliers in which physicians have ownership interest.*—No provision.

*(i) Mandatory assignment.*—No provision.

*(j) Establishment of reasonable lifetime for items.*—No provision.

*(k) GAO study of standards for use of and payment for durable medical equipment.*—No provision.

*(l) Acceleration of regional rates and narrowing of range of amounts recognized.*—

*(1) Calculation of local and regional prices.*—Under current law, reimbursement for three categories of durable medical equipment is derived from both local and regional price or charge components. The three categories of equipment subject to this reimbursement scheme are: (1) covered items, other than durable medical equipment; (2) miscellaneous and other items of

durable medical equipment; and (3) oxygen and oxygen equipment. Although the determinants of local and regional prices differ for each of the three categories of equipment, payments for all three categories of equipment have the same proportion of local and regional price components in their reimbursement structure. Payment amounts are determined as follows: payments in 1989 and 1990 are equal to 100 percent of the local purchase price; payments in 1991 are based on 75 percent of the local purchase price and 25 percent of the regional purchase price; in 1992, payments are based on 50 percent of the local purchase price and 50 percent of the regional purchase price; and, in 1993 and subsequent years, payments are based solely on regional purchase prices.

*(2) Limits on ranges of amounts recognized.*—Under current law, limits are established on the range of purchase prices recognized for covered items, other than durable medical equipment; miscellaneous and other items of durable medical equipment; and oxygen and oxygen equipment. No limit is established for 1990. In 1991, the recognized purchase price for an item may not exceed 130 percent, nor be lower than 80 percent of the average for all carrier service areas in the U.S.. In 1992, the range may not exceed 125 percent nor be lower than 85 percent of the average. Similar limits are applied for the range of monthly payment amounts recognized for oxygen and oxygen equipment.

*(m) Power-driven wheelchairs.*—Power driven wheelchairs are not specifically included in any category of durable medical equipment under current law. As a matter of practice, they are treated as miscellaneous and other covered items of durable medical equipment.

*(n) Ostomy supplies defined as part of home health services.*—Under current law, ostomy supplies are not specifically included in the definition of home health services. Current law includes medical supplies in the definition of home health services. Medical supplies are defined by exclusion, rather than inclusion. Drugs and biologicals are specifically excluded from medical supplies, but there is no further delineation as to what constitutes medical supplies.

*House bill*

*(a) Limitation of rental payment for miscellaneous items and other items of durable medical equipment.*—

*Section 10132.*—Limits monthly rental payments to 10 percent of the recognized purchase price for the first three months and 7.5 percent of the recognized purchase price for the next twelve months.

Changes the computation of the base local purchase price to the average of reasonable charges on claims paid on an assigned basis.

*Section 4011.*—No provision.

*(b) Payments for items requiring frequent and substantial servicing.*—

*Section 10132.*—Limits monthly rental payments for items requiring frequent and substantial servicing to a fifteen month period. Directs the Secretary to establish a maintenance and servicing payment for these items during the last month of every six month period following the initial fifteen months. The payment is for reasonable and necessary maintenance and servicing of the item, and is to include payment for parts and labor not covered by the supplier's or manufacturer's warranty.

*Section 4011.*—No provision.

*(c) Delay in and reduction of price update for 1990.*—

*Section 10132.*—Delays the DME fee schedule update for 1990 until April 1, 1990 and limits the amount of the update to 2 percent instead of the CPI-U.

*Section 4011.*—No provision.

*(d) Reduction in fee schedule for oxygen and oxygen equipment.*—

*Section 10132.*—Reduces the fee schedule amount for payment of oxygen and oxygen equipment from April 1, 1990 through December 31, 1990 to 95 percent of the local average monthly payment rate, increased by the applicable update factor.

*Section 4011.*—No provision.

*(e) National cap on fee schedules.*—

*Section 10132.*—Establishes a cap on fees for the all categories of durable medical equipment except customized items. The cap is established at 95 percent of the median of the amounts that would otherwise be paid under the fee schedule. Also includes a cap on the fee schedule for IV poles, which are added to the category of inexpensive and frequently purchased equipment.

*Section 4011.*—No provision.

*(f) Coverage of parenteral and enteral nutrition equipment.*—

*Section 10132.*—Includes parenteral and enteral nutrition equipment in the items included under the durable medical equipment provision. Maintains the exclusion of parenteral and enteral nutrition nutrients and supplies.

Includes IV poles in the category of inexpensive and routinely purchased durable medical equipment. Authorizes reimbursement for IV poles in 1990 at the average reasonable charge in the area for purchase or rental of the item in the 12-month period ending June 30, 1988, increased by the CPI-U for the 12 month period ending with June 1989. In subsequent years, the fee is the previous year's fee updated by the CPI-U for the 12 month period ended the previous June.

*Section 4011.*—Contains similar provision with respect to coverage of parenteral and enteral nutrition equipment. No provision regarding IV poles.

*(g) Overpriced items.*—

*(1) Inherent reasonableness.*—

*Section 10132.*—Removes restriction permitting the Secretary to apply inherent reasonableness guidelines only after January 1, 1991, thus permitting the Secretary to make inherent reasonableness adjustments after the effective date of this subsection.

*Section 4011.*—No provision.

*(2) Reduction in fee schedule for certain specified items*

*Section 10132.*—Directs the Secretary to reduce the payment amounts for seat-lift chairs, motorized scooters, and transcutaneous electrical nerve simulators by 15 percent for items furnished on or after April 1, 1990.

*Section 4011.*—Directs the Secretary to reduce the payment amounts for seat-lift chairs, power operated vehicles or transcutaneous electrical nerve simulators by 15 percent.

*(3) Reduction in fee schedule for other overpriced items*

*Section 10132.*—Directs the Secretary to publish a list of items which he has determined are overpriced and further directs the Secretary to reduce payments for these items by 15 percent beginning in the fourth month after publication of the list.

*Section 4011.*—No provision.

*(h) Restrictions on suppliers.*—

*(1) Prohibitions against distribution by suppliers of forms documenting medical necessity*

*Section 10132.*—Prohibits suppliers of durable medical equipment from distributing for commercial purposes to individuals eligible for Part B services any partially or fully completed forms required by the Secretary to document medical need for an item of durable medical equipment. Subjects suppliers who violate this prohibition to exclusion from Medicare or to civil money penalties not exceeding $1,000 for each form distributed.

*Section 4011.*—No provision.

*(2) Requirements for disclosing ownership in or control of a durable medical equipment supplier*

*Section 10132.*—Directs the Secretary to promulgate a regulation requiring durable medical equipment suppliers to provide the Secretary with complete information concerning the identity of each person having at least a 5% ownership or control interest in the supplier or at least a 5 percent ownership interest in any subcontractor. Suppliers must provide this information to the Secretary as a condition of payment for covered items and must also inform the Secretary if any of the people having such interest are physicians.

Stipulates that suppliers who are not eligible for Medicare reimbursement due to failing to comply with this provision can not bill beneficiaries for these items.

*Section 4011.*—No provision.

*(3) Carrier Review of suppliers in which physicians have ownership interest*

*Section 10132.*—Requires Medicare carriers to subject claims from suppliers of durable medical equipment, prosthetic devices, orthotics and prosthetics in which a physician has an ownership or control interest of at least 5 percent to a higher standard of review than claims from suppliers not having such ownership or control.

*Section 4011.*—No provision.

*(i) Mandatory assignment.*—

*Section 10132.*—Mandates billing and payment for durable medical equipment on an assignment-related basis only. Subjects suppliers who repeatedly violate this provision to exclusion from Medicare for up to five years or civil money penalties, or both.

*Section 4011.*—No provision.

*(j) Establishment of reasonable lifetime for items.*—

*Section 10132.*—Directs the Secretary to determine and establish a reasonable lifetime for two categories of durable medical equipment: equipment requiring frequent and substantial servicing and other items of durable medical equipment. If the reasonable lifetime for an item is reached during a continuous period of medical need, payment for a replacement may be made in accordance with the payment principles established for the category of equipment.

*Section 4001.*—No provision.

*(k) GAO Study of standards for use of and payment for durable medical equipment.*—

*Section 10132.*—Requires the Comptroller General to conduct a study of the appropriate uses of durable medical equipment and of the appropriate criteria for making determinations of medical necessity in the Medicare program. The study is to place particular emphasis on items, including seat-lift chairs that may be subject to abusive billing practices. The study is to include an analysis of the appropriate use of medical necessity forms and procedures for identifying

items that should no longer be covered by Medicare. In conducting the study, the Comptroller General is directed to convene a panel consisting of the following: 1) specialists in orthopedic medicine, rehabilitation, arthritis, and geriatric medicine; 2) representatives of consumer organizations; and 3) representatives of carriers participating in Medicare. The report is to be submitted by April 1, 1990 to the House Committees of Ways and Means and Energy and Commerce and the Senate Finance Committee and is to include recommendations that the Comptroller General deems appropriate.

*Section 4011.*—No provision.

*(l) Acceleration of regional rates and narrowing of range of amounts recognized.—*

*(1) Calculation of local and regional prices*

*Section 10132.*—No provision.

*Section 4011.*—Accelerates the transition to payments based solely on regional prices by eliminating payments based only on local payment amounts in 1990. Instead, payments in 1990 are based on 75 percent local prices and 25 percent regional prices. In 1991, the mix is 50 percent local prices and 50 percent regional prices. In 1992 and subsequent years, payments are based solely on regional prices.

*(2) Limits on ranges of amounts recognized*

*Section 10132.*—No provision.

*Section 4011.*—Restricts the ranges of recognized purchase prices or payment amounts and accelerates the restriction of such ranges. In 1990, the recognized purchase prices or payment amounts may not exceed 125 percent, nor be lower than 85 percent of the average for all carrier service areas in the U.S. In 1992, the range is between 120 percent and 90 percent of the average.

*(m) Power-driven wheelchairs*

*Section 10132.*—No provision.

*Section 4011.*—Explicitly defines power-driven wheelchairs as a separate type of inexpensive or routinely purchased durable medical equipment.

*(n) Ostomy supplies defined as part of home health services.—*

*Section 10132.*—No provision.

*Section 4011.*—Includes ostomy supplies (as defined by the Secretary) provided under a plan established by a home health agency and periodically reviewed by a physician in the definition of home health services. Specifies that ostomy supplies are not included in the definition of durable medical equipment. Requires home health agencies to provide ostomy supplies to Medicare beneficiaries who need such supplies as part their services.

*Effective date.*—Section 10132—Enactment, except (a) and (b) apply with respect to payment for items of DME furnished on or after April 1, 1990. Section (h)(1) and (2) apply to forms and documents distributed on or after April 1, 1990. Section(h)(3) applies with respect to covered items furnished on or after April 1, 1990. Sections (j) and (i) apply with respect to covered items furnished on or after April 1, 1990.

*Section 4011.*—Applies with respect to covered items furnished on or after January 1, 1990 except that Section (m) is effective October 1, 1989.

*Senate amendment*

*(a) Limitation of rental payments for miscellaneous items and other items of durable medical equipment.*—No provision.

*(b) Payments for items requiring frequent and substantial servicing.*—No provision.

*(c) Delay in and reduction of price update for 1990.*—Similar provision to Section 10132, except that amount of the update is 3 percent.

*(d) Reduction in fee schedule for oxygen and oxygen equipment.*—No provision.

*(e) National cap on fee schedules.*—No provision.

*(f) Coverage of parenteral and enteral nutrition equipment.*—No provision.

*(g) Overpriced items.—*

*(1) Inherent reasonableness.*—No provision.

*(2) Reduction in fee schedule for certain specified items.*—Similar provision to Section 10132, except that motorized scooters are not mentioned.

*(3) Reduction in fee schedule for other overpriced items.*—No provision.

*(h) Restrictions on suppliers.—*

*(1) Prohibitions against distribution by suppliers of forms documenting medical necessity.*—No provision.

*(2) Requirements for disclosing ownership in or control of a durable medical equipment supplier.*—No provision.

*(3) Carrier review of suppliers in which physicians have ownership interest.*—No provision.

*(i) Mandatory assignment.*—No provision.

*(j) Establishment of reasonable lifetime for items.*—No provision.

*(k) GAO study of standards for use of and payment for durable medical equipment.—*

*Section 5225.*—No provision.

*(l) Acceleration of regional rates and narrowing of range of amounts recognized.—*

*(1) Calculation of local and regional prices.*—No provision.

*(2) Limits on Ranges of Amounts Recognized.*—No provision.

*(m) Power-driven wheelchairs.*—Explicitly defines power-driven wheelchairs as a separate type of inexpensive or routinely purchased durable medical equipment, excluding a customized power-driven wheelchair defined as such by the Secretary. Directs the Secretary to specify, through regulation, criteria to be used by carriers in making determinations on a case-by-case basis in determining whether a power-driven wheelchair is a customized item or is to be classified as routinely purchased durable medical equipment.

*(n) Ostomy supplies defined as part of home health services.*—No provision.

*Effective date*

*Section 5222.*—Applies with respect to items furnished on or after April 1, 1990, except that the provision directing the Secretary to issue regulations on customized items is effective upon enactment.

*Conference agreement*

*(a) Limitation of rental payment for miscellaneous items and other items of durable medical equipment.*—The conference agreement does not include the House provision.

*(b) Payments for items requiring frequent and substantial servicing.*—The conference agreement does not include the House provision.

*(c) Delay in and reduction of price update for 1990.*—The conference agreement includes the House provision with an amendment which specifies that the MEI update for 1990 is zero precent.

*(d) Reduction in fee schedule for oxygen and oxygen equipment.*—The conference agreement included no provision.

*(e) National cap on fee schedules.*—The conference agreement included no provision.

*(f) Coverage of parenteral and enteral nutrition equipment.*—The conference agreement establishes a cap of 15 months on rental payments under the enteral and parenteral fee schedule, and requires the Secretary to provide for reasonable maintenance and servicing fees to be paid after the period of rental payments has expired, effective April 1, 1990.

*(g) Overpriced items.—*

*(i) Inherent reasonableness.*—The conference agreement included no provision.

*(ii) Reduction in feee schedule for certain specified items.*—The conference agreement includes the Senate amendment.

*(iii) Reduction in fee schedule for other overpriced items.*—The conference agreement included no provision.

*(h) Restrictions on suppliers.*—The conference agreement included no provision.

*(i) Mandatory assignment.*—The conference agreement included no provision.

*(j) Establishment of reasonable lifetime for items.*—The conference agreement included no provision.

*(k) GAO study of standards for use and payment for durable medical equipment.*—The conference agreement includes section 10132 of the House provision with a requirement that the Comptroller's report be submitted not later than April 1, 1991.

*(l) Acceleration of regional rates and narrowing of range of amounts recognized.*—The conference agreement includes Section 4011 of the House provision with respect to limits on ranges of amounts recognized.

*(m) Power-driven wheelchairs.*—The conference agreement includes the Senate amendment.

*(n) Ostomy supplies defined as part of home health services.*—The conference agreement includes the House provision with amendments.

*8. Clinical Diagnostic Laboratory Services*

Section 10133 and 4012 of House bill and section 5221 of Senate amendment.

*Present law*

*(a) Fee schedule update for 1990*

Under current law, the Secretary is directed to update the clinical laboratory fee schedule on January 1 of each year by a percentage increase or decrease in the consumer price index of all urban consumers (U.S. city average). The Secretary may make other adjustments he deems justified by technological changes. No update was permitted in 1988 and no catch-up is permitted in subsequent years.

*(b) Reduction of limitation amount on payment amount*

Under current law, clinical diagnostic laboratory services are reimbursed on the basis of a fee schedule established on a regional, state-wide or carrier service area at the discretion of the Secretary. As a matter of practice, the Secretary has established fee schedules on a carrier service basis. A ceiling limits payment that can be made for a laboratory test to the median of all the fee schedules established for that test in that laboratory setting. This ceiling was imposed on April 1, 1988, and is slated to remain in effect until a nationwide fee schedule is implemented.

*(c) Establishment of nationwide fee schedule*

Under current law, a nationwide fee schedule is to be established for clinical diagnostic laboratory tests furnished on or after January 1, 1990. A separate nationwide

fee schedule is established for tests furnished by sole community hospitals.

*(d) Payments of fees to certain labs for additional trips for tests requiring "stat" results*

Under current law, the Secretary is authorized to establish a nominal fee to cover the appropriate costs of collecting a laboratory sample and a fee to cover transportation and personnel expenses for trained personnel to travel to a person who is homebound or an inpatient in an inpatient facility which is not a hospital. Only one fee may be established for samples collected in the same encounter. The method for computing the fee for transportation and personnel expenses is to be based on the number of miles and the personnel costs involved in collecting the sample. However, this method for computing the fee applies only to tests furnished between April 1, 1989 and December 30, 1990 and only to laboratories that establish, to the Secretary's satisfaction, the following qualifications: 1) that the laboratory depends on Medicare payments for at least 80 percent of its collected revenues for clinical diagnostic laboratory tests; 2) at least 85 percent of the laboratory's gross revenue for tests are for tests performed for individuals who are homebound or resident in a nursing facility; and 3) the laboratory provides tests for residents in nursing facilities representing at least 20 percent of the number of nursing facilities in the state in which the laboratory is located. In establishing these qualifications, laboratories must use data for the twelve month period ended June 30, 1988. The law also requires the Secretary to adjust the fees for transportation and personnel in such a manner that total costs for clinical lab fees are not greater than they would have been in the absence of the adjustment for transportation and personnel.

*(e) Restriction on payment to referring laboratory*

Current law restricts payment for clinical diagnostic laboratory tests to the person or entity which performed or supervised the performance of the tests, with a few exceptions. One exception provides that in the case of a test performed by one laboratory at the request of another laboratory, payment may be made to the referring laboratory.

*(f) Repeal of State certification of high-volume physician office labs*

OBRA 87 required high volume physician office laboratories performing over 5,000 tests a year (including Medicare and non-Medicare) to meet the same conditions for participation in Medicare as those required of independent laboratories. The effect of this provision is that high volume physician laboratories must be licensed under state law if licensure is required of independent laboratories and must meet other conditions established by the Secretary to assure the health and safety of the people for whom the tests are performed.

*House bill*

*(a) Fee schedule update for 1990*

*Section 10133.*—Prohibits the Secretary from making an adjustment to the fee schedule to account for changes in the consumer price index in 1989. [drafting error] Stipulates that the 1990 annual adjustment to the fee schedule is an increase of 2 percent.

*Section 4012.*—No provision.

*(b) Reduction of limitation amount on payment amount*

*Section 10133.*—Maintains the ceiling on fee schedule payments at 100 percent of the median for a particular test in a particular laboratory setting through December 31, 1989. Establishes the ceiling on fee schedule payments at 95 percent of the median for a particular test in a particular laboratory setting beginning January 1, 1990 until such time as a nationwide fee schedule is established for that test in that laboratory setting.

*Section 4012.*—Establishes the ceiling on fee schedule payments at 95 percent of the median of all the fee schedules established for that test in that particular laboratory setting beginning January 1, 1990 and continuing indefinitely.

*(c) Establishment of nationwide fee schedule*

*Section 10133.*—Delays the implementation of the nationwide fee schedule for two years, until January 1, 1992.

*Section 4012.*—Eliminates the requirement for a nationwide fee schedule.

*(d) Payments of fees to certain labs for additional trips for tests requiring "Stat" results*

*Section 10133.*—Deletes qualifications relating to Medicare dependency and percentage of statewide test laboratories must demonstrate to the Secretary in order to receive a fee for transportation and personnel costs associated with collecting a sample from people who are homebound or institutionalized in nursing facilities. The requirement to demonstrate that at least 85 percent of the tests are performed on homebound people or residents of nursing homes remains. Provides payment to qualifying laboratories for a second fee for transportation and personnel on the same day to cases where an individual's physician has ordered a laboratory test for which results are required on an as-soon-as-possible ("stat") basis.

*Section 4012.*—No provision.

*(e) Restriction on payment to referring laboratory*

*Section 10133.*—No provision.

*Section 4012.*—Restricts the payment for clinical diagnostic laboratory tests to a referring laboratory only if the referring laboratory is located in, or is part of a rural hospital, or if not more than 30 percent of the tests for which the referring laboratory submits bills or requests payments within a year are performed by another laboratory.

*(f) Repeal of State certification of high-volume physician office labs*

*Section 10133.*—No provision.

*Section 4012.*—Repeals the requirement that high volume physician labs comply with the same State and Federal requirements as independent laboratories.

*Effective date*

Section 10133—Applies to tests furnished on or after January 1, 1990.

Section 4012—Enactment, except: (e) applies with respect to clinical diagnostic laboratory tests performed on or after January 1, 1990. and (f) is effective as if included in the enactment of OBRA—1987.

*Senate Amendment*

*(a) Fee schedule update for 1990*

*Section 5221.*—Stipulates that the 1990 annual adjustment to the fee schedule is an increase of 3 percent, effective April 1, 1990.

*(b) Reduction of limitation amount on payment amount*

Identical provision to Section 10133.

*(c) Establishment of nationwide fee schedule*

No provision.

*(d) Payments of fees to certain labs for additional trips for tests requiring "stat" results*

No provision.

*(e) Restriction on payment to referring laboratory*

No provision.

*(f) Repeal of State certification of high-volume physician office labs*

No provision.

*Effective date*

Enactment.

*Conference agreement*

*(a) Fee schedule for 1990.*—The conference agreement included no provision.

*(b) Reduction of limitation amount on payment amount.*—The conference agreement includes the House provision contained in Section 10133, with an amendment. It established the ceiling on fee schedule payments at 93 percent of the median for a particular test in a particular laboratory setting beginning January 1, 1990.

*(c) Establishment of nationwide fee schedule.*—The conference agreement includes the House provision contained in Section 4012.

*(d) Payment of fees to certain labs for additional trips for test requiring "stat" results.*—The conference agreement included no provision.

*(e) Restriction on payment to referring laboratory.*—The conference agreement includes the House provision with an amendment; however, it does not restrict the payment for clinical diagnostic laboratory tests to a referring laboratory if the referring laboratory is a wholly-owned subsidiary of the entity performing the test, or both the referring laboratory and the entity performing the test are wholly owned by a third entity. Stipulates that the restrictions apply to clinical diagnostic laboratory tests performed on or after January 1, 1990.

*(f) Repeal of State certification of high-volume physician office labs.*—The conference agreement includes 4012 of the House provision with an amendment that such laboratories meet the certification requirements of the Clinical Laboratory Improvement Act of 1988.

*(g) Moratorium on laboratory demonstration.*—The conference agreement included no provision.

*9. Mental Health Services*

Section 10134 and 4021 of House bill and section 5233 and 5237 of Senate bill.

*Present law*

*(a) Medicare reimbursement for psychologists' services*

Under current law, Medicare reimbursement for psychologists' services is limited to services furnished by clinical psychologists in risk-contracting health maintenance organizations (HMOs), rural health clinics, and community mental health centers (CMHCs) and services furnished off-site from a CMHC because of the inability of the patient to travel to the center because of physical or mental impairment, institutionalization or a similar reason.

*(b) Reimbursement on reasonable charge basis*

Under current law, reimbursement for services of qualified psychologists furnished by or offsite from a CMHC is 80 percent of the lesser of the actual charge for services or a fee schedule established by the Secretary.

*(c) Development of criteria regarding consultation with a physician*

No provision.

*(d) Elimination of dollar limitation for mental health services*

Under current law, payment in any year for outpatient mental health services for treatment of mental, psychoneurotic, and personality disorders is limited to the lesser of $1,375 or 62.5 percent of reasonable charges. After beneficiaries have paid coinsurance of 20 percent, payment for 62.5 percent of the remaining expenses is equal to payment of 50 percent of reasonable charges.

*(e) Definition of psychologist*

In current law, the Secretary is authorized to determine the qualifications for a clinical psychologist.

*(f) Coverage of clinical social worker services*

Under current law, services of clinical social workers are reimbursable only if they are provided pursuant to a contract with a risk-based organization (HMO). Current law defines clinical social workers, but not clinical social worker services.

*House Bill*

*(a) Medicare reimbursement for psychologists' services*

*Section 10134.*—Removes current restrictions on clinical psychologists' services. Services of clinical psychologists are reimbursable if they would otherwise be covered if they were furnished by physicians or as incident to physicians' services and as long as the psychologists are practicing within the scope of state licenses.

*Section 4021.*—Identical provision

*(b) Reimbursement on reasonable charge basis*

*Section 10134.*—Deletes current reimbursement, thus providing that psychologists' services are reimbursable on the basis of reasonable charges.

*Section 4021.*—No provision.

*(c) Development of criteria regarding consultation with a physician*

*Section 10134.*—Requires the Secretary to develop criteria covering direct reimbursement to qualified psychologists. The criteria must include an agreement by qualified psychologists that they will consult with patients' attending physicians within a reasonable period of time after initiating treatment. The purpose of the consultation is to consider potential physical conditions that may be contributing to patients' symptoms. The Secretary is required to consider patient confidentiality in developing these criteria.

*Section 4021.*—Directs the Secretary to require qualified psychologists and clinical social workers (whose services are added as Medicare reimbursable services under another provision in this section) to document the following in patients' records: 1) that the practitioner has informed the patient of the desirability of conferring with his primary care physician to consider potential medical conditions contributing to their condition; and 2) that the practitioner has provided written notification to the patient's attending physicians that mental health services are being provided, or that the practitioner has consulted directly with the attending physician to consider medical conditions which may be contributing to the patient's condition. If a patient specifically requests that such notification or consultation not be made, the physician is not required to notify or consult with the attending psychologist or social worker.

*(d) Elimination of dollar limitation for mental health services*

*Section 10134.*—Eliminates the provision limiting payment for mental health services to $1,375 per year.

*Section 4021.*—Identical provision.

*(e) Definition of psychologist*

*Section 10134.*—No provision.

*Section 4021.*—No provision.

*(f) Coverage of clinical social worker services*

*Section 10134.*—No provision

*Section 4021.*—Includes clinical social worker services as a Medicare reimbursable service. Defines clinical social worker services as services provided by a clinical social worker for the diagnosis and treatment of mental illnesses which the clinical social worker is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed. The services must be those that would be covered if furnished by a physician or as an incident to a physician's services. Reimbursement for clinical social worker services is on the basis of reasonable charges.

*Effective date*

Section 10134—Provisions (a), (b), and (c) are effective January 1, 1990. Provision (d) is effective for expenses incurred in a year beginning in 1990. Section 4021—Provisions (a), (b), (c) and (e) are effective January 1, 1990. Provision (d)—Applies to expenses incurred in a year beginning in 1990.

*Senate amendment*

*(a) Medicare reimbursement for psychologists' services*

*Section 5233.*—Similar provision.

*(b) Reimbursement on reasonable charge basis*

*Section 5233.*—Similar provision to section 10134.

*(c) Development of criteria regarding consultation with a physician*

No provision.

*(d) Elimination of dollar limitation for mental health services*

*Section 5233.*—Identical provision to Section 10134.

*(e) Definition of psychologist*

*Section 5233.*—Defines psychologist or qualified psychologist as a person with the following qualifications: (1) a license or certification at the independent practice level of psychology by the state in which the person practices; (2) a doctoral degree in psychology from a regionally accredited educational institution; or in the case of an individual licensed or certified prior to January 1, 1978, a master's degree in psychology and a listing in a national register of mental health services in psychology approved by the Secretary; and (3) at least two years of supervised experience in health service, at least one year of which is postgraduate.

*(f) Coverage of clinical social worker services*

*Section 5237.*—Identical provision to section 4021.

*Effective date*

Provision (a), (b), and (e)—Apply to services performed on or after January 1, 1990. Provision (d) applies to expenses incurred in a year beginning in 1990. Provision (f)—Enactment.

*Conference agreement*

*(a) Medicare reimbursement for psychologists' services.*—The conference agreement includes the House provision.

*(b) Reimbursement on reasonable charge basis.*—The conference agreement included no provision.

*(c) Development of criteria regarding consultation with a physician.*—The conference agreement includes the House provision contained in Section 10134. The conferees intend that the criteria developed by the Secretary stipulate that the patient's medical record include documentation that: (1) the psychologist or clinical social worker has informed the patient of the desirability of conferring with the patient's primary care physician to consider potential medical conditions contributing to the patient's condition; and (2) the psychologist or clinical social worker has provided written notification to the patient's designated attending physician that services are being provided to the patient, or has consulted directly with the physician to consider medical conditions that may be contributing to the patient's symptoms, unless the patient specifically requests that such notice or consultation not be made.

*(d) Elimination of dollar limitation for mental health services.*—The conference agreement includes the House provision.

*(e) Definition of psychologist.*—The conference agreement included no provision.

*(f) Coverage clinical social worker services.*—The conference agreement includes the House provision with an amendment. It excludes services furnished by a clinical social worker to an inpatient of a hospital and services furnished to an inpatient of a skilled nursing facility which the facility is required to provide as a requirement for participation in Medicare. It specifies that reimbursement to clinical social workers is to be 80 percent of the lesser of the actual charge for the service or 75 percent of the amount paid to a psychologist. Stipulates that payment may only be made on an assignment-related basis.

*10. Payments for Other Services*

Sections 10135, 10136, 10137(f)-(g), 4004 (b)-(d), 4014, 4017, 4022, 4024 of House bill.

*Present law*

*(a) Certified registered nurse anesthetists (CRNAs)*

*(1) Conversion factors of CRNAs.*—OBRA 86 provided for direct reimbursement of certified registered nurse anesthetists on an assigned basis for a two year period beginning January 1, 1989. Reimbursement to CRNAs would be the lesser of actual charges or a fee schedule established by the Secretary. The Secretary was authorized to develop a fee schedule using a methodology similar to the fee schedule for anesthesiology (i.e. using base, time and modifier units). OBRA 87 mandated that aggregate reimbursement for CRNA services under the fee schedule not exceed total payments that would have been made in 1989 and 1990 under the previous reimbursement methodology. In addi-

tion, it stipulated that the initial fee schedule must be based on audited data from cost reporting periods ending in FY 85 and trended forward using the MEI.

Regulations implementing the fee schedule were proposed in January, 1989, but have not been finalized yet. Proposed regulations are currently being implemented through carrier instructions. The Secretary's proposed regulations incorporated the base, time and modifier unit concepts and a conversion factor. Because of the budget neutrality requirements, the conversion factors used in the fee schedule proposal were considerably lower than anticipated, in comparison to hospital costs.

*(2) Medical direction of CRNAs.*—Current law does not prohibit a surgeon from being reimbursed for medical direction of a CRNA during a surgical procedure that is being performed by that surgeon. As a matter of practice, some Medicare contractors permit it, while others do not.

*(3) Extension of the pass-through for CRNA services in rural hospitals.*—Under current law, rural hospitals are permitted to exclude costs for CRNA services from the prospective payment system and be reimbursed for them on a cost basis if they meet specified conditions. Rural hospitals must have established these conditions to the Secretary's satisfaction prior to April 1, 1989 in order to be eligible for pass-through payments. Less than 250 surgical procedures (including both inpatient and outpatient procedures) must have been performed in the hospital during 1987. Prior to the beginning of subsequent years, the hospital must determine that it will perform less than 250 surgical procedures in the following year. Not more than one full-time equivalent CRNA may be employed by or under contract to the hospital and the CRNA must agree not to bill Medicare Part B directly for services. The pass-through exemption from the prospective payment system is effective for 1989, 1990 and 1991.

*(b) Nurse practitioner services, clinical nurse specialist services and assistants at surgery*

*(1) Services and reimbursement for nurse practitioners and clinical nurse specialists.*—Under current law, services of nurse practitioners are covered by Medicare in specified circumstances, as follows: (1) services provided in rural health clinics, or as incident to such services in rural health clinics if these services would be covered if provided by physicians; (2) services incident to physicians' services; and (3) services furnished in a health maintenance organization or competitive medical plan and services incident to these services if they would be covered if furnished by physicians.

Medicare reimbursement for these services varies by the setting in which services are performed. Nurse practitioner services performed in rural health clinics are reimbursed either on a reasonable cost basis or under the all-inclusive rate established for rural health centers. Reimbursement for services performed incident to physician services is included in reimbursement made to physicians. For nurse practitioner services rendered in an cost-based HMO or CMP, payment is included as part of reasonable cost reimbursement. No additional payment is authorized for nurse practitioner services rendered in risk-based HMOs or CMPs.

Services of clinical nurse specialists are covered as incident to a physician's services if they would be covered if provided by a physician.

OBRA 86 authorized coverage of physicians' assistants furnished under the supervision of a physician in a hospital, skilled nursing facility, intermediate care facility or as an assistant at surgery. Physicians' assistants must be legally authorized to perform those services in the State in which they are performed. Services and supplies furnished incident to these services are covered if they would be covered when furnished incident to physicians' services.

Physicians' assistants services are subject to a prevailing charge screen equal to 85 percent of the prevailing charge for comparable physicians' services furnished by nonspecialist physicians when these services are performed in skilled nursing facilities or intermediate care facilities. The prevailing charge screen is equal to 75 percent of the nonspecialist physicians' prevailing charge when services are performed in a hospital and 65 percent of the reasonable charge for a physician when acting as an assistant at surgery.

*(2) Payment for routine visits by members of a team.*—No provision.

*(3) Reduction in payment to avoid duplicate payment.*—No provision.

*(4) State demonstration projects on visit limitations.*—No provision.

*(5) GAO study of payment for services of nurse practitioners and clinical nurse specialists.*—No provision.

*(6) Study of payments for assistants at surgery.*—Current law provides for reimbursement for assistants at surgery on the basis of reasonable charges only if the services (1) are required due to exceptional medical circumstances; (2) are performed by team physicians needed to perform complex medical procedures; (3) constitute concurrent medical care relative to a medical condition that requires the presence of, and active care by, a physician of another specialty during surgery; or (4) are medically required and are furnished by a physician who is primarily engaged in surgery and the primary surgeon does not use interns and residents in the surgical procedures the physician performs. However, reasonable charge reimbursement is prohibited in hospitals with a training program relating to the medical specialty required for the surgical procedure and a qualified individual on the staff of the hospital is available to serve as an assistant at surgery.

Payment for an assistant at surgery is limited to 20 percent of the local prevailing charge, adjusted by the Medicare economic index (MEI), the surgical procedure performed by the primary surgeon. If conditions (2) and (3) above are met, payment is made on the basis of reasonable charges consistent with the prevailing practice in the area rather than at the special assistant at surgery rate.

Physicians' assistants may also serve as assistants at surgery. While acting as an assistant at surgery, reimbursement is limited to 65 percent of the amount that would be paid to a physician acting as an assistant at surgery.

*(c) Federally qualified health centers*

*(1) inclusion of federally qualified health center services in medicare benefits.*—Medicare law provides for reimbursement of rural health clinic services on the basis of costs which are reasonable and related to the costs of furnishing such services or which are based on such other tests of reasonableness as the Secretary prescribes by regulation.

*(2) medicare payment for federally qualified health center services.*—Medicare law provides for reimbursement of rural health clinic services on the basis of costs which are reasonable and related to the costs of furnishing such services or which are based on such other tests of reasonableness as the Secretary prescribes by regulation.

Current regulations governing reimbursement for rural health clinic services provide for reimbursement of clinics which are integral and subordinate parts of a Medicare participating hospital, skilled nursing facility or home health agency on the basis of the reasonable cost principles. All other rural health clinics, called independent clinics, are paid an all-inclusive rate for each beneficiary visit for covered services. The all-inclusive rate is determined by the carriers at the beginning of each reporting period. The rate is determined by dividing the estimated total allowable costs by estimated total visits for rural health clinic services. Rates are subject to reasonableness tests, and are reviewed periodically during each reporting period to assure that payments approximate actual allowable costs and visits.

Carriers adjust rates in the following circumstances: 1) there is a significant change in the utilization of clinic services; 2) actual allowable costs vary materially from the clinic's estimated allowable costs; or other circumstances arise which warrant an adjustment. Payments are also subject to reconciliation to assure that they do not exceed or fall short of allowable costs for covered services delivered to covered beneficiaries.

*(3) Waiver of part B deductible.*—No provision.

*(4) Requirements governing Medicare payments in specified circumstances.*—Under current law, Medicare payments generally may not be made in a number of specified circumstances, including where the person receiving the service has no legal obligation to pay or because a governmental entity (other than Medicare or a governmental entity providing health insurance benefits) is paying for such services directly or indirectly. Rural health clinic services are exempt from this requirement.

*(5) Exemption from Anti-Kickback Requirement.*—Current law prohibits providers or others furnishing services or supplies to Medicare beneficiaries from knowingly or willfully soliciting, receiving, offering to pay or paying any remuneration (including any kickback, bribe, or rebate) directly or indirectly, in cash or in kind in return for the following: 1) furnishing or arranging to furnish an item or service for which Medicare or any State health program will pay; and 2) purchasing, leasing, ordering a good facility, service, or item for which partial or full payment can be made under Medicare or any State health program. Those who violate these prohibitions are guilty of a felony and are subject to a fine of up to $25,000 and imprisonment for up to 5 years.

*(d) Rural health clinic services*

*(1) Staffing requirements; inclusion of certified nurse midwife.*—Current law does not regulate staffing requirements of rural health centers. Regulations require that a nurse practitioner or physician assistant be available to furnish patient care services at least 60 percent of the time a clinic operates.

*(2) Coverage of clinical social worker and certified nurse midwife services.*—No provision.

*(3) Expansion of Areas Eligible for Rural Health Center Status.*—Under current law,

facilities must meet specified criteria to be designated as rural health clinics. They must be located in an area that the Bureau of the Census has designated as not urbanized and that has been designated by the Secretary as either: 1) an area with a shortage of personal health services under the Public Health Service Act; or 2) an area designated under the same Act as a health manpower shortage area because of its shortage of primary medical care manpower.

*(4) Dissemination of rural health clinic information.*—No provision.

*(5) Treatment of certain facilities as rural health clinics.*—No provision.

*House Bill*

*(a) Certified Registered Nurse Anesthetists (CRNAs)*

*(1) Conversion factors of CRNAs.—*

*Section 10135.*—Requires the Secretary to establish a uniform national conversion factor for CRNA services in 1990. The uniform national conversion factor is to be $14 for services furnished under the medical direction of a physician and $21 for other services, except that these conversion factors may not exceed the conversion factor for anesthesiologists' services in the same locality. The exception would not apply in the case of services furnished in a facility where no anesthesiologist furnishes services.

*Section 4004.*—Similar provision; however, the limitation on the CRNA conversion factor applies whenever there is no physician furnishing anesthesia services.

*(2) Medical direction of CRNAs.—*

*Section 10135.*—Codifies a proposed regulation that prohibits the reimbursement of surgeons for medical direction of CRNAs. Establishes a penalty for surgeons knowingly and willfully violating this prohibition. The penalty may include exclusion from the Medicare program and civil monetary penalties.

*Section 4004.*—Similar provision with different effective date.

*(3) Extension of the pass-through for CRNA services in rural hospitals.—*

*Section 10135.*—No provision.

*Section 4004.*—Raises the number of inpatient and outpatient surgical procedures that may be performed in rural hospitals qualifying for the cost based reimbursement exemption from the prospective payment system from 250 to 500. Makes the pass-through exemption part of permanent law and permits the rural hospital to establish that it has met the conditions at any time before the year the pass-through is sought.

*Effective date*

Section 10135—Applies to services furnished on or after April 1, 1990.

*Section 4004.*—Applies to services furnished on or after January 1, 1990.

*(b) Nurse practitioner services, clinical nurse specialist services and assistants at surgery*

*(1) Services and reimbursement for nurse practitioners and clinical nurse specialists.—*

*Section 4022.*—Authorizes reimbursement for services of nurse practitioners, consistent with current law on physicians' assistants, in additional settings. The services must be those which would be covered as physician services if they were performed by a physician; services performed must be within the scope of services authorized by state law to be performed by nurse practitioners. They must be performed in collaboration with a physician, which means a process in which a nurse practitioner works with a physician to deliver health care services within the scope of the nurse practitioner's expertise, with jointly developed guidelines for medical direction and appropriate supervision or other mechanisms defined by state law in the state where services are performed. Such services must be performed in a hospital, skilled nursing facility, nursing facility, as an assistant at surgery, or in a rural area which has been designated as a health manpower shortage area by the Public Health Service Act.

Reimbursement for nurse practitioner services is on the same basis as reimbursement for physicians' assistants. Payment may only be made on an assignment related basis and is only to be paid to employers of nurse practitioners. Prevailing charges for services performed as an assistant at surgery can not exceed 65 percent of the amount that would be recognized if performed by a physician serving as an assistant at surgery. For other services provided in a hospital, excluding services performed as an assistant at surgery, reimbursement can not exceed 75 percent of the amount that would be recognized if performed by non-specialist physicians. For all other services, prevailing charges can not exceed 85 percent of the prevailing charge rate determined for services performed by non-specialist physicians.

*(2) Payment for routine visits by members of a team.—*

*Section 4022.*—Directs the Secretary to instruct carriers to develop mechanisms which permit routine Medicare payment for up to 1.5 team visits per month to residents of a nursing facility. Team refers to a physician and includes a physician assistant working under the supervision of the physician or a nurse practitioner working in collaboration with the physician, or both.

*(3) Reduction in payment to avoid duplicate payment.—*

*Section 4022.*—Authorizes the Secretary to reduce Medicare payments to hospitals and skilled nursing facilities to eliminate estimated duplicate payments for historical or current costs for nurse practitioners' services.

*(4) State demonstration projects on visit limitations.—*

*Section 4022.*—Directs the Secretary to provide at least one demonstration project in which the 1.5 limitation on visits by a physician and physician assistant team or a physician and nurse practitioner team would be applied on an average basis over the aggregate total of residents receiving services from members of the team, instead of on an individual basis.

*(5) GAO study of payment for services of nurse practitioners and clinical nurse specialists.—*

*Section 10137.*—Directs the Comptroller General to conduct a study on the feasibility of providing Medicare payment for services of nurse practitioners and clinical nurse specialists (particularly for inpatients) on the same basis as physician assistants. The study is to examine the following: (1) the licensing standards and educational requirements for nurse practitioners and clinical nurse specialists; (2) the types of services they currently provide to Medicare beneficiaries; (3) employment and compensation arrangements for these practitioners and specialists; (4) the experience and use of such practitioners and specialists in Medicare demonstration projects; and (5) the cost-effectiveness of covering these practitioners and specialists under Medicare. The report is to be submitted not later than 1 year after the date of enactment and is to include recommendations the Comptroller General deems appropriate.

*(6) Study of payments for assistants at surgery.—*

*Section 10137.*—Requires the Physician Payment Review Commission to conduct a study of Medicare payments for assistants at surgery. The study is to examine the necessity and appropriateness of using an assistant at surgery and the use of physician and non-physician assistants at surgery. The Commission is to submit its report to Congress by May 1, 1990 with recommendations it deems appropriate.

*Section 4017.*—Requires the Physician Payment Review Commission to Study the appropriateness of providing for payments and the appropriate level of Medicare payments for assistants at surgery. The Commission is to submit its report to Congress by January 15, 1991, and to include recommendations it deems appropriate.

*Effective date*

Section 10137—Enactment.

*Section 4017*—Enactment

*Section 4022.*—Applies to services furnished on or after January 1, 1990.

*(c) Federally qualified health centers*

*(1) Inclusion of federally qualified health center services in Medicare benefits.—*

*Section 10136.*—Includes Federally qualified health center services in the list of medical and other health services that are included in Medicare Part B benefits. Defines a federally qualified health center as a facility which is: 1) receiving a grant under Sections 329 (migrant health centers, 330 (community health centers) or 340 (health care centers for the homeless) of the Public Health Service Act; or 2) determined by the Secretary to meet the requirements for receiving a PHS grant, based on the recommendation of the Health Resources and Services Administration within the Public Health Service; or 3) was treated by the Secretary, for purposes of Medicare Part B as a comprehensive federally funded health center as of January 1, 1989. Defines federally qualified health center services as the same services provided by rural health centers eligible to participate in Medicare. Such services must be provided to an outpatient of a Federally qualified health center.

*Section 4014.*—Identical provision.

*(2) Medicare payment for federally qualified health center services.—*

*Section 10136.*—Provides for reimbursement of Federally qualified health center services on the same basis as reimbursement for rural health center services.

*Section 4014.*—Identical provision.

*(3) Waiver of part B deductible.—*

*Section 10136.*—Exempts beneficiaries from the requirement to pay a Medicare Part B deductible for services received at a Federally qualified health center.

*Section 4014.*—Identical provision.

*(4) Requirements governing Medicare payments in specified circumstances.—*

*Section 10136.*—Exempts Medicare services rendered in Federally qualified health centers from the payment exclusion.

*Section 4014.*—Identical provision.

*(5) Exemption from anti-kickback requirement.—*

*Section 10136.*—Stipulates that federally qualified health care centers who waive any Medicare Part B coinsurance for people who qualify for subsidized services under the

Public Health Service Act are exempt from the anti-kickback provision.

*Section 4014.*—Identical provision

*Effective date*

Section 10136—Applies to services furnished on or after April 1, 1990, except that Provision (c) (2) applies to a Federally qualified health center that was receiving reasonable charge reimbursement as of January 1, 1989 and that elects to receive reasonable charge reimbursement on and after a date the center elects, but not before April 1, 1990.

Section 4014—Applies to services furnished on or after January 1, 1990.

*(d) Rural health clinic services*

*(1) Staffing requirements; inclusion of certified nurse midwife.—*

*Section 4024.*—Requires a nurse practitioner, physician assistant, or nurse midwife to be available to furnish patient care services at least 50 percent of the time a clinic operates.

*(2) Coverage of clinical social worker and certified nurse midwife services.—*

*Section 4024.*—Adds services provided by clinical social workers to the list of services which are covered in rural health clinics.

*(3) Expansion of areas eligible for rural health center status.—*

*Section 4024.*—Expands the number of areas which may be qualified to have a rural health clinic in the following three ways: 1) by permitting State governors to designate areas of States as having a shortage of personal health services if the Secretary also certifies the areas as such; 2) by including areas defined as high impact areas under Section 329(a)(5) of the Public Health Service Act; and 3) by including areas with a population group which the Secretary determines has a health manpower shortage under Section 332(a)(1)(B) of the Public Health Service Act.

*(4) Dissemination of rural health clinic information.—*

*Section 4024.*—Directs the Secretary, in consultation with the Director of the Office of Rural Health Policy, to disseminate applications and necessary information about applying for designation as a Medicare and Medicaid rural health center within 60 days of enactment of this provision. Applications and accompanying information are to be disseminated to health care facilities and governors, chief health officers, and chief human services officers of States. Defines health care facility for the purposes of this provision as a community health center, migrant health center, home health agency, or a Medicare or Medicaid certified skilled nursing facility. Defines State for the purposes of this provision as including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

*(5) Treatment of certain facilities as rural health clinics.—*

*Section 4024.*—Prohibits the Secretary from denying rural health clinic status to a facility located on an island that would be qualified for certification except for the fact that it does not meet the requirement for the services of a physician assistant or nurse practitioner.

*Effective date*

Section 4024—Provisions (a), (b) and (c)—October 1, 1989; Provisions (d) and (e)—Enactment.

*Senate amendment*

No provision.

*Conference agreement*

*3(a) Certified registered nurse anesthetists.*—The conference agreement includes the House provision with an amendment. The requirement providing for increasing the CRNA fee schedule is deleted. In addition, the number of surgeries required for hospital to qualify for retaining the CRNA pass-through is increased.

*(b) Nurse practitioner services and assistants at surgery.—*

*(i) Services and reimbursement for nurse practitioners and clinical nurse specialists*—The conference agreement includes the House provision with an amendment which specifies that nurse practitioner services are reimbursable by Medicare only if they are performed in a nursing facility.

*(ii) Payment for routine visits by members of a team.*—The conference agreement includes the House provision.

*(iii) Reduction in payment to avoid duplicate payment.*—No provision.

*(iv) State demonstrations projects on visit limitations.*—The conference agreement includes the House provision.

*(v) PHYSPRC study of payments for assistance at surgery.*—The conference agreement includes Section 10137 of the House provision with the requirement that the study include an assessment of the effects of Section 9338 of OBRA '86 on registered nurses as assistants in surgery. The provision requires that the commission is to submit its report to Congress by not later than April 1, 1991.

The provisions regarding nurse practitioner and clinical nurse specialists apply to services performed on or after April 1, 1990.

*(c) Federally qualified health center services.*—The conference agreement does not include the House provision.

*11. Coverage of Preventive Services*

Sections 10137(b) and 4023 of House bill.

*Present law*

*(a) Coverage of screening pap smears.*—No provision.

*(b) Modification of therapeutic shoes for individuals with severe diabetic foot disease.*—OBRA 87 authorized the Secretary to establish a demonstration program, beginning October 1, 1988, to test the cost effectiveness of furnishing therapeutic shoes to a sample group of Medicare beneficiaries who have diabetes. Included in the definition of shoes are extra-depth shoes with inserts or custom molded shoes. The shoes must be prescribed and fitted by a podiatrist or other qualified individual.

Under the demonstration, benefits are limited to either one pair of custom molded shoes or to one pair of extra depth shoes and inserts for such shoes per year. Payment is limited to $300 for custom molded shoes and to $100 for extra depth shoes and $50 for inserts for extra depth shoes. The expense of fitting these shoes is included in reimbursement for the costs of the shoes themselves. However, the Secretary or a carrier is authorized to establish lower limits than these if the Secretary finds that shoes and inserts of appropriate quality are readily available at or below lower limits.

*House bill*

*(a) Coverage of screening pap smears*

*Section 10137.*—No provision.

*Section 4023.*—Adds screening pap smears as a Medicare benefit and provides for reimbursement on the basis of reasonable charges. Defines screening pap smear as a diagnostic laboratory test consisting of a routine exfoliative cytology test (Papanicolaou test) provided to a woman for early detection of cervical cancer and a physician's interpretation, if the woman has not such services during the preceding three years or a shorter period of time prescribed by the Secretary for a woman at high risk of developing cervical cancer. The Secretary is to determine factors which indicate high risk for developing cervical cancer.

Prohibits payment for screening pap smears performed more frequently than every 3 years, except in cases where the Secretary has established shorter time periods for testing women at high risk of developing cervical cancer.

*Effective date*

Applies to screening pap smears performed on or after January 1, 1990.

*(b) Modification of therapeutic shoes for individuals with severe diabetic foot disease*

*Section 10137.*—Expands the benefit provided in the demonstration for custom molded shoes by paying, for each patient in each year, for one pair of inserts to be provided with custom molded shoes and an additional two pairs of inserts for custom molded shoes or for one pair of extra-depth shoes and up to three pairs of inserts, including the insert provided with such shoes.

Specifies that the reimbursement limit is $300 for furnishing a pair of custom molded shoes and an initial pair of inserts. Stipulates that the reimbursement limit for inserts provided subsequent to the furnishing of the custom molded shoes and one pair of inserts is $50. Maintains payment of $50 for each pair of inserts provided for use with extra depth shoes.

Permits beneficiaries participating in the demonstration to substitute modification of custom molded or extra-depth shoes for inserts furnished subsequent to the initial furnishing of the shoes and inserts. The Secretary is directed to establish payment limits for modification of shoes to so that there is no net increase in expenditures as a result of the modification. Specifies that the method for updating payments for shoes and inserts remains the same.

*Section 4023.*—No provision.

*Effective date*

Applies with respect to therapeutic shoes and inserts furnished on or after July 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Coverage of screening of pap smears.*—The conference agreement includes the House provision, with an amendment to specify that the provision applies to screening pap smears performed on or after July 1, 1990.

*(b) Modification of therapeutic shoes for individuals with severe diabetic foot disease.*—The conference agreement includes the House provision.

*12. Miscellaneous and Technical Provisions Relating to Part B*

Section 10137, 4015, 4016, 4018, 4026 of House bill.

*Present law*

*(a) Coverage and payment for outpatient rural primary care hospital services under part B*

Outpatient rural primary care hospital centers are not defined in current law. However, services are similar to those provided in hospital outpatient departments. Services

provided in outpatient hospital departments are currently reimbursed in a variety of ways. Outpatient hospital departments provide a variety of services to hospital outpatients. They include services that aid physicians in treating patients and are referred to as services incident to physician services or therapeutic services. Services defined as incident to physician services are use of hospital facilities, including clinic and emergency room services, services of nurses, psychologists, technicians, therapists and other aides, services of interns and residents, medical supplies, prosthetic devices, and drugs and biologicals, if they cannot be self administered. Reimbursement for services incident to physicians' services in hospital outpatient departments is made on the basis of reasonable costs.

Other services, such as diagnostic services, rendered in hospital outpatient departments are reimbursed in different ways, depending on the type of service. Clinical diagnostic laboratory services are reimbursed on the basis of a fee schedule. Ambulatory surgery services are reimbursed on a blended rate if the hospital performs the services as a hospital outpatient department or through a prospective rate if the hospital elects designation as an ambulatory surgery center. Renal dialysis services provided by hospital outpatient departments are also reimbursed on the basis of prospective payment. Payments for outpatient radiology services are subject to a limit, which is the lesser of reasonable costs or charges or a blend of hospitals' costs for providing these services and the prevailing charges for providing the same services in physicians' offices.

*(b) Extension of municipal health service demonstration projects*

The Social Security Amendments of 1967 authorized the creation of four municipal health service demonstration projects, located in Baltimore, Cincinnati, Milwaukee, and San Jose. The Consolidated Omnibus Budget Act of 1985 (COBRA) extended the demonstrations for an additional three years.

*(c) Physical and occupational therapy services*

*(1) Increase in limit of maximum payments.*—Under current law, Medicare payments for occupational and physical therapy services rendered by a therapist in his office or in an individual's home are subject to a payment limit. Medicare only considers as incurred expenses the first $500 in any one year. This amount is subject to Part B deductible and coinsurance requirements.

*(2) GAO study of physical and occupational therapy services.*—No provision.

*(d) Study of reimbursement for ambulance services*

Reimbursement for ambulance services is made in different ways, depending on who provides the service. It is paid under Part A if a hospital inpatient is transported from one hospital to another to receive treatment not available at the first hospital. If the hospital is paid under PPS, reimbursement is included in the PPS payment; if reimbursement to the hospital is made on a cost basis, ambulance services are also reimbursed on the basis of cost. If a hospital inpatient is transported to another hospital to be admitted, payment for the service is made under Part B. Ambulance services provided by hospitals under Part B are reimbursed on a reasonable cost basis. Ambulance services provided by independent ambulance companies are reimbursed on a reasonable charge basis, subject to an inflation index. The inflation index, which is equal to the CPI-U, serves as a limit on the lowest of the actual, customary or prevailing charge.

*(e) GAO study of cost of magnetic resonance imaging*

Payment for magnetic resonance imaging (MRI) varies, depending on who performs the service and the service site. Payment for MRIs performed by or under the supervision of a radiologist are reimbursed according to the radiology fee schedule. MRIs performed by or under the supervision of physicians who are not radiologists are reimbursed on the basis of reasonable charges. Payments for MRIs performed in outpatient hospital departments are subject to an aggregate limit that includes all outpatient radiology services.

The limit applies to both capital and noncapital cost and is the lesser of reasonable costs or charges or a blend of the hospital's costs and the prevailing charges for providing the same services in a physician's office. For FY 89, the limit is the sum of (1) a hospital's reasonable cost for providing the service multiplied by .65 and (2) 62 percent of the prevailing charge (minus the 20 percent coinsurance) of participating physicians for providing the same service in their office multiplied by .35. For FY 90 and subsequent years, the split is 50 percent costs and 50 percent charges.

*(f) Study of blood clotting factor for hemophilia patients*

Reimbursement for blood clotting factors for hemophilia patients under Part B is made on a reasonable charge basis. Reasonable charges include charges for the factors and any supplies used for self administration. Reimbursement is based upon the least expensive medically necessary blood clotting factors. The Food and Drug Administration has determined that both non-heat treated and health treated factors are safe and effective. Therefore, unless a prescription explicitly calls for heat treated factor, reimbursement is based on the less expensive, non-heat treated factor.

*(g) Study of medicaid physician fees*

No provision.

*House bill*

*(a) Coverage and payment for outpatient rural primary care hospital services under part B*

*Section 10137.*—Defines outpatient rural primary care hospital services as medical and other health services furnished by a rural primary care hospital. Section 10102, as added by this bill, defines a rural primary care hospital as a facility designated as such by the Secretary. Permits rural primary care hospitals to choose between two payment methods for outpatient rural primary care services until 1993.

Provides that, under the first reimbursement method, payment is made for a cost-based facility fee plus professional charges. Payment for the facility fee is made on the basis of the lesser of reasonable costs or customary charges, less coinsurance, but limited to 80 percent of reasonable costs for facility services. In addition, payment is made on the basis of reasonable charges for professional medical services on the same basis as payment is made for professional medical services not rendered in outpatient rural primary care hospitals.

Provides that, under the second reimbursement method, payment is made for both facility services and professional medical services on the basis of an all-inclusive rate. The all-inclusive rate is to include reimbursement for all costs which are reasonable and related to the cost of furnishing such services or which are based on other reasonableness tests determined by the Secretary, less coinsurance and deductible payments made by beneficiaries. Payment for these services, excluding pneumococcal vaccine and influenza vaccine and their administration and for items furnished in connection with obtaining a second opinion, (or a third opinion, if the second opinion differed from the first), is limited to 80 percent of reasonable costs.

Directs the Secretary to develop and implement a prospective payment system for outpatient rural hospital primary care services by January 1, 1993. The reimbursement system is to be based on a methodology that includes all costs in providing outpatient rural primary care services, including professional medical services and determine payment on a prospective basis.

*Effective date*

Enactment.

*(b) Extension of municipal health service demonstration projects*

*Section 10137.*—Extends the municipal health service demonstration projects through December 31, 1993. The Secretary is required to submit a report to Congress on the program with respect to quality of health care, beneficiary costs, and other appropriate factors.

*Effective date*

Enactment.

*(c) Physical and occupational therapy services*

*(1) Increase in limit of maximum payments.*—

*Section 4015.*—Increases the limit on recognized expenses for physical and occupational therapy services from $500 to $750 a year.

*(2) GAO study of physical and occupational therapy services.*—

*Section 4015.*—Directs the Comptroller General to conduct a study of the provision of physical and occupational therapy services under Medicare. The study is to include an examination of the availability of services in different settings and the appropriateness of current payment methods. The report is due to the House Committees on Energy and Commerce and Ways and Means and the Senate Finance Committee by January 15, 1991, and is to include appropriate recommendations from the Comptroller General.

*Effective date*

Section 4015—(1)—Applies beginning with 1990; (2)—Enactment.

*(d) Study of reimbursement for ambulance services*

*Section 10137.*—Requires the Secretary to conduct a study to determine the adequacy and appropriateness of Medicare payments for ambulance services. The study is to examine the following: 1) the effect of payment amount on the provision of ambulance services in rural areas; 2) the relationship of Medicare payment amounts to the direct and indirect costs of providing ambulance services, including a separate examination of the relationship for the following: a) tax-subsidized, municipally owned and operated services; b) volunteer services; c) private, for-profit services; d) hospital-owned services and e) different levels (such as basic life support and advanced life support) of such services; and 3) how Medicare payments

compare to payment amounts made under state Medicaid plans for ambulance services.

Requires the Secretary to submit his report not later than one year after this provision is enacted, including recommendations for changes in Medicare payment policies for ambulance services needed to ensure access to quality ambulance services in metropolitan and rural areas.

*Section 4016.*—Identical provision.

*Effective date*

Enactment

*(e) GAO study of cost of magnetic resonance imaging*

*Section 10137.*—Directs the Comptroller General to conduct a study comparing Medicare payment amounts and costs for magnetic resonance imaging (MRI). The study is to be submitted to Congress by July 1, 1990, with recommendations deemed appropriate by the Comptroller General.

*Effective date*

Enactment.

*(f) Study of blood clotting factor for hemophilia patients*

*Section 4018.*—Directs the Secretary to review the current methodology for reimbursing for blood clotting factor for hemophilia patients under Medicare Part B and to evaluate the effect of the methodology on the accessibility and affordability of the factor to Medicare beneficiaries. The Secretary is to report his finding to the House Committees on Energy and Commerce and Ways and Means and the Senate Finance Committee no later than 6 months after the date of enactment of this provision. The report is to contain recommendations deemed appropriate by the Secretary.

*Effective date*

Enactment.

*(g) Study of medicaid physician fees*

*Section 4026.*—Requires the Physician Payment Review Commission to review the adequacy and appropriateness of payment rates for physicians' services under State Medicaid plans.

*Effective date*

Section 4026—Enactment.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Coverage and payment for outpatient rural primary care hospital services under part B.*—The conference agreement includes the House provisions.

*(b) Extension of municipal health service demonstration projects.*—The conference agreement includes the House provision.

*(c) Physical and occupational therapy services.*—The conference agreement includes the House provision with an amendment to strike the GAO study.

*(d) Study of reimbursement for ambulance services.*—The conference agreement includes the House provision.

*(e) GAO study of cost of magnetic resonance imaging.*—The conference agreement does not include the House provision.

*(f) Study of reimbursement for blood clotting factor for hemophilia patients.*—The conference agreement includes the House provision.

*(g) Physician Payment Review Commission study of Medicaid physician fees.*—The conference agreement does not include the House provision.

TABLE 1.—PRACTICE EXPENSE RATIOS

| Code | Description | Practice expense ratio |
|---|---|---|
| Group A: Procedure codes: | | |
| 19162 | Remove breast tissue: Nodes | 52 |
| 19200 | Extensive breast surgery | 53 |
| 19220 | Extensive breast surgery | 52 |
| 19240 | Extensive breast surgery | 51 |
| 27125 | Revise hip with prosthesis | 61 |
| 27126 | Revise hip with prosthesis | 60 |
| 27127 | Revise hip with prosthesis | 62 |
| 27130 | Total hip joint replacement | 61 |
| 27132 | Total hip joint replacement | 63 |
| 27134 | Revise hip joint replacement | 59 |
| 27137 | Revise hip joint component | 57 |
| 27138 | Revise hip joint component | 56 |
| 28290 | Correction of bunion | 62 |
| 28292 | Correction of bunion | 63 |
| 28293 | Correction of bunion | 63 |
| 28294 | Correction of bunion | 63 |
| 28296 | Correction of bunion | 61 |
| 28297 | Correction of bunion | 66 |
| 28298 | Correction of bunion | 63 |
| 28299 | Correction of bunion | 65 |
| 29870 | Knee arthroscopy | 62 |
| 29871 | Knee arthroscopy/drainage | 62 |
| 29872 | Knee arthroscopy/drainage | 64 |
| 29874 | Knee arthroscopy/surgery | 68 |
| 29875 | Knee arthroscopy/surgery | 68 |
| 29876 | Knee arthroscopy/surgery | 67 |
| 29877 | Knee arthroscopy/surgery | 75 |
| 29879 | Knee arthroscopy/surgery | 69 |
| 29880 | Knee arthroscopy/surgery | 73 |
| 29881 | Knee arthroscopy/surgery | 69 |
| 29882 | Knee arthroscopy/surgery | 66 |
| 29884 | Knee arthroscopy/surgery | 64 |
| 29886 | Knee arthroscopy/surgery | 68 |
| 29887 | Knee arthroscopy/surgery | 67 |
| 29889 | Knee arthroscopy/surgery | 59 |
| 31000 | Irrigation maxillary sinus | 62 |
| 31001 | Irrigation maxillary sinuses | 66 |
| 31002 | Irrigation sphenoid sinus | 55 |
| 31020 | Exploration maxillary sinus | 56 |
| 31021 | Exploration of sinuses | 59 |
| 31030 | Exploration maxillary sinus | 61 |
| 31031 | Exploration of sinuses | 61 |
| 31032 | Explore sinus: remove polyps | 60 |
| 31033 | Enter sinus: remove polyps | 61 |
| 31060 | Removal of larynx | 54 |
| 31065 | Removal of larynx | 55 |
| 31067 | Partial removal of larynx | 54 |
| 31068 | Partial removal of larynx | 52 |
| 32440 | Removal of lung | 53 |
| 32480 | Partial removal of lung | 53 |
| 32500 | Partial removal of lung | 53 |
| 32520 | Remove lung and revise chest | 53 |
| 32522 | Remove lung and revise chest | 52 |
| 32525 | Remove lung and revise chest | 53 |
| 33206 | Insertion of heart pacemaker | 71 |
| 33207 | Insertion of heart pacemaker | 69 |
| 33208 | Insertion of heart pacemaker | 69 |
| 33210 | Insertion of heart electrode | 70 |
| 33212 | Insertion of pulse generator | 69 |
| 33216 | Revision implanted electrode | 66 |
| 33218 | Repair pacemaker electrodes | 66 |
| 33219 | Repair of pacemaker | 66 |
| 33232 | Removal of pacemaker | 62 |
| 33405 | Replacement of aortic valve | 62 |
| 33510 | Coronary artery bypass | 66 |
| 33511 | Coronary arteries bypass | 65 |
| 33512 | Coronary arteries bypass | 65 |
| 33513 | Coronary arteries bypass | 64 |
| 33514 | Coronary arteries bypass | 64 |
| 33516 | Coronary arteries bypass | 65 |
| 35001 | Repair defect of artery | 53 |
| 35011 | Repair defect of artery | 53 |
| 35013 | Repair artery rupture, arm | 52 |
| 35021 | Repair defect of artery | 52 |
| 35045 | Repair defect of arm artery | 54 |
| 35081 | Repair defect of artery | 55 |
| 35082 | Repair artery rupture: aorta | 57 |
| 35091 | Repair defect of artery | 53 |
| 35092 | Repair artery rupture, belly | 54 |
| 35102 | Repair defect of artery | 54 |
| 35103 | Repair artery rupture: groin | 55 |
| 35112 | Repair artery rupture, spleen | 58 |
| 35121 | Repair defect of artery | 53 |
| 35122 | Repair artery rupture, belly | 59 |
| 35131 | Repair defect of artery | 52 |
| 35132 | Repair artery rupture, groin | 54 |
| 35141 | Repair defect of artery | 55 |
| 35142 | Repair artery rupture, thigh | 53 |
| 35151 | Repair defect of artery | 53 |
| 35152 | Repair artery rupture, knee | 53 |
| 35161 | Repair defect of artery | 55 |
| 35301 | Rechanneling of artery | 61 |
| 35311 | Rechanneling of artery | 62 |
| 35321 | Rechanneling of artery | 58 |
| 35331 | Rechanneling of artery | 58 |
| 35341 | Rechanneling of artery | 58 |
| 35351 | Rechanneling of artery | 59 |
| 35355 | Rechanneling of artery | 60 |
| 35361 | Rechanneling of artery | 61 |
| 35363 | Rechanneling of artery | 61 |
| 35371 | Rechanneling of artery | 62 |
| 35372 | Rechanneling of artery | 62 |
| 35381 | Rechanneling of artery | 59 |

TABLE 1.—PRACTICE EXPENSE RATIOS—Continued

| Code | Description | Practice expense ratio |
|---|---|---|
| 39400 | Visualization of mediastinum | 53 |
| 44120 | Removal of small intestine | 51 |
| 44130 | Bowel to bowel fusion | 51 |
| 44140 | Partial removal of colon | 52 |
| 44141 | Partial removal of colon | 51 |
| 44143 | Partial removal of colon | 52 |
| 44144 | Partial removal of colon | 51 |
| 44145 | Partial removal of colon | 51 |
| 44146 | Partial removal of colon | 53 |
| 44147 | Partial removal of colon | 50 |
| 44150 | Removal of colon | 53 |
| 44152 | Removal of colon/ileostomy | 53 |
| 44153 | Removal of colon/ileostomy | 54 |
| 44155 | Removal of colon | 51 |
| 44156 | Removal of colon/ileostomy | 56 |
| 44160 | Removal of colon | 53 |
| 44950 | Appendectomy | 55 |
| 44960 | Appendectomy | 54 |
| 45378 | Diagnostic colonscopy | 66 |
| 45379 | Colonscopy | 64 |
| 45380 | Colonscopy and biopsy | 66 |
| 45382 | Colonscopy, control bleeding | 65 |
| 45383 | Colonscopy, lesion removal | 65 |
| 45385 | Colonscopy, lesion removal | 76 |
| 47600 | Removal of gallbladder | 56 |
| 47605 | Removal of gallbladder | 55 |
| 47610 | Removal of gallbladder | 54 |
| 47620 | Removal of gallbladder | 54 |
| 49500 | Repair inguinal hernia | 60 |
| 44905 | Repair inguinal hernia | 63 |
| 49510 | Repair hernia: remove testis | 62 |
| 49515 | Repair inguinal hernia | 61 |
| 49520 | Rerepair inguinal hernia | 63 |
| 49525 | Repair inguinal hernia | 65 |
| 49530 | Repair incarcerated hernia | 62 |
| 49535 | Repair strangulated hernia | 60 |
| 49540 | Repair lumbar hernia | 61 |
| 49550 | Repair femoral hernia | 63 |
| 49552 | Repair femoral hernia | 59 |
| 49555 | Repair femoral hernia | 61 |
| 49560 | Repair abdominal hernia | 63 |
| 49565 | Rerepair abdominal hernia | 62 |
| 49570 | Repair epigastric hernia | 60 |
| 49575 | Repair epigastric hernia | 59 |
| 49580 | Repair umbilical hernia | 60 |
| 49581 | Repair umbilical hernia | 63 |
| 49590 | Repair abdominal hernia | 62 |
| 50590 | Fragmenting of kidney stone | 51 |
| 52500 | Revision of bladder neck | 53 |
| 52601 | Prostatectomy, (tur) | 52 |
| 52612 | Prostatectomy, first stage | 47 |
| 52614 | Prostatectomy, second stage | 48 |
| 52630 | Remove prostate regrowth | 52 |
| 42640 | Relieve bladder constructure | 51 |
| 52650 | Prostatectomy | 56 |
| 58102 | Curettage of uterus lining | 58 |
| 58150 | Total hysterectomy | 61 |
| 58152 | Total hysterectomy | 60 |
| 58180 | Partial hysterectomy | 57 |
| 58200 | Extensive hysterectomy | 62 |
| 58210 | Extensive hysterectomy | 61 |
| 58260 | Vaginal hysterectomy | 64 |
| 58265 | Hysterectomy and vagina repair | 61 |
| 58267 | Hysterectomy and vagina repair | 64 |
| 58270 | Hysterectomy and vagina repair | 62 |
| 58275 | Hysterectomy, revise vagina | 57 |
| 58280 | Hysterectomy, revise vagina | 59 |
| 58285 | Extensive hysterectomy | 61 |
| 63001 | Removal of spinal lamina | 55 |
| 63003 | Removal of spinal lamina | 56 |
| 63005 | Removal of spinal lamina | 56 |
| 63010 | Removal of spinal lamina | 58 |
| 63015 | Removal of spinal lamina | 57 |
| 63016 | Removal of spinal lamina | 56 |
| 63017 | Removal of spinal lamina | 57 |
| 63030 | Low back disk surgery | 54 |
| 63031 | Low back disk surgery | 57 |
| 63935 | Added spinal disk surgery | 49 |
| 64716 | Revision of cranial nerve | 68 |
| 64718 | Revise ulnar nerve at elbow | 65 |
| 64719 | Revise ulnar nerve at wrist | 66 |
| 64721 | Revise median nerve at wrist | 67 |
| 65850 | Incision of eye | 65 |
| 65855 | Laser surgery of eye | 65 |
| 66840 | Removal of lens material | 52 |
| 66850 | Removal of lens material | 61 |
| 66920 | Extraction of lens | 59 |
| 66930 | Extraction of lens | 51 |
| 66940 | Extraction of lens | 55 |
| 66983 | Remove cataract: insert lens | 61 |
| 66984 | Remove cataract: insert lens | 59 |
| 66985 | Insert lens prosthesis | 58 |
| 67107 | Repair detached retina | 59 |
| 67108 | Repair detached retina | 59 |
| 67208 | Treatment of retinal lesion | 63 |
| 67210 | Treatment of retinal lesion | 64 |
| 67218 | Treatment of retinal lesion | 59 |
| 67227 | Treatment of retinal lesion | 62 |
| 67228 | Treatment of retinal lesion | 63 |
| 69631 | Repair eardrum structures | 54 |
| 69632 | Rebuild eardrum structures | 52 |
| 69633 | Rebuild eardrum structures | 51 |
| 69635 | Repair eardrum structures | 53 |
| 69636 | Rebuild eardrum structures | 51 |

TABLE 1.—PRACTICE EXPENSE RATIOS—Continued

| Code | Code and description | Practice expense ratio |
|---|---|---|
| 69637 | Rebuild eardrum structures | 57 |
| 69641 | Revise middle ear and mastoid | 53 |
| 69642 | Revise middle ear and mastoid | 51 |
| 69644 | Revise middle ear and mastoid | 53 |
| 69646 | Revise middle ear and mastoid | 54 |
| 76700 | Echo exam of abdomen | 58 |
| 76705 | Echo exam of abdomen | 55 |
| 76770 | Echo exam of abdomen | 58 |
| 76775 | Echo exam abdomen back well | 57 |
| 92226 | Extended ophtalmoscopy | 58 |
| 92230 | Ophthalmoscopy/angioscopy | 57 |
| 92235 | Ophthalmoscopy/angiosgraphy | 56 |
| 92265 | Eye muscle evaluation | 76 |
| 92270 | Electro-oculography | 77 |
| 92275 | Electroretinography | 79 |
| 92280 | Special eye evaluation | 79 |
| 92283 | Color vision examination | 75 |
| 92284 | Dark adaptation eye exam | 80 |
| 92285 | Eye photography | 78 |
| 92286 | Internal eye photography | 77 |
| 92287 | Internal eye photography | 82 |
| 93000 | Electrocardiogram: complete | 66 |
| 93005 | Electrocardiogram: tracing | 66 |
| 93010 | Electrocardiogram report | 61 |
| 93012 | Transmission of ECG | 65 |
| 93014 | Report on transmitted ECG | 61 |
| 93015 | Cardiovascular stress test | 65 |
| 93017 | Cardiovascular stress test | 61 |
| 93018 | Cardiovascular stress test | 60 |
| 93024 | Cardiac drug stress test | 58 |
| 93040 | Rhythm ECG with report | 61 |
| 93041 | Rhythm ECG, tracing | 58 |
| 93042 | Rhythm ECG: report | 54 |
| 93045 | Special ECG | 64 |
| 93501 | Right heart catheterization | 64 |
| 93503 | Right heart catheterization | 65 |
| 93505 | Biopsy of heart lining | 63 |

TABLE 2.—OVERVALUED PROCEDURES

| Code | Code and description | One-third of difference |
|---|---|---|
| 19162 | Remove breast tissue: Modes | −3 |
| 19200 | Extensive breast surgery | −5 |
| 19220 | Extensive breast surgery | −4 |
| 19240 | Extensive breast surgery | −4 |
| 27125 | Revise hip with prosthesis | −6 |
| 27126 | Revise hip with prosthesis | −5 |
| 27127 | Revise hip with prosthesis | −6 |
| 27130 | Total hip joint replacement | −6 |
| 27132 | Total hip joint replacement | −4 |
| 27134 | Revise hip joint replacement | −6 |
| 27137 | Revise hip joint replacement | −5 |
| 27138 | Revise hip joint replacement | −5 |
| 28290 | Correction of bunion | −4 |
| 28292 | Correction of bunion | −7 |
| 28293 | Correction of bunion | −4 |
| 28294 | Correction of bunion | −4 |
| 28296 | Correction of bunion | −6 |
| 28297 | Correction of bunion | −5 |
| 28298 | Correction of bunion | −4 |
| 28299 | Correction of bunion | −5 |
| 29870 | Knee arthroscopy | −9 |
| 29871 | Knee arthroscopy/drainage | −9 |
| 29872 | Knee arthroscopy/drainage | −9 |
| 29874 | Knee arthroscopy/surgery | −11 |
| 29875 | Knee arthroscopy/surgery | −8 |
| 29876 | Knee arthroscopy/surgery | −10 |
| 29877 | Knee arthroscopy/surgery | −11 |
| 29879 | Knee arthroscopy/surgery | −11 |
| 29880 | Knee arthroscopy/surgery | −12 |
| 29881 | Knee arthroscopy/surgery | −9 |
| 29882 | Knee arthroscopy/surgery | −10 |
| 29884 | Knee arthroscopy/surgery | −9 |
| 29886 | Knee arthroscopy/surgery | −11 |
| 29887 | Knee arthroscopy/surgery | −10 |
| 29889 | Knee arthroscopy/surgery | −7 |
| 31000 | Irrigation maxillary sinus | −6 |
| 31001 | Irrigation maxillary sinuses | −6 |
| 31002 | Irrigation sphenoid sinus | −5 |
| 31020 | Exploration maxillary sinus | −6 |
| 31021 | Exploration of sinuses | −8 |
| 31030 | Exploration maxillary sinus | −8 |
| 31031 | Exploration of sinuses | −8 |
| 31032 | Explore sinus: Remove polyps | −7 |
| 30133 | Enter sinuses, remove polyps | −8 |
| 31360 | Removal of larynx | −4 |
| 31365 | Removal of larynx | −5 |
| 31367 | Partial removal of larynx | −5 |
| 31368 | Partial removal of larynx | −3 |
| 32440 | Removal of lung | −4 |
| 32480 | Partial removal of lung | −4 |
| 32500 | Partial removal of lung | −4 |
| 32520 | Remove lung and revise chest | −4 |
| 32522 | Remove lung and revise chest | −3 |
| 32525 | Remove lung and revise chest | −4 |
| 33206 | Insertion of heart pacemaker | −11 |
| 33207 | Insertion of heart pacemaker | −12 |
| 33208 | Insertion of heart pacemaker | −11 |

TABLE 2.—OVERVALUED PROCEDURES—Continued

| Code | Code and description | One-third of difference |
|---|---|---|
| 33210 | Insertion of heart electrode | −13 |
| 33212 | Insertion of pulse generator | −11 |
| 33216 | Revision implanted electrode | −13 |
| 33218 | Repair pacemaker electrodes | −13 |
| 33219 | Repair of pacemaker | −12 |
| 33232 | Removal of pacemaker | −11 |
| 33405 | Replacement of aortic valve | −8 |
| 33510 | Coronary artery bypass | −8 |
| 33511 | Coronary arteries bypass | −8 |
| 33512 | Coronary arteries bypass | −9 |
| 33513 | Coronary arteries bypass | −9 |
| 33514 | Coronary arteries bypass | −9 |
| 33516 | Coronary arteries bypass | −10 |
| 35001 | Repair defect of artery | −4 |
| 35011 | Repair defect of artery | −4 |
| 35013 | Repair artery rupture, arm | −3 |
| 35021 | Repair defect of artery | −4 |
| 35045 | Repair defect of arm artery | −5 |
| 35081 | Repair defect of artery | −6 |
| 35082 | Repair artery rupture: Aorta | −6 |
| 35091 | Repair defect of artery | −6 |
| 35092 | Repair artery rupture, belly | −5 |
| 35102 | Repair defect of artery | −5 |
| 35103 | Repair artery rupture: Groin | −6 |
| 35112 | Repair artery rupture, spleen | −7 |
| 35121 | Repair defect of artery | −4 |
| 35122 | Repair artery rupture, belly | −7 |
| 35131 | Repair defect of artery | −3 |
| 35132 | Repair artery rupture, groin | −5 |
| 35141 | Repair defect of artery | −5 |
| 35142 | Repair artery rupture, thigh | −4 |
| 35151 | Repair defect of artery | −4 |
| 35152 | Repair artery rupture, knee | −4 |
| 35161 | Repair defect of artery | −5 |
| 35301 | Rechanneling of artery | −9 |
| 35311 | Rechanneling of artery | −8 |
| 35321 | Rechanneling of artery | −7 |
| 35331 | Rechanneling of artery | −7 |
| 35341 | Rechanneling of artery | −7 |
| 35351 | Rechanneling of artery | −7 |
| 35355 | Rechanneling of artery | −7 |
| 35361 | Rechanneling of artery | −8 |
| 35363 | Rechanneling of artery | −8 |
| 35371 | Rechanneling of artery | −9 |
| 35372 | Rechanneling of artery | −9 |
| 35381 | Rechanneling of artery | −7 |
| 39400 | Visualization of mediastinum | −4 |
| 44120 | Removal of small intestine | −4 |
| 44130 | Bowel to bowel fusion | −4 |
| 44140 | Partial removal of colon | −5 |
| 44141 | Partial removal of colon | −4 |
| 44143 | Partial removal of colon | −4 |
| 44144 | Partial removal of colon | −4 |
| 44145 | Partial removal of colon | −4 |
| 44146 | Partial removal of colon | −5 |
| 44147 | Partial removal of colon | −3 |
| 44150 | Removal of colon | −5 |
| 44152 | Removal of colon/ileostomy | −5 |
| 44153 | Removal of colon/ileostomy | −6 |
| 44155 | Removal of colon | −4 |
| 44156 | Removal of colon/ileostomy | −7 |
| 44160 | Removal of colon | −5 |
| 44950 | Appendectomy | −7 |
| 44960 | Appendectomy | −6 |
| 45378 | Diagnostic colonoscopy | −9 |
| 45379 | Colonoscopy | −8 |
| 45380 | Colonoscopy and biopsy | −9 |
| 45382 | Colonoscopy, control bleeding | −8 |
| 45383 | Colonoscopy, lesion removal | −8 |
| 45385 | Colonoscopy: Lesion removal | −10 |
| 47600 | Removal of gallbladder | −7 |
| 47605 | Removal of gallbladder | −7 |
| 47610 | Removal of gallbladder | −6 |
| 47620 | Removal of gallbladder | −6 |
| 49500 | Repair inguinal hernia | −7 |
| 49505 | Repair inguinal hernia | −9 |
| 49510 | Repair hernia: Remove testis | −10 |
| 49515 | Repair inguinal hernia | −8 |
| 49520 | Repair inguinal hernia | −9 |
| 49525 | Repair inguinal hernia | −9 |
| 49530 | Repair incarcerated hernia | −9 |
| 49535 | Repair strangulated hernia | −7 |
| 49540 | Repair lumbar hernia | −7 |
| 49550 | Repair femoral hernia | −9 |
| 49552 | Repair femoral hernia | −7 |
| 49555 | Remove femoral hernia | −7 |
| 49560 | Repair abdominal hernia | −10 |
| 49565 | Repair abdominal hernia | −10 |
| 49570 | Repair epigastric hernia | −7 |
| 49575 | Repair epigastric hernia | −7 |
| 49580 | Repair umbilical hernia | −7 |
| 49581 | Repair umbilical hernia | −10 |
| 49590 | Repair abdominal hernia | −8 |
| 50590 | Fragmenting of kidney stone | −5 |
| 52500 | Revision of bladder neck | −5 |
| 52601 | Prostatectomy (TUR) | −6 |
| 52612 | Prostatectomy, first stage | −4 |
| 52614 | Prostatectomy, second stage | −4 |
| 52630 | Remove prostate regrowth | −5 |
| 52640 | Relieve bladder constructure | −6 |
| 52650 | Prostatectomy | −8 |
| 58102 | Crettage of uterus lining | −5 |
| 58120 | Dilation and curettage | −4 |
| 58150 | Total hysterectomy | −7 |
| 58152 | Total hysterectomy | −7 |

TABLE 2.—OVERVALUED PROCEDURES—Continued

| Code | Code and description | One-third of difference |
|---|---|---|
| 58180 | Partial hysterectomy | −4 |
| 58200 | Extensive hysterectomy | −6 |
| 58210 | Extensive hysterectomy | −6 |
| 58260 | Vaginal hysterectomy | −7 |
| 58265 | Hysterectomy and vagina repair | −7 |
| 58267 | Hysterectomy and vagina repair | −8 |
| 58270 | Hysterectomy and vagina repair | −7 |
| 58275 | Hysterectomy, revise vagina | −5 |
| 58280 | Hysterectomy, revise vagina | −6 |
| 58285 | Extensive hysterectomy | −7 |
| 63001 | Removal of spinal lamina | −5 |
| 63003 | Removal of spinal lamina | −3 |
| 63005 | Removal of spinal lamina | −5 |
| 63010 | Removal of spinal lamina | −7 |
| 63015 | Removal of spinal lamina | −6 |
| 63016 | Removal of spinal lamina | −5 |
| 63017 | Removal of spinal lamina | −5 |
| 63030 | Low back disk surgery | −5 |
| 63031 | Low back disk surgery | −5 |
| 63035 | Added spinal disk surgery | −3 |
| 64176 | Revision of cranial nerve | −10 |
| 64718 | Revise ulnar nerve at elbow | −9 |
| 64719 | Revise ulnar nerve at wrist | −9 |
| 64721 | Revise median nerve at wrist | −9 |
| 65850 | Incision of eye | −8 |
| 65855 | Laster surgery of eye | −8 |
| 66840 | Removal of lens material | −5 |
| 66850 | Removal of lens material | −4 |
| 66920 | Extraction of lens | −6 |
| 66930 | Extraction of lens | −5 |
| 66940 | Extraction of lens | −4 |
| 66983 | Remove cataract: Insert lens | −6 |
| 66984 | Remove cataract: Insert lens | −6 |
| 66985 | Insert lens prosthesis | −5 |
| 67107 | Repair detached retina | −6 |
| 67108 | Repair detached retina | −6 |
| 67208 | Treatment of retinal lesion | −7 |
| 67210 | Treatment of retinal lesion | −8 |
| 67218 | Treatment of retinal lesion | −5 |
| 67227 | Treatment of retinal lesion | −7 |
| 67228 | Treatment of retinal lesion | −7 |
| 69631 | Repair eardrum structures | −5 |
| 69632 | Rebuild eardrum structures | −3 |
| 69633 | Rebuild eardrum structures | −3 |
| 69635 | Repair eardrum structures | −4 |
| 69636 | Rebuild eardrum structures | −3 |
| 69637 | Rebuild eardrum structures | −5 |
| 69641 | Revise middle ear and mastoid | −4 |
| 69642 | Revise middle ear and mastoid | −4 |
| 69644 | Revise middle ear and mastoid | −3 |
| 69646 | Revise middle ear and mastoid | −3 |
| 76700 | Echo exam of abdomen | −7 |
| 76705 | Echo exam of abdomen | −11 |
| 76770 | Echo exam of abdomen | −7 |
| 76775 | Echo exam abdomen back wall | −9 |
| 92226 | Extended ophthalmoscopy | −4 |
| 92230 | Ophthalmoscopy/angioscopy | −3 |
| 92235 | Ophthalmoscopy/angioscopy | −4 |
| 92265 | Eye muscle evaluation | −11 |
| 92270 | Electro-oculography | −11 |
| 92275 | Electroretinography | −12 |
| 92280 | Special eye evaluation | −12 |
| 92283 | Color vision examination | −10 |
| 92284 | Dark adaptation eye exam | −12 |
| 92285 | Eye photography | −11 |
| 92286 | Internal eye photography | −11 |
| 92287 | Internal eye photography | −12 |
| 93000 | Electrocardiogram: Complete | −9 |
| 93005 | Electrocardiogram: Tracing | −8 |
| 93010 | Electrocardiogram report | −9 |
| 93012 | Transmission of ECG | −9 |
| 93014 | Report on transmitted ECG | −7 |
| 93015 | Cardiovascular stress test | −9 |
| 93017 | Cardiovascular stress test | −8 |
| 93018 | Cardiovascular stress test | −9 |
| 93014 | Cardiac drug stress test | −6 |
| 93040 | Rhythm ECG with report | −7 |
| 93041 | Rhythm ECG, tracing | −6 |
| 93042 | Rhythm ECG: Report | −4 |
| 93045 | Special ECG | −9 |
| 93501 | Right heart catherization | −10 |
| 93503 | Right heart catherization | −10 |
| 93505 | Biopsy of heart lining | −8 |

TABLE 3.—LIST OF GEOGRAPHIC PRACTICE COSTS ADJUSTMENT FACTORS

| Carrier locality code | Name | Overhead only |
|---|---|---|
| 51005 | Birmingham, AL | 0.903 |
| 51004 | Mobile, AL | 0.900 |
| 51002 | North Central AL | 0.862 |
| 51001 | Northwest AL | 0.864 |
| 51006 | Rural AL | 0.848 |
| 51003 | Southeast AL | 0.862 |
| 102001 | Alaska | 1.229 |
| 103005 | Flagstaff (city), AZ | 0.953 |
| 103001 | Phoenix (city), AZ | 1.045 |
| 103007 | Prescott (city), AZ | 0.953 |

TABLE 3.—LIST OF GEOGRAPHIC PRACTICE COSTS ADJUSTMENT FACTORS—Continued

| Carrier locality code | Name | Overhead only |
|---|---|---|
| 103099 | Rural Arizona | 0.981 |
| 103002 | Tucson (city), AZ | 1.022 |
| 103008 | Yuma (city), AZ | 0.953 |
| 52013 | Arkansas | 0.789 |
| 205026 | Anaheim-Santa Ana, CA | 1.234 |
| 54214 | Bakersfield, CA | 1.089 |
| 54211 | Fresno/Madera, CA | 1.054 |
| 54213 | King/Tulare, CA | 1.046 |
| 205018 | Los Angeles, CA (1st of 8) | 1.218 |
| 205019 | Los Angeles, CA (2nd of 8) | 1.218 |
| 205020 | Los Angeles, CA (3rd of 8) | 1.218 |
| 205021 | Los Angeles, CA (4th of 8) | 1.218 |
| 205022 | Los Angeles, CA (5th of 8) | 1.218 |
| 205023 | Los Angeles, CA (6th of 8) | 1.218 |
| 205024 | Los Angeles, CA (7th of 8) | 1.218 |
| 205025 | Los Angeles, CA (8th of 8) | 1.218 |
| 54203 | Marin/Napa/Solano, CA | 1.219 |
| 54210 | Merced/surrounding counties, CA | 1.053 |
| 54212 | Monterey/Santa Cruz, CA | 1.140 |
| 54201 | N. Coastal counties, CA | 1.109 |
| 54202 | NE rural CA | 1.037 |
| 54207 | Oakland-Berkeley, CA | 1.272 |
| 54227 | Riverside, CA | 1.116 |
| 54204 | Sacramento/surrounding counties, CA | 1.123 |
| 54215 | San Bernardino/E. Central CA | 1.114 |
| 205028 | San Diego/Imperial, CA | 1.125 |
| 54205 | San Francisco, CA | 1.311 |
| 54206 | San Mateo, CA | 1.311 |
| 205016 | Santa Barbara, CA | 1.110 |
| 54209 | Santa Clara, CA | 1.294 |
| 54208 | Stockton/surrounding counties, CA | 1.070 |
| 505017 | Ventura, CA | 1.161 |
| 55011 | Colorado | 0.951 |
| 307004 | Eastern Connecticut | 1.054 |
| 307001 | NW and N. Central Connecticut | 1.066 |
| 307003 | South Central Connecticut | 1.113 |
| 307002 | SW Connecticut | 1.151 |
| 57001 | Delaware | 0.975 |
| 58001 | DC plus MD/VA suburbs | 1.138 |
| 59003 | Fort Lauderdale, FL | 1.030 |
| 59004 | Miami, FL | 1.100 |
| 59002 | N/NC Florida cities | 0.954 |
| 59001 | Rural Florida | 0.900 |
| 1311001 | Atlanta, GA | 0.990 |
| 1311004 | Rural Georgia | 0.830 |
| 1311002 | Small GA cities 02 | 0.878 |
| 1311003 | Small GA cities 03 | 0.851 |
| 112001 | Hawaii | 1.086 |
| 513000 | Idaho Statewide | 0.927 |
| 513012 | North Idaho | 0.913 |
| 513011 | South Idaho | 0.940 |
| 62110 | Champagne-Urbana, IL | 0.947 |
| 62116 | Chicago, IL | 1.195 |
| 62103 | De Kalb, IL | 0.951 |
| 62111 | Decatur, IL | 0.953 |
| 62112 | East St. Louis, IL | 1.008 |
| 62106 | Kankakee, IL | 0.951 |
| 62108 | Normal, IL | 0.989 |
| 62101 | Northwest, IL | 0.926 |
| 62105 | Peoria, IL | 1.044 |
| 62107 | Quincy, IL | 0.926 |
| 62104 | Rock Island, IL | 0.943 |
| 62102 | Rockford, IL | 1.060 |
| 62113 | Southeast, IL | 0.926 |
| 62114 | Southern, IL | 0.926 |
| 62109 | Springfield, IL | 0.987 |
| 62115 | Suburban Chicago, IL | 1.132 |
| 63001 | Metropolitan Indiana | 0.913 |
| 63003 | Rural Indiana | 0.851 |
| 63002 | Urban Indiana | 0.859 |
| 64005 | Des Moines (Polk/Warren), IA | 0.929 |
| 64008 | Iowa City (city limits), IA | 0.930 |
| 64003 | Northcentral Iowa | 0.886 |
| 64002 | Northeast Iowa | 0.887 |
| 64006 | Northwest Iowa | 0.862 |
| 64004 | S. Central IA (excluding Des Moines) | 0.855 |
| 64001 | SE Iowa (excluding Iowa City) | 0.897 |
| 64007 | Southwest Iowa | 0.865 |
| 74005 | Kansas City, KA | 0.990 |
| 65001 | Rural Kansas | 0.879 |
| 74004 | Suburban Kansas City, KA | 0.990 |
| 66001 | Lexington and Louisville, KY | 0.886 |
| 66003 | Rural Kentucky | 0.851 |
| 66002 | Sm Cities (city limits) KY | 0.875 |
| 52807 | Alexandria, LA | 0.879 |
| 52803 | Baton Rouge, LA | 0.947 |
| 52806 | Lafayette, LA | 0.913 |
| 52804 | Lake Charles, LA | 0.895 |
| 52805 | Monroe, LA | 0.871 |
| 52801 | New Orleans, LA | 1.025 |
| 52850 | Rural Louisiana | 0.877 |
| 52802 | Shreveport, LA | 0.924 |
| 2120002 | Central Maine | 0.880 |
| 2120001 | Northern Maine | 0.889 |
| 2120003 | Southern Maine | 0.948 |
| 69001 | Baltimore/surrounding counties, MD | 1.032 |
| 69003 | South plus Eastern Shore, MD | 0.990 |
| 69002 | Western Maryland | 0.996 |
| 70002 | Massachusetts suburbs/rural (cities) | 1.046 |
| 70001 | Massachusetts urban | 1.098 |
| 71001 | Detroit, MI | 1.170 |
| 71002 | Michigan, not Detroit | 1.006 |

TABLE 3.—LIST OF GEOGRAPHIC PRACTICE COSTS ADJUSTMENT FACTORS—Continued

| Carrier locality code | Name | Overhead only |
|---|---|---|
| 72000 | Minnesota carrierwide | 0.920 |
| 72002 | Northern Minnesota | 0.898 |
| 72004 | Southern Minnesota | 0.883 |
| 1024001 | St. Paul Minneapolis, MN | 0.990 |
| 1025001 | Rural Mississippi | 0.814 |
| 1025002 | Urban MS (city limits) | 0.871 |
| 74003 | KC (Jackson County), MO | 0.990 |
| 74002 | NKC (Clay/Platte), MO | 0.990 |
| 1126003 | Rural (excluding rural NW), MO | 0.889 |
| 74006 | Rural NW counties, MO | 0.904 |
| 1126002 | SM. E. cities plus Jefferson County), MO | 0.955 |
| 74001 | St. Joseph, MO | 0.906 |
| 1126001 | St Louis/large eastern cities, MO | 1.015 |
| 75101 | Montana | 0.901 |
| 64500 | Nebraska | 0.801 |
| 64501 | Omaha plus Lincoln, NE | 0.869 |
| 64504 | Rural Nebraska | 0.800 |
| 64503 | Urban (county population 25,000), NE | 0.813 |
| 129003 | Elko and Ely (cities), NV | 1.041 |
| 129001 | Las Vegas, et al. (cities), NV | 1.090 |
| 129002 | Reno et al. (cities), NV | 1.142 |
| 129099 | Rural Nevada NV | 1.087 |
| 78040 | New Hampshire | 0.961 |
| 1331002 | Middle New Jersey | 1.098 |
| 1331001 | Northern New Jersey | 1.134 |
| 1331003 | Southern New Jersey | 1.084 |
| 532001 | New Mexico | 0.906 |
| 80101 | Buffalo/surrounding counties, NY | 0.945 |
| 80301 | Manhattan, NY | 1.330 |
| 80103 | N. Central cities, NY | 0.953 |
| 80302 | NYC suburbs/Long Island, NY | 1.318 |
| 80303 | Poughkeepsie/N. NYC suburbs | 1.043 |
| 1433004 | Queens, NY | 1.330 |
| 80102 | Rochester/surrounding counties, NY | 1.011 |
| 80104 | Rural New York | 0.939 |
| 1334095 | Rural North Carolina | 0.821 |
| 1334094 | Urban (city limits) NC | 0.859 |
| 1334000 | North Carolina carrierwide | 0.827 |
| 82001 | North Dakota | 0.870 |
| 1636001 | Akron, OH | 0.941 |
| 1636002 | Cincinnati, OH | 0.952 |
| 1636003 | Cleveland, OH | 0.963 |
| 1636004 | Columbus, OH | 0.952 |
| 1636005 | Dayton, OH | 0.934 |
| 1636009 | E. Central (Steubenville), OH | 0.914 |
| 1636007 | Mansfield, OH | 0.908 |
| 1636013 | Marion plus surrounding counties, OH | 0.913 |
| 1636006 | Northwest (Lima), OH | 0.920 |
| 1636014 | Scioto Valley, OH | 0.934 |
| 1636015 | Southeast (Ohio Valley), OH | 0.902 |
| 1636008 | Springfield, OH | 0.938 |
| 1636012 | W. Central (Lake Plains), OH | 0.408 |
| 1636011 | Youngstown, OH | 0.935 |
| 137001 | OK City, et al. (cities), OK | 0.907 |
| 137099 | Rural Oklahoma OK | 0.833 |
| 137004 | Small cities (Northern), OK | 0.830 |
| 137003 | Small cities (Southern), OK | 0.823 |
| 137002 | Tulsa, et al. (cities), OK | 0.900 |
| 138002 | Eugene, et al. (cities), OR | 1.002 |
| 138001 | Portland, et al. (cities), OR | 1.023 |
| 138099 | Rural Oregon | 0.991 |
| 138003 | Salem, et al. (cities), OR | 0.986 |
| 138012 | SW OR. cities (city limits) OK | 0.983 |
| 86502 | Large Pennsylvania cities | 1.045 |
| 86501 | Philly/Pittsburgh Medical Schools/Hospitals | 1.070 |
| 86504 | Rural Pennsylvania | 0.934 |
| 86503 | Small Pennsylvania cities | 0.942 |
| 87001 | Rhode Island | 0.966 |
| 88001 | South Carolina | 0.822 |
| 82002 | South Dakota | 0.836 |
| 544035 | Tennessee | 0.836 |
| 90029 | Abilene, TX | 0.833 |
| 90026 | Amarillo, TX | 0.852 |
| 90031 | Austin, TX | 0.911 |
| 90020 | Beaumont, TX | 0.900 |
| 90009 | Brazoria, TX | 0.900 |
| 90010 | Brownsville, TX | 0.842 |
| 90024 | Corpus Christi, TX | 0.891 |
| 90011 | Dallas, TX | 0.914 |
| 90012 | Denton, TX | 0.914 |
| 90014 | El Paso, TX | 0.847 |
| 90028 | Fort Worth, TX | 0.883 |
| 90015 | Galveston, TX | 0.912 |
| 90016 | Grayson, TX | 0.854 |
| 90018 | Houston, TX | 0.942 |
| 90033 | Laredo, TX | 0.813 |
| 90017 | Longview, TX | 0.878 |
| 90021 | Lubbock, TX | 0.835 |
| 90019 | McAllen TX | 0.828 |
| 90023 | Midland, TX | 0.938 |
| 90002 | Northeast Rural Texas | 0.833 |
| 90013 | Odessa, TX | 0.914 |
| 90025 | Orange, TX | 0.900 |
| 90030 | San Angelo, TX | 0.854 |
| 90007 | San Antonio, TX | 0.817 |
| 90003 | Southeast Rural Texas TX | 0.845 |
| 90006 | Temple, TX | 0.840 |
| 90008 | Texarkana, TX | 0.837 |
| 90027 | Tyler, TX | 0.879 |
| 90032 | Victor, TX | 0.916 |
| 90022 | Waco, TX | 0.826 |
| 90004 | Western Rural Texas | 0.803 |

TABLE 3.—LIST OF GEOGRAPHIC PRACTICE COSTS ADJUSTMENT FACTORS—Continued

| Carrier locality code | Name | Overhead only |
|---|---|---|
| 90034 | Wichita Falls, TX | 0.849 |
| 91001 | Utah | 0.926 |
| 78050 | Vermont | 0.891 |
| 1049001 | Richmond plus Charlottesville, VA | 0.893 |
| 1049004 | Rural Virginia | 0.843 |
| 1049003 | Small town/industrial VA | 0.849 |
| 1049002 | Tidewater plus N. VA counties | 0.959 |
| 93004 | E. Central plus (excluding Spokane) | 0.989 |
| 93002 | Seattle (King County), WA | 1.051 |
| 93003 | Spokane plus Richland (cities), WA | 1.006 |
| 93001 | W plus SEWA (excluding Seattle) | 1.001 |
| 1651016 | Charlestown, WV | 0.929 |
| 1651018 | Eastern Valley, WV | 0.961 |
| 1651019 | Ohio River Valley, WV | 0.858 |
| 1651020 | Southern Valley, WV | 0.853 |
| 1651017 | Wheeling, WV | 0.880 |
| 95113 | Central Wisconsin | 0.857 |
| 95140 | Green Bay, WI (Northeast) | 0.879 |
| 95154 | Janesville, WI (S-Central) | 0.872 |
| 95119 | Lacrosse, WI (W-Central) | 0.889 |
| 95115 | Madison, WI (Dane County) | 0.937 |
| 95146 | Milwaukee suburbs, WI (SE) | 0.962 |
| 95104 | Milwaukee, WI | 0.964 |
| 95112 | Northwest Wisconsin | 0.868 |
| 95160 | Oshkosh, WI (E-Central) | 0.878 |
| 95114 | Southern Wisconsin | 0.857 |
| 95136 | Wausau, WI (N-Central) | 0.866 |
| 553002 | Wyoming | 0.902 |

## PART C—PROVISIONS RELATING TO PARTS A AND B OF MEDICARE

### *1. Delay in Payments in Fiscal Year 1990*

Section 10151 of the House Bill, Section 5301 of the Senate Amendment.

*Present law*

Provider's claims for services to Medicare beneficiaries received in FY 1989 may not be paid by Federal intermediaries or carriers before a period of 14 days has expired following receipt. In addition, 95% of all clean claims (those without missing information or otherwise requiring special handling) from providers must be paid within 25 calendar days in FY 1989 and within 24 days in FY 1990. Claims by participating physicians must be paid within 18 days in FY 1989 and 17 days in FY 1990.

*House bill*

Requires that provider's claims not be paid before a period of 16 days has expired following receipt in FY 1990. Requires that 95% of clean claims submitted by providers be paid within 26 days of receipt, and within 21 days of receipt for participating physicians.

*Effective date*

Enactment.

*Senate amendment*

Requires that provider's claims not be paid before a period of 15 days has expired following receipt in FY 1990. Requires that 95% of clean claims be paid within 25 days of receipt, and within 20 days of receipt for participating physicians. Provides that any transfer of outlays, receipts, or revenues pursuant to this section is a necessary result of a significant policy change for purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

*Effective date*

Enactment.

*Conference agreement*

The Conference agreement includes neither the House nor Senate provision.

### *2. Medicare as Secondary Payer*

Section 10152 of House bill; section 5302 of Senate amendment.

*Present law*

*(a) Identification of Medicare secondary payer situations.*—Medicare is a secondary payer under specified circumstances when beneficiaries are covered by other third-party payers. Medicare is secondary payer to workers' compensation, automobile, medical, no-fault, and liability insurance. Medicare is also secondary payer to certain employer health plans covering aged and disabled beneficiaries and for end stage renal disease (ESRD) beneficiaries during the first 12 months of a beneficiary's entitlement to Medicare on the basis of ESRD.

HHS, through its contractors, currently identifies Medicare secondary payer cases through: beneficiary questionnaires; provider identification of third-party coverage when services are provided; and data transfers with other Federal and State agencies. According to HHS, approximately two-thirds of Medicare secondary payer cases are identified through these means.

Medicare contractors (insurance companies that process Medicare claims) are currently covered under the Privacy Act because they routinely handle beneficiary-specific information, including medical histories and social security numbers. Medicare contractors are currently prohibited from unauthorized disclosure of this information, subject to criminal penalties.

The Internal Revenue Code (IRC) prohibits disclosure of tax returns and return information of taxpayers, with exceptions for authorized disclosure to certain Governmental entities in certain specified instances. Any authorized recipient of tax return information must maintain a system of safeguards to protect against unauthorized disclosure of the information. No disclosure is allowed to third parties, such as employers and private insurers. Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000, or imprisonment of more than 5 years, or both. An action for civil damages also may be brought for unauthorized disclosure. Any authorized recipient of return information must maintain a system of safeguards to protect against unauthorized disclosure of the information.

*(b) Uniform enforcment and coordination of benefits.*—Medicare is secondary payer to employer group health plans, workers' compensation, automobile, medical, no-fault, and liability insurance. In cases involving liability insurance, providers are instructed to bill Medicare first for conditional payments, and Medicare subsequently recovers its costs from the liability insurer of the person who caused the injury.

Although payments made by primary employer group plans for working aged, disabled and ESRD beneficiaries are credited toward Medicare's deductible and coinsurance requirements, payments from workers' compensation and liability and related insurance are not counted toward Medicare's deductibles and coinsurance.

A variety of penalties exist to enforce compliance with the secondary payer provisions. Employers who do not comply with the working disabled provisions are subject to an excise tax equal to 25% of the group health plans, expenses. Failure to comply with the working aged provisions is a violation of the Age Discrimination in Employment Act of 1967, as amended. Employers who violate the secondary payer provisions for ESRD beneficiaries can lose their tax deduction for group health expenses.

*(c) Special enrollment period for disabled employees.*—Aged individuals are currently entitled to a special Medicare enrollment period if they are enrolled in a group health plan by reason of current employment. Under current law, disabled individuals are entitled to a special enrollment period only if they are covered under a large group health plan by reason of current employment.

*(d) No matching based on private activities required in fiscal intermediary agreements and carrier contracts.*—Under current law, the Secretary may terminate an agreement with a fiscal intermediary or carrier if he finds, after applying standards and criteria regarding claims processing and overall performance, that the entity has failed substantially to carry out the agreement or that the functions provided for in the agreement are disadvantageous or inconsistent with the efficient administration of the Medicare program.

*(e) Treatment of employment as a member of a religious order.*—The IRC permits religious orders whose members are required to take a vow of poverty to elect social security coverage, if such members perform tasks usually required of an active member of the order and are not retired because of old age or total disability. The IRC provides a method of computing the "wages" of members of such religious orders in order to apply the social security payroll tax, and considers such members to be "deemed employees."

Medicare is a secondary payer for aged individuals who have health insurance coverage from an employer, including religious orders. Religious orders are therefore required to provide the same health insurance coverage for their members who are age 65 and older as they do for members under age 64.

*House bill*

*(a) Identification of Medicare secondary payer situations.*—

*(1) Disclosure of taxpayer identity information*—(A) *Return information from Internal Revenue Service.*—Amends the Internal Revenue Code (IRC) to require the Secretary of the Treasury to disclose to the Commissioner of Social Security available filing status and taxpayer identity information from the individual master files of IRS related to whether Medicare beneficiaries identified by the Commissioner are married (for any specified year after 1986) and, if so, the name and Taxpayer Identification Number (TIN) of the beneficiary's spouse.

(B) *Return information from Social Security Administration.*—Upon written request, requires the Social Security Commissioner to disclose the following information to the HCFA Administrator: the name and TIN of each Medicare beneficiary identified as having received wages from a qualified employer in a previous year; for each married Medicare beneficiary whose spouse is identified as having received wages from a qualified employer in a previous year, the name and TIN of the beneficiary and the spouse; and, with respect to each such qualified employer, the name, address, and TIN of the employer and the number of individuals for whom the employer furnished W-2 forms for the previous year.

(C) *Disclosure by HCFA.*—Permits the HCFA Administrator to disclose the following information received from the Social Security Commissioner: (i) to the qualified employer, the name and TIN of Medicare beneficiaries and their spouses receiving wages from the employer, in order to determine the period during which such employees or the employees' spouses may be (or have been) covered under a group health plan of the employer and what benefits are (or were) covered under the plan (including the name, address, and identifying number of the plan); (ii) to any group health plan that provides coverage to such an employee or spouse, the name of such employee and the employee's spouse (if the spouse is a Medicare beneficiary), the name and address of the employer, and the TIN of the employee and/or spouse if Medicare benefits were paid during a period in which the plan was a primary plan; and (iii) to any agent of the HCFA Administrator, the name and TIN of Medicare beneficiaries and spouses receiving wages from a qualified employer and the name, address and TIN of their employers.

(D) *Special rules.*—Provides that information may be disclosed under this paragraph only to determine the extent to which any Medicare beneficiary is covered under any group health plan. Provides that any request made of the Secretary of Treasury or the Social Security Commissioner (as stated above) must be complied with as soon as possible, but no later than 120 days after the request is made.

(E) Provides for the following definitions:

Defines "Medicare beneficiary" as an individual entitled to benefits under Part A, or enrolled under Part B, of Medicare, but does not include an individual enrolled in Part A under the buy-in provisions of sec. 1818 (for the aged) or under the proposed buy-in provision for the disabled added by new sec. 10112(b) of this bill.

Defines "group health plan," to mean any group health plan or any large group health plan, as defined in IRC secs. 5000(b)(1) and 5000(b)(2).

Defines "qualified employer," for a calendar year, as an employer that has furnished W-2 statements to at least 20 individuals for wages paid in the year.

(F) *Termination.*—Provides that requirements for disclosing taxpayer identity information described in (A) and (B) above shall not apply to (i) requests made after September 30, 1991, and (ii) any request made before such date for information relating to 1990 or thereafter for information required of the IRS (described in (A)) and that information required of the Social Security Commission (described in (B)).

(G) *Safeguards.*—Extends a number of existing IRC confidentiality safeguards to the taxpayer identity information for Medicare secondary payer purposes described in this section.

(H) *Penalty.*—Extends an existing IRC penalty on State and other employees for unauthorized disclosure of information (i.e., felony punishable by a fine not to exceed $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution) to the unauthorized disclosure of taxpayer identity information for the Medicare secondary payer purposes described in this section.

*(2) Responsibilities of HCFA.*—(A) *In general.*—Amends the Social Security Act by requiring the Commissioner of Social Security, not less often than annually, to transmit to the Secretary of the Treasury a list of names and TINs of Medicare beneficiaries and to request that the Secretary disclose to the Commissioner available filing status and taxpayer identity information relating to the spouses and spouse TINs of such beneficiaries.

Requires the HCFA Administrator, not less often than annually, to request the Social Security Commissioner to disclose to the Administrator information on the names and TINs of Medicare beneficiaries

and their spouses receiving wages from qualified employers; the name, address, and TIN of such employers; and the number of individuals for whom the employer issued W-2 statements.

Requires the Administrator to disclose taxpayer identity information to intermediaries and carriers in order to determine instances where Medicare is the secondary player.

Requires fiscal intermediaries and carries to contact qualified employers to determine during what period the employee or employees' spouse may be (or has been) covered under an employer group health plan and the nature of the coverage (including the name, address, and identifying number of the plan). Prior to Oct. 1, 1991, within 30 days of receipt of the inquiry, requires the employer to provide such information to the intermediary or carrier. Prior to Oct. 1, 1991, provides that an employer (other than Federal or other governmental entity) who willfully or repeatedly fails to provide a timely and accurate response would be subject to a civil money penalty not to exceed $1,000 for each individual with respect to which the inquiry is made; provides that the civil monetary penalty procedures of section 1128 of the Social Security Act would apply.

(B) *Deadline for first request.*—By Oct. 1, 1989, requires the Social Security Commissioner to first transmit to the Secretary of the Treasury the list of names and TINs of Medicare beneficiaries and to request from the Secretary disclosure of taxpayer identity information.

*(b) Uniform enforcement and coordination of benefits.*—Restructures and changes provisions in current law related to Medicare as secondary payer requirements.

(1) *Requirements of group health plans*—(A) *Working aged under group health plans.*—Provides that for items or services furnished to an individual age 65 or older covered as a current employee (or as a spouse) under a group health plan, the group health plan may not take into account the entitlement of an individual to Part A of Medicare. Requires that a group health plan must entitle any employee age 65 or older, and any employee's spouse age 65 or older, to the same benefits under the plan, under the same conditions, as any employee and the spouse of such employee under age 65.

Provides that these requirements do not apply to (i) group health plans sponsored by or contributed to by an employer that has fewer than 20 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; (ii) individuals enrolled in a multiemployer or multiple employer group health plan sponsored or contributed to by an employer with fewer than 20 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, if the plan elects to be excepted; and (iii) items or services furnished in a month to an individual if for the month the individual is, or would upon application be, entitled to benefits under sec. 226A (end stage renal disease).

Defines "group health plan" as provided in IRC sec. 5000(b)(1), as amended by this section.

(B) *Disabled active individuals in large group health plans*—Prohibits, for items and services furnished on or after Jan. 1, 1987, and before Jan. 1, 1992, a large group health plan from taking into account that an active individual is entitled to benefits under Part A of Medicare.

Provides an exception to this requirement for items or services furnished in a month to an individual if, for the month, the individual is, or would upon application be, entitled to benefits under sec. 226A (end stage renal disease).

Defines "active individual" as an employee (as may be defined in regulations), the employer, a self-employed individual (such as the employer), an individual associated with the employer in a business relationship, or a member of the family of any such persons.

Defines "large group health plan" as provided in IRC sec. 5000(b)(2), as amended by this section.

(C) *Individuals with end stage renal disease*—Prohibits a group health plan from taking into account that an individual is entitled to Medicare benefits solely by reason of sec. 226A (end stage renal disease) during the 12-month period which begins with the earlier of (i) the month in which a regular course of renal dialysis is initiated, or, (ii) in the case of an individual who receives a kidney transplant, the first month in which he would be eligible for Part A benefits (if he had filed an application for such benefits) under the end stage renal provisions of sec. 226A(b)(1)(B).

Prohibits a group health plan from differentiating in the benefits it provides (on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner) between individuals having end stage renal disease and other individuals covered by the plan. Provides that a plan may take into account that an individual is entitled to Medicare benefits on the basis of end stage renal disease after the end of the 12-month period described above.

*(2) Medicare secondary payer*—Except for conditional payments described below, prohibits Medicare payment for items or services to the extent that payment has been made or can reasonably be expected to be made by a group health plan, or under a workers' compensation law or plan of the U.S. or a State, or under an automobile medical insurance policy or plan or no-fault insurance.

Defines "primary plan" to mean a group health plan or large group health plan, a workers' compensation law or plan, an automobile medical insurance policy or plan, or no-fault insurance which is required to pay for enrollee medical expenses regardless of Medicare coverage.

Provides that any conditional Medicare payment for items or services for which a primary plan or a liability insurance policy or plan (including a self-insured plan) is responsible is conditioned on reimbursement to the appropriate Medicare trust fund when notice or other information is received that the other policy or plan is primary.

Authorizes the U.S. to bring an action, in order to recover Medicare payments for an item or service, against any entity which is required or responsible to pay under a primary plan or a liability insurance policy or plan (and may collect double damages against that entity), or against any other entity (including any physician or provider) that has received payment from that entity. Authorizes the U.S. to join or intervene in any action related to the events that gave rise to the need for the item or service.

Provides that the U.S. will be subrogated (to the extent of the amount of Medicare's payment) to any right of an individual or any other entity to payment under a primary plan.

Provides that the Secretary may waive the provisions of this subparagraph in the case of an individual claim if the Secretary determines it is in the best interests of the Medicare program.

*(3) Enforcement.*—Establishes a private cause of action for damages (double the amount otherwise provided) where a primary plan fails to provide for primary payment or appropriate reimbursement.

Provides a reference to IRC sec. 5000, which imposes on any employer or employee organization that contributes to a nonconforming large group health plan (defined as a group health plan that does not pay primary benefits for the working aged, active disabled, or those with end stage renal disease) a tax equal to 25 percent of the employer's or employee organization's expenses incurred during the calendar year for each large group health plan to which the employer or employee organization contributes.

*(4) Coordination of benefits.*—Provides that where payment by a primary plan is less than the charge for an item or service and is not payment in full, Medicare payment may be made (without regard to Medicare deductibles and coinsurance) for the remainder of the charge, except as provided below.

Provides that Medicare's payment cannot exceed the amount that Medicare would have paid as primary payer. In addition, Medicare's payment, when combined with the amount payable under the primary plan, cannot exceed the amount that would be paid by Medicare for the item or service on the basis of reasonable cost or under the Prospective Payment System, whichever is appropriate for that item or service. Where Medicare payment for an item or service is authorized on another basis, Medicare's payment for the remainder of the charge is the greater of either (A) the amount payable under the primary plan (without regard to its deductibles and coinsurance), or (B) the reasonable charge or other amount payable by Medicare (without regard to Medicare's deductibles and coinsurance).

*(5) Enforcement through excise tax.*—For purposes of applying the excise tax on nonconforming group health plans, amends the following definitions in IRC sec. 5000:

Defines "group health plan" as any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees.

Defines "large group health plan" as a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employee that normally employed at least 100 employees on a typical business day during the previous calendar year.

Defines "nonconforming group health plan" as a group health plan or large group health plan that at any time during a calendar year does not comply with the primary payer requirements for group health plans covering the working aged, the active disabled, and those with end stage renal disease, as required by sec. 1862(b)(1) of the Social Security Act.

*(6) Application of provider agreements in secondary payer situations.*—Amends Medicare's requirements for provider agreements

(sec. 1866(a)(1)(A)) to prohibit providers from charging for items or services for which an individual would be entitled to Medicare payment if another policy or plan were not determined to be the primary payer.

*(7) Repeal of certain alternative enforcement provisions.*—Repeals sec. 162(i) of the Internal Revenue Code, which disallows as a deduction employer expenses for a group health plan if the plan discriminates against individuals having end stage renal disease or needing renal dialysis.

Amends the Age Discrimination in Employment Act of 1967 to strike sec. 4(g), which requires employers to offer coverage under a group health plan to employees and their spouses age 65 to 69 under the same conditions as to any employee or spouse under age 65.

*(c) Special enrollment period for disabled employees.*—Makes the special enrollment period for the disabled covered by an employer group health plan comparable to the special enrollment period for the aged covered under such a group health plan.

*(d) No matching based on private activities required in Fiscal Intermediary Agreements and Carrier Contracts.*—Prohibits the Secretary from requiring, as a condition of entering into or renewing agreements with fiscal intermediaries and carriers, that such intermediaries and carriers match data obtained through activities other than administering Medicare with data used to identify Medicare secondary payer situations.

*(e) Treatment of employment as a member of a religious order.*—Provides that an individual would not be considered to be employed or to be an employee for purposes of the Medicare secondary payer provisions if he or she is a member of a religious order whose members are required to take a vow of poverty and are considered "deemed employees" because of an election of social security coverage.

*Effective date*

(a)(1) effective Oct. 1, 1989; (a)(2) effective on enactment; (b) applies to items and services furnished after enactment; (c) applies to enrollments occurring after, and premiums for months after, the second calendar quarter beginning after enactment; (d) applies to agreements and contracts entered into or renewed on or after enactment; and (e) applies to items and services furnished on or after Oct. 1, 1989.

*Senate amendment*

*(a) Identification of medicare secondary payer situations.*—(a)(1) Similar provision. (a)(2) Similar provision, except provides for a deadline of Oct. 15, 1989 for the Social Security Commissioner to first transmit to the Secretary of the Treasury the list of names and TINs of Medicare beneficiaries and to request disclosure of taxpayer identity information.

*(b) Uniform enforcement and coordination of benefits.*—No provision.

*(c) Special enrollment period for disabled employees.*—No provision.

*(d) No Matching based on private activities required in fiscal intermediary agreements and carrier contracts.*—No provision.

*(e) Treatment of employment as a member of a religious order.*—No provision.

*Effective date*

(a)(I) effective Oct. 1, 1989; (a)(2) effective on enactment.

*Conference agreement*

*(a) Identification of Medicare secondary payer situations.*—The conference agreement includes the House provision, with amendments to change the effective date to date of enactment and to modify the deadline for the first request by the Commissioner of Social Security to no later than 14 days after the date of enactment.

*(b) Uniform enforcement and coordination of benefits.*—The conference agreement includes the House provision, with a change to include liability insurance (including a self-insured plan) in the definition of "primary plan" to which Medicare's secondary payer provisions apply.

*(c) Special enrollment period for disabled employees.*—The conference agreement includes the House provision.

*(d) No matching based on private activities required in fiscal intermediary agreements and carrier contracts.*—The conference agreement includes the House provision.

*(e) Treatment of employment as a member of a religious order.*—The conference agreement includes the House provision.

*3. End Stage Disease*

Sections 10153 and 4043 of House bill.

*Present law*

*(a) Maintenance of current composite rate.*—Under current law and regulation, dialysis facilities receive a prospectively determined rate for dialysis services. The rate is based on a single composite weighted formula which takes into account the mix of patients who receive dialysis at a facility or at home and the relative costs of providing such costs in such settings. A separate rate is established for hospital-based facilities and for independent facilities. In response to a regulatory effort to reduce dialysis payment rates, OBRA 86 mandated that rates in effect on May 13, 1986 be reduced by $2 (which was less of a reduction than envisioned under regulatory proposals) and that such rates be maintained until October 1, 1988.

*(b) Limitation on amount of payment when patients deal directly with medicare suppliers.*—Under current law and regulations, beneficiaries may elect to obtain home dialysis equipment and supplies from a supplier other than an approved ESRD facility (a hospital-based or independent facility being reimbursed for dialysis services on the basis of a composite rate.) Reimbursement for such equipment and supplies is made on a reasonable charge basis. This type of reimbursement is referred to as Method II. Currently, average monthly payments to suppliers not participating in the ESRD facility program are nearly twice payments made under the composite rate system.

*(c) ESRD patient protection and quality assurance.*—Patient protection and quality assurance functions for ESRD patients and services are performed in part by end stage renal disease network organizations. Current law provides for seventeen network organizations to assure effective and efficient administration of ESRD benefits.

The responsibilities of the network organizations are as follows: (1) encouraging, consistent with sound medical practice, the use of treatment settings most compatible with successful rehabilitation of patients and the participation of patients, providers of services and renal disease facilities in vocational rehabilitation programs; (2) developing criteria and standards relating to the quality and appropriateness of patient care; (3) evaluating the procedure by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities; (4) implementing a procedure for evaluating and resolving patient grievances; (5) conducting onsite reviews of facilities and providers (as determined by a medical review board or the Secretary) utilizing standards of care established by the network organization to assure proper medical care; (6) collecting, validating, and analyzing data necessary to prepare annual reports and to assure the maintenance of a national end stage renal disease registry; (7) identifying facilities and providers that are not cooperating toward meeting network goals and assisting them in developing appropriate plans for correction and reporting to the Secretary on facilities and providers that are not providing appropriate medical care; (8) submitting an annual report to the Secretary which includes a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation and encouraging participation in vocational rehabilitation programs), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation and organ procurement facilities; and (9) other duties prescribed by the Secretary.

Current regulations governing certification of ESRD facilities require establishment of standards regarding patients' rights, maintenance and distribution of medical records, maintenance of a long term care program for patients, reuse of hemodialysis filters and supplies, among other things. Regulations also specify the qualifications of directors and staff of renal dialysis facilities.

Under current federal law, the Secretary is authorized to make agreements with state agencies to conduct surveys and inspections of ESRD facilities to determine whether they comply with federal regulations governing them.

*(d) Study of costs of treatment and establishment of composite rates.*—No provision.

*(e) Erythropoietin (EPO).*—Medicare currently provides coverage for erythropoietin for renal dialysis patients if the drug is not self-administered. Payment is made in the form of an add-on to a facility's composite rate for dialysis. The amount of payment depends on the dosage administered. For doses less than 10,000 units, the payment is $40. For administration of 10,000 or more units, the payment is $70.

*House bill*

*(a) Maintenance of current composite rate—section 10153.*—Requires maintenance of the current composite rate until October 1, 1990.

*Section 4043.*—Requires maintenance of the current composite rate until October 1, 1989. Requires the Secretary to follow prescribed regulatory procedures (which include proposing rules and allowing for at least a 60-day comment period) before changing the composite rates in effect on September 30, 1989.

*(b) Limitation on amount of payment when patients deal directly with medicare suppliers—section 10153.*—Limits payments to suppliers who deal directly with ESRD patients (Method II) instead of through an approved ESRD facility to payments made

under a single composite rate to an approved ESRD facility.

Requires written agreements with suppliers providing supplies and services directly to ESRD beneficiaries in order to be eligible for Medicare payments. The agreements must specify that the following conditions are met: (1) the patient certifies that the suppler is the sole provider of such supplies and equipment to the patient; (2) the supplier agrees to receive payment for the cost of such supplies and equipment only on an assignment-related basis; and (3) the supplier certifies that it has entered into a written agreement with an approved provider of services or renal dialysis facility under which the provider or facility agrees to furnish all self-care home dialysis support services and all other necessary dialysis services and supplies, including institutional dialysis services and supplies and emergency services.

*Section 4043.*—Similar provision limiting Method II payments to the composite rate. (No provision regarding stipulations required to suppliers reimbursed under Method II).

*(c) ESRD patient protection and quality assurance.*—Section 10153. Creates the End Stage Renal Disease Patient Protection and Quality Assurance Act of 1989 to expand protection of ESRD patients and provide further assurances of quality. Requires renal dialysis facilities to protect and promote the rights of patients regarding quality of care and provision of information about dialysis care. Facilities must inform patients about specified matters as soon as feasible, but not later than 30 days after the beginning of a dialysis program or course of treatment and upon reasonable request subsequent to the original provision of information.

*(1) Information about the facility*

Requires the facility to provide the following: (1) information about patients' rights provided by this section and patients' rights regarding grievance procedures; (2) information about services available in the facility and charges for them, including any charges for services not covered by Medicare; (3) information about facilities' responsibilities for continuing patients in dialysis programs and the specific circumstances that might result in termination from treatment; (4) the name of the physician with primary responsibility for coordinating a patient's care and the names and professional relationships of other physicians who will see the patient, if different from a patient's personal physician; (5) upon request, full information regarding the relationship of the facility to other organizations, corporations, or institutions, including disclosure of any physicians involved in patients' care who have a financial relationship with the facility; (6) upon request, and in accordance with applicable state law, access to a patient's own medical records maintained by a facility; and (7) information from the network organization about facilities in the region offering home or self-care dialysis and flexible arrangements and about facilities outside the region that will treat transient patients.

*(2) Quality of care in treatment*

Imposes additional requirements on facilities regarding quality of care in treatment. Requires facilities to inform patients about their medical condition through a physician and at regular intervals, unless provision of this information is medically contraindicated as documented in the patient's medical records. Facilities are also required to transmit such information to their parties upon the patient's request or because of medical necessity; Facilities must provide each patient, on at least an annual basis, an evaluation by a physician or an individual designated by a physician regarding the patient's suitability for a transplant or peritoneal or self-care dialysis. The facility is also required to maintain appropriate documentation of the evaluation of the patient's medical record.

Requires that each patient be provided, except in emergencies, and through a physician, with as much information as needed to give informed consent to any proposed treatment, including any experimental procedure or procedure involving reuse. The patient must be given sufficient information to understand the medically significant risks involved in the procedure or treatment, any alternative course of treatment, and the risks involved in the alternative course of treatment or in not treating the condition, and the name of the individual who will perform the procedure or treatment. Facilities may not refuse to treat a patient because the patient seeks other medical opinions regarding modes of treatment. Facilities are also authorized to permit a patient to refuse treatment, to the extent permitted by law and without jeopardizing the facility, if the facility has informed the patient, and the patient is aware of the medical consequences of refusing treatment.

Requires that each patient be provided with a written plan of care which assures a reasonable continuity of care and which includes designation of the agreed-upon treatment modality, advance notice of the time and location of appointments for dialysis treatments and the designation of the physician responsible for such care. This written plan of care is to be provided at regular intervals. Permits facilities to require patients to attest to a statement which affirms that they have been fully informed of their rights, that they understand various transplantation options, peritoneal dialysis, self-care dialysis and that they have consented to the written plan of care.

Requires facilities to treat each patient with consideration and respect and to promote patients' rights. Rights to be protected include the following: (1) right to privacy regarding accommodations, written and telephone communications, visits, meetings of patient and family groups, except that this does not include provision of a private room; and (2) right to receive services with reasonable accommodation of individual needs and preference, except where the health or safety of the patient or other patients would be endangered.

Provides that facilities may only transfer or discharge a patient for medical reasons or for a patient's welfare, or that of other patients or staff, or for nonpayment of fees, except as prohibited by this section, and must provide a patient with advance notice of any transfer or discharge. A patient must consent to be transferred or discharged, except in specified cases. If the patient is a new patient or is medically unstable and the facility treating the patient is required, either by contract, state or local law, to routinely transfer the patient to another setting, a transfer is permitted. Facilities' written policies regarding transfers may not include as grounds for discharge or transfer the fact that the patient field a grievance or legal complaint or that the patient refused to agreed to reuse of artificial kidneys, if the such refusal is based on the written advice of a nephrologist that overriding medical reasons preclude reuse.

Requires facilities to ensure the confidential treatment of patients' personal and medical records, and may not release records to anyone outside the facility without the patient's consent, except if release is required in the case of a transfer to another institution, or if proper administration of the program requires it.

Requires that a registered professional nurse experienced in dialysis therapy be present during dialysis treatments of a facility to direct technicians providing dialysis services.

Prohibits facilities from interfering with the rights of patients to form patient councils or committees to discuss common concerns. In the case of facilities serving a significant number of people whose primary language is not English, facilities must provide information in a language and form understood by those patients.

Stipulates that rights provided to patients under this section also apply to guardians having legal responsibility for patients.

*(3) Grievance procedure*

Requires facilities to provide grievance procedures for resolution of patient concerns and conflicts and to permit patients to state grievances, report accidents and incidents and recommend changes in policies or services, directly or through any representative of choice, without restraint, interference or fear of reprisal.

*(4) Survey and certification process*

*(A) State responsibilities*

Directs states to certify, through surveys, the compliance of renal dialysis facilities and providers of services with the requirements imposed by this section. States are also responsible for conducting periodic educational programs for staff and patients of ESRD facilities in collaboration with network administrative organizations. The purpose of workshops is to present current regulations, procedures and policies. States are to transmit results of survey findings indicating that facilities are out of compliance with quality standards to network administrative organizations.

*(B) Surveys*

Defines standard surveys of ESRD facilities as including the following surveys for a sample of patients: (1) quality of care; (2) internal quality assurance program; (3) staffing, in-service training and consultant contracts; (4) written plans of care; (5) review of patient records; (6) compliance with patient rights; (7) interviews with patients; and (8) review of records for patients who died to determine quality of care.

Requires facilities to be surveyed without prior notice, and that a standard survey be conducted by December 31, 1992 and at least every 15 months thereafter. Standard surveys must also be conducted within 2 months of any change of ownership, administration, or management of a facility in order to determine whether the change has resulted in any decline in the quality of care.

Directs that facilities out of compliance with quality standards, as indicated by such factors as infection, hypotention, hospitalization, among others after consideration of case mix, be subject to an extended survey. At the discretion of the Secretary, other facilities may also be subject to an extended survey. The extended survey is to be conducted immediately after the standard

survey, or not later than 2 weeks after the end of the standard survey.

Requires the survey team in an extended survey to review and identify the policies, procedures and quality assurance system system which produced substandard care and is to determine whether the facility has complied with applicable standards and regulations. The extended survey is also to include a review of all of a facility's patient records and an expanded sample of patient interview to determine their satisfaction with care rendered. The survey team is to take into account whether the facility has a plan of correction and whether any evidence of immediate action exists. The Secretary may, without conducting an extended survey, impose a sanction based on the findings of a standard survey.

Requires that surveys be conducted based on a protocol developed, tested and validated by the Secretary no later than July 1, 1991 and by teams of surveyors who meet qualifications established by the Secretary. However, if the protocol are not developed by the date specified, states are still responsible for conducting surveys. The Secretary is to develop programs to reduce inconsistency among surveyors.

Requires that surveys be conducted by a multidisciplinary team of professionals, including a registered nurse. No member of a survey team may have been employed by the facility, either in a staff or consulting capacity, within the previous two years. In addition, no member of a survey team may have a personal or familial interest in the facility being surveyed.

Requires the Secretary to provide for a comprehensive training program for surveyors, and no one is permitted to serve as a surveyor unless they have completed a training and testing course approved by the Secretary.

If the Secretary has reason to question a facility's compliance with regulations, he may conduct a survey and make independent, binding determinations about the facility's compliance with regulations.

Directs that information obtained through surveys, including statements of deficiencies, are to be made available to the public. If a state, through the survey process, determines that a facility has provided substandard care, the state must notify the attending physician for each patient of the facility of the deficiency and of any plan to correct deficiencies. Information about grievances filed with ESRD network organizations and finding from the organization's investigations are to be provided to the facility administrator and patients filing such grievances. States may present awards of excellence to facilities providing exemplary care.

*(5) Establishment of Advisory Board*

Establishes a board to advise the Secretary, specifies the membership and legal functioning of the board, and defines its duties. The board is to have 11 members, to be composed of at least one of the following: an ESRD patient; a nephrologist; a renal administrator; a transplant surgeon; a nephrology nurse; a dialysis technician; a nephrology social worker; a renal nutritionist; a representative of a ESRD network administrative organization; and an expert in quality assessment or assurance.

Directs the board to advise the Secretary on development of the following: (1) quality standards; (2) protocols for surveys; (3) minimum qualifications for survey teams; (4) uniform national guidelines for surveyors, facilities and dialysis providers. The board is to make recommendations on these issues to the Secretary within a specified time period, and may make other recommendations on ways to improve administration of the ESRD program. The Secretary may implement appropriate recommendations, and is to notify the House Ways and Means and Energy and Commerce Committees and the Senate Finance of its implementation by January 1, 1992.

Requires the board to submit reports to the Secretary and these Congressional committees by the end of 1992 and 1994. The reports are to include the following: (1) recommendations to update quality standards; (2) an assessment of implementation of its recommendations; and (3) an assessment on which of its recommendations should be revised. Specifies the compensation of the board ability to hire staff, and the board's right to obtain information.

*(6) Enforcement Process*

Extends the enforcement provisions applicable to skilled nursing facilities with deficiencies to ESRD facilities with deficiencies. Those provisions permit the Secretary to appoint temporary managers of facilities in cases where a survey reveals that conditions immediately jeopardize the health or safety of patients. In such cases, the Secretary is also authorized to terminate the facility's participation in Medicare. In cases where conditions do not immediately threaten the health or safety of patients, the secretary is authorized to impose penalties consisting of the following: civil money penalties; denial of payment; or appointment of temporary management. Specifies that a temporary manager is to be an experienced facility administrator or licensed nephrologist in the state in which the facility is located. Deletes existing enforcement mechanisms.

*(7) Duties and Functions of ESRD Network Administrative Organizations*

Substantially revises the duties of ESRD network organizations by deleting all current law duties except the responsibility to encourage the most appropriate treatment settings for patients and the participation of patients in vocational rehabilitation programs. Substitutes instead the following duties: (1) assisting facilities found to be out-of-compliance; (2) developing network goals for placement of patients in self-care settings and transplantation; (3) conducting studies to assure that patients are assessed appropriately and to determine the number of patients returning to the work force; (4) implementing a procedure for evaluation and resolving patient grievances; (5) compiling information concerning facilities that offer home or self-care dialysis and provide flexible arrangements for patients returning to work; (6) conducting sufficient analytical work to prepare annual reports and assure maintenance of the ESRD registry; (7) advising facilities on the placement of patients; and (8) submitting an annual report to Congress.

*Section 4043.*—No provision

*(d) Study of the Costs of Treatment and Establishment of Composite Rates.—Section 10153.*—Requires the Director of the Office of Technology Assessment to conduct a study to determine the costs of various types of dialysis treatment and make recommendations regarding what the composite rate should be for Medicare dialysis services in FY 91 and the methodology that should be used to update the composite rate in subsequent years. The report is to be submitted to the House Committees on Ways and Means and Energy and Commerce and the Senate Finance Committee by June 1, 1990.

*Section 4043.*—No provision

*(e) Erythropoietin (EPO).—Section 10153.*—Requires the Secretary to submit a report on the methodology and rationale used to establish a Medicare payment rate for the drug erythropoietin (EPO). The report is to include a summary of information provided by the manufacturer to the Secretary and used by him to establish the rate and a plan for ensuring the appropriateness of rates in the future. The report is to be submitted to the House Committees on Ways and Means and Energy and Commerce and the Senate Finance Committee by April 1, 1990.

The Comptroller General is directed to submit a report by June 1, 1990 to the same committees that review the information contained in the Secretary's report. By June 1, 1990, the Director of the Office of Technology Assessment is to submit a report to the same committees on alternative acquisition and reimbursement strategies for reducing expenditures for certain drugs for ESRD patients that does not adversely affect quality of care.

*Section 4043.*—No provision

*Effective date*

Section 10153. Provision (a) takes effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986. Provision (b)—Applies to dialysis services, supplies and equipment furnished on or after October 1, 1989. Provision (c)—applies to renal dialysis facilities and providers, renal dialysis patients, ESRD network administrative organizations and States 6 months after the date of enactment, with two exceptions. The provision creating the Advisory Board is effective upon enactment. The provision repealing prior enforcement authority is effective January 1, 1993. Provisions (d) and (e)—Enactment.

*Section 4043.*—Applies with regard to dialysis services furnished on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Maintenance of current composite rate.*—The Conference agreement includes the House provision to maintain the current composite rate until October 1, 1990, with the provision specified in Section 4043 requiring the Secretary to follow prescribed regulatory procedures before changing the composite rates in effect on September 30, 1990.

*(b) Limitation on amount of payment when patients deal directly with Medicare suppliers.*—The Conference agreement includes the House provision contained in Section 10153 with an amendment. The amendment would allow payment of 130 percent of the median composite payment for hospital-based facilities for dialysis (CCPD) who deal directly with Medicare suppliers (Method II). It includes the provision requiring written agreements with suppliers who provide services and supplies directly to Medicare beneficiaries. The amendment changes the effective date to February 1, 1990.

The Conference agreement also includes an amendment to reallocate funds remaining after each network administrative organization has received funds necessary to carry out its responsibilities. In reallocating funds, the Secretary is to ensure equitable treatment for all network organizations and take into account: (1) the geographic size of the network area; (2) the number of providers of end stage renal disease services in the

network area; (3) the number of individuals who are entitled to end stage renal disease services in the network area; and (4) the proportion of the aggregate administrative funds collected in the network area.

The Conference agreement would also extend provisions that currently apply to PROs regarding protection against liability under Section 1157 and the prohibition against disclosure of information to ESRD network organizations which have entered into contracts with the Secretary.

*(c) ESRD patient protection and quality assurance.*—The conference does not include the House provision.

*(d) Study of costs of treatment and establishment of composite rates.*—No provision.

*(e) Erythropoietin (EPO).*—The Conference agreement includes the House provision with an amendment to strike the GAO report.

*4. Medicare Hospital Patient Protection Amendments. (Section 10155 of the House bill).*

*Present law*

*(a) Scope of hospital responsibility for screening.*—If an individual (whether or not eligible for Medicare) comes to the emergency department of a hospital, and a request is made on the individual's behalf for examination or treatment of a medical condition, the hospital is required to provide for an appropriate medical screening examination, within the capability of the hospital emergency department, to determine whether or not an emergency medical condition exists or if the individual is in active labor. Within the capability of the staff and facilities available at the hospital, the hospital must provide medical services necessary to stabilize the individual or to provide for treatment of the labor. In the case of a patient who is not stabilized or who is in active labor, the hospital may transfer the patient if the patient requests that the transfer be effected, or if the benefit of transfer outweighs the risk of transfer, and if the transfer is an appropriate one.

*(b) Informed refusals of treatment or transfers.*—After the initial medical screening, a hospital is considered to have met the requirements for providing further examination and treatment, or appropriate and necessary transfer, if a patient (or a person acting on the patient's behalf) refuses the examination and treatment or transfer.

*(c) Authorization for transfer.*—If a patient at a hospital has an emergency medical condition which has not been stabilized, or is in active labor, the hospital may not transfer the patient unless (1) the patient (or a legally responsible person acting on the patient's behalf) requests that the transfer be effected, or (2) a physician (or other qualified medical personnel when a physician is not readily available in the emergency department) has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual's medical condition from effecting the transfer. The transfer must also be an appropriate one, which requires that the receiving facility have available space and qualified personnel for the treatment of the patient and has agreed to accept transfer of the patient and to provide appropriate medical treatment.

*(d) Requiring maintenance of records of transfers.*—An appropriate transfer requires: that the transferring hospital provide the receiving facility with appropriate medical records (or copies thereof) of the examination and treatment effected at the transferring hospital; that the transfer is effected through qualified personnel and transportation equipment, including the use of necessary and medically appropriate life support measures during the transfer; and that the transfer meet other such requirements as the Secretary may find necessary in the interest of the health and safety of patients transferred.

*(e) Enforcement.*—Under the Medicare provider agreement, if a hospital knowingly and willfully, or negligently, fails to meet the requirements of this section, it is subject to termination of its provider agreement, or (at the option of the Secretary) suspension of such agreement for such period of time as the Secretary determines to be appropriate, upon reasonable notice to the hospital and the public. A participating hospital that knowingly violates a requirement of this section, and the responsible physician, is subject to a civil money penalty of not more than $50,000 for each violation. The responsible physician is subject to exclusion of up to 5 years from Medicare and Medicaid or a civil money penalty of not more than $50,000 for each violation.

*(f) Additional obligations.*—

No provision.

*(g) Change in "patient" terminology.*—Current law generally uses the word "patient" to describe an individual who is present for emergency services.

*(h) Clarification of "emergency medical condition" Definition.*— "Emergency medical condition" is defined in current law to mean a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part. Current law also defines "active labor" to mean labor at a time in which (1) delivery is imminent, (2) there is inadequate time to effect safe transfer to another hospital prior to delivery, or (3) a transfer may pose a threat to the health and safety of the patient or the unborn child. In addition, current law defines the term "to stabilize," and "stabilized." Defines that "to stabilize" means, with respect to emergency medical condition, to provide such medical treatment that may be necessary to assure, within reasonable medical probability, that no material deterioration to the condition is likely to result from the transfer of the individual from the facility. Defines that "stabilized" means, with respect to an emergency condition, that no material deterioration of the condition is likely within reasonable medical probability, to result from the transfer of the individual from the facility.

*House bill*

*(a) Scope of hospital responsibility for screening.*—Requires that the hospital provide for an appropriate medical screening examination within the capability of the hospital (not just within the hospital's emergency department).

*(b) Informed refusals of treatment or transfers.*—Provides that in the case of an individual (or a person acting on the individual's behalf) who refuses examination and treatment, or transfer, the hospital is required to explain to the individual (or the person acting on the individual's behalf) the risks and benefits of such examination and treatment, or transfer. Requires that the hospital take all reasonable steps to secure the written informed consent of the individual (or the person acting on the individual's behalf) to refuse examination and treatment, or transfer.

*(c) Authorization for transfer.*—

*(1) Informed consent for transfers.*—Provides that if an individual at a hospital has an emergency medical condition which has not been stabilized or is in active labor, the hospital may not transfer the individual unless, after being informed of the hospital's obligations under this section and of the risk of transfer, the individual (or a legally responsible person acting on the individual's behalf) requests transfer to another facility.

*(2) Clarifying physician authorization for transfers.*—Provides that if a physician is not physically present in the emergency department at the time an individual is transferred, the hospital is prohibited from transferring the individual unless a qualified medical person (as defined by the Secretary in regulations) has signed a certification after a physician, in consultation with the person, has made the determination that the benefits outweigh the risks, and subsequently countersigns the certification.

*(3) Standard for authorizing transfer.*—Prohibits the hospital from transfering the individual unless a physician has signed a certification that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual, and, in the case of labor, to the unborn child.

*(4) Inclusion of summary of risks and benefits in certificate.*—Requires the certification to include a summary of the risks and benefits upon which the certification is based.

*(5) Provision of services pending transfer.*—Adds to the requirements for an appropriate transfer that the transferring hospital provide the medical treatment within its capacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child.

*(d) Requiring maintenance of records of transfers.*—Requires the hospital that is transferring the individual to send to the receiving facility all available medical records (or copies thereof) related to the emergency condition for which the individual has presented, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests, and the informed written consent or certification (or copy thereof), and the name and address of any on-call physician who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment.

*(e) Enforcement.*—

*(1) Hospital liability.*—Provides that a participating hospital that violates a requirement of this section (whether or not it knowingly violates a requirement) is subject to a civil money penalty of not more than $50,000 for each violation. Amends the subsection to provide that a hospital is liable for the acts and omissions of its agents and the physicians through whom it carries out its duties.

*(2) Physician liability.*—Amends the subsection relating to sanctions imposed on responsible physicians to provide for a civil money penalty of not more than $50,000 for

each violation, for any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital (including a physician on-call for the care of such individual) and who violates a requirement of this section. This includes a physician who: signs a certification that medical benefits reasonably expected from a transfer to another facility outweigh the risks associated with the transfer, if the physician knew or should have known that the benefits did not outweigh the risks, or misrepresents an individual's condition or other information, including a hospital's obligation under this section. Provides for exclusion of the physician from Medicare and State health care program participation if the violation is knowing and willful or negligent. Provides that if, after an initial examination, a physician (a) determines that the individual requires the services of an on-call physician (as defined under the law), (b) notifies that physician, and then the on-call physician fails or refuses to appear within a reasonable period of time, and (c) the physician orders the individual's transfer because the physician determines that without the services of the on-call physician the benefits of transfer outweigh the risks, then the physician authorizing the transfer is not subject to a civil money penalty. Provides that the penalty would still apply to the hospital or to the on-call physician who failed or refused to appear.

*(f) Additional obligations.*—Adds several new sections to current law.

*(1) Nondiscrimination.*—Prohibits a participating hospital that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or in rural areas, regional referral centers) from refusing to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

*(2) No delay in examination or treatment.*—Prohibits a participating hospital from delaying provision of a required medical screening examination or treatment in order to inquire about the individual's method of payment or insurance status.

*(3) Whistleblower protections.*—Prohibits a participating hospital from penalizing or taking adverse action against a physician because the physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized.

*(g) Change in "patient" terminology.*—Substitutes the word "individual" for "patient" at various points.

*(h) Clarification of "emergency medical condition" definition.*—Provides that "emergency medical condition" also applies to a condition that places in serious jeopardy the health of the woman or her unborn child. Provides that with respect to a pregnant woman who is having contractions, an "emergency medical condition" means that there is inadequate time to effect a safe transfer to another hospital before delivery, or that transfer may pose a threat to the health or safety of the woman or unborn child. Deletes the separate definition of the term "active labor." Changes the definition of "to stabilize" to include that no material deterioration to the condition is likely to occur during (as well as "likely to result from"), the transfer of the individual from the facility, or (with respect to a condition that could result in serious impairment to bodily functions) that may be necessary to deliver (including the placenta). Changes the definition of "to stabilize" and "stabilized" to include that no material deterioration of the condition is likely, within reasonable medical probability, to occur during (as well as "result from") the transfer of the individual from the facility, or (with respect to a condition that could result in serious impairment to bodily functions) that may be necessary to deliver (including the placenta).

*Effective date*

Effective on the first day of the first month beginning 180 days after enactment, without regard to whether implementing regulations have been promulgated by such date.

*Senate amendment*

No provision.

*Conference agreement*

The Conference agreement includes the House provision with amendments. The provision requires hospitals to provide screening within the capabilities of the hospital's emergency department, including ancillary services routinely available to the emergency department. The provisions modifying the standard for hospital and physician liability for civil monetary penalties are deleted.

*5. Health Maintenance Organizations (HMOs) and Competitive Medical Plans (CMPs)*

Sections 10156 and 4041 of the House bill.

*Present law*

*(a) Physician incentive payments.*—Effective April 1, 1990, an HMO or CMP is subject to civil penalties if it makes a payment to a physician as an inducement to reduce or limit services to beneficiaries enrolled under a contract with Medicare or Medicaid. The penalty is up to $2,000 for each enrollee with respect to whom such a payment is made.

*(b) Exclusion of prisoners and welfare beneficiaries from computation of 50/50 rule.*—In order to qualify for a Medicare risk contract, an HMO or CMP must have an enrolled population of which at least 50 percent are not Medicare or Medicaid beneficiaries.

*(c) Disclosure of AAPCC assumptions and methodologies.*—Medicare establishes per capita payment rates for different classes of HMO/CMP enrollees, grouped by age, sex, and other factors determined by the Secretary to be appropriate. (Factors currently in use include county, institutional status, basis of eligibility, and receipt of welfare benefits.) The rate for each class is equal to 95 percent of the average adjusted per capita cost (AAPCC) for that class, a projection of what Medicare would spend to provide covered services to a comparable group of beneficiaries not enrolled in the HMO/CMP. By September 7 of each year, the Secretary must announce the per capita rates to be used in the next calendar year.

*(d) Making authority for benefit stabilization fund permanent.*—Each HMO/CMP must develop an adjusted community rate (ACR), an estimate of what it would charge a private member comparable to a Medicare beneficiary for the scope of services covered under its Medicare contract. If an HMO/CMP's ACR is lower than its average projected Medicare capitation payment, the HMO/CMP must use the difference to fund supplemental benefits or accept a reduced capitation rate. Alternatively, it may request that a portion of the difference be deposited in a benefit stabilization fund, to be drawn upon in a future year if the difference between the ACR and the Medicaid capitation rate is insufficient to continue financing the HMO/CMP's package of supplemental benefits. No fund may be established for a contract period beginning later than September 30, 1990; funds not used to pay for additional benefits within 4 years after their deposit revert to Medicare.

*(e) Temporary waiver for Watts Health Foundation.*—OBRA 87 waived the 50 percent private membership requirement for the Watts Health Foundation through January 1, 1990, and permitted a continued waiver after that date if the Secretary determined that the organization was making significant progress towards compliance with the requirement. If the Secretary does not so determine, he may, at any time after January 1, 1990, suspend further enrollment in the organization or suspend payment for new enrollees.

*(f) Limit on charges for emergency services and out-of-area coverage.*—HMO/CMP enrollees generally must receive services through providers employed by or contracting with the organization. In an emergency, or when an enrollee is outside the organization's service area and requires medical care, the HMO/CMP is financially responsible for covered services furnished by any qualified provider.

*(g) Increase to 100 percent of AAPCC.*—The Medicare per capita payment rate for each class of HMO/CMP enrollees is fixed at 95 percent of the average adjusted per capita cost (AAPCC) for that class of enrollees.

*House bill*

*(a) Physician incentive payments*

*Section 10156.*—Repeals the current civil penalty provision with respect to Medicare (but not Medicaid) contracts. Requires the Secretary to identify, in consultation with representatives of HMOs and CMPs, physician incentive arrangements that may place physicians at excessive risk, lead to denial of necessary services, or compromise access or quality. Requires the Secretary to publish a description of high-risk compensation arrangements within 1 year after enactment. Provides that the Secretary may not enter into a risk-sharing contract with an organization unless the organization (a) certifies that it does not use the identified high-risk compensation arrangements or (b) provides detailed information on the compensation arrangements it does use, on any stop-loss or other mechanisms used to limit individual physicians' risk, and on its internal quality assurance systems. Permits the Secretary to impose civil money penalties or suspension of enrollments or payments if an organization uses a high-risk arrangement after certifying that it does not, substantially changes a compensation plan without notifying the Secretary, or uses an arrangement that creates an inducement for a physician to deny a specific medically necessary service to an identifiable patient.

*Section 4041.*—Repeals the civil money penalty provision with respect to both Medicare and Medicaid contracts.

*(b) Exclusion of prisoners and welfare beneficiaries from computation of 50/50 rule*

*Section 10156.*—Provides that, for the purposes of the 50 percent rule, prisoners or persons receiving medical coverage under a State or local general assistance program shall not be included in the count of non-Medicare, non-Medicaid enrollees.

*Section 4041.*—No provision.

*(c) Disclosure of AAPCC assumptions and methodologies*

*Section 10156.*—Requires the Secretary to publish an explanation of the methodology and assumptions (including benefit coverage assumptions) used in computing per capita rates at least 45 days before announcing the rates, beginning with the announcement for 1991. The explanation must be sufficiently detailed to permit an HMO/CMP to compute rates for each county or equivalent area in its service area.

*Section 4041.*—Similar provision, except that the detailed explanation of the methodology is to be published concurrently with the announcement of per capita rates. Requires that proposed changes in the methodology and assumptions from those used in the previous year be published 45 days before the rate announcement and that HMO/CMPs be given an opportunity to comment on the proposed changes.

*(d) Making authority for benefit stabilization fund permanent*

*Section 10156.*—Repeals the deadline for establishing a fund and the 4 year time limit on use of a fund.

*Section 4041.*—No provision.

*(e) Temporary waiver for Watts Health Foundation*

*Section 10156.*—No provision.

*Section 4041.*—Extends the waiver of the 50 percent requirement through January 1, 1994. Requires the Secretary, beginning January 1, 1990, to conduct an annual review of the organization's compliance with requirements for an internal quality assurance program. If the Secretary determines that the organization is not in compliance, he may, after notice to the organization and an opportunity to correct the deficiencies, suspend new enrollments or payments for beneficiaries enrolling after the date the Secretary notifies the organization of its non-compliance.

*(f) Limit on charges for emergency services and out-of-area coverage*

*Section 10156.*—No provision.

*Section 4041.*—Provides that, when a Medicare participating physician not under contract with an HMO/CMP furnishes emergency or out-of-area care to a Medicare HMO/CMP enrollee, the physician must accept as payment in full from the HMO/CMP the amount that would be allowed under Part B for the same service to a beneficiary not enrolled in an HMO/CMP. In the case of a nonparticipating physician, imposes the limits on actual charges that would apply under Part B for the same service to a beneficiary not enrolled in an HMO/CMP.

*(g) Increase to 100 percent of AAPCC*

*Section 10156.*—No provision.

*Section 4041.*—Sets the Medicare payment rates for HMO/CMP enrollees at 100 percent of the AAPCC, beginning January 1990.

*Effective date.*

*Section 10156.*—(a) applies to contracts entered into or renewed on or after April 1, 1991, except that the repeal of the current civil money penalty provision is effective on enactment. (b) applies to contracts entered into on or after the date of enactment. (c) and (d) are effective on enactment.

*Section 4041.*—(f) applies to services furnished on or after the date of enactment. (g) applies to payments for months beginning with January 1990. All other provisions are effective on enactment.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Physician incentive payments.*—The conference agreement delays the effective date of the civil money penalty provision to April 1, 1991.

*(b) Exclusion of prisoners and welfare beneficiaries from computation of 50/50 rule.*—The conference agreement does not include the House provision.

*(c) Disclosure of AAPCC assumptions and methodologies.*—The conference agreement follows section 10156 of the House provision, except that the explanation is to be in the form of notice to the HMOs, rather than published.

In addition, the agreement modifies the current requirement that all HMOs/CMPs in an area must have a coordinated annual open enrollment period. A coordinated open enrollment period is required in an area only if the Medicare risk-sharing contract of one of the HMOs or CMPs in the area is not renewed or is terminated, or reduces its service area in such a way as to discontinue coverage for Medicare enrollees in part of the area.

In such a case, the remaining risk contractors in the area must have an open enrollment period for the Medicare enrollees losing coverage. The period must last 30 days and begin within 30 days after the Secretary notifies the organizations of the requirement. Enrollments will take effect 30 days after the end of the open enrollment period or, if the Secretary determines this is not feasible, on such other date as the Secretary specifies.

The Conferees expect that the Secretary will inform beneficiaries that a change in enrollment in a pre-paid plan may lead to loss of employer-related payments for additional benefits provided through the beneficiary's previous plan.

*(d) Making authority for benefit stabilization fund permanent.*—The conference agreement includes the House provision.

*(e) Temporary waiver for watts health foundation.*—The conference agreement includes the House provision.

*(f) Limit on charges for emergency services and out-of-area coverage.*—The conference agreement includes the House provision.

*(g) Increase to 100 percent of the AAPCC.*—The conference agreement does not include the House provision.

The conference agreement continues, for payments to Health Maintenance Organizations (HMOs) and Competitive Medical Plans (CMPs), the reductions in payment imposed under the sequester order of October 16, 1989, pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) through December 31, 1989. The agreement provides that no additional reduction in payments to HMOs and CMPs would occur as a result of a new sequester order under Title 11 of the Act. This would be accomplished by increasing payments to HMOs and CMPs for items or services provided on or after January 1, 1990 by a percentage amount (1.42 percent) equal to the amount of the reduction imposed pursuant to an order under Title 11.

*6. Physician ownership of, and referral to, health care entities*

Section 10157 of the House bill.

*Present law*

Criminal penalties are provided for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce business reimbursed under Medicare or State health care programs (including Medicaid, and any State program receiving funds under title V and title XX of the Social Security Act). The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to five years. Remuneration includes kickbacks, bribes, rebates, and any other payment made directly or indirectly, overtly or covertly, in cash or in kind. Prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration also intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid by Medicare or State health care programs. With respect to home health services, a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, a home health agency may not certify regarding a patient's need for home health services.

The Medicare and Medicaid Patient and Program Protection Act of 1987 (P.L. 100-93) provided authority to the Inspector General of the Department of Health and Human Services to exclude a person or entity from participation in Medicare and State health care programs if it is determined that the party is engaged in a prohibited remuneration scheme. The Act required the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution and that will not provide a basis for exclusion from the Medicare and State health care programs. These are sometimes referred to as "safe harbors." On January 23, 1989, the Secretary published a proposed rule to provide such "safe harbors." The rule has not yet been issued in final form.

The Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) prohibited a home IV therapy provider from providing services to a Medicare beneficiary based on a referral from a physician who has an ownership interest in, or receives compensation from, the provider. The prohibition also applies to ownership or compensation arrangements involving an immediate family member of the referring physician. The referring physician is defined as the physician who prescribes the home intravenous (IV) drug therapy or establishes a plan for such therapy. Several exceptions to this rule are provided: (1) ownership of publicly-traded stock purchased on terms available to the general public; (2) sole community rural home IV therapy providers; (3) compensation reasonably related to items or services actually provided by the physician which does not vary in proportion to the actual number of referrals made; (4) physicians whose only relationship with the provider is as an uncompensated officer or director of the provider; and (5) other exceptions established by the Secretary in regulation for ownership and compensation arrangements which the Secretary determines do not pose a substantial risk of program abuse. Payment is denied for services provided pursuant to a prohibited referral. The home IV therapy provider is also prohibited from billing for such services on an unassigned basis. A physician who knowingly and willfully accepts such a referral would be subject to civil money penalties of up to $15,000 for each such referral and/or exclusion from the Medicare program.

The Medicare Catastrophic Coverage Act also required the Inspector General of HHS to study and report to Congress on the prevalence of self-referral arrangements and

whether they lead to inappropriate utilization of services. In this report, the Inspector General identified limitations in the available data on physician ownership interests in entities providing services.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) requires the Secretary to establish a system that provides a unique identifier for each physician furnishing services to Medicare beneficiaries.

The Deficit Reduction Act of 1984 (P.L. 98-369) provided that Medicare would only pay the person actually providing clinical laboratory services. The purpose of this "direct billing" requirement was to prevent a physician from ordering a test and billing for it at a marked up price. An exception was provided for laboratory tests that were performed by a laboratory other than the one billing for the tests. This exception was designed to permit rural hospitals to utilize referral labs for tests they were unable to perform.

*House bill*

*(a) Prohibition of certain financial arrangements between referring physicians and providers of certain Medicare covered items and services.*—Amends the Social Security Act by adding new section 1877, "Limitation on Certain Physician Referrals." Except as specified below, prohibits a physician (or immediate family member of a physician) with an ownership or investment interest in an entity, or a compensation arrangement with an entity, from making a referral to that entity for the furnishing of an item or service for which Medicare would otherwise pay. Prohibits the entity from presenting or causing to be presented a Medicare claim or bill to any individual, third party payor, or other entity for an item or service furnished pursuant to a prohibited referral. Provides that an ownership or investment interest may be through equity, debt, or other means.

*(b) General exceptions to both ownership and compensation arrangement prohibitions.*—Provides for the following exceptions to the prohibition on referrals:

*(1) Physicians' services.*—Physicians' services provided personally by (or under the personal supervision of) another physician in the same group practice as the referring physician;

*(2) Services of practitioners employed by a physician.*—Services of a physician's assistant, a certified nurse midwife, or a psychologist provided by a practitioner who is employed by a referring physician, by the same group practice as the referring physician, or by another physician in that same group practice;

*(3) In-office ancillary services.*—Medical and other health services (excluding durable medical equipment, ambulance services, and parental and enteral nutrition) if these are furnished personally by the referring physician, personally by a physician of the same group practice as the referring physician, or personally by individuals who are employed by such physician or group practice and who are personally supervised by the physician or by another physician in the group practice. Requires the services to be furnished in the same building in which the referring physician practices (or in the case of a referring physician in a group practice, in another building used by the group for the central provision of items and services other than physicians' services). Requires the services to be billed by the physician performing or supervising the services, by a group practice of which such a physician is a member, or by the entity that is wholly owned by such physician or such group practice. Requires the ownership or investment interest to meet such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse;

*(4) Prepaid plans.*—Services provided by a prepaid plan with a contract under sections 1876 or 1833 or a prepaid demonstration project;

*(5) Home intravenous drug therapy.*—Home intravenous drug therapy services subject to the restrictions of section 1834(d)(3), as added by the Medicare Catastrophic Coverage Act; and

*(6) Other permissible exceptions.*—In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

*(c) General exception relating only to ownership or investment prohibition for ownership in publicly-traded securities.*—Provides an exception from the prohibition on referrals in a case of an ownership or investment if the ownership of investment securities (including shares or bonds, debentures, notes or other debt instruments) were purchased on terms generally available to the public and which are in a corporation that is: (1) listed for trading on the New York Stock Exchange, or the American Stock Exchange, or is a national market system traded under an automated interdealer quotation system operated by the National Association for Securities Dealers, and (2) had, at the end of the corporation's most recent fiscal year, total assets exceeding $100,000,000.

*(d) Additional exceptions related only to ownership or investment prohibition and subject to reporting and disclosure.*—

*(1) In general.*—Provides that the following types of providers are not considered to have an ownership or investment interest if the reporting and disclosure requirements described below are met: (a) disproportionate share hospitals with a disproportionate patient percentage greater than 32 (as defined for purposes of the prospective payment system under section 1886) and hospitals in Puerto Rico; (b) a hospital in which a referring physician is authorized to perform services and the ownership interest is in the hospital itself (and not merely a subdivision thereof); and (3) entities which were substantially in operation before March 1, 1989. Defines "substantially in operation" to mean that the entity is actually providing items and services, binding contracts for building or equipment needed to provide such items and services have been signed, or the entity has received a certificate of need from the State with respect to the provision of such items and services. Provides that to qualify for the exception, the entity cannot have as an interested investor any individual who was not an investor in the entity as of March 1, 1989.

*(2) Reporting requirements.*—Provides that to qualify for the exception under this subsection, the entity must meet the following reporting and disclosure requirements: the entity must provide the Secretary with information concerning the entity's ownership arrangements, including the items and services provided by the entity, the names and the provider numbers of the referring physician investors, and any other information required by the Secretary to determine that the entity is in compliance with applicable law. Requires the information to be provided in the form, manner, and at such times as the Secretary specifies. Requires each physician who is an interested investor in an entity and who makes a referral of a Medicare patient to the entity, to disclose to the patient (in a form and manner specified by the Secretary) the physician's (or family member's) ownership interest in the entity. Requires that hospitals report information in accordance with the uniform hospital reporting system developed under section 4007(c) of the Omnibus Budget Reconciliation Act of 1987.

*(e) Additional exceptions related only to ownership or investment prohibition and subject to reporting and disclosure and investment standards.*—

*(1) In general.*—Provides that the following are not considered to be an ownership or investment interest if the reporting requirements described above are met and if each of the investment standards specified below is met: (a) any rural provider (meeting a specific definition); (b) an ambulatory surgical center for services performed personally by the referring physician; (c) a facility providing lithotripsy services for services performed personally by the referring physician at the facility; and (d) items and services (other than items and services furnished to inpatients) provided by a hospital joint venture in which the hospital has a controlling interest, and an ownership interest, of at least 50% in the entity.

*(2) Description of investment standards.*—Specifies investment standards and provides that the Secretary's decision as to whether these investment standards have been met in any case is final, not subject to judicial review, and shall not control, or serve as a precedent in any other case. Provides that the standards are as follows: (a) investment in the entity must be open and offered on the same terms to disinterested investors as to interested investors; (b) the terms on which an investment interest is offered to an interested investor are not related to the previous or expected volume of referrals from that investor (or investor's family) to the entity; (c) the investment of each interested investor must bear the full risk of loss related to the investment; (d) the investment of each interested investor must be paid in full at the time of investment and may not be paid from funds or (or borrowed from) the entity or a related entity; (e) the amount of payment in return for the investment interest of an interested investor must be directly proportional to that person's capital investment; (f) the return on investment of an interested investor must be reasonable; (g) no requirement may be made that an investor (or investor's family) make or be in a position to make referrals of business to the entity as a condition of the investor's continued right to maintain an ownership interest; (h) investors (or investor's family) may not be encouraged to order services or otherwise refer business to the entity and the entity may not collect or maintain information on the volume of referrals of investors (and investor's family) other than information maintained in order to comply with applicable law; and (i) the entity must disclose, in a form and manner satisfactory to the Secretary, to individuals entitled to Medicare and receiving services at the entity, the relevant charges for such services and the professional qualifications of the entity to provide such services.

*(3) Discretionary application of standards.*—Authorizes the Secretary to withdraw the exception of an entity covered by this provision if the Secretary finds that (a) the entity has failed to disclose, in a form and

manner specified by the Secretary, any circumstance which would cause the entity to be out of compliance with any of the investment standards; (b) the entity has failed to disclose periodically information relating to the entity's compliance with such standards; or (c) based on information in such a disclosure or otherwise, that the entity is no longer in compliance with each of the standards. The Secretary's withdrawal of an exception would be final and not subject to judicial review. In the case of a withdrawal due to a failure to disclose information which, if disclosed, would result in a finding of noncompliance, the Secretary is required to make the withdrawal effective as of the date of the failure.

*(f) Additional case-by-case exceptions related only to ownership or investment prohibition.—*

*(1) In general.*—Authorizes the Secretary to provide an exception to the referral prohibition with respect to ownership or investment interest if: (a) the entity demonstrates to the Secretary's satisfaction that the items or services provided by the entity would otherwise be unavailable to the patients in the area to be served by the entity, the items and services provided by the entity would be more convenient for patients (defined by regulations based upon a reduction in travel time to the entity by at least 30 minutes for at least 75% of the patients, taking into account such factors as seasonal weather conditions), or the items and services provided by the entity would be provided at a substantially lower per unit charge and at a substantially lower cost overall to Medicare than any similar item or service in the area served by the entity; and (b) the entity applies to the Secretary for approval of the exception, the reporting and disclosure requirements are met, the Secretary determines that the investment standards are met, and there are no new interested investors in the entity on or after the date of approval of the application.

*(2) Discretionary application of conditions.*—Provides that the Secretary's decision regarding the exception above shall be final and not subject to judicial review. Provides that such a decision in one case shall not control or serve as a precedent in any other case.

*(3) Fees.*—Authorizes the Secretary to require, as a condition of approval of an exception, payment of a reasonable fee to cover the necessary costs of processing and reviewing the exception.

*(g) Exceptions relating to other compensation arrangements.*—Provides that referrals are not prohibited for the following compensation arrangements:

*(1) Rental of office space.*—Provides that payments made for rental or lease of space are not prohibited compensation arrangements if: (a) there is a written agreement specifying the space covered by the agreement and dedicated for the use of the lessee; (b) provides for at least one year rental or lease; (c) provides for payment on a periodic basis of an amount consistent with fair market value; (d) provides for an amount of aggregate payments that does not vary based on the volume or value of any referrals of business between the parties; and (e) would be considered to be commercially reasonable even if no referrals were made between the parties. Requires that in the case of rental or lease of office space in which a physician who is an interested investor (or an interested investor who is an immediate family member of the physician) has an ownership interest, the office space is in the same building as the building in which the physician (or group practice of which the physician is a member) has a practice. Requires the arrangement to meet other requirements the Secretary may impose by regulation as needed to protect against program or patient abuse.

*(2) Employment and service arrangements with hospitals.*—Provides that an arrangement between a hospital and an interested investor for the employment of the interested investor or for the provision of administrative services and personnel is not a prohibited compensation arrangement if: (a) the arrangement is for identifiable services; (b) the amount of remuneration under the arrangement is consistent with the fair market value of the services, and is not determined in a manner that takes into account the volume or value of any referrals by the physician; (c) the remuneration is provided pursuant to an agreement which would be considered to be commercially reasonable even if no referrals were made to the hospital; and (d) the arrangement meets other requirements the Secretary may impose by regulation as needed to protect against program or patient abuse.

*(3) Other administrative services.*—Provides that remuneration from an entity (other than a hospital) is not considered a prohibited compensation arrangement if the arrangement is: (a) for specific identifiable services as the medical director or as a member of a medical advisory board at the entity required under Medicare law; (b) for specific identifiable physicians' services to be furnished to an individual receiving hospice care if payment for such services may be made under Medicare as hospice care; or (c) for specific identifiable administrative services (other than direct patient care services) but only under exceptional circumstances specified by the Secretary in regulations. Requires, in addition, that the requirements specified above (relating to employment and service arrangements) are met with respect to the entity in the same manner as they apply to a hospital, and that the arrangement meets other requirements the Secretary may impose by regulation as needed to protect against program or patient abuse.

*(4) Physician recruitment.*—Provides that remuneration which is provided by a hospital to a physician to induce the physician to relocate to the area served by the hospital to become a member of the hospital's medical staff is not considered a prohibited compensation arrangement if: (a) the physician is not required to refer patients to the hospital; (b) the amount of the remuneration under the arrangement is not determined in a manner that takes into account the volume or value of any referrals by the referring physicians; and (c) the arrangement meets other requirements the Secretary may impose by regulation as needed to protect against program or patient abuse.

*(5) Isolated transactions.*—Provides that isolated financial transactions, such as a one-time sale of property, are not considered prohibited compensation arrangements if: (a) the requirements specified in subsection (2) with respect to employment and service arrangements are met with respect to the entity in the same manner as they apply to the hospital; and (b) the transaction meets other requirements the Secretary may impose by regulation as needed to protect against program or patient abuse.

*(6) Salaried physicians in a group practice.*—Provides that a compensation arrangement involving payment by a group practice of the salary of a physician member of the practice is not a prohibited compensation arrangement.

*(h) Sanctions.—*

*(1) Denial of payment.*—Prohibits Medicare payments for an item or service which is provided pursuant to a prohibited referral.

*(2) Requiring refunds for certain claims.*—Requires a person who collects money billed for a service provided pursuant to a prohibited referral to refund that money on a timely basis to the individual, and shall be liable to the individual for any amounts so collected.

*(c) Civil money penalty and exclusion for improper claims.*—Provides for a civil money penalty and exclusion from Medicare for any person who presents or causes to be presented a bill or claim for an item or service that such person knows or should know was provided pursuant to a prohibited referral, or who has not refunded that payment. Provides that the civil money penalty be not more than $15,000 for each such item or service provided pursuant to a prohibited referral plus an amount equal to twice the amount billed for the item or service. Authorizes the Secretary to make a determination in the same proceeding to exclude the person from Medicare participation and to direct the appropriate State agency to exclude the person from participation in any State health care program. Provides for the Secretary to follow the same due process as specified in Section 1128A of the Social Security Act.

*(4) Civil money penalty and exclusion for circumvention schemes.*—Provides for civil money penalties in cases where a physician or other entity enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has as its principal purpose assuring referrals which, if they had been directly made, would be in violation of the prohibition on referrals. Limits the civil money penalty to not more than $100,000 for each arrangement or scheme, plus an amount equal to twice the amount billed for the item or service. Authorizes the Secretary to make a determination in the same proceeding to exclude the person from Medicare participation and to direct the appropriate State agency to exclude the person from participation in any State health care program. Provides for the Secretary to follow the same due process procedures as specified in Section 1128A of the Social Security Act.

*(5) Failure to disclose information.*—Provides that any person who is required, but fails to meet a reporting requirement (specified above) or who knows or should know that a disclosure of any circumstances is required to be made to the Secretary and who fails to disclose, or causes the failure of such disclosure, is subject to a civil money penalty of not more than $10,000 for each day for which disclosure is required to have been made.

*(i) Definitions.*—Defines "compensation arrangement" to mean any arrangement involving any remuneration between a physician (or immediate family member) and an entity.

(2) Defines "remuneration" to include any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(3) Provides that an individual is considered to be "employed" or "an employee" of any entity if the individual would be considered to be an employee of the entity under the usual common law applicable in deter-

mining the employer-employee relationship (as applied under a specific section of the Internal Revenue Code).

(4) Defines "fair market value" as the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(5) Defines "group practice" to mean a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association: (a) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides through the joint use of shared office space, facilities, equipment and personnel; (b) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; (c) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group; and (d) which meets such other standards as the Secretary may impose by regulation. Provides for an exception in the case of a faculty practice plan associated with a hospital with an approval medical residency training program in which physician members may provide a variety of different speciality services and provide professional services both within and outside the group.

(6) Defines "interested investor" to mean, with respect to an entity, an investor who is in a position to make or to influence referrals or business to the entity (or is an immediate family member of the investor). "Disinterested investor" means an investor other than an interested investor.

(7) Provides that except as specified under subsection (8) below, the following constitutes a "referral" by a "referring physician:" (a) the prescription of a Medicare covered out-patient drug by a physician, but only if the physician directs the patient to the specific pharmacy, home intravenous drug therapy provider, or other entity dispensing the drug; (b) in the case of an item or service which is required by law to be provided by or under the supervision of a physician, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by, or under the supervision of, that other physician); and (c) the request or establishment of a plan of care by a physician for the provision of the item or services.

(8) Clarifies that the following does not constitute a "referral" by a "referring physician": (a) a request by a physician for physicians' services consisting solely of professional services to be furnished personally by that physician (or under the physician's personal supervision); (b) a request by a radiologist for diagnositic imaging services, by a physician specializing in the provision of radiation therapy services for such services, or by a pathologist for diagnostic clinical laboratory tests and pathological examination services, if such services are furnished by (or under the supervision of) such a physician pursuant to a consultation requested by another physician; (c) a referral by a physician to a specialized cancer treatment pharmacy, if the pharmacy is engaged in the specific practice of providing chemotherapy treatment to diagnosed cancer patients and is not engaged in distributing general pharmaceuticals to the public; and (d) a referral by a physician to a freestanding or hospital based renal dialysis facility in conjunction with a renal dialysis procedure performed under the direction of the physician at the facility.

*(j) Requiring requests for payment to include information on referring physician.*—(1) Requires that each request for payment, or bill submitted, for an item or service (other than physicians' services) furnished by an entity for which Medicare Part B payment may be made, and for which the entity knows or has reason to believe there has been a referral by a referring physician (as defined under new section 1877) include the name and provider number for the referring physician and indicate whether or not the referring physician is an interested investor.

(2) Provides that Medicare payment may be denied in the case of a request for payment for an item or service furnished by an entity under assignment and for which information on a referring physician is required but is not provided.

(3) Provides that in the case of a request for payment that is not submitted on an assignment-related basis and for which information on a referring physician is required but not provided, if the entity knowingly and willfully fails to provide such information promptly, the entity may be subject to a civil money penalty in an amount not to exceed $2,000. Provides that, if after being notified by the Secretary, the entity knowingly, willfully, and in repeated cases fails to provide the information, the entity may be subject to exclusion from participation in programs under the Social Security Act for up to 5 years, in accordance with specified procedures of section 1128 of the Social Security Act providing for Medicare exclusions. Provides that specified sections of 1128A of the Act apply to civil money penalties authorized under this section in the same way as they apply in cases of false claims and other violations under section 1128A(a).

*(k) GAO study of hospital ownership and hospital joint ventures.*—Requires the GAO to conduct a study of the ownership of hospitals by referring physicians and of joint ventures between hospitals and referring physicians. Requires the study to investigate: (1) the types of ownership arrangements and types of services offered under such arrangements, (2) the returns generally earned by physician investors in such arrangements, (3) the effect of such arrangements of hospital admissions overall and in the communities served, other hospitals in the communities served, the utilization of services by Medicare beneficiaries, and Medicare expenditures, and (4) the effect of such arrangements on independent providers of services. Requires the GAO report to Congress on the results of the study by May 15, 1990.

*Effective date*

Applies with respect to referrals made on or after 180 days after enactment. Provides that the Secretary publish final regulations no later than 180 days after enactment. With respect to compensation arrangements that were entered into and became legally binding before March 1, 1989, effective for referrals two years after the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Prohibition of certain financial arrangements between referring physicians and providers of certain Medicare covered items and services.*—The conference agreement includes the House provision, with an amendment. The prohibition of certain financial arrangements applies to clinical laboratory services with specific exceptions described below. An entity is prohibited from presenting, or causing to be presented, a Medicare claim or bill to an individual, third party payer, or other entity for clinical laboratory services furnished pursuant to a prohibited referral.

*(b) General exceptions to both ownership and compensation arrangement prohibitions.*—The conference agreement includes the House provision, with modifications. It deletes the provision relating to services of practitioners employed by physicians. The conference agreement also changes the provision relating to in-office ancillary services. The prohibitiion on referrals is effective January 1, 1992.

Under the agreement, the prohibition on referrals to an entity for the furnishing of clinical laboratory services does not apply in cases of services that are furnished: (1) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are employed by such physician or group practice and who are personally supervised by the physician or by another physician in the group practice, and (2) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of clinical laboratory services, or in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice for the centralized provision of the group's clinical laboratory services, and that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member, or by an entity that is wholly owned by such physician or such group practice, if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse. The conferees intend this exception to apply to a group practice which has set up its own central building to perform ancillary services for members of the group practice.

The conference agreement also eliminates the exception for home intravenous drug therapy services.

*(c) General exception relating only to ownership or investment prohibition for ownership and publicly-traded securities.*—The conference agreement includes the House provision.

*(d) Additional exceptions related only to ownership or investment prohibition and subject to reporting and disclosure.*—The conference agreement includes the House provision, with modifications and an amendment. Under the general exceptions, excepts all clinical laboratory services provided by Puerto Rican hospitals. Excepts clinical laboratory services if the laboratory furnishing the services is in a rural area [as defined in

section 1886(d)(2)(D)]. Applies the exceptions to hospital ownership in the case of clinical laboratory services provided by a hospital. Eliminates the provision excepting entities in operation before March 1, 1989.

The conference agreement also replaces the reporting and disclosure requirements required to qualify for the general exception under this subsection with a provision requiring each entity providing covered items and services for which Medicare payment may be made to provide the Secretary with information concerning the entity's ownership arrangements, including the covered items and services provided by the entity, and the names and all of the Medicare provider numbers of the physicians who are interested investors or who are immediate relatives of interested investors. The agreement requires this information to be provided in such form, manner, and at such times as the Secretary specifies. It requires that the information first be provided not later than one year after the date of enactment of this section.

*(e) Additional exceptions related only to ownership or investment prohibition and subject to reporting and disclosure and investment standards.*—No provision.

*(f) Additional case-by-case exceptions related only to ownership or investment prohibition.*—No provision.

*(g) Exceptions relating to other compensation arrangements.*—The conference agreement includes the House provision, with amendments. Under "employment and service arrangements with hospitals," the agreement deletes personnel. Under "other administrative services" it adds that referrals are not prohibited for a compensation arrangement if the arrangement is for specific physicians' services furnished to a nonprofit blood center.

*(h) Sanctions.*—The conference agreement includes the House provision, with modifications. It provides that no Medicare payment may be made for a clinical laboratory service which is provided pursuant to a prohibited referral. Replaces the provision relating to "failure to disclose information" with a provision that any person who is required, but fails, to meet a reporting requirement described above (see the reporting requirement described in (g) above) is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made.

*(i) Definitions.*—The conference agreement includes the House provision, with modifications: Under the definition for "referral; referring physician," it limits the definition to the case of a clinical laboratory services and deletes the section on prescriptions. Under "other items," the agreement limits the definition to a plan of care by a physician which includes the provision of the clinical laboratory service. Changes the "clarification respecting certain services integral to a consultation" to say that a request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, if such services are furnished by (or under the supervision of) such pathologist pursuant to a consultation requested by another physician does not constitute a "referral" by a "referring physician." The conference agreement deletes a request by a physician specializing in the provision of radiation therapy services for such services, and deletes provisions relating to specialized cancer treatment pharmacies, and renal dialysis providers.

*(j) Requiring requests for payment to include information on referring physicians.*—The conference agreement includes the House provision with an amendment providing that each request for payment or bill submitted for an item of service striking (including physicians' services) must include the required information.

*(k) GAO study of hospital ownership and hospital joint ventures.*—The conference agreement includes the House provision, with modifications and an amendment. Requires GAO to conduct a study of ownership of hospitals and other Medicare providers by referring physicians. Requires the study to investigate: (1) the types of such ownership arrangements and types of services offered under such arrangements; (2) the returns generally earned by physician investors in such arrangements; (3) the effect of such arrangements on the utilization of items and services by Medicare beneficiaries, Medicare expenditures, and other entities providing items and services in the communities served; (4) the effect of such arrangements on independent providers of similar services; and (5) the effect on the provision of in-office clinical laboratory services of the limitation on payment for the referrals contained in this section. Requires GAO to report to Congress no later than February 1, 1991 on the results of the study.

The Conference Agreement also adds a requirement that the Secretary submit to Congress and the Comptroller General, not later than 90 days after the end of each calendar quarter, a report which provides a statistical profile (by State and type of item or service) comparing utilization of items and services by Medicare beneficiaries served by entities in which the referring physician has a direct or indirect financial interest, and by Medicare beneficiaries served by other entities.

The conferees wish to make clear that if the report by the GAO finds that referring physician ownership of hospitals and other providers of Medicare items or services or ownership interest in such entities by referring physicians leads to inappropriate use of services or inappropriately alters admission or utilization patterns in favor of entities or services in which physicians have an ownership interest, it would be the intent of the relevant Committees to consider legislation banning referrals at the earliest possible date. Investors in entities should take this possibility into account prior to investing in such arrangements.

*(l) Requiring carriers to monitor and report overutilization.*—No provision.

*(m) Restriction of payment to referring laboratory.*—No provision.

The Conference Agreement provides that the reporting requirement is effective October 1, 1990. All other requirements of the section are effective with respect to referrals made on or after January 1, 1991. The Conference Agreement requires the Secretary to publish final regulations to carry out section 1877 no later than October 1, 1990.

The conferees wish to clarify that any prohibition, exemption, or exception authorized under this provision in no way alters (or reflects on) the scope and application of the anti-kickback provisions in section 1128B of the Social Security Act. The conferees do not intend that this provision should be construed as affecting, or in any way interfering, with the efforts of the Inspector General to enforce current law, such as cases described in the recent Fraud Alert issued by the Inspector General. In particular, entities which would be eligible for a specific exemption would be subject to all of the provisions of current law.

*7. Payments for Direct Graduate Medical Education*

Section 4044 of the House bill.

*Present law*

Hospitals currently receive payments for the direct costs of graduate medical education, which include salaries and fringe benefits of residents, faculty and support staff, as well as approved overhead expenses. The payment amount is determined on the basis of hospital specific costs incurred per full time equivalent (FTE) resident. The FTE resident amount is determined by fully counting (1.0) the number of residents who are in their initial residency period (the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility plus one year), and by counting residents not in the initial residency period as one-half (0.5) FTE.

*House bill*

Requires the Secretary to count primary care residents as 1.25 FTE and primary care specialty residents as 1.10 FTE. Defines a primary care resident as a resident in family medicine, general internal medicine, or general pediatrics, and a primary care specialty resident as a resident in internal medicine or pediatrics.

Requires the Secretary to establish a national payment limit for each residency year beginning on or after July 1, 1990. When applied to all hospitals with graduate medical education programs, the national payment limit would result in an estimated aggregate reduction in payments in the residency year equal to the additional expenditures resulting from the new (greater than 1.0) weighting factors for primary care residents and primary care specialty residents.

Requires the Secretary to estimate for each hospital a "primary care coefficient" equal to the number of FTE residents (using the weighting factors) expected in the hospital in the residency year divided by the total number of FTE residents (determined without the weighting factors) expected in the hospital in a residency year. The limit on the approved FTE resident amount for a hospital is then determined as the product of the national payment limit and the primary care coefficient for the hospital for the residency year.

*Effective date*

Applies to residency years beginning on or after July 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

*8. Peer Review Organizations*

(Section 10158 (a) and (b) and 4042 of House bill.

*Present law*

*(a) Peer review of non-physician services.*—Utilization and Quality Review Control Peer Review Organizations (PROs) are entities that contract with the Medicare program to review the services provided to Medicare patients to assure that services are medically necessary, provided in the appropriate setting, and meet professionally recognized standards of quality health care. Each PRO has a medical director, and a staff of nurse reviewers, data technicians and general support staff. In addition, each PRO has a board of directors, comprised of representatives from State medical societies, hospital associations and State medical spe-

cialty societies as well as a consumer representative. Finally, each PRO has a group of advisors who are consulted on cases on which there is a question regarding the nurse reviewer's decision. Only physicians can make initial determinations about services furnished or proposed to be furnished by another physician. However, nonphysician health care practitioners must be consulted before making a determination on a case involving the services provided by a nonphysician health care provider (e.g., services provided by a physical therapist).

*(b) Provider and practitioner right to reconsideration of PRO determination before notice to beneficiary.*—In reviewing the services provided to Medicare beneficiaries, a PRO may identify that care to be unreasonable or unnecessary, provided in an inappropriate setting or of substandard quality. After making such a finding, the PRO issues a preliminary notice to the physician or provider of such determination. The PRO is then required to give the physician or provider an opportunity for discussion and review of the proposed determination. If the PRO still disagrees with the physician or provider, it issues a formal notification to the physician or provider; such notification is also sent to fiscal intermediaries, carriers and the patient, and payment for service is denied. If reconsideration is requested, the PRO must complete the reconsideration within a specified time. Where the reconsideration is adverse to the beneficiary, and where the matter in controversy is $200 or more, the beneficiary is entitled to a hearing by the Secretary. Where the amount in controversy is $2,000 or more, the beneficiary is entitled to judicial review of the Secretary's final decision. Physicians and providers cannot appeal such a reconsideration.

*(c) Clarification of willing and able test for physician sanctions.*—If, after reasonable notice and opportunity for discussion with the practitioner or person concerned, a PRO determines that the practitioner or person has failed in a substantial number of cases substantially to provide services that are necessary, appropriate and of a quality that meets professionally recognized standards of care, or if said practitioner or person grossly and flagrantly violates any of those obligations in one or more instances, the PRO must submit a report and recommendations to the Secretary. If the Secretary agrees with the PRO's determination, and determines that the practitioner or person has demonstrated an unwillingness or a lack of ability substantially to comply with the above obligations, the Secretary (in addition to any other sanction provided under the law) may exclude (permanently or temporarily) that person from eligibility to provide services under Medicare. Practitioners or persons who are dissatisfied with a determination made by the Secretary are entitled to reasonable notice and opportunity for a hearing, and judicial review of the Secretary's final decision.

*(d) Increase in population threshold for preexclusion hearing.*—Before the Secretary can exclude a provider or practitioner located in a rural health manpower shortage area or in a county with a population less than 70,000 from Medicare for failure to meet the specified obligations, the provider or practitioner is entitled to a hearing before an administrative law judge respecting whether the provider or practitioner should be able to continue providing services to Medicare beneficiaries, pending completion of the administrative review procedure as specified in the law. If the judge determines that the provider or practitioner does not pose a serious risk to Medicare beneficiaries if permitted to continue providing them services, the Secretary cannot effect the Medicare exclusion until the provider or practitioner has been provided with reasonable notice and an opportunity for an administrative hearing.

*(e) Increase in civil monetary penalties.*—The Secretary may require the payment of civil money penalties in lieu of program exclusion in cases where the practitioner or person has provided health care services which were medically improper or unnecessary. The amount is limited to the actual or estimated cost of the medically improper or unnecessary services.

*House bill*

*(a) Peer review of non-physician services*

*Section 10158(a).*—Amends the Social Security Act relating to functions of Peer Review Organizations to require that PROs establish procedures for the involvement of health care practitioners who are not doctors of medicine in the review of services provided by members of their profession.

*Section 4042.*—No provision.

*Effective date*

Applies to contracts entered into after enactment.

*(b) Provider and practitioner right to reconsideration of PRO determination before notice to beneficiary*

*Section 10158(b).*—Amends section 1154 of the Social Security Act relating to functions of Peer Review Organizations to require PROs, in the case of payment denials for poor quality of care, to provide the physician or provider a reconsideration of the formal determination before notice is sent to patients, carriers and fiscal intermediaries. Provides that if a physician or provider is given a reconsideration, that reconsideration shall be in lieu of any subsequent reconsideration to which the provider or physician would otherwise be entitled. Preserves the right of a beneficiary to seek reconsideration of the PRO's determination. Provides that in the case of payment denials for poor quality of care that the notice to the patient state the following: "In the judgment of the peer review organization, the medical care received was not acceptable under the Medicare program. The reasons for the denial have been discussed with your physician and hospital."

*Section 4042(a).*—Similar provision.

*Effective date*

*Section 10158(b).*—Applies to PRO determinations with respect to which preliminary notifications are made, consistent with the notice timing requirements in law, more than 30 days after enactment.

*Section 4042 (a).*—Identical.

*(c) Clarification of willing and able test for physician sanctions.*—

*Section 10158.*—No provision.

*Section 4042(b).*—Amends section 1156(b)(1) relating to PRO sanctioning of physicians and providers to require, if appropriate, that in cases where the PRO has determined that such practitioner or person has failed to meet the specified obligations that the PRO give the practitioner or person an opportunity to pursue a recommended course of remedial education before the PRO submits a report and recommendations to the Secretary. Requires, in addition, that in determining whether a practitioner or person has demonstrated an unwillingness or a lack of ability substantially to comply with the specified obligations, the Secretary must take into account the practitioner's or person's refusal or willingness to pursue, or failure to comply with, an appropriate course of remedial education recommended by the PRO, or the practitioner's or person's failure or willingness to take any other corrective action on the practitioner's or person's own initiative before or during the administrative appeal.

*Effective date*

Applies with respect to recommendations for sanctions made by a PRO to the Secretary more than 90 days after enactment.

*(d) Increase in population threshold for preexclusion hearing*

*Section 10158.*—No provision.

*Section 4042(c).*—Replaces the current law requirement relating to counties with less than 70,000 to counties with less than 140,000.

*Effective date*

Applies to determinations made by the Secretary (under section 1156(b) of the law relating to sanctions and penalties) on or after enactment.

*(e) Increase in civil monetary penalties.*—

*Section 10158.*—No provision.

*Section 4042(d).*—Provides for a change in the civil money penalty from the actual or estimated cost of the medically improper or unnecessary services to $2500.

*Effective date*

Enactment.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Peer review of non-physician services.*—The Conference agreement includes the House provision.

*(b) Provider and practitioner right to reconsideration of PRO determination before notice to beneficiary.*—The Conference agreement includes the House provision.

*(c) Clarification of willing and able test for physician sanctions.*—The Conference agreement does not include the House provision.

*(d) Increase in population threshold for pre-exclusion hearing.*—The Conference agreement does not include the House provision.

*(e) Increase in civil monetary penalties.*—The Conference agreement does not include the House provision.

*9. Miscellaneous and Technical Provisions Relating to Parts A and B*

Sections 10158, 4045, 4061, 4062, and 4063 of House bill.

*Present law*

*(a) Determining eligibility of home health agencies for waiver of liability for denied claims.*—The Medicare program recognizes that circumstances may exist where providers of services or beneficiaries could not have reasonably known that certain services would not be covered by the program. The provider is presumed not to know that coverage for certain services would be denied, i.e., it qualifies for a "favorable presumption," when its denial rate is below a certain level. With this favorable presumption, it receives waiver of liability protection for denied claims below the threshold and it is paid for these claims. Home health agencies qualify for favorable presumption status if their denial rates are 2.5 percent or less. This denial rate is calculated based on a comparison of the number of home health

visits submitted for Medicare payment in a calendar quarter compared to the number of visits for which payment is denied. An agency has 60 days in which to request reconsideration of a denial.

*(b) Extension of authority to contract with fiscal intermediaries and carriers on other than a cost basis.*—The Secretary contracts with fiscal intermediaries and carriers to pay claims for benefits under Medicare Part A and Part B respectively. The Deficit Reduction Act of 1984 (DEFRA) authorized the Secretary to enter into no more than two competitively bid contracts under Part A and two such contracts under Part B. The Secretary would only be allowed to use this authority to replace poor performers, that is those falling into the lowest 20th percentile of all performers. DEFRA, as amended by OBRA-1986 authorized the Secretary to enter such contracts for fiscal years 1985-1989.

*(c) Expansion of rural health medical education demonstration project.*—OBRA 87 required the Secretary to conduct 3-year demonstration projects to assist resident physicians in developing field clinical experience in rural areas. Under the demonstration project, a sponsoring hospital provides a small rural hospital, for a period of one to three months of training, physicians who have completed one year of residency training.

The Secretary is required to select four small rural hospitals located in different counties to participate in the project, two of which are in rural counties of more than 2,700 square miles (one from either side of the Mississippi River) and two of which are located in rural counties with a severe shortage of physicians.

For the purposes of PPS payments, participating resident physicians are treated as if they are working in the sponsoring hospital and the sponsoring hospital receives an increased payment for direct graduate medical education costs incurred under the demonstration project.

*(d) Cancer center treatment demonstration project and study.*—Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury, or to improve the functioning of a malformed body member, are excluded from Medicare coverage. This exclusion has been interpreted to apply to several medically unproven, experimental, or investigational procedures.

*(e) Extension and clarification of prohibition on cost savings policies before beginning of fiscal year.*—OBRA-1987 (as amended by P.L.100-360) prohibited the Secretary from issuing any regulation which affects the current services baseline for Medicare by more than $50,000,000 prior to October 1989, unless required by law.

*(f) Long-term care study.*—No provision.

*(g) Recognition of costs of certain hospital-based nursing schools.*—The direct costs of approved medical education programs operated by a hospital are excluded from PPS and paid on a reasonable cost basis. HCFA has ruled that the costs of education programs operated at a hospital but controlled by another institution, such as a college or university, are not payable on a reasonable cost basis, but are included in PPS payment rates.

The Technical and Miscellaneous Revenue Act (TAMRA) of 1988 provided an exception to this rule for a hospital paid under a demonstration waiver that expired on September 30, 1985. If during its cost reporting period beginning in FY 1985 and for subsequent cost reporting periods, such a hospital has incurred substantial costs due to educational activities of a nursing college with which it share common directors, the activities shall be considered to be directly operated by the hospital for Medicare purposes, and shall be allowable as reasonable costs. Reimbursement is made on the same basis as if the costs were allowable direct costs of a hospital-operated approved educational program for cost reporting periods beginning in FY 1989, 1990, and 1991.

*(h) Inner-city hospital triage demonstration project.*—No provision.

*(i) GAO study of home health agency paperwork requirements.*—No provision.

*(j) GAO study of administrative costs of medicare program.*—No provision.

*(k) GAO review of long-term care insurance standards.*—No provision.

*(l) Distribution of information on recommended preventive health practices.*—The Secretary is required to distribute a notice containing information that explains the benefits available under Medicare, major categories of health care not provided by Medicare, limitations on payment (deductibles and coinsurance amounts), and a description of the limited benefits for long-term care services provided. The notice is mailed annually to individuals entitled to part A and part B benefits and when an individual applies for benefits under part A or enrolls in part B.

*(m) Administrative law judges for health-related cases.*— Administrative appeals involving Medicare and Medicaid are currently heard by administrative law judges from the Social Security Administration.

*(n) Amendments relating to the bipartisan commission on comprehensive health care.*—

*(1) Commission name.*—The U.S. Bipartisan Commission on Comprehensive Health Care was created by the Medicare Catastrophic Coverage Act to examine the shortcomings in current health care delivery and financing mechanisms that limit or prevent access of all individuals in the U.S. to comprehensive health care. It is required to make specific recommendations to the Congress on Federal programs, policies and financing needed to assure the availability of comprehensive long-term care services for the elderly and disabled, comprehensive health services for the elderly and disabled, and comprehensive health care services for all individuals in the U.S.

*(2) 4 Vice chairman.*—Under current law, the Commission is composed of 15 members, 3 appointed by the President, 6 Senators appointed by the President Pro Tempore of the Senate and 6 House members appointed by the Speaker of the House. The Commission members are required to elect from its members a chairman and vice chairman.

*(3) Additional mailing privilege.*—Current law provides that the Commission may use the U.S. mail in the same manner and under the same conditions as Federal agencies.

*(4) Printing of reports.*—The Commission is required to submit two reports to Congress, one on comprehensive long term care services for the elderly and disabled, and one on comprehensive health care services for the elderly, disabled and all persons.

*(5) Report deadlines.*—Under the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647), the original reporting dates for the Commission were extended from 6 months and one year after the date of enactment of the Medicare Catastrophic Coverage Act to 6 months and one year after the date of the first act providing appropriations for the Commission.

*(o) Office of rural health policy.*—The Office of Rural Health Policy, established by OBRA 87, is headed by a Director who provides advice to the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes established under Medicare and Medicaid on the financial viability of small rural hospitals, the ability of rural facilities to attract and retain physicians and other health professionals, and access to health care in rural areas. Currently, the office is within the Office of the Assistant Secretary for Health.

The Director is required to oversee compliance with certain statutory requirements pertaining to rural health issues, collect and distribute information on rural health care issues, rescarch findings, and innovative approaches to the delivery of health care in rural areas, coordinate the activities with the Department relating to rural health care, and inform the Department of the activities of other Federal departments and agencies on rural health care issues.

*House bill*

*(a) Determining eligibility of home health agencies for waiver of liability for denied claims.*—

*Section 10158(c).*—For purposes of calculating denial rates for favorable presumption status for home health agencies, requires that bills not be considered denied until the end of the 60-day period following the denial, or until the fiscal intermediary issues a decision on reconsideration of a denial. Also requires the Secretary to monitor the proportion of denied bills submitted by home health agencies for reconsideration and to notify Congress if the proportion of denials reversed upon reconsideration increases significantly.

*Effective date*

Enactment, with provisions for calculation of denial rates effective for quarters beginning on or after the date of enactment.

*(b) Extension of authority to contract with fiscal intermediaries and carriers on other than a cost basis*

*Section 10158(d).*—Extends the DEFRA authority for competitively bid contracting through FY1993 with two modifications. The period over which carrier performance is measured is defined as two years. In addition, the Secretary could enter into additional agreements and contracts without regard to cost reimbursement provisions if the contractor and the Secretary mutually agree to do so. The Secretary could not condition contract renewal, or otherwise require, that the contractor agree to waive cost reimbursement provisions.

*Effective date*

Applies beginning FY1990.

*(c) Expansion of rural health medical education demonstration project.*—

*Section 10158(e)*—Expands the number of demonstration projects from four to ten. For new projects, waives the selection restrictions provided in the original Act (size of county and rural counties with severe physician shortage). The new demonstration projects are required to begin within six months of the date of enactment and to be conducted for three years.

*Effective date*

Enactment.

*(d) Cancer center treatment demonstration project and study*

*Section 10158(f)*—Requires the Secretary to establish a demonstration project no later than one year after enactment that will permit Medicare payment for 3 cost reporting periods to 2 cancer center hospitals for costs of experimental treatments under research protocols registered (if appropriate) with the National Cancer Institute and approved by the hospital's patient protection committee. If experimental drugs are used, they must be approved by the Food and Drug Administration for clinical trials.

Requires OTA to conduct a study of the appropriateness of Medicare reimbursement for experimental cancer treatment, including an analysis of the costs to the Medicare program of such reimbursement, whether such reimbursement should be limited to cancer center hospitals, and any controls the program should place on such reimbursement. Requires OTA to submit a report, no later than June 1, 1992, to the House Ways and Means Committee and the Senate Finance Committee.

Requires hospitals applying for the demonstration project to agree to share with the Office of Technology Assessment (OTA) data and other information relating to the experimental treatments for which the hospital is reimbursed under the demonstration project to assist OTA in conducting its study.

*Effective date*

Enactment.

*(e) Extension and clarification of prohibition on cost savings policies before beginning of fiscal year.—*

*Section 10158(g).*—Extends and clarifies the DEFRA provision. The Secretary is prohibited from issuing any proposed or final regulation, instruction, or other policy which is estimated to reduce the current services baseline by more than $50,000 with three exceptions. The Secretary may issue proposed changes prior to May 15 preceding the fiscal year and final rule-making or other changes after October 15 of the fiscal year. The Secretary may also, at any time, issue proposed or final regulation, instruction or other policy if specifically required by law. The provision applies for the period FY 1990–FY 1993, or if later, the last year for which there is a maximum deficit amount (i.e. Gramm-Rudman deficit target) specified under the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344).

*Effective date*

Enactment.

*(f) Long-term care study*

*Section 10158(h).*—Requires the Secretary to request the Institute of Medicine (or another appropriate entity) to conduct a study of existing public and private long-term care programs and demonstration projects, including continuing care retirement communities, Medicaid waiver programs, long-term care programs under the Older Americans Act, and other innovative public or private long-term care programs. Requires that the study—

(1) identify new benefits, programs, or payment methodologies that could be used to develop and provide long-term care benefits for Medicare beneficiaries;

(2) determine the extent to which coverage of new benefits under the Medicare program would meet the needs of these beneficiaries;

(3) examine the issues of financing, coverage, and administration related to long-term care;

(4) determine the availability and adequacy of personnel to provide long-term care services;

(5) outline the methods and analyze the effectiveness with which current long-term care programs recruit, train, and retain personnel; use functional status and disability measures to entitle beneficiaries to various levels of coverage; and take into account the presence of family support and other informal caregivers;

(6) determine how the adoption of new long-term care benefits under the Medicare program could be designed to complement programs and benefits already in place; and

(7) identify areas where information important to the successful implementation of a long-term care benefit program under Medicare is either incomplete or unavailable.

Requires the Secretary to submit a report on the study, together with any recommendations to Congress, by not later than 2 years after completion of arrangements with the Institute of Medicine or other appropriate entity for conduct of the study.

*Effective date*

Enactment.

*(g) Recognition of costs of certain hospital-based nursing schools.—*

*Section 10158(i).*—Allows a hospital to be reimbursed on a reasonable cost basis for the costs of a hospital-based nursing school if, before June 15, 1989, and thereafter, the hospital incurred substantial costs in training students and operating the school, the nursing school and hospital share some common board members, and all instruction is provided at the hospital or in the immediate proximity of the hospital.

Allows a hospital paid under the TAMRA exception to be reimbursed for reasonable costs of training nursing students retroactively for hospital cost reporting periods beginning in FY 1986.

*Effective date*

Applies to cost reporting periods beginning on or after the date of enactment.

*(h) Inner-city hospital triage demonstration project*

*Section 10158(j).*—Requires the Secretary to establish a demonstration project in a public hospital located in a large urban area that has established a triage system. The Secretary is required to make payments for 3 years to reimburse the hospital for the reasonable costs of operating the system, including the costs of training hospital personnel to operate and participate in the system and costs of providing trauma and emergency services to patients who might otherwise be denied care. Limits payments under the project during a single year to $500,000.

*Effective date*

Enactment.

*(i) GAO study of home health agency paperwork requirements.—*

*Section 10158(k).*—Requires GAO to conduct a study analyzing the costs and effectiveness of current paperwork and other administrative requirements for home health agencies participating in Medicare, including an analysis of the feasibility of eliminating the separate reporting requirements for Medicare and Medicaid participation. Requires GAO to report to Congress on the study, together with any recommendations, by May 1, 1990.

*Effective date*

Enactment.

*(j) GAO study of administrative costs of medicare program*

*Section 10158(l).*—Requires GAO to conduct a study of the administrative burden of Medicare regulations and program requirements on providers of services, fiscal intermediaries, and carriers. The study is required to include an assessment of current administrative costs and trends since 1982, and a comparison with the administrative burdens of providing services to individuals who are not Medicare beneficiaries. Among the costs to be considered by the study are personnel costs, training costs, the costs of data and communications systems as affected by changes in requirements of the Medicare program, and costs of non-compliance with such requirements resulting from the failure of the Secretary to provide adequate notice of changes in program requirements. Requires the Comptroller General to submit a report to the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance by no later than March 31, 1990.

*Effective date*

Enactment.

*(k) GAO review of long-term care insurance standards*

*Section 10158(m).*—Requires GAO to conduct a review of the standards that may be used by States to regulate private long-term care insurance with respect to inflation protection, non-forfeiture of benefits, and other consumer protection provisions. Requires GAO to report to Congress on the result of its review by April 1, 1990.

*Effective date*

Enactment.

*(l) Distribution of information on recommended preventive health practices*

*Section 4045.*—Requires the Secretary to develop a summary of recommended preventive health care practices for elderly individuals entitled to Medicare benefits. If screening tests are recommended, the summary must indicate whether or not Medicare pays for the tests. Requires the Secretary to develop a 1-page form to be used as a personal and family medical history to assist physicians in furnishing appropriate health care. Requires the Secretary to consult with national physician, consumer, and other health-related groups in developing the summary and form, and base the form and summary on recommendations from an appropriate task force established by the Secretary. Requires the Secretary to provide for the distribution of the summary and form to each individual at the time of becoming eligible for Medicare and to other individuls at the time of general mailings.

*Effective date*

Enactment, with the development of the summary and form required by April 1, 1990, and the distribution of such materials by no later than October 1, 1990.

*(m) Administrative law judges for health-related cases*

*Section 4061.*—Adds a new section 1123 to the Social Security Act, "Administrative Law Judges for Health-Related Cases," which requires the Secretary to establish a group of administrative law judges devoted exclusively to hearing cases arising under Medicare, Medicaid or title XI of the Social Security Act (relating to peer review of utilization and quality of care), or arising out of

a provision of part A of title XI relating to Medicare or Medicaid.

*Effective date*

Applies to hearings before administrative law judges conducted on or after January 1, 1990.

*(n) Amendments relating to the bipartisan commission on comprehensive health care*

*(1) Commission name.—*

*Section 4062.*—Provides that the name of the Commission may also be known as the "Claude Pepper Commission" or the "Pepper Commission."

*(2) 4 Vice Chairmen.—*

*Section 4062.*—Requires that the members of the Commission elect from its members 4 vice chairmen.

*(3) Additional mailing privilege.—*

*Section 4062.*—Amends current law to authorize the Commission to use the frank under the provisions for use of the frank by a commission of Congress as described in section 3215 of title 39 of the United States Code.

*(4) Printing of reports.—*

*Section 4062.*—Provides that for purposes of costs relating to printing and binding, including the costs of personnel detailed from the Government Printing Office, the Commission is to be deemed a committee Congress.

*(5) Report deadlines.—*

*Section 4062.*—Amends section 406 of the Medicare Catastrophic Coverage Act to require that the two reports be submitted concurrently not later than November 9, 1989.

*Effective date*

Enactment.

*(o) Office of rural health policy*

*Section 4063.*—Amends provisions for the Office of Rural Health Policy by changing the title of the Director to that of Deputy Under Secretary for Rural Health reporting directly to the Secretary. The Secretary is required to appoint the current Director of the Office as first Deputy Under Secretary no later than 30 days after enactment.

Requires the Deputy Under Secretary to collect and disseminate information on specific rural health issues, including mental health, infant mortality and pre-natal care, and occupational safety and preventive promotion, information on innovative approaches to health care delivery, and health education and promotion.

*Effective date*

Enactment.

*Senate amendment*

No provision.

*Conference agreement*

*(a) Determining eligibility of home health agencies for waiver of liability for denied claims.*—The conference agreement includes the House provision with an amendment. The amendment would require the Secretary to continue using the hospital-based wage index for home health agency cost limits until cost reporting periods beginning on or after July 1, 1991.

*(b) Extension of authority to contract with fiscal intermediaries and carriers on other than a cost basis.*—The conference agreement includes the House provision.

*(c) Expansion of rural health medical health education demonstration project.*—The conference agreement includes the House provision;

*(d) Cancer center treatment demonstration project and study.*—The conference agreement does not include the House provision.

*(e) Extension and clarification of prohibition on cost savings policies before beginning of fiscal year.*—The conference agreement includes the House provision with an amendment to extend the prohibition through October 15, 1990.

*(f) Long-term care study.*—The conference agreement does not include the House provision.

*(g) Recognition of costs of certain hospital-based nursing schools.*—The conference agreement includes the House provision with amendments. The Secretary is prohibited from recouping, or otherwise reducing or adjusting, Medicare payments to hospitals before October 1, 1990, for alleged overpayments to hospitals as a result of a determination that costs reported for nursing and allied health education programs were allowable only as routine operating costs and therefore excluded from the medical education pass-through. The Secretary is required to issue regulations addressing payment of such costs by July 1, 1990, provided that the Secretary allows a comment period of not less than 60 days, consults with ProPAC, and any final rule is not effective before the later of October 1, 1990, or 30 days after publication in the Federal Register.

The regulations are to specify: (1) the relationship required between a hospital and an approved nursing or allied health education program for the program's costs to be attributed to the hospital; (2) the types of costs for such programs that are allowable; (3) the distinction between costs of educational activities eligible for pass-through and those treated as hospital operating costs; and (4) the treatment of other funding sources for the program.

The conferees expect the Secretary, in developing the regulations with respect to the relationship between a hospital and an educational program, to consider: (1) the degree of common ownership, broad membership, or control between the hospital, an educational institution, an academic medical center, a corporation or a related organization; (2) the degree to which instruction is provided in the immediate vicinity of the hospital; (3) the existence of a written agreement with an educational institution providing for joint activities in which the hospital incurs costs directly related to operation of the program; (4) reporting relationships or other affiliations between the educational institution, the hospital, and, if applicable, an academic medical center; and (5) the responsibility and control of the hospital for administering the education program.

The conferees further expect that rules relating to types of allowable costs shall consider such costs as clinical costs, operating costs, classroom costs, appropriately allocated overhead, and faculty supervision, and that the treatment of other funding sources shall take into account State or local funding and costs redistributed from non-provider sources.

The conferees wish to emphasize that, in providing reimbursement criteria for the costs of certain types of hospital-based nursing schools, it is not their intention to prejudice the Secretary's determination as to the appropriateness of cost reimbursement for other hospital-based nursing and allied health education programs. The conferees further note that a program will comply with the requirement that instruction be conducted in a building on the immediate grounds of the hospital only if this instruction occurs on the hospital campus, not on the campus of an institution with which the hospital is affiliated.

*(h) Inner-city hospital triage demonstration project.*—The conference agreement includes the House provision.

*(i) GAO study of home health agency paperwork requirements.*—The conference agreement does not include the House provision.

*(j) GAO study of administrative costs of the Medicare Program.*—The conference agreement includes the House provision.

*(k) GAO review of long-term care insurance standards.*—The conference agreement includes the House provision.

*(l) Distribution of information on recommended preventive health practices.*—The conference agreement does not include the House provision.

*(m) Administrative law judges for health-related cases.*—The conference agreement does not include the House provision.

*(n) Amendments relating to commissions.*—The conference agreement includes the House provisions with amendments.

*The United States Bipartisan Commission on Comprehensive Health Care.*—The conference agreement includes the House provision with an amendment to require that the reports be submitted by March 1, 1990.

*The National Commission on Children.*—The amendment extends the Commissioners' terms until March 31, 1991 and amends current law to provide that there be appropriated through fiscal year 1991 such sums as may be necessary. The Commission is authorized to accept donations of money, property or personal services.

*(o) Office of rural health policy.*—The conference agreement includes the House provision with an amendment to strike the provision requiring the appointment of a Deputy Under Secretary for Rural Health.

*(p) Extension of COBRA continuation coverage.*—The Conference agreement includes the House provision.

*(q) Other provision.*—The conference agreement also includes a provision to require the Secretary of HHS to enter into an agreement with the National Academy of Public Administration to study personnel administration at HCFA, to assess the adequacy of HCFA staffing and recommend any needed changes in HCFA staffing to the Secretary and the Congress.

*10. Medical Care Quality Research and Improvement*

Sections 10154 and 4101, 4111, 4121, 4131, 4132, 4133, 4134 and 4135 of the House bill.

*Present law*

*(a) In General.*—OBRA of 1986 (P.L. 99-509) amended section 1875 of the Social Security Act to provide for the establishment of a patient outcome assessment research program, administered by the National Center for Health Services Research and Health Care Technology (established under section 305 of the Public Health Service Act). The program is required to promote research with respect to patient outcomes of selected medical treatments and surgical procedures for the purpose of assessing their appropriateness, necessity, and effectiveness.

For the purposes of carrying out this research program, OBRA of 1986 authorized to be appropriated from the Medicare Trust Funds $6 million for fiscal year 1987, and $7.5 million for each of fiscal year 1988 and fiscal year 1989. These authorization amounts were increased by the Technical

and Miscellaneous Revenue Act of 1988 (P.L. 100-647) to $10 million for fiscal year 1989, $20 million for fiscal year 1990, and $30 million for fiscal year 1991, and the authorization was extended through fiscal year 1991.

OBRA of 1986 also requires the National Center for Health Services Research (NCHSR) to establish application procedures for grants and cooperative agreements, and to establish peer review panels to review all such applications and research findings. NCHSR is also required to consult with the Council on Health Care Technology in establishing the scope of and priorities for the research program and to report periodically to the Council on the status of the program. The Secretary is required to make available to this research program data derived from Medicare research programs and other programs administered by the Secretary.

In addition, NCHSR is required by OBRA of 1986 to report to the Senate Committees on Finance and Appropriations and the House Committees on Ways and Means, Energy and Commerce, and Appropriations not later than 18 months after enactment, and annually thereafter, on the findings of the research program. In cooperation with appropriate medical groups, the Center is required to disseminate its findings as widely as possible, including to the peer review organizations (PROs).

*(b) Establishment of research and education program.*—Under current law, the purpose of the existing patient outcome assessment research program is to promote research with respect to patient outcomes of selected medical treatments and surgical procedures to assess their appropriateness, necessity, and effectiveness. This research program includes: (1) reorganization of Medicare claims data in a manner that facilitates research on patient outcomes; (2) assessments of the appropriateness of admissions and discharges; (3) assessments of the extent of professional uncertainty regarding efficacy; (4) development of improved methods for measuring patient outcomes; (5) evaluations of patient outcomes; and (6) evaluation of the effects on physicians' practice patterns of the dissemination to physicians and PROs of the findings of outcomes research.

*(c) Priority with respect to certain health conditions.*—In selecting treatments and procedures to be studied under the existing patient outcome assessment research program, the Secretary is required to give priority to those medical and surgical treatment procedures for which data indicate a highly (or potentially highly) variable pattern of utilization among Medicare beneficiaries in different geographic areas, and which are significant (or potentially significant) to Medicare in respect to utilization, length of hospitalization associated with the treatment or procedure, costs to the research program, and risk involved to the beneficiary.

*(d) Standards for data bases.*—No provision.

*(e) Dissemination of findings and education of providers.*—Under the patient outcome assessment research program established by OBRA of 1986, the National Center for Health Services Research, in cooperation with appropriate medical groups, is required to disseminate the findings of the research program as widely as possible, including to the peer review organizations (PROs).

*(f) Development of practice guidelines.*—No provision.

*(g) Medicare demonstration project.*—No provision.

*(h) Reports to Congress.*—Under OBRA of 1986, the National Center for Health Services Research is required to report to the Senate Committees on Finance and Appropriations and the House Committees on Ways and Means, Energy and Commerce, and Appropriations not later than 18 months after enactment, and annually thereafter, on the findings of the patient outcome assessment research program.

*(i) Advisory council.*—No provision.

*(j) Coordinating group.*—No provision.

*(k) Authorization of appropriations.*—For the purposes of carrying out the patient outcomes assessment research program, OBRA of 1986 (P.L. 99-509) authorized to be appropriated from the Medicare Trust Funds $6 million for fiscal year 1987, and $7.5 million for each of fiscal year 1988 and fiscal year 1989. These authorization amounts were increased by the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) to $10 million for fiscal year 1989, $20 million for fiscal year 1990, and $30 million for fiscal year 1991, and the authorization was extended through fiscal year 1991.

*(l) Definitions.*—No provision.

*(m) Establishment of the Agency for Health Care Research and Policy.*—Initial authority for a government health services research program was enacted in 1967 under the Public Health Service (PHS) Act, followed by various pieces of legislation that modified, extended and improved this program. In 1974, legislation established the National Centers for Health Services Research, which was later expanded to include Health Care Technology Assessment.

Under the PHS Act, the Secretary, acting through the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) and the National Center for Health Statistics (NCHS), is required to conduct and support research, demonstrations, evaluations, and statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

*(n) General authorities and duties of the agency.*—NCHSR is responsible for planning, developing, and administering a program of health services research, demonstrations, evaluations, research training, and related grant and contract support activities relating to the financing, organization, quality, and utilization of health care services. The Center disseminates research findings and gives technical assistance to other Federal programs and health service providers. In the area of technology assessment, the Center supports studies on the safety, efficacy, and cost-effectiveness of specific technologies, development of new methods for evaluating medical technologies, and diffusion of medical technology. Current authority for NCHSR expires at the end of fiscal year 1990.

The PHS Act requires that the Secretary, acting through NCHSR, undertake and support research, evaluation, and demonstration projects (that may include and are to be coordinated with experiments and demonstration activities authorized by the Social Security Act respecting the delivery of health care services in rural areas (including frontier areas), which may include projects with respect to (1) the future of the rural hospital; (2) long-term health care for the rural elderly; (3) hospital care for the rural poor and uninsured; (4) alternative health care delivery systems and managed health care in rural areas. The law requires the Secretary to afford appropriate consideration to requests of State, regional and local health planning and health agencies; public and private entities and individuals engaged in the delivery of health care, and other persons concerned with health services to have NCHSR or other units of HHS undertake research, evaluations, and demonstrations respecting specific aspects of specified issues, including access, quality, supply, distribution and costs.

*(o) Dissemination by the administrator of the agency for health care research and policy.*—The PHS Act requires the Secretary, acting through NCHSR, to give appropriate emphasis to research, demonstrations, evaluations and statistical and epidemiological activities respecting the collection, analyses, and dissemination of health related statistics, alternative methods for disseminating knowledge concerning health and health related activities. In addition, the PHS Act requires the Secretary to publish, make available, and disseminate the results of health services research, demonstrations, and evaluations. It also requires the Secretary to make available to the public data developed in such research, demonstrations, and evaluations, and to provide indexing, abstracting, translating and other services leading to a more effective and timely dissemination of information.

Current law prohibits the Secretary from restricting the publication and dissemination of data from, and results of, projects undertaken by specified centers. It also requires the Secretary to act as needed to assure that statistics are of high quality, timely, comprehensive, etc. and are disseminated as widely as practicable.

The PHS Act currently prohibits the use of information for any purpose other than the purpose for which it was supplied, if an establishment or person supplying that information or described in it is identifiable, unless that establishment or person has consented to its use and other specified conditions are met.

*(p) Health care technology and technology assessment.*—Under the PHS Act, the Secretary, acting through NCHSR, is required to undertake and support (by grant or contract) research regarding technology diffusion, methods to assess health care technology, and specific health care technologies. The Act also establishes a National Advisory Council on Health Care Technology Assessment to advise the Secretary and the Director of NCHSR with respect to the performance of health care technology assessment functions, and specifies the composition, funding, and organization of the Council. The purposes of the Council include promoting the development and application of appropriate health care technology assessments, and the review of existing health care technologies in order to identify obsolete or inappropriately used health care technologies.

The PHS Act requires the Council to make recommendations to the Director of NCHSR with respect to the development of criteria and methods to be used by the Center in making health care technology coverage recommendations. It further requires that NCHSR advise the Secretary respecting health care technology issues and make recommendations with respect to whether specific technologies should be reimbursable under Federally financed health programs. In making these recommendations, the law requires NCHSR to consider

the safety, efficacy, and effectiveness, and as appropriate, the cost-effectiveness and appropriate uses of the technology. NCHSR is required to cooperate and consult with NIH, FDA, and other interested Federal departments or agencies.

The Act requires, in addition, that the Secretary makes grants for the planning, development, establishment, and operation of the Council, and specifies the conditions by which an entity can obtain a grant.

*(q) Establishment of the forum for quality and effectiveness in health care.*—No provision.

*(r) Forum/panels of experts and consumers.*—No provision.

*(s) Additional requirements for the forum for quality and effectiveness.*—No provision.

*(t) Additional authorities and duties of the agency for health care research and policy.*—No provision.

*(u) Peer review with respect to grants and contracts.*—Under the PHS Act, no grant or contract may be made under specified sections of the law, (relating to NCHSR and NCHS) unless an application for the grant has been submitted to the Secretary in such form and manner, and containing such information, as the Secretary may prescribe (through regulation) and unless a peer review group (as established by the Secretary through the Directors of NCHSR and NCHS) has recommended the application for approval. In addition, each application submitted for a grant or contract in an amount exceeding $50,000 of direct costs and for a health services research, evaluation, or demonstration project, has to be submitted to a peer review group for an evaluation of the technical and scientific merits of the proposals made in each application. The law requires the peer review groups to report their findings and recommendations to the Secretary, acting through the Director involved. The Secretary is not allowed to approve an application unless a peer review group has recommended the application for approval.

*(v) Provisions with respect to development, collection, and dissemination of data.*—No provision.

*(w) Additional provisions with respect to grants and contracts.*—Under the PHS Act, no grant or contract may be made under specified sections of the law, (respecting NCHSR and NCHS) unless an application for the grant has been submitted to the Secretary in such form and manner, and containing such information, as the Secretary may prescribe (through regulation) and unless a peer review group (as established by the Secretary through the Directors of NCHSR and NCHS) has recommended the application for approval. In addition, each application submitted for a grant or contract in an amount exceeding $50,000 of direct costs and for a health services research, evaluation, or demonstration project, has to be submitted to a peer review group for an evaluation of the technical and scientific merits of the proposals made in each application. The law requires the peer review groups to report their findings and recommendations to the Secretary, acting through the Director involved. The Secretary is not allowed to approve an application unless a peer review group has recommended the application for approval.

The Act also provides that amounts otherwise payable to a person under a grant or contract are to be reduced by: (a) amounts equal to the fair market value of any equipment or supplies furnished by the Secretary to carry out the project for which the grant was made; and (b) amounts equal to the pay, allowances, traveling expenses, etc. attributable to the performance of services by an officer or employee of the Federal Government in connection with the project, if that officer or employee was assigned or detailed by the Secretary, but only if the person requested the Secretary to furnish the equipment or supplies or the services of the Government officer or employee.

*(x) Certain administrative authorities.*—The PHS Act provides for the establishment of NCHSR and NCHS, including the appointment of officers and staff, the acquisition of facilities and equipment, and the appointment of advisory councils and committees.

*(y) Funding of the agency for health care research and policy.*—The PHS Act currently authorizes appropriations for health service research, evaluation, and demonstrations under sections 304 or 305 (relating to general authorities and specific authority for NCHSR), $30 million for FY1988 and such sums as may be necessary for FY1989 and FY1990.

At least 20 percent of the amount appropriated for any fiscal year or $6 million, whichever is less, is to be available only for health services research, evaluation, and demonstration activities directly undertaken through NCHSR, and at least 10 percent of such amount or $1.5 million, whichever is less, is to be available only for the user liaison program and the technical assistance programs operated by NCHSR and for dissemination activities directly undertaken by NCHSR.

The Secretary is also required to obligate from funds appropriated under this section not less than $4.5 million for each of fiscal years 1988 through 1990 for health care technology assessment activities. For the Council on Health Care Technology, the Secretary is required to make available from funds appropriated under this section not more than $750,000 for each of the fiscal years 1988 through 1990. No more than $1.5 million may be used for grants and contracts for all the costs of planning, establishing and operating centers (authorized under section 305(e)). The law also authorizes to be appropriated $55 million for FY1988, and such sums as may be necessary for each of fiscal years 1989 and 1990, for health statistical and epidemiological activities.

*(z) Additional definitions.*—No provision.

*(aa) Terminations.*—No provision.

*(bb) Contract for temporary assistance to secretary for health care technology assessment.*—No provision.

*(cc) Technical and conforming amendments to the PHS Act.*—No provision.

*(dd) Transitional and savings provisions.*— No provision.

*House bill*

*(a) In general.*

*Section 10154.*—Adds a new section 1142 to title XI of the Social Security Act, entitled "Research and Education Concerning the Outcomes, Effectiveness, and Appropriateness of Medical Care." Provides to the Secretary of HHS the responsibility for carrying out the research program.

*Section 4111.*—Adds a new section 1142, entitled "Research on Outcomes of Health Care Services and Procedures." Places the responsibility for carrying out the research program with the Administrator of the Agency for Health Care Research and Policy, an agency that is required to carry out outcomes research in a manner consistent with the new section 1142 of the Social Security Act, which is established by the bill under a new title IX of the Public Health Service Act (see sections (m) and (n) below).

*(b) Establishment of research and education program*

*Section 10154.*—Requires the Secretary to provide for outcomes, effectiveness, and appropriateness research with respect to specific medical treatment or specific medical conditions chosen using the selection procedure described (see section (j) below on "Coordinating Group").

Requires this research to include: (a) a review of existing research findings with respect to treatment or conditions; (b) a review of the existing methodologies that use large data bases in conducting such research, and development of new research methodologies, including data-based methods of advancing knowledge and methodologies that measure clinical and functional status of patients; (c) grants and contracts to research centers, and contracts to other entities, to conduct research on treatment or conditions, including research on the appropriate use of prescription drugs; (d) development of projects to demonstrate the use of claims data and data on clinical and functional status of patients in determining the outcomes, effectiveness, and appropriateness of such treatment; and (e) supplementation of existing data bases, including the collection of new information, to enhance data bases for research purposes, and the design and development of new data bases that would be used in outcomes and effectiveness research.

Requires the Secretary to establish a process to assure that new information and medical innovation are addressed, in a timely manner, and incorporated into outcomes, appropriateness and effectiveness research when appropriate.

*Section 4111.*—Requires the Secretary, acting through the Administrator for Health Care Research and Policy, to conduct and support research with respect to the outcomes of health care services and procedures in order to identify the manner in which diseases, disorders, and other health conditions can most effectively and appropriately be diagnosed and treated.

Provides that the Administrator, in carrying out these responsibilities, conduct or support evaluations of the comparative effects, on health and functional capacity, of alternative services and procedures utilized in diagnosing and treating diseases, disorders, and other health conditions.

Provides that the Administrator conduct and support research with respect to improvement of the methodologies and criteria utilized in conducting research with respect to outcomes of health care services and procedures, and evaluations of methodologies that utilize large data bases (including claims data and clinical data) in conducting research with respect to such outcomes.

*(c) Priority with respect to certain health conditions*

*Section 10154.*—Provides that the medical conditions to be researched be selected by a Coordinating Group (composed of the Assistant Secretary for Health, the Assistant Secretary for Planning and Evaluation, and the Administrator of HCFA) but that at least 2/3 of the conditions have the concurrence of the HCFA Administrator (see section (j) below on "Coordinating Group").

*Section 4111.*—Requires the Administrator for Health Care Research and Policy to establish priorities with respect to the dis-

eases, disorders, and other health conditions for which evaluations are to be conducted. Provides that in establishing such priorities, the Administrator is required to consider the extent to which: (a) improved methods of diagnosis and treatment can benefit a significant number of individuals; (b) there is significant variation among physicians in the particular services and procedures utilized in making diagnoses and providing treatments or there is significant variation in the outcomes of health care services or procedures due to different patterns of diagnosis or treatment; (c) the services and procedures utilized for diagnosis and treatment result in relatively substantial expenditures; and (d) the data necessary for such evaluations are readily available or can readily be developed.

Provides that for the purpose of establishing such priorities, the Administrator may, with respect to services and procedures utilized in diagnosing and treating diseases, disorders and other health conditions, conduct or support assessments of the extent to which: (a) rates of utilization vary among similar populations for particular diseases, disorders, and other health conditions; (b) uncertainties exist on the effect of utilizing a particular service or procedure; or (c) inappropriate services and procedures are provided.

(See section (i) below which provides for an Advisory Council to advise the Secretary and the Administrator regarding priorities for a national strategy for, among other things, the conduct of outcomes research under this section.)

*(d) Standards for data bases*

*Section 10154.*—Provides that to promote the research described above through the use of a wider data base, the Secretary is required to develop standards to be used in the collection and maintenance of data (whether by the Secretary or others). Requires that the Secretary, in developing these standards, develop (1) uniform definitions of data to be collected and used in describing a patient's clinical and functional status; (2) common reporting formats and linkages for such data; and (3) standards to assure the security, confidentiality, accuracy, and appropriate maintenance of such data. Requires the Secretary to report to Congress no later than one year after enactment on the feasibility of linking such research-related data of HHS with such data collected or maintained by other Federal departments (including the Departments of Defense and Veterans' Affairs and the Office of Personnel Management) and by non-Federal entities.

*Sections 4111 and 4121.*—Requires under title XI of the Social Security Act that the Administrator of the Agency for Health Care Research and Policy develop and promote the use of uniform standards and formats in the collection and maintenance of information on the outcomes of health care services and procedures, including the effect on health and functional capacity resulting from such services and procedures. (See also section (v) below.)

Amends the Public Health Service Act to require the Administrator of the Agency for Health Care Research and Policy to assure the utility of the data for all interested entities, and to establish guidelines for uniform methods of developing and collecting data. Requires the guidelines to include specifications for the development and collection of data on the outcomes of health care services and procedures.

*(e) Dissemination of Findings and Education of Providers*

*Section 10154.*—Requires the Secretary to provide for the dissemination of findings of the research described in this section and for the education of providers and others in the application of the research. Requires in so doing that the Secretary develop: (1) a program designed to identify effective means to educate, and to educate physicians, other providers, consumers, and others in using the research findings, including a formal training program for training physician managers within provider organizations; and (2) appropriate relationships between the Department and professional associations, medical societies, and other relevant groups.

*Section 4111.*—Requires that the Administrator of Health Care Research and policy provide for the dissemination of the research findings and for the education of providers. Authorizes the Administrator to conduct or support research with respect to disseminating information and the effectiveness and appropriateness of health care services and procedures. Requires the Administrator to conduct and support evaluations of the activities carried out under the bill title to determine the extent to which such activities have had an effect on the practices of physicians in providing medical treatment, the delivery of health care, and the outcomes of health care services and procedures. (See also sections (q), (r) and (s) below relating to the "Forum for Quality and Effectiveness.")

*(f) Development of Practice Guidelines*

*Section 10154.*—Requires the Secretary to establish an on-going program of financial support and oversight to: (1) develop (based on research described above) treatment-specific or condition-specific practice guidelines for clinical treatments and conditions selected by the Coordinating Group (see section (j) below on the "Coordinating Group") in forms appropriate for use in clinical practice, educational programs, and in reviewing quality and appropriateness of medical care, and (2) to update such guidelines and forms to reflect changes in technology and appropriate medical practice.

*Sections 4101 and 4111.*—No provision under title XI of the Social Security Act. Section 4101 establishes the Office of the Forum for Quality and Effectiveness in Health Care under the Public Health Service Act. Requires the Director of the Office to arrange for the development and periodic review and updating of: (a) clinically relevant guidelines that may be used by physicians and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be diagnosed and treated; and (b) standards of quality, performance measures, and medical review criteria through which health care providers and other appropriate entities may assess or review the provision of health care and assure the quality of such care. Requires the Director to establish standards and criteria to be used by expert panels in the development and periodic review and updating of the guidelines. (See sections (q), (r), and (s) below.)

*(g) Medicare Demonstration Project*

*Section 10154.*—Requires the Administrator of HCFA to initiate by January 1, 1991, a demonstration project to evaluate the application of the practice guidelines to at least three clinical treatments or conditions that account for a significant portion of Medicare expenditures, and have a significant variation in the frequency or the type of treatment provided. Requires the Secretary to provide for an evaluation of the project as a model for broad scale implementation.

*Sections 4101 and 4111.*—No provision under title XI of the Social Security Act. Amends the Public Health Service Act to authorize the Director of the Office of the Forum to conduct or support pilot testing of the guidelines standards, performance measures, and review criteria. (See section (s) below.)

*(h) Reports to Congress*

*Section 10154.*—Requires the Secretary to report to Congress by February 1 of each year (beginning with 1991) on the progress of the activities under this part of the bill during the previous fiscal year, including the impact of such activities on medical care (particularly medical care for individuals receiving Medicare benefits). (See also section (d) on "Standards for Data Bases" regarding the required report on linking HHS data with data maintained by other departments.)

*Section 4101 and 4111.*—No provision.

*(i) Advisory Council*

*Section 10154.*—Requires the Secretary to provide a charter for, and appointment of 18 members to, an advisory council to assist the Secretary in activities conducted under this part of the bill, including commenting and advising the Secretary regarding each annual coordination plan transmitted by the coordinating group (described below under section (j) on "Coordinating Group"). Provides that membership on the advisory council consist of representatives from a broad range of interested parties. Requires the Assistant Secretary of Health to be responsible for providing the advisory council with such staff and technical assistance as may be required. Provides that Section 14 of the Federal Advisory Committee Act does not apply to the advisory council.

*Section 4111 and 4121.*—No provision under title XI of the Social Security Act but establishes an Advisory Council for Health Care, Research, Evaluation and Policy under the Public Health Service Act. Specifies responsibilities, membership, appointment of a chair, time of meetings, compensation, and reimbursement of expenses, staff and duration. (See section (t) below on "Additional Duties of the Agency for Health Care Research and Policy.")

*(j) Coordinating Group*

*Section 10154.*—Requires the Secretary to establish a coordinating group composed of the Assistant Secretary for Health, the Assistant Secretary for Planning and Evaluation, and the Administrator of HCFA. Provides that the Assistant Secretary of Health serve as chairman of the coordinating group. Requires the coordinating group to: (1) transmit annually to the Secretary a plan to coordinate the activities of the Department in respect to research and education on outcomes, effectiveness and appropriateness of medical care; standards for data bases, dissemination of findings and education; and development of practice guidelines; (2) establish annually an agenda (including priorities) for activities under this section and periodically monitor and review activities conducted under this section (including coordination and information exchange); and (3) select the specific treatments and medical conditions to be the subject of research and guidelines for the

research on outcomes effectiveness and appropriateness, and the development of practice guidelines, of which at least 2/3 must have the concurrence of the HCFA Administrator.

*Section 4111.*—No provision under title XI of the Social Security Act (see section (t) below on "Additional Authorities and Duties of the Agency for Health Care Research and Policy" relating to duties of the Advisory Council established under the Public Health Service Act .

*(k) Authorization of Appropriations*

*Section 10154.*—Authorizes to be appropriated to carry out this section: (1) $72 million for FY1990; (2) $110 million for FY1991; (3) $170 million for FY1992; (4) $225 million for FY1993; and (5) $270 million for FY1994. Authorizes that 2/3 of these amounts for any fiscal year are to be transferred to carry out this section in the following proportions from the following trust funds: (1) 60% from the Medicare Hospital Insurance Trust Fund and (2) 40% from the Medicare Supplementary Insurance Trust Fund. Provides that of the amounts transferred or otherwise appropriated to carry out this section in FY1990, 1/3 shall be allotted for research activities on outcomes, effectiveness and appropriateness, 1/3 for developing standards for data bases; 1/6 for dissemination of findings and education, to be distributed evenly between informational and educational activities; and 1/6 for the development of practice guidelines and the Medicare demonstration project.

*Section 4111.*—Authorizes to be appropriated $8.3 million for FY1990, $12.5 million for FY1991, and $16.7 million for FY1992. In addition to these amounts, authorizes to be transferred from the Medicare Supplementary Trust Fund $16.7 million for FY1990, $25 million for FY1991, and $33.3 million for FY1992.

*(l) Definitions*

*Section 10154.*—Defines "outcomes research" to mean, with respect to a medical condition, research that (1) focuses on the evaluation of a treatment or alternative treatments for the condition, and (2) formally assesses the probabilities for the full spectrum of different outcomes and the value of these outcomes for patients, including mortality, morbidity, functional status, symptoms, and quality of life.

Defines "effectiveness research" to mean, with respect to a treatment, research that focuses on (1) the uses of the treatment for patients in typical clinical practice and the impact on outcome of the treatment of those patients, taking into account (to the extent relevant) patient conditions and local environment, and (2) through routine monitoring and feedback of information to physicians and patients, changes in the treatment to improve outcomes in such practice.

Defines "appropriateness research" to mean, with respect to a treatment, an assessment, which may be based on outcomes research, effectiveness research, or a consensus of medical experts or expert judgment, of the characteristics of particular patients for which the treatment is effective.

*Section 4111.*—Defines "Administrator" to mean the Administrator for Health Care Research and Policy. (See section (z) below on "Additional Definitions.")

*(m) Establishment of the Agency for Health Care Research and Policy*

*Section 10154.*—No provision.

*Section 4101.*—Amends the Public Health Service Act by authorizing a new title IX—Agency for Health Care Research and Policy (AHCRP). Provides that the purpose of the Agency is to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services, through the establishment of a broad base of scientific research and through improvements in clinical practice and in the organization, financing and delivery of health care services. Provides that the Agency be headed by the Administrator for Health Care Research and Policy to be appointed by the Secretary. Provides that the Secretary, acting through the Administrator, carry out the authorities and duties established in this new title IX of the Public Health Service Act.

*(n) General Authorities and Duties of the Agency*

*Section 10154.*—No provision.

*Section 4101.*—(1) In general.—Requires the Administrator of the Agency for Health Care Research and Policy (AHCRP) to conduct and support research, demonstration projects, evaluations, training, and the dissemination of information, on health care services and on systems for the delivery of such services, including activities with respect to: (a) the effectiveness, efficiency, and quality of health care services; (b) subject to (4) below (requiring consistency with section 1142 of the Social Security Act) the outcomes of health care services and procedures; (c) clinical practice, including primary care and practice-oriented research; (d) health care technologies, facilities, and equipment; (e) health care costs, productivity and market forces; (f) health promotion and disease prevention; (g) health statistics and epidemiology; and (h) medical liability.

(2) Rural areas and underserved populations. Requires the Administrator of AHCRP to undertake and support research, demonstration projects, and evaluations in respect to (a) the delivery of health care services in rural areas (including frontier areas); and (b) the health of low-income groups, minority groups, and the elderly.

(3) Multidisciplinary centers. Authorizes the Administrator of AHCRP to provide financial assistance to public or nonprofit private entities for meeting the costs of planning and establishing new centers, and operating existing and new centers for multidisciplinary health services research, demonstration projects, evaluations, training, policy analysis, and demonstrations in respect to rural areas and underserved populations.

(4) Relation to certain authorities regarding Social Security. Provides that activities required in this section may include, and should be appropriately coordinated with, experiments, demonstration projects, and other related activities authorized by the Social Security Act and the Social Security Act Amendments of 1967. Requires activities related to outcomes of procedures and surgeries to be carried out consistent with section 1142 of the Social Security Act (as created under this bill), relating to research and education on outcomes, effectiveness, and appropriateness of medical care (see sections (a) and (b) above).

*(o) Dissemination by the Administrator of the Agency for Health Care Research and Policy*

*Section 10154.*—No provision but see section (e) on "Dissemination of Findings and Education" above.

*Section 4101.*—(1) In general. Requires the Administrator of AHCRP to: (a) promptly publish, make available, and otherwise disseminate, in understandable form and on as broad a basis as practicable, the results of research, demonstration projects and evaluations conducted or supported under Title IX of the PHS Act (created by this bill); (b) promptly make available to the public data developed in such research, demonstration projects and evaluations; (c) provide indexing, abstracting, translating, publishing, and other services leading to a more effective and timely dissemination of information on research, demonstration projects, and evaluations with respect to health care to public and private entities and individuals engaged in the improvement of health care delivery and the general public, and undertake programs to develop new or improved methods for making such information available; and (d) as appropriate, provide technical assistance to State and local health agencies and conduct liaison activities to such agencies to foster dissemination.

(2) Prohibition against restrictions. Prohibits the Administrator of AHCRP from restricting the publication or dissemination of data from, or the results of, projects conducted or supported under title IX of the PHS Act, except as provided under subsection (3) as follows.

(3) Limitation on use of certain information. Prohibits the use of information for any purpose other than the purpose for which it has been supplied, if an establishment or person supplying the information or described in it is identifiable, unless the establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose. Prohibits the publication or release in an other form if the person who has supplied the information or who is described in it is identifiable unless the person has consented (as determined under regulations of the Secretary) to its publication or release in that other form.

(4) Certain interagency agreement. Provides that the Administrator of AHCRP and the Director of the National Library of Medicine enter into an agreement providing for the implementation of subsection (1)(c) above relating to indexing and other services.

*(p) Health care technology and technology assessment*

*Section 10154.*—No provision.

*Section 4101.*—(1) In general.—Provides that the Administrator of AHCRP shall promote the development and application of appropriate health care technology assessments by: (a) identifying needs in, and establishing priorities for, the assessment of specific health care technologies; (b) developing and evaluating criteria and methodologies for health care technology assessment; (c) conducting and supporting research on the development and diffusion of health care technology; (d) conducting and supporting research on assessment methodologies; and (e) promoting education, training, and technical assistance in the use of health care technology assessment methodologies and results.

(2) Specific assessments. Requires the Administrator of AHCRP to conduct and support specific assessments of health care technologies. Requires the Administrator in respect to these assessments to consider the safety, efficacy, and effectiveness, and, as appropriate, the cost-effectiveness and appropriate uses of such health care technologies.

(3) Information center. Provides for the establishment of an information center on health care technologies and health care

technology assessment at the National Library of Medicine. Requires the Administrator of AHCRP and the Director of the National Library of Medicine to enter into an agreement providing for the implementation of the information center.

(4) Recommendations with respect to health care technology. Requires the Administrator of AHCRP to make recommendations to the Secretary and to the Administrator of HCFA with respect to whether specific health care technologies should be reimbursable under federally financed health programs, including recommendations with respect to any conditions and requirements under which such reimbursements should be made. Requires the Administrator of AHCRP to consider the safety, efficacy, and, as appropriate, the cost-effectiveness and appropriate uses of such technology in making such recommendations. Requires the Administrator of AHCRP to cooperate and consult with the Director of NIH, the Commissioner of FDA, and the heads of any other interested Federal department or agency in carrying out this subsection.

*(q) Establishment of the forum for quality and effectiveness in health care*

*Section 10154.*—No provision.

*Section 4101.*—(1) Establishment of Office. Establishes within the Agency for Health Care Research and Policy an office to be known as the Office of the Forum for Quality and Effectiveness in Health Care. Requires the Administrator of AHCRP to appoint a Director to head the office.

(2) Duties: Requires the Administrator of AHCRP, acting through the Director, to establish a program known as the Forum for Quality and Effectiveness in Health Care. Requires the Director to arrange for the development and periodic review and updating of: (a) clinically relevant guidelines that may be used by physicians and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be diagnosed and treated; and (b) standards of quality, performance measures, and medical review criteria through which health care providers and other appropriate entities may assess or review the provision of health care and assure the quality of such care. Requires the director to do this using the process described below under section (r) below on "Forum of Experts and Consumers."

(3) Certain requirements: Requires that guidelines, standards, performance measures, and review criteria be based on the best available research and professional judgment regarding the effectiveness and appropriateness of health care services and procedures and be presented in formats appropriate for use by consumers of health care.

(4) Authority for contracts: Authorizes the Director to enter into contracts with public or nonprofit private entities in carrying out this subsection.

*(r) Forum/Panels of Experts and Consumers*

*Section 10154.*—No provision.

*Section 4101.*—(1) Panels and contracts: Requires the Director of the Forum for Quality and Effectiveness in Health Care" to convene panels of appropriately qualified experts (including practicing physicians) and health care consumers for the purpose of developing and periodically reviewing and updating the guidelines, standards, performance measures, and review criteria, and to enter into contracts with public and nonprofit private entities for this purpose.

(2) Authority for additional panels: Authorizes the Director to convene additional panels of appropriately qualified experts (including practicing physicians) and health care consumers for the purpose of: (a) making recommendations to the Director on priorities and strategies; (b) developing the standards and criteria; and (c) providing advice to the Administrator of AHCRP and the Director with respect to other specified activities carried out under the bill.

(3) Selection of panel members: Requires the Director in selecting the panels to consult with a broad range of interested individuals and organizations, including organizations representing physicians in the general practice of medicine and organizations representing physicians in specialties pertinent to the purposes of the panel involved. Requires the Director to appoint physicians reflecting a variety of practice settings.

*(s) Additional requirements for the forum for quality and effectiveness*

*Section 10154.*—No provision but see section (f) on "Development of Practice Guidelines" above.

*Section 4101.*—(1) Program agenda: Requires the Director to provide for an agenda for the development of the guidelines, standards, performance measures, and review criteria including identifying specific diseases, disorders, and other health conditions for which the guidelines are to be developed and those that are to be given priority in the development of the guidelines, and identifying specific aspects of health care for which the standards, performance measures and review criteria are to be developed and those that are to be given priority in the development of standards, performance measures and review criteria. Requires the Director to take into consideration the extent to which the guidelines, standards, performance measures, and review criteria can be expected to: (a) improve methods of diagnosis and treatment for the benefit of a significant number of individuals, (b) reduce clinically significant variations among physicians in the particular services and procedures utilized in making diagnoses and providing treatments; and (c) reduce clinically significant variations in the outcomes of health care services and procedures.

(2) Standards and criteria: Requires the Director to: (a) establish standards and criteria to be used by the expert panels in the development and periodic review and updating of the guidelines, standards, performance measures, and review criteria; (b) establish standards and criteria to be used for the purpose of ensuring that, if any contracts are entered into for the development or periodic review or updating of the guidelines, standards, etc, the contracts will be entered into only with appropriately qualified entities; (c) ensure that the standards and criteria specify that appropriate consultations with interested individuals and organizations are conducted in the development of the guidelines, standards, performance measures, and review criteria. Provides that such development may be accomplished through the adoption, with or without modification, of guidelines, standards, performance measures and review criteria that meet requirements and are developed by entities independently of the program established in this section; and (d) conduct and support research with respect to improving the standards and criteria.

(3) Dissemination: Requires the Director to promote and support dissemination of the guidelines, standards, performance measures and criteria. Requires the dissemination to be carried out through organizations representing health care providers, organizations representing health care consumers, peer review organizations, and other appropriate entities.

(4) Pilot testing: Authorizes the Director to conduct or support pilot testing of the guidelines, standards, performance measures, and review criteria. Provides that any such pilot testing may be conducted prior to, or concurrently with, their dissemination.

(5) Evaluations: Authorizes the Director to conduct and support evaluations of the extent to which the practice guidelines, standards, performance standards, and review criteria have had an effect on the clinical practice of medicine.

(6) Recommendations to the Administrator: Requires the Director to make recommendations to the Administrator on activities that should be carried out under this part of the bill and under the Social Security Act including recommendations of particular research projects that should be done with respect to (1) evaluating the outcomes of health care services and procedures; (2) developing the standards and criteria required under the section (f) above on the "Development of Practice Guidelines"; and (3) promoting the utilization of the guidelines, standards, performance standards, and review criteria.

*(t) Additional authorities and duties of the agency for health care research and policy*

*Section 10154.*—No provision but see section (i) on "Advisory Council" above.

*Section 4121.*—(1) In general. Amends the PHS Act to establish an advisory council to be known as the National Advisory Council for Health Care Research, Evaluation and Policy.

(2) Duties of the advisory council. Requires the Council to advise the Secretary and the Administrator of AHCRP with respect to activities to carry out the purpose of the Agency. Requires the Council's activities to include making recommendations to the Administrator regarding priorities for a national agenda and strategy for: (a) the conduct of research, demonstration projects, and evaluations with respect to health care, including clinical practice and primary care; (b) the development and periodic review and updating of guidelines for clinical practice, standards of quality, and performance measures with respect to health care; (c) the development and application of appropriate health care technology assessments; and (d) the conduct of research on outcomes of health care services and procedures under the relevant section (section 1142 of title XI) of the Social Security Act.

(3) Membership of the council. Requires the Council to be composed of appointed members and ex officio members. Provides that all members are to be voting members. Requires the Administrator of AHCRP to appoint to the Council 15 appropriately qualified representatives of the public who are not officers or employees of the United States. Requires the Administrator of AHCRP to ensure that the appointed members, as a group, are representative of professions and entities concerned with, or affected by, activities under this title of the bill and under the relevant section (section 1142 of title XI) of the Social Security Act. Provides that of the members, 8 are to be

individuals distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care; 3 are to be individuals distinguished in the practice of medicine; 2 are to be individuals distinguished in the fields of business, law, ethics, economics, and public policy; and 2 are to be individuals representing the interests of consumers of health care.

(4) Ex officio members. Requires the Administrator of AHCRP to designate as ex officio members of the Council the Director of NIH, the Director of the CDC, the Administrator of HCFA, the Assistant Secretary of Defense (Health Affairs), the Chief Medical Officer of the Department of Veterans Affairs, and other Federal officials that the Administrator may consider appropriate for membership on the Council.

(5) Terms. Provides that, in general, Council members be appointed for a term of 3 years. Provides that of the members first appointed to the Council, the Secretary shall appoint 5 members to serve for a term of 3 years, 5 members to serve for 2 years, and 5 to serve for 1 year.

(6) Vacancies. Provides that any member of the Council appointed to fill a vacancy occurring before the expiration of the term of the predecessor of the member is to be appointed for the remainder of the term of the predecessor. Provides that an appointed member of the Council may continue to serve after the expiration of the term of the member until a successor is appointed.

(7) Chair. Requires the Administrator of AHCRP to designate an individual to serve as chair from among the members appointed to the Council.

(8) Meetings. Requires the Council to meet not less than once during each 4-month period and to otherwise meet at the call of the chair.

(9) Compensation and reimbursement. (a) Appointed members: Provides that appointed members receive compensation for each day (including travel time) engaged in carrying out Council duties. Prohibits the compensation from exceeding the maximum rate of basic pay for GS-18 of the General Schedule; (b) Ex officio members: Provides that such members may not receive compensation for service on the Council in addition to the compensation otherwise received for duties carried out as officers of the United States.

(10) Staff. Requires the Administrator of AHCRP to provide to the Council such staff, information, and other assistance as may be necessary to carry out the duties of the Council.

(11) Duration. Requires the Council to continue in existence until otherwise provided by law.

*(u) Peer review with respect to grants and contracts*

*Section 10154.*—No provision.

*Section 4121.*—(1) Requirements of review. Requires that appropriate technical and scientific peer review be conducted with respect to each application for a grant, cooperative agreement, or contract under this title of the bill. Requires that each peer group to which an application is submitted report its finding and recommendations respecting the application to the Administrator of AHCRP in such form and in such manner as the Administrator requires.

(2) Approval as precondition of awards. Prohibits the Administrator of AHCRP from approving an application unless the application is recommended for approval by a peer review group established by (3) below.

(3) Establishment of peer review groups. Requires the Administrator of AHCRP to establish such technical and scientific peer review groups as may be necessary to carry out this section. Provides that such groups be established without regard to provisions of specified titles of Federal law relating to Federal employees. Requires that members of the any peer group be appointed from among individuals who are not officers or employees of the United States and who by virtue of their training or experience are eminently qualified to carry out the duties of such peer review group. Provides that the peer review groups continue in existence unless otherwise provided by law.

(4) Categories of review. Requires that review of applications with respect to research, demonstration projects, or evaluations be conducted by different peer review groups than the groups that conduct such review or applications with respect to dissemination activities or the development of research agendas (including conferences, workshops, and meetings). Provides that in the case of applications for financial assistance whose direct costs will not exceed $50,000, the Administrator of AHCRP may make appropriate adjustments in the procedures otherwise established by the Administrator for the conduct of peer review. Provides that these adjustments may be made for the purpose of encouraging the entry of individuals into the field of research, for the purpose of encouraging clinical practice-oriented research, and for other purposes the Administrator may determine to be appropriate.

(5) Regulations. Requires the Secretary to issue regulations for the conduct of peer review under this section.

*(v) Provisions with respect to development, collection, and dissemination of data*

*Section 10154.*—No provision but see section (d) on "Standards for Data Bases" above.

*Section 4121.*—(1) Standards with Respect to Utility of Data. Requires the Administrator of AHCRP to establish guidelines for uniform methods of developing and collecting data developed or collected by any entity for the purpose of enhancing quality, appropriateness, and effectiveness of health care services, as well as access to those services. Requires the guidelines to include specifications for the development and collection of data on the outcomes of health care services and procedures. (See also section (d) on "Standards for Data Bases" above.)

(2) Requires the Administrator of AHCRP to take such action as may be necessary to assure that statistics developed under this title are of high quality, timely, and comprehensive, as well as specific, standardized, and adequately analyzed and indexed. Requires the Administrator of AHCRP to publish, make available, and disseminate such statistics on as wide a basis as is practicable.

*(w) Additional provisions with respect to grants and contracts*

*Section 10154.*—No provision.

*Section 4121.*—(1) Requirement of Application. Prohibits the Administrator of AHCRP, in respect to any program under this title of the bill authorizing the provision of grants, cooperative agreements or contracts, from providing any financial assistance unless an application for the assistance is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Administrator determines to be necessary to carry out the program involved.

(2) Provision of Supplies and Services in Lieu of Funds. Provides that upon request of an entity receiving a grant, cooperative agreement, or contract, the Secretary is authorized to provide supplies, equipment and services for the purpose of aiding the entity in carrying out the project involved and, for such purpose, may detail to the entity any officer or employee of HHS. Provides that in such a case, the Secretary is required to reduce the amount of the financial assistance involved by the amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Administrator of AHCRP. Requires the Secretary to expend the amounts withheld for the payment of expenses in complying with such a request.

*(x) Certain administrative authorities*

*Section 10154.*—No provision

*Section 4121.*—(1) Deputy Administrator and Other Officers and Employees. Permits the Administrator of AHCRP to appoint a deputy administrator for the agency. Permits the administrator to appoint and fix the compensation of such officers and employees as may be necessary to carry out this title. Provides that except as otherwise provided by law, the officers and employees are to be appointed in accordance with specified laws and their compensation fixed in accordance with title 5 of the U.S. Code (relating to the Federal civil service).

(2) Facilities. Permits the Secretary in carrying out this title to acquire by lease or otherwise through the Administrator of General Services, buildings or portions of buildings in the District of Columbia or communities located adjacent to D.C. for use for a period not to exceed 10 years, and to acquire, construct, improve, repair, operate, and maintain laboratory, research, and other necessary facilities and equipment, and such other real or personal property (including patents) as the Secretary deems necessary.

(3) Provision of Financial Assistance. Permits the Administrator of AHCRP, in carrying out this title, to make grants to, and enter into cooperative agreements with, public and nonprofit private entities and individuals, and, when appropriate, contracts with public and private individuals and entities.

(4) Utilization of Certain Personnel and Resources. Permits the Administrator of AHCRP to utilize personnel and equipment, facilities, and other physical resources of HHS, permit appropriate entities and individuals to use the physical resources of HHS, and provide technical assistance and advice. Permits the Administrator of AHCRP to use, with their consent, the services, equipment, etc. of other Federal, State, or local public agencies, or of any such foreign government, with or without reimbursement of such agencies.

(5) Consultants. Permits the Secretary to secure, from time to time and for such periods as the Administrator of AHCRP deems advisable but in accordance with specified law, the assistance and advice of consultants from the U.S. or abroad.

(6) Experts. Permits the Secretary to obtain the services of not more than 50 experts or consultants who have appropriate scientific or professional qualifications. Requires that the experts or consultants be obtained in accordance with specified Federal law, except that the limitation on the duration of service does not apply. Requires that

the experts or consultants be reimbursed for their expenses associated with traveling to and from their assignment location in accordance with specified sections of Federal law. Provides that expenses may not be allowed in connection with the assignment of an expert or consultant unless he or she agrees in writing to complete the entire period of assignment, or one year, whichever is shorter, unless separated or reassigned for reasons that are beyond his or her control and that are acceptable to the Secretary. Provides that if he or she violates the agreement, the money spent by the United States for expenses is recoverable as a debt to the United States. Permits the Secretary to waive in whole or in part a right of recovery.

(7) Voluntary and Uncompensated Services. Permits the Administrator of AHCRP to accept voluntary and uncompensated services.

*(y) Funding of the Agency for Health Care Research and Policy*

*Section 10154.*—No provision.

*Section 4121.*—(1) Authorization of Appropriations: Authorizes to be appropriated $35 million for FY90, $50 million for FY91, and $70 million for FY92.

(2) Evaluations. Authorizes that in addition to amounts available pursuant to subsection (1) above, that amounts be made available to the Agency for Health Care Research and Policy equal to 40% of the maximum amount authorized for HHS evaluation funds.

*(z) Additional definitions*

*Section 10154.*—No provision.

*Section 4121.*—Defines the following terms as they apply to this title: (a) "Administrator" means Administrator for Health Care Research and Policy; (b) "Agency" means Agency for Health Care Research and Policy; (c) "Council" means the National Advisory Council on Health Care Research, Evaluation, and Policy; (d) "Director" means the director of the Office of the Forum for Quality and Effectiveness in Health Care.

*(aa) Terminations*

*Section 10154.*—No provision

*Section 4131.*—Abolishes NCHSR in HHS and all of its functions, including the duty to advise the Secretary on health care technologies. Repeals the Secretary's authority to conduct research, evaluation and demonstration projects through the Center on the following: (1) the accessibility, acceptability, planning, organization, distribution, technology, utilization, quality, and financing of health services and systems; (2) the supply and distribution, education and training, quality, utilization, organization and costs of health manpower; (3) the design, utilization, organization and cost of facilities and equipment; (4) the role of market forces in health care and their role in restraining cost increases and improving the availability and quality of care; and the safety, efficacy, effectiveness and cost effectiveness, economic, and social impacts of health care technologies.

Repeals the Secretary's authority to conduct research on health care delivery in rural areas. Eliminates mandate on the Secretary to assist State and local health agencies through a user liaison program and a technical assistance program. Repeals the mandate on the Secretary to assist, through grants or contracts, public or private nonprofit entities in meeting costs of planning and establishing new centers for multidisciplinary health services research, evaluation, training, policy analysis and demonstrations regarding the Center's functions. Abolishes the Secretary's authority to undertake and support research regarding technology diffusion, methods to assess health care technology and specific health care technologies through the Center.

Abolishes the National Advisory Council on Health Care Technology Assessment and all of its functions, including the duty to advise the Secretary and the Director of the Center on health technology assessment functions.

Repeals the Secretary's authority to make grants for the planning, development, establishment and operation of a council on health care technology. Abolishes the council and its functions, including the following: (1) promotion of the development and application of appropriate health care technology assessment; and (2) review of existing health care technologies in order to identify obsolete or inappropriately used health care technologies.

*(bb) Contract for temporary assistance to Secretary for Health Care Technology Assessment*

*Section 10154.*—No provision.

*Section 4132.*—Requires the Secretary to request the Institute of Medicine of the National Academy of Sciences to enter into a contract: (1) to develop and recommend to the Secretary priorities for assessing specific health care technologies; and (2) to assist the Administrator for Health Care Research and Policy and the Director of the National Institute of Medicine in establishing the information center on health care technologies and health care technology assessment required under Section 904 of this bill. Requires the Secretary to assure that these two functions are completed not later than one year after the Secretary enters into the contract. Requires the Secretary of HHS to transfer to the Secretary [sic] any information and materials developed by the Council on Health Care Technology. Provides an appropriation of $300,000 for FY 90 to carry out these functions.

*(cc) Technical and conforming amendments to the PHS Act*

*Section 10154.*—No provision.

*Section 4133.*—Makes miscellaneous technical and conforming amendments to the Public Health Service Act.

Amends section 306 of the PHS Act authorizing NCHS to require the Center to conduct and support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the U.S. Authorizes appropriations of $55 million for FY 1988 and such sums as may be necessary for each of FY 1989 and FY 1990.

*(dd) Transitional and savings provisions*

*Section 10154.*—No provision.

*Section 4134.*—Transfers personnel of HHS employed on the date of enactment in functions assigned to the Administrator of Health Care Research and Policy to the Administrator, along with assets, property, contracts, liabilities, records, unexpended balances of appropriations, authorizations, allocations or other funds connected with such functions. Specifies that unexpended funds transferred can only be used for the purpose for which the funds were originally authorized and appropriated.

Specifies that all orders, rules, regulations, grants, contracts, certificates, license, privileges, and other determinations, actions or other official documents of HHS that have been issued, made, granted or allowed to become effective in performing functions assigned to the Administrator for Health Care Research and Policy and that are effective on enactment will continue in effect according to their terms unless changed by law.

*Effective date*

*Section 10154.*—Enactment.

*Section 4135.*—Effective October 1, 1989 or upon date of enactment, whichever occurs later.

*Senate amendment*

No provision.

*Conference agreement*

*(a) In general.*—The conference agreement includes section 4111 of the House provision with an amendment changing the name of the Agency to the Agency for Health Care Policy and Research.

*(b) Establishment of research and education program.*—The conference agreement includes section 4111 of the House provision with an amendment. Changes "diagnosed and treated" to "prevented, diagnosed, treated, and managed clinically" wherever it appears in this subsection of the bill. Also changes "diagnosing and treating" to "preventing, diagnosing, treating, and managing clinically" wherever it appears in this section of the bill. The conference agreement requires that the Secretary, in addition to conducting and supporting research with respect to outcomes, effectiveness, and appropriateness of health care, also assure that the needs and priorities of the Medicare program are appropriately reflected in the development and periodic review and updating (through the process set forth by this bill in section 913 of the Public Health Service Act relating to the development of guidelines and standards) of treatment-specific or condition-specific practice guidelines for clinical treatments and conditions in forms appropriate for use in clinical practice, for use in educational programs, and for use in reviewing quality and appropriateness of medical care.

In carrying out this requirement (and PHS requirements relating to the development of initial guidelines), the agreement requires that no later than January 1, 1991, the Secretary shall assure the development of an initial set of guidelines that includes not less than three clinical treatments or conditions that account for a significant portion of Medicare expenditures and have a significant variation in the frequency or the type of treatment provided, or otherwise meet the needs and priorities of the Medicare program as set forth under the subsection relating to priorities and their relationship to the Medicare program (see (c)). The Secretary is required to provide for the use of these guidelines to improve the quality, effectiveness, and appropriateness of care provided under Medicare. Requires the Secretary to determine the impact of such use on the quality, appropriateness, effectiveness, and cost of medical care provided under Medicare and to report to the Congress on such determination no later than January 1, 1993. For this purpose, the Secretary is required to expend $1,000,000 for fiscal year 1990 and $1,500,000 for each of fiscal years 1991 and 1992, 60 percent of which is to be appropriated from the Medicare Hospital Insurance Trust Fund and 40 percent is to be appropriated from the Medicare Supplementary Medical Insurance Trust Fund.

The conference agreement provides that with respect to the improvement of method-

ologies and criteria for evaluations, that: (1) the Secretary conduct and support research with respect to the improvement of methodologies and criteria; (2) conduct and support reviews and evaluations of existing research findings with respect to such treatment or conditions; (3) conduct and support reviews and evaluations of the existing methodologies that use large data base in conducting such research and shall develop new research methodologies, including data-based methods of advancing knowledge and methodologies that measure clinical and functional status of patients, with respect to such research; (4) provide grants and contracts to research centers, and contracts to other entities, to conduct such research on such treatment or conditions, including research on the appropriate use of prescription drugs; (5) conduct and support research and demonstrations on the use of claims data and data on clinical and functional status of patients in determining the outcomes, effectiveness, and appropriateness of such treatment; and (6) conduct and support supplementation of existing data bases, including the collection of new information, to enhance data bases for research purposes, and the design and development of new data bases that would be used in outcomes and effectiveness research.

The conferees intend, that to the extent appropriate, the Secretary use the information and practice guidelines developed under the program to enhance the quality of care provided through titles XVIII and XIX of the Social Security Act. The Secretary shall also assimilate the research findings, practice guidelines and other information from this program to improve the efficiency and effectiveness of the Medicare and Medicaid programs.

The conferees intend that the research findings and guidelines developed under this program be reflected in the peer review, review of medical necessity, quality of care standards and provider certification, payment determinations, and other utilization review activities. Further, it is intended that the Secretary ensure that the research and guidelines programs be responsive to the needs and priorities that may arise from implementation of physician payment reform under this act.

The conferees also intend that the research program shall provide for the development and use of appropriate methodologies for assessment of patient outcomes including experimental and nonexperimental methods. It is intended that the research program will use an array of scientifically valid research methodologies that reflect individual study needs for outcome data. The conferees also desire the Secretary to assess the feasibility, cost and appropriateness of using clinical trials, including trials investigating the role of patient preferences in carrying out the purposes of this section. It is anticipated that the Secretary may desire to use matching funds in contract agreements for the development of practice guidelines. It is intended that the Secretary have the authority to do so in appropriate circumstances.

The conferees intend that in carrying out the conduct and support of research in this section, that the Secretary shall make available waivers of Medicare coverage rules for service provided under research protocols.

In addition, the conferees intend that for purposes of this provision, the term "clinical management" refers to the management of individual patient care and not the organizational management of the delivery of health care services.

*(c) Priorities with respect to certain health conditions.*—The conference agreement includes section 4111 of the House provision with an amendment. Requires the Secretary to establish the priorities, and provides that research as well as evaluations are to be conducted or supported. Permits the Secretary to conduct or support assessments. Provides that in establishing priorities for research and evaluation (and under the Public Health Service Act provision created by this bill relating to the program agenda of the Forum for Quality and Effectiveness), the Secretary is required to assure that such priorities appropriately reflect the needs and priorities of the Medicare program, as set forth by the Administrator of HCFA.

*(d) Standards for data bases.*—The conference agreement includes section 10154 of the House provision with modifications. Requires that the report on research-related data include the feasibility of linking such data with similar data collected by non-Federal (as well as Federal) entities. The conferees do not intend that these standards have to apply to data bases already established and in use.

*(e) Dissemination of findings and education of providers.*—The conference agreement includes sections 10154 and 4111 with modifications. Under section 10144, the conference agreement provides for the dissemination of the initial guidelines described in subsection (b) above. Requires the Secretary to work with professional associations, medical specialty and subspecialty organizations, and other relevant groups to identify and implement effective means to education physicians, other providers, consumers, and others in using such findings and guidelines, including training for physician managers within provider organizations. Under section 4111 relating to evaluations, the conference agreement requires the Secretary to conduct and support evaluations. Under section 4111 relating to research with respect to dissemination, permits the Secretary to conduct or support such research.

*(f) Development of practice guidelines.*—No provision.

*(g) Medicare demonstration project.*—No provision but see (n).

*(h) Reports to Congress.*—The Conference Agreement includes section 10154 of the House provision with modifications. Requires the Secretary to report to Congress no later than February 1 of each of the years 1991 and 1992, and of each second year thereafter, on the progress of the activities under this section during the preceding fiscal year (or preceding two fiscal years, as appropriate).

*(i) Advisory council.*—The conference agreement includes section 4121 of the House provision with an amendment (see (t) below).

*(j) Coordinating group.*—No provision.

*(k) Authorization of appropriations.*—The conference agreement includes section 10154 of the House provision with an amendment. Authorizes to be appropriated to carry out this section: $50 million for FY 1990; $75 million for FY 1991; $110 million for FY 1992; $148 million for FY 1993; and $185 million for FY 1994. Authorizes that ⅔ of the amounts for fiscal years 1990 through 1992, and 70 percent for fiscal years 1993 and 1994 be transferred to carry out this section in the following proportions from the following trust funds: (1) 60 percent from the Medicare Hospital Insurance Trust Fund, and (2) 40 percent from the Medicare Supplementary Medical Insurance Trust Fund.

The conference agreement provides that for each fiscal year, of the amounts transferred or otherwise appropriated to carry out this section, the Secretary is required to reserve appropriate amounts for each of the following purposes: (1) the development of guidelines, standards, performance measures, and review criteria; (2) research and evaluation; (3) data-base standards and development; and (4) education and information dissemination.

*(l) Definitions.*—No provision.

*(m) Establishment of the Agency for Health Care Research and Policy.*—The conference agreement includes section 4101 of the House provision with an amendment changing the name of the Agency to the Agency for Health Care Policy and Research.

*(n) General authorities and duties of the agency.*—The conference agreement includes section 4101 of the House provision with an amendment. Adds guideline development to the activities that the Administrator is required to do. Under the section on "relation to certain authorities regarding Social Security," the conference agreement changes "activities required" to "activities authorized." Requires that activities relating to the outcomes of health care services and procedures that affect the Medicare and Medicaid programs be carried out consistent with section 1142 of the Social Security Act (as created under this bill).

*(o) Dissemination by the Administrator of the Agency for Health Care Research and Policy.*—The conference agreement includes section 4101 of the House provision with an amendment. Requires the Administrator to promptly publish, make available, and otherwise disseminate, in an understandable form and on as broad a basis as practicable so as to maximize its use, the results of research, demonstration projects, and evaluations. Requires the Administrator to provide technical assistance to State and local government and health agencies.

*(p) Health care technology and technology assessment.*—The conference agreement includes section 4101 of the House provision with an amendment. Requires the Administrator to make recommendations to the Secretary and not to the Secretary and the Administrator of HCFA with respect to whether specific health care technologies should be reimbursable. Requires that the Administrator consider the safety, efficacy, and effectiveness, and, as appropriate uses of technologies, including the consideration of geographic factors.

*(q) Establishment of the forum for quality and effectiveness in health care.*—The conference agreement includes section 4101 of the House provision with an amendment. Adds that guidelines, standards, performance measures and review criteria include treatment-specific or condition-specific practice guidelines for clinical treatments and conditions in forms appropriate for use in clinical practice, for use in educational programs, and for use in reviewing quality and appropriateness of medical care. Requires the Administrator, no later than January 1, 1991, to assure the development of an initial set of guidelines, standards, performance measures, and review criteria that includes not less than three clinical treatments or conditions described in section 1142(a)(3) of the Social Security Act (as created by this section) relating to initial guidelines. Requires that to assure an appropriate reflection of the needs and priorities of the Medicare program, activities under this part that affect the Medicare

program are to be conducted consistent with section 1142 of that Act (as created by this section).

*(r) Forum/panels of experts and consumers.*—The conference agreement includes section 4101 of the House provision with an amendment. Changes the process by which guidelines and standards are to be developed. Requires the Director of the Forum to enter into contracts with public and nonprofit private entities for the purpose of developing and periodically reviewing and updating the guidelines, standards, performance measures, and review criteria. Includes under the role of the panels the reviewing of the guidelines, standards, performance measures and review criteria developed under the contracts with public and nonprofit private entities. Under "authority" for additional panels," specifies that the practicing physicians be ones with appropriate expertise, and eliminates the role of panels in making recommendations to the Director on priorities and strategies. Under "selection of panel members," adds organizations representing physicians in subspecialties.

*(s) Additional requirements for the forum quality and effectiveness.*—The conference agreement includes section 4101 of the House provision with an amendment. Changes the "Director" to the "Administrator." Requires that in providing for the program agenda, including priorities, the Administrator must consult with the Administrator of HCFA and otherwise act consistent with the provision of 1142 of the Social Security Act (as created by this bill) specifying the relationship of the research program on outcomes and effectiveness with the Medicare program. Under "standards and criteria," provides that the Director establish standards and criteria to be utilized by the recipients of the contracts and by the expert panels.

*(t) Additional authorities and duties of the Agency for Health Care Research and Policy.*—The conference agreement includes section 4121 of the House provision with an amendment. Under the duties of the council, deletes reference to section 1142 of the Social Security Act. Under "membership," requires the Secretary to appoint the members of the Council, and ensure that they are representative.

*Membership of the council.*—Requires the Council to be composed of appointed members and ex officio members. Provides that all appointed and five ex officio members, as identified in statute, are to be voting members. Requires the Administrator of the AHCPR to appoint to the Council 17 appropriately qualified representatives of the public who are not officers or employees of the United States. Requires the Administrator of AHCPR to ensure that the appointed members, as a group, are representative of professions and entities concerned with, or affected by, activities under this title of the bill and under the relevant section (section 1142 of title XI) of the Social Security Act. Provides that of the members, 8 are to be individuals distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care; 3 are to be individuals distinguished in the practice of medicine; 2 are to be individuals distinguished in the health professions; 2 are to be individuals distinguished in the fields of business (which could include medical device manufacturing), law, ethics, economics, and public policy; and 2 are to be individuals representing the interests of consumers of health care.

*Ex officio members.*—Requires the Administrator of AHCPR to designate as ex officio voting members of the Council the Director of NIH, the Director, of CDC, the Administrator of HCFA, the Assistant Secretary of Defense (Health Affairs), the Chief Medical Officer of the Department of Veterans Affairs. Allows the Administrator to appoint as nonvoting ex officio members such other Federal officials as the Secretary may consider appropriate.

The conference agreement also requires the Secretary to establish a Subcouncil on Outcomes and Guidelines to make recommendations regarding priorities for a rational agenda and strategy for carrying out the development and periodic review and updating of guidelines and the conduct of outcomes research. Requires the Secretary to designate the membership of the subcouncil as follows: (1) six individuals from among the individuals appointed to the Advisory Council from the following groups: individuals appointed to the Advisory Council from the following groups: individuals distinguished in the conduct of research, demonstration projects and evaluations with respect to health care, those distinguished in the practice of medicine, and those distinguished in the health professions; (2) two individuals from among the individuals appointed to the Council from those distinguished in the fields of business, law, ethics, economics, and public policy and those individuals representing the interests of consumers of health care; (3) the following officials designated as ex officio members of the Advisory Council: the Director of the National Institutes of Health, the Director of the Centers for Disease Control, the Administrator of HCFA, the Assistant Secretary of Defense (Health Affairs), and the Chief Medical Officer of the Department of Veterans Affairs.

*(u) Peer review with respect to grants and contracts.*—The conference agreement includes section 4121 of the House provision.

*(u) Provisions with respect to development, collection, and dissemination of data.*—The conference agreement includes section 4121 of the House provision with an amendment. Adds that the Secretary must, in order to assure the accuracy and sufficiency (as well as utility) of the data, establish guidelines. Adds that in any case where the guidelines for uniform methods of developing and collecting data may affect the administration of the Medicare program, the guidelines must be in the form of recommendations to the Secretary for the Medicare program.

*(w) Additional provisions with respect to grants and contracts.*—The conference agreement includes section 4121 of the House provision.

*(x) Certain administrative authorities.*—The conference agreement includes section 4121 of the House provision.

*(y) Funding for the Agency for Health Care Research and Policy.*—The conference agreement includes section 4121 of the House provision.

*(z) Additional definitions.*—The conference agreement includes section 4121 of the House provision.

*(aa) Terminations.*—The conference agreement includes section 4131 of the House provision.

*(bb) Contract for temporary assistance to Secretary of Health Care Technology Assessment.*—The conference agreement includes section 4132 of the House provision.

*(cc) Technical and conforming amendments to the Public Health Service Act.*—The conference agreement includes section 4133 of the House provision with an amendment.

*(dd) Transitional and savings provisions.*—The conference agreement includes section 4134 of the House provision with an amendment.

*Effective date*

Enactment.

### PART D—MEDICARE PART B BASIC PREMIUM

#### *1. Part B Premium*

Section 10161 of House bill; section 5401 of Senate amendment.

*Present law*

Ordinarily, the law sets the basic Part B premium rate as the lower of: (a) an amount sufficient to cover one-half of the costs of the program for the aged; or (b) the previous year's premium increased by the percentage increase in Social Security cash benefit payments.

For the period 1984-1989, the Congress approved a series of amendments which set the premium equal to 25 percent of program costs for the aged. The calculation reverts to the earlier method in 1990.

*House bill*

Sets the basic Part B premium at 25 percent of program costs for the aged in 1990.

*Effective date*

Enactment.

*Senate amendment*

Identical provision.

*Effective date*

Enactment.

*Conference agreement*

The House and Senate provision was adopted.

#### *2. Limitations on Charges for Medicare Beneficiaries Eligible for Medicaid Benefits*

Section 4025 of House bill.

*Present law*

Prior to the enactment of the 1988 Medicare Catastrophic Coverage Act, some Medicare beneficiaries also met state Medicaid income and asset requirements, and were eligible for both Medicare and Medicaid. This group is known as dual eligibles. Current law does not explicitly require mandatory assignment of Medicare claims for dual eligibles, but that has been the practical effect because physicians are not permitted to bill Medicaid beneficiaries for services.

The 1988 Medicare Catastrophic Coverage Act expanded Medicaid eligible to a larger group of Medicare beneficiaries based on higher income and asset tests. This group is known as qualified Medicare beneficiaries. Physicians treating qualified Medicare beneficiaries are not required to bill on an assignment related basis.

*House bill*

Requires physicians providing services to beneficiaries who are dually eligible for Medicare and Medicaid (including as a qualified Medicare beneficiary) to accept assignment for these claims. Subjects physicians who knowingly and willfully balance bill to exclusion from Medicare or civil monetary penalties, or both.

*Effective date*

Applies to services furnished on or after January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the provisions of the House bill with modifications.

PART E—EXTENSION OF COBRA CONTINUATION COVERAGE FOR DISABLED EMPLOYEES

*1. Extension of COBRA Continuation Coverage from 18 to 29 Months for Those with a Disability at Time of Termination of Employment*

Section 10171 of the House bill.

*Present law*

*(a) In general.*—Under Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA, P.L. 99-272), employers with 20 or more employees are required to provide certain employees and their families the option of purchasing continued health insurance coverage in the case of certain events. These events include: termination or reduction in hours of employment, death, divorce or legal separation, eligibility for Medicare, or the end of a child's dependency under a parent's health insurance policy. The maximum period of continuation coverage that may be elected is 36 months except in the case of termination of employment or reduction of hours for which the maximum period is 18 months. COBRA continuation coverage may be terminated before the maximum 18 or 36 months in the case of certain events. These include: the employer ceases to provide any group health plan to any employee, the beneficiary fails to pay the premium, or the qualified beneficiary becomes covered under another group health plan or entitled to Medicare.

*(b) Increased premium permitted.*—Employers are currently allowed to charge qualified beneficiaries 102 percent of the applicable premium for continuation coverage.

*(c) Notices required.*—Title X of COBRA requires that qualified beneficiaries notify the employer's plan administrator in the case of certain events.

*House bill*

*(a) In general.*—Amends section 4980(B)(f) of the Internal Revenue Code (providing for continuation coverage requirements of group health plans). Provides that in the case of a qualified beneficiary who is determined under title II (OASDI) or XVI (SSI) of the Social Security Act to have been disabled at the time of the qualifying event of termination of employment or reduction in hours of employment, the beneficiary is entitled to 29 (as opposed to 18) months of continuation coverage, but only if the qualified beneficiary has provided notice of such determination before the end of the 18 months. Provides that the extended continuation of coverage can be terminated in the month that begins more than 30 days after the date of the final determination under title II or title XVI of the Social Security Act that the qualified beneficiary is no longer disabled.

*(b) Increased premium permitted.*—Amends the law to allow employers to charge 150 percent of the applicable premium for the eleven additional months of coverage provided to disabled beneficiaries provided by this section.

*(c) Notices required.*—Amends the notice requirements of Title X of COBRA to require that each qualified beneficiary who is determined under title II or title XVI of the Social Security Act to have been disabled at the time of a qualifying event (termination of employment or reduction in hours of employment) is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days of the date of any final determination that the qualified beneficiary is no longer disabled.

*Effective date*

Effective for plan years beginning on or after the date of enactment, regardless of whether the qualifying event occurred before, on, or after such date.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House provision.

PART F—REVISIONS TO THE MEDICARE CATASTROPHIC COVERAGE ACT OF 1988

The conferees agreed to delete from the bill all provisions related to Medicare catastrophic coverage, and to resolve those issues in H.R. 3607, the "Medicare Catastrophic Coverage Repeal Act of 1989."

Subtitle C—Human Resource Amendments

*A. Social Services*

1. INCREASE FUNDING FOR THE TITLE XX SOCIAL SERVICES BLOCK GRANT

Section 10201 of House bill.

*Current law*

Under Title XX of the Social Security Act States are entitled to receive social services block grant funds. These funds must be used to provide services directed at achieving five goals: preventing or reducing dependency; achieving self-sufficiency; preventing or remedying neglect, abuse or exploitation of children and adults; preventing or reducing inappropriate institutional care; and providing services or referrals to individuals in institutions.

Title XX is a capped entitlement; funds are currently limited to $2.7 billion annually. The share for each State is based on its relative share of the national population.

*House bill*

The entitlement ceiling for the Title XX social services block grant would be increased by $200 million in fiscal year 1991, $400 million in fiscal year 1992, and $600 million in fiscal year 1993 and thereafter. These funds would not be earmarked, and are in addition to the Title XX earmark for child care. (The ceiling would be $2.9 billion in FY 91, $3.1 billion in FY 92, and $3.3 billion thereafter, without taking into account the earmark for child care.)

*Effective date*

On enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement would permanently increase the entitlement ceiling for the Title XX social services block grant by $100 million beginning for fiscal year 1990. These funds would not be earmarked.

*B. Foster Care and Child Welfare Amendments*

1. INCREASE IN CHILD WELFARE AUTHORIZATION

Section 10211 of House bill.

*Current law*

Title IV-B of the Social Security Act authorizes the appropriation of Federal funds for child welfare services. These funds may be used for preventing or remedying neglect and abuse, preventing the separation of children from their families, reunifying families, placing children for adoption, and assuring adequate care for children in out-of-home placements. The authorization level for the Title IV-B child welfare services program is $266 million per fiscal year.

Under the Title IV-B program, if total Federal appropriations exceed $141 million in any fiscal year, a State may receive its portion of the funds in excess of $141 million only if it has met the requirements for foster care protections outlined in section 427(a). In addition, if appropriations equal or exceed $266 million for 2 consecutive years, a State may receive its share of appropriations in excess of the 1979 funding level ($56.6 million) only if it has met the requirements for foster care protections outlined in section 427(b).

*House bill*

Increases the authorization level of the child welfare services program from $266 million to $400 million a year.

Increases from $266 million to $400 million the Title IV-B funding level at which, if equaled or exceeded for two consecutive years, a State must meet the requirements of section 427(b) in order to: (1) receive its share of the Federal appropriation for Title IV-B in excess of the 1979 funding level, and (2) transfer funds from the Title IV-E to the Title IV-B program.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement increases the authorization level of the child welfare services program from $266 million to $325 million a year.

The conference agreement also increases from $266 million to $325 million the title IV-B funding level at which, if equaled or exceeded for two consecutive years, a State must meet the requirements of section 427(b) in order to: (1) receive its share of the Federal appropriation in excess of the 1979 funding level; and (2) transfer funds from the Title IV-E to the Title IV-B program.

2. EXTENSION OF AUTHORITY TO TRANSFER FOSTER CARE FUNDS

Section 10212 of House bill.

*Current law*

Mandatory State-by-State ceilings are placed on foster care funds if the Federal appropriation for child welfare services reaches a specified trigger level, currently $266 million. In the absence of a mandatory foster care ceiling, States may elect to operate under a voluntary ceiling. A State may use one of several methods to calculate the most favorable ceiling.

Under a voluntary ceiling, a State may transfer a portion of its unused foster care funds. However, the amount transferred, together with the State's IV-B allocation, may not exceed what the State would have received if the child welfare services appropriation had triggered the ceiling (i.e., currently $266 million).

The foster care ceilings and the authority to transfer foster care funds to child welfare services expired September 30, 1989.

*House bill*

Extends the foster care ceilings and the authority to transfer foster care funds to child welfare services for three years, through September 30, 1992.

Permanently increases the Title IV-B child welfare services appropriations level at

which a mandatory foster care ceiling is triggered from $266 million to $400 million.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement extends the foster care ceilings and the authority to transfer foster care funds to child welfare services for three years, through September 30, 1992.

The conference agreement permanently increases the Title IV-B child welfare services appropriations level at which a mandatory foster care ceiling is triggered from $266 to $325 million.

3. REQUIREMENT FOR STATE REPORT TO COURTS ON PREVENTIVE SERVICES

Section 10213 of House bill.

*Current law*

Currently, State child welfare agencies are not required to provide information to the courts, in order to assist them in carrying out their child welfare services functions.

*House bill*

Effective beginning fiscal year 1990, requires that the State child welfare agency compile on an annual basis a detailed report which specifies which preplacement preventive and reunification programs and services are operating and available to children and families in need in the State.

The report would include the following information: the name of the program and the administering agency or organization, the monthly number of persons the program is capable of serving, a description of program services, a description of eligibility for the services, and the location of services, as of August of the fiscal year.

The information in the report would be arranged geographically to correspond with the relevant court jurisdictions. Requires that by October 1 of the following fiscal year, a copy of the report must be provided to all judges and other judicial administrators, and all State agencies, involved in child protective services, and to the HHS Secretary. Requires that the HHS Secretary publish an annual summary of the State reports by January 1.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

4. INCREASE FEDERAL REIMBURSEMENT FOR FOSTER AND ADOPTIVE PARENT TRAINING

Section 10214 of House bill.

*Current law*

Federal matching funds for administrative expenditures for foster care and adoption assistance under Title IV-E are available at the rate of 50 percent. Current HHS regulations specify that foster and adoptive parents and staff of licensed or approved child care institutions providing foster care under Title IV-E are eligible for short-term training at the initiation of or during their provision of care, and that certain of the costs associated with such training (travel and per diem) may be reimbursed as administrative costs under Title IV-E.

*House bill*

Effective beginning fiscal year 1990, allows Federal reimbursement for foster and adoptive parent training under Title IV-E at the rate of 75 percent. In addition to travel and per diem, reimbursable activities would include the short-term training of current and prospective foster and adoptive parents and the staff of licensed or approved child care institutions providing care to foster and adoptive children receiving Title IV-E foster care maintenance payments, in ways that increase their ability to provide support and assistance to Title IV-E foster and adopted children.

*Effective date*

Applies to expenditures made on or after October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, except the increased Federal reimbursement for foster and adoptive parent training would apply to expenditures made during the period extending from October 1, 1989 through September 30, 1992.

5. REQUIRE HEALTH AND EDUCATION RECORDS IN THE CHILD'S CASE PLAN

Section 10215 of House bill.

*Current law*

Under present law, for each child receiving foster care maintenance payments under the responsibility of the State, a written case plan must be developed which includes a description of the home or institution in which the child is to be placed, a discussion of the appropriateness of the placement and a plan for assuring that the child receives proper care and that services are provided. These case plans must be reviewed every six months.

Additionally, in order to certify compliance with the requirements of section 427, a State must, in addition to other requirements, have a written case plan and provide a case review system for each child receiving foster care under the responsibility of the State.

*House bill*

Effective beginning fiscal year 1990, requires that a foster child's case plan include a record of his educational and health status. The record must indicate the following information, to the extent the information is available and accessible:

The names and addresses of the child's health and educational providers;

The child's grade level performance;

The child's school record;

Assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

A record of the child's immunizations;,

The child's known medical problems;

The child's medications;

In the case of a Medicaid-eligible foster child, an indication that the child has received, within 60 days of placement in foster care and periodically thereafter, comprehensive health examinations that are identical to the assessments required by the State under the Early and Periodic Screening Diagnosis and Treatment (EPSDT) program under Medicaid, as well as the results of the examinations and any follow-up treatment provided; and

Any other relevant health and education information concerning the child determined to be appropriate by the State agency.

The health and education record must be reviewed and updated at the time of each placement of a foster child in foster care.

The health and education record must be supplied to the foster parent or foster care provider with which the child is placed.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill, except that it excludes the provision requiring that the health and education record indicate that the foster child has received EPSDT exams and follow-up treatment. The provision would take effect on April 1, 1990.

6. INDEPENDENT LIVING PROGRAM

Section 10216 of House bill.

*Current law*

The Budget Reconciliation Act of 1985 established the independent living initiatives program, a State entitlement program under Title IV-E, to help States provide services in fiscal years 1987 and 1988 to facilitate the transition of Title IV-E foster children ages 16 and over to independent living. The Technical and Miscellaneous Revenue Act of 1988 extended the independent living program through fiscal year 1989, and expanded it to apply, at State option, to all children ages 16 and over in foster care, including those who are not receiving AFDC foster care payments. It was also expanded to apply for up to 6 months after foster care payments or foster care ends for children whose care or payments ended on or after they became age 16.

Independent living program services may include those that enable participants to seek a high school diploma or take part in vocational training; provide training in daily living skills, budgeting, locating housing and career planning; provide for counseling; coordinate services; establish outreach programs; and provide an independent living plan in the participant's case plan.

The entitlement funding level is set at $45 million a year. Funds are allocated on the basis of the State's relative share of the number of children in Federally funded foster care in 1984.

*House bill*

Expands the purpose of the independent living program. The expanded program, called the Foster Care Adolescent Services Block Grant, would be authorized for three years beginning in fiscal year 1990. The program would provide special services to adolescents in foster care, including the independent living services currently authorized. States could expend unobligated prior year funds in any of the three fiscal years for which the program is authorized. The entitlement level of the program would be increased to $100 million annually.

In addition, at State option, eligibility for the program would be extended to youths in foster care who are age 10 or older. However, of the funds authorized for the Foster Care Adolescent Services Block Grant, each State would be required to expend at least 70 percent for independent living services for foster children ages 16 and older.

Payments under the program could be used to establish, extend and/or strengthen services and programs which focus on the needs of adolescents in foster care. In addition to independent living activities, such services and programs could include those which encourage and support school attendance, prevent alcohol and other drug abuse, increase access to mental health services

and alcohol and drug abuse treatment, as well as other adolescent services determined to be appropriate by the State.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement would extend the current law independent living initiatives program through fiscal year 1992. The entitlement ceiling for the program would be increased to $50 million for fiscal year 1990, $60 million for fiscal year 1991, and $70 million for fiscal year 1992. Beginning for fiscal year 1991, States would be required to provide 50 percent matching for any Federal funding claimed that exceeds the present $45 million funding level.

The Department of Health and Human Services would be required to evaluate the effectiveness of the program, including a comparison of outcomes for youth participating in the program with similar youths who did not.

Payments to the States for this program could not be used to supplant other State or local funds.

*Effective date*

On enactment.

7. DATA COLLECTION

Section 10217 of House bill.

*Current law*

HHS is not required to develop an annual report on Federal expenditures, services and participation under the various Title IV-E and Title IV-B child welfare, foster care and adoption programs. In addition, HHS does not collect and report comprehensive State-by-State data on the numbers, characteristics and status of children and families receiving Title IV-B and Title IV-E child welfare, foster care and adoption services and benefits, and of other children placed in foster care and adoption under the responsibility of the State child welfare agency.

The 1986 Budget Reconciliation Act included an amendment mandating certain studies and reports to Congress related to the feasibility of establishing a system for the collection of certain foster care and adoption data. The amendment, section 479 of the Social Security Act, required the Secretary of HHS to establish an Advisory Committee on Adoption and Foster Care Information. On October 1, 1987, the Advisory Committee submitted to the Congress the results of a study which identified the types of data necessary to assess on a continuing basis the incidence, characteristics and status of adoption and foster care. The advisory committee report recommended that the data collection system cover all legalized adoptions, including relative and non-relative adoptions, as well as adoptions under private and public auspices. With respect to foster care, the report called for data on all children within the purview of section 427 of the Social Security Act (relating to foster care protections), including children placed under the auspices of public child welfare agencies, children placed by private agencies under contract to the public agency, and children placed privately by licensed private agencies.

On May 26, 1989, the Secretary of HHS submitted to Congress a report, due on July 1, 1988, proposing a method of establishing, administering and financing a system for the collection of data relating to adoption and foster care in the United States. The report recommended limiting the scope of the system for adoption to only those adoptions in which the State child welfare agency is involved. With respect to foster care, it did not include the advisory committee's recommendation that the system require reporting for children placed privately by licensed private facilities. HHS is next required to promulgate final regulations providing for the implementation of the information system, with the full implementation of the system no later than October 1, 1991.

*House bill*

*(a) New data requirements.*—Amends section 479 to require the collection of additional information on foster care and adoption, including:

Separately for the Title IV-B child welfare services program, the Title IV-E foster care program, the Title IV-E adoption assistance program, and the Title IV-E Foster Care Adolescent Services Block Grant:

By State, a breakdown of total expenditures for the reporting period according to Federal dollars and State and local dollars;

By State, a breakdown of total Federal expenditures for the reporting period according to service categories established by the Secretary (who must consider the categories used in the Voluntary Cooperative Information System (VCIS) data collection system, those established by the Secretary pursuant to P.L. 100-485 for the Title XX program, and the ability of the States to collect and report data by service category); and

By State, the number of persons during the reporting period (or average monthly number of persons, where appropriate) who received services, total and according to the service categories established by the Secretary;

A State breakdown for the reporting period on transfer of funds from the Title IV-E foster care program to the Title IV-B child welfare services program;

Foster care ceilings (allotments) by State under the Title IV-E foster care program;

The average monthly rate of payment, by State, for foster care maintenance, including information on special rates of payment and information, by State, on the cost of providing foster care incurred by foster care providers with whom the State contracts to provide such care;

Information by State regarding compliance with section 427 child welfare protections as of September 30 of the reporting period;

Information on the date and result of all title IV-E and title IV-B HHS compliance reviews and fiscal reviews, and any other such reviews undertaken;

Information for the reporting period regarding disallowances resulting from compliance and fiscal reviews, and any other such reviews undertaken; and

Any other data the Secretary deems necessary to monitor the operations of the child welfare programs under titles IV-B and IV-E.

*(b) Promulgation of Regulations.*—Requires that no later than four months after the enactment of this legislation, the Secretary of HHS shall publish a notice of proposed rulemaking for the implementation of the data collection system required pursuant to section 479 of the Social Security Act, as amended, based on: the recommendations of the Advisory Committee on Adoption and Foster Care Information, the May 26, 1989 report of the Secretary to Congress required pursuant to section 479, and the Voluntary Cooperative Information System. The public must have 60 days to comment on the proposed regulations. No later than four months after the close of the comment period, the HHS Secretary shall publish final regulations. The regulations must provide for the full implementation of the system no later than October 1, 1991.

*(c) Timing of the Report.*—Requires that the Secretary report to the Committee on Ways and Means and the Committee on Finance, on an annual basis by the last day of the calendar year, the foster care and adoption information collected pursuant to section 479, as amended by this legislation. The data in the report would be based on the preceding Federal fiscal year. To the extent prior year data are available, requires that it be included in the report. The annual report must include any explanatory text and notes necessary to interpret and evaluate the data included in the report. The first report would be due December 31, 1992.

*(d) Interim Reports.*—Requires that the Secretary prepare interim reports due December 31, 1990 and December 31, 1991. These reports would include any data required by section 479, as amended by this legislation, that is provided to the Secretary in time for such reports.

*(e) Child Abuse Data Collection.*—Requires that the Secretary, through the National Center on Child Abuse and Neglect, collect and analyze aggregate and case-specific data on child abuse and neglect until the Secretary implements a new system (required by section 6 (b) (1) of the Child Abuse Prevention and Treatment Act) for identifying and reporting on child abuse and neglect. The child abuse and neglect reports must be issued at least biennially. The first report, containing 1987 and 1988 data, would be due no later than the end of calendar year 1990.

*Effective date*

On enactment.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

8. REVIEW OF STATE COMPLIANCE WITH CHILD WELFARE REQUIREMENTS

Section 10218 of the House bill.

*Current law*

Public Law 96-272, the Adoption Assistance and Child Welfare Amendments of 1980, provided financial incentives to States to implement and operate a set of services and procedures designed to prevent the unnecessary removal of children from their home, prevent extended stays in foster care and ensure that efforts are made to reunify children with their families or place them for adoption. The services and procedures are outlined in section 427 of the Social Security Act.

In fiscal year 1981, HHS requested that States "self-certify" their compliance with the section 427 protections "on the basis of their understanding of the statutory requirements and an analysis of the related State child welfare programs, systems and policies implemented and in operation during the year for which they certified (HHS Section 427 Review Handbook, August 1988, p. 1)." States which self-certified were to be reviewed later by the Department to ensure that they had actually implemented the section 427 protections.

According to the HHS Section 427 Review Handbook, to verify compliance with section 427 requirements, HHS conducts a two-stage review. The first stage is an administrative

review which determines whether States have developed policy and procedures to implement the section 427 requirements for all children in foster care under the responsibility of the State. The second stage of the review is the case record survey which confirms that the policies are being implemented throughout the State.

An initial review is conducted for the fiscal year in which the State first certifies its eligibility. If a State meets the initial review, a subsequent review is conducted for the following fiscal year. States that meet the requirements of this subsequent review will be reviewed for the third fiscal year following the fiscal year for which the subsequent review was conducted. This is known as the triennial review. The case record survey must confirm the section 427 foster care protections are provided for at least 66% of the children in the initial review; 80% in the subsequent review; and 90% in the triennial review. If a State does not meet the established standards for the year under review, the review is conducted each succeeding year until eligibility is established.

Final regulations implementing section 427 became effective on June 22, 1983.

*House Bill*

*(a) Development of New Review System.*—By March 1, 1990, the Secretary shall publish final rules which provide the specific, comprehensive set of standard criteria against which State programs will be uniformly measured for compliance with the section 427 protections.

Effective for any section 427 compliance review initiated for fiscal year 1991 or subsequent fiscal years, all HHS section 427 compliance review guidelines and all other materials used in the compliance review process, including instruments, methodology and forms, must conform to the revised regulations. In addition, no compliance review for fiscal year 1991 or later may be conducted using any guidelines and review materials that were revised less than six months prior to the beginning of the fiscal year under review.

*(b) Review timetable.*—No later than the beginning of fiscal year 1993, the Secretary shall have conducted a review of each State program under the new review system and shall have determined, based on the published standards, whether the program has been during the fiscal year under review in accordance with applicable section 427 requirements. Not less often than every three years (or not less often than annually in the case of any State which has been found in the most recent review to have been out of compliance) the Secretary shall conduct a complete review of the program in each State and determine, based on the published standards, whether the program has been operated during the fiscal year under review in accordance with applicable section 427 requirements.

Any State which is found to be out of compliance with the requirements of section 427 under the new system must receive final notification of any finding of noncompliance within forty-five working days of the review. Such notification must include the basis for the finding of noncompliance.

A State which is found through a review under the new system not to be in full compliance with the requirements shall be determined to be in substantial compliance only if the Secretary determines that any noncompliance with the requirements is of a technical nature which does not adversely affect program performance. These terms must be defined in the regulations.

*(c) Corrective action requirements.*—Any payments reduced or withheld as a result of a finding of noncompliance shall be suspended for any fiscal year, beginning with fiscal year 1991, if the State (1) submits a corrective action plan, within a period prescribed by the Secretary, which contains steps necessary to achieve substantial compliance within a time period prescribed by the Secretary, (2) the plan is approved by the Secretary, and (3) the Secretary finds that the corrective action plan is being fully implemented by the State and that the State is progressing in accordance with the timetable contained in the plan to achieve substantial compliance.

Under the new system the Secretary shall rescind any reduction or withholding of payments if the State achieves substantial compliance in accordance with the timetable contained in the approved corrective action plan.

*(d) Treatment of triennial reviews under current regulations.*—Effective June 9, 1989, the Secretary of HHS would be permanently precluded from reducing any payments to, seeking repayment from or withholding any payments from any State under Titles IV-B or IV-E of the Social Security Act, as a result of a disallowance determination made in connection with a triennial review of State compliance with the foster care protections outlined in section 427 of the Social Security Act for any Federal fiscal year preceding fiscal year 1991.

*Effective date*

On enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement provides that the Secretary of Health and Human Services could not, before October 1, 1990, reduce any payment to, seek any repayment from or withhold any payment from any State under Title IV-B or IV-E of the Social Security Act, as a result of a disallowance determination made in connection with a triennial review of State compliance with the foster care protections outlined in section 427 of the Social Security Act for any Federal fiscal year preceding fiscal year 1991.

### *C. Supplemental Security Income*

#### 1. OUTREACH PROGRAM FOR DISABLED AND BLIND CHILDREN

Section 10221 of House bill.

*Current law*

Current law has no specific provision dealing with outreach programs. However, the Social Security Administration (SSA) conducts national, regional, and local outreach and public information campaigns to reach individuals who may be eligible for SSI. SSA is continuing to establish liaisons with national, State, and local legal and welfare agencies and advocacy groups to inform them about the SSI program and to enlist their assistance in finding potentially eligible persons.

*House bill*

Establishes a permanent SSI outreach program for disabled and blind children. Requires the Secretary of Health and Human Services (HHS) to report annually on the effectiveness of this program and specifies the information which must be included in each report. Requires the Secretary to aim outreach efforts at populations for whom it would be most effective. Such efforts must include cooperation with other agencies and organizations which serve and have knowledge of potential recipients of SSI.

*Effective date*

On enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill except that it excludes the requirement for annual reports by the Secretary. The provision will take effect 3 months after the date of enactment.

#### 2. STANDARDS AND PROCEDURES FOR DETERMINING DISABILITY OF CHILDREN

*a. Individual functional assessments of children*

Section 10222 of House bill.

*Current law*

A medically determinable physical or mental impairment of comparable severity to that which would be considered disabling for an adult is required for children under 18 years old to be determined disabled. A child must have an impairment that meets or equals in severity an impairment in the Listing of Impairments in the regulations. This listing consists of Parts A and B. Part B contains impairments of children under 18. These criteria are applied first. If these are not met or equaled, then Part A criteria are applied.

Under Part A, an adult must be unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to last at least 12 months. If the severity of an adult's impairment does not meet or equal the severity of an impairment in the Listings, he can still be found disabled if his impairment prevents him from doing any substantial gainful work that exists in the national economy, considering his vocational factors (age, education and work experience). This vocational test is not applied to children because they have no significant work histories.

Recently the Third Circuit Court of Appeals handed down an opinion requiring the Administration to institute a "functional assessment" step in the evaluation process for children. Three other circuit court opinions have upheld the Administration's procedures. The issue has been accepted for appeal by the Supreme Court and will likely be argued and decided next year.

*House bill*

Requires the Secretary of HHS, in determining SSI eligibility for the blind or disabled, to assess individually each child's mental and physical impairments, including functional limitations that interfere with the activities of daily living appropriate to the age of the child. In determining the extent to which the impairments prevent or interfere with age appropriate daily living activities, the Secretary shall evaluate the degree of support and intervention reasonably required.

*Effective date*

Applies to determinations made on or after October 1, 1989.

*Senate Amendment*

No provision.

*Conference agreement*

House recedes.

*b. Presumptive disability based on genetic or congenital impairments for children under 4 years old*

Section 10223 of House bill.

*Current law*

To be eligible for SSI disability benefits, children born with genetic or congenital impairments must have impairments that meet or equal the severity of the impairments in the Listing of Impairments in regulations.

*House bill*

Requires the Secretary to presume a child under age 4 with a genetic or congenital impairment is disabled if the medical severity of the impairment cannot be accurately determined by clinical or laboratory techniques because the child is too young, and the Secretary determines that it is probable that, when the child is older, medical professionals will be able to administer a test that accurately demonstrates that the child suffers from an impairment or impairments of sufficient medical severity to qualify the child for benefits. This presumption may be rebutted. Such impairments must include but are not limited to cystic fibrosis, Down's syndrome, junctional epidermolysis bullosa, Hirschprung's syndrome, Tourette syndrome, Prader Willi syndrome, and spina bifida.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

*c. Revised listings of impairments for children*

i. Secretary Required to Publish Notice of Proposed Rulemaking on Revised Childhood Listings of Mental Impairments

Section 10224 of House bill.

*Current law*

At the request of SSA, a work group of psychiatrists and other specialists in children's disabilities developed revised standards for determining SSI eligibility for children with mental impairments. The work group reported on April 1, 1986. Proposed regulations to revise the mental listings were published on August 14, 1989.

*House bill*

Requires the Secretary of HHS to publish a notice of proposed rulemaking on the "Revised Childhood Listings of Mental Impairments" within 60 days after the date of enactment with final regulations issued nine months after enactment. The listings should be based on those submitted by the Mental Impairments Listing Workgroup of the Associate Commissioner for Disability on April 1, 1986.

*Effective date*

On enactment.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

ii. Require Revised Listings of Impairments for Children

Section 10225 of House bill.

*Current law*

Current "Listings of Impairments for Children" were published in 1977 in response to congressional pressure to develop appropriate standards for evaluating impairments of children. Although SSA is currently reviewing certain Listings, only limited changes have actually been made since 1977.

*House bill*

Requires the Secretary to solicit advice from childhood disability experts on changes that should be made to the children's "Listings of Impairments" so that they account for medical and functional rules that are appropriate to the age of the child. Requires publication of proposed revisions for public comment within 18 months from the date of enactment. Regulations must be final 24 months after the date of enactment.

*Effective date*

On enactment.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

3. ELIGIBILITY FOR RECIPIENTS WITH WEEKLY OR BIWEEKLY INCOME

Section 10226 of House bill.

*Current law*

An individual's initial eligibility for SSI in a month is determined on the basis of the individual's income, resources and other relevant factors in such month. The income is determined based on a projection of income for that month. The projected income is reconciled in later months with actual income as it is reported.

The amount of the SSI benefit in a month is determined on the basis of income and other factors in the first, or if the Secretary determines, second month preceding such month. Generally, the Secretary uses income and other factors in the second preceding month to determine the SSI benefit amount.

Individuals who earn biweekly or weekly income will occasionally receive 3 or 5 paychecks in a month instead of the usual 2 or 4 paychecks. The extra income in these months can make such individuals ineligible for SSI and Medicaid in these months. Such individuals are placed in a suspension status for that month and usually resume receiving benefits in the next month. When SSI benefits are suspended, Medicaid is terminated.

*House bill*

Requires the Secretary to deem certain individuals eligible for SSI benefits for the purpose of retaining Medicaid eligibility as long as they would be eligible for SSI benefits otherwise. An individual must meet three conditions: (1) the individual receives earned income on a regular weekly or biweekly basis; (2) the individual is determined to be ineligible for SSI for the month because of an extra weekly or biweekly paycheck; and (3) the individual would be eligible for SSI if the amount of his earned income in such month were equal to his average monthly rate of pay.

*Effective date*

Applies to benefits for months after September 1989.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

4. SSI BENEFITS FOR DISABLED CHILDREN OF PARENTS OVERSEAS

Section 10227 of House bill.

*Current law*

SSI benefits are paid only to individuals who live in the United States.

*House bill*

Extends eligibility for SSI benefits to disabled children who reside with parents working overseas. The child must be a U.S. citizen.

*Effective date*

Applies to benefits for months after September 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with an amendment limiting the provision to disabled children who reside with a parent who is a member of the U.S. Armed Forces assigned to permanent duty ashore outside the U.S., and who during the month prior to the parent's assignment abroad were receiving SSI disability benefits. The provision will take effect after March 1990.

5. WAIVER OF SSI INCOME AND RESOURCE DEEMING RULES FOR CERTAIN SEVERELY DISABLED CHILDREN

Section 10228 of House bill.

*Current law*

Under the SSI program, the income and resources of a disabled child's parents are "deemed" to the child if the child is living at home. These deeming rules do not apply if the child is hospitalized.

The Social Security Act authorizes States to offer programs so that disabled children can be cared for at home while retaining Medicaid eligibility. Under these programs, for purposes of Medicaid eligibility, the income and resource deeming rules do not apply.

*House bill*

Waives the SSI income and resource deeming rules in the case of severely disabled children who were eligible for SSI benefits while in a medical institution and who qualify for medicaid under a State "home care" plan authorized under title XIX. For purposes of the SSI program, such children would receive the same personal needs allowance ($30 per month) as if they were hospitalized.

*Effective date*

January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill. The effective date will be the first day of the sixth calendar month beginning after the date of enactment.

6. INTERGENERATIONAL DEMONSTRATION PROJECT FOR DISABLED CHILDREN

Section 10229 of House bill.

*Current law*

No provision.

*House bill*

Authorizes the Secretary of Health and Human Services to conduct demonstration projects in 10 communities. The demonstrations would test the use of volunteer senior aides to provide basic medical assistance and support to families with moderately or severely disabled or chronically ill children. The demonstration would determine the contribution of such voluntary assistance to

the reduction of the costs of care for these children.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

Senate recedes.

7. SSI BENEFIT INCREASE

Section 10241 of House bill.

*Current law*

The 1989 Federal SSI benefit standard for an individual and a couple is $368 and $553 per month, respectively.

*House bill*

Increases SSI benefits by $2 per month for individuals and $3 per month for couples.

*Effective date*

January 1, 1990.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

8. OUTREACH PROGRAM FOR ADULTS

Section 10242 of House bill.

*Current law*

Current law has no specific provision dealing with outreach programs. However, the Social Security Administration (SSA) conducts national, regional, and local outreach and public information campaigns to reach individuals who may be eligible for SSI. SSA is continuing to establish liaisons with national, State, and local legal and welfare agencies and advocacy groups to inform them about the SSI program and to enlist their assistance in finding potentially eligible persons.

*House bill*

Establishes a permanent SSI outreach program for adults. Requires the Secretary of Health and Human Services (HHS) to report annually on the effectiveness of this program. Requires the Secretary to aim outreach efforts at populations for whom it would be most effective. Such efforts should include not only ongoing efforts to notify social security beneficiaries of possible eligibility for SSI, but other efforts aimed at those not receiving social security.

*Effective date*

On enactment.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

9. TREATMENT OF INCOME IN SHARED LIVING ARRANGEMENTS

Section 10244 of House bill.

*Current law*

An individual living in another's household and receiving in-kind support and maintenance from the person in whose house he resides has his eligibility and benefits under SSI determined using a benefit rate that is reduced from the full Federal benefit rate by one-third. This is in lieu of including the actual value of the support and maintenance in his income.

Under regulations, the one-third reduction applies whenever an individual lives in the household of another unless: (1) all others in the household receive public assistance benefits; (2) the individual does not receive both food and shelter from within the household; or (3) the individual pays a pro rata share of the household's operating expenses.

If an individual is living with others and is not subject to the one-third reduction or is the owner of the house, regulations provide for determining whether the individual is receiving in-kind assistance from someone in the household. If he is receiving assistance, it is presumed to have a value of one-third of the Federal benefit rate plus $20 (the unearned income disregard) unless he shows SSA that the value of what he receives is less. The effect of the presumed maximum value is to reduce the benefit of the recipient by an amount equal to the one-third reduction.

*House bill*

In determining an individual's income, the Secretary must count the lesser of the actual value of in-kind assistance received by individuals or the current law one-third of the SSI benefit against the SSI benefit. Requires the Secretary to study the effect this provision has on SSI beneficiaries and the administration of the program and to report to Congress not later than 2 years after the date of enactment.

*Effective date*

Applies to benefits for months after December 1989.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

10. EXCLUSION FROM INCOME OF DOMESTIC COMMERCIAL TRANSPORTATION TICKETS RECEIVED AS GIFTS

Section 10245 of House bill.

*Current law*

Domestic commercial transportation tickets received as gifts by SSI recipients are treated as unearned income and valued at their current market value unless the ticket is not convertible to cash (e.g., charged on the donor's credit card), in which case it is not counted as income.

*House bill*

Gifts of domestic commercial transportation tickets given to an individual or eligible spouse, which are used by that individual or spouse and not converted to cash, would be disregarded in determining their income.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill. The provision will be effective the first day of the third calendar month beginning after the date of enactment.

11. REDUCTION IN TIME DURING WHICH INCOME AND RESOURCES OF SEPARATED COUPLES MUST BE TREATED AS JOINTLY AVAILABLE

Section 10246 of House bill.

*Current law*

A husband and wife who are aged, blind, or disabled, and who have not been living apart from each other for more than 6 months are considered to be an eligible couple under SSI. If the couple separates, the spouses are considered to be a couple for SSI purposes until they have lived apart for more than 6 months.

*House bill*

A married couple would be treated as separate individuals for the purposes of determining eligibility and benefit amounts under SSI beginning after the first full month of their living apart. The Secretary could waive the one month period in an emergency.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes a provision under which a married couple would be treated as separate individuals for purposes of SSI eligibility and benefit determination beginning with the first month following the month of separation or, in any case in which either spouse files an application for benefits or requests restoration of eligibility, at the time the application or request is filed. The effective date is October 1, 1990.

12. EXCLUSION OF INTEREST AND ACCRUALS ON BURIAL SPACES FROM RESOURCE LIMITS

Section 10247 of House bill.

*Current law*

A burial fund with a value of up to $1,500 including interest on the fund, is excluded in determining whether an individual meets the SSI resources test. Burial spaces are also excluded, but interest on the spaces is not excluded except under specified conditions.

*House bill*

In determining income for purposes of SSI eligibility, interest and other accruals on burial spaces would be excluded.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes a provision requiring that, in determining income and resources for purposes of SSI eligibility, interest and other accruals on burial spaces must be excluded. The effective date will be the fourth month beginning after the date of enactment.

13. SPECIAL SSI BENEFITS FOR SOCIAL SECURITY DISABILITY INSURANCE (SSDI) RECIPIENTS WHO BECOME INELIGIBLE FOR SSDI BECAUSE OF EARNINGS

Section 10248 of House bill.

*Current law*

A basic test used in determining whether an individual is disabled for purposes of Social Security Disability Insurance (SSDI) or for SSI disability benefits is whether the individual has earnings that constitute performance of "substantial gainful activity" (SGA). If he does, he cannot qualify for benefits. The Secretary of HHS has defined SGA as earnings of $300 a month. New regulations provide for increasing the SGA limit to $500 a month beginning in January.

In order to allow disabled SSI recipients to return to work without facing a severe disincentive, the Congress enacted legislation creating "special status" benefits under section 1619 of the Social Security Act. Section 1619 allows SSI recipients who continue to be disabled, but who, despite their impairments, begin to work at earnings above the SGA level, to continue to receive "special" SSI cash benefits. The benefit amount is reduced as earnings rise. Medicaid benefits are also continued.

Different rules apply with respect to Social Security disability beneficiaries who return to work at earnings above the SGA level. In the DI program, an individual may work without having his earnings affect his benefits during a 9-month trial work period. After the trial work period, disability benefits stop if the individual engages in SGA. However, the individual is entitled to receive a social security benefit for any month in which he does not perform SGA in the 36-month period that begins after the month in which the trial work period ends.

A Social Security disability insurance beneficiary who loses SSDI benefits because his earnings exceed the SGA level cannot subsequently qualify for regular SSI benefits (because he does not meet the basic disability definition). He therefore also cannot qualify for "special status" benefits under section 1619 which are available only to individuals who first qualify for regular SSI benefits.

*House bill*

Permits an individual whose SSDI benefits cease (after the close of the individual's trial work period) because of work activity and who could be eligible for SSI but for the fact that he continues to engage in substantial gainful activity and, therefore, cannot establish initial eligibility for SSI disability benefits, to become eligible for cash and Medicaid benefits under section 1619. The individual must file an application for benefits during a 33-month period beginning with the first month after the end of the individual's trial work period for which a benefit is not payable, and would be deemed to have been eligible for SSI in the month immediately preceding such 33-month period.

*Effective date*

Applies to individuals whose trial work period ends after June 1990.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

14. EXCLUSION OF VICTIMS' COMPENSATION PAYMENTS FROM SSI INCOME AND ASSETS DETERMINATIONS

Section 10249 of House bill.

*Current law*

Under current law, amounts received from victim assistance funds are included as income or assets for purposes of determining eligibility and benefits for SSI.

*House bill*

Any payment, or portion thereof, received from a State-administered victim assistance fund, that the beneficiary could demonstrate was compensation for expenses incurred or losses suffered as a result of the crime, would not be included as income or assets for purposes of determining SSI eligibility and benefits.

Any portion of a victim assistance payment which does not compensate for expenses incurred or losses suffered as a result of the crime, would not be counted as income for the month in which it is received. However, such portion, to the extent it is not expended during the nine-month period beginning after the month in which it was received, would be counted as a resource in the tenth month following the month in which it was received.

No person awarded victims' compensation, who was otherwise eligible for SSI and who refused to accept such compensation, would be considered ineligible for SSI as a result of such refusal.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

15. EXCLUSION OF THE VALUE OF INCOME-PRODUCING PROPERTY FROM EQUITY VALUE OF PROPERTY

Section 10230 of House bill.

*Current law*

Excludes from being counted as a resource income producing property which is so essential to the means of self-support of the individual as to warrant its exclusion.

The exclusion (known as the $6,000/6% rule) is limited by regulation to $6,000 of an individual's equity in income-producing property and applies only if such property produces a net annual income to the individual of at least 6 percent of the excluded equity.

In cases where income produced by property essential to self-support meets the regular definition of earned income, it is counted as earned income. In all other cases it is counted as unearned income.

*House bill*

Requires that the value of property which is used in the person's trade or business, or in the employment of a family member, be excluded from the equity value of the person's property. Income generated from the property would be counted in determining eligibility and benefits.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill. The effective date will be the first day of the fifth calendar month beginning after the date of enactment.

*D. Child Support Enforcement*

1. EXTENSION OF IRS INTERCEPT FOR NON-AFDC FAMILIES

Sections 10231 and 10232 sections of House bill.

*Current law*

States may collect child support arrearages of at least $500 owed to non-AFDC families through the Federal income tax refund offset mechanism. A similar mechanism is authorized for AFDC families, but the limit on arrearages is set at $150 by regulations. The arrearages must be owed to a "minor child."

*House bill*

Extends for five years (through calendar year 1995) present law that allows States to request that the Internal Revenue Service (IRS) collect child support arrearages of at least $500 out of income tax refunds due to non-custodial parents.

Retains current law requirements that the arrearage must be at least $500 to qualify for intercept.

Eliminates the minor child restriction on court-ordered arrearages in non-AFDC child support cases under the income tax refund offset for adults with a current support order who are disabled, as defined under OASDI or SSI.

*Effective date*

Date of enactment for extension with expiration on January 10, 1996; January 1, 1990 for disabled child provision.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

2. MEDICAID TRANSITION IN CHILD SUPPORT CASES

Section 10233 of House bill.

*Current law*

Medicaid benefits continue for 4 months after a family loses AFDC eligibility as a result of collection of child support payments under Title IV-D of the Social Security Act. (Title IV-D authorizes the Child Support Enforcement (CSE) program.) This provision expired on October 1, 1989.

*House bill*

Makes permanent the requirement that Medicaid benefits continue after a family loses AFDC eligibility as a result of collection of child support payments under the IV-D program. Extends these benefits for 12 months after a family leaves AFDC due to collection of child support.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement permanently extends current law.

*E. Unemployment Compensation*

1. OPTIONAL BENEFITS FOR NON-PROFESSIONAL SCHOOL EMPLOYEES

Section 10261 of House bill.

*Current law*

States are required to deny eligibility for Unemployment Compensation to nonprofessional employees of educational institutions between academic years or terms. Before the Social Security Amendments of 1983, States had the option to provide such benefits.

*House bill*

Allows States the option of paying unemployment compensation to nonprofessional employees of educational institutions between academic terms or years.

*Effective date*

On enactment.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

2. PROHIBITION ON COLLATERAL ESTOPPEL

Section 10262 of House bill.

*Current law*

Currently, 14 States prohibit courts from using quasi-judicial decisions reached in Unemployment Compensation hearings to stop law suits on related employment issues, such as wrongful discharge from a job. This judicial doctrine is called, "collateral estoppel." Federal law has no provision.

*House bill*

Requires State Unemployment Compensation laws to prohibit courts from stopping law suits on related employment issues based on a decision made in an unemployment compensation hearing.

*Effective date*

Generally, October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

3. SELF-EMPLOYMENT DEMONSTRATION PROJECTS

Section 10264 of House bill.

*Current law*

The Omnibus Budget Reconciliation Act of 1987 authorized a demonstration project under which up to 3 States would continue paying unemployment benefits to unemployed persons who attempt to set up their own businesses. In order to participate in a self-employment project, States would have to guarantee that no net additional costs in any fiscal year would accrue to the unemployment program as a result of the projects. (State general revenues would have to be used to meet administrative costs and to make up any losses to the unemployment compensation program.)

*House bill*

Authorizes appropriations totaling $1 million to cover State administrative expenses for operating self-employment demonstration projects authorized by the Omnibus Budget Reconciliation Act of 1987.

*Effective date*

On enactment.

*Senate amendment*

No provision.

*Conference agreement*

House recedes.

4. WITHHOLDING UNEMPLOYMENT BENEFITS TO RECOUP UNPAID UNEMPLOYMENT TAXES

Section 5601 of Senate amendment.

*Current law*

Federal law requires that amounts in State unemployment compensation accounts may be expended only for the purpose of paying unemployment benefits. The Department of Labor has held that the withholding of unemployment benefits to recoup unpaid unemployment taxes constitutes an improper use of the funds in the State unemployment account.

*House bill*

No provision.

*Senate amendment*

Federal rules governing allowable uses of funds in the State accounts of the Unemployment Trust Fund would be modified to allow States to deduct from the unemployment benefits otherwise payable to an individual any amounts the individual owes to the fund as unpaid unemployment taxes.

*Effective date*

On enactment.

*Conference agreement*

Senate recedes.

*F. Aid to Families With Dependent Children*

1. QUALITY CONTROL

*a. Resolve the backlog of disallowances through FY90*

Section 10271 of House bill.

*Current law*

States are required to pay back estimated misspent Federal funds, or so-called disallowances, under the AFDC quality control (QC) program. States with error rates above 3 percent are subject to repaying the Federal matching funds on the erroneous payments exceeding 3 percent. States may appeal disallowances to the Secretary of HHS, to a Departmental Appeals Board, and ultimately, to the courts.

All States but one, Nevada, are subject to disallowances. Currently, the States have been informed that they owe a total of about $1.2 billion to the Federal government for misspent Federal funds from fiscal years 1981 through 1986. A moratorium on collecting these disallowances expired on July 1, 1989.

*House bill*

(a) To resolve the backlog of pending disallowances, defined as all disallowances from fiscal years 1981 through 1990, the following statutory changes would be made:

1. For fiscal years 1983 through 1990, States would be subject to potential disallowances if their official error rates are above the lowest national annual average achieved since 1980. In the case of fiscal years 1981 and 1982, this threshold would be the higher of: (a) the lowest national annual average achieved since 1980, or (b) the target error rate in effect for fiscal years 1981 and 1982 for the respective States. The lowest national average achieved from 1981 through 1987 was 6.0 percent in 1984. Consequently, the 6.0 percent figure would apply for 1981 through 1987. If a lower national average than 6.0 percent is achieved in 1988, 1989, or 1990, it would be used to establish the threshold. Otherwise, 6.0 percent would apply to these years also.

2. State official error rates would be recalculated excluding so-called "technical errors." Technical errors are errors which, if corrected, would not result in a change in benefit amount, including failure to secure or apply for a Social Security number, failure to register for a work program, failure to assign child support rights, failure to assign rights to third party payments, and failure to obtain monthly reports from cases for which they are required.

3. All States subject to potential disallowances would have one of two options:

(a) Pay 75 percent of the potential disallowance in lieu of any further appeal; or

(b) Appeal directly to the Departmental Appeals Board. There would be no appeal to the Secretary for a waiver of the disallowance. States would have 6 months from the later of the date of enactment or the official announcement of the disallowance in which to file an appeal. The Board must rule on the appeal within 12 months from the date on which the appeal is filed. Interest would accrue on disallowances beginning after the Departmental Appeals Board decision and would be collected after appeals are exhausted. Interest is paid only on the final disallowance amount at the rate described in section 3717(a)(1) of title 31, U.S.C. A State may seek judicial review of a decision by the Board in any U.S. district court within 12 months after the decision is issued.

4. In deciding how much, if any, sanction would be imposed on the States, the Board must consider the following illustrative, but not all inclusive, list of factors:

Whether the State's error rate is sufficiently statistically reliable to support a conclusion that the State exceeded the tolerance level;

Whether the errors for which the State was cited in fact represented misspending of funds;

Whether the errors for which the State was cited could have been avoided by the State agency by cost-efficient means that would not have interfered with program purposes;

Whether the State's error rate in a year diverges from its historical trend enough to demonstrate a significant problem in need of correction;

Whether the error rate was affected by factors beyond the State's control, such as caseload growth, caseload composition, program changes, strikes, or natural disasters;

Whether the State's record with respect to corrective action demonstrates a concerted effort to reduce errors;

Whether measurement of errors was against State practice as outlined in State regulations and policy clarifications; and

Any other factors the Board determines to be relevant.

*Effective date*

July 1, 1989, applying to potential disallowances for fiscal years 1981 through 1990

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement permanently waives all disallowances through fiscal year 1991.

*b. Permanently modify the quality control system after fiscal year 1990*

Section 10281 of House bill.

*Current law*

States are required to pay back estimated misspent Federal funds, or so-called disallowances, under the AFDC quality control (QC) program. States with error rates above 3 percent are subject to repaying the Federal matching funds on the erroneous payments exceeding 3 percent. States may appeal disallowances to the Secretary of HHS, to a Departmental Appeals Board, and ultimately, to the courts.

*House bill*

(b) The following modifications would be made in the existing AFDC quality control system, beginning with fiscal year 1991:

1. Technical errors (as defined in the previous section) would be determined but excluded from all error rates for purposes of estimating disallowances. Failure to register for a work program would not be a technical error under the new system because the new JOBS program does not require registration.

2. Standard errors and 95 percent confidence intervals must be published.

3. Thresholds for State error rates would be:

Below incentives threshold: Incentives paid.

Between incentives and disallowance thresholds: Corrective actions required.

Above Disallowance Threshold: Potential disallowance imposed and corrective actions required.

The incentives threshold would be one-half of the lowest sum of the national average overpayment and underpayment error rates ever achieved in prior years beginning with fiscal year 1981. Technical errors would be excluded from the overpayment error rates.

The disallowance threshold, would be one percentage point plus the lowest sum of the national average overpayment and underpayment error rates ever achieved in prior years beginning with fiscal year 1981. Technical errors would be excluded from the overpayment error rates.

Incentive payments would equal half the difference between the incentive threshold and the State's error rate times the Federal share of the State's total payments.

Disallowances are the Federal share of erroneous payments in excess of the disallowance threshold.

4. As in the resolution of the backlog of disallowances, States would have one of two options:

(a) pay 75 percent of the potential disallowance in lieu of any further appeal; or

(b) appeal the sanction directly to the Departmental Appeals Board within 45 days. The Department of Health and Human Services waiver process would be eliminated. The Board would follow the same procedure as outlined under the backlog proposals. In addition, the Board must consider whether the State's error rate is based on errors that are reflected in other welfare programs and whether offsetting savings in other programs might have resulted from misspending on the AFDC program. A State may seek judicial review of a decision of the Board in any U.S. district court within 12 months after the decision is issued.

5. Interest would accrue on disallowances beginning after the Departmental Appeals Board decision and would be collected after appeals are exhausted. Interest would be paid on only the final disallowance amount at the rate described in section 3717(a) (1) of title 31, U.S.C.

6. Requires States to collect and report data on underpayments and negative case actions as part of the basic quality control sample. Negative case actions include improper denials and terminations. The Secretary would be required to study negative case actions and make recommendations to Congress on how to incorporate them into State error rates and the Federal incentive and disallowance formulas. States must begin reporting all data by no later than October 1, 1990. The Secretary must report to Congress no later than October 1, 1992.

*Effective date*

Date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes a new quality control system beginning in fiscal year 1991. In general, the new system:

(1) Imposes penalties on those States whose error rates are above the national average.

(2) Establishes penalties based on a sliding scale which reflect the degree to which a State's error rates exceed the national average.

(3) Takes into account both overpayments and underpayments that are made to AFDC recipients, and gives States an incentive to improve their AFDC child support collection programs.

(4) Establishes a new Quality Control Review Panel to assure that quality control review cases that are in dispute between States and the Federal government are resolved in a uniform and fair manner. The current Secretary's waiver procedure would no longer exist.

(5) Retains the Departmental Appeals Board to resolve all other issues in dispute between the States and the Federal government.

*Error Measurement.*—The conferees assume that the Secretary will use the same statistical methods to estimate errors as have been used under the current quality control system. Before the official error rate is determined, States may challenge the Federal re-review decisions by requesting reconsideration of any decisions on cases that are different from their own ("difference" cases) by a new Quality Control Review Panel to be established by the Secretary. Decisions by the Quality Control Review Panel will be on the record and will not be appealable to the Departmental Appeals Board. Decisions on difference cases may not be appealed to the court until the disallowance has become final (as a result of a decision by the Departmental Appeals Board or the decision of the State not to pursue an appeal to that Board).

In establishing a State's error rate, certain types of errors will be excluded: (1) errors based on failure to carry out properly changes in Federal legislation for a period of 6 months after the effective date of the legislation or the issuance of interim final or final regulations, whichever is later (however, States would not be relieved of the obligation to implement new legislation); (2) errors resulting from a State agency's correct use of erroneous information received from Federal agencies (e.g., the amount of a supplemental security income benefit); (3) errors resulting from a State agency's action based on written Federal policies (e.g., written advisories made in response to State inquiries); (4) errors due to circumstances (defined as those resulting in a declaration of a state of emergency by the governor or the President); and (5) errors due to monthly reporting that do not affect the amount of payment. The following errors would be counted: lack of a social security number in the file (unless an application for a number has been filed) and failure to assign child support rights.

The decision as to whether a case is in error will be made by comparison against permissible State practice (i.e., policies consistent with the approved State plan). However, if the State plan is inconsistent with Federal regulations, Federal regulations will prevail if the Secretary has informed the State of the inconsistency. If a change in State law is required, the Secretary may allow a reasonable time for the State to make the required change. A case which is at variance with Federal law and regulations because of compliance with a court order will be reveiwed against the court order.

The Secretary, in consultation with the States, will establish regulations setting forth the time period in which reviews must be completed and findings must be reported; the time period in which difference cases must be resolved; the time period in which error rates must be issued; and the sample size necessary to obtain a statistically valid error rate. To enable the Department of HHS to meet these regulatory timetables, the Secretary must insure that there will be adequate staff to perform required functions, and shall report annually to the Senate Committee on Finance and the House Committee on Ways and Means as to whether the timetables have been met. If a State fails to complete its reviews on a timely basis, the Secretary may conduct the reviews on his own initiative and will charge the State for any costs incurred in making the reviews.

*Determination of Disallowances.*—In general, the Federal government will provide matching funds for all approvable State expenditures except for those in excess of the error tolerance level. The error tolerance level will be the national average error rate or four percent, whichever is higher, computed by determining the overpayment error rate for each State and determining the average for all States.

Disallowances for States with error rates above the error tolerance level will be assessed on a sliding scale, reflecting the degree to which the State's error rate exceeds the error tolerance level. For example, a State with an error rate of 7.8 percent is 20 percent above a 6.5 percent national average tolerance level and would owe 20 percent of the sanction on the entire amount of its overpayments above the tolerance level (20 percent $\times$ 1.3 percent $\times$ the Federal share of benefits). In no case, however, would a State be required to repay more than 100 percent of its overpayments above the tolerance level.

Any sanction amount owed by a State will be due upon issuance by the Secretary of the notice to the State of a disallowance. The State may pay immediately, or the Secretary and the State may negotiate an agreement under which repayment may be made over a period of up to two and one-half years. Interest will accrue beginning 45 days after the date the State receives the notice of the disallowance. If a subsequent appeal is decided in the State's favor, the Federal government will repay all State payments with interest.

Before repayment to the Federal government, several adjustments shall be made.

If a State's error rate for underpayments is below the national average, its repayment amount shall be reduced as follows: if the underpayment rate is 0.1 percentage point below the national average, the error rate would be reduced by 0.1 percentage point. This reduction could be applied to any penalty due for the measurement year or for either of the following two years. The Secretary would be required to conduct a study and report to Congress on negative case actions—improper denials and terminations.

A State's repayment amount will also be reduced by a percentage equal to the percentage improvement in its AFDC child support collection rate (the number of AFDC cases for which a child support collection is made over the total number of AFDC cases) measured against the average collection rate for the State in the preceding three years, or the percentage by which the State's AFDC child support collection rate exceeds the national average, whichever is greater.

The amount to be repaid will be further reduced to reflect overpayments recovered by the State as follows: Multiply the Federal share of recovered overpayments by the ratio of the Federal share of erroneous payments above the error tolerance level to the Federal share of all erroneous payments in the State. The resulting sum shall be subtracted from the repayment amount.

*Appeal Procedures.*—If a State decides to appeal its disallowance to the Departmental Appeals Board, it must do so within 60 days of the notice of disallowance. In deciding whether to uphold the disallowance or any portion of it, the conferees expect the Board to conduct a thorough review of the issues and to take into account all relevant evidence. With respect to difference cases, the Departmental Appeals Board will adopt the decision of the Quality Control Review Panel.

If an appeal is not completed by the Board within 90 days, interest will be suspended until the appeal is completed. A State may appeal a decision by the Departmental Appeals Board (including a decision adopted by the Board with respect to a difference case) to Federal district court within 90 days of the decision by the Board. Court review shall be on the record established in the Departmental Appeals Board review in accordance with the standard of review pre-

scribed by section 706(2)(A) through (E) of title 5 of the U.S.C.

*Effective Date; Treatment of Disallowances for Prior Years.*—The new quality control system will be effective beginning with fiscal year 1991. Disallowances imposed in 1992 will be based on error rates determined for 1991. All disallowances for error rates determined for years prior to 1991 will be waived permanently.

*Hypothetical example of quality control computation*

[Assumes: State overpayment rate: 8%, underpayment rate: 2.8%; National overpayment rate: 6%, underpayment rate: 3.0%]

| | |
|---|---|
| 1. Calculation of State error rate: | |
| a. National underpayment rate. | 3.0% |
| (less) State underpayment rate | 2.8% |
| Underpayment "bonus" | 0.2% |
| b. State overpayment rate | 8.0% |
| (less) Underpayment "bonus" | 0.2% |
| "Error rate" | 7.8% |
| 2. Calculation of "basic" disallowance: | |
| State's AFDC payments | 10,000,000 |
| (times) Federal match rate | 50% |
| Gross Federal Cost | 5,000,000 |
| (times) Excess error rate (7.8% is 1.8 percentage points above 6% national average) | 1.8% |
| Excess erroneous payment | 90,000 |
| (times) Percent by which error rate exceeds national average. (7.8% is 30% above 6%) | 30% |
| "Basic" disallowance | 27,000 |
| 3. Adjustment for overpayment recoveries: | |
| Overpayment recoveries (Federal share) | 5,000 |
| (times) State error rate above national average (1.8%) as a percent of total State error rate (7.8%). (1.8% is 23% of 7.8) | 23% |
| Overpayment adjustment | 1,150 |
| 4. Adjustment for child support improvement: | |
| a. Percent by which AFDC child support collection rate (e.g. 16%) exceeds national AFDC child support collection rate (e.g. 12%). (16% is 33% higher than 12%) | 33% |
| b. Percent by which AFDC child support collection rate (e.g. 16%) exceeds State average over 3 prior years (e.g. 14%). (16% is 14% higher than 14%) | 14% |
| c. "Basic" disallowance from step 2 | 27,000 |
| (less) Overpayment adjustment (step 3) | 1,150 |
| Adjusted disallowance | 25,850 |
| (times) Child support adjustment percent (higher of 4.a. or 4.b.) | 33% |
| Child support adjustment | 8,530 |
| 5. Final calculation: | |
| Adjusted disallowance (4.c.) | 25,850 |
| (less) Child support adjustment | 8,530 |
| Final disallowance amount | 17,320 |

AFDC AND EMERGENCY ASSISTANCE REGULATIONS

Section 10263 of House bill.

*Current law*

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 prohibits the Secretary of Health and Human Services, prior to September 30, 1989, from taking any action that would have the effect of implementing, in whole or in part, the proposed regulations published in the Federal Register on December 14, 1987. These regulations would have restricted the use of AFDC emergency assistance funds for homeless families and would have limited States' authority to use AFDC funds for shelter in temporary quarters, whether as a basic or special need.

The Department of Health and Human Services was required to report, by July 1, 1989, with recommendations for statutory and regulatory changes designed to: (1) improve the ability of the AFDC program to respond to emergency needs of AFDC eligible families; and (2) eliminate the use of AFDC funds for shelter costs in so-called "welfare hotels." This report was sent to Congress July 3, 1989.

*House bill*

Extends for one year, through September 30, 1990, the moratorium barring the Secretary of Health and Human Services from taking any action that would have the effect of implementing, in whole or in part, the proposed regulations published in the Federal Register on December 14, 1987.

*Effective date*

October 1, 1989.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement directs the Secretary of HHS not to implement the proposed regulation published December 14, 1987 with respect to the use of emergency assistance or special needs funds, but permits the Secretary to issue revised proposed regulations with respect to the use of emergency assistance funds that reflect the recommendations included in a report entitled "Use of the Emergency Assistance and AFDC Programs to Provide Shelter to Families" transmitted by the Secretary to the Congress on July 3, 1989. The Secretary would be prohibited from establishing an effective date for any final regulations relating to emergency assistance, or otherwise modifying current policy regarding the use of emergency assistance or special needs funds, without specific legislative authority, prior to October 1, 1990.

Effective with the calendar quarter beginning January 1, 1990, States would be required to identify in their financial reports any emergency assistance or AFDC special needs funds that are used to pay for housing in welfare hotels or similar housing arrangements. The conferees expect that the Secretary will require the States to report information according to the type of temporary housing (as classified by the Secretary, but to include welfare hotels, other temporary commercial facilities, and other similar temporary living arrangements), and separately for the AFDC and emergency assistance programs.

*Effective date*

On enactment.

3. MINNESOTA FAMILY INVESTMENT PLAN (MFIP) DEMONSTRATION PROJECT

Section 10265 of House bill.

*Current law*

The State of Minnesota has passed legislation to conduct field trials of the Minnesota Family Investment Plan (MFIP) as an alternative to the present Aid to Families with Dependent Children (AFDC) program. The legislation authorizes the Minnesota Commissioner of Human Services to enter into an agreement with the Federal government consistent with the goals of the MFIP. The field trials cannot proceed without Federal authorizing legislation.

*House bill*

Permit the State of Minnesota to conduct a demonstration project, through two field trials involving up to 6,000 families at any one time, of its proposed MFIP, subject to the approval of the Secretary. One field trial would consist of a rural county(ies), the other of an urban county(ies). The demonstration would simplify the welfare system and increase recipient work incentives.

Except where otherwise provided, the requirements of the State plan approved under Title IV-A would apply to the project, unless waived by the Secretary. The Secretary could waive any requirement of part A or F of title IV that would prevent the State from carrying out the project or achieving its purposes, but only to the extent necessary to enable the State to carry out the project.

The Secretary could not: (1) waive any requirement of sec. 402(a)(4) or 482(h) of the Social Security Act (relating to fair hearing requirements and dispute resolution procedures); (2) permit the State to provide cash assistance to any family in an amount less than the aggregate value of the AFDC and food stamp assistance the family would have received had the demonstration not been in effect; or (3) waive any requirement of section 402(a)(19)(C) of the Social Security act (relating to exemptions from participation in JOBS activities).

The State is authorized to require the participation of an individual with a child age 1 or older in JOBS activities, unless the individual is otherwise exempt from participation.

At least the education, employment and training services available under the State's Title IV-F plan would be available to families required to have a contract under the project.

The demonstration would begin during the first month of a calendar quarter, and would end five years after the first day of the month during which the project begins. The demonstration could be terminated on six months' notice by the State, or, upon a finding that the State has materially failed to comply with this section and after 30 days written notice and the opportunity for a hearing, by the Secretary.

The Secretary must pay the State the amounts that would have been payable during the calendar quarter, in the absence of the demonstration project, for cash assistance, child care, education, employment and training, and administrative expenses under the State plan approved under section 402(a), and must reimburse the State at the rate of 50 percent for expenses of evaluating the effects of the project.

Cases participating in the project during a fiscal year would be excluded from any sample taken for purposes of determining

the AFDC quality control error rate. However, payments made by the State under the project would be included in the calculation of any disallowance for excessive error rates.

An evaluation plan would be developed and implemented by the State, and must include treatment and control groups assigned at random in the urban field trial. The State would issue an interim and final report of the evaluation.

*Effective date*

Upon enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement generally follows the House bill, except that it provides that the approval of the project by the Secretary of Health and Human Services is to be based on whether the application by the State meets the criteria established by this provision.

4. FAMILY SUPPORT ACT

Section 10266 of House bill.

*Current law*

No provision.

*House bill*

The Office of Legislative Counsel has identified several technical errors (i.e., incorrect cross references and citations as well as text that was inadvertently dropped) in the Family Support Act of 1988. Legislation to correct these technical errors is included.

*Senate amendment*

No provision.

*Conference agreement*

Senate recedes.

5. EXCLUSION OF AGENT ORANGE SETTLEMENTS IN DETERMINING ELIGIBILITY FOR NEEDS-TESTED PROGRAMS

*Present law*

Under SSI and other needs-tested programs, all forms of income generally count against eligibility for benefits unless there is a statutory provision under which the income can be disregarded. Individuals who are awarded benefits under the Agent Orange litigation could, therefore, find that the Agent Orange awards result in their losing eligibility under SSI or other programs.

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement excludes Agent Orange settlement payments from income and resources under SSI, AFDC, Medicaid, the Title XX social services block grant and several other programs. The provision would take effect on January 1, 1989.

SUBTITLE D—TRADE AGENCY AUTHORIZATIONS, CUSTOMS USER FEES, AND OTHER CUSTOMS PROVISIONS

SUBTITLE E—CARIBBEAN BASIN ECONOMIC RECOVERY ACT

SUBTITLE F—TARIFF PROVISIONS

The House agreed to recede on all trade provisions in Subtitles D, E, and F of the House reconciliation bill, and to make best efforts to pass S. 1164, providing authorizations of appropriations for trade agencies, this year. The Senate agreed to make best efforts to pass H.R. 3275, with two amendments—the House-passed Superfund and CBI-ethanol provisions (on a permanent basis) this year. The Senate also agreed to make best efforts to pass a new trade bill using a House-passed H.R.-numbered bill and containing CBI, customs users fees, miscellaneous tariff bills, a two-year authorization of appropriations for trade agencies and other trade-related provisions the Senate Committee on Finance determines to be appropriate. The Senate conferees agreed to attempt to pass such a bill as early as possible next year, if possible by March 31, 1990.

TITLE XI—MISCELLANEOUS

BANKING PROVISIONS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
*Washington, DC, November 15, 1989.*

Hon. LEON E. PANETTA,
*Chairman, Committee on the Budget, Washington, DC.*

DEAR CHAIRMAN PANETTA: The Committee on Banking, Finance and Urban Affairs has complied with its responsibilities under budget reconciliation by the enactment of H.R. 3281.

H.R. 3281 (Public Law 101-137) was signed by the President on November 3, 1987. This Act reauthorized the Flood and Crime Insurance programs and achieved savings in excess of those required of the Committee on Banking, Finance and Urban Affairs in budget reconciliation.

Accordingly, the Conferees from the Committee on Banking, Finance and Urban Affairs and our Senate counterparts have agreed to delete all House and Senate provisions concerning the Flood and Crime Insurance programs.

Sincerely,

HENRY B. GONZALEZ,
*Chairman.*
CHALMERS P. WYLIE,
*Ranking Member.*

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U.S. SENATE,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
*Washington, DC, November 15, 1989.*

Hon. JAMES SASSER,
*Chairman, Committee on the Budget, Dirksen Senate Office Building, Washington, DC.*

DEAR CHAIRMAN SASSER: The Committee on Banking, Finance and Urban Affairs has complied with its responsibilities under budget reconciliation by the enactment of H.R. 3281.

H.R. 3281 (Public Law 101-137) was signed by the President on November 3, 1987. This Act reauthorized the Flood and Crime Insurance programs and achieved savings in excess of those required of the Committee on Banking, Finance and Urban Affairs in budget reconciliation.

Accordingly, the Conferees from the Committee on Banking, Finance and Urban Affairs and our Senate counterparts have agreed to delete all House and Senate provisions concerning the Flood and Crime Insurance programs.

Sincerely,

DONALD W. RIEGLE,
*Chairman.*
JAKE GARN,
*Ranking Minority Member.*

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CHILD CARE PROVISIONS OF H.R. 3299

Subtitle E of Title III of H.R. 3299 as passed by the House incorporated a comprehensive child care proposal, the Early Childhood Education and Development Act of 1989. The Senate had no comparable provision on H.R. 3299. However, the Senate had previously passed S. 5, The Act for Better Child Care. The conferees on Subtitle E had reached substantial agreement on a compromise child care program. However, the conferees on the part of the House agree, in accordance with the position of the House leadership, to delete non-deficit related provisions from H.R. 3299; therefore, the House recedes.

The Managers state that, in dropping the child care provisions from H.R. 3299, they are determined to take all necessary steps to enact comprehensive child care as free standing legislation early in the next session of the 101st Congress.

The Managers believe that there will be sufficient general revenues to fund a discretionary comprehensive child care program in the second session of the 101st Congress at a level no less than that included in Subtitle E of the House passed reconciliation bill. The Managers further believe that no language in the Statement of Managers relating to any other provision of this Act places any restrictions on the Congress's decisions with respect to the allocation of Budget Authority in the Fiscal Year 1991 Budget Resolution or the Congress's ability to appropriate funds for a discretionary child care program.

OIL SHALE CLAIMS REFORM

*House bill*

Subtitle C of Title VI of the House bill provides certain requirements for oil shale mining claims located pursuant to the mining laws of the United States.

*Senate bill*

The Senate bill has no comparable provisions.

*Conference agreement*

The House recedes to the Senate position without prejudice to the House position.

TONGASS TIMBER REFORM

*House bill*

Subtitle B of Title VI of the House bill contains the Tongass Timber Reform Act of 1989.

First, the legislation repeals Section 705(a) of the 1980 Alaska National Interest Lands Conservation Act ("ANILCA," P.L. 96-487). Repeal of Section 705(a) eliminates the timber supply requirement that the Forest Service make available 4.5 billion board feet of public timber from the Tongass each decade and eliminates the permanent appropriation of "at least $40 million annually or as much as the Secretary of Agriculture finds is necessary" to fund timber operations.

Second, the legislation directs the Forest Service to cancel two long-term timber contracts signed in the 1950's, which extend until the years 2004 and 2011. Timber volume under the two long-term timber contracts would be replaced with standard, competitive bid, short-term sales.

Third, the legislation designates for permanent protection as wilderness 23 areas covering 1,823,405 acres of the Tongass. The wilderness lands contain significant stands of rare, high-volume old growth timber and include some of the most beautiful areas and valuable fish and wildlife habitat in the United States.

Finally, the legislation intends to improve management of the Tongass by providing for sustained production of old-growth

forest resources and by protecting fisheries with a 100 feet reparian buffer zone.

*Senate bill*

The Senate bill contains no comparable provision.

*Conference agreement*

The conference agreement contains no such provision.

PANAMA CANAL PROVISIONS

*House bill*

Title VII of the House bill contains three provisions dealing with the Panama Canal.

*Payment of extraordinary expenses and losses of Panama Canal Commission.*—The House bill contains a provision (section 7003) that would make available to the Secretary of the Treasury interest in an escrow account for payments due to the Republic of Panama. Up to $5 million would be made available to reimburse the Panama Canal Commission and the remainder would be deposited at the end of the fiscal year into the general fund.

*Panama Canal Commission Authorization.*—The House bill contains a provision (section 7004) that would authorize expenditures for the Panama Canal Commission for fiscal year 1990.

*Use of military commissaries and exchange stores by Panama Canal Commission employees.*—The House bill (section 7005) contains a provision that would authorize United States citizen employees of the Panama Canal Commission to purchase food and other goods at commissary and exchange stores in Panama.

*Senate bill*

The Senate amendment contains no similar provision.

*Conference agreement*

The House recedes to the Senate provision. The Panama Canal Authorization was contained in the National Defense Authorization Act for fiscal years 1990 and 1991.

CRUISE SHIP FEES

*Senate bill*

Section 302(b) of the Senate amendment imposes a fee of $3.00 per passenger on cruise ships (with specific exceptions) during fiscal year 1990. Two-thirds of the receipts will be deposited in the Harbor Maintenance Trust fund and one-third will be designated as offsetting receipts to Coast Guard activities.

*House bill*

The House bill contains no comparable provision.

*Conference agreement*

The Senate recedes to the House position. A tax of $6.00 per passenger has been incorporated into the revenue provisions of the conference report.

COAST GUARD USER FEES

*Senate bill*

Section 303 of the Senate amendment directs the Coast Guard to establish a system for collecting $50 million from users of Coast Guard services in fiscal year 1990. Included in this fee system will be collections from the sale of Support of Services (SOS) stamps which entitle the bearer to services without charge and a fee schedule to charge users of services who have not purchased an SOS stamp.

*House bill*

The House bill contains no comparable provision.

*Conference agreement*

The Conference Agreement does not include the Senate provision on Coast Guard fees.

AIRPORT SLOT FEES

*Senate bill*

Section 304 of the Senate amendment directs the Secretary of Transportation to establish a schedule of airport slot fees to be collected and deposited in the general fund.

*House bill*

The House bill contains no comparable provision.

*Conference agreement*

The conference agreement does not include the Senate provision on slot fees.

INTERNATIONAL DEPARTURE FEES

*Senate bill*

Section 302(a) of the Senate amendment directs the Secretary of Transportation to establish, assess and collect a fee for each passenger on commercial aircraft departing the United States.

*House bill*

The House bill contains no comparable provision.

*Conference agreement*

The Senate recedes to the House.

ONONDAGA LAKE RESTORATION PROGRAM

*Senate bill*

Section 4301 of the Senate amendment directs the Army Corps of Engineers to carry out an environmental restoration reconnaissance study of Lake Onondaga located near Syracuse, New York.

*House bill*

The House billl contains no comparable provision.

*Conference agreement*

The Senate recedes to the House.

SECTION 11002. RESTORATION OF FUNDS SEQUESTERED

Section 11002 provides for additional budget savings by retroactively replacing the President's October 16 sequester order with a new order. The new order exactly follows all the procedures, rules, definitions, calculations, and other requirements of the Balanced Budget and Emergency Deficit Reduction Act of 1985 (as amended) with one major and three minor exceptions.

The major exception is that, instead of the $16.1 billion in outlay reductions that were stated in the October 16 order, the new order shall be based on a required outlay reduction only 35.6 percent as large. The new order will be in effect for the entire fiscal year, but at a lower rate of reductions. Since the new order saves a smaller amount, the old order is rescinded and any amounts (beyond those needed to be saved under the new order) are restored. If, under the old order, individual payments or contracts were reduced, rebates will be made or contracts will be adjusted to reflect the smaller savings required by the new order.

The conferees are aware that, because of the application of the "crediting" rule in section 252(f) of the Balanced Budget Act, the stated $16.1 billion in savings in the President's October 16 order would actually have achieved $12.3 billion, according to CBO. Since that section also applies to this new order with regard to appropriation bills enacted after October 16, 1989, the new order will also achieve actual savings smaller than the apparent $5.75 billion—an estimated $4.55 billion.

One minor exception applies to the Guaranteed Student Loan program. The Balanced Budget Act does not contain a mechanism to achieve different savings in that program when the size of the sequester is altered. Therefore, section 11002 provides that the GSL savings will be achieved by the full Balanced Budget Act savings in effect in the first three months of the year, with no reductions under the new order for the remainder of the year. According to CBO, those three months will achieve more than 35.6 percent of the total amount of savings that would be achieved by a full-year sequester. The savings achieved during those three months will count as savings under the new order.

A second minor exception applies to Vocation Rehabilitation Basic State Grants and the Special Milk programs. The entitlement formulas in those programs are indexed to price increases; in the event of a sequester, the COLAs are frozen. Section 11002 overrides the COLA freeze that would otherwise be in place for the full year, and instead reduces the COLA by 35.6 percent. As with GSL's, the savings achieved by partial COLAs will count as savings under the new order.

Except as noted above, all the provisions of the Balanced Budget Act apply to the calculation and implementation of the new order. Specifically, it is still required that reductions in each program, project, or activity within a budget account be proportional to the reduction in the full account. However, since the new order is not technically the order of October 16, 1989, various requirements or procedures that are ancillary to that order do not apply. Specifically, the special Congressional procedures under section 258 of the Balanced Budget Act are not available, and the administration is not required to file a new accompanying message under section 252(a)(4) of the Act.

The final minor exception to the overlap between section 11002 and provisions in Title VI that achieve reconciliation savings by continuing the Medicare sequester under the original order of October 16 in full force for part of the year (e.g. through March 31, 1990, in the case of Part B Medicare). In order to prevent the Medicare sequester that would occur under this new order from applying on top of the Title VI sequester during the period when the two are concurrent, subsection (d) provides that during that period the Medicare cuts under Title XI will not take place. In effect, the continued Medicare cuts under Title VI (at a rate higher than the rate under Title XI) are deemed to achieve the Title XI Medicare savings during the period when the Title VI savings are in effect. After they expire, however, the Title XI Medicare savings will be in effect for the remainder of the year. This rule for the application of the Medicare reductions under Title XI is not taken into account in calculating the new OMB report and in the President's new order, although this rule then supercedes the President's new order with regard to Medicare cuts.

From the Committee on the Budget, for consideration of the House bill (except title XI and sections 10181 through 10191), and the Senate amendment (except title VI), and modifications committed to conference, and as exclusive conferees with respect to any proposal to report in total disagreement:

LEON E. PANETTA,
RICHARD A. GEPHARDT,
MARTY RUSSO,

MARVIN LEATH,
CHARLES E. SCHUMER,
BARBARA BOXER,
JIM SLATTERY,
BILL FRENZEL,
BILL GRADISON,
BILL GOODLING,

From the Committee on the Budget, for consideration of title XI and sections 10181 through 10191 of the House bill, and title VI of the Senate amendment, and modifications committed to conference:

LEON E. PANETTA,
RICHARD A. GEPHARDT,
MARTY RUSSO,
ED JENKINS,
FRANK GUARINI,
BILL FRENZEL,
BILL GRADISON,
WM. THOMAS,

From the Committee on Agriculture, for consideration of title I of the House bill, and title I of the Senate amendment, and modifications committed to conference:

E DE LA GARZA,
DAN GLICKMAN,
CHARLES STENHOLM,
JERRY HUCKABY,
GEORGE E. BROWN, JR.,
GLENN ENGLISH,
GARY CONDIT,
EDWARD MADIGAN,
E. THOMAS COLEMAN,
ARLAN STANGELAND,
BILL SCHUETTE,

From the Committee on Agriculture, for consideration of subtitle B of title VI (except section 6131) of the House bill, and modifications committed to conference:

E DE LA GARZA,
JERRY HUCKABY,
JIM OLIN,
RICHARD H. STALLINGS,
CLAUDE HARRIS,
BILL SARPALIUS,
RON MARLENEE,
SID MORRISON,
ROBERT F. SMITH,

From the Committee on Banking, Finance and Urban Affairs, for consideration of title II of the House bill, and title II of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
FRANK ANNUNZIO,
WALTER E. FAUNTROY,
BRUCE A. MORRISON,
BEN ERDREICH,
PAUL E. KANJORSKI,
CHALMERS P. WYLIE,
DOUG BEREUTER,
BILL PAXON,

From the Committee on Education and Labor, for consideration of sections 3000 through 3009 of the House bill, and subtitle B of title VIII of the Senate amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
PAT WILLIAMS,
WILLIAM D. FORD,
MAJOR R. OWENS,
CHARLES A. HAYES,
CARL C. PERKINS,
TOM COLEMAN,
STEVE GUNDERSON,
PAUL HENRY,
PETER SMITH,

From the Committee on Education and Labor, for consideration of sections 3051 through 3201 and 11851 through 11894 of the House bill, and subtitle A of title VIII of the Senate amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM CLAY,
WILLIAM D. FORD,
DALE E. KILDEE,
GEO. MILLER,
CHARLES A. HAYES,
MAJOR R. OWENS,

From the Committee on Education and Labor, for consideration of subtitles D and E of title III of the House bill and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
GEORGE MILLER,
DALE E. KILDEE,
PAT WILLIAMS,
MAJOR R. OWENS,
TOM SAWYER,
NITA M. LOWEY,
TOM TAUKE,
TOM PETRI,
STEVE GUNDERSON,
HARRIS W. FAWELL,
FRED GRANDY,

From the Committee on Energy and Commerce, for consideration of subtitles A through E of title IV, subtitle B of title X (except sections 10101 through 10112, 10171, 10181, and 10182), and sections 10003, 10005 (except subsection (c)), 10077(d), 10226, 10233, and 10248 of the House bill, and sections 4001 through 4013, 5201 through 5401, 5501, and 5601 (insofar as it relates to title XIX of the Social Security Act) of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
JAMES H. SCHEUER,
RON WYDEN,
TERRY L. BRUCE,
NORMAN F. LENT,
EDWARD R. MADIGAN,
BOB WHITTAKER (except for subtitles C and D of title IV and sections 10183 through 10191, 10226, 10233, and 10248 of the House bill, and section 5501 of the Senate amendment),

Provided that Mr. Tauke is appointed in place of Mr. Dannemeyer for consideration of sections 4001 and 10123 of the House bill, and Mr. Bilirakis is appointed in place of Mr. Whittaker for consideration of sections 10183 through 10191 of the House bill, and Mr. Nielson of Utah is appointed in place of Mr. Whittaker for consideration of subtitles C and D of title IV and sections 10226, 10233, and 10248 of the House bill and section 5501 of the Senate amendment:

THOMAS J. TAUKE,
HOWARD C. NIELSON,

From the Committee on Energy and Commerce, for consideration of subtitle F of title IV and section 6001 of the House bill, and section 4101 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHIL SHARP,
DOUG WALGREN,
BILLY TAUZIN,
JIM COOPER,
BILL RICHARDSON,
JOHN BRYANT,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
BILL DANNEMEYER,
JACK FIELDS,

From the Committee on Energy and Commerce, for consideration of subtitles G and H of title IV of the House bill, and section 301 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
ED MARKEY,
AL SWIFT,
CARDISS COLLINS,
DENNIS E. ECKART,
RICK BOUCHER,
THOMAS J. MANTON,
NORMAN F. LENT,
MATT RINALDO,
TOM TAUKE (except for subtitle G of title IV of the House bill),
THOMAS J. BLILEY, JR. (except for subtitle G of title IV of the House bill),

From the Committee on Government Operations, for consideration of title V and section 8001 of the House bill, and section 7001 of the Senate amendment, and modifications committed to conference:

JOHN CONYERS,
CARDISS COLLINS,
STEVE NEAL,
BEN ERDREICH,
ALBERT G. BUSTAMANTE,
GERALD D. KLECZKA,
BARBARA BOXER,
CHRISTOPHER SHAYS,
PETER SMITH,
BILL CLINGER,

From the Committee on Interior and Insular Affairs, for consideration of subtitle F of title IV and title VI of the House bill, and section 4101 of the Senate amendment, and modifications committed to conference:

MORRIS K. UDALL,
GEO. MILLER,
ED MARKEY,
AUSTIN J. MURPHY,
BRUCE F. VENTO,
PAT WILLIAMS (except for subtitles B and C of title VI of the House bill),
DON YOUNG,
JAMES V. HANSEN,

Provided that Mr. Sharp is appointed in place of Mr. Williams for consideration of subtitles B and C of title VI of the House bill:

PHIL SHARP,

From the Committee on Interior and Insular Affairs, for consideration of section 4201 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEORGE MILLER,
DON YOUNG,

From the Committee on Merchant Marine and Fisheries, for consideration of title VII of the House bill, and sections 302(b), 303, and 4201 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
GERRY STUDDS,
BILL HUGHES,
BILLY TAUZIN,
TOM FOGLIETTA,
D.M. HERTEL,
ROY DYSON,
BOB DAVIS,
DON YOUNG,

From the Committee on Post Office and Civil Service, for consideration of titles V and VIII and sections 10004(a) and 10004(b) of the House bill, and title VII of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
WILLIAM CLAY,
PAT SCHROEDER,
MARY ROSE OAKAR,
GERRY SIKORSKI,

FRANK MCCLOSKEY,
GARY L. ACKERMAN,
BEN GILMAN,
FRANK HORTON,
DON YOUNG,
TOM RIDGE,

From the Committee on Public Works and Transportation, for consideration of sections 302(a), 304, and 4301 of the Senate amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY J. NOWAK,
DOUG APPLEGATE,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND,
BILL CLINGER,

From the Committee on Veterans' Affairs, for consideration of title IX and section 11650 (except subsection (a)) of the House bill, and title IX of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
DON EDWARDS,
DOUG APPLEGATE,
LANE EVANS,
TIMOTHY J. PENNY,
HARLEY O. STAGGERS, Jr.,
J. ROY ROWLAND,
BOB STUMP,
JOHN PAUL HAMMERSCHMIDT,
CHALMERS P. WYLIE,
BOB MCEWEN,

From the Committee on Ways and Means, for consideration of subtitle B of title III and title XI (except sections 11901 through 11903) of the House bill, and the third item listed under miscellaneous charges in the fee schedules set forth in section 301(a)(1), title VI, and sections 302, 4004 through 4013, and 8001 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
HAROLD FORD,
TOM DOWNEY,
GUY VANDER JAGT,
RICHARD T. SCHULZE,

From the Committee on Ways and Means, for consideration of subtitle A of title IV, sections 4101 (insofar as it relates to section 1142 of the Social Security Act), 4111, and 4121 (insofar as it relates to section 1142 of the Social Security Act), and title X (except sections 10181 through 10191) of the House bill, and title V (except section 5501) of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
ANDREW JACOBS, Jr.,
TOM DOWNEY,

From the Committee on Ways and Means, for consideration of sections 10181 through 10191 of the House bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
PETE STARK,
BRIAN DONNELLY,
WILLIAM J. COYNE,
J.J. PICKLE,
BILL ARCHER,
GUY VANDER JAGT,

From the Committee on Ways and Means, for consideration of sections 11901 through 11903 of the House bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
TOM DOWNEY,
HAROLD FORD,
ROBERT T. MATSUI,
BARBARA KENNELLY,
MICHAEL ANDREWS,
RICHARD T. SCHULZE,
E. CLAY SHAW,

From the Committee on Ways and Means, for consideration of section 304 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
TOM DOWNEY,
RAY MCGRATH,

*Managers on the Part of the House.*

From the Committee on the Budget:

JIM SASSER,
DON RIEGLE,
FRANK R. LAUTENBERG,
PAUL SIMON,
TERRY SANFORD,
WYCHE FOWLER, Jr.,
CHRISTOPHER DODD,
PETE DOMENICI,
CHUCK GRASSLEY,
BOB KASTEN,

From the Committee on Agriculture, Nutrition, and Forestry:

PATRICK LEAHY,
DAVID PRYOR,
DAVID L. BOREN,
RICHARD G. LUGAR,
BOB DOLE,

From the Committee on Armed Services:

SAM NUNN,
J.J. EXON,
JOHN WARNER,

From the Committee on Banking, Housing, and Urban Affairs:

DON RIEGLE,
ALAN CRANSTON,
PAUL SARBANES,
CHRIS DODD,
JIM SASSER,
ALFONSE D'AMATO,
PHIL GRAMM,

From the Committee on Commerce, Science, and Transportation:

DANIEL K. INOUYE,
WENDELL H. FORD,

From the Committee on Energy and Natural Resources:

J. BENNETT JOHNSTON,
DALE BUMPERS,
BILL BRADLEY,
TIMOTHY E. WIRTH,
JAMES A. MCCLURE,
MALCOLM WALLOP,
FRANK H. MURKOWSKI,

From the Committee on Environment and Public Works:

QUENTIN N. BURDICK,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
JOHN BREAUX,
ALAN K. SIMPSON,
DAVE DURENBERGER,

From the Committee on Finance:

LLOYD BENTSEN,
SPARK MATSUNAGA,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
GEORGE MILLER,
DON RIEGLE,
JOHN D. ROCKEFELLER,
BOB PACKWOOD,
BOB DOLE,
JOHN DANFORTH,
JOHN H. CHAFEE,
JOHN HEINZ,

From the Committee on Governmental Affairs:

JOHN GLENN,
DAVID PRYOR,
JIM SASSER,
TED STEVENS,

From the Committee on Labor and Human Resources:

EDWARD M. KENNEDY,
CLAIBORNE PELL,
HOWARD M. METZENBAUM,
ORRIN G. HATCH,
NANCY LANDON KASSEBAUM,

From the Committee on Veterans' Affairs:

ALAN CRANSTON,
SPARK MATSUNAGA,
FRANK H. MURKOWSKI,

*Managers on the Part of the Senate.*

□ 2330

## MEDICARE CATASTROPHIC COVERAGE REFORM AMENDMENTS OF 1989

Mr. DONNELLY. Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 3607) to repeal Medicare provisions in the Medicare Catastrophic Coverage Act of 1988, with a Senate amendment thereto, and disagree to the Senate amendment.

The Clerk read the title of the bill.

(For Senate amendment, see prior proceedings of the House of today.)

The SPEAKER. The question is on the motion offered by the gentleman from Massachusetts [Mr. DONNELLY].

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ARCHER. Mr. Speaker, on that I demand the yeas and nays.

The SPEAKER. Those Members in favor of taking this vote by the yeas and nays will stand, and the chair will count all Members standing.

Mr. ARCHER. Mr. Speaker, I wish to revise my demand for a vote, and I demand a recorded vote.

A recorded vote was refused.

So the motion was agreed to.

A motion to reconsider was laid on the table.

## APPOINTMENT AS MEMBERS OF U.S. DELEGATION TO CANADA-UNITED STATES INTERPARLIAMENTARY GROUP

The SPEAKER. Pursuant to the provisions of 22 U.S.C. 276d, the Chair appoints as members of the U.S. delegation to attend the meeting of the Canada-United States interparliamentary group the following members on the part of the House:

Mr. GEJDENSON of Connecticut, Chairman;

Mr. FASCELL of Florida, Vice-Chairman;

Mr. HAMILTON of Indiana;

Mr. GIBBONS of Florida;
Mr. OBERSTAR of Minnesota;
Mr. FEIGHAN of Ohio;
Ms. SLAUGHTER of New York;
Mr. BROOMFIELD of Michigan;
Mr. HORTON of New York;
Mr. MILLER of Washington;
Mr. WALSH of New York; and
Mr. UPTON of Michigan.

## PRESENTING THE THANKS OF THE HOUSE TO SPEAKER THOMAS S. FOLEY

Mr. MICHEL. Mr. Speaker, I offer a resolution (H. Res. 300) presenting the thanks of the House to Speaker THOMAS S. FOLEY, and I ask unanimous consent for its immediate consideration.

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution as follows:

H. RES. 300

*Resolved,* That the thanks of the House are presented to the Honorable Thomas S. Foley, Speaker of the House of Representatives, for the able, impartial, and dignified manner in which he has presided over the deliberations and performed the arduous duties of the Chair during the present session of Congress.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER. The gentleman from Illinois [Mr. MICHEL] is recognized for 1 hour.

Mr. MICHEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first may I compliment the House for the manner in which the last debate was conducted. I have seldom seen a time when, in the evening of adjournment, or the night before, or whatever, with all the disruption that take place, to have a debate on a significant issue as we had conducted in such a manner in which Members were paying attention and good order and decorum. That is a credit to the House of Representatives, and I applaud all Members for that.

Mr. Speaker and colleagues, I have introduced this resolution because we are near the finish line and I feel it is very important that we publicly recognize in a bipartisan fashion the great job the Speaker has done in restoring a sense of civility and comity to the House of Representatives.

Earlier today, CNN television news carried a televised debate from the House of Commons. This is the first time this ancient institution of liberty has allowed television cameras into its chambers.

At the heart of the Mother of Parliaments are many of the traditions and customs that are at the heart of our House of Representatives.

I mention this because I know the Speaker is a student of legislative history. I know how much he reveres the House of Commons with its great traditions, as we all do.

I sincerely believe a great deal of the credit for the job the Speaker has done in this session can be traced to his sense of history. He sees this great institution not as an isolated legislative body, but as one part of a long, continuing story of freedom under law. And, in seeing our debates in this context, against the backdrop of history, he has set an example for us all. Once again, civility and comity are present in our debates.

We are all thankful to you, Mr. Speaker, for your leadership in helping bring this about.

Democrats and Republicans will continue to have our differences in this House. We will engage one another in heated debates, and we will bring to those debates the feelings which inspire all those who debate strongly held values.

That is the way it should be, as we strive to carry on a great tradition of legislative freedom, a tradition of fairness, civility, and mutual respect amidst policy differences, a tradition which has inspired your leadership, yes, and inspired this House.

The SPEAKER. The Chair wishes to thank the gentleman from Illinois and all Members of the House.

With some embarrassment, without objection, the Chair will put the question.

There was no objection.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

The SPEAKER. Thank you very much.

## CONFERENCE REPORT ON H.R. 3299, OMNIBUS BUDGET RECONCILIATION ACT OF 1989

Mr. PANETTA. Mr. Speaker, I call up the conference report on the bill (H.R. 3299) to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990, and I ask unanimous consent for its immediate consideration, and ask that the conference report be considered as read.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

(For conference report and statement, see prior proceedings of the House of today.)

The SPEAKER. The gentleman from California [Mr. PANETTA] will be recognized for 30 minutes, and the gentleman from Minnesota [Mr. FRENZEL] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 3299, the Omnibus Budget Reconciliation Act of 1989. The conference report was produced by 232 House and Senate conferees from 12 House and 11 Senate committees working in 27 subconferences.

This reconciliation bill is a historic document because it establishes several important precedents:

First, it achieves more real deficit reduction than any reconciliation bill going back 7 years.

Second, while it is not totally stripped of all extraneous issues, it is a dramatically cleaner bill than the bill that passed the House, and it establishes a precedent for keeping future bills directed solely toward deficit reduction.

Third, while accepting several timing shifts and accounting changes, it clearly identifies these shifts and achieves the reconciliation target established by the budget resolution without relying on any such shifts not included in the bipartisan budget agreement.

And last, it sends a message that if we fail to adopt reconciliation savings by the fixed date of October 15, there is a price to be paid in sequestration.

The deficit reduction associated with the conference report is $17.755 billion in fiscal year 1990 and a total of $81.261 billion over the next 5 years, largely as estimated by the Congressional Budget Office. The 5-year savings equal some nine-tenths of the 5-year savings produced by a full-year sequester, without the arbitrary impact of a full sequester.

The original instructions to House committees contained in the budget resolution required reconciliation savings of $13.45 billion, as measured by CBO. This package easily exceeds that goal.

The fiscal year 1990 deficit reduction contained in the conference report will bring the fiscal year 1990 deficit below the $110 billion Gramm-Rudman target for this year, and its passage will enable us to rescind as of the first week in February, the sequestration that went into effect on October 16. Indeed, the conference report includes a provision which accomplishes that.

This package also responds to the President's November 2 request that Congress develop a clean reconciliation bill that produces around $14 billion of real deficit reduction. In fact, this bill, when savings from timing shifts are not included, results in $14.671 billion in hard deficit reduction for fiscal year 1990 and $77.399 billion in hard savings over 5 years, far exceeding the reconciliation target in the budget resolution as well as that set by the President.

Comparing this bill to previous reconciliation packages, this is without

question the strongest reconciliation bill in terms of real deficit reduction to be enacted in the last 7 years.

It was not easy to reach the compromises that went into this agreement, particularly given the time pressures that were forced upon us by the long, drawn-out process that led to original House and Senate passage of the bill. The conferees should be commended for their hard work and the expedited schedule they followed in resolving the hundreds of issues involved in the reconciliation conference.

The conference report's $17.755 billion in fiscal year 1990 savings comes from four areas. It includes $6.913 billion in legislative spending reductions, $5.662 billion in new revenues, $4.551 billion from 4 months plus 1 week of savings under sequestration, and $629 million from reduced interest costs on the national debt.

Following my statement is a committee-by-committee description of the deficit reduction provisions agreed to in the reconciliation conference. We have at the back of the Chamber information for members on the contents of the conference report.

This reconciliation bill does include some timing shifts and takes the postal service off-budget, so that some of its deficit reduction follows past questionable tactics used to achieve savings.

But it does contain real, significant deficit reduction on both the spending and revenue side of the ledger. And, combined with the fine job done by the Appropriations Committees in both defense and domestic areas, the deficit reduction package produced this year by Congress will have included all three of the key areas for deficit reduction—entitlements, defense, and revenues.

I should also add that timing shifts, while they are not the preferred means of meeting deficit targets, are counted by CBO toward deficit reduction. In past years, they have rarely been questioned. CBO and OMB also score the Postal Service provision. In fact, not only were significant timing shifts and the Postal Service measure agreed upon by the White House and congressional leaders of both parties in the budget agreement but most were proposed by the White House. And the biggest timing shift of all was perpetrated in violation of that agreement by the administration when it shifted $2.9 billion in fiscal year 1990 Defense spending to fiscal year 1989 moving a pay date for military personnel. Based on that history, it is not unreasonable for a number of committees to have resorted to these shifts.

Another issue dealt with by the conferees was so-called extraneous provisions. Because of the Byrd rule in the Senate, that body's reconciliation bill contained only provisions which increased taxes and reduced spending. The House in conference gave up many provisions and major changes in law contained in our reconciliation bill in deference to the Byrd rule. In fact we calculate that over $35 billion in spending over 5 years was dropped from the House bill. As you know catastrophic health and capital gains were sent to the Senate recently as separate legislation. We hope for final legislation on catastrophic care before sine die adjournment. Child care legislation was dropped from the bill and is scheduled for consideration early next year. The repeal of section 89 was adopted with the debt limit bill. Many other provisions dropped in the confence will be considered separately and passed before the end of this session or will be taken up next year. These include provisions relating to pensions, the fairness doctrine, dial-a-porn, Tongass timber reforms, the Panama Canal, tariffs, trade, and social security. This conference report, like the original House bill and the budget resolution which proceeded it, is based on the budget agreement reached earlier this year by the bipartisan House and Senate leadership and the White House. As a result, it shares both the virtues and the faults of that agreement.

You are all aware of the faults. I have said time and time again that this is not the bold deficit-reduction package we need if we are truly going to confront this Nation's fiscal problems. Many of us were very much in favor of addressing these problems head-on this year with a package of defense and entitlement reductions and revenue increases. But politics got in the way, and when the campaign slogan, "read my lips," became the governing philosophy of this administration, it removed all incentives for either the President or the Congress to face up to the real, tough choices that have been avoided for far too long. So, yes, this package, as strong as it is, trims the deficit at the margins rather than at the core.

Clearly the 130-day sequester set in the conference report is preferable to a full-year sequester—the alternative if we fail to adopt the conference report. But the fact that we had to retain any sequestration represents a failure of both the administration and the Congress to face up to our responsibilities. The purpose of the bipartisan budget agreement was to avoid sequestration altogether.

The House and Senate leadership finally agreed to a 130-day sequester to secure the administration's support of the reconciliation package.

The House today faces a very simple choice. Do we pass this bill and rescind sequestration, or do we allow sequestration to remain in effect for the remainder of the fiscal year?

Many of you have read the dear colleagues I have sent out earlier this year detailing the impact of a full-year sequester. Let me remind you today of just a few of the effects: Over 175,000 students would not receive Pell grants enabling them to attend college; nearly 25,000 fewer children would be served by head start; 1,000 NIH health research; air traffic controllers and maintenance personnel might have to be furloughed; resources for the war on drugs would be severely curtailed; the 1990 census would either be delayed or have its accuracy significantly reduced; NASA's shuttle program would be limited; and 3,600 new low-income housing units would not be built. And I repeat, these are just a few of the areas that would be affected.

That is the choice we face. To vote no is to abandon our responsibility and allow for these arbitrary reductions in vital programs that both Congress and the administration care about. A yes vote provides for real deficit reduction agreed to by House and Senate conferees, sets important precedents for achieving even stronger reconciliation bills in the future, and gives us all greater hope that ultimately we can confront the tough challenges that await us in the future. I urge you to support the conference report.

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Mr. FRENZEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill that we are presenting as a reconciliation document is one of the first reconciliations that I will have voted for by the end of the evening. I think it is a trail breaker from the standpoint of the precedents it sets. I cannot remember a reconciliation bill that included as much real savings as this bill includes.

In addition, Mr. Speaker, I cannot remember a reconciliation bill that had fewer extraneous pieces of legislation clinging to it than this one does.

Those may seem like small things to some of our Members, and yet it is terribly important for control of the process that we try to keep this bill relatively clean and that we try to make it savings-real rather than ephemeral.

Mr. Speaker, this is a huge bill, and none of us can go through all of the pieces of it this evening. On the Republican side we have a good number of our House budget staff here present. Members who wish to converse with them are invited to do so. We have some handouts which are available at the desk, but there are important policy pieces which Members will want to look at closely.

Mr. Speaker, some of them will deal with the treatment of hospitals, particularly big city hospitals and the rural hospitals which we think got extraordinarily good treatment this year. Another important portion is the real

value system of physical payment which we are inaugurating this year to be effective a few years out. I think my colleagues will find extraordinary interest from the public for this program.

Most important to me, however, is the fact that we have brought home some real savings. I asked my staff to compare this bill to what we would get under sequester, and, forgetting about the interest savings, sequester will develop in 5 years $76 billion of savings. This bill will represent $73 billion of real savings. It is almost a horse apiece. We are getting as good a deal as we would with sequester. With sequester we would have to cut appropriated amounts 5 percent across the board. With this bill the 4 months and 1 week sequester, which has been spread over the whole year, will only reduce appropriated amounts by around 1.4 percent.

This bill is not perfect. I would like to have many more savings in it than are in it. On the other hand, it represents, I think, a significant accommodation by both the Republicans and the Democrats and the administration. We tried to work out the feelings and the needs of the appropriate groups, and we have done, I think, a workmanlike job in presenting this bill.

As I said earlier, Mr. Speaker, it will be the first reconciliation that I can remember having voted for. I would like to give appropriate credit to the leaders of the House, particularly the chairman of the committee, the gentleman from California [Mr. PANETTA], the Speaker, the majority leader, the minority leader, and others. I would also like to say this bill stems from the bipartisan budget agreement fashioned by President Bush and the leaders of this Congress, and it has been, I think, the President's strong interest and strong hand that has caused this bill to come before us in this shape.

Mr. Speaker, the President, as my colleagues know, a few weeks ago said he would need $14 billion in real savings. Some of our savings may be questionable, but we have delivered what we think, at least according to the administration score card, ought to be pretty close to $14 billion. We think it delivers the promise of the bipartisan budget agreement, and we urge support for this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. ROSTENKOWSKI], the chairman of the Committee on Ways and Means.

Mr. ROSTENKOWSKI. Mr. Speaker, I rise in support of this conference agreement on the reconciliation bill. In many ways, this year has been characterized by slide-by budgets, off-budget financing, and other games to avoid real deficit reduction.

However, there are several aspects of this bill that deserve our attention. This bill contains historic and significant improvements in our national health care policy. For the first time since the inception of Medicare almost 25 years ago, we have reformed the way physicians are reimbursed. We have enacted a new fee schedule for doctors; we have placed limits on the amount that physicians can bill patients above what Medicare recognizes is a reasonable level; and at the administration's urging, we have enacted expenditure targets.

If total physician fees exceed a target rate of increase, all physicians will receive a smaller update the next time fees are increased. On the other hand, to the extent that total physician expenditures are less than the target, doctors will be rewarded.

With regard to hospitals, increases in payments will average over 4 percent, with even higher increases for our vulnerable safety-net inner-city hospitals and for rural hospitals. In particular, I am pleased that disproportionate share payments to inner-city hospitals serving large numbers of the indigent are increased by over 20 percent. These hospitals are the backbone of our increasingly stressed urban hospital system, and increases in these payments will go a long way toward assuring their continued ability to provide critical health services in the inner city.

There are also new reforms of physician ownership of clinical laboratories.

There are a number of important revenue provisions. Several expiring tax provisions are extended for 9 months and excessive tax benefits for employee stock ownership plans [ESOP's] are limited. The conference agreement also imposes a tax on certain ozone depleting chemicals and increases the petroleum excise tax for funding the oilspill liability trust fund.

Overall, this reconciliation measure will reduce the deficit by more than $14 billion. The major health initiatives alone make this a worthwhile piece of legislation. These important provisions, combined with the deficit reduction measures, deserve the support of the House.

At this time, I would like to state my understanding that the purpose of the provision in this bill relating to trade show facilities was not to alter the law as it existed in 1986 at the time of the passage of the Tax Reform Act, but rather to clarify that the existing law has application to a trade show facility that is located in a physical structure that also contains other nontrade show-related facilities.

Mr. Speaker, I would like to comment on an issue that has been brought to my attention by Congressman PETE STARK relating to the deductibility of certain reserves established in connection with group accident and health insurance plans subject to a minimum premium rider. During the term of such riders, the employer is responsible to the insurer for funding claims up to a certain trigger-point amount on a cumulative monthly basis. These minimum premium riders do not change the risk assumed by the insurance company, and the insurer remains liable for all unpaid claims as of the date of termination of the rider. The insurance company reflects on its annual statement a liability for the future unpaid claims upon termination of the minimum premium rider in an amount essentially equal to the termination premiums.

The Internal Revenue Service has taken the position, in a technical advice memorandum, that an insurer in these circumstances is not entitled to a current deduction for additions to its reserve. This may be a "Catch 22" situation: The IRS denies a current unpaid loss deduction on the ground that the insurer's liability does not arise until some future date, and at the same time the IRS denies a current unearned premium deduction on the ground that risks insured against have occurred during the policy year.

I understand that a clarifying amendment regarding this issue was adopted in the Senate Finance Committee as part of their reconciliation bill, but was later dropped because of Senate procedures.

I agree that this matter should be clarified as expeditiously as possible. Mr. STARK has advised me that he believes that a current deduction should be permitted to an insurance company in these circumstances. In my opinion, Mr. STARK's analysis of this issue would appear to be reasonable. If this matter is not satisfactorily resolved by early next year, it would be my intention to have the Committee on Ways and Means pursue a legislative clarification of this issue as quickly as possible.

I ask unanimous consent that a brief summary of the major provisions of the bill be printed in the RECORD.

SUMMARY OF MAJOR PROVISIONS OF BUDGET RECONCILIATION CONFERENCE AGREEMENT

*Revenue-raising provisions*

In order to meet the revenue targets set by the leadership for the reconciliation of the fiscal year 1989 budget, and to improve the fairness and administration of the tax laws, the Conference agreement contains several revenue-raising provisions.

1. Corporate Provisions

The Conference agreement adopted several modifications to the Federal tax treatment of corporations. Many of these revisions respond to issues regarding mergers, acquisitions, and excessive levels of corporate debt. One provision would bifurcate the yield on certain obligations having original issue discount into an interest portion that is deductible when paid and a portion which has some characteristics of a return on

equity. Another provision would limit tax refunds arising from interest payments on debt that replaces equity. An additional provision would limit a corporate taxpayer's deductions for interest paid to related parties with respect to certain payments of interest to recipients that are not subject to U.S. taxation.

2. Accounting provisions

The Conference agreement would repeal the percentage-of-completion/capitalized-cost method of accounting, with a modification for certain *de minimis* amounts allocated to contracts. The Conference agreement also modifies the treatment of costs of acquiring franchises, trademarks and trade names, allowing an amortization of certain capital costs over a 25-year period.

3. Excise tax provisions

The Conference agreement suspends the Airport and Airway Trust Fund tax reduction trigger, imposes a tax on certain ozone-depleting chemicals, and increases the petroleum excise tax for funding the Oil Spill Liability Trust Fund. The Conference agreement also modifies other present law excise tax provisions.

4. Employee Stock Ownership Plans ("ESOPs")

The Conference agreement would repeal the partial interest exclusion for certain ESOP loans, and limit the deduction for dividends paid on ESOP stock. Generous transition relief would be provided.

5. Miscellaneous Revenue-Raising Provisions

The Conference agreement accelerates the time of collection of the payroll tax deposit for wages and other taxes to be deposited greater than $100,000. In addition, the Conference agreement contains several miscellaneous revenue-raising provisions with respect to the laws governing tax-exempt bonds and foreign tax rules.

*Extensions of expiring tax provisions*

The Conference agreement extends, with modifications, several expiring tax provisions for three-quarters of 1990, or for a period ending on September 30, 1990. The list of extended expiring tax provisions includes: exclusion for employer-provided educational assistance, targeted jobs tax credit, mortgage revenue bonds and mortgage credit certificates, research and development tax credit, low-income housing tax credit, allocation of research and development expenses, qualified small-issue bonds, business energy tax credits for solar, geothermal and ocean thermal property, deduction for health insurance expenses of self-employed individuals, and exclusion for employer provided group legal services.

*Simplification of the Tax Laws*

1. Corporate Minimum Tax Provisions

The Conference agreement adopted a comprehenive simplification of the corporate minimum tax, including removing all references to the taxpayer's book treatment in computing the present-law adjusted current earnings preference, expanding the availability of the minimum tax credit and allowing, as is currently allowed for regular tax purposes, a dividends-received deduction for minimum tax purposes.

2. Revision of Civil Penalties

The Conference agreement includes modifications which improve the penalty provisions of the tax law. In general, various accuracy penalties would be consolidated and coordinated to eliminate stacking of penalties, and other penalties would be modified.

3. Arbitrage Rebate

The Conference agreement extends the present-law six-month exception from arbitrage rebate to two years for certain bonds issued for construction projects.

MEDICARE AND HEALTH PROVISIONS

*Part A*

1. Reduction in capital payments to hospitals

Hospital capital related costs would be reducted by 15% effective January 1, 1990 through September 30, 1990.

2. Payments to hospitals

(a) The update factor for 1990 for hospitals in large urban areas would be market basket minus 1.10% and for hospitals in other urban areas market basket minus 1.75% effective January 1, 1990. The update for hospitals in rural areas would be market basket plus 3.0%. These updates include the effect of a 1.22 reduction in the weighting factors for DRGs effective October 1, 1989.

(b) Disproportionate share payments to inner-city hospitals would be increased by revising the multiplier to .6 and to .65 for high disproportinate share hospitals.

(c) Rural referral centers designations would be extended, the sole community hospital program would be expanded and an Essential Access Community Hospital (EACH) hospital demonstration program established. The Secretary of the Department of Health and Human Services (HHS) is required to develop a proposal for phasing-out the urban-rural differential by 1995. In the interim, Medicare-dependent small rural hospitals would be offered alternative payment. Also, a Geographic Classifications Review Board would be established.

3. Cancer hospitals

Cancer hospitals would be exempt from the prospective payment system.

4. Hospice payments

Hospice payments would be increased by 20% for FY 1990 and indexed thereafter.

5. Sequester

Part A payments would be reduced by 2.1% through December 31, 1989.

*Part B*

1. Physician payment reform

The Medicare physician payment system would be revised based on a three-part package, plus a program of outcomes and effectives research.

A resource-based relative value scale would be implemented with a five year phase-in beginning on January 1, 1992. Approximately 60% of the fees—the overhead component and 25% of the physician work component—would be adjusted for costs in geographic areas.

Medicare Volume Performance Standards (MVPS) would be set for 1990 and subsequent years. Factors included in the calculation of the MVPS would be the weighted average increase in the reasonable charge or fee schedule amounts, the increase in the number of Medicare beneficiaries, historic volume increases, statutory changes in the program (other than changes in prevailing charges and fee schedule amounts), and a performance standard. The performance standard for FY 90 is set at −0.5%.

The reform package also includes protections for beneficiaries, establishing limits on actual charges that are phased-in to 115% of the fee schedule amount in 1993.

The outcomes and research program includes both a research program on the appropriateness of medical treatments, and creating guidelines that can be used in reviewing the quality, effectiveness and appropriateness of medical care.

2. Overvalued procedures

Physician procedures would be designated as overvalued if they exceed the RB RVS value by at least 10%. Payments for these procedures would be reduced by one-third of the difference, subject to a 15% maximum.

3. Radiology and anesthesiology services

Radiology services would be reduced by 4%. Nuclear physicians would be exempt from the radiology fee schedule.

Anesthesiology services would be paid based on the basis of actual time.

4. Payments to physicians

(a) The update for physician services for 1990 would be set at MEI for primary care services, 2% for other services, and at 0% for overpriced, radiology and anesthesiology services. The update for 1990 would be delayed to April 1, 1990.

(b) MAAC limits as provided by current law would be extended to January 1, 1992.

(c) Customary fees for new physicians would be limited to 85% of the prevailing charge level in the second year of practice. Fees for certain physician services would be limited to the level of the prevailing fee of the specialty that provides the service most frequently.

5. Hospital outpatient capital payments

Hospital outpatient capital related costs would be reduced by 15% effective January 1, 1990, through September 30, 1990.

6. Clinical laboratories

The cap on clinical laboratory fees would be set at 93% of national median fee.

The fee schedule amounts would receive the full CPI update.

7. Durable medical equipment

No update would be provided in 1990. Payments for seat lift chairs and TENS equipment would be reduced by 15%.

There would be no national cap on fee schedule amounts.

Motorized wheelchairs would be treated as routinely purchased items. Payment for enteral and perenteral equipment rentals would be capped at 15 months.

8. Mental health services

(a) Coverage would be extended to services of clinical psychologists and social workers.

(b) The limit on mental health benefits would be eliminated.

9. Pap smears

Pap smears would be covered effective July 1, 1990.

10. Sequester

Part B services would be reduced by 2.1% through March 31, 1990.

*Parts A and B*

1. Secondary payer

The Medicare secondary payer provisions would be strengthened to improve the ability of HHS to identify Medicare secondary payer cases.

Members of religious orders would be exempt from secondary payer requirements.

2. End Stage Renal Disease program

The composite rate under Method I would be maintained through September 31, 1990. Payments under Method II would be limited to the hospital-based composite rate with a 130 percent limit for CCPD.

3. Physician ownership/referral

Referrals to clinical laboratories with which a referring physician has a financial relationship would be prohibited, effective January 1, 1992. Exemptions would be provided for hospital ownership, rural providers, Puerto Rico providers, group practices, in-office ancillaries, and pre-paid plans (HMOs).

All Medicare providers would be required to report to the Secretary regarding ownership arrangements involving referring physicians. Each Part B claim would be required to carry the name and provider number of the referring physician. GAO would study the impact of self-referral arrangements on utilization, access, cost, and quality of additional services.

4. Hospital-based nursing and joint nursing education programs

Certain hospital-based nursing programs would be treated as if they were operated by a hospital and HHS would be prohibited from any recoupment regarding alleged overpayments to hospitals on behalf of joint nursing education programs for one year.

5. HMOs

HHS would be required to publish an explanation of the methodology and assumptions used to calculate the AAPCC for HMOS and changes would be made to the coordinated open enrollment requirements. Payments for out-of-area services would be limited. The prohibition on HMO physician incentive payments would be waived for an additional year. Payments to HMOs would be sequestered through December 31, 1989.

6. Medicare baseline

The prohibition on HHS regs affecting the baseline would be extended for one year.

*Payments by Beneficiaries*

1. Part B premium rule

The 25% rule for the Part B premium would be extended for 1990.

*Other provisions*

1. COBRA continuation coverage would be extended from 18 to 29 months for those with a disability at the time of termination of employment.

*Human Resource/Income Security Provisions*

1. Extension of authority to transfer foster care funds

Extends through September 30, 1992 the current State authority to transfer unused foster care funds to the child welfare services program.

2. Independent living program

Extends through fiscal year 1992 the current foster care independent living program. The entitlement ceiling for the program would equal $50 million in fiscal year 1990; $60 million in fiscal year 1991; and $70 million in fiscal year 1992. A State match of 50 percent would be required beginning in fiscal year 1991 on amounts above $45 million. an evaluation of the program would also be required.

3. Medicaid transition in child support cases

Permanently extends the current law provision which gives families leaving AFDC due to collection of child support 4 months of Medicaid benefits.

4. AFDC quality control

The current quality control system for the Aid to Families with Dependent Children (AFDC) program would be replaced by a new system which:

(a) Imposes penalties only on those States whose error rates are above the national average (or 4 percent, whichever is higher).

(b) Establishes penalties based on a sliding scale which reflects the degree to which a State's error rate exceeds the national average (or 4 percent, whichever is higher).

(c) Takes into account both overpayments and underpayments that are made to AFDC recipients, and gives States an incentive to improve their AFDC child support collection programs.

(d) Establishes a new Quality Control Review Board to resolve disputes between States and the Federal government over whether quality control review cases involve errors.

(e) Retains the Departmental Appeals Board to resolve all other issues in dispute between the States and the Federal government.

(f) Allows States to appeal decisions of the Departmental Appeals Board to Federal District Court.

(g) Provides that any sanction amount owed by a State will be due within 45 days of the date notice of the disallowance is received by the State. The State may pay immediately, or the Secretary and the State may enter into an agreement under which repayment may be made over a period of up to two and one-half years. Interest will accrue beginning 45 days after receipt of the notice. If a subsequent appeal is decided in the State's favor, the Federal government will repay all State payments with interest.

The new quality control system will be effective beginning with fiscal year 1991. Sanctions imposed in 1992 will be based on error rates determined for 1991. All sanctions for error rates determined for years before 1991 are waived.

5. AFDC and emergency assistance regulations

Prohibits HHS from issuing proposed regulations published on December 14, 1987 with respect to the use of emergency assistance or special needs funds. The Department could issue proposed rules that are consistent with the recommendations of the recent HHS report on emergency assistance. Final regulations could not be issued prior to October 1, 1990. States would be required to submit financial reports on the use of emergency assistance and special needs funds.

6. Increase Federal reimbursement for foster and adoptive parent training

Federal reimbursement would be allowed for foster and adoptive parent training under Title IV-E at the rate of 75 percent for fiscal year 1990 through fiscal year 1992. Reimbursable activities would include the short term training of foster and adoptive parents and the staff of licensed or approved child care institutions providing Title IV-E foster care.

7. Require health and education records in the child's case plan

Requires that a foster child's case plan include certain specific information regarding the child's educational and health status. The health and education record must be reviewed and updated at the time of each placement of a child in foster care and supplied to the foster parent or foster care provider.

8. Review of State Compliance With Child Welfare Requirements

Effective for the period June 9, 1989 through September 30, 1990, the Secretary of HHS could not reduce payments to or seek repayments from any State under the foster care or child welfare services program, as a result of a State's failure to pass a section 427 triennial review for any fiscal year preceding fiscal year 1991. Section 427 reviews measure compliance with certain requirements which are designed to protect children in foster care.

9. SSI Outreach Program for Disabled and Blind Children

Establishes a permanent SSI outreach program for disabled and blind children.

10. SSI Benefits for Disabled Children of Parents Overseas

Extends eligibility for SSI benefits to disabled children who reside with a parent who is a member of the U.S. Armed Forces assigned to permanent duty ashore outside the U.S., and who during the month prior to the parent's assignment abroad was receiving SSI disability benefits.

11. Waiver of SSI Income and Resource Deeming Rules for Certain Severely Disabled Children

Waives the SSI income and resource deeming rules in the case of severely disabled children who were eligible for SSI while in a medical institution and who qualify for Medicaid under a State home care plan.

12. Exclusion From SSI Income of Domestic Commercial Transportation Tickets Received as Gifts

Disregards, in determining income for SSI purposes, gifts of domestic commercial transportation tickets which are used by the individual and not converted to cash.

13. Reduction in Time During Which Income and Resources of Separated Couples Must Be Treated as Jointly Available Under SSI

Treats a married couple as separate individuals beginning with the first month following the month of separation.

14. Exclusion of Interest and Accruals on Burial Spaces From SSI Resources Limits

Requires that in determining income and resources for purposes of SSI eligibility, interest and other accruals on burial spaces must be excluded.

15. Exclusion of the Value of Income-Producing Property Under SSI

Requires that the value of property which is used in a person's trade or business, or in the employment of a family member, be excluded from the equity value of the person's property.

16. Minnesota Family Investment Plan Demonstration Project

Permits the State of Minnesota to test its welfare reform initiative.

17. Permanent Increase in Title XX

Permanently increases the Title XX social services block grant by $100 million beginning in fiscal year 1990. The additional funds would not be earmarked.

18. Increase in Child Welfare Authorization

Permanently increases the authorization for the Title IV-B child welfare services program from $266 million to $325 million.

19. Demonstration Project

Authorizes demonstration projects in 10 communities to test the use of volunteer senior aides to provide basic medical assistance and support to families with disabled or chronically ill children.

20. Treatment of Agent Orange Settlement Payments

Excludes Agent Orange settlement payments from income and resources under SSI, AFDC, Medicaid, Title XX and several other programs.

*Social Security*

1. Continuation of Disability Benefits During Appeal

The conference agreement extends for one year the provision of current law permitting disability insurance beneficiaries to elect to have their benefits continued during appeal.

2. Extension of General Fund Transfers to Railroad Retirement Tier II Trust Fund

The conference agreement extends for one additional year (to October 1, 1990) the transfer of proceeds from the income taxation of railroad retirement Tier II benefits from the general fund of the Treasury to the railroad retirement trust fund.

3. Extension of Disability Insurance Program Demonstration Project Authority

The conference agreement extends for three additional years the authority of the Secretary of HHS to conduct work incentive demonstration projects.

4. Prohibition Against Termination of Coverage of U.S. Citizens and Residents Employed Abroad by a Foreign Affiliate of an American Employer

The conference agreement prohibits American employers from terminating the social security coverage of U.S. citizens and residents employed abroad in their foreign affiliates.

5. Treatment of Refunds by Employers Under the Medicare Catastrophic Coverage Act of 1988 for FICA and Other Purposes

The conference agreement excludes from wages for FICA, FUTA, and railroad retirement and railroad unemployment insurance tax purposes refunds provided to individuals by employers under the maintenance-of-effort provision of the Medicare Catastrophic Coverage Act of 1988. In addition, the agreement gives the Secretary of the Treasury authority to prescribe the manner in which the refunds are to be reported.

6. Repeal of Carryover Reduction in Retirement or Disability Insurance Benefits Due to Receipt of Widow(er)'s Benefits Before Age 62

The conference agreement eliminates the carryover reduction applied to retirement or disability benefits received by widow(er)s who collected widow(er)'s benefits before age 62.

7. Extension of Social Security Coverage Exemption for Members of Certain Religious Faiths

The conference agreement extends the existing religious exemption from social security coverage to: (a) qualifying employees of partnerships in which each partner holds a religious exemption from social security coverage, and (b) qualifying employees of churches and church-controlled non-profit organizations who are treated as self-employed for purpose of social security taxation.

8. Inclusion of Employer Cost of Group-Term Life Insurance in Compensation Under the Railroad Retirement Tax Act

The conference agreement makes employer-paid premiums for group-term life insurance coverage in excess of $50,000 subject to the railroad retirement payroll tax, bringing the treatment of such premiums into conformity with their treatment under the Social Security Act.

9. Inclusion of Deferred Compensation Arrangements, Including 401(k) Plans, in Compensation Under the Railroad Retirement Tax Act

The conference agreement makes contributions to 401(k) deferred compensation plans subject to the railroad retirement payroll tax, bringing the treatment of such contributions into conformity with their treatment under the Social Security Act.

10. Codification of the Rowan Decision With Respect to Railroad Retirement

The conference agreement stipulates that, except for meals and lodging provided for the convenience of the employer, nothing in Internal Revenue Service (IRS) regulations defining wages for purposes of the income tax is to be construed as requiring a similar definition for purposes of the railroad retirement payroll tax, thus conforming the Railroad Retirement Tax Act to the Social Security Act.

11. Improvements in Social Security Administration Services and Beneficiary Protections

The conference agreement makes a number of improvements in SSA procedures regarding correction of earnings records; standards applicable in determinations of fault, good faith and good cause; same-day interviews on time-sensitive matters; notices sent to blind social security beneficiaries; legal representatives of claimants; and the avenues of recourse open to potential applicants who lose benefits because SSA provides them with inaccurate or incomplete information. In addition, SSA would be required to issue a report on options for increasing its use of foreign language notices. The agreement also makes conforming changes in the Supplemental Security Income program as applicable.

12. Payment of Benefits to a Child Adopted After a Parent's Entitlement to Retirement or Disability Benefits

The conference agreement provides that a child adopted after a worker becomes entitled to retirement or disability benefits is eligible for child's insurance benefits regardless of whether he or she was living with and dependent on the worker prior to the worker's entitlement.

13. Earnings and Benefit Statements

The conference agreement requires the Secretary of HHS, upon request, to provide individuals with a statement of their earnings and contributions and an estimate of their future benefits. In future years, these statements will be provided to all individuals who attain age 60, and biennially to all other individuals (for individuals under age 50, benefit estimates will continue to be provided only upon request).

14. Inclusion of Certain Deferred Compensation in the Calculation of Average Wages Under the Social Security Act

The conference agreement specifies that contributions to deferred compensation plans, including amounts deferred in 401(k) plans, would be included in the determination of average wages for social security purposes.

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Mr. FRENZEL. Mr. Speaker, I yield 5 minutes to the gentleman from Massachusetts [Mr. CONTE] the distinguished vice chairman of the Appropriations Committee.

Mr. CONTE. Mr. Speaker, I rise in opposition to this reconciliation conference report.

It used to be, when the continuing resolution was the last bill we considered, I would say if I were not an Appropriations Committee member, I would rebel at the process. How dare anybody ask me to vote for a stack of Xeroxed materials that I had not seen nor examined. Well, for the past 2 years, Appropriations has finished its 13 bills, and there are no more abusive full-year continuing resolutions.

But now we have a new culprit, reconciliation. How dare anyone ask me to vote for this unexamined mass of legislation. I rebel. The budget summit concluded in April, the budget resolution passed in May, and reconciliation was to be completed in June. Yet here we are acting on legislation put together in the darkness of the 11th hour of the 11th month.

Second, to achieve the $14 billion in deficit reduction, this package conducts a raid on appropriations. One-third of the so-called savings in this package come from keeping sequestration in place through the first week in February. That is unacceptable in my book. As Members have heard me say over the past weeks, sequestration is a meat ax, chopping the good programs with the bad. Appropriations bills were enacted within their own constraints this year. The budget was tight. And yet, because other committees could not meet their deficit reductions—maternal and child health care, research on cancer, heart, kidney, student aid, and so forth, all get cut. That is wrong.

The way the process has worked, or should I say, not worked, has shown several fundamental flaws in the process: first, appropriations programs had no real representation in the Reconciliation conference, despite the fact that appropriations programs take the brunt of sequestration. We were cut out, and that is wrong.

Second, the incentives in Reconciliation are all wrong. Those Committees, like Merchant Marine and Fisheries, with the Coast Guard user fee, that do not meet their deficit targets, get off scot free. Indeed, the penalty for not meeting those targets is that deficit reduction gets taken out of someone else's hid—the appropriations programs that get hit with sequester. That is a fundamental flaw in this bill.

And third, there is no penalty for not keeping to the budget summit agreement that was reached last year. The Office of Management and Budget, the House and Senate leadership, and the budget leaders signed off on a package in April calling for no sequester and $14 billion in real savings. Yet, in November, the Office of Man-

agement and Budget simply walked away from that agreement. That bodes ill for our ability to depend on such agreements in the future. This Reconciliation bill once again puts the burden on programs like health or education.

Yet, the underlying problem remains the failure to gain control over the entitlement and manadatory programs over which we have no control. Between 1980 and 1989, spending for entitlement programs grew from $269 billion to $526 bilion, while spending on discretionary programs grew from $155 billion to $193 billion. Until we get a grip on entitlement programs, the deficit will not be brought under control. This reconciliation bill fails to make any significant effort to address the root cause of the deficit, and so I cannot give it my support.

AMERICAN LUNG ASSOCIATION,
*November 20, 1989.*

Hon. SILVIO CONTE,
*Ranking Minority Member, House Appropriations Committee, Longworth House Office Building, Washington, DC.*

DEAR REPRESENTATIVE CONTE: The American Cancer Society, the American Heart Association, and the American Lung Association, this Nation's largest voluntary health organizations with a total membership of over 5 million volunteers, urge you to enact a budget reconciliation measure with $14 billion of savings that will fully restore the sequestration of discretionary programs.

We are concerned about the proposal to achieve budget savings through a partial sequestration of discretionary programs. This is a dangerous precedent, usurping the jurisdiction of the Appropriations Committees which have already made significant sacrifices to meet budget savings targets.

A partial sequestration will have a devastating effect on the programs to advance progress in the battle against the leading causes of disability and death in the United States. These vital programs have already been scaled back by the appropriations process.

Again, we urge that Congress achieve budgetary reconciliation targets without a further deterioration of domestic discretionary programs.

Sincerely,

ALAN C. DAVIS,
*Vice President for Public Affairs, American Cancer Society.*
SCOTT D. BALLIN,
*Legislative Counsel and Vice President for Public Affairs, American Heart Association.*
FRAN DU MELLE,
*Director of Government Relations, American Lung Association.*

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Speaker, I rise in strong support of the budget reconciliation package. In addition to achieving the genuine savings called for by the President, the package includes other important items including Medicaid coverage of pregnant women, as well as children up to age 6 with incomes up to 133 percent of poverty.

I am also pleased the package includes two technical provisions I sought. The first provision clarifies current law under the spousal impoverishment provisions of the Catastrophic Coverage Act. Unfortunately, the Health Care Financing Administration has misinterpreted spousal impoverishment law and its intent in community property States like New Mexico.

In New Mexico, Medicaid income eligibility is $964 or less. Because New Mexico is a community property State, both spouse's incomes would be added together and divided by half in order to determine Medicaid eligibility. HCFA has correctly interpreted current law for initial Medicaid eligibility but has refused to apply community property methodology to subsequent eligibility determinations. As a result, some elderly individuals who now qualify have been determined to be ineligible and will be kicked out of the program because of HCFA's misinterpretation of the statute. This provision will clarify that community property rules apply to both initial and all subsequent eligibility determinations.

I am also pleased the budget reconciliation package includes a technical provision correcting a problem that exists for New Mexico hospice programs as well as for hospice programs in some other States. In the Comprehensive Omnibus Budget Reconciliation Act of 1986 [COBRA], Congress made clear its intention that terminally ill nursing home residents are entitled to hospice services under Medicare and Medicaid. Because two-thirds of nursing home residents rely on Medicaid for nursing home coverage, COBRA provided that States should establish a room and board rate to cover the costs of nonhospice services provided to Medicaid individuals who elect hospice coverage in nursing homes. Unfortunately, HCFA has failed to issue regulations to assist States in determining the room and board rate for hospice patients.

Some States, including New Mexico proceeded, without the benefit of HCFA regulations, to establish rates which unintentionally discourage participation in hospice by nursing home residents. The unintended result is that in New Mexico, dying nursing home residents cannot receive hospice care but instead must engage in a cycle of repeated trips between the nursing home and the hospital.

The provision included in the package we are debating today requires that States which choose to cover hospice care pay the hospice organization an amount equal to at least 95 percent of the rate that would have been paid by the State under Medicaid to the nursing home facility for that dying individual.

The importance of this technical correction goes far beyond the State of New Mexico. Forty-seven percent of the Nation's ill elderly have no family members to assist in caring for them in their own homes. These individuals often become nursing home residents and then may subsequently become terminally ill. In COBRA, Congress acted to ensure hospice access for these individuals. This correction ensures that no unintended disincentive will frustrate the intent of Congress and the desire of hospice programs to provide care to those dying patients residing in nursing homes.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri [Mr. CLAY].

Mr. CLAY. Mr. Speaker, I rise in support of the conference report on H.R. 3299, the Omnibus Budget Reconciliation Act of 1989. Although the bill does not contain several pension provisions that I care about deeply, it does make necessary amendments to and clarification of the Employee Retirement Income Security Act of 1974 [ERISA] and the Internal Revenue Code (the Code) that will better enable plans to comply with the law, protect plan participants and beneficiaries, and strengthen enforcement of current law.

Once again the chaotic budget conciliation process has produced a bill that leaves participants in so-called overfunded pension plans at the mercy of corporate raiders and employers desiring access to ready cash to use for other corporate purposes. Over $20 billion in pension assets have been removed from the defined benefit pension system since 1981 and that number continues to escalate as employers scramble to terminate plans before Congress finally puts a halt to this offensive practice of employer reversions.

Unfortunately the strong financial incentives for employers to terminate pension plans prematurely to recover assets will still exist even after this bill is passed. As long as it is so easy for employers to gain access to pension assets, unnecessary plan terminations will continue to occur.

This year the business community had a two pronged agenda with respect to pension plan assets: to prevent Congress from curbing asset reversions when pension plans terminate and to expand employer flexibility to use the deferred wages of workers to satisfy other corporate obligations by convincing Congress to permit them to transfer assets from an ongoing pension plan to pay for the employer's retiree health obligations to another group of workers.

Many Members of this body agree with me that the issues of employer reversions and retiree health transfers are inextricably linked and thus ought only to be considered by and acted upon by Congress at the same time. The leadership in the other body as well as the chairmen of both the Labor and Finance Committees agreed and refused to agree to legislative change on either issue until both were resolved. Thus this conference report contains neither the proposals of the Committee on Education and Labor or the Committee on Ways and Means with respect to the use of so-called surplus pension assets. The provisions prohibiting pension reversions from terminating pension plans and permitting limited transfers of pension assets from ongoing plans to pay retiree health benefits have all been deleted from the final bill.

Although we would have strongly preferred to have resolved these issues this year, the absence of legislative change in the pension reversion area gives us another opportunity to work with our colleagues on the Committee on Ways and Means and in the other body on the labor and tax committees to fashion a

compromise solution to this long-standing problem.

In the long run, it is not simply participants and retirees under terminated plans that suffer from Congress' inability to resolve this issue in a timely fashion. Premature plan terminations undermine our national capital and savings pool. For most Americans, money saved through their pension plans is the largest source (and, in some cases, the only source) of savings they will have to supplement their Social Security and Medicare benefits in retirement. And pension assets represent the largest pool of capital available for investment.

The assets that employers have recovered when pension plans terminate prematurely represent a tremendous windfall for employers since, according to testimony by a major actuarial consulting firm, less than 10 percent of those assets exist because of any enhanced investment performance or skill on the part of employers. Most of the socalled surplus when pension plans terminate occurs as a result of the normal operation of ERISA's minimum funding rules that assumes an ongoing pension plan and the fact that the termination itself generates a substantial surplus of assets.

I am hopeful that next year we will finally put this issue to rest.

The conference agreement does incorporate some pension changes that I support. For instance, we have finally been able to accomplish some of the most necessary changes to ERISA that have been part of bipartisan miscellaneous ERISA amendment bills for the past several years. While I have strong procedural objections to the process by which some, but not all, of the conferees determined which changes were to be included in the bill, at least many of the necessary changes were finally made. In particular, I am pleased that my suggested modifications of notice rules for multiemployer plans under the health insurance continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 [COBRA] are included in the conference agreement and that Congress will finally assure that, under the COBRA rules, qualified beneficiaries will not have gaps in their health insurance coverage as a result of their preexisting medical conditions.

Finally, I support the new mandatory civil penalty that we have adopted in lieu of the increase in the premiums paid by single-employer defined benefit plans to the Pension Benefit Guaranty Corporation. The Committee on Education and Labor has long been concerned about ERISA enforcement. For many years, the Department of Labor's reluctance or inability to mount a vigorous crackdown on those who violate the law has been the subject of criticism from Members of Congress, their constitutents, Government auditors (including the General Accounting Office and the Department's own Inspector General), and outside parties.

When Congress enacted ERISA, it is clear that it never contemplated an enforcement scheme entirely dependent on the efforts of the executive branch. Given the number and variety of employee benefit plans and the size of the asset pool involved, the enforcement capability of the two Federal agencies primarily responsible for enforcing the law, the Departments of Labor and the Treasury, has been severely strained. Many believe that they cannot keep pace with the growth and development of creative methods by plan sponsors, service providers, and plans to evade the law.

Participants and beneficiaries simply cannot depend entirely on the Federal agencies to safeguard their rights. Wisely, the framers of ERISA authorized private rights of action so that the courts could provide invaluable assistance in the enforcement area. Congress recognized that, although the statute itself was by far the most comprehensive attempt made by Congress to regulate the employee benefits area to date, many issues were either not addressed or addressed in an incomplete fashion. Thus the legislative history of ERISA made it clear that the Federal courts were both authorized and encouraged to create a Federal common law under ERISA to fill in the gaps.

Many courts have taken this responsibility seriously and a growing body of Federal common law is developing. These efforts may have suffered an unexpected temporary setback with the Supreme Court's 1987 decision in Pilot Life Insurance Company versus Dedeaux. Many are concerned that the effect of this decision preempting State laws authorizing punitive or other extracontractual damages in connection with claims for benefits is effectively to deny them legal recourse.

In Pilot Life, the Supreme Court held that State common law claims against an insurance company for breach of contract and bad faith arising from an improper denial of disability benefit claims under ERISA were preempted. In addition, the court declined to adopt a Federal common law remedy for this violation holding that the civil enforcement provisions contained in section 502 of ERISA were intended to be the exclusive remedies afforded to plan participants and beneficiaries. Although the Court was correct to hold the State law in question was preempted, it incorrectly construed congressional intent with respect to the creation of a Federal common law of remedies.

Last month, the Subcommittee on Labor-Management Relations, which I chair, held hearings on access to health insurance. Some of our witnesses addressed the issue of the impact of the Pilot Life case on ERISA enforcement. Not surprisingly, those representing plan participants were critical of the Supreme Court's action and those representing the insurance industry applauded it.

As a practical matter, however, the effect of the decision is to undercut the ability of the courts to deter willful or negligent misconduct. Numerous complaints have poured in since this case was decided. Generally it is alleged that insurance companies have deliberately delayed or refused payment on large medical claims because they recognize that the worst that could happen to them, even if a court rules that their actions violated ERISA, is that they would have to pay the claims. Presumably the insurance company assumes that most participants with large medical claims cannot afford to sue, and others, particularly AIDS victims who often experience this type of problem, will be dead before any judicial decision can be rendered.

Although this callous behavior has been exhibited by relatively few insurance companies or plan administrators, reasonable people agree that those engaging in egregious violations of the law clearly deserve to be subjected to harsher penalties than those who inadvertently engage in a technical violation of ERISA. Yet, under the Supreme Court's erroneous interpretation of ERISA, if sued, it appears that both could receive the same penalty: a requirement to put the aggrieved plan participant in the same position he or she would have been had the violation not occurred. That clearly was not what Congress intended when it enacted ERISA.

In authorizing the Federal courts to have the flexibility to structure the punishment to fit the violation, the fundamental wisdom of the framers of ERISA is apparent. Congress was right in 1974 to recognize that the courts, not the Congress, could best evaluate the facts and circumstances before them and create remedies that would not only make participants whole but also deter future violations.

The civil penalty under section 502(1) adopted in this bill will give the Secretary of Labor a new tool to deter fiduciary violations. It is critical that the Secretary of Labor as well as the courts renew their efforts to safeguard the rights of plan participants by vigilant and aggressive pursuit of violations and by using every tool they have to create a strong deterrent effect for the future.

Finally, the conference report contains a so-called technical amendment to section 4402(h) of the Employee Retirement Income Security Act of 1974. This is not, however, a mere "technical amendment." In fact, the amendment is a special relief act that applies to only one company, Lady Baltimore Foods. By this amendment, Lady Baltimore attempts for the third time to obtain relief from its pension liabilities to the Central States Pension Fund by passage of retroactive legislation surreptitiously attached to a budget bill.

Lady Baltimore has persisted in these tactics in spite of the fact that a Federal district court has already opined that a previous version of the "Lady Baltimore amendment" was unconstitutional. This bill is even worse, because it seeks to retroactively annul a final Federal court decision that compelled Lady Baltimore to pay its pension obligations, together with liquidated damages and attorney's fees for failure to pay these obligations voluntarily in a timely fashion.

The Lady Baltimore amendment is, in my opinion, unconstitutional. It applies to only one company. It interferes with the workings of the judicial branch. And, it attempts to overturn a final judgment in favor of one private party so as to benefit another private party. Regrettably, because Congress has not been provided a meaningful opportunity to debate and vote on this provision, it now falls to the courts to vindicate the rights of the pension plan and the retirees who depend upon it.

**Mr. PANETTA.** Mr. Speaker, I yield such time as he may consume to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, today the House considers, as part of its budget recon-

ciliation package, major changes to the Stafford Student Loan Program.

These are important changes. They meet the budget targets we were required to meet. And they make student loan policy changes that are essential if we are to maintain the integrity of our Federal Student Aid System.

These changes are a compromise between the House-passed budget reconciliation bill and the Senate's version of that legislation. It is a compromise that is consistent with our concerns when we passed our bill, and it addresses all of those concerns.

Let me give you some of the highlights of the legislation we are considering today. It limits borrowing in the Supplemental Loan for Students [SLS] Program to only those schools that have a default rate of below 30 percent. It requires a 30-day delayed disbursement of an SLS loan for first time, first year undergraduate borrowers. It requires that all loans be made in at least two disbursements. It limits the amount of an SLS a student can borrow based on the length of a course a student takes. And it grants the Secretary of Education new enforcement authority to deal with schools or lenders that are abusing the student loan programs.

These are tough provisions. They will definitely have an impact on schools and students. I do not doubt that some schools might not be able to survive because of these changes. They will have a particularly harsh impact on trade schools. But these changes have to be made because things are happening in the SLS Program that were never anticipated by us and that have the potential of seriously undermining confidence and support in all student aid programs.

The SLS Program is beginning to get out of control. What was intended to be a loan of last resort program has quickly become a major source of postsecondary education financing. In 1985 97,000 SLS loans were made. This year, over 700,000 will be made. In 1985 those loans totaled $259 million. This year that figure will be over $2 billion.

Most of those loans are going to first-year students, students who have not had the chance to prove that they can benefit from the education and training they are undertaking, yet who are becoming saddled with large loan debts.

Many of these loans are going into default. In 1987 SLS loan defaults were $14 million. This year that figure will rise to $247 million. And according to the Department of Education, SLS defaults will total $600 million by 1994 if we fail to act.

And, contrary to the intentions of the architects of the SLS Program, many of these loans are going to students attenting trade schools. More than 60 percent of SLS loans go to these students. And 86 percent of the SLS loan defaults is in the trade school sector.

These developments underscore a potential crisis that is about to explode, a crisis that threatens all student aid programs. And this year the Appropriations Committee clearly indicated how serious they consider that crisis to be. Student aid funding did not receive the kind of funding increases those programs so desperately need because of the belief on the part of the Appropriation Committee members that there is too much abuse currently existing in the student loan programs. That impression has to be changed, and the legislation we are considering today does that.

Mr. Speaker, through this legislation we are sending a loud and clear message: That student loan defaults are creating a significant hemorrhage of Federal dollars and those losses must be stemmed. I am attaching for the record, the changes we are herein making to the Nation's student loan programs.

HOUSE/SENATE AGREEMENT ON BUDGET RECONCILIATION

(1) Medical Student Loan Internship Deferments, including mandatory forbearance provisions.

(2) Eliminate undergraduate borrowers attending schools with calculated cohort default rates of 30 percent or more from participating in the SLS program except allow current borrowers at those schools to participate in the SLS program until their program is completed. This provision also includes language that would limit the ability of an institution from evading this provision through change of ownership, branching or consolidation.

(3) Require that all SLS disbursements be made 30 days after the beginning of the course of instruction for all first-time, first-year, undergraduate borrowers. This provision also includes language that would require institutions to certify that a student is still enrolled and is maintaining satisfactory progress.

(4) Establish a 6 month amnesty program for defaulted student loans.

(5) Require GSL and SLS disbursements to be made in a minimum of two parts, with no disbursement exceeding one-half of the loan amount.

(6) Provide the Secretary with the authority to take emergency action for 30 days against lenders and institutions.

(7) Prohibit accreditation jumping by denying aid eligibility should accreditation be withdrawn or should the institution withdraw under suspicion of termination.

(8) Remove prohibition by the Secretary against the use of the National Student Loan Data system in verifying student eligibility or student information before a loan is certified or guaranteed. This provision also modifies the data elements to be collected.

(9) Provides the Secretary with the authority to take emergency action for 30 days against institutions and provides the Secretary with the authority to limit, suspend or terminate institutions' agents when there is reliable information that such entities are in violation of the law. This provision also permits guarantee agencies to exercise the same authority.

(10) Clarity the prohibition against using aid administrator discretion for whole groups of students.

(11) Require all schools to insure that a student is enrolled in a GED program and require that all students have received GED before they are eligible for an SLS.

(12) Reduce SLS Annual Loan Limits for programs of less than one academic year based on length of program such that a student attending a program whose length is at least two-thirds of an academic year is eligible for $2500. A student attending program whose length is less than two-thirds but at least one-third is $1500. Students attending programs of one academic year or greater would be eligible for $4,000. No student is eligible to receive more than one SLS during a period of 9 consecutive months.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, I rise in support of this measure.

I want to point out two factors in this bill that came out in this bill that I hope the Members have a chance to read. One refers to the passage of the approved penalty, it is the civil tax penalty reform measure that has been approved by the American Bar and the American Bankers and Accountants and a great improvement in our Tax Code.

The other measure is the rural hospital bill that I commend our committee and the chairman and others, the rural coalition, for working on. Both of these are very important measures.

Mr. Speaker, I rise in support of H.R. 3299. In addition to meeting its targets for budget savings under the Gramm-Rudman law, this bill includes a wide range of important policy provisions including a major initiative to aid our Nation's rural hospitals.

This assistance could not come at a more critical time for this country's rural health care delivery system. Since 1984, a total of 159 rural hospitals—many of them the only source of acute health care for great distances—have been forced to lock their doors and turn away their patients. And the crisis is growing worse. A recent survey of hospital administrators found that as many as 600 hospitals could shut down over the next 5 years. In that survey, almost 60 percent of the administrators of rural hospitals believe their institutions are at risk of having to close their doors.

The provisions of H.R. 3299 will not ensure that all of these facilities will survive, but it will give the great majority a fighting chance. This bill incorporates virtually all of the provisions of H.R. 762, the Equity for Rural Hospitals Act, which I introduced barely 10 months ago and which over 100 Members of this House have cosponsored and this bill parallels the Rural Health Act introduced with the Senate by my good friend, Senator LLOYD BENTSEN, chairman of the Senate Finance Committee.

The legislation before us would require the Secretary of Health and Human Services to develop a legislative proposal to eliminate the current separate and lower rate of payment for rural hospitals and establish a single national hospital payment rate by fiscal year 1995. The current differential of about 12 to 13 percent between what Medicare pays rural and urban hospitals has become an unfair and unjustified distinction in the view of rural hospital administrators. The basic Medicare payment system should not systematically penalize the class of rural hospitals simply because they have been able to deliver quality

health care services at lower costs. That is inherently unfair, and it must be stopped if rural hospitals are going to survive.

In addition, as part of the adjustments in PPS payment rates, H.R. 3299 would increase payments to rural hospitals 3 percent above the medical inflation rate. This increased revenue is critical to the continued operation of these hospitals. Further, as proposed in H.R. 762, this bill includes provisions to help the most vulnerable rural hospitals. On an interim basis, the bill provides some financial relief to rural hospitals with fewer than 100 beds that depend on Medicare for 60 percent or more of their revenues. On an interim basis, payments to these facilities will be based on the higher of 100 percent hospital-specific costs based on a base year of either 1982 or 1987, or the regional PPS rates.

This legislation would also allow more rural hospitals to qualify for enhanced reimbursement as "sole community hospitals," and significantly improve the payment for these facilities. Any hospital more than 35 miles from another facility would qualify as a rural sole community hospital, and the Secretary would be authorized to designate other facilities as sole community hospital on the basis of travel time to the next nearest hospital. Hospitals qualifying under this criterion would receive 100 percent hospital-specific payments based on the higher of 1982, or 1987 costs, or PPS rates.

The bill also provides for the establishment of a board to review the applications of hospitals seeking geographic reclassification. These facilities face special problems as a result of being located so close to an urban area that they must compete for the same labor and materials with more generously compensated hospitals. Rural hospitals bordering on urban areas have come to many Members of Congress seeking assistance in this situation, especially because the Health Care Financing Administration [HCFA] has refused to use its administrative authority to grant relief or even the most legitimate inequities. This legislation creates a separate board to examine the requests of rural "border" hospitals who believe they are unfairly treated by Medicare. I think this is preferable to continuing to legislate case-by-case exceptions.

The bill would also create a major demonstration program aimed at giving small rural hospitals with low occupancy an alternative to competing with larger hospitals. The program will test the concept of developing "essential access community hospital" networks in which small hospitals would provide emergency and primary care, and transfer more costly inpatient cases to a central hospital. This demonstration, in my judgment, could be a significant alternative for small rural hospitals that just can't compete in the current market. If the program works, it would be a way for Medicare to help assure that these facilities continue to provide essential medical care to beneficiaries in rural areas.

Finally, Mr. Speaker, the bill recognizes the importance of a special set of rural facilities which act as regional centers for patients transferred from neighboring hospitals. These facilities offer a wider variety of specialized services, employ more specifically trained personnel, and have a medical staff composed of a wide variety of specialists. This bill would allow those facilities designated as rural referral centers on September 30, 1989, to maintain that designation through October 1, 1992.

Mr. Speaker, I want to express my thanks to all of those Members who joined me in sponsoring the Equity for Rural Hospitals Act, especially my good friend and colleague on the Ways and Means Subcommittee on Health, BERYL ANTHONY. Also, BYRON DORGAN, and RON FLIPPO, leaders of the House Rural Health Care Coalition and a strong voice for rural health care on the Ways and Means Committee. And, of course, the other members of the Rural Health Care Coalition, especially cochairs MIKE SYNAR and TOM TAUKE, and my good friend from Texas, CHARLIE STENHOLM. Finally, Mr. Speaker, I want to express my deep appreciation to the chairman of the Ways and Means Health Subcommittee, PETE STARK, whose leadership was instrumental in achieving this crucial assistance for rural health care.

Mr. Speaker, I am proud to tell my colleagues that the budget reconciliation package contains a far-reaching reform, which will benefit taxpayers nationwide. The House budget reconciliation package includes IMPACT, H.R. 2528, the Improved Penalty Administration and Compliance Tax Act. This protaxpayer reform measure is the result of an extensive 2-year review by the Ways and Means Subcommittee on Oversight of the civil tax penalty provisions of the Internal Revenue Code. The penalty reform provisions before the House are the result of extensive discussions with all those affected by Internal Revenue Code penalties—including accountants, lawyers, business—big and small—the administration. Most importantly, we have tried to consider the individual taxpayer and tried to make the penalties fairer to him.

With nearly 150 penalties currently in the code, the IRS, taxpayers, and tax practitioners are faced with substantial compliance and administrative burdens resulting from the complexities involved with these provisions. There are just too many penalties. Many penalty provisions are too complex for the IRS to effectively administer and, for many taxpayers, too difficult to figure out. Under our current structure, there are a number of instances where the same taxpayer behavior can be subject to more than one tax penalty. In other words, a number of the penalties overlap and stack, increasing the possibility that enormous penalties may be imposed on relatively small tax deficiencies. Reform of our tax penalty structure has long been overdue.

The new penalty provisions will provide a fairer, less complex and a more readily understandable civil tax penalty system. They will eliminate overlapping penalties and will consolidate into a single, uniform accuracy penalty the current law penalties for negligence, overevaluation and overstatement of income. Further, penalties for failure to pay and for failure to make timely deposits of tax have been improved by elimination of overlapping and by the encouragement of remedial action. Lastly, the package addresses penalties applicable to tax shelter promoters and tax protesters.

In conclusion, I know the Senate shares our belief that penalty reform is long overdue. This will be a major step toward a fairer, simpler Internal Revenue Code. We should all be pleased to know that in a matter of months, every taxpayer in this country stands to benefit from an improved Internal Revenue Code—one that is fair to all those trying to comply.

Mr. Speaker, this measure has the strong support of the U.S. Treasury, the Internal Revenue Service the American Bar Association, the American Certified Public Accountants, the American Banking Association, and many other groups across the land. I believe it is unanimously endorsed by nearly every group involved with the preparation of tax return and the payment of taxes.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. TAUKE].

Mr. TAUKE. Mr. Speaker, I want to alert my colleagues that virtually the entire rural health care caucus agenda is contained in this resolution.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. PASHAYAN].

Mr. PASHAYAN. Mr. Speaker, I rise in support of the conference report.

Mr. Speaker, I should like to explain the rule obviated by unanimous consent. House Resolution 291 was the rule under which the House was to consider legislation to reduce the fiscal 1990 Federal deficit by over $14 billion.

The conference agreement on budget reconciliation reaches the deficit reduction target by making so-called real savings of $14.7 billion. This amount is satisfactory to the Bush administration. It includes a total of $4.55 billion in funds to be sequestered.

Mr. Speaker, the chairman of the Budget Committee, the gentleman from California [Mr. PANETTA], indicated this morning that, under the agreement, the sequester will continue until the first week of February 1990. The sequester will produce deficit reductions totaling $4.55 billion.

The rule would have waived all points of order against the conference report on H.R. 3299, and all points of order against its consideration by the House today.

Mr. Speaker, the Committee on Rules reported the rule late Thursday afternoon in anticipation that the conferees would conclude their agreement over the weekend.

The House and Senate conferees reached agreement on the deficit reduction package at 1 a.m. this morning, due in large measure to the diligence and tenacity of both the gentleman from California [Mr. PANETTA] and the ranking Republican member of the Budget Committee, the gentleman from Minnesota [Mr. FRENZEL].

Mr. Speaker, since the Committee on Rules did not have any report materials available to it when it granted the rule, the committee had to guess what waivers of the rules of the House would be needed.

Mr. Speaker, the rule would have provided that the conference report shall be considered as read when called up for consideration, only if copies of the report have been available to Members for at least 2 hours.

The Committee on Rules expected that it was waiving two points of order in this rule:

First, to permit consideration of the report today, even though it has not been available for the required 3 days; and

Second, to cover any point of order if the conferees exceeded the scope of items committed to conference.

Mr. Speaker, as far as the Committee on Rules knows, these are the only two waivers to have been covered by the rule.

Mr. Speaker, the conference report is a mixture of changes in permanent law and miscellaneous tax provisions that will reduce the fiscal 1990 deficit by over $14 billion. Enactment of this bill will lower the Federal deficit to $110 billion in 1990, the target set by law.

The conference report retains includes 4 months' worth of budget deficit reductions for fiscal 1990 that result from the across-the-board cuts that were automatically imposed on defense and domestic programs on October 16, when the budget sequester provisions of the law were triggered.

Mr. Speaker, the Members are aware that various provisions of the House's version of the budget reconciliation bill sought to produce savings by moving effective dates. According to the chairman of the budget Committee, the conference agreement contains several of these time shifts, but they are not included in the deficit reduction agreement with the Bush administration.

If the balance sheet savings that will result from moving various effective dates are added to the $14.7 billion in real savings, the bill reduces the fiscal 1990 deficit by $17.8 billion.

Mr. Speaker, I want to repeat this point. The conferees reached the deficit reduction target without counting the payroll time shifts, the effective date changes for various expiring tax provisions, the date changes for agriculture deficiency payments, or the change in FICA withholding dates for employees of the Postal Service.

Mr. Speaker, passage of the conference report is critical if the House shall act in a responsible manner in dealing with the Federal deficit. Passage of the conference report will also bring us one step closer to adjournment of this session of the 101st Congress.

I urge passage of the conference report it makes in order.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri [Mr. COLEMAN].

Mr. COLEMAN of Missouri. Mr. Speaker, I rise in support of the conference report containing the subconference agreement on Stafford student loans. The agreement reached by the subconference effectively and equitably addresses the problem of escalating default rates in the Supplemental Student Loan Program, which have increased over 1,166 percent during the past 3 fiscal years. Obviously, this problem demanded a response from the Congress.

The subconference agreement includes language requiring the Secretary of Education to promulgate additional regulations to assure that his highly promising default initiative is not frustrated by practices on the part of some institutions. It was brought to the conferees' attention that some schools, employing loopholes in the current regulations and systems in place at the Department of Education, had engaged in school sales and in branching practices which effectively relieved them of having to implement procedures to reduce actual defaults under the default initiative.

The conferees urge the Secretary to issue clarifying regulations speedily, to assure that all components of an institution during the fiscal year upon which the default rate is calculated continue to be subject to the default reduction measures imposed by the law and the Secretary, regardless of subsequent change of ownership or restructuring.

The legislation adopted by the conferees provides that supplemental loans for students will not be available for borrowers attending any institution with a cohort default rate of 30 percent or above, as determined by the Secretary of Education. In addition, an eligible institution of postsecondary education may not certify a supplemental loan for any first-time, first-year undergraduate student until a date which will assure that funds will not be disbursed to that student until he or she has been enrolled for at least 30 days. Before the borrower may receive this delayed disbursement of SLS funds, an official or employee of the institution must certify that the student has actually been enrolled and has been making satisfactory progress for the 30-day period.

Although both of these provisions are silent concerning their enforcement mechanisms, I would like to point out that section 490 of the Higher Education Act already contains criminal penalties for fraud amounting of up to $10,000 and imprisonment of up to 5 years. In addition, under section 487, the Secretary of Education is authorized to impose civil fines of up to $25,000 per violation upon institutions failing to carry out the provisions of the law. I am confident that these criminal and civil sanctions will prove sufficient to assure that the law is obeyed.

Conferees specifically authorized emergency action against lenders and institutions by the Secretary of Education and by guaranty agencies in exceptional situations of substantial program abuse. Such action may not last more than 30 days, unless a limitation, suspension, or termination hearing is begun within that time.

Such actions have been successfully taken by guaranty agencies, individually or in concert, in cases of flagrant violation of law or regulations, when they have been the primary guarantors dealing with the institution or lender in question. The conferees believed that it was important to include in law this effective tool for dealing with situations where substantial loss to the Federal Treasury was imminent.

Finally, the conference agreement replaces the current section 485B, relating to a semiannual report from guaranty agencies concerning names and addresses of borrowers for whom loans have been guaranteed with a mandate to the Secretary of Education to work cooperatively with the guaranteed student loan community in developing a proposal for a national student loan data systems.

I am hopeful that the conference agreement will end this standoff. I am confident that the Secretary and th guaranteed loan community—guaranty agencies, lenders, and schools—can reach agreement on the elements of a workable data system which can be implemented reasonably easily and with little or no cost to participants. If such a system can be put into place, not only will the Federal Treasury benefit through avoidance of any ineligible borrowing which may be occurring, but also the Congress and other policymakers will have a base of information on which to base estimates and decisions.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, trying to figure out which will achieve greater reductions in the deficit, sequestration or reconciliation, is a moving target, to say the least. I am not suggesting that anybody has provided any of us with erroneous data this evening on this subject, but understanding the way this institution functions it is quite probable that if we leave sequestration in place we will achieve more redution in the deficit than we ever will achieve through the adoption of this reconciliation package.

I agree with my colleague, the gentleman from Massachusetts [Mr. CONTE]. He is absolutely right. We have a continuing resolution before us with another name. It is called reconciliation.

Since at least May or June this vehicle has been in business to achieve reductions in spending. Since this organization has been on occasion accused of being in business to increase spending, we can only conclude that is the

reason it has taken to the eve of adjournment to produce this document that is before us.

The figures that I have that I want to share for the historians here are as follows: If we leave sequestration in place over the next 5 years, we will achieve reductions in the deficit of $91.1 billion. If we adopt this reconciliation package that tonight over the same 5 years we will achieve reductions of $15.9 billion.

□ 2400

There is a substantial difference there for the overburdened taxpayers and the people who have to pay the debt in this country, and I would suggest that we are all better off by leaving sequestration in place and rejecting this reconciliation report.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Mississippi [Mr. MONTGOMERY].

Mr. MONTGOMERY. Mr. Speaker, I rise in support of the conference report.

Mr. Speaker, instructions contained in the budget resolution adopted by the Congress for fiscal year 1990 directed the Committee on Veterans' Affairs to report legislation that would save $496 million in budget authority and $666 million in outlays for fiscal year 1990.

H.R. 3299 contains the language adopted by the conferees of the Veterans Affairs' Committees that, if enacted, will fully comply with the reconciliation instructions contained in the conference agreement on the budget resolution adopted by the House and Senate.

The agreement we have reached with the other body would extend the current loan fees through September 30, 1990. In addition, the agreement would extend authority for the Department of Veterans Affairs to sell loans without recourse through September 30, 1990.

The agreement we have reached with the other body would reverse the current OMB rules for counting the proceeds of certain with-recourse sales. Section 9003 of the agreement would provide that notwithstanding any other provision of law—such as Public Laws 93-344 and 100-119—the proceeds of with-recourse sales be credited as offsetting collections of the Loan Guaranty Revolving Fund or a subsequently established revolving fund which received the fee for the original guaranteed loan. The crediting shall be made without reduction and for the fiscal year in which the proceeds were received and all amounts so credited for a fiscal year shall offset outlays of such revolving fund during that fiscal year.

The Veterans Affairs' Committees continue to disagree with the Budget Committees that the sale of loans without recourse saves the Federal Government money. We know from past sales that it costs taxpayers plenty.

VA has been forced to pay millions of taxpayer dollars in commissions to investment brokers to put together these sales, funds that could have been better used to help veterans threatened with foreclosure to keep their homes. In addition, the absolute loss of revenues needed to honor the Government's guaranty commitment makes this an absurd policy to continue. Hopefully, before the Congress adjourns we will enact legislation to correct this ill-advised policy.

Mr. Speaker, I want to thank the distinguished chairman and ranking minority Member of the Senate, Mr. CRANSTON, and Mr. MURKOWSKI and other members of the Senate Veterans' Affairs Committee who acted as conferees. I also want to thank the ranking minority member of our own committee, Mr. STUMP, and other House conferees who worked together in bringing about this agreement. Finally, I want to commend and thank the very able chairman of the Budget Committee, Mr. PANETTA, for working with all of us in resolving our differences. I also appreciate the assistance of the ranking minority member of the Budget Committee, Mr. FRENZEL and other Budget Committee conferees.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Speaker, I rise in support of the bill.

Mr. PANETTA. Mr. Speaker, I yield 4 minutes to the gentleman from California [Mr. FAZIO].

Mr. FAZIO. Mr. Speaker, I know it is impossible to convey in an hour like this, and I do not want to really take as much time as the chairman has been kind enough to give me, but the gentleman from Massachusetts [Mr. CONTE] made a very important point a minute ago. He read it into the RECORD out of frustration. I do not think very many people listened. We are establishing a very negative trend in the adoption of this reconciliation package. One-third of the real savings comes from the partial sequestration through the end of the first week of February. We made savings by simply allowing sequestration to go into effect and negotiated that out with OMB.

What that means is that the Committee on Appropriations pays up front and then pays again at the end. When the authorizing committees fail, when the Committee on Ways and Means does not raise revenues or cut entitlements, when the Committee on Merchant Marine and Fisheries does not impose a user fee, we cut across the board.

Seventy percent of the sequestration money is appropriation money, and we are blind to the effect of it. We do not know what these cuts will do. We simply think that if we are looking the other way while this partial across-the-board cut goes into place, we will get the savings and nobody will be hurt. That is not the case. It is a blind dull meat-ax approach.

If we continue to do it in other years as we have this year, we will regret it. Because we are eating into the basic fabric of our Government.

This is not a turf issue. This is something we all have to be attendant to. We think that somehow the Committee on Appropriations can pull rabbits out of the hat and give us all the things that we know are needed in our constituencies. It cannot be done anymore. We are either going to have to come up with entitlement savings, revenues, or just let the withering away of domestic and soon defense appropriations to continue.

Mr. Speaker, as we consider the budget reconciliation bill for this session of the Congress, I would like to make a few remarks with regard to the spending authority in this bill as it relates to the original budget plan and the performance of the Committee on Appropriations within its responsibilities under the 302 allocation of the so-called summit agreement.

Mr. Speaker, there are basically three ways that the deficit can be reduced:

First, is through an increase in revenues, either through increased taxes or user fees;

Second, is through a constrained 302 allocation of discretionary accounts allocated to the Committee on Appropriations. This avenue of attack has the effect of limiting or in some cases actually lowering the amount of new appropriations available for new discretionary purposes; and

Third, the final way to reduce the deficit is to reduce the costs of entitlement programs which we call reconciliation.

Under the allocation to the Committee on Appropriations, we were constrained to report the 13 annual appropriations bills some $300 million in outlays under the CBO baseline.

After the committee adopted the subcommittee allocations for each of the 13 subcommittees, and after actually passing 13 of the regular appropriations bills—except for the unforseen national disasters of Hurricane Hugo and the earthquake in California—not only is the entire committee within its overall allocation, but we see that each of the various subcommittees are within their subcommittee budget allocations.

Mr. Speaker, asking the Committee on Appropriations to endure an additional hit under the "sequestration process" would indeed create a double jeopardy for programs we fund. We have already "given at the office" and are not about to give up our right to either allocate funds through the appropriations process or to rescind funds previously provided through the reconciliation process.

We, the Appropriations Committee, have been "reconciled" without our consent or participation in this legislation. We give at the beginning and at the end of the budget process because the Ways and Means Committee and its counterpart in the other body have failed to meet their targets as have a few other authorizing committees; $4.55 billion have been cut across the board in this bill. Sixty-six percent of the newly sequestered funds are in the purview of the Appropriations Committees.

Mr. OBEY. Mr. Speaker, will the gentleman yield?

Mr. FAZIO. I am happy to yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Speaker, I would simply like to say that I know the hour is late, and people want to go home. But this is a very important in-

stitutional question, and the problem will be three times as big next year, and if we ignore what the gentleman from Massachusetts [Mr. CONTE] said tonight and what the gentleman in the well says, we are ignoring the major problem we are going to have in the budget in the next session of the Congress.

The fact is that the domestic investment programs in our Federal budget since 1980 have declined as the share of that budget by more than 40 percent, and the impact of sequestration in this proposal tonight will accelerate that process. That is not the fault of the gentleman from California. That is not the fault of the Committee on the Budget. It is the fault of a warped budget process.

The fact is that if the committees who have jurisdiction over entitlement programs do not succeed in meeting their targets, their failure impacts on the domestic appropriation programs in the budget, and that means that we continue the warp that the gentleman is talking about.

I think we badly need to revise Gramm-Rudman so that the impact of sequestration falls upon the programs which fail to meet the deficit-reduction targets mandated in the beginning of the year. If we do not do that, we commit long-range suicide as a competitive society.

Mr. SABO. Mr. Speaker, will the gentleman yield?

Mr. FAZIO. I am happy to yield to the gentleman from Minnesota.

Mr. SABO. Mr. Speaker, I would simply like to associate myself with the comments of the gentleman from California, the gentleman from Wisconsin, and the gentleman from Massachusetts. They are absolutely on target in defining our problem of this year, but more severely the problem of next year.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. FAZIO. I am happy to yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I, too, want to associate myself with the remarks of the gentleman from Massachusetts [Mr. CONTE] and the gentleman from California.

I think what this should dictate to us very strongly is that we accomplish reconciliation far earlier than we have this year, because the later in the session that we effect reconciliation, the more leverage the administration has in overriding essentially what the appropriation process has done and assisting itself for the year to come by simply allowing sequestration to stay in place.

As the gentleman from California has indicated, we do not in this short period of time have the ability to analyze the adverse consequences that is going to have after months and months of hearings and action by this House and the other House.

I think the gentleman from California has well stated the case for a much more careful crafting of reconciliation in the years ahead.

Mr. FAZIO. Mr. Speaker, I appreciate the gentleman's comments.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Speaker, I rise in support of the legislation that provides a Medicare buy-in for disabled persons who return to work, among other things.

Mr. Speaker, I rise in support of this final budget reconciliation package and specifically I support one particular provision. That provision is the Medicare buy-in for continued benefits for disabled individuals. This is an extremely important provision because it will remove a major disincentive to work by allowing disabled individuals who receive Social Security Disability Insurance [SSDI] and return to work the opportunity to buy into the Medicare system. This opportunity will occur after the person has exhausted the current trial work period and the extended period of eligibility, or 48 months after the SSDI recipient returns to work.

The provision will require Medicaid to pay the entire Medicare premium for those SSDI recipients earning less than 200 percent of poverty or approximately $12,000 in annual income in 1989 after the 48-month period has been exhausted. For those earning between 150 percent and 200 percent of the poverty line, States could, at their option, require the disabled worker to pay part of the premium based on his income. For those SSDI recipients earning over 200 percent of the poverty line, the individual would pay the entire Medicare premium.

This provision removes an essential disincentive to work by allowing SSDI recipients to return to work without the risk of losing their health care benefits. A similar work incentive was enacted in 1986 for supplemental security income [SSI] recipients which has resulted in approximately 55,000 SSI recipients entering the work force, some for the very first time. This program has been extremely successful. Since 1982, participation in the 1619(a) program has increased 7,639 percent. People in 1619(a) are SSI recipients who return to work but continue to receive cash benefits and Medicaid. Participation in the 1619(b) program, those receiving only Medicaid benefits, increased by 203.5 percent since 1982. This data shows that the work incentive program in SSI is having its intended effect.

Now, with passage of this budget reconciliation package, barriers to work in the SSDI program will be removed. Current law for SSDI recipients is a catch-22. Under current law, a disabled person who is unemployed has health insurance; the same disabled person with a job does not. Access to health insurance is the primary disincentive that keeps disabled people who want to work from pursuing employment opportunities. Eliminating that barrier will allow disabled persons to return to work and improve their lives. American productivity will increase with a larger labor force, and the taxpayers will benefit with lower costs.

I particularly want to thank Congressman ROSTENKOWSKI, Congressman ARCHER, Congressman LEVIN, Congressman GRADISON, and Congressman MATSUI for their continued commitment to include the Medicare piece in the budget reconciliation package. And, I want to thank Congressman WAXMAN, Congressman TAUKE, and Congressman MADIGAN for agreeing to include the Medicaid portion of the buy-in when other equally important Medicaid provisions have been excluded. I appreciate all the hard work that they and their staffs have given to this issue, and I plan to work with Congressman WAXMAN next year to ensure passage of several Medicaid items that were stripped from this package.

For example, the House had included legislation that would mandate 209(b) States to use the SSI eligibility test so that children on SSI can receive Medicaid benefits. Currently these 14 States can use a different disability eligibility test to determine whether these children can receive Medicaid. I believe that disabled children on SSI should automatically receive Medicaid and I will work with Congressman WAXMAN to pass this legislation.

In addition, I support the Medicaid transition coverage language which would allow States, at their option, to extend Medicaid to welfare mothers who are working for an additional 12 months. Currently, States must continue Medicaid coverage to families who lose AFDC benefits due to earnings. This additional coverage will encourage women to continue to work without the risk of losing health insurance benefits and give employers more time to cover these new workers under employer provided health insurance.

Finally, I want to work with Congressman WAXMAN to pass a Medicaid reform bill which will provide community services to disabled individuals, a provision that was also included in the House budget reconciliation bill but was stripped by the other body. I have supported mandated Medicaid coverage for disabled individuals who wish to leave institutional care and live in the community. While the provisions in the House passed bill gave States the option to provide community services under Medicaid, I believe this is a good first step toward Medicaid reform.

Again, I strongly support the Medicaid buy-in that has been included in this package because it will allow disabled persons the opportunity to return to work. Disabled people want this opportunity and I urge my colleagues to support this bill.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. COX].

Mr. COX. Mr. Speaker, I thank the gentleman for yielding.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Speaker, as the ranking minority member of the Labor-Management Relations Subcommittee of the Committee on Education and Labor. I want to speak to the issue of the pension provisions which previ-

ously had been included in budget reconciliation and which in combination would present a serious threat to our capital markets and the continuation of the voluntary private pension system.

Fortunately, in the interest of the continued sound operation of the private pension system, the most deleterious of the pension provisions have been excluded from the final legislation.

At issue, in this year's budget bill, were three inextricably linked amendments to title III added by the Committee on Education and Labor. I call them the "gang of three." They were the Visclosky amendment requiring every pension plan in the land to elect a joint employee-employer board of trustees; an absolute prohibition on the reversion to employers of excess assets upon the termination of their defined benefit pension plans; and ERISA report filing fees ranging from $100 to $500 per plan and $200 per participant upon plan termination. These new "taxes" would have been levied annually on the Nation's 5.4 million pension and health benefit plans.

Both in committee and in the House debate I opposed the inclusion of these provisions because they were not germane to budget reconciliation, because they were adopted by circumventing the normal hearing process, and because their substance was contrary to the purpose of ERISA to encourage the establishment and continuation of defined benefit and other pension plans.

The strong efforts of the Secretary of Labor, Elizabeth Dole, the Secretary of the Treasury, Nicholas Brady, and OMB Director Richard Darman, to oppose these provisions and retain current law should also be recognized.

With regard to the Visclosky provision, because this body on September 27, 1989, agreed to the Roukema amendment to strike this misguided mandate, the private pension system has been saved from unwarranted disruption and costs. Employees and retirees will also not have to face the prospect of benefit cutbacks or plan terminations that would have been triggered by this most disruptive change to the Federal pension law since the enactment of ERISA in 1974.

In other positive action, on October 4 and 5 the so-called user fees were deleted from H.R. 3299 with my support under a favorable ruling from the chair on a point-of-order raised by my colleague from Minnesota, Representative BILL FRENZEL. Although these fees were added to budget reconciliation to pay for other pension revenue losers, they were insidious on their own and represented new taxes that would jeopardize employee benefits and plan continuation.

The last remaining member of what I previously termed the "gang-of-three" is the provision totally prohibiting asset reversions upon termination which would make very drastic changes to the operations of single-employer defined benefit pension plans. Under current law, in order to stabilize pension costs as a percentage of payroll, employers may voluntarily advance fund their plans and build up excess pension assets which are not attributable to unanticipated investment gains or other sources. The total ban on reversions would discourage employers from advance funding and undercut employee benefit security, because upon plan termination, and after all benefit promises under the plan have been satisfied, the employer's own voluntary contributions would be recharacterized and translated into mandated benefits beyond those promised.

Had these provisions not been deleted in conference, they would for the first time have established Federal pension plan termination benefit mandates which are inconsistent with the voluntary nature of the private pension system. Such mandates would further discourage the formation and maintenance of defined benefit pension plans.

With the deletion of this gang-of-three the private pension system has been spared potentially disastrous consequences. Changes to ERISA and other Federal pension laws are too important to the retirement income security of this Nation's employees and retirees to be considered other than in the regular order. If further pension reform is found to be necessary, then any changes should be taken up in this body on their own and after adequate hearings, debate, and markup in the subcommittees and committees of jurisdiction. They should not be legislated through the reconciliation process.

In this connection and in conclusion, I would remind my colleagues that continued vigilance will be required if present and future pensioners are to be represented fairly in these matters. They deserve no less.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New York [Mr. GREEN], a member of the Committee on Appropriations.

Mr. GREEN. Mr. Speaker, I rise in opposition to the reconciliation bill. I do so because it represents a grave default in the Budget Committee with respect to its responsibilities under the Budget and Impoundment Control Act of 1974.

Under the Budget Act process, one important aspect of the budget resolution is to determine how much of the deficit limitation is to be accomplished by restraints on appropriation bills, and how much is to be accomplished by revenue measures and by amendments of authorizing legislation, including entitlement programs. It is the Budget Committee that is supposed to police the process. The latter part of that process is supposed to be embodied here tonight by the reconciliation bill.

Under the budget resolution we adopted, $14 billion was to be saved by revenue measures and amendments to authorizing legislation. To enforce that target, the Budget Committee has the right to bring legislation to the floor on its own initiative when the relevant committees fail to meet their targets.

Yet the Budget Committee accepted a 35-percent shortfall by the relevant committees, and instead imposed that $4.6 billion in the form of an across-the-board cut of appropriations through acceptance of a so-called 130-day sequestration.

Those across-the-board cuts seriously distort appropriation bills. For example, in the Veterans-HUD-independent agencies appropriation bill, I, as ranking minority member on that appropriations subcommittee, have always fought for full funding of that account before funding other accounts. It will now be cut $30 million below what HUD's formula says it requires.

Poor people, sick people, the Nation's infrastructure all will be injured by the appropriation cuts to be forced on us by this bill.

This reconciliation bill and its unthinking appropriations cuts is a poor way to legislate. It raises serious questions as to whether the 1974 Budget Act is serving any purpose. It plainly is a major default by the Budget Committee.

Maybe it is time to repeal the 1974 Budget Act and find a better way to do our business.

GENERAL LEAVE

Mr. FRENZEL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on H.R. 3299, the bill now under consideration.

The SPEAKER. Is there objection to the request to the request of the gentleman from Minnesota?

There was no objection.

Mr. DINGELL. Mr. Speaker, section 3001 contains the conference agreement for FCC cost of regulation fees. There are several significant differences between this section and the comparable provisions of H.R. 3299 as it passed the House, and I'd like to direct the attention of my colleagues to them.

The House-passed provisions were designed to charge fees for all applicants at the FCC. The Commerce Committee believed that this was the most equitable way to achieve the savings mandated by the budget resolution.

The Senate version was significantly different. The Senate decided to continue to exempt public broadcasters, as well as public safety and other licensees. This was a reasonable approach, since many of those licensees are units of State and local governments. Any fees paid by these entities would ultimately be borne by taxpayers.

But it is my view that if some licensees are exempted, then amateur radio operators should not be subjected to the fees. Amateurs do not use the spectrum for profit, and they render important services to the public during natural disasters. Since the conferees have accepted some of the exemptions proposed by the Senate, we have decided to exempt the amateur service as well.

Mr. Speaker, it is the intention of the conferees that the FCC implement this new structure as expeditiously as possible. To that end, we have been as specific as possible in the schedule of charges that is contained in section 3001. However, to remove any further ambiguity, and to permit the Commission to implement the new fee structure without a full-blown rulemaking, I insert the following explanation at this point in the RECORD:

EXPLANATION

PRIVATE RADIO SERVICES

1. Marine Coast Stations:

d. Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license or rules. Charge applies to each initial request as well as modification or extension of a previously granted request.

e. Assignments (per station)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

f. Transfers of Control (per station)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

g. Request For Waiver—(i) Routine (per request): All requests for waiver of the Committee's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (ii) Non-routine (per section/per station): Requests for waiver that involve more than one rule section or station. Fee required will be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

2. Ship Stations: A mobile station in the maritime mobile service located on board a vessel which is not permanently moored and including radio station classes such as radionavigation, on-board, satellite, EPIRB, radiotelephone, and radiotelegraph.

a. New License (per application)—Request for a license to operate a new ship station including portable ship stations. Requests for a fleet license will be charged according to the number of stations requested.

b. Modification of License (per application)—Request for changes to an existing license other than a change in mailing address, name of licensee, name of vessel (which do not otherwise involve an assignment of license or transfer of control) or addition or replacement of transmitting equipment on a frequency or frequency band authorized by the present license. A fleet license will be charged based upon the number of stations renewed.

c. Renewal of License (per application)—Renewal of an existing license at the expiration of the term of authorization.

d. Request for Waiver—See 1g above. A waiver would also include a request for exemption, a modification of an existing exemption or renewal of an exemption from the provisions of law and treaty otherwise requiring the compulsory use of a ship station.

3. Operational Fixed Microwave Stations:

d. Special Temporary Authority (Initial, Modifications, Extensions)—Temporary authority granted by the Commission to operate in emergency situations; to permit restoration or relocation of existing facilities; to conduct tests to determine necessary data for an application for regular authorization; for a temporary non-recurring service; and other extraordinary circumstances. Charge applies to each initial request as well as to a modification or extension of a previously granted request.

e. Assignments (per station)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

f. Transfers of Control (per station)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

g. Request For Waiver.—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involves no more than one station and one rule part. (ii) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

4. Aviation (Ground Stations):

d. Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license or rules. Charge applies to each initial request as well as to a modification or extension of a previously granted request.

e. Assignments (per station)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

f. Transfers of Control (per station)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

g. Request For Waiver—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (ii) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

5. Aircraft Stations: A mobile station in the aeronautical mobile service (including an air carrier aircraft station), other than a survival craft station, located on board an aircraft.

a. New License (per application)—Request for a new license to operate an aircraft station of portable station. Requests for fleet licenses will be charged according to the number of stations requested.

b. Modification of License (per application)—Request for changes to an existing license other than a change in mailing address, name of licensee, name of vessel or addition or replacement of transmitting equipment on a frequency or frequency band authorized by the present license. A fleet license will be charged based upon the number of stations renewed.

c. Renewal of License (per application)—Renewal of an existing license at the expiration of the term of authorization. A fleet license will be charged based upon the number of stations renewed.

d. Request For Waiver—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (ii) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

6. Land Mobile Radio Stations (including Special Emergency and Public Safety Stations): A mobile service between base stations and land mobile stations, or between land mobile stations. Special Emergency stations includes stations used in the Medical services, by rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. Public Safety stations include stations used in the Local Government, Policy, Fire, Highway Maintenance and Forestry-Conservation Radio Services.

d. Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license or rules. Charge applies to each initial request as well as to a modification or extension of a previously granted request.

e. Assignments (per station)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

f. Transfer of Control (per call sign)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

g. Request For Waiver—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (ii) Non-routine (per rule section/per station): Requests for wavier that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the

number of rule sections and then multiplying this figure by the base fee amount.

h. Reinstatement (per call sign)—An application to reinstate a license that has previously expired for less than six months.

i. Specialized Mobile Radio Systems: Base Stations—A radio service in which licensees provide land mobile communications services on a commercial basis to entities eligible to be licensed under the land mobile rules, to government entities and individuals. The base station is a station at a specified site authorized to communicate with mobile stations.

(i) New License (per call sign)—Request for a license to operate a new base station in a conventional or trunked mode.

(ii) Modification of License (per call sign)—Request for changes to an existing license requiring the submission of an application for modification of license under Commission rules.

(iii) Renewal of License (per call sign)—Renewal of an existing license at the expiration of the term of authorization.

(iv) Waiting List (annual charge per application)—Applications that cannot be granted due to a lack of available channels in a particular area are placed on a waiting list for that area.

(v) Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license. Charge applies to each initial request as well as modifications or extensions of a previously granted request.

(vi) Assignments (per call sign)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

(vii) Transfers of Control (per call sign)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

(viii) Request For Waiver—(1) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part.

(2) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

(ix) Reinstatement (per call sign)—An application to reinstate a license that has previously expired for less than six months.

j. Private Carrier Licenses: A license in the private radio services that authorizes an entity to provide communications services to other private users on a commercial basis.

(i) New License (per call sign)—Request for a license to operate a new base station in a conventional or trunked mode.

(ii) Modification of License (per call sign)—Request for changes to an existing license requiring the submission of an application for modification of license under Commission rules.

(iii) Renewal of License (per call sign)—Renewal of an existing license at the expiration of the term of authorization.

(iv) Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license or rules. Charge applies to each initial request as well as modifications or extensions of a previously granted request.

(v) Assignments (per call sign)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

(vi) Transfer of Control (per call sign)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

(vii) Request for Waiver—(1) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involves no more than one station and one rule part. (2) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

(viii) Reinstatement (per call sign)—An application to reinstate a license that has previously expired for less than six months.

7. General Mobile Radio Service (GMRS): A land mobile radio service available to eligibles and intended primarily for short-distance, two-way personal and business communications.

a. New License (per call sign)—A new license for a GMRS system or for a station in a GMRS system. A single fee is required for up to six (6) land stations in a GMRS system, which constitutes one call sign.

b. Modifications of License (per call sign)—Modification to an existing GMRS system or station license.

c. Renewal of License (per call sign)—Renewal of an existing system or station license for another term.

d. Request for Waiver—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (ii) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

e. Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license. Charge applies to each initial request as well as modifications or extensions to a previously granted request.

f. Transfer of Control (per call sign)—Consent for transfer of control of a corporation that holds a GMRS system license.

8. Restricted Radiotelephone Operator Permit—A permit that allows operation of most aircraft and aeronautical ground stations, and marine radiotelephone stations on pleasure vessels when operator licensing is required. Also required for transmitter operation, repair and maintenance at all types of AM, FM, TV and international broadcast stations.

9. Request for Duplicate Station License (all services)—Request by an existing licensee to replace an original license that has been lost, mutilated or destroyed.

10. Hearing (Comparative New and Modification)—Charge levied when any private radio application is designated for a comparative new hearing or modification hearing before an administrative law judge.

EQUIPMENT APPROVAL SERVICES/EXPERIMENTAL RADIO

1. Certification:

c. Modifications and Class II Permissive Changes—Modifications to previously certified equipment are permissible, provided that the variations do not affect the characteristics required to be reported to the Commission. A Class II permissive change includes those modifications which degrade the performance characteristics as reported to the Commission at the time of the initial certification.

d. Request for Confidentiality—A request included with any application for certification or a modification thereto that submitted information not be made routinely available for public inspection. The charge is in addition to the underlying application.

2. Type Acceptance:

b. Modifications and Class II Permissive Changes—Modifications to previously type accepted equipment are permissible so long as the equipment is electrically and mechanically interchangeable and will have the same basic tube or semiconductor lineup, frequency multiplication, basis frequency determining and stabilizing circuitry, basic modulator circuit and maximum power rating. A Class II permissive change includes those modifications which bring the performance of the equipment outside of the manufacturer's rated limits as originally filed but not below the minimum requirements of the FCC rules.

c. Request for Confidentiality—A request included with any application for type acceptance or a modification thereto that submitted information not be made routinely available for public inspection. The charge is in addition to the underlying application.

3. Type Approval (all devices): An equipment authorization based upon examination and measurement of one or more sample units by the Commission.

a. With Testing (including Minor Modifications)—Type approval requests for new equipment and major modifications that require testing.

b. Without Testing (included Minor Modifications)—Type approval requests for previously tested and approved equipment submitted for approval under new identification or for minor modification without testing.

c. Request for Confidentiality—A request included with any application for type approval or a modification thereto that submitted information not be made routinely available for public inspection. The charge is in addition to the underlying application.

4. Notifications: Process requires manufacturers to test devices for compliance with applicable FCC regulations and to keep records of test data. Manufacturer submits brief application for authorization of device citing that all regulatory requirements have been met.

5. Advance Approval for Subscription TV System: Licensees and permittees of TV broadcast and low power TV stations may conduct subscription operations only by using an encoding system approved in advance by the Commission.

a. Request for Confidentiality—A request included with any application for type approval or a modification thereto that submitted information not be made routinely available for public inspection. The charge is in addition to the underlying application.

6. Assignment of Grantee Code for Equipment Identification: Equipment covered by an application for equipment authorization must bear a nameplate/label displaying the FCC identifier. The applicant must request the three digit grantee code either before filing its first request for equipment authorization or simultaneously with that request. The fee is in addition to the simultaneously filed equipment authorization request.

7. Experimental Radio Service: A service in which radio waves are employed for purposes of experimentation in the radio art or for purposes of providing essential communications for research projects which could not be conducted without the benefit of such communications. Student authorizations are not included within this definition.

a. New Construction Permit and Station Authorization (per application)—Request for a combined construction permit and radio station license for base stations, fixed stations or mobile stations on either a temporary or permanent basis. Charge is on a per application basis when requests are combined in accordance with FCC rules.

b. Modification to Existing Construction Permit and Station Authorization (per application)—Request to modify a combined construction permit and station license, including the transfer of a station from temporary to permanent status. Charge is on a per application basis when requests are combined in accordance with FCC rules.

c. Renewal of Station Authorization (per application)—Renewal of an existing station authorization, including a special temporary authority, in accordance with the term of the existing authorization. Charge is on a per application basis when requests are combined in accordance with FCC rules.

d. Assignment or Transfer of Control (per application)—Voluntary or involuntary assignment of the legal right to construct or control the use or operation of a station or voluntary or involuntary transfer of a corporation holding a station authorization.

e. Special Temporary Authority (per application)—Authorization granted when a need is shown for operation of an authorized station for a limited time only in a manner other than that specified in the existing authorization, but not in conflict with the Commission's rules.

f. Additional Charge for Applications Containing Requests to Withhold Information From Public Inspection: A request included with any application for experimental radio authorizations requesting that submitted information not be made routinely for public inspection. The charge is in addition to the underlying application.

MASS MEDIA SERVICES

1. Commercial TV Stations: A commercial television station refers to any UHF or VHF station other than those classified by the FCC as non-commercial educational stations. A non-commercial educational television station is either a UHF or VHF station licensed to a nonprofit educational organization that is used primarily to serve the educational needs of the community, for the advancement of educational programs, or to furnish a nonprofit and non-commercial television broadcast service.

1c. Hearing (Major/Minor Change, Comparative New or Comparative Renewal)—Applications designated for hearing in mutually exclusive, comparative new construction permit, comparative renewal or major/minor change adjudicative proceedings are required to pay fees prior to the applicant's participation in the hearing.

1f. Renewal—The charge levied when filing an application for renewal of an existing license. The license periods are five years for television broadcast stations and seven years for radio broadcast stations. Auxiliary Service licenses are generally held by licensees of full service AM, FM or TV stations and are renewed automatically whenever the main station license is renewed. Auxiliary stations renewed in conjunction with the main station will not require an additional fee.

1g. Call Sign (New or Modification)—Generally a four-letter designation beginning with the letter K or W, and used to identify each commercial and noncommercial radio and television broadcast station licensed by the FCC. Fee is payable upon request for a new call sign assignment or a request for a modified call sign assignment. Fee will be in addition to any concurrently filed request for authority such as a license or assignment/transfer.

1h. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)—A grant of authority, or extension of a previous grant, to allow a permittee or licensee to operate a broadcast facility for a limited period at a specified variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station. In addition, the STA fee will apply to applicants requesting field test authority. However, in the event that circumstances beyond the control of the station force it to change its operating schedule or discontinue operations, the station may for a period of not more than 30 days cease operations without further authority from the FCC or a payment of a fee. An STA request to extend this period of discontinued operation will not require a fee.

1i. Extension of Time to Construct or Replacement of CP—A request for an extension of time to construct an AM, FM or TV station or to replace an expired construction permit for such a station.

1j. Application for Permit to Deliver Programs to Foreign Broadcast Stations—A formal or informal application under Section 325(b) of the Communications Act for authority to locate, use, or maintain a broadcast studio or other place or apparatus in connection with a foreign station consistently received in the United States.

1k. Petition for Rulemaking for Change in Community of License—Petitions filed for the amendment of the Television Table of Allotments to modify the license or permit of a UHF or VHF TV station to change the community of license or channel in the same community of license through a rule making proceeding. Upon approval of a petition, the license/permittee must file this fee in addition to the fee for the minor change or license change application required to effect the change.

1l. Ownership Report (per report)—A report filed with the FCC by each licensee of a commercial TV station, once a year on the anniversary of the date that its renewal application is due, or a certification that no changes have occurred since the filing of an earlier annual report.

2. Commercial Radio Stations: A commercial radio station is any AM or FM station other than those classified by the FCC as a non-commercial educational station. A non-commercial educational radio station is any AM or FM station licensed to a nonprofit educational organization that is primarily used for the advancement of an educational program.

2c. Hearing (Major/Minor Change, Comparative New or Comparative Renewal)—See 1c.

2d. License.

(iv) FM Directional Antenna—A directional antenna is an antenna that is designed or altered for the purpose of obtaining a noncircular radiation pattern. Directional antennas may be employed for the purpose of improving service or for the purpose of using a particular site. This charge is due upon the filing of a construction permit for new or modified service.

(v) AM Remote Control—An operating system which provides sufficient control and operating parameter monitoring capability to allow technical operation of a station outside the main facility in compliance with the rules applicable to that station and the terms of the station authorization. No authorization from the FCC is required to operate the transmission system of an AM station operating with a nondirectional antenna. A fee is charged when filing an application to operate an AM station using a directional antenna system by remote control.

2f. Renewal—See 1f.

2g. Call Sign—See 1g.

2h. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)—See 1h.

2i. Extension of Time to Construct or Replacement of CP—See 1i.

2j. Permit to Deliver Programs to Foreign Broadcast Stations—See 1j.

2k. Petition for Rulemaking for Change in Community or License or Higher Class Channel—Petition filed for the amendment of the FM Table of Allotments and modification of the license or permit of an FM station to another community of license or to another class of channel in the same or another community. Upon approval of this petition, the licensee/permittee must file this fee in addition to the fee for its minor change or license application required to effect the change.

2l. Ownership Report (per report)—See 1l.

3. FM Translators: A station in the broadcast service operated for the purpose of retransmitting the programs and signals of an FM broadcast station (either commercial or noncommercial educational), without significantly altering any characteristics of the original signal other than its frequency and amplitude, for the purpose of providing FM reception to the general public.

3d. Renewal—See 1f.

3e. Special Temporary Authority (other than to remain silent or to extend an existing STA to remain silent)—See 1h.

4. TV Translators and LPTV Stations: A television translator station is a station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station (either commercial or noncommercial), without significantly altering any characteristics of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public. A low power television station is a UHF or VHF station that may originate programming or provide a subscription television service.

4d. Renewal—See 1f.

4e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)—See 1h.

5. Auxiliary Services: (includes Remote Pickup Stations, TV Auxiliary Broadcast Stations, Aural Broadcast STL and Intercity Relay Stations, and Low Power Auxiliary Stations)

5b. Renewals—Auxiliary stations renewed in conjunction with the main station would not require a fee.

5c. Special Temporary Authority (STA)—See 1h.

6. FM/TV Boosters: An FM broadcast booster station is a station in the broadcasting service operated for the sole purpose of retransmitting the signals of an FM radio broadcast station, by amplifying and rearadiating such signals, without significantly altering any characteristics of the incoming signal other than its amplitude. A television broadcast booster station is a station in the broadcast service operated by the licensee or permittee of a full service television broadcast station for the purpose of retransmitting the programs and signals of such primary station without significantly altering any characteristic of the original signal other than its amplitude.

6a. New and Major Change Construction Permits—TV Boosters: A permit to construct a new station or to make major changes in previously authorized facilities. A major change includes any change in frequency; transmitting antenna system including the direction of the radiation; directive antenna pattern of transmission line; antenna height; antenna location exceeding 200 meters; or authorized operating power. A major change also includes any modification that increases the station's signal range in any horizontal direction. FM Boosters: A permit to construct a new station or to make major changes in previously authorized facilities. Major changes include replacement of the transmitter as a whole; a change in the transmitting antenna system, including the direction of radiation or directive antenna pattern; any change in the location of the booster except a move within the same building or upon the same pole or tower; any change in frequency; any change in antenna location exceeding 152.4 meters; change in authorized operating power; change in authorized principal community or area being served.

6b. License—Request for a license to cover a construction permit for a new station or major change in a previously authorized facility.

6c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)—See 1h.

7. International Broadcast Station: A broadcasting station employing frequencies allocated to the broadcasting service between 5,900 and 26,100 kHz, the transmissions of which are intended to be received directly by the general public in foreign countries.

7a. New Construction Permit and Facilities Change CP—A permit to construct a new International station or to make changes to an existing station.

7b. License—Request for a license to cover a construction permit. License fees are not applicable to any license modification that does not require prior authorization from the FCC.

7c. Assignment or Transfer (per station)—An assignment is the transfer by any means of an authorization from the present holder to another person as defined in section 3(i) of the Communications Act. A transfer involves a change in the controlling interest in a corporation or partnership holding a station permit or license.

7d. Renewal—Renewal of an existing license at the expiration of the term of authorization. The license period for International stations is seven years.

7e. Frequency Assignment and Coordination (per frequency hour)—Frequency hours are requested by applicants and are assigned by the Commission after consultation with foreign governments for use during specified hours and for transmission to specified zones or areas of reception. A frequency hour is a specific hour of the day during which a station may broadcast daily on a particular frequency during a particular season. There are four seasons of varying lengths during the year. A request for coordination for use of a frequency for one hour per day for a six-month period shall constitute a request for two frequency hours.

7f. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent—See 1h.

8. Cable Television Service:

8a. Cable Television Relay Service.

(v) Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)—In circumstances requiring immediate or temporary use of facilities, a request may be made for special temporary authority to install and operate new equipment or to operate licensed equipment in a manner different from that authorized in a station license. An STA may be granted to conduct a field survey or to conduct equipment, program, service and path tests.

8c. 76.12 Registration Statement (per statement)—A system community unit is authorized to commence operation only after filing with the Commission the requisite information pursuant to Section 76.12 of the Commission's Rules.

8d. Aeronautical Frequency Usage Notifications (per notice)—A notice filed by the operator of a cable system in accordance with section 76.615 of the rules stating that a cable system operating under sections 76.610-76.617 of the Commission's Rules is transmitting carriers or other signal components capable of delivering peak power equal to or greater than 10-4 watts at any point in the cable system in the frequency bands 108-137 and 225-400 MHz. A fee would not be required for notifications under 76.618 of the rules.

8e. Aeronautical Frequency Usage Waivers (per waiver)—An annual notice filed by the operator of a cable system notifying the Commission of all signals carried in the aeronautical radio frequency bands and before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period greater than 10-4 watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands.

9. Direct Broadcast Satellite:

9b. Hearing (Comparative New or Major/Minor Modifications, or Comparative renewal)—See 1c.

9c. Special Temporary authority (other than to remain silent or extend an existing STA to remain silent)—See 1h.

COMMON CARRIER SERVICES

All Common Carrier Services:

1a. Hearing (Comparative New or Major/Minor Modifications)—An administrative proceeding initiated when an application for a new service, for major or minor changes in authorized facilities or for renewal of an authorized facility is designated for a comparative hearing before an administrative law judge.

1b. Development Authority—An authorization issued to communications common carriers for experimentation leading to the development of new common carrier service or for using transmitting equipment prior to FCC approval of that type of equipment. The charge for a developmental authorization is the same as for regular authority in the radio service in which developmental authorization is requested.

1c. Formal Complaints and Pole Attachment Complaints—A formal complaint is an allegation against a common carrier resolved on a written record consisting of a complaint, answer and reply but may also include other written submissions such as briefs and written interrogatories. A pole attachment complaint is a filing by a cable television system operator, a cable television system association, a utility, an association of utilities or other entities alleging that a rate, term, or condition for a pole attachment is not just and reasonable.

2. Domestic Public Land Mobile Stations (includes Base, Dispatch, Control and Repeater Stations):

2c. Fill in Transmitter (per transmitter)—A transmitter operating within a presently authorized service contour such that the reliable service area does not exceed the already authorized service contour.

2d. Major Amendment to a Pending Application (per transmitter)—Major amendments include changes in technical proposals, amendments to proposed base station facilities, amendments that increase a CGSA or changes in beneficial ownership and control as defined in existing Commission rules.

2f. Partial assignment (per call sign)—A partial assignment occurs when only a portion of the authorized facility is assigned or transferred to another party, whether voluntarily or involuntarily.

2i. Special Temporary Authority (per frequency/per location)—An authorization granting permission to operate a station when circumstances require immediate or temporary operation of a station. An STA also includes the authority granted to a permittee or licensee to permit operation of a station facility prior to grant of license authorizations and/or the filing of certifications of construction completion.

2j. Extension of Time to Construct (per application)—A request for an additional amount of time to construct a facility beyond the established term of the construction authorization.

2k. Notice of Completion of Construction (per application)—Upon completion of construction, the certification that the facilities have been constructed as authorized or with minor modifications.

2l. Auxiliary Test Station (per transmitter)—A fixed station used for test transmissions.

2m. Subsidiary Communications Services (per request)—A one-way service using a broadcast station sub-carrier frequency.

2n. Reinstatement (per application)—A request for new authorization after the expiration of a construction authorization of license to operate.

2o. Combining Call Signs (per call sign)—A request to consolidate the facilities of one or more call signs under a single call sign.

2p. Standby Transmitter (per transmitter/per location)—A transmitter installed and maintained for use in lieu of the main transmitter only during periods when the main

transmitter is out of service for maintenance or repair.

2q. 900 MHz Nationwide Paging—A one-way communications system licensed to operate on a common frequency throughout the United States. A network organizer is the licensee of a nationwide frequency responsible for organizing and controlling its use. A network operator is an operator under control of a network organizer responsible for local distribution of nationwide pages. The network organizer and network operator are subject to renewal fees in addition to any other fees imposed on domestic public land mobile licensees or permittees.

3. Cellular Systems (per system):

3e. License to Cover Construction

(ii) Subsequent License for Wireline Carrier—Wireless carriers are common carriers that are in the business of providing landline local exchange telephone service. When construction has been completed in accordance with the radio station authorization, the license shall notify the Commission. Licensees can commence service the day notification is mailed. The subsequent license refers to any license requested after an initial license has been granted.

(iii) License for Nonwireline Carrier—A common carrier engaged in the provision of Public Mobile Service which is not also in the business of providing landline local exchange service. These carriers were formerly called "miscellaneous common carriers". The charge is assessed for both initial and susequent licenses to cover authorized construction.

(iv) Fill in License (all carriers)—Applications by cellular system licensees expanding their systems within Metropolitan Statistical Areas and Rural Service Areas during the five year fill-in period.

3g. Extension of Time to Complete Construction—See 2j.

3h. Special Temporary Authority (per system)—See 2i.

3i. Combining Cellular Geographic Service Areas (per system)—The geographic area served by a cellular system within which the licensee is authorized to provide service. Licensees may request combining their service areas under one call sign for administrative efficiency.

4. Rural Radio (includes Central Office, Interoffice or Relay Facilities):

4c. Major Amendment to Pending Application (per transmitter)—An amendment shall be deemed to be a major amendment if, as defined in current FCC rules, it changes a technical proposal, results in a substantial change in the engineering proposal, or specifies a change in beneficial ownership or control of an applicant that has not previously been approved by the Commission.

4e(iii). Partial Assignment (per call sign)—If only a portion (less than 100%) of the authorized facilities are transferred or assigned to another party, voluntarily or involuntarily, such action is considered a partial assignment.

4g. Extension of Time to Complete Construction (per application)—See 2j.

4h. Notice of Completion of Construction (per application)—See 2k.

4i. Special Temporary Authority (per frequency/per location)—See 2i.

4j. Reinstatement (per application)—See 2n.

4k. Combining Call Signs (per call sign)—See 2o.

4l. Auxiliary Test Station (per transmitter)—See 2l.

4m. Standby Transmitter (per transmitter-per location)—See 2p.

5. Offshore Radio Service (Mobile, Subscriber, and Central Stations: fees would also apply to any expansion of this service into coastal waters other than the Gulf of Mexico)

5c. Fill in Transmitters—See 2c.

5d. Major Amendment to Pending Application (per transmitter)—See 4c.

5f(iii). Partial Assignment (per call sign)—See 4e(iii).

5h. Extension of Time to Complete Construction (per application)—See 2j.

5i. Reinstatement (per application)—See 2n.

5j. Notice of Completion of Construction (per application)—See 2k.

5k. Special Temporary Authority (per frequency/per location)—See 2i.

5l. Combining Call Signs (per call sign)—See 2o.

5m. Auxiliary Test Station (per transmitter)—See 2l.

5n. Standby Transmitter (per transmitter/per location)—See 2p.

6. Point-to-Point Microwave and Local Television Radio Service:

6a. Conditional License (per station)—A construction authorization, formerly called a construction permit, issued prior to commencement of construction of a station.

6b. Major Modification of Conditional License or License Authorization (per station)—A request for a change to a previously authorized construction authorization or modification to a previously granted nonconditional license authorization for a station.

6c. Certification of Completion of Construction (per station)—Notification to the Commission that construction has been completed or that permissible changes have been made that result in a non-conditional license authorization for a station.

6d. Renewal (per licensed station)—Required renewal of a previously granted nonconditional license authorization.

6e. Assignment or Transfer (per authorized station)—Voluntary or involuntary assignment of a station or transfer of control of a corporation holding a station.

6f. Extension of Construction Authorization (per station)—Request for an extension of the time to construct contained in a previously granted conditional license.

6g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request)—An authorization granting permission to operate a station when circumstances require immediate or temporary operation of a station. A request for waiver of prior construction authorization permits construction before a conditional license is granted.

7. Multipoint Distribution Service (including multichannel MDS):

7a. Conditional License (per station)—A construction authorization, formerly called a construction permit, issued prior to commencement of construction of a station.

7b. Major Modification of Conditional License or License Authorization (per station)—A request for a change to a previously authorized construction authorization or modification to a previously granted nonconditional license authorization for a station.

7c. Certification of Completion of Construction (per channel)—Notification to the Commission that construction has been completed or that permissible changes have been made that result in a non-conditional license authorization for a station.

7d. Renewal (per licensed station)—Required renewal of a previously granted nonconditional license authorization.

7e. Assignment or Transfer (per authorized station)—Voluntary or involuntary assignment of a station or transfer of control of a corporation holding a station.

7f. Extension of Construction Authorization (per station)—Request for an extension of the time to construct contained in a previously granted conditional license.

7g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request)—An authorization granting permission to operate a station when circumstances require immediate or temporary operation of a station. A request for waiver of prior construction authorization permits construction before a conditional license is granted.

8. Digital Electronic Message Service:

8a. Conditional License (per nodal station)—A construction authorization, formerly called a construction permit, issued prior to commencement of construction of a station.

8b. Modification of Conditional License or License Authorization (per nodal station)—A request for a change to a previously authorized construction authorization or modification to a previously granted nonconditional license authorization for a station.

8c. Certification of Completion of Construction (per nodal station)—Notification to the Commission that construction has been completed or that permissible changes have been made that result in a non-conditional license authorization for a station.

8d. Renewal (per licensed nodal station)—Required renewal of a previously granted non-conditional license authorization.

8e. Assignment or Transfer (per authorized station)—Voluntary or involuntary assignment of a station or transfer of control of a corporation holding a station.

8f. Extension of Construction Authorization (per station)—Request for an extension of the time to construct contained in a previously granted conditional license.

8g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request)—An authorization granting permission to operate a station when circumstances require immediate or temporary operation of a station. A request for waiver of prior construction authorization permits construction of a station before a conditional license is granted.

9. International Fixed Public Radio (Public & Control Stations):

9e. Extension of Construction Authorization (per station)—See 2j.

9f. Special Temporary Authority or Request for Waiver (per request)—See 2i. A waiver request includes any request to suspend or modify a Commission rule.

10. Fixed-Satellite Transmit/Receive Earth Stations: Includes international and domestic earth stations operating in the 4/6 GHz and 11/12/14 GHz bands. VSAT systems are treated separately as a discret category of applications.

10b. Modification of License (per station)—Application to add or delete equipment or to change power, frequencies, station location, or other operating parameters.

10c. Assignment or Transfer—An assignment is the change of an authorization from the present holder to another person as defined in Section 3(i) of the Communications Act. A transfer involves the changing of control of any interest in a corporation or partnership licensed to operate an earth station that requires FCC approval. For this service the first station on the application

will pay the higher fee while all other stations simultaneously transferred on the same application will pay a lesser fee.

10d. Development Station (per station)—An earth station that is used in the development of new techniques which give promise of improvement in the Fixed-Satellite Service; the development and testing of equipment intended for use in this service; or path loss tests necessary to resolve uncertainties associated with proposed earth stations.

10e. Renewal of License (per station)—Renewal of an existing license at the expiration of the term of authorization.

10f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request)—An authorization granting permission to operate a station when circumstances require immediate or temporary operation of a station. A request for waiver of prior construction authorization permits construction before a construction permit or license is granted.

10g. Amendment of Application (per station)—The modification, deletion or addition of information to a pending application for Commission authorization.

10h. Extension of Construction Permit (per station)—See 2j.

11. Small Transmit/Receive Earth Stations (2 meters or less and operating in the 4/6 GHz frequency band):

11c. Modification of License (per station)—See 10b.

11d. Assignment or Transfer—See 10c.

11e. Developmental Station (per station)—See 10d.

11f. Renewal of License (per station)—See 10e.

11g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request)—See 10f.

11h. Amendment of Application (per station)—See 10g.

11i. Extension of Construction Permit (per station)—See 2j.

12. Receive Only Earth Stations:

12b. Modification of License or Registration (per station)—See 10b.

12c. Assignment or Transfer—See 10c.

12d. Renewal of License (per station)—See 10e.

12e. Amendment of Application (per station)—See 10g.

12f. Extension of Construction Permit (per station)—See 2j.

12g. Waivers (per request)—request for waiver of the Commission's rules may be granted upon application or by the Commission on its own motion.

13. Very Small Aperture Terminal (VSAT) Systems: VSAT Systems operate in the 12/14 GHz frequency bands. Although various size small earth stations may be used, all stations of a particular size must be technically identical. Because these stations operate on a primary basis, frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more larger hub stations.

13b. Modification of License (per system)—See 10b.

13c. Assignment or Transfer of System—An assignment is the change of an authorization from the present holder to another person as defined in Section 3(i) of the Communications Act. A transfer involves the changing of control of any interest in a corporation or partnership licensed to operate an earth station that requires FCC approval.

13d. Developmental Station—See 10d.

13e. Renewal of License (per system)—See 10e.

13f. Special Temporary Authority or Waiver of prior construction authorization (per request)—See 10f.

13g. Amendment of application (per system)—See 10g.

13h. Extension of Construction Permit (per system)—See 2j.

14. Mobile-Satellite Earth Stations: Earth stations intended to be used while in motion or during halts at unspecified points and fixed hub stations used in conjunction with the network. These stations may provide a variety of land, maritime and aeronautical voice and data services. This category does not include Radio-determination-Satellite Service earth stations, which are treated separately.

14a. Initial Application for Blanket Authorization—Application for a license to operate numerous portable mobile units.

14b. Initial Application for Individual Earth Station—Application for a license to operate a single earth station in conjunction with an existing system.

14c. Modification of License (per system)—See 10b.

14d. Assignment or Transfer (per system)—See 13c.

14e. Developmental Station (per station)—An earth station that is used in the development of new techniques which give promise of improvement in the Mobile—Satellite Service; the development and testing of equipment intended for use in this service; or path loss tests necessary to resolve uncertainties associated with proposed earth stations.

14f. Renewal of License (per system)—See 10e.

14g. Special Temporary Authority or Waiver of prior construction authorization (per request)—See 10f.

14h. Amendment of Application (per system)—See 10g.

14i. Extension of Construction Permit (per system)—See 2j.

15. Radiodetermination—Satellite Earth Stations:—A mobile earth station or fixed hub earth station used in conjunction with a Radiodetermination-Satellite Service (RDSS) system for the purpose of providing position location information.

15a. Initial Application for Blanket Authorization—Application for a license to operate one or more earth stations in conjunction with a hub station.

15b. Initial Application for Individual Earth Station—See 14b.

15c. Modification of License (per system)—See 10b.

15d. Assignment or Transfer (per system)—See 13c.

15e. Developmental Station—An earth station that is used in the development of new techniques which give promise of improvement in the Radiodetermination-Satellite Service; the development and testing of equipment intended for use in this service; or path loss tests necessary to resolve uncertainties associated with proposed earth stations.

15f. Renewal of License (per system)—See 10e.

15g. Special Temporary Authority or Waiver of prior construction authorization (per request)—See 10f.

15h. Amendment of Application (per system)—See 10g.

15i. Extension of Construction Permit (per system)—See 2j.

16. Space Stations:

16b. Application for Authority to Launch & Operate—Authorization to launch a space station, or replacement, and assignment of an orbital location at which the space station is to be operated.

16c. Assignment or Transfer (per satellite)—See 10c.

16d. Modification—Application to add or delete equipment, or to change power, frequencies, station location, or other operating parameters.

16e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request)—See 10f. In addition, the STA may allow for the provision of space segment services to various points.

16f. Amendment of Application—See 10g.

16g. Extension of Construction Permit/Launch Authorization (per request)—A request to extend a required implementation milestone date (e.g., beginning or completion of construction, launch date).

17. Section 214 Applications:

17b. Cable Landing License—The authorization required for a person to land or operate in the U.S. a submarine cable which directly or indirectly connects the U.S. with any foreign country, or connects one portion of the U.S. with another portion of the U.S. This authority is not required for cables that lie wholly within the Continental U.S.

(i) Common Carrier—A Common Carrier cable landing license is a request to land and operate a submarine cable by entities engaged as common carriers for hire. This request is always associated with a Section 214 application to construct and operate a submarine cable.

(ii) Non-Common Carrier—A Non-Common Carrier cable landing license is a request to land and operate a private, non-common carrier cable by entities who do not offer service for hire to the public at large.

17e. Special Temporary Authority (all services)—See 21.

17f. Assignments or Transfers (all services)—An assignment is the change of an authorization from the present holder to another person as defined in Section 3(i) of the Communications Act. A transfer involves a change of control of any interest in a corporation or partnership licensed to construct or operate under Section 214 of the Communications Act.

18. Recognized Private Operating Agency Status: (per application)—A request by any individual or company or corporation other than a governmental establishment or agency that seeks recognition to operate an international public correspondence or radio service capable of causing harmful interference and upon which are imposed obligations provided for in Article 44 of the International Telecommunication Convention.

19. Telephone Equipment Registration: Registration of terminal equipment and circuitry connected directly to the telephone network.

20. Tariff Filings:

20a. Filing Fee—A filing is a Letter of Transmittal with accompanying tariff supplement, revised page(s), additional page(s), concurrence(s), notice of revocation, adoption notice or any other schedule(s) of rates or regulations filed in accordance with Part 61 of the Commission's rules.

20b. Special Permission Filing (per filing)—An application to waive any portion of Part 61 of the Commission's rules.

21. Accounting and Audits:

21a. Field Audit—An on-site review of a carrier's financial and operating practices, procedures and records that is designed to

examine and measure the carrier's compliance with the Commission's rules and regulations.

21b. Review of Attest Audit—The review by Commission staff of an audit conducted by outside accounting firm attesting that the methods used by a Tier 1 carrier to separate its costs between regulated and nonregulated activities properly implement the procedures set forth in the carrier's cost allocation manual filed with the Commission.

21c. Review of Depreciation Update Study (Single State)—Staff review of a study prepared by a common carrier in support of its request to change the parameters underlying the rates at which it depreciates its plant. The study may cover the carrier's operations in a single state, or may include studies applicable to two to six states. The fee for depreciation rate studies is based on a single state study, with an additional charge established for each additional state.

21d. Interpretation of Accounting Rules (per request)—Request for formal interpretation of a provision of the prescribed Uniform System of Accounts (Parts 32, 34, 35). The fee would be imposed for carriers who seek a written accounting interpretation, and would be required at the time the request is filed.

21e. Petition for Waiver (per petition)—Request for waiver of any of the Commission's accounting or audit rules including the prescribed accounting rules (Part 32), separations rules (Part 36) or access charge rules (Part 69).

MISCELLANEOUS CHARGES

1. International Telecommunications Settlements Administrative Fee for Collections: (per line item)—The FCC acts as a clearinghouse in processing international telecommunications settlements in the Maritime Mobile and Maritime Mobile-Satellite Services. Settlements consist of charges incurred by FCC licensees through the use of foreign telecommunications facilities while in international or foreign waters. The administrative fee would be imposed on every line item charged to the FCC and subsequently billed to its licensees, with the exception that government licensees would not be subject to the administrative fee. A line item represents the total charge billed to the Commission by a foreign country for a single radiocommunication or transmission by an FCC licensee.

2. Radio Operator Examinations:

a. Commercial Radio Operator Examination—Applicants for the Marine Radio Operator Permit, General Radiotelephone Operator License, Third Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate and First Class Radiotelegraph Operator's Certificate (and Ship Radar Endorsement) must pass an examination before being issued a license, permit or certificate. The fee would be collected with each application for an examination and is retained if the applicant fails to take the examination or does not pass the examination.

b. Renewal of Commercial Radio Operator License, Permit or Certificate—Licenses, permits or certificates are issued for five year terms and may be renewed at any time during the last year of the license term or during a five year grace period following expiration.

c. Duplicate or Replacement Radio Operator License, Permit or Certificate—The holder of a radio license, permit or certificate which has been lost, mutilated or destroyed may obtain a duplicate license document by filing an application. The holder of one of these documents whose name is legally changed or physical description is significantly altered may obtain a replacement license by filing an application. Both requests would be subject to a fee.

3. Ship Inspections:

a. Inspection of Oceangoing Vessels under Title III, Part II of the Communications Act (per inspection)—All passenger ships irrespective of size and cargo ships of 1,600 gross tons and upward must have a required equipment inspection at least once every 12 months. If a reinspection is necessary at another date, an additional fee will be collected.

b. Inspection of Passenger Vessels under Title III, Part III of the Communications Act (per inspection)—United States vessels which transport more than six passengers for hire while navigating on any tidewater within the jurisdiction of U.S., including adjacent to or in the open sea, must have a required equipment inspection once every five years. If a reinspection is necessary at another date, an additional fee will be collected.

c. Inspection of Vessels under the Great Lakes Agreement (per inspection)—Each U.S. flag vessel subject to the Agreement Between the United States and Canada for Promotion of Safety on the Great Lakes by Means of Radio (1973) must have an inspection of the required radiotelephone installation not less than once every twelve months. If a reinspection is necessary at another date, an additional fee will be collected.

d. Inspection of Foreign Vessels under the Safety of Life at Sea (SOLAS) Convention (per inspection)—Foreign flag vessels engaged in international voyages must meet the terms of the SOLAS Convention and are subject to periodic inspection. If a reinspection is necessary at another date, an additional fee will be collected.

e. Temporary waiver for Compulsorily Equipped Vessel—The Commission may grant a waiver of the annual inspection for a period not to exceed 30 days from the time of first arrival of a ship at a U.S. port directly from a foreign port for the sole purpose of enabling the vessel to proceed to another port in the United States where an inspection can be made.

It is my understanding that Senator HOLLINGS intends to include an identical explanation at the appropriate point in the Senate's deliberations. It is our intention that the Commission be guided by this explanation, and avoid second-guessing the Congress by asking questions in a rulemaking that have already been answered by the Congress.

Finally, I would like to take this opportunity to address two items that were included in H.R. 3299, but which have been dropped by the conferees. These two provisions—codification of the fairness doctrine and dial-a-porn—are supported by a majority of conferees from both the House and the Senate.

While it would have been my preference to leave these in the conference agreement, it has become clear that it is the will of the House that we pass a clean reconciliation bill.

I have always respected and attempted to honor the will of the House. I am doing so again. However, it is my view that we have at last an opportunity to codify the fairness doctrine, an action which is broadly shared by a majority of Members of the House and the Senate on both sides of the aisle.

Mr. HAWKINS. Mr. Speaker, I rise to reluctantly oppose the adoption of the conference report on the reconciliation bill. I have at least two reasons for my opposition.

First, the Committee on Education and Labor was required by the budget resolution to find $40 million in cutbacks in our programs for fiscal year 1990 and to find a further $40 million for fiscal year 1991. We fully complied with that instruction in the budget resolution, and, in fact, exceeded the amount of cutbacks we were ordered to find.

Now we are being told that we must accept further cutbacks of $320 million in our programs. That is unacceptable.

It was not easy for our committee to find the cuts originally ordered by the budget resolution. We had to deliberate many months and engaged in intensive arguments among ourselves about the effects of these cutbacks on the Federal student loan programs. In the end, we severely limited the supplemental loan program so that many thousands of students will be denied those loans. Several of our Members believe that those students will also be denied an education due to the fact that they will not qualify for those loans.

It was a difficult task, but we persevered and did the best job we could to limit the damage from these cutbacks.

Now we are being told that we must accept additional cutbacks eight times as extensive as that initial $40 million. We are being told to accept an unfair share of the cost of deficit reduction.

That leads me to my second reason which is the far more important reason for my opposition to this reconciliation bill. Those additional cutbacks of $320 million will damage our country's economic survival.

Just this week the Japanese Government bluntly told our trade negotiators that a major reason for our deep trade deficit with that country is due to the poor quality of our schools. The Japanese told us that a major part of any plan to restore our economic competitiveness must involve improving our schools.

Do we need foreigners to tell us that? We know that. In fact, for years now businessmen have been telling the Congress and all our elected officials that we must improve our schools. Yet, today by this vote will be harming our schools.

The chapter 1 program will be cut back by more than $80 million. This will mean that 130,000 disadvantaged students will not receive assistance.

Aid for students in college will be cut back by over $100 million. This will mean that 30,000 students will be denied Pell grants, and 1.3 million students will have their Pell grants reduced.

These results make absolutely no sense. They make no sense for our people, for our country, or for our economic competitiveness.

Therefore, I must reluctantly oppose this conference report and urge the Members to vote against it.

Mr. BRENNAN. Mr. Speaker, I rise in opposition to the conference report on budget reconciliation. One key objectionable provision relates to the Gramm-Rudman sequestration order. These across-the-board cuts will slash vital government programs without any established priority.

The unelected bureaucrats are already sharpening their meat ax to implement the nearly $5 billion in cuts called for in this measure. Programs I consider of the highest merit and priority such as: cancer research, environmental cleanup, low-income housing, student loans, air traffic control, health care for expectant mothers, and fighting the war on drugs will all suffer. I cannot support a measure which permits them to be adversely affected in such a blind and mindless fashion.

We should not abdicate our role in creating spending priorities within the Federal budget. Our constituents elected us to make the tough choices and retain a voice in how the Federal budget should be allocated. The effects of these across-the-board cuts will not likely be felt until we have long adjourned for the year. By then, the severe impact of these spending cuts will be felt and the blame will not be focused on the unelected bureaucrats charged with making the cuts. The outrage will be directed at Congress and the President for permitting this meat ax to be lowered on vital human needs programs.

We must take responsibility for Federal spending. I urge my colleagues to reject this conference report and avoid the harm it will cause to so many of our constituents.

Mr. WAXMAN. Mr. Speaker, with respect to those provisions within the Omnibus Budget Reconciliation Act of 1989, regarding vaccine compensation, I would note, that this language specifies that the Secretary of Health and Human Services is to participate in vaccine proceedings. The language also makes it clear that this participation is subject to a variety of other amendments, including those requiring all parties to attempt to make proceedings "less adversarial, expeditious, and informal." The special masters in these proceedings are directed by this language to use "flexible and informal standards of admissibility of evidence" and to include the opportunities "for parties to submit arguments and evidence on the record without * * * routine use of oral presentations, cross examinations, or hearings." We would not anticipate that the Secretary will be required to provide direct testimony in support of his positions on the medical issues in the majority of cases. However, some cases may require such participation, and some will be clear on the record. We hope that the masters will make the most judicious use of the time of all parties and will enable the proceedings to be expeditious and fair.

Mr. STARK. Mr. Speaker, I am pleased to join Chairman ROSTENKOWSKI in support of the conference agreement on H.R. 3299, the Omnibus Budget Reconciliation Act of 1989.

As chairman of the Subcommittee on Health, I believe that the Medicare and related provisions of the bill represent a balanced, rational approach to cutting spending, while also making needed changes in the Medicare Program.

The Medicare provisions save $2.8 billion in fiscal year 1990, in excess of the target of $2.7 billion.

The conference agreement focuses savings on that part of the Medicare Program which is growing the fastest—payments under part B for physicians and outpatient care. At the same time, it provides a reasonable inflation increase for hospitals.

For several years, Congress has been struggling with physician payment reform. This bill includes a long overdue overhaul of Medicare's physician payment system. The provisions provide for a three-part plan for reform.

This plan adopts a resource-based relative value scale and volume performance standards to help limit overall growth in expenditures.

In addition, the conference agreement would provide essential protection for Medicare beneficiaries against extra billing. This will assure that the savings we achieve are not simply passed on to the beneficiaries in the form of higher out-of-pocket costs.

The committee's package also includes a program of research on outcome and effectiveness to assist and improve our efforts to assure quality of care.

With regard to hospitals, increases in payments will average over 4 percent, with even higher increases for over vulnerable safety-net inner-city hospitals and for rural hospitals.

Disproportionate share payments to inner-city hospitals serving large numbers of the poor are increased by over 20 percent. For rural hospitals, the inflation increase would be three percentage points above the expected inflation rate in order to account for higher than average cost growth in those hospitals.

The bill also provides for the establishment of a framework for dealing with the structural problems of our troubled rural hospital system. Through the Essential Access Community Hospital [EACH] demonstration program, the bill begins to take the necessary steps to assure an accessible and effective rural health care delivery system.

Vital assistance for the hospice program is also included in the conference agreement. Rates of payment for hospice services to the terminally ill have not been increased for several years. Hospice rates will be increased by 20 percent and indexed in future years for inflation.

The conference agreement builds upon the 1977 Medicare antifraud and abuse legislation by prohibiting doctors from referring patients to clinical laboratories with which they have an ownership interest. Based upon studies conducted by the inspector general of Health and Human Services and the General Accounting Office, the conference agreement provides important new safeguards necessary to guard against kickbacks and the increased ordering of laboratory tests when physicians own the labs to which they refer their patients.

The conference agreement also establishes new reporting requirements for other types of services to which physician-owners make referrals. In addition, physicians will be required to note on the Medicare claim form when they refer patients to facilities in which they hold an interest. These two provisions coupled with a requirement for further analysis of physician ownershp of other services will lay the groundwork for further legislation in this area next year.

The hospital antidumping provisions of current law that prohibit unstable patients from being transferred are strengthened. The bill also includes an improved system for identifying Medicare secondary payer situations.

The conference agreement also includes a number of provisions to improve health coverage for individuals with disabilities. The bill extends COBRA continuation coverage from 18 to 29 months for those with a disability at the time of termination of employment. The Medicare buy-in provision allows disabled beneficiaries who have worked a full 48 months and have exhausted their extended period of Medicare eligibility the option of purchasing Medicare coverage.

Mr. Speaker, the Medicare and health provisions of the reconciliation legislation will help to restrain the growth in health care costs. They are a fair and balanced response to the need for deficit reduction while also providing significant reforms in the Medicare Program.

Ms. PELOSI. Mr. Speaker, I urge my colleagues to support H.R. 3299, the budget reconciliation bill. It includes my bill, H.R. 2310, which will address an issue of great concern to disabled Americans.

The Consolidated Omnibus Budget Reconciliation Act [COBRA] of 1985 requires that continuation of certain health insurance coverage be offered to employees who who would otherwise lose coverage in an employer's group health plan due to termination of employment or other qualifying events. For most eligible beneficiaries the minimum continuation period is 18 months; for certain other situations, the minimum period is 36 months.

When a worker becomes disabled under provisions of title II of the Social Security Act, he or she is eligible for financial support months after the onset of disability. Health coverage under Medicare is available after another 24-month waiting period. Thus, an individual who is disabled by a severe medical condition faces a 29-month waiting period from the date of onset of disability to the date of becoming eligible for coverage under Medicare.

This provision would extend the minimum continuation period from 18 months to 29 months for individuals who are disabled under title II of the Social Security Act.

This provision will help improve access to health services and also help protect family financial resources. For those workers who become disabled, the option to continue under the same health coverage without a lapse of 11 months could relieve a major burden of worry. I urge my colleagues to support the budget reconciliation bill. Thank you.

Mr. PAYNE of Virginia. Mr. Speaker, the Veterans Affairs Committee has been extremely active this year in attempting to correct the Department of Veterans Affairs Home Loan Guaranty Program so that this will eventually be a self-financing program and will not continue to require substantial appropriations to stay solvent. I want to commend—and thank—Chairman MONTGOMERY, Congressman HAMMERSCHMIDT, Congressman STAGGERS and Congressman BURTON for their leadership and support for this legislation.

I am very pleased about the change in score-keeping method related to the sale of VA mortgages proposed in this reconciliation bill. On one hand, this body was attempting to improve a program and save the taxpayers money, while on the other hand we were maintaining an inaccurate accounting system

that actually cost taxpayers unnecessary money.

If you sold a DVA-guaranteed loan with recourse at a profit, it did not count as an offsetting collection. Rather, it was viewed as borrowing. However, if you sold a loan without recourse at a loss of 50 cents on the dollar, this was treated as a savings. No businessman or manager would ever consider running his business this way, and I hardly think that the Federal Government should and I applaud the change in scorekeeping in this reconciliation bill.

Selling a loan without recourse is, on the surface, a more sound policy for the government since the investor, theoretically, bears the risk of defaulted loans. In actuality, due to the manner that without-recourse sales are "structured" by the DVA, i.e., dividing the loan assets into two or more classes of securities with the DVA retaining a portion of the subordinate securities, the Department of Veterans Affairs bears all of the risk of default. In other words, these nonrecourse sales are not without risk for the DVA.

CBO analyst testified that the major difference between recourse sales and structured nonrecourse sales is simply that the latter involves many more consultants, advisers and other intermediaries—all of whom make a profit.

I am pleased about the provision in the reconciliation bill eliminating this type of accounting. The American public was losing by this policy, and we were possibly endangering a program that has been of great benefit to many veterans. I am pleased it is being rectified.

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
*Washington, DC, November 8, 1989.*

DEAR COLLEAGUE: I anticipate that the Senate will shortly be asked to give final consideration to the conference report on H.R. 3299, the Budget Reconciliation bill. As Chairman of the Committee on Veterans' Affairs, I am writing to urge that you join me in opposing any move to delete from the Committee's title (IX) of the report a provision (section 9003) that would correct current inequities in the way that proceeds of VA loan-asset sales are credited for budget purposes. The current methodology produces "gimmick" deficit-reduction figures while actually increasing the deficit.

This provision has been passed by the House twice this year (on June 6 in H.R. 1415, veterans' home-loan-guaranty legislation, and on October 5 in the reconciliation bill). On September 13, 1989, our Committee reported a bill, S. 13, containing the same provision, but dropped the provision in order to avoid possible procedural delays in considering that omnibus bill, which was passed by the Senate on October 3.

*Background on vendee loans sales.*—When VA sells homes it has acquired as a result of foreclosures on VA-guaranteed loans, VA itself often finances the sale by extending credit, referred to as a "vendee" loan, to the purchaser. VA has sold these vendee loans to investors either "with recourse," meaning that VA promises to make good on any loans that default, or "without recourse," meaning that (theoretically) the investor bears the risk of defaulted loans. However, these without-recourse sales are "structured" by VA to divide the loan assets into two or more classes of securities, with VA retaining enough of the subordinate securities so as to bear, for all practical purposes, *all* the risk of default. VA itself admits that there is little difference between VA's financial risk in a recourse sale and its risk in a structured, without-recourse sale—even though the latter produces far less up-front cash and incurs far greater administrative expenses than a recourse sale.

*Budget gimmickry.*—Despite the lack of any significant difference in VA's financial risks in the two types of sales, in 1987, OMB, and later CBO adopted policies to score recourse sales and without-recourse sales differently for budget purposes. OMB and CBO now score the proceeds from a loan sold with recourse as though it were a loan from the buyer, but score the proceeds of a without-recourse sale as deficit-reducing receipts. This policy creates an artificial bias in favor of selling loans without recourse that in turn is used to produce "gimmick" budget reductions. In contrast, GAO in its February 1988 report entitled "Loan Asset Sales: An Assessment of Selected Sales" (GAO/AFMD-88-240), stated that loan asset sales generally "should not be promoted as deficit reduction tools because such sales simply shift future cash receipts to the budget year in which sales are completed." Even more to the point, the Congressional Budget Office analyst responsible for the VA program, in a January 11, 1989, memorandum to Committee staff estimated that selling loans without recourse—rather than with recourse—actually costs taxpayers $37 million a year.

*Prior Congressional response.*—In 1987, Congress enacted a provision in Public Law 100-136 effectively precluding without-recourse VA loan sales. Six weeks later though, Congress, as part of the Economic Summit Agreement (Public Law 100-203), suspended the preclusion until October 1989, and OMB and CBO scored that action as a reduction in the deficit of $800 million in FY 1988 and $1 billion in FY 1989—even though it achieved no real savings. As contemplated by our Committee's reconciliation instructions, a provision in the pending conference report would postpone the preclusion of without-recourse sales for one more year, technically—though not in any real sense—achieving "savings" of $496 million in FY 1990. These kinds of phony reconciliation "savings" can keep being made year after year, as long as the current, contrived OMB/CBO scoring policy remains in place.

In order to prevent future use of this gimmickry—which has produced or will produce claimed "savings" of $2.3 billion over this and the past two fiscal years—and to permit the policy on selling vendee loans to be determined based on the best fiscal and financial interests of VA's home-loan guaranty program, the pending conference report provision would require a more objective, equitable scorekeeping approach by removing the artificial bias and restoring the pre-1987 scorekeeping method of treating the proceeds of both recourse and without-recourse sales in the same manner. The provision is part of the package agreement to comply with our Committee's reconciliation instructions for this year and to make it possible for VA to achieve greater real savings in the future.

You should also be aware that by dictating an unwise public policy based on a faulty technical rule, the current OMB/CBO scorekeeping convention hurts veterans by diminishing the viability of VA's home-loan guaranty program, which must absorb the added costs of selling loans without recourse.

Some have argued that the scorekeeping provision might violate the Byrd Rule (against extraneous provisions in reconciliation) or a section of the Budget Act (section 306, relating to provisions within the Budget Committee's jurisdiction), even though maintaining the current scorekeeping convention actually increases the deficit. It would be the height of irony to use these rules aimed at preserving budget-process integrity and reducing the deficit to block a provision that would eliminate future gimmicked "savings" that actually cost taxpayers money.

I urge you to join me in fighting any move to eliminate this important real deficit-reduction provision from the reconciliation report. If you have any questions about this legislation, please ask your staff to contact Michael W. Cogan of the Veterans' Affairs Committee staff at 224-9126.

With warm regards,
Cordially,

ALLAN CRANSTON,
*Chairman.*

Mr. GOODLING. Mr. Speaker, from the beginning of the budget reconciliation debate about specific provisions to make cost savings in the Supplemental Loan for Students Program, I have expressed my concern that the House not exact cost saving measures which would cut off access to student aid to good proprietary schools as well as the program abusers in this sector. The basic fact is that millions of low-income students are trained in the proprietary sector for useful and tax paying occupations. The simple fact is that if access were totally cut off from this sector, many of these students would have no other place for postsecondary and training.

I am pleased to say that the conference agreement reflects these concerns. However, I have some concerns about two other provisions. First, the requirement that a student who lacks a high school diploma must receive a GED prior to being eligible for an SLS. My second concern is with the requirement that a school's default rate continues with that school despite changes in ownership or control. Such a provision might well result in a policy which drives away responsible purchasers who would be good managers and educators.

These provisions are in effect for two fiscal years, 1990 and 1991, and I am hopeful that what we learn from the impact of these decisions will inform the debate surrounding the reauthorization of the Higher Education Act in 1992.

Mr. GAYDOS. Mr. Speaker, I rise in opposition to one small part—that dealing with savings to be gained from student aid loan programs—of the conference report on H.R. 3299, the budget reconciliation bill.

Because I knew that time would be limited today, I expressed my concerns in detail during a special order on Wednesday, November 15, but let me briefly outline my concerns for my colleagues.

If we accept the language proposed by the subconference committee on this matter of savings to be gained from reductions and restrictions on the eligibility of students to borrow under certain student aid loan programs, we will be making a tragic mistake.

If we adopt these provisions, my friends, we will be denying too many—and one is too many—young and old Americans the opportunity to learn job skills necessary for immediate placement in the work force.

Three items in the proposed language concern me. First, we would deny students eligibility for supplemental loans for students—the SLS program directed toward assisting independent students—if they wished to attend a career training school that has a student loan default rate of 30 percent or more.

Second, we would make it mandatory that any student applying for an SLS loan have a high school diploma or a GED.

And, finally, we would limit the loan amount available for students, depending on the length of the program in which they enroll.

Each of these three items directly restricts the accessibility of education for many young people and severely limits the choice of educational opportunity for them.

I am a member of the subconference on this issue and I have not and will not sign the subconference committee report because I think it is fundamentally flawed and is a step directly 180 degrees in the wrong direction.

The policy changes detailed in this report make bad policy because the consequences of them will make those students who most need career training ineligible for it and will hurt the very schools that would provide that training.

A 1989 report by Shearson Lehman Hutton argues that limiting access to higher education, including, and especially, career training, will cost dramatically more in terms of other Federal programs such as welfare, food stamps, women and infant care, housing, and Medicaid.

If we accept the changes in this report, the way it is now, we will be dooming too many Americans to a life of low wages or welfare by taking away the main vehicle that would enable them to learn a skill and better their lives.

I invite anyone who has any questions to look at my special order that has been printed in the CONGRESSIONAL RECORD.

And, if we were allowed a separate vote in this part of the conference report on H.R. 3299, I would urge all of you to join me in voting against it.

Mr. FRENZEL. Mr. Speaker, I yield 5 minutes to the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker and my colleagues, notwithstanding the objections of the gentleman who just preceded me in the well, I can fully understand and appreciate some of the feathers that become frayed during the course of consideration of a budget resolution of this type or reconciliation particularly. There has always been that kind of conflict when we enacted the Budget Act and superimposed it upon other committees around here chaired and vice chaired by men and women of substance, but, nevertheless, I think what this committee has done is outstanding.

I am not going to review the bidding here, because that has been pretty well laid out for us. I think we can say that it has, without question, done the very best job on reconciliation since the Budget Act and the whole process was enacted.

I want to take just a moment before concluding to compliment the distinguished chairman of the Committee on the Budget, the gentleman from California [Mr. PANETTA], the first year that he has chaired that committee. We have had distinguished chairman in the past. He has done an outstanting job, and I want to pay my respects to him.

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And then too, without any reflection whatsoever or diminishing what I have just said about the gentleman from California, let me pay my own respects on my side to the distinguished gentleman from Michigan [Mr. FRENZEL]. He is my kind of guy. We know from the very beginning that he was a hard worker, diligent, industrious, tenacious, obstreperous at times, but very, very well informed, and I am very proud of the kind of job you have done. Mr. FRENZEL, for our side of the aisle whenever there was conflict with the other side. You acquitted yourself as a gentleman, but always standing up for the principles you felt so deeply in. I will tell you, in these closing days when those of us few Members in the leadership, then with just the few Members that were taken into account here, particularly the gentleman from California and the gentleman from Minnesota, to work with them, to see how well they did their homework on behalf of the House versus the other body, all of the Members would be proud of the manner in which they acquitted themselves. We just have to give kudos to both of them for the fine job they have done, and I hope as many of my colleagues as possible will vote for the reconciliation bill. It is a good one of which we can all be mighty proud.

Mr. RICHARDSON. Mr. Speaker, I rise in strong support of the budget reconciliation package. In addition to achieving the genuine savings called for by the President, the package includes other important items including Medicaid coverage of pregnant women, as well as children up to age 6 with incomes up to 133 percent of poverty.

I am also pleased the package includes two technical provisions I sought. The first provision clarifies current law under the spousal impoverishment provisions of the Catastrophic Coverage Act. Unfortunately, the Health Care Financing Administration has misinterpreted spousal impoverishment law and its intent in community property States like New Mexico.

In New Mexico, Medicaid income eligibility is $964 or less. Because New Mexico is a community property State, both spouses' incomes would be added together and divided by half in order to determine Medicaid eligibility. HCFA has correctly interpreted current law for initial Medicaid eligibility but has refused to apply community property methodology to subsequent eligibility determinations. As a result, some elderly individuals who now qualify have been determined to be ineligible and will be kicked out of the program because of HCFA's misinterpretation of the statute. This provision will clarify that community property rules apply to both initial and all subsequent eligibility determinations.

I am also pleased the budget reconciliation package includes a technical provision correcting a problem that exists for New Mexico hospice programs as well as for hospice programs in some other States. In the Comprehensive Omnibus Budget Reconciliation Act of 1986 [COBRA], Congress made clear its intention that terminally ill nursing home residents are entitled to hospice services under Medicare and Medicaid. Because two-thirds of nursing home residents rely on Medicaid for nursing home coverage, COBRA provided that States should establish a "room and board" rate to cover the costs of nonhospice services provided to Medicaid individuals who elect hospice coverage in nursing homes. Unfortunately, HCFA has failed to issue regulations to assist States in determining the room and board rate for hospice patients.

Some States, including New Mexico proceeded, without the benefit of HCFA regulations, to establish rates which unintentionally discourage participation in hospice by nursing home residents. The unintended result is that in New Mexico, dying nursing home residents cannot receive hospice care but instead must engage in a cycle of repeated trips between the nursing home and the hospital.

The provision included in the package we are debating today requires that States which choose to cover hospice care pay the hospice organization an amount equal to at least 95 percent of the rate that would have been paid by the State under Medicaid to the nursing home facility for that dying individual.

The importance of this technical correction goes far beyond the State of New Mexico. Forty-seven percent of the Nation's ill elderly have no family members to assist in caring for them in their own homes. These individuals often become nursing home residents and then may subsequently become terminally ill. In COBRA, Congress acted to ensure hospice access for these individuals. This correction ensures that no unintended disincentive will frustrate the intent of Congress and the desire of hospice programs to provide care to those dying patients residing in nursing homes.

Mr. ANTHONY. Mr. Speaker, once again I wish to submit my view on the events that led to the final ESOP provisions of a major tax bill. I did the same thing on September 25, 1986, with regard to the ESOP provisions of the Tax Reform Act of 1986 [TRA 86].

Unlike TRA 86, H.R. 3299 ESOP provisions do not attempt to reform the underlying operation of ESOP's in terms of making ESOP's better ERISA, or retirement plans. But H.R. 3299 does impact ESOP's, and ESOP creation greatly, more so than any other piece of legislation since 1986.

In a hard, cold analysis of H.R. 3299's ESOP provisions, the attractiveness of setting up an ESOP is diminished. At the same time, some would argue that the changes in ESOP

tax incentives will, in the long run, prove beneficial to ESOP's, as ESOP's will be established for the right reasons.

My view falls in between these two extremes. Briefly and generally, the conference version of H.R. 3299 provides that:

First, in order for the lender to an ESOP to exclude 50 percent of the interest from its interest income from the ESOP loan, the ESOP has to hold at least 50 percent of the plan sponsor's stock;

Second, dividends paid on ESOP stock are deductible, except that if the dividends are used to pay debt, only dividends paid on stock acquired with the ESOP loan proceeds may be deducted; and

Third, a variety of special ESOP tax incentives are repealed. These are code section 2057, an exclusion from an estate under certain circumstances, up to $750,000, for stock transferred to an ESOP; code section 2210, an ESOP sponsor, under certain circumstances, may pay the estate tax liability if stock is transferred to an ESOP; code section 415(c)(6)(A), a special section 415 contribution limit, doubling under certain circumstances; and code section 382(1)(3)(c), an exception to the limitations of loss carryforwards for certain ESOP's; and

Fourth, a new 3-year holding period requirement before code section 1042 is available.

Taking each change cited above, I believe the following comments will prove accurate: For all but 1 to 3 percent of the ESOP transactions, code section 133, or the so-called ESOP lender's partial interest exclusion is repealed. The ESOP dividend deduction, especially for dividends paid in cash to employees, is alive and well. On the other hand, the conference decision on ESOP dividends create unique drafting tasks. Even though none of us have had time to review the conference draft in detail, we have to watch developments carefully as the new restriction on the deductibility of dividends used to pay debt is implemented and followed. The repeal of the several minor ESOP tax incentives will result in a small decrease in the number of ESOP's created, especially in the estate planning area.

While pleased that the conference decided to protect the bulk of the ESOP dividend deduction program, I am disappointed that the ESOP lender partial interest exclusion was basically eliminated by the conference, after both the House and Senate ratified the 30 percent threshold. I think everyone would agree that increasing the threshold to 50 percent was a surprise, and somewhat a psychological disappointment for ESOP advocates. On the other hand, I am well aware that the administration, through Treasury, endorsed total repeal of the ESOP lender partial interest exclusion, but indicated support of the ESOP dividend deduction.

In truth, the final conference result on ESOP's reflects the administration, or Treasury's position, more than either the House or Senate's positions.

How did we get to where we are today with these ESOP provisions? Like most questions, there is no simple answer. The factors bringing us to where we are today with these new ESOP provisions are many—some relating to issues that have nothing to do with ESOP's and others relating directly to ESOP, both real and unreal.

When the history of employee ownership and ESOP's is written, some will refer to the years of 1987, 1988, and the first half of 1989, as the "golden" years. Others, in particular reference to the first half of 1989, will refer to the era as the "garbage" years. In fact, in analyzing why we are where we are, the focus has to be on the first 6 months of 1989.

Prior to March 1989, the Congress and the administration calculated that all of the ESOP tax incentives cost approximately $300 million to $400 million per year in lost Federal tax revenues. But by June 1, both the Joint Committee on Taxation and the Treasury were stating that the ESOP lender partial interest exclusion would lose over $1 billion in revenue in fiscal year 1990, and $2 to $3 billion in revenue in the so-called out years.

To illustrate my point about the changing nature of attitudes toward the ESOP tax incentives, in January, during hearings by the Ways and Means Committee on LBO's and the role of ESOP's in LBO's, in response to my inquiries about the administration's position on ESOP's, Secretary of Treasury Nicholas Brady said that the administration supported ESOP's, and did not want any change in ESOP tax incentives. By May, however, Treasury was testifying that a review of the ESOP lender partial interest exclusion was required because of unexpected revenue losses, and by June, Treasury favored total repeal of this ESOP tax incentive.

What happened to cause such a change in Treasury's position, which was also the general reaction of many people here in Congress—that is, "ESOP's are out-of-control, we have to do something."

What happened in the first half of 1989? The undeniable fact is that beginning in January 1989, and cresendoing up to July 1989, many large, publicly traded corporations established ESOP's, utilizing the two major ESOP tax incentives—lender exclusion, and dividend deduction.

It is my view that there ESOP's were established for two major reasons: First, ESOP's were perceived as a good defense against a takeover under Delaware's takeover law; and second, the ESOP tax incentives resulted in a corporation being able to fund its defined contribution plans with employer stock at a cost lower through an ESOP than through a pure 401(k), profit-sharing, or savings/thrift plan.

Large corporate America decided ESOP's were good takeover defenses after the Delaware court decision in *Shamrock Holdings, Inc.* v. *Polaroid Corp.*, 559 A.2d 257 (Del. Ch. 1989) in mid-January 1989. Without characterizing this court case one way or the other as to whether it was correct or incorrect, or whether Delaware takeover law is good or bad, many people believe that the holding in the Polaroid case is this: "If you are incorporated in Delaware, and you have stock in an ESOP and/or other friendly hands, up to 15 percent of the corporation's outstanding voting stock, a corporate raider will not try to take over your corporation."

ESOP experts tell me that this is a very simplistic interpretation of the Polaroid case, and of ESOP law in particular, because the Delaware case seemed to sanction only certain kinds of ESOP's, and ESOP law does not ensure the stock is in hands friendly to management.

As to the second reason, benefits experts figured out that, under an IRS letter ruling, (PLR 8921101), which most believe properly interpreted current law, a corporation could fund an ESOP with the same amount of employer securities, previously contributed to other defined contribution plans, at a lower cost. Roughly, the result seemed to be—no extra benefit for employees because the stock contributed was equal to pre-ESOP plans, but lower costs to the corporation because of the ESOP lender interest exclusion and the ESOP dividend deduction provision.

The statistics, SEC filings, and news articles bear out my observations: In all of 1988, $4.3 billion in ESOP loans were made, compared to $17 billions in the first half of 1989. Of the 1989 loans, nearly 90 percent, by value, were to publicly traded corporations. Most of these transactions, which were reported in the newspapers, involved plans holding less than 15 percent of the corporation's stock of corporations incorporated under Delaware law. Most plans were described as combinations of the corporations' 401(k) plan, which can hold employer stock, and a new ESOP.

In the face of this obvious outbrust of ESOP creation, and the revenue loss therefrom, the attack on the ESOP's began.

First, even though the Ways and Means Committee hearings in early 1989 proved beyond a doubt that ESOP's were involved in very few LBO's, and very few restructuring before 1989, the Ways and Means Committee floated options to curtail ESOP's as a major solution to the LBO controversy. The options were to: First, repeal the ESOP lender partial interest exclusion; second, repeal the ESOP dividend deduction provision; and third, require all ESOP companies to have an additional, federally-defined meaningful pension plan. After a flurry of opposition, option 3 seemed to disappear.

Second, on June 2, the IRS issued rev. rul. 89–76, which allowed, among other things, ESOP debt to be securitized in the public bond market. ESOP critics, responded to this ruling as if the ESOP provisions would now cost the Treasury $5 to $10 billion per year in revenue losses. They did so because of newspaper stories with certain quotes, which I am told were taken out of context, implying ESOP transactions would balloon into the billions and billions of dollars. This whole episode growing from rev. rul. 89–76 was labeled the "Perpetual Misinformation Machine" by the October 23, 1989 Tax Notes issue, p. 388. Ironically, the final conference decision does not repeal rev. rul. 89–76, because people came to realize the ruling was not what it was made out to be. And, as a practitioner of the art of politics, I know very well the risks involved with being quoted in the news media.

Beginning on June 4, there seemed to be a generalized panic about ESOP transactions, both by those wanting to do them, and by those wanting to stop them.

Out of a genuine concerns about the loss of revenue, the chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, introduced H.R. 2572 which would have repealed

the ESOP lender partial interest exclusion for loans made after June 6, with certain exceptions under a general transition rule. The revenue gain from this legislation was estimated to be nearly $1.5 billion in fiscal year 1990, and over $10 billion over the next 5 fiscal years.

Now, I turn to the big picture. Simultaneous with all the concerns that ESOP's had run amouk, the President and the Congress had decided on a 1990 budget package, which provided that the tax committees would raise $5.3 billion in new revenue for fiscal year 1990 in the 1989 Budget Reconciliation Act.

Now the picture is clear: Because there was a need for $5.3 billion in new revenue, obtaining $1.5 billion from an ESOP program run amouk became very attractive to some.

Allow me to digress for a moment to say that I personally had concerns about the new revenue estimates concerning ESOP's. I say this as an ESOP supporter. I welcomed the fact that many of the largest U.S. corporations were creating ESOP's. For employee ownership to spread, it has to be embraced by our largest employers. But from the congressional vantage point, the frenzy of ESOP creation in the first half of 1989 appeared to be too much, too fast. And, the ESOP's created frequently had only 2 to 10 percent of the corporation's stock placed in an ESOP.

Again, however, I also saw the benefit to employees. In many of these companies, the ESOP became the largest shareholder. As publicly traded companies, the employees will vote allocated ESOP shares. The value of the ESOP shares in publicly traded, Fortune 500 companies is solid, and liquid. And, many companies establishing ESOP's in early 1989 have strong employee participation plans, or instituted participation plans in conjunction with the ESOP creation.

In any event, the Ways and Means Committee had to raise $5.3 billion under the first budget resolution. As we moved toward our early July markup date, the number of ESOP transactions did not significantly diminish, in spite of Chairman ROSTENKOWSKI's bill H.R. 2572. In other words, the companies, and their advisors, interested in lowering employee benefit costs and/or in the supposed ESOP takeover defense, continued to create ESOP's. This actively demonstrated that the ESOP dividend deduction was more important to the creation of ESOP's among Fortune 500 companies than was the ESOP lender partial interest exclusion.

And, as it seems inevitable before the Ways and Means Committee marks up a tax bill, the chairman's staff found that more revenue was needed as new revenue estimates were calculated.

To the dismay of ESOP supporters, on July 10, the chairman's "mark", unveiled on July 10, recommended the repeal of the ESOP dividend deduction as well as the ESOP lender partial interest exclusion. Because repealing these two key ESOP tax incentives, added to the code in 1984, and expanded in 1986, would have moved ESOP's back to pre-1984 in terms of interest in ESOP's, I decided by the morning of July 11, to offer an alternative ESOP proposal.

Most of us know, but perhaps the public does not, that when a member of the Ways and Means Committee offers an amendment to the chairman's mark, the general rule is that if the revenue gain deleted by the amendment from the chairman's mark is offset by some revenue gain, then chances of the amendment's adoption are enhanced. Furthermore, if the amendment's revenue gain is from the same area as the revenue deleted, chances of success are even further enhanced.

So I decided on a proposal that was, in essence, revenue neutral, by repealing several minor ESOP tax incentives in order to allow the ESOP lender partial interest exclusion and the ESOP dividend deduction to be available if the ESOP held 30 percent or more of the plan sponsor's stock. Later revenue estimates had my amendment actually losing revenue, but the final committee bill reached its target, so my amendment was not revisited. My amendment was adopted by a voice vote. I was pleased the committee accepted my amendment to maintain, to some degree, a positive set of pro-ESOP tax incentives.

The committee also adopted two other ESOP amendments. One, by the gentleman from Pennsylvania, Congressman SCHULZE, changed the effective date of the ESOP lender partial interest exclusion from June 6 to July 10. The other, by the gentleman from New York, Congressman MCGRATH, set forth a special rule for a series of so-called ESOP immediate allocation loans.

After the committee action, the House took no other formal action pertaining to the ESOP provisions in H.R. 3299.

I do wish to note that our colleague, Congressman BALLENGER, of North Carolina introduced H.R. 3364 after the Ways and Means Committee acted, and his bill has attracted over 30 cosponsors. H.R. 3364 would limit the ESOP lender partial interest exclusion to those ESOP's with 20 percent or more ESOP's. Also, our colleague from California [Mr. ROHRABACHER] sent a letter to Chairman ROSTENKOWSKI protesting the ESOP proposals in the chairman's mark. More than 50 Members cosigned this letter. Finally, the Populist Caucus of the House, led by Congressman LANE EVANS of Illinois, also wrote to Chairman ROSTENKOWSKI to express disagreement with the ESOP cutback provisions.

On July 12, Senator LLOYD BENTSEN, chairman of the Senate Finance Committee introduced S. 1303, which also established a 30-percent threshold before the ESOP lender's partial interest exclusion was available. Among other things, his bill required full voting rights passthrough for any stock acquired with a loan qualified for the interest exclusion. Earlier, Senator ROBERT DOLE had introduced S. 1171, which was similar to Chairman ROSTENKOWSKI's original bill H.R. 2572.

As is generally acknowledged, the support for ESOP's, and employee ownership, is more widespread and deeper in the U.S. Senate than in the House. Certainly this is partially attributable to the leadership of the ESOP champion, Senator Russell Long. Unlike prior years, when this assumption was not necessarily backed up by fact, in 1989, the Senate Finance Committee made a strong record against a severe ESOP cutback. The committee did so by refusing to restrict the deductibility of ESOP dividends one iota, and by refusing to repeal any of the ESOP miscellaneous provisions.

Thus, when the Senate version of the 1989 budget bill left the Senate, its only ESOP provision was to limit the ESOP lender partial interest exclusion to ESOP loans to 30 percent or more ESOP's in the manner proposed in Senator BENTSEN's bill S. 1303.

I will not repeat how the differences between the House and Senate bills were resolved in the House-Senate conference, except to note that the two chairmen of the tax committees resolved the differences in a face-to-face meeting.

In concluding my remarks on how we developed the ESOP provisions before us today, I'd like to make some general observations about the 1989 ESOP debate.

One, in some ways, the experience was frustrating. Yes, I am pleased that my ESOP amendment was adopted in committee, and that ESOP dividends are still, in general, deductible. I appreciate my committee colleagues openmindedness when I presented my amendment. I also appreciate Chairman ROSTENKOWSKI, and the committee staff, for working with me in a cooperative spirit in developing my proposal. I certainly appreciate the open support of my amendment by several of my committee colleagues, both Democrat and Republican. And it was nice to have ESOP advocates, from all over the United States, say thanks.

But, I was, and still am, frustrated to a degree about our recent ESOP debate. Once again it seemed ESOP's were the No. 1 revenue raising item in our budget bill. Do not misunderstand, I recognize the budget procedures force the Ways and Means Committee to pass a revenue bill every year. And, I know that the responsibility for such a bill falls mainly on the broad and able shoulders of our chairman, Mr. ROSTENKOWSKI. Still, I have to wonder why the 1984 tax bill, the 1986 bill, the 1987 bill, and even the 1988 bill, plus the 1989 bill always turn to ESOP's to extract money.

This year, in 1989, the ESOP trimming cut to the bone. There is no ESOP fat left. If ESOP's are to continue to be the target of revenue raising, the future is not bright. This practice of taking the money from ESOP's each year frustrates me because I believe in ESOP's and employee ownership.

My second general observation is that this year's ESOP debate was not as policy-focused as the 1985–86 debate. While there was some earlier rhetoric this June and July about good ESOP's versus bad ESOP's, by November the issues were revenues for the Federal Treasury. My only comment is this: I disagree with those who argue that the size of an ESOP in terms of corporate stock ownership is not an indicia of whether an ESOP is good or bad. As a general rule, the bigger the ESOP, the more money flowing to employees, and the more company productivity. Granted, this is a general rule, and sometimes the ESOP company with a 10- to 20-percent ESOP is more impressive in terms of employee wealth and company performance than is an ESOP company with a 60- to 70-percent ESOP. But my general observation is backed up by a study of Ohio ESOP companies by

the Northeast Ohio Employee Ownership Center. They studied 64 Ohio Companies in the 1985–86 period. It found the bigger the ESOP, the better the corporate performance. Thus, I reject arguments that my 30 percent threshold amendment was not based on sound considerations. 30 percent may have been too high, but I stand by the general rule that the bigger the ESOP, the better.

My next to the last observation is that during the 1989 debate, there was criticism of the leverage ESOP, which are ESOP's that use leverage to obtain employer securities, usually in large blocs. It is the leveraged ESOP that can provide the most wealth to employees because of rapidly appreciating stock. A GAO study backed this conclusion, as have other studies.

Finally, in 1986, I concluded my remarks on the ESOP provisions in TRA 86 with this observation:

Current ESOP tax incentives will probably be challenged in the future, and probably restricted in some respects. * * * In the final analysis, however, the fate of ESOP law will be determined not by Members of Congress, nor by inside-the-beltway lobbyists, but by the performance of thousands of ESOP companies.

I will continue to speak out, and work for employee ownership. I am pleased to see more and more of my colleagues join me in this endeavor. But the words of 1986 are still true today—the work outside-the-beltway will determine the fate of ESOP's.

Although, I have set forth some frustrations about our 1989 ESOP debate, I remain optimistic. ESOP's and employee ownership are growing throughout the world, in developed and underdeveloped nations, in the West and the East.

But there will still be efforts in Congress to nickel and dime ESOP's to death, as we face difficult budget issues. We, who support ESOP's, have more work ahead.

This concludes my thoughts about the ESOP debate of 1989.

Mr. FRENZEL. Mr. Speaker, I support the conference agreement for H.R. 3299, the fiscal year 1990 Budget reconciliation bill. Yet I would be fooling this House if I offered up unabashed and unequivocal support for this conference agreement.

There is much to be proud of here: $14.7 billion in deficit reduction this year and a compromise package I believe the President will sign, however, reluctantly. However, this bill has aspects of which few can be proud: Scoring of some rather dubious savings and inclusion of paper savings in Medicare.

Much of the savings in this conference report—$5.8 billion—comes from reducing entitlement program costs and increasing user fees. I am pleased that we are able to effect savings in an area of the budget that is usually the most difficult to control.

I am pleased also that $4.5 billion in savings derive from a sequester reduction of about 1.4 percent for nondefense and 1.2 percent for defense. These percentage reductions, far below the original amounts of 5.3 percent and 4.3 percent, respectively, will yield nearly $25 billion in savings over 5 years. We must take care, however, not to jeopardize these substantial savings by restoring the cuts with a supplemental appropriation. Considering the very real long-term savings that can be attained from this modest sequester, it would be the height of budget irresponsibility to undo that work by reinstating these funds later on.

There are other pieces of good news in this conference report. Certain gimmicks in the bill, gimmicks that don't add up to real deficit reduction, are not scored as savings. These false savings from speeding up tax payments, speeding up Postal Service payments, and shifting the timing of advanced deficiency payments, are retained in the agreement, but are not counted as savings.

With that good news comes bad news, however. Other gimmicks are, unfortunately, scored as savings. Three of these budget tricks which were originally endorsed in the bipartisan budget agreement are moving the Postal Service and farm credit off budget and shifting Government retiree lump sum benefits. Since the reconciliation bill first came to the floor I have pointed out these and other disingenous savings. I am sorry that they have lasted as scored savings all the way to this final agreement. With a more vigorous effort toward deficit reduction measures, we could have—and should have—come up with more genuine savings so we do not have to rely on a face value of $3.7 billion in tricks and budget sleights of hand.

Concern over the unknown is often greater than concern over the known. We know that several scoring gimmicks still remain in this bill. We know that Republican preferences did not prevail in a number of instances. We do not like this but we understand what happened and why.

What causes us concern is the discovery that even after the components had been agreed to, efforts were made to insert additional items, some of them highly contentious and controversial, in the reconciliation bill. I believe enough of these last minute attempted insertions and adjustments have been deleted to assure a signable bill, but there may be items which have escaped my notice.

Finally, I wish to point out one especially promising aspect of this reconciliation conference agreement. Many of the extraneous provisions, provisions that had nothing to do with deficit reduction, or even measures that increased the deficit, are dropped from this agreement. Catastrophic health care and its repeal are certainly key issues. Child care as well is an important concern to be addressed by this House. And other items such as the Fairness Doctrine, dial-a-porn, Tongass timber, and certain pension provisions may legitimately deserve to be debated. But they are not relevant to deficit reduction and they have no place in a reconciliation bill. I am pleased that most of these extraneous measures have been dropped from this conference report. I would be happier still if all of them had been removed.

We are getting a valuable precedent here by limiting a reconciliation bill to only deficit reduction. Budget process reform is sorely needed, and many Members have introduced legislation to this effect. Let us use this conference agreement as the first step in process reform and refrain in the future from adding extraneous provisions to reconciliation bills.

Mr. Speaker, this is not a perfect agreement. I would have liked to see more serious deficit reduction without reliance on the scoring of questionable items. Yet I am encouraged by the savings we did achieve and the dropping of many other gimmicks and extra proposals.

I do not believe that a full year sequester at the higher percentage reductions would have been a terrible thing. However, the hard savings in this bill, together with the parital 4 months plus 1 week sequester it contains, produce slightly more deficit reduction in fiscal year 1990 than would be achieved if we left the full sequester in place. Over a 5-year-period, the bill and the full sequester are nearly comparable.

The material that follows illustrates this point and lays out where the true and fictitious savings can be found in this bill.

CHART I

WHICH SAVES MORE: SEQUESTER OR RECONCILIATION?

As the conferees met over a final reconciliation agreement, they were concerned that the reconciliation agreement achieve at least as much deficit reduction as the across-the-board sequester in effect since October.

The resulting reconciliation agreement, when scored for "hard" savings excluding paper savings, timing shifts, off-budget scoring agreed to in the Bipartisan Budget Agreement and speeded-up tax collections, almost equals the amount that would be saved by leaving the current sequester in place for the entire fiscal year.

Sequester:

The October 16 sequester order, after taking appropriations action into account, will result in a total across-the-board cut of $12.3 billion in FY 1990.

If these cuts are not restored through the appropriations process, they will total about $76 billion over five years.

Reconciliation:

Reconciliation includes $4.5 billion of sequester for FY 1990 which will total about $25 billion over five years.

Hard savings in the reconciliation bill net out to $8.3 billion in FY 1990, and $48 billion over five years.

Deficit reduction for the entire bill adding together the hard savings and the bill's partial sequester come to $13 billion for FY 1990 and about $72 billion over five years.

DEFICIT REDUCTION

[Dollars in billions]

| | Fiscal year— | |
|---|---|---|
| | 1990 | 1990–94 |
| October 16 full sequester | 12.3 | 76 |
| Reconciliation: | | |
| Partial sequester | 4.5 | 25 |
| Hard savings | 8.3 | 48 |

Chart II.—ESTIMATE OF RECONCILIATION CONFERENCE OUTCOME H.R. 3299, OMNIBUS RECONCILIATION ACT OF 1989

[Dollars in millions]

| | 1990 | 1991 | 1992 | 1993 | 1994 | Total |
|---|---|---|---|---|---|---|
| **Real deficit reduction** | | | | | | |
| Program changes: | | | | | | |
| 1989 deficiency payment reduction | −235 | 0 | 0 | 0 | 0 | −235 |
| Dairy realignment | −27 | −33 | −29 | −23 | −19 | −131 |
| Oilseed planting | −116 | −123 | 0 | 0 | 0 | −239 |
| TEA & EEP | −143 | 12 | 0 | 0 | 0 | −131 |
| GSL reforms | −40 | −50 | −100 | −60 | −50 | −300 |
| USPS COLAs & health | −76 | −88 | −132 | −195 | −280 | −771 |
| VA nonrecourse loan sales | −496 | −82 | −57 | −45 | −36 | −716 |
| Medicare (incl. sequester) | −1,437 | −2,576 | −2,554 | −2,515 | −2,446 | −11,528 |
| Subtotal | −2,570 | −2,940 | −2,872 | −2,838 | −2,831 | −14,051 |
| Sequestration: 4 month, 1 week sequester | −4,551 | −4,700 | −4,800 | −5,200 | −5,400 | −24,651 |
| User fees: | | | | | | |
| FCC | −15 | −18 | −18 | −18 | −18 | −87 |
| NRC | −54 | 0 | 0 | 0 | 0 | −54 |
| Housing loan origination | −169 | −10 | 0 | 0 | 0 | −179 |
| ERISA penalties | −25 | −28 | −32 | −36 | −41 | −162 |
| Subtotal | −263 | −56 | −50 | −54 | −59 | −482 |
| Revenues: | | | | | | |
| Deferred compensation | −400 | −1,095 | −1,087 | −1,083 | −1,069 | −4,734 |
| All other | −4,239 | −5,263 | −4,994 | −5,814 | −6,423 | −26,733 |
| Subtotal | −4,639 | −6,358 | −6,081 | −6,897 | −7,492 | −31,467 |
| Total real deficit reduction | −12,023 | −14,054 | −13,803 | −14,989 | −15,782 | −70,651 |
| Bipartisan budget agreement items: | | | | | | |
| Bumpers-Pryor | −420 | −483 | −383 | −420 | 0 | −1,706 |
| USPS off budget | −1,770 | 570 | −780 | 670 | 720 | −590 |
| Lump sum payment | −700 | 750 | 0 | 0 | 0 | 50 |
| Total BBA agreed items | −2,890 | 837 | −1,163 | 250 | 720 | −2,246 |
| Paper savings—Medicare | −830 | −1,100 | −1,190 | −1,285 | −2,045 | −6,450 |
| **Deficit increases** | | | | | | |
| Program changes: | | | | | | |
| Medicare | 438 | 941 | 1,069 | 1,126 | 1,173 | 4,747 |
| Human resources | 167 | 595 | 793 | 340 | 315 | 2,210 |
| Subtotal | 605 | 1,536 | 1,862 | 1,466 | 1,488 | 6,957 |
| Revenues: | | | | | | |
| Expiring provisions | 1,435 | 1,324 | 621 | 553 | 533 | 4,466 |
| All other | 438 | 755 | 818 | 784 | 801 | 3,596 |
| Subtotal | 1,873 | 2,079 | 1,439 | 1,337 | 1,334 | 8,062 |
| Total deficit increases | 2,478 | 3,615 | 3,301 | 2,803 | 2,822 | ,15,019 |
| Reconciliation impact on deficit | −13,265 | −10,702 | −12,855 | −13,221 | −14,285 | −64,328 |
| Enacted legislation for reconciliation credit: | | | | | | |
| Adjusted dairy prices (P.L. 101–71) | −25 | −10 | −8 | 0 | 0 | −43 |
| FSLIC tax breaks (P.L. 101–72) | −568 | −31 | −351 | −310 | −213 | −1,473 |
| Banking—insurance premiums (P.L. 101–137) | −190 | −23 | 205 | 38 | 8 | 37 |
| Total enacted legislation | −783 | −64 | −154 | −272 | −206 | −1,479 |
| Debt Service | −629 | −1,773 | −2,785 | −3,904 | −5,177 | −14,268 |
| Total reconciliation credit | −14,677 | −12,539 | −15,794 | −17,397 | −19,668 | −80,075 |
| **Unscored items** | | | | | | |
| **Disingenuous deficit reduction** | | | | | | |
| Time-shifts—spending: | | | | | | |
| 1988 advanced deficiency repayments | −54 | 0 | 0 | 0 | 0 | −54 |
| FECA shift | −330 | −35 | −40 | −45 | −50 | −500 |
| Subtotal | −384 | −35 | −40 | −45 | −50 | −554 |
| Time-shifts—revenues: | | | | | | |
| Airline ticket tax | −112 | 54 | −2 | −2 | −2 | −64 |
| Gasoline tax | −138 | −4 | −1 | −2 | −5 | −150 |
| Payroll tax | −2,450 | −150 | 750 | −100 | −1,150 | −3,100 |
| Subtotal | −2,700 | −100 | 747 | −104 | −1,157 | −3,314 |
| Deficit increases: | | | | | | |
| Medicaid | 150 | 316 | 367 | 411 | 440 | 1,684 |
| Section 89 (P.L. 101–140) | 154 | 156 | 170 | 185 | 202 | 867 |
| Subtotal | 304 | 472 | 537 | 596 | 642 | 2,551 |
| Total unscored | −2,780 | 337 | 1,244 | 447 | −565 | −1,317 |

TABLE.—SUMMARY—CONFERENCE REPORT ON H.R. 3299, OMNIBUS RECONCILIATION ACT OF 1989—AGRICULTURE

[Fiscal year 1990]

| | CBO Feb. Scoring | | OMB GRH scoring | |
|---|---|---|---|---|
| | Budget authority | Outlays | Budget authority | Outlays |
| Farm program savings: | | | | |
| Oilseed planting, 110 percent trigger | −116 | −116 | −94 | −94 |
| Delay deficiency pymt recovery | −54 | −54 | −73 | −73 |
| Reduced advance payments | −235 | −235 | −245 | −245 |
| TEA reductions to $200 million and EEP reductions to $566 million [1] | −143 | −143 | | |
| Subtotal farm program savings | −548 | −548 | −412 | −412 |
| Other: | | | | |
| Delay Bumpers-Pryor | −500 | −420 | −516 | −516 |
| Public Law 101-7 | −25 | −25 | | |
| Realign dairy prices | −27 | −27 | | |
| Total | −1,100 | −1,020 | −928 | −928 |

[1] Only $143 million in TEA and EEP savings are scored for reconciliation purposes—the remaining $71 million originally in the package was scored as part of the Agriculture Appropriations bill.

Oilseed Planting, 110 percent trigger—Extends the provisions contained in the 1988 Disaster Assistance Act, allowing 10 to 25 percent of permitted acreage to be planted in soybeans or sunflowers without loss of base. Savings result from fewer deficiency payments and commodity loans made on program crop acreage.

Delay Deficiency Payment Recovery—Repayment of most unearned deficiency payments is expected to be made after harvest. Under this provision, repayments for winter-planted crops would not be required until 1990. This measure shifts the repayments from fiscal year 1989 to fiscal year 1990.

Reduced Advance Payments—Reduces 1990 crop deficiency payments for corn and other feed grains, wheat, upland cotton and rice by approximately 3 percent. The reduction will be applied against any advance deficiency payment made available to producers of 1990 crops, thus ensuring that the savings occur in 1990. Any partial sequester retained in order to bring total deficit reduction to $14 billion will be imposed on top of this 3 percent cut.

TEA Reductions and Export Enhancement Program—Limits the TEA spending in FY 1990 to $200 million in BA and limits EEP spending in FY 1990 to $566 million in BA. The TEA and EEP program are treated as budget neutral in the President's budget, and no outlays are associated with this activity. Therefore, Congressional action to limit the level of TEA and EEP bonuses cannot be credited with savings for purposes of determining compliance with the G-R-H deficit target level. $71 million of the $214 million in savings have already occurred as part of the Agriculture Appropriations bill and will not be scored again for reconciliation purposes. Only $143 million will be scored for reconciliation.

Delay Bumpers-Pryor—Delays the effective date of the Bumpers-Pryor amendment from October 1, 1989 to January 1, 1993—leaving the Financial Assistance Corporation (FAC) in an off-budget status until 1993.

Public Law 101-7—References savings from legislation enacted earlier this year allocating price support changes to dairy products purchased by the Commodity Credit Corporation. Both OMB and CBO agree that the legislation saved $25 million under their January baselines, but saves nothing against their August or Gramm-Rudman baselines.

Realign Dairy Prices—Secretary of Agriculture given authority to cut price CCC pays for purchase of dairy products under the price support program.

HOUSING ISSUES

[Fiscal year 1990]

| | CBO Feb. Scoring | | OMB GRH scoring | |
|---|---|---|---|---|
| | Budget authority | Outlays | Budget authority | Outlays |
| Extend National Flood Insurance | −2 | −189 | 0 | 0 |
| Extened Crime Insurance | −1 | −1 | 0 | 0 |
| Total | −3 | −190 | 0 | 0 |

Flood and Crime Insurance—Public Law 101-137 was enacted on 11-3-89 extending the Flood and Crime Insurance programs. These savings are referenced for the purposes of reconciliation. OMB classifies this as enacted law already reflected in the Gramm-Rudman baseline.

The provision results in net receipts in fiscal year 1990 because premium payments would be received in that year, and substantial indemnities would not be paid out until the following year.

USER FEES

[Fiscal year 1990]

| | CBO Feb. Scoring | | OMB GRH scoring | |
|---|---|---|---|---|
| | Budget authority | Outlays | Budget authority | Outlays |
| FCC fees | −15 | −15 | −13 | −13 |
| NRC fees | −54 | −54 | −53 | −53 |
| Total | −69 | −69 | −66 | −66 |

FCC User Fees—Increased the minimum fee level to $35 across-the-board except for non-commercial operators.

NRC User Fees—Requires 45 percent cost recovery of the NRC's budget from user fees. Current law is at 33 percent cost recovery. House instructions had assumed 100 percent cost recovery.

HUMAN RESOURCES/SOCIAL SECURITY

[Fiscal year 1990]

| | CBO Feb. Scoring | | OMB GRH scoring | |
|---|---|---|---|---|
| | Budget authority | Outlays | Budget authority | Outlays |
| Human Resources | | | | |
| Social Ser. Block Grant (Title XX) | 100 | 95 | NA | NA |
| Foster Care | NA | 48 | NA | NA |
| Aid to Families with Dep. Children | * | * | NA | NA |
| Supplemental Security Income | 4 | 4 | NA | NA |
| Social Security sending initiatives | NA | 12 | NA | NA |
| Deferred compensation | NA | −400 | NA | NA |
| Miscellaneous | 8 | 8 | NA | NA |
| Total | NA | −233 | NA | NA |

Note.—Based on preliminary estimates subject to review of legislative language.

Overview: Direct spending on Social Security and human resources will increase by $167 million in FY 1990 and $2.2 billion over five years.

$400 million in new revenue in FY 1990 will be realized from the inclusion of deferred compensation in calculating average total wages for the purpose of determining the annual FICA wage base and indexing benefit computations.

*Human resource provisions*

Provisions in bill

Social Services Block Grant (Title XX)—Funding for Title XX was increased by $100 million in FY 90 (currently capped at $2.7 billion). These funds are not earmarked for child care or any other purpose.

Foster Care—State discretion to transfer unused moneys from Foster Care to Child Welfare Services. Additionally, the bill raises the entitlement ceiling for the Independent Living program (but requires State match beginning in FY 91). Another provision increases federal reimbursement for training foster and adoptive parents.

Supplemental Security Income—Outreach program established for children eligible for SSI benefits. Six other items either relax eligibility requirements or increase benefits for special needs recipients.

Aid to Families with Dependent Children—The quality control system for AFDC is liberalized: penalties waived for past excess errors; threshold error rate for sanctions is raised; penalties are calculated on a sliding scale; and States allowed to appeal to the Federal District Court. HHS is expressly prohibited from issuing certain regulations governing use emergency assistance and special needs funds.

Miscellaneous—The bill permanently extends law providing four months additional Medicaid benefits to families who lose AFDC due to child support payments. Other initiatives in the bill include: mandated compliance with child welfare requirements; implementation of Family Support Act Amendments; an increase in Child Welfare authorization; authorization of an intergenerational demonstration project; and exclusion of agent orange settlements in determining eligibility for means-tested programs.

Deleted provisions

Human Resources—Numerous SSI, Foster Care, AFDC and Unemployment Insurance Initiatives were stripped from the final bill.

*Social Security provisions*

Provisions in bill

Major Social Security provisions include: continuation of disability benefits upon appeal; improvements in SSA services & beneficiary protections; and payment of benefits to children adopted after parent's initial entitlement to benefits.

Deleted provisions

Three major provisions were dropped from the final reconciliation bill. These were: an increase in the earnings test; creation of an independent agency to administer Social Security; and an increase in Social Security benefits for certain low income persons.

MEDICAID AND OTHER HEALTH PROGRAMS

| | Fiscal year 1990 (HBC-Rep. estimate) | | | |
|---|---|---|---|---|
| | CBO Feb. Scoring | | OMB GRH scoring | |
| | Budget authority | Outlays | Budget authority | Outlays |
| Medicaid (Direct Spending): | | | | |
| Pregnant women and infants | 60 | 60 | 60 | 60 |
| Children up to age 6 | 50 | 50 | 50 | 50 |
| Other Medicaid | 40 | 40 | 40 to 700 | 40 to 700 |
| Total | 150 | 150 | 150 to 810 | 150 to 810 |

CBO scores five Medicaid expansion provisions as costing $150 million in FY 1990 and

$1.684 billion over five years. There may be additional "technical" amendments which CBO estimates at no cost and OMB estimates at up to $650 million.

Pregnant Women and Infants—mandatory Medicaid coverage of pregnant women and infants (up to age one) below 133 percent of poverty.

Children up to age 6—mandatory Medicaid coverage of children under age 6 and 133 percent of poverty.

Other Medicaid—reimburse federally-funded health centers at 100 percent of reasonable costs; define the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefits in statute; and conduct Medicaid buy-in demonstrations for pregnant women and children up to age 20.

Authorizations

Maternal and Child Health Block Grants—authorization increased by $125 million.

Demonstration project for medically uninsurable children—$5 million authorization for FYs 1991-1993.

Maternal and Child Health Handbook—$1 million authorization for FYs 1991-1993.

Vaccine Compensation—technical amendments.

## MEDICARE

| | Fiscal year 1990 (HBC Rep. estimate) | | | |
|---|---|---|---|---|
| | CBO Feb. Scoring | | OMB GRH Scoring | |
| | Budget authority | Outlays | Budget authority | Outlays |
| Real savings (including sequester) | | −1,437 | | NA |
| Paper savings | | −830 | | NA |
| Program expansions | | +438 | | NA |
| Total | | −1,829 | | NA |

Hospital Update—FY 1990 only: large urban hospitals, market basket plus .12; small rural hospitals, market basket minus .53; rural hospitals, market basket plus 4.22; and non-PPS hospitals, market basket.

DRG recalibration—leave regulations in place for FY 1990, overall a 1.22% reduction in DRG weights.

Capital—reduce allowed costs by 15%.

Indirect Medical Education—no change.

Other Part A—higher reimbursements for disproportionate share adjustments for inner-city hospitals (.65 multiplier), cancer hospitals, and for hospice services; grandfather rural referral centers; provisions for sole community hospitals and Essential Access Community Hospital (EACH) demonstrations.

Physician Update—CY 1990 only: all services, 3 month freeze; primary care services, full MEI; all other services except (listed next) 2% and overvalued, radiology, anesthesiology services, no update.

Overvalued Physician Services—defined as 10% over median fee schedule; reduction phased-in over three years—⅓, ⅓, ⅓.

Radiology & Anesthesiology—radiology services reduced 4% below CY 1989 levels; anesthesiology paid on actual time basis.

Physician Payment Reform—establish a relative-value resource-based physician fee schedule with limits on expenditure growth and beneficiary out-of-pocket charges.

Clinical Labs—full CPI update; cap on fees set at 93% of national median.

Durable Medical Equipment—update reduced 2%; 15% reduction in overpriced items (seat lift chairs and TENS equipment).

Other Part B—provide for routine pap smears and mental health services of clinical psychologists and social workers.

Part B premium—raised to 25% of costs for CY 1990.

Medicare Secondary Payor—enhance enforcement capabilities.

Full 2% Sequester through Decembver 31, 1989 for Part A and March 31, 1990 for Part B. (Upon completion of this 2% sequester, the 1.3% "partial sequester" will apply to Medicare.)

## PENSIONS

| | Fiscal year 1990 | | | |
|---|---|---|---|---|
| | CGO Feb. scoring | | OMB GRH scoring | |
| | Budget authority | Outlays | Budget authority | Outlays |
| Penalties for ERISA violations | NA | −25 | NA | NA |
| Total | NA | −25 | NA | NA |

Overview

A penalty is imposed on violations of ERISA regulations. This provision would raise $25 in FY 90 and $162 million over five years. All of Ways & Means' technical provisions were retained along with several Education & Labor provisions (which the Finance committees deemed truly technical).

Provisions in bill

Penalties for ERISA violations—The bill imposes a mandatory civil penalty on fiduciaries who violate ERISA provisions (i.e., conflicts of interest and failure to diversity investments). The penalty is equal to 20 percents of the amount of the assets involved in the violation

Deleted provisions

Pensions—Education & Labor's asset reversion provision was dropped from the bill. Both Education & Labor and Ways & Means' retiree health transfer provisions were also dropped. Most of Education & Labor's technical provisions were stripped (except for those deemed by the Finance committees as "truly technical". Finally, Senate Labor's increase in PBGC premiums also failed to make the bill.

## POSTAL AND CIVIL SERVICES ISSUES

| | Fiscal year 1990 | | | |
|---|---|---|---|---|
| | CGO Feb. scoring | | OMB GRH scoring | |
| | Budget authority | Outlays | Budget authority | Outlays |
| Postal Service Off-Budget | −3,400 | −1,700 | −3,535 | −2,346 |
| Lump Sum Retirement | 0 | −700 | 0 | −519 |
| FECA Payment Shift | −330 | −330 | −330 | −330 |
| USPS Retiree/Survivor COLAs | −6 | −6 | −1 | −1 |
| USPS Health Benefits | −70 | −70 | −70 | −70 |
| Total | −3,806 | −2,876 | −3,936 | −3,266 |

Postal Service Off-Budget—The Postal Service will no longer be a part of the Federal budget or be included in Gramm-Rudman deficit calculations.

Lump Sum Retirement—Extends the lump sum retirement provision and changed it to a 50/50 distribution, whereby federal civilian employees retiring after September 30, 1989 and opting for lump-sum payments, will receive 50 percent the first year and the remaining 50 percent plus interest one year after retirement.

FECA Payment Shift—Permanently, advances the payment date for USPS' (an off-budget entity) annual workers' compensation payment to the Department of Labor (an on-budget entity), resulting in the USPS making two payments in FY 1990. Savings of $330 million are claimed since the payment shows up as a receipt to the Federal Government rather than an interagency transfer between two on-budget entities.

Amortize Retiree/Survivor COLAs—USPS will begin paying post-September 30, 1989 retiree/survivor COALs. The USPS payments to the Civil Service Retirement System will be amortized over 15 years.

Health Benefits—USPS will pay the employer premium for selected retirees/survivors retroactive to June 15, 1985.

*Revenues*

[Fy 1990 Joint Tax Estimates]

| | |
|---|---|
| Revenue Raising Provisions: | |
| Net Operating Loss Carrybacks | −226 |
| Withholding tax on Ag. Workers | −270 |
| ESOPS: | |
| Interest Exclusion | −1,013 |
| Dividend Deductibility | −54 |
| Suspend airport tax trigger | −851 |
| Tax on ozone depleting chemicals | −489 |
| Like-kind exchanges | −103 |
| Oil spill trust fund | −106 |
| Repeal of remaining Completed Contract method | −109 |
| All other | −1,009 |
| Tax Extenders (extension until Sept. 30, 1990): | |
| R&D Credit | NA |
| R&D Allocation | NA |
| Low Income Housing Credit | NA |
| Mortage Revenue Bonds | NA |
| Small Issue Bonds | NA |
| Employer Education Assistance | NA |
| Targeted Jobs Tax Credit | NA |
| Energy Credits (solar, geothermal, ocean thermal) | NA |
| Health Insurance for Self-employed | NA |
| Group Legal Services | NA |
| Subtotal | 1,435 |
| Other Revenue Losers: | |
| Corporate Minimum Tax | 416 |
| Other | 22 |
| Time Shifts: | |
| Payroll tax | −2,450 |
| Airline ticket tax | −112 |
| Gasoline tax | −138 |
| Other: | |
| Deferred Compensation | −400 |
| Offshore Oil Compensation Fund | −9 |
| FSLIC tax breaks (enacted—PL 101-73) | −568 |
| Total net revenues | −6,034 |

## STUDENT LOANS

| | Fiscal year 1990 | | | |
|---|---|---|---|---|
| | CBO Feb. scoring | | OMB GRH scoring | |
| | Budget authority BA | Outlays | Budget Authority | Outlays |
| No lender forbearance for medical residents | −8 | −8 | −13 | −10 |
| Drop schools with 30% default rates from SLS loan progam (except for current borrowers) | −3 | −(1) | −2 | −1 |
| Establish six-month Default Reduction Program for Stafford Student Loan defaulters: increase federal share | −30 | −30 | −30 | −24 |
| Total [1] | −40 | −35 | −45 | −34 |

[1] Totals may not add due to small reductions and interactive effects between programs.

Miscellaneous amendments tightening the student loan program have negligible or no budget impact. These amendments prohibit disbursement of loans to first-year undergrads until 30 days after instruction has begun; tighten up curent Stafford Student Loan program disbursement requirements; restrict Stafford loan eligibility for schools which have lost accreditation; require schools with programs of less than two years to make a GED program available to students and to require students to have a GED to be eligible for a SLS; limit annual borrowing in programs of less then one year; allow use of National Student Loan Data Bank in verifying student eligiblity or information; and expand current loan rehabilitation program.

VETERANS

| | Fiscal year 1990 | | | |
|---|---|---|---|---|
| | CBO Feb. scoring | | OMB GRH scoring | |
| | Budget authority | Outlays | Budget authority | Outlays |
| Loan Origination Fee | −169 | −169 | −111 | −111 |
| Non-recourse Loan Sales | −496 | −496 | −511 | −511 |
| Total | −665 | −665 | −622 | −622 |

Loan Origination Fee—Extends one percent loan origination fee for one year.

Non-recourse Loan Sales—Extends the VA's authority to sell non-recourse loans for one year.

Directed Scorekeeping—Mandates that with recourse and without recourse loan sales shall be scored as offsetting collections.

PARTIAL SEQUESTER

| | Fiscal year 1990 | | | |
|---|---|---|---|---|
| | CBO Feb. scoring | | OMB GRH scoring | |
| | Budget authority | Outlays | Budget authority | Outlays |
| Four month plus one week sequester | | −4,551 | | NA |

Because the policy changes in the reconciliation bill fell substantially short of the $14 billion President Bush requires in order to sign the bill, a partial sequester was included in the bill. The sequester will reduce the deficit by $4.5 billion in FY 1990—the same amount which would be realized if the full sequester were in effect for four months and one week. This $4.5 billion sequester will be spread over a full year at an across-the-board rate of approximately 1.3% for non-defense and 1.1% for defense (compared to the original 5.3% and 4.3%, respectively).

MAJOR ISSUES DROPPED FROM HOUSE RECONCILIATION BILL

Capital Gains, Catastrophic Health provisions, Child Care provisions, Coast Guard user fees, Repeal of Section 89, Independent Agency to Administer Social Security, Liberalization of the Social Security Earnings test, Pension asset reversions, Retiree health transfer provisions, PBGC premiums, Trade provisions, SEC user fees, Fairness Doctrine, Dial-a-Porn provisions, and Postal Service Borrowing Authority Increase.

Mr. Speaker, I have thousands of other requests for time, but I do not want to spoil the speech by the majority leader.

Mr. Speaker, I yield back the balance of my time.

Mr. PANETTA. Mr. Speaker, I have no other requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HOYER). Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DANNEMEYER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 272, noes 128, not voting 33, as follows:

[Roll No. 379]

AYES—272

| | | |
|---|---|---|
| Ackerman | Fascell | Leach (IA) |
| Akaka | Fazio | Lehman (CA) |
| Anderson | Feighan | Lehman (FL) |
| Andrews | Flake | Lent |
| Annunzio | Foglietta | Levin (MI) |
| Anthony | Ford (MI) | Levine (CA) |
| Atkins | Ford (TN) | Lloyd |
| Barnard | Frenzel | Lowery (CA) |
| Bartlett | Frost | Lowey (NY) |
| Bateman | Gallo | Luken, Thomas |
| Bennett | Gejdenson | Madigan |
| Bentley | Gephardt | Markey |
| Bereuter | Gibbons | Martin (NY) |
| Bevill | Gilman | Martinez |
| Bliley | Gingrich | Matsui |
| Boehlert | Glickman | Mavroules |
| Boggs | Gonzalez | Mazzoli |
| Borski | Goodling | McCloskey |
| Bosco | Gordon | McCrery |
| Boxer | Gradison | McCurdy |
| Broomfield | Grandy | McGrath |
| Browder | Grant | McHugh |
| Brown (CA) | Gray | McMillan (NC) |
| Bruce | Guarini | McMillen (MD) |
| Bunning | Gunderson | McNulty |
| Bustamante | Hall (OH) | Meyers |
| Byron | Hall (TX) | Mfume |
| Campbell (CO) | Harris | Michel |
| Carper | Hastert | Miller (CA) |
| Chandler | Hatcher | Miller (OH) |
| Chapman | Hayes (IL) | Mineta |
| Clarke | Hayes (LA) | Moakley |
| Clay | Hefner | Mollohan |
| Clement | Henry | Montgomery |
| Clinger | Hiler | Morella |
| Coble | Hoagland | Morrison (CT) |
| Coleman (MO) | Hochbrueckner | Morrison (WA) |
| Collins | Holloway | Mrazek |
| Condit | Horton | Murtha |
| Cooper | Houghton | Nagle |
| Coughlin | Hoyer | Natcher |
| Courter | Huckaby | Neal (MA) |
| Coyne | Hughes | Neal (NC) |
| Darden | Hunter | Nelson |
| Davis | Hutto | Nowak |
| de la Garza | Hyde | Obey |
| DeWine | Jacobs | Olin |
| Dicks | Jenkins | Ortiz |
| Dingell | Johnson (CT) | Oxley |
| Dixon | Johnson (SD) | Pallone |
| Donnelly | Johnston | Panetta |
| Dorgan (ND) | Jones (GA) | Parker |
| Downey | Jones (NC) | Pashayan |
| Durbin | Kanjorski | Payne (NJ) |
| Dwyer | Kaptur | Payne (VA) |
| Dyson | Kasich | Pease |
| Eckart | Kastenmeier | Pelosi |
| Edwards (CA) | Kennedy | Penny |
| Edwards (OK) | Kennelly | Perkins |
| Emerson | Kildee | Pickle |
| Engel | Kleczka | Price |
| Erdreich | Kostmayer | Quillen |
| Espy | LaFalce | Rangel |
| Evans | Lancaster | Ravenel |
| Ray | Sikorski | Thomas (GA) |
| Rhodes | Sisisky | Torres |
| Richardson | Skeen | Towns |
| Rinaldo | Skelton | Udall |
| Ritter | Slattery | Upton |
| Roberts | Slaughter (NY) | Valentine |
| Roe | Smith (FL) | Vander Jagt |
| Rogers | Smith (NE) | Vento |
| Ros-Lehtinen | Smith (NJ) | Volkmer |
| Rostenkowski | Smith (VT) | Vucanovich |
| Roukema | Snowe | Walgren |
| Rowland (CT) | Solarz | Walsh |
| Rowland (GA) | Spratt | Waxman |
| Russo | Staggers | Weber |
| Sabo | Stallings | Weldon |
| Saiki | Stangeland | Wheat |
| Sangmeister | Stark | Whittaker |
| Sarpalius | Stenholm | Whitten |
| Sawyer | Sundquist | Williams |
| Saxton | Swift | Wilson |
| Scheuer | Synar | Wise |
| Schiff | Tallon | Wolf |
| Schneider | Tanner | Wolpe |
| Schulze | Tauke | Yates |
| Schumer | Tauzin | Yatron |
| Sharp | Taylor | Young (AK) |
| Shaw | Thomas (CA) | |

NOES—128

| | | |
|---|---|---|
| Alexander | Gillmor | Petri |
| Applegate | Goss | Pickett |
| Archer | Green | Porter |
| Armey | Hamilton | Poshard |
| AuCoin | Hammerschmidt | Pursell |
| Ballenger | Hancock | Rahall |
| Barton | Hawkins | Regula |
| Bates | Hefley | Ridge |
| Beilenson | Herger | Rohrabacher |
| Bilbray | Hertel | Roth |
| Bilirakis | Hopkins | Roybal |
| Bonior | Hubbard | Savage |
| Brennan | Inhofe | Schaefer |
| Brown (CO) | Ireland | Schroeder |
| Buechner | James | Schuette |
| Burton | Jontz | Sensenbrenner |
| Callahan | Kolbe | Shays |
| Campbell (CA) | Kolter | Shumway |
| Carr | Kyl | Shuster |
| Coleman (TX) | Lagomarsino | Skaggs |
| Combest | Lewis (CA) | Slaughter (VA) |
| Conte | Lewis (FL) | Smith (IA) |
| Costello | Lewis (GA) | Smith (TX) |
| Cox | Lightfoot | Smith, Robert (NH) |
| Craig | Livingston | Smith, Robert (OR) |
| Crane | Long | Solomon |
| Dannemeyer | Lukens, Donald | Spence |
| DeFazio | Machtley | Stearns |
| DeLay | Martin (IL) | Stokes |
| Dellums | McCandless | Studds |
| Dickinson | McCollum | Stump |
| Dornan (CA) | McDade | Thomas (WY) |
| Douglas | McDermott | Traficant |
| Dreier | McEwen | Unsoeld |
| Duncan | Miller (WA) | Visclosky |
| Dymally | Moody | Walker |
| Early | Murphy | Watkins |
| English | Myers | Weiss |
| Fawell | Nielson | Wyden |
| Fields | Owens (UT) | Young (FL) |
| Frank | Packard | |
| Gallegly | Parris | |
| Gekas | Patterson | |
| Geren | Paxon | |

NOT VOTING—33

| | | |
|---|---|---|
| Aspin | Florio | Oakar |
| Baker | Garcia | Oberstar |
| Berman | Gaydos | Owens (NY) |
| Boucher | Hansen | Robinson |
| Brooks | Lantos | Rose |
| Bryant | Laughlin | Smith, Denny (OR) |
| Cardin | Leath (TX) | Torricelli |
| Conyers | Lipinski | Traxler |
| Crockett | Manton | Wylie |
| Derrick | Marlenee | |
| Fish | Molinari | |
| Flippo | Moorhead | |

□ 1231

The Clerk announced the following pair:

On this vote:

Mr. Oberstar for, with Mr. Marlenee against.

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS AUTHORIZATION ACT, 1990—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 101-115)

The SPEAKER laid before the House the following veto message from the President of the United States:

*To the House of Representatives:*

I am returning herewith without my approval H.R. 1487, the foreign relations authorization bill for fiscal years 1990 and 1991. I am convinced that Section 109 of the bill would impermissibly constrict the conduct of our Nation's foreign policy, for many of the same reasons I set forth in my veto of H.R. 2939, on November 19, 1989.

Although this bill contains many desirable provisions, including a number sought by this Administration, it is fatally flawed by the inclusion of Section 109. Under some circumstances, this provision purports to prohibit, under peril of criminal sanctions, the use of U.S. assistance or third-party funds by executive branch officials, and requires Presidential reporting of certain discussions concerning provision of assistance even within the executive branch. Because of its vague and sweeping language, it threatens to subject to criminal investigation a wide range of entirely legitimate diplomatic activity, the authority and responsibility for which is vested in the executive branch by the Constitution. The result would be a dangerous timidity and disarray in the conduct of U.S. foreign policy. Such a result is wholly contrary to the allocation of powers under the Constitution.

The Administration made a good-faith effort to resolve with the Congress the constitutional and other problems contained in the bill. Those efforts have failed, and I must in these circumstances veto this bill.

Among other things, Section 109 of the bill would prohibit officers or employees of the executive branch from using "any United States funds or facilities" to "assist" certain diplomatic enterprises "if the purpose of any such act is the furthering" of certain prohibited activities. This prohibition on use of funds could extend to activities or conversations of any U.S. diplomat who receives a Federal salary. The prohibition on use of facilities could also extend to meetings at U.S. embassies, or the use of U.S. word processors or telephones. Those who violate this prohibition would be subject to substantial criminal penalties.

I believe that the limiting provisions set forth therein may allow for a constitutional construction of certain provisions in Section 109; nonetheless, serious constitutional problems remain, and the section as a whole is sufficiently ambiguous to present an unacceptable risk that it will chill the conduct of our Nation's foreign affairs.

Section 109 could be construed to prohibit consultation between U.S. officials and other sovereign nations regarding certain actions that nation may wish to undertake. As I observed in my veto of H.R. 2939, however, it has long been recognized—by the Framers, by the Supreme Court, and by past Congresses—that the President, both personally and through his subordinates in the executive branch, possesses the constitutional authority to communicate freely with representatives of foreign governments, and to recommend to their representatives such courses of action as the President believes are in our Nation's interest. The prohibition, therefore, would impermissibly circumscribe a fundamental responsibility that the Constitution has entrusted to the President—the protection of our Nation's security through a vigorous representation of our interests abroad. I am not convinced that the limiting provisions are sufficient to resolve this constitutional problem inherent in the section. It would be cold comfort indeed for our diplomats to be assured that these provisions would be available as a defense in a criminal investigation.

Moreover, Section 109 poses profound constitutional problems insofar as it purports to restrict the use of U.S. funds or facilities in the realm of foreign affairs, because the "purpose" test it establishes is so vague and subjective as to interfere with the President's constitutional role. For courts to attempt to discern the President's state of mind or the state of mind of subordinate executive branch officials in such matters would entangle the judiciary in political disputes and foreign policy questions ill-suited to judicial resolution.

Were Section 109 and its criminal sanctions to be extended to prohibitions existing in current law, it would have a sweeping effect and cause incalulable damage to American foreign policy interests. There are many statutory prohibitions on the provision of U.S. assistance in situations where we would have no objection to others providing assistance or taking other action—such as prohibitions on U.S. assistance to Communist countries even when they are undergoing reform. Were Section 109 applied to this prohibition, it could inhibit vital discoussions concerning the provision of assistance to democratizing regimes in Eastern Europe.

The Presidential noitification procedures contained tin Section 109 also appear designed further to disable the President in the conduct of foreign relations. The provisions would require the President to inform the Congress wherever various types of foreign initiatives are urged by executive branch officials, even if the initiatives are discussed solely within the executive branch—or are discussed with the legislative branch. This provision would interfere with the Nation's need to keep confidential our foreign policy discussions with other countries, as well as our internal planning for such discussions.

In addition to these constitutional problems, Section 109 would hamper the Nation's foreign policy by criminalizing foreign policy disputes, rather than leaving resolution of such disputes to the political process. By making those who formulate and execute foreign policy serve the public under a vague and sweeping prohibition, Section 109 would clearly circumscribe the effective, forceful, and entirely lawful representation of the Nation's foreign policy interests. It is neither wise nor fair to expect the men and women of our Foreign Service to represent the Nation with a sword of Damocles over their heads.

It is significant that the Congress has seen fit to extend the prohibitions contained in Section 109 only to the executive branch, and not to the Congress itself. The Congress would thus remain free to engage in the very activities proscribed for the executive branch. There is no logical or constitutional basis for such a distinction.

Finally, the provision imposes definitions so broad as to sweep within the scope of the statute's prohibitions activities not even considered to constitute the provision of assistance under the Foreign Assistance Act and related legislation. Perhaps most important in this connection, it would cover intelligence activities for which a wholly separate, longstanding, and comprehensive regime already exists.

Although Section 109, standing alone, necessitates my veto of this bill, many other provisions of the bill also pose constitutional problems. Among these is a provision that impermissibly conditions availability of funds on including representatives of the legislative branch on delegations negotiating arms agreements within the framework of the Conference on Security and Cooperation in Europe. The Administration has discussed this and other provisions in detail in letters to both houses of Congress. Any further legislation in this area should address all such problems.

I am sensitive to the concerns that have prompted the inclusion of Sec-

tion 109 in the bill. I have repeatedly emphasized in my meetings with the congressional leadership that through close consultation with the Congress I intend to build a new spirit of cooperation and trust between the legislative and executive branches. Section 109, however, is inimical to that spirit of trust and would cast the shadow of criminal liability over the executive branch in the conduct of our foreign policy at a time when the course of world events necessitates great flexibility. I look forward to working with the Congress to craft a bill that I can enthusiastically support and to rapid passage of an authorization bill that will facilitate our many foreign policy initiatives.

GEORGE BUSH.

THE WHITE HOUSE, *November 21, 1989.*

The SPEAKER. The objections of the President will be spread at large upon the Journal and the message and the bill will be printed as a House document.

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that the veto message of the President, together with the accompanying bill, H.R. 1487, be referred to the Committee on Foreign Affairs.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER. The veto message of the President on the bill, H.R. 1487, is referred to the Committee on Foreign Affairs.

## DISPENSING WITH CALENDAR WEDNESDAY BUSINESS AND ENTERTAINING MOTIONS TO SUSPEND THE RULES ON WEDNESDAY, NOVEMBER 22, 1989

Mr. PANETTA. Mr. Speaker, I ask unanimous consent that it be in order during the calendar day of Wednesday, November 22, 1989, for the Speaker to entertain motions to suspend the rules, and that Calendar Wednesday business be dispensed with today.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

## ESTABLISHING EASTERN AIRLINES LABOR DISPUTES EMERGENCY BOARD—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 101-116)

The SPEAKER pro tempore (Mr. MAZZOLI) laid before the House the following veto message from the President of the United States:

*To the House of Representatives:*

I am returning herewith without my approval H.R. 1231, a bill establishing a congressional advisory commission to investigate and make recommendations on pending labor disputes at Eastern Airlines.

The future of Eastern Airlines is currently the subject of reorganization under Chapter 11 of the Bankruptcy Code. The bankruptcy court is charged with protecting the overall interests of the concerned parties in an evenhanded fashion. This state of affairs should not be disturbed by new legislation. I am particularly concerned that the investigation and recommendations of the commission proposed by H.R. 1231 would create the expectation of further intervention by the Congress that would significantly disrupt chances for an orderly reorganization by the bankruptcy court. This would hinder saving Eastern Airlines and the jobs of its employees.

The commission's mandate under this legislation to investigate three pending labor disputes, as well as certain broader aviation industry issues, is also unrealistic. The National Mediation Board spent over 500 days of sustained effort in an unsuccessful attempt to resolve the single dispute at Eastern that has reached impasse. H.R. 1231 would charge the commission with recommending settlements for *three* outstanding disputes at Eastern in a fraction of the time—45 days. Furthermore, involvement in the two ongoing labor disputes at Eastern that have not reached impasse violates our policy against governmental interference in the collective bargaining process. I see no justification for approving legislation that would mandate Government intervention in the cases of pilots and flight attendants.

For these reasons, I am compelled to disapprove H.R. 1231.

I also note that certain provisions of section 5 of the bill could be read to provide that executive branch resources must be deployed at the discretion of a congressional advisory commission. Such a reading of the bill would raise constitutional concerns.

GEORGE BUSH.

THE WHITE HOUSE, *November 21, 1989.*

The SPEAKER pro tempore. The objections of the President will be spread at large upon the Journal, and the message and the bill will be printed as a House document.

Mr. ANDERSON. Mr. Speaker, I ask unanimous consent that the veto message and the bill, H.R. 1231, to direct the President to establish an emergency board to investigate and report respecting the dispute between Eastern Airlines and its collective bargaining units, be referred to the Committee on Public Works and Transportation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The veto message of the President on the bill, H.R. 1231, is referred to the Committee on Public Works and Transportation.

## RECESS

The SPEAKER pro tempore. Pursuant to the order of the House of Monday, November 20, 1989, the Chair declares the House in recess.

Accordingly (at 12 o'clock and 40 minutes a.m.), the House stood in recess.

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 2 o'clock and 25 minutes a.m.

## FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills and a joint resolution of the House of the following titles:

H.R. 1. An act to amend Federal laws to reform housing, community and neighborhood development, and related programs, and for other purposes;

H.R. 91. An act to prohibit exports of military equipment to countries supporting international terrorism, and for other purposes;

H.R. 875. An act to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park near Fredericksburg, VA;

H.R. 1553. An act to require the Secretary of the Treasury to mint and issue coins in commemoration of the 100th anniversary of the statehood of Idaho, Montana, North Dakota, South Dakota, Washington, and Wyoming, and for other purposes;

H.R. 1727. An act to modify the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes;

H.R. 2469. An act to limit a previous owner's right of first refusal in the case of fraud or resale for sales of farm property by the Farmers Home Administration and the Farm Credit System;

H.R. 3671. An act to amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program;

H.R. 3729. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes; and

H.J. Res. 175. Joint resolution to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1096. An act to provide for the use and distribution of funds awarded the Seminole

Indian in dockets 73, 151, and 73-A of the Indian Claims Commission; and

S. 1539. An act to amend the Federal Water Pollution Control Act so as to include Lake Champlain in the Clean Lakes Demonstration Program.

□ 0225

## ANTITERRORISM AND ARMS EXPORT AMENDMENTS OF 1989

Mr. FASCELL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 91) to prohibit exports of military equipment to countries supporting international terrorism, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments as follows:

Senate amendments:

Page 11, line 7, strike out "The" and insert "With regard to munitions items controlled pursuant to this Act, the".

Page 19, line 17, strike out all after "section" down to and including "40 and" in line 18.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

Mr. GOSS. Mr. Speaker, reserving the right to object, I only do so to yield to the gentleman from Florida [Mr. FASCELL], the distinguished chairman of the Committee on Foreign Affairs, to explain the bill.

Mr. FASCELL. Mr. Speaker, I rise in support of H.R. 91, as amended, the Anti-Terrorism and Arms Export Amendments of 1989.

H.R. 91 has been adopted by the House of Representatives on four separate occasions. Unfortunately, while the measure has been reported by the Senate Foreign Relations Committee it has not previously been scheduled for Senate floor consideration. However, the Senate has now considerated H.R. 91 and adopted two minor changes which were of concern to the Senate Banking Committee.

The first change clarifies the provisions of the Export Administration Act with respect to so-called dual use items. The amendment makes clear that exporters processing legal dual-use items would continue under normal EAA procedures. However, no terrorist state should expect a windfall. Items which are on the munitions list and items which are military in nature will not be transferred to terrorist states. H.R. 91 ensures that a careful and thorough review will occur both by the executive branch and by the Congress.

The second change concerns the judicial review procedures for placing items on the munitions list. Items placed on the munitions list will not be subject to judicial review. However, their is a period of comment on the regulations which does provide for interagency review. Such a review is not intended to foster further bickering among the agencies but intended to preserve a united front against terrorist states. H.R. 91 will ensure that defense articles or defense services will not be transferred to any terrorist state.

In closing, may I commend my distinguished colleagues Mr. BERMAN and Mr. HYDE for their tireless work on this measure. Without their perseverance H.R. 91 would not be before this body today. H.R. 91 as amended has bipartisan support and deserves the support of this body.

Mr. Speaker, I strongly support this legislation and urge my colleagues to approve it with an overwhelming vote.

Mr. GOSS. Mr. Speaker, further reserving the right to object, I would like to point out this bill was a result of the hard work of the gentleman from Illinois [Mr. HYDE].

Mr. FASCELL. Mr. Speaker, if the gentleman will yield further so I may make one other observation, I concur in the gentleman's commendation of the gentleman from Illinois [Mr. HYDE]. One of the principal sponsors is our colleague, the gentleman from California [Mr. BERMAN], who worked long and hard for many years to get this bill adopted. It is due to the gentleman's insistence and determination and skill, as well as that of the gentleman from Illinois [Mr. HYDE], that this bill finally has been considered.

Unfortunately, the gentleman from California [Mr. BERMAN] could not be here. Illness in his family required him to leave Washington and return to California.

Mr. GOSS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

A motion to reconsider was laid on the table.

## REQUEST FOR CONSIDERATION OF SENATE AMENDMENTS TO H.R. 1727, EVERGLADES NATIONAL PARK PROTECTION AND EXPANSION ACT OF 1989

Mr. VENTO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1727) to modify the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes, with Senate amendments thereto, and confer in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota?

□ 0230

Mr. BARTLETT. Mr. Speaker, reserving the right to object, I note that I do not know that there will be any problem with this, but we have not yet received clearance from the Republican leadership. We expect to shortly. I do apologize to the gentleman, but we have not yet received clearance. If the gentleman could withdraw for a short period of time, we would notify them in just a few moments.

Mr. VENTO. Mr. Speaker, I withdraw my unanimous-consent request.

## PALAU COMPACT OF FREE ASSOCIATION IMPLEMENTATION ACT

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 175) to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendment as follows:

Senate amendment: Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—IMPLEMENTATION OF COMPACT OF FREE ASSOCIATION WITH PALAU

SEC. 101. ENTRY INTO FORCE OF COMPACT.

Notwithstanding the provisions of Section 101(d)(1)(B) of Public Law 99-658, entry into force of the Compact of Free Association between the United States and Palau (set forth in title II of Public Law 99-658 and hereafter in this joint resolution referred to as the "Compact") in accordance with subsections (a) and (d) of section 101 of Public Law 99-658 (100 Stat. 3673) is hereby authorized—

(1) subject to the condition that the Compact, as approved by the Congress in Public Law 99-658, is approved by the requisite percentage of the votes cast in a referendum conducted pursuant to the Constitution of Palau, and such approval is free from any legal challenge, and

(2) upon expiration of 30 days, in which either the House of Representatives or the Senate of the United States is in session, after the President notifies the Committees on Interior and Insular Affairs and Foreign Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate of the effective date of the Compact.

SEC. 102. FISCAL PROCEDURES ASSISTANCE.

Upon request of the government of Palau, the Secretary of the Interior shall provide assistance to the Government of Palau to develop and promulgate regulations for the effective expenditure of funds received pursuant to this joint resolution, Public Laws 99-658 and 99-239, or any other Act of Congress.

SEC. 103. ANTIDRUG PROGRAM.

(a) PLAN.—The Department of the Interior shall develop, in cooperation with the

Government of Palau and the National Drug Control Policy Office, a plan for an antidrug program in Palau. The plan shall be submitted to the Committees on Interior and Insular Affairs, Foreign Affairs, and Appropriations of the House of Representatives and the Committees on Energy and Natural Resources and Appropriations of the Senate by April 1, 1990. The plan shall: (1) identify the specific needs and costs of such an antidrug program; (2) shall identify all existing resources to be allocated for its implementation by the Government of the United States and the Government of Palau; and (3) shall recommend priority use for additional resources, assuming such resources are made available.

(b) AGREEMENT.—Following completion of the plan, the President and the Government of Palau shall negotiate an agreement to facilitate implementation of the plan. Such agreement may include—

(1) that the Government of Palau may request, on a long-term or case-by-case basis, that the officers of United States law enforcement agencies may conduct investigations consistent with implementation of the plan in cooperation with the law enforcement agencies of the Government of Palau;

(2) that the Government of Palau or the Government of the United States may agree to provide specific resources, on a one-time or a multiyear basis, to strengthen the antidrug program; and

(3) a specific description of the technical assistance, training, and equipment to be provided to Palau by the United States necessary to implement the plan.

SEC. 104. PUBLIC AUDITOR AND SPECIAL PROSECUTOR.

(a) Upon request of the Government of Palau the President shall provide, on a nonreimbursable basis, appropriate technical assistance to the public auditor or special prosecutor. The assistance provided pursuant to this subsection for the first five years after the effective date of the Compact shall, upon the request of the Government of Palau, and to the extent personnel are available, include (but not be limited to) the full time services of—

(1) an auditor or accountant, as determined by the public auditor, for the office of public auditor; and

(2) an attorney or investigator, as determined by the special prosecutor, for the office of special prosecutor.

SEC. 105. POWER GENERATION.

Section 104(e) of Public Law 99-658 is amended to read as follows:

"(e) Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sum and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau, except under the procedures established by the Compact and its related agreements. No funds appropriated pursuant to the Compact, this Act, or any other Act for grants or other assistance to Palau may be used to satisfy any obligation or expense incurred by Palau prior to November 14, 1986, with respect to any contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau which has not been specifically authorized by Congress in advance, except that the Government of Palau may use any portion of the annual grant under section 211(b) not required to be devoted to the energy needs of those parts of Palau not served by its central power generating facilities and any portion of the funds under section 212(b) of the Compact for such purpose.".

SEC. 106. AUDIT CERTIFICATION.

The chief officer of any agency conducting an audit pursuant to paragraph (1) of sections 102(c) and 103(m) of the Compact of Free Association Act of 1985 (Public Law 99-239) and section 101(d)(1)(C) of Public Law 99-658 shall certify that audit.

SEC. 107. ACQUISITION OF DEFENSE SITES.

The provisions of title III of the Compact relating to future use by the United States of defense sites in Palau do not restrict the authority of the President of the United States to—

(1) request additional funding, subject to appropriation, related to the use of privately owned land in Palau pursuant to article II of title III of the Compact as may be appropriate in light of actual land use requirements, independent appraisals of such privately owned land accepted by both governments, and other appropriate documentation of actual land use costs; and

(2) consent to an extension of the time set forth in a subsidiary agreement to such article in which the Government of Palau is required to make such land available to the United States.

SEC. 108. FEDERAL PROGRAMS COORDINATION PERSONNEL.

The Secretary of the Interior shall station at least one professional staff person in each of the Offices of the United States Representatives in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands to provide Federal program coordination and technical assistance to such governments as authorized under Public Laws 99-239 and 99-658. In meeting the purposes of this section the Secretary shall select qualified persons following consultations with the Interagency Group on Freely Associated State Affairs.

SEC. 109. REFERENDUM COSTS.

The Secretary of the Interior shall provide such sums as may be necessary for a further referendum on approval of the Compact, if one is required, or other appropriate costs associated with the approval process in Palau.

SEC. 110. AGREEMENTS.

(a) EFFECTIVE DATE OF CERTAIN AGREEMENTS.—An agreement between the United States and the Government of the Republic of Palau consistent with the agreements approved by Public Law 101-62 (101 Stat. 162) shall take effect without further authorization thirty days after submission to Congress.

(b) EXTENSIONS.—The provisions of article IX, paragraph 5(a) of the Agreement referred to in section 462(e) of the Compact of Free Association as approved by Public Law 99-239, and article IX, paragraph 5(a) of the agreement referred to in section 462(f) of the Compact of Free Association for Palau as approved by Public Law 99-658, are extended, in accordance with the terms thereof, until October 1, 1998, unless earlier terminated or further extended by the laws of the United States.

(c) AUTHORIZATION.—Funding to implement the provisions of this title, and for assistance to the central health care facility and the prison in Palau, and the offices of Public Auditor and Special Prosecutor as proposed in the agreement entitled "Agreement Concerning Special Programs related to the Entry into Force of the Compact of Free Association Between the Government of the United States and the Government of the Republic of Palau" signed on May 26, 1989, shall be available pursuant to the authorization in section 105(c) of Public Law 99-239 as referenced by Section 102(b) of Public Law 99-658 or from funds appropriated for technical assistance to the Secretary of the Interior.

SEC. 111. MODIFICATION OF ENERGY ASSISTANCE FUNDING.

(a) The President is authorized to negotiate and conclude an agreement, including the obligation of United States funds, with the Government of Palau which shall provide the following:

(1) The sum of $28,000,000, adjusted by section 215 of the Compact at the time of its availability to Palau, shall be provided to Palau pursuant to section 211(b) of the Compact and upon entry into force of the Compact.

(2) Palau shall pay to the United States, on or before the 15th anniversary of the effective date of the Compact, an amount equal to the net economic cost to the United States of making available the section 211(b) funds in the manner specified in this subsection rather than as provided in section 211(b).

(3) Such economic cost shall reflect the time value of money and be determined using the rate determined for an equivalent loan by the Federal Financing Bank as of the date these funds are advanced, and using an inflation rate consistent with the determinations made under the provisions of section 215 of the Compact.

(4) If the Government of Palau has not paid such net economic costs to the United States by the 15th anniversary of the effective date of the Compact, then the United States shall be automatically paid such sums from the fund established under section 211(f) of the Compact.

(5) The provision of section 211(b) funds, as appropriated by Public Law 99-349 and pursuant to this subsection, shall be in fulfillment of all United States obligations under such section 211(b) of the Compact and shall be subject to section 236 of the Compact.

(b) Subject to the provisions of subsection (a) and upon the request of the Government of Palau, the sum of $28 million appropriated by Public Law 99-349 to fulfill the obligations of the United States under section 211(b) of the Compact (approved in Public Law 99-658), adjusted by section 215 of such Compact, shall be provided to Palau upon entry into force of the Compact.

(1) At the end of Section 111 insert the following new subsection:

(c) Funding provided in Public Law 101-121 under the "Trust Territory of the Pacific Islands" appropriation account shall remain available until expended.

SEC. 112. SUBMISSION OF AGREEMENTS.

Any agreement concluded with the Government of Palau pursuant to this joint resolution including the agreement entitled "Agreement Concerning Special Programs related to the Entry into Force of the Compact of Free Association Between the Government of the United States and the Government of the Republic of Palau" signed on May 26, 1989, and any agreement which would amend, change, or terminate any such agreement, or portion thereof, shall be submitted to the Congress and may not take effect until after 30 days after the date on which such agreement is so submitted. An amendment or agreement substituting or in addition to the subsidiary agreement negotiated under section 212(a) of the Compact or

its annex shall take effect only when approved by an Act of Congress.

SEC. 113. TRANSITION FUNDING.

For the purposes of applying section 105(c)(2) of the Compact of Free Association Act of 1985 (99 Stat. 1792) to Palau, the terms "fiscal year 1987", "fiscal year 1988"s, and "fiscal year 1989" in section 104(c) of Public Law 99-658 shall be deemed to be the first, second, and third fiscal years, respectively, beginning after the effective date of the Compact.

TITLE II—INSULAR AREAS MATTERS

SEC. 201. CONTROLLED SUBSTANCES IN THE FREELY ASSOCIATED STATES.

(a) IN GENERAL.—The President is authorized to negotiate agreements which provide—

(1) that the United States shall carry out the provisions of part C of the Controlled Substances Act (21 U.S.C. 821 et seq.) as necessary to provide for the lawful distribution of controlled substances in the freely associated states; and

(2) that a freely associated state which institutes and maintains a voluntary system to report annual estimates of narcotics needs to the International Narcotics Control Board, and which imposes controls on imports of narcotic drugs consistent with the Single Convention on Narcotic Drugs, 1961, shall be eligible for exports of narcotic drugs from the United States in the same manner as a country meeting the requirements of subsection (a) of section 1003 of the Controlled Substances Act (21 U.S.C. 953).

(b) EFFECTIVE DATE.—Agreements concluded pursuant to this section shall become effective pursuant to section 101(f)(5) of Public Law 99-239 or section 101(d)(5) of Public Law 99-658, as may be applicable.

SEC. 202. NORTHERN MARIANAS COLLEGE.

The Northern Marianas College is hereby constituted a depository to receive Government publications, and the Superintendent of Documents shall supply to the Northern Marianas College one copy of each such publication in the same form as supplied to other designated depositories

SEC. 203. VIRGIN ISLANDS.

The Revised Organic Act of the Virgin Islands is amended by striking out the second sentence of section 25 (48 U.S.C. 1615).

SEC. 204. CABRAS ISLAND.

Section 818(b)(2) of Public Law 96-418 (94 Stat. 1782) (as amended by section 504 of Public Law 98-454 (98 Stat. 1736)) is amended by striking "30 percent" and inserting "50 percent".

SEC. 205. POHNPEI HYDROPOWER ADDITION.

In addition to sums already appropriated for the Nanpil hydropower project, there are hereby authorized to be appropriated to the Secretary of the Army up to $6.5 million for design and construction of the hydropower addition to the Nanpil project. The Secretary of the Army is directed to use any funds appropriated pursuant to this authorization for the intended purposes, and under the same terms and conditions as sums previously provided.

SEC. 206. CLARIFICATION WITH RESPECT TO ALLOTMENTS FOR TERRITORIES.

Section 901(a), Part 1, Title I of the Act of June 19, 1968 (42 U.S.C. 3791(a)) is further amended in paragraph (2) by changing the proviso to read as follows: "*Provided*, That for the purpose of section 506(a), American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one state and that for these purposes 67 per centum of the amounts allocated shall be allocated to American Samoa, and 33 per centum to the Commonwealth of the Northern Mariana Islands.".

SEC. 207. VIRGIN ISLANDS PRISON EXPANSION AND RENOVATION.

There is authorized to be appropriated $5,000,000 to the Secretary of the Interior for the Golden Grove Prison on St. Croix, United States Virgin Islands, and for renovation of and improvements to existing prison facilites.

SEC. 208. OFFICE OF THE RESIDENT REPRESENTATIVE.

Real property owned by the Commonwealth of the Northern Mariana Islands in the capital of the United States and used by the Resident Representative thereof in the discharge of his representative duties under the Covenant shall be exempt from assessment and taxation.

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Arizona?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I do so to yield to the chairman of the full committee, the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Speaker, I am today recommending to my colleagues that the House pass House Joint Resolution 175, which would authorize implementation of the Compact of Free Association with Palau, provide additional assistance to Palau, and also include several miscellaneous provisions regarding other insular areas.

As you know, Palau is the last of the insular areas which were part of the strategic trusteeship established by the United Nations following World War II and placed under the jurisdiction of the United States. For over 40 years, our Nation has had the responsibility to assist Palau in developing economically and politically.

The Compact of Free Association, developed over a period of years, would provide Palau with sovereign self-government and free association with the United States. It would provide financial aid to Palau for a period of 15 years. The United States would receive certain strategic military rights there for a period of 50 years.

At the time we were asked to conclude U.S. legislative action on the Palau Compact by President Reagan 2 years ago, information came to our attention which indicated that the system of government in Palau was not functioning properly. There were reported instances of threats, intimidation, and violence as well as improper government pressure to suppress and frustrate legitimate efforts of those who challenged the constitionality of the approval of the compact by the people of Palau. It was also evident that there was corruption in the highest positions of the insular government. Had something not been done to address these and many other serious problems in Palau, there would be little hope today for Palau to become a strong democracy in the Pacific region.

These problems, combined with the ill-advised incurring of a substantial debt in connection with purchase of a large electric power generating plant, threatened the viability of the Government of Palau regardless of whether the compact were to come into effect or whether the current Trusteeship responsibility of the United States were to continue. Suffice it to say that there is clear and convincing evidence that there had been a breakdown in the rule of law in Palau serious enough to compromise this fledgling republic's future.

Insular and International Affairs Subcommittee Chairman RON DE LUGO, Rep. GEORGE MILLER, Rep. DON YOUNG, I and other Members of the Committee on Interior and Insular Affairs joined a majority of Palau's Congress in recognizing that the situation required extraordinary actions be taken to help Palau bring their problems under control.

Congressmen DE LUGO, MILLER, and I asked the General Accounting Office [GAO] to conduct a review of the allegations which had come to our attention. That report was released in August. It confirmed information we had received concerning wrongdoing and governmental malfeasance which jeopardized the future of Palau. At this point in the RECORD, I will insert an overview of that report in the form of a statement Subcommittee Chairman RON DE LUGO, Representative GEORGE MILLER, and I issued on August 18, 1989.

GAO REPORT ON PROBLEMS IN TRUST TERRITORY ISLANDS OF PALAU RELEASED

The release of a General Accounting Office (GAO) report on problems facing the Pacific Trust Territory islands of Palau was announced today by the three House Interior and Insular Affairs Committee Members who asked for the investigation: Chairman Morris K. Udall (D-AZ); the second-ranking Democrat, George Miller (D-CA); and Insular and International Affairs Subcommittee Chairman Ron de Lugo (D-VI).

The report was released after de Lugo gave advance copies to Palau Vice President Kuniwo Nakamura representing President Ngiratkel Etpison; Senate President Joshua Koshiba; and House Speaker Shiro Kyota in a San Francisco meeting last weekend.

Key points made clear by the report include the following:

Palau spent at least $7.7 million more than it needed to for power facilities it bought from IPSECO, a now-bankrupt British company. The deal involved payments of hundreds of thousands of dollars to officials that should be investigated for violation of bribery and tax laws. Reagan administration officials made the deal possible even though

they had been advised in advance that it was a bad one.

The late President Lazarus Salii of Palau and a group of associates (often secretly) negotiated a number of other questionable, ill-advised, and, possibly, illegal deals.

Fraud may have been involved in the government of Palau's rental of a house to be Salii's official residence.

Palau needs the special prosecutor and auditor that the Compact of Free Association legislation compromise (which passed the House of Representatives June 27th) would help fund and it needs the help for improving financial management also included in the compromise.

Nearly two million dollars and intimidation—including violence—of Compact challengers, legislators, government employees, and jurists in Palau were used to try to obtain approval of the Compact.

Compact compromise provisions would respond to concerns about U.S. military land use; the amount of U.S. aid Palau will receive under the Compact; critical debts; and the lack of basic infrastructure that have contributed to Palau's failure to approve the Compact to date.

The Reagan Administration abdicated its responsibilities in Palau. It did so because it constantly anticipated that the Compact was about to come into effect. It did not know of many problems it should have and it did not act or act effectively when it did know of problems.

Palau's serious drug and law enforcement problems require additional aid included in the Compact legislation compromise.

A fuller list of points made clear in the report is attached.

In releasing the report, de Lugo, Udall, and Miller made the following statement:

"GAO's independent findings fully justify the need for the Palau Compact of Free Association legislation compromise which passed the House by a two-thirds vote on June 27th with bipartisan support.

"The report shows why we shared the concern of many of Palau's leaders about the Compact going into effect without a clear commitment of assistance from the United States to help Palau address some very serious problems.

"Two messages come through loud and clear in the report: 1) Reagan Administration officials didn't do their job in Palau and 2) in case after case, a small group in the Salii Administration substantially—and often secretly—abused the public trust.

"The report leaves no doubt about what actions need to be carried out by the federal and Palauan governments, in addition to outlining problems.

"The most important of these actions would strengthen the basic institutions of government—ensuring that it has the necessary checks and balances on power, the necessary resources, and the essential infrastructure—so that Palauans can face the future of self-government with confidence.

"We are hopeful that Interior Secretary Manuel Lujan, who worked closely with us on the Palau legislation when he was in Congress, will ensure that the Interior Department lives up to its responsibilities and meets the undeniable needs of Palau.

"Interior should do this by helping Palau to tackle problems or by combatting problems itself where Palau cannot do so alone for so long as Palau's transition to self-government continues.

"We also hope that Palau's new leaders headed by President Ngiratkel Etpison will follow up on the report's recommendations. The report presents a clear agenda for them.

"The report confirms that the government of Palau was taken into de facto bankruptcy because of the virtual absence of adequate internal controls and accountability over spending; because of abuses of office by some past leaders; and because the Interior Department in the previous Administration ignored its responsibilities for providing assistance, guidance, and oversight. Had this situation been allowed to continue, Palau would have so mortgaged its future that it would not have been able to recover for many years to come.

"As much as this report contains, it still only identifies, catalogs and discusses a portion of the problems facing Palau. The report only scratches the surface. It is now up to the government of Palau—with federal assistance—to address the full range of problems.

"Finally, with all that the report says was wrong about the way that Palau was governed by some officials during the Salii and Reagan Administrations, it also provides a testament to the indomitable will, courage, perseverance, and capability of the people of Palau.

"They, most notably, deserve credit for not succumbing to corruption and intimidation. They, ultimately, will have to take the actions that are needed to overcome Palau's problems, even though the U.S. has a major role to perform in helping them do so."

A copy of the executive summary and tables of contents of the report entitled "Issues Associated with Palau's Transition to Self-Government" is attached as are the list of key points that the report makes clear and background information on the compromise legislation and the GAO report.

In addition, a summary of our assessment of that report appears as an enclosure to the statement by subcommittee Chairman RON DE LUGO elsewhere in the RECORD today.

Earlier this year, I led a delegation of 11 of my House colleagues and the Secretary of the Interior, my friend of many years, the Honorable Manuel Lujan, to Pacific insular areas within this committee's jurisdiction, including Palau.

What we saw and heard in Palau confirmed that the steps we had taken to assist Palau were not only justified but also essential to the welfare of Palau as well as appreciated by the vast majority of the people of the islands. Through these steps, Palau has been provided with time to reflect on, to investigate, and to begin the process of solving the many problems facing it.

Based on our discussions in Palau at the time of the trip and in subsequent discussions, we believe that the chances that Palau might approve the Compact of Free Association in a seventh referendum are better than during any previous period if the U.S. Government fulfills some of its fundamental responsibilities to the Palauan people as it seeks to bring the trusteeship to termination and embark on a new relationship with Palau.

Among those responsibilities is the provision of critically needed funding to assist Palau in constructing a hospital which can provide the basic health care which most Americans enjoy even in the most rural areas of the United States and which we should have helped Palau obtain before now.

Another is to assist Palau in building a jail which would provide, at a minimum, sanitary and humane living and working conditions for inmates, including the capability to separate hardened criminals from younger offenders, and to segregate men from women. The conditions I saw at the existing facility were deplorable. The United States simply has not done its job in the eyes of the world if we do not assure Palau certain basic infrastructure, particularly the hospital and jail, in an acceptable condition.

Still another is to address satisfactorily the legitimate anxiety and concern of Palauans regarding the potential use of their land for United States Defense Department purposes.

We also have a heavy responsibility to help Palau eliminate the corruption they have experienced in high places, including the intimidation of those seeking redress of grievances against their government through the judicial system, as well as the other excesses of the past. Having been put on notice about the extent and seriousness of these problems, it would be tantamount to gross negligence for the Congress not to take strong and meaningful action to help address these problems, especially in light of the solution, which is both clearly available to the United States and acceptable to the Palauan people.

After much study and analysis, we conclude that the best way that this latter responsibility could be carried out was to require—for a period of at least 5 years—that Palau fund and maintain fully staffed Offices of Special Prosecutor and Public Auditor, established under Palauan law with a commitment of United States funding assistance for such offices.

The proper functioning of these two offices, coupled with Palau's maintaining the integrity of its judicial system and enhancing the capability of the Olbiil Era Kelulau—Palau's Congress—to conduct oversight of the operations of its government will give Palau its best hope for ensuring that its system of checks and balances function properly, to protect the rights of its people and continue to develop a strong and stable democracy in the Pacific region.

These and other matters were addressed in the "Agreement Concerning Special Programs Related to the Entry into Force of the Compact of Free Association Between the Government of the United States and the Government of the Republic of Palau," which was signed by representatives of the Governments of Palau and the United States on May 26, 1989, and which we

are incorporating by reference in sections 110 and 112 of House Joint Resolution 175. Regarding section 110 of House Joint Resolution 175, it is our intention to make clear that the funding for the Offices of Public Auditor and Special Prosecutor are authorized in addition to compact funds.

With respect to congressional intent relating to the special prosecutor and public auditor provisions of the referenced agreement which covers these offices, I am entering into the RECORD at this point, answers to questions I posed to the Department of State regarding my concerns over the agreement.

U.S. DEPARTMENT OF STATE,
*Washington, DC, July 6, 1989.*

Hon. MORRIS K. UDALL,
*Chairman, Committee on Interior and Insular Affairs, House of Representatives.*

DEAR MR. CHAIRMAN: On June 29, the Department of State received the revised written questions that you submitted for the record of the June 8, 1989 hearing of the Subcommittee on Territorial and International Affairs on H.J. Res. 175 and on the U.S.-Palau Compact subsidiary agreement signed on May 26, 1986.

I am pleased with this letter to transmit our written responses to those questions.

Sincerely,

JANET G. MULLINS,
*Assistant Secretary, Legislative Affairs.*

Enclosures: Q's and A's.

Questions of Hon. Morris K. Udall for the U.S. Department of State regarding Article IV of the Agreement Concerning Special Programs Relating to the Entry into Force of the Compact of Free Association with Palau. [These questions and answers to them will be made part of the record of the hearing held by the Subcommittee on Insular and International Affairs on June 8, 1989]

*Question 1.* My questions are based on the premise that the agreement with Palau signed on May 26, 1989 by James Berg, a representative of the U.S. State Department, was to have been a good faith attempt to incorporate the provisions of H.J. Res. 597 as passed by the House of Representatives in the 100th Congress into a subsidiary agreement to the Compact of Free Association with Palau. I have several concerns about the agreement but will focus here on my concerns about Article IV of the agreement regarding the maintenance and staffing of the offices of public auditor and special prosceutor established under the authority of the Constitution and laws of Palau which appears to fall short of meeting some of the principal requirements relating to these offices in H.J. Res. 597.

The resolution H.J. Res. 597 provided for the public auditor and special prosecutor offices to be maintained and staffed "during the period that the Government of the United States provides assistance under subsection (e) * * *" which authorizes funding at the level of "$300,000 annually for the first 15 years after the effective date of the Compact" for these two offices. Under H.J. Res. 597 these offices were to be maintained by Palau for not only the first 5 years after the effective date of the Compact during which time the U.S. and Palau guarantee a minimum expenditure of $300,000 and $100,000 annually respectively for the offices but also for the remaining 10 of the first 15 years after the effective date of the Compact if U.S. assistance continues to be provided for these offices.

As I read the agreement, these offices would be maintained for only 5 years, and would continue thereafter at the option of Palau even if the U.S. was willing to continue to provide funding for the next 10 years of the Compact. In other words, even if the U.S. continues to provide funds, the Government of Palau could, under the agreement, discontinue the offices after 5 years and not be in breach of the Compact.

For what reasons did the agreement not adhere to the provisions of H.J. Res. 597 in this instance? Please explain.

Answer. The Administration believes that the provisions of Article IV of the May 26 agreement are consistent with H.J. Res. 597 as passed by the House on October 6, 1988 with respect to the particulars mentioned in this question. First, H.J. Res. 597, if enacted would have authorized U.S. funding for the public auditor and special prosecutor offices for a fifteen year period but would have provided funding only for the first five years after the effective date of the Compact. It required Palau to maintain the offices during the period the US provided funding. The same requirement, and Palauan agreement to it, exists in the Compact subsidiary agreement.

U.S. funding for the two offices, if any, that is provided for the period after the first years of the effective date of the Compact could only be used by Palau for the staffing, maintenance and operation of the two offices in question. Any other use would be prohibited. Thus it is only reasonable to assume that Palau could not discontinue the offices while at the same time staffing, maintaining and operating them.

*Question 2.* The resolution H.J. Res. 597 required that technical assistance be provided "upon the request of the Government of Palau or its public auditor or special prosecutor" to the public auditor or special prosecutor specifically to avoid the possibility that the Executive Branch of the Government of Palau might not request such assistance regardless of the clear need. To address that possibility, H.J. Res. 597 permitted the public auditor or special prosecutor to make such a request.

Why does the agreement not contain the provision from H.J. Res. 597 for the special prosecutor and public auditor to be able to request technical assistance thereby helping to assure the independence of their offices. Please explain.

Answer. The agreement contemplates that the offices of special prosecutor and public auditor and created by and operate under the authority of the laws of Palau as enacted by the Government of Palau, of which these two offices are a part. The Compact and all of its subsidiary agreements are based on a relationship between the Government of the United States and the Government of Palau. No other type of relationship is cognizable once the Compact enters into force. The individuals who are the special prosecutor and public auditor of Palau will be employees and officers of the Government of Palau and may therefore, as such, act for the Government of Palau in terms of operating their offices, including requesting technical assistance from the United States Government under the May 26 agreement.

*Question 3.* Along these same lines, the requirement in H.J. Res. 597 that the public auditor or special prosecutor determine whether they needed an accountant or auditor from the U.S. for the public auditor office and an attorney or investigator for the office of special prosecutor was changed in the agreement to put that decision in the hands of the Government of Palau.

What is the rationale for not adhering to the provisions of H.J. Res. 597 on this matter?

Answer. Please see the answer to Question 2.

*Question 4.* Paragraph 2(b) of the agreement provides for "annual amounts of not to exceed $300,000" a year for the offices of special prosecutor and public auditor while H.J. Res. 597 provided annual amounts "not less than $300,000. . . ." There is potentially a $300,000 or greater difference between these two formulations.

What is the rationale here for not adhering to the provisions H.J. Res 597?

Answer. The meaning and operational effect of the language in Article IV of the May 26 Compact subsidiary agreement is that the United States Government will provide $300,000 annually over a five year period for the public auditor and special prosecutor offices in Palau. The Administration is committed to requesting the appropriation of these funds for each of the years in question and they will be provided if Congress appropriates them. H.J. Res. 597, while requiring the expenditure of "not less than" $300,000 annually for these same purposes during the first five years, actually authorizes exactly $300,000 annually during that period for appropriation. The Administration intends that exactly $300,000 annually be provided during the period. The May 26 Compact subsidiary agreement is thus consistent with the language of H.J. Res. 597 in this regard.

*Question 5.* Paragraph 3 of the agreement provides that the U.S. "may agree to provide * * * technical and other assistance * * *" while H.J. Res. 597 requires that the U.S. "shall provide" such assistance on a nonreimbursable basis, etc.

What is the rationale here for not adhering to the provisions of H.J. Res. 597?

Answer. H.J. Res. 597 provides that technical assistance by the United States to the Palau special prosecutor and public auditor offices will be provided pursuant to Compact Sections 222 and 224. These sections provide, inter alia, that decisions as to whether the technical assistance in questions is to be with or without cost to Palau will be determined at the time of the provision of the technical assistance. H.J. Res. 597 goes on to specify that, during the first five years after the effective date of the Compact, a defined minimum level of technical assistance—the professional services of an accountant and an attorney—will be provided on a non-reimbursable basis to Palau. The agreement is thus consistent with these provisions of H.J. Res. 597.

*Question 6.* The provisions of H.J. Res. 597 which Article IV of the agreement was to have incorporated are important to efforts by the people of Palau to help ensure that there is accountability of government spending in Palau and that the rule of law is never again effectively suspended.

Section 5(f) of H.J. Res. 597 provided that the President "shall initiate the conference and dispute resolution procedures" provided for in Article II of Title IV of the Compact if the Government of Palau does not maintain the offices of the public auditor and special prosecutor as required.

In the agreement there is merely a statement that the President has "recourse to the conference and dispute resolution procedures * * *" This appears to mean that, co-

trary to the intent of H.J. Res. 597, the President has total discretion to initiate such procedures or not. This a fundamental departure from H.J. Res. 597.

What rationale was used in this instance for the deviation from subsection 5(f) of H.J. Res. 597?

Answer. There is no deviation from the provisions of H.J. Res. 597, irrespective of the intent of that legislation. Specifically, the May 26 Compact subsidiary agreement, in pertinent part, states that "* * * the Government of the United States shall have recourse to the conference and dispute resolution provisions * * *" if "* * * Palau does not comply with the provisions of paragraph 1 of this Article. * * *"

*Question 7.* The resolution H.J. Res. 597 provided that if the "Government of Palau does not conform its actions to any determinations reached through" the conference and dispute resolution procedures, the Government of the United States would "treat such nonconformance as a material breach of the Compact and, if no other efforts obtained compliance within 180 days of such determinations," the President would be required to take appropriate steps which were to include either withholding of funds to be provided pursuant to H.J. Res. 597 and P.L. 99-658, or suspending the effectiveness of Section 236 of the Compact until the Government of Palau conforms its actions to the determinations reached through the conference and dispute resolution procedures.

The agreement provides only that the U.S. Government "shall take steps it considers appropriate, including, but not limited to, the withholding of funds * * *"

*Question 7(a).* This is another fundamental change to a provision of H.J. Res. 597, please explain the rationale for not adhering to such a key provision of H.J. Res. 597.

Answer. H.J. Res. 597 contemplated that the funds provided by the United States to support the public auditor and special prosecutor offices during the first five years after the effective date of the Compact would have attached to them a pledge of the full faith and credit of the United States. The language of H.J. Res. 597 contemplated as a possible, but not required, U.S. response to Palauan non-compliance with an arbitration determination that Palau had not complied with the requirement to maintain either or both of the special prosecutor or public auditor offices, the suspension of the full faith and credit provision. Since, under the provisions of H.J. Res. 175, the legislation by which Congress will authorize the Palau Compact to enter into force, the special prosecutor and public auditor funding is authorized but not pledged with the full faith and credit of the United States, it follows that the iteration of suspension of the full faith and credit provision as a sanction against Palau is no longer relevant.

*Question 7(b).* Also, does the Executive Branch of the U.S. intend to follow the intent of H.J. Res. 597 to withhold funds "until the Government of Palau conforms its actions to the determinations referred to" in paragraph 4 of Article IV of the agreement?

Answer. In the very unlikely circumstance that the conditions foreseen in the last sentences of paragraph 4 of Article IV of the May 26 Compact subsidiary agreement come into play, the Administration will act in a manner consistent with the Agreement, and the Compact. This means taking steps that are appropriate, including the withholding of funds, but not limited to that particular step.

The purpose of such questions was to obtain reassurances from the Department that the administration had, in fact, made a good-faith effort to reflect in the agreement the provisions of House Joint Resolution 597 as it passed the House in the last Congress. Incorporating those provisions into the agreement was the commitment made by the current administration to obtain passage of this legislation by the House. As my colleagues will see by reviewing the answers to my questions and the agreement laid in the RECORD today as part of the statement on House Joint Resolution 175 by the gentleman from the Virgin Islands [Mr. DE LUGO], the U.S. Department of State has for the most part attempted to reflect the provisions of House Joint Resolution 597 in the agreement.

In the final analysis, though, what will count will be the level of commitment of our government and the Palauan Government to carrying out both the letter and spirit of the agreement—and its antecedent, House Joint Resolution 597 from the 100th Congress. It is my sincere hope that neither will act in the future to jeopardize this commitment.

It is only with the understanding that the key Members of the House and Senate on this matter, as well as decisionmakers from the executive branch, will make bona fide efforts to obtain appropriations for the items in the agreement, as well as for other provisions of House Joint Resolution 175, that I have agreed to bring this legislation before the House at this time.

Mr. Speaker, we are working here on nothing less than the birth of a new nation. The actions we take today are of great importance to every Palauan and to virtually every aspect of Palauan life.

Because of the gravity of this matter and its relevance to the future of Palau and to United States-Palau relations, I feel compelled to raise one of a number of issues related to this legislation which remains of concern to me.

That issue has to do with shortsighted efforts in certain quarters to undercut the fulfillment of this Nation's responsibilities to Palau as expressed in House Joint Resolution 597 from the 100th Congress. That joint resolution was endorsed by both the House Foreign Affairs Committee and the House Interior and Insular Affairs Committee as well as the Reagan and Bush administrations and the legislative executive branches of the Palauan Government.

The efforts I am referring to are ones which may, if they continue, ultimately jeopardize the fragile coalition of Palauans who had joined together to obtain approval of a legislative package which, combined with the compact, could conceivably achieve approval of the compact by the people of Palau under its constitution for the first time.

The compact has failed to be approved six times previously, in part, because of inadequate sensitivity by the United States to rectifying shortcomings in the compact that this legislative package would help overcome. If Palau fails to obtain approval of the compact in a seventh referendum, a large part of the responsibility for such failure will rest squarely on the shoulders of those whose efforts appear to have been aimed at weakening the provisions developed to, first, help fulfill United States responsibilities toward Palau and at the same time, second, overcome some of the most serious reservations Palauans have regarding the compact. As I understand it, those efforts have offended the Palauan people and their leaders. I hope that we have seen the last of such efforts.

The position of this committee had been to require the modest provisions in House Joint Resolution 597 of the 100th Congress to be backed by the full faith and credit of the United States. The vast majority of the assistance provided for in the compact has such a full faith and credit guarantee. Notwithstanding that fact, as an accommodation to concerns of some in the Senate, we in the House agreed to drop this requirement in favor of an authorization coupled with a commitment on the part of all—the House, the Senate, and the administration—to make sure the money was, indeed, requested and appropriated.

Therefore, although I personally have reservations about the efficacy of moving forward with this legislation without further amendment, I am today agreeing with the recommendation of subcommittee Chairman RON DE LUGO and Palau Vice President Kuniwo Nakamura that the House of Representatives approve this legislation.

I encourage my colleagues to support this measure at this time. This legislative package—including the compact and—very importantly—the subsidiary agreement to the compact signed May 26—will enable the Palauan people to determine their political status for the years ahead.

If the people of Palau accept this legislative package and approve the compact, I wish them well in their new status of free association with the United States.

If the people of Palau reject this package, I will continue my efforts to help them attain their self-determination goals.

Whatever the outcome, I share with our friends, the Palauan people, a genuine desire for Palau to develop economically, politically, and socially, and

for it to continue to improve the quality of life and to promote justice for its people. Furthermore, it is my hope that they may, in time, fully benefit from all the rights and privileges that are inherent in the democratic way of life.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I yield to the gentleman from the Virgin Islands [Mr. DE LUGO].

Mr. DE LUGO. Mr. Speaker, I thank the gentleman for yielding.

During the last Congress, the Subcommittee on Insular and International Affairs, which I am privileged to chair, dedicated most of its efforts to the smallest of the eight insular areas: the western Pacific islands of Palau.

These efforts were focused on a proposed Compact of Free Association with Palau. They led the House to pass legislation to authorize the compact to be put into effect in October of last year with 406 votes.

In the closing hours of the 100th Congress, a compromise was reached on this legislation. Under it, the Reagan administration committee to fulfill the requirements of the House legislation without being required to do so by statute if the House would pass the Senate version with one mutually agreed-upon amendment.

Unfortunately, the commitments that made the compromise possible were delivered literally minutes too late to enable the compromise to be enacted last year.

Also unfortunately, the Reagan administration didn't follow through on the compromise. The ranking Republican of the Insular and International Affairs Subcommittee, BOB LAGOMARSINO, promised in January, though, that the Bush administration would.

So, in March, 65 Members joined me in sponsoring House Joint Resolution 175, the legislation that the compromise requires regarding Palau.

I said then I would seek action when the Bush administration did what it could to implement the compromise. I suggested an addition to the compact be agreed to with Palau that would commit the United States to fulfill the requirements of the last Congress' House legislation.

SUBSIDIARY AGREEMENT

After the Bush administration finally decided to honor the compromise, the State Department officer who had agreed to it in the first place, James Berg, began negotiating the needed subsidiary agreement to the compact with a Palauan commission headed by the islands' new Vice President, Kuniwo Nakamura.

Two administration proposals were made but fell short of the compromise. Meanwhile, some in Palau became concerned that the necessary consensus on the compromise would erode. Some in Washington felt that time for the compromise had run out.

Finally, after Palau's leaders spoke out in the U.N. Trusteeship Council, Mr. Berg agreed to the commitments that made agreement possible. A subsidiary agreement for this purpose was signed on May 26.

The Insular and International Affairs Subcommittee conducted a hearing June 8 to determine whether the agreement signed May 26 met the requirements of the compromise.

Our hearing confirmed that the agreement generally lives up to the compromise. The differences we found between the agreement and the compromise are minor and are fair to both the United States and Palau. For the most part, the agreement commits the executive branch to take action which would have been required by the House legislation in the last Congress.

HOUSE JOINT RESOLUTION 175 SUBSTITUTE

That made it incumbent upon both Houses to expeditiously pass the legislation that the compromise requires. From conversations I had with the chairman of the committee of jurisdiction in the Senate, I expected the Senate to join the House in doing this.

A substitute that I proposed for House Joint Resolution 175, as it was introduced, was overwhelmingly approved by the House on June 27.

The differences between the introduced resolution and the substitute were the following:

First. The substitute would have approved the May 26 agreement, effectively making it a part of the compact and this legislation.

Second. The substitute included a number of miscellaneous other insular measures that were included in the compromise but were not included in House Joint Resolution 175, as it was introduced.

Third. The substitute included a few other miscellaneous insular measures which the chairman of the Senate committee and I agreed to have added by the House.

SENATE ACTION

The Senate, unfortunately, did not act expeditiously on the resolution as we had been led to believe it would.

The Senate Energy and Natural Resources Committee favorably reported House Joint Resolution 175 with an amendment; but only did so on November 3. The full Senate finally agreed to it just a short while ago.

For the most part, the changes relating to the Palau compact in the Senate amendment are cosmetic. Only a few could even really be considered technical.

The motivation appears to be to clarify the authorship of the language. This is ironic, of course, since the language that the House passed primarily was language authored and initially passed by the Senate, as I have explained.

Even more ironic is the fact that representatives of the Senate managers objected to most of the changes now made by the Senate when we proposed similar changes before the House acted. Principally, these changes eliminated language covered by the May 26 subsidiary agreement to the compact.

Thus, the legislation passed by the Senate is essentially what the House sought. Their agreement to legislation to accomplish our objectives, will, hopefully, end a long period of disagreement on this matter.

There are a few minor substantive differences relating to the Palau compact, though. These differences will have no practical effect of any real consequence, however, because of commitments we have now obtained from the executive branch.

Let me explain these differences and why they present no real problem.

AMENDMENT OF SUBSIDIARY AGREEMENT

As I had agreed with the chairman of the Senate committee, the House legislation would have required congressional approval for any change to the May 26 agreement or other agreements entered into pursuant to the compact or this legislation.

The Senate amendment would essentially incorporate the May 26 agreement into the compact and this legislation—as the House legislation would have. It would not, though, add the agreement to the list of subsidiary agreements to the compact which can only be amended or ended by the U.S. by act of Congress. Instead, it provides that any such changes must be submitted to Congress for 30 days before they can take effect.

The Senate omission presents no real problem, though, because Congress could act to prevent any change which conflicted with the understandings of this legislation or with which it otherwise disagreed. This should provide sufficient time to act to prevent any effort to subvert the commitments which have been made.

Additionally, the executive branch has now committed not to amend the May 26 agreement without consulting with the Interior and Insular Affairs Committee and any other committee which may have jurisdiction. This commitment is understood to obligate the executive branch of this and future administrations not to change May 26 agreement requirements unless an understanding is reached with appropriate committees. I am sure that the leadership of our committee would not agree to such an understanding unless it felt that doing so would be acceptable to this House.

So, the protection sought in the House legislation would not be significantly compromised by the language of the Senate amendment.

COMPACT REFERENDUM FUNDING

As the agreement on this legislation required, the House legislation would

have stated a clear intent for the Interior Department to provide at least $200,000 to Palau for a referendum to approve the compact. Eligible expenses would have included public education as well as other appropriate costs related to the change in the political relationship between Palau and the United States. The funds would have had to have been provided without using other funds intended for Palau.

The Senate amendment would require the Interior Department to provide the full amounts necessary for these purposes to Palau. It would also consolidate the intent to provide at least $200,000 into a general authorization of funds. It would not, though, specifically authorize the $200,000 minimum required by the agreement on this legislation.

The Senate omission presents no real problem, though, because the executive branch has now committed to provide Palau with at least $200,000 for these purposes.

SUBSTANCE ABUSE AND LAW ENFORCEMENT FUNDING

The May 26 agreement negotiated at our insistence requires the government of Palau to develop a plan for the enforcement of narcotics and other laws and for prevention and treatment of narcotics and other substance abuse—in cooperation with the Government of the United States. This plan would be used to expend—but not be required for—a commitment of grants from the United States to Palau of $400,000 per year for 5 years beginning not later than next fiscal year.

The Senate amendment would commit the United States to provide Palau with this assistance. It would also, though, require the Interior Department to develop a plan for an antidrug (only) program in Palau—in cooperation with the Government of Palau.

The Senate amendment presents no real problem, though, because the executive branch has now committed that all provisions of the May 26 agreement will still be implemented.

Thus, while the Interior Department may prepare this limited antidrug plan for Palau, the Government of Palau remains committed to prepare the comprehensive plan for the enforcement of narcotics and other laws and to prevent and treat narcotics and other substance abuse. In fact, it is expected that Palau will prepare the comprehensive plan intended by the agreement on the legislation with technical assistance funded by the Interior Department.

Further, the requirement for the Interior Department to prepare a plan cannot be used to avoid the United States commitment to provide Palau with the $2 million for these purposes.

PALAU'S APPROVAL

Finally, as the agreement on this legislation required, the House legislation would have required Palau to approve the compact before it is put into effect.

The Senate amendment includes this requirement. It would, though, add a requirement that Palau's approval be free from legal challenge.

The Senate addition presents no problem, though, because: First, the Bush administration has committed not to try again to implement the compact if its approval is being challenged—as did the Reagan administration; second, we have never considered that the compact can be considered "approved" if it is under legal challenge; and third, both the House legislation and Senate amendment require Presidential notice to Congress of an intent to implement the compact precisely so that we can be sure that the Bush administration does not repeat the mistakes in this regard of the Reagan administration and take preventive action if it so tries.

EXECUTIVE BRANCH COMMITMENTS

The commitments from the executive branch that I have referenced are contained in a letter dated November 17, 1989, signed by Department of State Assistant Secretary for Legislative Affairs, Janet G. Mullins.

I will include this letter in the RECORD at this point because it contains commitments which are fundamental elements of the agreement on this legislation:

U.S. DEPARTMENT OF STATE,
*Washington, DC.*

Hon. RON DE LUGO,
*Chairman, Subcommittee on Insular and International Affairs, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to reaffirm the Administration's support for H.J. Res. 175, which would implement the Compact of Free Association with Palau. I also wish to assure you that the Administration fully intends to implement the most recent subsidiary agreement to the Compact, signed at Guam on May 26, 1989, entitled "Agreement Concerning Special Programs Related To The Entry Into Force Of The Compact Of Free Association Between The Government Of The United States And The Government Of Palau," unless and to the extent that it is found that a provision of the agreement is inconsistent with federal law. No amendment will be made to this Agreement without prior consultation with your Committee and other appropriate Committees of Congress.

The House-passed version of H.J. Res. 175 contemplated the availability to Palau of $9.3 million in addition to the funding Palau will otherwise receive pursuant to the terms of the Compact. On the assumption that H.J. Res. 175 is enacted, and the Compact subsequently enters into force, the Administration would seek, through pending and future appropriations requests or through funds already appropriated, to make these additional amounts available to Palau. These funds would be provided in a manner consistent with the reports and recommendations referred to in my previous letter of March 31, 1989, the relevant provisions of Compact subsidiary agreements, and, in the case of appropriations requests, in accordance with United States laws.

Following consultation with the Department of the Interior, I can also assure you that funding for a future Palau voter education campaign and plebiscite on the Compact of Free Association is available within existing authorizations and appropriations to the Department of the Interior for technical assistance for the territories and Trust Territory, and that justified funding will be made available in an amount of up to $200,000.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

JANET G. MULLINS,
*Assistant Secretary, Legislative Affairs.*

It is now understood that this letter and the definitive explanation of this legislation that I am presenting should prevent any misconceptions as to the intent of this legislation which might arise from certain isolated statements made earlier in the Senate report on this legislation or on the Senate floor.

There are also a few minor substantive differences relating to other insular areas between the legislation as passed by the House and Senate. Because of their nature, these differences will, though, have no practical effect.

DIPLOMATIC REPRESENTATION

As the agreement on this legislation required, the House legislation would have approved agreements between the United States and the Federated States of Micronesia which would have effectively amended the Compact of Free Association Act of 1985 to enable the United States representatives in the freely associated states to be designated "ambassadors."

The Senate amendment would delete this provision.

The Senate omission presents no problem, though, because these agreements have now have approved through legislation sponsored by the distinguished ranking Republican of the Insular and International Affairs Subcommittee, our colleague, BOB LAGOMARSINO. I was happy to support that legislation, over which the Interior and Insular Affairs and Foreign Affairs Committees shared jurisdiction.

JUDICIAL ASSISTANCE

As the agreement on this legislation required, the House legislation would have authorized the temporary assignment of judges of the ninth judicial circuit to courts of the freely associated states.

The Senate amendment would delete this provision.

The Senate omission presents no real problem, though, because a similar authorization has been enacted.

$200,000 MATCHING WAIVER

As the agreement on this legislation required, the House legislation would have clarified the intent of existing

law to waive any and all requirements that would otherwise be imposed for insular governments to provide up to $200,000 (in funds or in-kind contributions) in order to have any Federal program or project apply or be granted to, or take place in American Samoa, Guam, the Northern Mariana Islands, or the Virgin Islands.

The Senate amendment would delete this provision.

The Senate omission presents no real problem, though, because the waiver requirement is already law and already applies to all programs, projects, and grants.

Amendments proposed in the Senate to limit the waiver to nondiscretionary programs or cases in which a local contribution is a criterion for determining whether to provide assistance were rejected. This is because they were inconsistent with existing law which waives insular contributions up to $200,000 under all Federal programs, projects, or grants in each instance where such a contribution could otherwise be required. Thus, the waiver continues to apply to Interior Department infrastructure operations and maintenance and technical assistance as well as all other Federal programs.

PUERTO RICO STATUS CHANGE FUNDING

As I had agreed with the chairman of the Senate committee, the House legislation would have authorized grants of $500,000 for each of the three main political parties of Puerto Rico for expenses related to the development of legislation to grant statehood or independence or enhance the current commonwealth relationship with the United States, depending on the results of a referendum.

The Senate amendment would delete this provision.

The Senate omission presents no real problem, though, because the funds have already been appropriated by the 1989 Dire Emergency Supplemental Appropriations Act.

MENTAL HEALTH AND SUBSTANCE ABUSE GRANTS

As I had agreed with the chairman of the Senate committee, the House legislation would have made a technical correction to the Anti-Drug Abuse Act of 1988 necessary to reallocate the intended funding for mental health and substance abuse block grants to Guam and the Virgin Islands.

The Senate amendment would delete this provision.

The Senate omission presents no real problem, though, because a similar authorization has been enacted.

JUSTICE ASSISTANCE GRANTS

The Senate amendment would amend the authorization contained in the Omnibus Insular Areas Act of 1986 for justice assistance grants to American Samoa, Guam, and the Northern Mariana Islands. That law extended the justice assistance grant program to these Pacific insular areas; but it limited the size of the grants to American Samoa to one-third, to Guam to one-half, and to the Northern Mariana Islands to one-sixth of a state-share. The Senate amendment would increase the authorization for the grants to American Samoa to two-thirds, to Guam to equal to, and to the Northern Mariana Islands to one-third of a state-share.

The Senate addition would present no problem because we had sought inclusion of these Pacific insular areas in the justice assistance grant program as states in the first place when the current law was enacted. We only reluctantly accepted the current limitation.

NORTHERN MARIANAS REPRESENTATIVE TAX EXEMPTION

The Senate amendment would also exempt real property in the District of Columbia owned by the Northern Mariana Islands for use by its resident representative to the United States from assessment and taxation. The Senate amendment references a covenant which is understood to be the covenant to establish a commonwealth of the Northern Mariana Islands in political union with the United States, which was approved by Public Law 94-241.

The Senate addition would present no problem because it is consistent with the relationship established by the covenant and apparently acceptable to the District of Columbia.

SHORT TITLES

Finally, the Senate amendment would delete the short titles in the House legislation which would have designated title I as the Palau Compact of Free Association Implementation Act and title II as the Omnibus Insular Areas Act.

The Senate omission presents no problem because title I would still enact the Palau compact of free association implementation legislation and title II would still enact the omnibus insular areas legislation.

COMPROMISE TO APPROVE COMPACT

We in Washington entered into the compromise reflected in the House legislation in October of last year with the concurrence of leaders of Palau. Their support for it is critical because the free association relationship that the compact would bring about would be a mutually determined relationship. Palau, after all, must also approve the compact for it to become effective.

Palau's leaders felt strongly that the original legislation we introduced on this matter in June of last year offered the best chance for getting their people—who have failed to approve the compact in six referenda—to finally approve it. This was because the legislation addressed problems which had hindered aproval of the compact in the past.

They agreed with us, though, to the compromise between leaders of the Interior and Insular Affairs and Foreign Affairs Committees that made overwhelming House passage in the last Congress possible because they recognized the need for compromise.

They also went along with the compromise on this legislation reached in the last hours of the last Congress because they recognized that it provided the best improvements to the compact that we could get through implementation legislation.

PALAU'S APPROVAL

So, I hope that this legislation will result not only in Congress' final approval of the compact; but final approval by Palau as well.

Palauan approval, of course, cannot be presumed. It appears to be less assured than it seemed to be late last year and even earlier this year. The consensus in Palau for approval may have eroded during the long time it took for the administration to make the commitments that were needed and the even longer time it took for the Senate to act on this legislation.

Still, from what I have heard from Palau's leaders, they will try to obtain their people's approval.

The need for Palauan approval is one of the reasons we should approve this legislation. Palau needs to know the United States position on this matter to be able to make its own decision. This legislation should frame the necessary final U.S. position.

Palau's leaders will then have to carefully judge how to obtain their people's final approval. For if this package does not result in Palau's approval of the compact, there may be no way to ever get it approved.

OUR GOAL

I want my friends in Palau to know, though, that I remain committed to working for any other needed improvements in free association between the United States and Palau under the compact.

If the compact is approved under this legislation, our efforts and theirs to get help for Palau to be able to fairly settle its crippling power facilities debt and relieve its medical referral debts; to root out corruption and correct fiscal mismanagement; to combat drug abuse; to build a decent hospital and jail; to fix deficient infrastructure; and to assure that the compact will not interfere with the Palauan constitutional requirement for just compensation for private lands needed for public purposes, will soon begin to bear fruit.

We would, thus, finally achieve our mutual goal of ensuring that the United States meets its essential obligations under the trusteeship. We would be able to bring trusteeship responsibility to an end as soon as possible and do it with honor.

EXPLANATION OF SUBSTITUTE

Let me now explain the provisions of this legislation that I have not already discussed in some detail.

TITLE I

More than the language of the resolution must be read to understand title I. The legislative provisions can only be understood when read in the context of the compromise. They must be read together with the agreement signed May 26, 1989 because the agreement effectively amends the legislation.

The administration assures that the agreement, which would be approved and effectively become a part of this legislation, will constitute an international legal obligation of the United States. It must be complied with if the United States is not to face challenge for a breach of compact obligations.

The intent of title I that I have not already explained is, therefore, as follows.

ENTRY INTO FORCE

The compact would be authorized to be put into effect (1) when it has been unquestionably approved by the vote required by Palau's constitution—75 percent—or a lesser percentage if Palau's constitution is amended to lower the requirement—and (2) 30 days, in which either the House or the Senate is in session, after the President has notified the Committees on Interior and Insular Affairs and Foreign Affairs, of the House and the Committee on Energy and Natural Resources of the Senate of his intent to implement the compact.

FISCAL PROCEDURES ASSISTANCE

The Secretary of the Interior would be required to assist Palau in developing regulations for spending compact assistance.

Palau would be required to develop plans to implement United States audit recommendations, or in the alternative, inform the United States of its objections to implementing the recommendations within 120 days of when recommendations are made. The Secretary of the Interior would be required to provide Palau with assistance to implement recommendations.

ANTIDRUG AND LAW ENFORCEMENT PROGRAM

The United States would be committed to provide Palau with assistance for enforcement of its narcotics and other laws and prevention and treatment of narcotics and other substance abuse.

Palau would be committed to submit a plan for an antisubstance abuse program to the United States for agency approval. The United States would be committed to provide Palau with $400,000 a year for 5 years beginning by fiscal year 1991 as well as technical assistance for implementing the plan and for law enforcement. It is intended that the United States will provide further assistance to Palau for these purposes after the 5-year period if needed and justified by Palau.

Palau would be committed to authorize United States law enforcement officers to conduct investigation related to enforcement of United States laws in Palau in cooperation with Palauan law enforcement agencies.

The United States would be committed to having Federal law enforcement officers assist in enforcing substance abuse laws in Palau and provide training and equipment for Palauan substance abuse law enforcement.

Palau would also be committed to employ additional customs officers trained to detect smuggling of prohibited substances, and conduct substance abuse education and treatment efforts.

PUBLIC AUDITOR AND SPECIAL PROSECUTOR

Palau would be committed to maintain and staff the special prosecutor and public auditor offices established by its law and dedicate the necessary amount of its own funds (but not less than $100,000 a year) for each of the offices for at least 5 years.

The United States would be committed to provide the public auditor and special prosecutor with technical assistance on a nonreimbursable basis. Requests for the assistance could come from either the Government of Palau or the auditor or the prosecutor.

The assistance must include the services of an auditor or accountant for the office of public auditor and an attorney or investigator for the office of special prosecutor for at least the first 5 years after the effective date of the compact. The type of personnel required would be determined by the public auditor and special prosecutor.

The United States would also be committed to provide Palau with at least $300,000 annually for the public auditor and special prosecutor offices for at least the first 5 years of the compact—$100,000 of these amounts would be required to be spent annually for each office. The additional $100,000 per year would be required to be divided between the two offices by the Government of Palau. These sums would be authorized.

In the event that Palau does not maintain public auditor and special prosecutor offices, the President would initially have to take the conference and dispute resolution steps outlined in the compact. These involve: the two Governments conferring; referral to arbitration if the dispute is not resolved within 90 days; the naming of three arbitrators within a total of 45 days; and an arbitration decision within 30 days, unless a longer period is mutually agreed upon.

Palau would be considered in material breach of the compact if it did not comply with an arbitration decision on this matter within 180 days. In this event, the President would be required to withhold funds that this legislation, the compact, and any other law would provide Palau and take such other actions as may be appropriate notwithstanding any other provision of the compact or law. These would continue until Palau again began to maintain, staff, and adequately fund its special prosecutor and public auditor offices.

As I will later make clear, it is unfortunate that assistance for this purpose has not been available in the past to the Government of Palau, from technical assistance or other Interior Department funds.

POWER GENERATION SYSTEM DEBT

Section 104 (e) of Public Law 99-658, the law which approved the compact subject to the condition that another law be enacted to approve its effectiveness, would be amended to prohibit Federal officials from paying compact legislation funding to parties other than the Government of Palau, except as the May 26 or other subsidiary agreements to the compact might provide.

This law would also be amended to prohibit Federal assistance from being used by Palau to satisfy power facilities debts incurred prior to November 14, 1986, except for funds specifically authorized by Congress to be used for this purpose.

Two funds would be authorized by this legislation to settle the debt for the IPSECO power facilities (the origin of which I will discuss later). One consists of the energy development funds provided under compact section 211(b) (other than those required to be devoted to parts of Palau not served by Palau's central power facilities). These amount to $1.5 million per year, adjusted for inflation, in years 2 through 15 of the compact. The other consists of the capital development funds provided under compact section 212(b). These amount to $28 million, adjusted for inflation.

DEVELOPMENT PLAN

Palau would be committed to adapt its development plan to the first 5 years of the compact; list public infrastructure and private sector projects to be financed with compact assistance in priority order; and outline how existing capital improvement debts would be paid.

MEDICAL FACILITY

Palau would be required to submit a plan for hospital construction and operation to the Departments of Interior and Health and Human Services. The Secretary of the Interior would be required to submit a report on the options for improving the current hospital facilities, prepared in cooperation with the Public Health Service, to congressional committees.

Palau would be committed to dedicate at least $5 million to hospital needs during the first 15 years of the compact. The United States would be committed to provide Palau with at least $5 million for the hospital and

such other amounts as provided by United States law not later than fiscal year 1991. (A sum of $6 million was appropriated for this purpose through the fiscal year 1990 Interior appropriations act.)

AUDIT CERTIFICATION

The head of any Federal agency which audits funds pursuant to the laws approving the compacts with Palau, the Federated States of Micronesia, and the Marshall Islands would be required to certify that the audits meet the requirements of those laws. The intent of this requirement is to ensure that a Federal official is fully responsible for determining whether compact assistance has been spent properly.

ACQUISITION OF DEFENSE SITES

The United States would recognize that: The Government of Palau will be bound by its constitution to provide fair payment for private land that the United States might require Palau to provide for military purposes under the compact; that land is scarce and has a special importance in Palau; and that Palau wants to prevent foreign ownership of its land.

The United States would also recognize that Palauans with interests in land used by the United States for military purposes under the compact in ways that prevent private development may be entitled to compensation as if their entire interest had been taken.

The United States would be committed to request only the minimum amount of and interest in land needed for military purposes and attempt to request public, rather than private, land for its military needs, if possible.

The Government of Palau would be committed to obtain rights to land at the Airai airfield and Malakal harbor for United States military use to meet United States needs for the sites, as may be necessary.

The United States would be committed to enter into agreements for financial assistance if requested by Palau to acquire land, other than at the airfield and harbor, that the United States requires Palau to provide under the compact. Assistance would be required to be based on fair value of land.

Palau would not be obligated to make such land available until such agreements are reached, notwithstanding any other provisions of the compact.

The United States would be committed to extend the 60-day period that Palau has to make private land available to the United States under the compact if Palau justifies such an extension.

PRISON IMPROVEMENTS

Palau would be committed to submit a plan to the Departments of the Interior and Justice for prison construction and operation. The Secretary of the Interior would be required to report options for improving Palau's prison to congressional committees.

The United States would be committed to provide Palau $800,000 for prison improvements not later than fiscal year 1991.

FEDERAL PROGRAMS COORDINATION PERSONNEL

The Interior Department would be required to assign at least one professional each to the United States representative offices in Palau, the Federated States of Micronesia, and the Marshall Islands.

The intent is that these officers—hopefully augmented by other staff if needed—would coordinate all Federal programs in and assistance to the freely associated states. They would be selected in consultation with other agencies concerned with the freely associated states.

Their expenses would be authorized; but the intent is that stationing of the officers is required whether or not specific, separate appropriations are made for this purpose. The compromise is based on the understanding that the Interior Department has and will use existing personnel slots and funding if needed to satisfy this requirement of the compromise.

AGREEMENTS

Agreements with the Federated States of Micronesia, the Marshall Islands, and Palau concerning their continued eligibility under the compact for the essential air services program would be approved. The agreements would extend their eligibility through fiscal year 1998.

FUNDS

Palau would be authorized to spend assistance provided it by the United States for use in 1 year in a subsequent year.

The United States would be committed to provide Palau with the $28 million, adjusted for inflation, that the compact requires the United States to pay Palau from year 2 to year 15 of the compact for energy development when the compact comes into effect, if Palau settles its debt for the IPSECO power facilities. This debt now exceeds some $50 million; but agreement has been reached to settle it for $32 million—a fair price for the facilities—under this legislation.

Palau would be required to pay the United States $3 million for costs of this advancement of funds 30 days after the first 10 years of the compact. If Palau does not, this amount would be deducted from the $70 million investment fund that the United States is required to provide Palau under section 211(f) of the compact.

The Government of Palau would be committed to spend at least $7 million for the energy needs of the areas of Palau not served by the IPSECO power facilities within 15 years of compact implementation. It would also be committed not to use Federal funds other than those I have identified to pay the IPSECO debt.

SUBMISSION OF AGREEMENTS

Agreements between the United States and Palau pursuant to this resolution, including the May 26 agreement, and any agreements which would in any way change such agreements, would be approved 30 days after being submitted to Congress.

This delayed effectiveness is intended to give Congress time to ensure that such agreements are consistent with the intent of this resolution. It would enable Congress to act if any requirements of this legislation—such as those of the May 26 agreement—were not being met.

This explicit recognition of the May 26 agreement is intended to make it an integral part of the compact agreement and the agreement on the compact agreement and the agreement on this legislation when it is approved after formal submission to Congress.

Additionally, congressional approval would be required for any change to any further agreement entered into under the compact which would require the United States to construct a 53-mile road on Babelthaup Island in Palau.

TRANSITION FUNDING

Public law 99-658 would be amended to delay the 3-year, 25-percent-per-year, phase-down of the Federal programs that would be discontinued under free association. The delay would be from fiscal year 1987 to the first fiscal year after the compact is implemented.

POWER FACILITY ASSISTANCE

It is intended that the United States would provide Palau with grant or loan assistance for operating the IPSECO power facilities as may be provided under United States law if justified by Palau.

CAPITAL INFRASTRUCTURE ASSISTANCE

It is intended that the United States would provide Palau with Department of the Interior and Corps of Engineers assistance for operating and improving United States-built infrastructure in Palau, including infrastructure which has been identified as being deficient. The infrastructure was built in fulfillment of U.S. trusteeship responsibilities. The necessary improvements have been estimated to cost $6.3 million by a Federal study although Palauan estimates are higher.

All of the improvements identified in the study done for the Interior Department are intended to be made to the extent necessary. Improvements are to be made on a priority basis. Palau and the United States would cooperate to force any contractors responsible for deficiencies to help correct them. Such an effort could not be used by Federal agencies to avoid

making priority improvements on their own.

Included in the fiscal year 1990 Interior appropriations act was $8.2 million for necessary repairs in Palau as well as in the Federated States of Micronesia and the Marshall Islands, which have also been parts of the trust territory.

MEDICAL REFERRAL OBLIGATIONS

The United States would be committed to assume all existing Palauan medical debts to the United States public and private sectors, which we understand to be approximately $2 million. Debts to federal institutions would be canceled. The United States would pay, or provide Palau with the money to pay, private health care providers for all existing Palauan medical debts.

The Government of Palau would be committed to promptly pay for all future services to its citizens at United States military medical institutions. The United States would be committed to consider providing Palau with funds to pay for future services at United States military medical institutions if justified by Palau.

TAXATION MATTERS

The United States and Palau would be committed to negotiate agreements on tax treatment—including tax exemption—of income earned by residents of the United States in Palau and vice-versa. Any agreement would, of course, be submitted to Congress.

CIVIL AIR TRANSPORT

The United States would be committed to recognize that Palau has authority to regulate civil air carrier landings within its borders except for rights already guaranteed United States carriers under a subsidiary agreement to the compact.

LAND SURVEY ASSISTANCE

The United States would be committed to providing Palau with assistance in surveying its land to the extent justified by Palau.

TRADE AND TARIFF MATTERS

The United States would be committed to negotiate agreements to ensure that Palauan textile and apparel products receive no less favorable tariff treatment than that provided to Caribbean basin initiative countries to the extent not prohibited by other agreements that the United States has already signed. The United States would also be committed to negotiate agreements to ensure that other Palauan products continue to receive tariff preference no less advantageous in comparison to treatment of similar products of other countries.

MARITIME JURISDICTION

The United States would be committed to recognize that Palau has full authority to regulate submerged lands or the waters off its borders.

FEDERAL PROGRAMS

The United States would be committed to negotiate an agreement within 1 year of compact implementation on continuation of Federal programs in Palau not provided for under the compact so that Palau will not face hardship because of the phase-out of Federal programs. The United States would be committed to consider any further Palauan requests for other Federal programs as justified.

DISPUTES

The United States and Palau would be committed to try to resolve any disputes under the May 26 agreement and to submit disputes not resolved within 90 days to arbitration under the compact.

AUTHORIZATION

All United States financial assistance to Palau provided by the May 26th agreement would be authorized by the legislation.

CONTROLLED SUBSTANCES

The President would be authorized to reach an agreement with the freely associated states for the distribution of medical drugs. Such an agreement would permit the United States to continue to regulate the distribution of drugs to the states or to treat the states as foreign countries for the purposes of such distribution if the states agree to international conventions on distribution.

Agreements reached under this section would be submitted to Congress.

NORTHERN MARIANAS COLLEGE

The Northern Marianas College would be designated a Federal depository so that it will be eligible to receive all Federal publications.

VIRGIN ISLANDS DISTRICT COURT

The Revised Organic Act of the Virgin Islands would be amended to authorize the United States Court for the Virgin Islands to sit anywhere in the territory.

GUAM PORT

The limitation in existing law on the amount of the proceeds from the sale or lease of 927 acres at Guam's main port that Guam may use to develop the property would be amended to increase the percentage from 30 to 50 percent.

This property was transferred to the territory under a 1980 law. The 1984 Omnibus Insular Areas Act amended the 1980 law's requirement that all proceeds from any private use of the land be paid to the Federal Government to permit 30 percent of the proceeds to be used for development costs.

This amendment further liberalizes the original requirement and our distinguished colleague, BEN BLAZ, should be recognized for his work on this regard. The amendment would still, however, provide that half of the proceeds from private use of the property would be paid to the Federal Government.

POHNPEI HYDROPOWER AUTHORIZATION

$6.5 million would be authorized to be appropriated for the design and construction, for the Nanpil River hydropower diversion project in the Federated States of Micronesia. It is intended that the project will proceed as described in a March 1988 Army Corps of Engineers report.

MEMBERS

Mr. Speaker, reaching this compromise required the dedication and cooperation of a number of Members. As one who has dedicated a tremendous amount of effort to the cause of meeting the needs of Palau, I appreciate the involvement of Members who have helped make this compromise possible.

In particular, I would like to recognize the contributions of the distinguished chairmen of the Interior and Insular Affairs Committee, MO UDALL, and the Foreign Affairs Committee, DANTE FASCELL; and the ranking Democrat on the Interior and Insular Affairs Committee, GEORGE MILLER; in addition to the gentleman from California, BOB LAGOMARSINO.

I would also like to recognize the efforts of the chairman and ranking Republican of the Asian and Pacific Affairs Subcommittee, STEVE SOLARZ and JIM LEACH; the ranking Republicans of the Interior and Insular Affairs and Foreign Affairs Committees, DON YOUNG and BILL BROOMFIELD; and other Members such as DOUG BEREUTER, JAMIE CLARKE, and BEN BLAZ.

Of course, the support of other cosponsors of this legislation is very much appreciated including: DANNY AKAKA; DOUG BARNARD; CHARLES BENNETT; HOWARD BERMAN; SHERWOOD BOEHLERT; DAVE BONIOR; DOUG BOSCO; GEORGE BROWN; ALBERT BUSTAMANTE; CARDISS COLLINS; LARRY CRAIG; BUDDY DARDEN; PETER DEFAZIO; RON DELLUMS; BUTLER DERRICK; JULIAN DIXON; BYRON DORGAN; MERVYN DYMALLY; DON EDWARDS; BILL EMERSON; MIKE ESPY; ENI FALEOMAVAEGA; VIC FAZIO; TOM FOGLIETTA; BILL FORD; JAIME FUSTER; ELTON GALLEGLY; JIM HANSEN; CHARLES HAYES; MARCY KAPTUR; BOB KASTENMEIER; DALE KILDEE; RICK LEHMAN; MEL LEVINE; JOHN LEWIS; JIM LIGHTFOOT; ED MARKEY; MATTHEW MARTINEZ; BOB MATSUI; JOE MCDADE; MATT MCHUGH; BOB MRAZEK; AUSTIN MURPHY; HOWARD NIELSON; MARY ROSE OAKAR; MAJOR OWENS; WAYNE OWENS; CHIP PASHAYAN; NANCY PELOSI; JOHN RHODES; BILL RICHARDSON; MARTY SABO; RICHARD STALLINGS; ESTEBAN TORRES; BOB TRAXLER; BRUCE VENTO; BARBARA VUCANOVICH; and PAT WILLIAMS.

STAFF

I also want to express my gratitude to the House staff members who have dedicated themselves to bringing this legislation this far.

My subcommittee staff director, Jeffrey Farrow, has worked with devotion

and tireless energy to keep the compact process moving and to produce legislation that will benefit both Palau and the United States.

Professional staff member Gail Mukaihata has contributed to this bill through her many contacts with Palauan leaders and her trip to represent the committee in Palau at a particularly critical moment.

Professional staff member Pat Krause has provided invaluable help, based on her years of knowledge of and love for the people of Micronesia.

Clerk Daisy Minter has helped keep the subcommittee running smoothly throughout this busy final period of work on this legislation.

Roy Jones, associate staff director of the Interior and Insular Affairs Committee, has contributed his expertise and dedication at every step of the way.

Manase Mansur, consultant to the minority of the Insular and International Affairs Subcommittee, devoted countless hours to this legislation.

I also want to thank Lee McElvain, Linda Stevens, Dan Beard, and Stan Sloss of the committee's majority staff.

I additionally want to commend Rick Agnew and Dan Kish from the minority staff.

Finally, Tom Dunmire represented the committee on special trips to Palau during a very sensitive period and advised us well on this matter.

PHIL BURTON AND JOHN SEIBERLING

Additionally, I want to thank two predecessor chairmen of the subcommittee with jurisdiction over Palau: John Seiberling and our late colleague Phil Burton.

SENATORS

I also want to recognize the cooperation on and interest in this matter of two Members of the other body, the chairman and ranking Republican of the Energy and Natural Resources Committee, BENNETT JOHNSTON and JIM MCCLURE. Their willingness to accept what we have insisted upon will enable this matter to finally be resolved.

ADMINISTRATIVE OFFICIALS

Administrative officials have also made this compromise possible, including: our former colleague, Secretary of the Interior Manuel Lujan and his counselor, Tim Glidden; Office of Territorial and International Affairs officials; Office of Management and Budget Interior Branch Chief Ron Cogswell; and the staff of the State Department Freely Associated State Affairs.

PALAU LEADERS

But no one will be more responsible than several leaders of Palau if this legislation enables problems worsened by years of United States neglect to be addressed. Chief among these leaders are the President of the Senate, Joshua Koshiba, and the Vice President of Palau, Kuniwo Nakamura. They have shown unequaled courage, dedication, integrity, and judgment in fighting for the interests of their people, as has the former speaker of Palau's House, Santos Olikong.

Palau's new President, Ngiratkel Etpison, and his predecessor, Thomas Remengesau, have provided a great service to their people by their courageous support of this legislation. Other members of Palau's Congress, including the Speaker of the House, Shiro Kyota; Senators Lucius Malsol, Tommy Remengesau, Jr., and Peter Sugiyama; and Delegates Ignacio Anastacio and Hideo Tell, to name a few, have helped make it possible for us to accomplish as much as we have.

Leaders of Palau's judicial branch, including Supreme Court Chief Justice Mamoru Nakamura and Associate Justice Robert Hefner, have also made major contributions to Palau's political development by their courage and wise handling of compact litigation.

PALAU'S REPRESENTATIVES

Palau has also been advised well on these matters by its Washington counsel, including Stuart Eizenstat, who has done so much to make a fair resolution of this matter possible; Michael Chanin; and Clyde Spillenger. It has, also, been well represented here by Steve Kanai and Noriwo Ubedie. All of these representatives have been helpful to us.

Last, in this regard, but not least, I want to mention the contribution of Palau's Commisson on United States Relations chaired by Vice President Nakamura. Their hard work really made the critical May 26 agreement possible.

BACKGROUND

Let me explain some of the background of the Palau Compact legislation.

TRUSTEESHIP AUTHORITY

Our Nation got its first authority in Palau in some of the bloodiest battles of World War II. The United States has been fully responsible for the islands since it entered into an agreement with the United Nations Security Council in 1947 for the trusteeship administration of the former Japanese-administered islands of Micronesia.

The trusteeship agreement gave the United States full powers in the Trust Territory of the Pacific Islands in an arrangement approved by the joint resolution of July 18, 1947.

This responsibility was delegated to the President by the act of June 30, 1954. Pursuant to law, it was redelegated by executive order to the Secretary of the Interior.

CONSTITUTIONAL GOVERNMENT

The Secretary has authorized a locally determined Government of Palau to exercise the authority vested in his office. Of course, this delegation has not absolved the Department of the Interior of full responsibility for the governing of Palau.

Palau's Government was established according to a constitution approved in 1980. The intent at that time was that Palau would exercise powers of local self-government, with the Interior Department continuing to exercise national responsibilities.

This intent changed within a couple of years. A desire to save money and avoid difficult situations, as well as a misplaced confidence that the compact was always just about to come into effect, led to an abdication of the exercise of Federal responsibilities in Palau.

A number of the most serious problems now faced by Palau resulted from this neglect. The problems require that the United States take the actions that the compromise would require so that our Nation's trusteeship obligations can finally be met.

THE COMPACT

The compact would provide Palau with self-governing authority in all matters other than those affecting security. The United States would retain full military rights in Palau.

The United States rights include the authority to deny military access to any other country in perpetuity. They also include the requirement that Palau make land designated by the United States available for military bases for 50 years.

In combination with bases in Guam and base rights in the Northern Mariana Islands, these base rights figure into almost any scenario for alternatives to our important bases in the Philippines, which are some 500 miles from Palau.

The compact would also provide Palau with substantial assistance over 15 years. An estimate values the financial assistance at $478 million, adjusted for inflation. This does not include the value of Federal programs and technical assistance which will also be provided. It also does not include the additional assistance that this legislation would provide that I have already described.

Another benefit of the compact is that it will grant the 15,000 Palauans the right to enter and work in the United States.

OTHER AREAS

Palau is the only part of the Trust Territory of the Pacific Islands which has not determined its future political status. The Northern Mariana Islands entered into a Commonwealth union with the United States through a covenant that I mentioned that was approved by Public Law 94-241. A compact to establish free association between the United States and the Federated States of Micronesia and the

Marshall Islands was approved by Public Law 99-239.

Implementation of this compact will hopefully, therefore, enable the trusteeship agreement to be finally terminated. Termination would also mean the end of the U.N. trusteeship system since this is the last trusteeship of the 11 that the United Nations established.

THIRD COMPACT LAW

If this resolution is enacted, it will be the third law regarding the compact.

The first, passed at the end of 1985, was an "approval in principle" of the compact with Palau. Public Law 99-239 did not include an actual approval of the compact with Palau because Palau hadn't approved the compact—in spite of two referenda on it.

These votes resulted in majority support for the compact; but they did not approve it by the 75-percent majority required by Palau's Constitution. The constitution requires 75 percent approval because the compact would grant the United States nuclear rights that the Constitution otherwise prohibits.

Members of the Interior and Insular Affairs Committee were concerned about the approval in principle since the issues had not been thoroughly reviewed. We agreed to it, however, to show our willingness for the United States to enter into free associations with Palau.

In early 1986, the President asked Congress for a real approval of the compact, asserting that a third referendum in Palau had approved it. The compact hadn't received 75 percent support; but the administration claimed that a slight rewording of the U.S. nuclear rights in the compact avoided the 75-percent approval requirement.

Members of the Interior and Insular Affairs Committee doubted, however, that the President was right about this. Our doubts were proven well-placed by a ruling of Palau's Supreme Court which held that Palau had not approved the compact.

We agreed, though, to the second law on the Palau compact. Public Law 99-658 was a conditional approval of the compact; the significant condition being that Congress pass yet another resolution authorizing implementation. House Joint Resolution 175 is intended to be that further resolution.

Members of this committee were concerned about the conditional approval, particularly because a review of the issues indicated that there were problems preventing Palau's approval of the compact which had not been addressed. We agreed to it, however, to show again that the United States was willing to enter into free association with Palau.

In a statement on the House passage of Public Law 99-658, Chairman Mo UDALL recognized some of the problems which had prevented Palau's approval of the compact. He said that the resolution was an offer to Palau that should be revised if it did not finally result in Palau's approval of the compact.

PALAU DIDN'T APPROVE

Well, Palau didn't approve the compact in the fourth referendum on it. But, last administration, however, declined to follow Chairman UDALL's advice and try to resolve the problems which had prevented Palau's approval.

I led a visit to Palau shortly after the fourth referendum. I said then that if Palau approved the compact in a planned fifth referendum, the Insular and International Affairs Subcommittee would address the problems which had prevented approval, once the compact was approved.

I said that we would consider these problems afterward because of the administration's opposition to doing so beforehand and because of the plans for the fifth referendum.

HEARING

That fifth referendum also didn't result in Palau's approval, however. So, the subcommittee conducted a hearing to see what plans there were for further consideration of the compact and addressing Palau's problems.

There was a lot said in that hearing about Palau's problems by compact critics, including then Palau House Speaker Santos Olikong. Because of assurances by both United States and Palauan administration officials that the charges were groundless and politically motivated, however, we really didn't believe most of what we were told. We did promise, though, to look into the allegations of corruption, drug trafficking, and political intimidation.

Some of Palau's needs did become clear at the time of that hearing. Two-thirds of the Government work force had been laid off, meals at the hospital were canceled, and power and water service had been curtailed by the then President of Palau, Lazarus Salii.

Amazingly, the Interior Department had no plans to deal with the problems. Officials made it clear at the hearing that they didn't intend to develop any either.

PRESSURE FOR APPROVAL

The reason for the cutbacks was supposedly a lack of funds. Lack of money was a problem; but Salii also wanted to make clear to his people that the compact would be the solution to Palau's continuing financial problems.

An originator of the free association concept, he hoped that the crisis would justify a controversial move to amend Palau's constitution to eliminate the 75-percent approval requirement.

Substantial—and we know now illegal—pressure was used to get a constitutional amendment referendum scheduled.

After a referendum was held to approve the constitutional amendment, a sixth referendum was held on the compact. Both resulted in majority votes.

APPROVAL CLAIMED

President Salii claimed that the compact had been approved by this method, even though the approval fell short of the 75 percent requirement. A lawsuit was filed, however, challenging the approval.

The suit was withdrawn, though, when Salii and Palau's highest ranking chief reached an agreement on one of the main reasons for opposition to the compact: the requirement for Palau to make land available to the United States for military purposes without compensation for 50 years.

Compact critics were afraid that land would be taken without an owner's consent and without fair compensation. Salii had pledged that this would not happen.

I was happy when Salii told me in August 1987 that the agreement had ended the controversy. I thought then that we would soon be able to take the final action on this matter.

APPROVAL CHALLENGED

The agreement, however, did not settle the controversy. The suit was refiled by courageous, traditional women leaders of the islands within a couple of days.

These leaders disagreed that the purported approval was constitutional. They also thought that Salii's agreement was an inadequate assurance of protection for landowners' rights.

The reaction to the suit was even more serious—and violent—pressure on compact challengers. Finally, after shootings, a bombing, a murder and direct threats to the plaintiffs, the suit was withdrawn.

Salii told me that the plaintiffs withdrew the suit for the good of Palau. The judge in the case, though, the courageous Robert Hefner, said that it appeared that intimidation through the use of violence was the reason.

INVESTIGATION

I then directed the staff to find out the truth. What they found initially, as well as what they were finding out from investigating the allegations made at the hearing I mentioned, convinced Chairman UDALL and our colleague GEORGE MILLER to join me in asking the General Accounting Office for a major investigation of the compact approval process and other problems in Palau.

The GAO completed its final report on this investigation, "Issues Associated with Palau's Transition to Self-Government," this summer.

We—and others—then took the position that the Interior and Insular Affairs Committee would not approve compact implementation legislation until compact challengers were allowed to exercise their constitutional rights to challenge the compact's approval. The intimidation that they were subjected to at the time is set forth in the GAO report and is well-catalogued in a report by the International Commission of Jurists.

PRESIDENT'S REQUEST

President Reagan, however, accepted President Salii's assertion that the compact had been approved by Palau. In November 1987, he once again asked Congress to approve the compact.

Members of the Interior and Insular Affairs Committee once again doubted that the President was right about Palau's approval of the compact—the condition agreed upon in 1986 for final U.S. approval.

Chairman UDALL and I were also concerned about what the Subcommittee's investigation was turning up about problems in Palau. We decided we must insist that there be assurance that these problems would be addressed if the United States was to relinquish its governing responsibilities in the islands.

A majority of Palau's Congress also took this position. So did governors of the Palauan states with a majority of Palau's population.

PROBLEMS IN PALAU

I include in the RECORD at this point the summary of the principal findings of the GAO report, followed by a list of highlights of the report and a statement by Palau's leadership on it:

PRINCIPAL FINDINGS OF THE GENERAL ACCOUNTING OFFICE REPORT ISSUES ASSOCIATED WITH PALAU'S TRANSITION TO SELF-GOVERNMENT

INTERIOR OVERSIGHT

Interior officials believe that Interior's decision in 1979 to recognize and delegate authority to Palau's constitutional government upon its establishment effectively reduced Interior's authority and responsibility for interceding in local decisions. This policy interpretation, in conjunction with Interior's declining presence in Micronesia, led Interior to exercise limited oversight of Palau's financial situation and contract negotiations. Interior advised Palau to reduce expenditures and took action to assist Palau in resolving problems with 3 of the 18 major contracts and agreements GAO reviewed. However, Interior officials did not closely monitor Palau's actions regarding the remaining 15 contracts or provide Palau with timely advice to avoid or resolve problems.

Interior's technical assistance program, which provides grants to help Palau improve its government operations, has been slow in achieving benefits, partly due to weaknesses in Interior's management and Palau's slowness in implementing projects.

FINANCIAL MANAGEMENT

Since 1981, Palau has experienced serious financial problems, including annual budget deficits; cash flow problems, accumulation of debt, including $44 million for a power plant; and widespread internal control weaknesses that create opportunities for inefficient and improper spending. Palau's failure to establish and follow sound acquisition procedures has resulted in several ill-advised contracts and agreements, some of which were entered into without required legislative approval or assured funding. For example, Palau incurred unnecessary costs by prematurely awarding a $32.5-million noncompetitive contract to construct a power plant to a firm that made questionable payments to Palauan officials involved in approving the project. In addition, Palau has not implemented its special prosecutor law, has experienced delays in hiring a public auditor, and lacks effective conflict-of-interest legislation.

LAW ENFORCEMENT

Palau's public safety officers have improved their skill in routine law enforcement with the help of U.S. training and assistance coordinated by Interior but are not yet fully capable of independently investigating such complex crimes as political violence and drug trafficking. Because the Justice Department has not authorized it, the Federal Bureau of Investigation has not provided agents to assist Palau in investigating the 1987 murder of a compact opponent's father.

COMPACT APPROVAL

Threats, property damage, and political pressure attended the Palau legislature's approval of compact-related legislation in 1987, and some Palau executive branch actions may have unfairly favored pro-compact interests. Moreover, pressure from compact supporters and violence, including the murder of a compact opponent's father, appear to have been significant factors in the withdrawal of a 1987 lawsuit challenging the constitutionality of the compact approval process. Interior officials did not investigate these problems because they did not want to interfere with local politics and believed these were matters to be resolved through Palau's law enforcement system.

KEY POINTS MADE CLEAR BY THE GAO REPORT ON ISSUES ASSOCIATED WITH PALAU'S TRANSITION TO SELF-GOVERNMENT

IPSECO DEAL

Palau spent at least $7.7 million more than it needed to for the power facilities it brought from IPSECO for $32.5 million. It now faces a $50 million debt for this purchase: an amount over twice the facility's value The Palau legislation compromise would address this problem by enabling Palau to settle the debt for $32 million.

Palauan and Federal officials did not act on less costly opportunities to meet Palau's power needs.

Payments of hundreds of thousands of dollars by IPSECO to Palauan officials from funds borrowed to pay for the facilities should be investigated for violation of bribery and tax laws—questionable payments included $20,000 to former President Salii; $250,000 to his brother, a former Palau House speaker; $175,000 to his development bank president; and $50,000 and other payments to a former senator who was a close associate. The Palau legislation compromise would address this problem—and other instances of alleged corruption and financial mismanagement—by assisting Palau in implementing its special prosecutor and public auditor laws.

Reagan Administration officials didn't act on at least five opportunities to block—and their representations encouraged—the IPSECO deal, although they had been advised beforehand that the deal was a bad one.

OTHER INSTANCES OF ALLEGED CORRUPTION AND FINANCIAL MISMANAGEMENT

A number of questionable and ill-advised contracts entered into by the Government of Palau during the Salii Administration were secretly negotiated by Salii and a small group of high-level associates without knowledge of Palau's Congress or other Palauan officials, creating the opportunity for improper acts.

A number of contracts entered into by the Salii administration:

Were entered into by the government of Palau due to pressure on Palauan officials—such as threats of dismissal—from former President Salii or his aides; may have violated Palauan law as well as Federal regulations; and created obligations that Palau may be forced to pay even though they were canceled after Salii's suicide. For example, Palau may be liable for a $1.2 million contract for airport planning.

A top Salii aide asked one businessman who needed government approval for his venture for $100,000 to $1 million and told another that he was expected to pay bribes.

A top Salii assistant and assistant attorney general were on the board of a firm that Salii contracted with to plan a new capital to be leased back to the government and to mint coins for Palau. The capital contract conflicted with capital planning already underway. Salii was unwilling to discuss these contracts which raise conflict of interest questions.

Approval of a phony $398 million infrastructure bond deal not in Palau's development plan was rushed by the Salii Administration. The FBI didn't investigate the deal, although it investigated bribery in similar sham bond deals in other islands. The deal may damage Palau's ability to float other bonds.

Fraud may have been involved with the Government of Palau's rental of a house former President Salii owned before becoming President for use as his official residence while President.

The Government of Palau spent $71,000 on the house for Salii—in addition to $20,000 Salii reimbursed the government for spending—for improvements that did not benefit Palau.

Under the Salii Administration, a vessel purchased for $1.3 million in 1976 was sold for $82,000 in 1986. Another vessel purchased for $196,000 in 1975 was transferred to a prominent Palauan businessman who sold it for $5,000.

Approximately $25 million in contracts issued by individual states of Palau with assurances from Palau's national government may impose debts on the national government which jeopardize its ability to carry out the development plan required under the Compact. Reagan Administration officials did not inform Congress of this problem during the required Federal approval of the plan. The Palau legislation compromise would address this problem by requiring Palau to amend its development plan in light of these debts.

The contract for a 22 mile road on Babelthaup Island specified a cost twice that of other roads in Palau and was apparently rigged. Former President Salii planned to ask the U.S. to substitute payment for the 22 mile road for the U.S. meeting its obligation to construct a 53 mile road under the Compact. The Palau legislation compromise

would address this problem by requiring congressional approval for changes to the U.S. obligation to build the 53 mile road.

The contractor for the Babelthaup road was to be paid $29.6 million if paid by the U.S. and $26.7 million if paid by Palau.

COMPACT CONSIDERATION

The Government of Palau spent at least $1.7 million for Compact consideration between 1983 and 1987. Although required to be impartial, the expenditures favored approval of the Compact.

Public resources were used to campaign in favor of the Compact approval but were not available to those campaigning against it.

President Salii secretly gave over $10,000 in public funds to the leader of the furloughed government workers group that was implicated in intimidation of Compact challengers.

An aide to President Salii sanctioned violence against Compact challengers in broadcast statements.

Palau government workers were pressured to support the Compact. Reprisals were taken against some who did not.

Palauan legislators who asserted improvements were needed in the Compact as negotiated suffered damages to their homes and cars and were subjected to threats, illegal demands for money, and acts of violence.

Plaintiffs in the lawsuit challenging President Salii's claim that Palau had approved the compact in the August 1987 referenda were intimidated through the use of violence—including murder—into withdrawing the suit.

Twenty percent of the job layoffs ordered by President Salii prior to the August 1987 referenda related to the compact did not save money because the jobs involved were entirely federally funded.

An employee of Salii's Minister of State tried to embarrass an anticompact Palau state governor by framing the governor's employee with counterfeit currency.

PROBLEMS WITH THE COMPACT

The government of Palau's ability to manage compact funds without additional U.S. technical assistance is questionable. Inefficient use of these funds would undermine Palau's ability to continue government operations at the current level. (The Palau legislation compromise would address this problem by requiring the Interior Department to provide this assistance.)

The compact does not require Palau to act on recommendations contained in the required U.S. audits of Palauan spending of U.S. aid under the compact. The Palau legislation compromise would address this problem by requiring Palau to respond to audit recommendations and requiring the United States to help it do so.

Some Palauans have opposed approval of the compact to date because of their concern that compact terms could result in their land being taken without compensation for U.S. military use. (The Palau legislation compromise would address this problem by committing the U.S. to reach further agreements with Palau on compensation for land if needed.)

The government of Palau may not be able to comply with the compact requirement for it to provide the United States within 60 days with land which may be desired by the United States for military use over a 50 year period. This compact requirement may create a constitutional crisis in Palau since it may conflict with the constitutional rights of private property owners. (The Palau legislation compromise would address this problem by committing the United States to consider extending the 60 day deadline if needed.)

Some Palauans have not supported the compact because they believe it would not provide Palau with enough U.S. assistance. (GAO estimates that the compact would provide $14.5 million less than Palau will receive if the trusteeship continues.) (The Palau legislation compromise would address this problem by more than making up for this shortfall with additional financial assistance.)

Some Palauans have not supported the compact because they object to the phaseout of a number of federal programs. The agreement under the Palau legislation compromise would address this problem by requiring negotations on continuing additional federal programs under the compact.

Some Palauans have not supported the compact because they assert that the United States should commit to helping Palau fund certain critical infrastructure such as a new hospital, jail, and the IPSECO power facilities debt. (The Palau legislation compromise would address this problem by helping fund the hospital, jail, and IPSECO debt and requiring assistance for other infrastructure needs.)

Palau officials believe the United States should further help them fund a new hospital. (The Palau legislation compromise would address the problem by providing Palau with at least $5 million for this purpose $6 million has now been appropriated.)

Palau's prison is in deplorable condition. (The Palau legislation compromise would address this problem by providing Palau with $800,000 for this purpose.)

INTERIOR AND OTHER AGENCIES CARRYING OUT OF RESPONSIBILITIES

The Reagan Interior Department did not exercise the responsibility for Palau it has under law because, since 1981, it constantly anticipated that the compact would soon be implemented. It, thus, let serious problems develop during Palau's—continuing—transition from trust territory to sovereign state.

The specific roles of Interior Department officials and Federal law enforcement agencies in Palau have not been clearly defined.

The Reagan Interior Department did not closely monitor developments in Palau. It was unaware of instance after instance of improper expenditures of Federal funds or questionable deals entered into by the Salii administration.

The Interior Department has been handicapped by a lack of presence in Palau. (The Palau legislation compromise would address this problem by requiring the stationing of Interior Department personnel to provide assistance to Palau.)

The Reagan administration did not question whether intimidation of compact challengers was used to make the claim that Palau approved the compact possible. And it did not act on the knowledge it had of the violence involved.

The Interior Department did not try to—but could have acted to help—avert the furlough of two-thirds of Palau's Government work force prior to the August 1987 votes related to the compact.

The Reagan Interior Department was slow in providing—and ineffectively managed—technical assistance to the Government of Palau.

Interior's inspector general suspended auditing in Palau in part because of concerns for the safety of auditors and Palau's lack of responsiveness to audit recommendations. (The Palau legislation compromise would address this problem by requiring Palau to respond to audit recommendations and requiring the United States to help it in doing so.)

Counterfeiting allegations from Palau which had a connection to President Salii's attorney general were referred by Interior Department officials back to that same attorney general of Palau.

LAW ENFORCEMENT

The investigation of the murder of the father of a Palauan involved in litigation challenging the compact was half-hearted (with prime suspects not being questioned.)

Not implementing its special prosecutor and public auditor laws as intended adversely affects Palau's ability to properly spend public funds and enables fraud and corruption to occur undetected. (The Palau legislation compromise would address this problem by providing Palau with $1.5 million and personnel to implement its prosecutor and auditor laws over 5 years.)

Palau's public auditor's office lacks the funds and experienced auditors it needs. (The Palau legislation compromise would address this problem by providing Palau with $1.5 million and personnel to implement its prosecutor and auditor laws over 5 years.)

Palau's law enforcement system was not prepared for responsibilities abruptly thrust upon it by Interior. It is handicapped by a lack of funding, training, supplies, and equipment needed to combat drug trafficking and other criminal activity. The Palau legislation compromise would help by providing $2 million and technical assistance over 5 years for preventing and treating drug abuse and enforcing other laws.

Palau lacks customs officers who can detect smuggling. The agreement under the Palau legislation compromise would address this problem by providing technical assistance and requiring customs officers.

An Australian, later arrested for gun running and drug smuggling in the Philippines, was helped by former President Salii's attorney general to import rockets and machine guns into Palau and to start an air charter operation in the islands.

Reports indicate that the number of Palauans who have used heroin have been in the hundreds, although the number of users substantially decreased due to the attention to the problem focused by the subcommittee's investigation. The Palau legislation compromise would address this problem by providing $2 million over 5 years to prevent and treat drug abuse and enforce other laws.

The Drug Enforcement Administration's investigation of drug trafficking involving Palau only concentrated on trafficking through the islands and not local usage. Two former Palau legislators close to the late President Salii were allegedly involved with local trafficking.

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STATEMENT ON THE GAO REPORT, GOVERNMENT OF THE REPUBLIC OF PALAU, AUGUST 18, 1989

We welcome the report from the United States General Accounting Office on prior financial and other abuses. The GAO is an independent and neutral entity. Its report confirms, what many had suspected, how the failure of a few people in the United States and Palau led to corruption and fraud and harmed innocent people. The allegations are serious and require the fullest attention and action by both governments.

The report is not the end of the process, but part of the beginning. The United States and Palau can learn from these mistakes of the past. We are united in committing the government of Palau to carrying out the recommendations of the report as well as other actions necessary to rectify these past failures and to prevent their future recurrence.

One fundamental lesson from this report is that the political status of Palau cannot be allowed to remain perpetually in limbo. It is clear from the report that the uncertainty of our democracy and the pending Compact process allowed some in Palau to abuse the public trust for their own personal gain and some United States officials to adopt an ill-conceived policy of ignoring problems and tolerating abuses in Palau.

The uncertainty that allowed these abuses must be removed by resolving Palau's political status. But, this relationship cannot be determined through economic or physical coercion. It must be based on mutual respect between the United States and Palau and must address the fundamental needs of the people of Palau. We are pleased that the report recognizes these needs and how they have been addressed in the recent Compact Subsidiary Agreement—particularly in regard to protecting land ownership. Prompt passage by the United States Congress of pending Compact legislation would greatly expedite consideration in Palau of its political status.

A second lesson from the report is that, whatever Palau's political status, there are actions that Palau must take to protect the integrity of its government, particularly in the areas of public contracts, financial management and conflicts of interest. We have already undertaken actions to begin to meet some of these problems. For example, the public auditor, federal programs coordinator and tax advisor have been appointed; services have been made subject to competitive bidding; a new procurement manual will be completed by October; a financial disclosure law has been introduced in the National Congress (Olbiil Era Kelulau); and with the new financial management our government will not operate at a deficit this year.

However, significant additional actions are required. President Etpison will soon create a committee to review the report and make recommendations within thirty days.

In the interim, we are undertaking the following actions:

The appointment of the Special Prosecutor is being expedited and the United States will be asked to begin funding that office.

The National Congress (OEK) is being asked to establish a joint committee for immediate consideration of financial disclosure legislation as well as additional conflict of interest and anti-corruption legislation.

The public auditor, the Attorney General and Palau's outside counsel are being asked to report on recovering any damages suffered by Palau as well as referring to the Special Prosecutor any potential criminal acts by any person or entity within or without Palau.

The United States government will be asked to designate one high level official responsible for its relations with Palau.

Although Palau will not let go free those who benefited from the abuses of the past, Palau's focus must now be on its future. Our people have shown great strength throughout this traumatic period and have preserved our democracy. Our will is strong and if we learn from the past mistakes, the future of Palau will be bright.

We jointly express our appreciation to Congressmen Udall, Miller and de Lugo for requesting the GAO investigation and making sure that it occured.

We have jointly agreed that all matters and comments regarding the GAO report shall be addressed by a spokesman for the Republic of Palau.

NGIRATKEL ETPISON,
*President, Republic of Palau*
JOSHUA KOSHIBA,
*President of the Senate*
SHIRO KYOTA,
*Speaker, House of Delegates.*

COMMITTEE OFFER

Mr. Speaker, our insistence that it be made safe for those who had tried to challenge the compact's approval in 1987 to reinstate their suit resulted in the suit being refiled last year. Our doubts about whether Palau had really approved the compact were then proven well-placed once again by yet another Palau Supreme Court ruling that the compact had not been approved.

As I have explained, the serious problems facing Palau hindered Palau's approval of the compact. So, Chairman UDALL and I offered the administration a deal: We would support legislation to authorize the compact to be put into effect (when it was clear that it had been approved by Palau) if the administration would agree to assurances that these problems would be addressed.

We developed the necessary legislation in consultation with Palau's leaders, and introduced it as House Joint Resolution 597 in June of last year.

A substantial majority of Palau's leaders supported House Joint Resolution 597. A minority, however, including then President Salii—balked at one provision: an assurance that Palau would implement its special prosecutor and public auditor laws. They, like the Reagan administration, wanted approval of the compact as it was negotiated.

FUNDAMENTAL PROVISIONS

Chairman UDALL and I, however, reiterated our position that the committee would only report legislation that included the fundamental provisions of House Joint Resolution 597.

There are two reasons that we took this position.

One is that it would have been futile to pass legislation that did not include these provisions. As I have explained, Palauan leaders believed that the only chance of their people approving the compact was if the implementing legislation included the fundamental provisions of House Joint Resolution 597.

The other reason is that our consciences wouldn't allow us to ignore the very serious problems in Palau and the pleas of the majority of Palauans for the help they needed to tackle them.

In spite of this, administration officials opposed our resolution. One of their excuses was that they could not support something Palau's President opposed. Objection to cost and a stubborn determination to defend their proposal—whatever its deficiencies—were also factors, though.

PRESSURE ON SALII

As last summer wore on, pressure mounted on President Salii.

There was a final Supreme Court ruling that Palau had not approved the compact as he had claimed.

The Federal court ruling that Palau owed a now-estimated $50 million for the power facilities made it clear that he knew at the time the deal was made that the facilities would not be self-financing as had been claimed. This was particularly embarrassing in light of his involvement in the deal and the $200,000 he took.

Salii's Vice President and his Minister of State broke with him to support House Joint Resolution 597. They questioned why anyone would not want to commit to enforcing Palau's own special prosecutor and public auditor laws.

Finally, and tragically, President Salii took his own life in August of last year.

UNITY IN PALAU

In the wake of his death, Palau's leaders were able to be unified for the first time on the compact. Palau's new President, Thomas Remengesau, joined the Congress in saying that the best chance for getting the compact approved was to have it authorized by the United States as House Joint Resolution 597 would have authorized it.

AMENDMENT

Members of the Interior and Insular Affairs and Foreign Affairs Committees then agreed upon an amended version of House Joint Resolution 597. It represented substantial compromises; but it also preserved the resolution's fundamental provisions. After pressure on our part, this initial compromise received the support of the Reagan administration.

It was passed by the House in October of last year by a vote of 406 to 11.

The day after the House acted, the other body amended House Joint Resolution 597. This amendment did not guarantee the assistance that the House legislation would have provided Palau.

Curiously, the Reagan administration supported both versions. Their unwillingness to take sides impeded reaching the necessary compromise between the Houses.

COMPROMISE REACHED

Several compromise proposals were made by the House but rejected by representatives of the other body. Finally, the compromise I described at the outset was reached due to the ef-

forts of all involved. What made the final compromise possible were assurances from the last administration that the executive branch would implement the requirements of the House version of the legislation if the House would pass the Senate version with one mutually agreed-upon amendment.

Unfortunately, as I have said, these assurances were delivered by the administration just minutes too late to get the compromise enacted last year. They were only delivered after the House had begun to vote on what then Speaker Wright had announced would be the last piece of legislation in the 100th Congress.

Two of our colleagues from the other side of the aisle understandably objected when we proposed approval of the compromise in spite of what Speaker Wright had said. Our new Speaker, then the majority leader, understandably, however, refused to ignore the Republican objections. So, the legislation was not able to be considered in the closing hours of the 100th Congress.

Its history in this Congress has been as I described earlier in this statement.

DEMOCRACY IN PALAU

In spite of circumstances which would have threatened or brought down many governmental systems the people of Palau have remained steadfast in their support of democracy and their alliance with the United States.

The last few years have seen the tragic death in office of two presidents and the endurance of significant hardships, financial and otherwise. Yet, at the same time, we have seen the orderly succession to office of Vice President Remengesau last year and the orderly, but highly contested democratic election of the new President, Ngirathkel Etpison; Vice President, Kuniwo Nakamura; and Congress under Senate President Joshua Koshiba, who is one of the heroes of Palau's struggle over the past couple of years; and House Speaker, Shiro Kyota, also a man of courage.

The new Government of Palau has begun to put its financial house in order with fiscal controls and improved management. Although it has had differences with the U.S. executive branch over the compact, the Government of Palau has continued to assert its desire for stronger relationship with the United States. The organized and businesslike way in which Palau has negotiated resolution of its major differences with the executive branch during the past year has been most impressive.

The stability of the Palauan political system in these circumstances, the manner in which Palau has conducted its governmental business in these last several months, and the unity of the government of Palau is a tribute to both the leadership and the people of Palau. This speaks well for Palau's future and is one reason why we should approve this legislation so that Palau can make its determination on the Compact.

REQUESTS

Mr. Speaker, I ask that the House accept the Senate amendment.

I also include in the RECORD:

The May 26 agreement required by the compromise, which will be approved pursuant to this legislation and will become a fundamental part of the compact;

A statement and letters of administration support for House Joint Resolution 175 and the compromise;

The recommendations, conclusions, and explanation of improvements to the Compact resulting from the subsidiary agreement contained in the report of Palau's Commission on Future Palau/United States Relations; and

A list of the requirements of the compromise not contained in the text of House Joint Resolution 175 itself and addressed in large part of the agreement.

AGREEMENT CONCERNING SPECIAL PROGRAMS RELATED TO THE ENTRY INTO FORCE OF THE COMPACT OF FREE ASSOCIATION BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE REPUBLIC OF PALAU

This Agreement is entered Into by the Government of the United States and the Government of Palau in recognition of their desire to record their agreements and intended undertakings with respect to the implementation of certain aspects of agreements subsidiary to the Compact of Free Association and with respect to the continuation of certain programs and assistance commenced prior to the entry into force of the Compact of Free Association. The Government of the United States and the Government of Palau note that these continuing programs and elements of assistance are intended to allow for an expeditious and productive transition to their relationship under the Compact and that authority for them is set forth in United States Public Laws 99-239 and 99-658, the United States law authorizing entry into force of the Compact enacted pursuant to Section 101(d)(1)(b) of United States Public Law 99-658 and the relevant laws of the Republic of Palau. The government of the United States and the Government of Palau intend that this Agreement be construed and implemented in a manner consistent with the Compact.

ARTICLE I. DEFINITION OF TERMS

1. Except as otherwise provided in this Agreement, the Definition of Terms set forth in Section 461 of the Compact is incorporated in full in this Agreement.

2. Except as otherwise provided in this Agreement, the Definition of Terms set forth in the subsidiary agreements between the Government of the United States and the Government of Palau referred to in Section 462 of the Compact are incorporated in full in this Agreement.

3. Except as otherwise provided in this Agreement, the Definition of Terms set forth in the following agreements between the Government of the United States and the Government of Palau pursuant to the Compact are incorporated in full in this Agreement:

(a) The Agreement Concerning Procedures for the Implementation of United States Economic Assistance, Programs and Services Provided in the Compact of Free Association Between the Government of the United States and the Government of the Republic of Palau (the Fiscal Procedures Agreement), done at Washington, D.C. on December 2, 1987; and

(b) The Agreement between the Government of the United States and the Government of Palau Regarding Mutual Assistance in Law Enforcement Matters, done at Washington, D.C. on December 2, 1987.

ARTICLE II. CONSTRUCTION PROJECTS

*1. Completion of the Central Health Care Facility in Palau*

(a) The Government of Palau shall prepare and submit a plan to the Government of the United States for completion of the central health care facility of Palau, the construction of which commenced during Fiscal Year 1989. The plan shall specify the amount necessary to complete an operational facility, the funds to be provided by the Government of Palau for that purpose, and the manner in which the central health care facility, once completed, will be operated and maintained. The Government of Palau shall dedicate, prior to the fifteenth anniversary of the effective date of the Compact, the sum of $5 million to the construction of the central health care facility or its operation and maintenance.

(b) The review and approval of the plan by the Government of the United States shall include review by the United States Departments of Health and Human Services and Interior. After review of the plan, the Government of the United States shall provide to the Government of Palau an amount, as provided by the laws of the United States and not later than during fiscal year 1991, of not less than $5 million and such additional funds as shall be provided under the laws of the United States to complete construction of the Central health care facility pursuant to such plan. Funds provided by the Government of the United States pursuant to this paragraph shall be used by the Government of Palau exclusively for completion, operation and maintenance of the central health care facility of Palau and shall be in addition to the funds already provided by the Government of the United States for the Palau central health care facility prior to the end of fiscal year 1989.

*2. Prison Facility Improvements*

(a) The Government of Palau shall prepare and submit a plan to the Government of the United States for the improvement of the Palau national prison facility. The plan shall address in a comprehensive manner the purpose and placement of the prison facility in the context of the overall criminal justice policy and specify the amount necessary to complete an operational and improved prison facility and the manner in which the prison facility shall be operated and maintained.

(b) The review of the plan by the Government of the United States shall include review by the United States Departments of Justice and Interior. After review of the plan, the Government of the United States shall provide to the Government of Palau the sum of $800,000, as provided by the laws of the United States and not later than

during fiscal year 1991, to be used exclusively for improvements to the Palau national prison facility in accordance with the plan, and such sum shall be in addition to the funds already provided by the Government of the United States for the same purpose prior to the end of fiscal year 1989.

*3. Central Power Generating Facility*

The Government of Palau may prepare a plan for the operation and maintenance of the Palau central power generating facility and its related power distribution system. The Government of the United States shall sympathetically consider providing assistance to the Government of Palau, in accordance with Sections 222 and 224 of the Compact, for the purposes set forth in such operations and maintenance plan and upon the request of the Government of Palau. Such assistance may include the extension of grants and loans to the Government of Palau, as authorized and provided by the laws of the United States.

*4. Capital Infrastructure*

The Government of the United States and the Government of Palau shall continue to cooperate in the implementation of the program addressing operations, maintenance, deficiency identification and correction, and training under the sponsorship of the Government of the United States through the Departments of the Interior and Army Corps of Engineers. The Government of Palau shall assist the Government of the United States in obtaining legal redress, where appropriate, against responsible parties with respect to any identified deficiencies in the capital infrastructure built in Palau, during which time the Government of the United States and the Government of Palau shall give priority attention to infrastructure in need of immediate repair.

ARTICLE III. DRUG ENFORCEMENT, TREATMENT AND EDUCATION PROGRAMS

1. The government of the United States and the Government of Palau declare that it is their policy that the enforcement of narcotics and other laws and the prevention and treatment of narcotics and other substance abuse in Palau benefits both Palau and the United States. The Government of Palau, in cooperation with the Government of the United States, shall develop a plan for the enforcement of narcotics and other laws and for the prevention and treatment of narcotics and other substance abuse in Palau. The plan, which shall be submitted to the Government of the United States for approval, shall identify the specific needs and costs of such a program, identify all existing resources available to the Government of Palau to be allocated to the implementation of the plan and shall recommend priority use for additional resources, if any, for plan implementation. Review and approval of the plan by the Government of the United States shall include review by the United States Office of National Drug Policy, and the United States Departments of Justice, Education, Health and Human Services and Interior. The plan shall be consistent with the provisions of this Article, the Compact and its subsidiary agreements, the laws of the United States applicable to Palau pursuant to the Compact, and the laws of Palau.

2. After review of the plan referred to in paragraph 1 of this Article, the Government of the United States shall provide to the Government of Palau an annual amount not to exceed $400,000, as provided by the laws of the United States and during the five successive years commencing not later than during fiscal year 1991, for the purpose of implementing the plan and for the purposes set forth in this Article. If consistent with the plan, funds provided pursuant to this paragraph may be used by the Government of Palau to construct a rehabilitation center for narcotic and other substance abuse victims.

3. If, prior to the sixth anniversary of the effective date of the Compact, the Government of Palau has prepared a reveiw of the effectiveness of the plan referred to in this Article and if that review identifies and justifies the application of additional assistance from the Government of the United States for the purposes to which the original plan was dedicated, the Government of the United States shall sympathetically consider providing such additional assistance. Technical assistance from the Government of the United States to assist the Government of Palau in carrying out the plan and for the purposes referred to in this Article shall be provided in accordance with Section 222 of the Compact.

4. The Government of Palau authorizes officers of the law enforcement agencies of the Government of the United States, including the Drug Enforcement Agency, the Federal Bureau of Investigation and the United States Secret Service and Customs Service and Immigration and Naturalization Service, to conduct investigations, in accordance with the applicable laws of Palau and in cooperation with the law enforcement agencies of the Government of Palau, related to the enforcement of the laws of the United States applicable in Palau.

5. The Government of Palau may request, on a long-term or case-by-case basis, the assistance of United States law enforcement officers to conduct investigations consistent with the implementation of the plan referred to in paragrpah 1 of this Article and in cooperation with the law enforcement agencies of the Government of Palau. In this connection, the Government of the United States will make available to the Government of Palau, in accordance with Section 222 of the Compact, training courses in narcotics investigations, narcotics identification and search techniques, and the rules of evidence for successful prosecutions.

6. The Government of Palau may procure from the Government of the United States narcotics test kits, communications equipment and investigative aids consistent with the purposes of the plan referred to in paragraph 1 of this Article.

7. The Government of Palau, in the implementation of the plan referred to in paragraph 1 of the Article, shall employ additional customs officers who will be trained and equipped to detect narcotics in sea and air shipments of goods destined for Palau and shall continue its narcotics awareness and education efforts, especially those directed toward young people, and for the treatment and rehabilitation of persons already addicted to narcotic substances.

ARTICLE IV. ASSISTANCE FOR PROSECUTION AND AUDIT PROGRAMS

1. The Government of Palau shall maintain and staff the offices of public auditor and special prosecutor established under the authority of and pursuant to its constitution and laws during the period specified in paragraph 2 of this Article and thereafter as it determines necessary. The individuals appointed by the Government of Palau to head the offices of public auditor and special prosecutor shall be resident in Palau during the periods of their incumbencies. The Government of Palau shall dedicate not less than $100,000 annually to the maintenance and staffing of each of the offices of public auditor and special prosecutor during the period and in addition to the amounts specified in paragraph 2 of this Article.

2. The Government of the United States shall provide assistance to the Government of Palau, pursuant to Sections 222 and 224 of the Compact and as provided by the laws of the United States, in furtherance of the maintenance and staffing of the offices of public auditor and special prosecutor as follows for the first five fiscal years after the effective date of the Compact:

(a) upon the request of the Government of Palau, an auditor or accountant, as determined by the Government of Palau, to serve in the office of the public auditor but who shall not serve as the public auditor and an attorney or investigator, as determined by the Government of Palau, who shall serve in the office of the special prosecutor but who shall not serve as the special prosecutor; and

(b) annual amounts not to exceed $300,000, which amounts shall be used by the Government of Palau for the commencement, staffing, operation and maintenance of the offices of public auditor and special prosecutor, provided that in each year not less than $100,000 of these amounts shall be dedicated by the Government of Palau to each of the offices of public auditor and special prosecutor with the remainder to be allocated as between the two offices as the Government of Palau determines.

3. The Government of Palau may at any time request, and the Government of the United States may agree to provide, pursuant to Sections 222 and 224 of the Compact, technical and other assistance additional to that specified in paragraph 2 of this Article to the Government of Palau for the operation, maintenance and staffing of the offices of pubic auditor and special prosecutor.

4. Disputes arising under this Article shall be resolved in accordance with the conference and dispute resolution provisions of Article II of Title Four of the Compact. In the case that the Government of Palau does not comply with the provisions of paragraph 1 of this Article while receiving assistance from the Government of the United States pursuant to paragraph 2(b) of this Article, the Government of the United States shall have recourse to the conference and dispute resolution provisions referred to in this paragraph. If a determination of material nonconformance on the part of the Government of Palau is made and if, within 180 days after such determination, the Government of Palau takes no steps effectively to rectify such nonconformance, then the Government of Palau shall be considered to be in material breach of its undertakings. The Government of the United States, in response to this consideration, shall take the steps it considers appropriate, including, but not limited to, the withholding of funds to be provided pursuant to this Agreement, to the Compact and to other applicable laws of the United States until the Government of Palau conforms its actions to the determinations referred to in this paragraph.

ARTICLE V. FISCAL PROCEDURES

*1. Implementation of Audit Recommendations*

(a) Within 120 days after an audit conducted by the Government of the United

States pursuant to Section 233 of the Compact and the Fiscal Procedures Agreement is submitted to the Government of Palau, the Government of Palau shall:

(i) develop a plan to implement the recommendations made by such audit, or

(ii) inform the United States audit officials, as that term is defined in Article IV of the Fiscal Procedures Agreement, of its objections to implementing such recommendations.

(b) The Government of the United States, in accordance with Section 222 of the Compact, shall provide assistance to the Government of Palau, upon its request, to implement such audit recommendations.

*2. Palau National Development Plan*

(a) In respect of the National Development Plans promulgated by the Government of Palau pursuant to Section 231 of the Compact and paragraph 3 of Article III of the Fiscal Procedures Agreement the Government of Palau shall ensure the inclusion in such development plans of the following information:

(i) current information, including such information adopting the existing plan to the first 5-year period following the effective date of the Compact; and

(ii) a list, in priorty order, of all capital infrastructure projects, both for the public and the private sectors, intended by the Government of Palau to be financed with United States assistance, including all capital infrastructure projects for which obligations were in existence at the commencement of the plan period covered by the first National Development Plan.

*3. Financing and reimbursement arrangements related to Section 211(b) of the Compact*

(a) If the conditions of paragraph 3(b) of this Article are satisfied, the Government of the United States shall provide to the Government of Palau, on a grant basis and together with the funds provided to Palau upon entry into force of the Compact, the sum of $28 million. Such sum shall be adjusted by Section 215 of the Compact and the resulting funds in the adjustment account shall be provided together with the funds provided upon entry into force of the Compact. The payment of the sum of $28 million referred to in this paragraph constitutes fulfillment of the obligations of the Government of the United States under Section 211(b) of the Compact. The payment of the adjustment account amount referred to in this paragraph constitutes fulfillment of the obligations of the Government of the United States under Section 215 of the Compact as it relates to Section 211(b) of the Compact through the date of such payment.

(b) The Government of Palau shall have entered into an agreement with its creditors for the full discharge of its obligations with respect to the central power generating facility in Palau.

(c) The Government of Palau shall dedicate at least $7 million to the energy needs of those parts of Palau not served by the central power generating facility prior to the fifteenth anniversary of the effective date of the Compact. If funds additional to those provided pursuant to this Article and Section 211(b) of the Compact are used by the Government of Palau to satisfy its payment obligations with respect to the central power generating facility, only funds provided pursuant to Section 212(b) of the Compact shall be so used, in addition to funds otherwise available to the Government of Palau from sources other than the Government of the United States.

(d) The Government of Palau shall pay to the Government of the United States an amount equal to the net economic cost to the United States of making available funds pursuant to Section 211(b) of the Compact in the manner specified in paragraph 3(a) of this Article rather than as provided in Section 211(b) of the Compact. The Government of the United States and the Government of Palau have determined that the net economic cost to be paid to the Government of the United States equals to sum of $3 million and have further determined that this sum shall be paid to the Government of the United States by the Government of Palau not later than the tenth anniversary of the effective date of the Compact. In order to accomplish the payment of the amount referred to in this paragraph, the Government of Palau may authorize the Government of the United States to deduct such amount from any funds that otherwise would have been paid to the Government of Palau pursuant to the Compact and its related agreements prior to the tenth anniversary of the effective date of the Compact.

(e) Notwithstanding Section 211(f) or the agreement concluded pursuant to Section 211(f) of the Compact, the Government of Palau shall pay to the Government of the United States, from the fund created pursuant to Section 211(f) of the Compact, the amount that would be due to the Government of the United States pursuant to paragraph 3(d) of this Article as of the tenth anniversary of the effective date of the Compact. Such payment shall be made within thirty days of the tenth anniversary of the effective date of the Compact unless the payment conditions of paragraph 3(d) have already been fulfilled by the Government of Palau. The payment obligations set forth in this paragraph shall continue as a condition on the ownership of the fund created pursuant to Section 211(f) of the Compact until the payment obligation of the Government of Palau set forth in this Article is satisfied.

ARTICLE VI. ACQUISITION OF DEFENSE SITES

1. In accordance with Section 352 of the Compact, the Government of the United Staes recognizes that the Government of Palau, in meeting its obligations under Title Three of the Compact, is obligated by its constitution to provide just compensation to the owners of any private land which may be used for that purpose. The Government of the United States recognizes and respects the scarcity and special importance of land in Palau. In making any designation of land pursuant to Section 322 of the Compact, the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy the requirement through public real property, where available, rather than through private property. The Government of the United States acknowledges that the Government of Palau desires that ownership of land in Palau be maintained for people indigenous to Palau. The Government of the United States further recognizes that in the event of any taking of a partial interest in real property by the Government of Palau, in meeting its obligations under Title Three of the Compact, rendering the remaining interest economically unusable for the purposes for which the real property in question was being used, the interest holders may be entitled to compensation from the Government of Palau as if the entire real property interest had been taken.

2. The Government of Palau, in light of any actual United States land use requirements in Palau which impact upon privately owned land, exclusive of the Airai airfield and Malakal harbor exclusive-use and joint-use defense sites specifically identified in paragraphs 1(a), 1(b), 2(a) and 2(b) and Tabs 1, 2 and 3 of Annex A of the agreement referred to in Section 462(h) of the Compact, may request United States financial assistance in addition to that provided in Title Two of the Compact. The Government of Palau shall acquire and retain such rights to those Airai airfield and Malakal harbor defense sites as to be able to fulfill its obligations under Title Three of the Compact. Upon the request of either, the Government of the United States and the Government of Palau shall enter into an appropriate agreement for such financial assistance, and such agreement shall be subject to approval in accordance with their respective constitutional processes. As to any designation of any defense site pursuant to Section 322(b) of the Compact, the Government of Palau shall not be obligated to make available to the Government of the United States the use rights pertaining to such designation unless such an agreement has been so approved as to such designation, provided however, that if such an agreement has not been entered into and approved within a time period specified by the Government of the United States at the time of the initial designation, the Government of the United States and the Government of Palau may continue to seek the prompt conclusion of such an agreement or either of them may resolve the matter as provided for in paragraph 5 of this Article.

3. Any agreement concluded pursuant to paragraph 2 of this Article shall be based upon independently verified land appraisals and other appropriate documentation of actual land use costs, and be consistent with the mutual undertakings and interests of the Government of the United States and the Government of Palau under Title Three of the compact, and the absence of such agreement shall not derogate from the obligations and authorities of the Government of Palau and the Government of the United States under that Title.

4. Should the Government of Palau be required pursuant to Title Three of the Compact to acquire privately owned land in Palau for United States use, the Government of Palau may request extension of the time limit set forth pursuant to Title Three of the Compact and the Government of the United States shall sympathetically and expeditiously consider such request.

5. Disputes arising between the Government of the United States and the Government of Palau under the terms of this Article shall be resolved in accordance with the provisions of Title Three of the Compact.

ARTICLE VII. OUTSTANDING MEDICAL REFERRAL OBLIGATIONS

1. The Government of the United States shall take the appropriate steps necessary to settle, or shall provide the Government of Palau the necessary funds to pay, as provided by the laws of the United States, any properly verified unliquidated medical obligations owed to United States citizens or to non-governmental medical facilities in the United States, including its territories and Commonwealths, for services rendered prior to the effective date of the Compact to citi-

zens of Palau at the request of the Government of Palau.

2. The Government of the United States hereby cancels, as provided by the laws of the United States, any obligations incurred by the Government of Palau for treatment in United States Government medical facilities prior to the effective date of the Compact.

3. Pursuant to Article XVII of the agreement subsidiary to Section 323 of the Compact which provides for continued access by citizens of Palau referred by the Government of Palau to United States military medical facilities, such access shall be subject to expeditious reimbursement, pursuant to the terms and conditions agreed upon pursuant to such agreement, of the Government of the United States by the Government of Palau for medical services rendered. The Government of the United States and the Government of Palau may develop additional terms and conditions under which such services shall be provided, including the availability of funds for the provision of such services.

ARTICLE VIII. CONSULTATION AND TRANSITION PROVISIONS

*1. Discussions on Taxation Matters*

The Government of the United States and the Government of Palau shall discuss agreements concerning the taxation and exemption from taxation by each of them of source income earned by residents of the other. Any such agreements would be subject to approval pursuant to the constitutional processes of the Government of the United States and the Government of Palau.

*2. Economic Regulation of Civil Air Transport*

Except for the rights, so long as they continue, of the United States air carriers as provided in paragraph 6 of Article IX of the Federal Programs and Services Agreement Concluded Pursuant to Article II of Title Two of the Compact, the Government of Palau has the exclusive authority, exercised in a manner consistent with the Compact, to grant or deny landing rights in Palau to civil air carriers.

*3. Assistance in Land Survey Activities*

The Government of Palau shall develope a plan and submit the same to the Government of the United States which shall consider sympathetically requests by the Government of Palau for financial and technical assistance to complete the surveying of the land in Palau pursuant to such plan. Any such assistance shall be provided in accordance with Sections 222 and 224 of the Compact.

*4. Discussions on Trade and Tariff Matters*

The Government of the United States and the Government of Palau shall discuss agreements to ensure that the export of textile and apparel items not subject to textile agreements as to which the Government of the United States is a party, from Palau to the United States shall be eligible to receive tariff treatment no less favorable than that afforded like products exported to the United States from Caribbean Basin Initiative countries and to ensure that the export of other products from Palau to the United States shall retain the same relative beneficial tariff treatment in regard to exports to the United States from other countries as is provided in the Compact of Free Association and the laws of the United States. Any such agreements would be subject to approval pursuant to the constitutional processes of the Government of the United States and Government of Palau.

*5. Maritime Space Jurisdiction*

The Government of the United States and the Government of Palau interpret the provisions of the Agreement Regarding the Jurisdiction and Sovereignty of the Republic of Palau over its Territory and the Living and Non-Living Resources of the Sea and referred to in Section 462(j) of the Compact as in no way preventing the Government of Palau from exercising its rights as to its continental shelf or from declaring an exclusive economic zone, in manners consistent with the Third United Nations Convention on the Law of the Sea and with the principles of international law.

*6. Discussions on Federal Programs Matters*

The Government of the United States and the Government of Palau, prior to the first anniversary of the effective date of the Compact, shall enter into an agreement identifying whether and what federal program assistance shall be continued to offset any anticipated, economically adverse circumstances. The Government of Palau shall include any requests for continuation of federal programs in the reports referred to in Section 231(b) of the Compact. Any continuation or commencement of federal program application arising pursuant to this paragraph shall be in accordance with Section 224 of the Compact.

ARTICLE IX. EFFECTIVE DATE, AMENDMENT AND DURATION

1. This Agreement shall come into effect simultaneously with the Compact.

2. This Agreement may be amended at any time by the mutual consent of the Government of the United States and the Government of Palau.

3. Except as otherwise provided in this Agreement, disputes arising between the Government of the United States and the Government of Palau under the terms of this Agreement shall be resolved in accordance with the procedures set forth in Article II of title Four of the Compact.

4. This Agreement shall remain in full force and effect until terminated by mutual consent, or until the termination of the Compact, whichever occurs first.

5. This Agreement may be accepted, by signature or otherwise, by the Government of the United States and the Government of Palau. Each Government shall possess an original English language version.

In witness whereof, the undersigned, duly authorized, have signed this Agreement Concerning Special programs Related to the Entry into Force of the Compact of Free Association between the Government of the United States and the Government of the Republic of Palau which shall come into effect in accordance with its terms between the Government of the United States and the Government of Palau.

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U.S. DEPARTMENT OF STATE,
*Washington, DC, September 14, 1989.*

Hon. J. BENNETT JOHNSTON,
*Chairman, Committee on Energy and Natural Resources, U.S. Senate.*

DEAR MR. CHAIRMAN: This letter is written to provide the views of the Department of State on H.J. Res. 175, a bill to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes.

As expressed in my letter of March 31, 1989 to Chairman Morris K. Udall of the House Committee on Interior and Insular Affairs, the Department supports the earliest possible enactment of legislation to authorize entry into force of the Compact with Palau. Title I of this bill enable the United States and Palau to implement the Compact and its related agreements, including the most recent Compact subsidiary agreement signed at Guam on May 26, 1989, promptly upon completion of Palau's internal approval process.

Section 102 of the bill recognizes that the Compact must be approved by the Palauan people in a referendum conducted in accordance with such constitutional procedures as the Palauan government may choose to employ. This section also enables the President to agree to an effective date and implement the Compact 30 days after notifying relevant Committees of the Senate and House Representatives of such effective date. These provisions are based upon proposals made by the Department, and are fully acceptable.

Similarly, we support the fiscal and audit procedures contained in Section 103. Provisions of a Palauan anti-drug program contained in Section 104 are consistent with the Administration's policy to step up the fight against illicit narcotics. We note, however, that the April 1, 1989 date for submission of an anti-drug plan has passed, and that the National Drug Policy Board, which no longer exists, has been replaced by the Office of National Drug Control Policy. We recommend that Section 104 be amended to provide that the Government of Palau draft an anti-drug plan consistent with the U.S. national drug control strategy, in consultation with the relevent U.S. Government agencies. The development of a rational, effective anti-drug plan is a task that will require careful evaluation of Palau's needs, and may take several months to complete.

The Department agrees that, subject to appropriation, provision of assistance to Palau for the support of offices of a public auditor and special prosecutor would provide a useful additional dimension to Compact assistance. We therefore support Section 105 of the bill. Section 106, together with Section 115(b), would allow Palau to liquidate the accumulated debt for its new power plant through agreement with its creditors, thus averting a potentially serious threat to Palau's international credit standing. We support this solution as a means to permit Palau to embark on its new status free of the burden of this past debt.

Section 107 provides for updating the 5-year National Development Plan for Palau to coincide with the five year period following the effective date of the Compact, and is consistent with obligations previously assumed by the two governments already in free association with the United States. The Department supports the provision of assistance to Palau for upgrading its medical facilities, subject to appropriation and upon the recommendation of the Secretary of the Interior and the Public Health Service, as provided in Section 108.

We fully concur with the audit certification procedures provided in Section 109. With respect to Section 110, the Department wishes to clarify that U.S. rights to acquire and utilize defense sites in Palau continue to be protected under this legislation, and by the agreement signed by the United States and Palau in May 26, 1989. Under provisions of that agreement, the governments will agree to additional payments for private lands utilized as defense sites, and provision is made for settlement of any disputes which might arise in this connection.

The Department reaffirms that the United States has no present intention to utilize any public or private lands in Palau for defense activities.

Subject to appropriation, and in accordance with the report to be prepared by the Secretary of the Interior in cooperation with the Government of Palau on the condition of the Palau prison, the Department supports the provision of funds to upgrade prison facilities, authorized under Section 111. The Department also supports the assignment by the Secretary of the Interior of professional staff persons to each of the U.S. Offices in the freely associated states, as provided in Section 112. Pursuant to legislation, these offices have recently been elevated to the status of embassies. Provision of funds to carry out a further referendum in Palau on the Compact, contained in Section 113, is necessary and appropriate.

Section 114 approves an upgrade of diplomatic relations between the United States and Palau, upon entry into force of the Compact and the completion of required agreements and procedures. A separate bill upgrading relations with the states already in feee association with the United States, H.R. 2214, passed both houses of Congress and was signed into law by the President on July 26, 1989. The exchanges of diplomatic notes required to make the upgrade fully effective are now underway.

The Department also supports Section 114(c), extending the provision, which would otherwise expire, of essential air services to the freely associated states. We support the obligation and payments procedures contained in Section 115 of the bill, which are essential to permit resolution of Palau's outstanding power plant debt although we note that it no longer appears possible to provide funding for liquidation of this debt during fiscal year 1989.

With respect to Section 116, the Department notes and agrees with the requirements for Congressional oversight contained in Section 116(a), and the requirement for submission of agreements set forth in Sections 103 and 107, as specified in Section 116(b). We also concur in Section 117, the amendment of Section 104(c) of the Palau Compact, to reflect accurately the designation of fiscal years during the 3-year transition period.

With respect to Title II of H.J. Res. 175, the Department of State defers comment on most of its Sections to the Department of the Interior, with the exception of Section 203. This Section would make it possible for the freely associated states to continue to receive regular shipments of controlled substances for medical use from the United States, pending the adherence of the freely associated states to the Single Convention on Narcotic Drugs. The adherence of the freely associated states to the Single Convention is currently under consideration by those governments. Meanwhile, shortages of controlled drugs can cause great human suffering at hospitals in the freely associated states. The Department therefore strongly supports this provision.

The Department believes that H.J. Res. 175 fully addresses the commitments undertaken by the United States in the subsidiary agreements signed on May 26, 1989. We also believe that it builds a firm foundation for the future relations between Palau and the United States. With respect to the floor statements made in the House of Representatives at the time of its passage, we note that the continued provision of Federal programs not contained in the Compact would be subject not only to negotiation and mutual agreement, but also to authorization and appropriation. The Department endorses the floor statements made by Mr. de Lugo, Mr. Lagomarsino, Mr. Solarz and others regarding the need to implement the Compact before making further adjustments to its terms. We wish to emphasize that no attempt to bring the Compact into effect will be made by the United States until the Palauan people have clearly spoken, and their decision is free of any legal challenges. This legislation is the culmination of protracted negotiations that must now draw to a close. We urge its passage, and await the decision of the people of Palau on the Compact in a free and open referendum.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objections to the submission of this report.

Sincerely,

JANET G. MULLINS,
*Assistant Secretary, Legislative Affairs.*

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STATEMENT OF JAMES D. BERG, DIRECTOR OF THE OFFICE OF FREELY ASSOCIATED STATE AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear hear today on behalf of the Administration and in response to your letter of June 2 to Secretary Baker. I am also pleased to be accompanied by Mr. David Heggestad of the Office of Territorial and International Affairs of the Department of the Interior.

The Administration supports the earliest possible passage by the House and Senate of House Joint Resolution 175, as introduced into the House on March 8 of this year. I believe that the Subcommittee is well aware of this Administration position so I will not review the legislation on a section by section basis in this statement. However, to complete the record, I have attached to this statement a letter to the Chairmen of the two House Committees with jurisdiction from Assistant Secretary of State Janet Mullins dated March 31, 1989. That letter sets out in full the Administration's position on House Joint Resolution 175, and emphasizes the reasons why we see the need for expedited action on the measure. Also attached is a September 26, 1988 letter, signed on behalf of the last Administration by then-Deputy Secretary of State John Whitehead, which remains the foundation of our support of both the legislation that is now before Congress in the form of H.J. Res. 175 and the substance of the Compact subsidiary agreement that was signed on May 26 of this year with Palau.

The legislation of the United States that approved the Compact of Free Association for Palau—PL 99-658—requires that before the Compact can enter into force, the Congress must so authorize by another joint resolution and the people of Palau must approve the Compact in accordance with their constitutional processes. The Administration has been seeking passage of a joint resolution by Congress authorizing the Compact's entry into force since legislation to that effect was first submitted by the Reagan Administration on November 1, 1987. From the United States point of view, there is no reason for any delay in passing authorizing legislation for the Compact. Funds for the Compact have been appropriated and are ready to be obligated this fiscal year. The administrative system for managing our participation in a free association relationship with Palau is in place. Our experience with the Compact, and with United States participation in free association relationships with other former parts of the Trust Territory of the Pacific Islands has been wholly positive and has reaffirmed our view that free association is the most workable political status and relationship for Palau. Of course, the Compact will not enter into force until it has been approved by the people of Palau and until we have entered into an effective date agreement with Palau.

The newly inaugurated Government of Palau has stated its commitment to the Compact and its early entry into force. In that connection, the Palau Government is expected soon to call a plebiscite on the Compact and its subsidiary agreements. Included among those agreements is one signed just a few weeks ago on May 26. This new subsidiary agreement addresses certain current needs that the Palauan Government has identified and that, although arising out of the trusteeship period, will, pursuant to this subsidiary agreement to the Compact, be able to be addressed after the Compact enters into force. In other words, this subsidiary agreement contemplates a transitional arrangement under which Palau and the United States will be able to complete the addressal of trusteeship era matters without delaying the entry into force of the Compact.

The subsidiary agreement signed with Palau on May 26 does not amend the Compact or any of its existing subsidiary agreements. Nor does it violate, in the view of the Administration, the fundamental philosophy of the free association relationship which is, at its existence, a relationship between two sovereign governments. These two features are critical to the integrity of the future American-Palauan relationship, as it is enshrined in the Compact signed on January 10, 1986.

Under the terms of the new subsidiary agreement, the United States will provide $9.3 million, spread out over six years after the Compact enters into force, to finance projects in Palau. These projects include construction activities related to the new hospital that Palau is now building with a grant of $10 million already provided by the United States, funding and technical assistance for Palau government programs in drug law enforcement and treatment, audit, and prosecution, and funds for the construction and improvement of prison facilities. The Administration intends to request funds for these purposes in the years and for the amounts specified in the subsidiary agreement.

The subsidiary agreement also provides that the United States will advance certain funds already included in the Compact to Palau at a date earlier than the Compact provides so that Palau can liquidate its power plant debt. Palau must have reached an agreement with its creditors prior to the effective date of the Compact for this provision to have effect, and we believe that the agreement near completion is fair to both Palau and its creditors.

The May 26 subsidiary agreement also contains provisions, such as the one regarding medical referral debts, which, with the above mentioned provisions, made it an accurate reflection of the compromise reached last October 22, between representatives of the House, the Senate and the Administration regarding the Palau Compact authorizing legislation. Under that compromise, the House was to have passed the Senate version of last year's Palau Compact authoriz-

ing legislation—H.J. Res. 597—and the Administration would implement the provisions of the House version of that legislation. Translated into this year, H.J. Res. 175 is the same as the version of H.J. Res. 597 passed by the Senate on October 7, 1988. The new subsidiary agreement signed on May 26 provides the vehicle under which the Administration will implement the provisions of the year's House passed version of the legislation. It is important to note that Congressional passage of H.R. Res. 175 is necessary not only to allow the Compact to enter into force but also to provide legislative authorization for the undertakings in the May 26 subsidiary agreement.

Mr. Chairman, we would be pleased to answer questions with respect to H.J. Res. 175, the Compact or the subsidiary agreement just signed with Palau. We hope that this subsidiary agreement will allow the House to move forward with final passage of H.J. Res. 175 in the form it was introduced within the next few days and look forward to working with the Subcommittee to accomplish that end.

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U.S. DEPARTMENT OF STATE,
*Washington, DC, March 31, 1989.*

Hon. MORRIS K. UDALL,
*Chairman, Committee on Interior and Insular Affairs, House of Representatives.*

DEAR MR. CHAIRMAN: The Administration believes Congress should pass legislation authorizing implementation of the Palau Compact of Free Association at the earliest possible date. In this regard, we support passage by the House and the Senate of H.J. Res. 175 which was introduced on March 8. This bill is similar to legislation passed by the Senate last October 7 but differs in two ways: one is a date change from March to April regarding submissions of Palau's drug intervention plan, and the other would adjust the payment stream of Compact funding to Palau to accommodate a resolution agreed to by Palau of its power plant debt.

While more than two-thirds of the people of Palau have successively demonstrated in past plebiscites their desire for a free association relationship with the United States, Palau has yet to approve the Compact of Free Association in accordance with the requirements of its constitution. It is the Administration's judgement that the Palauan people can make an informed judgment on the Compact only once the terms of its implementation are defined by enactment of United States legislation authorizing its entry into force. Since many of the elements of Compact implementation, including the arrangements to facilitate resolution by Palau of its power plant debt, are linked to actions this fiscal year, a plebiscite in Palau on the Compact and its subsidiary agreements needs to occur by early summer. Early House and Senate action approving H.J. Res. 175 is thus all the more imperative.

Last year, the House and Senate passed differing versions of legislation authorizing entry into force of the Palau Compact, and the Reagan Administration supported both versions. In the closing hours of the One-Hundredth Congress, a compromise between the two versions was developed, but not enacted, under which the Administration would implement, through appropriations requests and other administrative actions, the provisions of the House-passed version (October 6) if Congress would approve the Senate-passed version (October 7). While final Congressional action did not occur, that same compromise is now available in the form of H.J. Res. 175. In urging passage of H.J. Res. 175, the Administration is prepared to take steps that will give effect to that compromise, in addition to actions already taken to address the specific issues. The steps we intend to commence during the process of Congressional consideration and passage of H.J. Res. 175 include the negotiation and conclusion of Compact subsidiary agreements with Palau, the completion of the reports to Congress that are mentioned in H.J. Res. 175 and in the House-passed version, and, ultimately, administrative actions or requests for the appropriation of funds, totalling up to $9.3 million spread over the first six years of Compact effectiveness, that are authorized in H.J. Res. 175 and detailed specifically in the House-passed version.

The House-passed version contemplated the availability to Palau of the $9.3 million in addition to the funding Palau will otherwise receive pursuant to the terms of the Compact. On the assumption that H.J. Res. 175 is enacted and the Compact can enter into force before the end of the current fiscal year, the Administration would seek, through pending and future appropriations requests or through funds already appropriated, to make these additional amounts available to Palau starting in FY 1990, the first full year of Compact effectiveness. These funds would be provided in a manner consistent with the reports and recommendations referred to above, the relevant provisions of Compact subsidiary agreements, and, in the case of appropriations requests, in accordance with United States laws.

The Administration's approach outlined in this letter is designed to facilitiate House and Senate passage of H.J. Res. 175, and the commencement and completion of Administration undertakings related to H.J. Res. 175 and last year's House-passed version, on an expeditious basis.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JANET G. MULLINS,
*Assistant Secretary, Legislative Affairs.*

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THE DEPUTY SECRETARY OF STATE,
*Washington, DC, September 26, 1988.*

Hon. MORRIS K. UDALL,
*Chairman, Committee on Interior and Insular Affairs, House of Representatives.*

DEAR MR. CHAIRMAN: The Administration believes Congress should pass legislation authorizing implementation of the Palau Compact of Free Association at the earliest possible date. We support efforts to fashion legislation in the House of Representatives accomplishing this result before Congress' early October adjournment.

The President submitted draft legislation on November 30, 1987 authorizing implementation of the Compact. Since that time, the Senate has passed a version of the legislation that was, with one minor alteration, acceptable to the Administration. The House Foreign Affairs Committee, last April, reported H.J. Res. 479 that was also acceptable to the Administration. An alternate version of implementing legislation—H.J. Res. 597—was later considered by the House Interior Committee, but has never been reported. Additionally, on August 29, 1988, the Palau Supreme Court determined that there is inconsistency between the Compact and the Palau Constitution. This decision requires Palau to complete its internal Compact approval process through a vote on the Compact, whether directly or through a constitutional amendment procedure.

Therefore, because Palau must put the Compact before the Palauan electorate by one or the other of these methods, we believe it imperative that the United States position on implementation of the Compact be made clear now so that the Palauan people can participate in an informed act of self-determination. Thus, I urge that the House pass implementing legislation as soon as possible.

The Administration is aware of the provisions of legislation that emerged from recent meetings between members of the House Foreign Affairs and Interior Committees. To date, we have not had the opportunity to review a final text of these provisions.

However, based on our understanding of the legislation and given the imperative to clarify the United States position on implementation of the Palau Compact, we support passage of this new compromise legislation but deem it essential that objectionable provisions and limitations in the compromise relating to Palau's use of Compact funds to liquidate its power plant debt be revised in the process of final Senate and House action. On this matter, we would oppose any United States Government loan, guarantee or other subsidization of the debt. With respect to the funding authorized in the new bill, a full faith and credit provision attaches to a maximum of $9.3 million of these funds. The Administration intends to ensure that appropriate planning, needs analyses and justifications are associated with provision of this funding in a manner consistent with the legislation.

Sincerely,

JOHN C. WHITEHEAD.

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A REPORT TO THE THIRD OLBIIL ERA KELULAU AND THE REPUBLIC OF PALAU PRESIDENT

(By the Commission on Future Palau/United States Relations)

RECOMMENDATIONS

The Commission is fully aware, despite political education programs which had preceded each of the referenda on the compact many people in Palau continue to have certain misgivings about approving the compact and its subsidiary agreements. Many are concerned about the nuclear provisions of the compact; This Commission was not able to and could not re-negotiate possible changes to the Compact language on nuclear and harmful substances, but it made note of the fact that any approval of the Compact and its subsidiary agreements by 75% votes will overcome any constitutional impediments to the use of harmful substances and nuclear material within the Republic of Palau. Any argument, therefore, against the approval of the compact and the subsidiary agreements based upon the provisions of the Palau Constitution prohibiting the use of harmful substances will be moot. Others contend that the economic and financial assistance being offered by the United States will not be sufficient to allow orderly economic development for Palau; some maintain that the options given the United States to use Palau lands for defense sites and military purposes will deprive Palau as to the use of such lands, the money to pay for the use of such lands would not allow just and fair compensation to land owners, and that the period of the compact is onerous. Still many others disfavor the compact

because they prefer other political status alternatives such as independence or commonwealth.

While this Commission does not want to be drawn into a debate on the merits or demerits of the compact and its subsidiary agreements, it is constrained to make an observation regarding the need to resolve the Political Status with the approval of the compact and its subsidiary agreements as the only alternative available. In the long run, it is not the amount of money proposed to be provided in any political status alternative, such as that provided for under this compact with its subsidary agreements, that should induce Palau voters either to accept or reject it. Even if that were the only yardstick to assess the merits of the compact, the funding level set by the compact and the subsidiary agreements, together with financial and technical assistance under H.J. Res. 174 and its subsidiary agreement, compares well with similar levels of financial assistance extended other political entities in the Micronesian areas.

It is the stability of the government associated with the resolution of the political status through the approval of the compact which is paramount. Once the stability of the government is assured, Palau can expect an accelerated development in the private sector of the economy. This in turn will bring about the kind of economic progress and social development in step with the general effort of nation building.

Both the United States and the Republic of Palau will need to take the following steps to bring about the approval of the compact and its subsidiary agreements and to ensure its implementation:

A. Actions to be taken by the United States to allow compact to take effect.

(1) Enactment by the U.S. Congress of H.J. Res. 175 authorizing the entry into force of the compact and its subsidiary agreements.

(2) Approval by U.S. Department of the Interior for the allotment of funds to Palau for the political education program and for the holding of the Seventh Referendum on the Compact of Free Association.

(3) United States to request the UN Trusteeship Council to dispatch a Visiting Mission to observe the 7th Referendum on the compact.

B. Actions to be taken by Palau Government relative to the approval of the compact.

(1) Enactment by the OEK of an enabling legislation to set the date of the referendum sometime in July, 1989 and to provide for for an impartial and fair political education program on the compact and its subsidiary agreements.

(2) Carrying out a political education program on the compact and its subsidiary agreements and on H.J. Res. 175 and its subsidiary agreement. (See Exhibits 12 and 13.)

(3) Holding of a clean and properly conducted Referendum on the compact and its subsidary agreements.

(4) Creation of the Transition Committee to provide for smooth transition, in the event the compact is approved.

(5) Identification of plans, reports, and studies required to be prepared including the formulation of the Palau National Development Plan pursuant to the compact and its subsidiary agreements and pursuant to H.J. Res. 175 and its subsidiary agreements and assigning these tasks to the committee on transition so as to ensure their completion within the time frame specified.

(6) Public Political Education Committee on the Compact.

CONCLUSIONS

The greatest involvement of the people of Palau in the status question will come in a referendum in which the Palauan voters accept or reject the compact. The outcome of such a referendum will determine the future relations between the United States and Palau after the Trusteeship system governing Palau comes to an end. The future well-being of this generation of Palauan people requires that a firm and strong consensus be established on the matter of status. Conducting plebiscites and referenda involving political status issues inevitably create social conflict, divert much energies, time, and public funds that could otherwise be expended for more constructive ends. Thus, if the majority of the Palau voters should reject the compact in any referendum to be held, the Commission strongly recommends that such a referendum be the last one held on the 1986 compact and its subsidiaries. At least, the present Administration should not even consider holding any more referendum on the same compact during its term.

E. *Improvements to the Compact Resulting from the Subsidiary Agreement.*

Inasmuch as the mandate of the Commission is to improve the terms of any future relationship between the United States and Palau when the Trusteeship system governing Palau terminates, the Commission has decided to give in this part of the Report an overview of the improvements in the compact resulting from the Subsidiary Agreement. The list that follows does not itemize every improvement in the implementing legislation and the Subsidiary Agreement, but is designed rather to highlight the most significant changes from the compact as negotiated.

*1. Use of Land in Palau for Defense Purposes*

*Compact as Negotiated.* Under the compact as negotiated (together with separate subsidiary agreements), the United States was entitled to designate a site at Malakal Harbor, at Airai Airfield including equivalent site in Angaur, a site for non-exclusive use in Melekeok State, and any other land in Palau for defense purposes and was not obligated to pay compensation to Palau for the land designated. Upon notice by the U.S. of designation, Palau has 60 days to provide such lands. The financial benefits in Title Two of the Compact, including an impact payment of $5.5 million, were regarded as full compensation for any land that might be taken. There was no specific recognition by the U.S. of Palau's obligation under its Constitution to provide just compensation to holders of private land by the government.

Implementing Legislation and Subsidiary Agreements. Except for two specific sites, Palau has no obligation to provide private land to the United States for defense sites unless the United States has first agreed to provide compensation for the land to be used. If there is a dispute on compensation, Palau is still not obligated to act until the dispute is resolved. The sites where the United States can designate land without a prior agreement are at Airai Airfield—exclusive use of an aircraft parking area and joint use of the airfield—and in Malakl Harbor—exclusive use of a wharf in a designated area if one is ever built by the United States and joint use of the anchorage area. In effect, the United States has reduced its defense sites to two specific areas and has agreed that it must first execute separate agreements with Palau as to any other sites. The United States also specifically recognizes the constitutional obligations of the government of Palau to provide just compensation for the use of private lands.

(While H.J.Res. 597 as introduced and passed by the House in 1988 recognized Palau's obligation to compensate for the use of private lands and provided for an agreement as to compensation from the United States, these provisions did not state that Palau did not have to provide land without an agreement, nor did they limit United States defense sites to two specific locations.)

*2. Settlement of IPSECO Debt*

Compact as Negotiated. The Compact as negotiated does not specifically address the IPSECO debt. It does, however, leave the financial benefits under the Compact vulnerable to attachment by the creditors should they prevail in the pending lawsuit. The Compact leaves the litigation pending, with a judgment against Palau now estimated at approximately $50 million.

Implementing Legislation and Subsidiary Agreement. The Subsidiary Agreement and H.J.Res. 175 provide that, if there is a settlement with the creditors, $28 million in energy funds payable over 14 years under Section 211(b) of the Compact will be accelerated into the first year, without discount, and made available with related inflation adjustment to pay the settlement. In return for this non-discounted acceleration, H.J.Res. 175 provides that Palau will pay the United States at the end of 15 years for the net economic cost of the nondiscounted acceleration of energy funds. The United States estimated this amount to be between $7 and $8 million, but the Subsidiary Agreement provides for payment of $3 million in ten years as full payment of net economic cost.

The Subsidiary Agreement also provides that Palau can meet out-island energy needs from any funds, rather than just Section 211(b) funds, provided at least $7 million is dedicated for this purpose prior to the 15th year of the Compact. It further provides that Palau may request further assistance from the United States with respect to electric power generation, including applicable grants and loans.

*3. Medical Referral Debts*

Compact as Negotiated. No provision.

Implementing Legislation and Subsidiary Agreement. The United States will act to settle all outstanding medical referral debts so long as those referrals are documented. Moreover, the United States agrees to cancel all debts arising out of referrals to the United States military hospitals.

*4. Central Health Care Facility*

Compact as Negotiated. No provision.

Implementing Legislation and Subsidiary Agreement. The Subsidiary Agreement commits the United States to support the provision of at least $5 million, and perhaps more, in fiscal year 1990 or fiscal year 1991 to Palau for construction of its central health facility. Palau must devote at least 5 million over the next fifteen (15) years to the hospital, including operations and maintenance, instead of matching any United States funding as was provided in H.J.Res. 597 as introduced and passed in the House in 1988.

*5. National Prison Facility*

Compact as Negotiated. No provision.

Implementing Legislation and Subsidiary Agreement. The Subsidiary Agreement commits the United States to support the provi-

sion of $800,000 during fiscal year 1990 or fiscal year 1991, for improvement of the Palau national prison facility.

*6. Deficiencies in Capital Infrastructure Projects*

Compact as Negotiated. No provision. Deficiencies in previous CIP projects are not acknowledged.

Implementing Legislation and Subsidiary Agreement. The United States and Palau agree to continue to cooperate to correct infrastructure deficiencies under the program sponsored by the United States through the Department of the Interior and the Army Corps of Engineers and to cooperate in seeking legal redress from negligent contractors, while repairing infrastructure in need of immediate repair.

*7. Anti-Drug Program*

Compact as Negotiated. No vision.

Implementing Legislation and Subsidiary Agreement. The Subsidiary Agreement commits the United States to support the provision of $400,000 annually to Palau during fiscal years 1991 through 1995 for an anti-drug program which can include a rehabilitation center if desired. The United States acknowledges that it is in its interest as well as Palau's that such a program be instituted. United States law enforcement officials in Palau are required to comply with the laws of Palau. Further requests for assistance are to be viewed sympathetically by the United States.

*8. Special Prosecutor and Public Auditor*

Compact as Negotiated. No provision.

Implementing Legislation and Subsidiary Agreement. The Subsidiary Agreement commits the United States to support the provision of $300,000 annually to Palau and to provide one staff person for each office during the first five years after implementation of the Compact for the offices of special prosecutor and public auditor.

Palau must fund the offices at $100,000 annually each for the five-year period, but the penalties for Palau's failure to maintain these offices that would have been provided by H.J.Res. 597 as passed by the House in 1988 are reduced and made applicable only if the United States provides financial assistance as stated above.

*9. Continuation of Federal Programs*

Compact as Negotiated. Apart from certain federal programs for which the Compact explicitly states that Palau will remain eligible, existing federal programs will be phased out over a three-year period.

Implementing Legislation and Subsidiary Agreement. The United States and Palau will enter into an agreement (during the first year of the Compact) to determine which federal programs in addition to those specifically continued by operation of the Compact will be continued, to ensure that Palau does not suffer anticipated adverse economic consequences as a result of the phasing out of federal programs and in spite of the assistance under Title Two of the Compact.

*10. Miscellaneous Provisions*

Compact as Negotiated. None of the following issues are treated.

Implementing Legislation and Subsidiary Agreement. The Subsidiary Agreement provides:

The Government of Palau retains exclusive authority to grant or deny landing rights in Palau to civil air carriers, except for rights held by United States air carriers as provided in The Federal Programs and Services Agreement concluded pursuant to the Compact.

The United States and Palau will discuss agreements to ensure that Palau does not receive less favorable tariff treatment than Caribbean Basin Initiative countries with respect to textile and apparel items and other exports.

The United States will sympathetically consider requests from Palau for assistance to complete land surveying in Palau.

The United States and Palau confirm that the separate Agreement Regarding the Jurisdiction and Sovereignty of the Republic of Palau over its Territory and the Living and Non-Living Resources of the Sea preserves Palau's rights under international law as to its continental shelf and as to its declaration of an exclusive economic zone.

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REQUIREMENTS OF THE COMPROMISE ON H.J. RES. 597

(In addition to requirements specified in the Senate amendment)

The Compact will be implemented when (a) it is approved by the percentage of votes in Palau required by Palau's constitution *and* (b) the President has negotiated agreements with Palau in consultation with the Congress that will provide for required assistance for law enforcement, Palau's special prosecutor and public auditor, medical and prison facilities, and a referendum on the Compact.

The President will negotiate an agreement which will commit the U.S. to provide Palau in FY 90 with the amount up to $5 million matched by Palau for improvement of medical facilities to be spent according to a plan approved by the Secretary of the Interior in consultation with the Secretary of Health and Human Services.

The President will negotiate an agreement which will commit the U.S. to settle the outstanding debts of Palau, the Federated States of Micronesia, and the Marshall Islands to U.S. medical institutions incurred during the trusteeship.

The U.S. will recognize that Palau is required to provide fair payment for private land the U.S. might require Palau to provide for military purposes under the Compact.

The President will enter into agreements regarding financial assistance for this purpose based on fair value if Palau determines it needs such assistance.

The U.S. will recognize that the President may extend the 60 days Palau has to make land available to the U.S. if an extension is needed to acquire privately held land.

The President will negotiate an agreement which will commit the U.S. to assist Palau in enforcing narcotics and other laws and in preventing and treating narcotics and other substance abuse.

The agreement will specifically describe the assistance to be provided for law enforcement.

It will also commit the U.S. to provide Palau with $400,000 annually in years two through six of the Compact for these purposes.

Finally, it will provide that Palau authorizes U.S. law enforcement officers to investigate U.S. laws applying in Palau in cooperation with Palauan officials.

The President will negotiate an agreement with Palau in consultation with the Congress which will commit the U.S. to provide Palau with $800,000 for prison facilities.

The President will negotiate an agreement which will provide that the U.S. will assist Palau in implementing its special prosecutor and public auditor laws.

The agreement will provide that Palau will spend not less than $100,000 annually for each of the offices in years one through five of the Compact.

It will also commit the U.S. to providing nonreimbursable technical assistance to the two offices, including an attorney or investigator and an auditor or accountant, in years one through five of the Compact at the request of the government of Palau or the Prosecutor or auditor.

Additionally, it will commit the U.S. to provide Palau with $300,000 annually in years one through five of the Compact for the offices.

If Palau does not maintain the offices, the President will take the matter up under the conference and dispute resolution procedures of the Compact. If Palau does not comply with an arbitration decision under these procedures within 180 days, the President will either withhold assistance to Palau or suspend the guarantee of assistance the Compact would provide Palau.

The President will consult with the Congress in negotiating the required agreement on implementation of U.S. audit recommendations. The agreement will provide that the Secretary of the Interior will assist Palau in implementing such recommendations.

The President will negotiate an agreement which will provide that Palau will provide information describing private sector projects to be financed with Compact assistance and outlining how current Palauan national and state capital project debts will be paid.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I rise in support of this legislation authorizing the implementation of the Palau Compact of Free Association once the compact is approved consistent with the constitution of Palau. It has taken two decades to develop a new relationship with the United States and Palau, in part because of the complex self-determination process with these linguistic and culturally diverse peoples of Micronesia scattered across thousands of miles of ocean. During the process, the United States placed great value on the practice of democratic principles by the Palauans in the development of self-government.

In 1979, the people of Palau developed a constitution which was not well-received by many segments of the United States Government. Serious reservations were maintained regarding certain antinuclear provisions which were perceived to infringe upon the strategic interests of the United States.

I asked the new Reagan-Bush administration to review United States policy regarding the evolving relations with the Micronesian islands. After an extensive review, the Reagan administration determined that the concept of free association reflected a dignified relationship and that the expressed wishes of the people of Micronesia, including Palau, should be respected as well as the strategic interests of the United States. Since then, the Palau

constitution has remained the principal pillar of law in the islands.

During the 1980's, an extensive effort was made to formulate a United States-Palau relationship which respected the constitutional provisions of Palau prohibiting the use, testing, or storing of nuclear weapons. Several conscientious attempts were made by United States and Palau negotiators to change the compact language to eliminate any constitutional conflict. The people voted six times to approve the compact in margins from 60 percent to 72 percent.

During the last attempt by the Palauans to approve the compact, a constitutional amendment was authorized by the Palau Congress to permit the compact to be implemented with a simple majority vote. Unfortunately, after the compact was approved by the people, the Palau court ruled that the process by which the Palau Legislature voted to amend the constitution was flawed. Therefore, the majority approval of the compact was negated. Although we now seek to authorize the President to implement the compact it rests with the people of Palau to freely approve the compact.

The new free association relationship has been clearly defined in the law approving the Palau Compact of Free Association, Public Law 99-658. As a freely associated state, Palau will be responsible for its own affairs of state and will not be under the sovereignty of the United States like the United States-flag territories of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. Palau will issue Palauan passports as the people will have Palau citizenship, not United States citizenship. The United States will have the responsibility of defending Palau and the strategic guarantee that Palau will not be used militarily by any other country.

The Compact of Free Association has been negotiated and developed to be in the mutual best interest of both the United States and Palau. Although Palau will benefit from several Federal programs, technical assistance and grants, it will not be nor should it be anywhere near the level of assistance to United States territories. Palau has opted not to yield sovereignty to the United States nor to acquire United States citizenship and rights, benefits, and responsibilities. Lower assistance levels are warranted and justified. Likewise, the treatment of U.S. citizens in the U.S.-flag territories who are seeking to redefine their relationship with the United States will be based on the degree of closeness sought and commensurate with the level of participation and commitment. Therefore, the amount of assistance extended to Palau is consistent with that due to the people of a state in free association with the United States.

Many people have been involved over the years in the negotiations and development of the Palau compact. Perhaps no Palauan put more effort and contributed as much to the process than the late President of Palau, Lazarus Salii. He was the primary negotiator for Palau for nearly 20 years. He was elected by the people of Palau with the pledge that he would obtain an authorization from the Congress to implement the Compact of Free Association. It is most unfortunate that the level of frustration in obtaining that authorization was pushed to a point which breached emotional tolerance. President Salii's efforts and contributions are evident throughout the compact. A small consolation, but a statement in itself, was the election of a Salii supporter as the next President of Palau.

While there are numerous other individuals who have been involved with the compact over the years, three individuals from the executive branch stand out head and shoulders above all else as the ones who were personally responsible for successfully concluding the compact with Palau. I am referring to the President's personal representative to the Micronesian status negotiations, Ambassador Fred M. Zeder II, who was appointed by then President Reagan to conclude the elusive agreements. With the loyal and competent assistance of James Berg, subsequently the Director of the Office of Freely Associated State Affairs, and Lt. Comdr. Howard L. Hills, counsel, the Ambassador succeeded in securing negotiated compacts of free association with the Marshall Islands, the Federated States of Micronesia and Palau. The Congress approved all three and all but Palau have been implemented.

I firmly believe that without the dedicated and tenacious efforts of Ambassador Zeder, Jim Berg, and Howard Hills, we would not have the precedent of free association relationships today. Their extraordinary talents have been recognized by President Bush, who has tapped their skills and expertise in other important matters affecting the international interests of the United States in places such as Poland and Hungary.

I want to thank my colleagues who endeavored to work closely and in a bipartisan manner on this complex legislation, including BENNETT JOHNSTON and JAMES MCCLURE on the Senate side. RON DE LUGO has invested an incredible amount of time in the development of the implementing legislation. I want to particularly acknowledge the strong leadership of my good colleague from Iowa, JIM LEACH, who worked with the administration, the House and Senate on the last night of the 100th Congress to develop solutions to the impasse to the Palau legislation. The compromise arrangement was not carried out and no legislation enacted although there seemed to be ample time to take action before the House rose. However, the work of that evening provided the basis for the legislation introduced this Congress and the resolution before the House today.

I also want to commend STEVE SOLARZ, DANTE FASCELL, BILL BROOMFIELD, and BEN BLAZ for their continuous interest, involvement and support of the Palau Compact of Free Association.

Mr. Speaker, further reserving the right to object, I yield further to the gentleman from the Virgin Islands.

Mr. DE LUGO. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I want to say that no one has worked harder than the gentleman from California, and it is a pleasure to have worked with him on this, and perhaps some more babies will be named after the gentleman from California to recognize this success. I join with him in commending not only all of the other Members of Congress that he named, but also the staff who worked so hard.

Mr. BROOMFIELD. Mr. Speaker, House Joint Resolution 175 is an historic resolution that brings us close to the end of an era, an era of 42 years during which the United States administered several islands in the Pacific as trust territories for the United Nations, and helped prepare the people of these islands for independence. We have met our trust commitments for the Marshall Islands and for Micronesia, and soon we will have fulfilled our obligations regarding Palau, the last of our trust territories.

Over several years, a great deal of energy and emotion has been invested in both Palau and the United States in the attempt to implement the Compact of Free Association. In five referenda, the Palauans voted by large majorities to approve the compact, but unfortunately it was never quite the 75 percent required by the Constitution. As part of the voting, we witnessed a great deal of controversy and turmoil and possibly even death in Palau. However, due to the efforts of our colleagues in the House and the Senate—Congressmen SOLARZ and LEACH of the Foreign Affairs Subcommittee on Asian and Pacific Affairs, Congressmen DE LUGO and LAGOMARSINO of the Interior Committee's Subcommittee on Insular and International Affairs, and Senators JOHNSTON and MCCLURE—and with the cooperation of the administration, we have been able to come to agreements on several programs and initiatives that speak to the many concerns of the Palauans as they approach independence.

The administration should pay particular attention to the approval process in Palau because the Senate has amended the procedures for bringing the compact into force. Care should be used to determine that the process is free of substantive legal challenges to ensure integrity of an approval in the referendum.

Mr. Speaker, House Joint Resolution 175, the compact itself, and the agreements between the United States and Palau that were signed earlier this spring form a solid basis for a relationship that meets the needs of both the United States and Palau. I urge my colleagues to approve this resolution, and I encourage the Palauans to approve the compact in their coming referendum.

Mr. LAGOMARSINO. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Arizona?

There was no objection.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. DE LUGO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on House Joint Resolution 175, the joint resolution just considered.

The SPEAKER. Is there objection to the request of the gentleman from the Virgin Islands?

There was no objection.

## COMMITTEE TO NOTIFY THE PRESIDENT

Mr. GEPHARDT. Mr. Speaker, I offer a privileged resolution (H. Res. 301) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 301

*Resolved,* That a committee of two Members be appointed by the House to join a similar committee appointed by the Senate, to wait upon the President of the United States and inform him that the two Houses have completed their business of the session and are ready to adjourn, unless the President has some other communication to make to them.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. MAZZOLI). The Chair appoints as Members on the part of the House of the committee to notify the President the gentleman from Missouri [Mr. GEPHARDT], the majority leader, and the gentleman from Illinois [Mr. MICHEL], the minority leader.

## PROVIDING FOR SINE DIE ADJOURNMENT OF THE FIRST SESSION OF THE 101ST CONGRESS ON WEDNESDAY, NOVEMBER 22, 1989

Mr. GEPHARDT. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 239) and ask for its immediate consideration, and I ask unanimous consent that I be permitted to address the House for 1 minute on the resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 239

*Resolved by the House of Representatives (the Senate concurring),* That when the House and Senate adjourn on Wednesday, November 22, 1989, they stand adjourned sine die, or until 12 o'clock meridian on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

SEC. 3. The Congress declares—

(1) that clause 5 of rule III of the Rules of the House of Representatives, adopted for the One Hundred First Congress in House Resolution 5 on January 3, 1989, authorizes the Clerk of the House of Representatives to receive messages from the President during periods when the House of Representatives is not in session;

(2) that the House of Representatives intends by such rule to preserve until its adjournment sine die from the final session of the One Hundred First Congress the constitutional prerogative of the House to reconsider vetoed measures in light of the objections of the President;

(3) that the order of the Senate of January 3, 1989, effective for the duration of the One Hundred First Congress, authorizes the Secretary of the Senate to receive messages from the President during periods when the Senate is not in session; and

(4) that the Senate intends by such order to preserve until its adjournment sine die from the final session of the One Hundred First Congress the constitutional prerogative of the Senate to reconsider vetoed measures in light of the objections of the President.

SEC. 4. The Congress reaffirms its intent that the availability of the Clerk of the House of Representatives to receive messages from the President during periods when the House is not in session and the availability of the Secretary of the Senate to receive messages from the President during periods when the Senate is not in session ensure that the adjournment of either House pursuant to this concurrent resolution shall not prevent the return by the President of any bill presented to him for approval.

SEC. 5. The Clerk of the House of Representatives shall inform the President of the United States of the adoption of this resolution.

Mr. WALKER. Mr. Speaker, reserving the right to object, there is a question on our side as to whether or not this would interfere with the President's constitutional prerogatives to pocket-veto bills. As I understand it, this is a concurrent resolution which would have no impact on the President's constitutional prerogative to do that if he so chose? Is that correct?

Mr. GEPHARDT. Mr. Speaker, if the gentleman will yield, as I understand it, this resolution would inform the President that the Clerk of the House and the Secretary of the Senate are available under their rules to receive messages from the President during the adjournment. It makes it clear that this adjournment will not prevent the return of any bill and reserves the constitutional prerogative to reconsider vetoed measures in light of the President's objections.

Mr. WALKER. But if the President chooses to pocket-veto a bill rather than send a veto message up even though we have clerks in place, it is my understanding that the President would still be permitted to do that under this resolution since it is a concurrent resolution? Is that correct?

Mr. GEPHARDT. If the gentleman will yield further, the President can exercise his constitutional prerogative. This resolution simply expresses the sentiment of the House and Senate as to the appropriate congressional prerogatives.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection, and I thank the majority leader.

□ 1340

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the concurrent resolution.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

## PROVIDING FOR CONVENING OF SECOND SESSION OF 101ST CONGRESS AND FOR TRANSMISSION BY THE PRESIDENT OF THE UNITED STATES BUDGET FOR FISCAL YEAR 1991

Mr. GEPHARDT. Mr. Speaker, I offer a joint resolution (H.J. Res. 449), providing for convening of the second session of the 101st Congress, and for transmission by the President of the United States of the budget for fiscal year 1991, and I ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the joint resolution.

The Clerk read the joint resolution, as follows:

H.J. RES. 449

*Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled,* That the second regular session of the One Hundred First Congress shall begin at 12 o'clock meridian on Tuesday, January 23, 1990.

SEC. 2. Prior to the convening of the second regular session of the One Hundred First Congress on January 23, 1990, as provided in section 1 of this resolution, Congress shall reassemble at 12 o'clock meridian on the second day after its Members are notified in accordance with section 3 of this resolution.

SEC. 3. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority

Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

SEC. 4. Notwithstanding the provisions of section 1105 of title 31, United States Code, the President shall transmit to the Congress not later than January 22, 1990, the Budget for fiscal year 1991.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. WALKER. Mr. Speaker, reserving the right to object, just to clarify what we are doing, as I understand it, this is to allow the President to submit the budget on January 22, essentially?

Mr. GEPHARDT. Mr. Speaker, if the gentleman will yield, that is correct.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

## REPORT OF COMMITTEE TO INFORM THE PRESIDENT

The SPEAKER pro tempore. Does the gentleman from Missouri [Mr. GEPHARDT] seek recognition?

Mr. GEPHARDT. Mr. Speaker, your committee appointed to join a committee of the Senate to inform the President that the Congress is ready to adjourn, and to ask him if he has any further communications to make to the Congress, has performed that duty. The President has directed us to say that he has no further communications to make to the Congress.

The SPEAKER pro tempore. The Chair would ask if the gentleman from Illinois [Mr. MICHEL] the minority leader, wishes to address himself to this matter?

Mr. MICHEL. I only want to make the quick observation, Mr. Speaker, that while we were visiting with the President on what we should not be doing for the balance of this session, the President wanted to be sure to wish every Member of the House of Representatives a very Happy Thanksgiving and an enjoyable recess. He is hoping that when we come back in January we will be ready to do business, and we assured him that we surely would.

The SPEAKER pro tempore. The Chair would suggest that it is kind of the President, and we appreciate it. I am sure we all share those wishes for one another.

## AUTHORIZING THE SPEAKER TO ACCEPT RESIGNATIONS AND APPOINT COMMISSIONS, BOARDS, AND COMMITTEES NOTWITHSTANDING SINE DIE ADJOURNMENT

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that notwithstanding the sine die adjournment of the first session of the 101st Congress, the Speaker be authorized to accept resignations, and to appoint commissions, boards, and committees authorized by law or by the House, and that the minority leader be authorized to accept resignations and to make appointments authorized by law or by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

## GRANTING MEMBERS OF THE HOUSE THE PRIVILEGE TO EXTEND AND REVISE THEIR REMARKS IN CONGRESSIONAL RECORD UNTIL LAST EDITION IS PUBLISHED

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that all Members of the House shall have the privilege, until the last edition authorized by the Joint Committee on Printing is published, to extend and revise their own remarks in the CONGRESSIONAL RECORD on more than one subject, if they so desire, and may also include therein such short quotations as may be necessary to explain or complete such extensions of remarks. But this order shall not apply to any subject matter which may have occurred, or to any speech delivered subsequent to the adjournment of Congress.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

## AUTHORIZING THE CHAIRMAN AND RANKING MINORITY MEMBER OF EACH STANDING COMMITTEE AND SUBCOMMITTEE TO EXTEND REMARKS IN RECORD

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that the chairman and ranking minority member of each standing committee and each subcommittee be permitted to extend their remarks in the RECORD, up to and including the RECORD's last publication, and to include a summary of the work of that committee or subcommittee.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

## AUTHORIZING THE SPEAKER TO DECLARE RECESSES DURING THE REMAINDER OF THE SESSION

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that at any time during the remainder of this session it may be in order for the Speaker to declare recesses, subject to the call of the Chair.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

## EVERGLADES NATIONAL PARK PROTECTION AND EXPANSION ACT OF 1989

Mr. VENTO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1727) to modify the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Everglades National Park Protection and Expansion Act of 1989".

### TITLE I—EVERGLADES NATIONAL PARK EXPANSION

SEC. 101. FINDINGS, PURPOSES AND DEFINITION OF TERMS.

(a) FINDINGS.—The Congress makes the following findings:

(1) The Everglades National Park is a nationally and internationally significant resource and the park has been adversely affected and continues to be adversely affected by external factors which have altered the ecosystem, including the natural hydrologic conditions within the park.

(2) The existing boundary of Everglades National Park excludes the contiguous lands and waters of the Northeast Shark River Slough that are vital to longterm protection of the park and restoration of natural hydrologic conditions within the park.

(3) Wildlife resources and their associated habitats have been adversely impacted by the alteration of natural hydrologic conditions within the park, which has contributed to an overall decline in fishery resources and a 90 percent population loss of wading birds.

(4) Incorporation of the Northeast Shark River Slough and the East Everglades within the park will limit further losses suffered by the park due to habitat destruction outside the present park boundaries and will preserve valuable ecological resources for use and enjoyment by future generations.

(5) The State of Florida and certain of its political subdivisions or agencies have indicated a willingness to transfer approximately 35,000 acres of lands under their jurisdiction to the park in order to protect lands and water within the park, and may so transfer additional lands in the future.

(6) The State of Florida has proposed a joint Federal-State effort to protect Everglades National Park through the acquisition of additional lands.

(b) PURPOSE.—The purposes of this Act are to—

(1) increase the level of protection of the outstanding natural values of Everglades National Park and to enhance and restore the ecological values, natural hydrologic conditions, and public environment of such area by adding the area commonly known as the Northeast Shark River Slough and the East Everglades to Everglades National Park; and

(2) assure that the park is managed in order to maintain the natural abundance, divesity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem.

*(c)* DEFINITIONS.—As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "addition" means the approximately 107,600 acre area of the East Everglades area authorized to be added to Everglade National Park by this Act.

(3) The term "park" means the area encompassing the existing boundary of Everglades National Park and the addition area described in paragraph (2).

(4) The term "project" means the Central and Southern Florida Project.

SEC. 102. BOUNDARY MODIFICATION.

(a) AREA INCLUDED.—The park boundary is hereby modified to include approximately 107,600 acres as generally depicted on the map entitled "Boundary Map, Everglades National Park Addition, Dade County, Florida", numbered 160-20,013B and dated September 1989. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(b) BOUNDARY ADJUSTMENT.—The Secretary may from time to time make minor revisions in the boundaries of the park in accordance with section 7(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 and following). In exercising the boundary adjustment authority the Secretary shall ensure all actions will enhance resource preservation and shall not result in a net loss of acreage from the park.

(c) ACQUISITION.—Within the boundaries of the addition described in subsection (a), the Secretary may acquire lands and interests in land by donation, purchase with donated or appropriated funds, or exchange. For purposes of acquiring property by exchange, the Secretary may, notwithstanding any other provision of law, exchange the approximately one acre of Federal land known as "Gilberts' Marina" for non-Federal land of equal value located within the boundaries of the addition. Any lands or interests in land which are owned by the State of Florida or any political subdivision thereof, may be acquired only by donation.

(2) It is the express intent of Congress that acquisition within the boundaries of the addition shall be completed not later than 5 years after the date of enactment of this section. The authority provided by this section shall remain in effect until all acquisition is completed.

(d) ACQUISITION OF TRACTS PARTIALLY OUTSIDE BOUNDARIES.—When any tract of land is only partly within boundaries referred to in subsection (a), the Secretary may acquire all or any portion of the land outside of such boundaries in order to minimize the payment of severance costs. Land so acquired outside of the boundaries may be exchanged by the Secretary for non-Federal lands within the boundaries, and any land so acquired and not utilized for exchange shall be reported to the General Services Administration for disposal under the Federal Property and Administrative Services Act of 1949 (63 Stat. 377).

(e) OFFERS TO SELL.—In exercising the authority to acquire property under this Act, the Secretary shall give prompt and careful consideration to any offer made by any person owning property within the boundaries of the addition to sell such property, if such owner notifies the Secretary that the continued ownership of such property is causing, or would result in undue hardship.

(f) AUTHORIZATION OF APPROPRIATIONS.—(1) Subject to the provisions of paragraph (2), there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(2) With respect to land acquisition within the addition, not more than 80 percent of the cost of such acquisition may be provided by the Federal Government. Not less than 20 percent of such cost shall be provided by the State of Florida.

(g) ASSISTANCE.—Upon the request of the Governor of the State of Florida, the Secretary is authorized to provide technical assistance and personnel to assist in the acquisition of lands and waters within the Kissimmee River/Lake Okeechobee/Everglades Hydrologic Basin, including the Big Cypress Swamp, through the provision of Federal land acquisition personnel, practices, and procedures. The State of Florida shall reimburse the Secretary for such assistance in such amounts and at such time as agreed upon by the Secretary and the State. Notwithstanding any other provision of law, reimbursement received by the Secretary for such assistance shall be retained by the Secretary and shall be available without further appropriation for purposes of carrying out any authorized activity of the Secretary within the boundaries of the park.

SEC. 103. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the areas within the addition in accordance with this Act and other provisions of law applicable to the Everglades National Park, and with the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4). In order to further preserve and protect Everglades National Park, the Secretary shall utilize such other statutory authority as may be available to him for the preservation of wildlife and natural resources as he deems necessary to carry out the purposes of this Act.

(b) PROTECTION OF ECOSYSTEM.—The Secretary shall manage the park in order to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem.

(c) PROTECTION OF FLORA AND FAUNA.—The park shall be closed to the operation of airboats—

(1) except as provided in subsection (d); and

(2) except that within a limited capacity and on designated routes within the addition, owners of record of registered airboats in use within the addition as of January 1, 1989, shall be issued nontransferable, nonrenewable permits, for their individual lifetimes, to operate personally-owned airboats for noncommercial use in accordance with rules prescribed by the Secretary to determine ownership and registration, establish uses, permit conditions, and penalties, and to protect the biological resources of the area.

(d) CONCESSION CONTRACTS.—The Secretary is authorized to negotiate and enter into concession contracts with the owners of commercial airboat and tour facilities in existence on or before January 1, 1989, located within the addition for the provision of such services at their current locations under such rules and conditions as he may deem necessary for the accommodation of visitors and protection of biological resources of the area.

(e) VISITOR CENTER.—The Secretary is authorized and directed to expedite the construction of the visitor center facility at Everglades City, Florida, as described in the Development Concept Plan, Gulf Coast, dated February 1989, and upon construction shall designate the visitor center facility as "The Majory Stoneman Douglas Center" in commemoration of the vision and leadership shown by Mrs. Douglas in the protection of the Everglades and Everglades National Park.

SEC. 104. MODIFICATION OF CERTAIN WATER PROJECTS.

(a) IMPROVED WATER DELIVERIES.—(1) Upon completion of a final report by the Chief of the Army Corps of Engineers, the Secretary of the Army, in consultation with the Secretary, is authorized and directed to construct modifications to the Central and Southern Florida Project to improve water deliveries into the park and shall, to the extent practicable, take steps to restore the natural hydrological conditions within the park.

(2) Such modifications shall be based upon the findings of the Secretary's experimental program authorized in section 1302 of the 1984 Supplemental Appropriations Act (97 Stat. 1292) and generally as set forth in a General Design Memorandum to be prepared by the Jacksonville District entitled "Modified Water Deliveries to Everglades National Park". The Draft of such Memorandum and the Final Memorandum, as prepared by the Jacksonville District, shall be submitted as promptly as practicable to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation of the United States House of Representatives.

(3) Construction of project modifications authorized in this subsection and flood protection systems authorized in subsections (c) and (d) are justified by the environmental benefits to be derived by the Everglades ecosystem in general and by the park in particular and shall not require further economic justification.

(4) Nothing in this section shall be construed to limit the operation of project facilities to achieve their design objectives as set forth in the Congressional authorization and any modifications thereof.

(b) DETERMINATION OF ADVERSE EFFECT.—(1) Upon completion of the Final Memorandum referred to in subsection (a), the Secretary of the Army, in consultation with the South Florida Water Management District, shall make a determination as to whether the residential area within the East Everglades known as the "Eight and One-Half Square Mile Area" or adjacent agricultural areas, all as generally depicted on the map

referred to in subsection 102(a), will be adversely affected by project modifications authorized in subsection (a).

(2) In determining whether adjacent agricultural areas will be adversely affected, the Secretary of the Army shall consider the impact of any flood protection system proposed to be implemented pursuant to subsection (c) on such agricultural areas.

(c) FLOOD PROTECTION; EIGHT AND ONE-HALF SQUARE MILE AREA.—If the Secretary of the Army makes a determination pursuant to subsection (b) that the "Eight and One-Half Square Mile Area" will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for that portion of presently developed land within such area.

(d) FLOOD PROTECTION; ADJACENT AGRICULTURAL AREA.—(1) If the Secretary of the Army determines pursuant to subsection (b) that an adjacent agricultural area will be adversely affected, The Secretary of the Army is authorized and directed to construct a flood protection system for such area. Such determination shall be based on a finding by the Secretary of the Army that:

(A) the adverse effect will be attributable solely to a project modification authorized in subsection (a) or to a flood protection system implemented pursuant to subsection (c), or both; and

(B) such modification or flood protection system will result in a substantial reduction in the economic utility of such area based on its present agricultural use.

(2) No project modification authorized in subsection (a) which the Secretary of the Army determines will cause an adverse effect pursuant to subsection (b) shall be made operational until the Secretary of the Army has implemented measures to prevent such adverse effect on the adjacent agricultural area: *Provided,* That the Secretary of the Army or the South Florida Water Management District may operate the modification to the extent that the Secretary of the Army determines that such operation will not adversely affect the adjacent agricultural area: *Provided further,* That any preventive measure shall be implemented in a manner that presents the least prospect of harm to the natural resources of the park.

(3) Any flood protection system implemented by the Secretary of the Army pursuant to this subsection shall be required only to provide for flood protection for present agricultural uses within such adjacent agricultural area.

(4) The acquisition of land authorized in section 102 shall not be considered a project modification.

(e) PERIODIC REVIEW.—(1) Not later than 18 months after the completion of the project modifications authorized in subsection (a), and periodically thereafter, the Secretary of the Army shall review the determination of adverse effect for adjacent agricultural areas.

(2) In conducting such review, the Secretary of the Army shall consult with all affected parties, including, but not limited to, the Secretary, the South Florida Water Management District and agricultural users within adjacent agricultural areas.

(3) If, on the basis of such review, the Secretary of the Army determines that an adjacent agricultural area has been, or will be adversely affected, the Secretary of the Army is authorized and directed, in accordance with the provisions of subsection (d), to construct a flood protection system for such area: *Provided,* That the provisions of subsection (d)(2) shall be applicable only to the extent that the Secretary, in consultation with the Secretary of the Army, determines that the park will not be adversely affected.

(4) The provisions of this subsection shall only be applicable if the Secretary of the Army has previously made a determination that such adjacent agricultural area will not be adversely affected.

(f) CURRENT CANAL OPERATING LEVELS.—Nothing in this section shall be construed to require or prohibit the Secretary of the Army or the South Florida Water Management District from maintaining the water level within any project canal below the maximum authorized operating level as of the date of enactment of this Act.

(g) NO LIMITATION ON OTHER CLAIMS.—If the Secretary of the Army makes a determination of no adverse effect pursuant to subsection (b), such determination shall not be considered as a limitation or prohibition against any available legal remedy which may otherwise be available.

(h) COORDINATION.—The Secretary and the Secretary of the Army shall coordinate the construction program authorized under this section and the land acquisition program authorized in section 102 in such a manner as will permit both to proceed concurrently and as will avoid unreasonable interference with property interest prior to the acquisition of such interests by the Secretary under section 102.

(i) WEST DADE WELLFIELD.—No Federal license, permit, approval, right-of-way or assistance shall be granted or issued with respect to the West Dade Wellfield (to be located in the Bird Drive Drainage Basin, as identified in the Comprehensive Development Master Plan for Dade County, Florida) until the Secretary, the Governor of the State of Florida, the South Florida Water Management District and Dade County, Florida enter into an agreement providing that the South Florida Water Management District's water use permit for the wellfield, if granted, must include the following limiting conditions: (1) the wellfield's peak pumpage rate shall not exceed 140,000,000 gallons per day; (2) the permit shall include reasonable, enforceable measures to limit demand on the wellfield in times of water shortage; and (3) if, during times of water shortage, the District fails to limit demand on the wellfield pursuant to (2), or if the District limits demand on the wellfield pursuant to (2), but the Secretary certifies that operation of the wellfield is still causing significant adverse impacts on the resources of the Park, the Governor shall require the South Florida Water Management District to take necessary actions to alleviate the adverse impact, including, but not limited to, temporary reductions in the pumpage from the wellfield.

(j) PROTECTION OF NATURAL VALUES.—The Secretary of the Army is directed in analysis, design and engineering associated with the development of a general design memorandum for works and operations in the "C-111 basin" area of the East Everglades, to take all measures which are feasible and consistent with the purposes of the project to protect natural values associated with Everglades National Park. Upon completion of a general design memorandum for the area, the Secretary shall prepare and transmit a report to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation of the United States House of Representatives on the status of the natural resources of the C-111 basin and functionally related lands.

TITLE II—FORT JEFFERSON NATIONAL MONUMENT REDESIGNATION STUDY

SEC. 201. FORT JEFFERSON NATIONAL MONUMENT REDESIGNATION STUDY.

The Secretary shall prepare and transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, not later than 2 years after the date of enactment of this Act, a feasibility and suitability study of expanding and redesignating Fort Jefferson National Monument in the Dry Tortugas as Fort Jefferson National Park. The study shall include cost estimates for any necessary acquisition, development, operation, and maintenance, as well as alternatives, including a joint Federal and State management scheme, to further protect the waters, reef tracts, fisheries, and shallow banks in and around the Florida Keys and Fort Jefferson National Monument.

Mr. VENTO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Minnesota?

Mr. GOSS. Mr. Speaker, reserving the right to object, I yield to the gentleman from Minnesota [Mr. VENTO], chairman of the subcommittee, for an explanation of the legislation.

Mr. VENTO. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, H.R. 1727, provides the Everglades National Park, one of the great national parks of this country, with sorely needed improved water deliveries, 107,000 acres of increased acreage and additional hydrological protection. Today, Everglades Park with its ecology based on the water that in past years has been greatly altered from its natural flows, is a severely threatened park. The House in response to this major threat passed H.R. 1727 on November 6. The Senate has now seen fit to amend the House bill.

The Senate amendments change the map reference to delete three agricultural parcels—some 155 acres—from the area to be added to the park. The Senate modified House language related to the conditions for provision of flood protection for certain agricultural areas. Given that the impetus for this legislation is to protect the Everglades National Park rather than for any other reason, any such measures that the Secretary of the Army might utilize to prevent adverse impacts on the agricultural areas must give highest protection to the natural resources of the park as TAE priority.

The Senate also made minor technical amendments for the operation of the West Dade Wellfield and directs the Secretary of the Interior to construct a visitor center at Everglades City, FL. The bill also directs the Secretary of the Interior and the Secretary of the Army to coordinate the Construction Program and the Land Acquisition Program so that they can proceed concurrently.

Mr. Speaker, section 104 of the bill directs the Secretary of the Army to improve water deliveries into the park and, "to the extent practicable," to take steps to restore the natural hydrological conditions within the park. It is my understanding of the phrase "to the extent practicable," means that highest priority will be given by the Army Corps of Engineers to the re-establishment of natural water flows within the capacity of the physical system constructed in accordance with this act.

Mr. Speaker, I endorse this legislation, and recommend that it should be passed by the House. By directing the restoration of natural water flows into Everglades National Park, H.R. 1727 will help restore the Everglades National Park so that it will be preserved for all of our children and their children.

Mr. Speaker, I thank the gentleman for yielding and giving me this opportunity to explain the bill.

Mr. GOSS. Mr. Speaker, reclaiming my time, and further reserving the right to object, I yield to my distinguished colleague, the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I would like to clarify the intent of the language in the amendment in section 104(e)(3) of the Senate bill.

As I understand it, the intent of this section, which states that the determination of adverse effect on adjacent agricultural areas will be attributable "solely" to a project modification authorized in subsection (a) or to a flood protection system implemented pursuant to subsection (c), or both, is a recognition of the fact that damage to crops or agricultural lands that might occur under current conditions, without this project, would not be considered an adverse effect.

However, any damage over and above what might occur had the project not been implemented is to be considered damage attributable solely to the project and, therefore, would entitle the property owners to flood protection or a modification of the water delivery schedules, to the degree that this would not adversely affect the Park.

Is that the understanding of the gentleman from Minnesota?

Mr. VENTO. Mr. Speaker, will the the gentleman from Florida yield?

Mr. GOSS. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, the gentleman is correct. That is my understanding of that section in discussions with the gentleman from New York [Mr. NOWAK], who of course has the principal responsibility.

Mr. DE LUGO. Mr. Speaker, will the gentleman yield?

Mr. GOSS. I yield to the gentleman from the Virgin Islands.

Mr. DE LUGO. Mr. Speaker, speaking on behalf of the Committee on Public Works and Transportation, the gentleman is correct.

Mr. FASCELL. If the gentleman from Florida will yield further, may I ask him if that is his understanding?

Mr. GOSS. That is duly noted. That is my understanding, and I thank the gentleman for his explanation.

Further reserving the right to object, Mr. Speaker, I yield briefly to my distinguished colleague, the gentleman from Pennsylvania [Mr. CLINGER].

Mr. CLINGER. Mr. Speaker, I rise today in support of H.R. 1727, the Everglades National Park Protection and Expansion Act of 1989.

I want to thank my colleagues on the Interior Committee who have labored to develop a comprehensive bill that is fully protective of an incomparable resource. I also want to thank the leadership of the Committee on Public Works and Transportation, Chairman ANDERSON; the ranking Republican member, JOHN PAUL HAMMERSCHMIDT; the chairman of the Subcommittee on Water Resources, HENRY NOWAK; and the ranking Republican member, ARLAN STANGELAND, for working toward an approach that is balanced and is fair to those who fear unintended adverse consequences from a very complicated project.

All of us want to protect the Everglades, a truly remarkable national treasure. This bill would accomplish that through acquisition of an additional 110,000 acres and improved water delivery to help restore the natural hydrology of the park. This is necessary because changes to the park's hydrology over time have resulted in unintended adverse impacts on the park's ecology.

In authorizing these new changes, however, we should not forget the lessons of the past—that our ability to predict the consequences of water delivery modifications is less than precise. The corps has said that the changes envisioned would not adversely affect a $300 million agricultural enterprise. But the corps has not had the best track record on predicting the impact of project modifications.

Therefore, the bill preserves a measure of flexibility to allow the corps to evaluate the impact of the modified water deliveries and, if they find adverse impacts, to construct needed flood protection. Those adverse impacts cannot be inconsequential—they must be substantial or measurable. Further, the impacts must be attributable solely to the modified water deliveries. That is not to say that the natural hydrologic condition cannot be factored into the equation, only that the cause of the adverse effect should be tied directly to the new delivery schedule.

The corps' authority to undertake operational changes, such as a reduction in the schedule of water deliveries, would only be limited to the extent that the Secretary of the Interior found that such reductions would adversely affect the park.

Mr. Speaker, I believe this is a good and balanced bill and I urge my colleagues to support it.

Mr. DE LUGO. Mr. Speaker, will the gentleman from Florida yield?

Mr. GOSS. I am happy to further yield under my reservation to the gentleman from the Virgin Islands for a further explanation.

Mr. DE LUGO. Mr. Speaker, I am rising on behalf of the Committee on Public Works and Transportation.

Mr. Speaker, I rise in support of the Senate amendments to the bill. H.R. 1727 expands the boundaries of the Everglades National Park, and modifies an existing Corps of Engineers flood control project to permit a new schedule of water deliveries to the park and restore natural water flows.

When this bill was being considered in the House, it was referred to our Committee on Public Works and Transportation because of provisions it contained relating to flood protection for residential and agricultural areas. We amended the bill to expand the flexibility available to the Secretary of the Army to respond to possible flooding of these areas caused by the new water deliveries. The Senate has amended these provisions, and these amendments are acceptable to us. I would, however, like to clarify a few points.

In section 104(d)1, it is stated that an adverse effect must be attributable solely to a project modification. What this means is that damage to crops or lands which might occur without the modified water delivery schedules in place would not be considered an adverse effect. However, any damages attributable to a modification would be an adverse effect. It is also stated that the modification must result in a substantial reduction in the economic utility of an area based on its present agricultural use. This would not include insignificant or small fluctuating reductions in crop yields, but would include significant reductions in crop yield or utilization of the land, and would encompass both long- and short-term damages to crops such as

reduced yield or destruction of a particular crop.

Finally, the measures which the Secretary may undertake to prevent damage to agricultural areas may include nonstructural as well as structural measures.

Mr. Speaker, I urge passage of the bill.

Mr. GOSS. Mr. Speaker, further reserving the right to object, this is an important item of legislation in the State of Florida, and I strongly support the bill.

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in strong support of H.R. 1727, the Everglades National Park Protection and Expansion Act of 1989. Today, we are completing action on a bill that will allow for improved protection and restoration of an incomparable natural treasure, the Florida Everglades.

The Everglades National Park includes valuable pine and cypress forests, sawgrass prairies, incomparable beaches and diverse fresh and salt water habitat. It is home to a variety of fish and wildlife species, including 13 species which are listed as endangered.

Recent signs of stress in the park ecology have been evidenced by significant declines in the population of wildlife species. Indications are that these losses are due to changes in the park's hydrologic characteristics caused by manmade modifications of the traditional flow of water into the park—changes that have taken place gradually and often with the best of intentions.

H.R. 1727 addresses the situation by providing for a return to a more traditional flow of water into the park. Specifically, the bill would authorize the Secretary of the Interior to expand the park's boundaries by adding approximately 110,000 acres of land along the Northeast Shark River Slough, through which water historically migrated from the north and northeast.

The bill also authorizes the Army Corps of Engineers to make modifications to the central and southern Florida project which are necessary to improve the delivery of water to the Shark River Slough area. At the present time a corps' study on this project is still under review. Therefore, the language in the bill preserves the corps' options by conditioning the authorization upon a satisfactory report of the Chief of Engineers. This is highly unusual procedure, but nonetheless justified given the potential environmental harm that could be caused by further delay.

I strongly support the bill and the efforts of the corps, the Park Service and the State of Florida to preserve this incomparable resource. At the same time, I realize that hydrologic changes envisioned in this bill require some degree of caution to ensure that there is flexibility to address unintended consequences. In that context, I understand that the proposed changes in water deliveries to the park raised concern among the south Dade County agricultural community. These concerns relate to the potential impact of improved water deliveries on agricultural activities that are such an important element in the economy of the area.

While I believe that the potential for adverse impacts on agriculture should not lessen our resolve to save the Everglades, I also feel that we should seek to ensure that, to the extent possible, such adverse impacts are minimized. The House bill, developed in cooperation between the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation, incorporated language intended to address this problem in a constructive way. While the Senate language may not be as clear on this as I had hoped, it does provide a measure of flexibility to allow for modifications needed to address potential flooding.

One area that is less clear than I had hoped related to language describing the circumstances under which measures may be undertaken to address flooding of nearby agricultural areas.

The Senate bill authorizes the corps to undertake flood protection if they find that an adverse effect is attributable solely to either the modified delivery schedule or flood control measures constructed to protect residential development. I am concerned that the word "solely" could be read more narrowly than it is intended. Therefore, I want to emphasize that it is my understanding that the corps need not conclude that all damages are caused solely by the project, only that the project is the sole cause of some condition, such as those outlined in subsection 104(B)(2) of the House passed bill, which results in an adverse effect on existing agricultural uses.

Furthermore, to the extent that the language requires that the corps find a substantial reduction in economic utility, that finding could be made without a showing of total, long-term economic collapse. Rather, the corps need only find that there are clear, measurable economic damages, including short-term losses attributable to significantly reduced yield or destruction of a particular crop or long-term losses, such as those evidenced by demonstrable reductions in land values.

Finally, I want to emphasize that the bill allows the corps to conclude that there is an adverse effect even after implementation of the water delivery schedule changes. The corps would be authorized to undertake necessary steps to prevent or mitigate for such damages. These steps could include construction of a flood protection system for the affected area. Authority to undertake operational changes are not intended to be precluded.

Any changes in the water delivery schedule, however, including changes undertaken pending construction of flood protection measures, would require that the Secretary of the Interior, in consultation with the Secretary of the Army, determine that the park would not be adversely affected.

I want to thank the leadership of the Committee on Interior and Insular Affairs, including Chairman UDALL and the ranking Republican on the full committee, DON YOUNG, as well as the chairman and ranking Republican on the Subcommittee on National Parks and Public Lands, BRUCE VENTO and BOB LAGOMARSINO, for their hard work on this very complicated issue.

I also want to express my appreciation to Chairman ANDERSON for his careful consideration of this bill and for his commitment to the protection of this national treasure. Let me also commend the chairman and ranking Republican on our Water Resources Subcommittee, Mr. NOWAK and Mr. STANGELAND for the important contributions they made in finding a solution to an issue of substantial concern to many in the affected area.

Finally, I would be remiss if I didn't thank the distinguished chairman of the Committee on Foreign Affairs who represents the southern tip of Florida, DANTE FASCELL, who has dedicated countless hours to the cause of the Everglades. Without his efforts to fashion a workable solution, this important legislation would not have been possible.

In conclusion, I urge my colleagues to support this well crafted and balanced bill which ensures protection of the park while allowing for flexible solutions to potential problems.

Mr. GOSS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

A motion to reconsider was laid on the table.

□ 0250

## GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks in the RECORD on the Senate amendment just approved.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Minnesota?

There was no objection.

## FREDERICKSBURG AND SPOTSYLVANIA COUNTY BATTLEFIELDS NATIONAL MILITARY PARK EXPANSION ACT OF 1989

Mr. VENTO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 875), to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park near Fredericksburg, VA, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Senate amendments:

Page 2, line 25, strike out "park" and insert "park, in accordance with the provisions of subsection 3(b)".

Page 3, lines 2 and 3, strike out "subsection (a) and insert "this section".

Page 3, line 6, strike out all after "provide." down to and including line 11.

Page 3, strike out lines 17 to 20, and insert:

(b) CONVEYANCE OF LANDS EXCLUDED FROM PARK.—(1) The Secretary is authorized, in accordance with applicable existing law, to exchange Federal lands and interests excluded from the park pursuant to subsection 2(b) for the purpose of acquiring lands within the park boundary.

(2) If any such Federal lands or interests are not exchanged within five years after the date of enactment of this Act, the Secretary may sell any or all such lands or interests to the highest bidder, in accordance with such regulations as the Secretary may prescribe, but any such conveyance shall be at not less than the fair market value of the land or interest, as determined by the Secretary.

(3) All Federal lands and interests sold or exchanged pursuant to this subsection shall be subject to such terms and conditions as will assure the use of the property in a manner which, in the judgment of the Secretary, will protect the battlefield setting. Notwithstanding any other provision of law, the net proceeds from any such sale or exchange shall be used, subject to appropriations, to acquire lands and interests within the park.

Mr. VENTO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I do so in order to yield to the gentleman from Minnesota.

Mr. VENTO. I thank the gentleman for yielding.

Mr. Speaker, the battles of Fredericksburg, Spotsylvania, Chancellorsville and the Wilderness, fought between 1862 and 1864 were important because of the strategic relationship to Richmond, capital and industrial center of the Confederacy. Today, those same battlefields face another fight: The fight to preserve them in such a way that future generations can understand what happened here during the Civil War. Fredericksburg-Spotsylvania National Military Park has never had a legislated boundary, and needs one. There are also key elements of the battles that need much greater protection. Historians, preservationists and Civil War enthusiasts have all emphasized the park's need for the additional acreage. Because of the rapid growth of this area, these lands must now have formal protection. Now is the time to do this legislation.

H.R. 875, a bill introduced by our colleague, Congressman FRENCH SLAUGHTER, gives a legislated boundary to the four battlefields in the environs of Fredericksburg—Fredericksburg, Chancellorsville, Spotsylvania Courthouse and the Wilderness. I want to commend the gentleman from Virginia for his efforts to work through this legislation in a way that is satisfactory to all.

The Senate amended H.R. 875. Most of the changes are merely technical, and quite minor. The one major change pertains to the way the Secretary of the Interior may dispose of lands. It specifies that all Federal lands and interests in lands sold or exchanged shall be subject to terms which will continue to protect the battlefield setting. It also adds that proceeds from such sales or exchanges shall be used subject to appropriations to acquire lands and interests within the park. We accept these amendments and endorse the passage of this legislation so that it can be signed into law and the important task of protecting these battlefields can begin. Mr. Speaker, I endorse H.R. 875 as amended and recommended its passage.

I thank the ranking member, the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, this legislation is supported by the administration and the minority members of the authorizing committee. It is necessary to provide needed boundary changes in one of our most significant Civil War national park battlefields.

I support this legislation.

Mr. Speaker, I withdraw my reservation of objection.

Mr. SLAUGHTER of Virginia. Mr. Speaker, I am pleased that the other body has acted so quickly to pass H.R. 875—the legislation that I introduced which will preserve, protect, and enhance the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park.

The legislation will promote the ability of the National Park Service to meet its mission of protecting lands involved in four key Civil War battles—Chancellorsville, Fredericksburg, Spotsylvania Court House, and Wilderness—and of promoting a better understanding of our country's history as shaped during these battles. The bill also establishes the park's first legislative boundary and involves changes in the boundary to include a total net addition of 1,860 acres to the park.

I believe that H.R. 875, as approved by the House on July 17, 1989, and modified by the other body, reflects a carefully drafted response to the needs of the park. The bill represents the product of a thorough review of all parties concerned for the protection of the park and the preservation of America's rich history. In fact, local governing bodies and community leaders stand strongly behind the legislation; indeed, their assistance was essential in shaping the bill.

Mr. Speaker, I would like to take this opportunity to thank the distinguished chairman and ranking member of the Committee on Interior and Insular Affairs, Mr. UDALL and Mr. YOUNG of Alaska; the chairman and ranking member of the Subcommittee on National Parks and Public Lands, Mr. VENTO and Mr. MARLENEE; whose leadership paved the way for the House consideration and approval of the park expansion bill, so vital for the protection of these battlefields. I would also like to thank the gentleman from New York [Mr. MRAZEK], for his support and his assistance, which were crucial to the successful passage of the bill.

Mr. Speaker, the preservation and proper interpretation of key Civil War battlefield sites is important for understanding our history as a nation. Accordingly, I urge my colleagues to concur in the technical amendments offered by the other body and pass the bill.

Thank you for your consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Minnesota?

There was no objection.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the measure just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REFORM ACT OF 1989

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1) to amend Federal laws to reform housing, community, and neighborhood development and related programs and for other purposes, with a Senate amendment thereto and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

*Strike out all after the enacting clause and insert:*

*SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.*

*(a) SHORT TITLE.—This Act may be cited as the "Department of Housing and Urban Development Reform Act of 1989".*

*(b) TABLE OF CONTENTS.—*

*Sec. 1. Short title and table of contents.*
*TITLE I—REFORMS TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT*
*Subtitle A—Ethics*
*Sec. 101. Allocation of housing assistance.*
*Sec. 102. HUD accountability.*
*Sec. 103. Prohibition of advance disclosure of funding decisions.*
*Sec. 104. Reform of headquarters reserve.*
*Sec. 105. Reform of CDBG discretionary fund and provision of technical assistance.*
*Sec. 106. Waiver of regulation requirements and handbook provisions.*
*Sec. 107. Civil money penalties against mortgagees and lenders.*
*Sec. 108. Civil money penalties against multifamily mortgagors.*
*Sec. 109. Civil money penalties against section 202 mortgagors.*
*Sec. 110. Civil money penalties against GNMA issuers.*
*Sec. 111. Civil money penalties for violations of Interstate Land Sales Full Disclosure Act.*
*Sec. 112. Registration of consultants.*
*Subtitle B—Management Reform*
*Sec. 121. Establishment of HUD Chief Financial Officer.*
*Sec. 122. Establishment of FHA Comptroller.*

Sec. 123. Expediting rulemaking.
Sec. 124. Funding for program evaluation and monitoring.
Sec. 125. Refinancing of section 235 mortgages.
Sec. 126. Sanctions for improper conveyances under urban homestead programs.
Sec. 127. Reform of moderate rehabilitation program.
Subtitle C—Federal Housing Administration Reforms
Sec. 131. Annual audited financial statements.
Sec. 132. Credit reviews of persons acquiring mortgaged properties under single family program for life of mortgage.
Sec. 133. Repeal of title X land development program.
Sec. 134. Civil money penalties for improper dealer and loan broker participation in origination of property improvement loans.
Sec. 135. Notification regarding suspended mortgagees.
Sec. 136. FHA foreclosed properties.
Sec. 137. Report regarding providing foreclosed properties to 1989 disaster victims.
Sec. 138. Report regarding actions to improve direct endorsement program.
Sec. 139. Co-insurance amendments.
Sec. 140. FHA management.
Sec. 141. Contracting for financial management support.
Sec. 142. FHA operations.
Sec. 143. Elimination of private investor-owners from single family mortgage insurance program.
TITLE II—HOUSING PRESERVATION
Sec. 201. Limitations on prepayment.
Sec. 202. Clarification of applicability to voluntary termination of insurance.
Sec. 203. Incentives to extend low-income use.
Sec. 204. Preservation.
Sec. 205. Report on property disposition demonstration.
Sec. 206. Prohibition on prepayment of new rural housing loans.
Sec. 207. Equity takeout incentive for new rural housing loans.
TITLE III—HOUSING PROGRAM EXTENSIONS AND CHANGES
Sec. 301. Flexible subsidy program.
Sec. 302. Continuation of public housing economic rent.
Sec. 303. Extension of reciprocity in approval of housing subdivisions among Federal agencies.
Sec. 304. HODAG Amendment.
TITLE IV—RURAL HOUSING
Sec. 401. Accountability in awards of assistance; remedies and penalties.
Sec. 402. Reuse of section 515 loan authority.
TITLE V—NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING
Sec. 501. Purpose.
Sec. 502. Establishment of Commission.
Sec. 503. Membership of Commission.
Sec. 504. Functions of the Commission.
Sec. 505. Powers of Commission.
Sec. 506. Authorization of appropriations.
Sec. 507. Sunset.
TITLE VI—NATIONAL COMMISSION ON NATIVE AMERICAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING
Sec. 601. Establishment.
Sec. 602. Membership.
Sec. 603. Functions of the Commission.
Sec. 604. Powers of the Commission.
Sec. 605. Authorization of appropriations.
TITLE VII—MISCELLANEOUS
Sec. 701. Nullification of right of redemption of single family mortgagors under section 312 rehabilitation loan program.
Sec. 702. CDBG Grants to Indian tribes.
TITLE VIII—SECTION 8 RENT ADJUSTMENTS
Sec. 801. Annual adjustment factors for section 8 rents.

## TITLE I—REFORMS TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Subtitle A—Ethics

**SEC. 101. ALLOCATION OF HOUSING ASSISTANCE.**

(a) ASSISTANCE SUBJECT TO FORMULA ALLOCATION.—Section 213(d)(1) of the Housing and Community Development Act of 1974 is amended to read as follows:

"(d)(1)(A) Except as provided by subparagraph (B), the Secretary shall allocate assistance referred to in subsection (a)(1) the first time it is available for reservation on the basis of a formula that is contained in a regulation prescribed by the Secretary, and that is based on the relative needs of different States, areas, and communities, as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other objectively measurable conditions specified in the regulation. In allocating assistance under this paragraph for each program of housing assistance under subsection (a)(1), the Secretary shall apply the formula, to the extent practicable, in a manner so that the assistance under the program is allocated according to the particular relative needs under the preceding sentence that are characteristic of and related to the particular type of assistance provided under the program. Assistance under section 202 of the Housing Act of 1959 shall be allocated in a manner that ensures that awards of the assistance under such section are made for projects of sufficient size to accommodate facilities for supportive services appropriate to the needs of frail elderly residents.

"(B) The formula allocation requirements of subparagraph (A) shall not apply to—

"(i) assistance that is approved in appropriation Acts for use under section 9 or 14, or the rental rehabilitation grant program under section 17, of the United States Housing Act of 1937, except that the Secretary shall comply with section 102 of the Department of Housing and Urban Development Reform Act of 1989 with respect to such assistance; or

"(ii) other assistance referred to in subsection (a) that is approved in appropriation Acts for uses that the Secretary determines are incapable of geographic allocation, including amendments of existing contracts, renewal of assistance contracts, assistance to families that would otherwise lose assistance due to the decision of the project owner to prepay the project mortgage or not to renew the assistance contract, assistance to prevent displacement or to provide replacement housing in connection with the demolition or disposition of public and Indian housing, and assistance in support of the property disposition and loan management functions of the Secretary.

"(C) Any allocation of assistance under subparagraph (A) shall, as determined by the Secretary, be made to the smallest practicable area, consistent with the delivery of assistance through a meaningful competitive process designed to serve areas with greater needs.

"(D) Any amounts allocated to a State or areas or communities within a State that are not likely to be used within a fiscal year shall not be reallocated for use in another State, unless the Secretary determines that other areas or communities (that are eligible for assistance under the program) within the same State cannot use the amounts within that same fiscal year.".

(b) ALLOCATION TO NONMETROPOLITAN AREAS.—The second sentence of section 213(d)(2) of the Housing and Community Development Act of 1974 is amended by striking "such assistance" and inserting "the assistance that is subject to allocation under paragraph (1)(A)".

(c) COMPETITION FOR ASSISTANCE.—Section 213(d) of the Housing and Community Development Act of 1974 is amended by adding at the end the following new paragraph:

"(5)(A) The Secretary shall not reserve or obligate assistance subject to allocation under paragraph (1)(A) to specific recipients, unless the assistance is first allocated on the basis of the formula contained in that paragraph and then is reserved and obligated pursuant to a competition.

"(B) Any competition referred to in subparagraph (A) shall be conducted pursuant to specific criteria for the selection of recipients of assistance. The criteria shall be contained in—

"(i) a regulation promulgated by the Secretary after notice and public comment; or

"(ii) to the extent authorized by law, a notice published in the Federal Register.

"(C) Subject to the times at which appropriations for assistance subject to paragraph (1)(A) may become available for reservation in any fiscal year, the Secretary shall take such steps as the Secretary deems appropriate to ensure that, to the maximum extent practicable, the process referred to in subparagraph (A) is carried out with similar frequency and at similar times for each fiscal year.

"(D) This paragraph shall not apply to assistance referred to in paragraph (4).".

(d) APPLICABILITY.—In accordance with section 201(b)(2) of the United States Housing Act of 1937, the amendments made by subsections (a), (b), and (c) of this section shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.

(e) CONFORMING AMENDMENT.—Section 213(a)(1) of the Housing and Community Development Act of 1974 is amended by striking "section 235 or 236 of the National Housing Act,".

**SEC. 102. HUD ACCOUNTABILITY.**

(a) NOTICE REGARDING ASSISTANCE.—

(1) PUBLICATION OF NOTICE OF AVAILABILITY.—The Secretary shall publish in the Federal Register notice of the availability of any assistance under any program or discretionary fund administered by the Secretary.

(2) PUBLICATION OF APPLICATION PROCEDURES.—The Secretary shall publish in the Federal Register a description of the form and procedures by which application for the assistance may be made, and any deadlines relating to the award or allocation of the assistance. Such description shall be designed to help eligible applicants to apply for such assistance.

(3) PUBLICATION OF SELECTION CRITERIA.—Not less than 30 days before any deadline by which applications or requests for assistance under any program or discretionary

fund administered by the Secretary must be submitted, the Secretary shall publish in the Federal Register the criteria by which selection for the assistance will be made. Subject to section 213 of the Housing and Community Development Act of 1974, such criteria shall include any objective measures of housing need, project merit, or efficient use of resources that the Secretary determines are appropriate and consistent with the statute under which the assistance is made available.

(4) DOCUMENTATION OF DECISIONS.—

(A) The Secretary shall award or allocate assistance only in response to a written application in a form approved in advance by the Secretary, except where other award or allocation procedures are specified in statute.

(B) The Secretary shall ensure that documentation and other information regarding each application for assistance is sufficient to indicate the basis on which any award or allocation was made or denied. The preceding sentence shall apply to—

(i) any application for an award or allocation of assistance made by the Secretary to a State, unit of general local government, or other recipient of assistance, and

(ii) any application for a subsequent award or allocation of such assistance by such State, unit of general local government or other recipient.

(C)(i) The Secretary shall notify the public of all funding decisions made by the Department. The Secretary shall require any State or unit of general local government to notify the public of the award or allocation of such funding to subsequent recipients. The notification shall include the following elements for each funding decision:

(I) the name and address of each funding recipient;

(II) the name or other means of identifying the project, activity, or undertaking for each funding recipient;

(III) the dollar amount of the funding for each project, activity, or undertaking;

(IV) the citation to the statutory, regulatory, or other criteria under which the funding decision was made; and

(V) such additional information as the Secretary deems appropriate for a clear and full understanding of the funding decision.

(ii) The notification referred to in clause (i) of this subsection shall be published as a Notice in the Federal Register at least quarterly.

(iii) For purposes of this subparagraph, the term "funding decision" means the decision of the Secretary to make available grants, loans, or any other form of financial assistance to an individual or to an entity, including (but not limited to) a State or local government or agency thereof (including a public housing agency), an Indian tribe, or a nonprofit organization, under any program administered by the Department that provides, by statute, regulation, or otherwise, for the competitive distribution of financial assistance.

(D) The Secretary shall publish a notice in the Federal Register at least annually informing the public of the allocation of assistance under section 213(d)(1)(A) of the Housing and Community Development Act of 1974.

(E) The Secretary shall ensure that each application and all related documentation and other information referred to in subparagraph (B), including each letter of support, is readily available for public inspection for a period of not less than 5 years, beginning not less than 30 days following the date on which the award or allocation is made.

(5) EMERGENCY EXCEPTION.—The Secretary may waive the requirements of paragraphs (1), (2), and (3) if the Secretary determines that the waiver is required for appropriate response to an emergency. Not less than 30 days after providing a waiver under the preceding sentence, the Secretary shall publish in the Federal Register the Secretary's reasons for so doing.

(b) DISCLOSURES BY APPLICANTS.—The Secretary shall require the disclosure of information with respect to any application for assistance within the jurisdiction of the Department for a project application submitted to the Secretary or to any State or unit of general local government by any applicant who has received or, in the determination of the Secretary, can reasonably be expected to receive assistance within the jurisdiction of the Department in excess of $200,000 in the aggregate during any fiscal year or such lower amount as the Secretary may establish by regulation. Such information shall include the following:

(1) OTHER GOVERNMENT ASSISTANCE.—Information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project or activities for which the applicant is seeking assistance. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

(2) INTERESTED PARTIES.—The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance or the planning, development, or implementation of the project or activity. For purposes of this paragraph, residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

(3) EXPECTED SOURCES AND USES.—A report satisfactory to the Secretary of the expected sources and uses of funds that are to be made available for the project or activity.

(c) UPDATING OF DISCLOSURE.—During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required under the previous subsection within 30 days of any substantial change.

(d) LIMITATION OF ASSISTANCE.—The Secretary shall certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance described in subsection (b)(1). The Secretary shall adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as the Secretary determines to be appropriate, for any changes reported under subsection (c).

(e) ADMINISTRATIVE REMEDIES.—If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (b) or (c) has occurred, the Secretary shall—

(1) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

(2) in the case of a selection that has been made, determine whether to—

(A) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

(B) impose sanctions upon the violator, including debarment, subject to review and determination on the record after opportunity for a hearing;

(C) recapture any funds that have been disbursed;

(D) permit the violating applicant selected to continue to participate in the program; or

(E) take any other actions that the Secretary considers appropriate.

The Secretary shall publish in the Federal Register a descriptive statement of each determination made and action taken under this subsection.

(f) CIVIL MONEY PENALTIES.—

(1) IN GENERAL.—Whenever any person knowingly and materially violates any provision of subsection (b) or (c), the Secretary may impose a civil money penalty on that person in accordance with the provisions of this section. This penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed $10,000 for each violation.

(g) AGENCY PROCEDURES.—(1) The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (f). These standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity to make the determination;

(B) shall provide for the imposition of a penalty only after the person has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order, the determination or order shall be final.

(2) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (f), consideration shall be given to such factors as the gravity of the offense, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(3) REVIEWABILITY OF IMPOSITION OF A PENALTY.—The Secretary's determination or order imposing a penalty under subsection (f) shall not be subject to review, except as provided in subsection (h).

(h) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (g)(1), a person against whom the Secretary has imposed a civil money penalty under subsection (f) may obtain a review of the penalty and such ancillary issues as may be addressed in the

notice of determination to impose a penalty under subsection (g)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part.

(2) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (g)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(i) ACTION TO COLLECT THE PENALTY.—If any person fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (f), after the determination or order is no longer subject to review as provided by subsections (g)(1) and (h), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(j) SETTLEMENT BY THE SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(k) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(l) DEPOSIT OF PENALTIES.—The Secretary shall deposit all civil money penalties collected under this section into miscellaneous receipts of the Treasury.

(m) DEFINITIONS.—For the purpose of this section—

(1) The term "Department" means the Department of Housing and Urban Development.

(2) The term "Secretary" means the Secretary of Housing and Urban Development.

(3) The term "person" means an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

(4) The term "assistance within the jurisdiction of the Department" includes any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

(5) The term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(n) EFFECTIVE DATE.—This section shall take effect on the date specified in regulations implementing this section that are issued by the Secretary after notice and public comment.

SEC. 103. PROHIBITION OF ADVANCE DISCLOSURE OF FUNDING DECISIONS.

The Department of Housing and Urban Development Act is amended by adding at the end the following new section:

"PROHIBITION OF ADVANCE DISCLOSURE OF FUNDING DECISIONS

"SEC. 12. (a) PROHIBITED ACTIONS.—During any selection process, no officer or employee of the Department of Housing and Urban Development shall knowingly disclose any covered selection information regarding such selection, directly or indirectly, to any person other than a person authorized by the Secretary to receive such information.

"(b) ADMINISTRATIVE REMEDIES.—If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (a) has occurred, the Secretary shall—

"(1) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

"(2) in the case of a selection that has been made, determine whether to—

"(A) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

"(B) impose sanctions upon the violating applicant selected, subject to review and determination on the record after opportunity for a hearing;

"(C) permit the violating applicant selected to continue to participate in the program; or

"(D) take any other actions that the Secretary considers appropriate.

"(c) CIVIL MONEY PENALTIES.—

"(1) IN GENERAL.—Whenever any employee of the Department knowingly and materially violates the prohibition in subsection (a), the Secretary may impose a civil money penalty on the employee in accordance with the provisions of this subsection. This penalty shall be in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary takes other disciplinary actions.

"(2) AMOUNT.—The amount of the penalty, as determined by the Secretary, may not exceed $10,000 for each violation.

"(3) AGENCY PROCEDURES.—

"(A) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under this subsection. The standards and procedures—

"(i) shall provide for the Secretary or other official of the Department to make the determination to impose a penalty or to use an administrative entity to make the determination;

"(ii) shall provide for the imposition of a penalty only after the employee has been given an opportunity for a hearing on the record; and

"(iii) may provide for review of any determination or order, or interlocutory ruling, arising from a hearing.

"(B) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable order. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(C) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under paragraph (2), consideration shall be given to such factors as the gravity of the offense, any history of prior disclosures of information on pending funding decisions made after the date of enactment of this section, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(D) REVIEWABILITY OF IMPOSITION OF A PENALTY.—The Secretary's determination or order imposing a penalty under paragraph (1) shall not be subject to review, except as provided in paragraph (4).

"(4) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(A) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under paragraph (3)(A), an employee against whom the Secretary has imposed a civil money penalty under paragraph (1) may obtain a review of the penalty and such ancillary issues (such as any administrative sanctions under 24 C.F.R. part 25) as may be addressed in the notice of determination to impose a penalty under paragraph (3)(A)(i) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

"(B) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to paragraph (3)(A) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

"(C) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(D) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(5) ACTION TO COLLECT PENALTY.—If any employee fails to comply with the Secretary's determination or order imposing a civil money penalty under paragraph (1), after the determination or order is no longer subject to review as provided by paragraphs (3)(A) and (4), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the employee and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(6) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this subsection.

"(7) DEPOSIT OF PENALTIES.—The Secretary shall deposit all civil money penalties collected under this subsection into miscellaneous receipts of the Treasury.

"(d) CRIMINAL PENALTIES.—Whoever willfully violates subsection (a) by making a disclosure prohibited by subsection (a) to any applicant, or any officer, employee, representative, agent, or consultant of any applicant, shall be imprisoned not more than 5 years, or fined in accordance with title 18, United States Code, or both.

"(e) DEFINITIONS.—For purposes of this section:

"(1) APPLICANT.—The term 'applicant' means any applicant or candidate that is being considered for receiving assistance.

"(2) ASSISTANCE.—The term 'assistance' means any grant, loan, subsidy, guarantee, or other financial assistance under a program administered by the Secretary that provides by statute, regulation, or otherwise for the competitive distribution of such assistance. The term does not include any mortgage insurance provided under a program administered by the Secretary.

"(3) COVERED SELECTION INFORMATION.—The term 'covered selection information' means—

"(A) any information that is contained in any application or request for assistance, or any information regarding the decision of the Secretary to make available assistance or other information that is determined by the Secretary to be information that is not generally available to the public (not including program requirements and timing of the decision to make assistance available); and

"(B) any information that is required by statute, regulation, or order to be confidential.

"(4) KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(5) SELECTION.—The term 'selection' means the determination of which applicants for assistance are to receive assistance under the program.

"(6) SELECTION PROCESS.—The term 'selection process' means the period with respect to a selection for assistance that begins with the development, preparation, and issuance of a solicitation or request for applications for the assistance and concludes with the selection of recipients of assistance, and includes the evaluation of applications.

"(f) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(g) APPLICABILITY.—This section shall apply only with respect to violations that occur on or after the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989.".

SEC. 104. REFORM OF HEADQUARTERS RESERVE.

(a) FUNDING CATEGORIES.—Section 213(d)(4) of the Housing and Community Development Act of 1974 is amended to read as follows:

"(4)(A) Notwithstanding any other provision of law, with respect to fiscal years beginning after September 30, 1990, the Secretary may retain not more than 5 percent of the financial assistance that becomes available under programs described in subsection (a)(1) during any fiscal year. Any such financial assistance that is retained shall be available for subsequent allocation to specific areas and communities, and may only be used for—

"(i) unforeseen housing needs resulting from natural and other disasters;

"(ii) housing needs resulting from emergencies, as certified by the Secretary, other than such disasters;

"(iii) housing needs resulting from the settlement of litigation; and

"(iv) housing in support of desegregation efforts.

"(B) Any amounts retained in any fiscal year under subparagraph (A) that are unexpended at the end of such fiscal year shall remain available for the following fiscal year under the program under subsection (a)(1) from which the amount was retained. Such amounts shall be allocated on the basis of the formula under subsection (d)(1).".

(b) EFFECTIVE DATE.—Any assistance made available under section 213(d)(4) of the Housing and Community Development Act of 1974 before October 1, 1990, or pursuant to a commitment for such assistance entered into before such date, shall be governed by the provisions of section 213(d)(4) as such section existed before the date of the enactment of this Act.

(c) INDIAN HOUSING.—In accordance with section 201(b)(2) of the United States Housing Act of 1937, the amendment made by subsection (a) and the provisions of subsection (b) of this section shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.

SEC. 105. REFORM OF CDBG DISCRETIONARY FUND AND PROVISION OF TECHNICAL ASSISTANCE.

(a) SPECIAL PURPOSE GRANTS.—Section 107(a) of the Housing and Community Development Act of 1974 is amended—

(1) by striking "in a special discretionary fund" in the first sentence; and

(2) by striking all that follows the period at the end of the second sentence.

(b) AUTHORIZED USES.—Section 107(b) of the Housing and Community Development Act of 1974 is amended—

(1) by striking paragraphs (1) and (3);

(2) by striking the period at the end of paragraph (5) and inserting a semicolon;

(3) by redesignating paragraphs (2) and (5) (as amended) as paragraphs (1) and (2), respectively; and

(4) by inserting after paragraph (2) (as so redesignated) the following new paragraph:

"(3) to historically Black colleges; and"; and

(5) in paragraph (4)—

(A) by striking "and" after the third semicolon and all that follows through "and" after the fourth semicolon; and

(B) by striking "and" at the end and inserting the following: "for purposes of this paragraph the term 'technical assistance' means the facilitating of skills and knowledge in planning, developing, and administering activities under this title in entities that may need but do not possess such skills and knowledge, and includes assessing programs and activities under this title; except that any recipient of a grant under this paragraph that provides technical assistance pursuant to this paragraph shall provide for the notification of the availability of such assistance and shall have specific criteria for selection of recipients of such assistance that are published and publicly available.".

(c) FUNDING CRITERIA.—Section 107 of the Housing and Community Development Act of 1974 is amended by adding at the end the following new subsection:

"(f) Any grant made under this section shall be made pursuant to criteria for selection of recipients of such grants that the Secretary shall by regulation establish and which the Secretary shall publish together with any notification of availability of amounts under this section.".

(d) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in this paragraph and paragraph (2), the amendments made by this section shall apply with respect to any grants made under section 107 of the Housing and Community Development Act of 1974 on or after the date of the enactment of this Act, except a grant made under the third sentence of section 107(a) of Housing and Community Development Act of 1974, as such sentence existed immediately before such date, and grants for specific activities (referred to in House Report Number 101-297) pursuant to the amount appropriated for use under section 107 by the enactment of the bill, H.R. 2916, of the One Hundred First Congress.

(2) PRIOR GRANTS.—Any grant made under section 107 of the Housing and Community Development Act of 1974 before the date of the enactment of this Act or pursuant to a grant award notification made before such date shall be governed by the provisions of such section as it existed immediately before the date of the enactment of this Act.

(e) CONFORMING AMENDMENT.—The section heading of section 107 of the Housing and Community Development Act of 1974 is amended to read as follows:

"SPECIAL PURPOSE GRANTS".

SEC. 106. WAIVER OF REGULATION REQUIREMENTS AND HANDBOOK PROVISIONS.

Section 7 of the Department of Housing and Urban Development Act is amended by adding at the end the following new subsection:

"(q)(1) Any waiver of regulations of the Department shall be in writing and shall specify the grounds for approving the waiver.

"(2) The Secretary may delegate authority to approve a waiver of a regulation only to an individual of Assistant Secretary rank or equivalent rank, who is authorized to issue the regulation to be waived.

"(3) The Secretary shall notify the public of all waivers of regulations approved by the Department. The notification shall be included in a notice in the Federal Register published not less than quarterly. Each notification shall cover the period beginning on the day after the last date covered by the prior notification, and shall—

"(A) identify the project, activity, or undertaking involved;

"(B) describe the nature of the requirement that has been waived and specify the provision involved;

"(C) specify the name and title of the official who granted the waiver request;

"(D) include a brief description of the grounds for approval of the waiver; and

"(E) state how more information about the waiver and a copy of the request and the approval may be obtained.

"(4) Any waiver of a provision of a handbook of the Department shall—

"(A) be in writing;

"(B) specify the grounds for approving the waiver; and

"(C) be maintained in indexed form and made available for public inspection for not less than the 3-year period beginning on the date of the waiver.".

SEC. 107. CIVIL MONEY PENALTIES AGAINST MORTGAGEES AND LENDERS.

(a) IN GENERAL.—Title V of the National Housing Act is amended by adding at the end the following new section:

"CIVIL MONEY PENALTIES AGAINST MORTGAGEES AND LENDERS

"SEC. 536. (a) IN GENERAL.—

"(1) AUTHORITY.—Whenever a mortgagee approved under this Act, or a lender holding a contract of insurance under title I of this Act, knowingly and materially violates any of the provisions of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

"(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed $5,000 for each violation, except that the maximum penalty for all violations by any particular mortgagee or lender during any 1-year period shall not exceed $1,000,000. Each violation of a provision of subsection (b)(1) shall constitute a separate violation with respect to each mortgage or loan application. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

"(b) VIOLATIONS FOR WHICH A PENALTY MAY BE IMPOSED.—

"(1) VIOLATIONS.—The Secretary may impose a civil money penalty under subsection (a) for any knowing and material violation by a mortgagee or lender, as follows:

"(A) Except where expressly permitted by statute, regulation, or contract approved by the Secretary, transfer of a mortgage insured under this Act to a mortgagee not approved by the Secretary, or transfer of a loan to a transferee that is not holding a contract of insurance under title I of this Act.

"(B) Failure of a nonsupervised mortgagee, as defined by the Secretary—

"(i) to segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments, and insurance premiums; or

"(ii) to deposit these funds in a special account with a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation through the Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations, or by the National Credit Union Administration.

"(C) Use of escrow funds for any purpose other than that for which they were received.

"(D) Submission to the Secretary of information that was false, in connection with any mortgage insured under this Act, or any loan that is covered by a contract of insurance under title I of this Act.

"(E) With respect to an officer, director, principal, or employee—

"(i) hiring such an individual whose duties will involve, directly or indirectly, programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary; or

"(ii) retaining in employment such an individual who continues to be involved, directly or indirectly, in programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary.

"(F) Falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity.

"(G) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to—

"(i) the application of a mortgagee or lender for approval by the Secretary; or

"(ii) the notification by a mortgagee or lender to the Secretary concerning establishment of a branch office.

"(H) Violation of any provisions of title I, II, or X (as such title existed immediately before the effective date of the Department of Housing and Urban Development Reform Act of 1989) of this Act or any implementing regulation or handbook that is issued under this Act.

"(2) NOTIFICATION TO ATTORNEY GENERAL.—Before taking action to impose a civil money penalty for a violation under paragraph (1)(D) or paragraph (1)(F), the Secretary shall inform the Attorney General of the United States.

"(c) AGENCY PROCEDURES.—

"(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). These standards and procedures—

"(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity (such as the Mortgagee Review Board, established pursuant to section 202(c) of the National Housing Act) to make the determination;

"(B) shall provide for the imposition of a penalty only after the mortgagee or lender has been given an opportunity for a hearing on the record; and

"(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including those before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (d).

"(d) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (c)(1), a mortgagee or lender against whom the Secretary has imposed a civil money penalty under subsection (a) may obtain a review of the penalty and such ancillary issues (such as any administrative sanctions under 24 C.F.R. part 25) as may be addressed in the notice of determination to impose a penalty under subsection (c)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's determination or order be modified or be set aside in whole or in part.

"(2) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of the additional evidence.

"(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(e) ACTION TO COLLECT PENALTY.—If any mortgagee or lender fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagee or lender and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(f) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

"(g) DEFINITION OF KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(h) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(i) DEPOSIT OF PENALTIES IN INSURANCE FUNDS.—Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the appropriate insurance fund or funds established under this Act, as determined by the Secretary.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to—

(1) violations referred to in the amendment that occur on or after the effective date of this section; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.

SEC. 108. CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS.

(a) IN GENERAL.—Title V of the National Housing Act (as amended by the preceding provisions of this Act) is further amended by adding at the end the following new section:

"CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS

"SEC. 537. (a) IN GENERAL.—The penalties set forth in this section shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The Secretary may not impose penalties under this section for violations a material cause of which are the failure of the Department, an agent of the Department, or a public housing agency to comply with existing agreements.

"(b) PENALTY FOR VIOLATION OF AGREEMENT AS CONDITION OF TRANSFER OF PHYSICAL ASSETS, FLEXIBLE SUBSIDY LOAN, CAPITAL IMPROVEMENT LOAN, MODIFICATION OF MORTGAGE TERMS, OR WORKOUT AGREEMENT.—

"(1) AUTHORITY.—Whenever a mortgagor of property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to this Act, who has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, knowingly and materially fails to comply with any of these commitments, the Secretary may impose a civil money penalty on that mortgagor in accordance with the provisions of this section.

"(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, for a violation of this subsection may not exceed the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

"(c) VIOLATIONS OF REGULATORY AGREEMENT FOR WHICH PENALTY MAY BE IMPOSED.—

"(1) VIOLATIONS.—The Secretary may also impose a civil money penalty under this section on any mortgagor of property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to this Act for any knowing and material violation of the regulatory agreement executed by the mortgagor, as follows:

"(A) Conveyance, transfer, or encumbrance of any of the mortgaged property, or permitting the conveyance, transfer, or encumbrance of such property, without the prior written approval of the Secretary.

"(B) Assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

"(C) Conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

"(D) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

"(E) Requiring, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent, plus a security deposit in an amount not in excess of 1 month's rent, to guarantee the performance of the covenants of the lease.

"(F) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account.

"(G) Payment for services, supplies, or materials which exceeds $500 and substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

"(H) Failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary.

"(I) Failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

"(J) Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing. The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor.

"(K) At the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, failure to furnish monthly occupancy reports or failure to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage.

"(L) Failure to make promptly all payments due under the note and mortgage, including mortgage insurance premiums, tax and insurance escrow payments, and payments to the reserve for replacements when there is adequate project income available to make such payments.

The pay out of surplus cash, as defined by and provided for in the regulatory agreement, shall not constitute a violation of such agreement.

"(2) AMOUNT OF PENALTY.—A penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed $25,000.

"(d) AGENCY PROCEDURES.—

"(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsections (b) and (c). These standards and procedures—

"(A) shall provide for the Secretary or other department official (such as the Assistant Secretary for Housing) to make the determination to impose a penalty;

"(B) shall provide for the imposition of a penalty only after the mortgagor has been given an opportunity for a hearing on the record; and

"(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (b) or (c), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the tenants, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (b) or (c) shall not be subject to review, except as provided in subsection (e).

"(e) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (d)(1), a mortgagor against whom the Secretary has imposed a civil money penalty under subsection (b) or (c) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (d)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

"(2) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (d)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

"(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(f) ACTION TO COLLECT PENALTY.—If a mortgagor fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (b) or (c), after the determination or order is no longer subject to review as provided by subsections (d)(1) and (e), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagor and such other relief as may be available.

The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(g) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

"(h) DEFINITION OF KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(i) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(j) DEPOSIT OF PENALTIES IN INSURANCE FUNDS.—Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the fund established under section 201(j) of the Housing and Community Development Amendments of 1978.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to violations referred to in the amendment that occur on or after the effective date of this section.

SEC. 109. CIVIL MONEY PENALTIES AGAINST SECTION 202 MORTGAGORS.

(a) IN GENERAL.—Title II of the Housing Act of 1959 is amended by inserting after section 202 the following new section:

"CIVIL MONEY PENALTIES AGAINST SECTION 202 MORTGAGORS

"SEC. 202a. (a) IN GENERAL.—The penalties set forth in this section shall be in addition to any other available civil remedy or criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The Secretary may not impose penalties under this section for violations a material cause of which are the failure of the Department, an agent of the Department, or a public housing agency to comply with existing agreements.

"(b) PENALTY FOR VIOLATION OF AGREEMENT AS CONDITION OF TRANSFER OF PHYSICAL ASSETS, FLEXIBLE SUBSIDY LOAN, CAPITAL IMPROVEMENT LOAN, MODIFICATION OF MORTGAGE TERMS, OR WORKOUT AGREEMENT.—

"(1) IN GENERAL.—Whenever a mortgagor of property that includes 5 or more living units and that has a mortgage held pursuant to section 202, who has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, knowingly and materially fails to comply with any of these commitments, the Secretary may impose a civil money penalty on the mortgagor in accordance with the provisions of this section.

"(2) AMOUNT.—The amount of the penalty, as determined by the Secretary, for a violation of this subsection may not exceed the amount of the loss the Secretary would incur at a foreclosure sale, or sale after foreclosure, with respect to the property involved.

"(c) VIOLATIONS OF REGULATORY AGREEMENT.—

"(1) IN GENERAL.—The Secretary may also impose a civil money penalty on a mortgagor or property that includes 5 or more living units and that has a mortgage held pursuant to section 202 for any knowing and material violation of the regulatory agreement executed by the mortgagor, as follows:

"(A) Conveyance, transfer, or encumbrance of any of the mortgaged property, or permitting the conveyance, transfer, or encumbrance of such property, without the prior written approval of the Secretary.

"(B) Assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

"(C) Conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

"(D) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

"(E) Requiring, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent, plus a security deposit in an amount not in excess of 1 month's rent, to guarantee the performance of the covenants of the lease.

"(F) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account.

"(G) Payment for services, supplies, or materials which exceeds $500 and substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

"(H) Failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary.

"(I) Failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

"(J) Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with requirements prescribed by the Secretary, and prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing. The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor.

"(K) At the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, failure to furnish monthly occupancy reports or failure to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage.

"(L) Failure to make promptly all payments due under the note and mortgage, including tax and insurance escrow payments, and payments to the reserve for replacements when there is adequate project income available to make such payments.

"(M) Amending the articles of incorporation or bylaws, other than as permitted under the terms of the articles of incorporation as approved by the Secretary, without the prior written approval of the Secretary.

"(2) AMOUNT OF PENALTY.—A penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed $25,000 for a violation of any of the subparagraphs of paragraph (1).

"(d) AGENCY PROCEDURES.—

"(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsections (b) and (c). These standards and procedures—

"(A) shall provide for the Secretary or other department official (such as the Assistant Secretary for Housing) to make the determination to impose a penalty;

"(B) shall provide for the imposition of a penalty only after the mortgagor has been given an opportunity for a hearing on the record; and

"(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (b) or (c), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the tenants, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (b) or (c) shall not be subject to review, except as provided in subsection (e).

"(e) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (d)(1), a mortgagor against whom the Secretary has imposed a civil money penalty under subsection (b) or (c) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (d)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's

order or determination be modified or be set aside in whole or in part.

"(2) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (d)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

"(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(f) ACTION TO COLLECT PENALTY.—If a mortgagor fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (b) or (c), after the determination or order is no longer subject to review as provided by subsections (d)(1) and (e), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagor and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(g) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

"(h) DEFINITION OF KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(i) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(j) DEPOSIT OF PENALTIES IN INSURANCE FUNDS.—Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the fund established under section 201(j) of the Housing and Community Development Amendments of 1978.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to violations referred to in the amendment that occur on or after the effective date of this section.

(c) CONFORMING AMENDMENT.—Section 201(j)(2) of the Housing and Community Development Amendments of 1978 is amended—

(1) by striking "and" before "(D)"; and

(2) by inserting before the period at the end the following: ", and (E) any amount received by the Secretary pursuant to section 537 of the National Housing Act and section 202a of the Housing Act of 1959".

SEC. 110. CIVIL MONEY PENALTIES AGAINST GNMA ISSUERS.

(a) IN GENERAL.—Title III of the National Housing Act is amended by adding at the end the following new section:

"CIVIL MONEY PENALTIES AGAINST ISSUERS

"SEC. 317. (a) IN GENERAL.—

"(1) AUTHORITY.—Whenever an issuer or custodian approved under section 306(g) knowingly and materially violates any provisions of subsection (b), the Secretary of Housing and Urban Development may impose a civil money penalty on the issuer or the custodian in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary imposes other administrative sanctions.

"(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed $5,000 for each violation, except that the maximum penalty for all violations by a particular issuer or custodian during any one-year period shall not exceed $1,000,000. Each violation of a provision of subsection (b)(1) shall constitute a separate violation with respect to each pool of mortgages. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

"(b) VIOLATIONS FOR WHICH A PENALTY MAY BE IMPOSED.—

"(1) VIOLATIONS.—The violations by an issuer or a custodian for which the Secretary may impose a civil money penalty under subsection (a) are the following:

"(A) Failure to make timely payments of principal and interest to holders of securities guaranteed under section 306(g).

"(B) Failure to segregate cash flow from pooled mortgages or to deposit either principal and interest funds or escrow funds into special accounts with a depository institution whose accounts are insured by the National Credit Union Administration or by the Federal Deposit Insurance Corporation through the Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations.

"(C) Use of escrow funds for any purpose other than that for which they were received.

"(D) Transfer of servicing for a pool of mortgages to an issuer not approved under this title, unless expressly permitted by statute, regulation, or contract approved by the Secretary.

"(E) Failure to maintain a minimum net worth in accordance with requirements prescribed by the Association;

"(F) Failure to promptly notify the Association in writing of any changes that materially affect the business status of an issuer.

"(G) Submission to the Association of false information in connection with any securities guaranteed, or mortgages pooled, under section 306(g).

"(H) Hiring, or retaining in employment, an officer, director, principal, or employee whose duties involve, directly or indirectly, programs administered by the Association while such person was under suspension or debarment by the Secretary.

"(I) Submission to the Association of a false certification either on its own behalf or on behalf of another person or entity.

"(J) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to, the application for approval as an issuer of securities under section 306(g).

"(K) Violation of any provisions of this title or any implementing regulation, handbook, or participant letter issued under authority of this title.

"(2) NOTIFICATION TO ATTORNEY GENERAL.—Before taking action to impose a civil money penalty for a violation under paragraph (1)(G) or paragraph (1)(I), the Secretary shall inform the Attorney General of the United States.

"(c) AGENCY PROCEDURES.—

"(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

"(A) shall provide for the Secretary to make the determination to impose the penalty;

"(B) shall provide for the imposition of a penalty only after an issuer or a custodian has been given notice of, and opportunity for, a hearing on the record; and

"(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of a notice of opportunity for hearing, the imposition of a penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine by regulations.

"(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (d).

"(d) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (c)(1), an issuer or a custodian against which the Secretary has imposed a civil money penalty under subsection (a) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice provided under subsection (c)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

"(2) OBJECTIONS NOT RAISED IN HEARING.—A court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence, which was not presented at such hearing, is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

"(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, the

court shall have the power in any such review to order payment of the penalty imposed by the Secretary.

"(e) ACTION TO COLLECT PENALTY.—If any issuer or custodian fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the issuer or custodian and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(f) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

"(g) DEFINITION OF KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(h) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(i) DEPOSIT OF PENALTIES.—The Secretary shall deposit all civil money penalties collected under this section into moneys of the Association pursuant to section 307.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to—

(1) violations referred to in the amendment that occur on or after the effective date of this section; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.

SEC. 111. CIVIL MONEY PENALTIES FOR VIOLATIONS OF INTERSTATE LAND SALES FULL DISCLOSURE ACT.

(a) IN GENERAL.—The Interstate Land Sales Full Disclosure Act is amended by inserting after section 1418 the following new section:

"CIVIL MONEY PENALTIES

"SEC. 1418a. (a) IN GENERAL.—

"(1) AUTHORITY.—Whenever any person knowingly and materially violates any of the provisions of this title or any rule, regulation, or order issued under this title, the Secretary may impose a civil money penalty on such person in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

"(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed $1,000 for each violation, except that the maximum penalty for all violations by a particular person during any 1-year period shall not exceed $1,000,000. Each violation of this title, or any rule, regulation, or order issued under this title, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

"(b) AGENCY PROCEDURES.—

"(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

"(A) shall provide for the imposition of a penalty only after a person has been given an opportunity for a hearing on the record; and

"(B) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (c).

"(c) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (b)(1), a person aggrieved by a final order of the Secretary assessing a penalty under this section may seek judicial review pursuant to section 1411.

"(2) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(d) ACTION TO COLLECT PENALTY.—If any person fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (b) and (c), the Secretary may request the Attorney General of the United States to bring an action in any appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(e) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

"(f) DEFINITION OF KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(g) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(h) USE OF PENALTIES FOR ADMINISTRATION.—Civil money penalties collected under this section shall be paid to the Secretary and, upon approval in an appropriation Act, may be used by the Secretary to cover all or part of the cost of rendering services under this title.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to—

(1) violations referred to in the amendment that occur on or after the effective date of this section; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of violation referred to in the amendment that occurs on or after such date.

SEC. 112. REGISTRATION OF CONSULTANTS.

The Department of Housing and Urban Development Act, as amended by the preceding provisions of this Act, is further amended by adding at the end the following new section:

"REGISTRATION OF CONSULTANTS

"SEC. 13. (a) RECORD OF EXPENDITURES.—

"(1) REQUIREMENT TO MAINTAIN.—Each person who makes an expenditure to influence the decision of any officer or employee of the Department, through communication with such officer or employee, with respect to—

"(A) the award of any financial assistance within the jurisdiction of the Department, or

"(B) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person,

shall keep records, as required by this section. The preceding sentence shall not apply to expenditures incurred in complying with conditions, requirements, or procedures imposed by the Secretary in connection with any financial assistance.

"(2) COVERED INFORMATION.—Each person referred to in paragraph (1) shall keep a detailed and exact account of—

"(A) all such expenditures made by or on behalf of such person; and

"(B) the name and address of every person to whom any such expenditure is made and the date of the expenditure.

"(3) MAINTENANCE OF RECORDS.—Each person making such an expenditure shall obtain a bill, stating the particulars, for every such expenditure, and shall retain all records required by this section for not less than the 2-year period beginning on the date of the filing of the report required by subsection (b), which shall include the information under paragraph (2).

"(4) LIMITATION OF FEES.—Any person engaged for pay or other consideration for the purpose of attempting to influence any award or allocation of financial assistance within the jurisdiction of the Department shall not seek or receive any fee that is—

"(A) based on the amount of assistance or number of units that may be provided by the Secretary, or

"(B) contingent on an award of assistance by the Secretary, except where—

"(i) services are provided to a nonprofit entity applying for such award or allocation of assistance; and

"(ii) professional services related to a project are donated in whole or in part to a

nonprofit entity in the event assistance for a project is not awarded.

"(b) REPORTS OF EXPENDITURES FILED WITH THE SECRETARY.—

"(1) REPORT.—Each person making an expenditure for the purposes designated in subsection (a)(1) shall file with the Secretary, between the 1st and 10th day of each calendar year, a report specifying the total expenditures made by or on behalf of such person during the year and the information required by subsection (a)(2)(B).

"(2) REGULAR EMPLOYEES.—The requirements of this subsection shall not apply in the case of a payment of reasonable compensation made to any regularly employed officer or employee of the person who requests or receives assistance within the jurisdiction of the Department, or who is involved in any management action with respect to such assistance.

"(3) MINIMUM DOLLAR REQUIREMENTS.—The requirements of this subsection shall not apply to any person whose total expenditures for purposes described in subparagraphs (A) and (B) of subsection (a)(1) are less than $10,000 in any calendar year.

"(4) FILING AND RETENTION.—A report required by this subsection—

"(A) shall be considered properly filed when deposited in a post office within the prescribed time, stamped, registered, and addressed to the Secretary, but if the Secretary does not receive the report, the person shall promptly file a duplicate report when the Secretary notifies the person that the original report has not been received; and

"(B) shall be retained by the Secretary for the 2-year period beginning on the date of filing, shall constitute part of the public records of the Department, and shall be open to public inspection.

"(5) PUBLICATION OF INFORMATION.—The Secretary shall compile all expenditure information as soon as practicable after the close of the calendar year with respect to which the information is filed and shall publish it as a notice in the Federal Register.

"(c) REGISTRATION BY PERSONS ATTEMPTING TO INFLUENCE DEPARTMENT DECISIONS.—

"(1) REQUIREMENT AND INFORMATION.—Each person receiving payment or any consideration for the purpose described in subsection (a)(1), shall, not later than 14 days after being retained for such purpose, register with the Secretary. The registration shall be in writing and shall include the name and business address of the registrant, the name and address of the registrant's employer and of any person or entity in whose interest the registrant appears or works, and a statement of whether the registrant has been employed by the Federal Government during the 2-year period ending on the date of the registration and in what capacity. Each registrant shall, between the 1st and 10th day of each calendar year, file with the Secretary a detailed report of all money received and expended by the registrant during the preceding year in carrying out the work, including information as to whom money was paid, and for what purposes.

"(2) MINIMUM DOLLAR REQUIREMENT.—The requirements of the last sentence of paragraph (1) shall not apply with respect to any calendar year to any person whose total compensation for attempting to influence a decision with respect to assistance within the jurisdiction of the Department or a management action with respect to such assistance is less than $10,000 in such year.

"(3) PUBLICATION OF INFORMATION.—The Secretary shall compile all registration information as soon as practicable after the close of the calendar year with respect to which the information is filed and shall publish it annually as a notice in the Federal Register.

"(d) CIVIL MONEY PENALTIES.—

"(1) AUTHORITY.—Whenever any person knowingly fails to file a report required under subsection (b), or any person knowingly fails to register and file a report required under subsection (c), the Secretary may impose a civil money penalty on that person in accordance with the provisions of this subsection. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

"(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, shall not exceed the greater of—

"(A) $10,000 for each violation; or

"(B) the total amount received for any services performed for any applicant to which the violation under paragraph (1) relates.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under this subsection, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(4) AGENCY PROCEDURES.—

"(A) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under paragraph (1). These standards and procedures shall—

"(i) provide for the Secretary or other department official to make the determination to impose the penalty or for use of an administrative entity to make the determination;

"(ii) provide for the imposition of a penalty only after the person has been given an opportunity for a hearing on the record; and

"(iii) provide for review of any determination or order, or interlocutory ruling, arising from a hearing.

"(B) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(C) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under paragraph (1) shall not be subject to review, except as provided in paragraph (5).

"(5) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(A) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under paragraph (4)(A), a person against whom the Secretary has imposed a civil money penalty under paragraph (1) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under paragraph (4)(A)(i) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

"(B) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to paragraph (4)(A) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there are reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

"(C) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(D) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(6) ACTION TO COLLECT PENALTY.—If any person fails to comply with the Secretary's determination or order imposing a civil money penalty under paragraph (1), after the determination or order is no longer subject to review as provided by paragraphs (4)(A) and (5), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this paragraph, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(7) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this subsection.

"(8) DEPOSIT OF PENALTIES.—The Secretary shall deposit all civil money penalties collected under this subsection into miscellaneous receipts of the Treasury.

"(e) PROHIBITION ON CONSULTING ACTIVITIES.—

"(1) IN GENERAL.—Whoever is fined under subsection (d) may be prohibited, for the 3-year period beginning on the date of the imposition of the fine, from receiving any payment or thing of value for performing any services (with respect to any application for financial assistance within the jurisdiction of the Department) for any applicant.

"(2) CRIMINAL PENALTY.—Whoever violates the prohibition under paragraph (1) shall, upon conviction, be guilty of a felony and shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

"(f) DEFINITIONS.—For purposes of this section:

"(1) The term 'person' means an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

"(2) The term 'expenditure' includes a payment, distribution, loan, advance, deposit, gift of money, or anything else of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

"(3) The term 'financial assistance within the jurisdiction of the Department' includes any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

"(4) The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(5) The term 'reasonable compensation' means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to or not furnished in cooperation with the Department.

"(6) The term 'regularly employed' means, with respect to an officer or employee of a person requesting or receiving assistance within the jurisdiction of the Department or who is involved in a management action with respect to such assistance, an officer or employee who is employed by such person for at least 130 working days within one year immediately before the date of the submission that initiates departmental consideration of such person for receipt of such assistance, or the date of initiation of any management action.

"(g) REGULATIONS.—The Secretary shall issue any regulations necessary to implement this section.

"(h) EFFECTIVE DATE.—This section shall take effect on the date specified in regulations implementing this section that are issued by the Secretary after notice and public comment. The regulations shall establish standards that include determinations of what types of activities constitute influence with respect to the decisions of the Department described in subsection (a)(1) (A) and (B).".

*Subtitle B—Management Reform*

SEC. 121. ESTABLISHMENT OF HUD CHIEF FINANCIAL OFFICER.

Section 4 of the Department of Housing and Urban Development Act is amended by adding at the end the following new subsection:

"(e) There shall be in the Department a Chief Financial Officer, designated by the Secretary, who shall—

"(1) serve as the principal advisor to the Secretary on financial management;

"(2) develop and maintain a financial management system for the Department (including accounting and related transaction systems, internal control systems, financial reporting systems, credit, and cash and debt management);

"(3) supervise and coordinate all financial management activities and operations of the Department;

"(4) assist in the financial execution of the Department's budget in relation to actual expenditures and prepare timely performance reports for senior managers; and

"(5) issue such policies and directives as may be necessary to carry out this section.".

SEC. 122. ESTABLISHMENT OF FHA COMPTROLLER.

Section 4 of the Department of Housing and Urban Development Act, as amended by section 121, is further amended by adding at the end the following new subsection:

"(f) There shall be in the Department a Federal Housing Administration Comptroller, designated by the Secretary, who shall be responsible for overseeing the financial operations of the Federal Housing Administration.".

SEC. 123. EXPEDITING RULEMAKING.

Section 7(o) of the Department of Housing and Urban Development Act is amended—

(1) in paragraph (2)(A)—

(A) by striking "first period of 15 calendar days of continuous session of Congress which occurs" in the first sentence and inserting "15-calendar day period beginning on the day"; and

(B) by striking "of continuous session" in the second sentence;

(2) in paragraph (2)(B), by striking "of continuous session of Congress";

(3) in paragraph (3)—

(A) by striking "first period of 30 calendar days of continuous session of Congress which occurs" in the first sentence and inserting "expiration of the 30-calendar day period beginning on the day"; and

(B) by striking all that follows the period at the end of the first sentence and inserting the following: "Any regulation implementing any provision of the Department of Housing and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of not less than 60 days."; and

(4) by striking paragraphs (5) and (6).

SEC. 124. FUNDING FOR PROGRAM EVALUATION AND MONITORING.

Section 7 of the Department of Housing and Urban Development Act, as amended by section 106 of this Act, is further amended by adding at the end the following new subsection:

"(r)(1) For the programs listed in paragraph (2), amounts appropriated under this subsection shall be available to the Secretary for evaluating and monitoring of all such programs (including all aspects of the public housing and section 202 programs). The Secretary shall expend amounts made available under this subsection in accordance with the need and complexity of evaluating and monitoring each such program.

"(2) The programs subject to this subsection shall be the programs authorized under—

"(A) titles I and II of the United States Housing Act of 1937;

"(B) section 202 of the Housing Act of 1959;

"(C) section 106 of the Housing and Urban Development Act of 1968;

"(D) the Fair Housing Act;

"(E) title I and section 810 of the Housing and Community Development Act of 1974;

"(F) section 201 of the Housing and Community Development Amendments of 1978;

"(G) the Congregate Housing Services Act of 1978;

"(H) section 222 of the Housing and Urban-Rural Recovery Act of 1983;

"(I) section 561 of the Housing and Community Development Act of 1987; and

"(J) title IV of the Stewart B. McKinney Homeless Assistance Act.

"(3) In conducting evaluations and monitoring pursuant to the authority under this subsection, the Secretary shall determine any need for additional staff and funding relating to evaluating and monitoring the programs under paragraph (2).

"(4)(A) The Secretary may provide for evaluation and monitoring under this subsection directly or by grants, contracts, or interagency agreements. Not more than 50 percent of the amounts made available under paragraph (1) may be used for grants, contracts, or interagency agreements.

"(B) Any amounts not used for grants, contracts, or interagency agreements under subparagraph (A) shall be used in a manner that increases and strengthens the ability of the Department to monitor and evaluate the programs under paragraph (2) through officers and employees of the Department.

"(5) Not later than December 31 of each year, the Secretary shall submit to the Congress a report regarding the use of amounts made available under this subsection during the fiscal year ending on September 30 of that year, including an analysis of the ability of the Department to monitor and evaluate the programs under paragraph (2) and a statement of any needs determined under paragraph (3).

"(6) There is authorized to be appropriated to carry out this subsection $25,000,000 for fiscal year 1991. Such amounts shall remain available until expended.".

SEC. 125. REFINANCING OF SECTION 235 MORTGAGES.

(a) IN GENERAL.—Section 235(r) of the National Housing Act is amended to read as follows:

"(r)(1) The Secretary is authorized, upon application of a mortgagee, to insure under this subsection a mortgage the proceeds of which are used to refinance a mortgage insured under this section.

"(2) To be eligible for insurance under this subsection, a mortgage must be executed by a mortgagor meeting the requirements of paragraph (3) and shall—

"(A) be a first lien on real estate held in fee simple, or on a leasehold under a lease—

"(i) for not less than 99 years which is renewable; or

"(ii) having a period of not less than 10 years to run beyond the maturity date of the mortgage;

"(B) have been made to, and held by, a mortgagee approved by the Secretary;

"(C) be in an amount not exceeding the outstanding principal balance, including any unpaid interest, due on the mortgage being refinanced;

"(D) have a maturity not exceeding the unexpired term of the mortgage being refinanced;

"(E) bear an interest rate not exceeding such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets; to the extent that the amounts described in paragraphs (4) (A) and (B) are not otherwise paid by the Secretary, the foregoing interest rate may be increased, in the discretion of the Secretary, to compensate the mortgagee for its payment to, or on behalf of, the mortgagor of such amounts; and

"(F) meet the criteria for refinancing as determined by the Secretary.

"(3) Notwithstanding the provisions of subsection (h)(2), assistance payments in connection with mortgages insured under paragraph (2) shall be made only with respect to a family who is eligible for, and receiving assistance payments with respect to, the insured mortgage being refinanced.

"(4) The Secretary is authorized and, to the extent provided in appropriation Acts, may pay to the mortgagor (directly, through the mortgagee, or otherwise)—

"(A) an amount, as approved by the Secretary, as an incentive to the mortgagor to refinance a mortgage insured under this section; and

"(B) an amount as approved by the Secretary for costs incurred in connection with the refinancing, including but not limited to discounts, loan origination fees, and closing costs.

"(5) Amounts of budget authority required for assistance payments contracts with re-

spect to mortgages insured under this subsection shall be derived from amounts recaptured from assistance payments contracts relating to mortgages that are being refinanced. For purposes of subsection (c)(3)(A), the amount of recaptured budget authority that the Secretary commits for assistance payments contracts relating to mortgages insured under this subsection shall not be construed as 'unused'.

"(6) The Secretary is authorized to take any actions to identify and communicate with any mortgagor of a mortgage insured under this section to implement the refinancing of such mortgages with insurance under this subsection. The Secretary may take such actions directly, or under contract. Notwithstanding the restriction of section 552a(b) of title 5 of the United States Code, upon the request of an approved mortgagee, the Secretary may disclose to such mortgagee the name and address of any mortgagor of a mortgage insured under this section that meets the criteria for refinancing, pursuant to paragraph (2)(F), and the unpaid principal balance and interest rate on such mortgage.

"(7) The Secretary shall implement the provisions of this subsection by a notice published in the Federal Register.".

(b) EXCESS RECAPTURED AMOUNTS.—Section 235(c)(3)(C) of the National Housing Act is amended by inserting after the period at the end the following new sentence: "Notwithstanding the preceding sentence, any amounts of budget authority or contract authority recaptured from assistance payments contracts relating to mortgages that are being refinanced that are not required for assistance payments contracts relating to mortgages insured under this subsection, shall be rescinded.".

(c) CONFORMING AMENDMENTS.—Section 235 of the National Housing Act is amended—

(1) in subsection (c)(1), by inserting ", other than a contract in connection with a refinancing under subsection (r)," in the second sentence after "any new contract";

(2) in subsection (c)(3)(A), by inserting "(except to the extent provided in subsection (r) for mortgages insured under such subsection)" in the second sentence after "refinanced,";

(3) in subsection (e), by striking "or (j)(7)," and inserting "(j)(7), or (r),";

(4) in subsection (h)(1)—

(A) by inserting "(other than obligations in connection with mortgages insured under subsection (r))" in the third sentence after "October 1, 1983";

(B) by inserting "(except under subsection (r))" in the sixth sentence after "under this section" the first place it appears; and

(C) by inserting "(other than a contract in connection with a mortgage insured under subsection (r))" in the seventh sentence after "under this section";

(5) in subsection (h)(3), by inserting after the period at the end the following: "The preceding sentence shall not apply to contracts in connection with mortgages insured under subsection (r).";

(6) in subsection (m), by inserting "(except a mortgage insured under subsection (r))" after "No mortgage"; and

(7) in subsection (n), by inserting "or to a mortgage insured under subsection (r)" before the period at the end.

(d) SAVINGS PROVISION.—Notwithstanding the termination of the program under section 235 pursuant to section 401(d) of the Housing and Community Development Act of 1987, the Secretary of Housing and Urban Development shall have authority to insure mortgages under section 235(r), to make assistance payments with respect to such insured mortgages, and to make any other payment or take any other action related to the refinancing of mortgages insured under section 235.

SEC. 126. SANCTIONS FOR IMPROPER CONVEYANCES UNDER URBAN HOMESTEAD PROGRAMS.

(a) IN GENERAL.—Section 810 of the Housing and Community Development Act of 1974 is amended by adding at the end the following new subsection:

"(m) If the Secretary determines that any property transferred for use under an urban homestead program under this section has been conveyed or used under the program in a manner contrary to the provisions of this section, the Secretary may take action as the Secretary considers appropriate, including taking any of the following actions:

"(1) The Secretary may impose a civil penalty on the unit of general local government or the State or the qualified community organization or public agency designated by a unit of general local government, or the transferee of such entity, as appropriate, in an amount not less than any profit realized with respect to the conveyance or use of the property contrary to the provisions of this section.

"(2) The Secretary may revoke the conveyance of the property pursuant to subsection (b)(4) and revoke the transfer of the property to the unit of general local government or State or the qualified community organization or public agency designated by a unit of general local government, except that the Secretary may not revoke the conveyance of any property under this paragraph if the Secretary determines that the conveyance was made to an individual or family who has substantially complied with the requirements of this section for participation in an urban homestead program and who has no knowledge of the conveyance or use of the property contrary to the provisions of this section. If any tenants of any property for which a conveyance is revoked under this paragraph would be displaced by such revocation and the Secretary determines that the tenants are not responsible for or involved in the actions for which the revocation has been imposed, the Secretary shall, if practicable, take actions that would allow the tenants to remain on the property and maintain the property under an urban homestead program.".

(b) CONFORMING AMENDMENT.—Section 810(b)(4) of the Housing and Community Development Act of 1974 is amended by inserting before the semicolon at the end the following: "or by the Secretary under subsection (m)(2)".

(c) APPLICABILITY.—The amendments made by this section shall apply to any property transferred for use in an urban homestead program under section 810 of the Housing and Community Development Act of 1974 after January 1, 1981.

SEC. 127. REFORM OF MODERATE REHABILITATION PROGRAM.

Section 8(e)(2) of the United States Housing Act of 1937 is amended—

(1) by striking the period at the end of the first sentence and inserting the following: ", and which shall involve a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems.";

(2) by inserting after the period at the end the following new sentence: "In order to maximize the availability of low-income housing, in providing assistance under this paragraph, the Secretary shall include in any calculation or determination regarding the amount of the assistance to be made available the extent to which any proceeds are available from any tax credits provided under section 42 of the Internal Revenue Code of 1986 (or from any syndication of such credits) with respect to the housing."; and

(3) by inserting after the period at the end (as inserted by paragraph (2)) the following: "For each fiscal year, the Secretary may not provide assistance pursuant to this paragraph to any project for rehabilitation of more than 100 units. Assistance pursuant to this paragraph shall be allocated according to the formula established pursuant to section 213(d) of the Housing and Community Development Act of 1974, and awarded pursuant to a competition under such section. The Secretary shall maintain a single listing of any assistance provided pursuant to this paragraph, which shall include a statement identifying the owner and location of the project to which assistance was made, the amount of the assistance, and the number of units assisted.".

### Subtitle C—Federal Housing Administration Reforms

SEC. 131. ANNUAL AUDITED FINANCIAL STATEMENTS.

Title V of the National Housing Act (as amended by the preceding provisions of this Act) is further amended by adding at the end the following new section:

"ANNUAL AUDITED FINANCIAL STATEMENTS

"SEC. 538. With respect to fiscal year 1989 and for every fiscal year thereafter, the Secretary shall make available to the public a financial statement of the insurance funds established under this Act that will present their financial condition on a cash and accrual basis, consistent with generally accepted accounting principles. Each financial statement shall be audited by an independent accounting firm selected by the Secretary and the results of such audit shall be made available to the public.".

SEC. 132. CREDIT REVIEWS OF PERSONS ACQUIRING MORTGAGED PROPERTIES UNDER SINGLE FAMILY PROGRAM FOR LIFE OF MORTGAGE.

(a) IN GENERAL.—Section 203(r) of the National Housing Act is amended—

(1) by amending the first sentence to read as follows: "The Secretary shall take appropriate actions to reduce losses under the single-family mortgage insurance programs carried out under this title."; and

(2) by amending paragraphs (2) and (3) to read as follows:

"(2) requiring that at least one person acquiring ownership of a one- to four-family residential property encumbered by a mortgage insured under this title be determined to be creditworthy under standards prescribed by the Secretary, whether or not such person assumes personal liability under the mortgage (except that acquisitions by devise or descent shall not be subject to this requirement); and

"(3) in any case where personal liability under a mortgage is assumed, requiring that the original mortgagor be advised of the procedures by which he or she may be released from liability.".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply only with respect to—

(1) mortgages insured—

(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act; or

(B) in accordance with the direct endorsement program (24 C.F.R. 200.163), if the approved underwriter of the mortgage signs the appraisal report for the property on or after the date of the enactment of this Act; and

(2) the approval of substitute mortgagors, if the original mortgagor was subject to such amendments.

(c) TRANSITION PROVISIONS.—Any mortgage insurance provided under title II of the National Housing Act as it existed immediately before the date of the enactment of this Act, shall continue to be governed (to the extent applicable) by the provisions of section 203(r) of the National Housing Act, as such section existed immediately before such date.

SEC. 133. REPEAL OF TITLE X LAND DEVELOPMENT PROGRAM.

(a) REPEAL.—Title X of the National Housing Act is hereby repealed.

(b) APPLICABILITY.—On or after the date of enactment of this Act, no mortgage may be insured under title X, as such title existed immediately before such date, except pursuant to a commitment to insure made before such date.

(c) SAVINGS PROVISION.—Any contract of insurance entered into under title X before the date of enactment of this Act shall be governed by the provisions of such title as such title existed immediately before such date.

(d) CONFORMING AMENDMENTS.—The National Housing Act is amended—

(1) in section 1, by striking "X," each place it appears;

(2) in section 212(a), by striking the seventh sentence;

(3) in section 512, by striking "X," in the first sentence;

(4) in section 522, by inserting ", as such title existed immediately before the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989," after "title X of this Act"; and

(5) in section 530, by striking "X,".

SEC. 134. CIVIL MONEY PENALTIES FOR IMPROPER DEALER AND LOAN BROKER PARTICIPATION IN ORIGINATION OF PROPERTY IMPROVEMENT LOANS.

(a) IN GENERAL.—Section 2(b) of the National Housing Act is amended by adding at the end the following new paragraph:

"(7) With respect to the financing of alterations, repairs, and improvements to existing structures or the building of new structures as authorized under clause (i) of the first sentence of section 2(a), any loan broker (as defined by the Secretary) or any other party having a financial interest in the making of such a loan or advance of credit or in providing assistance to the borrower in preparing the loan application or otherwise assisting the borrower in obtaining the loan or advance of credit who knowingly (as defined in section 536(g) of this Act) submits to any such financial institution or to the Secretary false information shall be subject to a civil money penalty in the amount and manner provided under section 536 with respect to mortgagees and lenders under this Act.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to—

(1) violations referred to in the amendment that occur on or after the date of the enactment of this Act; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.

SEC. 135. NOTIFICATION REGARDING SUSPENDED MORTGAGEES.

Section 203 of the National Housing Act is amended by adding at the end the following new subsection:

"(s) Whenever the Secretary has taken any discretionary action to suspend or revoke the approval of any mortgagee to participate in any mortgage insurance program under this title, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to—

"(1) the Secretary of Veterans Affairs;

"(2) the chief executive officer of the Federal National Mortgage Association;

"(3) the chief executive officer of the Federal Home Loan Mortgage Corporation;

"(4) the Administrator of the Farmers Home Administration;

"(5) if the mortgagee is a national bank or District bank, or a subsidiary or affiliate of such a bank, the Comptroller of the Currency;

"(6) if the mortgagee is a State bank that is a member of the Federal Reserve System or a subsidiary or affiliate of such a bank, or a bank holding company or a subsidiary or affiliate of such a company, the Board of Governors of the Federal Reserve System;

"(7) if the mortgagee is a State bank that is not a member of the Federal Reserve System or is a subsidiary or affiliate of such a bank, the Board of Directors of the Federal Deposit Insurance Corporation; and

"(8) if the mortgagee is a Federal or State savings association or a subsidiary or affiliate of a savings association, the Director of the Office of Thrift Supervision.".

SEC. 136. FHA FORECLOSED PROPERTIES.

(a) MAINTENANCE.—Section 204(a) of the National Housing Act is amended by inserting after the period at the end of the third sentence the following new sentence: "As a condition of the receipt of such benefits, the mortgagee shall maintain or assure the maintenance of the mortgaged property (in such manner as the Secretary shall by regulation provide) during the period beginning on the taking of the possession or other acquisition of the mortgaged property by the mortgagee and ending on conveyance to the Secretary or other disposition of the mortgaged property in accordance with this section, and funds expended by the mortgagee in meeting such obligation shall be included, to the extent provided in this subsection or in subsection (k), in debentures or other insurance payment pursuant to this section.".

(b) DISPOSITION OF PROPERTIES ON CREDIT TERMS.—Section 204(g) of the National Housing Act is amended by inserting after the period at the end of the first sentence the following new sentence: "The Secretary shall, by regulation, carry out a program of sales of such properties and shall develop and implement appropriate credit terms and standards to be used in carrying out the program.".

SEC. 137. REPORT REGARDING PROVIDING FORECLOSED PROPERTIES TO 1989 DISASTER VICTIMS.

(a) HUD.—

(1) STUDY.—The Secretary of Housing and Urban Development shall conduct a study regarding the feasibility of making available, to low-income persons whose homes in areas declared by the President as disaster areas as a result of hurricane Hugo or the Loma Prieta earthquake during 1989 were destroyed by such disasters, any available properties (including multifamily properties) owned by the Secretary.

(2) REPORT.—The Secretary of Housing and Urban Development shall submit to the Congress, not later than the expiration of the 90-day period beginning on the date of the enactment of this Act, a report regarding the results and conclusions of the study under paragraph (1), together with any recommendations for legislation regarding providing such property.

(b) FARMERS HOME ADMINISTRATION.—The Secretary of Agriculture shall conduct a study regarding the feasibility of making available, as provided in subsection (a)(1), any available properties (including multifamily properties) owned by the Secretary through the Farmers Home Administration and shall submit a report regarding such study as provided in subsection (a)(2).

(c) CONSULTATION.—The Secretary of Housing and Urban Development and the Secretary of Agriculture shall consult in conducting the studies under subsections (a) and (b) and may submit a single report meeting the requirements of subsections (a)(2) and (b).

SEC. 138. REPORT REGARDING ACTIONS TO IMPROVE DIRECT ENDORSEMENT PROGRAM.

(a) IN GENERAL.—With respect to the direct endorsement program in connection with single-family mortgage insurance under title II of the National Housing Act, the Secretary shall submit to the Congress a report describing any actions the Secretary determines are necessary to take, to—

(1) improve monitoring and supervision under the program;

(2) reduce defaults under the program; and

(3) decrease the potential for fraud under the program.

(b) TIME OF SUBMISSION.—The Secretary shall submit the report under subsection (a) to the Congress not later than the expiration of the 6-month period beginning on the date of the enactment of this Act.

SEC. 139. CO-INSURANCE AMENDMENTS.

(a) IN GENERAL.—Section 244 of the National Housing Act is amended by adding at the end thereof the following new subsection:

"(i) The Secretary shall, by January 15 and July 15 of each year (1) review the adequacy of capital and other requirements for mortgagees under this section, (2) assess the compliance by mortgagees with such requirements, and (3) make such adjustment to such requirements as the Secretary, after providing opportunity for hearing, determines to be appropriate to improve the long-term financial soundness of the Federal Housing Administration funds. Such requirements shall include the minimum capital or net worth of mortgagees; the ratio that mortgagees shall maintain between the mortgagee's capital and the volume of mortgages co-insured by such mortgagee; and such other requirements as the Secretary determines to be appropriate to ensure the long-term financial soundness of the Federal Housing Administration funds. The Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report on the review and assessment under the previous sentence, and an explanation of the Secretary's reasons for making any adjustment in requirements authorized under this section.".

(b) REPORT.—The Secretary of Housing and Urban Development shall submit to the Congress not later than April 1, 1990, a report on the disposition of coinsured multifamily housing projects held by the Government National Mortgage Association. The report shall include a description of the guidelines governing the disposition of such

properties, particularly as such guidelines relate to the objectives of—

(1) minimizing losses to the Federal Government;

(2) preserving the projects in decent, safe, and sanitary condition; and

(3) protecting lower-income tenants residing in such projects.

The report shall also describe the status of such multifamily housing projects, including the name, address, and size of each project, and the date and conditions of any foreclosure sale.

SEC. 140. FHA MANAGEMENT.

Section 4 of the Department of Housing and Urban Development Act is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively; and

(2) by redesignating the second sentence in subsection (a) as subsection (b) and adding at the end thereof the following: "The Secretary shall ensure, to the extent practicable, that managers of Federal Housing Administration programs, at each level of the Department, shall be accountable for program operation, risk management, management of cash and other Federal assets, and program financing related to activities over which such managers have responsibility.".

SEC. 141. CONTRACTING FOR FINANCIAL MANAGEMENT SUPPORT.

Section 7(e) of the Department of Housing and Urban Development Act is amended by adding at the end thereof the following: "The Secretary is authorized to enter into contracts with private companies for the provision of such managerial support to the Federal Housing Administration as the Secretary determines to be appropriate, including but not limited to the management of insurance risk and the improvement of the delivery of mortgage insurance.".

SEC. 142. FHA OPERATIONS.

Section 202 of the National Housing Act is amended by—

(1) striking the heading "MUTUAL MORTGAGE INSURANCE FUND" and inserting "FEDERAL HOUSING ADMINISTRATION OPERATIONS";

(2) striking "SEC. 202." and inserting: "SEC. 202. (a) MUTUAL MORTGAGE INSURANCE FUND.—"; and

(3) adding at the end thereof the following new subsections:

"(b) ADVISORY BOARD.—There is created a Federal Housing Administration Advisory Board ("Board") that shall review operation of the Federal Housing Administration, including the activities of the Mortgagee Review Board, and shall provide advice to the Federal Housing Commissioner with respect to the formulation of general policies of the Federal Housing Administration and such other matters as the Federal Housing Commissioner may deem appropriate. The Advisory Board shall, in all other respects, be subject to the provisions of the Federal Advisory Committee Act.

"(1) The Advisory Board shall be composed of 15 members to be appointed from among individuals who have substantial expertise and broad experience in housing and mortgage lending of whom—

"(A) 9 shall be appointed by the Secretary;

"(B) 3 shall be appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate; and

"(C) 3 shall be appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(2) Membership on the Advisory Board shall include—

"(A) not less than 4 persons with distinguished private sector careers in housing finance, lending, management, development or insurance;

"(B) not less than 4 persons with outstanding reputations as licensed actuaries, experts in actuarial science, or economics related to housing;

"(C) not less than 4 persons with backgrounds of leadership in representing the interests of housing consumers;

"(D) not less than 1 person with significant experience and a distinguished reputation for work in the enforcement, advocacy, or development of fair housing or civil rights legislation; and

"(E) not less than 1 person with a background of leadership representing rural housing interests.

"(3) Members of the Advisory Board shall be selected to ensure, to the greatest extent practicable, geographical representation or every region of the country.

"(4) Not more than 8 members of the Advisory Board may be from any one political party.

"(5) Membership of the Advisory Board shall not include any person who, during the previous 24-month period, was required to register with the Secretary under section 112(c) of the Department of Housing and Urban Development Reform Act of 1989 or employed a person for purposes that required such person to so register.

"(6) Of the members of the Advisory Board first appointed, 5 shall have terms of 1 year, and 5 shall have terms of 2 years. Their successors and all other appointees shall have terms of 3 years.

"(7) The Advisory Board is empowered to confer with, request information of, and make recommendations to the Federal Housing Commissioner. The Commissioner shall promptly provide the Advisory Board with such information as the Board determines to be necessary to carry out its review of the activities and policies of the Federal Housing Administration.

"(8) The Board shall, not later than December 31 of each year, submit to the Secretary and the Congress a report of its assessment of the activities of the Federal Housing Administration, including the soundness of underwriting procedures, the adequacy of information systems, the appropriateness of staffing patterns, the effectiveness of the Mortgagee Review Board, and other matters related to the Federal Housing Administration's ability to serve the nation's homebuyers and renters. Such report shall contain the Board's recommendations for improvement and include any minority views.

"(9) The Board shall meet in Washington, D.C., not less than twice annually, or more frequently if requested by the Federal Housing Commissioner or a majority of the members. The Board shall elect a chair, vice-chair and secretary and adopt methods of procedure. The Board may establish committees and subcommittees as needed.

"(10) Subject to the provisions of Section 7 of the Federal Advisory Committee Act, all members of the Board may be compensated and shall be entitled to reimbursement from the Department for traveling expenses incurred in attendance at meetings of the Board.

"(c) MORTGAGEE REVIEW BOARD.—

"(1) ESTABLISHMENT.—There is established within the Federal Housing Administration the Mortgagee Review Board ("Board"). The Board is empowered to initiate the issuance of a letter of reprimand, the probation, suspension or withdrawal of any mortgagee found to be engaging in activities in violation of Federal Housing Administration requirements or the nondiscrimination requirements of the Equal Credit Opportunity Act, the Fair Housing Act, or Executive Order 11063.

"(2) COMPOSITION.—The Board shall consist of—

"(A) the Assistant Secretary of Housing/Federal Housing Commissioner;

"(B) the General Counsel of the Department;

"(C) the President of the Government National Mortgage Association;

"(D) the Assistant Secretary for Administration;

"(E) the Assistant Secretary for Fair Housing Enforcement (in cases involving violations of nondiscrimination requirements); and

"(F) the Chief Financial Officer of the Department;

or their designees.

"(3) ACTIONS AUTHORIZED.—When any report, audit, investigation, or other information before the Board discloses that a basis for an administrative action against a mortgagee exists, the Board shall take one of the following administrative actions:

"(A) LETTER OF REPRIMAND.—The Board may issue a letter of reprimand only once to a mortgagee without taking action under subparagraphs (B), (C), or (D) of this section. A letter of reprimand shall explain the violation and describe actions the mortgagee should take to correct the violation.

"(B) PROBATION.—The Board may place a mortgagee on probation for a specified period of time not to exceed 6 months for the purpose of evaluating the mortgagee's compliance with Federal Housing Administration requirements, the Equal Credit Opportunity Act, the Fair Housing Act, Executive Order 11063, or orders of the Board. During the probation period, the Board may impose reasonable additional requirements on a mortgagee including supervision of the mortgagee's activities by the Federal Housing Administration, periodic reporting to the Federal Housing Commissioner, or submission to Federal Housing Administration audits of internal financial statements, audits by an independent certified public accountant or other audits.

"(C) SUSPENSION.—The Board may issue an order suspending a mortgagee's approval for doing business with the Federal Housing Administration if there exists adequate evidence of a violation or violations and continuation of the mortgagee's approval, pending or at the completion of any audit, investigation, or other review, or such administrative or other legal proceedings as may ensue, would not be in the public interest or in the best interests of the Department. A suspension shall last for not less than 6 months. During the period of suspension, the Federal Housing Administration shall not commit to insure any mortgage originated by the suspended mortgagee.

"(D) WITHDRAWAL.—The Board may issue an order withdrawing a mortgagee if the Board has made a determination of a serious violation or repeated violations by the mortgagee. The Board shall determine the terms of such withdrawal, but the term shall be not less than 1 year. Where the Board has determined that the violation is egregious or willful, the withdrawal shall be permanent.

"(E) SETTLEMENTS.—The Board may at any time enter into a settlement agreement with

a mortgagee to resolve any outstanding grounds for an action. Agreements may include provisions such as—

"(i) cessation of any violation;

"(ii) correction or mitigation of the effects of any violation;

"(iii) repayment of any sums of money wrongfully or incorrectly paid to the mortgagee by a mortgagor, by a seller or by the Federal Housing Administration;

"(iv) actions to collect sums of money wrongfully or incorrectly paid by the mortgagee to a third party;

"(v) indemnification of the Federal Housing Administration for mortgage insurance claims on mortgages originated in violation of Federal Housing Administration requirements;

"(vi) modification of the length of the penalty imposed; or

"(vii) implementation of other corrective measures acceptable to the Secretary.

Material failure to comply with the provisions of a settlement agreement shall be sufficient cause for suspension or withdrawal.

"(4) NOTICE AND HEARING.—

"(A) The Board shall issue a written notice to the mortgagee at least 30 days prior to taking any action against the mortgagee under subparagraph (B), (C), or (D) of paragraph (3). The notice shall state the specific violations which have been alleged, and shall direct the mortgagee to reply in writing to the Board within 30 days. If the mortgagee fails to reply during such period, the Board may make a determination without considering any comments of the mortgagee.

"(B) If the Board takes action against a mortgagee under subparagraph (B), (C), or (D) of paragraph (3), the Board shall promptly notify the mortgagee in writing of the nature, duration, and specific reasons for the action. If, within 30 days of receiving the notice, the mortgagee requests a hearing, the Board shall hold a hearing on the record regarding the violations within 30 days of receiving the request. If a mortgagee fails to request a hearing within such 30-day period, the right of the mortgagee to a hearing shall be considered waived.

"(C) In any case in which the notification of the Board does not result in a hearing (including any settlement by the Board and a mortgagee), any information regarding the nature of the violation and the resolution of the action shall be available to the public.

"(5) PUBLICATION.—The Secretary shall establish and publish in the Federal Register a description of and the cause for administrative action against a mortgagee.

"(6) CEASE-AND-DESIST ORDERS.—

"(A) Whenever the Secretary, upon request of the Mortgagee Review Board, determines that there is reasonable cause to believe that a mortgagee is violating, has violated, or is about to violate, a law, rule or regulation or any condition imposed in writing by the Secretary or the Board, and that such violation could result in significant cost to the Federal Government or the public, the Secretary may issue a temporary order requiring the mortgagee to cease and desist from any such violation and to take affirmative action to prevent such violation or a continuation of such violation pending completion of proceedings of the Board with respect to such violation. Such order shall include a notice of charges in respect thereof and shall become effective upon service to the mortgagee. Such order shall remain effective and enforceable for a period not to exceed 30 days pending the completion of proceedings of the Board with respect to such violation, unless such order is set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B) of this paragraph. The Board shall provide the mortgagee an opportunity for a hearing on the record, as soon as practicable but not later than 20 days after the temporary cease-and-desist order has been served.

"(B) Within 10 days after the mortgagee has been served with a temporary cease-and-desist order, the mortgagee may apply to the United States district court for the judicial district in which the home office of the mortgagee is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the mortgagee, and such court shall have jurisdiction to issue such injunction.

"(C) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to this paragraph, the Secretary may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the mortgagee is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

"(D) For purposes of this paragraph, the term 'mortgagee' means a mortgagee, a branch office or subsidiary of a mortgagee, or a director, officer, employee, agent, or other person participating in the conduct of the affairs of such mortgagee.

"(7) REPORT REQUIRED.—The Board, in consultation with the Federal Housing Administration Advisory Board, shall annually recommend to the Secretary such amendments to statute or regulation as the Board determines to be appropriate to ensure the long term financial strength of the Federal Housing Administration fund and the adequate support for home mortgage credit.

"(d) COORDINATION OF GNMA AND FHA WITHDRAWAL ACTION.—

"(1) Whenever the Federal Housing Administration or Government National Mortgage Association initiates proceedings that could lead to withdrawing the mortgagee from participating in the program, the initiating agency shall—

"(A) within 24 hours notify the other agency in writing of the action taken;

"(B) provide to the other agency the factual basis for the action taken; and

"(C) if a mortgagee is withdrawn, publish its decision in the Federal Register.

"(2) Within 60 days of receipt of a notification of action that could lead to withdrawal under subsection (1), the Federal Housing Administration or the Government National Mortgage Association shall—

"(A) conduct and complete its own investigation;

"(B) provide written notification to the other agency of its decision, including the factual basis for its decision; and

"(C) if a mortgagee is withdrawn, publish its decision in the Federal Register.

"(e) APPRAISAL STANDARDS.—(1) The Secretary shall prescribe standards for the appraisal of all property to be insured by the Federal Housing Administration. Such appraisals shall be performed in accordance with uniform standards, by individuals who have demonstrated competence and whose professional conduct is subject to effective supervision. These standards shall require at a minimum—

"(A) that the appraisals of properties to be insured by the Federal Housing Administration shall be performed in accordance with generally accepted appraisal standards, such as the appraisal standards promulgated by the Appraisal Foundation a not-for-profit corporation established on November 30, 1987 under the laws of Illinois; and

"(B) that each appraisal be a written statement used in connection with a real estate transaction that is independently an impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

"(2) The Appraisal Subcommittee of the Federal Financial Institutions Examination Council shall include the Secretary or his designee.".

SEC. 143. ELIMINATION OF PRIVATE INVESTOR-OWNERS FROM SINGLE FAMILY MORTGAGE INSURANCE PROGRAM.

(a) RETENTION OF PUBLIC AND NONPROFIT INVESTOR OWNERS.—Section 203(g)(3) of the National Housing Act is amended—

(1) in subparagraph (A), by striking the semicolon at the end and inserting the following: ", or any other State or local government or an agency thereof;"; and

(2) in subparagraph (B), by striking the semicolon at the end and inserting the following: ", or other private nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 and intends to sell or lease the mortgaged property to low or moderate-income persons, as determined by the Secretary;".

(b) ELIMINATION OF PRIVATE INVESTOR-OWNERS.—Section 203(g) of the National Housing Act, as amended by subsection (a), is further amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(c) APPLICABILITY.—The amendments made by this section shall apply only with respect to—

(1) mortgages insured—

(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act; or

(B) in accordance with the direct endorsement program, if the approved underwriter of the mortgagee signs the appraisal report for the property on or after the date of the enactment of this Act; and

(2) the approval of substitute mortgagors, if the original mortgagor was subject to such amendments.

(d) TRANSITION PROVISIONS.—Any mortgage insurance provided under title II of the National Housing Act, as it existed immediately before the date of the enactment of this Act, shall continue to be governed (to the extent applicable) by the provisions amended by subsections (a) and (b) as such provisions existed immediately before such date.

## TITLE II—HOUSING PRESERVATION

SEC. 201. LIMITATIONS ON PREPAYMENT.

Section 203(a) of the Emergency Low Income Housing Preservation Act of 1987 is amended by striking "upon the expiration of the 2-year period beginning on the date of the enactment of this Act" and inserting in lieu thereof "on September 30, 1990".

SEC. 202. CLARIFICATION OF APPLICABILITY TO VOLUNTARY TERMINATION OF INSURANCE.

(a) GENERAL PREPAYMENT LIMITATION.—Section 221(a) of the Emergency Low Income Housing Preservation Act of 1987 is amended by adding at the end the following new sentence: "An insurance contract with respect to eligible low-income housing may be terminated pursuant to section 229 of the National Housing Act only in accordance with a plan of action approved by the Secretary under this subtitle.

(b) ALTERNATIVE PREPAYMENT LIMITATION.—Section 221(b) of the Emergency Low Income Housing Preservation Act of 1987 is amended—

(1) by striking the first comma and inserting "(1)"; and

(2) by inserting before the period at the end of the sentence the following: ", and (2) an insurance contract with respect to eligible low-income housing located in the geographic area subject to the jurisdiction of such court may not be terminated pursuant to section 229 of the National Housing Act during the 2-year period following the date of such invalidation".

(c) NOTICE OF INTENT.—Section 222 of the Emergency Low Income Housing Preservation Act of 1987 is amended by inserting after "agreement" the following: "(including a request to terminate the insurance contract pursuant to section 229 of the National Housing Act)".

(d) CONFORMING AMENDMENTS.—

(1) Section 250(a) of the National Housing Act is amended by inserting after "project" the second place it appears the following: "or permit a termination of an insurance contract pursuant to section 229 of this Act".

(2) Section 229 of the National Housing Act is amended by inserting after "section 2" the following: "and except as specified under section 250 of this Act and subtitle B of the Emergency Low Income Housing Preservation Act of 1987,".

SEC. 203. INCENTIVES TO EXTEND LOW-INCOME USE.

(a) LOANS.—

(1) ACQUISITIONS BY PUBLIC ENTITIES.—Section 236(b) of the National Housing Act is amended by inserting "public entity," before "or a cooperative housing corporation".

(2) CAPITAL IMPROVEMENT LOANS.—(A) Section 201(m)(2)(B) of the Housing and Community Development Amendments of 1978 is amended by striking "Reduce" and inserting "Notwithstanding subsection (l)(2)(B), reduce".

(B) Section 201(m)(2) of the Housing and Community Development Amendments of 1978 is amended—

(i) by striking "not subject to paragraph (1)";

(ii) by inserting after "residents" the second place it appears the following: ", or where appropriate to implement a plan of action under subtitle B of the Emergency Low Income Housing Preservation Act of 1987";

(iii) adding a new subparagraph after subparagraph (D):

"(E) Permit repayment of the debt service to be deferred as long as the low and moderate income character of the project is maintained in accordance with subsection (d).".

(b) APPROVAL OF PLAN OF ACTION.—

(1) TENANT PROFILE.—Section 225(b)(3)(F)(i) of the Emergency Low Income Housing Preservation Act of 1987 is amended by inserting before the semicolon the following: "(based on the area median income limits established by the Secretary in February, 1987), or the date the plan of action is approved, whichever date results in the highest proportion of very low-income families, except that this limitation shall not prohibit a higher proportion of very low-income families from occupying the housing".

(2) SECTION 8 RENTAL ASSISTANCE.—Section 225 of the Emergency Low Income Housing Preservation Act of 1987 is amended by adding at the end the following new subsections:

"(c) SECTION 8 RENTAL ASSISTANCE.—When providing rental assistance under section 8, the Secretary may enter into a contract with an owner, contingent upon the future availability of appropriations for the purpose of renewing expiring contracts for rental assistance as provided in appropriations Acts, to extend the term of such rental assistance for such additional period or periods as is necessary to carry out an approved plan of action. The contract and the approved plan of action shall provide that, if the Secretary is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Secretary, upon the request of the owner, shall take the following actions (subject to the limitations under the following paragraphs):—

"(1) Modification of the binding commitments made pursuant to subsection (b) that are dependent on such rental assistance.

"(2) If action under paragraph (1) is not feasible, release of an owner from the binding commitments made pursuant to subsection (b) that are dependent on such rental assistance.

"(3) If action under paragraphs (1) and (2) would, in the determination of the Secretary, result in the default of the insured loan, approval of the revised plan of action, notwithstanding subsection (a), that involves the termination of low-income affordability restrictions.

At least 30 days prior to making a request under the preceding sentence, an owner shall notify the Secretary of the owner's intention to submit the request. The Secretary shall have a period of 90 days following receipt of such notice to take action to extend the rental assistance contract and to continue the binding commitments under subsection (b).

"(d) RELOCATION OF DISPLACED TENANTS.—Any plan of action shall specify actions that the Secretary and the owner shall take to ensure that any tenants, displaced as a result of a plan of action approved under subsection (a) or as a result of modifications taken pursuant to subsection (c), are relocated to affordable housing.".

(c) INSURANCE FOR SECOND MORTGAGE FINANCING.—

(1) UNDERWRITING.—Section 241(f)(2) of the National Housing Act is amended by adding at the end the following sentence:

"When underwriting an equity loan under this subsection, the Secretary may assume that the rental assistance provided in accordance with an approved plan of action under section 225(b) of the Emergency Low Income Housing Preservation Act of 1987 will be extended for the full term of the contract entered into under section 225(c) of that Act. The Secretary may accelerate repayment of a loan under this section in the event rental assistance is not extended under section 225(c) of that Act or the Secretary is unable to develop a revised package of incentives to the owner comparable to those received under the original approved plan of action.".

(2) ACQUISITIONS BY PUBLIC ENTITIES.—Section 241(f)(3) of the National Housing Act is amended by inserting "public entity," after "A".

(d) LIMITATIONS ON FORECLOSURE.—Section 241(f) of the National Housing Act is amended by adding at the end the following new paragraph:

"(6) If the Secretary is unable to extend the term of rental assistance for the full term of the contract entered into under section 225(c) of the Emergency Low Income Housing Preservation Act of 1987, the Secretary is authorized to take such actions as the Secretary deems to be appropriate to avoid default, avoid disruption of the sound ownership and management of the property or otherwise minimize the cost to the Federal Government.".

SEC. 204. PRESERVATION.

(a) MANAGEMENT AND PRESERVATION OF HUD-OWNED AND HUD-HELD MULTIFAMILY HOUSING PROJECTS.—Section 203(k) of the Housing and Community Development Amendments of 1978 is amended to read as follows: "The Secretary shall annually submit to the Congress on June 1 of each year a report describing the status of multifamily housing projects that are subject to subsection (a), which report shall include—

"(1) the name, address, and size of each project;

"(2) the nature and date of assignment;

"(3) the status of the mortgage;

"(4) the physical condition of the project;

"(5) the proportion of units in a project that are vacant;

"(6) the date on which the Secretary became mortgagee in possession or the date of imposition of any receivership;

"(7) the date and conditions of any foreclosure sale;

"(8) the date of acquisition by the Secretary; and

"(9) the date and conditions of any property disposition sale.

The report shall describe the activities carried out under subsection (e) during the preceding year, and shall contain a description and assessment of the rules, guidelines and practices governing the Department's assumption of management responsibilities in multifamily housing projects subject to subsection (a) that are owned by the Secretary (or for which the Secretary is mortgagee in possession) as well as the steps that the Secretary has taken or plans to take to expedite the assumption of management responsibilities of the Department and improve the management performance of the Department, including the expedited repair and turnover of vacant units.".

(b) REHABILITATION LOANS.—Section 241 of the National Housing Act is amended by inserting the following after subsection (f):

"(g)(1) When underwriting a rehabilitation loan under this section in connection with eligible multifamily housing, the Secretary may assume that any rental assistance provided for purposes of servicing the additional debt will be extended for the term of the rehabilitation loan. The Secretary shall exercise prudent underwriting practices in insuring rehabilitation loans under this section. For purposes of this subsection, the term 'eligible multifamily housing' means any housing financed by a loan or mortgage that is—

"(A) insured or held by the Secretary under section 221(d)(3) of the National Housing Act and assisted under section 101 of the Housing and Urban Development Act of

1965 or section 8 of the United States Housing Act of 1937;

"(B) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act; or

"(C) insured, assisted or held by the Secretary under section 236 of the National Housing Act.

"(2) A mortgagee approved by the Secretary may not withhold consent to a rehabilitation loan insured in connection with eligible multifamily housing on which that mortgagee holds a mortgage.".

(c) CAPITAL ASSESSMENT STUDY.—(1) The Secretary of Housing and Urban Development shall conduct a study to determine the physical renovation needs of the Nation's federally-assisted multifamily housing inventory that is distressed and to estimate the cost of correcting deficiencies and subsequently maintaining that inventory in adequate physical condition. The Secretary shall establish criteria to determine what housing qualifies as distressed and such criteria shall include factors such as serious deficiencies in the original design, deferred maintenance, physical deterioration or obsolescence of major systems and other serious deficiencies in the physical plant of a project. The study shall examine and assess the adequacy of existing tools that are available to the Secretary for modernization efforts including—

(A) mortgage insurance for rehabilitation loans under section 241 of the National Housing Act;

(B) operating assistance and capital improvement loans under section 201 of the Housing and Community Development Amendments of 1978 (the "Flexible Subsidy Program"); and

(C) rental assistance under section 8.

The study shall also examine and assess the effectiveness of sanctions that are now available to the Secretary. Not later than one year after the date of enactment of this Act, the Secretary shall submit to the Congress a detailed report setting forth the findings of the Secretary as a result of the study. The Secretary shall submit to the Congress an interim report containing the information required under paragraph (2) not later than April 1, 1990.

(2) The examination and assessment of the Flexible Subsidy Program required by paragraph (1) shall include—

(A) an accounting of all applications that have been approved or rejected since 1980;

(B) an analysis of all applications that have not been acted upon since 1980 including the length of time such applications have been pending, the amount of assistance requested, and the number of units affected;

(C) an estimate of the funding that will be made available to the Flexible Subsidy Fund under section 201(j) of the Housing and Community Development Amendments of 1978 in the next three fiscal years; and

(D) an assessment of what additional resources will be needed for the Fund in the next three fiscal years.

(3) The term "federally-assisted multifamily housing" means housing financed by a loan or mortgage that is—

(A) insured or held by the Secretary under section 221(d)(3) of the National Housing Act and assisted under section 101 of the Housing and Urban Development Act of 1965 or section 8 of the United States Housing Act of 1937;

(B) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act; or

(C) insured, assisted or held by the Secretary under section 236 of the National Housing Act.

SEC. 205. REPORT ON PROPERTY DISPOSITION DEMONSTRATION.

The Secretary of Housing and Urban Development shall submit to the Congress, not later than 30 days after the date of enactment of this Act, a report describing the steps that have been and will be taken to implement section 184 of the Housing and Community Development Act of 1987 including a detailed description of—

(1) the efforts taken by the Secretary to solicit participants in the demonstration;

(2) any applications, responses or other expressions of interest submitted by State housing finance agencies;

(3) the reasons for the Secretary's refusal, as of the date of enactment of this Act, to approve such applications; and

(4) the steps that the Secretary has taken and plans to take to ensure that the demonstration is implemented in at least one State within 90 days after the date of enactment of this Act.

SEC. 206. PROHIBITION ON PREPAYMENT OF NEW RURAL HOUSING LOANS.

(a) IN GENERAL.—Section 502(c)(1) of the Housing Act of 1949 is amended—

(1) by inserting "(A)" after "(c)(1)";

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(3) by adding at the end the following new subparagraph:

"(B) The Secretary may not accept an offer to prepay, or request refinancing in accordance with subsection (b)(3) of, any loan made or insured under section 515 pursuant to a contract entered into on or after the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989.".

(b) CONFORMING AMENDMENT.—Section 502(c)(1) of the Housing Act of 1949 is amended—

(1) by striking "after the date of enactment of this subsection," and inserting the following: "after December 21, 1979, but before the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989,"; and

(2) by striking "after the date of enactment of this subsection and" and inserting the following: "after December 21, 1979, but before the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989, and".

SEC. 207. EQUITY TAKEOUT INCENTIVE FOR NEW RURAL HOUSING LOANS.

Section 515 of the Housing Act of 1949 is amended by adding at the end the following new subsection:

"(t) EQUITY TAKEOUT LOANS.—

"(1) AUTHORITY.—The Secretary is authorized to guarantee an equity loan (in the form of a supplemental loan) to an owner of housing financed with a loan made or insured under subsection (b), only if the Secretary determines, after taking into account local market conditions, that there is reasonable likelihood that the housing will continue as decent, safe, and sanitary housing for the remaining life of the original loan on the project made or insured under subsection (b) and that such an equity loan is—

"(A) necessary to provide a fair return on the owner's investment in the housing;

"(B) the least costly alternative for the Federal Government that is consistent with carrying out the purposes of this subsection; and

"(C) would not impose an undue hardship on tenants or an unreasonable cost to the Federal Government.

The amount of loans guaranteed under this subsection shall be subject to limits provided in appropriations Acts.

"(2) TIMING.—The Secretary is authorized to guarantee an equity loan under this subsection after the expiration of the 20-year period beginning on the date that an existing loan under subsection (b) of this section was made or insured. Not more than one equity loan under this subsection may be provided for any project.

"(3) AMOUNT OF THE TAKEOUT.—The amount of an equity loan under this subsection shall not exceed the difference between the outstanding principal on debt secured by the project and 90 percent of the appraised value of the project. The appraised value of the project shall be determined by 2 independent appraisers, 1 of whom shall be selected by the Secretary and 1 of whom shall be selected by the owner. If the 2 appraisers fail to agree on the value of the project, the Secretary and the owner shall jointly select a third appraiser whose appraisal shall be binding on the Secretary and the owner. The amount of the equity loan shall not exceed 30 percent of the amount of the original loan on the project made or insured under subsection (b).

"(4) RESERVE ACCOUNT PAYMENTS.—For each loan made or insured under subsection (b) pursuant to a contract entered into after the date this subsection takes effect, the owner shall make monthly payments from project income to the Secretary for deposit in a reserve account for the project. Such monthly payments shall, in the first year after the loan is made or insured, equal $2 for each unit in the project, and shall increase by $2 annually until the expiration of the 20-year period beginning on the date that the loan was made or insured, except that such annual increases shall not be required for a unit occupied by a low-income family or individual who is paying more than 30 percent of the family's or individual's adjusted income in rent. The rent on a unit for which payment is made under this paragraph shall be increased by the amount of such payment.

"(5) RESERVE ACCOUNT.—

"(A) Payments under paragraph (4) shall be deposited in an interest bearing account that the Secretary shall establish for the project.

"(B) The Secretary shall make available amounts in the reserve account only for payments of principal and interest on an equity loan under this subsection. Such payments shall be in amounts necessary to ensure that rent payments made by low-income families residing in the housing do not exceed the maximum rent under section 521(a)(2)(A);

"(C) Any payments to the account, and interest on such payments, not expended in the project from which such payments were made, shall be used in other projects to make payments of principal and interest on an equity loan under this subsection. Such payments shall be in amounts necessary to ensure that rent payments made by low-income families residing in the housing do not exceed the maximum rent under section 521(a)(2)(A).

"(D) The Secretary shall make payments from accounts under this paragraph only to the extent provided in appropriations Acts.

"(6) SUBMISSION OF PLAN.—An owner requesting an equity loan under this subsection shall submit a plan acceptable to the

Secretary to ensure that the cost of amortizing an equity loan under paragraph (1) does not result in the displacement of very-low-income tenants or substantially alter the income mix of the tenants in the project.

"(7) REGULATIONS.—The Secretary shall issue final regulations within 180 days from the date of enactment of this subsection.

"(8) EFFECTIVE DATE.—The requirements of this subsection shall apply to any applications for assistance under this section on or after the expiration of 180 days from the date of enactment of this subsection.".

## TITLE III—HOUSING PROGRAM EXTENSIONS AND CHANGES

SEC. 301. FLEXIBLE SUBSIDY PROGRAM.

Section 236(f)(3) of the National Housing Act is amended by striking "September 30, 1989" and inserting "September 30, 1991".

SEC. 302. CONTINUATION OF PUBLIC HOUSING ECONOMIC RENT.

Section 3(a)(2) of the United States Housing Act of 1937 is amended—

(1) in subparagraph (A), by striking "3-year" and inserting "5-year"; and

(2) in subparagraph (B)—

(A) by striking "3-year" and inserting "5-year"; and

(B) by adding at the end the following: "The terms of all ceiling rents established prior to the date of enactment of the Department of Housing and Urban Development Reform Act of 1989 shall be extended for the 5-year period beginning on such date of enactment.".

SEC. 303. EXTENSION OF RECIPROCITY IN APPROVAL OF HOUSING SUBDIVISIONS AMONG FEDERAL AGENCIES.

Section 535(b) of the Housing Act of 1949 is amended by striking "1-year period beginning on the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988" and inserting the following: "6-month period beginning on the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989".

SEC. 304. HODAG AMENDMENT.

Section 17(d) of the United States Housing Act of 1987 is amended as follows:

"(11) SALE OF UNITS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a project assisted by a development grant awarded pursuant to this section where (i) the grant was originally approved for a nonprofit cooperative, and (ii) a majority of the units in the approved project have 3 or more bedrooms, the nonprofit owner of such project may sell such units for fee simple or condominium ownership if the requirements of subparagraph (B) are met.

"(B) REQUIREMENTS.—The requirements of this subparagraph are that—

"(i) at least 80 percent of the units in the project are initially sold to households with incomes that do not exceed 80 percent of the median income of the area;

"(ii) housing cost to such households shall be initially calculated at not to exceed 30 percent of actual household income;

"(iii) each purchaser agrees that, during the 20-year period following the initial sale, any subsequent resale of the unit shall be to a purchaser whose income does not exceed 80 percent of the median income for the area; and

"(iv) after the 20-year period described in clause (iii), the pro rata grant attributable to a unit, which shall be secured by a deed of trust on the unit, shall be repaid upon any sale, lease, or transfer of any interest in the unit except for a sale of the unit to a purchaser whose income does not exceed 80 percent of the median income of the area.

"(C) REFINANCING.—A refinancing of the unit involving an equity withdrawal shall require a repayment to the extent of the withdrawal not to exceed the pro rata amount of the grant attributable to the unit. A refinancing unrelated to a sale, equity withdrawal, lease, or transfer of interest shall not require repayment.

"(D) ADMINISTRATION.—A homeowner may request grantee approval of a sale, equity withdrawal, or other transfer with postponement of the repayment or without full or partial repayment and grantee may approve if the grantee determines that—

"(i) an undue hardship will result from the application of the repayment requirement, such as where the proceeds are insufficient to repay the loan in full; or

"(ii) postponing repayment is in the interest of neighborhood growth and stability.

"(E) EFFECT OF REPAYMENT.—Upon repayment of the grant, any program requirements affecting the unit shall terminate. The grantee shall use repayments of the grant for low and moderate income housing as prescribed by the Secretary. Notwithstanding any existing project covenants or inconsistencies with this section, the Secretary shall take all action necessary to implement this paragraph.".

## TITLE IV—RURAL HOUSING

SEC. 401. ACCOUNTABILITY IN AWARDS OF ASSISTANCE; REMEDIES AND PENALTIES.

(a) IN GENERAL.—Title V of the Housing Act of 1949 is amended by adding at the end the following:

"ACCOUNTABILITY

"SEC. 536. (a) NOTICE REGARDING ASSISTANCE.—

"(1) PUBLICATION OF NOTICE OF AVAILABILITY.—The Secretary shall publish in the Federal Register notice of the availability of any assistance under any program or discretionary fund administered by the Secretary under this title.

"(2) PUBLICATION OF APPLICATION PROCEDURES.—The Secretary shall publish in the Federal Register a description of the form and procedures by which application for the assistance may be made, and any deadlines relating to the award or allocation of the assistance. Such description shall be sufficient to enable any eligible applicant to apply for such assistance.

"(3) PUBLICATION OF SELECTION CRITERIA.—Not less than 30 days before any deadline by which applications or requests for assistance under any program or discretionary fund administered by the Secretary must be submitted, the Secretary shall publish in the Federal Register the criteria by which selection for the assistance will be made. Such criteria shall include any objective measures of housing need, project merit, or efficient use of resources that the Secretary determines are appropriate and consistent with the statute under which the assistance is made available.

"(4) DOCUMENTATION OF DECISIONS.—

"(A) The Secretary shall award or allocate assistance only in response to a written application in a form approved in advance by the Secretary, except where other award or allocation procedures are specified in statute.

"(B) The Secretary shall ensure that documentation and other information regarding each application for assistance is sufficient to indicate the basis on which any award or allocation was made or denied. The preceding sentence shall apply to—

"(i) any application for an award or allocation of assistance made by the Secretary to a State, unit of general local government, or other recipient of assistance, and

"(ii) any application for a subsequent award or allocation of such assistance by such State, unit of general local government or other recipient.

"(C) The Secretary shall ensure that each application and all related documentation and other information referred to in subparagraph (B) is readily available for public inspection for a period of not less than 10 years, beginning not less than 30 days following the date on which the award or allocation is made.

"(5) EMERGENCY EXCEPTION.—The Secretary may waive the requirements of paragraphs (1), (2), and (3) if the Secretary determines that the waiver is required for adequate response to an emergency. Not less than 30 days after providing a waiver under the preceding sentence, the Secretary shall publish in the Federal Register the Secretary's reasons for so doing.

"(b) DISCLOSURES BY APPLICANTS.—The Secretary shall require the disclosure of information with respect to any application for assistance under this title submitted by any applicant who has received or, in the determination of the Secretary, can reasonably be expected to receive assistance under this title in excess of $200,000 in the aggregate during any fiscal year. Such information shall include the following:

"(1) OTHER GOVERNMENT ASSISTANCE.—Information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project or activities for which the applicant is seeking assistance under this title. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

"(2) INTERESTED PARTIES.—The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance under this title or the planning, development, or implementation of the project or activity. For purposes of this paragraph, residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

"(3) EXPECTED SOURCES AND USES.—A report satisfactory to the Secretary of the expected sources and uses of funds that are to be made available for the project or activity.

"(c) UPDATING OF DISCLOSURE.—During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required under the previous subsection within 30 days of any substantial change.

"(d) REGULATION OF LOBBYISTS AND CONSULTANTS.—

"(1) LIMITATION OF FEES.—Any person who is engaged for pay or for any consideration for the purpose of attempting to influence any award or allocation of assistance by the Secretary shall not seek or receive any fee that is—

"(A) based on the amount of assistance or number of units that may be provided by the Secretary, or

"(B) contingent on an award of assistance by the Secretary, except that professional

services related to a project may be donated in whole or in part to a community housing development organization in the event assistance for a project is not awarded.

"(2) REGISTRATION.—Any person who will be engaged for pay or for any consideration for the purpose of attempting to influence any award or allocation of assistance by the Secretary shall, before doing anything in furtherance of such object, register by submitting to the Secretary a sworn statement containing—

"(A) such person's name and business address,

"(B) the nature and duration of any previous Federal employment,

"(C) the name and address of the person by whom such person is employed, and in whose interest such person appears or works,

"(D) the duration of such employment,

"(E) how much such person is paid and is to receive,

"(F) by whom such person is paid or is to be paid,

"(G) how much such person is to be paid for expenses, and

"(H) what expenses are to be included.

For purposes of this paragraph, ownership by an individual of a single family home financed under section 502 does constitute pay or consideration.

"(3) REPORTING.—Each person registering under paragraph (2) shall, between the first and tenth day of each calendar quarter, so long as such person's activity continues, file with the Secretary a detailed report under oath setting forth—

"(A) all money received and expended by such person during the preceding calendar quarter in carrying on such person's work;

"(B) an identification of the person or persons to whom funds were paid and the purposes of such payments;

"(C) all awards or allocations of assistance under this title that the person attempted to influence; and

"(D) any contacts with any employee of the Department for the purpose of attempting to influence any award or allocation of assistance by the Secretary.

"(e) REMEDIES AND PENALTIES.—

"(1) ADMINISTRATIVE REMEDIES.—If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (b), (c), or (d) this section has occurred, the Secretary shall—

"(A) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

"(B) in the case of a selection that has been made, determine whether to—

"(i) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

"(ii) impose sanctions upon the violator, including debarment, subject to review and determination on the record after opportunity for a hearing;

"(iii) recapture any funds that have been disbursed;

"(iv) permit the violating applicant selected to continue to participate in the program; or

"(v) take any other actions that the Secretary considers appropriate.

The Secretary shall publish in the Federal Register a descriptive statement of each determination made and action taken under this paragraph.

"(2) CIVIL PENALTIES.—Whoever violates any section of this section shall be subject to the imposition of a civil penalty in a civil action brought by the United States in an appropriate district court of the United States. A civil penalty under this paragraph may not exceed—

"(A) $100,000 in the case of an individual; or

"(B) $1,000,000 in the case of an applicant other than an individual.

"(3) DEPOSIT OF PENALTIES IN INSURANCE FUNDS.—Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the Rural Housing Insurance Fund.

"(4) NONEXCLUSIVENESS OF REMEDIES.—This subsection may not be construed to limit the applicability of any requirements, sanctions, penalties, or remedies established under any other law. The Secretary shall not be relieved of any obligation to carry out the requirements of this section because such other requirements, sanctions, penalties, or remedies apply.

"(f) LIMITATION OF ASSISTANCE.—The Secretary shall certify that assistance provided by the Secretary to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance from all Federal, State, and local sources. The Secretary shall adjust the amount of assistance provided to an applicant to compensate for any changes reported under subsection (c).

"(g) REGULATIONS.—Not less than 180 days following enactment of this Act, the Secretary shall promulgate regulations to implement this section.

"(h) DEFINITION.—For purposes of this section, the term 'assistance' means any housing grant, loan, guarantee, insurance, rebate, subsidy, tax credit benefit, or other form of direct or indirect assistance.

"(i) REPORT BY THE SECRETARY.—The Secretary shall submit to the Congress, not later than 180 days following the date of enactment of this section, a report describing actions taken to carry out this section, including actions to inform and educate officers and employees of the Department of Agriculture regarding the provisions of this section.".

(b) EFFECTIVE DATE.—Section 536 of the Housing Act of 1949, as added by subsection (a), shall take effect on the effective date of regulations implementing such section.

SEC. 402. REUSE OF SECTION 515 LOAN AUTHORITY.

Section 515 of the Housing Act of 1949, as amended by section 207, is amended by adding at the end the following:

"(u) REUSE OF LOAN AUTHORITY.—Loan authority that is obligated under this section but that is not expended due to any action that removes the original borrower, may be reallocated to a different borrower during the same fiscal year in which the loan authority was obligated.".

## TITLE V—NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

SEC. 501. PURPOSE.

The purpose of this title is to establish a National Commission on Severely Distressed Public Housing—

(1) to identify those public housing projects in the Nation that are in a severe state of distress;

(2) to assess the most promising strategies to improve the condition of severely distressed public housing projects that have been implemented by public housing authorities, other Government agencies at the Federal, State, and local level, public housing tenants, and the private sector;

(3) to develop a national action plan to eliminate by the year 2000 unfit living conditions in public housing projects determined by the Commission to be the most severely distressed.

SEC. 502. ESTABLISHMENT OF COMMISSION.

There is established a commission to be known as the National Commission on Severely Distressed Public Housing (hereinafter in this title referred to as the "Commission").

SEC. 503. MEMBERSHIP OF COMMISSION.

(a) APPOINTMENT.—(1) The Commission shall be composed of 18 members, appointed not later than 60 days after amounts are appropriated pursuant to section 506 or made available from non-Federal sources. The members shall be as follows:

(A) 6 members to be appointed by the Secretary of Housing and Urban Development;

(B) 6 members appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and Ranking Minority Member of the Subcommittee on VA, HUD, and Independent Agencies of the Committee on Appropriations of the Senate; and

(C) 6 members appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Chairman and Ranking Minority Member of the Subcommittee on VA, HUD, and Independent Agencies of the Committee on Appropriations of the House of Representatives.

(2) The Secretary and the congressional leaders referred to in paragraph (1) shall each appoint as member of the Commission—

(A) 2 individuals who are elected public officials at the Federal, State, or local level;

(B) 2 individuals who are local public housing officials or representatives of public housing authorities with experience in eliminating unfit living conditions in severely distressed public housing projects;

(C) 1 individual who is a tenant or a representative of tenants or a tenant organization; and

(D) 1 individual who is a leader of business or labor or is a distinguished academic in the field of housing and urban development.

(b) CHAIRPERSON.—The Commission shall elect a chairperson from among members of the Commission.

(c) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(d) VOTING.—Each member of the Commission shall be entitled to 1 vote, which shall be equal to the vote of every other member of the Commission.

(e) VACANCIES.—Any vacancy on the Commission shall not affect its powers, but shall be filled in the manner in which the original appointment was made.

(f) PROHIBITION ON ADDITIONAL PAY.—Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

SEC. 504. FUNCTIONS OF THE COMMISSION.

(a) IDENTIFICATION OF SEVERELY DISTRESSED PUBLIC HOUSING PROJECTS.—The Commission shall identify those public housing projects that are in a severe state of distress, giving special attention to projects that—

(1) require major redesign to correct serious deficiencies in the original design (including inappropriately high population

density), deferred maintenance, physical deterioration or obsolescence of major systems and other deficiencies in the physical plant of the project;

(2) are occupied predominantly by families with children who are in a severe state of distress, characterized by such factors as high rates of unemployment, teenage pregnancy, single-parent households, long-term dependency on public assistance and minimal educational achievement;

(3) are locations for recurrent vandalism and criminal activity (including drug-related criminal activity);

(4) suffer from management deficiencies, including absence of effective management systems to (A) repair and re-rent vacant units expeditiously; (B) maintain units and common areas; (C) terminate the tenancy of tenants engaged in activity that adversely affects the health, safety, and right to quiet enjoyment of their neighbors; (D) collect rents; (E) encourage tenant participation and cooperation in management and maintenance; and (F) maintain adequate security; and

(5) meet such other criteria that the Commission determines to be evidence of unfit living conditions.

(b) EVALUATION OF ALTERNATIVE STRATEGIES.—The Commission shall assess the most promising strategies to eliminate unfit living conditions in severely distressed public housing projects that have been implemented by public housing authorities, other Government agencies at the Federal, State, and local level, public housing tenants, and the private sector. Such strategies may include but shall not be limited to—

(1) measures to correct management deficiencies;

(2) the provision of supportive services to project residents, and, if necessary, the redesign of projects to accommodate such services;

(3) the redesign of projects to reduce density and otherwise eliminate harmful design elements;

(4) the conversion of projects to mixed-income housing developments; and

(5) the total or partial demolition or disposition of projects. Evaluation of such strategies shall consider efforts to provide for replacement of public housing dwelling units that were demolished, disposed of or otherwise removed from use by low-income persons.

(c) DEVELOPMENT OF NATIONAL ACTION PLAN.—The Commission shall establish a national action plan to eliminate by the year 2000 unfit living conditions in public housing projects identified in subsection (a). The action plan shall—

(1) specify objectives that the Department of Housing and Urban Development could achieve in cooperation with public housing authorities, public housing tenants, and other interested parties;

(2) provide a schedule by which such objectives could be achieved;

(3) recommend any legislative or administrative action that is necessary to achieve such objectives;

(4) make recommendations regarding any necessary replacement of public housing; and

(5) calculate, in accordance with the schedule established above, any impact on Federal expenditures necessary to achieve such objectives.

(d) FINAL REPORT.—Not later than 12 months after the Commission is established pursuant to section 503(a), the Commission shall submit to the Secretary and to the Congress a final report which shall contain the information, evaluations, and recommendations specified above.

SEC. 505. POWERS OF COMMISSION.

(a) HEARINGS.—The Commission may, for the purpose of carrying out this subtitle, hold such hearings and sit and act at such times and places as the Commission may find advisable.

(b) RULES AND REGULATIONS.—The Commission may adopt such rules and regulations as may be necessary to establish its procedures and to govern the manner of its operations, organization and personnel.

(c) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) The Commission may secure directly from any department or agency of the United States such data and information as the Commission may require for the purpose of this subtitle, including but not limited to comprehensive plans submitted by public housing authorities in accordance with section 14 of the United States Housing Act of 1937, and applications submitted by public housing authorities requesting funds for the major reconstruction of public housing projects in accordance with section 5 of such Act. Upon request of the Commission, any such department or agency shall furnish such data or information. The Commission may acquire data or information directly from public housing authorities to the same extent the Secretary could acquire such data or information.

(2) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(3) Upon the request of the chairperson of the Commission, the Secretary of Housing and Urban Development shall, to the extent possible and subject to the discretion of the Secretary, detail any of the personnel of the Department of Housing and Urban Development, on a nonreimbursable basis, to assist the Commission in carrying out its duties under this subtitle.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(e) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriations Acts, enter into contracts with private firms, institutions, and individuals for the purpose of conducting research or surveys necessary to enable the Commission to discharge its duties under this subtitle.

(f) STAFF.—(1) The Commission shall appoint an executive director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5, United States Code.

(2) In addition to the executive director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(g) ADVISORY COMMITTEE.—The Commission shall be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title not to exceed $2,000,000 for fiscal year 1990 and $1,000,000 for fiscal year 1991. Funds appropriated under this section shall remain available until expended.

SEC. 507. SUNSET.

The Commission shall terminate upon the expiration of 18 months following the appointment of all the members under section 503(a).

## TITLE VI—NATIONAL COMMISSION ON NATIVE AMERICAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

SEC. 601. ESTABLISHMENT.

There is established a Commission to be known as the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing (hereinafter in this section referred to as the "Commission").

SEC. 602. MEMBERSHIP.

(a) APPOINTMENT.—(1) The Commission shall be composed of 12 members, appointed not later than 60 days after amounts are appropriated pursuant to section 605 of this Act or made available from non-Federal sources. The members shall be appointed as follows:

(A) 2 members to be appointed by the Secretary of Housing and Urban Development;

(B) 2 members appointed by the Chairman and the Ranking Minority Member of the Select Committee on Indian Affairs of the Senate;

(C) 3 members appointed by the Chairman and the Ranking Minority Member of the Subcommittee on Housing and Community Development of the Committee on Banking, Finance, and Urban Affairs of the House of Representatives;

(D) 3 members appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate;

(E) 1 Native Hawaiian appointed by the Secretary of Housing and Urban Development; and

(F) 1 Native Hawaiian appointed by the Chairman and Ranking Minority Member of the Select Committee on Indian Affairs of the Senate.

(2) Except as provided in paragraph (3), the Secretary and the congressional leaders referred to in subparagraphs (A) through (D) of paragraph (1) shall appoint as members of the Commission individuals who are elected officials of Indian tribes, who are officials of Indian housing authorities, or who have experience in Federal Indian housing programs.

(3) The congressional leaders referred to in subparagraphs (C) and (D) paragraph (1) shall appoint 1 individual under each such clause with experience in housing development and finance.

(4) The members appointed under subparagraphs (E) and (F) of paragraph (1) shall be individuals with experience in the Native Hawaiian community in housing programs available to beneficiaries of the Hawaiian Homes Commission Act of 1920.

(b) CHAIRPERSON.—The Commission shall elect a chairperson from among the members of the Commission.

(c) QUORUM.—A majority of the members shall constitute a quorum for the transaction of business.

(d) VOTING.—Each member of the Commission shall be entitled to one vote, which shall be equal to the vote of every other member of the Commission.

(e) VACANCIES.—Any vacancy on the Commission shall not affect its powers, but shall

be filled in the original manner in which the appointment was made.

(f) PROHIBITION ON ADDITIONAL PAY.—Members on the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(g) TERMINATION.—The Commission shall terminate upon the expiration of 18 months after all members of the Commission are appointed under paragraph (1).

SEC. 603. FUNCTIONS OF THE COMMISSION.

(a) EVALUATION OF CURRENT PROBLEMS.—The Commission shall evaluate the factors currently impeding the development of safe and affordable housing for American Indians, Alaska Natives, and Native Hawaiians, including factors related to tribal administrative capacity, property management, access to financial markets, infrastructure development, and the adequacy of existing housing programs for Indians, Alaska Natives, and Native Hawaiians.

(b) EVALUATION OF ALTERNATIVE STRATEGIES.—The Commission shall assess the most promising strategies for the development, management, and modernization of housing for Indians, Alaska Natives, and Native Hawaiians. The Commission shall, in particular, evaluate housing strategies that have been or could be carried out by Indian housing authorities, public housing authorities, other government agencies at the Federal, State and local level, and the private sector.

(c) DEVELOPMENT OF AN ACTION PLAN.—The Commission shall establish an action plan for American Indian and Alaska Native housing based upon the assessment in subsections (a) and (b). The action plan shall—

(1) specify objectives that the Department of Housing and Urban Development could achieve in cooperation with Indian housing authorities, Indian tribes, Native Hawaiian organizations, and other interested parties;

(2) provide a schedule by which such objectives could be achieved; and

(3) recommend legislative, regulatory, or administrative action necessary to achieve such objectives.

(d) FINAL REPORT.—Not later than 12 months after the appointment of members of the Commission under section 602(a), the Commission shall submit to the Secretary and to the Congress a final report which shall contain the information, evaluations, and recommendations specified above.

(e) DEFINITION.—As used in this section, the term "Native Hawaiian organization" means any organization which is established and controlled by beneficiaries or eligible beneficiaries under the provisions established by the Hawaiian Homes Commission Act of 1920.

SEC. 604. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may for the purpose of carrying out this title, hold such hearings and sit and act at such times and places as the Commission may find advisable.

(b) RULES AND REGULATIONS.—The Commission may adopt such rules and regulations as may be necessary to establish its procedures and to govern the manner of its operations, organization, and personnel.

(c) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) The Commission may secure directly from any department or agency of the United States such data and information as the Commission may require for the purpose of this title. Upon request of the Commission, any such department or agency shall furnish such data or information. The Commission may require data or information directly from Indian housing authorities to the same extent the Secretary could acquire such data or information.

(2) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(3) Upon the request of the chairperson of the Commission, the Secretary of Housing and Urban Development shall, to the extent possible and subject to the discretion of the Secretary, detail any of the personnel of the Department of Housing and Urban Development, on a nonreimbursable basis, to assist the Commission in carrying out its duties under this title.

(d) MAILS. —The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(e) CONTRACTING. —The Commission may, to such extent and in such amounts as are provided in appropriations Acts, enter into contracts with private firms, institutions, and individuals for the purpose of conducting research or surveys necessary to enable the Commission to discharge its duties under this title.

(f) STAFF.—(1) The Commission shall appoint an executive director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5, United States Code.

(2) In addition to the executive director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(3) ADVISORY COMMITTEE.—The Commission shall be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 605. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not to exceed $500,000 for each of the fiscal years 1990 and 1991. Any sums so appropriated shall remain available until expended.

## TITLE VII—MISCELLANEOUS

SEC. 701. NULLIFICATION OF RIGHT OF REDEMPTION OF SINGLE FAMILY MORTGAGORS UNDER SECTION 312 REHABILITATION LOAN PROGRAM.

(a) IN GENERAL.—Whenever with respect to a single family mortgage securing a loan under section 312 of the Housing Act of 1964, the Secretary of Housing and Urban Development or its foreclosure agent forecloses in any Federal or State court or pursuant to a power of sale in a mortgage, the purchaser at the foreclosure sale shall be entitled to receive a conveyance of title to, and possession of, the property, subject to any interests senior to the interests of the Secretary. With respect to properties that are vacant and abandoned, notwithstanding any State law to the contrary, there shall be no right of redemption (including all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale in connection with such single family mortgage. The appropriate State official or the trustee, as the case may be, shall execute and deliver a deed or other appropriate instrument conveying title to the purchaser at the foreclosure sale, consistent with applicable procedures in the jurisdiction and without regard to any such right of redemption.

(b) FORECLOSURE BY OTHERS.—Whenever with respect to a single family mortgage on a property that also has a single family mortgage securing a loan under section 312 of the Housing Act of 1964, a mortgagee forecloses in any Federal or State court or pursuant to a power of sale in a mortgage, the Secretary of Housing and Urban Development, if the Secretary is purchaser at the foreclosure sale, shall be entitled to receive a conveyance of title to, and possession of, the property, subject to the interests senior to the interests of the mortgagee. Notwithstanding any State law to the contrary, there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) if the mortgagor or any other person subsequent to the foreclosure sale to the Secretary in connection with a property that secured a single family mortgage for a loan under section 312 of the Housing Act of 1964. The appropriate State official or the trustee, as the case may be, shall execute and deliver a deed or other appropriate instrument conveying title to the Secretary, who is the purchaser at the foreclosure sale, consistent with applicable procedures in the jurisdiction and without regard to any such right of redemption.

(c) VERIFICATION OF TITLE.—The following actions shall be taken in order to verify title in the purchaser at the foreclosure sale:

(1) In the case of a judicial foreclosure in any Federal or State court, there shall be included in the petition and in the judgment of foreclosure a statement that the foreclosure is in accordance with this subsection and that there is no right of redemption in the mortgagor or any other person.

(2) In the case of a foreclosure pursuant to a power of sale provision in the mortgage, the statement required in paragraph (1) shall be included in the advertisement of the sale and either in the recitals of the deed or other appropriate instrument conveying title to the purchaser at the foreclosure sale or in an affidavit or addendum to the deed.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "mortgage" means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any interest in property, real, personal, or mixed, or any interest in property, including leaseholds, life estates, reversionary interests, and any other estates under applicable State law, is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien, for the purpose of securing the payment of money or the performance of an obligation.

(2) The term "single family mortgage" means a mortgage that covers property that includes a 1- to 4-family residence.

SEC. 702. CDBG GRANTS TO INDIAN TRIBES.

(a) ELIMINATION FROM DEFINITION OF NONENTITLEMENT AREAS.—Section 102(a)(7) of the Housing and Community Development Act of 1974 is amended by striking the period at the end and inserting the following: "and does not include Indian tribes.".

(b) ALLOCATION.—Section 106 of the Housing and Community Development Act of 1974 is amended—

(1) in subsection (a)—

(A) by inserting "and Indian tribes" before the period at the end of the first sentence; and

(B) by striking the period at the end and inserting the following: "Indian tribes shall

*receive grants from such allocation pursuant to subsection (b)(7).";*

*(2) in subsection (b)(1), by striking "The'" and inserting "After taking into account the set-aside for Indian tribes under paragraph (7), the";*

*(3) in subsection (b)(2), by striking "The" and inserting "After taking into account the set-aside for Indian tribes under paragraph (7), the";*

*(4) in subsection (b), by adding at the end the following new paragraphs:*

*"(7)(A) For each fiscal year, the Secretary shall reserve for grants to Indian tribes, from amounts approved in appropriation Acts under section 103 for grants for the year under subsection (a), not more than 1 percent of the amounts appropriated under such section.*

*"(B) The Secretary shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment."; and*

*(5) in subsection (d), by striking paragraph (4).*

*(c) OFFICE OF INDIAN AND ALASKA NATIVE PROGRAMS.—The Secretary of Housing and Urban Development shall administer grants to Indian tribes under title I of the Housing and Community Development Act of 1974 through the Office of Indian and Alaska Native Programs of the Department of Housing and Urban Development.*

*(d) REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section and the amendments made by this section in a manner and by such time to provide for the effectiveness of such regulations with respect to amounts appropriated for fiscal year 1991 under section 103 of the Housing and Community Development Act of 1974.*

*(e) APPLICABILITY.—The amendments made by this section shall apply to amounts approved in any appropriation Act under section 103 of the Housing and Community Development Act of 1974 for fiscal year 1991 and each fiscal year thereafter.*

*TITLE VIII—SECTION 8 RENT ADJUSTMENTS*

*SEC. 801. ANNUAL ADJUSTMENT FACTORS FOR SECTION 8 RENTS.*

*(a) EFFECT OF PRIOR COMPARABILITY STUDIES.—*

*(1) IN GENERAL.—In any case in which, in implementing section 8(c)(2) of the United States Housing Act of 1937—*

*(A) the use of comparability studies by the Secretary of Housing and Urban Development or the appropriate State agency as an independent limitation on the amount of rental adjustments resulting from the application of an annual adjustment factor under such section has resulted in the reduction of the maximum monthly rent for units covered by the contract or the failure to increase such contract rent to the full amount otherwise permitted under the annual adjustment factor, or*

*(B) an assistance contract requires a project owner to make a request before becoming eligible for a rent adjustment under the annual adjustment factor and the project owner certifies that such a request was not made because of anticipated negative adjustment to the project rents,*

*for fiscal year 1980, and annually thereafter until regulations implementing this section take effect, rental adjustments shall be calculated as an amount equal to the annual adjustment factor multiplied by a figure equal to the contract rent minus the amount of contract rent attributable to debt service. Upon the request of the project owner, the Secretary shall pay to the project owner the amount, if any, by which the total rental adjustment calculated under the preceding sentence exceeds the total adjustments the Secretary or appropriate State agency actually approved, except that solely for purposes of calculating retroactive payments under this subsection, in no event shall any project owner be paid an amount less than 30 percent of a figure equal to the aggregate of the annual adjustment factor multiplied by the full contract rent for each year on or after fiscal year 1980, minus the sum of the rental payments the Secretary or appropriate State agency actually approved for those years. The method provided by this subsection shall be the exclusive method by which retroactive payments, whether or not requested, may be made for projects subject to this subsection for the period from fiscal year 1980 until the regulations issued under subsection (e) take effect. For purposes of this paragraph, "debt service" shall include interest, principal, and mortgage insurance premium if any.*

*(2) APPLICABILITY.—*

*(A) IN GENERAL.—Subsection (a) shall apply with respect to any use of comparability studies referred to in such subsection occurring before the effective date of the regulations issued under subsection (e).*

*(B) FINAL LITIGATION.—Subsection (a) shall not apply to any project with respect to which litigation regarding the authority of the Secretary to use comparability studies to limit rental adjustments under section 8(c)(2) of the United States Housing Act of 1937 has resulted in a judgment before the effective date of this Act that is final and not appealable (including any settlement agreement).*

*(b) 3-YEAR PAYMENTS.—The Secretary shall provide the amounts under subsection (a) over the 3-year period beginning on the effective date of the regulations issued under subsection (e). The Secretary shall provide the payments authorized under subsection (a) only to the extent approved in subsequent appropriations Acts. There are authorized to be appropriated such sums as may be necessary for this purpose.*

*(c) COMPARABILITY STUDIES.—Section 8(c)(2)(C) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(C) is amended by inserting after the period at the end of the first sentence the following: "In implementing the limitation established under the preceding sentence, the Secretary shall establish regulations for conducting comparability studies for projects where the Secretary has reason to believe that the application of the formula adjustments under subparagraph (A) would result in such material differences. The Secretary shall conduct such studies upon the request of any owner of any project, or as the Secretary determines to be appropriate by establishing, to the extent practicable, a modified annual adjustment factor for such market area, as the Secretary shall designate, that is geographically smaller than the applicable housing area used for the establishment of the annual adjustment factor under subparagraph (A). The Secretary shall establish such modified annual adjustment factor on the basis of the results of a study conducted by the Secretary of the rents charged, and any change in such rents over the previous year, for assisted units and unassisted units of similar quality, type, and age in the smaller market area. Where the Secretary determines that such modified annual adjustment factor cannot be established or that such factor when applied to a particular project would result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, the Secretary may apply an alternative methodology for conducting comparability studies in order to establish rents that are not materially different from rents charged for comparable unassisted units.*

*(d) DETERMINATION OF CONTRACT RENT.—(1) The Secretary shall upon the request of the project owner, make a one-time determination of the contract rent for each project owner referred to in subsection (a). The contract rent shall be the greater of the contract rent—*

*(A) currently approved by the Secretary under section 8(c)(2) of the United States Housing Act of 1937, or*

*(B) calculated in accordance with the first sentence of subsection (a)(1).*

*(2) All adjustments in contract rents under section 8(c)(2) of the United States Housing Act of 1937, including adjustments involving projects referred to in subsection (a), that occur beginning with the first anniversary date of the contract after the regulations issued under subsection (e) take effect shall be made in accordance with the annual adjustment and comparability provisions of sections 8(c)(2)(A) and 8(c)(2)(C) of such Act, respectively, using the one-time contract rent determination under paragraph (1).*

*(e) REGULATIONS.—The Secretary shall issue regulations to carry out this section and the amendments made by this section, including the amendments made by subsection (c) with regard to annual adjustment factors and comparability studies. The Secretary shall issue such regulations not later than the expiration of the 180-day period beginning on the date of the enactment of this Act.*

*(f) REPORT.—Not later than March 1, 1990, the Secretary shall report to the Congress on the feasibility and desirability, and the budgetary, legal, and administrative aspects, of adjusting contract rents under section 8(c)(2)(C) of the United States Housing Act of 1937 on the basis of any alternative methodologies that are simpler in application than individual project comparability studies.*

*(g) TECHNICAL AMENDMENT.—The first sentence of section 8(c)(2)(C) of the United States Housing Act of 1937 is amended by inserting ", type," after "quality".*

Mr. GONZALEZ (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mrs. ROUKEMA. Mr. Speaker, reserving the right to object, I will not object, but I do so for the purpose of yielding to the chairman of the committee of the gentleman from Texas [Mr. GONZALEZ] for any explanation that he would choose to give our colleagues at this time.

Mr. GONZALEZ. I thank the gentlewoman for yielding.

Mr. Speaker, I am here today to ask the House to pass H.R. 1, the Depart-

ment of Housing and Urban Development Reform Act of 1989, as amended by the Senate. This bill is the culmination of valuable work on the part of my colleagues from both sides of the aisle. On the majority side, I commend Representatives SCHUMER, FRANK, and KANJORSKI. On the minority side, I would be remiss not to recognize Representative CHALMERS WYLIE, the ranking member of the Banking Committee, and Representative MARGE ROUKEMA, the ranking member of the Housing Subcommittee, for their efforts. This legislation is truly bipartisan—it contains proposals from Democratic and Republican members of the Housing Subcommittee, as well as items that Secretary Kemp submitted. The Senate also has made its own worthy contributions, and we appreciate their swift and cooperative response to our action.

I wish to emphasize the speed with which we have acted to produce a reform bill. During the spring and summer, hearings by our committee, and the Government Operations Committee, revealed the details and depth of the problems at HUD. On October 30, Secretary Kemp presented his reform package. The Housing Subcommittee approved legislation on November 9, and the House passed it unanimously on November 14. One week has gone by since initial passage, and we are ready to enact these urgent reforms into law. We are proud of this accomplishment. I thank all those on the Housing Subcommittee who made this possible.

Title I of the bill addresses the core of the previous abuses—ethics and management issues. Under H.R. 1, HUD must allocate housing funds by a formula and make awards through a fair and open competition process. HUD would have to publish program criteria and fund availability, as well as publish funding decisions and maintain documentation of the reasons for decisions. Under the Community Development Block Grant Program, State and local governments would be required to give public notice of subgrantees who receive CDBG funds. HUD employees would be prohibited from disclosing funding information that is not generally available to the public. Significantly, we have included a specific reform of the moderate rehabilitation program to ensure the proper selection of projects under that program.

Funding applicants would be required to furnish HUD the names and fees of consultants and lobbyists hired to influence Department decisions. Likewise, consultants would have to register with HUD and disclose who hired them to influence the Department. The intent of this provision is to deal with abuses such as those which occurred in the moderate rehabilitation program when favored persons were paid exhorbitant amounts to use their influence in obtaining contracts. It is not intended to cover legitimate legal representation in the filing of various applications for approvals of applicants such as those for insurance or guarantees, or modifications thereof or representation in connection with investigatory inquiries or actions.

HUD employees, applicants, and consultants who violate these provisions would be subject to civil and criminal penalties. Also, the Secretary's discretionary fund is substantially revised to ensure that grants meet clearly defined eligibility requirements.

Additional measures would strengthen the Federal Housing Administration [FHA] insurance funds by eliminating investors from single-family mortgage insurance and providing stiff civil penalties for violations in multifamily insurance programs. An FHA Comptroller would be established and audited annual FHA financial statements would be required. The risky Title X Land Development Program is terminated and HUD is required to increase its oversight over coinsurance programs. In addition, the FHA Mortgagee Review Board is given additional powers to discipline mortgagees that violate FHA requirements. The Secretary, at the request of the FHA Mortgagee Review Board can order a mortgagee to cease and desist certain business practices pending completion of the Board's deliberation. Because the sanction is so powerful and may be imposed before the Board has a hearing or has completed its proceeding, this authority should only be used in circumstances where there is reasonable cause to believe a mortgagee has committed or will commit a knowing and material violation that threatens to cause significant costs to the Federal Government or the public.

Title II provides several emergency low-income housing preservation measures. H.R. 1 extends the prepayment moratorium until September 30, 1990, and clarifies, consistent with the original intent of the 1987 law, that a termination of insurance cannot be used to evade prepayment restrictions. Prepayments on new section 515 rural housing loans would be prohibited and an equity take-out incentive would be provided to preserve rural low-income housing.

This bill also contains several positive measures that the Senate added to provide incentives to encourage owners to keep their properties affordable for low-income tenants, or to transfer properties to owners or oganizations that agree to preserve affordability. These provisions clearly conform to the congressional goal of preserving affordable housing for low-income families for the longest possible period.

With regard to the provision of section 8 assistance for projects where the owner commits to low-income occupancy beyond the initial 20-year period, Congress expects that in the future HUD will request, and Congress will appropriate, sufficient funds to extend or renew section 8 contracts. This is to ensure that low-income occupancy can be preserved for an additional 20 years. Such an understanding is particularly critical to assuring the usefulness and financial security of second mortgages for equity take-out or rehabilitation purposes.

Title III extends the flexible subsidy program and extends to 5 years the availability of economic rent ceilings for public housing.

Title IV would apply accountability and penalty provisions to the FmHA that are similar to those applied to HUD. Also, a provision is included that clarifies that the FmHA may transfer section 515 loan authority from one borrower to another.

The Senate amendment would establish three expert Commissions: One on the problems of the Federal Housing Administration; one on the needs of native American, Alaskan, and Native Hawaiian housing; and another focussed on developing an action plan to alleviate the problems of severely distressed public housing projects.

Finally, the amendment includes an equitable resolution to the problem raised by the Rainier view decision. The resolution assures that contract rents for section 8 new construction and substantial rehabilitation projects are not materially different than the rents charged for comparable unassisted units in the same market area. HUD estimated that if Congress did not act on this matter, the potential liability for the Government would amount to $2.1 billion over 10 years.

The House and Senate agreement in this bill would provide reasonable levels of retroactive payments to owners, but not windfalls. The intent of the retroactive payment provision is to provide a project owner for each year since 1980, 30 percent of the difference between the contract rent for that year resulting from application of the full annual adjustment factor to the prior years contract rent assuming comparability studies had never been done on the project, minus the rent previously approved by HUD for such year. HUD shall compute the amount due the owner under this alternative by totaling the amount due for each year pursuant to the immediate preceding sentence. The resolution would reduce retroactive costs to $210 million and reduce prospective costs to $500 million over 10 years.

Let me reiterate that the Housing Subcommittee is proud of this legislation, and the House should be as well. We acted swiftly and comprehensively.

This reform package will clean up HUD and prevent future abuses and influence peddling of the type that contorted sound programs and mocked the goal of delivering aid to those in need. I thank our Senate colleagues for their prompt and cooperative efforts that helped meld their provisions and ours into a piece of legislation that we can both accept. And again, I appreciate my House colleagues' efforts and support.

I urge the House to pass this bill so we can move on to pressing housing authorization legislation.

PROVISIONS INCLUDED IN THE SENATE AMENDMENT FROM THE HOUSE-PASSED VERSION OF H.R. 1, THE HUD REFORM ACT OF 1989

TITLE I—REFORMS TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

*Subtitle A—Ethics*

Allocation of housing assistance.

Prohibition of advance disclosure of funding decisions.

Reform of headquarters reserve.

Reform of CDBG discretionary fund and provision of technical assistance.

Waiver of regulation requirements and handbook provisions.

Civil money penalties against mortgagees and lenders.

Civil money penalties against multifamily mortgagors.

Civil money penalties against multifamily mortgagors.

Civil money penalties against section 202 mortgagors.

Civil money penalties against GNMA issuers.

Civil money penalties for violations of Interstate Land Sales Full Disclosure Act.

Registration of consultants.

*Subtitle B—Management Reform*

Establishment of HUD Chief Financial Officer.

Establishment of FHA Comptroller.

Expediting rulemaking.

Funding for programs evaluation and monitoring.

Refinancing of section 235 mortgages.

Sanctions for improper conveyances under urban homestead programs.

Reform of moderate rehabilitation program.

*Subtitle C—Federal Housing Administrative Reforms*

Annual audited financial statements.

Credit reviews of persons acquiring mortgaged properties under single family program for life of mortgage.

Repeal of Title X land development program.

Civil money penalties for improper dealer and loan broker participation in origination of property improvement loans.

Notification regarding suspended mortgagees.

FHA foreclosed properties.

Report regarding providing foreclosed properties to 1989 disaster victims.

Report regarding actions to improve direct endorsement program.

TITLE II—HOUSING PRESERVATION

Clarification of applicability to voluntary termination of insurance.

Prohibition on prepayment of new rural housing loans.

Equity takeout incentive for new rural housing loans.

Flexible subsidy program.

Continuation of public housing economic rent.

TITLE VII—MISCELLANEOUS

CDBG Grants to Indian tribes.

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CHANGES MADE IN THE SENATE AMENDMENT TO H.R. 1, THE HUD REFORM ACT OF 1989

TITLE I—HUD REFORMS

*Subtitle A—Ethics*

1. Ensures that allocations of Section 202 elderly and handicapped assistance will be made to projects of a sufficient size to accommodate the needs of the frail elderly.

2. Requires HUD program applicants to disclose all sources of project assistance and the persons receiving a pecuniary interest if the project receives over $200,000 in HUD assistance. State and local governments must notify the public of all deicisions regarding the award or allocations of CDBG funding to subgrantees.

3. Clarifies that when imposing civil money penalties on mortgages lenders, and GNMA issuers, penalties will be imposed on persons who have actual knowledge, act with deliberate ignorance or with reckless disregard.

4. Clarifies that when imposing civil money penalties on Multifamily Mortgagors and Section 202 Mortgagors: a) mortgagors will not be held liable due to failure by HUD or a public housing agency; b) requires HUD to approve 60 day extensions for submitting annual financial reports when mortgagors cannot submit their reports on time due to events beyond their control; c) authorizes penalties to be deposited in the Flexible Subsidy Fund starting in FY 1991; and d) clarifies, that in the case of multifamily mortgagors, the payment of surplus cash is not a violation of regulatory agreements.

*Subtitle B—Management Reform*

5. Excludes the CDBG targeting provision in the House version which would have increased from 60% to 75% the percentage of CDBG program assistance that must be used to benefit low- and moderate-income persons.

6. Requires proceeds from the financing of Sec. 235 mortgages to go back to the U.S. Treasury instead of using the funds for HUD program evaluation and monitoring as provided in the House bill.

*Subtitle C—FHA Reform*

7. Deletes the due-on-sale requirement (originally contained in the House bill) from credit checks on FHA assumptions.

8. Excludes the House provision which prohibited the use of FHA insurance for second homes.

9. Requires HUD to review the capital adequacy of coinsurers by January 15 and August 15 of each year and make adjustments to ensure long-term financial soundness of the FHA fund.

10. Creates an FHA Advisory Board to review the operations of the FHA.

11. Creates an FHA Mortgagee Review Board which currently operates through regulation. Provides temporary cease and desist authority to prohibit violations by mortgagee violators and prescribes minimum FHA appraisal standards.

12. Authorizes FHA to contract with private companies for financial management support.

TITLE II—HOUSING PRESERVATION

13. The Senate amendment includes several provisions relating to the prepayment provisions in Title II of the 1987 Act: (a) extends the prepayment moratorium until August 1, 1990, instead of the House extension until September 30, 1990; (b) makes public entities eligible mortgagors to acquire Section 236 projects; (c) authorizes HUD to change the terms of capital loans where appropriate to implement a plan of action; (d) authorizes HUD to insure second mortgages for projects with contingent Section 8 contract assistance; (e) ensures that rents in projects should reflect the tenant profile which takes into account the date which results in the highest proportion of very low-income families; (f) permits HUD to enter into Section 8 contracts that are contingent on future appropriations to extend the contract for a full 20 years and permits owner to modify plan of action or to prepay loan if FHA default will occur because Section 8 contract is not extended; (g) requires HUD and projects owners to ensure that displaced tenants will be relocated to affordable housing; (h) authorizes HUD to take such actions to avoid default and provide sound management ownership on affected projects if HUD is unable to extend the full term of rental assistance under approved plans of action; (i) require HUD to annually report to Congress on the status of HUD-owned or HUD-held multifamily housing projects; (j) requires HUD to conduct a study on the physical renovation needs of the federally-assisted multifamily housing inventory.

14. Requires HUD within 30 days of the enactment date to report on steps being taken to implement the Multifamily Housing Disposition Partnership provision contained in Section 184 of the 1987 Housing Act.

TITLE III—PROGRAM EXTENSIONS AND CHANGES

15. Excludes the Housing provision which would have extended the Section 235 Homeownership Loan program through FY 1991.

16. Extends for an additional 6 months the reciprocity authority for FHA to accept VA certificates of reasonable value for housing subdivisions.

17. Extends the availability of economic rents for an additional 5-year period, instead of an unlimited period as provided in the House bill.

18. Authorizes nonprofit cooperatives to sell units to lower income families in a project assisted with Section 17 Development (HODAG) grants if the grant was originally approved for a nonprofit cooperative and a majority of the project units have 3 or 4 bedrooms.

TITLE IV—RURAL HOUSING

19. Authorizes provisons to require accountability of the Farmers Home Administration (FmHA) in awarding rural housing assistance which are similar to those provisions imposed on HUD.

20. Authorizes the reuse of unexpended Section 515 Rural Housing Multifamily Loan authority to reallocated to different borrower.

TITLE V—NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

21. Establishes a National Commission on Severely Distressed Public Housing to identify public housing projects that are in a severely distressed state, assess strategies that have been used to improve those severely distressed projects and develop a national action plan to eliminate unfit living conditions in those public housing projects by the year 2000. Authorizes $2 million in FY 1990 and $1 million in FY 1991 for the Commission and provides that the Commission shall terminate 18 months after the appointment of all members.

TITLE VI—NATIONAL COMMISSION ON NATIVE AMERICAN, ALASKAN NATIVE, AND NATIVE HAWAIIAN HOUSING

22. Establishes a National Commission on American Indians, Alaskan Natives and Native Hawaiian Housing to (a) identify factors which impede the supply of such housing, (b) assess the most promising strategies for the development, management and modernization of housing for Indians, Alaska Natives and Native Hawaiians; and develop an action plan to address the problems. Authorizes the appropriation of $500,000 in each FY 1990 and 1991 and terminates the Commission after 18 months after all Commission members are appointed.

TITLE VII—MISCELLANEOUS

23. Authorizes the Federal preemption of State redemption laws covering the Section 312 Rehabilitation Loan program in cases where homes are vacant or abandoned.

TITLE VIII—SECTION 8 RENT ADJUSTMENT

24. Projects affected by comparability studies prior to date of enactment may request retroactive rent adjustments that will provide at least 30% of the funds that would have been provided if full annual adjustment factors had been provided since 1980. Requires HUD to establish modified AAAF for sub-market areas. HUD would retain authority to conduct project-based comparability studies if modified AAF is insufficient to prevent material differences in rents between assisted and unassisted units. AAF applied to total contract rent adjusted, if appropriate, for comparability. HUD would be required to examine simplied procedures for conducting comparability and report by March 1, 1990.

Mrs. ROUKEMA. Mr. Speaker, further reserving the right to object, the chairman has correctly stated the position.

Mr. Speaker, we brought this bill to the House floor last Tuesday, it passed on voice vote with overwhelming support, and we now have it back from the Senate with its amendments. Overall, this is a good bill and deserves our support.

I wish to acknowledge the cooperation and leadership of Chairman GONZALEZ, the assistance of Mr. FRANK, and the responsible manner in which Secretary Kemp has responded to the scandals he inherited.

We cannot legislate competent or responsible personnel. If such abuses by those in and out of the Department were not illegal, they should have been.

This bill makes many of those activities illegal. This legislation is an important step forward for reform. Incomplete, with more to be done next year.

Contains much of what the administration requested, and HUD supports it.

Contains many of the provisions in my own reform bill which had been introduced earlier.

Of particular importance: Requires registration of consultants and public disclosure of their activities and fees. Violations can carry civil money and/or criminal penalties. Creates a Chief Financial Officer at HUD to supervise and coordinate all financial management activities and operations. Requires the Department to publish in the Federal Register any time it vacates a current rule or regulation. Also a number of FHA reforms.

ADVANCE DISCLOSURE OF FUNDING PROHIBITION

I need to describe in some greater detail another feature of the bill. The House bill prohibited applicants to HUD from soliciting from the Department any advance information regarding funding, and it prohibited HUD employees from giving out such information. Unfortunately, the Senate has decided to seriously weaken this bill by deleting the paragraph relating to applicants. This is most unwise and greatly reduces the enforcement effectiveness of the provision. The House and I fought hard but lost this issue to intransigent Senate insistence. But it came down to this or no bill. Time to go forward.

Under the Senate version, an applicant could improperly solicit restricted information from the Department, and, if it were (improperly) given by a HUD employee, the employee could be punished by civil or criminal penalties, but no one could touch the applicant who came looking for the information.

This is just not right. Unfortunately, because of the limits of time in these final hours of the session, we were not able to resolve this matter, and it comes to us as amended by the Senate. I can assure the Members that this is an issue which will be revisited next year.

INSPECTOR GENERAL PROVISIONS

As I mentioned when we considered this bill on the floor last week, there were also several significant provisions to strengthen the watchdog powers of inspectors general. For the legislative record these would have:

Granted inspector general's subpoena power for testimony, as they now have for documents;

Required the inspectors general to report directly to Congress if he found serious and flagrant abuses, and the Secretary failed to report to Congress;

Established an office of legal counsel within the inspectors general's office;

Required the Secretary to provide Congress an "accountability report" on his actions following recommendations from the inspectors general; and

Given the HUD inspectors general a fixed term of 5 years in order to increase his independence.

Unfortunately, the Government Operations Committee, which has jurisdiction over inspectors general legislation, objected to our including these in our bill, and they had to be dropped out before going to the floor last week.

Removing the inspectors general powers greatly diminished the effectiveness and impact of these reforms. This was a major omission. However, I am willing to work with the Members of the Government Operations Committee, which is planning hearings on these and other inspectors general issues early in the spring. I hope that the Committee will be able to move expeditiously on this, or inspector general's will be hampered in their efforts to uncover mismanagement and wrong-doing.

PREPAYMENT

Finally, I would just point out that, while there are some modest new incentives in the Senate amendment to pursuade owners of 236 and 221(d)(3) projects not to prepay their mortgages, this is not a permanent solution to the problem. Our committee is committed to addressing this matter early next year and fashioning a permanent solution. This bill extends the current moratorium so that we can work out that solution. While I am not pleased about having to continue the moratorium, even for a short time, we really had no choice. Clearly, we could not have simply let the moratorium expire; that would have raised the possibility of thousands of elderly, low-income families, and women and children from being evicted from their apartments.

SUMMARY

In summary, while I did not get everything I wanted in this bill, on balance this is an important, effective and essential package of reforms, and I urge the House to approve this bill as amended by the other body. But I shall return in the next authorization to place even tougher civil and criminal penalties to protect the taxpayers, the public and the department from egregious violations of the public trust.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
*Washington, DC, November 22, 1989.*

Hon. CHALMERS P. WYLIE,
*Minority Member, Committee on Banking, Finance and Urban Affairs, House of Representatives, Washington, DC.*

DEAR MR. WYLIE: I applaud prompt Congressional passage of H.R. 1, the "Department of Housing and Urban Development Reform Act of 1989." Without your personal commitment to move expeditiously on this package, our goal of implementing vital reforms—to replace political favoritism and program abuse with fair and open competition and ethical program management—would not have been accomplished. H.R. 1 is a composite of ideas originating at HUD and in both houses of Congress.

H.R. 1 contains many of the ethics reforms the Administration proposed in its October 31, 1989, legislative package. These include: strict limitations on the use of discretionary funds by HUD; public notification of funding decisions; strict disclosure requirements for consultants doing business with the Department; and civil monetary penalties to enable HUD to better enforce program compliance.

In addition, H.R. 1 makes many of the critical program reforms included in the October 31 package, including: establishment of a Chief Financial Officer at HUD and a Comptroller for FHA; expedited congres-

sional review of HUD regulations; and provisions to improve the financial soundness of the FHA by terminating a number of programs, including investor loans and Title X, which expose the mortgage insurance fund to unnecessary risk.

In particular, I commend the Congress for adopting the Administration's proposal to terminate FHA insurance for private investors, thereby getting the Federal Government out of the business of subsidizing the risks of private real estate speculation. With this important reform, FHA will eliminate a program which has rarely benefitted first-time homebuyers and which has been the source of fraud and FHA's highest default rates. This congressional action endorses long-standing recommendations of the HUD Inspector General and the General Accounting Office.

I am also pleased that the House and Senate agreed to a provision reaffirming the authority of the Secretary of HUD to set marke comparable rents for Section 8 projects. The practical effect of this agreement is to minimize HUD's liability under the Ninth Circuit Rainier View ruling and eliminates HUD's future liability to arbitrarily increase rents. Although the final bill does impose a greater retroactive settlement cost than I had proposed, it does provide the essential legislative relief to avoid a potential loss of $2 billion at a cost of less than $250 million.

In addition, I applaud inclusion in the bill of several recommendations originating in Congress, including: the imposition of criminal penalties for unauthorized disclosure of funding information; a provision to refinance high-interest loans under the Section 235 program; and reforms to the Section 8 Moderate Rehabilitation program.

I am disappointed, however, that H.R. 1 does not include a number of reforms the Administration proposed in its bill, particularly those involving the CDBG program. The CDBG reform initiatives would have increased the low- and moderate-income benefit targeting requirement from 60 percent to 75 percent; tightened accounting rules to ensure that the CDBG program actually benefits low- and moderate-income individuals; required higher targeting of CDBG in affluent areas; and required entitlement grantees and States to have an anti-poverty strategy. Taken together, these proposals would have ensured that scarce Federal resources would have gone for the benefit of the people who need them the most. I look forward to deliberations on a few housing authorization bill during which a more thorough examination and discussion of these proposals can take place.

In addition, the Senate version of H.R. 1 strikes a House provision which would have restricted the use of FHA to insure second homes and vacation homes. I do not believe FHA should be insuring any programs which expose the insurance fund to undue risk, and particularly those programs that provide little or no benefit to the low- and moderate-income homebuyers FHA is intended to serve.

I am also disappointed that Congress failed to include the Administration reform proposal to give HUD greater flexibility in the disposition of FHA-held multifamily properties in certain soft market areas while protecting current low-income tenants.

We believe valuable Section 8 subsidies should be allocated on the basis of need rather than the location of default. However, I am encouraged by expressions of support during markup of H.R. 1 in the House Banking Committee for addressing this problem which stands to impose significant added costs on the already troubled FHA General Insurance Fund.

The HUD reform bill also contains a number of provisions which are not directly related to the issue of HUD reform which require comment.

H.R. 1 extends until September 30, 1990, the moratorium on the prepayment of HUD-subsidized mortgages in order for the Administration and Congress to work out a permanent solution to low-income housing preservation. While we support this extension, we recommended and would have preferred a shorter duration—to May 1, 1990—to minimize the uncertainty created by the absence of a permanent solution to prepayment and to help spur the Congress and the Administration to reach an agreement on a comprehensive housing authorization bill containing a preservation program. The bill also contains a Senate-sponsored package of incentives for owners to remain in the HUD programs and to maintain their properties for low income use.

We had requested that this package of proposals be with drawn for a number of reasons.

First, we were concerned that provisions involving the commitment of rental subsidies, as well as those regarding loans for equity "take-outs" and project rehabilitation, violated the policies underlying the Anti-Deficiency Act and the Congressional Budget Act of 1974. While the Administration is unequivocally committed to providing assistance to low-income families who are currently being served for as long as they need assistance, we do not support attempts to impose back-door obligations to appropriate funds in future years. We believe our position is consistent with the intent of the Anti-Deficiency and Congressional Budget Act.

We believe the change to make the Secretary's commitment discretionary rather than mandatory is an improvement over the previous provision.

Secondly, the proposals offered by the Senate imposed significant risks to the FHA insurance fund at a time when HUD is seeking measures—including many authorized by H.R. 1—to improve the fund. In particular, the Senate amendments "directed" the Secretary to assume in rehabilitation loan underwriting the availability of short-term rental subsidies, without regard for the actual length of the loan term. Should subsidies not be available in the future, a loan default likely will result and the FHA will be required to pay an insurance claim.

Again, we believe the changes made in the final bill are an improvement over the original provisions and thereby re-establish with the Secretary the proper authority to manage the FHA insurance fund.

Finally, we believe that in the haste to implement changes designed to give incentives to project owners, the original Senate language would have had the unintended effects of not only subjecting the FHA fund to greater risk, but also of increasing the likelihood of default which would, in turn, have given tenants less than adequate protection. The changes contained in this bill alleviate those concerns to some degree. However, we believe that in the future, any solution to the prepayment problem—whether temporary or permanent—should have as its first concern the well-being of residents of Federally assisted housing.

I hope these agreements on preservation will clear a path for developing permanent low-income housing preservation alternatives in the next session. On November 10, 1989, President Bush announced the Administration's new housing and urban economic development proposals, called "Homeownership and Opportunity for People Everywhere (HOPE)." Among other things, HOPE includes a low-income housing preservation strategy which includes homeownership opportunities for low-income families or persons. With our joint commitment, I am confident we can work to enact a program that is fair to owners and renters alike.

Finally, your bill would establish a National Commission on Severely Distressed Public Housing. We endorse the concept behind the formation of a bipartisan commission to investigate the management problems which have led to the deterioration of public housing. However, we believe it is essential that the Commission be chartered to examine all problems contributing to distressed public housing, including existing public housing laws. In addition, I hope that in developing alternative strategies and a national action plan, the Commission will call upon the best and brightest minds of a new generation of public housing residents who are deeply committed to the empowerment of those who live in public housing.

I believe the need to enact reform legislation to correct systemic flaws in HUD programs is an urgent priority. I am pleased that Congress shared and acted upon this sense of urgency. The final version of H.R. 1, which includes ideas developed by HUD and its Inspector General, and many Members of Congress, represents true bipartisan cooperation and goes a long way toward correcting many of the past problems of the Department and helps ensure that in the future HUD will better serve those who depend on the Department's programs.

Very sincerely yours,

JACK KEMP,
*Secretary.*

Mr. Speaker, I would like to make just one minor notation. I would hope it would be something that we would be able to review at another time.

We did remove the criminal penalties for advance disclosure in the funding, the funding prohibition, and that is with respect to the applicants, not the employees at HUD but with respect to the applicants who make inquiries. I think that needs further review at another time. But the gentleman is correct as to the firm strengths of the bill which remain intact.

I certainly want to thank the chairman and thank the gentleman from Massachusetts [Mr. FRANK] for his assistance.

There were some pretty difficult negotiations with the Senate toward the end, and with our persistence over several days running and the fine work of the staff we have been able to bring here a bill that deserves our support.

Mr. Speaker, under my reservation I yield now to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. I thank the gentlewoman for yielding.

Mr. Speaker, I do support the legislation. I would make two notes for the House floor.

First, this bill does abolish the special discretionary fund which has been the subject of some debate on this House floor and some debate during the HUD reform hearings in the Subcommittee on Government Operations.

It abolishes that fund and converts that fund in that section to be used principally for technical assistance and thus eliminates the idea of the Federal Government choosing special projects that would fulfill CDBG needs.

I would note that that appropriations bill was appropriated in fiscal year 1990, was specifically grandfathered from the termination of the special discretionary fund so that fiscal year 1990 appropriations would continue.

Those 41 items that were the subject of the debate on the House floor and were included ultimately over my objection, but with the majority of the House, in the conference committee report to go to the Secretary, were specifically grandfathered so that the Secretary of HUD is specifically permitted, although not required, to fund those 41 projects. It would be my urging that he not fund those 41 projects but he is specifically permitted to under the terms of this bill.

Second, this bill does provide a new and much-needed set of incentives for the Secretary of HUD and the owners of privately owned, HUD-insured mortgages, privately owned, HUD-insured mortgages of apartment complexes to develop packages to avoid prepayment and yet to continue the 20-year package of rental assistance.

I think we have a good package, and I thank the gentlewoman for yielding.

Mrs. ROUKEMA. Mr. Speaker, further reserving the right to object, under my reservation I yield to the gentleman from Massachusetts [Mr. FRANK], a member of the committee.

Mr. FRANK. I thank the gentlewoman.

Mr. Speaker, my congratulations to the gentlewoman and to the chairman for putting in a very important piece of legislation. I just want to note that is, in part, the consequence of some, I think, exemplary cooperation between committees because the Subcommittee on Employment and Housing of the Committee on Government Operations worked on some hearings.

We are sometimes asked, "What are you guys having all these hearings for? What comes of it?" It ought to be explicit that the legislation that we are enacting today comes as a result of the hearings that were held and of the Subcommittee on Housing distilling along with the Committee on Government Operations what we learned about how to improve it.

We ought to understand that with the enactment of this we have pretty much done—we have to deal with inspectors general because of some committee jurisdictional problems—but we have done most of the things that people thought had to be done to improve HUD programs.

It is important to note that because we will be back this spring with an effort to enact some programs which provide housing for people. We want to understand, to those who may say to us, "Well, you have got an agency that is not being run well," the bill we are enacting today, here we are doing first things first.

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This is the package that the Secretary wanted, that the oversight committee has recommended, and we are doing our best to do by reforms. Having done them, we think we will have a right to come back to the floor in 1990 and say now we think we can move on to the second step, which is trying to improve the housing. I think a great deal of cooperation took place.

Let me also acknowledge the ranking member of the subcommittee from the Committee on Appropriations, but the chairman of the subcommittee, this still was not everything he would have liked from every standpoint. I want to acknowledge his constructive cooperation. He could not stand in the way of reforms.

We will still have disagreements that we will learn to live with. However, I appreciate the chairman who collaborated with Members, a No. 1 goal. We did the reform people could have expected to be done, and we hope to build on the reforms and get back in the housing business.

Mrs. ROUKEMA. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York [Mr. GREEN], ranking member of the subcommittee of the Committee on Appropriations.

Mr. GREEN. Mr. Speaker, I thank the gentlewoman for yielding.

I had not expected to discuss the question of the 41 projects. I would simply say that they were acted on by this House, and while originally they were only in a conference report, the fact of the matter is that they were specifically debated on the floor of this House, and the House voted not to strike them.

I would think that under these circumstances, the Secretary of HUD should respect the vote of this House and move ahead with this project.

On that subject, further, my guess is that given the history that we have had under various housing acts over the years, that the Committee on Banking and our colleague's subcommittee, we will find cases in the future where we need to deal very directly with very special problems that various municipalities have with the Housing and Urban Development funds. I suspect that we will both be dealing with those issues in the future.

I did, however, also originally get up here to address the same issue that the gentlewoman from New Jersey did, and that is the provision that seems to bar people from asking the status of their applications. That, it seems to me, is a bit far. That applicants, or even Members of the Congress, should be impugned for making inquiry of HUD as to what the status under the HUD application process is, of their applications has, it seems to me as I read this legislation, to be creating an unnecessary difficulty because it does not seem to me inappropriate for applicants or Members of Congress to make those kinds of inquiries. I hope as this legislation evolves, and as the Committee on Banking will be looking at this legislation next year and seeing whether it needs some approval, that there may be some softening of that portion of the bill which seems to me to create very serious problems for Members of Congress trying to do honest work on behalf of consituents, or members of their constituencies who on their own initiative seek to find out where in the bureaucracy their applications are trapped.

Mrs. ROUKEMA. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Mr. Speaker, I wanted to disabuse our distinguished Member's mind, the mind of the gentleman from New York, that this in any way contains language that would prohibit the inquiries the gentleman is troubled about.

The exclusion or the information prohibited is with respect to HUD employees.

Mr. GREEN. Mr. Speaker, will the gentlewoman yield?

Mrs. ROUKEMA. Mr. Speaker, I yield to the gentleman from New York.

Mr. GREEN. Could the gentlewoman further clarify? Is the gentlewoman saying HUD inquiries cannot make inquiry of a central office so that, for example, when I was a regional administrator of HUD and I got an inquiry from a mayor as to where his application stood, it was not proper for me to call the central office and ask what the status of the processing was in the central office?

Mrs. ROUKEMA. Mr. Speaker, further reserving the right to object, I think the clarification in the new language will meet with the gentleman's approval. The employees are not prohibited from giving information to other employees. The question is whether or not we are giving out privileged information to others who are making inquiries, insider information.

Mr. GREEN. Mr. Speaker, if the gentlewoman will continue to yield, I can understand on the one hand that while the process of scoring applications, under some scoring system is in process, that it would be improper for a HUD employee to be giving that kind of inside information to applicants whose applications were in the process of scoring; on the other hand, if the HUD process requires applications first to be reviewed by the regional office and then to move on to the central office, and then from some branch in the central office to move up to the Secretary, it would not seem to be improper, either for the applicant or for a Member of Congress to inquire as to where the thing is, nor at any level of HUD to disclose where the thing is.

Mrs. ROUKEMA. Mr. Speaker, I would be very happy to work with the gentleman in the future should he review the language and still find any impediment to the kinds of practical applications the gentleman is speaking of.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, reading from the statute, I just hope at 3 o'clock in the morning that a bill we all agreed to, we will not get in a fight, but it does say as the prohibition as to who can get the information: "You shall not disclose to any person, other than a person authorized by the Secretary to receive such information." That will not cover every person, but as to HUD employees talking to each other, if the Secretary authorizes HUD employees to talk to each other, that takes care of that part. So there is no problem with regard to HUD employees talking to each other.

Mr. GREEN. Mr. Speaker, if the gentlewoman will continue to yield, I am still concerned that if I make an inquiry as to the status of a pending application of HUD, there has to be a Secretarial decision before I can be informed.

Mr. FRANK. Mr. Speaker, if the gentlewoman will continue to yield, the gentleman does not have to worry. He would only be in trouble if the executive branch gave out accurate information. So in most cases, no person would have to worry about anything.

Mr. GREEN. Mr. Speaker, if the gentlewoman will continue to yield, I think this is something that could use polishing next year. I would hope the Committee on Banking would give it that polishing.

Mrs. ROUKEMA. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Speaker, during the course of the Banking Subcommittee markup, I expressed concern about the fact that the targeting provisions of CDBG were changed from 60 to 75 percent, the concern being that first of all this was a substitute change, not really related to the reforms that the Secretary was requesting. Second, a concern that this would have a significant negative impact on a great number of communities around the country.

Now it is my hope, and it is my understanding that the other body has by their amendment deleted those provisions from H.R. 1. I would ask the gentlewoman to confirm my understanding.

Mrs. ROUKEMA. Mr. Speaker, yes, the gentleman is correct. That has been deleted.

Mr. BEREUTER. Mr. Speaker, I thank the gentlewoman.

Mr. WYLIE. Mr. Speaker, I rise in strong support of the motion to suspend the rules and pass the bill H.R. 1, the Department of Housing and Urban Development Reform Act of 1988, and concur in the Senate amendment. At the outset, I would like to congratulate Secretary Jack Kemp and his new management team at HUD, who contributed a majority of the provisions included in the bill we are voting on today. More importantly, Mr. Speaker, the House can take pride in the bipartisan spirit in which the Banking Committee, under the exemplary leadership of Chairman GONZALEZ, has worked to create a good HUD reform package. Through effective compromise and fair-handed discussion, the concerns of all parties, including HUD, have been addressed.

Mr. Speaker, the legislation before us today, is based in large part on Secretary Kemp's reform proposal. I would especially like to acknowledge the contributions made by my colleagues on the Banking Committee, Congresswoman ROUKEMA, and Congressmen BARTLETT, SCHUMER, and KANJORSKI. After passage in the House last week on November 14, 1989, H.R. 1 was sent to the Senate for consideration. The Senate Banking Committee made several acceptable improvements but for the most part adopted H.R. 1 as passed by the House. Virtually all of Secretary's Kemp's important reform proposals have been incorporated in H.R. 1. Certain provisions not directly related to HUD reform such as the CDBG antipoverty strategy, and proportional counting were dropped.

As with all legislation, Mr. Speaker, H.R. 1 is a product of give-and-take. With regard to the majority of the reform provisions, HUD and the American taxpayer which it serves have everything to gain, while honest lenders, developers, and other participants have nothing to fear. In order to speed passage of the legislation through the other body, compromises were agreed to for certain provisions which could not otherwise have been resolved.

These issues include a provision regarding the metholdology for HUD to use in determining section 8 project rent adjustments made necessary by the Rainier View court decision. While I believe that the solution to this difficult problem previously adopted by the House was a reasonable and fair one, the compromise being presented today is also reasonable and fair. It too will produce substantial reductions in costs estimated by HUD to be as high as $700 to $800 millon. It too will permit reasonable and realistic rent adjustments to be approved for section 8 projects overall.

I am pleased to see, through the hard work of our ranking Republican on the Housing Subcommittee, Mrs. ROUKEMA, that the provisions in the House bill imposing criminal penalties on any HUD employee who purposely discloses advance information affecting project funding and for consultants who fail to register with HUD, are retained.

The preservation and prepayment of low-income assisted housing was another difficult issue. The House bill extended the moratorium on prepayment through September 30, 1990. To this extension the Senate amendment adds incentives making it easier for HUD and project owners to proces plan of action applications. Notwithstanding this temporary extension and the inclusion of incentives, the Banking Committee must consider a more permanent solution early next year.

Mr. Speaker, I would like to emphasize that HUD must administer an application of the civil money penalties for violations of program regulations authorized in the bill in an even handedmanner. I believe that the Senate additions to the House bill will be helpful in assuring that serious violators will be punished and that honest mortgagees, sponsors, and owners of HUD projects will not be penalized.

Increasing the low- and moderate-income targeting requirements for the Community Development Block Grant Program was another controversial issue. The House bill increased this targeting from 60 to 75 percent. However, the Senate proposed deleting the House provision in favor of considering this issue in the context of legislative hearings early next year. Since this was not a HUD reform issue per se, I agree with this approach.

Mr. Speaker, this is a fair and workable bill addressing the systemic flaws in our housing and community development programs which have come to light in the past several months. I must say that H.R. 1 represents a determined effort to reduce the susceptibility of HUD programs to waste, fraud, abuse, and political influence. I urge my colleagues to concur in the Senate Amendment to H.R. 1:

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,
*Washington, DC, November 22, 1989.*

Hon. CHARLMERS P. WYLIE,
*House of Representatives, Washington, DC.*

DEAR MR. WYLIE: I appalud prompt Congressional passage of H.R. 1, the "Department of Housing and Urban Development Reform Act of 1989." Without your personal commitment to move expeditiously on this package, our goal of implementing vital reforms—to replace political favortism and program abuse with fair and open competition and ethical program management—would not have been accomplished. H.R. 1 is a composite of ideas originating at HUD and in both houses of Congress.

H.R. 1 contains many of the ethics reforms the Administration proposed in its October 31, 1989, legislative package. These include: strict limitations on the use of discretionary funds by HUD; public notification of funding decisions; strict disclosure requirements for consultants doing business with the Department; and civil monetary penalties to enable HUD to better enforce program compliance.

In addition, H.R. 1 makes many of the critical program reforms incldued in the October 31 package, including: establishment of a Chief Financial Officer at HUD an a Comptroller for FHA; expedited congressional review of HUD regualtions; and provisions to improve the financial soundness of the FHA by terminating a number of programs, inlcuding investor loans and Title X, which expose the mortgage insurance fund to unnecessary risk.

In particular, I commend the Congress for adopting the Administration's propsal to terminate FHA insurance for private investors, thereby getting the Federal Government out of the business of subsidizing the risks of private real estate speculation. With this important reform, FHA will eliminate a program which has rarely benefited first-time homebuyers and which has been the source of fraud and FHA's highest default rates. This congressional action endorses long-standing recommendations of the HUD Inspector General and the General Accounting Office.

I am also pleased that the House and Senate agreed to a provision reaffirming the authority of the Secretary of HUD to set market comparable rents for Section 8 projects. The practical effect of this agreement is to minimize HUD's liability under the Ninth Circuit Rainier View ruling and eliminates HUD's future liability to arbitrarily increase rents. Although the final bill does impose a greater retroactive settlement cost than I had proposed, it does provide the essential legislative relief to avoid a potential loss of $2 billion at a cost of less than $250 million.

In addition, I applaud inclusion in the bill of several recommendations originating in Congress, including: the imposition of criminal penalties for unauthorized disclosure of funding information; a provision to refinance high-interest loans under the Section 235 program; and reforms to the Section 8 Moderate Rehabilitation program.

I am disappointed, however, that H.R. 1 does not include a number of reforms the Administration proposed in its bill, particularly those involving the CDBG program. The CDBG reform initiatives would have increased the low- and moderate-income benefit targeting requirement from 60 percent to 75 percent; tightened accounting rules to ensure that the CDBG program actually benefits low- and moderate-income individuals; required higher targeting of CDBG in affluent areas; and required entitlement grantees and States to have an anti-poverty strategy. Taken together, these proposals would have ensured that scarce Federal resources would have gone for the benefit of the people who need them the most. I look forward to deliberations on a new housing authorization bill during which a more thorough examination and discussion of these proposals can take place.

In addition, the Senate version of H.R. 1 strikes a House provision which would have restricted the use of FHA to insure second homes and vacation homes. I do not believe FHA should be insuring any programs which expose the insurance fund to undue risk, and particularly those programs that provide little or no benefit to the low- and moderate-income homebuyers FHA is intended to serve.

I am also disappointed that Congress failed to include the Administration reform proposal to give HUD greater flexibility in the disposition of FHA-held multifamily properties in certain soft market areas while protecting current low-income tenants. We believe valuable Section 8 subsidies should be allocated on the basis of need rather than the location of default. However, I am encouraged by expressions of support during markup of H.R. 1 in the House Banking Committee for addressing this problem which stands to impose significant added costs on the already troubled FHA General Insurance Fund.

The HUD reform bill also contains a number of provisions which are not directly related to the issue of HUD reform which require comment.

H.R. 1 extends until September 30, 1990, the moratorium on the prepayment of HUD-subsidized mortgages in order for the Administration and Congress to work out a permanent solution to low-income housing preservation. While we support this extension, we recommended and would have preferred a shorter duration—to May 1, 1990—to minimize the uncertainty created by the absence of a permanent solution to prepayment and to help spur the Congress and the Administration to reach an agreement on a comprehensive housing authorization bill containing a preservation program. The bill also contains a Senate-sponsored package of incentives for owners to remain in the HUD programs and to maintain their properties for low income use.

We had requested that this package of proposals be withdrawn for a number of reasons.

First, we were concerned that provisions involving the commitment of rental subsidies, as well as those regarding loans for equity "take-outs" and project rehabilitation, violated the policies underlying the Anti-Deficiency Act and the Congressional Budget Act of 1974. While the Administration is unequivocally committed to providing assistance to low-income families who are currently being served for as long as they need assistance, we do not support attempts to impose back-door obligations to appropriate funds in future years. We believe our position is consistent with the intent of the Anti-Deficiency and Congressional Budget Acts.

We believe the change to make the Secretary's commitment discretionary rather than mandatory is an improvement over the previous provision.

Secondly, the proposals offered by the Senate imposed significant risks to the FHA insurance fund at a time when HUD is seeking measures—including many authorized by H.R. 1—to improve the fund. In particular, the Senate amendments "directed" the Secretary to assume in rehabilitation loan underwriting the availability of short-term rental subsidies, without regard for the actual length of the loan term. Should subsidies not be available in the future, a loan default likely will result and the FHA will be required to pay an insurance claim.

Again, we believe the changes made in the final bill are an improvement over the original provisions and thereby re-establish with the Secretary the proper authority to manage the FHA insurance fund.

Finally, we believe that in the haste to implement changes designed to give incentives to project owners, the original Senate language would have had the unintended effects of not only subjecting the FHA fund to greater risk, but also of increasing the likelihood of default which would, in turn, have given tenants less than adequate protection. The changes contained in this bill alleviate those concerns to some degree. However, we believe that in the future, any solution to the prepayment problem—whether temporary or permanent—should have as its first concern the well-being of residents of Federally assisted housing.

I hope these agreements on preservation will clear a path for developing permanent low-income housing preservation alternatives in the next session. On November 10, 1989, President Bush announced the Administration's new housing and urban economic development proposals, called "Homeownership and Opportunity for People Everywhere (HOPE)." Among other things, HOPE includes a low-income housing preservation strategy which includes homeownership opportunities for low-income families or persons. With our joint commitment, I am confident we can work to enact a program that is fair to owners and renters alike.

Finally, your bill would establish a National Commission on Severely Distressed Public Housing. We endorse the concept behind the formation of a bipartisan commission to investigate the management problems which have led to the deterioration of public housing. However, we believe it is essential that the Commission be chartered to examine all problems contributing to distressed public housing, including existing public housing laws. In addition, I hope that in developing alternative strategies and a national action plan, the Commission will call upon the best and brightest minds of a new generation of public housing residents who are deeply committed to the empowerment of those who live in public housing.

I believe the need to enact reform legislation to correct systemic flaws in HUD programs is an urgent priority. I am pleased that Congress shared and acted upon this sense of urgency. The final version of H.R. 1, which includes ideas developed by HUD and its Inspector General, and many Members of Congress, represents true bipartisan cooperation and goes a long way toward correcting many of the past problems of the Department and helps ensure that in the future HUD will better serve those who depend on the Department's programs.

Very sincerely yours,

JACK KEMP.

Mrs. ROUKEMA. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on the Senate amendment to H.R. 1.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

## CORRECTING TECHNICAL ERRORS IN ENROLLMENT OF H.R. 3607, MEDICARE CATASTROPHIC COVERAGE REPEAL ACT OF 1989

Mr. ROSTENKOWSKI. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 241) and ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 241

*Resolved by the House of Representatives (the Senate concurring),* That, in the enrollment of the bill (H.R. 3607) to repeal medicare provisions in the Medicare Catastrophic Coverage Act of 1988, the Clerk of the House of Representatives shall make the following correction:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Catastrophic Coverage Repeal Act of 1989".

### TITLE I—PROVISIONS RELATING TO PART A OF MEDICARE PROGRAM AND SUPPLEMENTAL MEDICARE PREMIUM

#### SEC. 101. REPEAL OF EXPANSION OF MEDICARE PART A BENEFITS.

(a) IN GENERAL.—

(1) GENERAL RULE.—Except as provided in paragraph (2), sections 101, 102, and 104(d) (other than paragraph (7)) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360) (in this Act referred to as "MCCA") are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such section had not been enacted.

(2) EXCEPTION FOR BLOOD DEDUCTION.—The repeal of section 102(1) of MCCA (relating to deductibles and coinsurance under part A) shall not apply, but only insofar as such section amended paragraph (2) of section 1813(a) of the Social Security Act (relating to a deduction for blood).

(b) TRANSITION PROVISIONS FOR MEDICARE BENEFICIARIES.—

(1) INPATIENT HOSPITAL SERVICES AND POST-HOSPITAL EXTENDED CARE SERVICES.—In applying sections 1812 and 1813 of the Social Security Act, as restored by subsection (a)(1), with respect to inpatient hospital services and extended care services provided on or after January 1, 1990—

(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of illness;

(B) with respect to the limitation on such services provided in a spell of illness, days of such services before January 1, 1990, shall not be counted, except that days of inpatient hospital services before January 1, 1989, which were applied with respect to an individual after receiving 90 days of services in a spell of illness (commonly known as "lifetime reserve days") shall be counted;

(C) the limitation of coverage of extended care services to post-hospital extended care services shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30 consecutive days in which the individual is not provided inpatient hospital services or extended care services; and

(D) the inpatient hospital deductible under section 1813(a)(1) of such Act shall not apply—

(i) in the case of an individual who is receiving inpatient hospital services during a continuous period beginning before (and including) January 1, 1990, with respect to the spell of illness beginning on such date, if such a deductible was imposed on the individual for a period of hospitalization during 1989;

(ii) for a spell of illness beginning during January 1990, if such a deductible was imposed on the individual for a period of hospitalization that began in December 1989; and

(iii) in the case of a spell of illness of an individual that began before January 1, 1990.

(2) HOSPICE CARE.—The restoration of section 1812(a)(4) of the Social Security Act, effected by subsection (a)(1), shall not apply to hospice care provided during the subsequent period (described in such section as in effect on December 31, 1989) with respect to which an election has been made before January 1, 1990.

(3) TERMINATION OF HOLD HARMLESS PROVISIONS.—Section 104(b) of MCCA is amended by striking "or 1990" each place it appears.

(c) TERMINATION OF TRANSITIONAL ADJUSTMENTS IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.—

(1) PPS HOSPITALS.—Section 104(c)(1) of MCCA is amended by inserting "and before January 1, 1990," after "October 1, 1988,".

(2) PPS-EXEMPT HOSPITALS.—

(A) IN GENERAL.—Section 104(c)(2) of MCCA is amended—

(i) by inserting "and before January 1, 1990," after "January 1, 1989,"; and

(ii) by striking the period at the end and inserting the following: ", without regard to whether any of such beneficiaries exhausted medicare inpatient hospital insurance benefits before January 1, 1989.".

(B) TRANSITION.—The Secretary of Health and Human Services shall make an appropriate adjustment to the target amount established under section 1886(b)(3)(A) of the Social Security Act in the case of inpatient hospital services provided to an inpatient whose stay began before January 1, 1990, in order to take into account the target amount that would have applied but for the amendments made by this title.

(d) EFFECTIVE DATE.—The provisions of this section shall take effect January 1, 1990, except that the amendments made by subsection (c) shall be effective as if included in the enactment of MCCA.

#### SEC. 102. REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM AND FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.

(a) IN GENERAL.—Sections 111 and 112 of MCCA are repealed and the provisions of law amended by such sections are restored or revived as if such sections had not been enacted.

(b) DELAY IN STUDY DEADLINE.—Section 113(c) of MCCA is amended by striking "November 30, 1988" and inserting "May 31, 1990".

(c) DISPOSAL OF FUNDS IN FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.—Any balance in the Federal Hospital Insurance Catastrophic Coverage Reserve Fund (created under section 1817A(a) of the Social Security Act, as inserted by section 112(a) of MCCA) as of January 1, 1990, shall be transferred into the Federal Supplementary Medical Insurance Trust Fund and any amounts payable due to overpayments into such Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the provisions of this section shall take effect January 1, 1990.

(2) REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.—The repeal of section 111 of MCCA shall apply to taxable years beginning after December 31, 1988.

### TITLE II—PROVISIONS RELATING TO PART B OF THE MEDICARE PROGRAM

#### SEC. 201. REPEAL OF EXPANSION OF MEDICARE PART B BENEFITS.

(a) IN GENERAL.—

(1) GENERAL RULE.—Except as provided in paragraph (2), sections 201 through 208 of MCCA are repealed and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

(2) EXCEPTION.—Paragraph (1) shall not apply to subsections (g) and (m)(4) of section 202 of MCCA.

(b) CONFORMING AMENDMENTS.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)) is amended—

(1) in paragraph (3)(C)—

(A) by striking "Subject to paragraph (4), deductibles" and inserting "Deductibles", and

(B) by striking "1813, section 1833(b)" and all that follows and inserting "1813 and section 1833(b)).''; and

(2) by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(c) EFFECTIVE DATE.—The provisions of this section shall take effect January 1, 1990.

#### SEC. 202. REPEAL OF CHANGES IN MEDICARE PART B MONTHLY PREMIUM AND FINANCING

(a) IN GENERAL.—Sections 211 through 213 (other than sections 211(b) and 211(c)(3)(B)) of MCCA are repealed and the provisions of law amended or repealed by such sections are restored or revised as if such sections had not been enacted.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect January 1, 1990, and the repeal of section 211 of MCCA shall apply to premiums for months beginning after December 31, 1989.

#### SEC. 203. AMENDMENT OF CERTAIN MISCELLANEOUS PROVISIONS.

(a) REVISION OF MEDIGAP REGULATIONS.—

(1) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 221(d) of MCCA, is amended—

(A) in the third sentence of subsection (a) and in subsection (b)(1), by striking "subsection (k)(3)" and inserting "subsections (k)(3), (k)(4), (m), and (n)";

(B) in subsection (k)—

(i) in paragraph (1)(A), by inserting "except as provided in subsection (m)," before "subsection (g)(2)(A)", and

(ii) in paragraph (3), by striking "subsection (1)" and inserting "subsections (l), (m), and (n)"; and

(C) by adding at the end the following new subsections:

"(m)(1)(A) If, within the 90-day period beginning on the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection and subsection (n) referred to as the 'Association') revises the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) and adopted on September 20, 1988) to improve such regulation and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Act of

1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the amended NAIC Model Regulation (referred to in subsection (k)(1)(A)) as revised by the Association in accordance with this paragraph (in this subsection and subsection (n) referred to as the 'revised NAIC Model Regulation').

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

"(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) referred to as 'revised Federal model standards') for medicare supplemental policies to improve such standards and otherwise supplemental policies to improve such standards and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised Federal model standards or 1 year after the date the Secretary first promulgates such standards.

"(3) Notwithstanding any other provision of this section (except as provided in subsection (n))—

"(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a),

"(B) no certification made pursuant to subsection (a) shall remain in effect, and

"(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A),

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

"(n)(1) Until the date specified in paragraph (4), in the case of a qualifying medicare supplemental policy described in paragraph (3) issued in a State—

"(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the transition provision described in paragraph (2), or

"(B) on or after the transition deadline, the policy is deemed to be in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term 'transition deadline' means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Secretary promulgates revised Federal model standards (as the case may be).

"(2) The transition provision described in this paragraph is—

"(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this title made by the Medicare Catastrophic Coverage Repeal Act of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

"(B) if the Association does not provide for a transition provision by the date described in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

"(3) In paragraph (1), the term 'qualifying medicare Supplemental policy' means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before the date of the enactment of this subsection.

"(4)(A) The date specified in this paragraph for a policy issued in a State is—

"(i) the first date a State adopts, after the date of the enactment of this subsection, standards equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

"(ii) the date specified in subparagraph (B), whichever is earlier.

"(B) In the case of a State which the Secretary identifies in consultation with the Association, as—

"(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

"(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

"(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) unless each individual who is entitled to benefits under this title and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

"(A) the changes in benefits under this title effected by the Medicare Catastrophic Coverage Repeal Act of 1989, and

"(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

"(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before the date of the enactment of this subsection, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) unless the insurer—

"(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

"(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstitution of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

"(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of the date of the enactment of this subsection, if (as of January 1, 1990) the individual is not subject to a waiting period with respect to treatment of a pre-existing condition under such other policy.".

(b) ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS.—Notwithstanding any other provision of this Act, the amendments made by this Act (other than the repeal of sections 1833(c)(5) and 1834(c)(6) of the Social Security Act) shall not apply to risk-sharing contracts, for contract year 1990—

(1) with eligible organizations under section 1876 of the Social Security Act, or

(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967, or under section 222(a) of the Social Security Amendments of 1972.

(c) NOTICE OF CHANGES.—The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act for 1990, for a description of the changes in benefits under title XVIII of such Act made by the amendments made by this Act.

(d) MISCELLANEOUS TECHNICAL CORRECTION.—Section 221(g)(3) of MCCA is amended by striking "subsection (f)" and inserting "subsection (e)".

(e) EFFECTIVE DATE.—The provisions of this section shall take effect January 1, 1990, except that the amendment made by subsection (d) shall be effective as if included in the enactment of MCCA.

## TITLE III—MISCELLANEOUS AMENDMENTS

SEC. 301. MISCELLANEOUS MCCA AMENDMENTS.

(a) IN GENERAL.—Sections 421 through 425 and 427 of MCCA are repealed and any provision of law amended or repealed by such sections is restored or revived as if such sections had not been enacted.

(b) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1834(b)(4)(A) of the Social Security Act, as added by section 4049(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking

"insurance and deductibles under section 1835(a)(1)(I)" and inserting "coinsurance and deductibles under sections 1833(a)(1)(J)".

(2) Section 1842(j)(1)(C)(vii) of the Social Security Act, as added by section 4085(i)(7)(C) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "accordingly" and inserting "according".

(3) Section 1886(g)(3)(A)(iv) of the Social Security Act, as added by section 4006(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "may) be" and inserting "may be)"

(4) Section 1866(a)(1)(F)(i)(III) of the Social Security Act is amended by striking "fiscal year))" and inserting "fiscal year)".

(5) Section 1875(c)(7) of the Social Security Act, as added by section 9316(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of this section".

(6) Section 1842(j)(2)(B) of the Social Security Act, as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987, is amended by striking "paragraphs" and inserting "subsections".

(c) MISCELLANEOUS CORRECTIONS RELATING TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987.—

(1) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1834(b)(4)(A) of the Social Security Act (42 U.S.C. 1395m(b)(4)(A)), as added by section 4049(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "insurance and deductibles under section 1835(a)(1)(I)" and inserting "coinsurance and deductibles under sections 1833(a)(1)(J)".

(2) Section 1842(j)(1)(C)(vii) of the Social Security Act (42 U.S.C. 1395u(j)(1)(C)(viii)), as added by section 4085(i)(7)(C) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "accordingly" and inserting "according".

(3) Section 1886(g)(3)(A)(iv) of the Social Security Act (42 U.S.C. 1395ww(g)(3)(A)(iv)), as added by section 4006(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "may) be" and inserting "may be)".

(d) OTHER CORRECTIONS.—

(1) Section 1866(a)(1)(F)(i)(III) of the Social Security Act (42 U.S.C. 1395cc(a)(1)(F)(i)(III)) is amended by striking "fiscal year))" and inserting "fiscal year)".

(2) Section 1875(c)(7) of the Social Security Act (42 U.S.C. 1395ll(c)(7)), as added by section 9316(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of this section".

(3) Section 1842(j)(2)(B) of the Social Security Act (42 U.S.C. 1395u(j)(2)(B)), as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987, is amended by striking "paragraphs" and inserting "subsections".

(e) EFFECTIVE DATE.—The provisions of this section (other than subsections (c) and (d)) shall take effect January 1, 1990, except that—

(1) the repeal of section 421 of MCCA shall not apply to duplicative part A benefits for periods before January 1, 1990, and

(2) the amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. ARCHER. Mr. Speaker, reserving the right to object, I shall not object, but I take this time for the purpose of having a colloquy with the chairman of the committee.

It is my understanding that this is to correct an inadvertent error, that the repeal legislation that was sent back to the Senate on the catastrophic illness program was not correct in its technical form, and this is to correct that and send it back, so we can be sure that the law is as we intended it to be; is that correct?

I yield to the gentleman from Illinois.

Mr. ROSTENKOWSKI. Mr. Speaker, this resolution simply makes technical corrections in the enrollment of the bill repealing catastrophic health insurance.

The repeal of catastrophic health insurance has now passed both the House and the Senate. I want to emphasize that this enrolling resolution makes absolutely no substantive changes to the bill. This resolution has the concurrence of all committees of jurisdiction.

Mr. ARCHER. Mr. Speaker, I thank the gentleman.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

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## EXTENDING CIVIL PENALTY ASSESSMENT DEMONSTRATION PROGRAM

Mr. RAHALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3671) to amend the Federal Aviation Act of 1958 to extend the Civil Penalty Assessment Demonstration Program, with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the House amendment to the Senate amendment, as follows:

House amendment to Senate amendment: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SEC. 2. INSTALLATION AND EVALUATION OF COLLISION AVOIDANCE SYSTEMS.

Section 601(f) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421(f)) is amended—

(1) by redesignating paragraph (3) as paragraph (6); and.

(2) by inserting immediately after paragraph (2) the following new paragraphs:

"(3) OPERATIONAL EVALUATION.—The Administrator shall institute, for a 1-year period beginning not later than December 30, 1990, a program for the operational evaluation of the collision avoidance system known as TCAS-II, in order to collect and assess safety and operational data from the civil aircraft equipped with such system. In conducting the program, the Administrator shall encourage the participation of foreign air carriers which operate civil aircraft equipped with such system.

"(4) EXTENSION OF TIME.—If the Administrator determines that extending the deadline contained in paragraph (2) is necessary—

"(A) to promote a safe and orderly transition to operation of a fleet of civil aircraft described in paragraph (2) which is equipped with the collision avoidance system known as TCAS-II, or

"(B) to promote other safety objectives, the Administrator may extend such deadline for a period not to exceed 2 years.

"(5) COMPATIBILITY OF WINDSHEAR EQUIPMENT INSTALLATION SCHEDULE.—The Administrator shall consider the feasibility and desirability of amending the schedule for the installation of airborne low-altitude windshear equipment in order to make such schedule compatible with the schedule for the installation of the collision avoidance system known as TCAS-II.".

SEC. 3. PENINSULA AIRPORT CONVEYANCE.

Subsection (b) of the first section of the Act entitled "An Act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes", approved November 6, 1986 (Public Law 99-618; 100 Stat. 3490), is amended—

(1) in paragraph (3) by striking "7.5 acres" and inserting in lieu thereof "20.5 acres"; and

(2) by striking paragraph (4).

SEC. 4. EXCESS LAND DISPOSAL.

Paragraph 14 of section 511(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2210(a)) is amended to read as follows:.

"(14) if the airport operator or owner receives a grant before, on, or after December 31, 1987, for the purchase of land for airport development purposes (other than noise compatibility purposes)—

"(A) the owner or operator will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States proportionate share of the fair market value of the land;

"(B) such disposition will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport;

"(C) that portion of the proceeds of such disposition which is proportionate to the United States share of the cost of acquisition of such land will—

"(i) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at the airport or within the national airport system; or

"(ii) be paid to the Secretary for deposit in the Trust Fund if no such eligible project exists;

subject to the requirement that land shall be considered to be needed for airport purposes under this paragraph if (I) it may be needed for aeronautical purposes (including runway protection zone) or serves as noise buffer land and (II) the revenue from interim uses of such land contribute to the financial self-sufficiency of the airport, and sub-

ject to the further requirement that land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or the Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the use of such land, did not object to such use, and the land continues to be used for that purpose;".

Mr. RAHALL (during the reading). Mr. Speaker, I ask unanimous consent that the House amendment to the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. (Mr. MAZZOLI). Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from West Virginia?

Mr. CLINGER. Mr. Speaker, reserving the right to object, I will not object, and I yield to the gentleman from West Virginia to explain the purpose of the bill.

Mr. RAHALL. Mr. Speaker, we are asking the House to adopt an amendment dealing with important aviation legislation which the other body has just sent over. Most of the provisions in our amendment are the same or similar to provisions which passed the House on Monday by unanimous consent.

First, our amendment includes a provision, which was previously passed by the House, allowing the Peninsula Airport Commission in Newport News, VA, to convey 13 acres of land which are no longer needed for airport purposes.

Secondly, our amendment includes the provision passed by the House extending for four months the authority of the Federal Aviation Administrator to impose civil penalties for violations of FAA safety and security regulations.

Third, our amendment includes a modification of a bill passed by the House to give authority to the FAA Administrator to extend the deadline for installation of collision avoidance equipment on aircraft.

A final provision in our amendment, which was not previously passed by the House, adopts a Senate provision which modifies the procedures to be followed when an airport has received a grant to purchase land for aeronautical purposes and then, because of changed circumstances the land is no longer needed for the original purpose of the grant. This amendment does not change the basic requirement that when the land is no longer needed for the original purpose it must be sold.

I understand that these modifications to the land disposal requirements in our amendment are acceptable to the Federal Aviation Administration and the Department of Transportation.

Mr. Speaker, I urge adoption of this package of important aviation legislation.

Mr. CLINGER. Mr. Speaker, I thank the gentleman from West Virginia [Mr. RAHALL] for the explanation, and would just indicate the support of the minority for this bill. The civil penalties provision the gentleman alluded to is important because we need to continue that program to give us an opportunity to look at this again next year with the prospects of significant reform in that civil penalties program.

The removal of the deed resptrictions for the gentleman from Virginia [Mr. BATEMAN] in the Peninsula Airport in Newport News is something that has been pending for about 3 Congresses, and it is good we are getting to that.

Mr. Speaker, I think the fact that we have made revisions in this bill to enable the FAA to be a little more flexible in implementing the collision advoidance system is also a good provision. It is my understanding that the additional provision in this bill relating to the airport in Honolulu is not agreed to in this bill.

Mr. RAHALL. Mr. Speaker, the gentleman is correct.

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in support of this legislation, several components of which have previously passed this body with wide support.

The underlying bill just passed the House last week by unanimous consent. This provisions would extend the FAA's civil penalty demonstration program for 4 months. In 1987, we authorized this program to permit FAA to administratively impose and enforce small civil penalties so that the FAA would not have to go through the U.S. attorney.

Unfortunately, while the civil penalty demonstration may have increased efficiency, it has been very controversial. Aviation groups which are often unable to agree on other issues have been united in their opposition to this program. The problem is not with the concept of the program as much as with the procedures that FAA has adopted to implement the program.

These procedural objections are particularly troublesome because the NTSB already has procedures to deal with certificate actions. One question we should be examining here is whether those procedures could simply be used for this program or whether the NTSB could take over the administration of this program entirely. I realize that there are questions about the resources available to the NTSB to do this, but I believe it is a question we should address next year. That is the reason for a 4-month extension.

Also, the legislation includes a provision which the House passed previously involving the airline collision avoidance system know as TCAS–II.

This would permit the FAA to adopt a phased implementation schedule and to conduct a test of the TCAS–II system as it is being phased in. It would set a target of 1993 for the complete installation of TCAS. The FAA could extend this 1993 date but it would face a heavy burden in doing so.

In my view, this approach will allow for a safe and orderly installation of collision avoidance technology. It will also keep the FAA's and the airline's "feet to the fire" to ensure that they install this important safety equipment as soon as possible.

The legislation clears up some unfinished business from the last two Congresses. In the 99th Congress, we passed a bill that removed certain deed restrictions on the airport in Newport News, VA. This cleared the sale of about 20½ acres of property at that airport which was no longer needed for airport purposes. However, when the Senate took up the bill, they took out about 13 acres. This left some of the property still subject to the deed restriction.

Last year, During the 100th Congress, the Senate took another look at this issue and decided to pass a bill to remove the restriction on the last 13 acres. However, the House took no action on that bill.

The bill before us now is similar to the one the Senate passed last year and the same as the one that the House passed earlier this year. It completes the action that this body initiated 3 years ago by releasing the remaining 13 acres of airport property from restrictions in the deed that prevent their sale.

Finally, the legislation would modify one of the sponsor's assurances for airport improvement program grants. Under current law if an airport sponsor receives a grant before, on, or after the date of enactment for the purchase of land for airport purposes the owner, when the land is no longer needed, must dispose of it at fair market value. That portion of the proceeds proportionate to the U.S. share of the costs of the acquisition is returned to the Secretary for deposit in the airport and airway trust fund.

This amendment would permit the proceeds to be reinvested in another eligible AIP project or project approved by the Secretary at that airport or within the National Airport System. If no such eligible project exists, the money would be paid back to the trust fund.

In addition, the amendment defines "airport purposes" to prevent a situation arising where an airport would be required to sell land currently under lease notwithstanding the fact that the lease was approved by the FAA prior to the adoption of the 1987 amendments.

Mr. Speaker, these are all good provisions. I therefore support enactment of this legislation.

Mr. CLINGER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from West Virginia?

There was no objection.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. RAHALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the legislation just considered.

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The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

## TECHNICAL AND CORRECTING CHANGES IN AGRICULTURE PROGRAMS

Mr. STENHOLM. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1793) to make technical and correcting changes in agriculture programs, with a Senate amendment to the House amendment thereto, and concur in the Senate amendment to the House amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment, as follows:

In lieu of the matter proposed to be inserted by the amendment of the House, insert:

SECTION 1. PEANUTS.

(a) On page 8, line 7, insert after "for quota peanuts" the following: "multiplied by the quantity of peanuts sold or disposed of in violation of subsection (b)(1)(B)".

(b) On page 8, beginning on line 11, strike "subsection (a) shall become effective 30 days after the date of enactment of this Act" and insert in lieu thereof "this section shall be effective with respect to the 1990 and subsequent crops of peanuts"

SEC. 2. TECHNICAL CHANGES IN SECTION 7 OF THE BILL THAT DEALS WITH PURCHASES OF FINANCIAL ASSISTANCE CORPORATION STOCK BY FARM CREDIT SYSTEM INSTITUTIONS.

(a) On page 14—

(1) line 19, strike "Trust Fund" and insert in lieu thereof "Financial Assistance Corporation Trust Fund (hereinafter in this section referred to as the 'Trust Fund')";

(2) line 20, strike "section 6.25" and insert in lieu thereof "section 6.25(b)"; and

(3) line 21, strike "U.S.C. 2278b-5" and insert in lieu thereof "U.S.C. 2278b-5(b)".

(b) On page 15—

(1) line 10, after "Corporation", insert "on assets of the Trust Fund";

(2) line 13, strike "of the amount";

(3) line 15, strike "by" and insert in lieu thereof "through";

(4) line 17, insert "annual" after "and fourth";

(5) line 21, after "poration", insert "on assets of the Trust Fund"; and

(6) line 24, strike "of the amount".

(c) On page 16, after "issued by", insert "the Financial Assistance Corporation through".

SEC. 3. PROHIBITION ON DUTY DRAWBACK CLAIMS BY EXPORTERS WHO USE CERTAIN EXPORT PROMOTION PROGRAMS.

(a) IN GENERAL.—The Secretary of Agriculture may provide that a person shall be ineligible for participation in an export program established under title I or title III of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.), or in any other export credit, credit guarantee, bonus, or other export program carried out through, or administered by, the Commodity Credit Corporation or carried out with funds made available pursuant to section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935 (7 U.S.C. 612c) with respect to the export of any agricultural commodity or product that has been or will be used as the basis for a claim of a refund, as drawback, pursuant to section 313(j)(2) of the Tariff Act of 1930 (19 U.S.C. 1313(j)(2)), of any duty, tax, or fee imposed under Federal law on an imported commodity or product.

(3) VEGETABLE OIL.—A person shall be ineligible for participation in any of the export programs referred to in subsection (a) with respect to the export of vegetable oil or a vegetable oil product that has been or will be used as a the basis for a claim of a refund, as a drawback, pursuant to section 313 of the Tariff Act of 1930, of any duty, tax, or fee imposed under Federal law on an imported commodity or product.

(c) CERTIFICATION.—A person applying to export any agricultural commodity or product under the export programs referred to in subsection (a) shall certify, in accordance with regulations issued under subsection (d), that none of the commodity or product has been or will be used as the basis of a claim for any refund specified in subsection (a), except that a person applying to export any vegetable oil or vegetable oil product under such programs shall certify that none of the vegetable oil or vegetable oil product has been or will be used as the basis of a claim for any refund specified in subsection (b).

(d) REGULATIONS.—The Secretary of Agriculture shall issue regulations to carry out this section.

(e) APPLICABILITY.—This section shall not apply to quantities of agricultural commodities and products with respect to which an exporter has entered into a contract, prior to the effective date of this section, for an export sale.

SEC. 4. REPAYMENT OF ADVANCE DEFICIENCY PAYMENTS.

Effective only for the 1988 crops of wheat, feed grains, upland cotton, and rice, produced by producers that qualified for assistance under section 201(a) of the Disaster Assistance Act of 1988 (7 U.S.C. 1421 note) or section 101(a) of the Disaster Assistance Act of 1989 (7 U.S.C. 1421 note), if the Secretary of Agriculture determines that any portion of the advance deficiency payment made to producers for such crop under section 107C of the Agricultural Act of 1949 (7 U.S.C. 1445b-2) must be refunded, such refund shall not be required to be made prior to July 31, 1990.

Mr. STENHOLM (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment to the House amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Texas?

Mr. ROBERT F. (BOB) SMITH. Mr. Speaker, reserving the right to object, I will not object, but do so only to yield to the gentleman from Texas [Mr. STENHOLM], chairman of the Subcommittee on Livestock, Dairy, and Poultry, to explain the bill.

Mr. STENHOLM. Mr. Speaker, this bill includes about 15 different technical and correcting changes dealing from oats, meat sales and military commissaries, egg check-offs, peanuts, various other changes as far as disaster assistance for earthquakes, actual field data to county committees, and other technical changes, as well as correcting changes in other farm credit amendment language.

Mr. ROBERT F. (BOB) SMITH. Mr. Speaker, further reserving the right to object, I only want to say a portion of this bill is the fruition of about 4 years of efforts on my part and many other Members with respect to our level of competition with the European Community in meat sales. This authorizes some $70 million of fresh meat to be sent to commissaries in Europe. It is a good idea. It has always been a good idea, but I finally convinced Members of that.

Mr. PANETTA. Mr. Speaker, I simply want to join my colleague, the Honorable CHARLIE STENHOLM, in supportint passage of S. 1793, as amended.

S. 1793, with a Senate amendment to the House amendment, includes a provision that will aid farmers and agricultural busiensses that suffered damage and losses due to the Loma Preita earthquake in northern California. This provision is idential to the language contained in the bill H.R. 3589, the Earthquake Disaster Assistance Act which I introduced on November 3, 1989, and which passed the House on November 13.

The earthquake assistance provided by this measure is of critical importance to the residents of the 16th District of California, many of whom are involved in or associated with agriculture, and many of whom saw their farms and agricultural-related businesses destroyed by the earthquake.

S. 1793, as amended, would simply extend the same benefits to the producers of program and nonprogram crops—including ornamentals—affected by the earthquake, as were received by farmers who suffered losses due to damaging weather in other parts of the country. These benefits would include payments for losses in production suffered due to the earthquake as well as the availability of loan guarantees to help rebuild farms and businesses damaged by the quake. This aid is essential if the agricultural indusry in northern California is to rebuild and the communities that are associated with this industry are to once again prosper.

Mr. Speaker, S. 1793, as amended, can help to restore earthquake losses that were the result of damage to crops, storage and processing structures, farm and processing equipment, and business interruptions due to losses of supplies, labor, and transportation. This assistance will help growers of program and nonprogram crops, flower growrs, wineries, fruit and vegetable canneries, and processing facilities.

I urge my colleagues to support passage of S. 1793, as amended.

Mr. ROBERT F. (BOB) SMITH. Mr. Speaker, with that explanation, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid upon the table.

## GENERAL LEAVE

Mr. STENHOLM. Mr. Speaker, I ask unanimous consent that Members have 5 days, not withstanding the adjournment of Congress, to revise and extend their remarks on the legislation just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

## PERSONAL EXPLANATION

Mr. RAHALL. Mr. Speaker, due to unavoidable absence from the city on Friday, November 17, Sunday, November 19, Monday, November 20, and Tuesday, November 21, I was unable to cast my vote on nine matters for which there were recorded votes. Had I been present and voting I would have voted as follows:

Rollcall No. 368, the Civil Rights Commission reauthorization, "yea";

Rollcall No. 369, the Journal approval vote, "yea";

Rollcall No. 370, the Chinese Adjustment of Status Facilitation Act, "yea";

Rollcall No. 371, repeal of the Medicare Catastrophic Act, "yea";

Rollcall No. 372, a motion to adjourn, "nay";

Rollcall No. 373, rule on foreign aid appropriations, with an amendment restricting funding for military purposes in El Salvador, "yea";

Rollcall No. 374, passage of the foreign aid appropriations bill, "nay";

Rollcall No. 375, sense-of-the-Congress resolution deploring the escalating violence in El Salvador and the killing of innocent civilians, including six Jesuit priests and others, and calling for an immediate cessation of hostilities, "yea"; and

Rollcall No. 376, repeal of Medicare catastrophic, "yea."

## REMARKS ON RECONCILIATION

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, I did not seek time during the debate on the reconciliation bill because there were plenty of other Members. I do want to take this time to explain that I voted against the budget reconciliation resolution because the budget process promotes debt and reduces Government services.

At the end of each year I assembled data to illustrate the national priorities reflected by actual spending, and this year I completed the numbers on the Reagan years.

Instead of presenting the data in dollars spent, I present the national priority in percentage shares of spending. This makes it easier to understand what is happening in the trillion-dollar budget.

I have also grouped spending into five categories: trust funds, defense, interest paid on debt, entitlements, and Government services.

The data is not only important because it shows national priorities, it also shows trends. First, the category spending for trust funds, defense, and mandatory spending programs, have remained relatively constant during the Reagan era, while interest on the debt share has increased by 43 percent.

Second, share of spending for Government services was cut by about the same percentage share as the percentage increase in net interest paid on the debt. Thus, nonmilitary Government services were reduced in order to offset or to hold down a part of the dramatic increase in Federal debt during the Reagan years.

The net interest on the debt has increased by more than $100 billion in the last 8 years.

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That means that there is $100 billion less for education, or $100 billion less for housing, or $100 billion less for Hurricane Hugo or the California earthquake victims or $100 billion less to assist for other American needs or to nourish the fledgling democracies in Eastern Europe like Poland or Hungary or other foreign needs around the world.

This phenomenon, I believe, has occurred in part because of the present budget process which has accommodated the national priorities that I have just illustrated, and that will be illustrated in the following tables.

Mr. Speaker, budget reform is urgently needed. It is my hope that the leadership of both parties will see this need early in the second session and will take into consideration two bills that I have introduced. One I believe is essential to change some definitions, and, two, if the definitions are changed, then we can proceed to reforming the process.

Mr. Speaker, I am including herein two tables in the nature of extraneous matter.

## EXPRESS THANKSGIVING WITH THANKSLIVING

(Mr. FAUNTROY asked and was given permission to address the House for 1 minute.)

Mr. FAUNTROY. Mr. Speaker, it is entirely appropriate that the House adjourn sine die this morning on the threshold of our Nation's observance of Thanksgiving.

When we think of it, this is one of the most meaningful years in recent decades. We, in America, have so much for which to be thankful. We are thankful because there is a fierce wind blowing in our world today. It is a wind of freedom and democracy. We hear the wind blowing, the rumbling chords in Tiananmen Square and throughout Asia. The echo of the wind is heard in Hungary and Poland and East Germany, and we in this country can be so grateful that that wind blows strongest right here in the land of the free and the home of the brave.

I hope that as our Members return to their districts, to their families, and to their constituents, they will emphasize how much we in this great country have to be thankful for and that we will be inspired in this coming holiday season to express our thanksgiving with thanksliving by sharing more of our democracy, more of our wealth, more of our love and sense of brotherhood and sisterhood with people not only in this country but around the world.

## COMPLETING LEGISLATION ON THE PRESIDENT'S DRUG STRATEGY

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, we have much that we can be thankful for in terms of the work that we have completed this year, and I think that there is much good work that has been done by the Congress. But it is somewhat disappointing, as we arrive at this last evening of our session in the first session, that much of the President's drug strategy and much of the drug strategy offered by the czar that this Congress had appointed last year has not been implemented.

The drug-free schools legislation failed to make it through the process. The process did not permit us to get the bill through from the Committee on Energy and Commerce. It did not permit us to get the portion of the bill from the Committee on the Judiciary through.

Mr. Speaker, as a result, we will not have substantial portions of strategy 1 completed at the end of this Congress. Mr. Bennett is supposed to put into effect strategy 2 sometime after we come back into session.

It makes it very difficult for him to design strategy 2 when we have not completed our work on strategy 1. I would hope that we will very quickly move in the beginning of the next session of Congress to implement this and then, in addition, move on the violent crime package, which is also an essential component part of the strategy of the President in fighting drugs.

Mr. Speaker, I yield to my colleague, the gentleman from Pennsylvania [Mr. CLINGER].

Mr. CLINGER. Mr. Speaker, I thank my colleague for yielding.

I just wanted the record to reflect that the drug-free schools legislation did pass the other body, that passed, and the international narcotics legislation passed.

Mr. WALKER. I am glad to hear that. I understood earlier this evening that the drug-free schools legislation was hung up in the other body and probably would not pass. I am pleased to know that it has passed now. That means that instead of having three-quarters of the package unfinished, we have half of the package unfinished.

Mr. CLINGER. We have half unfinished; we are batting .500.

Mr. WALKER. This is still something I think we would want to correct at the beginning of the next session of Congress and something that is absolutely necessary that we correct before we move on to the second part of the drug czar strategy.

## THE DIVIDEND OF PEACE

(Mr. BEREUTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEREUTER. Mr. Speaker, as we are preparing to adjourn sine die here, I think it is perhaps important for us to take a look at what is happening in Eastern and Central Europe at this time.

During the last few days and the last few weeks the changes have been dramatic. All one has to do is pick up their morning paper to find out things that we had never predicted would happen are happening in rapid succession. Never before have so many changes prevailed in that part of the world.

Recently I have had constituents ask me why is it that we should be providing some assistance to Poland and Hungary or to other countries of the Warsaw Pact. That is a reasonable question at a time when we have huge budget deficits. It is a reasonable question in light of our own domestic needs.

I think one of the most important things that we could consider is the prospect for significant reductions in arms and in our military forces on both sides, in the Warsaw Pact and in the NATO alliance and, therefore, the United States' commitments.

It has been true for some period of time that our defense expenditures have been largely driven by our commitments to defend Central Europe from aggression from the Warsaw Pact countries. Indeed, over half of our expenditures for defense are said to relate directly to that theater, and most of our weapons seem to be designed for the theater itself.

One of the interesting things that has happened the last few days on this side of the Atlantic is that Secretary Cheney has directed the armed services of the United States to consider major cutbacks in defense expenditures for 3 upcoming fiscal years to the tune of $182 billion over 3 fiscal years. At a time when we were asked to approve an authorization and appropriation for approximately $738 million for assistance to Poland and Hungary, most of it going to Poland, at a time when the majority of the assistance at this point appropriately is coming from Western Europe and more should come from Japan and some of the other Asian nations that are doing very well, I think it is interesting to compare that expenditure to the $182 billion that our Secretary of Defense feels it may be possible for us to cut because of the change in the level of threat from the Warsaw Pact countries.

One of the most important things we have to keep our eye on at this point, it seems to this Member, is what is happening in Vienna with the CFE negotiations. President Bush has pushed very hard for a conclusion and beginning implementation of that treaty within the next year. The Soviets have held out for a 2-year period of time, but if, in fact, we can have major reductions of conventional forces on both sides of the Iron Curtain, which is now being breached with disproportionately large cutbacks on the Warsaw Pact side, then, indeed, some of these savings may well be possible, and then we will have a peace dividend that will enable us to deal with our fiscal problems and address more of our own domestic needs. That is my hope, and I know that we are going to watch, and with great sympathy, urge the people in Prague and Bulgaria, as they are beginning to take steps to follow East Germany, to follow Poland and Hungary.

## FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2494. An act to reauthorize the Export-Import Bank tied aid credit fund and pilot interest subsidy program, to provide for the participation of the United States in a replenishment of the Inter-American Development Bank and in the Enhanced Structural Adjustment Facility of the International Monetary Fund, to improve the safety and soundness of the U.S. banking system and encourage the reduction of the debt burdens of the highly indebted countries, to encourage the multilateral development banks to engage in environmentally sustainable lending practices and give greater priority to poverty alleviation, and for other purposes.

□ 0330

## INTERNATIONAL DEVELOPMENT AND FINANCE ACT OF 1989

Mr. FAUNTROY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2494) to reauthorize the Export-Import Bank tied aid credit fund and pilot interest subsidy program, to provide for the participation of the United States in a replenishment of the Inter-American Development Bank and in the Enhanced Structural Adjustment Facility of the International Monetary Fund, to improve the safety and soundness of the U.S. banking system and encourage the reduction of the debt burdens of the highly indebted countries, to encourage the multilateral development banks to engage in environmentally sustainable lending practices and give greater priority to poverty alleviation, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

In the table of contents, after the item relating to section 102 insert the following new item:

SEC. 103. EXPORT-IMPORT PROGRAMS TO THE PEOPLE'S REPUBLIC OF CHINA PROHIBITED UNLESS CERTAIN CONDITIONS ARE MET.

In the table of contents, strike the item relating to section 402 and redesignate the items relating to sections 403, 404, 405, 406, 407, and 408, as relating to sections 402, 403, 404, 405, 406, and 407, respectively.

In the table of contents, strike the item relating to subtitle B of title V, and the items relating to sections 511, 512, and 513, and insert the following:

Subtitle B—International Debt Exchanges and the Environment

Sec. 511. Sense of the Congress regarding environmental policy and international debt exchanges.

Sec. 512. Multilateral development banks and debt-for-nature exchanges.

In the table of contents, strike the item relating to section 605.

Page 4, line 11, strike "$50,000,000" and insert "$35,000,000".

Page 4, strike line 17 and all that follows through page 5, line 2, and insert the following:

(10) PURPOSE.—Section 15(a)(5) of such Act (12 U.S.C. 635i-3(a)(5)) is amended by striking all that follows "commercial advantage" and inserting "for the purposes of—

"(A) enforcing compliance with the existing arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes; and

"(B) facilitating efforts to negotiate, establish, and enforce new or revised comprehensive international arrangements effectively restricting the use of tied aid and partially untied aid credits for commercial purposes;

and such program should be used aggressively for such purposes.".

(2) ESTABLISHMENT OF PROGRAM.—The first sentence of section 15(b)(1) of such Act (12 U.S.C. 635i-3(b)(1)) is amended by striking the matter preceding subparagraph (A) and inserting "To carry out the purposes of subsection (a)(5), the Bank shall establish a tied aid credit program under which grants shall be made from funds available in the Tied Aid Credit Fund established under subsection (c)—".

(3) ADMINISTRATION OF PROGRAM.—Section 15(b)(2)(A) of such Act (12 U.S.C. 635i-3(b)(2)(A)) is amended by striking all that follows "to" and inserting "carry out the purposes described in subsection (a)(5);".

(4) AVAILABILITY OF FUNDS.—Section 15(c)(2) of such Act (12 U.S.C. 635i-3(c)(2)) is amended—

(A) by striking "cost" and inserting "amount equal to the concessionality level"; and

(B) by striking all that follows "authorized by the Bank" and inserting "through fiscal year 1991."

(5) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1990 AND 1991.—Section 15(e)(1) of such Act (12 U.S.C. 635i-3(e)(1)) is amended by inserting ", and for fiscal years 1990 and 1991, $300,000,000" after "$300,000,000".

(6) REPORTS.—Section 15(g)(2)(E) of such Act (12 U.S.C. 635i-3(g)(2)(E)) is amended to read as follows:

"(E) the progress achieved by negotiations conducted to carry out the purposes described in subsection (a)(5).".

Page 8, after line 20, insert the following:

SEC. 103. EXPORT-IMPORT PROGRAMS TO THE PEOPLE'S REPUBLIC OF CHINA PROHIBITED UNLESS CERTAIN CONDITIONS ARE MET.

(a) Notwithstanding any other provision of law and subject to the provisions of subsections (b) and (c), the Export-Import Bank of the United States shall not finance any trade with, nor extend any loan, credit, credit guarantee, insurance or reinsurance to the People's Republic of China.

(b) The prohibitions described in subsection (a) of this section shall not apply to food or agricultural commodities.

(c) The President may waive the prohibitions in subsection (a) if he makes a report to Congress either—

(1) that the Government of the People's Republic of China has made progress on a program of political reform throughout the country, as well as in Tibet, which includes—

(A) lifting of martial law;

(B) halting of executions and other reprisals against individuals for the nonviolent expression of their political beliefs;

(C) release of political prisoners;

(D) increased respect for internationally recognized human rights, including freedom of expression, the press, assembly, and association; and

(E) permitting a freer flow of informaiton, including an end to the jamming of Voice of America and greater access for foreign journalists; or.

(2) it is in the national interest of the United States to terminate a suspension under subsection (a).

Page 11, line 22, strike the close quotation marks and the period that follows.

Page 11, after line 22, insert the following:

"(d) CERTIFICATION OF ACCESS TO BANK RECORDS REQUIRED BEFORE PAYMENT FOR SUBSCRIPTION TO CAPITAL STOCK AND CONTRIBUTION TO FUND FOR SPECIAL OPERATIONS.—The Secretary of the Treasury shall not make any payment for the subscription and contribution authorized under subsection (a) until the Secretary, after consultation with the United States Executive Director of the Bank, certifies to the Congress that—

"(1) the Bank has given the Comptroller General of the United States access to the audit memorandum issued by the Auditor General of the Bank with respect to the November 1987 disbursement of funds to the Government of Nicaragua;

"(2) the Bank has implemented and is continuing to implement revised procedures issued in 1988 for collecting loan services payments in arrears;

"(3) the revised procedures referred to in paragraph (2) satisfy the recommendations of the Auditor General of the Bank; and

"(4) the Comptroller General of the United States has access to all documents of the Bank on the same terms and under the same conditions as such documents are made available to the United States Executive Director of the Bank.".

Page 13, strike lines 12 and 13 and insert the following:

"The Secretary of the Treasury shall—

Page 13, line 14, insert "take all necessary steps to encourage the Bank to limit" before "the aggregate".

Page 14, line 6, insert "a portion of" before "the resources".

Page 18, line 20, strike "and staffing".

Page 19, strike line 14 and all that follows through page 22, line 16, and insert the following:

SEC. 402. ADDITIONAL RESERVE REQUIREMENTS.

(a) FINDINGS.—The Congress finds that—

(1) since the adoption of the International Lending Supervision Act of 1983, the credit quality of loans by United States banking institutions to highly indebted countries has deteriorated and the prospects for full repayment of such loans have diminished;

(2) in general during this period, the level of country exposure and transfer risk associated with loans by United States banking institutions to highly indebted countries has not been adequately reflected in the reserve levels established by many individual United States banking institutions or the reserve requirements imposed by Federal banking agencies pursuant to such Act;

(3) during the last 3 years and particularly in recent months, United States banking institutions have increased their reserves for possible losses from loans to highly indebted countries but such reserves remain, in some cases, significantly lower than reserves established by banking institutions in a number of foreign countries and may not be adequate to deal with potential risks; and

(4) in order to fulfill the purposes of such Act, the Federal banking agencies should take a more active role in reviewing reserve levels established by United States banking institutions for potential losses from loans to highly indebted countries and in requiring appropriate levels of both special and general reserves to reflect the increased risk of such loans.

(b) IN GENERAL.—The International Lending Supervision Act of 1983 (12 U.S.C. 3901 et seq.) is amended by inserting after section 905 the following new section:

"SEC. 905A. ADDITIONAL RESERVE REQUIREMENTS.

"(a) IN GENERAL.—Each appropriate Federal banking agency shall review the exposure to risk of United States banking institutions arising from the medium- and long-term loans made by such institutions that are outstanding to any highly indebted country. Each agency shall provide direction to such institutions regarding additions to general reserves maintained by each banking institution for potential loan losses and special reserves required by such agency arising from such review.

"(b) DETERMINATION OF INSTITUTIONAL EXPOSURE TO RISK.—In determining the exposure of an institution to risk for purposes of subsection (a), the appropriate Federal banking agency—

"(1) shall determine whether any country exposure that is, and has been for at least 2 years, rated in the category 'Other Transfer Risk Problems' or the category 'Substandard' by the Interagency Country Exposure Review Committee should be reevaluated;

"(2) may exempt, in full or in part, from reserve requirements established pursuant to subsection (a), any loan—

"(A) to a country that enters into a debt reduction, debt service reduction, or financing program with its bank creditors that is supported by the International Bank for Reconstruction and Development or the International Monetary Fund; or

"(B) secured, in while or in part, by appropriate collateral for payment of interest or principal;

"(3) take into account any other factors which bear on such exposure and the particular circumstances of the institution; and

"(4) shall consider as indicators of risk, where appropriate, the average reserve levels maintained by or required of banking institutions in foreign countries and secondary market prices for such loans.

"(c) TIMING AND REPORT.—

"(1) DETERMINED BY AGENCY.—Except as provided in paragraph (3), each appropriate Federal banking agency shall determine the timing of any addition to reserves required by subsection (a).

"(2) REPORT.—Each appropriate Federal banking agency shall include in each report required to be made under section 913(d) after 1989 a report on the actions taken pursuant to this section.

"(3) DEADLINE.—Each Federal agency required to undertake a review described in subsection (a) shall complete the review not later than December 31, 1990.

"(d) HIGHLY INDEBTED COUNTRY DEFINED.—As used in this section, the term 'highly indebted country' means any country designated as a 'Highly Indebted Country' in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before the date of the enactment of this section.".

Page 22, line 22, strike "404" and insert "403".

Page 23, line 6, strike "why" and insert "the merits of".

Page 23, line 7, strike "should not be required".

Page 23, line 10, insert "and" after the semicolon.

Page 23, strike lines 11 through 13.

Page 23, line 14, strike "(3)" and insert "(2)".

Page 23, line 20, strike "405" and insert "404".

Page 25, line 20, and all that follows through page 27, line 9, and insert the following:

SEC. 405. FACTORS TO BE TAKEN INTO ACCOUNT IN DEVELOPING UNITED STATES POLICY TOWARD DEBT REDUCTION FOR CERTAIN HIGHLY INDEBTED COUNTRIES; REPORT TO THE CONGRESS.

"(a) FACTORS TO BE TAKEN INTO ACCOUNT.—In developing the policy of the United States Government with respect to debt reduction for each highly indebted country which has a substantial share of

the export market for 1 or more agricultural commodities the export market for which the United States also has a substantial share, the Secretary of the Treasury shall consider among other factors the effects of such policy on:

(1) United States exports of such commodities.

(2) The world price of such commodities.

(3) Domestic agricultural production and land distribution patterns in such country.

(4) The volume of exports from such country of agricultural commodities the export market for which such country has a substantial share of.

(5) Basic nutrition levels in such country.

(b) REPORT TO THE CONGRESS.—Before the end of the 12-month period beginning on the date of the enactment of this section, the Secretary of the Treasury shall submit a report to the Congress on the potential impact of such policy on such factors in the highly indebted countries.

(c) HIGHLY INDEBTED COUNTRY DEFINED.—As used in this section, the term "highly indebted country" means any country designated as a "Highly Indebted Country" in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before the date of the enactment of this section.

Page 27, line 10, strike "407" and insert "406".

Page 28, line 3, strike "408" and insert "407".

Page 28, line 17, strike the semicolon and insert a comma.

Page 28, line 24, insert "which are major producers, processors traffickers, or exporters of illegal drugs to the United States" before the comma.

Page 34, strike line 18 and all that follows through page 39, line 23, and insert the following:

Subtitle B—International Debt Exchanges and the Environment

SEC. 511. SENSE OF THE CONGRESS RESOLUTION REGARDING ENVIRONMENTAL POLICY AND INTERNATIONAL DEBT EXCHANGES.

It is the sense of the Congress that—

(1) the Secretary of the Treasury should include support for sustainable development and conservation projects when providing a framework for negotiating or facilitating exchanges or reductions of commercial debt of foreign countries; and

(2) that in assisting or facilitating the reduction of debt of heavily indebted foreign countries, through multilateral institutions such as the International Monetary Fund or the International Bank for Reconstruction and Development, the Secretary of State and the Secretary of the Treasury should—

(A) support efforts to provide adequate resources for sustainable development and conservation projects as a component of the restructured commercial bank debt of that country; and

(B) in providing such support, seek to assure that—

(i) the host government, or a local nongovernmental organization acting with the support of the host government, has identified conservation or sustainable development projects it will target for assistance;

(ii) there will be in place an organization, either governmental or nongovernmental, that will have the commitment to assure the long-term viability of the project; and

(iii) the allocation of the resources provided for conservation and sustainable development projects through the debt restructuring agreement is done in a manner that will not overwhelm or distort economic conditions in the host country.

SEC. 512. MULTILATERAL DEVELOPMENT BANKS AND DEBT-FOR-NATURE EXCHANGES.

The International Financial Institutions Act (22 U.S.C. 262c et seq.) is amended by redesignating section 1614 (as so redesignated by section 501 of this Act) as section 1617, and by inserting after section 1613 (as added by such section 501) the following:

"SEC. 1614. MULTILATERAL DEVELOPMENT BANKS AND DEBT-FOR-NATURE EXCHANGES.

"(a) DIRECTIONS TO THE UNITED STATES EXECUTIVE DIRECTORS.—The Secretary of the Treasury shall direct the United States Executive Directors of the multilateral development banks to—

"(1) negotiate for the creation in each respective multilateral development bank, except where the Secretary of the Treasury determines that the provisions of this subsection have previously been met, of a department that will—

"(A) be responsible for environmental protection and resource conservation, including support for restoration, protection, and sustainable use policies;

"(B) develop and monitor strict environmental guidelines and policies to govern lending activities; and

"(C) actively promote, coordinate and facilitate debt-for-nature exchanges and the restoration, protection, and sustainable use of tropical forests, renewable natural resources, endangered ecosystems and species in debtor countries;

"(2) support and encourage the approval of multilateral development bank loans which include provisions that foser and facilitate the implementation of a sound and effective environmental policy in the borrowing country;

"(3) encourage the banks to assist such countries in reducing and restructuring private debt through the use of a portion of a project or policy based environmental loan in ways which will enable such countries to buy back private debt at a rate of discount available for such debt, at auction in the secondary market or through negotiations with creditors holding such debt;

"(4) seek to ensure that staff of each bank facilitate debtor countries; collaboration with local and international debt-for-nature exchanges; and

"(5) seek to ensure that each bank adopts policy guidelines which to the maximum extent possible provide for—

"(A) the inclusion of sustainable use policies in loan agreements negotiated with borrower members;

"(B) the adoption of economic programs to foster sound environmental policies; and

"(C) the provision of debtor countries' policy changes or significant increases in financial resources for use in at least 1 of the following—

"(i) restoration, protection, or sustainable use of the world's oceans and atmosphere;

"(ii) restoration, protection, or sustainable use of diverse animal and plant species;

"(iii) establishment, restoration, protection, and maintenance of parks and reserves;

"(iv) development and implementation of sound systems of natural resource management;

"(v) development and support of local conservation programs;

"(vi) training programs to strengthen conservation institutions and increase scientific, technical, and managerial capabilities of individuals and organizations involved in conservation efforts;

"(vii) efforts to generate knowledge, increase understanding, and enhance public commitment to conservation;

"(viii) design and implementation of sound programs of land and ecosystems management; and

"(ix) promotion of regenerative approaches in farming, forestry, and watershed management.

"(b) NEGOTIATION OF GUIDELINES FOR RESTORATION, PROTECTION, OR SUSTAINABLE USE POLICIES.—The United States Executive Directors of the multilateral development banks shall seek to negotiate with the other executive directors to provide guidelines for restoration, protection, or sustainable use policies. Pending the outcome of such negotiations, the United States Executive Directors shall consider restoration, protection, or sustainable use policies to be those which—

"(1) support development that maintains and restores the renewable natural resource base so that present and future needs of debtor countries' populations can be met, while not impairing critical ecosystems and not exacerbating global environmental problems;

"(2) are environmentally sustainable in that resources are conserved and managed in an effort to remove pressure on the natural resource base and to make judicious use of the land so as to sustain growth and the availability of all natural resources;

"(3) support development that does not exceed the limits imposed by local hydrological cycles, soil, climate, vegetation, and human cultural practices;

"(4) promote the maintenance and restoration of soils, vegetation, hydrological cycles, wildlife, critical ecosystems (tropical forests, wetlands, and coastal marine resources), biological diversity and other natural resources essential to economic growth and human well-being and shall, when using natural resources, be implemented to minimize the depletion of such natural resources; and

"(5) take steps, wherever feasible, to prevent pollution that threatens human health and important biotic systems and to achieve patterns of energy consumption that meet human needs and relies on renewable resources.

"(c) INCLUSION OF CERTAIN ITEMS IN GUIDELINES.—The United States Executive Directors shall endeavor to include the provisions of paragraphs (1) through (5) of subsection (b) in the guidelines developed through the negotiations specified in this section.

"SEC. 1615. PROMOTION OF LENDING FOR THE ENVIRONMENT.

"The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to initiate discussions with the other executive directors of such bank and the management of such bank and propose that, in order to reduce the future need for bank lending for reforestation and restoration of environmentally degraded areas, the bank establish a project and policy based environmental lending program (including a loan a portion of which could be used to reduce and restructure private debt), to be made available to interested countries with a demonstrated commitment to natural resource conservation, which would be based on—

"(1) the estimated long-term economic return which could be expected from the sustainable use and protection of tropical

forests, including the value of tropical forests for indigenous people and for science;

"(2) the value derived from such services as—

"(A) watershed management;

"(B) soil erosion control;

"(C) the maintenance and improvement of—

"(i) fisheries;

"(ii) water supply regulation for industrial development;

"(iii) food;

"(iv) fuel;

"(v) fodder; and

"(vi) building materials for local communities;

"(D) the extraction of naturally occurring products from locally controlled protected areas; and

"(E) indigenous knowledge of the management and use of natural resources; and

"(3) the long-term benefits expected to be derived from maintaining biological diversity and climate stabilization.

"SEC. 1616. PROMOTION OF INSTITUTION-BUILDING FOR NON-GOVERNMENTAL ORGANIZATIONS CONCERNED WITH THE ENVIRONMENT.

"The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to vigorously promote the adoption of policies and procedures which seek to—

"(1) increase collaboration with, and, where necessary, strengthen, nongovernmental organizations in such countries which are concerned with environmental protection by providing appropriate assistance and support for programs and activities on environmental protection; and

"(2) encourage international collaboration for information exchange and project enhancement with nongovernmental organizations in developing countries which are concerned with environmental protection and government agencies and private voluntary organizations in developed countries which are concerned with environmental protection.".

Page 40, beginning on line 24, strike "available to the Executive Director" and insert "completed by the borrowing country or the institution, and been made available to the board of directors of the institution".

Page 41, beginning on line 2, strike "and" and all that follows through "public" and insert "or a comprehensive summary of such assessment has been made available to the multilateral development bank, affected groups, and local nongovernmental organizations".

Page 41, strike lines 6 through 21 and insert the following:

"(2) EXCEPTIONS AND REPORTS.—

"(A) EXCEPTIONS.—The requirement of paragraph (1)(B) shall not apply where the Secretary finds compelling reasons to believe that disclosure in any case described in paragraph (1) would jeopardize the confidential relationship between the borrower country and the respective bank.

"(B) REPORTS BY SECRETARY.—The Secretary shall submit a quarterly report in writing to the Committees specified in subsection (f)(1) of the findings described in subparagraph (A).

Page 46, strike line 3 and all that follows through page 47, line 23, and insert the following:

Subtitle D—Debt-for-Development Swaps

SEC. 531. ENCOURAGEMENT OF DEBT-FOR-DEVELOPMENT SWAPS THROUGH LOCAL CURRENCY REPAYMENT.

(a) STATEMENT OF POLICY.—It is the sense of the Congress that—

(1) debt-for-development swaps, where payment is made in local currency at the free market rate, serve a useful purpose by providing banking institutions with constructive opportunities for the reduction of the external debt of highly indebted developing countries in a process that involves the participation of private, nonprofit groups in providing a stimulus to the economic and social development of such developing countries;

(2) debt-for-development swaps provide highly indebted developing countries with a creative method of reducing external debt burdens, while promoting their economic growth and restructuring objectives;

(3) banking institutions should give careful consideration to engaging in such swaps as one means of strengthening overall loan portfolios through the reduction of high external debt burdens while expanding economic opportunities through private sector initiatives; and

(4) in order to avoid any bias against such swaps in the regulatory framework applicable to the financial reporting of banking institutions, where payment is made in local currency at the free market rate, appropriate recognition of the fair market exchange value of the currency so received should be made.

(b) NOTIFICATION RELATING TO LOCAL CURRENCY REPAYMENT THROUGH DEBT-FOR-DEVELOPMENT SWAPS.—Before the end of the 6-month period beginning on the date of the enactment of this section, each appropriate Federal banking agency shall adopt uniform guidelines that will effectuate the policy set forth in subsection (a) concerning the regulatory framework and accounting treatment of debt-for-development swaps involving repayment in local currency at the free market rate. For the purpose of such guidelines, the impact of such swaps on reported loan loss reserves shall be determined by valuing currency received in such swaps at fair market exchange value.

(c) DEFINITIONS.—As used in this section:

Page 49, line 13, insert ", except that the report for fiscal year 1989 shall be submitted not later than June 1, 1990" before the period.

Page 50, line 11, strike "international financial institutions" and insert "multilateral development banks".

Page 51, line 16, insert ", and, for the fiscal year 1990, the report described in section 1613" before the semicolon.

Page 66, strike lines 3 through 16.

Page 45, line 5, strike the word "Committee" and insert in line thereof "Committees".

Page 45, line 6, insert "and Environment and Public Works" before the word "of".

On page 66, between lines 16 and 17, insert the following:

"TITLE VII—MISCELLANEOUS

SEC. 701. SHORT TITLE.

This title may be cited as the "Global Environmental Protection Assistance Act of 1989".

PART A—COMMERCIAL DEBT-FOR-NATURE EXCHANGES

SEC. 711. AMENDMENT TO THE FOREIGN ASSISTANCE ACT.

The Foreign Assistance Act of 1961 is amended by inserting after chapter 6 of part I the following new chapter:

"CHAPTER 7—DEBT-FOR-NATURE EXCHANGES

"SEC. 461. DEFINITION.—For purpose of this chapter, the term 'debt-for-nature exchange' means the cancellation or redemption of the foreign debt of the government of a country in exchange for—

"(1) that government's making available local currencies (including through the issuance of bonds) which are used only for eligible projects involving the conservation or protection of the environment in that country (as described in section 463); or

"(2) that government's financial resource or policy commitment to take certain specified actions to ensure the restoration, protection, or sustainable use of natural resources within that country; or

"(3) a combination of assets and actions under both paragraphs (1) and (2).

"SEC. 462. ASSISTANCE FOR COMMERCIAL DEBT EXCHANGES.—(a) The Administrator of the Agency for International Development is authorized to furnish assistance, in the form of grants on such terms and conditions as may be necessary, to nongovernmental organizations for the purchase on the open market of discounted commercial debt of a foreign government of an eligible country which will be canceled or redeemed under the terms of an agreement with that government as part of a debt-for-nature exchange.

"(b) Notwithstanding any other provision of law, a grantee (or any subgrantee) of the grants referred to in subsection (a) may retain, without deposit in the Treasury of the United States and without further appropriation by Congress, interest earned on the proceeds of any resulting debt-for-nature exchange pending the disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

"SEC. 463. ELIGIBLE PROJECTS.—(a) The Administrator of the Agency for International Development shall seek to ensure that debt-for-nature exchanges under this chapter support one or more of the following activities by either the host government, a local private conservation group, or a combination thereof:

"(1) restoration, protection, or sustainable use of the world's oceans and atmosphere;

"(2) restoration, protection, or sustainable use of diverse animal and plant species;

"(3) establishment, restoration, protection, and maintenance of parks and reserves;

"(4) development and implementation of sound systems of natural resource management;

"(5) development and support of local conservation programs;

"(6) training programs to strengthen conservation institutions and increase scientific, technical, and managerial capabilities of individuals and organizations involved in conservation efforts;

"(7) efforts to generate knowledge, increase understanding, and enhance public commitment to conservation;

"(8) design and implementation of sound programs of land and ecosystem management; and

"(9) promotion of regenerative approaches in farming, forestry, fishing, and watershed management.

"(b)(1) In cooperation with nongovernmental organizations, the Administrator of the Agency for International Development shall seek to identify those areas, which because of an imminent threat, are in particular need of immediate attention to prevent the loss of unique biological life or valuable ecosystem.

"(2) The Administrator of the Agency for International Development shall encourage as many eligible countries as possible to propose such exchanges with the purpose of demonstrating to a large number of governments the feasibility and benefits of sustainable development.

"SEC. 464. ELIGIBLE COUNTRIES.—In order for a foreign country to be eligible to participate in a debt-for-nature exchange under this chapter, the Administrator of the Agency for International Development shall determine that—

"(1) the host country is fully committed to the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange;

"(2) a long-term plan has been prepared by the host country, or private counservation group, which adequately provides for the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange or that such a plan will be prepared in a timely manner; and

"(3) there is a government agency or a local nongovernmental organization, or combination thereof, in the host country with the capability, commitment, and record of environmental concern to oversee the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange.

"SEC. 465. TERMS AND CONDITIONS.—(a) The terms and conditions for making grants under this chapter shall be deemed to be fulfilled upon final approval by the Administrator of the Agency for International Development of the debt-for-nature exchange, a certification by the nongovernmental organization that the host government has accepted the terms of the exchange, and that an agreement has been reached to cancel the commercial debt in an agreed upon fashion.

"(b) Grants made under this section are intended to complement, and not substitute for, assistance otherwise available to a foreign country under this Act or any other provision of law.

"(c) The United States Government is prohibited from accepting title or interest in any land in a foreign country as a condition on the debt exchange.

"SEC. 466. PILOT PROGRAM FOR SUB-SAHARAN AFRICA.—(a) The Administrator of the Agency for International Development, in cooperation with nongovernmental conservation organizations, shall invite the government of each country in sub-Saharan Africa to submit a list of those areas of severely degraded national resources which threaten human survival and well-being and the opportunity for future economic growth or those areas of biological or ecological importance within the territory of that country.

"(b) The Administrator of the Agency for International Development shall assess the list submitted by each country under subsection (a) and shall seek to reach agreement with the host country for the restoration and future sustainable use of those areas.

"(c)(1) The Administrator of the Agency for International Development is authorized to make grants, on such terms and conditions as may be necessary, to nongovernmental organizations for the purchase on the open market of discounted commercial debt of a foreign government of an eligible sub-Saharan country in exchange for commitments by that government to restore natural resources identified by the host country under subsection (a) or for commitments to develop plans for sustainable use of such resources.

"(2) Notwithstanding any other provision of law, a grantee (or any subgrantee) of the grants referred to in section (a) may retain, without deposit in the Treasury of the United States and without further appropriation by Congress, interest earned on the proceeds of any resulting debt-for-nature exchange pending the disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.".

PART B—MULTILATERAL FOREIGN ASSISTANCE COORDINATION

SEC. 721. GENERAL POLICY.

It is the sense of the Congress that the Secretary of State should seek to develop an increased consideration of global warming, tropical deforestation, sustainable development, and biological diversity among the highest goals of bilateral foreign assistance programs of all countries.

SEC. 722. POLICY ON NEGOTIATIONS.

"(a) IN GENERAL.—The Secretary of State, acting through the United States representative to the Development Assistance Committee of the Organization for Economic Coordination and Development (OECD), should initiate, at the earliest practicable date, negotiations among member countries on a coordinated approach to global warming, tropical deforestation, sustainable development, and biological diversity through bilateral assistance programs that would include—

(1) increased consideration of the impact of developmental projects on global warming, tropical deforestation, and biological diversity;

(2) reduction or elimination of funding for those projects that exacerbate those problems;

(3) coordinated research and development of projects that emphasize sustainable use or protection of tropical forests and support for local conservation efforts;

(4) expanded use of forgiveness of foreign assistance debt in exchange for policy changes or programs that address problems associated with global warming, tropical deforestation, sustainable development, and biological diversity;

(5) increased use of foreign assistance funds and technical assistance in support of local conservation, restoration, or sustainable development efforts and debt-for-nature exchanges;

(6) improved exchange of information on energy efficiency and solar and renewable energy sources, and a greater emphasis on the use of those sources of energy in developmental projects; and

(7) increased use of environmental experts in the field to assess development projects for their impact on global warming, tropical deforestation, and biological diversity.

"(b) IMPLEMENTATION OF AGREEMENT.—Negotiations described in subsection (a) shall seek to ensure that the recommended changes are implemented as quickly as possible by member countries of the Development Assistance Committee.

Page 66, line 17, strike "VII" and insert "VIII".

Page 66, line 18, strike "701" and insert "801".

Mr. FAUNTROY (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from the District of Columbia?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from the District of Columbia?

Mr. BARTLETT. Mr. Speaker, reserving the right to object, I shall not object, but I yield to the gentleman from the District of Columbia to explain his request.

Mr. FAUNTROY. Mr. Speaker, the legislation before you tonight will serve critical U.S. economic and foreign policy interests. The bill, H.R. 2494, was passed by the House on October 18 with overwhelming bipartisan support. The administration initially requested and continues to strongly support enactment of the authorizations within the bill.

The bill is pro-export. The bill will help reinforce democracy through the promotion of economic growth in Latin America. The bill will help many of the destitute nations of sub-Saharan Africa refinance some of their high-cost debt on concessional terms. The bill will provide a push to the Brady initiative on Third World debt. Finally, this legislation will promote the protection of rain forests and other endangered ecosystems in the developing world.

Approval by the House will ratify several weeks of arduous negotiations with the Senate which produced the compromise incorporated within the Senate amendment. Approval will endorse a renewed Export-Import Bank tied-aid program. Approval will reinvigorate the Inter-American Development Bank, and allow that institution to help millions of people in Latin America and the Caribbean. Approval will endorse United States participation in the enhanced structural adjustment facility which is helping many of the poorest countries in sub-Saharan Africa to right their economies.

The bill also addresses the Third World debt problem by encouraging U.S. banks to participate in debt reduction efforts as envisioned within the Brady plan. The legislation will make a major step forward in preserving the world's environment by encouraging reforms in multilateral development bank lending programs.

Let me briefly summarize the major provisions of the Senate amendment. The amendment:

Accepts the Senate version of Eximbank Tied-Aid War Chest, authorizing the War Chest Program for 2 years at a level of $300 million;

Authorizes the Eximbank interest rate subsidy program at $20 million in fiscal year 1990 and $35 million in 1991;

Accepts a compromise on the bank reserving provisions for LDC debt;

Strengthens provisions affecting debt for development swaps to encourage more such transactions in the future;

Imposes tough new restrictions on Eximbank loans to the People's Republic of China pending political reforms in that country;

Represents a compromise on the numerous environmental provisions in this legislation designed to promote more responsible environmental lending practices by the multilateral banks and to encourage debt-for-nature swaps.

The hour is late and the legislation before you is critical to U.S. economic interests around the world. I ask Members for their support.

Mr. BARTLETT. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Speaker, I would say that the Senate amendments have been discussed with the majority and minority, and they are acceptable.

The Treasury and the administration continue to be strongly supportive of the authorizations in this bill for the Export-Import Bank's tied aid credit program, the capital increase for the Inter-American Development Bank, and the one-time $150 million contribution to the enhanced structural adjustment facility of the IMF.

I would urge my colleagues to accept the Senate amendment so that we can enact these important measures before we end the session, and that we can strengthen our exports and honor our international commitments to positive economic development in this hemisphere.

I would like to pay a special tribute to the chairman and ranking member, the gentleman from Iowa [Mr. LEACH], who have worked very diligently in moving this legislation to this point. They were joined this evening in a special effort by the gentlewoman from California [Ms. PELOSI] to assure that we would work out last minute difficulties with the other body.

To the staff on both sides of the aisle, and especially to the minority staff assistant, Mrs. Nelle Temple. I want to commend them for their special effort to move this to this point.

Again I thank the gentleman for yielding and for his assistance this evening.

Mr. BARTLETT. Mr. Speaker, further reserving the right to object, I yield to the gentlewoman from California [Ms. PELOSI], the author of one of the principal sections of the legislation.

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding. I too commend the chairman of the subcommittee for his hard work and leadership on this important legislation, and to the chairman of the full committee, the gentleman from Texas [Mr. GONZALEZ] for his leadership in moving it along as well, and also to the gentleman from Iowa [Mr. LEACH], the ranking minority member of the committee, and the gentleman from Ohio [Mr. WYLIE].

The gentleman from the District of Columbia [Mr. FAUNTROY] took this bill and worked out a lot of compromises so that we could have a bill tonight and celebrate one that has in it I think for the first time a provision for environmental assessments. Before the United States can vote on a loan in the World Bank, there must be an environmental assessment, and it must be disclosed.

I am particularly grateful for the cooperation and leadership of the gentleman from Nebraska [Mr. BEREUTER] and for his assistance on this because he has real standing on this issue. He has a long history of commitment to it, and his dedication to it and willingness to support this aspect of the legislation took us a long way down the road to getting it accepted. So I am grateful to the gentleman from Nebraska for his assistance.

So I am pleased to support the bill. I thank the gentleman from Texas [Mr. BARTLETT] for yielding, and for his cooperation as well in the passage of this legislation.

Mr. BARTLETT. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding. I would like to have a couple of questions answered with regard to the bill.

Section 605 that was in the original bill that passed the House of Representatives, which was sent to the Congress relating to family planning, it is my understanding that that section has been stricken completely from the bill, is that correct?

Mr. BARTLETT. Further reserving the right to object, section 605, the sense of Congress for family planning, has been stricken from the bill that is before us and that was sent over from the Senate. So the bill we are considering does not have section 605.

Mr. WALKER. And there is no similar language that was put into the report that we have or the bill that is before us?

Mr. BARTLETT. Further reserving the right to object, that is my understanding, there is no similar language in the bill that is before us.

Mr. WALKER. I thank the gentleman.

Mr. BARTLETT. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York [Mr. GREEN].

Mr. GREEN. Mr. Speaker, I must say that that news is not happy news to this gentleman. I can only point out in terms of the future of this planet that, say for example, if we manage through dent of great effort to decrease by 50 percent the per capita emission of greenhouse gases, but the world's population doubles, as it surely will if we do not encourage international family planning, over a period of three, four, or five decades we will be in as much trouble as if we had not made the effort. I really think that we who are concerned with development problems around the world and environmental problems around the world, and I am appreciative of the environmental efforts made in this bill, ought to understand that population issues and environmental issues are inevitably intertwined, and we are not going to solve the environmental issues if we create still more population that creates the environmental problems.

Mr. BARTLETT. Under my reservation of objection, I do understand what the gentleman from New York is saying, and would note to the body. that the item in dispute that was stricken was a sense of Congress resolution solely. It was language which expressed our sense of family planning, but it was not an integral part of the bill. Perhaps there will be an additional opportunity for that.

Mr. GREEN. If the gentleman will yield further, I do understand that, and I do express my appreciation to the Committee on Banking, Finance and Urban Affairs for all it has done to move this legislation forward. I simply want to say that I think if we are interested in development problems, if we are interested in environmental problems, then we have to be interested in world population problems. In the long run if we do not address those, we are not going to succeed in either the environmental or population or development area.

Mr. BARTLETT. I do thank the gentleman for his comments.

Mr. PORTER. Mr. Speaker, I rise in support of H.R. 2494 and its provision entitled "Multilateral Development Banks and Debt-for-Nature Exchanges."

The debt-for-nature concept was part of the Tropical Forest Protection Act, which I introduced in the 100th Congress with my colleague, Mr. OBEY, and reintroduced in this Congress. We have since worked with

Messrs. LEACH, BEREUTER, FAUNTROY, and Ms. PELOSI to ensure inclusion of the debt-for-nature language in this bill. I also applaud Senator HEINZ for his support throughout negotiations with the other body.

H.R. 2949 is a vital step in our attempt to help developing countries achieve economically and environmentally sustainable development. It authorizes the Secretary of the Treasury to direct the U.S. executive directors at the multilateral development banks to encourage the banks to assist highly indebted countries in reducing private debt in exchange for environmental protection, resource conservation, and sustainable use policies. It also encourages the integration of local nongovernmental organizations early in the bank's project planning procedures.

In the 1987 Foreign Operations Appropriations Conference Report we explicitly stated it is the policy of the United States that participation in international financial institutions is predicated on the implementation of programs to promote environmentally sustainable economic growth and to vigorously promote a commitment of these institutions to fully inform and involve indigenous peoples organizations at all stages of the project cycle * * *. Further, our report promotes the requirement that all country lending strategies, policy based loans and adjustment programs contain analyses of the impact of such activities on the * * * legal protection for the land rights of indigenous peoples. We need to see a similar commitment to these principles among our fellow voters at the banks.

In intend to follow this precedent by making this concern an official part of our policy regarding all multilateral financial institutions, including the IMF and IDA authorizations needed next year.

Meanwhile, the U.S. Congress will continue to intercede in specific cases of abuse of indigenous peoples basic rights. For the Kayapo Indian Tribe in the amazon region, and for the Penan Tribe in Malaysia, their human freedoms are directly tied to their lands. Preserve the pristine state of the lands they inhabit and which sustain them and you undoubtedly preserve their rights.

Modern communications have given the Congress a link to indigenous people. I intend to use all channels to make sure recipients of bank funds are respectful of indigenous people.

The World Bank is increasingly receptive to factoring the environmental effects into it lending and may find some version of the debt-for-nature concept acceptable. While it obviously will not alone solve the problem of tropical forest destruction and global climate change, focusing debt-for-nature swaps to protect specific lands inhabited by indigenous peoples can ensure the preservation of their rights.

The practice of debt-for-nature conversions has taken off thanks to the technical assistance and dedication of many individuals including Barbara Bramble of the National Wildlife Federation, Brent Blackwelder of the Environmental Policy Institute, Kathryn Fuller of the World Wildlife Fund, Larry Williams of the Sierra Club, Fran Spivy-Weber of the National Audubon Society and an incredible network of nongovernmental organizations.

As both bodies of Congress have now agreed, there is a cyclical relationship between poverty, environmental degradation and debt in the developing world. Voting for H.R. 2494 is going to help break this cycle.

Mr. BARTLETT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from the District of Columbia?

There was no objection.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. FAUNTROY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from the District of Columbia?

There was no objection.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain 1-minute statements if Members have any.

□ 0340

## RECESS

The SPEAKER pro tempore (Mr. MAZZOLI). Pursuant to the order of the House, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 3 o'clock and 40 minutes a.m.), the House stood in recess subject to the call of the Chair.

□ 0427

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 4 o'clock and 27 minutes a.m.

## MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill, joint resolution and concurrent resolution of the House of the following titles:

H.R. 3275. An act to implement the steel trade liberalization program;

H.J. Res. 449. Joint resolution providing for the convening of the second session of the One Hundred First Congress; and

H. Con. Res. 239. Concurrent resolution providing for the sine die adjournment of the first session of the One Hundred First Congress.

## STEEL TRADE LIBERALIZATION PROGRAM IMPLEMENTATION ACT

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3275) to implement the steel trade liberalization program, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

*SECTION 1. SHORT TITLE.*

*This Act may be cited as the "Steel Trade Liberalization Program Implementation Act".*

*SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES; SENSE OF CONGRESS REGARDING THE STEEL TRADE LIBERALIZATION PROGRAM.*

*(a) FINDINGS AND PURPOSES.—Section 802 of the Steel Import Stabilization Act (19 U.S.C. 2253 note) is amended to read as follows:*

*"SEC. 802. FINDINGS AND PURPOSES.*

*"(a) The Congress finds that—*

*"(1) since 1984, the United States steel industry has made significant progress toward adjustment, through modernization of production facilities, elimination of excess capacity, reduction of production costs, and improvement of productivity;*

*"(2) an extension of import relief, through transitional bilateral arrangements, for a period of two and one-half years will facilitate the steel industry's continued modernization and worker retraining;*

*"(3) liberalization of market access during the period of transitional bilateral arrangements, with preferential treatment for countries who support fair and open trade, will help ensure an orderly return to an open market;*

*"(4) the negotiation of an international consensus through the Uruguay Round of trade negotiations and through bilateral agreements to address subsidies and tariff and nontariff barriers will strengthen the international trading system and conditions of global steel trade; and*

*"(5) the termination of transitional bilateral arrangements by March 31, 1992, and the full and forceful application of the United States unfair trade laws, will protect the United States national interest in preserving conditions of fair and open trade in the United States market.*

*"(b) The purposes of this title are—*

*"(1) to endorse the principles and goals of the steel trade liberalization program as announced by the President on July 25, 1989, and provide for its implementation;*

*"(2) to grant specific enforcement powers to the President to carry out the terms and conditions of bilateral arrangements entered into for purposes of implementing that program; and*

*"(3) to make the continuation of those powers subject to the condition that the steel industry continue to modernize its plant and equipment and provide for appropriate worker retraining.".*

*(b) SENSE OF CONGRESS.—Section 803 of the Steel Import Stabilization Act is amended to read as follows:*

*"SEC. 803. SENSE OF CONGRESS REGARDING THE STEEL TRADE LIBERALIZATION PROGRAM.*

*"(a) The Congress supports the full and effective implementation of the steel trade liberalization program.*

"(b) It is the sense of the Congress that the steel trade liberalization program should be implemented in a manner which provides for liberalized market access for steel products during the period in which bilateral arrangements remain authorized in order to prepare for the eventual termination of such arrangements in 1992 and reliance thereafter on market forces and the full enforcement of United States trade laws. In particular, liberalized market access should be provided to those foreign countries that work with the United States to achieve the goals referred to in subsection (c).

"(c) It is further the sense of the Congress that the United States Trade Representative should promptly conduct negotiations, through the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade and through complementary bilateral arrangements, to seek an international consensus regarding steel trade that provides for—

"(1) strong disciplines over trade-distorting government subsidies;

"(2) the lowering of trade barriers so as to ensure market access; and

"(3) enforcement measures to deal with violations of consensus obligations.

"(d) The President shall provide to the Congress an annual assessment of the progress of the negotiations referred to in subsection (c). The President may include the assessment in the annual report required under section 163(a) of the Trade Act of 1974 (19 U.S.C. 2213(a)) regarding the trade agreements program.".

SEC. 3. EXTENSION OF ACT.

(a) EXTENSION UNTIL APRIL 1, 1992.—Section 806(a) of the Steel Import Stabilization Act is amended—

(1) by striking out "the fifth anniversary of the effective date of this title" in paragraph (1) and inserting "March 31, 1992"; and

(2) by striking out "or fourth" in paragraph (2) and inserting "fourth, fifth, sixth, or seventh".

(b) SPECIAL PROVISION.—If the Steel Trade Liberalization Program Implementation Act is not enacted on or before October 1, 1989, then section 806(a)(2) of the Steel Import Stabilization Act (as amended by subsection (a)) shall be applied by treating the reference therein to the close of the fifth anniversary of the effective date of the Steel Import Stabilization Act as a reference to the close of the 30th day after the date of the enactment of the Steel Trade Liberalization Program Implementation Act.

SEC. 4. ENFORCEMENT AUTHORITY.

(a) INTERIM AUTHORITY.—Section 805(a) of the Steel Import Stabilization Act is amended by adding at the end thereof the following new sentence: "The President is further authorized to carry out, between October 1, 1989, and the date of the concluding of any bilateral arrangement, such actions as may be necessary or appropriate to ensure an orderly transition to that arrangement.".

(b) SHORT SUPPLY SITUATIONS.—Section 805(b) of the Steel Import Stabilization Act is amended to read as follows:

"(b)(1) If—

"(A) a bilateral arrangement includes a provision relating to short supply situations; and

"(B) the Secretary of Commerce (hereinafter in this subsection referred to as the 'Secretary') determines, in accordance with this subsection, that a short supply situation exists in the United States with respect to a steel product that is subject to a quantitative limitation under such arrangement;

the Secretary shall authorize the importation of additional quantities of that product without regard to any aggregate quantitative import limitation in effect under such arrangement.

"(2) In determining under this subsection whether a short supply situation exists in the United States with respect to a steel product, the Secretary shall take into account all relevant factors, including—

"(A) (to the extent information is available) the recent levels of capacity utilization for domestic facilities producing the product;

"(B) the quantity of the steel product requested in a short supply petition and the ability of domestic producers to supply the product in such quantity;

"(C) the willingness of a domestic producer to supply the steel product at a price which is not an aberration from prevailing domestic market prices;

"(D) reasonable specifications requested by the purchaser or any end user; and

"(E) delivery times to the purchaser and any end user of the steel product.

"(3)(A) A petition requesting a determination under this subsection may be filed with the Secretary. The petition must be in such form and contain such relevant information as the Secretary requires.

"(B) If the Secretary considers that a petition filed under subparagraph (A) is adequate, the Secretary shall promptly cause to be published in the Federal Register a notice that a determination under this subsection with respect to the steel product concerned is under consideration.

"(C) The Secretary shall provide opportunity for comment by interested persons regarding the issues raised in a petition.

"(D)(i) The petitioner shall certify that the factual information contained in the petition and any additional submission is accurate and complete to the best of the petitioner's knowledge.

"(ii) An interested person shall certify that the factual information submitted by that person to the Secretary is accurate and complete to the best of the person's knowledge.

"(4)(A) If an adequate petition is filed under paragraph (3)(A), the Secretary shall determine, not later than the day specified in subparagraph (B)—

"(i) whether a short supply situation exists in the United States with respect to the steel product; and

"(ii) if the determination under clause (i) is affirmative, the quantity of the steel product that the Secretary will authorize for importation.

"(B) The Secretary must make a determination with respect to a petition not later than—

"(i) the 15th day after the day on which the petition is filed if—

"(I) the raw steel making capacity utilization in the United States equals or exceeds 90 percent,

"(II) the importation of additional quantities of the steel product was authorized by the Secretary during each of the 2 immediately preceding years, or

"(III) the Secretary finds, on the basis of available information (and whether or not in the context of a determination under this subsection), that the steel product is not produced in the United States; or

"(ii) the 30th day after the day on which the petition was filed if neither subclause (I), (II), or (III) of clause (i) applies.

"(C) In making a determination with respect to which subparagraph (B)(i) applies, the Secretary shall apply a rebuttable presumption that the short supply situation alleged in the petition exists.

"(D) The Secretary shall cause to be published in the Federal Register notice of each determination made under this subsection setting forth the reasons for the determination.

"(5) If under this subsection the Secretary authorizes the importation of a specified quantity of a steel product, the Secretary shall notify a representative of the appropriate foreign government and issue to the petitioner the necessary documentation to permit the importation of that quantity.

"(6) The Secretary shall prescribe regulations to carry out this subsection. The interim text of such regulations shall be issued on or before the 30th day after the date of the enactment of the Steel Trade Liberalization Program Implementation Act. The regulations shall provide for transparency and fairness in the process of making short supply determinations, and shall be consistent with the President's announcement on July 25, 1989, establishing the steel trade liberalization program.".

(c) CONFORMING AMENDMENTS.—Section 805 is further amended—

(1) by amending subsection (c) by striking out "may provide" and inserting ", in consultation with the Secretary of Commerce, shall provide"; and

(2) by striking out "President's Steel Policy," in subsection (d)(3) and inserting "steel trade liberalization program".

SEC. 5. DEFINITIONS.

Section 804 of the Steel Import Stabilization Act is amended—

(1) by inserting "or the steel trade liberalization program" before the period at the end of paragraph (1); and

(2) by adding at the end thereof the following:

"(4) The term 'steel trade liberalization program' means the program, announced by the President on July 25, 1989, designed to achieve an orderly transition to open markets, the continued modernization and adjustment of the steel industry, and the negotiation of an international consensus to restore fair and open steel trade.".

SEC. 6. DOMESTIC INDUSTRY EFFORTS TO IMPROVE QUALITY AND SERVICE AND TO PROVIDE WORKER TRAINING.

(a) IN GENERAL.—Section 806(b) of the Steel Import Stabilization Act is amended—

(1) by amending paragraph (2)(A) to read as follows:

"(A) The term 'major company' means an enterprise that produces iron and steel and whose raw steel production in the United States during 1988 exceeded 2,000,000 net tons."; and

(2) by adding at the end of paragraph (3) the following: "For purposes of this paragraph, the United States International Trade Commission shall seek to—

"(A) obtain information from purchasers of domestic steel products, as well as from domestic producers of steel products, regarding recent improvements in domestic quality and service, including those that result from industry modernization; and

"(B) obtain information on—

"(i) the general nature of the worker retraining efforts undertaken by the steel industry, and

"(ii) with respect to the moneys referred to in paragraph (1)(B), the amounts used to retrain displaced former employees as compared with the amounts used for on-the-job retraining within the industry.".

*(b) SPECIAL RULE.—The amendment made by subsection (a)(1) shall not affect the definition of "qualified corporation" contained in section 212(g)(1)(A) of the Tax Reform Act of 1986.*

*SEC. 7. ETHYL ALCOHOL AND MIXTURES THEREOF FOR FUEL USE.*

*(a) DETERMINATION OF INDIGENOUS PRODUCTS.—Section 423(c) of the Tax Reform Act of 1986 (19 U.S.C. 2703 note) is amended—*

*(1) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and*

*(2) by striking out paragraph (2) and inserting the following:*

*"(2) Ethyl alcohol or a mixture thereof that is produced by a process of full fermentation in an insular possession or beneficiary country shall be treated as being an indigenous product of that possession or country.*

*"(3)(A) Ethyl alcohol and mixtures thereof that are only dehydrated within an insular possession or beneficiary country (hereinafter in this paragraph referred to as 'dehydrated alcohol and mixtures') shall be treated as being indigenous products of that possession or country only if the alcohol or mixture, when entered, meets the applicable local feedstock requirement.*

*"(B) The local feedstock requirement with respect to any calendar year is—*

*"(i) 0 percent with respect to the base quantity of dehydrated alcohol and mixtures that is entered;*

*"(ii) 30 percent with respect to the 35,000,000 gallons of dehydrated alcohol and mixtures next entered after the base quantity; and*

*"(iii) 50 percent with respect to all dehydrated alcohol and mixtures entered after the amount specified in clause (ii) is entered.*

*"(C) For purposes of this paragraph:*

*"(i) The term 'base quantity' means, with respect to dehydrated alcohol and mixtures entered during any calendar year, the greater of—*

*"(I) 60,000,000 gallons; or*

*"(II) an amount (expressed in gallons) equal to 7 percent of the United States domestic market for ethyl alcohol, as determined by the United States International Trade Commission, during the 12-month period ending on the preceding September 30;*

*that is first entered during that calendar year.*

*"(ii) The term 'local feedstock' means hydrous ethyl alcohol which is wholly produced or manufactured in any insular possession or beneficiary country.*

*"(iii) The term 'local feedstock requirement' means the minimum percent, by volume, of local feedstock that must be included in dehydrated alcohol and mixtures.".*

*(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to calendar years beginning after December 31, 1989.*

*SEC. 8. CONSISTENCY OF THE SUPERFUND PETROLEUM TAX WITH THE GENERAL AGREEMENT ON TARIFFS AND TRADE.*

*(a) UNIFORM RATE.—Section 4611(c)(2)(A) of the Internal Revenue Code of 1986 (26 U.S.C. 4611(c)(2)(A)) is amended to read as follows:*

*"(A) the Hazardous Substance Superfund financing rate is 9.7 cents a barrel, and".*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.*

*SEC. 9. EFFECTIVE DATE.*

*The amendments made by this Act (other than the amendments made by sections 7 and 8) shall take effect on October 1, 1989.*

Mr. ROSTENKOWSKI (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Illinois?

Mr. FRENZEL. Mr. Speaker, reserving the right to object, I yield to the gentleman from Illinois to explain the request.

Mr. ROSTENKOWSKI. Mr. Speaker, I rise in strong support of H.R. 3275, the Steel Trade Liberalization Program Implementation Act, as amended by the Senate. The steel provisions of the bill are identical to those passed overwhelmingly by the House on October 2.

The administration needs the enforcement authority set forth in this bill to fully implement the voluntary restraint agreements which they have recently negotiated. The bill is strongly supported by producers and users alike, as well as the administration.

The Senate has amended the bill by adding two additional time-sensitive provisions. One of the amendments amends the Internal Revenue Code to eliminate the differential in the Superfund tax applicale to domestic and imported crude oil. This provision is necessary in order to comply with a GATT panel ruling against the United States which found the existing differential to be unjustified. This ruling has been outstanding for nearly 3 years now and our trading partners have been threatening to retaliate. It is important that we act quickly to recognize and abide by our international obligations.

The second amendment extends the grandfather provision applicable to certain producers of ethanol produced in the Caribbean. If this provision is not enacted before the end of the year, several legitimate Caribbean producers of ethanol will be forced to cease operations.

I understand that during Senate consideration of this legislation, the issue of certain ethanol related tax and tariff provisions, which are scheduled to expire in 1992 and 1993, was raised. Since these provisions are not scheduled to expire for several years and since the Congress has not had the opportunity to review these matters, extension of these provisions at this time is premature. However, I recognize that a number of Members on both sides of the aisle in both the House and the Senate are interested in pursuing these issues. Therefore, as chairman of the Committee on Ways and Means, I am committed to hold hearings on these ethanol-related issues as early next year as possible. I make the further commitment that the Committee on Ways and Means will take a timely comprehensive look at these interrelated ethanol issues, including the ethanol tax credits, the additional tariff currently applicable to imported ethanol, and the CBI ethanol compromise contained in this bill.

The Senate has added these provisions to the steel bill as part of a commitment made in the conference on budget reconciliation. The House agreed to drop all of the trade provisions in the House-passed reconciliation bill in exchange for the Senate's commitment to move H.R. 3275 this year, with these two amendments. The Senate has also committed itself to make best efforts to pass a new trade bill early next year which would contain most of the trade provisions in the House-passed version of H.R. 3299. Among the provisions which the House expects to see in the new trade bill are provisions on the CBI, customs user fees, a 2-year authorization of appropriations for the trade agencies, and a number of miscellaneous trade provisions.

Mr. Speaker, the Senate in passing this bill has shown good faith in fulfilling its commitments. I urge my colleagues to join me in enacting these important provisions, by voting for H.R. 3275, as amended.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I will not object but want to indicate my support for H.R. 3275 and the two additional provisions added in the other body. In sending us this bill the other body fulfills part of an agreement reached when all trade provisions were dropped from the reconciliation package. Members agreed that two time-sensitive matters would be included on H.R. 3275—now before us—and second, a larger trade bill including the Caribbean basin initiative and miscellaneous tariff provisions would be considered very early in the next session.

The steel bill, H.R. 3275, represents a well-crafted compromise supported by the administration and domestic steel producers and consumers. This bill gives the President the authority to implement his Steel Trade Liberalization Program. Since September 30, those in our Government assigned to count imports and collect export licenses have been working under the assumption that Congress would soon extend the steel program. We are late in carrying out this responsibility so I am pleased we are acting now.

The two additional provisions, although unrelated, are exceedingly important and time sensitive. The first responds to a GATT panel finding that the U.S. Superfund fee discrimi-

nates against imports and is, therefore, illegal under international law. The change we make here equalizes the fee and puts United States negotiators in Geneva in a better position to continue important Uruguay round talks aimed at an effective dispute settlement regime. Also included by the other body is compromise language, originally worked out by the Ways and Means Committee, establishing the level of Caribbean feedstock required to make Caribbean ethanol eligible for duty-free treatment under the CBI Act. This language is important to several small businesses who, in good faith, made investments in the region, and later the rules of the game were changed.

Mr. Speaker, all three items in this package are urgently required and I ask for swift adoption.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

A motion to reconsider was laid on the table

□ 0430

## MINORITY LEADER COMMENDED

(By unanimous consent, Mr. GEPHARDT was allowed to address the House for 1 minute.)

Mr. GEPHARDT. Mr. Speaker, first I would like to just take a moment to commend the minority leader, the gentleman from Illinois [Mr. MICHEL] for his help in making this 1st session of the 101st Congress possible. Mr. Speaker, he did a very fine job. It was a great pleasure to work with him. We appreciate very much his making this a very successful session.

## WHEN IT RAINS, IT POURS

The SPEAKER. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, for the second time I come before this House to alert the Members to a storm which is gathering in our Nation's banks. The storm to which I refer is the accumulation of leveraged buyouts and the loans which finance them. Like thick black rain clouds hovering over our heads, these masses of debt appear harmless enough from the outside. However, all it will take is a little convective activity to stir up the storm cells within, and the instability of the situation will become apparent to all.

Leveraged buyouts, leveraged recapitalizations, and leveraged employee stock ownership plans are all just fancy terms for spending somebody else's money on a bet. The bet is that profits will stay high enough to pay off high levels of debt. It is risky because there is no room for error. There is little capital to cushion the blow in the event of a recession.

Sometimes they know that profits won't be enough to pay the debt, so they enter the deal planning to sell off assets; more commonly known as robbing Peter to pay Paul. The bet here is that they will not accidentally sell off assets they need to continue earning profits. Sometimes they plan to raid an overfunded pension fund to pay the debt. In this case, they are betting that the pension fund was in fact overfunded and that the corporation will not be liable to the workers somewhere down the road. No matter how you look at it, they are speculating with borrowed money.

We have already begun to witness the effects of a decade of debt-financed speculation. Not only are good leveraged buyout deals becoming harder to find, but old ones are showing the cracks in their foundations. As balloon payments come due and profits fail to rise as projected, managers are finding it difficult to live with the decisions of the takeover artists who long ago parachuted to safety. Ironically, many of those takeover artists have found a new calling as turnaround artists rescuing failed LBO's with the help of the bankruptcy courts.

Just last week, the Comptroller of the Currency initiated a program of renewed scrutiny of LBO loans. He acknowledged that big banks are not finding it as easy to sell their LBO loans downstream to smaller banks, thus making it more likely that a big bank would fail in the event of a recession. If this happens, the cost to the taxpayer will make Lincoln Savings look like penny ante poker. Five months ago, the vice chairman of the Federal Reserve Board issued similar warnings. In July, I tried to put together hearings on this subject in the Financial Institutions Subcommittee and only one major bank agreed to testify.

Bankers are obviously not eager to draw attention to their LBO exposure and there are signs that they are increasingly worried about it. While the regional banks are stocking up on LBO loans, the big money center banks, those that negotiate the deals and are most familiar with them, are scaling back. Corporate raiders are no longer certain that their loan applications will always be approved. Funding is rejected because the deals involve so much junk bond financing. Wall Street analysts warn that economic downturns, which are inevitable, will make it difficult for highly leveraged companies to make their payments. And as every lender knows, a borrower in bankruptcy is as major risk, no matter how senior the debt.

As with all financial pyramids, those who got in on the LBO game early made a killing by taking advantage of undervalued stocks. But now stock prices have risen so high that such opportunities are rare. Unfortunately, those who were not quick enough or smart enough to see that the easy money is gone are still out there taking risks with insured funds. What will we tell the taxpayers when one of these banks fails and must be bailed out? In the wake of the biggest financial crisis since the Great Depression, can we afford to ignore that risk?

The 101st Congress dealt with the S&L crisis with as much speed and resolve as is possible in any democratic society. However, we should not convince ourselves that we have eradicated all threats to the banking system. While the S&Ls were taking undue risks with other people's money, the nation's banks were taking risks of their own. Doubt not for a second, ladies and gentlemen, that those chickens are coming home to roost.

The SPEAKER. Under a previous order of the House, the gentleman from Arkansas [Mr. ALEXANDER] is recognized for 5 minutes.

Mr. ALEXANDER. Mr. Speaker, smog is a reminder that hangs in the air over our cities.

It is a reminder that breathing is hazardous to our health.

And, it is a reminder that the clean air bill awaits our return in January.

But now there is hope on the horizon.

Clean-burning alternative fuels, such as ethanol from America's farms, can play a critical role in making the air breathable again in cities all across this land.

The clean air legislation we consider next year may well determine the role of alternative fuels in the 1990s and beyond.

Alternative fuels have been the subject of much debate within the Energy and Commerce Committee, and without doubt they will be the subject of even more debate when the clean air bill comes to the full House next year.

Congress must make informed choices on alternative fuels and other important air quality issues soon after Congress reconvenes. As a congressional member of the U.S. Alternative Fuels Council, I will do what I can to provide Members with information on this subject.

To that end, I submit for the record a column written by our colleague from New Mexico [Mr. RICHARDSON], that appeared in the New York Times on Sunday, November 19. I commend the gentleman's column to the attention of all Members.

[From the New York Times, Nov. 19, 1989]

WATERING DOWN CLEAN FUELS

(By Bill Richardson)

WASHINGTON.—With great fanfare, President Bush drove an ethanol car this summer and promised the nation that his clean fuels program would be "the most innovative and far-reaching component" of his new clean air proposal. Yet, when the Administration's clean fuels program came before the House Health and Environment Subcommittee last month, the White House looked the other way as big oil and big auto interests eviscerated the package.

The result was a self-inflicted political wound for the Administration, an unexpected windfall for auto and oil companies and a gutted clean-fuels program for the rest of the nation.

The fact is, we need aggressive investment in new motor vehicle fuels. Americans buy more cars, drive more miles and suffer more congestion every year. In the long run, this means more pollution in our smoggy cities. Without heavy use of clean fuels like natu-

ral gas, methanol, ethanol and electricity, we will never control automotive pollution.

The centerpiece of the President's clean air legislation would have required car makers to produce one million natural gas or other clean fuel vehicles each year for sale in the country's nine most polluted cities. By the Administration's estimate, that would ultimately remove 80 percent of the smog-forming emissions produced by even the cleanest gasoline cars.

But an amendment pushed by the oil and auto industries, and eventually adopted by the subcommittee, eliminates that requirement. Instead it calls only for "certification" that car makers have the "capacity" to produce one million vehicles. What's more, the amendment relaxed the performance standards for clean fuel vehicles to the point that even gasoline-powered vehicles could qualify.

The rationale for watering down the bill was its perceived "methanol mandate." In fact, there is no such mandate. The Administration bill explicitly recognizes ethanol, natural gas, propane and any other fuel with comparably low emissions as acceptable clean fuels. Nor does the bill guarantee methanol—or any other fuel—commercial success. Instead, it lets market forces pick the right clean fuels for the right vehicles at the right prices.

Clean fuel foes try to minimize the environmental benefits of the President's program, claiming that, in early years, it achieves emission reductions of less than 1 percent. But these critics miss the point.

The program is designed to develop clean fuel technology and infrastructure for the long run. Ultimately, using clean fuels in all vehicles would reduce smog-forming emissions by 10 percent—far more than almost any other control strategy.

Rather than undermine the President's proposal, we should strengthen it. We should use it as a foundation for building a truly effective clean fuels program.

First, we need stronger provisions promoting the use of oxygenated fuels, such as the gasoline-ethanol blend called gasohol. These fuels reduce carbon monoxide emissions up to 20 percent and do so more cost-effectively than any alternative strategy.

Second, we need strong provisions requiring the use of clean fuels in fleet vehicles. Taxis, delivery vans and other fleet vehicles drive twice as far as private passenger cars; converting them to clean fuels offers the biggest emissions reduction bang for the buck. Fleet vehicles also provide an ideal market for domestic clean fuels like natural gas and propane: The low costs of these gaseous fuels, combined with the extra mileage drive by the fleet vehicles, more than offset the initially high conversion expenses.

Finally, we need to require oil companies to develop "reformulated gasolines" to clean up the emissions from our oldest and dirtiest cars. A reformulated fuel now being sold in California reduces emissions from decade-old vehicles by 20 percent at no additional cost to the consumer.

Regrettably, an unexpected obstacle confronts those of us who would support and strengthen the Administration's bill: The President has been dangerously inconsistent in support of his own proposal. Mr. Bush must take a firm and unwavering stand on this issue if he truly intends to be the "environmental President."

## HOSPITAL CLOSINGS COMMUNITY RELIEF ACT OF 1989

The SPEAKER. Under a previous order of the House, the gentlewoman from Illinois [Mrs. COLLINS] is recognized for 30 minutes.

Mrs. COLLINS. Mr. Speaker, in the last few years, with increasing frequency, hospitals have been closing with no warning to public health organizations, government officials, employees, nor—most critically of all—the communities they serve. Many patients are stranded with neither alternative health services nor information about their options. Closings are often so abrupt that regular patients have no time to prepare. This often causes panic as patients scurry to find other health care sources. Some remaining hospitals may find themselves disproportionately overburdened with additional patients as a result.

The last few years has seen the occurrence of unannounced, immediate, and unexpected hospital closings multiply from an isolated phenomenon to an explosive national issue that touches all segments of America. In Chicago alone, at least 11 health care providers have closed their doors in the past 3½ years. Many of these happened virtually overnight, and the adverse consequences cannot be understated. But our cities are not alone in experiencing this trend. Excluding the 11 closures in Chicago, the past 3½ years have witnessed 6 closures elsewhere in Illinois. Rural hospital closings have become so numerous that they received mention in the October 5, 1988 Vice Presidential debates and their effect is as severe as the closings of urban hospitals.

Today, I am introducing a bill which will help cushion the impact felt by the closing of a hospital. It would direct the States that participate in Medicaid to implement a plan for easing the impact of hospital closings. The State would have latitude to adopt creative solutions involving State authority but the plan would also have to require certain actions by the closing hospital.

The hospital would be required to notify State health authorities within a day of making the decision to close—and that information will be treated as confidential by the State. The medical records of a closing facility must be transferred to a State-approved custodian—again, with appropriate confidentiality—and be made available to a health care professional on request of the patient. The State plan must require an identification of the principal geographical area served by the hospital. The residents of that area must then be informed of the hospital closing, the availability of alternative sources of health care in the area, and the facts concerning the transfer of medical records. The State plan must be deemed by the Secretary of Health and Human Services to satisfy these requirements and the failure to do so would necessitate withholding approval of a State plan for medical assistance.

The upshot of this bill is that it would require a closing hospital to help its community find alternative sources of services and plan the transition, thus easing the burden of a hospital closing. It would also facilitate the efforts of Government health agencies to continue a well coordinated, effective health care delivery system.

Mr. Speaker, this bill addresses a serious problem with health care in America, and I hope my colleagues will lend it their fullest support.

## LEAVE OF ABSENCE

By unanimous consent leave of absence was granted to:

Mr. BROOKS (at the request of Mr. GEPHARDT) on account of medical reasons.

Mr. DENNY SMITH (at the request of Mr. MICHEL) for the week of November 20 on account of getting married.

## SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 1096. An act to provide for the use and distribution of funds awarded the Seminole Indian in dockets 73, 151, and 73-A of the Indian Claims Commission; to the Committee on Interior and Insular Affairs.

S. 1524. An act to amend the Wild and Scenic Rivers Act of 1968 by designating segments of the Pemigewasset River in the State of New Hampshire for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 1539. An act to amend the Federal Water Pollution Control Act so as to include Lake Champlain in the Clean Lakes demonstration program; to the Committee on Public Works and Transportation.

S. 1606. An act to amend the Public Health Service Act to improve the health of individuals who are members of minority groups and who are from disadvantaged backgrounds, and for other purposes; to the Committee on Energy and Commerce.

S. 1610. An act to develop a program to determine potential impacts of climate change on agriculture and forestry, to provide for the development of policies designed to address issues of potential climate change, with respect both to developing a capacity for agriculture and forestry to adapt to climate change, and to developing innovative ways to ameliorate climate change, and for other purposes; to the Committee on Agriculture and Science, Space, and Technology.

## ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 1487. An act to authorize appropriations for fiscal years 1990 and 1991 for the Department of State, and for other purposes;

H.R. 2712. An act to facilitate the adjustment or change of status of Chinese nationals in the United States by waiving the 2-year foreign residence requirement for "J" nonimmigrants;

H.R. 3072. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 1990, and for other purposes;

H.R. 3566. An act making appropriations for the Departments of Labor, Health and Human Services, and related agencies, for the fiscal year ending September 30, 1990, and for other purposes;

H.R. 3743. An act making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1990, and for other purposes; and

H.R. 3746. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1990, and for other purposes.

## SINE DIE ADJOURNMENT

Mr. GEPHARDT. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER. In accordance with the provisions of House Concurrent Resolution 239, the Chair declares the 1st session of the 101st Congress adjourned sine die.

Thereupon (at 4 o'clock and 31 minutes a.m.), pursuant to House Concurrent Resolution 239, the House adjourned.

## EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports of various House committees concerning the foreign currencies and U.S. dollars utilized by them during the third quarter of 1989 in connection with foreign travel pursuant to Public Law 95-384 are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1989

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| Hon. Daniel Akaka | 6/30 | 7/9 | United Kingdom | | 1,673.00 | | 1,080.00 | | | | 2,753.00 |
| Hon. Tom Bevill | 8/6 | 8/9 | Germany | | 760.00 | | | | | | 760.00 |
| | 8/9 | 8/13 | Soviet Union | | 628.00 | | | | | | 628.00 |
| | 8/13 | 8/15 | Romania | | 372.00 | | | | | | 372.00 |
| | 8/15 | 8/18 | United Kingdom | | 340.50 | | | | | | 340.50 |
| Military transportation | | | | | | | 5,289.00 | | | | 5,289.00 |
| Hon. Bob Carr | 7/1 | 7/9 | Soviet Union | | 1,150.00 | | 4,536.00 | | | | 5,686.00 |
| Hon. Mickey Edwards | 9/8 | 9/8 | El Salvador | | | | | | | | |
| | 9/8 | 9/9 | Panama | | 206.00 | | | | | | 206.00 |
| | 9/9 | 9/10 | Nicaragua | | | | | | | | |
| Military transportation | | | | | | | 4,163.69 | | | | 4,163.69 |
| Hon. Vic Fazio | 8/10 | 8/11 | Iceland | | 192.00 | | | | | | 192.00 |
| | 8/11 | 8/15 | England | | 832.00 | | | | | | 832.00 |
| | 8/15 | 8/20 | Scotland | | 807.00 | | | | | | 807.00 |
| Military transportation | | | | | | | 4,700.94 | | | | 4,700.94 |
| Hon. Jim Kolbe | 8/6 | 8/9 | Germany | | 760.00 | | | | | | 760.00 |
| | 8/9 | 8/13 | Soviet Union | | 628.00 | | | | | | 628.00 |
| | 8/13 | 8/15 | Romania | | 372.00 | | | | | | 372.00 |
| | 8/15 | 8/18 | United Kingdom | | 340.50 | | | | | | 340.50 |
| Military transportation | | | | | | | 5,289.00 | | | | 5,289.00 |
| Hon. William Lehman | 6/30 | 7/9 | United Kingdom | | 1,673.00 | | | | | | 1,673.00 |
| Military transportation | | | | | | | 1,080.00 | | | | 1,080.00 |
| Hon. Bob Livingston | 8/22 | 8/27 | Southern Korea | | 1,000.00 | | | | | | 1,000.00 |
| | 8/27 | 8/30 | Philippines | | 432.00 | | | | | | 432.00 |
| | 8/30 | 9/2 | Hong Kong | | 630.00 | | | | | | 630.00 |
| Military transportation | | | | | | | 6,152.00 | | | | 6,152.00 |
| Hon. William Lowery | 8/10 | 8/11 | Iceland | | 192.00 | | | | | | 192.00 |
| | 8/11 | 8/15 | England | | 832.00 | | | | | | 832.00 |
| | 8/15 | 8/20 | Scotland | | 807.00 | | | | | | 807.00 |
| Military transportation | | | | | | | 4,700.94 | | | | 4,700.94 |
| Hon. John Murtha | 8/22 | 8/27 | South Korea | | 1,000.00 | | | | | | 1,000.00 |
| | 8/27 | 8/30 | Philippines | | 432.00 | | | | | | 432.00 |
| | 8/30 | 9/2 | Hong Kong | | 630.00 | | | | | | 630.00 |
| Military transportation | | | | | | | 6,152.00 | | | | 6,152.00 |
| Hon. John Murtha | 9/15 | 9/16 | Panama | | 100.00 | | | | | | 100.00 |
| Military transportation | | | | | | | 1,535.00 | | | | 1,535.00 |
| Hon. John T. Myers | 8/6 | 8/9 | Germany | | 760.00 | | | | | | 760.00 |
| | 8/9 | 8/13 | Soviet Union | | 628.00 | | | | | | 628.00 |
| | 8/13 | 8/15 | Romania | | 372.00 | | | | | | 372.00 |
| | 8/15 | 8/18 | United Kingdom | | 340.00 | | | | | | 340.50 |
| Military transportation | | | | | | | 5,289.00 | | | | 5,289.00 |
| Hon. Harold Rogers | 8/6 | 8.9 | Germany | | 760.00 | | | | | | 760.00 |
| | 8/9 | 8/13 | Soviet Union | | 628.00 | | | | | | 628.00 |
| | 8/13 | 8/15 | Romania | | 372.00 | | | | | | 372.00 |
| | 8/15 | 8/18 | United Kingdom | | 340.50 | | | | | | 340.50 |
| Military transportation | | | | | | | 5,289.00 | | | | 5,289.00 |
| Hon. Neal Smith | 8/6 | 8/9 | Germany | | 760.00 | | | | | | 760.00 |
| | 8/9 | 8/13 | Soviet Union | | 628.00 | | | | | | 628.00 |
| | 8/13 | 8/15 | Romania | | 372.00 | | | | | | 372.00 |
| | 8/15 | 8/18 | United Kingdom | | 340.50 | | | | | | 340.50 |
| Military transportation | | | | | | | 5,289.00 | | | | 5,289.50 |
| Hon. Lindsay Thomas | 7/2 | 7/5 | Belgium | | 355.00 | | | | | | 355.00 |
| | 7/6 | 7/10 | Germany | | 624.00 | | | | | | 624.00 |
| Commercial transportation | | | | | | | 4,258.00 | | | | 4,258.00 |
| Hon. Bob Traxler | 8/6 | 8/9 | Germany | | 760.00 | | | | | | 760.00 |
| | 8/9 | 8/13 | Soviet Union | | 628.00 | | | | | | 628.00 |
| | 8/13 | 8/15 | Romania | | 372.00 | | | | | | 372.00 |
| | 8/15 | 8/18 | United Kingdom | | 340.50 | | | | | | 340.50 |
| Military | | | | | | | 5,289.00 | | | | 5,289.00 |
| Hon. Frank Wolf | 8/6 | 8/10 | Soviet Union | | 1,003.64 | | | | | | 1,003.64 |
| Commercial transportation | | | | | | | 2,919.00 | | | | 2,919.00 |
| Gregory Dahlberg | 6/30 | 7/9 | United Kingdom | | 1,673.00 | | | | | | 1,673.00 |
| Military transportation | | | | | | | 1,080.00 | | | | 1,080.00 |
| Jim Fairchild | 8/6 | 8/9 | Germany | | 760.00 | | | | | | 760.00 |
| | 8/6 | 8/13 | Soviet Union | 628.00 | | | | | | 628.00 | |
| | 8/13 | 8/15 | Romania | | 372.00 | | | | | | 372.00 |
| | 8/15 | 8/18 | United Kingdom | | 340.50 | | | | | | 340.50 |
| Military transportation | | | | | | | 5,289.00 | | | | 5,289.00 |
| Thomas Kingfield | 6/30 | 7/9 | United Kingdom | | 1,673.00 | | | | | | 1,673.00 |
| Military transportation | | | | | | | 1,080.00 | | | | 1,080.00 |
| Edward E. Lombard | 8/10 | 8/11 | Iceland | | 192.00 | | | | | | 192.00 |
| | 8/11 | 8/15 | England | | 832.00 | | | | | | 832.00 |
| | 8/15 | 8/20 | Scotland | | 807.00 | | | | | | 807.00 |
| Military transportation | | | | | | | 4,700.94 | | | | 4,700.94 |
| William Marinelli | 8/10 | 8/11 | Iceland | | 192.00 | | | | | | 192.00 |

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1989—Continued

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| | 8/11 | 8/15 | England | | 832.00 | | | | | | 832.00 |
| | 8/15 | 8/20 | Scotland | | 807.00 | | | | | | 807.00 |
| Military transportation | | | | | | | 4,709.94 | | | | 4,700.94 |
| Ronald J. Miller | 8/22 | 8/27 | South Korea | | 1,000.00 | | | | | | 1,000.00 |
| | 8/27 | 8/30 | Philippines | | 432.00 | | | | | | 432.00 |
| | 8/30 | 9/2 | Hong Kong | | 630.00 | | | | | | 630.00 |
| Military transportation | | | | | | | 6,152.00 | | | | 6,152.00 |
| Frederick G. Mohrman | 8/22 | 8/27 | South Korea | | 1,000.00 | | | | | | 1,000.00 |
| | 8/27 | 8/30 | Philippines | | 432.00 | | | | | | 432.00 |
| | 8/30 | 9/2 | Hong Kong | | 630.00 | | | | | | 630.00 |
| Military transportation | | | | | | | 6,152.00 | | | | 6,152.00 |
| John G. Osthaus | 8/6 | 8/9 | Germany | | 760.00 | | | | | | 760.00 |
| | 8/9 | 8/13 | Soviet Union | | 628.00 | | | | | | 628.00 |
| | 8/13 | 8/15 | Romania | | 372.00 | | | | | | 372.00 |
| | 8/15 | 8/18 | United Kingdom | | 340.50 | | | | | | 340.50 |
| Military transportation | | | | | | | 5,289.00 | | | | 5,289.00 |
| John G. Plashal | 9/15 | 9/16 | Panama | | 100.00 | | | | | | 100.00 |
| Military transportation | | | | | | | 1,535.00 | | | | 1,535.00 |
| Donald E. Richbourg | 8/22 | 8/27 | South Korea | | 1,000.00 | | | | | | 1,000.00 |
| | 8/27 | 8/30 | Philippines | | 432.00 | | | | | | 432.00 |
| | 8/30 | 9/2 | Hong Kong | | 630.00 | | | | | | 630.00 |
| Military transportation | | | | | | | 6,152.00 | | | | 6,152.00 |
| Committee total | | | | | 44,668.64 | | 115,142.45 | | | | 159,811.09 |
| Appropriations surveys, and investigations staff: | | | | | | | | | | | |
| Richard H. Ash | 9/23 | 9/26 | Bahamas | | 507.00 | | 508.37 | | 7.00 | | 1,022.37 |
| David L. Blessing | 8/20 | 8/21 | Bahamas | | 50.00 | | 295.00 | | 7.00 | | 352.00 |
| Carroll L. Hauver | 9/23 | 9/26 | Bahamas | | 507.00 | | 508.37 | | 7.00 | | 1,022.37 |
| William P. Haynes | 9/23 | 9/26 | Bahamas | | 507.00 | | 508.37 | | 7.00 | | 1,022.37 |
| Maurice A. Herron | 8/20 | 8/21 | Bahamas | | 50.00 | | 295.00 | | 7.00 | | 352.00 |
| Robert D. Pullen | 8/20 | 8/21 | Bahamas | | 50.00 | | 295.00 | | 7.00 | | 352.00 |
| Staff total | | | | | 1,671.00 | | 2,410.11 | | 42.00 | | 4,123.11 |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JAMIE L. WHITTEN, Chairman, Oct. 31, 1989.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON ENERGY AND COMMERCE, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1989

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| Hon. John D. Dingell | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Hon. Al Swift | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,4,457.17 |
| Hon. Dennis Eckart | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.000 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398.00 |
| Military Aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Hon. Terry L. Bruce | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 1/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | 398.00 | | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Hon. Thomas J. Manton | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 1/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | 398.00 | | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Norman F. Lent | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | 398.00 | | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Hon. Edward R. Madigan | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Hon. Carlos J. Moorhead | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Hon. Howard C. Nielson | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Hon. Alex McMillian | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON ENERGY AND COMMERCE, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1989—Continued

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| John Orlando | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Sharon E. Davis | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Richard Frandsen | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398.000 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| John Shelk | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/19 | Ireland | | 398.00 | | | | | | 398.00 |
| Military aircraft | | | | | | | 4,457.17 | | | | 4,457.17 |
| Hon. Edward Markey | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/14 | Yugoslavia | | 776.00 | | | | | | 776.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/18 | Ireland | | 199.00 | | | | | | 199.00 |
| Commercial air fair | | | | | | | 391.00 | | | | 391.00 |
| Military aircraft | | | | | | | 3,016.08 | | | | 3,016.08 |
| Hon. Joe Barton | 8/8 | 8/10 | Austria | | 336.00 | | | | | | 336.00 |
| | 8/10 | 8/13 | Yugoslavia | | 440.00 | | | | | | 440.00 |
| | 8/13 | 8/13 | Germany | | | | | | | | |
| | 8/14 | 8/15 | Switzerland | | 208.00 | | | | | | 208.00 |
| | 8/15 | 8/17 | Poland | | 375.00 | | | | | | 375.00 |
| | 8/17 | 8/18 | Ireland | 199.00 | | | | | | | 199.00 |
| Commercial air fare | | | | | | | 1,551.45 | | | | 1,551.45 |
| Military aircraft | | | | | | | 2,680.96 | | | | 2,680.96 |
| Claudia Beville | 7/12 | 7/14 | Netherlands | | 316.00 | | | | | | 316.00 |
| | 7/14 | 7/20 | Sweden | | 1,380.00 | | | | | | 1,380.00 |
| Commercial air fare | | | | | | | 2,212.00 | | | | 2,212.00 |
| John J. Hambel | 7/12 | 7/14 | Netherlands | | 316.00 | | | | | | 316.00 |
| | 7/14 | 7/20 | Sweden | | 1,380.00 | | | | | | 1,380.00 |
| Commercial air fare | | | | | | | 2,212.00 | | | | 2,212.00 |
| Lesley Russell | 8/24 | 9/3 | Japan | | 2,215.00 | | | | | | 2,215.00 |
| Commercial air fare | | | | | | | 2,757.00 | | | | 2,757.00 |
| Karen Nelson | 8/24 | 9/3 | Japan | | 2,215.00 | | | | | | 2,215.00 |
| Commercial air fare | | | | | | | 2,757.00 | | | | 2,757.00 |
| Ruth Katz | 8/24 | 9/3 | Japan | | 2,215.00 | | | | | | 2,215.00 |
| Commercial air fare | | | | | | | 2,757.00 | | | | 2,757.00 |
| Tim Westmoreland | 8/24 | 9/3 | Japan | | 2,215.00 | | | | | | 2,215.00 |
| Commercial air fare | | | | | | | 2,757.00 | | | | 2,757.00 |
| Hon. Thomas A. Luken [3] | 1/6 | 1/8 | Hong Kong | | 636.00 | | | | | | 636.00 |
| | 1/8 | 1/11 | China | | 438.00 | | | | | | 438.00 |
| Surface transportation | | | | | | | 140.25 | | | | 140.25 |
| Commercial air fare | | | | | | | 305.40 | | | | 305.40 |
| Jack Chesson [3] | 5/18 | 5/26 | England | | 1,808.00 | | | | | | 1,808.00 |
| | 5/26 | 5/28 | West Germany | | 455.00 | | | | | | 455.00 |
| | 5/28 | 5/31 | Switzerland | | 387.00 | | | | | | 387.00 |
| Commercial air fare | | | | | | | 3,301.00 | | | | 3,301.00 |
| Julia Fortier [3] | 6/4 | 6/10 | Canada | | 1,062.00 | | | | | | 1,062.00 |
| Conference fee | | | | | | | | | 416.66 | | 416.66 |
| Commercial air fare | | | | | | | 312.74 | | | | 312.74 |
| Committee totals | | | | | 46,672.50 | | 89,551.26 | | 416.66 | | 136,640.42 |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] This represents a supplemental report.

JOHN D. DINGELL, Chairman.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON GOVERNMENT OPERATIONS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1989

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| James Gottlieb | 8/4 | 8/7 | England | 379.26 | 624.00 | | 1,610.00 | | | | 2,234.00 |
| | 8/7 | 8/8 | Netherlands | 354 | 164.00 | | | | | | 164.00 |
| | 8/8 | 8/14 | France | 8,013.06 | 954.00 | | | | | | 954.00 |
| | 8/20 | 8/22 | Italy | 580,508 | 412.00 | | | | | | 412.00 |
| | 8/22 | 8/23 | Switzerland | 351.52 | 208.00 | | | | | | 208.00 |
| | 8/23 | 8/25 | England | 269.30 | 416.00 | | | | | | 416.00 |
| | 8/25 | 8/26 | Belgium | 7,727 | 190.00 | | 178.10 | | | | 368.10 |
| Hon. Ted Weiss | 8/20 | 8/22 | Italy | 580,508 | 412.00 | | 1,091.00 | | | | 1,503.00 |
| | 8/22 | 8/23 | Switzerland | 351.52 | 208.00 | | | | | | 208.00 |
| | 8/23 | 8/25 | England | 269.30 | 416.00 | | | | | | 416.00 |
| Ken Salaets | 8/11 | 8/13 | Frankfurt | | 274.00 | 119 | 61.32 | | | | 335.32 |
| Hon. Robert E. Wise, Jr | 8/22 | 8/24 | Peru | | 196.00 | | | | [3] 828.52 | | 1,024.52 |
| | 8/24 | 8/25 | Bolivia | | 97.54 | | [4] 22,345.00 | | | | 22,442.54 |
| Hon. Al McCandless | 8/22 | 8/24 | Peru | | 196.00 | | | | | | 196.00 |
| | 8/24 | 8/25 | Bolivia | | 97.54 | | | | | | 97.54 |
| Hon. Donald E. Lukens | 8/22 | 8/24 | Peru | | 196.00 | | | | | | 196.00 |

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON GOVERNMENT OPERATIONS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1989—Continued

| Name of Member or employee | Date | | Country | Per diem [1] | | Transportation | | Other purposes | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arrival | Departure | | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] | Foreign currency | U.S. dollar equivalent or U.S. currency [2] |
| | 8/24 | 8/25 | Bolivia | | 172.65 | | | | | | 172.65 |
| Lee Godown | 8/22 | 8/24 | Peru | | 196.00 | | | | | | 196.00 |
| | 8/24 | 8/25 | Bolivia | | 172.65 | | | | | | 172.65 |
| Kathleen Smith | 8/22 | 8/24 | Peru | | 196.00 | | | | | | 196.00 |
| | 8/24 | 8/25 | Bolivia | | 172.65 | | | | | | 172.65 |
| Brian Lockwood | 8/22 | 8/24 | Peru | | 196.00 | | | | | | 196.00 |
| | 8/24 | 8/26 | Bolivia | | 172.65 | | | | | | 172.65 |
| Committee totals | | | | | 6,339.68 | | 25,285.42 | | 828.52 | | 32,453.62 |

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] $500 (interpreter); $110.60 (security); $217.92 (guards).
[4] Military aircraft for entire delegation.

JOHN CONYERS, JR., Chairman, Oct. 31, 1989.

## ETHICS REFORM ACT OF 1989

Mr. FAZIO. Mr. Speaker, for the benefit of my colleagues and other Government officers and employees affected by the Ethics Reform Act of 1989, H.R. 3660, I insert at this point in the RECORD a detailed summary of its provisions and the entire text of the act.

The material referred to follows:

ETHICS REFORM ACT OF 1989

(Public Law 101-194)

TITLE I—POST EMPLOYMENT RESTRICTIONS ON THE EXECUTIVE AND LEGISLATIVE BRANCHES

Title I of the Act revises the current post-employment restrictions of Section 207 of title 18. It expands coverage to Members and top level congressional staff, bars the very senior executive branch officials from lobbying all other top officials in addition to their own agency, and makes other changes in current law.

The term "lobbying," as used in this summary, refers to the prohibited activity specified in the Act of knowingly making, with the intent to influence, any communication to or appearance before any officer or employee of the relevant agency.

These post-employment restrictions take effect January 1, 1991. The provisions of current law will continue to apply to those individuals who leave government service prior to that date.

*Lifetime ban*

All former executive branch employees are permanently barred from lobbying anywhere in the federal government, on behalf of another person, on a particular matter involving specific parties in which they were personally and substantially involved and in which the United States has a direct and substantial interest. This is similar to current law.

*Two-year ban*

All former executive branch employees are barred for two-years from lobbying anywhere in the federal government, on behalf of another person, on a particular matter involving specific parties which the employees know or should know was pending under their official responsibility within their last year of government service, and in which the United States has a direct and substantial interest. This is similar to current law.

*Trade or treaty negotiations*

Any former executive or legislative branch employee, or Member of Congress, who was personally and substantially involved in an ongoing trade or treaty negotiation on behalf of the United States within their last year of government service, and who had access to information not publicly available under the Freedom of Information Act, is barred for one year from representing, aiding, or advising any other person on the basis of that information concerning such ongoing negotiation.

*One-year ban*

All former executive branch employees paid at the GS-17 salary level or above, and comparable military officers, are barred for one year from lobbying their former agency on behalf of another person, on any matter on which such person seeks official action by such agency. The Office of Government Ethics may waive this restriction for covered positions, other than those at the Executive Level or in the Executive Office of the President, if the Director determines that the restriction would create an undue hardship in obtaining qualified personnel and if a waiver would not create the potential for undue influence.

All former executive branch employees paid at Executive Level I and employees in the Executive Office of the President paid at Executive Level II are barred for one year from lobbying not only their former agency on behalf of another person on any matter on which such person seeks official action, but also any person appointed to an Executive Level I through V position in any other executive branch agency.

*Legislative branch—One-year ban*

The Act imposes a one-year post employment restriction on Members of Congress and legislative branch employees paid at the GS-17 salary rate or above on lobbying on behalf of another person in connection with any matter on which official action is sought. The one-year ban applies as follows:

Members are barred from lobbying anywhere in the legislative branch. Elected officers of each House are barred from lobbying their respective Houses.

Personal staff are barred from lobbying their former Member and the employees of that Member.

Committee staff are barred from lobbying the Members and staff of their former committee and any Member who served on that committee in the year prior to the employee's termination.

Leadership staff are barred from lobbying the Members and employees of the leadership offices for the House in which they served.

Other legislative offices staff, such as the General Accounting Office, Congressional Budget Office, Library of Congress, are barred from lobbying their former agencies.

*Representation of foreign entities*

All former employees of the executive or legislative branch paid at the GS-17 level or above, including the Vice President, are barred for one year from representing, aiding or advising a foreign government or foreign political party on a matter before any department or agency of the United States.

*Compartmentalization*

The Office of Government Ethics is authorized to designate separate statutory agencies or bureaus within a department or agency in the executive branch for purposes of the one-year ban on lobbying one's former agency. Unlike current law, the Act explicitly prohibits any agency or bureau within the Executive Office of the President from being so designated and does not allow any designation to apply to persons appointed to Executive Levels I through V positions.

*Exceptions*

A series of general exceptions to the restrictions imposed by Section 207 are established. Some of the restrictions will not apply, for example, to official duties as an employee of state or local governments, institutions of higher education, or hospital or medical research facilities; to personal matters or to statements based on the individual's special knowledge, if such statements are uncompensated; or to scientific and technical information if provided under specified procedures.

*Enforcement*

Violations of the lobbying restrictions would be subject to civil, misdemeanor, and felony penalties under new Section 216 of title 18, created by the Act. The misdemeanor penalty is a sentence of not more than one year in prison and/or a fine of not more than $100,000. The new felony penalty, which applies to willful violations, is a sentence of not more than five years in prison and/or a fine of not more than $250,000. The civil penalty is a fine of up to $50,000 or the amount of compensation earned for the prohibited conduct, whichever is greater.

TITLE II—FINANCIAL DISCLOSURE OF FEDERAL PERSONNEL

Title II of the Act revises current financial disclosure requirements and merges the three separate titles of the Ethics in Government Act into one uniform title for all three branches of government.

The changes in the disclosure requirements will apply to reports filed after January 1, 1991 for calendar year 1990.

*Coverage*

Coverage of executive branch personnel is revised to apply to all employees in the Executive Office of the President who hold commissions of appointment from the President; to clarify that foreign service officers subject to Senate confirmation who are compensated at less than a GS-16 salary rate are exempted; and to eliminate coverage of advisory committee staff members who are compensated at less than a GS-16 rate.

The definition of a candidate is conformed to the definition in the Federal Election Campaign Act (i.e., any person who has raised or spent $5,000). Current law applies to any person who has qualified for the ballot. Candidate reports must be filed no later than 30 days prior to an election, rather than 7 days as in current law. Reports will be filed with the Federal Election Commission, rather than with the Clerk of the House or the Secretary of the Senate.

*Contents of reports*

The following changes are made in the reporting requirements:

Income: The reporting threshold for income is raised from $100 to $200, and a new category of value for disclosure of unearned income (dividends, interest, rent, and capital gains) in excess of $1,000,000 is added.

Honoraria: Beginning in calendar year 1991, the source, date, and amount of any payments in lieu of honoraria made to a charitable organization must be reported. A corresponding list of the recipients of such payments, together with the dates and amounts, must be filed on a confidential basis with the appropriate supervising ethics office.

Gifts: The value of gifts that need not be aggregated for disclosure purposes is raised from $35 to $75. The reporting thresholds remain the same: $250 for gifts of transportation, lodging, food, or entertainment; and $100 for all other gifts.

Reimbursements: A travel itinerary, dates, and the nature of expenses provided must be included in the reporting of reimbursements for travel expenses aggregating $250 or more from any one source.

Investment funds: The financial interests held by a mutual fund, regulated investment company, pension plan, or other widely held investment fund need not be reported if the assets are widely diversified and the reporting individual exercises no control over those financial interests. Only the category of the amount of income from the investment fund must be reported.

Categories of value: Two new categories of value are added for reporting assets, liabilities, and transactions between $500,000 and $1,000,000 and in excess of $1,000,000. The bottom category is changed to not more than $15,000. The Act also specifically authorizes disclosure of the exact dollar amount in lieu of the category of value for reporting assets, liabilities, and transactions, or unearned income.

Spousal honoraria: The source and amount of any honoraria received by the spouse must be reported.

Dependents: Gifts and reimbursements to a dependent child which are not received independent of the relationship to the reporting individual must be disclosed, as is now the case with respect to gifts and reimbursements to the spouse.

Prior compensation: A nonelected reporting individual must list any person who paid him compensation in excess of $5,000 in any of the two years prior to the year the individual files his first disclosure report, and a description of the services rendered.

*Termination reports*

Members and employees of the legislative branch must file reports within 30 days after leaving office, or by May 15, whichever is later, as is now required for executive and judicial branch personnel. The report would cover the preceding calendar year, if no report for that year has been filed, and the period up to the date of termination.

*Disclosure forms*

The Office of Government Ethics is directed to develop and make available disclosure forms for reporting the required information. A reporting individual may supply the required information in an alternative format, such as forms provided by the individual's accountant, pursuant to either rules adopted by the supervising ethics office or a specific written determination by such office in each case.

*Public availability*

The period within which reports must be made available to the public is extended from 15 days to 30 days after they are filed.

*Compliance review*

The congressional ethics committees and other appropriate ethics offices must ensure that reports are reviewed within 60 days after they are filed. The appropriate official is responsible for determining whether the individual is in compliance with applicable laws and regulations, notifying the individual if he is not in compliance, and determining what steps are necessary to assure compliance. These compliance review procedures currently apply only to the executive branch.

*Confidential reports*

The supervising ethics offices are authorized to require officers and employees under their jurisdiction to file confidential reports, as set forth in rules or regulations prescribed by the office. Current law extends this authority only to the executive branch.

*Enforcement*

The maximum civil penalty for knowing and willful falsification or failure to file a report is increased to $10,000. A late filing fee of $200 is established for anyone who files a report later than 30 days after the due date (including any extensions). The fee may be waived by the ethics office.

*GAO report*

The Comptroller General is directed to conduct a study to determine whether the financial disclosure law is being carried out effectively, by December 31, 1992 and regularly thereafter.

*Notice of actions taken*

The Act extends to all three branches of government a provision in current law that requires executive branch officials to notify the Office of Government Ethics and appropriate congressional committees of actions taken to comply with ethics agreements made with such committees. If no agreement is made to comply with conflict of interest laws or other ethics regulations with OGE or appropriate congressional ethics committee, Senate confirmation committee, or the Judicial Conference, no action is required under this section.

*Commission on Appointment Process*

The Act establishes a 14-member advisory commission to study the best means of simplifying the presidential appointment process by reducing the number and complexity of forms to be completed by nominees. Eight members of the commission will be appointed by the President, two each by the Majority and Minority Leaders of the Senate, and one each by the Speaker and Minority Leader of the House. The commission is to report to the President within 90 days of its creation.

TITLE III—GIFTS AND TRAVEL

Title III of the Act addresses the acceptance of gifts and travel expenses by federal government employees.

*Gifts to superiors*

The Act amends Section 7351 of title 5, which prohibits federal employees from giving gifts to superiors, by authorizing the Office of Government Ethics to issue regulations exempting voluntary gifts for special occasions. The current penalty of dismissal is replaced by a reference to appropriate disciplinary action by the employing agency.

*Federal travel acceptance authority*

The Act creates a new provision, 31 U.S.C. 1352, authorizing executive branch agencies to accept payment from non-federal sources for travel expenses incurred by employees in attending meetings, conferences, or similar functions relating to official duties. Reports of any such travel payments of more than $250 would be publicly available through the Office of Government Ethics. The General Services Administration, in consultation with the Office of Government Ethics, is directed to prescribe regulations to implement this travel acceptance authority.

*Gifts to Federal employees*

The Act creates a new provision, 5 U.S.C. 7353, prohibiting officers and employees of all three branches from soliciting or accepting anything of value from any person seeking official action, doing business with, or (in the case of executive branch personnel) conducting activities regulated by the individual's employing agency, or whose interests may be substantially affected by the performance or nonperformance of official duties.

Each supervising ethics office is authorized to issue rules and regulations implementing this section and providing for reasonable exceptions. An employee who violates the gifts prohibition would be subject to appropriate disciplinary action. Nothing in this section is intended to create any exemption or exclusion from the criminal bribery statute, 18 U.S.C. 201(b).

TITLE IV—AMENDMENTS TO TITLE 18, UNITED STATES CODE

Title IV of the Act amends the criminal conflict of interest laws in title 18 of the U.S. Code.

*18 U.S.C. 202*

The Act amends Section 202 to add new definitions of statutory terms used in the conflict of interest laws. These are consistent with existing law, except that the definition of "Member of Congress" is revised to include all Delegates and Resident Commissioners to the Congress.

*18 U.S.C. 203*

The Act amends Section 203 of title 18, which prohibits Members, officers and employees in all three branches from accepting compensation for services in any proceeding

in which the United States is a party or has a direct and substantial interest. The amendment clarifies that the "services" prohibited are "representational services as agent or attorney or otherwise"; replaces existing criminal penalties with the alternative felony, misdemeanor, and civil penalties provided in new Section 216; and treats employees of the District of Columbia separately from other federal employees.

*18 U.S.C. 204*

The Act amends Section 204, which prohibits Members of Congress from practicing before the U.S. Claims Court and the Court of Appeals for the Federal Circuit, to replace existing criminal penalties with the alternative felony, misdemeanor, and civil penalties provided in new Section 216.

*18 U.S.C. 205*

The Act amends Section 205, which prohibits officers and employees of each branch of government from acting as agent or attorney in claims against the United States, or in which the United States is a party or has a substantial interest. The amendment replaces existing criminal penalties with the alternative felony, misdemeanor, and civil penalties provided in new Section 216, and treats employees of the District of Columbia separately from other federal employees.

*18 U.S.C. 208*

The Act amends Section 208, which prohibits conflicts of interest for executive branch employees. The amendment creates new statutory exemptions for certain special government employees serving on advisory committees, and certain conflicts of interest that result solely from the birthrights of native Americans. It also clarifies that regulations exempting certain categories of employees or certain types of financial interests as too remote or too inconsequential may be issued only by the Office of Government Ethics. All waivers and exemptions granted by the agencies pursuant to such regulations must be submitted to OGE and made available to the public. The amendment also replaces existing criminal penalties with the alternative felony, misdemeanor, and civil penalties provided in new Section 216.

*18 U.S.C. 209*

The Act amends section 209. which prohibits supplementation of the salary of an executive branch officer or employee, to replace existing criminal penalties with the alternative penalties in Section 216.

*18 U.S.C. 216*

The Act creates a new Section 216 of the criminal code which establishes alternative felony, misdemeanor, and civil penalties for violations of Section 203, 204, 205, 207, 208, and 209, and authorizes the Attorney General to seek an injunction against ongoing conduct that violates these sections.

The new misdemeanor penalty is a sentence of not more than one year in prison and/or a fine of not more than $100,000. The new felony penalty, which applies to willful violations, is a sentence of not more than five years in prison and/or a fine of not more than $250,000. The civil penalty is a fine of up to $50,000 or the amount of compensation received or offered for the prohibited conduct, whichever is greater.

TITLE V—OTHER ETHICS REFORMS

*Referral by Senate Ethics Committee to GAO*

The Senate Ethics Committee is authorized to refer to the GAO Office of Special Investigations any matter in which the committee has reason to believe a Member, officer, or employee of the Senate may have committed an ethics violation.

*Tax rollover for asset divestiture*

The Act amends the Internal Revenue Code to provide a deferral of capital gains taxes on assets which must be divested by an executive branch official to avoid conflicts of interest under federal laws and regulations, provided they are reinvested within 60 days in neutral investments. Any such sale or disposition of property must be pursuant to a "certificate of divestiture" issued by the President or the Director of the Office of Government Ethics stating that divestiture of specific property is reasonably necessary to comply with conflict of interest laws or rules. This section applies to sales after the date of enactment.

*Use of Government vehicles*

The Act provides that, notwithstanding any other law, the head of each department, agency or other entity of each branch of government shall prescribe by rule appropriate conditions for the incidental use, for other than official business, of vehicles owned or leased by the government.

*Elimination of campaign fund grandfather clause*

The Act amends the Federal Election Campaign Act to repeal the clause that exempts Members elected before 1980 from the prohibition against conversion of excess campaign funds to personal use. The repeal applies to Members who serve in the 103rd Congress. In the case of Members who leave office before 1993, the amendment prohibits conversion to personal use of any amount in excess of the balance in their campaign committee as of the date of enactment (November 30, 1989).

*Repeal of obsolete provisions*

The Act repeals 37 U.S.C. 801(a), which restricts payment to certain retired military officers, and Section 319 of the Interior Department Appropriations Act for FY 1988, which is no longer necessary because of the Act's amendment to 18 U.S.C. 208 dealing with Indian birthrights.

*Recertification of senior executives*

The Act adds a new Section 3393a to title 5 to establish a recertification program for members of the Senior Executive Service. Recertification would begin in 1991 and recur every third year thereafter for a performance review of each career appointee in each agency.

Career executives would be allowed to appear before the performance review board if serious consideration is being given to conditional or non-recertification. Any pay rate lost in a conditional recertification will be restored if, after a one-year opportunity period, the executive is recertified. SES members will also have full appeal rights to the Merit Systems Protection Board of any non-recertification decision, with the Board rendering a final decision.

*Suspension of procurement integrity statutes*

The Act suspends for one year from the date of enactment certain statutes relating to post-employment activities of federal procurement officers. The suspension was requested by the Administration for the purpose of reviewing these provisions in light of the new post-employment restrictions included in title I of the Act. Following is a brief description of the suspended laws:

Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) imposes special restrictions on the post-employment activities of all federal procurement officers. These individuals are prohibited from negotiating for employment with, accepting gratuities from, or disclosing inside information to any contractor with whom they are currently involved in a government contracting process. They are also prohibited for one year after leaving government service from working in any capacity on the performance of a contract on which they worked in their last two years in government.

Sections 2397a and 2397b of title 10 impose restrictions on Department of Defense (DOD) employees who are performing procurement-related functions. They are required to recuse themselves from procurement matters prior to negotiating for employment with certain DOD contractors. They are also prohibited from accepting employment with a contractor if they performed certain procurement functions with that contractor during their last two years of government service.

Section 281 of title 18 prohibits retired officers of the Armed Forces from prosecuting any claim against the government, or selling anything to the branch of the service from which they retired. This ban covers the two years following retirement.

Sections 603 through 606, Section 607(a) and (b), and Section 608(a) and (c) of the Department of Energy Reorganization Act apply to personnel of the Department of Energy. These provisions largely duplicate various provisions of the Ethics in Government Act on post-employment restrictions and on financial disclosure.

TITLE VI—LIMITATIONS ON OUTSIDE EMPLOYMENT AND ELIMINATION OF HONORARIA

Title VI of the Act amends the Ethics in Government Act of 1978 to establish government-wide (except the Senate) limitations on outside earned income and employment, effective in 1991.

*Outside earned income*

A Member, officer, or non-career employee of any branch of the government paid at the GS-16 salary rate or above may not have outside earned income in any calendar year which exceeds 15 percent of the salary for level II of the Executive Schedule.

*Honoraria*

A Member, officer, or employee of any branch of government, regardless of salary level, may not receive any honorarium.

Payments in lieu of honoraria may be paid on behalf of a Member, officer, or employee directly to a charitable organization (as described in Section 170c of the Tax Code). Any such payment may not exceed $2,000 or be made to a charitable organization from which the individual or immediate family member derives any direct financial benefit. The Tax Code is amended to specify that such payments to charity shall not be treated as received by that individual for all tax purposes, including state and local tax laws, and no deduction shall be allowed.

*Outside employment*

A Member, officer, or non-career employee paid at the GS-16 salary level or above may not (1) affiliate with a firm to provide professional services for compensation which involve a fiduciary relationship; (2) permit their name to be used by any such firm or other entity; (3) practice a profession for compensation which involves a fiduciary relationship; (4) serve for compensation on the board of directors of any association, corporation, or other entity; or (5) receive compensation for teaching without

the prior notification and approval of the appropriate ethics office.

*Administration*

The limitations on outside earned income and employment are to be administered by and subject to the rules and regulations of the House Committee on Standards of Official Conduct, the Office of Government Ethics and agency ethics officials, and the Judicial Conference of the United States with respect to officers and employees under their respective jurisdictions.

*Civil penalties*

The Act provides a maximum civil penalty of $10,000 or the amount of the compensation received for the prohibited conduct, whichever is greater, for violations of the outside employment and earned income restrictions.

*Effective date*

The provisions on honoraria, outside earned income and employment take effect January 1, 1991. They will cease to be effective if the provisions of the Act relating to compensation in 1991 are subsequently repealed, in which case the prior laws shall be deemed to have been readopted.

TITLE VII—CITIZENS' COMMISSION ON PUBLIC SERVICE AND COMPENSATION

Title VII of the Act reconstitutes the quadrennial salary commission, establishes new procedures for determining the salaries of senior government officials, and provides for comparability adjustments in 1990 and a salary increase in 1991 for top officials in all three branches.

*Citizens' Commission*

The Act reconstitutes the quadrennial Commission on Executive, Legislative, and Judicial Salaries into a new Citizens' Commission on Public Service and Compensation. The commission would be composed of 11 members. Five would be drawn by lot from voter registration rolls and appointed by the Administrator of General Services under procedures to ensure maximum geographic diversity. Of the remaining six members, two would be appointed by the President, two by the Chief Justice, and one each by the President pro tempore of the Senate and the Speaker of the House. The President would appoint the chairman.

The first commission would be appointed in fiscal year 1993, and every fourth fiscal year thereafter. The commission would be charged with reviewing not only salary levels, but also any problems of recruiting and retaining government officers and employees and maintaining appropriate ethical standards throughout the government.

The commission would report its recommendations to the President not later than December 15 after the close of the fiscal year in which it was appointed. Any proposed salary increases could take effect over a four-year period, rather than be confined to one year as in current law. The President would submit his recommendations to Congress the following January.

The recommended salary increase must be approved by recorded vote, and may not take effect until after an intervening election of the House of Representatives. This requirement would also apply to any other proposed salary increase for senior officials, other than annual cost-of-living adjustments.

*Cost-of-living adjustments*

The Act restores the 1989 comparability adjustment of 4.1 percent to Members and senior government officials who were denied the increase that all other federal workers received. The 3.6 percent COLA scheduled for 1990 would also be granted to senior officials. The two COLA restorations will take effect after sequestration is rescinded. The first pay period affected will be February, 1990. The Senate is excepted from this section.

*Salary increase 1991*

Senior government officials under the purview of the current quadrennial commission (positions in the executive schedule, Members of Congress except the Senate, and federal judges) will receive a 25 percent salary increase effective January 1, 1991.

*Future COLA adjustments*

Effective in 1991, a separate index will be used to determine annual salary adjustments for senior officials in all three branches. The propective adjustments will be based on the annual rate of change in the Economic Cost Index (ECI), minus one-half of one percent (0.5 percent). The ECI is the quarterly index of wages and salaries for private industry, as published by the Bureau of Labor Statistics. No annual adjustment under this provision may exceed 5 percent or be less than zero.

In determining the comparability adjustment to take effect on October 1 of any year, the fourth quarter ending the previous December would be compared to the fourth quarter ending the next previous December. Thus, the first COLA under the ECI index effective October 1, 1991 would be determined by comparing the ECI as of December 31, 1990 with the ECI as of December 31, 1989.

*Senior judges work certification*

The Act amends Section 406 of title 28 to establish a work certification procedure for judges in senior status in order to receive salary increases. Certification will be made by the chief judge of the circuit, and in most cases will be based on a caseload involving courtroom participation equal to what an average active judge would perform in three months. The three-month work obligation could also be satisfied by engaging in substantial judicial duties not involving courtroom work. The certification requirement will apply to work performed after January 1, 1990.

TITLE VIII—AMENDMENTS TO THE RULES OF THE HOUSE

Title VIII of the Act amends the rules of the House of Representatives respecting acceptance of gifts and travel expenses, rights and duties of staff, procedures of the Committee on Standards of Official Conduct, and limitations on outside earned income and employment.

*Acceptance of gifts*

Rule XLIII, clause 4 is amended to provide that a Member, officer or employee of the House shall not accept gifts in a calendar year aggregating more than minimal value, as established by the Foreign Gifts and Decorations Act ($200 as of January 1, 1990), from any person other than a relative. Gifts of personal hospitality of an individual and gifts valued at $75 or less are exempted. The Committee on Standards of Official Conduct is authorized to grant written waivers in exceptional circumstances.

The Committee on Standards is directed to amend its advisory opinions to prohibit lodging received as personal hospitality in excess of 30 days in a calendar year from any individual other than a relative, unless a written waiver is granted by the committee; and to exempt gifts of food and beverage that are not provided in connection with a gift of overnight lodging.

These amendments take effect January 1, 1990.

*Staff conflicts of interest*

A new clause 12 is added to Rule XLIII to prohibit any employee required to file a financial disclosure statement from participating personally and substantially in any contact with any executive or judicial branch agency regarding non-legislative matters affecting any non-governmental entity in which the employee has a significant financial interest. The prohibition may be waived by the individual's employing authority through a written waiver filed with the Standards Committee stating that the employee's participation is necessary. The new rule takes effect January 1, 1990.

*Rights and duties of staff*

Rule XLIII, clause 8 is amended to include employees of officers and committees under the requirement that a Member's personal office employees perform official duties commensurate with compensation received, and to clarify that they shall perform official duties in the employing authority's offices.

Rule XLIII, clause 9 is amended to add handicap and marital or parental status to the prohibited discriminatory practices with respect to staff, and to specify that a person's domicile or political affiliation may be taken into consideration.

Rule XI, clause 6 is amended to clarify that the existing prohibition against professional committee staff engaging in any work other than committee business applies only during congressional working hours.

These rules changes take effect January 1, 1990.

*Clarification of political activities*

Rule XLIII, clause 6 is amended to clarify that campaign funds may only be used for bona fide campaign or political purposes. This change brings the rule into conformity with the Standards Committee's interpretation of the restriction on use of campaign funds for "bona fide campaign purposes." This amendment takes effect January 1, 1990.

*Use of leased vehicles*

The Committee on House Administration is directed to issue regulations to allow for the incidental use of government owned or leased vehicles for other purposes pursuant to the statutory change in Section 503 of the Act. The Committee on Standards of Official Conduct is directed to issue an advisory opinion providing for the incidental use of campaign owned or leased vehicles for nonpolitical purposes. This provision takes effect January 1, 1990.

*Standards Committee procedures*

The Act amends Rule X to limit Members' service on the Committee on Standards of Official Conduct to three Congresses in any period of five successive Congresses, and provides for the expansion of the committee from 12 to 14 members.

The committee is directed to adopt rules governing its disciplinary proceedings that separate the investigative and adjudicative functions within the existing committee structure. A four- or six-member investigative subcommittee must be established whenever the committee votes to undertake a preliminary inquiry. If the investigative panel issues a Statement of Alleged Violation, a subcommittee on adjudication, consisting of the remaining members of the full

committee, would then be constituted to hear the evidence and determine guilt.

The findings of the adjudicatory panel would be reported to the full committee which would then decide what recommendations or sanctions, if any, to submit to the House. Rule X is amended to provide that any letter of reproval or other administrative action of the committee may only be implemented as a part of its report to the House, and to require the committee to report to the House upon the final disposition of any case it has voted to investigate.

Rule XXXII is amended to permit an accused Member to be accompanied by counsel on the floor of the House when the committee's recommendation on his case is under consideration by the House.

Rule X, clause 4(e) is amended to establish a general statute of limitations on Standards Committee investigations. The committee may not investigate allegations of ethics violations occurring before the third previous Congress unless it determines that such matters are directly related to any alleged violation which occurred in a more recent Congress.

The committee is directed to establish an Office of Advice and Education whose primary responsibility shall include providing guidance to Members and employees on applicable rules and regulations, recommending to the committee formal advisory opinions of general applicability, and developing an educational program for Members and employees.

The provisions respecting the Standards Committee take effect January 3, 1991, except that the provisions on a statute of limitations, right to counsel, and the Office of Advice and Education take effect on January 1, 1990.

*Limitations on outside earned income and employment*

Rule XLVII is amended to eliminate honoraria and to establish the same limitations on outside earned income and employment, effective January 1, 1991, as are provided in statute under title VI of the Act.

The rule is also amended to provide that a Member may not have outside earned income, including honoraria, in 1990 in excess of 30 percent of the Member's annual salary in 1989.

The amendments to Rule XLVII take effect January 1, 1990, and as provided in the rule. They shall cease to be effective if provisions of the Act relating to compensation in 1991 are subsequently repealed, in which case the prior rules shall be deemed to be readopted.

*Restrictions on travel expenses*

The Committee on Standards of Official Conduct is directed to amend its advisory opinions on acceptance of necessary travel expenses in connection with speaking engagements, fact-finding activities and similar events to prohibit acceptance of such expenses for more than four consecutive days in the case of domestic travel, and seven consecutive days in the case of foreign travel, excluding travel days. The committee is also directed to permit acceptance of travel expenses for the spouse or other family member.

The committee is authorized to grant exemptions from the limitations in exceptional circumstances.

TITLE IX—REGULATIONS RELATING TO THE SENATE

Title IX of the Act establishes regulations relating to acceptance of gifts and travel expenses, transmittal of financial disclosure statements, and staff conflict of interest rules applicable to Members, officers and employees of the Senate.

*Gifts and travel expenses*

The Act amends the existing Senate rule on acceptance of gifts to establish two separate limitations. First, it retains the current prohibition on acceptance of gifts aggregating more than $100 in value in a calendar year from any person with a direct interest in legislation. Second, it prohibits acceptance of gifts aggregating more than $300 in value from any other source (other than a relative). The Select Ethics Committee may grant a waiver in an unusual case.

The Act changes current Senate rules to include entertainment within the definition of a gift. Gifts with a value of less than $75, and gifts of meals or beverages that are not consumed or enjoyed in connection with a gift of overnight lodging are exempted.

The Act provides that Members and staff of the Senate may not accept necessary travel expenses from the sponsoring organization of an event in which they participate for a period in excess of three days (and two nights) exclusive of travel time within the United States, or seven days (and six nights) exclusive of travel time outside of the United States. The Ethics Committee may approve travel in excess of those limits as necessary for participation in a conference, seminar, or similar matter. Necessary expenses may not be accepted for anyone accompanying a Member, officer or employee other than the spouse of the individual or one Senate employee acting as an aide to a Member.

*Transmittal of financial disclosure reports*

The Select Committee on Ethics is directed to transmit a copy of each financial disclosure report filed by employees with the committee to the head of the individual's employing office.

*Staff conflict of interest*

Any employee required to file a financial disclosure statement must refrain from participating personally and substantially in any contact with any executive or judicial branch agency regarding non-legislative matters affecting any non-governmental entity in which the employee has a significant financial interest. This prohibition may be waived by the individual's employing authority through a written waiver filed with the Ethics Committee stating that the employee's participation is necessary.

TITLE X—RULEMAKING POWER OF THE CONGRESS

Title X states that the provisions of the Act which apply to Members, officers and employees of the legislative branch are enacted as an exercise of the rulemaking power of the House and Senate and are considered as part of the rules of each House, respectively, with full recognition of the constitutional right of either House to change its rules at any time.

TITLE XI—PAY AND HONORARIA ADJUSTMENTS

Title XI of the Act provides for cost-of-living adjustments in the pay of Senators, and corresponding reductions in the limits on honoraria that they may accept.

*Cost-of-living adjustments*

The Act provides the 1988, 1989, and 1990 comparability pay adjustments to Members of the Senate, equal to a 9.7 percent increase compounded. The COLAs will take effect after sequestration is rescinded. The first pay period affected will be February, 1990.

*Reduction of honorarium*

The Act amends the statutory limitations on honoraria (2 U.S.C. 31-1) applicable to Senators to reduce the 40 percent limit to 27 percent of salary, effective January 1, 1990.

Beginning January 1, 1991, if the salary of Senators is increased by any provision of law, the honoraria limit will be reduced by a percentage resulting in a dollar decrease for each dollar increase in salary. When the honoraria limit is reduced to 1 percent of salary, the acceptance of honoraria by Senators will be prohibited.

The text of Public Law 101-194 as signed by the President follows:

AN ACT To amend the Rules of the House of Representatives and the Ethics in Government Act of 1978 to provide for Government-wide ethics reform, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ethics Reform Act of 1989".

TITLE I—POST EMPLOYMENT RESTRICTIONS ON THE EXECUTIVE AND LEGISLATIVE BRANCHES

SEC. 101. RESTRICTIONS ON POSTEMPLOYMENT ACTIVITIES.

(a) RESTRICTIONS.—Section 207 of title 18, United States Code, is amended to read as follows:

"§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

"(a) RESTRICTIONS ON ALL OFFICERS AND EMPLOYEES OF THE EXECUTIVE BRANCH AND CERTAIN OTHER AGENCIES.—

"(1) PERMANENT RESTRICTIONS ON REPRESENTATION ON PARTICULAR MATTERS.—Any person who is an officer or employee of the executive branch of the United States Government (including any independent agency of the United States and any special Government employee), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States Government or the District of Columbia, as the case may be, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, as the case may be, on behalf of any other person (except the United States) in connection with a particular matter—

"(A) in which the United States is a party or has a direct and substantial interest,

"(B) in which the person participated personally and substantially as such officer or employee, and

"(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

"(2) TWO-YEAR RESTRICTIONS CONCERNING PARTICULAR MATTERS UNDER OFFICIAL RESPONSIBILITY.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States Government, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia,

on behalf of any other person (except the United States), in connection with a particular matter—

"(A) in which the United States is a party or has a direct and substantial interest,

"(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States Government or the District of Columbia, and

"(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

"(b) ONE-YEAR RESTRICTIONS ON AIDING OR ADVISING.—

"(1) IN GENERAL.—Any person who is a former officer or employee subject to the restrictions contained in subsection (a)(1), and any person described in subsection (e)(7), who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, and which is so designated by the appropriate department or agency, shall not, on the basis of that information, which the person knew or should have known was so designated, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for 1 year after his or her service or employment with the United States Government terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

"(2) DEFINITION.—For purposes of this paragraph—

"(A) the term 'trade negotiation' means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

"(B) the term 'treaty' means an international agreement made by the President that requires the advice and consent of the Senate.

"(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

"(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee of the executive branch (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

"(2) PERSONS TO WHOM RESTRICTIONS APPLY.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

"(i) employed at a rate of pay fixed according to subchapter II of chapter 53 of title 5, or a comparable or greater rate of pay under other authority,

"(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay is equal to or greater than the basic rate of pay payable for GS-17 of the General Schedule,

"(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3, or

"(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O-7 or above.

"(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

"(C) Subparagraph (A)(ii) includes persons employed in the Senior Executive Service at the basic rate of pay specified in that subparagraph.

"(D) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that—

"(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

"(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

"(d) RESTRICTIONS ON VERY SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

"(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who—

"(A) serves in the position of Vice President of the United States,

"(B) is employed in a position paid at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

"(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

"(2) ENTITIES TO WHICH RESTRICTIONS APPLY.—The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are—

"(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

"(B) any other person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5.

"(e) RESTRICTIONS ON MEMBERS OF CONGRESS AND OFFICERS AND EMPLOYEES OF THE LEGISLATIVE BRANCH.—

"(1) MEMBERS OF CONGRESS AND ELECTED OFFICERS.—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

"(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

"(2) PERSONAL STAFF.—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

"(i) the Senator or Member of the House of Representatives for whom that person was an employee; and

"(ii) any employee of that Senator or Member of the House of Representatives.

"(3) COMMITTEE STAFF.—Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

"(4) LEADERSHIP STAFF.—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate

and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

"(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

"(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

"(5) OTHER LEGISLATIVE OFFICES.—(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

"(6) LIMITATION ON RESTRICTIONS.—The restrictions contained in paragraphs (2), (3), (4), and (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid for such service at a basic rate of pay equal to or greater than the basic rate of pay payable for GS-17 of the General Schedule under section 5332 of title 5.

"(7) DEFINITIONS.—As used in this subsection—

"(A) the term 'committee of Congress' includes standing committees, joint committees, and select committees;

"(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

"(C) the term 'employee of the House of Representatives' means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

"(D) the term 'employee of the Senate' means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

"(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

"(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

"(G) the term 'employee of any other legislative office of the Congress' means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

"(H) the term 'employee on the leadership staff of the House of Representatives' means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

"(I) the term 'employee on the leadership staff of the Senate' means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

"(J) the term 'Member of Congress' means a Senator or a Member of the House of Representatives;

"(K) the term 'Member of the House of Representatives' means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

"(L) the term 'Member of the leadership of the House of Representatives' means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

"(M) the term 'Member of the leadership of the Senate' means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

"(f) RESTRICTIONS RELATING TO FOREIGN ENTITIES.—

"(1) RESTRICTIONS.—Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in subsection (c), (d), or (e), as the case may be—

"(A) represents the interests of a foreign entity before any officer or employee of any department or agency of the Government of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

"(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the Government of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

"(2) DEFINITION.—For purposes of this subsection, the term 'foreign entity' means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.".

"(g) SPECIAL RULES FOR DETAILEES.—For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

"(h) DESIGNATIONS OF SEPARATE STATUTORY AGENCIES AND BUREAUS.—

"(1) DESIGNATIONS.—For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

"(2) INAPPLICABILITY OF DESIGNATIONS.—No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A) (i) or (iii).

"(i) DEFINITIONS.—For purposes of this section—

"(1) the term 'intent to influence' means the intent to affect any official action by a Government entity of the United States through any officer or employee of the United States, including Members of Congress;

"(2) the term 'participated' means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

"(3) the term 'particular matter' includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

"(j) EXCEPTIONS.—

"(1) OFFICIAL GOVERNMENT DUTIES.—The restrictions contained in subsections (a), (c), (d), and (e) shall not apply to acts done in carrying out official duties as an officer or employee of the United States Government or as an elected official of a State or local government.

"(2) STATE AND LOCAL GOVERNMENTS AND INSTITUTIONS, HOSPITALS, AND ORGANIZATIONS.—The restrictions contained in subsections

(c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of—

"(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or

"(B) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

"(3) INTERNATIONAL ORGANIZATIONS.—The restrictions contained in subsections (c), (d), and (e) shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization of which the United States is a member.

"(4) PERSONAL MATTERS AND SPECIAL KNOWLEDGE.—The restrictions contained in subsections (c), (d), and (e) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibitions of those subsections prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

"(5) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL INFORMATION.—The restrictions contained in subsections (a), (c), (d), and (e) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

"(6) EXCEPTION FOR TESTIMONY.—Nothing in this section shall prevent a former Member of Congress or officer or employee of the executive or legislative branch or an independent agency (including the Vice President and any special Government employee) from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence, a former officer or employee subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter.".

(b) CONFORMING AMENDMENT.—The item relating to section 207 in the table of sections at the beginning of chapter 11 of title 18, United States Code, is amended to read as follows:

"207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches.".

SEC. 102. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by section 101 take effect on January 1, 1991.

(b) EFFECT ON EMPLOYMENT.—(1) The amendments made by section 101 apply only to persons whose service as a Member of Congress or an officer or employee to which such amendments apply terminates on or after the effective date of such amendments.

(2) With respect to service as an officer or employee which terminates before the effective date set forth in subsection (a), section 207 of title 18, United States Code, as in effect at the time of the termination of such service, shall continue to apply, on and after such effective date, with respect to such service.

## TITLE II—FINANCIAL DISCLOSURE OF FEDERAL PERSONNEL

SEC. 201. REPEAL OF TITLES II AND III OF THE ETHICS IN GOVERNMENT ACT OF 1978.

Titles II and III of the Ethics in Government Act of 1978 (5 U.S.C. App.; 28 U.S.C. App.) are repealed.

SEC. 202. FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL.

Title I of the Ethics in Government Act of 1978 (2 U.S.C. 701 et seq.) is amended to read as follows:

"TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

"PERSONS REQUIRED TO FILE

"SEC. 101. (a) Within thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 102(b) unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position.

"(b)(1) Within five days of the transmittal by the President to the Senate of the nomination of an individual (other than an individual nominated for appointment to a position as a Foreign Service Officer or a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code, is O-6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 102(b). Such individual shall, not later than the date of the first hearing to consider the nomination of such individual, make current the report filed pursuant to this paragraph by filing the information required by section 102(a)(1)(A) with respect to income and honoraria received as of the date which occurs five days before the date of such hearing. Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

"(2) An individual whom the President or the President-elect has publicly announced he intends to nominate to a position may file the report required by paragraph (1) at any time after that public announcement, but not later than is required under the first sentence of such paragraph.

"(c) Within thirty days of becoming a candidate as defined in section 301 of the Federal Campaign Act of 1971, in a calendar year for nomination or election to the office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, but in no event later than 30 days before the election, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President, Vice President, or Member of Congress shall file a report containing the information described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

"(d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a).

"(e) Any individual who occupies a position described in subsection (f) shall, on or before the later of May 15 or the thirtieth day after termination of employment in such position, file a report containing the information described in section 102(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position described in subsection (f).

"(f) The officers and employees referred to in subsections (a), (d), and (e) are—

"(1) the President;

"(2) the Vice President;

"(3) each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, whose position is classified at GS-16 or above of the General Schedule prescribed by section 5332 of title 5, United States Code, or the rate of basic pay for which is fixed (other than under the General Schedule) at a rate equal to or greater than the minimum rate of basic pay fixed for GS-16; each member of a uniformed service whose pay grade is at or in excess of O-7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

"(4) each employee appointed pursuant to section 3105 of title 5, United States Code;

"(5) any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government;

"(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is

equal to or greater than the minimum rate of basic pay fixed for GS-16;

"(7) the Director of the Office of Government Ethics and each designated agency ethics official;

"(8) any civilian employee not described in paragraph (3), employed in the Executive Office of the President (other than a special government employee) who holds a commission of appointment from the President;

"(9) a Member of Congress as defined under section 109(12);

"(10) an officer or employee of the Congress as defined under section 109(13);

"(11) a judicial officer as defined under section 109(10); and

"(12) a judicial employee as defined under section 109(8).

"(g) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the supervising ethics office for each branch, but the total of such extensions shall not exceed ninety days.

"(h) The provisions of subsections (a), (b), and (e) shall not apply to an individual who, as determined by the designated agency ethics official or Secretary concerned (or in the case of a Presidential appointee under subsection (b), the Director of the Office of Government Ethics), the congressional ethics committees, or the Judicial Conference of the United States, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year—

"(1) the report required by subsections (a) and (b) shall be filed within fifteen days of the sixtieth day, and

"(2) the report required by subsection (e) shall be filed as provided in such subsection.

"(i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year, but only if the supervising ethics office determines that—

"(1) such individual is not a full-time employee of the Government,

"(2) such individual is able to provide services specially needed by the Government,

"(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

"(4) public financial disclosure by such individual is not necessary in the circumstances.

"CONTENTS OF REPORTS

"SEC. 102. (a) Each report filed pursuant to section 101 (d) and (e) shall include a full and complete statement with respect to the following:

"(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and such individuals shall simultaneously file with the applicable supervising ethics office, on a confidential basis, a corresponding list of recipients of all such payments, together with the dates and amounts of such payments.

"(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

"(i) not more than $1,000,

"(ii) greater than $1,000 but not more than $2,500,

"(iii) greater than $2,500 but not more than $5,000,

"(iv) greater than $5,000 but not more than $15,000,

"(v) greater than $15,000 but not more than $50,000,

"(vi) greater than $50,000 but not more than $100,000,

"(vii) greater than $100,000 but not more than $1,000,000, or

"(viii) greater than $1,000,000.

"(2)(A) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expenses provided) of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of $75 or less need not be aggregated for purposes of this subparagraph.

"(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $75 or less need not be aggregated for purposes of this subparagraph.

"(C) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expenses provided) of reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

"(D) In an unusual case, a gift need not be aggregated under subparagraph (A) or (B) if a publicly available request for a waiver is granted.

"(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse, parent, brother, sister, or child or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

"(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed $10,000 at any time during the preceding calendar year, excluding—

"(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

"(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

"(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—

"(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

"(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

"(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

"(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of $5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report under this title, the individual shall include in the report—

"(i) the identity of each source of such compensation; and

"(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

"(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

"(b)(1) Each report filed pursuant to subsections (a), (b), and (c) of section 101 shall include a full and complete statement with respect to the information required by—

"(A) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

"(B) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

"(C) paragraphs (6) and (7) of subsection (a) as of the filing date but for periods described in such paragraphs.

"(2)(A) In lieu of filling out one or more schedules of a financial disclosure form, an individual may supply the required information in an alternative format, pursuant to either rules adopted by the supervising ethics office for the branch in which such individual serves or pursuant to a specific written determination by such office for a reporting individual.

"(B) In lieu of indicating the category of amount or value of any item contained in any report filed under this title, a reporting individual may indicate the exact dollar amount of such item.

"(c) In the case of any individual described in section 101(e), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

"(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), and (5) of subsection (a) are as follows:

"(A) not more than $15,000;

"(B) greater than $15,000 but not more than $50,000;

"(C) greater than $50,000 but not more than $100,000;

"(D) greater than $100,000 but not more than $250,000;

"(E) greater than $250,000 but not more than $500,000;

"(F) greater than $500,000 but not more than $1,000,000; and

"(G) greater than $1,000,000.

"(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

"(e)(1) Except as provided in the last sentence of this paragraph, each report required by section 101 shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse or dependent child of the reporting individual as follows:

"(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and the source and amount of any honoraria received by a spouse, except that, with respect to earned income (other than honoraria), if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

"(B) All information required to be reported in subsection (a)(1)(B) with respect to income derived by a spouse or dependent child from any asset held by the spouse or dependent child and reported pursuant to subsection (a)(3).

"(C) In the case of any gifts received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

"(D) In the case of any reimbursements received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of each such reimbursement.

"(E) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Reports required by subsections (a), (b), and (c) of section 101 shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

"(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

"(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

"(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

"(A) any qualified blind trust (as defined in paragraph (3));

"(B) a trust—

"(i) which was not created directly by such individual, his spouse, or any dependent child, and

"(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of; or

"(C) an entity described under the provisions of paragraph (8),

but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust or other entity under subsection (a)(1)(B) of this section.

"(3) For purposes of this subsection, the term 'qualified blind trust' includes any trust in which a reporting individual, his spouse, or any minor or dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

"(A)(i) The trustee of the trust and any other entity designated in the trust instrument to perform fiduciary duties is a financial institution, an attorney, a certified public accountant, a broker, or an investment advisor who—

"(I) is independent of and not associated with any interested party so that the trustee or other person cannot be controlled or influenced in the administration of the trust by any interested party; and

"(II) is not and has not been an employee of or affiliated with any interested party and is not a partner of, or involved in, any joint venture or other investment with, any interested party; and

"(III) is not a relative of any interested party.

"(ii) Any officer or employee of a trustee or other entity who is involved in the management or control of the trust—

"(I) is independent of and not associated with any interested party so that such officer or employee cannot be controlled or influenced in the administration of the trust by any interested party;

"(II) is not or has not been a partner of any interested party and is not a partner of, or involved in any joint venture or other investment with any interested party; and

"(III) is not a relative of any interested party.

"(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

"(C) The trust instrument which establishes the trust provides that—

"(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

"(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

"(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

"(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

"(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income

or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1) of this section, but such report shall not identify any asset or holding;

"(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

"(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

"(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

"(E) For purposes of this subsection, 'interested party' means a reporting individual, his spouse, and any minor or dependent child; 'broker' has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); and 'investment adviser' includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts.

"(F) Any trust qualified by a supervising ethics office before the effective date of this section shall continue to be governed by the law and regulations in effect immediately before such effective date.

"(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of any applicable conflict of interest statutes, regulations, or rules of the Federal Government (including section 208 of title 18, United States Code), until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

"(B)(i) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual, or the spouse, dependent child, or minor child of such a person, if the supervising ethics office for such reporting individual finds that—

"(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

"(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

"(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraphs (3)(C)(iii) and (iv) of this subsection, from making public or informing any interested party of the sale of any securities;

"(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

"(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established prior to the effective date of this Act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A).

"(ii) In any instance covered by subparagraph (B) in which the reporting individual is an individual whose nomination is being considered by a congressional committee, the reporting individual shall inform the congressional committee considering his nomination before or during the period of such individual's confirmation hearing of his intention to comply with this paragraph.

"(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

"(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

"(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

"(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

"(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

"(i) notify his supervising ethics office of such dissolution, and

"(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

"(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 105 and the provisions of that section shall apply with respect to such documents and lists.

"(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

"(6)(A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

"(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection or (ii) fail to file any document required by this subsection.

"(C)(i) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $10,000.

"(ii) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

"(7) Any trust may be considered to be a qualified blind trust if—

"(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

"(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

"(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

"(8) A reporting individual shall not be required to report the financial interests held by a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if—

"(A)(i) the fund is publicly traded; or

"(ii) the assets of the fund are widely diversified; and

"(B) the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

"(g) Political campaign funds, including campaign receipts and expenditures, need

not be included in any report filed pursuant to this title.

"(h) A report filed pursuant to subsection (a), (d), or (e) of section 101 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

"FILING OF REPORTS

"SEC. 103. (a) Except as otherwise provided in this section, the reports required under this title shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 101(e), was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

"(b) The President, the Vice President, and independent counsel and persons appointed by independent counsel under chapter 40 of title 28, United States Code, shall file reports required under this title with the Director of the Office of Government Ethics.

"(c) Copies of the reports required to be filed under this title by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency ethics officials, employees described in section 105(a)(2)(A) or (B), 106(a)(1)(A) or (B), or 107(a)(1)(A) or (b)(1)(A)(i), of title 3, United States Code, candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.

"(d) Reports required to be filed under this title by the Director shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title.

"(e) Each individual identified in section 101(c) shall file the reports required by this title with the Federal Elections Commission.

"(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

"(g) The Office of Government Ethics shall develop and make available forms for reporting the information required by this title.

"(h)(1) The reports required under this title shall be filed by a reporting individual with—

"(A)(i) the appropriate congressional ethics committee with regard to a Member of Congress, officer or employee of the Congress described under paragraphs (9) and (10) of section 101(f) (including individuals terminating service in such office or position under section 101(e) or immediately preceding service in such office or position); and

"(ii) in the case of an officer or employee of the Congress as described under section 101(f)(10) who is employed by an agency or commission established in the legislative branch after the date of the enactment of the Ethics Reform Act of 1989—

"(I) the congressional ethics committee designated in the statute establishing such agency or commission; or

"(II) if such statute does not designate such committee, the Senate Select Committee on Ethics for agencies and commissions established in even numbered calendar years, and the Committee on Standards of Official Conduct of the House of Representatives for agencies and commissions established in odd numbered calendar years; and

"(B) the Judicial Conference of the United States with regard to a judicial officer or employee described under paragraphs (11) and (12) of section 101(f) (including individuals terminating service in such office or position under section 101(e) or immediately preceding service in such office or position).

"(2) The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such committee.

"FAILURE TO FILE OR FILING FALSE REPORTS

"SEC. 104. (a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $10,000.

"(b) The head of each agency, each Secretary concerned, the Director of the Office of Government Ethics, each congressional ethics committee, or the Chairman of the Judicial Conference of the United States, as the case may be, shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.

"(c) The President, the Vice President, the Secretary concerned, the head of each agency, the Office of Personnel Management, a congressional ethics committee, and the Judicial Conference of the United States, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

"(d)(1) Any individual who files a report required to be filed under this title more than 30 days after the later of—

"(A) the date such report is required to be filed pursuant to the provisions of this title and the rules and regulations promulgated thereunder; or

"(B) if a filing extension is granted to such individual under section 101(g), the last day of the filing extension period,

shall pay a filing fee of $200 to the miscellaneous receipts of the General Treasury.

"(2) The supervising ethics office may waive the filing fee under this subsection in extraordinary circumstances.

"CUSTODY OF AND PUBLIC ACCESS TO REPORTS

"SEC. 105. (a) Each agency and each supervisory ethics office shall make each report filed with it under this title available to the public in accordance with the provisions of subsection (b) of this section, except that this section does not require public availability of a report filed by—

"(1) any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. In addition, such individuals may be authorized, notwithstanding section 104(a), to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds that such filing is necessary in the national interest; or

"(2) an independent counsel or person appointed by independent counsel under chapter 40 of title 28, United States Code, whose identity has not otherwise been disclosed.

"(b)(1) Each agency and each supervising ethics office shall, within thirty days after any report is received by such agency or office under this title, permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. The agency or office may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

"(2) Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

"(A) that person's name, occupation and address;

"(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

"(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

"(c)(1) It shall be unlawful for any person to obtain or use a report—

"(A) for any unlawful purpose;

"(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

"(C) for determining or establishing the credit rating of any individual; or

"(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

"(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $10,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

"(d) Any report filed with or transmitted to an agency or supervising ethics office pursuant to this title shall be retained by such agency or office, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the

case of an individual who filed the report pursuant to section 101(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 101(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President, Vice President, or as a Member of Congress, unless needed in an ongoing investigation.

"REVIEW OF REPORTS

"SEC. 106. (a)(1) Each designated agency ethics official or Secretary concerned shall make provisions to ensure that each report filed with him under this title is reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports required to be transmitted to him under this title within sixty days after the date of transmittal.

"(2) Each congressional ethics committee and the Judicial Conference of the United States shall make provisions to ensure that each report filed under this title is reviewed within sixty days after the date of such filing.

"(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, Secretary concerned, designated agency ethics official, or a person designated by the congressional ethics committee, or the Chairman of the Judicial Conference of the United States, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

"(2) If the Director of the Office of Government Ethics, Secretary concerned, designated agency ethics official or a person designated by the congressional ethics committee, or the Chairman of the Judicial Conference of the United States, after reviewing any report under subsection (a)—

"(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

"(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

"(3) If the Director of the Office of Government Ethics, Secretary concerned, designated agency ethics official, a congressional ethics committee, or the Judicial Conference of the United States, reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, the official or committee shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in the opinion of such official or committee be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

"(A) divestiture,

"(B) restitution,

"(C) the establishment of a blind trust,

"(D) request for an exemption under section 208(b) of title 18, United States Code, or

"(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such rules or regulations as the supervising ethics office may prescribe.

"(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position (other than in the foreign service or the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

"(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the foreign service or the uniformed services, the Secretary concerned shall take appropriate action.

"(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee the matter shall be referred to the head of the appropriate agency, the congressional ethics committee, or the Judicial Conference of the United States, for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

"(7) Each supervising ethics office may render advisory opinions interpreting this title within its respective jurisdiction. Notwithstanding any other provision of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any penalty or sanction provided by this title.

"CONFIDENTIAL REPORTS AND OTHER ADDITIONAL REQUIREMENTS

"SEC. 107. (a)(1) Each supervising ethics office may require officers and employees under its jurisdiction (including special Government employees as defined in section 202 of title 18, United States Code) to file confidential financial disclosure reports, in such form as the supervising ethics office may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency shall be set forth in rules or regulations prescribed by the supervising ethics office, and may be less extensive than otherwise required by this title, or more extensive when determined by the supervising ethics office to be necessary and appropriate in light of sections 202 through 209 of title 18, United States Code, regulations promulgated thereunder, or the authorized activities of such officers or employees. Any individual required to file a report pursuant to section 101 shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is more extensive than information otherwise required by this title. Subsections (a), (b), and (d) of section 105 shall not apply with respect to any such report.

"(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

"(3) Nothing in this subsection exempts any individual otherwise covered by the requirement to file a public financial disclosure report under this title from such requirement.

"(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

"(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, rule, or regulation.

"AUTHORITY OF COMPTROLLER GENERAL

"SEC. 108. (a) The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.

"(b) No later than December 31, 1992, and regularly thereafter, the Comptroller General shall conduct a study to determine whether the provisions of this title are being carried out effectively.

"DEFINITIONS

"SEC. 109. For the purposes of this title, the term—

"(1) 'congressional ethics committees' means the Senate Select Committee on Ethics and the Committee on Standards of Official Conduct of the House of Representatives;

"(2) 'dependent child' means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

"(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

"(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986;

"(3) 'designated agency ethics official' means an officer or employee who is designated to administer the provisions of this title within an agency;

"(4) 'executive branch' includes each Executive agency (as defined in section 105 of title 5, United States Code) and any other entity or administrative unit in the executive branch;

"(5) 'gift' means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

"(A) bequest and other forms of inheritance;

"(B) suitable mementos of a function honoring the reporting individual;

"(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government;

"(D) food and beverages consumed at banquets, receptions, or similar events; or

"(E) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

"(6) 'honoraria' has the meaning given such term in section 505 of this Act;

"(7) 'income' means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

"(8) 'judicial employee' means any employee of the judicial branch of the Government, of the Tax Court, of the Court of Veterans Appeals, or of the United States Court of Military Appeals, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who receives compensation at a rate at or in excess of the minimum rate prescribed for grade 16 of the General Schedule under section 5332 of title 5, United States Code;

"(9) 'Judicial Conference' means the Judicial Conference of the United States;

"(10) 'judicial officer' means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in the Canal Zone, Guam, and the Virgin Islands, Court of Claims, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, United States Court of Military Appeals, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior;

"(11) 'legislative branch' includes—

"(A) the Architect of the Capitol;

"(B) the Botanic Gardens;

"(C) the Congressional Budget Office;

"(D) the General Accounting Office;

"(E) the Government Printing Office;

"(F) the Library of Congress;

"(G) the United States Capitol Police;

"(H) the Office of Technology Assessment; and

"(I) any other agency, entity, office, or commission established in the legislative branch;

"(12) 'Member of Congress' means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

"(13) 'officer or employee of the Congress' means—

"(A) any individual described under subparagraph (B), other than a Member of Congress or the Vice President, whose compensation is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives;

"(B)(i) each officer or employee of the legislative branch who is compensated for 60 consecutive days at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS-16 of the General Schedule; and

"(ii) at least one principal assistant designated for purposes of this paragraph by each Member who does not have an employee compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS-16 of the General Schedule;

"(14) 'personal hospitality of any individual' means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

"(15) 'reimbursement' means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

"(A) provided by the United States Government;

"(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

"(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

"(16) 'relative' means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

"(17) 'Secretary concerned' has the meaning set forth in section 101(8) of title 10, United States Code, and, in addition, means—

"(A) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

"(B) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service;

"(18) 'supervising ethics office' means—

"(A) the Select Committee on Ethics of the Senate, for Senators, officers and employees of the Senate, and other officers or employees of the legislative branch required to file financial disclosure reports with such committee pursuant to section 103(h) of this title;

"(B) the Committee on Standards of Official Conduct of the House of Representatives, for Members, officers and employees of the House of Representatives and other officers or employees of the legislative branch required to file financial disclosure reports with such committee pursuant to section 103(h) of this title;

"(C) the Judicial Conference of the United States for judicial officers and judicial employees; and

"(D) the Office of Government Ethics for all executive branch employees; and

"(19) 'value' means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

"NOTICE OF ACTIONS TAKEN TO COMPLY WITH ETHICS AGREEMENTS

"SEC. 110. (a) In any case in which an individual agrees with that individual's designated agency ethics official, the Office of Government Ethics, a Senate confirmation committee, a congressional ethics committee, or the Judicial Conference of the United States, to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency ethics official, the Office of Government Ethics, the appropriate committee of the Senate, the congressional ethics committee, or the Judicial Conference of the United States, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than three months after the date of the agreement, if no date for action is so specified.

"(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency ethics official or the appropriate supervising ethics office within the time prescribed in the last sentence of subsection (a).

"ADMINISTRATION OF PROVISIONS

"SEC. 111. The provisions of this title shall be administered by—

"(1) the Director of the Office of Government Ethics, the designated agency ethics official, or the Secretary concerned, as appropriate, with regard to officers and employees described in paragraphs (1) through (8) of section 101(f);

"(2) the Senate Select Committee on Ethics and the Committee on Standards of Official Conduct of the House of Representatives, as appropriate, with regard to officers and employees described in paragraphs (9) and (10) of section 101(f); and

"(3) the Judicial Conference of the United States and clerk of the applicable court, as appropriate, in the case of an officer or employee described in paragraphs (11) and (12) of section 101(f).

"EFFECTIVE DATE

"SEC. 112. The provisions made by this title shall take effect on January 1, 1990, and shall be applicable to reports filed under this title after January 1, 1991.".

SEC. 203. PRESIDENT'S COMMISSION ON THE FEDERAL APPOINTMENT PROCESS.

(a) ESTABLISHMENT.—There shall be established an advisory commission to study the best means of simplifying the Presidential appointment process, in particular by reducing the number and complexity of forms to be completed by nominees. The Commission shall be known as the President's Commission on the Federal Appointment Process.

(b) MEMBERSHIP.—The Commission shall be composed of 14 members from among officers and employees of the three branches of the Federal Government. Eight members shall be appointed by the President, two members shall be appointed by the majority leader of the Senate, two members shall be appointed by the minority leader of the Senate, one member shall be appointed by the Speaker of the House of Representatives, and one member shall be appointed by the minority leader of the House of Representatives. Any vacancy on the Commission shall be filled in the same manner as the initial appointment.

(c) REPORT.—The Commission shall present its report to the President no later than ninety days after its first meeting. The

Commission shall cease to exist upon submission of its report.

## TITLE III—GIFTS AND TRAVEL

### SEC. 301. GIFTS TO SUPERIORS.

Section 7351 of title 5, United States Code, is amended by—

(1) adding "(a)" before "An employee may not"; and

(2) striking the final sentence and inserting the following:

"(b) An employee who violates this section shall be subject to appropriate disciplinary action by the employing agency or entity.

"(c) The Office of Government Ethics is authorized to issue regulations implementing this section, including regulations exempting voluntary gifts or contributions that are given or received for special occasions such as marriage or retirement or under other similar circumstances.".

### SEC. 302. TRAVEL ACCEPTANCE AUTHORITY.

(a) IN GENERAL.—Subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end thereof the following:

**"§ 1352. Acceptance of travel and related expenses from non-Federal sources**

"(a) Notwithstanding any other provision of law, the Administrator of General Services, in consultation with the Director of the Office of Government Ethics, shall prescribe by regulation the conditions under which an agency or employee in the executive branch may accept payment from non-Federal sources for travel, subsistence, and related expenses with respect to attendance of the employee (or the spouse of such employee) at any meeting or similar function relating to the official duties of the employee. Any cash payment so accepted shall be credited to the appropriation applicable to such expenses. In the case of a payment in kind so accepted, a pro rata reduction shall be made in any entitlement of the employee to payment from the Government for such expenses.

"(b) Except as provided in this section or section 4111 of title 5, an agency or employee may not accept payment for expenses referred to in subsection (a). An employee who accepts any payment in violation of the preceding sentence—

"(1) may be required, in addition to any penalty provided by law, to repay, for deposit in the general fund of the Treasury, an amount equal to the amount of the payment so accepted; and

"(2) in the case of a repayment under paragraph (1) shall not be entitled to any payment from the Government for such expenses.

"(c) As used in this section—

"(1) the term 'executive branch' means any executive agency (as such term is defined in section 105 of title 5); and

"(2) the term 'employee in the executive branch' means—

"(A) an appointed officer or employee in the executive branch; and

"(B) an expert or consultant in the executive branch, under section 3109 of title 5; and

"(3) the term 'payment' means a payment or reimbursement, in cash or in kind.

"(d)(1) The head of each agency of the executive branch shall, in the manner provided in paragraph (2), submit to the Director of the Office of Government Ethics reports of payments of more than $250 accepted under this section with respect to employees of the agency. The Director shall make such reports available for public inspection and copying.

"(2) The reports required by paragraph (1) shall, with respect to each payment—

"(A) specify the amount and method of payment, the name of the person making the payment, the name of the employee, the nature of the meeting or similar function, the time and place of travel, the nature of the expenses, and such other information as the Administrator of General Services may prescribe by regulation under subsection (a);

"(B) be submitted not later than May 31 of each year with respect to payments in the preceding period beginning on October 1 and ending on March 31; and

"(C) be submitted not later than November 30 of each year with respect to payments in the preceding period beginning on April 1 and ending on September 30.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end the following new item:

"1352. Acceptance of travel and related expenses from non-Federal sources.".

### SEC. 303. GIFTS TO FEDERAL EMPLOYEES.

(a) IN GENERAL.—Subchapter V of chapter 73 of title 5, United States Code, is amended by adding at the end thereof the following new section:

**"§ 7353. Gifts to Federal employees**

"(a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branches shall solicit or accept anything of value from a person—

"(1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by the individual's employing agency; or

"(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

"(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.

"(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations established by such individual's supervising ethics office pursuant to paragraph (1).

"(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.

"(3) Nothing in this section precludes a Member, officer, or employee from accepting gifts on behalf of the United States Government or any of its agencies in accordance with statutory authority.

"(c) An employee who violates this section shall be subject to appropriate disciplinary and other remedial action in accordance with any applicable laws, Executive orders, and rules or regulations.

"(d) For purposes of this section—

"(1) the term 'supervising ethics office' means—

"(A) the Committee on Standards of Official Conduct of the House of Representatives or the House of Representatives as a whole, for Members, officers, and employees of the House of Representatives;

"(B) the Select Committee on Ethics of the Senate, or the Senate as a whole, for Senators, officers and employees of the Senate;

"(C) the Judicial Conference of the United States for judges and judicial branch officers and employees;

"(D) the Office of Government Ethics for all executive branch officers and employees; and

"(E) the ethics committee with which the officer or employee is required to file financial disclosure forms, for all legislative branch officers and employees other than those specified in subparagraphs (A) and (B), except that such authority may be delegated; and

"(2) the term 'officer or employee' means an individual holding an appointive or elective position in the executive, legislative, or judicial branch of Government other than a Member of Congress.

(b) AMENDMENT TO TABLE OF CONTENTS.—The table of contents for chapter 73 of title 5, United States Code, is amended by inserting after the item relating to section 7352 the following new item:

"7353. Gifts to Federal employees.".

## TITLE IV—AMENDMENTS TO TITLE 18 OF THE UNITED STATES CODE

### SEC. 401. AMENDMENT TO SECTION 202 OF TITLE 18, UNITED STATES CODE.

Section 202 of title 18, United States Code, is amended by adding at the end thereof the following new subsections:

"(c) Except as otherwise provided in such sections, the terms 'officer' and 'employee' in sections 203, 205, 207, 208, and 209 of this title, mean those individuals defined in sections 2104 and 2105 of title 5. The terms 'officer' and 'employee' shall not include the President, the Vice President, a Member of Congress, or a Federal judge.

"(d) The term 'Member of Congress' in sections 204 and 207 shall include—

"(1) a United States Senator; and

"(2) a Representative in, or a Delegate or Resident Commissioner to, the House of Representatives.

"(e) As used in this chapter, the term—

"(1) 'executive branch' means any executive agency as defined in title 5, and any other entity or administrative unit in the executive branch;

"(2) 'judicial branch' means the Supreme Court of the United States; the United States courts of appeals; the United States district courts; the Court of International Trade; the United States bankruptcy courts; any court created pursuant to article I of the United States Constitution, including the Court of Military Appeals, the United States Claims Court, and the United States Tax Court, but not including a court of a territory or possession of the United States; the Federal Judicial Center; and any other agency, office, or entity in the judicial branch; and

"(3) 'legislative branch' means—

"(A) a Member of Congress, or any officer or employee of the United States Senate or United States House of Representatives; and

"(B) an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and any other agency, entity, office, or commission established in the legislative branch.".

### SEC. 402. AMENDMENTS TO SECTION 203 OF TITLE 18, UNITED STATES CODE.

Section 203 of title 18, United States Code, is amended by—

(1) striking "services" the first place it appears in subsection (a)(1) and inserting "representational services, as agent or attorney or otherwise,";

(2) inserting "court," after "department, agency," in subsection (a)(1);

(3) striking "shall be fined under this title or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States" in subsection (a) and inserting "shall be subject to the penalties set forth in section 216 of this title";

(4) inserting "representational" before "services" in subsection (a)(2);

(5) inserting "Member Elect," after "Member," in subsection (a)(2);

(6) inserting "Delegate Elect," after "Delegate," in subsection (a)(2);

(7) striking "including the District of Columbia," in subsection (a)(1)(B);

(8) in subsection (b)—

(A) by redesignating such subsection as subsection (c); and

(B) by striking "subsection (a)" and inserting "subsections (a) and (b)";

(9) by inserting after subsection (a) the following:

"(b) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

"(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another, at a time when such person is an officer or employee of the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the District of Columbia is a party or has a direct and substantial interest, before any department, agency, court, officer, or commission; or

"(2) knowingly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was an officer or employee of the District of Columbia;

shall be subject to the penalties set forth in section 216 of this title."; and

(10) adding at the end the following:

"(d) Nothing in this section prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise representing his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

"(1) in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

"(2) in those matters that are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

"(e) Nothing in this section prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.".

SEC. 403. AMENDMENT TO SECTION 204 OF TITLE 18, UNITED STATES CODE.

Section 204 of title 18, United States Code, is amended to read as follows:

"§ 204. Practice in United States Claims Court or the United States Court of Appeals for the Federal Circuit by Members of Congress

"Whoever, being a Member of Congress or Member of Congress Elect, practices in the United States Claims Court or the United States Court of Appeals for the Federal Circuit shall be subject to the penalties set forth in section 216 of this title.".

SEC. 404. AMENDMENT TO SECTION 205 OF TITLE 18, UNITED STATES CODE.

Section 205 of title 18, United States Code, is amended to read as follows:

"§ 205. Activities of officers and employees in claims against and other matters affecting the Government

"(a) Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, other than in the proper discharge of his official duties—

"(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or

"(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

"(b) Whoever, being an officer or employee of the District of Columbia or an officer or employee of the Office of the United States Attorney for the District of Columbia, otherwise than in the proper discharge of official duties—

"(1) acts as agent or attorney for prosecuting any claim against the District of Columbia, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim; or

"(2) acts as agent or attorney for anyone before any department, agency, court, officer, or any commission in connection with any covered matter in which the District of Columbia is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

"(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a covered matter involving a specific party or parties—

"(1) in which he has at any time participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

"(2) which is pending in the department or agency of the Government in which he is serving.

Paragraph (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

"(d) Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

"(e) Nothing in subsection (a) or (b) prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for, or otherwise representing, his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

"(1) in those matters in which he has participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or

"(2) in those matters which are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

"(f) Nothing in subsection (a) or (b) prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

"(g) Nothing in this section prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

"(h) For the purpose of this section, the term 'covered matter' means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.".

SEC. 405. AMENDMENTS TO SECTION 208 OF TITLE 18, UNITED STATES CODE.

Section 208 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting "or" after "United States Government,";

(B) by inserting "an officer or employee" before "of the District of Columbia";

(C) by striking "partner" and inserting "general partner"; and

(D) by striking "Shall be fined not more than $10,000, or imprisoned not more than two years, or both." and inserting "Shall be subject to the penalties set forth in section 216 of this title."; and

(2) by striking subsection (b) and inserting the following:

"(b) Subsection (a) shall not apply—

"(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which

the Government may expect from such officer or employee;

"(2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been exempted from the requirements of paragraph (1) as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies;

"(3) in the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (including an individual being considered for an appointment to such a position), the official responsible for the employee's appointment, after review of the financial disclosure report filed by the individual pursuant to section 107 of the Ethics in Government Act of 1978, certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved; or

"(4) the financial interest that would be affected by the particular matter involved is that resulting solely from the interest of the officer or employee, or his or her spouse or minor child, in birthrights—

"(A) in an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

"(B) in an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States, or

"(C) in an Indian claims fund held in trust or administered by the United States,

if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.

"(c)(1) For the purpose of paragraph (1) of subsection (b), in the case of class A and B directors of Federal Reserve Banks, the Board of Governors of the Federal Reserve System shall be deemed to be the Government official responsible for appointment.

"(2) The potential availability of an exemption under any particular paragraph of subsection (b) does not preclude an exemption being granted pursuant to another paragraph of subsection (b).

"(d)(1) A copy of any determination by other than the Director of the Office of Government Ethics granting an exemption pursuant to subsection (b)(1) or (b)(3) shall be submitted to the Director, who shall make all determinations available to the public pursuant to section 105 of the Ethics in Government Act of 1978. For determinations pursuant to subsection (b)(3), the information from the financial disclosure report of the officer or employee involved describing the asset or assets that necessitated the waiver shall also be made available to the public. This subsection shall not apply, however, if the head of the agency or his or her designee determines that the determination under subsection (b)(1) or (b)(3), as the case may be, involves classified information.

"(2) The Office of Government Ethics, after consultation with the Attorney General, shall issue uniform regulations for the issuance of waivers and exemptions under subsection (b) which shall—

"(A) list and describe exemptions; and

"(B) provide guidance with respect to the types of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from the employee.".

SEC. 406. AMENDMENT TO SECTION 209 OF TITLE 18, UNITED STATES CODE.

Section 209(a) of title 18, United States Code, is amended by striking "Shall be fined not more than $5,000 or imprisoned not more than one year, or both." and inserting "Shall be subject to the penalties set forth in section 216 of this title.".

SEC. 407. PENALTIES AND INJUNCTIONS.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by inserting after section 215 the following new section:

"§ 216. Penalties and injunctions

"(a) The punishment for an offense under sections 203, 204, 205, 207, 208, and 209 of this title is the following:

"(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.

"(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

"(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under sections 203, 204, 205, 207, 208, and 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

"(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.".

(b) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 11 of title 18, United States Code, is amended by inserting after the item relating to section 215 the following:

"216. Penalties and injunctions.".

## TITLE V—OTHER ETHICS REFORMS

SEC. 501. REFERRAL OF ETHICS VIOLATIONS BY THE SENATE ETHICS COMMITTEE TO THE GENERAL ACCOUNTING OFFICE FOR INVESTIGATION.

If the Committee on Ethics of the Senate determines that there is a reasonable basis to believe that a Member, officer, or employee of the Senate may have committed an ethics violation, the committee may request the Office of Special Investigations of the General Accounting Office to conduct factfinding and an investigation into the matter. The Office of Special Investigations shall promptly investigate the matter as directed by the committee.

SEC. 502. NONRECOGNITION FOR CERTAIN SALES TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.

(a) GENERAL RULE.—Part III of subchapter O of chapter 1 of the Internal Revenue Code of 1986 (relating to common nontaxable exchanges) is amended by adding at the end thereof the following new section:

"SEC. 1043. SALE OF PROPERTY TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.

"(a) NONRECOGNITION OF GAIN.—If an eligible person sells any property pursuant to a certificate of divestiture, at the election of the taxpayer, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost (reduced by any basis adjustment under subsection (c) attributable to a prior sale) of any permitted property purchased by the taxpayer during the 60-day period beginning on the date of such sale.

"(b) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE PERSON.—The term 'eligible person' means—

"(A) an officer or employee of the executive branch of the Federal Government, but does not mean a special Government employee as defined in section 202 of title 18, United States Code, and

"(B) any spouse or minor or dependent child whose ownership of any property is attributable under any statute, regulation, rule, or executive order referred to in paragraph (2) to a person referred to in subparagraph (A).

"(2) CERTIFICATE OF DIVESTITURE.—The term 'certificate of divestiture' means any written determination—

"(A) that states that divestiture of specific property is reasonably necessary to comply with any Federal conflict of interest statute, regulation, rule, or executive order (including section 208 of title 18, United States Code), or requested by a congressional committee as a condition of confirmation,

"(B) that has been issued by the President or the Director of the Office of Government Ethics, and

"(C) that identifies the specific property to be divested.

"(3) PERMITTED PROPERTY.—The term 'permitted property' means any obligation of the United States or any diversified investment fund approved by regulations issued by the Office of Government Ethics.

"(4) PURCHASE.—The taxpayer shall be considered to have purchased any permitted property if, but for subsection (c), the unadjusted basis of such property would be its cost within the meaning of section 1012.

"(c) BASIS ADJUSTMENTS.—If gain from the sale of any property is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any permitted property which is purchased by the taxpayer during the 60-day period described in subsection (a).".

(b) TECHNICAL AMENDMENTS.—

(1) Section 1223 of such Code (relating to holding period of property) is amended by redesignating paragraph (14) as paragraph (15) and by inserting after paragraph (13) the following new paragraph:

"(14) In determining the period for which the taxpayer has held property the acquisi-

tion of which resulted under section 1043 in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property had been held as of the date of such sale.".

(2) Subsection (a) of section 1016 of such Code (relating to adjustments to basis) is amended by striking "and" at the end of paragraph (23), by striking the period at the end of paragraph (24) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(25) in the case of property the acquisition of which resulted under section 1043 in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in section 1043(c).".

(3) The table of sections for part III of subchapter O of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 1043. Sale of property to comply with conflict-of-interest requirements.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after the date of the enactment of this Act.

SEC. 503. USE OF GOVERNMENT VEHICLES.

Notwithstanding any other provision of law, the head of each department, agency, or other entity of each branch of the Government shall prescribe by rule appropriate conditions for the incidental use, for other than official business, of vehicles owned or leased by the Government. Such use with respect to vehicles owned or leased by, or the cost of which is reimbursed by, the House of Representatives or the Senate shall be only as prescribed by rule of the House of Representatives or the Senate, as applicable.

SEC. 504. AMENDMENT TO THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO ELIMINATE THE EXCESS CAMPAIGN FUND GRANDFATHER PROVISION.

(a) IN GENERAL.—Section 313 of the Federal Election Campaign Act of 1971 (2 U.S.C. 439a) is amended by striking ", with respect to" and all that follows through "1979,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)—

(1) in the case of an individual who serves as a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress in the 102d Congress or an earlier Congress, shall apply, except as provided in paragraph (2), to the use of excess amounts totaling more than the amount equal to the unobligated balance on hand on the date of the enactment of this Act; and

(2) in the case of an individual who serves as a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress after the 102d Congress (including an individual referred to in paragraph (1) who so serves), shall apply to the use of any excess amount on or after the first day of such service.

SEC. 505. REPEAL OF CERTAIN OBSOLETE PROVISIONS.

(a) RESTRICTION ON PAYMENT TO CERTAIN RETIRED MILITARY OFFICERS.—Subsection (a) of section 801 of title 37, United States Code, is repealed.

(b) INTERIOR APPROPRIATIONS.—Section 319 of the Act of September 27, 1988 (Interior Department Appropriations, Fiscal Year 1988) (Public Law 100-446, 102 Stat. 1774, 1826) is repealed.

SEC. 506. RECERTIFICATION OF SENIOR EXECUTIVES.

(a) Chapter 33 of title 5, United States Code, is amended—

(1) by inserting immediately following section 3393 the following new section:

"§ 3393a. Recertification

"(a)(1) In order to ensure that the performance of career appointees demonstrates the excellence needed to meet the goals of the Senior Executive Service, as set forth in section 3131, each career appointee shall be subject to recertification by the employing agency in accordance with the provisions of this section.

"(2) Beginning in calendar year 1991, and recurring every third calendar year thereafter, the head of an agency shall determine a time during such calendar year when the performance of career appointees in the agency shall be subject to recertification. Recertification shall not be required of any career appointee who has not been continuously employed as a senior executive for the 156 weeks preceding the time determined for the recertification. For the purposes of the previous sentence, a break in service of 6 months shall be deemed not to interrupt the 156 weeks of continuous employment.

"(b) The supervising official of each career appointee shall submit to a performance review board established by the agency under section 4314 a recommendation as to whether the career appointee's performance justifies recertification as a senior executive, based on such factors as the career appointee's performance ratings for the 3 preceding years under section 4314, any award or other recognition received by the career appointee, any developmental activities of the career appointee, and any other relevant factors. The supervising official's recommendation shall reflect that official's view as to whether the career appointee's overall performance over the 3 preceding years has demonstrated the excellence expected of a senior executive in relation to the written performance requirements for the career appointee's senior executive position as established under section 4312(b). The career appointee may submit to the performance review board a statement of accomplishments and other documentation giving evidence of the quality of the career appointee's performance.

"(c)(1) After considering the recommendation and other information received under subsection (b), the performance review board shall submit to the appointing authority a recommendation as to whether the career appointee should be recertified, conditionally recertified, or not recertified as a senior executive. If the board proposes to recommend conditional recertification or nonrecertification, then the affected appointee shall be so notified and shall have the opportunity to appear before the performance review board. If the board is recommending that the career appointee be recertified, the board may also recommend that the career appointee's rate of basic pay be increased to a higher rate established under section 5382. If the board is recommending that the career appointee be conditionally recertified, the board may recommend that the career appointee's pay be reduced to the next lower rate established under section 5382. The board shall also provide to the appointing authority the recommendation and other information received under subsection (b).

"(2) More than one-half of the members of a performance review board under this section shall consist of career appointees. The requirement of the preceding sentence shall not apply in any case in which the Office of Personnel Management determines that there exists an insufficient number of career appointees available to comply with the requirement.

"(d)(1) If the appointing authority determines that the career appointee's performance during the preceding 3 years demonstrates the excellence expected of a senior executive, the appointing authority shall recommend to the head of the agency that the career appointee be recertified as a senior executive.

"(2) If the appointing authority determines that the career appointee's performance has not demonstrated the excellence expected of a senior executive, the appointing authority shall recommend to the head of the agency that the career appointee be conditionally recertified as a senior executive or not be recertified as a senior executive.

"(e)(1) If the head of the agency decides that the career appointee's performance warrants recertification as a senior executive, the career appointee shall continue in the Senior Executive Service. If a career appointee is recertified as a senior executive, the career appointee's rate of basic pay may not be reduced at the time of recertification.

"(2) If the head of the agency decides that the career appointee's performance does not warrant full recertification, but does warrant conditional recertification, the career appointee—

"(A) shall remain a career appointee in the Senior Executive Service;

"(B) shall be subject to continuing close review of the career appointee's performance by the supervising official in coordination with an executive resources board established under section 3393, in accordance with a performance improvement plan developed by the supervising official and subject to the approval of the executive resources board;

"(C) may, if the head of the agency so determines, be reduced to the next lower rate of basic pay established under section 5382; and

"(D) shall be removed from the Senior Executive Service if the career appointee is not recertified as a senior executive at the end of the 12-month period following the conditional recertification.

If, at the end of the 12-month period following the conditional recertification, the career appointee is recertified as a senior executive, any reduction that was made in the career appointee's rate of basic pay under subparagraph (C) shall be restored prospectively.

"(3) If the head of the agency decides that the career appointee's performance does not demonstrate that the career appointee qualifies for recertification or conditional recertification as a senior executive, the career appointee shall be removed from the Senior Executive Service in accordance with section 3592.

"(f) The Office of Personnel Management shall prescribe standards and procedures to ensure consistency and fairness for the process of recertification under this section.".

(2) by inserting in the analysis, immediately following the item relating to section 3393, the following new item:

"3393a. Recertification.".

(b) Title 5, United States Code, is further amended as follows:

(1) in section 3151(a)(5)—

(A) by striking "and" at the end of subparagraph (C);

(B) by inserting "and" after the semicolon at the end of subparagraph (D); and

(C) by inserting after subparagraph (D) the following new subparagraph:

"(E) recertification consistent with section 3393a;";

(2) in section 3393(g), by inserting after "1207," the following: "3393a,";

(3) in section 3592(a)—

(A) by striking "or" at the end of paragraph (1);

(B) by inserting "or" after the comma at the end of paragraph (2);

(C) by inserting after paragraph (2) the following new paragraph:

"(3) if the career appointee is not recertified as a senior executive under section 3393a,"; and

(D) by inserting at the end thereof the following: "In the case of a removal under paragraph (3) of this subsection, the career appointee shall have the right to appeal the removal from the Senior Executive Service to the Merit Systems Protection Board under section 7701.";

(4) in section 3593(a)(2)—

(A) by striking "or";

(B) by striking the period and inserting in lieu thereof the following: ", or failure to be recertified as a senior executive under section 3393a.";

(5) in section 3594(b)—

(A) by striking "or" at the end of paragraph (1);

(B) by inserting "or" after the semicolon at the end of paragraph (2); and

(C) by inserting after paragraph (2) the following new paragraph:

"(3) is removed from the Senior Executive Service for failure to be recertified under section 3393a;";

(6) in section 7701(c)(1)(A) by striking "of" and inserting in lieu thereof the following: "of a removal from the Senior Executive Service for failure to be recertified under section 3393a or";

(7) in section 8336(h)—

(A) in paragraph (1) by striking "for" and inserting in lieu thereof the following: "for failure to be recertified as a senior executive under section 3393a or for";

(B) in paragraph (2) by striking "for" and inserting in lieu thereof the following: "for failure to be recertified as a senior executive or for"; and

(C) in paragraph (3) by striking "for" and inserting in lieu thereof the following: "for failure to be recertified as a senior executive or for";

(8) in section 8339(h) by striking the period at the end of the first sentence and inserting in lieu thereof the following: ", except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive.";

(9) in section 8414(a)—

(A) in paragraph (1) by striking "for" and inserting in lieu thereof the following: "for failure to be recertified as a senior executive under section 3393a or for";

(B) in paragraph (2) by striking "for" and inserting in lieu thereof the following: "for failure to be recertified as a senior executive or for"; and

(C) in paragraph (3) by striking "for" and inserting in lieu thereof the following: "for failure to be recertified as a senior executive or for"; and

(10) in section 8421(a)(2) by striking the period and inserting in lieu thereof the following: ", except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age".

(c)(1) Section 305 of the Foreign Service Act of 1980 is amended by inserting at the end thereof the following new subsection:

"(c) The Secretary shall by regulation establish a recertification process for members of the Senior Foreign Service that is equivalent to the recertification process for the Senior Executive Service under section 3393a of title 5, United States Code.".

(2) Section 12(a)(1) of the National Security Agency Act of 1959 is amended—

(A) by striking "and" at the end of paragraph (F);

(B) by inserting "and" after the semicolon at the end of paragraph (G); and

(C) by inserting after paragraph (G) the following new paragraph:

"(H) provide for the recertification of members of the Senior Cryptologic Executive Service consistent with the provisions of section 3393a of such title.".

(3) Section 1601(a) of title 10, United States Code, is amended—

(A) by striking "and" at the end of paragraph (6);

(B) by inserting "and" after the semicolon at the end of paragraph (7); and

(C) by inserting after paragraph (7) the following new paragraph:

"(8) provide for the recertification of members of the Defense Intelligence Senior Executive Service consistent with the provisions of section 3393a of title 5.".

(d) The amendments made by this section shall take effect on January 1, 1991.

SEC. 507. SUSPENSION OF EFFECT OF CERTAIN PROVISIONS OF LAW.

The following provisions of law shall have no force or effect during the period beginning on the day after the date of enactment of this Act and ending one year after such day:

(1) Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423).

(2) Sections 2397a and 2397b of title 10, United States Code.

(3) Section 281 of title 18, United States Code.

(4) Sections 603 through 606, subsections (a) and (b) of section 607, and subsections (a) and (c) of section 608 of the Department of Energy Organization Act.

## TITLE VI—LIMITATIONS ON OUTSIDE EMPLOYMENT AND ELIMINATION OF HONORARIA

SEC. 601. LIMITATIONS ON OUTSIDE EARNED INCOME AND EMPLOYMENT.

(a) LIMITATIONS.—Title V of the Ethics in Government Act of 1978 is amended to read as follows:

"TITLE V—GOVERNMENT-WIDE LIMITATIONS ON OUTSIDE EARNED INCOME AND EMPLOYMENT

"SEC. 501. OUTSIDE EARNED INCOME LIMITATION.

"(a) OUTSIDE EARNED INCOME LIMITATION.—

"(1) Except as provided by paragraph (2), a Member or an officer or employee who is not a career civil servant and whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code, may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year.

"(2) In the case of any individual who becomes a Member or an officer or employee who is not a career civil servant and whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule during a calendar year, such individual may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member, officer or employee which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year multiplied by a fraction the numerator of which is the number of days such individual is a Member, officer or employee during such calendar year and the denominator of which is 365.

"(b) HONORARIA PROHIBITION.—An individual may not receive any honorarium while that individual is a Member, officer or employee.

"(c) TREATMENT OF CHARITABLE CONTRIBUTIONS.—Any honorarium which, except for subsection (b), might be paid to a Member, officer or employee, but which is paid instead on behalf of such Member, officer or employee to a charitable organization, shall be deemed not to be received by such Member, officer or employee. No such payment shall exceed $2,000 or be made to a charitable organization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual derives any financial benefit.

"SEC. 502. LIMITATIONS ON OUTSIDE EMPLOYMENT.

"A Member or an officer or employee who is not a career civil servant and whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule shall not—

"(1) affiliate with or be employed by a firm, partnership, association, corporation, or other entity to provide professional services which involves a fiduciary relationship for compensation;

"(2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity;

"(3) practice a profession which involves a fiduciary relationship for compensation;

"(4) serve for compensation as an officer or member of the board of any association, corporation, or other entity; or

"(5) receive compensation for teaching, without the prior notification and approval of the appropriate entity referred to in section 503.

"SEC. 503. ADMINISTRATION.

"This title shall be subject to the rules and regulations of—

"(1) and administered by the committee of the House of Representatives assigned responsibility for administering the reporting requirements of title I with respect to Members, officers and employees of the House of Representatives;

"(2) the Office of Government Ethics and administered by designated agency ethics officials with respect to officers and employees of the executive branch; and

"(3) and administered by the Judicial Conference of the United States (or such other agency as it may designate) with respect to officers and employees of the judicial branch.

"SEC. 504. CIVIL PENALTIES.

"(a) CIVIL ACTION.—The Attorney General may bring a civil action in any appropriate United States district court against any individual who violates any provision of section 501 or 502. The court in which such action is brought may assess against such individual a civil penalty of not more than $10,000 or the amount of compensation, if any, which the individual received for the prohibited conduct, whichever is greater.

"(b) ADVISORY OPINIONS.—Any entity described in section 503 may render advisory opinions interpreting this title, in writing, to individuals covered by this title. Any individual to whom such an advisory opinion is rendered and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of such advisory opinion, acts in good faith in accordance with its provisions and findings shall not, as a result of such actions, be subject to any sanction under subsection (a).

"SEC. 505. DEFINITIONS.

"For purposes of this title:

"(1) The term 'Member' means a Representative in, or a Delegate or Resident Commissioner to, the Congress.

"(2) The term 'officer or employee' means any officer or employee of the Government except (A) any individual (other than the Vice President) whose compensation is disbursed by the Secretary of the Senate or (B) any special Government employee (as defined in section 202 of title 18, United States Code).

"(3) The term 'honorarium' means a payment of money or any thing of value for an appearance, speech or article by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed.

"(4) The term 'travel expenses' means, with respect to a Member, officer or employee, or a relative of any such individual, the cost of transportation, and the cost of lodging and meals while away from his or her residence or principal place of employment.

"(5) The term 'charitable organization' means an organization described in section 170(c) of the Internal Revenue Code of 1986.".

(b) CONFORMING AMENDMENTS.—

(1) Section 323 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441i) is amended—

(A) in subsection (a) by striking "No person while an elected or appointed officer or employee of the Federal Government" and by inserting "No person while a Senator or officer or employee of the Senate", and by striking "accept" the first place it appears; and

(B) in subsection (b) by striking "an elected or appointed officer or employee of any branch of the Federal Government" and by inserting "a Senator or any officer or employee of the Senate".

(2) Section 908(a)(3) of the Supplemental Appropriations Act, 1983 (2 U.S.C. 31-1(a)(3)), is amended to read as follows:

"(3) 'Member' means a Senator; and".

SEC. 602. TAX TREATMENT OF AMOUNTS PAID TO CHARITY.

Section 7701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following:

"(k) TREATMENT OF CERTAIN AMOUNTS PAID TO CHARITY.—In the case of any payment which, except for section 501(b) of the Ethics in Government Act of 1978, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c)—

"(1) such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

"(2) no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government and a Senator or officer (except the Vice President) or employee of the Senate shall not be treated as an officer or employee of the Federal Government.".

SEC. 603. EFFECTIVE DATE.

The amendments made by this title shall take effect on January 1, 1991. Such amendments shall cease to be effective if the provisions of section 703 are subsequently repealed, in which case the laws in effect before such amendments shall be deemed to be reenacted.

## TITLE VII—CITIZENS' COMMISSION ON PUBLIC SERVICE AND COMPENSATION

SEC. 701. CITIZENS' COMMISSION ON PUBLIC SERVICE AND COMPENSATION.

(a) REDESIGNATION.—

(1) IN GENERAL.—Section 225(a) of the Federal Salary Act of 1967 (2 U.S.C. 351) is amended by striking "Commission on Executive, Legislative, and Judicial Salaries" and inserting "Citizens' Commission on Public Service and Compensation".

(2) CONFORMING AMENDMENT.—The heading for section 225 of such Act (2 U.S.C. 351 and following) is amended to read as follows:

"CITIZENS' COMMISSION ON PUBLIC SERVICE AND COMPENSATION".

(b) MEMBERSHIP.—Section 225(b) of such Act (2 U.S.C. 352) is amended to read as follows:

"(b) MEMBERSHIP.—

"(1) The Commission shall be composed of 11 members, who shall be appointed from private life as follows:

"(A) 2 appointed by the President of the United States;

"(B) 1 appointed by the President pro tempore of the Senate, upon the recommendation of the majority and minority leaders of the Senate;

"(C) 1 appointed by the Speaker of the House of Representatives;

"(D) 2 appointed by the Chief Justice of the United States; and

"(E) 5 appointed by the Administrator of General Services in accordance with paragraph (4).

"(2) No person shall serve as a member of the Commission who is—

"(A) an officer or employee of the Federal Government;

"(B) registered (or required to register) under the Federal Regulation of Lobbying Act; or

"(C) a parent, sibling, spouse, child, or dependent relative, of anyone under subparagraph (A) or (B).

"(3) The persons appointed under subparagraphs (A) through (D) of paragraph (1) shall be selected without regard to political affiliation, and should be selected from among persons who have experience or expertise in such areas as government, personnel management, or public administration.

"(4) The Administrator of General Services shall by regulation establish procedures under which persons shall be selected for appointment under paragraph (1)(E). Such procedures—

"(A) shall be designed in such a way so as to provide for the maximum degree of geographic diversity practicable among members under paragraph (1)(E);

"(B) shall include provisions under which those members shall be chosen by lot from among names randomly selected from voter registration lists; and

"(C) shall otherwise comply with applicable provisions of this subsection.

"(5) The chairperson shall be designated by the President.

"(6) A vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made.

"(7) Each member of the Commission shall be paid at the rate of $100 for each day such member is engaged upon the work of the Commission and shall be allowed travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when engaged in the performance of services for the Commission.

"(8)(A) The terms of office of persons first appointed as members of the Commission shall be for the period of the 1993 fiscal year of the Federal Government, and shall begin not later than February 14, 1993.

"(B) After the close of the 1993 fiscal year of the Federal Government, persons shall be appointed as members of the Commission with respect to every fourth fiscal year following the 1993 fiscal year. The terms of office of persons so appointed shall be for the period of the fiscal year with respect to which the appointment is made, except that, if any appointment is made after the beginning and before the close of any such fiscal year, the term of office based on such appointment shall be for the remainder of such fiscal year.

"(C)(i) Notwithstanding any provision of subparagraph (A) or (B), members of the Commission may continue to serve after the close of a fiscal year, if the date designated by the President under subsection (g) (relating to the date by which the Commission is to submit its report to the President) is subsequent to the close of such fiscal year, and only if or to the extent necessary to allow the Commission to submit such report.

"(ii) Notwithstanding any provision of subsection (c), authority under such subsection shall remain available, after the close of a fiscal year, so long as members of the Commission continue to serve.".

(c) AMENDMENTS TO SECTION 225(c).—Section 225(c) of such Act (2 U.S.C. 353) is amended by striking "subsection (b) (2) and (3)" each place it appears and inserting "subparagraphs (A) and (B) of subsection (b)(8)".

(d) AMENDMENT TO SECTION 225(f).—Section 225(f) of such Act (2 U.S.C. 356) is amended by striking "subsection (b) (2) and (3)" and inserting "subparagraphs (A) and (B) of subsection (b)(8)".

(e) REPORT TO THE PRESIDENT.—Section 225(g) of such Act (2 U.S.C. 357) is amended—

(1) by amending the subsection heading to read as follows: "REPORT BY COMMISSION TO THE PRESIDENT WITH RESPECT TO PAY";

(2) in the first sentence, by striking "Commission of" and inserting "Commission with respect to rates of pay for"; and

(3) in the second sentence, by striking "December 15" and all that follows thereafter through the period and inserting "December 15 next following the close of the fiscal year in which the review is conducted by the Commission.".

(f) RECOMMENDATIONS OF THE PRESIDENT WITH RESPECT TO PAY.—Section 225(h) of such Act (2 U.S.C. 358) is amended to read as follows:

"(h) RECOMMENDATIONS OF THE PRESIDENT WITH RESPECT TO PAY.—

"(1) After considering the report and recommendations of the Commission submitted under subsection (g), the President shall transmit to Congress his recommendations with respect to the exact rates of pay, for offices and positions within the purview of subparagraphs (A), (B), (C), and (D) of subsection (f), which the President considers to be fair and reasonable in light of the Commission's report and recommendations, the prevailing market value of the services rendered in the offices and positions involved, the overall economic condition of the country, and the fiscal condition of the Federal Government.

"(2) The President shall transmit his recommendations under this subsection to Congress on the first Monday after January 3 of the first calendar year beginning after the date on which the Commission submits its report and recommendations to the President under subsection (g).".

(g) EFFECTIVE DATE OF RECOMMENDATIONS OF THE PRESIDENT.—

Section 225(i) of such Act (2 U.S.C. 359) is amended to read as follows:

"(i) EFFECTIVE DATE OF RECOMMENDATIONS OF THE PRESIDENT.—

"(1) None of the President's recommendations under subsection (h) shall take effect unless approved under paragraph (2).

"(2)(A) The recommendations of the President under subsection (h) shall be considered approved under this paragraph if there is enacted into law a bill or joint resolution approving such recommendations in their entirety. This bill or joint resolution shall be passed by recorded vote to reflect the vote of each Member of Congress thereon.

"(B)(i) The provisions of this subparagraph are enacted by the Congress—

"(I) as an exercise of the rulemaking power of the Senate and the House of Representatives and as such shall be considered as part of the rules of each House, and shall supersede other rules only to the extent that they are inconsistent therewith; and

"(II) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedures of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"(ii) During the 60-calendar-day period beginning on the date that the President transmits his recommendations to the Congress under subsection (h), it shall be in order as a matter of highest privilege in each House of Congress to consider a bill or joint resolution, if offered by the majority leader of such House (or a designee), approving such recommendations in their entirety.

"(3) Except as provided in paragraph (4), any recommended pay adjustment approved under paragraph (2) shall take effect as of the date proposed by the President under subsection (h) with respect to such adjustment.

"(4)(A) Notwithstanding the approval of the President's pay recommendations in accordance with paragraph (2), none of those recommendations shall take effect unless, between the date on which the bill or resolution approving those recommendations is signed by the President (or otherwise becomes law) and the earliest date as of which the President proposes (under subsection (h)) that any of those recommendations take effect, an election of Representatives shall have intervened.

"(B) For purposes of this paragraph, the term 'election of Representatives' means an election held on the Tuesday following the first Monday of November in any even-numbered calendar year.".

(h) AMENDMENT TO SECTION 225(j).—Section 225(j)(A) of such Act (2 U.S.C. 360(A)) is amended by striking "(other than" and all that follows thereafter through ", and" and inserting "(other than any provision of law enacted with respect to such recommendations in the period beginning on the date the President transmits his recommendations to the Congress under subsection (h) and ending on the date of their approval under subsection (i)(2)), and".

(i) REQUIREMENTS APPLICABLE TO RECOMMENDATIONS.—Section 225 of such Act (2 U.S.C. 351 and following) is amended by adding at the end the following:

"(l) REQUIREMENTS APPLICABLE TO RECOMMENDATIONS.—Notwithstanding any other provision of this section, the recommendations submitted by the Commission to the President under subsection (g), and the recommendations transmitted by the President to the Congress under subsection (h), shall be in conformance with the following:

"(1) Any recommended pay adjustment shall specify the date as of which it is proposed that such adjustment take effect.

"(2) The proposed effective date of a pay adjustment may occur no earlier than January 1 of the second fiscal year, and no later than December 31 next following the close of the fifth fiscal year, beginning after the fiscal year in which the Commission conducts its review under subsection (f).

"(3)(A)(i) The rates of pay recommended for the Speaker of the House of Representatives, the Vice President of the United States, and the Chief Justice of the United States, respectively, shall be equal.

"(ii) The rates of pay recommended for the majority and minority leaders of the Senate and the House of Representatives, the President pro tempore of the Senate, and each office or position under section 5312 of title 5, United States Code (relating to level I of the Executive Schedule), respectively, shall be equal.

"(iii) The rates of pay recommended for a Senator, a Member of the House of Representatives, the Resident Commissioner from Puerto Rico, a Delegate to the House of Representatives, a judge of a district court of the United States, a judge of the United States Court of International Trade, and each office or position under section 5313 of title 5, United States Code (relating to level II of the Executive Schedule), respectively, shall be equal.

"(B) Nothing in this subsection shall be considered to require that the rate recommended for any office or position by the President under subsection (h) be the same as the rate recommended for such office or position by the Commission under subsection (g).".

(j) ADDITIONAL FUNCTION.—Section 225 of such Act (2 U.S.C. 351 and following), as amended by subsection (i), is further amended by adding at the end the following:

"(m) ADDITIONAL FUNCTION.—The Commission shall, whenever it conducts a review under subsection (f), also conduct a review under this subsection relating to any recruitment or retention problems, and any public policy issues involved in maintaining appropriate ethical standards, with respect to any offices or positions within the Federal public service. Any findings or recommendations under this subsection shall be included by the Commission as part of its report to the President under subsection (g).".

(k) PROVISION RELATING TO CERTAIN OTHER PAY ADJUSTMENTS.—Section 225 of such Act (2 U.S.C. 351 and following) is amended by adding after subsection (m) (as added by subsection (j)) the following:

"(n) PROVISION RELATING TO CERTAIN OTHER PAY ADJUSTMENTS.—

"(1) A provision of law increasing the rate of pay payable for an office or position within the purview of subparagraph (A), (B), (C), or (D) of subsection (f) shall not take effect before the beginning of the Congress following the Congress during which such provision is enacted.

"(2) For purposes of this subsection, a provision of law enacted during the period beginning on the Tuesday following the first Monday of November of an even-numbered year of any Congress and ending at noon on the following January 3 shall be considered to have been enacted during the first session of the following Congress.

"(3) Nothing in this subsection shall be considered to apply with respect to any pay increase—

"(A) which takes effect under the preceding subsections of this section;

"(B) which is based on a change in the Employment Cost Index (as determined under section 704(a)(1) of the Ethics Reform Act of 1989) or which is in lieu of any pay adjustment which might otherwise be made in a year based on a change in such index (as so determined); or

"(C) which takes effect under section 702 or 703 of the Ethics Reform Act of 1989.".

SEC. 702. RESTORATION OF COMPARABILITY ADJUSTMENTS.

(a) RESTORATION.—

(1) IN GENERAL.—Effective for pay periods beginning on or after the date of enactment of this Act, the rate of basic pay for any office or position in the executive, legislative, or judicial branch of the Government or in the government of the District of Columbia shall be determined as if the provisions of law cited in paragraph (2) had never been enacted.

(2) CITATIONS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Section 620(b) of the Treasury, Postal Service and General Government Appropriations Act, 1989 (2 U.S.C. 5305 note).

(B) Section 619(b) of the Treasury, Postal Service and General Government Appropriations Act, 1990 (Public Law 101-136).

(b) EXCEPTIONS.—Notwithstanding any other provision of this section, the rate of basic pay for a Senator, the President pro tempore of the Senate, and the majority leader and the minority leader of the Senate shall be determined as if subsection (a) had not been enacted.

(c) SPECIFIC AUTHORITY.—For purposes of section 140 of Public Law 97-92 (28 U.S.C.

461 note), appropriate salary increases are hereby authorized for Federal judges and Justices of the Supreme Court pursuant to subsection (a).

(d) SPECIAL RULE.—Notwithstanding any other provision of this section, no adjustment in any rate of pay shall become effective, as a result of the enactment of this section, before the first applicable pay period beginning on or after the date as of which the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is rescinded.

SEC. 703. SALARY LEVELS OF SENIOR GOVERNMENT OFFICIALS.

(a) SALARY LEVELS.—

(1) EXECUTIVE POSITIONS.—Effective the first day of the first applicable pay period that begins on or after January 1, 1991, the rate of basic pay for positions in the Executive Schedule shall be increased in the amount of 25 percent of their respective rates (as last in effect before the increase), rounded to the nearest multiple of $100 (or, if midway between multiples of $100, to the next higher multiple of $100).

(2) LEGISLATIVE POSITIONS; OFFICE OF THE VICE PRESIDENT.—

(A) GENERALLY.—Effective the first day of the first applicable pay period that begins on or after January 1, 1991, the rate of basic pay for the offices and positions under subparagraphs (A) and (B) of section 225(f) of the Federal Salary Act of 1967 (2 U.S.C. 356 (A) and (B)) shall be increased in the amount of 25 percent of their respective rates (as last in effect before the increase), rounded to the nearest multiple of $100 (or, if midway between multiples of $100, to the next higher multiple of $100), except as provided in subparagraph (B).

(B) EXCEPTIONS.—Nothing in subparagraph (A) shall affect the rate of basic pay for a Senator, the President pro tempore of the Senate, or the majority leader or the minority leader of the Senate.

(3) JUDICIAL POSITIONS.—Effective the first day of the first applicable pay period that begins on or after January 1, 1991, the rate of basic pay for the Chief Justice of the United States, an associate justice of the Supreme Court of the United States, a judge of a United States circuit court, a judge of a district court of the United States, and a judge of the United States Court of International Trade shall be increased in the amount of 25 percent of their respective rates (as last in effect before the increase), rounded to the nearest multiple of $100 (or, if midway between multiples of $100, to the next higher multiple of $100).

(b) COORDINATION RULE.—If a pay adjustment under subsection (a) is to be made for an office or position as of the same date as any other pay adjustment affecting such office or position, the adjustment under subsection (a) shall be made first.

SEC. 704. REVISION IN METHOD BY WHICH ANNUAL PAY ADJUSTMENTS FOR CERTAIN EXECUTIVE, LEGISLATIVE, AND JUDICIAL POSITIONS ARE TO BE MADE.

(a) PERCENT CHANGE IN THE EMPLOYMENT COST INDEX.—

(1) METHOD FOR COMPUTING PERCENT CHANGE IN THE ECI.—

(A) DEFINITIONS.—For purposes of this paragraph—

(i) the term "Employment Cost Index" or "ECI" means the Employment Cost Index (wages and salaries, private industry workers) published quarterly by the Bureau of Labor Statistics; and

(ii) the term "base quarter" means the 3-month period ending on December 31 of a year.

(B) METHOD.—For purposes of the provisions of law amended by paragraph (2), the "most recent percentage change in the ECI", as of any date, shall be one-half of 1 percent less than the percentage (rounded to the nearest one-tenth of 1 percent) derived by—

(i) reducing—

(I) the ECI for the last base quarter prior to that date, by

(II) the ECI for the second to last base quarter prior to that date,

(ii) dividing the difference under clause (i) by the ECI for the base quarter referred to in clause (i)(II), and

(iii) multiplying the quotient under clause (ii) by 100,

except that no percentage change determined under this paragraph shall be—

(I) less than zero; or

(II) greater than 5 percent.

(2) PROVISIONS THROUGH WHICH NEW METHOD IS TO BE IMPLEMENTED.—

(A) AMENDMENT TO TITLES 3, 5, AND 28 OF THE UNITED STATES CODE.—Section 104 of title 3, United States Code, section 5318 of title 5, United States Code, and section 461(a) of title 28, United States Code, are amended by striking "corresponds to" and all that follows thereafter through the period, and inserting the following:

"corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.".

(B) AMENDMENT TO THE LEGISLATIVE REORGANIZATION ACT OF 1946.—Section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) is amended by striking "corresponds to" and all that follows thereafter through the period and inserting the following:

"corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.".

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on January 1, 1991.

SEC. 705. WORK PERFORMED BY SENIOR JUDGES IN ORDER TO RECEIVE CERTAIN SALARY INCREASES.

(a) IN GENERAL.—Section 371 of title 28, United States Code, is amended—

(1) in subsection (b)—

(A) by inserting "(1)" after "(b)";

(B) by inserting "or her" after "his"; and

(C) by striking the period and inserting the following: "if he or she meets the requirements of subsection (f).

"(2) In a case in which a justice or judge who retires under paragraph (1) does not meet the requirements of subsection (f), the justice or judge shall continue to receive the salary that he or she was receiving when he or she was last in active service or, if a certification under subsection (f) was made for such justice or judge, when such a certification was last in effect. The salary of such justice or judge shall be adjusted under section 461 of this title."; and

(2) by adding at the end the following new subsection:

"(f)(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

"(A) The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

"(B) The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average judge in active service would perform in three months.

"(C) The justice or judge has, in the preceding calendar year, performed work described in subparagraphs (A) and (B) in an amount which, when calculated in accordance with such subparagraphs, in the aggregate equals at least 3 months work.

"(D) The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch.

"(E) The justice or judge was unable in the preceding calendar year to perform judicial or administrative work to the extent required by any of subparagraphs (A) through (D) because of a temporary or permanent disability. A certification under this subparagraph shall be made to a justice who certifies in writing his or her disability to the Chief Justice, and to a judge who certifies in writing his or her disability to the chief judge of the circuit in which the judge sits. A justice or judge who is certified under this subparagraph as having a permanent disability shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

"(2) Determinations of work performed under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be made pursuant to rules promulgated by the Judicial Conference of the United States. In promulgating such criteria, the Judicial Conference shall take into account existing standards promulgated by the Conference for allocation of space and staff for senior judges.

"(3) If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she

is thereafter ineligible to receive such a certification.

"(4) In the case of any justice or judge who retires under subsection (b) during a calendar year, there shall be included in the determination under this subsection of work performed during that calendar year all work performed by that justice or judge (as described in subparagraphs (A), (B), (C), and (D) of paragraph (1)) during that calendar year before such retirement.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall first apply with respect to work performed on or after January 1, 1990, by a justice or judge of the United States who has retired under section 371(b) of title 28, United States Code.

(2) CALENDAR YEAR 1990.—In the case of certifications required by section 371(f) of title 28, United States Code, for calendar year 1990—

(A) such certifications shall be based on the 10-month period beginning on January 1, 1990, and ending on October 31, 1990, and shall be completed not later than December 15, 1990;

(B) determinations of work performed under section 371(f) of title 28, United States Code, shall be made pro rata on the basis of such 10-month period; and

(C) such certifications shall be deemed to be certifications made in calendar year 1991.

## TITLE VIII—AMENDMENTS TO THE RULES OF THE HOUSE OF REPRESENTATIVES

SEC. 801. ACCEPTANCE OF GIFTS.

(a) DOLLAR LIMITS.—Clause 4 of rule XLIII of the Rules of the House of Representatives is amended to read as follows:

"4. A Member, officer or employee of the House of Representatives shall not accept gifts (other than the personal hospitality of an individual or with a fair market value of $75 or less) in any calendar year aggregating more than the minimal value as established by paragraph (5) of section 7342 of title 5, United States Code, directly or indirectly from any person (other than from a relative), except to the extent permitted by written waiver granted in exceptional circumstances by the Committee on Standards of Official Conduct pursuant to clause 4(e)(1)(E) of rule X.".

(b) DEFINITIONS.—The last undesignated paragraph of rule XLIII of the Rules of the House of Representatives is amended—

(1) by striking the dash after "Conduct" and by striking "(1) The" and by inserting ", the";

(2) by striking "the person reporting" and by inserting "such Member, officer, or employee, and shall be deemed to include the fiance or fiancee of the Member, officer, or employee"; and

(3) by repealing subparagraph (2).

(c) Rule XLIII of the Rules of the House of Representatives is amended by inserting after clause 11 the following:

"12. (a) Except as provided by paragraph (b), any employee of the House of Representatives who is required to file a report pursuant to rule XLIV shall refrain from participating personally and substantially as an employee of the House of Representatives in any contact with any agency of the executive or judicial branch of Government with respect to non-legislative matters affecting any non-governmental person in which the employee has a significant financial interest.

"(b) Paragraph (a) shall not apply if an employee first advises his employing authority of his significant financial interest and obtains from his employing authority a written waiver stating that the participation of the employee is necessary. A copy of each such waiver shall be filed with the Committee on Standards of Official Conduct.".

(d) ADDITIONAL DUTIES OF THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.—Clause 4(e)(1) of rule X of the Rules of the House of Representatives is amended by striking "and" before "(D)" and by inserting before the period the following: "; and (E) to give consideration to the request of any Member, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XLIII".

(e) ADVISORY OPINION AMENDMENTS.—The Committee on Standards of Official Conduct of the House of Representatives shall amend its advisory opinions relating to the acceptance of gifts (1) to prohibit lodging received as personal hospitality in excess of 30 days in any calendar year from any individual unless a written waiver is granted by the committee and (2) to exempt gifts of food and beverages consumed not in connection with gifts of lodging from coverage under clause 4 of rule XLIII of the Rules of the House of Representatives.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1990.

SEC. 802. USE OF OFFICIAL RESOURCES.

(a) QUALIFICATIONS OF OFFICERS AND EMPLOYEES.—Rule XLI of the Rules of the House of Representatives is amended to read as follows:

"RULE XLI.

"QUALIFICATIONS OF OFFICERS AND EMPLOYEES.

"No person shall be an officer or employee of the House, or continue in its employment, who shall be an agent for the prosecution of any claim against the Government or be interested in such claim otherwise than as an original claimant or than in the proper discharge of official duties.".

(b) RIGHTS AND DUTIES OF STAFF.—(1) Clause 8 of rule XLIII of the Rules of the House of Representatives is amended to read as follows:

"8. A Member or officer of the House of Representatives shall retain no one under his payroll authority who does not perform official duties commensurate with the compensation received in the offices of the employing authority. In the case of committee employees who work under the direct supervision of a Member other than a chairman, the chairman may require that such Member affirm in writing that the employees have complied with the preceding sentence (subject to clause 6 of rule XI) as evidence of the chairman's compliance with this clause and with clause 6 of rule XI.".

(2) Clause 9 of rule XLIII of the Rules of the House of Representatives is amended by inserting "(including marital or parental status), handicap" after "sex" and by inserting before the period the following: ", but may take into consideration the domicile or political affiliation of such individual".

(3) Clause 6 of rule XI of the Rules of the House of Representatives is amended—

(A) in paragraph (a)(3) by striking subdivision (A) and by redesignating subdivisions (B) and (C) as subdivisions (A) and (B), respectively; and

(B) in paragraph (a)(3)(A) (as redesignated) by inserting "during congressional working hours" after "business"; and

(C) in paragraph (b)(1) by striking ", without regard to race, creed, sex, or age".

(c) CLARIFICATION OF POLITICAL ACTIVITIES.—The second sentence of clause 6 of rule XLIII of the Rules of the House of Representatives is amended to read as follows: "A Member shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable campaign expenditures and shall expend no funds from his campaign account not attributable to bona fide campaign or political purposes.".

(d) USE OF OFFICIAL VEHICLES.—The Committee on House Administration of the House of Representatives shall take such action as may be necessary to carry out section 503 with respect to vehicles of the House of Representatives.

(e) USE OF CAMPAIGN VEHICLES.—The Committee on Standards of Official Conduct of the House of Representatives shall issue an advisory opinion to provide for appropriate conditions for the incidental noncampaign use of vehicles owned or leased by a campaign committee of a Member of the House of Representatives.

(f) CONFORMING AMENDMENT.—Clause 1 of rule XLIV of the Rules of the House of Representatives is amended by striking "July 1" and by inserting "August 1" and by striking "May 15" and by inserting "June 15".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1990.

SEC. 803. REFORMS RESPECTING THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.

(a) MEMBERSHIP OF COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.—Clause (6)(a)(2) of rule X of the Rules of the House of Representatives is amended by inserting at the end the following: "No Member shall serve as a member of the Committee on Standards of Official Conduct during more than 3 Congresses in any period of 5 successive Congresses (disregarding for this purpose any service performed as a member of such committee for less than a full session in any Congress).".

(b) COMMITTEE COMPOSITION.—The respective party caucus or conference of the House of Representatives shall each nominate to the House of Representatives at the beginning of each Congress 7 members to serve on the Committee on Standards of Official Conduct.

(c) INVESTIGATIVE SUBCOMMITTEES.—The Committee on Standards of Official Conduct shall adopt rules providing—

(1) for the establishment of a 4 or 6-member investigative subcommittee (with equal representation from the majority and minority parties) whenever the committee votes to undertake any investigation;

(2) that the senior majority and minority members on an investigative subcommittee shall serve as the chairman and ranking minority member of the subcommittee; and

(3) that the chairman and ranking minority member of the full committee may only serve as non-voting, ex officio members on an investigative subcommittee.

Clause 5(d) of rule XI of the Rules of the House of Representatives shall not apply to any investigative subcommittee.

(d) ADJUDICATORY SUBCOMMITTEES.—The Committee on Standards of Official Conduct shall adopt rules providing—

(1) that upon the completion of an investigation, an investigative subcommittee shall report its findings and recommendations to the committee;

(2) that, if an investigative subcommittee by majority vote of its membership adopts a statement of alleged violation, the remaining members of the committee shall com-

prise an adjudicatory subcommittee to hold a disciplinary hearing on the violation alleged in the statement;

(3) that any statement of alleged violation and any written response thereto shall be made public at the first meeting or hearing on the matter which is open to the public after the respondent has been given full opportunity to respond to the statement in accordance with committee rules, but, if no public hearing or meeting is held on the matter, the statement of alleged violation and any written response thereto shall be included in the committee's final report to the House of Representatives as required by clause 4(e)(1)(B) of rule X of the Rules of the House of Representatives;

(4) that a quorum for an adjudicatory subcommittee for the purpose of taking testimony and conducting any business shall consist of a majority of the membership of the subcommittee plus one; and

(5) that an adjudicatory subcommittee shall determine, after receiving evidence, whether the counts in the statement have been proved and shall report its findings to the committee.

Clause 5(d) of rule XI of the Rules of the House of Representatives shall not apply to any adjudicatory subcommittee.

(e) ADMINISTRATIVE ACTIONS.—Clause 4(e)(1)(A) of rule X of the Rules of the House of Representatives is amended by inserting after "House" the second time it appears the following: ", and any letter of reproval or other administrative action of the committee pursuant to an investigation under subdivision (B) shall only be issued or implemented as a part of a report required by such subdivision".

(f) REPORT TO THE HOUSE.—Clause 4(e)(1)(B) of rule X of the Rules of the House of Representatives is amended by striking everything after "hearing" through the semicolon and by inserting the following: "(unless the right to a hearing is waived by the Member, officer, or employee), shall report to the House its findings of fact and recommendations, if any, upon the final disposition of any such investigation, and such action as the committee may deem appropriate in the circumstances;".

(g) STATUTE OF LIMITATIONS.—Clause 4(e)(2)(C) of rule X of the Rules of the House of Representatives is amended by inserting before the period the following: "; nor shall any investigation be undertaken by the committee of any alleged violation which occurred before the third previous Congress unless the committee determines that the alleged violation is directly related to any alleged violation which occurred in a more recent Congress".

(h) RIGHT TO COUNSEL.—Clause 1 of rule XXXII of the Rules of the House of Representatives is amended by inserting "and one attorney to accompany any Member who is the respondent in an investigation undertaken by the Committee on Standards of Official Conduct when the recommendation of such committee is under consideration;" after the last semicolon.

(i) ADVICE AND EDUCATION.—

(1) The Committee on Standards of Official Conduct shall establish within the committee an Office on Advice and Education (hereinafter in this subsection referred to as the "Office") under the supervision of the chairman.

(2) The Office shall be headed by a director who shall be appointed by the chairman, in consultation with the ranking minority member, and shall be comprised of such staff as the chairman determines is necessary to carry out the responsibilities of the Office.

(3) The primary responsibilities of the Office shall include:

(A) Providing information and guidance to Members, officers and employees of the House regarding any laws, rules, regulations, and other standards of conduct applicable to such individuals in their official capacities, and any interpretations and advisory opinions of the committee.

(B) Submitting to the chairman and ranking minority member of the committee any written request from any such Member, officer or employee for an interpretation of applicable laws, rules, regulations, or other standards of conduct, together with any recommendations thereon.

(C) Recommending to the committee for its consideration formal advisory opinions of general applicability.

(D) Developing and carrying out, subject to the approval of the chairman, periodic educational briefings for Members, officers and employees of the House on those laws, rules, regulations, or other standards of conduct applicable to them.

(4) No information provided to the Committee on Standards of Official Conduct by a Member, officer or employee of the House of Representatives when seeking advice regarding prospective conduct of such Member, officer or employee may be used as the basis for initiating an investigation under clause 4(e)(1)(B) of rule X of the Rules of the House of Representatives, if such Member, officer or employee acts in accordance with the written advice of the committee.

(j) EFFECTIVE DATE.—This section shall take effect immediately before noon January 3, 1991, except that subsections (g), (h), and (i) shall take effect on January 1, 1990.

SEC. 804. ELIMINATION OF HONORARIA AND LIMITATIONS ON OUTSIDE EARNED INCOME AND EMPLOYMENT.

(a) HONORARIA AND OUTSIDE EARNED INCOME.—Clauses 1 and 2 of rule XLVII of the Rules of the House of Representatives are amended to read as follows:

"1. (a)(1) Except as provided by subparagraph (2), in calendar year 1991 or thereafter, a Member or an officer or employee of the House may not—

"(A) have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year; or

"(B) receive any honorarium.

"(2) In the case of any individual who becomes a Member or an officer or employee of the House during calendar year 1991 or thereafter, such individual may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member, officer or employee which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year multiplied by a fraction the numerator of which is the number of days such individual is a Member, officer, or employee during such calendar year and the denominator of which is 365.

"(3) In calendar year 1991 or thereafter, any payment in lieu of an honorarium which is made to a charitable organization on behalf of a Member, officer or employee of the House may not be received by such individual. No such payment shall exceed $2,000 or be made to a charitable organization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual derives any financial benefit.

"(b)(1) Except as provided by subparagraph (2), in calendar year 1990, a Member may not have outside earned income (including honoraria received in such calendar year) attributable to such calendar year which exceeds 30 percent of the annual pay as a Member to which the Member was entitled in 1989.

"(2) In the case of any individual who becomes a Member during calendar year 1990, such individual may not have outside earned income (including honoraria) attributable to the portion of that calendar year which occurs after such individual becomes a Member which exceeds 30 percent of $89,500 multiplied by a fraction the numerator of which is the number of days such individual is a Member during such calendar year and the denominator of which is 365.".

(b) LIMITATIONS ON OUTSIDE EMPLOYMENT.—Rule XLVII of the Rules of the House of Representatives is amended by inserting after clause 1 the following new clause:

"2. On or after January 1, 1991, a Member or an officer or employee of the House shall not—

"(1) affiliate with or be employed by a firm, partnership, association, corporation, or other entity to provide professional services which involves a fiduciary relationship for compensation;

"(2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity;

"(3) practice a profession which involves a fiduciary relationship for compensation;

"(4) serve for compensation as an officer or member of the board of any association, corporation, or other entity; or

"(5) receive compensation for teaching, without the prior notification and approval of the Committee on Standards of Official Conduct.".

(c) DEFINITIONS.—Clause 3 of rule XLVII is amended—

(1) by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively, and by inserting after paragraph (a) the following new paragraph:

"(b)(1) Except as provided by paragraph (2), the term 'officer or employee of the House' means any individual (other than a Member) whose pay is disbursed by the Clerk and who is paid at a rate equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code, and so employed for more than 90 days in a calendar year.

"(2) When used with respect to honoraria, the term 'officer or employee of the House' means any individual (other than a Member) whose salary is disbursed by the Clerk.";

(2) by striking paragraphs (c) and (d) (as redesignated) and by inserting the following:

"(c) The term 'honorarium' means a payment of money or any thing of value for an appearance, speech or article by a Member or an officer or employee of the House, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such ex-

penses to the extent that such expenses are not paid or reimbursed.

"(d) The term 'travel expenses' means, with respect to a Member or an officer or employee of the House, or a relative of any such individual, the cost of transportation, and the cost of lodging and meals while away from his or her residence or principal place of employment.".

(3) in paragraph (e) (as redesignated)—

(A) by striking "professional fees, honorariums," and inserting "fees,";

(B) by striking "(other than copyright royalties)"; and

(C) by striking "and" at the end of subparagraph (3), by striking the period at the end of subparagraph (4) and inserting "; and", and by inserting after subparagraph (4) the following:

"(5) copyright royalties received from established publishers pursuant to usual and customary contractual terms."; and

(4) by inserting at the end the following:

"(f) The term 'charitable organization' means an organization described in section 170(c) of the Internal Revenue Code of 1986.".

(d) TITLE CHANGE.—The title of rule XLVII of the Rules of the House of Representatives is amended to read as follows: "LIMITATIONS ON OUTSIDE EMPLOYMENT AND EARNED INCOME.".

(e) CONFORMING AMENDMENT.—Effective January 1, 1991, clause 5 of rule XLIII of the Rules of the House of Representatives is amended by striking everything after "activity" and inserting a period.

(f) EFFECTIVE DATE.—Except as provided by subsection (e), the amendments made by this section shall take effect on January 1, 1990. The amendments made by this section shall cease to be effective if the provisions of section 703 are subsequently repealed, in which case the rules in effect before the amendments made by this section shall be deemed to be readopted.

SEC. 805. RESTRICTIONS ON REIMBURSABLE TRAVEL EXPENSES.

(a) RESTRICTIONS.—The Committee on Standards of Official Conduct of the House of Representatives shall amend its advisory opinions relating to the acceptance of necessary travel expenses incurred on or after January 1, 1990, in connection with speaking engagements and similar events to—

(1) prohibit the acceptance of such expenses for more than 4 consecutive days in the case of domestic travel and 7 consecutive days (excluding travel days) in the case of foreign travel; and

(2) permit the acceptance of travel expenses for the spouse or other family member in connection with any substantial participation event or fact-finding activity.

(b) EXEMPTION AUTHORITY.—The Committee on Standards of Official Conduct of the House of Representatives is authorized to grant prior written exemptions from the limitations contained in subsection (a)(1) in exceptional circumstances.

SEC. 806. EXERCISE OF RULEMAKING POWERS.

The provisions of this title are enacted by the Congress as an exercise of the rulemaking power of the House of Representatives and as such they shall be considered as part of the rules of the House and shall supersede other rules only to the extent they are inconsistent therewith; and with full recognition of the constitutional right of the House to change such rules (so far as relating to the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

## TITLE IX—REGULATIONS RELATING TO THE SENATE

SEC. 901. GIFTS AND TRAVEL.

(a) GIFTS.—(1) No Member, officer, or employee of the Senate, or the spouse or dependent thereof, shall knowingly accept, directly or indirectly, any gift or gifts having an aggregate value exceeding $100 during a calendar year directly or indirectly from any person, organization, or corporation having a direct interest in legislation before the Congress or from any foreign national unless, in an unusual case, a waiver is granted by the Select Committee on Ethics.

(2) No Member, officer, or employee of the Senate, or the spouse or dependent thereof, shall knowingly accept, directly or indirectly, any gift or gifts having an aggregate value exceeding $300 during a calendar year from any person, organization, or corporation unless, in an unusual case, a waiver is granted by the Select Committee on Ethics.

(3) In determining the aggregate value of any gift or gifts accepted by an individual during a calendar year from any person, organization, or corporation, there may be deducted the aggregate value of gifts (other than gifts described in paragraph (5)) given by such individual to such person, organization, or corporation during that calendar year.

(4) For purposes of this subsection, only the following shall be deemed to have a direct interest in legislation before the Congress:

(A) a person, organization, or corporation registered under the Federal Regulation of Lobbying Act of 1946, or any successor statute, a person who is an officer or director of such a registered lobbyist, or a person who has been employed or retained by such a registered lobbyist for the purpose of influencing legislation before the Congress; or

(B) a corporation, labor organization, or other organization which maintains a separate segregated fund for political purposes (within the meaning of section 321 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b)), a person who is an officer or director of such corporation, labor organization, or other organization, or a person who has been employed or retained by such corporation, labor organization, or other organization for the purpose of influencing legislation before the Congress.

(5) The prohibitions of this subsection do not apply to gifts—

(A) from relatives;

(B) with a value of less than $75;

(C) of personal hospitality of an individual; or

(D) from an individual who is a foreign national if that individual is not acting; directly or indirectly, on behalf of a foreign corporation, partnership or business enterprise, a foreign trade, cultural, educational or other association, a foreign political party or a foreign government.

(6) For purposes of this subsection—

(A) the term "gift" means a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received, but does not include (1) a political contribution otherwise reported as required by law, (2) a loan made in a commercially reasonable manner (including requirements that the loan be repaid and that a reasonable rate of interest be paid), (3) a bequest, inheritance, or other transfer at death, (4) a bona fide award presented in recognition of public service and available to the general public, (5) a reception at which the Member, officer, or employee is to be honored, provided such individual receives no other gifts that exceed the restrictions in this rule, other than a suitable memento, (6) meals or beverages consumed or enjoyed, provided the meals or beverages are not consumed or enjoyed in connection with a gift of overnight lodging, or (7) anything of value given to a spouse or dependent of a reporting individual by the employer of such spouse or dependent in recognition of the service provided by such spouse or dependent; and

(B) the term "relative" has the same meaning given to such term in section 107(2) of title I of the Ethics in Government Act of 1978 (Public Law 95-521).

(7) If a Member, officer, or employee, after exercising reasonable diligence to obtain the information necessary to comply with this rule, unknowingly accepts a gift described in paragraph (1) such Member, officer, or employee shall, upon learning of the nature of the gift and its source, return the gift or, if it is not possible to return the gift, reimburse the donor for the value of the gift.

(8)(A) Notwithstanding the provisions of this subsection, a Member, officer, or employee of the Senate may participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization if such participation is not in violation of any law and if the select Committee on Ethics has determined that participation in such program by Members, officers, or employees of the Senate is in the interests of the Senate and the United States.

(B) Any Member who accepts an invitation to participate in any such program shall notify the Select Committee in writing of his acceptance. A Member shall also notify the Select Committee in writing whenever he has permitted any officer or employee whom he supervises to participate in any such program. The chairman of the Select Committee shall place in the Congressional Record a list of all individuals, participating, the supervisors of such individuals where applicable; and the nature and itinerary of such program.

(C) No Member, officer, or employee may accept funds in connection with participation in a program permitted under subparagraph (A) if such funds are not used for necessary food, lodging, transportation, and related expenses of the Member, officer, or employee.

(b) LIMITS ON DOMESTIC AND FOREIGN TRAVEL BY MEMBERS AND STAFF OF THE SENATE.—The term "necessary expenses", with respect to limits on domestic and foreign travel by Members and staff of the Senate, means reasonable expenses for food, lodging, or transportation which are incurred by a Member, officer, or employee of the Senate in connection with services provided to (or participation in an event sponsored by) the organization which provides reimbursement for such expenses or which provides the food, lodging, or transportation directly. Necessary expenses do not include the provision of food, lodging, or transportation, or the payment for such expenses, for a continuous period in excess of 3 days (and 2 nights) exclusive of travel time within the United States or 7 days (and 6 nights) exclusive of travel time outside of the United

States unless such travel is approved by the Committee on Ethics as necessary for participation in a conference, seminar, meeting or similar matter. Necessary expenses do not include the provision of food, lodging, or transportation, or the payment for such expenses, for anyone accompanying a Member, officer, or employee of the Senate, other than the spouse of a Member, officer, or employee of the Senate or one Senate employee acting as an aide to a Member.

SEC. 902. TRANSMITTAL OF FINANCIAL DISCLOSURE REPORTS.

(a) The Select Committee on Ethics shall transmit a copy of each report filed with it under title I of the Ethics in Government Act of 1978 (other than a report filed by a Member of Congress) to the head of the employing office of the individual filing the report.

(b) For purposes of this section, the head of the employing office shall be—

(A) in the case of an employee of a Member, the Member by whom that person is employed;

(B) in the case of an employee of a Committee, the chairman and ranking minority member of such Committee;

(C) in the case of an employee on the leadership staff, the Member of the leadership on whose staff such person serves; and

(D) in the case of any other employee of the legislative branch, the head of the office in which such individual serves.

SEC. 903. AMENDMENT TO SENATE CONFLICT OF INTEREST RULE.

(a) Except as provided by subsection (b), any employee of the Senate who is required to file a report pursuant to Senate rules shall refrain from participating personally and substantially as an employee of the Senate in any contact with any agency of the executive or judicial branch of Government with respect to non-legislative matters affecting any non-governmental person in which the employee has a significant financial interest.

(b) Subsection (a) shall not apply if an employee first advises his supervisor of his significant financial interest and obtains from such supervisor a written waiver stating that the participation of the employee is necessary. A copy of each such waiver shall be filed with the Select Committee.

TITLE X—RULEMAKING POWER OF THE CONGRESS

SEC. 1001. RULEMAKING POWER OF THE CONGRESS.

The provisions of this Act that are applicable to Members, officers, or employees of the legislative branch are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

TITLE XI—PAY AND HONORARIA ADJUSTMENTS

SEC. 1101. ADJUSTMENTS IN RATES OF PAY AND REDUCTION IN HONORARIUM OF SENATORS.

(a)(1) ADJUSTMENTS IN RATES OF PAY.—Notwithstanding any other provision of law (including any provision of this Act or amendment made by this Act), effective as provided in paragraph (2), the rate of pay of each office and position of United States Senator, the President pro tempore of the Senate, and the majority and minority leaders of the Senate shall be increased by—

(A) the percentage increase that would have taken effect in fiscal year 1988 if the provisions of section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) were applied to the rate of pay of each such office and position in effect on January 1, 1988 without regard to section 108 of the resolution entitled "Joint resolution making further continuing appropriations for the fiscal year 1988, and for other purposes," approved December 22, 1987 (101 Stat. 1329-434; 5 U.S.C. 5305 note);

(B) the percentage increase that would have taken effect in fiscal year 1989 if the provisions of section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) were applied to the rate of pay of each such office and position in effect on January 1, 1989 (as adjusted under subparagraph (A) of this paragraph) without regard to subsection (b) of section 620 of the Treasury, Postal Service and General Government Appropriations Act, 1989 (Public Law 100-440; 102 Stat. 1756; 5 U.S.C. 530 note); and

(C) the percentage increase that would take effect in fiscal year 1990 by the application of section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) (as adjusted under subparagraphs (A) and (B) of this paragraph) without regard to subsection (b) of section 619 of the Treasury, Postal Service and General Government Appropriations Act, 1990 (Public Law 101-136).

(2) The increase in the rates of pay for each office and position described under paragraph (1) shall be effective on the first day of the first pay period beginning on or after January 1, 1990.

(b) REDUCTION OF HONORARIUM.—Section 908(b) of the Supplemental Appropriations Act, 1983 (2 U.S.C. 31-1) is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding the provisions of this subsection—

"(A) the percentage referred to under paragraphs (1) and (2) shall be 27 percent as such paragraphs apply to United States Senators in the calendar year beginning on January 1, 1990;

"(B)(i) beginning on and after January 1, 1991, if the aggregate salary of a United States Senator is increased pursuant to section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)), section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351 et seq.), or any other provision of law, the percentage referred to under paragraphs (1) and (2) (with respect to United States Senators) shall be reduced by a percentage resulting in a dollar amount decrease in the limit of honorarium for each dollar amount of increase of such aggregate salary; and

"(ii) beginning on January 1 of the calendar year in which the adjustments under clause (i) of this subparagraph result in a limitation of accepting honoraria less than or equal to 1 percent of the aggregate salary paid to United States Senators for service as Senators in such calendar year, the acceptance of honoraria shall be prohibited, and thereafter no Senator shall accept honoraria.".

(c) SPECIAL RULE.—Notwithstanding any other provision of this section, no adjustment in any rate of pay and section 908(b)(4)(A) of the Supplemental Appropriations Act, 1983, as added by subsection (b) of this section, shall become effective, as a result of the enactment of this section, before the first applicable pay period beginning on or after the date as of which the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is rescinded.

## H.R. 3607

The bill H.R. 3607, the Medicare Catastrophic Coverage Repeal Act of 1989, was enrolled under the authority of House Concurrent Resolution 241, which made technical corrections. The legislation presented to the President for approval follows:

AN ACT To repeal medicare provisions in the Medicare Catastrophic Coverage Act of 1988

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Catastrophic Coverage Repeal Act of 1989".

TITLE I—PROVISIONS RELATING TO PART A OF MEDICARE PROGRAM AND SUPPLEMENTAL MEDICARE PREMIUM

SEC. 101. REPEAL OF EXPANSION OF MEDICARE PART A BENEFITS.

(a) IN GENERAL.—

(1) GENERAL RULE.—Except as provided in paragraph (2), sections 101, 102, and 104(d) (other than paragraph (7)) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360) (in this Act referred to as "MCCA") are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such section had not been enacted.

(2) EXCEPTION FOR BLOOD DEDUCTION.—The repeal of section 102(1) of MCCA (relating to deductibles and coinsurance under part A) shall not apply, but only insofar as such section amended paragraph (2) of section 1813(a) of the Social Security Act (relating to a deduction for blood).

(b) TRANSITION PROVISIONS FOR MEDICARE BENEFICIARIES.—

(1) INPATIENT HOSPITAL SERVICES AND POST-HOSPITAL EXTENDED CARE SERVICES.—In applying sections 1812 and 1813 of the Social Security Act, as restored by subsection (a)(1), with respect to inpatient hospital services and extended care services provided on or after January 1, 1990—

(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of illness;

(B) with respect to the limitation on such services provided in a spell of illness, days of such services before January 1, 1990, shall not be counted, except that days of inpatient hospital services before January 1, 1989, which were applied with respect to an individual after receiving 90 days of services in a spell of illness (commonly known as "lifetime reserve days") shall be counted;

(C) the limitation of coverage of extended care services to post-hospital extended care services shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30 consecutive days in which the individual is not provided

inpatient hospital services or extended care services; and

(D) the inpatient hospital deductible under section 1813(a)(1) of such Act shall not apply—

(i) in the case of an individual who is receiving inpatient hospital services during a continuous period beginning before (and including) January 1, 1990, with respect to the spell of illness beginning on such date, if such a deductible was imposed on the individual for a period of hospitalization during 1989;

(ii) for a spell of illness beginning during January 1990, if such a deductible was imposed on the individual for a period of hospitalization that began in December 1989; and

(iii) in the case of a spell of illness of an individual that began before January 1, 1990.

(2) HOSPICE CARE.—The restoration of section 1812(a)(4) of the Social Security Act, effected by subsection (a)(1), shall not apply to hospice care provided during the subsequent period (described in such section as in effect on December 31, 1989) with respect to which an election has been made before January 1, 1990.

(3) TERMINATION OF HOLD HARMLESS PROVISIONS.—Section 104(b) of MCCA is amended by striking "or 1990" each place it appears.

(c) TERMINATION OF TRANSITIONAL ADJUSTMENTS IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.—

(1) PPS HOSPITALS.—Section 104(c)(1) of MCCA is amended by inserting "and before January 1, 1990," after "October 1, 1988,".

(2) PPS-EXEMPT HOSPITALS.—

(A) IN GENERAL.—Section 104(c)(2) of MCCA is amended—

(i) by inserting "and before January 1, 1990," after "January 1, 1989,"; and

(ii) by striking the period at the end and inserting the following: ", without regard to whether any of such beneficiaries exhausted medicare inpatient hospital insurance benefits before January 1, 1989.".

(B) TRANSITION.—The Secretary of Health and Human Services shall make an appropriate adjustment to the target amount established under section 1886(b)(3)(A) of the Social Security Act in the case of inpatient hospital services provided to an inpatient whose stay began before January 1, 1990, in order to take into account the target amount that would have applied but for the amendments made by this title.

(d) EFFECTIVE DATE.—The provisions of this section shall take effect January 1, 1990, except that the amendments made by subsection (c) shall be effective as if included in the enactment of MCCA.

SEC. 102. REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM AND FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.

(a) IN GENERAL.—Sections 111 and 112 of MCCA are repealed and the provisions of law amended by such sections are restored or revived as if such sections had not been enacted.

(b) DELAY IN STUDY DEADLINE.—Section 113(c) of MCCA is amended by striking "November 30, 1988" and inserting "May 31, 1990".

(c) DISPOSAL OF FUNDS IN FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.—Any balance in the Federal Hospital Insurance Catastrophic Coverage Reserve Fund (created under section 1817A(a) of the Social Security Act, as inserted by section 112(a) of MCCA) as of January 1, 1990, shall be transferred into the Federal Supplementary Medical Insurance Trust Fund and any amounts payable due to overpayments into such Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the provisions of this section shall take effect January 1, 1990.

(2) REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.—The repeal of section 111 of MCCA shall apply to taxable years beginning after December 31, 1988.

## TITLE II—PROVISIONS RELATING TO PART B OF THE MEDICARE PROGRAM

SEC. 201. REPEAL OF EXPANSION OF MEDICARE PART B BENEFITS.

(a) IN GENERAL.—

(1) GENERAL RULE.—Except as provided in paragraph (2), sections 201 through 208 of MCCA are repealed and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

(2) EXCEPTION.—Paragraph (1) shall not apply to subsections (g) and (m)(4) of section 202 of MCCA.

(b) CONFORMING AMENDMENTS.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)) is amended—

(1) in paragraph (3)(C)—

(A) by striking "Subject to paragraph (4), deductibles" and inserting "Deductibles", and

(B) by striking "1813, section 1833(b)" and all that follows and inserting "1813 and section 1833(b)).''; and

(2) by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(c) EFFECTIVE DATE.—The provisions of this section shall take effect January 1, 1990.

SEC. 202. REPEAL OF CHANGES IN MEDICARE PART B MONTHLY PREMIUM AND FINANCING.

(a) IN GENERAL.—Sections 211 through 213 (other than sections 211(b) and 211(c)(3)(B)) of MCCA are repealed and the provisions of law amended or repealed by such sections are restored or revised as if such sections had not been enacted.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect January 1, 1990, and the repeal of section 211 of MCCA shall apply to premiums for months beginning after December 31, 1989.

SEC. 203. AMENDMENT OF CERTAIN MISCELLANEOUS PROVISIONS.

(a) REVISION OF MEDIGAP REGULATIONS.—

(1) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 221(d) of MCCA, is amended—

(A) in the third sentence of subsection (a) and in subsection (b)(1), by striking "subsection (k)(3)" and inserting "subsections (k)(3), (k)(4), (m), and (n)";

(B) in subsection (k)—

(i) in paragraph (1)(A), by inserting "except as provided in subsection (m)," before "subsection (g)(2)(A)", and

(ii) in paragraph (3), by striking "subsection (l)" and inserting "subsections (l), (m), and (n)"; and

(C) by adding at the end the following new subsections:

"(m)(1)(A) If, within the 90-day period beginning on the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection and subsection (n) referred to as the 'Association') revises the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) and adopted on September 20, 1988) to improve such regulation and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the amended NAIC Model Regulation (referred to in subsection (k)(1)(A)) as revised by the Association in accordance with this paragraph (in this subsection and subsection (n) referred to as the 'revised NAIC Model Regulation').

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

"(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) referred to as 'revised Federal model standards') for medicare supplemental policies to improve such standards and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised Federal model standards or 1 year after the date the Secretary first promulgates such standards.

"(3) Notwithstanding any other provision of this section (except as provided in subsection (n))—

"(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a),

"(B) no certification made pursuant to subsection (a) shall remain in effect, and

"(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A),

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

"(n)(1) Until the date specified in paragraph (4), in the case of a qualifying medicare supplemental policy described in paragraph (3) issued in a State—

"(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the transition provision described in paragraph (2), or

"(B) on or after the transition deadline, the policy is deemed to be in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term 'transition deadline' means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Sec-

retary promulgates revised Federal model standards (as the case may be).

"(2) The transition provision described in this paragraph is—

"(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this title made by the Medicare Catastrophic Coverage Repeal Act of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

"(B) if the Association does not provide for a transition provision by the date described in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

"(3) In paragraph (1), the term 'qualifying medicare supplemental policy' means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before the date of the enactment of this subsection.

"(4)(A) The date specified in this paragraph for a policy issued in a State is—

"(i) the first date a State adopts, after the date of the enactment of this subsection, standards equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

"(ii) the date specified in subparagraph (B),

whichever is earlier.

"(B) In the case of a State which the Secretary identifies, in consultation with the Association, as—

"(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

"(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

"(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) unless each individual who is entitled to benefits under this title and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

"(A) the changes in benefits under this title effected by the Medicare Catastrophic Coverage Repeal Act of 1989, and

"(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

"(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before the date of the enactment of this subsection, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) unless the insurer—

"(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

"(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstitution of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

"(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of the date of the enactment of this subsection, if (as of January 1, 1990) the individual is not subject to a waiting period with respect to treatment of a pre-existing condition under such other policy.".

(b) ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS.—Notwithstanding any other provision of this Act, the amendments made by this Act (other than the repeal of sections 1833(c)(5) and 1834(c)(6) of the Social Security Act) shall not apply to risk-sharing contracts, for contract year 1990—

(1) with eligible organizations under section 1876 of the Social Security Act, or

(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967, or under section 222(a) of the Social Security Amendments of 1972.

(c) NOTICE OF CHANGES.—The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act for 1990, for a description of the changes in benefits under title XVIII of such Act made by the amendments made by this Act.

(d) MISCELLANEOUS TECHNICAL CORRECTION.—Section 221(g)(3) of MCCA is amended by striking "subsection (f)" and inserting "subsection (e)".

(e) EFFECTIVE DATE.—The provisions of this section shall take effect January 1, 1990, except that the amendment made by subsection (d) shall be effective as if included in the enactment of MCCA.

## TITLE III—MISCELLANEOUS AMENDMENTS

### SEC. 301. MISCELLANEOUS MCCA AMENDMENTS.

(a) IN GENERAL.—Sections 421 through 425 and 427 of MCCA are repealed and any provision of law amended or repealed by such sections is restored or revived as if such sections had not been enacted.

(b) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1834(b)(4)(A) of the Social Security Act, as added by section 4049(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "insurance and deductibles under section 1835(a)(1)(I)" and inserting "coinsurance and deductibles under sections 1833(a)(1)(J)".

(2) Section 1842(j)(1)(C)(vii) of the Social Security Act, as added by section 4085(i)(7)(C) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "accordingly" and inserting "according".

(3) Section 1886(g)(3)(A)(iv) of the Social Security Act, as added by section 4006(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "may) be" and inserting "may be)"

(4) Section 1866(a)(1)(F)(i)(III) of the Social Security Act is amended by striking "fiscal year))" and inserting "fiscal year)".

(5) Section 1875(c)(7) of the Social Security Act, as added by section 9316(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of this section".

(6) Section 1842(j)(2)(B) of the Social Security Act, as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987, is amended by striking "paragraphs" and inserting "subsections".

(c) MISCELLANEOUS CORRECTIONS RELATING TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987.—

(1) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1834(b)(4)(A) of the Social Security Act (42 U.S.C. 1395m(b)(4)(A)), as added by section 4049(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "insurance and deductibles under section 1835(a)(1)(I)" and inserting "coinsurance and deductibles under sections 1833(a)(1)(J)".

(2) Section 1842(j)(1)(C)(vii) of the Social Security Act (42 U.S.C. 1395u(j)(1)(C)(viii)), as added by section 4085(i)(7)(C) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "accordingly" and inserting "according".

(3) Section 1886(g)(3)(A)(iv) of the Social Security Act (42 U.S.C. 1395ww(g)(3)(A)(iv)), as added by section 4006(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "may) be" and inserting "may be)".

(d) OTHER CORRECTIONS.—

(1) Section 1866(a)(1)(F)(i)(III) of the Social Security Act (42 U.S.C. 1395cc(a)(1)(F)(i)(III)) is amended by striking "fiscal year))" and inserting "fiscal year)".

(2) Section 1875(c)(7) of the Social Security Act (42 U.S.C. 1395ll(c)(7)), as added by section 9316(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of this section".

(3) Section 1842(j)(2)(B) of the Social Security Act (42 U.S.C. 1395u(j)(2)(B)), as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987, is amended by striking "paragraphs" and inserting "subsections".

(e) EFFECTIVE DATE.—The provisions of this section (other than subsections (c) and (d)) shall take effect January 1, 1990, except that—

(1) the repeal of section 421 of MCCA shall not apply to duplicative part A benefits for periods before January 1, 1990, and

(2) the amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

## BILLS AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following dates present to the President, for his approval, bills and joint resolutions of the House of the following titles:

On November 20, 1989:

H.R. 2461. An act to authorize appropriations for fiscal year 1990, for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes;

H.R. 2748. An act to authorize appropriations for fiscal year 1990 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes;

H.J. Res. 282. Joint resolution designating November 19-25, 1989, as "National Family Caregivers Week";

H.J. Res. 393. Joint resolution to grant the consent of Congress to the boundary change compact between South Dakota and Nebraska;

H.R. 3566. An act making appropriations for the Departments of Labor, Health and Human Services, and related agencies, for the fiscal year ending September 30, 1990, and for other purposes; and

H.R. 3072. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 1990, and for other purposes.

On November 21, 1989:

H.R. 3746. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1990, and for other purposes;

H.R. 3743. An act making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1990, and for other purposes;

H.R. 1487. An act to authorize appropriations for fiscal years 1900 and 1991 for the Department of State, and for other purposes; and

H.R. 2712. An act to facilitate the adjustment or change of status of Chinese nationals in the United States by waiving the 2-year foreign residence requirement for "J" nonimmigrants.

On December 7, 1989:

H.R. 1. An act to amend Federal laws to reform housing, community and neighborhood development, and related programs, and for other purposes;

H.R. 2494. An act to reauthorize the Export-Import Bank tied aid credit fund and pilot interest subsidy program, to provide for the participation of the United States in a replenishment of the Inter-American Development Bank and in the Enhanced Structural Adjustment Facility of the International Monetary Fund, to improve the safety and soundness of the United States banking system and encourage the reduction of the debt burdens of the highly indebted countries, to encourage the multilateral development banks to engage in environmentally sustainable lending practices and give greater priority to poverty alleviation, and for other purposes;

H.R. 3671. An act to amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program;

H.R. 3259. An act to amend the Immigration and Nationality Act to provide for adjustment of status, without regard to numerical limitations, for certain H-1 nonimmigrant nurses and to establish conditions for the admission, during a 5-year period, of nurses as temporary workers;

H.R. 3607. An act to repeal Medicare provisions in the Medicare Catastrophic Coverage Act of 1988; and

H.R. 2178. An act to designate lock and dam numbered 4 on the Arkansas River, AR, as the "Emmett Sanders Lock and Dam."

## COMMUNICATION RECEIVED FOLLOWING THE SINE DIE ADJOURNMENT OF THE 101ST CONGRESS

The following communication was received following the sine die adjournment of the 101st Congress:

WASHINGTON, DC,
*November 28, 1989.*

Hon. THOMAS S. FOLEY,
*The Speaker, House of Representatives, Washington, DC.*

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 5 of Rule III of the Rules of the U.S. House of Representatives, the Clerk received at 1:09 p.m. on Wednesday, November 22, 1989 the following message from the Secretary of the Senate: That the Senate passed without amendment H.J. Res. 448 and at 10:45 a.m. on Monday, November 27, 1989 the following message from the Secretary of the Senate: That the Senate agreed to the amendment of the House to S. 1164, that the Senate agreed to the amendment of the House to S. 1877, that the Senate agreed to the amendments of the House to S.J. Res. 16, that the Senate passed without amendment H.R. 3294, that the Senate agreed to the Conference Report to H.R. 3299, that the Senate agreed to the Conference Report to H.R. 3611, that the Senate agreed to the Conference Report to H.R. 3614, that the Senate agreed to the House amendment to the Senate amendment to H.R. 3671, that the Senate receded from the amendment to H.R. 3607, that the Senate passed without amendment H.R. 3696, H. Con. Res. 241, H.J. Res. 429 and H.R. 2178, and the Senate made appointments to the Commission on Interstate Child Support.

With great respect, I am,
Sincerely yours,
DONNALD K. ANDERSON,
*Clerk, House of Representatives.*

## APPOINTMENTS AFTER SINE DIE ADJOURNMENT

Pursuant to the provisions of section 18, Public Law 98-237, and the order of the House of November 21, 1989, empowering the Speaker to appoint commissions, boards, and committees authorized by law or by the House, the Speaker on December 1, 1989, did appoint to the Advisory Commission on Conferences in Ocean Shipping the following Members on the part of the House:

From the Committee on Merchant Marine and Fisheries:

Mr. JONES, of North Carolina; and
Mr. DAVIS, of Michigan.

From the Committee on the Judiciary:

Mr. HUGHES, of New Jersey; and
Mr. CAMPBELL, of California.

## ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED AFTER SINE DIE ADJOURNMENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

On November 28, 1989:

H.R. 3402. An act to promote political democracy and economic pluralism in Poland and Hungary by assisting those nations during a critical period of transition and abetting the development in those nations of private business sectors, labor market reforms, and democratic institutions, to establish, through these steps, the framework for a composite program of support for East European Democracy (SEED);

H.R. 3660. An act to amend the Rules of the House of Representatives and the Ethics in Government Act of 1978 to provide for Governmentwide reform, and for other purposes; and

H.J. Res. 448. Joint resolution making supplemental appropriations for the fiscal year 1990, and for other purposes.

On November 30, 1989:

H.R. 91. An act to prohibit exports of military equipment to countries supporting international terrorism, and for other purposes;

H.R. 422. An act to amend the Department of Transportation Act to reauthorize local rail service assistance;

H.R. 481. An act to designate the building located at 2562 Hylan Boulevard, Staten Island, NY, as the "Walter Edward Grady United States Post Office Building;"

H.R. 875. An act to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park near Fredericksburg, VA;

H.R. 972. An act to amend section 3724 of title 31, United States Code, to increase the authority of the Attorney General to settle claims for damages resulting from law enforcement activities of the Department of Justice;

H.R. 1312. An act to revise and extend the programs of the Domestic Volunteer Service Act of 1973;

H.R. 1495. An act to amend the Arms Control and Disarmament Act to authorize appropriations for the Arms Control and Disarmament Agency, and for other purposes;

H.R. 1502. An act to authorize the appropriation of funds to the District of Columbia for additional officers and members of the Metropolitan Police Department of the District of Columbia, to provide for the implementation in the District of Columbia of a community-oriented policing system, and for other purposes;

H.R. 1668. An act to authorize appropriations for certain ocean and coastal programs of the National Oceanic and Atmospheric Administration;

H.R. 1727. An act to modify the boundaries of the Everglades National Park and to provide for the protection of lands, water,

and natural resources within the park, and for other purposes;

H.R. 2134. An act to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to authorize the distribution of wholesome meat and poultry products for human consumption that are not in compliance with the acts to charity and public agencies;

H.R. 2459. An act to authorize appropriations for the Coast Guard for fiscal year 1990, and for other purposes;

H.R. 3275. An act to implement the steel trade liberalization program;

H.R. 3294. An act to authorize distribution within the United States Information Agency film entitled "A Tribute to Mickey Leland;"

H.R. 3611. An act to combat international narcotics production and trafficking;

H.R. 3614. An act to amend the Drug-Free Schools and Communities Act of 1986 to revise certain requirements relating to the provision of drug abuse education and prevention program in elementary and secondary schools, and for other purposes;

H.R. 3620. An act to clarify the Food Security Act of 1965;

H.R. 3629. An act to extend the authority of the Secretary of Commerce to conduct the quarterly financial report program under section 91 of title 13, United States Code, through September 30, 1993;

H.R. 3670. An act to authorize the expansion of the membership of the Superior Court of the District of Columbia from 50 associate judges to 58 associate judges;

H.R. 3696. An act to provide survival assistance to victims of civil strife in Central America;

H.R. 3720. An act to amend provisions of the National Consumer Cooperative Bank Act relating to the payment of interest on and the redemption of class A notes issued by the National Consumer Cooperative Bank;

H.J. Res. 175. Joint resolution to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes;

H.J. Res. 429. Joint resolution to designate the week of December 10, 1989, through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week"; and

H.J. Res. 449. Joint resolution providing for the convening of the second session of the 101st Congress.

On December 5, 1989:

H.R. 1. An act to amend Federal laws to reform housing, community and neighborhood development, and related programs, and for other purposes;

H.R. 901. An act to amend title 38, United States Code, to provide a 4.7 percent cost-of-living adjustment in rates of disability compensation for veterans with service-connected disabilities and in rates of dependency and indemnity compensation for survivors of veterans dying from service-connected causes and to improve certain health-care, education, housing, and memorial affairs programs; and for other purposes;

H.R. 2178. An act to designate lock and dam numbered 4 on the Arkansas River as the "Emmett Sanders Lock and Dam";

H.R. 2494. An act to reauthorize the Export-Import Bank tied aid credit fund and pilot interest subsidy program, to provide for the participation of the United States in a replenishment of the Inter-American Development Bankmand in the Enhanced Structural Adjustment Facility of the International Monetary Fund, to improve the safety and soundness of the U.S. banking system and encourage the reduction of the debt burdens of the highly indebted countries, to encourage the multilateral development banks to engage in environmentally sustainable lending practices and give greater priority to poverty alleviation, and for other purposes;

H.R. 3259. An act to amend the Immigration and Nationality Act to provide for adjustment of status, without regard to numerical limitations, for certain H-1 nonimmigrant nurses and to establish conditions for the admission, during a 5-year period, of nurses as temporary workers;

H.R. 3607. An act to repeal medicare provisions in the Medicare Catastrophic Coverage Act of 1988; and

H.R. 3671. An act to amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program.

On December 11, 1989:

H.R. 3299. An act to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990.

## SENATE ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED AFTER SINE DIE ADJOURNMENT

The SPEAKER announced on the following dates his signature to enrolled bills and joint resolutions of the Senate of the following titles:

On November 28, 1989:

S. 488. An act to provide Federal Assistance and leadership to a program of research, development, and demonstration of renewable energy and energy efficiency technologies, and for other purposes;

S. 892. An act to exclude Agent Orange settlement payments from countable income and resources under Federal means-tested programs;

S. 974. An act to designate certain lands in the State of Nevada as wilderness, and for other purposes;

S. 1164. An act to authorize appropriations for fiscal year 1990 for the Office of the U.S. Trade Representative, the U.S. International Trade Commission, and the U.S. Customs Service;

S. 1960. An act to authorize the food stamp portion of the Minnesota family investment plan;

S.J. Res. 16. Joint resolution designating November 1989 and November 1990 as "National Alzheimer's Disease Month;"

S.J. Res. 164. Joint resolution designating 1990 as the "International Year of Bible Reading;"

S.J. Res. 203. Joint resolution providing for the appointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution; and

S.J. Res. 205. Joint resolution designating December 3, through 9, 1989, as "National Cities Fight Back Against Drugs Week."

On November 30, 1989:

S. 804. An act to conserve North American wetland ecosystems and waterfowl and the other migratory birds and fish and wildlife that depend upon such habitats;

S. 1793. An act to make technical and correcting changes in agriculture programs;

S. 1877. An act to improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes; and

S.J. Res. 202. Joint resolution providing for the appointment of Robert James Woolsey, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

*[Pursuant to the order of the House on Nov. 19, 1989, the following report was filed on Nov. 30, 1989]*

Mr. CONYERS: Committee on Government Operations. Report on Quicker and Sicker: Substandard Treatment of Medicare Patients (Rept. 101-387). Referred to the Committee of the Whole House on the State of the Union.

*[Pursuant to the order of the House on Nov. 17, 1989, the following report was filed on Dec. 1, 1989]*

Mr. ANDERSON: Committee on Public Works and Transportation. H.R. 2015. A bill to amend the Public Works and Economic Development Act of 1965 and the Appalachian Regional Development Act of 1965; with an amendment (Rept. 101-388, Pt. 1). Ordered to be printed.

*[Pursuant to the order of the House on Nov. 19, 1989, the following report was filed on Dec. 1, 1989]*

Mr. CONYERS: Committee on Government Operations. Report on Infertility in America: Why is the Federal Government ignoring a major health problem? (Rept. 101-389). Referred to the Committee of the Whole House on the State of the Union.

*[Pursuant to the order of the House on Nov. 19, 1989, the following report was filed on Dec. 6, 1989]*

Mr. CONYERS: Committee on Government Operations. Report on the challenge of cultural diversity and cultural equity at the Smithsonian Institution (Rept. 101-391). Referred to the Committee of the Whole House on the State of the Union.

*[Pursuant to the order of the House on Nov. 19, 1989, the following report was filed on Dec. 11, 1989]*

Mr. CONYERS: Committee on Government Operations. Report on the Federal Role in Determining the Medical and Psychological Impact of Abortion on Women (Rept. 101-392). Referred to the Committee of the Whole House on the State of the Union.

## REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

*[Pursuant to the order of the House on Nov. 17, 1989, the following report was filed on Dec. 1, 1989]*

Mr. ANDERSON: Committee on Public Works and Transportation. H.R. 3386. A bill to prohibit the use of refrigerated motor vehicles for the transportation of solid waste, to prohibit the use of cargo tanks in providing motor vehicle transportation of food and hazardous materials, and for other purposes; with amendments; referred to the Committee on Energy and Commerce for a period ending not later than February 28, 1990, for consideration of such provisions of

the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(h), rule X (Rept. 101-390, Pt. 1). Ordered to be printed.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2059. A letter from the Director, Defense Security Assistance Agency, transmitting notification concerning the Department of the Navy's proposed letter(s) of offer and acceptance [LOA] to Turkey for defense articles estimated to cost $50 million or more, pursuant to 10 U.S.C. 118; to the Committee on Armed Services.

2060. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Navy's proposed letter(s) of offer and acceptance [LOA] to Turkey for defense articles and services estimated to cost $91 million (Transmittal No. 90-12), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

2061. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting copies of the original reports of political contributions for David C. Fields, of California, to be Director of the Office of Foreign Missions, with the rank of Ambassador; John J. Maresca, of Connecticut, for the rank of Ambassador during his tenure of service as head of the U.S. Delegation to the Conference on Confidence and Security Building Measures [CSBM]; Robert William Farrand, of Virginia, to be Ambassador to Papua New Guinea; J. Steven Rhodes, of California, to be Ambassador Extraordinary and Plenipotentiary to Zimbabwe, and members of their families, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

2062. A letter from the Chairman, Equal Employment Opportunity Commission, transmitting a report on the Commission's interagency coordination of Federal equal employment opportunity activities for the period April 1 through September 30, 1989, pursuant to 42 U.S.C. 2000e-14; to the Committee on Government Operations.

2063. A letter from the Chief Judge, U.S. Tax Court, transmitting the actuarial reports of the U.S. Tax Court Judges' Retirement and Survivor Annuity Plans for the year ending December 31, 1987, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

2064. A letter from the Deputy Associate Director for Collection and Disbursements, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2065. A letter from the Deputy Associate Director for Collection and Disbursements, Department of the Interior, transmitting notification of proposed refunds of excess royality payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2066. A letter from the Acting Assistant Secretary, Department of Energy, transmitting a copy of the Department's final programmatic environmental impact statement [PEIS] for the Clean Coal Technology Demonstration Program [CCTDP] (DOE/EIS-0146); jointly, to the Committee on Appropriations; Energy and Commerce; and Science, Space, and Technology.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XXII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 1677. A bill to require the Federal Communications Commission to reinstate restrictions on advertising during children's television, to enforce the obligation of broadcasters to meet the educational and informational needs of the child audience, and for other purposes (Rept. No. 101-385). Referred to the Committee of the Whole House on the State of the Union.

Mr. PANETTA: Committee of Conference. Conference report on H.R. 3299 (Rept. No. 101-386). Ordered to be printed.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FASCELL:

H.R. 3792. A bill to authorize appropriations for fiscal year 1990 and 1991 for the Department of State, and for other purposes; to the Committee on Foreign Affairs.

By Mr. BEREUTER:

H.R. 3793. A bill to amend the High Plains States Groundwater Demonstration Program Act of 1983 to authorize additional appropriations, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. BOUCHER:

H.R. 3794. A bill to amend title VII of the Energy Security Act to provide for continued monitoring of acid deposition and its effects in order to understand the effects of emissions controls; to the Committee on Energy and Commerce.

By Mr. BROWN of Colorado:

H.R. 3795. A bill to amend the Older Americans Act of 1965 to authorize flexibility in approving projects under title V of such act; to the Committee on Education and Labor.

By Mr. COLLINS:

H.R. 3796. A bill to amend title XIX of the Social Security Act with respect to requiring State plans for appropriately responding to the closing of hospitals; to the Committee on Energy and Commerce.

H.R. 3797. A bill to amend the Internal Revenue Code of 1986 to make the low-income housing credit permanent and to facilitate the rehabilitation of public housing using such credit; to the Committee on Ways and Means.

By Mr. DICKINSON (for himself, Mr. ARMEY, Mr. BALLENGER, Mr. BARNARD, Mr. BLILEY, Mr. BROWN of Colorado, Mr. COBLE, Mr. COMBEST, Mr. DANNEMEYER, Mr. DORNAN of California, Mr. EMERSON, Mr. GALLEGLY, Mr. GINGRICH, Mr. GOSS, Mr. HANCOCK, Mr. HEFLEY, Mr. HOLLOWAY, Mr. JAMES, Mr. KASICH, Mr. KOLBE, Mr. KYL, Mr. MARLENEE, Mr. MCCRERY, Mr. OXLEY, Mr. PACKARD, Mr. PORTER, Mr. ROBERTS, Mr. SHAW, Mr. SPENCE, Mr. SMITH of Texas, Mr. SMITH of New Hampshire, Mr. STUMP, and Mrs. VUCANOVICH):

H.R. 3798. A bill to amend the Federal Election Campaign Act of 1971 with respect to contributions and expenditures by national banks, corporations, and labor unions; to the Committee on House Administration.

By Mr. HAYES of Illinois:

H.R. 3799. A bill to amend title 39, United States Code, to require the U.S. Postal Service to make space available in post offices for State voter registration authorities to place voter registration forms and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. CARPER (for himself, Mrs. MARTIN of Illinois, Mr. JOHNSON of South Dakota, Mr. ARMEY, Mr. GLICKMAN, Mr. FRENZEL, Mr. OWENS of Utah, Mr. MILLER of Washington, Mrs. PATTERSON, Mr. PURSELL, Mr. PENNY, Mr. RIDGE, Mr. BRUCE, Mr. PETRI, and Mr. DEFAZIO):

H.R. 3800. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to establish procedures for the expedited consideration by the Congress of certain proposals by the President to rescind amounts of budget authority; jointly, to the Committees on Government Operations and Rules.

By Mr. HAYES of Illinois:

H.R. 3801. A bill to amend title 39, United States Code, to provide that the U.S. Postal Service give voter registration forms along with change-of-address forms and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. HORTON (for himself, Mr. MINETA, Mr. FALEOMAVAEGA, Mrs. SAIKI, Mr. AKAKA, Mr. MATSUI, Mr. DE LUGO, and Mr. HUNTER):

H.R. 3802. A bill designating the month of May as "Asian/Pacific American Heritage Month"; to the Committee on Post Office and Civil Service.

By Mr. KOSTMAYER (for himself, Mrs. ROUKEMA, and Mr. TORRICELLI):

H.R. 3803. A bill to require the Secretary of Agriculture to conduct a study relating to forest resources and open space in the States of New York, New Jersey, and Pennsylvania; to the Committee on Agriculture.

H.R. 3804. A bill to require the Secretary of the Interior to conduct a study relating to scenic, natural, historic, ecological, and recreational resources and open space in the States of New York, New Jersey, and Pennsylvania; to the Committee on Interior and Insular Affairs.

By Mr. McCLOSKEY:

H.R. 3805. A bill to amend title 39, United States Code, to establish a civil penalty for mailing sexually oriented advertisements to individuals included on the Postal Service's list of persons who have indicated a desire not to receive any such mailings, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. McCLOSKEY (for himself, and Mr. JONTZ):

H.R. 3806. A bill to provide for an improved and expanded program of competitive grants for agricultural, food, and environmental research; to the Committee on Agriculture.

By Mr. McCURDY (for himself, Mr. GEPHARDT, Mr. GRAY, Mr. HOYER, Mr. PANETTA, Mrs. KENNELLY, and Mr. SIKORSKI):

H.R. 3807. A bill to enhance national and community service, and for other purposes; to the Committee on Education and Labor.

By Mr. McEWEN:

H.R. 3808. A bill to prohibit the Administration of the Federal Aviation Administration from designating certain airspace near Wilmington, OH, as restricted airspace; to the Committee on Public Works and Transportation.

By Mr. MOAKLEY:

H.R. 3809. A bill to temporarily suspend the duty on certain aluminum plates, sheets, and strips that are products of Bahrain; to the Committee on Ways and Means.

By Mr. NELSON of Florida:

H.R. 3810. A bill to provide that civil service retirement credit may be given for certain service performed by employees and former employees of nonappropriated fund instrumentalities of the Air Force between 1966 and 1976; to the Committee on Post Office and Civil Service.

By Mr. PASHAYAN (for himself, Mr. LEHMAN of California, Mr. LAGOMARSINO, Mr. CONDIT, and Mr. THOMAS of Wyoming):

H.R. 3811. A bill to recognize the centennials of national parks and monuments, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. RANGEL (for himself, Mr. STARK, Mr. AKAKA, Mr. GUARINI, Mr. FAUNTROY, Mr. LEVINE of California, Mr. ORTIZ, Mr. SMITH of Florida, Mr. TOWNS, Mr. TRAFICANT, Mr. MFUME, and Mrs. LOWEY of New York):

H.R. 3812. A bill to amend title 18, United States Code, to prohibit certain exports of fully automatic or semiautomatic assault weapons; to the Committee on the Judiciary.

By Mr. RITTER:

H.R. 3813. A bill to promote greater predictability in professional liability actions by establishing certain standards for liability and providing for other reforms; jointly, to the Committees on the Judiciary and Energy and Commerce.

By Mr. ROGERS:

H.R. 3814. A bill to allow for Kentucky Vietnam veterans to receive a one-time bonus from the Commonwealth; to the Committee on Veterans' Affairs.

By Mr. SENSENBRENNER (for himself, Mr. ROHRABACHER, Mr. DANNEMEYER, Mr. DORNAN of California, Mr. LIVINGSTON, Mr. SHAYS, Mr. PARRIS, Mr. COBLE, Mr. PAXON, Mr. GEKAS, Mr. HYDE, Mr. DOUGLAS, Mr. ARMEY, Mr. COUGHLIN, Mr. HERGER, Mr. WALSH, Mr. CONDIT, Mr. BUECHNER, and Mr. LANCASTER):

H.R. 3815. A bill to amend the Rehabilitation Act of 1973 to provide that current abusers of illegal drugs are not individuals with handicaps for purposes of section 503 and 504 of such act, and for other purposes; to the Committee on Education and Labor.

By Mr. SMITH of New Hampshire:

H.R. 3816. A bill to continue the comprehensive program of acid precipitation monitoring established under the Acid Precipitation Act, and to charge the Administrator of the Environmental Protection Agency with carrying it out; to the Committee on Energy and Commerce.

By Mr. STARK (for himself, Mr. SHAYS, Mr. RANGEL, Mr. FASCELL, Mr. LEWIS of Florida, Mr. ACKERMAN, Mr. PORTER, Mr. BLAZ, Mr. CROCKETT, and Mr. FALEOMAVAEGA):

H.R. 3817. A bill to restrict exports of firearms and other munitions items to Colombia; to the Committee on Foreign Affairs.

By Mr. STARK, (for himself, Mr. LANTOS, Mr. JONTZ, Mr. BROWN of California, Mr. CAMPBELL of California, Mr. MURPHY, Ms. SCHNEIDER, and Mr. BATES):

H.R. 3818. A bill to amend the Wild and Scenic Rivers Act to designate certain segments of Salmon Creek and the South Fork and Little South Fork of the Elk in Humboldt County, CA, for potential addition to the Wild and Scenic Rivers System; to the Committee on Interior and Insular Affairs.

By Mr. WALGREN:

H.R. 3819. A bill to amend the Public Health Service Act to establish a National Center for Medical Rehabilitation Research, and for other purposes; to the Committee on Energy and Commerce.

By Mr. BARTLETT (for himself, Mr. BARNARD, Mr. WYLIE, Mr. HILER, Mr. RIDGE, and Mr. DREIER of California):

H.R. 3820. A bill to amend the Community Reinvestment Act of 1977 to establish procedures for agency evaluation of community reinvestment performance in connection with deposit facility applications, to provide safe harbor rules with respect to investments in community development organizations, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. BENNETT:

H.R. 3821. A bill to amend the Internal Revenue Code of 1986 to allow individuals to direct that part or all of their Federal income tax refunds be contributed to Federal programs specified by the individuals on their tax returns; to the Committee on Ways and Means.

By Mr. BEREUTER:

H.R. 3822. A bill to amend the U.S. Grain Standards Act to improve the competitive position of U.S. grain in international and domestic markets, to facilitate the communication of quality characteristics that final buyers of grain desire, to provide certain incentive to producers of high quality grain, and to improve the quality of farmer-owned and federally owned reserve grain stocks, and for other purposes; to the Committee on Agriculture.

H.R. 3823. A bill to amend the Wild and Scenic Rivers Act of 1968 to designate certain segments of the Niobrara River in Nebraska as components of the National Wild and Scenic Rivers System, and for other purposes; jointly, to the Committees on Interior amd Insular Affairs and Merchant Marine and Fisheries.

By Mr. CAMPBELL of Colorado:

H.R. 3824. A bill to amend the Food Security Act of 1985 to make permanent the prohibition on payment to foreigners of any type of production adjustment payments, Price Support Program loans, or other Farm Program benefits; to the Committee on Agriculture.

By Mr. CONDIT (for himself, Mr. TALLON, Mr. SPENCE, Mr. BATES, Mrs. PATTERSON, and Mr. RANGEL):

H.R. 3825. A bill to amend the Internal Revenue Code of 1986 to provide for the establishment of, and the deduction of contributions to, disaster relief savings accounts, and for other purposes; to the Committee on Ways and Means.

By Mr. COOPER (for himself and Mr. SHAYS):

H.R. 3826. A bill to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes; to the Committee on Energy and Commerce.

By Mr. DeFAZIO (for himself, Mrs. UNSOELD, Mr. CRAIG, Mr. STALLINGS, Mr. WILLIAMS, Mr. JONTZ, and Mr. WYDEN):

H.R. 3827. A bill to authorize any State to prohibit or otherwise restrict the exportation from the United States of unprocessed timber from lands owned or administered by that State; jointly, to the Committees on Agriculture, Interior and Insular Affairs, and Foreign Affairs.

By Mr. DeFAZIO (for himself, Mr. WYDEN, Mrs. UNSOELD, Mr. STALLINGS, and Mr. JONTZ):

H.R. 3828. A bill to restrict the export of unprocessed timber from certain Federal lands, and for other purposes; jointly, to the Committees on Agriculture, Interior and Insular Affairs, and Foreign Affairs.

By Mr. DYSON:

H.R. 3829. A bill to amend the Food Security Act of 1985 to provide for the extension of the Conservation Reserve Program, and for other purposes; to the Committee on Agriculture.

By Mr. ENGEL:

H.R. 3830. A bill to amend the Asbestos School Hazard Abatement Act of 1984 for the purpose of removing per capita income as a factor to be considered in determining eligibility for asbestos removal assistance; to the Committee on Energy and Commerce.

By Mr. HAYES of Illinois (for himself and Mrs. MORELLA):

H.R. 3831. A bill to amend title 5, United States Code, to establish a pay schedule, to revise the rates of pay for Federal Fire Service personnel and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. HOPKINS:

H.R. 3832. A bill to place contingencies on the divestiture of certain locks and dams; to the Committee on Public Works and Transportation.

By Mr. LEVINE of California (for himself, Mr. GEPHARDT, Mr. LEVIN of Michigan, and Mr. MINETA):

H.R. 3833. A bill to establish as an executive department of the Government a Department of Industry and Technology, to establish within such Department the Advanced Civilian Technology Agency, to add the Secretaries of the Treasury and Industry and Technology and the U.S. Trade Representative to the National Security Council, and for other purposes; jointly, to the Committees on Government Operations; Banking; Finance and Urban Affairs; Foreign Affairs; Ways and Means; Science, Space, and Technology; Merchant Marine and Fisheries; and House Administration.

By Mr. LEWIS of Georgia:

H.R. 3834. A bill to amend the National Trails System Act to designate the route from Selma to Montgomery for study for potential addition to the national trails system; to the Committee on Interior and Insular Affairs.

By Mr. RAHALL:

H.R. 3835. A bill to amend the Public Buildings Act of 1959 to require the heads of Federal agencies to conduct studies of, and submit reports on, whether relocating operations of the agencies to nonmetropolitan areas would be feasible and save the Federal Government money over the long term; to the Committee on Public Works and Transportation.

By Mr. RIDGE (for himself, Mr. LEVINE of California, Mr. BEREUTER, Mr. FAUNTROY, Mr. LEACH of Iowa, Mr. FRENZEL, Mr. SLATTERY, Mr. ROTH, and Mr. RITTER):

H.R. 3836. A bill to establish a bipartisan task force on export development, and for other purposes; jointly, to the Committees on Foreign Affairs, and Banking, Finance and Urban Affairs.

By Mr. SCHUMER (for himself and Mr. DURBIN):

H.R. 3837. A bill to amend the Balanced Budget and Emergency Control Act of 1985 with respect to the treatment of actions occurring after a final sequestration report and to establish additional points of order under the Congressional Budget Act of 1974; jointly, to the Committees on Government Operations and Rules.

By Mr. SKAGGS (for himself, Mrs. ROUKEMA, Mrs. SCHROEDER, Mr. STARK, Mr. OWENS of Utah, Mr. CAMPBELL of Colorado, Mr. RICHARDSON, Mr. STALLINGS, Mr. HUGHES, Mr. DWYER of New Jersey, Mr. JONTZ, and Mr. FAUNTROY):

H.R. 3838. A bill to amend the Atomic Energy Act of 1954 to provide for independent health and safety regulation of Department of Energy defense nuclear facilities; jointly, to the Committees on Armed Services and Energy and Commerce.

By Mr. SMITH of New Jersey:

H.R. 3839. A bill to amend the Internal Revenue Code of 1986 to provide for the establishment of, and deduction of contributions to, education savings accounts; to the Committee on Ways and Means.

By Mr. ROBERT F. SMITH (for himself, Mr. WYDEN, and Mr. DENNY SMITH):

H.R. 3840. A bill to establish the Newberry Volcanoes National Monument in the State of Oregon, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. TAYLOR:

H.R. 3841. A bill to amend the Internal Revenue Code of 1986 to restore the regular investment tax credit for domestically produced property; to the Committee on Ways and Means.

By Mr. TAYLOR (for himself, Mr. TAUZIN, and Mr. ORTIZ):

H.R. 3842. A bill to establish a Head Start Program for threatened and endangered sea turtles for release into the Gulf of Mexico, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. CAMPBELL of Colorado:

H.R. 3843. A bill to authorize a land exchange in South Dakota and Colorado; to the Committee on Interior and Insular Affairs.

By Mr. NATCHER:

H.J. Res. 448. Joint resolution making supplemental appropriations for the fiscal year 1990, and for other purposes; to the Committee on Appropriations.

By Mr. FAZIO:

H.J. Res. 450. Joint resolution proposing an amendment to the Constitution of the United States to permit certain naturalized citizens of the United States to hold the offices of President and Vice President; to the Committee on the Judiciary.

By Mr. LIPINSKI (for himself, Mr. SANGMEISTER, Mr. MOODY, Mr. HAYES of Illinois, Mr. MCMILLEN of Maryland, Mr. MCNULTY, Mr. DINGELL, Mr. POSHARD, Mr. PALLONE, and Mr. PAXON):

H.J. Res. 451. Joint resolution commending Solidarity for bringing democracy to Poland and proclaiming Lech Walesa to be an honorary citizen of the United States; jointly, to the Committee on Post Office and Civil Service and the Judiciary.

By Mr. NAGLE:

H.J. Res. 452. Joint resolution to designate the week of June 10, 1990, through June 16, 1990, as "State-Supported Homes for Veterans Week"; to the Committee on Post Office and Civil Service.

By Mr. ROYBAL:

H.J. Res. 453. Joint resolution designating May 1990 as "National Digestive Disease Awareness Month"; to the Committee on Post Office and Civil Service.

By Mr. SENSENBRENNER:

H.J. Res. 454. Joint resolution proposing an amendment to the Constitution of the United States to permit Congress to grant power to the Supreme Court to remove judges in certain cases; to the Committee on the Judiciary.

By Mr. TOWNS:

H. Con. Res. 240. Concurrent resolution expressing the sense of the congress that the Department of Defense should give top priority to redirecting resources transferred from U.S. European defense forces to the war on drugs, specifically by lending additional support to Department of Defense efforts at international drug interdiction and the establishment of up-to-date communication links between the agencies battling the flow of drugs into the Nation; to the Committee on Armed Services.

By Mr. SHARP (for himself, Mr. GEPHARDT, Mr. FRANK, Mr. COOPER, Mr. GEJDENSON, Mr. SLATTERY, Mr. EVANS, Mr. NEAL of North Carolina, Mr. HOCHBRUECKNER, Mr. LIPINSKI, Mr. BROWN of California, Mr. FAZIO, Mr. SIKORSKI, Mr. FROST, Mr. HUGHES, Mr. MYERS of Indiana, Mr. SAXTON, Mr. WISE, and Mr. ENGEL):

H. Res. 298. Resolution relating to electric utility investments in the more efficient use of energy; to the Committee on Energy and Commerce.

By Mr. MICHEL:

H. Res. 299. Resolution electing Representative Campbell of California to the Committee on the Judiciary; considered and agreed to.

H. Res. 300. Resolution presenting the thanks of the House to Speaker Thomas S. Foley; considered and agreed to.

*[Submitted Nov. 22 (legislative day, Nov. 21), 1989]*

By Mr. GEPHARDT:

H.J. Res. 449. Joint resolution providing for the convening of the second session of the One Hundred First Congress; considered and passed.

By Mr. GEPHARDT:

H. Con. res. 239. Concurrent resolution providing for the sine die adjournment of the first session of the One Hundred First Congress; considered and agreed to.

By Mr. ARCHER:

H. Con. Res. 241. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3607; jointly, to the Committees on Ways and Means, Energy and Commerce, and House Administration.

By Mr. GEPHARDT:

H. Res. 301. Resolution providing for the committee to notify the President of completion of business; considered and agreed to.

## MEMORIALS

Under clause 4 of rule XXII,

302. The SPEAKER presented a memorial of the State Senate of Michigan, relative to requesting the Congress to enact legislation to restore tax deductions for interest on educational loans of medical professionals working in underserved areas; to the Committee on Ways and Means.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. LEWIS of Georgia:

H.R. 3844. A bill for the relief of Benjamin S. Freeman; to the Committee on the Judiciary.

By Mr. SMITH of Texas:

H.R. 3845. A bill for the relief of Alice M. Rector; to the Committee on the Judiciary.

By Mr. TAYLOR:

H.R. 3846. A bill to authorize issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel *Mariner III;* to the Committee on Merchant Marine and Fisheries.

## ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 71: Mr. TOWNS.

H.R. 84: Mr. MOLLOHAN.

H.R. 98: Mr. HALL of Texas, Mr. MILLER of California, Mr. JONES of Georgia, Mr. HAYES of Illinois, Mr. MFUME, Mr. YATRON, Mr. GINGRICH, Mr. LIVINGSTON, Mr. HANCOCK, Mr. STUMP, Mr. EMERSON, Mr. LOWERY of California, Mr. SMITH of New Hampshire, Mr. BURTON of Indiana, Mr. ROHRABACHER, Mr. BUECHNER, Mr. DEWINE, Mr. KYL, Mr. THOMAS of Wyoming, Mr. COX, Mr. GRANT, Mr. VANDER JAGT, Mr. JAMES, Mr. FAWELL, Mr. THOMAS of California, Mr. FRENZEL, Mr. ROBERT F. SMITH, Mr. CLINGER, Mr. PARKER, and Mr. STENHOLM.

H.R. 195: Mr. MORRISON of Connecticut and Mr. ECKART.

H.R. 200: Mrs. MORELLA.

H.R. 211: Mrs. MORELLA.

H.R. 222: Mr. ROSE and Mr. DOWNEY.

H.R. 244: Mr. WALKER.

H.R. 368: Ms. SNOWE.

H.R. 396: Mr. INHOFE.

H.R. 416: Mr. TOWNS.

H.R. 509: Mr. HAMILTON, Mr. HENRY, Mr. MACHTLEY, and Mr. CHAPMAN.

H.R. 567: Mr. COURTER.

H.R. 615: Mr. ROE.

H.R. 645: Mr. WOLPE.

H.R. 731: Mr. BONIOR, Mr. CHANDLER, Mr. ROBINSON, and Mr. BURTON of Indiana.

H.R. 780: Mr. MACHTLEY, Mr. WEISS, and Mrs. UNSOELD.

H.R. 916: Mr. MAVROULES, Mr. WOLPE, Mr. BRENNAN, Mr. EVANS, Mr. LEWIS of Georgia, Mr. CONYERS, Mr. PAYNE of New Jersey, Mr. FROST, Mr. BOSCO, Mr. MAZZOLI, Mr. FORD of Tennessee, Mr. MOLINAIR, Mr. JOHNSON of South Dakota, Mr. DWYER of New Jersey, Mr. PACKARD, Mr. JACOBS, Mr. BILBRAY, Mr. DORGAN of North Dakota, Mr. ROE, Mr. LAFALCE, Mr. VALENTINE, Ms. LONG, Mr. CHAPMAN, and Mr. ORTIZ.

H.R. 990: Mr. HERTEL, Mr. MFUME, Mr. LEWIS of California, Mrs. LOWEY of New York, Mr. BOSCO, Mr. FOGLIETTA, Mr. ACKERMAN, Mr. UDALL, Mr. MCDERMOTT, Mr. LIPINSKI, Mr. KOLTER, Mr. DWYER of New Jersey, Mr. FORD of Tennessee, Mr. GORDON, Mr. SANGMEISTER, Ms. PELOSI, and Mr. LANCASTER.

H.R. 1028: Mr. WELDON, Mr. SMITH of Florida, and Ms. OAKAR.

H.R. 1041: Mr. FROST, Mr. ECKART, Mr. RICHARDSON, Mr. BOUCHER, Mr. MRAZEK, Mr. CONDIT, Mr. LAGOMARSINO, and Mr. GEREN.

H.R. 1043: Mr. MACHTLEY.

H.R. 1068: Mr. THOMAS A. LUKEN, Mr. PETRI, and Mr. ROWLAND of Connecticut.

H.R. 1078: Mr. PAYNE of New Jersey.

H.R. 1109: Mr. AUCOIN.

H.R. 1169: Mr. TORRICELLI.

H.R. 1227: Mr. ROBERT F. SMITH.

H.R. 1239: Mr. BLILEY and Mr. LAGOMARSINO.

H.R. 1249: Mr. DURBIN.

H.R. 1281: Mr. RINALDO and Mr. DIXON.

H.R. 1360: Mr. STOKES, Mr. DELLUMS, and Mr. MARTINEZ.

H.R. 1409: Mr. DEFAZIO, Mr. ECKART, Mr. PAYNE of New Jersey, and Mr. UDALL.

H.R. 1453: Mr. ROWLAND of Connecticut.

H.R. 1454: Mr. JOHNSON of South Dakota, Mr. OXLEY, Mrs. PATTERSON, and Mr. SHAYS.

H.R. 1561: Mr. MILLER of California and Mr. WALSH.

H.R. 1570: Mr. MCMILLEN of Maryland.

H.R. 1691: Mr. SMITH of Vermont, Mr. YATES, and Mrs. JOHNSON of Connecticut.

H.R. 2111: Mr. SOLARZ, Mr. ROE, Mr. FALEOMAVAEGA, Ms. SLAUGHTER of New York, Mr. BATES, Mr. PANETTA, Mr. SCHEUER, Mr. MACHTLEY, Mr. SAVAGE, Mrs. COLLINS, Mr. ATKINS, Mr. CONDIT, Mr. FROST, Mr. HYDE, Mr. HAYES of Illinois, Mr. CROCKETT, and Ms. PELOSI.

H.R. 2121: Mr. SPENCE.

H.R. 2174: Mr. ANNUNZIO.

H.R. 2192: Mr. MCMILLEN of Maryland, Mr. ROE, Mr. QUILLEN, and Mr. GLICKMAN.

H.R. 2193: Mr. TORRICELLI.

H.R. 2222: Mr. MACHTLEY.

H.R. 2259: Mr. COX and Mr. SCHAEFER.

H.R. 2265: Mr. JACOBS.

H.R. 2288: Mr. ECKART.

H.R. 2316: Mr. PETRI and Mr. ARMEY.

H.R. 2335: Mr. DE LUGO.

H.R. 2386: Mr. SAXTON.

H.R. 2418: Mr. CROCKETT.

H.R. 2502: Mr. PAYNE of New Jersey.

H.R. 2575: Mr. MCMILLEN of Maryland, Mr. LEWIS of Georgia, and Mr. CLEMENT.

H.R. 2584: Mr. EVANS, Mr. TRAXLER, Mrs. UNSOELD, Mr. MACHTLEY, Mr. HALL of Ohio, Mr. CAMPBELL of Colorado, and Mr. DONALD E. LUKENS.

H.R. 2674: Mr. SMITH of New Hampshire and Mr. ARMEY.

H.R. 2754: Mrs. COLLINS, Mr. FRANK, Mr. MILLER of California, Mr. ROSE, Mrs. SAIKI, Mr. SANGMEISTER, Mr. WEISS, and Mr. DONALD E. "BUZ" LUKENS.

H.R. 2789: Mr. ATKINS.

H.R. 2798: Mr. ROBINSON.

H.R. 2884: Mr. SIKORSKI and Mr. MADIGAN.

H.R. 2948: Mr. TRAFICANT.

H.R. 2951: Mr. LIPINSKI, Mrs. COLLINS, Mr. FRANK, Ms. KAPTUR, Mr. DURBIN, Mr. HYDE, Mrs. LLOYD, Mr. ACKERMAN, Mrs. KENNELLY, and Mr. BRUCE.

H.R. 2952: Mr. HYDE, Mr. DURBIN, Ms. KAPTUR, Mr. FRANK, Mrs. COLLINS, Mr. LIPINSKI, Mrs. LLOYD, Mr. ACKERMAN, Mrs. KENNELLY, and Mr. BRUCE.

H.R. 2954: Mr. TOWNS.

H.R. 3037: Mr. FISH.

H.R. 3053: Mr. WEISS.

H.R. 3106: Mr. MACHTLEY.

H.R. 3119: Mr. KYL and Mr. COURTER.

H.R. 3123: Mr. ESPY, Mr. ROGERS, Mr. JENKINS, Mr. BEVILL, Ms. SNOWE, Mr. COYNE, and Mr. SCHEUER.

H.R. 3129: Mr. BARNARD, Mr. CLARKE, Mr. EMERSON, Mr. ESPY, Mr. EVANS, Mr. GINGRICH, Mr. JONTZ, Mr. LIGHTFOOT, Mr. PARKER, Mr. PRICE, Mr. RAY, Mr. RICHARDSON, Mr. SCHIFF, Mr. SLATTERY, Mrs. SMITH of Nebraska, Ms. SNOWE, Mr. TANNER, Mr. VALENTINE, Mr. WHITTEN, and Mr. WYLIE.

H.R. 3141: Mr. TAUZIN, Mr. COURTER, Mr. GINGRICH, Mr. POSHARD, Mr. ATKINS, Mr. EMERSON, Mr. JONTZ, Mr. DORNAN of California, Mr. ECKART, Mr. ESPY, Ms. LONG, and Mr. EDWARDS of Oklahoma.

H.R. 3164: Mr. JONES of Georgia and Mr. PRICE.

H.R. 3200: Mr. JACOBS, Mr. CROCKETT, Mr. MCNULTY, Mr. FRANK, Mr. CHAPMAN, Mr. BRYANT, Mr. APPLEGATE, Mr. TORRES, Mr. PALLONE, and Mr. MCCLOSKEY.

H.R. 3208: Mr. MCDERMOTT.

H.R. 3212: Ms. PELOSI.

H.R. 3236: Mr. TOWNS, Mr. STOKES, Mr. LAGOMARSINO, Mrs. LLOYD, Mrs. COLLINS, Ms. SLAUGHTER of New York, Mr. HERTEL, Mr. BONIOR, Mr. NIELSON of Utah, Mr. HYDE, Mr. LEHMAN of Florida, Mr. EVANS, Mrs. SAIKI, Mr. BROWN of Colorado, Mrs. ROUKEMA, Mrs. MARTIN of Illinois, Mr. MILLER of Washington, Mr. STANGELAND, Mr. KASICH, Mr. ROE, Mr. MCDERMOTT, Mr. MCGRATH, Mr. ATKINS, and Mr. BENNETT.

H.R. 3251: Mr. BONIOR and Mr. ATKINS.

H.R. 3272: Mr. DEFAZIO, Mr. BOEHLERT, Mr. FAZIO, Mr. SKELTON, Mr. ATKINS, Mr. MACHTLEY, Mr. COLEMAN of Missouri, Mrs. SAIKI, and Mrs. MARTIN of Illinois.

H.R. 3274: Mr. WEISS.

H.R. 3292: Mr. GILLMOR.

H.R. 3317: Mr. MACHTLEY and Mr. STUMP.

H.R. 3323; Mr. MCMILLEN of Maryland.

H.R. 3333: Mr. MCCOLLUM, Mr. MCEWEN, Mr. BEREUTER, and Mr. DUNCAN.

H.R. 3347: Mr. PERKINS, Mr. HEFLEY, Mr. MACHTLEY, and Mrs. UNSOELD.

H.R. 3371: Mr. DELLUMS, Mr. TOWNS, Mr. RANGEL, Mr. COURTER, Mr. STOKES, Mr. WILSON, Mr. WALSH, Mr. EDWARDS of California, Mr. EVANS, Mr. DYMALLY, and Mr. SKELTON.

H.R. 3376: Mr. STEARNS.

H.R. 3383: Mr. PANETTA and Mr. HUGHES.

H.R. 3386: Mr. WALKER and Mr. POSHARD.

H.R. 3389: Mr. ANDREWS, Mr. WOLPE, and Mr. PAYNE of New Jersey.

H.R. 3409: Mr. BILBRAY, Mr. KILDEE, Mr. DONALD E. "BUZ" LUKENS, Mr. SAXTON, Mr. DYMALLY, Mr. OBERSTAR, and Mr. WILSON.

H.R. 3412: Mr. PAYNE of New Jersey.

H.R. 3415: Mr. PAYNE of New Jersey.

H.R. 3423: Ms. KAPTUR.

H.R. 3440: Mr. UPTON.

H.R. 3458: Mr. FOGLIETTA, Mr. FROST, Mr. BATES, Mrs. BOGGS, Mr. MCDERMOTT, Ms. PELOSI, Mr. PALLONE, Mr. EVANS, Mr. STARK, Mr. HOYER, Mrs. UNSOELD, Mr. TORRES, Mr. MORRISON of Connecticut, Mr. GEPHARDT, and Mr. FRANK.

H.R. 3464: Mr. SPRATT.

H.R. 3466; Mr. DWYER of New Jersey and Mr. MCCOLLUM.

H.R. 3478: Mr. MATSUI, Mr. ROWLAND of Connecticut, and Mr. SOLOMON.

H.R. 3480: Mr. FALEOMAVAEGA, Mr. FROST, Mr. PICKETT, Mr. KENNEDY, Mr. HERTEL, Mr. MCDERMOTT, Ms. SLAUGHTER of New York, Mr. WEISS, and Mr. STAGGERS.

H.R. 3491: Mr. ARMEY.

H.R. 3493: Mr. ENGLISH.

H.R. 3496: Mr. SWIFT, Mr. OWENS of Utah, Mr. MILLER of California, Mr. AKAKA, Mrs. COLLINS, and Mrs. BOXER.

H.R. 3508: Mr. HUGHES.

H.R. 3511: Mr. ATKINS, and Mr. MCCLOSKEY.

H.R. 3514: Mr. SABO, Mr. LIPINSKI, Mr. ATKINS, and Mr. RAY.

H.R. 3527: Mr. WOLPE and Mr. ATKINS.

H.R. 3530: Mr. ESPY.

H.R. 3536: Mr. BUSTAMANTE and Mr. GILMAN.

H.R. 3539: Mr. ARMEY.

H.R. 3555: Mr. TOWNS, Mr. SMITH of Florida, Mr. LAGOMARSINO, and Mr. ROE.

H.R. 3557: Mr. MORRISON of Connecticut and Mr. WEISS.

H.R. 3587: Mr. BEREUTER, Mr. BOSCO, Mr. GORDON, Mr. HUCKABY, Mr. JOHNSON of South Dakota, Mr. LAUGHLIN: Mr. MCMILLAN of North Carolina, Mr. MOORHEAD, Mr. PARKER, Mr. RANGEL, Mr. RICHARDSON, Mr. SCHIFF, Mr. SLATTERY, Mr. PACKARD, and Mr. PALLONE.

H.R. 3594: Mr. HOCHBRUECKNER, Mrs. COLLINS, Mr. NEAL of North Carolina, and Mr. PAYNE of New Jersey.

H.R. 3603: Mr. TRAFICANT, Mr. FOGLIETTA, Mr. GRANT, Mr. LIPINSKI, Mr. BAKER, Mr. PAXON, Mr. DREIER of California, Mr. CRANE, Mr. BLAZ, Mr. MILLER of Washington, Mr. GALLO, Mr. BARNARD, Mr. YOUNG of Alaska, Mr. DEFAZIO, Mr. MACHTLEY, Mr. POSHARD, Mr. WELDON, Mrs. ROS-LEHTINEN, and Mr. ROSE.

H.R. 3643: Mr. HEFLEY.

H.R. 3665: Mr. WHITTAKER, Mrs. SAIKI, Mr. SUNDQUIST, Mr. SCHIFF, Mr. ROE, Mr. WALSH, and Mr. OWENS of Utah.

H.R. 3681: Mr. JONTZ, Mr. ROE, Mr. ACKERMAN, Mr. PETRI, Mr. ROGERS, Mr. ECKART, and Mr. EMERSON.

H.R. 3690: Mr. BARNARD.

H.R. 3691: Mr. BARNARD.

H.R. 3699: Mr. COBLE, Mr. GILLMOR, Mr. TRAFICANT, Mrs. UNSOELD, and Mr. DANNEMEYER.

H.R. 3700: Mr. MACHTLEY, Mr. MFUME, Mr. JONTZ, Mr. BOEHLERT, Mr. FLORIO, Ms. SNOWE, Mrs. COLLINS, and Mr. LEHMAN of California.

H.R. 3721: Mr. NEAL of Massachusetts.

H.R. 3733: Mr. BATES, Mr. BRUCE, Mr. DEFAZIO, Mr. ECKART, Mr. FAUNTROY, Mr. MINETA, Mr. PAYNE of New Jersey, Mr. ROYBAL, Mr. SIKORSKI, and Mr. WHEAT.

H.R. 3740: Mr. ROE, Mr. COLEMAN of Texas, and Mr. TOWNS.

H.R. 3766: Mr. GILMAN.

H.J. Res. 57: Mr. TORRES.

H.J. Res. 82: Mr. VENTO.

H.J. Res. 183: Mr. STALLINGS.

H.J. Res. 244: Mr. ATKINS, Mr. BEVILL, Mr. BRENNAN, Mr. BROOKS, Mr. COUGHLIN, Mr. DIXON, Mr. ESPY, Mr. FASCELL, Mr. FOGLIETTA, Mr. GONZALEZ, Mr. HALL of Texas, Mr. HUGHES, Mr. JONTZ, Mr. LAGOMARSINO, Mr. LANCASTER, Mr. MCCLOSKEY, Mr. MCDERMOTT, Mr. NCNULTY, Ms. OAKAR, Mr. PALLONE, Mr. PETRI, Mr. RICHARDSON, Mr. RIDGE, Ms. SLAUGHTER of New York, Mr. TOWNS, Mr. VOLKMER, Mr. WALGREN, and Mr. WAXMAN.

H.J. Res. 255: Mr. VANDER JAGT and Mr. GARCIA.

H.J. Res. 268: Mr. GEREN, Mr. CONDIT, and Mr. TAYLOR.

H.J. Res. 367: Mr. FRANK, Mr. TANNER, Mr. DERRICK, Mr. COOPER, Mr. PRICE, and Mr. OWENS of Utah.

H.J. Res. 416: Mr. CRAIG, Mrs. MEYERS of Kansas, Mr. ROYBAL, Mr. KILDEE, Mrs. MARTIN of Illinois, Mr. GILMAN, Mr. FROST, Mr. WELDON, Mr. CROCKETT, Mr. TANNER, Ms. SLAUGHTER of New York, Mr. PAYNE of New Jersey, Mr. NAGLE, Mr. COBLE, Mr. OWENS of Utah, Mr. CLARKE, Mr. MARTINEZ, Mr. LAFALCE, Mr. GRANDY, Mr. KASTENMEIER, Mr. TAUKE, Mr. CONDIT, Mr. LIGHTFOOT, Mr. SMITH of Iowa, Mr. SHAW, Mr. BROWDER, Mr. QUILLEN, Mr. DYMALLY, Mrs. JOHNSON of Connecticut, Mr. GRAY, Mr. SHAYS, Mr. AKAKA, Mr. COSTELLO, Mr. WATKINS, Mr. JOHNSTON of Florida, Mr. BAL-

LENGER, Mr. HANSEN, Mr. SLATTERY, Mr. GEKAS, Mr. ROTH, Mr. PRICE, Mr. NIELSON of Utah, Mr. SANGMEISTER, Mr. LEVINE of California, Mr. GREEN, Mr. RHODES, Mr. ENGEL, Mr. BARTLETT, Mr. MANTON, Mr. SYNAR, Mr. DYSON, Mr. TRAXLER, Mr. DONNELLY, Mr. HOCHBRUECKNER, Mr. LIVINGSTON, Mrs. LOWEY of New York, Mrs. BENTLEY, Mr. BUNNING, Mr. BARNARD, Mr. SMITH of New Hampshire, Mr. DEFAZIO, Mr. WEISS, Mr. ROWLAND of Georgia, Mr. DICKS, Mr. HAYES of Illinois, Mr. CHANDLER, Mr. BUSTAMANTE, Mr. AUCOIN, Mr. HAWKINS, Mr. UDALL, Mr. MATSUI, Mr. MOORHEAD, Mr. BERMAN, Mr. WAXMAN, Mr. WEBER, Mr. BATES, Mr. ROBERT F. SMITH, Mr. ENGLISH, Mr. JONES of Georgia, Mr. MFUME, Mr. HAYES of Louisiana, Mr. MINETA, Mr. FLAKE, Mr. DE LUGO, Mr. ESPY, Mrs. COLLINS, Mr. ORTIZ, Mr. SAXTON, Mr. FAUNTROY, Mr. SAVAGE, Mr. SARPALIUS, Mr. ATKINS, Mr. LEWIS of Georgia, Mr. ARCHER, Mr. RAHALL, Mr. RINALDO, Mr. TRAFICANT, Mr. TORRES, Mr. DORNAN of California, Mr. PAXON, Mr. GRANT, Mr. SPRATT, Mr. STALLINGS, Mr. HUGHES, Mr. DE LA GARZA, Mr. RICHARDSON, Mr. GARCIA, Mr. BROWN of California, Mr. LAGOMARSINO, Mr. HOYER, Mr. HERGER, Mr. BOSCO, Mr. FISH, Mr. MCGRATH, Mr. MCHUGH, Mr. FLORIO, Mr. YATRON, Mr. VENTO, Mr. MORRISON of Connecticut, Mr. HARRIS, Mrs. UNSOELD, Mr. PAYNE of Virginia, Mr. OLIN, Mr. COOPER, Mr. MARKEY, Mr. ALEXANDER, Mr. BENNETT, Mr. ANDERSON, Mr. FRANK, Mr. STENHOLM, Mr. MONTGOMERY, Mr. PARKER, Mr. RAY, Mr. HANCOCK, Mr. SMITH of Florida, Mr. DREIER of California, Mr. BROOMFIELD, Mr. GUNDERSON, Mr. PURSELL, Mrs. ROS-LEHTINEN, Mr. EMERSON, Mr. ROHRABACHER, Mr. HALL of Texas, Mr. MICHEL, Mr. DANNEMEYER, Mr. BROWN of Colorado, Mr. SOLOMON, Mr. THOMAS of Wyoming, Mr. CONTE, Mr. MURTHA, Mr. SMITH of Texas, Mr. SLAUGHTER of Virginia, Mr. HUBBARD, Mr. PARRIS, Mr. NOWAK, Mr. BURTON of Indiana, Mr. HAMMERSCHMIDT, and Mr. PASHAYAN.

H.J. Res. 420: Mr. WEISS, Mr. PALLONE, Mr. CROCKETT, Mr. GARCIA, and Mr. MOODY.

H.J. Res. 429: Mr. FASCELL, Mr. SMITH of Iowa, Mr. SKELTON, Mr. SKEEN, Mr. SHARP, Mr. DEFAZIO, Mr. SAVAGE, Mr. SARPALIUS, Mr. WHITTAKER, Mr. ROWLAND of Connecticut, Mr. ROYBAL, Mr. ROGERS, Mr. RITTER, Mr. RINALDO, Mr. RAVENEL, Mr. BORSKI, Mrs. PATTERSON, Mr. PAYNE of Virginia, Mr. GEREN, Mr. STANGELAND, Mrs. JOHNSON of Connecticut, Mr. PARKER, Mr. SANGMEISTER, Mrs. UNSOELD, Mr. MURTHA, Mr. MORRISON of Connecticut, Mr. MCEWEN, Mr. BOEHLERT, Mr. DUNCAN, Mr. BUSTAMANTE, Mr. CALLAHAN, Mr. MOLINARI, Mr. CLINGER, Mr. CLARKE, Mr. SCHIFF, Mr. ROE, Mr. RANGEL, Mr. ROWLAND of Georgia, Mrs. COLLINS, Mr. CONYERS, Mr. DAVIS, Mr. BROWDER, Mr. MONTGOMERY, Mr. MORRISON of Washington, Mr. MRAZEK, Mr. MURPHY, Mr. NEAL of Massachusetts, Mr. NIELSON of Utah, Mr. PACKARD, Mr. KOSTMAYER, Mr. KASICH, Mr. DEWINE, Mr. DICKS, Mr. DIXON, Mr. DONNELLY, Mr. DORNAN of California, Mr. DYMALLY, Mr. RAHALL, Mr. CHAPMAN, Mr. CRAIG, Mr. SHAW, Mr. STEARNS, Mrs. MARTIN of Illinois, Mrs. SAIKI, Mr. LOWERY of California, Mrs. BOXER, Mr. BATES, Mr. LEHMAN of California, Mr. LANTOS, Mr. PANETTA, Mr. ALEXANDER, Mr. STARK, Mr. EDWARDS of California, Mr. CARPER, Mr. ACKERMAN, Mr. ERDREICH, Mr. EVANS, Mr. SMITH of Florida, Mr. GILMAN, Mr. WALGREN, Mr. SYNAR, Mr. COOPER, Mr. POSHARD, Mr. SCHEUER, Mr. COX, Mr. NATCHER, Mr. HOYER, Mr. ECKART, Mr. LANCASTER, Mr. MCNULTY, Mr. BEILENSON, Mr. JOHNSTON of Florida, Mr. FRANK, Mr. MOODY, Mr. HOPKINS, Mrs. MEYERS of Kansas, Mr. PICKLE, Mr. DE LA GARZA, Mr. TANNER, Mr. SKAGGS, Mr. BROWN of California, Mr. UPTON, Mr. RUSSO, Mrs. KENNELLY, Mr. MARTINEZ, Mr. MATSUI, Mr. TORRES, Mr. SABO, Mr. COURTER, Mr. BATEMAN, Mr. CARDIN, Mr. HUTTO, Mr. MOAKLEY, Mr. MILLER of California, Mr. GAYDOS, Mr. FIELDS, Mr. FLIPPO, Mr. ENGLISH, Mr. FISH, Mr. FROST, Mr. GUARINI, Mr. KASTENMEIER, Mr. IRELAND, Mr. JOHNSON of South Dakota, Mr. GALLO, Mr. GIBBONS, Mr. DARDEN, Mr. HATCHER, Mr. RAY, Mr. THOMAS of Georgia, Mr. STALLINGS, Mr. JENKINS, Mr. BRUCE, Mr. CAMPBELL of Colorado, Mr. LIPINSKI, Mr. AKAKA, Mr. LEVINE of California, Mr. LAGOMARSINO, Mr. JONES of North Carolina, Mr. CONDIT, Mr. DURBIN, Mr. TAYLOR, Mr. HUGHES, Mr. ANNUNZIO, Mr. BILBRAY, and Mr. MAZZOLI.

H.J. Res. 436: Mr. HANSEN, Mr. GORDON, Mr. MCMILLEN of Maryland, Mr. BATES, Mr. FRANK, Mr. POSHARD, Mr. RAY, Mr. WOLF, Mr. SMITH of Florida, Ms. KAPTUR, and Mr. ROE.

H. Con. Res. 26: Mr. HOLLOWAY.

H. Con. Res. 39: Mr. SIKORSKI and Mr. MADIGAN.

H. Con. Res. 48: Mr. MAZZOLI.

H. Con. Res. 57: Mr. CHAPMAN, Mr. BARTLETT, and Mr. DAVIS.

H. Con. Res. 66: Mr. WEISS.

H. Con. Res. 80: Mr. BONIOR.

H. Con. Res. 91: Mr. JONTZ.

H. Con. Res. 138: Mr. SHAYS.

H. Con. Res. 155: Mr. JOHNSON of South Dakota.

H. Con. Res. 172: Mr. DURBIN, Ms. KAPTUR, Mr. FRANK, Mrs. COLLINS, Mr. LIPINSKI, Mr. HYDE, Mrs. LLOYD, Mr. ACKERMAN, Mrs. KENNELLY, and Mr. BRUCE.

H. Con. Res. 203: Mr. GUNDERSON, Mr. SAVAGE, Mr. SWIFT, Mr. WAXMAN, Mr. SYNAR, Mr. DURBIN, Mrs. LOWEY of New York, Mr. MCDERMOTT, Mr. OBEY, Mr. HOAGLAND, Mr. MCCLOSKEY, Ms. PELOSI, Mr. HOCHBRUECKNER, Ms. OAKAR, and Mr. PANETTA.

H. Con. Res. 216: Mr. GREEN, Mr. MACHTLEY, and Mr. FALEOMAVAEGA.

H. Con. Res. 219: Mrs. MEYERS of Kansas and Mr. TAUZIN.

H. Con. Res. 227: Mr. GILMAN, Mr. MORRISON of Connecticut, Mr. WEISS, and Mrs. COLLINS.

H. Res. 19: Mr. ATKINS, Mr. DANNEMEYER, and Mr. HUGHES.

H. Res. 181: Mr. MOORHEAD.

H. Res. 193: Mr. CARPER, Mr. DICKS, Mr. HAYES of Illinois, Mr. KILDEE, Mr. SLATTERY, Mr. BENNETT, Mr. MACHTLEY, Mr. KOLTER, Mr. MAVROULES, and Mr. LAGOMARSINO.

H. Res. 247: Mr. CRAIG.

H. Res. 269: Mr. COX.

# SENATE—*Tuesday, November 21, 1989*

*(Legislative day of Monday, November 6, 1989)*

The Senate met at 12 noon, on the expiration of the recess and was called to order by the Honorable ALAN J. DIXON, a Senator from the State of Illinois.

## PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

*And he said unto me, My grace is sufficient for thee: for my strength is made perfect in weakness.* * * *—II Corinthians 12:9.

Gracious Father in Heaven, this brilliant, powerful man, Paul, learned the infinite sufficiency of the grace of God, but he learned it through weakness. You taught him grace to protect him from his ego. No matter how strong we are, Father, how wise, how self-sufficient, we face personal extremities. Teach us not to deprive ourselves of Your grace, Your undeserved favor, because we refuse to acknowledge our need. Help us to learn that Your grace is made perfect in our weakness. Pour out Your Spirit upon us in these frustrating hours that we may experience Your mighty power, the infinite sufficiency of Your grace.

In Jesus' name who is the Mediator of that grace. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, November 21, 1989.*

*To the Senate:*

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Alan J. Dixon, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,
*President pro tempore.*

Mr. DIXON thereupon assumed the chair as Acting President pro tempore.

## RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the distinguished majority leader is recognized.

## THE JOURNAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## UNANIMOUS-CONSENT REQUEST—AUTHORIZING COMMITTEE TO FILE REPORTED BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that during the adjournment of the Senate, committees may file reported legislative and Executive Calendar business on December 13, 1989, and January 10, 1990, from 12 noon to 3 p.m.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DOLE. Reserving the right to object.

Mr. MITCHELL. Mr. President, I withdraw that request. I apologize to the Republican leader. I thought that had been cleared.

## SCHEDULE

Mr. MITCHELL. Mr. President, following the time reserved for the two leaders today, there will be a period for morning business until 12:30 p.m., with Senators permitted to speak therein for up to 5 minutes each. From 12:30 to 2:15 p.m., the Senate will stand in recess to accommodate the party conferences.

## RESERVATION OF MAJORITY LEADER'S TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time. I yield to the distinguished Republican leader.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. The distinguished Republican leader is recognized.

## RESERVATION OF THE REPUBLICAN LEADER'S TIME

Mr. DOLE. Mr. President, I reserve my time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 12:30 p.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

The distinguished Senator from Ohio is recognized.

Mr. GLENN. I thank the Chair.

(The remarks of Mr. GLENN, and Mr. HATFIELD pertaining to the introduction of S. 1950 and S. 1951 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. D'AMATO addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from New York [Mr. D'AMATO].

Mr. D'AMATO. I thank the Chair.

(The remarks of Mr. D'AMATO pertaining to the introduction of S. 1955 and S. 1956 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SPECTER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized, but may I suggest to him that we have less than 5 minutes left. I see the Senator from Pennsylvania. Is the Senator from Alabama equally interested in seeking recognition? I see we have only 3 minutes remaining. We will need some extra time.

## EXTENSION OF MORNING BUSINESS

Mr. GORE. Mr. President, I ask unanimous consent that morning business be continued until the hour of 12:45. Let me say that at the time I arrived on the floor the Senator from Pennsylvania and the Senator from Alabama were both already present. I will be glad to withhold until they have had an opportunity to speak.

The ACTING PRESIDENT pro tempore. I thank the Senator from Tennessee.

Without objection, the time will be extended to 12:45.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 1953 are located in today's RECORD under

"Statements on Introduced Bills and Joint Resolutions.")

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee [Mr. GORE].

## AGENDA OF THE LATE CONGRESSMAN MICKEY LELAND IN ETHIOPIA

Mr. GORE. Thank you very much for your courtesy, Mr. President.

Before we leave for the Thanksgiving holiday, I wanted to report to my colleagues about some very interesting efforts which are now getting underway to develp an innovative agricultural project in areas of Africa subject to famine, particularly in Ethiopia, in honor of our late colleague, Congressman Mickey Leland.

Mickey Leland had a longstanding agenda in Ethiopia. However, on his last trip, he had intended to explore the receptivity of the Ethiopian authorities to a new idea which had been the subject of discussions between Congressman Leland and myself and an individual from New York City named Ivan Tillem, who first proposed the first version of this idea.

Mr. Tillem, incidentally, linked up with Mickey Leland on this fatal trip and died with him in the plane crash. Essentially, the concept that Mickey Leland was working on at the time of his death was to find ways to enable the Ethiopian peasant farmer to improve agricultural productivity by means that he personally could bring to bear, producing enough additional foodstuffs to serve as a barrier against famine and also to prevent the further deterioration of the environment.

I had thought that this hopeful idea had also been a casualty in the plane crash, but that is apparently not the case. There is an effort underway to organize private funding in support of a project very much in the spirit of what Mickey Leland had in mind.

It is my understanding that the EMMES Foundation in New York is actively exploring the possibility of a program of technical assistance to Ethiopian agriculture which would be designed by Israeli and Ethiopian experts.

I have already seen proposals developed at Ben Gurion University organized around the search for ways to raise more plentiful crops under those conditions and with training and investment that are in the proper context for a country like Ethiopia.

One example is a search for ways to use brackish water for crop irrigation. Another involves a search for plant forms that can survive very rigorous growing conditions, and so on. As presently conceived, these programs would require a number of years before reaching fruition in the form of new techniques applicable to Ethiopia's unique circumstances.

During that time, private financing may suffice. Thereafter, the question would be how to fund the dissemination of these techniques.

At that point, the Government of the United States may wish to revisit present policies and laws which ban any form of aid to Ethiopia, other than outright disaster relief. Those policies are grounded in the history of United States-Ethiopian relations which have been marred for many years by hostility based upon both geopolitical, ideological, and human rights issues.

These conditions may well have changed for the better by the time the issue of U.S. Government assistance as follow through to this proposed new private effort becomes topical. We will have to wait and see.

But meanwhile, the famine continues and the life and death struggle should weigh in the balance of our considerations. For now, it is up to those who are attempting to organize this new approach, and to Ethiopia's authorities, who may either block it or encourage it. Hopefully, in memory of Mickey Leland, they will do the latter.

Mr. President, I know that many of my colleagues will wish to learn more about this development, if it continues to proceed and demonstrate continued promise, and may even wish to help it out at the appropriate time. I will continue to report on its progress and, hopefully, there will be more to say about it soon.

In conclusion, let me just note that every day, on average, 37,000 children under the age of 5 die of starvation in this world or of preventable diseases made worse by malnutrition.

When the two whales were trapped in the ice of the Arctic last year, struggling for enough space to get a breath of air, our attention was riveted on their plight, and God bless those who saved those two whales.

But what a contrast between the attention and concern devoted to those two whales struggling for life and the relative lack of interest and concern in the plight of an average of 37,000 children under the age of 5 dying everyday because of malnutrition, starvation, and preventable diseases made worse by the failures of crops and politics.

The time is coming, Mr. President, when we will devote more attention to this unspeakable tragedy going on in places like Ethiopia. Mickey Leland gave his life in an effort to try to address those problems. At the end of his life, he had arrived at a new approach that held great promise. It is that approach that is embodied in these private efforts, about which I report to the Senate today, and about which I will report further later on.

Thank you, Mr. President. I yield the floor.

Mr. HEFLIN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Will the Senator withhold that, please, I ask the Senator from Alabama?

## S. 1600—INDEPENDENT FAA

Mr. FORD. Mr. President, following in the footsteps of my friend and colleague, the Honorable senior Senator from the State of West Virginia, who has honored us with a history of the Senate's first 200 years, I rise today to give you a look, albeit a brief one, into the Federal Government's role in the history of U.S. aviation.

With the push for deregulation of the airways in the 1970's it may come as something of a surprise that in the 1920's—as taking to the air began to take hold in the mind and spirit of the American public—there was a cry for the Federal Government to take action. Without Federal regulation, the itinerant flier caused fear and dread wherever he went. The public wanted to fly, but they were afraid. Big money was afraid to invest. The system that existed wasn't a system at all. It was, with the exception of limited and inconsistent State and local laws and regulations, anarchy. In a statement that could have as easily come from yesterday's paper, the Buffalo Courier in 1924 said, "Time is at hand to bring some order out of the chaos of laissez faire in the air * * *." Which makes me think that Dad was right when he told me that the more things change, the more they stay the same.

To be sure, Federal intervention in the airways was not without its problems. While the aviation community and its friends wanted the Government to promote safety in the air, they also wanted it to play a major role in encouraging development of the industry, much as was the case in Western Europe. What form this subsidization would take was a stumbling block that had to be crawled over before any substantive action could take place. The issue of State rights had to be addressed. Registration, certification, penalties—aviation advocates, both in and out of the government, had to start from scratch. That may help to explain why it took 26 studies and almost a decade between the time legislation was first proposed and finally enacted.

Ultimately, it was decided that the Federal Government would help to establish airways but not airports; regulation of interstate commerce would be left up to the Federal Government, obviously, but not the regulation of intrastate commerce; civil penalties and liens would be the preferred method of enforcing Federal air regulations; and Federal licensing would

affect only those pilots engaged in interstate commerce. Federal air traffic rules, however, would apply to everyone using the airways. On May 20, 1926, the Federal Government went airborne as Calvin Coolidge signed the Air Commerce Act into law.

A great deal of credit for working out the kinks in this legislation and keeping the pressure up to get it passed should go to William P. MacCracken, Jr., a young attorney from Chicago who was involved in the negotiations, first as a representative of the American Bar Association and later as a serious contender and ultimate nominee for the post of Assistant Secretary for Aeronautics. I'll discuss his role and accomplishments a bit more in depth in a later statement—before I'm done, I think there will probably be four or five of these things—but I believe I would be remiss if I didn't take this opportunity to bring out one point that is evident in Mr. MacCracken's title: the Federal Government's first air regulatory agency was not an independent one, it was merely a branch, a branch of the Department of Commerce. You all probably knew there would be a catch in this history lesson, and you were right. Future statements will examine how this arrangement, with its additional layer of bureaucracy and resultant problems, hampered the development of a truly effective system of keeping tabs on the airways. I know you'll look forward to these as much as I will when the second session begins and discussions of S. 1600, the Federal Aviation Administration Independent Establishment Act of 1989, start to heat up, so I'll leave you for now with a little something to think about over the holiday recess.

## INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD

Mr. KOHL. Mr. President, I ask my colleagues to take note of an historic moment for children around the world. Yesterday, the United Nations General Assembly adopted a landmark Convention on the Rights of the Child. This is the first time that the economic, political, and social rights of all children have been put forth in one document. It is appropriate that this action took place on the 30th Anniversary of the United Nations Declaration of the Rights of the Child and the 10th anniversary of the International Year of the Child.

I commend the superb work of the U.S. Committee for UNICEF, Save the Children, Foster Parents Plan, Childhope, the Children's Defense Fund, B'nai B'rith International, the American Academy of Pediatrics, and countless other organizations working with the American Council for Voluntary International Action in support of this Convention. I also must commend UNICEF for its outstanding leadership and accomplishments in the arena of fundamental rights and services for children worldwide.

The General Assembly's vote comes none too soon. Despite the fact that children are the future, not one country guarantees adequate health, nutrition, housing, education, or child care for all its youngest citizens. Neither can any nation claim to protect all its children from abuse, neglect, or exploitation.

Mr. President, we do not have to look beyond our own doorstep to see the far-reaching risks and repercussions of poverty, poor health, abuse and neglect, homelessness and hunger for children. One out of every four children under the age of 6 in this country is poor. For minority preschoolers, that figure is even higher. Every other black and Hispanic child in America lives in a family with an income below the poverty level. And the overall figures for older children are no better. Some 10 million children under the age of 13 are growing up in poverty.

What is even more alarming is the fact that more American children are living in poverty today than 10 or 20 years ago. And, as has been noted on this floor all too many times before, budget cuts in programs and services for children and families over the past decade have left hundreds and thousands at greater risk. We now have the dubious distinction of having the highest infant mortality, teenage pregnancy, and childhood poverty rates in the Western industrialized world.

Despite the fact that many developing nations have lower infant mortality rates than that found right here in Washington, DC, the past decade has marked an overall decline in public programs promoting the health, education, and welfare of children. When deficits and debt crisis loom, programs for vulnerable children and families are the first to go.

The global statistics are staggering. Every day, 38,000 children die from lack of food, shelter or primary health care. Add to that the daily toll of 40,000 child deaths from diarrhea. From Rio, Brazil, to Bombay, India, more than 80 million homeless children live in the streets. And, more than 100 million children work in hazardous conditions.

Mr. President, we must not overlook those children at risk of abuse, neglect, and exploitation. Reported cases of physical and sexual child abuse are on the rise worldwide. Neither can we forget those children subject to the horrors of war. Between 60 and 70 percent of all the refugees in the world are children. And the refugee camps in which millions of children grow up leave them at risk of chronic infectious diseases, malnutrition, and physical and mental handicaps.

The recent events in San Salvador serve as a potent reminder of the tragedies facing children caught in armed conflicts. Last week alone, as many as 50,000 people were displaced by bombing and strafing attacks. Half of them were children, and many who had hoped to find refuge at church relief centers found they had been closed or raided by the military.

The time for landmark human rights legislation for children has come. The United Nations Convention adopted yesterday will create a permanent forum on the rights of children everywhere. These include: First, the right to survival with adequate food, shelter, clean water, and primary health care; second, the right to protection from abuse, neglect, exploitation, and the vicissitudes of war; and third, the right to develop in a safe environment with freedom from discrimination and access to education and health care.

Mr. President, those governments ratifying the Convention will have an opportunity to ensure their laws, programs, and services for children meet the standard set forth in this historic document. I urge my colleagues to offer their advise and consent to this Convention. And I further urge President Bush to offer his full-fledged support. Our children, and their peers around the globe, deserve no less.

I ask unanimous consent that articles published in Monday developments, a biweekly publication of InterAction, be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From Monday Developments, Oct. 16, 1989]

### SAVE THE CHILDREN MAKING A REALITY OF CHILDREN'S RIGHTS

The international fight for children's rights first began in the early 1920s with Eglantyne Jebb, the British woman who founded the Save the Children movement. She began a campaign that resulted in the adoption by the League of Nations of the Declaration of Geneva, which established fundamental rights for children. The Declaration was expanded and adopted by the UN in 1959.

Three decades later, we are now at a historic moment in children's rights. After nearly a decade of debate, the UN General Assembly is about to consider the Convention on the Rights of the Child. The Convention consists of 41 articles outlining a broad range of children's rights. After being approved by the General Assembly, the Convention will begin the ratification process and will become binding international law after 20 states have ratified it.

The International Save the Children Alliance, an association of 21 Save the Children organizations from around the world, has been an active promoter of the Convention. This summer, a major conference on children's rights was organized in Stockholm by the Swedish Save the Children. For two days, 200 delegates from more than 30 coun-

tries met to bring the Convention and children's rights into focus.

"Believing that there is an urgent need to give special attention to the fulfillment of children's rights in view of children's vulnerability and the brutal realities which so many of them face," the delegates adopted the Stockholm Statement on the Rights of the Child. It calls upon governments, the UN system, nongovernmental organizations and professionals to "make reality of children's rights" through measures including:

(1) Adopting and ratifying the UN Convention without reservations;

(2) Bringing children's rights into focus when global issues of survival—such as the degradation of the environment, the debt crisis and armed conflicts—are being addressed because children will inherit the consequences;

(3) Reviewing development programs and making adjustments to enhance the protection and attainment of children's rights;

(4) Offering assistance in response to reports of violations of children's rights;

(5) Educating themselves about the needs and rights of children;

(6) Ensuring children's participation in making the Convention on the Rights of the Child a reality.

In addition to working with the Alliance to encourage implementation of the Stockholm Statement, Save the Children is promoting the Convention by: 1) educating Americans about the Rights of the Child; 2) encouraging ratification by the US government; and 3) continuing to incorporate the principles of the Convention into its work in the US and other countries.

Details of the Stockholm meeting are included in the book "Making Reality of Children's Rights."

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[From Monday Developments, Sept. 4, 1989]

SPOTLIGHT ON WORK FOR CHILDREN'S CONVENTION—CHILDHOPE UNITES STREET KIDS WORLDWIDE

While InterAction's campaign to promote the United Nations Convention on the Rights of the Child is focused on winning ratification in the United States, several agencies have begun to look for ways to promote it abroad. This international treaty, which guarantees specific standards for children's basic needs, protections and freedoms will only enter into force after twenty countries have ratified it in their national legislatures. Therefore, it is critical that the strategy to encourage US ratification of the Convention be combined with an effort to drum up support in as many other countries as possible. InterAction agencies are well-positioned to promote the Convention through counterparts in the developing world.

Important work is being done by Childhope Foundation, which, through its work with street children has launched an initiative to teach children about their rights and protections. Street children represent one of the world's most exploited and rapidly growing minorites. Today there are 100 million street children worldwide—and their numbers will likely double in the next generation. The presence of street children is largely the result of disastrous economic conditions in the Third World and the centuries-old problem of child abuse and neglect. Attempts to help street children seek a better life are made difficult by the fact that they fall outside most basic social services. As Marilyn Rocky, Regional Director of Childhope USA, points out: this is because street children are born and raised on the fringes of their communities. They are left out of educational opportunities, health care services and other support systems. The Convention on the Rights of the Child seeks to bring street children back into the mainstream by focusing attention on those factors which have forced them on to the streets. This includes guaranteeing access to quality medical care, education, and shelter and forcing the state to provide appropriate care for children when their families are unable to do so.

Childhope is very effective in engaging children to become active proponents for their rights and in drawing public attention to the plight of street children. In 1986, ten Brazilian street kids organized the first conference of the National Movement for Street Boys and Girls in which 432 child delegates turned out to discuss such issues as alternative education, income generation and employment, community organization and violence on the streets. Childhope's Executive Director Peter Tacon was there to observe and provide moral support. At the end of this September, Childhope will again attend the convocation of street children in Brasilia. This time nearly 1,000 street youth are expected to participate. Among the various activities planned, the children will present a resolution to Brazilian President Jose Sarney condemning the killing of street children by vigilantes.

Earlier this year as part of its sponsorship of the First Regional conference on Street Children in Asia, Childhope supported a theatrical performance by street children for an audience which included Philippine President Corazon Aquino. The President was so moved by what she saw and heard that she responded to their call by offering one million dollars in government funding to expand local services to meet the needs of street children. Another high profile activity by Childhope included the organization of a month-long campaign in Guatemala City which included a series of seminars, press conferences, demonstrations and parades by street children demanding recognition of their rights.

This initiative, known as the National Campaign for Boys and Girls, highlighted direct child participation. But perhaps the most creative way Childhope encourages street children to exercise their rights is through its newsletter "Let Us Speak" which provides an open forum for street children to speak to other children throughout the world. This colorful six-page newsletter allows street children to tell their story about life on the streets through drawings and essays.

Street children are perhaps the most maligned and disenfranchised segment of the population. Unable to protect themselves against the harsh realities of street life, these children are at the mercy of adult willingness to protect and respect their rights. While some street children have been able to demand their rights on their own, the vast majority can only expect real progress when the international community demonstrates its will to raise the standards for treatment of all children.

The UN Convention on the Rights of the Child is an important step towards focusing attention on the grave living conditions many children face. The best hope InterAction has for influencing a positive outcome for the Convention is to combine the coalition's effort to support US ratification with individual agency efforts to promote the treaty among their colleagues in the South. As more countries include the Convention as part of their national law, the greater impact the treaty will have on the lives of children around the world.

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## BOVE'S CAFE ON PEARL STREET

Mr. LEAHY. Mr. President, generations of hungry college students from the Burlington area have been sustained in body and spirit by the food and good company at Bove's Cafe on Pearl Street.

The parents of one of my legislative aides sealed their engagement between the antipasto and lasagne. Another aide who has been a caseworker in my Burlington office for 12 years, was pinned by a St. Michael's College student in one of the booths. They still use the same booth, more than 20 years and 3 children later.

I ate there with my parents as a child, later as a college student, and often as State's attorney while waiting for a jury to reach a decision on a case I was prosecuting. Many of us celebrate birthdays and anniversaries just to share our joy with the Bove familiy in the busy, happy atmosphere of their family restaurant.

Mr. President, when you can enter a restaurant through its kitchen and talk to the cooks on the way to your table, you have indeed found a culinary gem. It is an indescribable experience that I have enjoyed for more than 30 years.

The Boves are a wonderfully close and loving Italian family.

Since the founding of Bove's Cafe in 1941 by Louie and Victoria, through Dick Bove's management today, the family kept serving fine food at prices we college kids could afford. We would line up behind the big, colorful jukebox in the rear until our numbers spilled out into the street. We would wait for a table cheerfully, and still do, whetting our appetites with the delicious aromas that surrounded us.

And the first words you would always hear as you entered were Babe Bove's greeting all the way from the register up front: "Everyone's been asking for ya."

Even the conversation is delicious at Bove's. I ask that the story about this wonderful family be printed in the CONGRESSIONAL RECORD. And if any of you are ever in downtown Burlington at dinner time, go down to Pearl Street and get in line. Marcelle and I have been doing it for years. Our children still do and I think our son Kevin and Rick Bove have probably eaten enough pasta there for a large city in Italy. Alicia, Rob, and Mark have never turned down an invitation to join us for a meal there, and just giving this speech makes me hungry.

Let me share the story of Bove's Cafe with you, told by Eloise Hedbor in the Burlington Free Press of November 13, 1989.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BURLINGTON'S FIRST FAMILY—48 YEARS AT BOVE'S CAFE: LOUIE AND VICTORIA WOULD BE PROUD

(By Eloise Hedbor)

In 1941, Louie and Victoria Bove applied to the Burlington Board of Aldermen for permit to open Bove's Cafe on Pearl Street.

Aldermen only met twice a month, but they polled a quorum and issued a temporary permit until the next meeting, when the official license was granted. That was Dec. 7, 1941, the same day the Japanese bombed Pearl Harbor. The two older sons, Babe and Erine, got drafted, recalled their younger brother, Richard "Dick" Bove, who now owns the famous restaurant.

But Louie and Victoria carried on, and the little cafe with its black art deco trim and great homemade Italian food quickly became a favorite of soldiers stationed at Fort Ethan Allen. Beer was a nickel and a spaghetti dinner with meatballs cost 25 cents.

Everything was made from scratch. In the summer, Dick recalled, his mother would pick the Italian plum tomatoes from her own graden, right there in the back yard. And the whole family lived upstairs. "There were six big rooms but we filled up the place," he said.

When the war ended, boys returned home, and in 1946, Louie died. "Erine, the oldest, took over and ran the place," Bove said, "but my mother was actually the matriarch."

It was such a simple formula. Good food, in ample quantities, served cheerfully and priced well within reach even of struggling college students.

Men from St. Michael's and women from Trinity made Bove's a regular spot on Friday nights where they could meet and enjoy meatless spaghetti sauce.

Sports fans began gathering there in the early 1950s when Bove's became one of the first places in Burlington to have a television, that, with the help of a 100-foot tower, could receive a snowy signal from Schenectady, NY.

Family and friends met there on Sunday, the one day the restaurant was closed, to watch football and drink soft drinks. But no beer on Sunday. "My mother was very strict about that," Bove said.

Bove's has seen its share of pranks and jokes too. Like the year the New York Yankees went to the World Series and lost. "Babe is a Yankee fan, true blue," Bove said.

So after the Yankees lost, some fellow from St. Mike's borrowed a hearse and a coffin and arrived at the restaurant, all decked out in black suits. They solemnly carried the coffin inside, placed it in front of the bar, and then knelt around it, each holding a large candle. On top of the coffin was a large sign reading, "New York Yankees."

The family hasn't stopped langhing about that one.

All the Boves can cook. Well, almost all. "Babe can't cook, Bove said. When my brother Erine wanted him to go into the kitchen, he always burned everything." So Babe became the "front nan," always out by the cash register, talking with customers and expressing viewpoints on a wide variety of local issues.

But ironically it was little brother Dick who was the first Bove to run for office. At the age of 24 he became the youngest alderman ever elected in Burlington.

But when Dick Bove announced he's run for state Senate, he received a letter from the secretary of state informing him he was too young, and that 30 was the minimum age.

"Babe got really peeved," Bove recalled, and decided he'd run if his little brother couldn't, and won easily.

Five years ago, after a sometimes bitter family dispute, the two oldest brothers, Ernie and Babe, finally negotiated an out-of-court settlement with dissident family members, including brother Anthony Bove, who had started a competing restaurant, now called Anthony's Italian Foods, just across the parking lot from Bove's Cafe.

The settlement gave Dick Bove, the youngest of the second generation, sole ownership of Bove's Cafe and sole rights to the commercial use of the family name. Shortly after that, Anthony's was sold to a French couple.

"It's over. It's done with. I don't want to say anything. It wasn't a good thing for an Italian family," Bove said.

Bove said he's seen a lot of changes in Burlington over the years, as he rattles off the names of families and family businesses that have long since disappeared, victims of urban renewal and "progress."

Today posh, exotic eateries with prices to match mingle with flashy office buildings. Church Street has been transformed in an effort to compete with suburban malls. Everything has changed.

Everything, that is, except Bove's.

For people who've been away from Burlington for years, walking into Bove's is like, at last, coming home. The wooden booths were replaced some years ago but the new ones still look familiar, and the fluorescent tube lighting down the middle aisle has given way to less institutional looking fixtures. But the bathrooms are the same and the kitchen's the same, except for some pieces of equipment that have worn out and had to be replaced.

And "that bar is the original bar that my father bought. It was his first big investment, $275. That was a lot of money then," Bove said.

And little has changed in the way the place is run. "We go in at 5 o'clock in the morning and cook all day," Bove said, "Everything is from scratch.

He admits they now buy canned crushed tomatoes instead of getting them from his mother's garden. "But we still roll the meatballs," and the lasagne still has more secret ingredients than that famous extra crispy chicken.

There's still a lively take-out business—for one dinner or 150. And the restaurant still is closed Sunday and Monday. Despite increasing competition, "Bove's restaurant will always be open just five days a week," Bove said. "Our staff needs the time off."

The cigarette machine is stilll in place too, and carries a price tag of 25 cents a pack. But there's no merchandise inside, and smoking is allowed in just four booths.

"I wanted to eliminate it," Bove admits, but gave in to pleas from loyal customers who haven't been able to kick the habit.

Another thing that's not changing is the family management. Dick Bove's sons, Rick and Mark, are continuing the tradition into the third generation. "I'm letting them learn the operation," Bove said. But, he adds, you can't force kids to go into a family business.

Louie and Victoria "worked and worked. We do the same. But they enjoyed what they were doing and so so we. You've got to enjoy it or you should get out and do something else."

THE BOVE FILE

Name: Richard "Dick" Bove.

Born: May 30, 1937, at home on Champlain Street, "right in the middle of urban renewal."

Residence: Burlington.

Education: Cathedral grammar and high school, Champlain College, 1961.

Family: Married Josephine, 1961; she graduated from Trinity College May 30, 1964; son, Rick, born June 2, 1964—"she just barely made it off the stage (at Trinity)"; son, Mark, born in 1966. Rick graduated from the University of Vermont two years ago, and Mark will complete his course work in December, and receive his degree in 1990.

Business: Owner of Bove's Cafe.

Other interests: Served nine years in Vermont Air National Guard; helped start televised Sunday Mass, and worked with that for 20 years.

## TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise simply to state that today marks the 1,711th day that Terry Anderson has been held captive in Beirut.

## RECESS UNTIL 2:15 P.M.

The ACTING PRESIDENT pro tempore. It appearing there are no further Senators on the floor who desire to engage in morning business, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:42 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. SHELBY].

## ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, it had been my intention to proceed with the resolution deploring the escalating violence in El Salvador. I am waiting the clearance of presence of the distinguished Republican leader who will be joining me in this effort. I intend to proceed to that momentarily. I see other Senators present. Are there Senators who wish to address the Senate as in morning business?

## MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business not to extend beyond the hour of 2:30 p.m., with Senators permitted to address the Senate for up to 5 minutes each during that period.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New Hampshire.

## EDITORIAL MISLEADS THE READER

Mr. HUMPHREY. Mr. President, there is a rather unfortunate editorial in today's Washington Post entitled "No Money For the Population Fund." I say that is an unfortunate editorial because, first of all, it misleads the reader; second of all, it is based on a flawed premise; and third, its criticism of the President is invalid.

The editorial begins by quoting President Reagan in an earlier statement in support of the concept of family planning, and then goes on to say, "How do these sentiments square with the President's recent veto of the foreign aid appropriations bill because it contained $15 million for the U.N. Population Fund? The rationale is that the fund aids population planning programs in China, which are coercive and lead to compulsory abortion, involuntary sterilization and even infanticide."

That is no small matter, Mr. President. The Post may think that is a small matter, but that is a very big matter, a very big matter of principle with a great, great many people in this country including, thank goodness, the President. That is precisely why he vetoed that bill because, in fact, funds in that bill would have subsidized the U.N. Population Fund which in turn subsidizes those programs in the People's Republic of China, which include coercive forced abortion and sterilization. I, for one, am grateful to the President for his veto. I think it was principled, courageous and absolutely correct.

The editorial goes on to say that "Nevertheless, Congress, mindful of the explosive nature of these charges, agreed to contribute to the fund only if the U.S. contribution were kept in a segregated account, with none of it used for any program in China or for my abortion-related service anywhere in the world."

Mr. President, please, that is such utter drivel. It is drivel if you want to use that as rationale for supporting the bill. It is true, of course; we made a bookkeeping distinction. We said the U.N. population fund must not use this money in China. That is purely a bookkeeping distinction. It means nothing. Money is fungible. Senators, of all people, know money is fungible. If you give $15 million to the UNFPA and say you cannot use any of that in China, what they do is take from account B and use that for forced abortion. The effect is the same. Money is fungible. It frees up money elsewhere that can be put to the same grizzly purpose.

Then the Post editorial goes on to say, "The veto does not accomplish anything useful in terms of affecting policy in China, but it does have a number of very harmful effects. It will reduce." the Post says, "the amount of money available for birth control programs in 120 poor countries."

The contention there that is so misleading is somehow the Senate reduced the funding for population activities. We did no such thing. Upon the President's insistence, which was the basis of his veto from the first bill, we removed the $15 million earmarked for the UNFPA. That $15 million will now go to a legitimate family planning agency somewhere else in the world apart from China.

So the suggestion by the editorial that the President reduced the amount of money, by virtue of his veto, available to legitimate family planning programs is untrue and it is misleading. In fact, we will be spending every penny anticipated by both Houses of Congress for family planning. We will simply not be earmarking the $15 million for the UNFPA and, therefore, it cannot be used in any way, directly or indirectly, to aid these ghastly, grizzly, human rights abuses in China which continue.

Ironically, in this morning's New York Times, there is an article about how China is using sterilization against mentally retarded people, forced sterilization of mentally retarded people.

Mr. President, I ask unanimous consent that both the Washington Post editorial and the New York Times article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Nov. 21, 1989]

### NO MONEY FOR THE POPULATION FUND

When he was the U.S. representative to the United Nations in 1973, George Bush wrote an enthusiastic foreword to a book title "World Population Crisis: the U.S. Response." After noting his family's early associations with Planned Parenthood and his own support for population programs in Congress, the president had this to say about the importance of international family planning efforts: "One fact is clear: in a world of nearly 4 billion people, with some 150 independent government, myriad races, religions, tribes and other organizations, major world problems like population and environmental protection will have to be handled by large, complex organizations representing many nations and many points of view. . . . Success in the population field, under United Nations leadership, may, in turn, determine whether we can resolve successfully the other great questions of peace, prosperity and individual rights that face the world."

How do these sentiments square with the president's recent veto of the foreign aid appropriations bill because it contained $15 million for the United Nations Population Fund? The rationale is that the fund aids population planning programs in China, which are coercive and lead to compulsory abortion, involuntary sterilization and even infanticide. The Chinese deny that these abuses are part of the government program; and, in any event, U.N. money in China has gone only for research, for the collection of demographic information and for improvements in the manufacture of contraceptives. Nevertheless Congress, mindful of the explosive nature of these charges, agreed to contibute to the fund only if the U.S. contribution were kept in a segregated account, with none of it used for any program in China or for any abortion-related service anywhere in the world. In a final attempt to avert a veto, Congress also added an amendment specifying that if any of these conditions were violated, the entire U.S. contribution was to be returned.

The veto does not accomplish anything useful in terms of affecting policy in China, but it does have a number of very harmful effects. It will reduce the amount of money available for birth control programs in 120 poor countries. In Africa, for example, while the United States provides bilateral population assistance in about a dozen countries, the U.N. program operates in 40. Now no American money will go to the international effort on that continent. Maternal and child health programs in Latin America, birth control education in Asia and efforts to improve the status of women in the Middle East will all be shortchanged. So will research on contraceptives, training programs in demographics and information sharing among the poorest nations. And instead of the rate of abortions worldwide being reduced, there is a very real possibility that it will rise in the absence of effective contraceptive programs.

This shortsighted veto is harmful to the developing world, unnecessary in terms of U.S. policy aims and at odds with everything George Bush once said he believed.

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[From the New York Times, Nov. 21, 1989]

### CHINESE REGION USES NEW LAW TO STERILIZE MENTALLY RETARDED

(By Nicholas D. Kristof)

LANZHOU, CHINA.—The provincial government in this poverty-stricken region of northwestern China is aggressively enforcing a new law requiring the sterilization of mentally retarded people.

So far this year, officials here say, more than 1,000 people have been sterilized under the law, which requires people with significant mental retardation to be sterilized if they are married or intend to be married. If the couple evades the law and the woman becomes pregnant, she must have an abortion.

The law was approved by the provincial Parliament a year ago and took effect at the beginning of the year here in Gansu province, where it directly affects about 30,000 retarded people out of a population of 21 million.

The law has been hailed nationwide, and officials say that the national legislature and half a dozen provincial governments are thinking of adopting similar legislation. Several provinces have sent delegations here to study the measure as they consider drafting their own laws.

"The purpose of the law is to raise the quality of our population and of our nation," Miao Xia, the deputy head of the Gansu Province Family Planning Association, said in an interview. "We want to solve the poverty problem in part by raising the quality of the population."

As Miss Miao acknowledged, however, the new law raises questions of morality and the role of legislation: Does society have a right to force people to be sterilized? If a citizen has committed no crime, but happens to be retarded, can the state intervene to the point of forcing sterilization or an abortion?

DIFFERENT VIEWS IN THE WEST

The law is an echo of the eugenics movement in the West earlier in this century. Tens of thousands of "mental defectives" were sterilized across the United States, mostly between the 1920's and the 1950's.

In Virginia, which kept records, about 8,300 were sterilized between 1924 and 1972 under a state law providing for compulsory sterilization of the mentally disabled. The law was upheld in a landmark Supreme Court ruling of 1927 in which Justice Oliver Wendell Holmes made a now notorious comment: "Three generations of imbeciles are enough."

In Nazi Germany, a system of eugenic health courts ordered the sterilizations of more than half a million people from 1933 to 1940. They were judged by the courts to be suffering from mental retardation, physical deformities, schizophrenia and other illnesses.

In most Western countries, such sterilization programs have been sharply curtailed in response to public furor. The Chinese sterilization law could escalate longstanding complaints by the United States Government over China's population control policies, which seek to limit the number of children born and impose penalties on couples who violate the rule.

[President Bush vetoed a $14.6 billion foreign aid bill Sunday night, objecting specifically to an allocation of $15 million for the United Nations Population Fund. Foes of abortion in the United States have opposed its financing on the ground that the agency performs work in China, whose population program includes abortion and sterilization.]

INDIVIDUAL VERSUS SOCIETY

But in China there has been almost no public reaction to the sterilization law. Some Chinese intellectuals observe that their nation is inspired not by the notion of an individuals's rights, or theories of social contract that limit the state, but by a Confucian heritage in which the individual is subordinated to the good of society.

Before the law was approved, the discussion centered not so much on ethics as on practical questions such as how the law would be enforced, and whether the mentally retarded were likely to have mentally retarded children.

HOW THE LAW APPLIES

"Some people said that ordinary people can have an idiot for a child, while two idiots can have an ordinary child," said Wang Jian, the Secretary General of the Gansu Population Studies Association. "But we explained that even if their child is normal, it will carry a gene for idiocy."

The degree to which mental retardation is hereditary has been vigorously debated in the West, and no clear consensus has emerged.

The Chinese provincial law applies to people with moderate or serious mental retardation, such as those with an IQ of 49 or below. The retardation must be congenital and must be confirmed by a doctor.

The law has initially been put into effect in four particularly poor counties in Gansu, and has been accompanied by a major publicity campaign to convince people of the measure's importance. The arguments are not aimed at the mentally retarded themselves, for they are deemed insufficiently aware to react much one way or another, but at their families.

Many of the mentally retarded are married to people of average mental ability, and their spouses have not been enthusiastic about the law, some officials acknowledge. While their partners would not have to be sterilized themselves, they would be prevented from conceiving children within the marriage.

Mr. HUMPHREY. Mr. President, I will say more about the Washington Post editorial. Unfortunately, I do not have time now. I will continue later on.

Mr. President, the Post is wrong in criticizing President Bush for his veto of the foreign operations bill. The President vetoed that bill because it contained an earmark of $15 million in population activity funds for the UNFPA.

The President argued against that veto because he maintains, as do so many, that the United States has no business subsidizing directly or indirectly the program of forced abortion and forced sterilization carried out by the People's Republic of China.

Indeed the Post editorial acknowledged in passing that that is the President's concern, but that was the extent of it. The Post noted in passing that the concern is over forced abortion and forced sterilization. One would have hoped that the Post would have dwelt on that a little bit more and expressed itself about what abominations forced abortion and forced sterilization are. These are very real concerns, Mr. President.

In this morning's Washington Times there appeared a much more sensible editorial on the same subject. And I want to quote in part from that.

The editorial is entitled "No Aid to UNFPA."

It quotes from a forthcoming book, "The Slaughter of the Innocents," by former Census Bureau China expert John Aird.

In August, Mr. Aird writes, a government newspaper for the first time advocated coercive birth control:

We must punish those who have turned a deaf ear to dissuasion from having additional children . . . suitable coercion and control should be implemented.

That is according to the Shanghai Social Science Academy's magazine.

That magazine further urged compulsory abortions for all women under the age of 24, for all second pregnancies occurring less than 5 years after the first, and for all third pregnancies. It also advocated executing government officials who allow unauthorized births.

The provincial governor of Guandong recently warned, "Whoever violates the policy on family planning will have to be severely penalized and no appeasement will be allowed."

There is simply no question, Mr. President, that the People's Republic of China embraces a policy of forced abortion and forced sterilization. And yet that very real concern, that very real fact, that bloody, ghastly fact of massive human rights violation is swept away by the Washington Post and the others who are critical of President Bush's very principled veto of the bill that earmarked money for the UNFPA which, in turn, subsidizes the Chinese population control program.

The Washington Times editorial goes on: "Mr. Bush's veto serves two purposes: It dissociates this country from the unspeakable practices carried out in the name of birth control and attacks the myth that killing and maiming millions of people somehow contributes to a nation's prosperity and well-being."

The Washington Post should have been singing the President's praises instead of criticizing him. They should have been damning the concept and the practice of forced abortion and forced sterilization in China and elsewhere, not criticizing our President for a principled veto of the foreign operations bill.

Despite all the carping and the cheap shots and all of the studied efforts to avert one's gaze from what is going on in China, despite all of that, the President prevailed. He vetoed the bill and the Congress chose to send him a new bill without this earmark for the UNFPA. That is a victory for more than the President of the United States, it is a victory for all of our people and the principles we hold so dear and which make this so special a republic among all of the kinds of government on this Earth. It is a victory of all of the people, not only for those of the United States, but for all of those people in this world who stand for human rights.

So I commend the President, while I condemn the Washington Post for its narrow focus and its cheap shots. I commend the President for his courage and for his principles and for his important victory.

The PRESIDING OFFICER (Mr. FOWLER). The Senator from Alabama.

## HAZARDOUS WASTE SENSE OF THE SENATE RESOLUTION

Mr. SHELBY. Mr. President, as we were here late into the night to finish our work for the session, the Senate passed an important resolution dealing with a problem that threatens us all.

Mr. President, we live in a disposable society—we are slaves to the convenience of simply throwing things away whether its the wrapper on a Big Mac, newspaper or the byproducts of this high-technology world we live in.

As we prepare to enter the 21st century, we are facing an environmental crisis of dramatic proportions. We have all heard of the greenhouse effect, of the devastation of our rain forests, of the polluting of our oceans. But underlying these grave problems

is an attitude of irresponsibility about the disposal of waste.

We are a society that has seen dramatic benefits from the various technological advances that have changed our world. We never planned that the byproducts of these advances would be polluting our water, contaminating our soil and poisoning our air. We never planned to pay for these industrial and chemical advances with our health or with the well-being of our children. Instead, what we have is a waste disposal problem that is threatening the long-term health and safety of our citizens.

Mr. President one problem that hits home for many Alabamians is that of hazardous waste. Alabama, my home State, has the dubious distinction of being home to the world's largest hazardous waste landfill. The ChenWaste Management Facility in Emelle, AL, receives a disproportionate share of the Nation's hazardous waste. Each and every day, Mr. President, truck loads of waste come from all over the country bringing their deadly cargo for burial in the heart of Alabama.

My resolution, Senate Joint Resolution 216, expresses the sense of the Senate on the formation by the States of interstate agreements to govern the management of hazardous waste. It simply directs that each State should have within its own borders or by agreement with other States sufficient capacity to safely manage all hazardous waste generated within that State.

Mr. President this resolution is a first step—an attempt by this body to encourage each and every State to develop a comprehensive plan to handle the waste it produces either individually or though interstate agreements.

Over the past 2 years, I have been working with Gov. Guy Hunt, Attorney General Don Siegelman, and Leigh Pegues, the executive director of the Alabama Department of Environmental Management, as well as the Alabama congressional delegation, to insure that the role relegated to Alabama—that of the Nation's dumping ground—is ended.

Mr. President, with everything the Senate is hoping to accomplish before adjournment, I am pleased that we were able to swiftly and unanimously pass this important measure. This resolution sends a clear message to the States to begin to focus on safe and effective hazardous waste management. It promotes responsibility, respect and renewed commitment to a clean and safe environment by all the States.

Senate Joint Resolution 216 is a forerunner of things to come, Mr. President. During the second session of the 101st Congress, I intend to introduce and push for passage of legislation which will facilitate the formation of interstate hazardous waste compact commissions. I hope my colleagues in the Senate will provide the same support for that legislation as they have with this resolution.

Mr. President, I yield back the remainder of my time.

## VIOLENCE IN EL SALVADOR

Mr. LOTT. Mr. President, it has been reported this morning that the Marxist guerrillas have attacked and taken control of the Sheraton Hotel in San Salvador where Americans are staying.

In addition, there is a report that the Secretary General of the OAS may be in the hotel. I do not know if that is actually true or not.

This is another of the continuing outrages by these Marxist guerrillas who are proven enemies of democracy in El Salvador.

We have heard all sorts of criticism of the duly elected Government of El Salvador while it fights for its life against the recent terrorist offensive, which seeks the very destruction of this democratically elected Government.

This terrorist offensive was undertaken with the clear purpose of causing as much death and misery to the innocent civilian population as possible in order to undermine the Salvadoran Government.

This is in line with traditional Marxist doctrine. I ask, where is the outrage from those who were so quick to judge the Government of El Salvador? These critics rush to judgment over the tragic murder of the Jesuit priests without awaiting a preliminary investigation of what actually happened. And this while the Marxist guerrillas take credit for the urban offensive in the suburbs of San Salvador, an offensive that they know will bring death and destruction to large numbers of innocent civilians.

The critics call for negotiations with these terrorists, who have refused to participate in two elections where there was a free and open process to determine who would lead that government.

We are fixing to have a resolution on this issue. I urge my colleagues to look at the resolution and support it.

Mao Tse-tung said many years ago that every Communist must grasp the truth that "political power grows out of the barrel of a gun." That is what is happening in El Salvador. They are trying to seize power through guns, through taking hotels, through attacking the capital of El Salvador. We should not allow these actions to destroy the democratic government in El Salvador.

## CONGRATULATING HANS DEHMELT ON HIS NOBEL PRIZE FOR PHYSICS

Mr. GORTON. It is with great pride as a fellow Washingtonian that I add my heartfelt congratulations to the recognition already bestowed upon University of Washington Prof. Hans G. Dehmelt. Last month, Dehmelt was awarded the Nobel Prize in Physics, surely the most meaningful and prestigious of all scientific awards.

The world of atomic and subatomic particles has been a lifelong love of this Nobel Prize winner. He joined the University of Washington faculty in 1955, and in 1973, along with several assistants, he used electrical-magnetic fields generated in a vacuum to hold a single electron in place. It is for this accomplishment we honor him today. But Professor Dehmelt did not stop seeking more information on particulate behavior. In 1986, he and others energized a single barium atom and watched it make a quantum leap to a higher energy level.

Professor Dehmelt's work in the measurement of quantum leaps, which has led to the most precise timekeeping method in scientific history, is astounding in its implications for the future. Although as a layman, the intricacies of his work remain as mysterious to me as they do to most Americans, we are no less its beneficiaries. His achievement is a major step forward in the slow process of defining and understanding our universe.

I understand that the German-born professor is a naturalized citizen; we should be honored that he has chosen the United States as his new homeland. His presence reaffirms the vitality and curiosity immigrants bring to our country. Washington State is particularly fortunate Professor Dehmelt chose the Seattle area as his home; the announcement of his Nobel Prize in our centennial year of statehood is a marvelous finale to our year of celebration.

Again, I ask the Senate to join me in congratulating Professor Dehmelt. He is a credit to his profession and his State. On behalf of my colleagues and the citizens of Washington, I extend our gratitude and respect.

## TRIBUTE TO THE LATE JOAN COHEN

Mr. LAUTENBERG. Mr. President, I rise to note the recent passing of Joan Cohen, a close personal friend and dedicated community leader.

Joan Cohen dedicated a lifetime to charitable and cultural activities. An active participant in local and national Jewish affairs, she distinguished herself as President of the Montclair, NJ chapter of Hadassah. She was a leader in the United Jewish Appeal Federation and chairperson of the N.Y. Federation's very important Government Relations Committee. She was founding chairperson of the Jewish Information and Referral Service, a clearinghouse of information and services

available to the blind, hearing impaired and others seeking assistance.

Her philanthropic endeavors extended beyond the Jewish community. Mrs. Cohen was a trustee and founder of the National Center of Photography, now the Photography Museum, recognized as a leading U.S. photography museum. In charge of the Friends Program of the Alvin Ailey American Dance Theatre, she chaired its many gala events.

She served on New York Mayor Ed Koch's voluntary action committee, overseeing voluntarism in the city.

Despite a 2-year battle against cancer, this brave woman continued to participate in civic and philanthropic causes. Having known Joan and her husband Alan for almost 30 years, I know that her contributions to the community, and her dedication to the ideals and values of these organizations are deeply admired and much appreciated. Her example of community service will live on for future generations to follow. She will be missed.

I extend my deepest sympathies to Alan and to her family and friends.

## TRIBUTE TO THE LATE ROBERT V. VAN FOSSAN

Mr. LAUTENBERG. Mr. President, I rise to pay tribute to a remarkable individual. With the passing recently of Robert V. Van Fossan, board chairman and chief executive officer of the Mutual Benefit Life Insurance Co., New Jersey and the Nation has lost one of its corporate and civic leaders.

Born in Breckenridge, MN, and raised in Devils Lake, ND, Bob served in the U.S. Marine Corps in World War II. For over 24 years at the Northwestern National Life Insurance Co., he climbed the ladder to become senior vice president and a member of the company's executive committee. At the age of 45, in 1972, he became president and chief executive officer of Mutual Benefit. He became chairman in 1978. Under Bob's leadership, the company grew nearly fivefold.

He was respected by his colleagues in the business community. He was their choice to serve as chairman of the board of the New Jersey Chamber of Commerce from 1979 until this past June. He was an eloquent and persuasive voice for public policies that promote economic growth in our State. He was a welcome presence here in Washington and led the annual legislative dinner of the Chamber.

Mr. President, Bob Van Fossan's accomplishments as a businessman were matched only by his contributions to public service. We hear people talk about public-private partnerships. Bob Van Fossan made them happen and made them succeed. In so doing, he left his mark on a much broader canvas than his company.

As the primary founder and former chairman of the Partnership for New Jersey, he helped forge a strong friendship and cooperation of business and community leaders to help solve social and economic problems in our State. Having served with Bob on the board of the Port Authority of New York and New Jersey, I know how dedicated he was to the economic development of our region.

He was committed to the revitalization of the city of Newark, the headquarters city for Mutual Benefit. He served as chairman of Renaissance Newark, Inc., a public-private group dedicated to the city's revival. He was a leader in the renovation of Newark's Symphony Hall. He was also chairman of New Jersey Performing Arts Corp., which is well on the way to developing a new performing arts center for the State, to be located in Newark. He was also a trustee of the Newark Museum and of the Community Foundation of New Jersey.

He was a former chairman of the New Jersey Supreme Court Committee on efficiency in the courts, of the executive committee of northeastern governors, and a member of the executive committee of the State's National Conference of Christians and Jews.

Robert Van Fossan leaves a rich legacy of contributions to the State of New Jersey. He will be missed.

I extend my deepest sympathies to his wife, Mary Jane and his children; daughter Deborah Greer, sons Robert and Steven, and to his mother Marie and his two grandchildren. He will be missed.

## DEPLORING THE ESCALATING VIOLENCE IN EL SALVADOR

Mr. MITCHELL. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution.

The assistant legislative clerk read as follows:

A resolution (S. Res. 217) deploring the escalating violence in El Salvador; condemning the killing of innocent civilians, including six Jesuit priests; and calling for an immediate cessation of hostilities.

Mr. MITCHELL. Mr. President, I ask that the resolution be read in its entirety.

The PRESIDING OFFICER. Without objection, it is so ordered.

The assistant legislative clerk read as follows:

S. RES. 217

Whereas violence in El Salvador has reached unprecedented levels with the military offensive begun by the Farabundo Marti National Liberation Front (FMLN) on November 11, 1989;

Whereas hundreds of civilian casualties have resulted from fighting in densely populated areas and armed FMLN forces have surrounded a hotel in the Escalon section of San Salvador endangering the safety of the Secretary General of the OAS and several United States citizens staying in the hotel;

Whereas due to the intensity of the fighting the Red Cross and other humanitarian organizations have not been able to evacuate the wounded and provide basic medical treatment or other support;

Whereas escalating violence, bombings and assassinations preceding and following the FMLN offensive has resulted in numerous incidents of brutality and the deaths of innocent victims;

Whereas six Jesuit priests and two others in their household were brutally murdered on November 16, 1989;

Whereas President Cristiani of El Salvador has ordered that an immediate and thorough investigation be conducted of the barbaric murder of Fathers Inacio Ellacuria, Rector of the Central American University, Ignacio Martin Baro, the Vice Rector, and educators Segundo Montes, Armando Lopez, Juan Ramon Moreno and Joaquin Lopez y Lopez, as well as their cook and her daughter, Julia Elba Ramos and Cecilia Ramos;

Whereas continued guerrilla warfare in populated areas will further jeopardize innocent life;

Whereas the Government of El Salvador and the FMLN were engaged in a dialog to seek a political settlement of the conflict in El Salvador;

Whereas the people of El Salvador have repeatedly demonstrated a clear preference for a democratic system of government based on respect for the dignity of the individual: Now, therefore, be it

*Resolved*, That the Senate—

(1) condemns the FMLN for initiating on November 11, 1989 the military offensive in El Salvador which has led to the death of hundreds of innocent civilians and deplores the armed seizure of a San Salvador hotel endangering the lives of innocent guests in the hotel;

(2) deplores and expresses its stongest revulsion at the heinous murder of six Jesuit priests and two women;

(3) reaffirms its dedication to and strong support for human rights and democratic institutions;

(4) urges the United Nations and the Organization of American States to encourage the FMLN and the Salvadoran Government to enter into an immediate cease-fire and withdraw of FMLN forces from urban areas;

(5) deplores the continuing violent hostilities in densely populated areas and calls for a disengagement of the military forces of both sides to allow the Red Cross and other international humanitarian organizations to provide urgently needed medical attention and supplies to the hundreds of civilian casualties;

(6) urges the Government of El Salvador and the FMLN to immediately resume a peaceful dialogue and commends President Cristiani for sending representatives to the meeting scheduled in Caracas, Venezuela to seek a political settlement of the conflict;

(7) demands that those responsible for the murder of six Jesuit priests, as well as the bombing of the headquarters of a local labor union, be brought to justice and punished for their crimes;

(8) states unequivocally that if the Salvadoran Government fails to make every good faith effort to prosecute and punish those responsible for the November 16 murder of six Jesuit priests and two women, the Congress will carefully review and consider the question of aid to El Salvador;

(9) requests the administration to render a full report to the Congress by February 20,

1990, on the status of the investigation into the deaths of the six priests with the understanding that such a report is to be available to Congress prior to any further consideration of foreign aid; and

(10) urges the administration to provide emergency assistance to the innocent victims of the war through the International Red Cross and other appropriate channels.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be 20 minutes of debate on the resolution, equally divided between Senator DOLE and myself, and that no amendments or motions be in order to the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I ask for the yeas and nays on the resolution.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. Accordingly, Mr. President, Senators should be now advised that a rollcall vote will occur on this resolution at approximately 2:55.

Mr. President, the violence in El Salvador has reached unprecedented levels since the FMLN began their urban offensive. As a result, hundreds of innocent civilians have fallen victim to the fighting and the aerial attacks.

The Red Cross and the other humanitarian organizations have been unable to evacuate the wounded and provide urgently needed medical assistance. As the unrestrained violence has escalated before and after the FMLN offensive, there have been numerous acts of brutality inflicted on the civilian population.

A particularly savage crime was the murder of six Jesuit priests and their cook and her daughter. This brutal crime and the countless others that have occurred must not go unpunished.

It is incumbent on President Cristiani's government to fully investigate these murders and to punish those who are guilty. It is equally incumbent on the FMLN to cease at once their reckless action of seizing a hotel in the Escalon section of San Salvador, and placing the lives of the Secretary General of the organization of American States and several U.S. citizens and other innocent guests in grave danger.

It is my hope that there will be an immediate cease-fire to allow the evacuation of the innocent civilians caught in the fighting, and that both sides will resume the dialog to seek a negotiated settlement for the tragic 10-year-old civil war that is destroying the hopes and aspirations of the Salvadoran people.

Mr. President, the killing has gone on for far too long in El Salvador. It is past time that both sides realize, for the sake of the people of that country, they must find a peaceful solution to the many economic and social problems which beset their ravaged country. Both the FMLN and the Salvadoran Government must take strong action to curb the killing that both sides seem to have unleashed on a defenseless populace. It is time to cease the battle and try to find a peaceful political settlement of the issues which have divided the Salvadoran people. I urge the administration to do all in its power to assist in this urgently needed effort to find a peaceful solution.

Mr. DOLE addressed the chair.

The PRESIDING OFFICER. The Republican leader, Mr. DOLE.

Mr. DOLE. Mr. President, I ask unanimous consent that on this side, Senators KASTEN, SYMMS, KASSEBAUM, MCCAIN, WILSON, and DURENBERGER be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

BIPARTISAN RESOLUTION ON EL SALVADOR

Mr. DOLE. Mr. President, in yesterday's vote on the Leahy amendment, the Senate decisively reaffirmed its support for the Cristiani government.

This morning's developments demonstrate the wisdom of that Senate action.

The Communist guerrillas have launched a new, bloody attack on a large hotel, reportedly taking many hostages—including a number of American Embassy employees and private Americans. There have also been a series of reports indicating that the OAS Secretary General may also be held by the guerrillas.

At this hour, many of the details remain unclear. But what is clear from the dramatic tape footage we have seen this morning on television is that El Salvador is witnessing even more death, destruction, and terrorism at the hands of the Communist guerrillas.

As outraged as we are over activities of the so-called death squads, let's never forget that the biggest and most vicious death squad in El Salvador is the FMLN. We have seen the proof of that in the hundreds of bodies of the victims of their urban attacks; we see it again in the bloody assault this morning.

Mr. President, the Senate must continue to voice its revulsion at the blood-letting and terrorism in El Salvador. Votes like yesterday's can be misinterpreted, and it is important that our message be clear and strong.

This resolution makes clear that we abhor all of the violence we see in El Salvador—whether it comes from the extreme right or the Communist left.

We condemn the murder of the six priests and demand that the perpetrators be brought to justice. We condemn the terror of the FMLN and demand that it cease its assaults on the people and Government of El Salvador—and now, on innocent foreign visitors to that troubled land.

Mr. President, I believe the Senate should speak with one strong voice, to condemn all of the violence. That is precisely what this resolution does.

I am pleased to join with the distinguished majority leader in offering the resolution, and I urge its immediate, overwhelming passage.

I will yield the remainder of the time maybe after other speakers, and my colleague, Senator KASSEBAUM.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MITCHELL. Will the Senator yield?

Mrs. KASSEBAUM. Mr. President, I yield the remainder of my time, to use for himself or to disseminate as he sees fit, to the Senator from Connecticut [Mr. DODD.]

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I would like to rise in strong support of the leadership resolution on El Salvador. I think it is very important for us today to speak with one voice on this firm but balanced resolution.

It has been read in its entirety, and there is not a lot of need to repeat, but I believe it makes some very important points. It condemns the FMLN. It is ironic that, despite the international pleas, the FMLN has launched a second offensive in the last 24 hours, perhaps holding as hostage the negotiators from the Organization of American States who were there to attempt to bring about some peaceful negotiations and get the talks back on track.

It deplores the murder of the priests, and it calls for a disengagement to allow the Red Cross to supply assistance. I believe, Mr. President, that is very important.

It also says that we should review and consider aid to El Salvador in February after a status report is available to us on the investigations of these murders.

Tragic conditions exist in El Salvador. There are none of us who would deny that. With the escalation of violence, extremism gains momentum. But I think, after the Republican leader just spoke, now is the time for us to balance, and weigh and speak with one voice in calling the world's attention and our own to the tragedy that exists there, and help to focus thought in El Salvador on both sides—that those who are responsible for escalating violence there to come to terms with the havoc and the tragedy that are in El Salvador.

I reserve the remainder of the time, Mr. President, that I might have.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut, Mr. DODD.

Mr. DODD. Mr. President, I will not take a great deal of time on this matter.

I am pleased that the majority leader and the minority leader, along with others, have introduced this resolution. I say I had hoped, given the time constraints that we are under and the pressure on the Members in the Chamber itself, that might have been the only action we would be taking given the fact we are planning to leave Washington in the coming few hours.

That is not to suggest at all that stiffer actions may be necessary at some point, but I think it is so difficult to try to legislate in the middle of a conflict as violent as the one in El Salvador, particularly one that reached a level over the last 4 or 5 days that none of us have seen over the last 10 years.

Nonetheless, action was taken last evening. My concern is that the Senate sends somewhat of a confusing signal as to where the United States stands at this point. That is the most dangerous thing we might do at this particular moment, to send even more elements of confusion into an already confusing situation.

This resolution lays out, at least to the extent any resolution can, a set of policy guidelines that will guide us as individual members and as a body. Hopefully, it will send a message to all of those involved to the FMLN, to the military, to the government of President Cristiani and, frankly, to others in this city who represent the executive branch as to how we feel generally even though there may be particular points of some disagreement.

I think by and large this resolution is one that we all agree on, where we find the actions of the last 5 or 6 days abhorrent with the summary executions of eight innocent people, six Jesuit priests, two of whom I knew very well, one in particular, ironically, who had been very supportive of President Cristiani and critical of the FMLN in his last two speeches that he had given, Father Ellacuria. Of course, at least 134 other people have lost their lives in the last week or so, many of them at the hands of the FMLN. It is vitally important that they understand that we are not going to stand by and just allow these actions to continue to progress without expressing our strong feelings.

Second, the military, and those who may have been involved in some of these violent acts, should understand that this is not a blank check that exists in this country, that we are not necessarily going to be underwriting their activities in perpetuity, that it is extremely important that President Cristiani understands—a man for whom I have developed a great deal of respect as an individual, and a person who I believe is interested in ending this conflict in his country, and bringing about some peace and stability for his people after 70,000 people have lost their lives. It is important for him to understand that while we have a great deal of respect for him as an individual, he needs to demonstrate not only to the people of El Salvador, but to the people in this country and elsewhere that he is in control of the political and military circumstances in his country as the President of that nation; and that no matter how much we may support him as an individual, if he fails to demonstrate that kind of control, no matter how much we may wish him to do otherwise, that this body or the other body, I suspect, Mr. President, will find it necessary to condition, to curtail, or in some way limit the resources that we have provided to that country, at least in a military way.

So while these are dark days, maybe the darkest days we have seen in El Salvador, it can also be seen as an opportunity for President Cristiani to move aggressively where others have failed to do that for a variety of reasons and to ferret out from his own government and others and other sectors of that society those elements which would continue to perpetuate the violation of human rights of people in that nation, including those who were brutally murdered last week.

It may also be a time for those who have been supportive of the FMLN, who may know them well, to urge them that the course they are presently following is the course that leads nowhere except to death and destruction, and that the best course for those who would like to change the political, the societal environment of El Salvador is to get back to the bargaining table and not be engaging in the kind of wholesale slaughter which we are witnessing at this very hour.

So, Mr. President, this resolution, while it is not a "tiger with a lot of teeth," as some will say, does, I believe, express the collective feelings of Republicans, Democrats, liberals, and conservatives in this body, and while we move away from this Chamber for the remainder of the next 6 or 8 weeks we will come back to this issue.

Our collective hope is that the Government of El Salvador, the leadership of the FMLN, and others will find that this is not the way to successfully prosecute this conflict in this nation, and they will get back to that bargaining table as soon as possible to end this violence and give the people of El Salvador a chance for peace and prosperity, something they have not seen for the last 10 years.

Mr. President, I urge the adoption of this resolution. I believe there are no further requests on this side of the aisle, and I will reserve the remainder of my time.

Mr. ROCKEFELLER. Mr. President, recent events in El Salvador provide concrete illustration of the fact that our present policy in that country is not working. Since 1981, American taxpayers have funneled $4 billion in military and economic aid to that country. The only result has been more and more bitter violence and bloodshed.

I was disgusted to learn of the actions of El Salvador's rightwing death squads this past Thursday. Just before dawn on November 16, a score of armed men broke into a Roman Catholic dormitory. They killed two Jesuit priests and shot the school's cook and her 15-year-old daughter in their beds. The gunmen then dragged four more Jesuits outside and shot them in the head with high-powered rifles. The priests' mutilated bodies were left outside as a warning to civilians possibly sympathetic to the leftwing guerrillas not to interfere in the mounting civil war.

In light of this event, and in light of the escalating violence, I believe that Congress must deal with the realities in El Salvador. We are not helping promote democracy. We are not aiding the cause of peace and order. We are not furthering American security interests, and we are not rebuilding the Salvadoran economy. Blind in the early 1980's to the fact that the insurgency is largely homegrown and self-sufficient, we railed against Soviet interference while neglecting the need for a comprehensive strategy for economic restructuring which is El Salvador's only real long-term hope. Today, we and El Salvador are paying the consequences of our past neglect.

Mr. President, we must recognize the contribution of economic reform and protection of basic human rights to stability in El Salvador. We must either find a way to build a political center in that country which safeguards the social and economic rights of its people, or we must reconsider the value of our assistance. We must not continue to exacerbate El Salvador's tragedy.

I understand and appreciate the concerns of those who point to atrocities committed by the opposition FMLN. I, too, am appalled by reports from many residents of San Salvador that the FMLN deliberately put them at risk by entrenching rebel troops in private homes, using civilians as a shield. Both sides of the conflict have contributed to the recent escalation of this horrible civil war.

But that recognition does not diminish one bit my conviction that American policy in El Salvador is failing. Rebel brutality does not justify the murder of Jesuit priests. We should be

trying to help the people of El Salvador, not destroy them. To repeat, we must find ways to build a political center in El Salvador and aid in efforts to produce a long-term strategy of economic reform, or we in the Senate must rethink our policy toward that embattled Central American nation.

Mr. DURENBERGER. Mr. President, I thank the Senate leadership for providing this opportunity for the Senate to express its outrage and condemnation regarding the regrettable and continuing escalation of violence in El Salvador. I strongly support the message that this resolution contains.

The resolution is clearly a measured and balanced statement deploring the esclating violence in El Salvador as well as condemning the killing of innocent civilians and six Jesuit priests. The resolution also calls for an immediate cessation of hostilities, as I have done recently.

Given the extreme volatility of the situation in El Salvador, it is important that the United States Senate go on record with this evenhanded, yet firm statement. I sincerely hope that the regrettable escalation and continuation of violence will promptly end, and both sides will return to the negotiating table. I restate my belief that there can be no lasting peace in El Salvador unless there is a negotiated settlement.

The FMLN must finally realize that it will never succeed militarily. For the sake of peace and decency, the FMLN must immediately end this new assault and return to the negotiation table. The Government must also renew its commitment to finding a peaceful solution to this conflict.

TIME TO END UNITED STATES MILITARY AID TO EL SALVADOR

Mr. CRANSTON. Mr. President, over the past 2 weeks, violence on both sides of the war in El Salvador has escalated terribly, a state of emergency has been declared, and the prospects for a negotiated peace have been greatly diminished.

Prior to the recent eruption of indiscriminate violence, there had been hope for a negotiated settlement. Prospects for peace had improved over the past several months—despite ongong human rights atrocities committed on both sides. President Cristiani was elected in free elections last March. And just a few short weeks ago in Mexico City the Salvadoran Government the FMLN guerrillas sat down at the negotiating table.

The current round of violence began 2 weeks ago with the bombing of the Fenastras Union Headquarters and the Comadres office of the "Mothers of the Disappeared." These terrorist acts, apparently committed by rightwing death squads, killed 10 unionists and injured scores more. These murderers were clearly designed to undermine President Cristiani's ability to participate in the peace process, a process rightwing extremists bitterly oppose. These acts reaffirm what has been apparent to many of us for a long time: the civilian government to which we ship American arms is unable to control the forces who use these U.S.-provided weapons.

Last week, the FMLN responded to rightwing terrorism by launching a brutal counteroffensive that has already taken a terrible civilian toll. Especially to be condemned is the Marxist-FMLN's calcualted strategy of occupying densely populated neighborhoods; clearly the FMLN is trying to use civilians as hostages to shield the guerrillas from the Salvadoran Army's counterattacks.

I condemn the Salvadoran Army's unconscionable decision to bomb and strafe civilian neighborhoods. I also utterly condemn the FMLN's tactics. Now each day, indeed, each hour, brings word of new atrocities such as the holding of civilian hostages and the bombing of the homes of San Salvador's poor.

Last Friday, we learned of the barbaric torture and murder of six Jesuit priests on the grounds of Salvador's leading university. These acts reportedly were carried out under the protection of Salvador's uniformed military forces, who controlled the neighborhood under a 24-hour curfew and were seen surrounding the priests' residence at the time the murders occurred.

These barbaric acts demonstrate yet again the fact that the Government of El Salvador is not in control. Military forces are involved in acts of murder. President Cristiani is unable to control this indiscriminate voilence. He is unable to control rightwing death squads operating under the protection of U.S.-armed military forces.

Mr. President, I have consistently opposed unconditional military aid to El Salvador. I have fought to reduce the amount of aid we provide. Recognizing that there has not been a Senate majority in support of this proposition, I have then worked to cap aid and to condition it on real progress toward a negotiated peace settlement and an end to human rights abuses.

Today I renew my call upon the Bush administration to suspend all military aid to El Salvador. The war in that nation has been reduced to the level of street thugs butchering each other and innocent passers by. There is no U.S. national security interest in using our taxpayer dollars to bankroll such a conflict. Indeed, we have a compelling interest in reducing the level of violence. This requires that we stop pouring gasoline on a burning house.

The fact is that there is no imminent danger of a Communist takeover in El Salvador. And it is time—past time—that United States officials take a good look at what we are financing in El Salvador. While the extremists on the far left and far right are beyond U.S. control, we need to use our substantial leverage to end the indiscriminate bombing and press for a resumption of peace talks. United States taxpayers have sent more than $3 billion to El Salvador since 1980. In the last decade, 70,000 Salvadorans have died and little in the situation has improved.

Recently, the Congress voted to cap annual funding to El Salvador at $90 million, and to lift the conditions which had wisely been placed on its disbursement by the Senate Appropriations Committee. I firmly believe that this was too much money, given too freely. I strongly disagree with the position many well-intentioned Senators have taken in support of unconditional aid. Many Senators have wanted to give President Cristiani time to improve the abysmal human rights record of his ARENA party and to make substantial progress toward a negotiated settlement.

Mr. Cristiani has had 8 months, but the situation in El Salvador has only deteriorated. He has failed to control the rightwing death squads and their barbaric attacks on labor leaders, widows and men of the cloth. He has failed to advance the peace process. We now need to send a strong and unmistakably clear message to El Salvador that we will neither support the rightwing butchers who have sullied the Salvadoran Government, nor support the Communist guerrillas, who prosecute their war by crippling essential services and terrorizing civilians.

Congress cannot continue to finance indefinitely an unwinnable war and to countenance flagrant abuses of human rights perpetrated with our tax dollars.

I strongly believe that we must condition any future United States aid on substantial progress toward those goals the aid is designed to advance—nothing less than the end to flagrant abuses of human rights perpetrated by forces under the Salvadoran Government's control and a negotiated political settlement that will form the foundation for a stable, democratic government.

We must get back to the peace table. If there is one thing that the brutal violence of the past 2 weeks has demonstrated, it is that the conflict in Salvador will never be resolved militarily. A negotiated settlement is the only way to end this horrible decade of civil war. We in the United States must use all of our considerable leverage to advance this peace process.

The PRESIDING OFFICER. Who yields time?

Mrs. KASSEBAUM. Mr. President, I have no further request on this side of the aisle for anyone who wishes to

speak. Given that, I yield back any time remaining on this side.

The PRESIDING OFFICER. Does the Senator from Connecticut yield back the remainder of his time?

Mr. DODD. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the resolution. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

[Disturbance in the Visitors' Galleries.]

The PRESIDING OFFICER (Mr. REID). Order in the Gallery.

The clerk will continue the call of the roll.

The assistant legislative clerk resumed the call of the roll.

[Disturbance in the Visitors' Galleries.]

The PRESIDING OFFICER. Let there be order in the galleries.

The clerk will continue the call of the roll.

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 312 Leg.]

YEAS—99

| | | |
|---|---|---|
| Adams | Fowler | McClure |
| Armstrong | Glenn | McConnell |
| Baucus | Gore | Metzenbaum |
| Bentsen | Gorton | Mikulski |
| Biden | Graham | Mitchell |
| Bingaman | Gramm | Moynihan |
| Bond | Grassley | Murkowski |
| Boren | Harkin | Nickles |
| Boschwitz | Hatch | Nunn |
| Bradley | Hatfield | Packwood |
| Breaux | Heflin | Pell |
| Bryan | Heinz | Pressler |
| Bumpers | Helms | Pryor |
| Burdick | Hollings | Reid |
| Burns | Humphrey | Riegle |
| Byrd | Inouye | Robb |
| Chafee | Jeffords | Rockefeller |
| Coats | Johnston | Roth |
| Cochran | Kassebaum | Rudman |
| Cohen | Kasten | Sanford |
| Conrad | Kennedy | Sarbanes |
| Cranston | Kerrey | Sasser |
| D'Amato | Kerry | Shelby |
| Danforth | Kohl | Simon |
| Daschle | Lautenberg | Simpson |
| DeConcini | Leahy | Specter |
| Dixon | Levin | Stevens |
| Dodd | Lieberman | Symms |
| Dole | Lott | Thurmond |
| Domenici | Lugar | Wallop |
| Durenberger | Mack | Warner |
| Exon | Matsunaga | Wilson |
| Ford | McCain | Wirth |

NAYS—0

NOT VOTING—1

Garn

So, the resolution (S. Res. 217) was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

The Senate will be in order.

Senators will please take their seats.

The majority leader is recognized.

Mr. MITCHELL. Mr. President, will the Chair restate the results of the vote? Many Senators in the confusion did not hear the results.

The PRESIDING OFFICER. On the rollcall vote No. 312, there were 99 yeas, no nays.

## ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, we will next proceed to the catastrophic legislation, as soon as papers can be prepared. The Finance Committee has been working on that and I hope to discuss it with the chairman shortly.

[Disturbance in the Visitors' Galleries.]

Mr. MITCHELL. Until such time, Mr. President, I suggest the absence of a quorum.

[Disturbance in the Visitors' Galleries.]

The PRESIDING OFFICER. The Senate will suspend until the Sergeant at Arms can restore order in the Galleries.

The Sergeant of Arms will clear the Galleries until the disturbance subsides.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KOHL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## COAST GUARD AUTHORIZATION ACT

Mr. KOHL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2459.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved,* That the House agree to the amendment of the Senate to the bill (H.R. 2459) entitled "An act to authorize appropriations for the Coast Guard for fiscal year 1990, and for other purposes," with the following amendment:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coast Guard Authorization Act of 1989".

TITLE I—AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF FUNDS FOR FISCAL YEAR 1990.

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1990, as follows:

(1) OPERATION AND MAINTENANCE.—For the operation and maintenance of the Coast Guard, $2,312,200,000.

(2) ACQUISITION AND CONSTRUCTION.—For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including related equipment, $746,300,000 of which up to $20,000,000 shall be used to rehabilitate the Coast Guard Cutter MACKINAW, and additional sums as may be necessary to carry out the Coast Guard icebreaker ship program and the Coast Guard patrol boat program, to remain available until expended.

(3) RESEARCH AND DEVELOPMENT.—For research, development, test, and evaluation, $29,000,000, to remain available until expended.

(4) RETIREMENT BENEFITS.—For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $420,800,000, to remain available until expended.

(5) ALTERATION OR REMOVAL OF BRIDGES.—For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $2,300,000.

SEC. 102. AUTHORIZATION OF FUNDS FOR FISCAL YEAR 1991.

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1991, as follows:

(1) OPERATION AND MAINTENANCE.—For the operation and maintenance of the Coast Guard, $2,381,500,000.

(2) ACQUISITION AND CONSTRUCTION.—For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including related equipment, $501,800,000, to remain available until expended.

(3) RESEARCH AND DEVELOPMENT.—For research, development, test, and evaluation, $29,000,000, to remain available until expended.

(4) RETIREMENT BENEFITS.—For retired pay, including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose and payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and for payments for medical care of retired personnel and their dependents under chapter 55, of title 10, United States Code, $451,200,000, to remain available until expended.

(5) ALTERATION OR REMOVAL OF BRIDGES.—For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $7,500,000.

SEC. 103. AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1990.

(a) ACTIVE DUTY PERSONNEL.—As of September 30, 1990, the Coast Guard is authorized an end-of-year strength for active duty personnel of 37,750. This authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) STUDENT LOADS.—For fiscal year 1990, the Coast Guard is authorized average military training student loads as follows:

(1) RECRUIT AND SPECIAL TRAINING.—For recruit and special training, 2,687 student-years.

(2) FLIGHT TRAINING.—For flight training, 110 student-years.

(3) PROFESSIONAL TRAINING.—For professional training in military and civilian institutions, 390 student-years.

(4) OFFICER ACQUISITION.—For officer acquisition, 900 student-years.

SEC. 104. AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1991.

(a) ACTIVE DUTY PERSONNEL.—As of September 30, 1991, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,300. The authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) STUDENT LOADS.—For fiscal year 1991, the Coast Guard is authorized average military training student loads as follows:

(1) RECRUIT AND SPECIAL TRAINING.—For recruit and special training, 2,787 student years.

(2) FLIGHT TRAINING.—For flight training, 110 student years.

(3) PROFESSIONAL TRAINING.—For professional training in military and civilian institutions, 390 student years.

(4) OFFICER ACQUISITION.—For officer acquisition, 900 student years.

SEC. 105. MODIFICATION AND EXTENSION OF RULES OF ROAD ADVISORY COUNCIL AND EXTENSION OF TOWING SAFETY ADVISORY COMMITTEE.

(a) RULES OF THE ROAD ADVISORY COUNCIL.—

(1) MODIFICATION AND EXTENSION.—Section 5 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) is amended as follows:

(A) Subsection (a) is amended by striking "Rules of the Road Advisory Council" and inserting "Navigation Safety Advisory Council".

(B) Subsection (b) is amended to read as follows:

"(b) The Council shall advise, consult with, and make recommendations to the Secretary on matters relating to the prevention of collisions, rammings, and groundings, including the Inland Rules of the Road, the International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems. Any advice or recommendation made by the Council to the Secretary shall reflect the independent judgement of the Council on the matter concerned. The Council shall meet at the call of the Secretary, but in any event not less than twice during each calendar year. All proceedings of the Council shall be public, and a record of the proceedings shall be made available for public inspection.".

(C) Subsection (d) is amended by striking "September 30, 1990" and inserting "September 30, 1995".

(2) REFERENCES.—Each reference to the Rules of the Road Advisory Council in a law, regulation, order, document, record, or paper of the United States is deemed to be a reference to the Navigation Safety Advisory Council.

(b) TOWING SAFETY COMMITTEE.—Subsection (e) of the Act entitled "An Act to establish a Towing Safety Advisory Committee in the Department of Transportation", approved October 6, 1980 (33 U.S.C. 2131a(e)), is amended by striking "September 30, 1990" and inserting "September 30, 1995".

SEC. 106. COMMERCIAL FISHING INDUSTRY VESSEL ADVISORY COMMITTEE APPOINTMENTS.

Section 4508 of title 46, United States Code, is amended by adding at the end of subsection (b)(8) the following: "The Secretary may not ask or use information concerning the political affiliation of individuals in making appointments to the Committee."

## TITLE II—PROGRAMS

SEC. 201. TECHNICAL AMENDMENTS TO ACT TO PREVENT POLLUTION FROM SHIPS

The Act to Prevent Pollution from Ships (33 U.S.C. 1901-1912) is amended—

(1) in section 6(c)(1), by striking "Annex V" and inserting "Annex I and Annex II";

(2) in section 8(c)(1), by inserting "or of this Act" after 'Convention"; and

(3) in section 8(c)(2), by inserting "or of this Act" after "MARPOL Protocol".

SEC. 202. TECHNICAL CORRECTIONS RELATING TO SAFEGUARDING MILITARY WHISTLEBLOWERS.

Section 1034 of title 10, United States Code, is amended—

(1) in subsection (c)(1), by inserting "when the Coast Guard is not operating as a service in the Navy" immediately after "in the case of a member of the Coast Guard";

(2) in subsection (c)(5), by inserting "(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)" immediately after "to the Secretary of Defense";

(3) in subsection (c)(6), by inserting "(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy" immediately after "to the Secretary of Defense"; and

(4) in the first sentence of subsection (a), by inserting "(except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)" immediately after "former member of the armed forces".

SEC. 203. MISCELLANEOUS PROVISIONS CONCERNING CONTINUITY OF GRADE, APPOINTMENT, AND RETIREMENT OF COAST GUARD PERSONNEL.

Title 14, United States Code, is amended—

(1) in section 52, by inserting "or admiral" immediately after "to another position as a vice admiral";

(2) in section 271(a), by inserting at the end of the first sentence. "except that advice and consent is not required for appointments under this section in the grade of lieutenant (junior grade) or lieutenant" immediately after "consent of the Senate";

(3) in section 289(c), by striking "no less than 75 percent" and inserting "no less than 50 percent";

(4) in section 736(c), by adding at the end the following new sentence: "However, the Secretary may adjust the date of appointment—

"(1) if a delay in the finding required under section 734(a) of this title is beyond the control of the officer and the officer is otherwise qualified for promotion; or

"(2) for any other reason that equity requires."; and

(5) in section 741(a), by inserting "who have 18 years or more of service for retirement and are" after "in an active status" the third time it appears.

SEC. 204. AUTHORIZATION OF JUNIOR RESERVE OFFICERS TRAINING PROGRAM PILOT PROGRAM.

(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is opening (hereinafter in this section referred to as the "Secretary") may carry out a pilot program to establish and maintain a junior reserve officers training program in cooperation with the Dade County Public School System of Dade County, Florida, as part of the Maritime and Science Technology Academy established by that school system (hereinafter in this section referred to as the "Academy").

(b) PROGRAM REQUIREMENTS.—A pilot program carried out by the Secretary under this section—

(1) shall be known as the "Claude Pepper Junior Reserve Officers Training Program"; and

(2) shall provide to students at the Academy—

(A) instruction in subject areas relating to operations of the Coast Guard; and

(B) training in skills which are useful and appropriate for a career in the Coast Guard.

(c) PROVISION OF ADDITIONAL SUPPORT.—To carry out a pilot program under this section, the Secretary may provide to the Academy—

(1) assistance in course development, instruction, and other support activities:

(2) commissioned, warrant and petty officers of the Coast Guard to serve as administrators and instructors; and

(3) necessary and appropriate course materials, equipment, and uniforms.

(d) EMPLOYMENT OF RETIRED COAST GUARD PERSONNEL.—

(1) IN GENERAL.—Subject to paragraph (2) of this subsection, the Secretry may authorize the Academy to employ as administrators and instructors for the pilot program retired Coast Guard and Coast Guard Reserve commissioned, warrant, and petty officers who request that employment and who are approved by the Secretary and the Academy.

(2) AUTHORIZED PAY.—(A) Retired members employed under paragraph (1) of this subsection are entitled to receive their retired or retainer pay and an additional amount of not more than the difference between—

(i) the amount the individual would be paid as pay and allowance if they were considered to have been ordered to active duty during that period of employment; and

(ii) the amount of retired pay the individual is entitled to receive during that period.

(B) The Secretary shall pay to the Academy an amount equal to one half of the amount described in subparagraph (A) of this paragraph, from funds appropriated for that purpose.

(C) Notwithstanding any other law, while employed under this subsection, an individual is not considered to be on active duty or inactive duty training.

SEC. 205. LIMITATIONS ON CONTRACTING OF COAST GUARD SERVICES.

Notwithstanding any other provision of law, an officer or employee of the United States may not enter into a contract for procurement of performance of any function being performed by Coast Guard personnel as of January 1, 1989, before—

(1) a study has been performed by the Secretary of Transportation under the Office of Management and Budget Circular A-76 with respect to that procurement;

(2) the Secretary of Transportation has performed a study, in addition to the study required by paragraph (1) of this subsection, to determine the impact of that procurement on the multimission capabilities of the Coast Guard; and

(3) copies of the studies required by paragraphs (1) and (2) of this subsection are submitted to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 206. LOCAL HIRE.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by adding at the end the following new section:

"§ 666. Local hire

"(a) Notwithstanding any other law, each contract awarded by the Coast Guard for construction or services to be performed in while or in part in a State that has an unemployment rate in excess of the national average rate of unemployment (as determined by the Secretary of Labor) shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. The Secretary of Transportation may waive the requirements of this subsection in the interest of national security or economic efficiency.

"(b) LOCAL RESIDENT DEFINED.—As used in this section, 'local resident' means a resident of, or an individual who commutes daily to, a State described in subsection (a).".

(b) CLERICAL AMENDMENT.—The analysis for chapter 17 of title 14, United States Code, is amended by adding at the end the following:

"666. Local hire.".

SEC. 207. REPORT ON CONTROL OF EXOTIC SPECIES.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall submit to the Congress a report on the options available to control the infestation of the waters of the United States, including the Great Lakes, by exotic species from the ballast water of vessels operating on the waters of the United States. In preparing this report, the Secretary shall consult with the Secretary of the Interior, the Secretary of Commerce, the Great Lakes Fishery Commission, and other appropriate parties.

(b) EXOTIC SPECIES DEFINED.—In this section "exotic species" means nonnative fish, mollusks, crustaceans, zooplankton, and other aquatic organisms, other than sea lampreys.

SEC. 208. LAW ENFORCEMENT SURVEILLANCE.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Transportation shall—

(1) submit a report to the Congress that identifies——

(A) the needs for outfitting existing Coast Guard aircraft with surveillance and reconnaissance equipment to assist in the conduct of law enforcement activities; and

(B) the cost of that equipment; and

(2) in cooperation with the Secretary of Defense, establish and submit to the Congress a plan for closing existing gaps in radar coverage along the coastline of the United States on the Gulf of Mexico and the coastline of the southeastern United States on the Atlantic Ocean.

SEC. 209. NUMBERING OF VESSELS.

Section 2101 of title 46, United States Code, is amended by inserting after paragraph (17) the following:

"(17a) 'numbered vessel' means a vessel for which a number has been issued under chapter 123 of this title.".

SEC. 210. CONSTRUCTIVE SEIZURE PROCEDURES

Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation and the Secretary of the Treasury, in order to avoid the devastating economic effects on innocent owners of seizures of their vessels, shall develop a procedure for constructive seizure of vessels of the United States engated in commercial service as defined in section 2101 of title 46, United States Code, that are suspected of being used for committing violations of law involving personal use quantities of controlled substances.

SEC. 211. USER FEES REPORT CLARIFICATION.

Section 664(c) of title 14, United States Code, is amended as follows:

(1) in paragraph (1) by striking "collected stating—" and substituting "collected under any law stating—"; and

(2) in paragraph (2) by inserting "under any law" after "collected" the first time it appears.

SEC. 212. BOARD FOR THE CORRECTION OF MILITARY RECORDS.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Transportation shall—

(1) amend part 52 of title 33, Code of Federal Regulations, governing the proceedings of the board established by the Secretary under section 1552 of title 10, United States Code, to ensure that a complete application for correction of military records is processed expeditiously and that final action on the application is taken within 10 months of its receipt; and

(2) appoint and maintain a permanent staff, and a panel of civilian officers or employees to serve as members of the board, which are adequate to ensure compliance with paragraph (1) of this subsection.

SEC. 213. CONSIDERATION OF MARITIME ADMINISTRATION VESSELS.

Before acquiring a vessel for use by the Coast Guard, the Secretary of Transportation or the Commandant of the Coast Guard, as appropriate, shall review the inventory of vessels acquired by the Secretary or the Secretary of Commerce as the result of a default under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271-1279c), to determine whether any of those vessels are suitable for use by the Coast Guard.

SEC. 214. REQUIREMENT TO REPORT SEXUAL OFFENSES.

(a) IN GENERAL.—Chapter 101 of title 46, United States Code is amended by:

(1) deleting section 10104; and

(2) adding the following new section:

"§ 10104. Requirement to report sexual offenses

"(a) A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code.

"(b) A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of not more than $5,000.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 101 of title 46, United States Code, is amended by striking, "10104. Regulations." and inserting "10104. Requirement to report sexual offenses.".

SEC. 215. LIMITATION ON VESSEL TRANSFER FROM GULFPORT, MISSISSIPPI.

The Secretary of Transportation shall not transfer the Coast Guard cutter ACUSMMET from Gulfport, Mississippi, until at least two Coast Guard patrol boats are based permanently in Gulfport.

SEC. 216. CONSIDERATION OF DEPARTMENT OF DEFENSE HOUSING FOR COAST GUARD.

Notwithstanding any other provision of law, the Coast Guard is deemed to be an instrumentality within the Department of Defense for the purposes of section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687).

SEC. 217. PROHIBITION AGAINST REDUCTION IN SERVICES.

The Secretary of Transportation may not reduce expenditures in fiscal year 1990 or fiscal year 1991 for Coast Guard services other than drug law enforcement to increase drug law enforcement unless the Secretary first notifies the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives 30 days prior to any reduction, except that nothing in this section shall be construed to reduce the Coast Guard's ability to respond to interdiction opportunities that may arise in the course of normal activities.

SEC. 218. COST OF SECURITY AT KENNEBUNKPORT, MAINE.

Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall—

(1) submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives that identifies the costs incurred by the Coast Guard and any reallocation of assets or personnel that would have been used for search and rescue or law enforcement operations, as a result of providing security at Kennebunkport, Maine; and

(2) actively seek reimbursement of those costs from the Secretary of Treasury.

SEC. 219. VESSEL TRAFFIC SERVICE RESTORATION.

The Secretary of the department in which the Coast Guard is operating shall reestablish a vessel traffic service on the Lower Mississippi River in New Orleans, and shall continue operation of the New York Harbor area and other existing vessel traffic service systems.

SEC. 220. SEARCH AND RESCUE SATELLITE SYSTEM

(a) The Secretary of Transportation shall take such action as may be necessary to upgrade the ground segment of the Search and Rescue Satellite Aided Tracking system (hereafter in this section referred to as "SARSAT").

(2) In carrying out this section, the Secretary of Transportation shall establish not less than 5 SARSAT ground stations for the purpose of providing adequate coverage of the United States area of search and rescue for which it has responsibility under the program known as "COSPAS-SARSAT". In establishing such stations, the Secretary, after consultation with the satellite search and rescue offices of the Coast Guard, the National Oceanic and Atmospheric Administration, the Air Force, the National Aeronautics and Space Administration, and the SARSAT Program Steering Group, shall locate the stations in the most optimum sites to assure complete coverage of the search and rescue areas for which the United States is responsible.

(b) The Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration, shall administer the SARSAT ground stations. Such administration shall be carried out in consultation with the Secretary of Transportation and the Secretary of Defense.

(c) For the purpose of carrying out the provisions of subsection (a) of this section, there is authorized to be appropriated $5,300,000. Moneys appropriated pursuant

to this subsection shall remain available until expended.

SEC. 221. BOSTON LIGHT STATION

(a) The Congress finds and declares the following:

(1) The Boston Light Station (hereafter in this section referred to as the "Boston Light") on Little Brewster Island, Boston Harbor, Massachusetts, is the Nation's oldest lighthouse station.

(2) The Boston Light is a National Historic Landmark and Little Brewster Island is listed in the National Register of Historic Places. As such, they should be administered and maintained in a way that preserves for public enjoyment and appreciation their special historic character.

(3) Continued manned operation of the Boston Light will preserve its special historic character. Any proposal to automate or modernize Boston Light must be consistent with the provisions of sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470f and 470h-2).

(4) Efforts should be undertaken that will facilitate public access to, and enhance the public enjoyment and appreciation of, the Boston Light and Little Brewster Island.

(b) The Boston Light shall be operated on a permanently manned basis. The amounts authorized to be appropriated under sections 101 and 102 include funds—

(1) for maintenance of the keeper's house and of the Boston Lighthouse; and

(2) to enhance public access to the Boston Light and Little Brewster Island, including making pier improvements on the island.

(c) The Secretary of Transportation shall, in consultation with the Secretary of the Interior, the Massachusetts Department of Environmental Management, the Massachusetts Historical Preservation Officer, appropriate local government entities, and private preservation groups, develop a strategy to implement policies regarding the ownership, maintenance, staffing, and use of the Boston Light. The strategy shall propose ways—

(1) to provide improved public access to the Boston Light and Little Brewster Island; and

(2) to ensure that the special historic character of the Boston Light will be preserved, with the continuing presence of Coast Guard personnel, so as to provide the best possible public enjoyment and appreciation.

SEC. 222. COAST GUARD ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM.

(a) ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM.—Title 14, United States Code, is amended by adding the following new chapter 19 after chapter 17:

"CHAPTER 19—ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM

"Sec.
"690. Definitions.
"691. Environmental Compliance and Restoration Program.
"692. Environmental Compliance and Restoration Account.
"693. Annual Report to Congress.

"690. DEFINITIONS.

"For the purposes of this chapter—

"(1) 'environment', 'facility', 'person', 'release', 'removal', 'remedial', and 'response' have the same meaning they have in section 101 of the Comprehensive Environmental Response, Compensation, and Liability act (42 U.S.C. 9601);

"(2) 'hazardous substance' has the same meaning it has in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), except that it also includes the meaning given 'oil' in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and

"(3) 'pollutant' has the same meaning it has in section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362).

"691. ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM.

"(A) The Secretary shall carry out a program of environmental compliance and restoration at current and former Coast Guard facilities.

"(b) Program goals include:

"(1) Identifying, investigating, and cleaning up contamination from hazardous substances and pollutants.

"(2) Correcting other environmental damage that poses an imminent and substantial danger to the public health or welfare or to the environment.

"(3) Demolishing and removing unsafe buildings and structures, including buildings and structures at former Coast Guard facilities.

"(4) Preventing contamination from hazardous substances and pollutants at current Coast Guard facilities.

"(c)(1) The Secretary shall respond to releases of hazardous substances and pollutants—

"(A) at each Coast Guard facility the United States owns, leases, or otherwise possesses;

"(B) at each Coast Guard facility the United States owned, leased, or otherwise possessed when the actions leading to contamination from hazardous substances or pollutants occured; and

"(C) on each vessel the Coast Guard owns or operates.

"(2) Paragraph (1) of this subsection does not apply to a removal or remedial action when a potentially responsible person responds under section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9622).

"(3) The Secretary shall pay a fee or charge imposed by a state authority for permit services for disposing of hazardous substances or pollutants from Coast Guard facilities to the same extent that nongovernmental entities are required to pay for permit services. This paragraph does not apply to payment that is the responsibility of a lessee, contractor, or other private person.

"(d) The Secretary may agree with another Federal agency for that agency to assist in carrying out the Secretary's responsibilities under this chapter. The Secretary may enter into contracts, cooperative agreements, and grant agreements with State and local governments to assist in carrying out the Secretary's responsibilities under this chapter. Services that may be obtained under this subsection include identifying, investigating, and cleaning up off-site contamination that may have resulted from the release of a hazardous substance or pollutant at a Coast Guard facility.

"(e) Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9619) applies to response action contractors that carry out response actions under this chapter. The Coast Guard shall indemnify response action contractors to the extent that adequate insurance is not generally available at a fair price at the time the contractor enters into the contract to cover the contractor's reasonable, potential, long-term liability.

"692. ENVIRONMENTAL COMPLIANCE AND RESTORATION ACCOUNT.

"(a) There is established for the Coast Guard an account known as the Coast Guard Environmental Compliance and Restoration Account. All sums appropriated to carry out the Coast Guard's environmental compliance and restoration functions under this chapter or another law shall be credited or transferred to the account and remain available until expended.

"(b) Funds may be obligated or expended from the account to carry out the Coast Guard's environmental compliance and restoration functions under this chapter or another law.

"(c) In proposing the budget for any fiscal year under section 1105 of title 31, United States Code, the President shall set forth separately the amount requested for the Coast Guard's environmental compliance and restoration activities under this chapter or another law.

"(d) Amounts recovered under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607) for the Secretary's response actions at current and former Coast Guard facilities shall be credited to the account.

"693. ANNUAL REPORT TO CONGRESS.

"(a) The Secretary shall submit to Congress a report each fiscal year describing the progress the Secretary has made during the preceding fiscal year in implementing this chapter.

"(b) Each report shall include:

"(1) A statement for each facility or vessel for which the Secretary is responsible under section 691(c) of this title where a release of a hazardous substance or pollutant has been identified.

"(2) The Status of response actions contemplated or undertaken at each facility.

"(3) The specific cost estimates and budgetary proposals for response actions contemplated or undertaken at each facility.

"(4) The total amount required to clean up contamination at all identified facilities.".

(b) TITLE ANALYSIS.—The title analysis at the beginning of part I of title 14, United States Code, is amended by adding after item 17:

"19. Coast Guard Environmental Compliance and Restoration Program .....690".

(c) PRIOR AUTHORIZATION REQUIREMENT.—Section 662 of title 14, United States Code, is amended by adding the following new paragraph:

"(5) For environmental compliance and restoration at Coast Guard facilities.".

SEC. 223. BLOCK ISLAND SOUTHEAST LIGHTHOUSE PRESERVATION.

(a) CONVEYANCE.—(1) The Secretary of the department in which the Coast Guard is operating may convey, by any appropriate means, all right, title and interest of the United States in the Block Island Southeast Lighthouse to the Block Island Southeast Lighthouse Foundation (hereafter referred to as the "Foundation") of the town of New Shoreham, Rhode Island.

(2) The purpose of this conveyance is to establish and maintain a nonprofit center for the public at the Block Island Southeast Lighthouse for interpretation and preservation of the culture of the United States Coast Guard and Block Island's maritime history.

(3) The Secretary may not transfer the Block Island Southeast Lighthouse until the Foundation or the State of Rhode

Island, acting on its behalf, requests from the Secretary that the transfer occur.

(4) TERMS AND CONDITIONS.—The conveyance shall be made—

(1) without payment of consideration;

(2) subject to the condition that if the property, or any part of the property, ceases to be used for the purpose of this section, title to all such property shall be deemed to have immediately reverted to the United States; and

(3) subject to such other terms and conditions as the Secretary of the department in which the Coast Guard is operating may impose.

(c) REQUIREMENTS.—The conveyance shall include provisions necessary to assure that—

(1) the light, antennas, sound signal, and associated equipment which are active aids to navigation shall continue to be operated and maintained by the United States;

(2) the Foundation will not interfere or allow interference in any manner with navigational aids without written permission of the United States;

(3) there is reserved to the United States the right to relocate, replace, or add any navigational aids, or make any changes on any portion of the property as may be necessary for navigation purposes;

(4) the United States shall have the right, at any time, to enter the property without notice to maintain navigational aids; and

(5) the United States shall have an easement for access to the property to maintain navigational aids.

(d) PROPERTY DESCRIPTION.—The Secretary of the department in which the Coast Guard is operating shall identify, describe, and determine the property to be conveyed under this section.

(e) DEFINITION.—For purposes of this section, "Block Island Southeast Lighthouse" means the lighthouse and attached keeper's dwelling, several ancillary buildings, a fog signal and land (but not less than nine acres) necessary to carry out the purposes of this section located in the town of New Shoreham, Rhode Island.

(f) STRATEGY.—The Secretary of Transportation shall within six months of the date of enactment, in consultation with the Secretary of the Interior, appropriate state, local, and other governmental entities, and private preservation groups, develop a strategy regarding the ownership, maintenance, operation, and use of the Block Island Southeast Lighthouse that will preserve the special historic character of the Lighthouse and ensure public access. Any proposal must be consistent with the provisions of the National Historic Preservation Act (16 U.S.C. 470 et seq.), other applicable law, and efforts to interpret and preserve the material culture of the United States Coast Guard and Block Island's maritime history.

## TITLE III—MISCELLANEOUS

### SEC. 301. DOCUMENTATION OF VESSELS.

(a) TECHNICAL AMENDMENTS.—Chapter 121 of title 46, United States Code, is amended a follows:

(1) Section 12101(b) is amended—

(A) in paragraph (1), by striking "registry as" and inserting "registry endorsement as";

(B) in paragraph (2), by striking "coastwise license" and inserting "coastwise endorsement";

(C) in paragraph (3), by striking "Great Lakes license" and inserting "Great Lakes endorsement";

(D) by repealing paragraphs (4); and

(E) by redesignating paragraph (5) as paragraph (4).

(2) Section 12102 is amended—

(a) in the matter preceding paragraph (1) of subsection (a)—

(i) by inserting "that is" before "not", and

(ii) by inserting "or is not titled in a State" after "foreign country";

(B) by striking "(b)(1)" and inserting "(c)(1)";

(C) in subsection (c)(1) (as redesignated by subparagraph (B)), by striking "fishery license" and inserting "fishery endorsement"; and

(D) by repealing subsection (c).

(3) Section 12103 is amended—

(A) in subsection (a), by striking "of one of the types" and inserting "endorsed with one or more of the endorsements"; and

(B) in subsection (b)—

(i) by striking "(b)" and inserting "(b)(1)"; and

"(ii) by adding at the end the following new paragraph:

"(2) The Secretary shall require each person applying to document a vessel to provide—

"(A) the person's social security number; or

"(B) for a person other than an individual—

"(i) the person's taxpayer identification number; or

"(ii) if the person does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the person and who signs the application for documentation for the vessel.".

(4) Section 12104(2) is amended by striking "vessel license," and inserting "endorsement,".

(5) Section 12105 is amended—

(A) by amending subsection (a) to read as follows:

"(a) A certificate of documentation may be endorsed with a registry endorsement.";

(B) in subsection (b), by inserting "endorsement" after "registry";

(C) by repealing subsections (c) and (d); and

(D) in the catchline, by inserting "endorsements" after "Registry". (6) Section 12106 is amended—

(A) in subsection (a), by striking "A coastwise license or, as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued" and inserting "A certificate of documentation may be endorsed with a coastwise endorsement";

(B) in subsection (b), by striking "coastwise license or an appropriately endorsed registry" and inserting "certificate of documentation with a coastwise endorsement";

(C) in subsection (c), by striking "license" and inserting "endorsement";

(D) by repealing subsection (d); and

(E) in the catchline, by striking "licenses and registry" and inserting "endorsements".

(7) Section 12107 is amended—

(A) in subsection (a), by striking "A Great Lakes license, or as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued" and inserting "A certificate of documentation may be endorsed with a Great Lakes endorsement";

(B) by amending subsection (b) to read as follows:

"(b) Subject to the laws of the United States regulating trade with Canada, only a vessel for which a certificate of documentation with a Great Lakes endorsement is issued may be employed on the Great Lakes and their tributary and connecting waters in trade with Canada.";

(C) by repealing subsection (c); and

(D) in the catchline, by striking "licenses and registry" and inserting "endorsements".

(8) Section 12108 is amended—

(A) in subsection (a), by striking "A fishery license or, as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued" and inserting "A certificate of documentation may be endorsed with a fishery endorsement";

(B) in subsection (a)(1), by striking "and";

(C) in subsection (b), by striking "fishery license or an appropriately endorsed registry" and inserting "certificate of documentation with a fishery endorsement";

(D) in subsection (c), by striking "license" and inserting "endorsement";

(E) by repealing subsection (d); and

(F) in the catchline, by striking "licenses and registry" and inserting "endorsements".

(9) Section 12109 is amended—

(A) by striking subsection (a) and inserting the following:

"(a) A certificate of documentation with a recreational endorsement may be issued for a vessel that is eligible for documentation.";

(B) in subsection (b)—

(i) by striking "licensed recreational vessel" and inserting "documented vessel with a recreational endorsement"; and

(ii) by striking "Such" and inserting "A recreational";

(C) by adding at the end the following new subsection:

"(c) A documented vessel operating under a recreational endorsement may be operated only for pleasure."; and

(D) in the catchline, by striking "vessel licenses" and inserting "endorsements".

(10) Section 12110 is amended—

(A) by amending subsection (a) to read as follows:

"(a) A vessel may not be employed in a trade except a trade covered by the endorsement issued for that vessel."; and

(B) in subsection (c)—

(i) by striking "certificate of documentation" and inserting "endorsement",

(ii) by striking "recreational vessel" and inserting "vessel with a recreational endorsement", and

(iii) by striking "except" and inserting

(11) Section 12112 is amended—

(A) in subsection (a), by striking "an appropriate document" and inserting "a certificate of documentation with an appropriate endorsement"; and

(B) in subsection (b), by striking "an appropriate" and inserting "a".

(12) The table of sections at the beginning of chapter 121 is amended by striking the entries for sections 12105 through 12109 and inserting the following:

"12105. Registry endorsements.
"12106. Coastwise endorsements.
"12107. Great Lakes endorsements.
"12108. Fishery endorsements.
"12109. Recreational endorsements.".

(b) DOCUMENTATION SURRENDER AND INVALIDATION.—Section 12111(c)(3) of title 46, United States Code, does not apply to a mortgage that—

(1) was filed or recorded before January 1, 1989; and

(2) was not a preferred mortgage (as that term is defined in section 31301(6) of that title) on that date.

### SEC. 302. VESSEL IDENTIFICATION SYSTEMS.

Chapter 125 of title 46, United States Code, is amended as follows:

(1) Section 12501(b)(2) is amended to read as follows:

"(2) identifying the owner of the vessel, including—

"(A) the owner's social security number; or

"(B) for an owner other than an individual—

"(i) the owner's taxpayer identification number; or

"(ii) if the owner does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the owner and who signed the application for documentation or numbering for the vessel;".

(2) Section 12503(a)(2) is amended to read as follows:

"(2) identifies the owner of the vessel, including by—

"(A) the owner's social security number; or

"(B) for an owner other than an individual—

"(i) the owner's taxpayer identification number; or

"(ii) if the owner does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the owner and who signed the application for documentation or numbering for the vessel;".

(3) Section 12504 is amended by striking "Secretary, the Secretary of Transportation—" and inserting "Secretary of Transportation, the Secretary—".

SEC. 303. COMMERCIAL INSTRUMENTS AND MARITIME LIENS.

Chapter 313 of title 46, United States Code, is amended as follows:

(1) Section 31306 is amended—

(A) in subsection (a), by striking "When" and inserting "Except as provided by the Secretary of Transportation, when" and by striking "of Transportation"; and

(B) in subsection (c), by striking "An" and inserting "Except as provided by the Secretary, an".

(2) Section 31321(c) is amended—

(A) by striking "that has not yet been documented," and inserting "for which an application for documentation is filed,"; and

(B) by striking "party whose name and address is stated on" and inserting "interested party to";

(3) Section 31322 is amended—

(A) by amending subsection (a)(2) to read as follows:

"(2) Paragraph (1)(D) of this subsection does not apply to—

"(A) a documented vessel that has a fisheries endorsement or a recreational endorsement, or both endorsements; or

"(B) a vessel for which an application for documentation with a fisheries endorsement or a recreational endorsement, or both endorsements, has been filed.";

(B) in subsection (d)(1), by striking "representing financing of a vessel under State law that is made under applicable State law" and inserting "granting a security interest perfected under State law"; and

(C) in subsection (e) (1) and (2) by striking "the validity of the preferred mortgage" each place that phrase appears and inserting "the status of the preferred mortgage".

(4) Section 31325 is amended—

(A) by amending subsections (b) and (c) to read as follows:

"(b) On default of any term of the preferred mortgage, the mortgagee may—

"(1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, or a foreign vessel; and

"(2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—

"(A) a civil action in personam in admiralty against the mortgagor, maker, comaker, and guarantor for the amount of the outstanding indebtedness or any

(5) Section 31341(a)(3) is amended by striking "mangement" and inserting "management".

(6) Section 31342 is amended—

(A) by striking "A person providing necessaries to a vessel (except a public vessel) on the order of a person listed in section 31341 of this title" and inserting "(a) Except as provided in subsection (b) of this section, a person providing necessaries to a vessel on the order of the owner"; and

(B) by adding the following new subsection (b) at the end:

"(b) This section does not apply to a public vessel.".

(7) Section 31343 is amended by striking "vessel covered by a preferred mortgage filed or recorded under this chapter" and inserting "documented vessel".

(8) The following new section is added at the end:

"§ 31344. Extinction of maritime liens

"Except as otherwise provided by law, a person must bring an action to enforce a maritime lien (except a preferred mortgage lien) within 3 years after the day when the lien arose.".

(9) The table of sections is amended by adding at the end the following:

"31344. Extinction of maritime liens.".

SEC. 304. AMENDMENTS TO THE SHIPPING ACT, 1916.

(a) EXEMPTION FROM REQUIREMENT OF APPROVAL BY SECRETARY.—Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), is amended in subsection (c)(1) by inserting "or the last documentation of which was under the laws of the United States" before the semicolon at the end;

(2) in subsection (c)(2) by inserting ", or a vessel the last documentation of which was under the laws of the United States," after "a documented vessel";

(3) in subsection (d) (1) an (2), by striking "or control in" and inserting "in or control of"; and

(4) adding the following new paragraph:

"(4) A person that charters, sells, transfers, or mortgages a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.".

(b) REMISSION OF FORFEITURE.—Section 38 of the Shipping Act, 1916 (46 App. U.S.C. 836) is amended by striking "duties." and inserting "duties, except that forfeitures may be remitted without seizure of the vessel.".

SEC. 305. CIVIL PENALTY PROCEDURES.

Chapter 3 of title 49, United States Code, is amended—

(1) by adding at the end of subchapter II the following new section:

"§ 336. Civil penalty procedures

"(a) After notice and an opportunity for a hearing, a person found by the Secretary of Transportation to have violated a provision of law that the Secretary carries out through the Maritime Administrator or the Commandant of the Coast Guard or a regulation prescribed under that law by the Secretary for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

"(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

"(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

"(d) The Secretary may refund or remit a civil penalty collected under this section if—

"(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

"(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed."; and

(2) in the table of sections, by adding at the end the following:

"336. Civil penalty procedures.".

SEC. 306. EXEMPTION OF CERTAIN FISHING INDUSTRY FROM INSPECTION REQUIREMENTS

Section 403(a) of Public Law 98-364 is amended by striking "1990" in the first sentence and insert: "1991".

SEC. 307. LAWS REPEALED.

The following laws are repealed:

(1) Section 4172 of the Revised Statutes of the United States (46 App. U.S.C. 41).

(2) Section 8 of Public Law 96-376 (46 App. U.S.C. 382b-1)

(3) Section 9(a) of the Shipping Act, 1916 (46 App. U.S.C. 808(a)).

(4) Sections 15 and 34 of the Merchant Marine Act, 1920.

(5) Section 701 of the Merchant Marine Act, 1928 (46 App. U.S.C. 891s).

(6) Section 6 of the Act of June 16, 1933 (46 App. U.S.C. 891y).

(7) Sections 201(b), 201(g), 510(h), 612, 804(c)(2), 805(e), 806(a), 807, 11.06, 1107, and 1109 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1111(b), 1111(g), 1160(h), 1182, 1222(c)(2), 1223(e), 1224, 1225, 1276, 1279, and 1279b).

(8) Section 402 of the Act of October 8, 1940 (46 App. U.S.C. 1155a).

(9) Section 101 of the Act of June 25, 1958 (46 App. U.S.C. 1242-1).

(10) Sections 3(b) and 9 of the Act of December 13, 1977 (46 App. U.S.C. 1502(b) and 1508).

(11) Sections 20(a), 21, and 22 of the Shipping Act of 1984 (46 App. U.S.C. 1720).

(12) Sections 3 (b)-(f), 4, 5 (a), (b), and (d), 6, 7, 8 (a)-(c), 10, 11(b), 12 (b)-(e), and 13 of the Act of March 8, 1946 (50 App. U.S.C. 1736 (b)-(f), 1737, 1738 (a), (b), and (d), 1739, 1740, 1741 (a)-(c), 1743, 1744(b), 1745 (b)-(f), and 1746).

(13) Section 2 of the Act of June 29, 1949 (50 App. U.S.C. 1738a).

(14) The Act of September 21, 1959 (50 App. U.S.C. 1745a).

(15) Section 1-5 of the Act of March 21, 1945 (50 App. U.S.C. 1721-1725).

(16) The Act of August 20, 1954 (50 App. U.S.C. 2391-2394).

(17) Section 4377 of the Revised Statutes of the United States (46 App. U.S.C. 325).

SEC. 308. COASTWISE DOCUMENTATION AND OPERATION.

(a) DOCUMENTATION.—Notwithstanding section 12106 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of

the department in whch the Coast Guard is operating may issue a certificate of documentation endorsed with a coastwise endorsement for each of the following vessels:

(1) CAMELOT (United States official number 536408)

(2) CRILI (United States official number 656976)

(3) DA WARRIOR (Hawaiian Registration number HA 161 CP)

(4) HARBOR EXEC (United States official number 563895)

(5) JAMAL (United States official number 611165)

(6) KARLISSA (United States official number 950453)

(7) LAZY JACK (Maine Registration number ME9395G)

(8) MAGNUM FORCE (United States official number 287968)

(9) TERANGI NO. 2 (United States official number 573048)

(10) ¾ TIME (United States official number 907962)

(11) WINDDANCER (United States official number 955031)

(b) OPERATION.—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the submersible vessel PC-1501 may engage in the coastwide trade.

SEC. 309. EFFECTIVE DATES AND TRANSITION PROVISIONS.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act take effect on the date of the enactment of this Act.

(b) EXCEPTIONS.—

(1) The amendments made by section 1(a)(2) take effect January 1, 1989, except that the amendment made by subparagraph (A) of such section does not apply to a vessel titled in a State until one year after the Secretary of Transportation prescribes guidelines for a titling system under section 13106(b)(8) of title 46, United States Code.

(2) The amendments made by section 1(a)(3) take effect on the 180 day after the date of the enactment of this Act.

(c) TRANSITION.—The amendments made by section 3(8) and (9) do not apply to a maritime lien arising before the date of enactment of this Act. Except as otherwise provided by law, a person must bring an action to enforce a maritime lien arising before the date of enactment (except a preferred mortgage lien) within 3 years after the date of enactment of this Act.

SEC. 310. SUBSTITUTION OF VESSEL.

Section 4(c)(2) of 101 Stat. 1780 is amended by adding after "1987" the following: ", except that an alternative vessel of no greater tonnage than the vessel in the application may be substituted, if that substitution is made by the original applicant".

AMENDMENT NO. 1195

Mr. KOHL. Mr. President, I move that the Senate concur in the House amendment to the Senate amendment, with an amendment, which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL] proposes an amendment numbered 1195.

Mr. KOHL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments submitted.")

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. KOHL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## MEASURES INDEFINITELY POSTPONED

Mr. KOHL. Mr. President, I ask unanimous consent that Calendar Nos. 341, 342, 343, 344, 345, and 346 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

## EXTENSION OF AUTHORITY FOR CONDUCTING A QUARTERLY FINANCIAL REPORT

Mr. KOHL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 387, H.R. 3629, a bill to extend the authority of the Secretary of Commerce to conduct the quarterly financial report program.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3629) extending the authority of the Secretary of Commerce to conduct the quarterly financial report program under section 91 of title 13, United States Code, through September 30, 1993.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1196

(Purpose: To provide for a partial deferred payment of lump-sum credit for certain individuals electing alternative forms of annuities under the Federal retirement systems and to increase the limitations on the borrowing authority of the U.S. Postal Service)

Mr. KOHL. Mr. President, I send to the desk an amendment on behalf of Senators GLENN, PRYOR, and STEVENS, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL], for Mr. GLENN (for himself, Mr. PRYOR, and Mr. STEVENS), proposes an amendment numbered 1196.

Mr. KOHL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following new sections:

SEC. 2. PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (c), any lump-sum credit payable to an employee or Member pursuant to the election of an alternative form of annuity by such employee or Member under section 8343a or section 8420a of title 5, United States Code, shall be paid in accordance with the schedule under subsection (b) (instead of the schedule which would otherwise apply), if the commencement date of the annuity payable to such employee or Member occurs after December 2, 1989, and before October 1, 1990.

(b) SCHEDULE OF PAYMENTS.—The schedule of payment of any lump-sum credit subject to this section is as follows:

(1) 50 percent of the lump-sum credit shall be payable on the date on which, but for the enactment of this section, the full amount of the lump-sum credit would otherwise be payable.

(2) the remainder of the lump-sum credit shall be payable on the date which occurs 12 months after the date described in paragraph (1).

An amount payable in accordance with paragraph (2) shall be payble with interest, computed using the rate under section 8334(e)(3) of title 5, United States Code.

(c) EXCEPTIONS.—The Office of Personnel Management shall prescribe regulations to provide that, unless the individual involves indicates otherwise by written notice to the Office (submitted at such time and in such manner as the regulations may require), this section shall not apply—

(1) in the case of any individual who is separated from Government service involuntarily, other than for cause on charges of misconduct or delinquency; and

(2) in the case of any individual as to whom the application of this section would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

(d) ANNUITY BENEFITS NOT AFFECTED.—Nothing in this section shall effect the commencement date, the amount, or any other aspect of any annuity benefits payable under section 8343a or section 8420a of title 5, United States Code.

(e) DEFINITIONS.—For purposes of this section, the terms "lump-sum credit", "employee", and "Member" each has the meaning given such term by section 8331 or section 8401 of title 5, United States Code, as appropriate.

SEC. 3. AMENDMENTS RELATING TO LIMITATIONS ON POSTAL SERVICE'S BORROWING AUTHORITY.

(a) IN GENERAL.—Section 2005(a) of title 39, United States Code, is amended—

(1) by striking "(a)" and inserting "(a)(1)";

(2) by striking "$10,000,000,000." and inserting "the maximum amount then allowable under paragraph (2) of this subsection.";

(3) by striking "$1,500,000,000" and inserting "$2,000,000,000";

(4) by striking "$500,000,000" and inserting "$1,000,000,000"; and

(5) by adding at the end the following:

"(2) The maximum amount allowable under this paragraph is—

"(A) $10,000,000,000 for fiscal year 1990;

"(B) $12,500,000,000 for fiscal year 1991; and

"(C) $15,000,000,000 for fiscal year 1992 and each fiscal year thereafter.".

(b) EFFECTIVE DATE.—(1) Subject to the provisions of paragraph (2), the amendments made by subsection (a) shall take effect on October 1, 1990.

(2) Notwithstanding any other provision of this section, the amendments made by subsection (a) shall not take effect, if no law to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990 is enacted before October 1, 1990.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1196) was agreed to.

Mr. KOHL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was a read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 3629), as amended, was passed.

Mr. KOHL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## DESIGNATING THE WALTER EDWARD GRADY U.S. POST OFFICE

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Government Affairs be discharged from further consideration of H.R. 481, to designate the Walter Edward Grady U.S. Post Office in Staten Island, NY, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 481) to designate the building located at 2562 Hylan Boulevard, Staten Island, NY, as the "Walter Edward Grady U.S. Post Office Building."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 481) was ordered to a third reading, was read the third time, and passed.

Mr. KOHL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## BIOLOGICAL WEAPONS ANTITERRORISM ACT

Mr. KOHL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 393, S. 993, a bill to implement the convention on the prohibition of the development, production, and stockpiling of bacteriological and toxin weapons and their destruction.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 993) to implement the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their destruction, by prohibiting certain conduct relating to biological weapons, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Biological Weapons Anti-Terrorism Act of 1989".

SEC. 2. PURPOSE AND INTENT.

(a) PURPOSE.—The purpose of this Act is to—

(1) implement the Biological Weapons Convention, an international agreement unanimously ratified by the United States Senate in 1974 and signed by more than 100 other nations, including the Soviet Union; and

(2) protect the United States against the threat of biological terrorism

(b) INTENT OF ACT.—Nothing in this Act is intended to restrain or restrict peaceful scientific research or development.

SEC. 3. TITLE 18 AMENDMENTS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 9 the following:

"CHAPTER 10—BIOLOGICAL WEAPONS

"Sec.

"175. Prohibitions with respect to biological weapons.

"176. Seizure, forfeiture, and destruction.

"177. Injunction.

"178. Definitions.

**"§ 175. Prohibitions with respect to biological weapons**

(a) IN GENERAL.—Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, shall be fined under this title or imprisonerd for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.

"(b) DEFINITION.—For purposes of this section, the term 'for use as a weapon' does not include the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for prophylactic, protective, or other peaceful purposes.

**"§ Seizure, forfeiture, and destruction**

"(a) IN GENERAL.—(1) Except as provided in paragraph (2), the Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any biological agent, toxin, or delivery system that—

"(A) exists by reason of conduct prohibited under section 175 of this title; or

"(B) is of a type or in a quantity that under the circumstances has no apparent justificaiton for prophylactic, protective, or other peaceful purposes.

"(2) In exigent circumstances, seizure and destruction of any biological agent, toxin, or delivery system described in subparagraphs (A) and (B) of paragraph (1) may be made upon probable cause without the necessity for a warrant.

"(b) PROCEDURE.—Property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing. At such hearing, the government shall bear the burden of persuasion by a preponderance of the evidence. Except as inconsistent herewith, the same procedures and provisions of law relating to a forfeiture under the customs laws shall extend to a seizure or forfeiture under this section. The Attorney General may provide for the destruction or other appropriate disposition of any biological agent, toxin, or delivery system seized and forfeited pursuant to this section.

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense against a forfeiture under subsection (a)(1)(B) of this section that—

"(1) such biological agent, toxin, or delivery system is for a prophylactic, protective, or other peaceful purpose; and

"(2) such biological agent, toxin, or delivery system, is of a type and quantity reasonable for that purpose.

**"§ 177. Injunctions**

"(a) IN GENERAL.—The United States may obtain in a civil action an injunction against—

"(1) the conduct prohibited under section 175 of this title;

"(2) the preparation, solicitation, attempt, or conspiracy to engage in conduct prohibited under section 175 of this title; or

"(3) the development, production, stockpiling, transferring, acquisition, retention, or possession, or the attempted development, production, stockpiling, transferring, acquisition, retention, or possession of any biological agent, toxin, or delivery system of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.

"(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense against an injunction under subsection (a)(3) of this section that—

"(1) the conduct sought to be enjoined is for a prophylactic, protective, or other peaceful purpose; and

"(2) such biological agent, toxin, or delivery system is of a type and quantity reasonable for that purpose.

"§ 178. Definitions

"As used in this chapter—

"(1) the term 'biological agent' means any micro-organism, virus, or infectious substance, capable of causing—

"(A) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

"(B) deterioration of food, water, equipment, supplies, or material of any kind; or

"(C) deleterious alteration of the environment;

"(2) the term 'toxin' means, whatever its origin or method of production—

"(A) any poisonous substance produced by a living organism; or

"(B) any poisonous isomer, homolog, or derivative of such a substance;

"(3) the term 'delivery system' means—

"(A) any apparatus, equipment, device, or means of delivery specifically designed to delivery or disseminate a biological agent, toxin, or vector; or

"(B) any vector; and

"(4) the term 'vector' means a living organism capable of carrying a biological agent or toxin to a host.".

"(b) WIRE INTERCEPTION.—Section 2516(c) of title 18, United States Code, is amended by adding "section 175 (relating to biological weapons)," after "section 33 (relating tc destruction of motor vehicles or motor vehicle facilities),".

"(c) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 9 the following new item:

"10. Biological Weapons ..... 175.".

Mr. KOHL. Mr. President, the Senate's passage of the Biological Weapons Antiterrorism Act (S. 993) marks a significant moment for those concerned about world security. Final enactment of this measure will strike a blow against terrorists and fulfill our obligations under an important arms agreement. That is why this legislation has attracted support from the Bush administration, arms control advocates, prominent scientists, and others. That is why the House and the President should move swiftly to get the act on the books.

Fifteen years ago, the Senate unanimously ratified the Biological Weapons Convention [BWC], an international pact that prohibits the development and possession of germ warfare devices. A total of 111 countries, including the Soviet Union, have agreed to abide by the convention. Under its terms, nations renounce these weapons and destroy whatever stockpiles they may have. The United States unilaterally took both steps even before signing the BWC.

But ratification of the BWC was not enough to ensure our safety. Article IV of the BWC compels each nation to "take any necessary measures" to outlaw biological weapons at home. In other words, the convention requires an additional step after ratification—implementation, or the incorporation of its prohibitions into domestic statutes. S. 993 fulfills our obligation.

This is more than a legal technicality, Mr. President. By approving the legislation, the Senate has signaled the world that the United States is serious about controlling these abominable creations. And when the act is finally signed into law, the United States will be able to demand that all nations comply with the BWC in every way.

S. 993, then, is a long overdue arms control initiative. But it also represents a crucial antiterrorism and nonproliferation measure. The bill makes it a crime to develop, manufacture, transfer, or possess a biological weapon. Violators can be fined and imprisoned for life. The same punishment awaits those who help a foreign nation—or any organization—acquire bioweapons. In addition, the Attorney General can seek the civil seizure, forfeiture, and destruction of such weapons—before they insure people or harm the environment.

Surprisingly, there is no uniform law in our Criminal Code that prohibits the development or manufacture or transfer of these heinous killing machines. The Biological Weapons Antiterrorism Act closes this loophole. Such protective action is needed now more than ever. The explosion in genetic engineering has increased the prospects of biological terrorism. And the Iran-Iraq war showed that some countries are willing to stop at nothing to defeat their enemies.

S. 993 does not restrict peaceful scientific research or development. The bill has been carefully crafted to ensure that legitimate scientists are not mistakenly targeted for prosecution or civil action for using dangerous biological agents or toxins in the course of their research. Only persons who "knowingly" devise or construct biological weapons will be punished.

Mr. President, I would like to close by expressing my gratitude to those who have played key roles in passing this essential legislation. Senator PRYOR, a longtime leader on biological and chemical weapons issues, worked closely with me. The Bush administration, and particularly the Justice Department, made valuable suggestions for improving the bill. Senators BIDEN and THURMOND guaranteed speedy and thorough consideration by the Judiciary Committee, which ultimately reported the bill favorably by unanimous consent. And my colleague from Wisconsin, Congressman KASTENMEIER, introduced companion legislation in the House, where he and Congressman MORRISON are doing a fine job of guiding the measure to enactment.

The PRESIDING OFFICER. The bill is open to amendment. If there be no further amendment to be proposed the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 993) was passed.

Mr. KOHL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## MINNESOTA FAMILY INVESTMENT PLAN

Mr. KOHL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 1960, a bill to authorize the food stamp portion of the Minnesota family investment plan, introduced earlier today by Senator BOSCHWITZ.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1960) to authorize the food stamp portion of the Minnesota Family Investment Plan.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BOSCHWITZ. Mr. President, today I am pleased to introduce legislation that will authorize the food stamp portion of the Minnesota family investment plan [MFIP], a welfare reform demonstration project. Legislation authorizing the AFDC portion of this demonstration project has been included in the final version of the budget reconciliation bill.

Simplification and better coordination of our welfare programs has been an interest of mine for quite some time. Many of these programs have complicated rules and eligibility determination processes. In addition, few of the eligibility criteria or rules are the same for different programs. Furthermore, the rules can work at cross purposes for recipients who are trying to enter the job market. MFIP will ensure coordinated rules for those attempting to find work as well as those who become employed.

I have long believed that we should work to better coordinate and simplify the myriad of assistance programs that are available to low-income families and individuals. In the long run,

this will benefit the recipient as well as those who administer the programs on the State and local levels.

MFIP is an innovative demonstration project with the primary goal of making families receiving food stamps or AFDC self-sufficient. This bill provides the broad authority for the food stamp portion of this demonstration project.

This is a 5-year project to be tested on 6,000 families—both urban and rural—in Minnesota. AFDC and food stamps would be combined into a cash grant for the family. However, the family would still be able to request the food assistance portion of their assistance to be supplied in food stamp coupons rather than cash.

Participation in MFIP may be voluntary or by random selection. Assistance will be standardized. The State will provide two basic levels of assistance to families in MFIP. When families begin participating in the project, they will receive the current aggregate value of AFDC and food stamps. After the parents or caregivers become employed and have earnings, they'll continue to receive payments, beyond what they would receive under current law but at the State's cost, which will boost their overall income level. We make clear that the amount of assistance will not be less than the aggregate value of assistance that families would receive under food stamps and AFDC if they were not in MFIP.

Each family enters into a contract with the ultimate goal being self-sufficiency. The contract will stipulate employment, training services and education goals for the parents or caregivers to enable them to be self-sufficient. The family can be sanctioned for noncompliance with the employment and training provisions of the contract.

Except for a portion of the evaluation costs, this project will not result in additional Federal expenditures. Indeed, each fiscal year MFIP will be revenue neutral from the Federal perspective. The State will kick in additional dollars as needed.

An intensive evaluation will be conducted. The evaluation will focus on such factors as the reduction in welfare dependency and the consequences of cash payments on household expenditures and food consumption. Effects of the project to be evaluated include the prevention of long-term dependency and simplification of the welfare system.

Mr. President, I urge my colleagues to support this innovative approach to welfare reform.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time and passed, as follows:

S. 1960

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) is amended by adding the following new section:

(a) IN GENERAL.—

(1) Subject to paragraph (2), upon written application of the State of Minnesota that complies with this section and sections 6 to 11, 13, 130, and 132 of article 5 of 282 of the 1989 Laws of Minnesota, and after approval of such application by the Secretary in accordance with subsections (b) and (d), the State may implement a family investment demonstration project (hereinafter in this section referred to as the "Project") in parts of the State to determine whether the Project more effectively helps families to become self-supporting and enhances their ability to care for their children than do the food stamp program and programs under part A and F of title IV of the Social Security Act. The State may provide cash payments under the Project, subject to paragraph (2), that replace assistance otherwise available under the food stamp program and under part A of title IV of the Social Security Act.

(2) The Project may be implemented only in accordance with this section and only if the Secretary of Health and Human Services approves an application submitted by the State permitting the State to include in the Project families who are eligible to receive benefits under part A of title IV of the Social Security Act.

(b) REQUIRED TERMS AND CONDITIONS OF THE PROJECT.—

The application submitted by the State under subsection (a) shall provide an assurance that the Project shall satisfy all of the following requirements:

(1) Only families may be eligible to receive assistance and services through the Project.

(2) Participating families, families eligible for or participating in the program authorized under part A of title IV of the Social Security Act or the food stamp program that are assigned to and found eligible for the Project, and families required to submit an application for the Project that are found eligible for the Project shall be ineligible to receive benefits under the food stamp program.

3(A) Subject to the provisions of this paragraph and any reduction imposed under subsection (c)(3) of this section, the value of assistance provided to participating families shall not be less than the aggregate value of the assistance such families could receive under the food stamp program and part A of title IV of the Social Security Act if such families did not participate in the Project.

(B) For purposes of satisfying the requirement specified in subparagraph (A)—

(i) payments for child care expenses under the Project shall be considered part of the value of assistance provided to participating families with earnings;

(ii) payments for child care expenses for families without earnings shall not be considered part of the value of assistance provided to participating families or the aggregate value of assistance that such families could have received under the food stamp program and part A of title IV of the Social Security Act; and (iii) any child support payments not assigned to the State under the provisions of part A of Title IV of the Social Security Act, less $50.00 per month, shall be considered part of the aggregate value of assistance participating families would receive if such families did not participate in the Project.

(C) For purposes of satisfying the requirement specified in subparagraph (A), the State shall—

(i) identify the sets of characteristics indicative of families that might receive less assistance under the Project;

(ii) establish a mechanism to determine, for each participating family that has a set of characteristics identified under clause (i) whether such family could receive more assistance, in the aggregate, under the food stamp program and part A of title IV of the Social Security Act if such family did not participate in the Project;

(iii) increase the amount of assistance provided under the Project to any family that could receive more assistance, in the aggregate, under the food stamp program and part A of title IV of the Social Security Act if such family did not participate in the Project, so that the assistance provided under the Project to such family is not less than the aggregate amount of assistance such family could receive under the food stamp program and part A of title IV of the Social Security Act if such family did not participate in the Project; and

(iv) increase the amount of assistance paid to participating families, if the State or locality imposes a sales tax on food, by the amount needed to compensate for the tax.

This subparagraph shall not be construed to require the State to make the determination under clause (ii) for families that do not have a set of characteristics identified under clause (i).

(D)(i) The State shall designate standardized amounts of assistance provided as food assistance under the Project and notify monthly each participating family of such designated amount.

(ii) The amount of food assistance so designated shall be at least the value of coupons such family could have received under the food stamp program if the Project had not been implemented. The provisions of this subparagraph shall not require that the State make individual determinations as to the amount of assistance under the Project designated as food assistance.

(iii) The State shall periodically allow participating families the option to receive such food assistance in the form of coupons.

(E)(i) Individuals ineligible for the Project who are members of a household including a participating family shall have their eligibility for the food stamp program determined and have their benefits calculated and issued following the standards established under the food stamp program, except as provided differently in this subparagraph.

(ii) The State agency shall determine such individuals' eligibility for benefits under the food stamp program and the amount of such benefits without regard to the participating family.

(iii) In computing such individuals' income for purposes of determining eligibility (under section 5(c)(1)) and benefits, the State agency shall apply the maximum excess shelter expense deduction specified under section 5(e).

(iv) Such individuals' monthly allotment shall be the higher of $10 or 75 percent of the amount calculated following the standards of the food stamp program and the foregoing requirements of this subpara-

graph, rounded to the nearest lower whole dollar.

(4) The Project shall include education, employment, and training services equivalent to those offered under the employment and training program described in section 6(d)(4) to families similar to participating families elsewhere in the State.

(5) The State may select families for participation in the Project through submission and approval of an application for participation in the Project or by assigning to the Project families that are determined eligible for or are participating in the program authorized by part A of title IV of the Social Security Act or the food stamp program.

(6) Whenever selection for participation in the Project is accomplished through submission and approval of an application for the Project—

(A) The State shall promptly determine eligibility for the Project, and issue assistance to eligible families, retroactive to the date of application, not later than 30 days following the family's filing of an application;

(B) in the case of families determined ineligible for the Project upon application, the application for the Project shall be deemed an application for the food stamp program, and benefits under the food stamp program shall be issued to those found eligible following the standards established under the food stamp program;

(C) expedited benefits shall be provided under terms no more restrictive than under paragraph (9) of section 11(e) and the laws of Minnesota and shall include expedited issuance of designated food assistance provided through the Project or expedited benefits through the food stamp program;

(D) each individual who contacts the State in person during office hours to make what may reasonbly be interpreted as an oral or written request to receive financial assistance shall receive and shall be permitted to file an application form on the same day such contact is first made;

(E) provision shall be made for telephone contact by, mail delivery of forms to and mail return of forms by, and subsequent home or telephone interview with, elderly individuals, physically or mentally handicapped individuals, and individuals otherwise unable to appear in person solely because of transportation difficulties and similar hardships;

(F) a family may be represented by another person if the other person has clearly been designated as the representative of such family for that purpose and the representative is an adult who is sufficiently aware of relevant circumstances, except that the State may—

(i) restrict the number of families who may be represented by such person; and

(ii) otherwise establish criteria and verification standards for representation under this subparagraph; and

(G) the State shall provide a method for reviewing applications to participate in the Project submitted by, and distributing assistance under the Project to, families that do not reside in permanent dwellings or who have no fixed mailing address.

(7) Whenever selection for participation in the Project is accomplished by assigning families that are determined eligible for or participating in the program authorized by part A of title IV of the Social Security Act or the food stamp program—

(A) the State shall provide eligible families assistance under the Project no later than benefits would have been provided following the standards established under the food stamp program; and

(B) the State shall ensure that assistance under the Project is provided so that there is no interruption in benefits for families participating in the program under part A of title IV of the Social Security Act or the food stamp program.

(8) Paragraphs (1)(B) and (8) of section 11(e) shall apply with respect to applicants and participating families in the same manner as such paragraphs apply with respect to applicants and participants in the food stamp program.

(9) Assistance provided under the Project shall be reduced to reflect the pro rata value of any coupons received under the food stamp program for the same period.

(10)(A) The State shall provide each family or family member whose participation in the Project ends and each family whose participation is terminated with notice of the existence of the food stamp program and the person or agency to contact for more information.

(B)(i) Following the standards specified in subparagraph (C), the State shall ensure that benefits under the food stamp program are provided to participating families in case the Project is terminated or to participating families or family members that are determined ineligible for the Project because of income, resources, or change in household composition, if such families or individuals are determined eligible for the food stamp program. Food coupons shall be issued to eligible families and individuals described in this clause retroactive to the date of termination from the Project; and

(ii) If sections 256.031 through 256.036 of the Minnesota Statutes, 1989 Supplement, or Minnesota Laws 1989, Chapter 282, article 5, section 130, are amended to reduce or eliminate benefits provided under those sections or restrict the rights of Project applicants or participating families, the State shall exclude from the Project applicants or participating families or individuals affected by such amendments and follow the standards specified in subparagraph (C), except that the State shall continue to pay from State funds an amount equal to the food assistance portion to such families and individuals until the State determines eligibility or ineligibility for the food stamp program or the family or individual has failed to supply the needed additional information within 10 days. Food coupons shall be provided to families and individuals excluded from the Project under this clause who are determined eligible for the food stamp program retroactive to the date of the determination of eligibility. The Secretary shall pay to the State the value of the food coupons for which such families and individuals would have been eligible in the absence of food assistance payments under this clause from the date of termination from the Project to the date food coupons are provided.

(C) Each family whose Project participation is terminated shall be screened for potential eligibility for the food stamp program and if the screening indicates potential eligibility, the family or family member shall be given a specific request to supply all additional information needed to determine such eligibility and assistance in completing a signed food stamp program application including provision of any relevant information obtained by the State for purpose of the Project. If the family or family member supplies such additional information within ten days after receiving the request, the State shall, within five days after the State receives such information, determine whether the family or family member is eligible for the food stamp program. Each family or family member who is determined through the screening or otherwise to be ineligible for the food stamp program shall be notified of that determination.

(11) Section 11(e)(10) shall apply with respect to applicant and participating families in the same manner as such paragraph applies with respect to applicants and participants in the food stamp program, except that families shall be given notice of any action for which a hearing is available in a manner consistent with the notice requirements of the regulations implementing sections 402(a)(4) and 482(h) of the Social Security Act.

(12)(A) For each fiscal year, the Secretary shall not be liable for any costs related to carrying out the Project in excess of those that the Secretary would have been liable for had the Project not been implemented, except for costs for evaluating the Project, but shall adjust for the full amount of the federal share of increases or decreases in costs that result from changes in economic, demographic, and other conditions in the State based on data specific to the State, changes in eligibility or benefit levels authorized by the Food Stamp Act, as amended, or changes in amounts of Federal funds available to States and localities under the food stamp program.

(13) The State shall carry out the food stamp program throughout the State while the State carries out the Project.

(14)(A) Except as provided in subparagraph (B), the State will carry out the Project during a 5-year period beginning on the date the first family receives assistance under the Project.

(B) The Project may be terminated—

(i) by the State 180 days after the State gives notice to the Secretary that it intends to terminate the Project;

(ii) by the Secretary 180 days after the Secretary, after notice and an opportunity for a hearing, determines that the State materially failed to comply with this section; or

(iii) whenever the State and the Secretary jointly agree to terminate the Project.

(15) Not more than 6,000 families may participate in the Project simultaneously.

(c) ADDITIONAL TERMS AND CONDITIONS OF THE PROJECT.—

The Project shall be subject to the following additional terms and conditions:

(1) The State may require any parent in a participating family to participate in education, employment, or training requirements unless the individual is a parent in a family with one parent who—

(A) is ill, incapacitated, or 60 years of age or older;

(B) is needed in the home because of the illness or incapacity of another family member;

(C) is the parent of a child under one year of age and is personally providing care for the child;

(D) is the parent of a child under 6 years of age and is employed or participating in education or employment and training services for 20 or more hours a week;

(E) works 30 or more hours a week or, if the number of hours worked cannot be verified, earns at least the Federal minimum hourly wage rate multiplied by 30 per week; or

(F) is in the second or third trimester of pregnancy.

(2) The State shall not require any parent of a child under 6 years of age in a participating family with only one parent to be employed or participate in education or employment and training services for more than 20 hours a week.

(3) For any period during which a individual required to participate in education, employment, or training requirements fails to comply without good cause with a requirement imposed by the State under paragraph (1), the amount of assistance to the family under the Project may be reduced by an amount not more than 10 percent of the assistance the family would be eligible for with no income other than that from the Project.

(d) FUNDING.—

(1) If an application submitted under subsection (a) complies with the requirements specified in subsection (b), then the Secretary shall—

(A) approve such application; and

(B) subject to subsection (b)(12) from the funds appropriated under this Act provide grant awards and pay the State each calendar quarter for—

(i) the cost of food assistance provided under the Project equal to the amount that would have otherwise been issued in the form of coupons under the food stamp program had the Project not been implemented, as estimated under a methodology satisfactory to the Secretary after negotiations with the State; and

(ii) the administrative costs incurred by the State to provide food assistance under the Project that are authorized under subsections (a), (g), (h)(2) and (h)(3) of section 16 equal to the amount that otherwise would have been paid under such subsections had the Project not been implemented, as estimated under a methodology satisfactory to the Secretary after negotiations with the State: Provided, that payments made under subsection (g) of section 16 shall equal payments that would have been made if the Project had not been implemented.

(2) The Secretary shall periodically adjust payments made to the State under paragraph (1) to reflect—

(A) the cost of coupons issued to individuals ineligible for the Project specified in subsection (b)(3)(E) in excess of the amount that would have been issued to such individuals had the Project not been implemented, as estimated under a methodology satisfactory to the Secretary after negotiations with the State; and

(B) the cost of coupons issued to families exercising the option specified in paragraph (b)(3)(D)(iii) in excess of the amount that would have been issued to such individuals had the Project not been implemented, as estimated under a methodology satisfactory to the Secretary after negotiations with the State.

(3) Payments under paragraph (1)(B) shall include adjustments, as estimated under a methodology satisfactory to the Secretary after negotiations with the State, for increases or decreases in the costs of providing food assistance and associated administrative costs that result from changes in economic, demographic, or other conditions in the State based on data specific to the State, changes in eligibility or benefit levels authorized by the Food Stamp Act, as amended, and changes in or additional amounts of Federal funds available to States and localities under the food stamp program.

(e) WAIVER.—With respect to the Project, the Secretary shall waive compliance with any requirement contained in this Act (other than this section) that, if applied, would prevent the State from carrying out the Project or effectively achieving its purpose.

(f) PROJECT AUDITS.—The Comptroller General of the United States shall—

(1) conduct periodic audits of the operation of the Project to verify the amounts payable to the State from time to time under subsection (d); and

(2) submit to the Secretary, the Secretary of Health and Human Services, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of each such audit.

(g) CONSTRUCTION.—(1) For purposes of any Federal, State, or local law other than part A of title IV of the Social Security Act or the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.)—

(A) cash assistance provided under the Project that is designated as food assistance by the State shall be treated in the same manner as coupon allotments under the food stamp program are treated; and

(B) participating families shall be treated in the same manner as participants in the food stamp program are treated.

(2) Nothing in this section shall—

(A) allow payments made to the State under the Project to be less than the amounts the State and eligible households within the State would have received if the Project had not been implemented; or

(B) require the Secretary to incur costs as a result of the Project in excess of costs that would have been incurred if the Project had not been implemented, except for costs for evaluation.

(h) QUALITY CONTROL.—Participating families shall be excluded from any sample taken for purposes of making any determination under section 16(c). For purposes of establishing the total value of allotments under section 16(c)(1)(C), food coupons and the amount of federal liability for food assistance provided under the Project as limited by subsection b(12) of this section shall be treated as allotments issued under the food stamp program. Payments for administrative costs incurred by the State shall be included for purposes of establishing the adjustment under section 16(c)(1)(A).

(i) EVALUATION.—(1) The State shall develop and implement a plan for an independent evaluation designed to provide reliable information on Project impacts and implementation. The evaluation will include treatment and control groups and will include random assignment of families to treatment and control groups in an urban setting. The evaluation plan shall satisfy the evaluation concerns of the Secretary of Agriculture such as effects on benefits to participants, costs of the Project, payment accuracy, administrative consequences, any reduction in welfare dependency, any reduction in total assistance payments, and the consequences of cash payments on household expenditures, and food consumption. The evaluation plan shall take into consideration the evaluation requirements and administrative obligations of the State. The evaluation will measure the effects of the Project in regard to goals of increasing family income, prevention of long term dependency, movement toward self support, and simplification of the welfare system.

(2) The State shall pay 50 percent of the cost of developing and implementing such plan and the Federal government shall pay the remainder.

(j) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) The term "family" means the following individuals who live together: a minor child or a group of minor children related to each other as siblings, half siblings, stepsiblings, or adopted siblings, together with their natural or adoptive parents, or their caregiver. Family also includes a pregnant woman in the third trimester of pregnancy with no children.

(2) The term "contract" means a plan to help a family pursue self-sufficiency, based on the State's assessment of the family's needs and abilities and developed with a parental caregiver.

(3) The term "caregiver" means a minor child's natural or adoptive parent or parents who live-in the home with the minor child. For purposes of determining eligibility for the Project, "caregiver" also means any of the following individuals who live with and provide care and support to a minor child when the minor child's natural or adoptive parent or parents do not reside in the same home; grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, persons of preceding generations as denoted by prefixes of "great" or "great-great" or a spouse of any person named in the above groups even after the marriage ends by death or divorce.

(4) The term "State" means the State of Minnesota.

Mr. KOHL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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## CORRECTION IN THE ENROLLMENT OF S. 488

Mr. KOHL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 237, to correct the enrollment of S. 488.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 237) correcting the enrollment of the bill S. 488.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 237) was agreed to.

Mr. KOHL. I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT AMENDMENTS

Mr. KOHL. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of S. 1894, a bill to amend the Consolidated Farm and Rural Development Act, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1894) to amend the Consolidated Farm and Rural Development Act to require borrowers to act in good faith with respect to restructuring loans made or guaranteed under such act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1197

Mr. KOHL. Mr. President, I offer a substitute amendment for Senators CONRAD and KASSEBAUM.

The PRESIDING OFFICER. The Clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL], for Mr. CONRAD (for himself, Mrs. KASSEBAUM and Mr. WALLOP), proposes an amendment numbered 1197.

Mr. KOHL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. ELIGIBILITY CRITERIA.

Section 353(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001(b)) is amended—

(1) by inserting "(1) IN GENERAL.—" before "To be" and indenting the margin of such paragraph two ems;

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D) and indenting the margin of each such subparagraph (as so redesignated) two ems;

(3) in paragraph (1)(B) (as so redesignated) by inserting "(in accordance with paragraph (2))" after "good faith";

(4) in paragraph (1)(C) (as so redesignated) by redesignating subparagraphs (A) and (B) as clauses (1) and (11) and indenting the margins of such clauses (as so redesignated) two ems; and

(5) by adding at the end thereof the following new paragraph:

"(2) Failure to act in good faith.—

"(A) IN GENERAL.—For purposes of paragraph (1)(B), the Secretary shall not make a determination that a borrower has acted with a lack of good faith if such borrower has sold security mortgaged to the Secretary and used the proceeds from such sale to pay essential household and farm operating expenses, as defined by the Secretary under section 335(f), without receiving the authorization of the Secretary to sell such security in cases in which the Secretary has not released essential household and farm operating expenses.

"(B) LEGAL CLAIM.—

"(1) IN GENERAL.—In order to make a determination that a borrower has not acted in good faith as required in paragraph (1)(B), the Secretary shall obtain a written opinion from the Office of General Counsel of the Department of Agriculture stating that the borrower has not acted in good faith, as described in such paragraph.

"(ii) SUBMISSION OF LEGAL OPINION TO BORROWER.—Not later than 15 days after the date on which the Secretary obtains a written opinion under clause (1), the Secretary shall submit a copy of such opinion to the borrower.".

SEC. 2. GOOD FAITH REQUIREMENT FOR RESTRUCTURING CERTAIN LOANS.

(a) IN GENERAL.—Section 353(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001(c)) is amended—

(1) in paragraph (6)—

(A) by inserting after "recovery value" the first place such appears the following: "if the delinquency is due to circumstances beyond the control of the borrower, if the borrower acted in good faith with the Secretary in connection with the loan, as defined in regulations and policies issued by the Secretary, and if the borrower meets the eligibility criteria established under paragraph (2) of subsection (b),"; and

(B) by striking out "45" and inserting in lieu thereof "90". and

(2) by adding at the end thereof the following new paragraph:

"(7) Application and data collection.—

"(A) APPLICATION.—The requirement that the delinquency is due to circumstances beyond the control of the borrower and that a buyer act in good faith to be eligible for the termination of loan obligations under paragraph (6) shall not apply to offers of net recovery buyout made by the Secretary under this section prior to the date of enactment of this paragraph, except that such requirement shall apply, prior to such date, to borrowers determined (prior to the date of enactment of this paragraph) by the Secretary not to have acted in good faith with respect to the loan.

"(B) DATA COLLECTION.—The Secretary shall collect and make available in a timely fashion, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, the following information—

"(i) the number of borrowers who have applied for debt restructuring who are alleged, or who have been shown, to have acted in bad faith;

"(ii) the number of applications for net recovery buyout that are being held due to bad faith allegations;

"(iii) the number of subsequent appeals or reversals by the national appeals division of bad faith determinations that have occurred because of the implementation of subsection (b)(1)(B) and (b)(2);

"(iv) the amount of time required for the processing of net recovery buyout requests;

"(v) the number of borrowers who have applied for debt restructuring after the date of issuance of the first notices of the availability of loan servicing programs that—

"(I) have not been offered restructuring options by the Secretary; and

"(II) have not recieved a notice of intent to accelerate or to continue acceleration, a notice of borrowers' rights, and forms for the making of responses to the notice of the intent of the Farmers Home Administration to accelerate or continue acceleration; and

"(vi) the number of bad faith allegations that have been submitted by the Secretary to the State director for agricultural loan programs.".

(b) TERMINATION.—The amendments made by this section shall terminate on August 31, 1990.

SEC. 3. REGULATIONS.

The Secretary of Agriculture shall promulgate regulations to implement the amendments made by this Act. Such regulations may be issued without prior public comment. If such regulations are issued without prior comment the Secretary must solicit public comment with such regulations and consider such comments in any related subsequent issuance of regulations.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1197) was agreed to.

Mr. KOHL. I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CONRAD. Mr. President, on November 16, I introduced a bill, S. 1894, which would clarify a provision in the Agricultural Credit Act of 1987 to ensure that a Farmers Home Administration borrower who acted in bad faith would not be eligible for a net recovery value buyout of his loan.

The bill we are passing today is the result of negotiations between Members and FmHA on my bill and a bill that Senator KASSEBAUM introduced, S. 1487. We all had the same goal. We wanted to clarify that borrowers who are not delinquent due to circumstances beyond their control and have not acted in good faith are not eligible to buyout their delinquent loans at the net recovery value. However, we needed to clarify whether the law should outline the activities which constitute bad faith, or whether FmHA should be given the discretion to define bad faith through regulations.

This bill clarifies that the eligibility criteria which currently applies to restructurings also applies to buyout. This bill does not spell out what activities shall constitute bad faith. I intend to closely oversee FmHA as it issues regulations and implements this bill to ensure that it follows congressional intent. This bill will expire on August 31, 1990. If I am not satisfied with FmHA's implementation by that date, I will oppose reauthorization of this law.

In addition, I have received a commitment from Senator LUGAR and Senator KASSEBAUM that they will support passage of the stronger provisions clearly defining bad faith if FmHA does not implement the law according to congressional intent.

As I stated when I introduced S. 1894, the Agricultural Credit Act generally is working. As is usual with any major legislation, there is need for some technical corrections.

The act required the Federal Government to get the maximum return on delinquent debt through loan servicing or foreclosure. FmHA is acknowledging the losses it accumulated prior to passage of the act, and is taking steps to resolve that delinquent debt. If FmHA is implementing the law correctly, the Federal Government is receiving more money than it would have if it had foreclosed on all those delinquent loans.

Second, borrowers in critical financial trouble are getting the assistance necessary to enable them to repay their delinquent loans and continue farming.

Borrowers rights are explicit, and FmHA is notifying borrowers of and observing these rights. The national appeals staff is providing objective reviews of disputed FmHA decisions, and overturning decisions when necessary.

However, FmHA argues that it is not explicitly clear in the statutory language of the act whether the eligibility criteria for restructurings also apply to net recovery value buyouts. Under the criteria for restructuring, the borrower must be delinquent due to circumstances beyond his control and must have acted in good faith. However, FmHA does not believe that the law clearly requires the same criteria to be applied to buyout eligibility.

As a result, FmHA has interpreted the law to allow borrowers who have clearly acted in bad faith and are not delinquent due to circumstances beyond their control, and are consequently denied restructuring, to buy out their loans at the net recovery value of the collateral. I was the author of that good faith provision on restructuring. I do not believe FmHA's interpretation was Congress' intent when we passed the act.

This bill clarifies the buyout provision. It makes very clear that borrowers are not eligible for a net recovery buyout if they have acted in bad faith or are not delinquent due to circumstances beyond their control.

This bill prohibits FmHA from determining a borrower has acted in bad faith when the borrower has sold security and used the proceeds for essential living and operating expenses in instances in which FmHA has not released adequate living and operating expenses. By essential living and operating expenses, we do not mean just the $18,000 which FmHA is required to release to borrowers whose loans have been accelerated. Adequate income is the ability to pay household expenses and to operate a farm in a manner which will produce enough income to cover current and upcoming living and operating expenses, including the repayment of debt. We also expect that a borrower who has had some income release, but not enough to cover essential living and operating expenses, and used the proceeds for living and operating expenses, will not be determined to have acted in bad faith under this exception.

This bill establishes a procedure that FmHA must follow prior to denying a borrower a buyout due to bad faith, which includes a review of the bad faith allegation by the Office of General Counsel. It also requires FmHA to collect and make available monthly to the House and Senate Agriculture Committees information on bad faith allegations so that Congress will know just how many bad faith activities are going on in the field, and how FmHA is implementing this law.

The eligibility criteria outlined in this bill will apply in general to future buyout offers. However, it will also apply to borrowers denied restructuring due to bad faith determinations who have buyout offers pending on passage of this bill. In passing this bill, we intend that buyout denials based on these eligibility criteria can be appealed by the borrower just as can any adverse decision.

We intend that FmHA shall use the same definition of bad faith to implement this bill as it established through interim regulation 1951.909(c), published on September 14, 1988, and through its current policies, such as Administrative Notice 1877 (1951) dated March 8, 1989, and General Guidelines For Determination of Lack of Good Faith Because of Fraud, Waste and Conversion. I ask that a copy of that regulation and administrative notice be included in the RECORD at the end of my statement.

In particular, it is the intent of Congress that FmHA consider the borrower's intent when determining whether an action constitutes a lack of good faith. Mr. President, the element of intent is absolutely essential to the proper implementation of this bill. FmHA should not make a bad faith determination against a borrower who may have technically violated an agreement with FmHA or made an honest mistake on a financial statement, but did not intend to defraud or deceive FmHA. FmHA must also consider its traditional practices which may deviate from written policy when determining if a borrower had violated an agreement with FmHA.

This bill is intended to prohibit FmHA from harassing borrowers who have made an honest mistake, or were not able to, or did not comply with, FmHA agreements and regulations due to circumstances beyond their control, or because they received erroneous advice from FmHA staff. I want to make very clear that it is intended to prohibit FmHA from making arbitrary and capricious bad faith determinations.

For example, a borrower who sold collateral based on verbal approval from his FmHA county supervisor which was not documented in writing should not be determined to have acted in bad faith. A borrower who could not pay taxes on time in accordance with his written agreement with FmHA because FmHA would not release living and operating expenses should not be determined to have acted in bad faith. A borrower who reports grain or livestock sales and use of the proceeds at the end of the year, as is the current practice in many FmHA county offices, rather than prior to each sale and use of the proceeds, as technically required by FmHA policy, should not be determined to have acted in bad faith.

A borrower who innocently erred in writing down financial information on his farm and home plan should not be determined to have acted in bad faith. A borrower who didn't understand that the value of his insurance fund should be included in his statement of assets because of inadequate FmHA instructions for completing a farm and home plan should not be determined to have acted in bad faith. These are but a few of the examples in which FmHA should not determine that a borrower has acted in bad faith.

This bill is intended to prevent the truly bad actors from being eligible for a buyout. I do expect FmHA to determine that borrowers have acted in bad faith if they had the intent to defraud or deceive FmHA. To have acted in bad faith, a borrower must have had the intent to defraud or deceive FmHA in failing to comply with written agreements. To have acted in bad faith, a borrower must have knowingly sold collateral and used the proceeds for other than essential living and operating expenses without FmHA approval. To have acted in bad faith, a borrower must have knowingly falsified financial statements.

I strongly urge FmHA to carefully review the intent of a borrower's actions prior to making a bad faith determination, in order to reduce the number of appeals and need for stringent congressional oversight.

Mr. President, the bill we are passing today also requires a borrower to be delinquent due to circumstances beyond his control to be eligible for a buyout. FmHA currently applies this criteria to restructuring eligibility. This statutory criteria gives FmHA the authority to determine that a borrower is ineligible for restructuring and buyout if the borrower is not willing to use unsecured, nonessential assets to repay his debt. I am disturbed by reports that FmHA has not used this authority, and has restructured borrowers who had the ability to

bring their loans current with FmHA, and in some cases, even allowed these borrowers to buy out their loans.

It is my understanding that when the Senate passed the act, we intended the primary loan servicing program to be used to help financially troubled borrowers who are delinquent due to circumstances beyond their control. Such circumstances include low commodity prices and natural disasters. We did not intend the act to assist those borrowers who currently have unsecured assets worth hundreds of thousands of dollars which are nonessential to the borrower's business and could be used to bring the borrower's delinquent debt current.

The act specifically states that in order for a borrower to be eligible for primary loans servicing, "the delinquency must be due to circumstances beyond the control of the borrower, as defined in regulations issued by the Secretary." There are four citations in FmHA regulations and instructions which reinforce that borrowers who are not willing to use available nonessential, unsecured assets to bring their loans current will not be eligible for primary loan servicing.

The Senate expected borrowers to apply available assets to their delinquent debt prior to being restructured, but did not intend to drain a farmer of all his assets, leaving him penniless and unable to make a living, in order to qualify for assistance. We did expect that borrowers who had income over and above a level necessary for reasonable living and operating expenses, as demonstrated through the borrowers' previous farm records, to use this income to bring their loans current. We did expect that borrowers who have unsecured assets which are not essential to enabling the borrower to continue to earn income necessary to pay reasonable living and operating expenses, including income to repay debt, to use these assets to bring their loans current. We did not intend to require borrowers to sell unsecured tractors and vehicles needed to run the farming operation, or transport them to an off-farm job. However, we did intend to prevent the bad actors who have numerous assets which they could use to pay off their debt from getting a writedown or writeoff.

I would encourage FmHA to modify its regulations to ensure that borrowers who have the ability to become current using nonessential, unsecured assets are not considered eligible for primary loan servicing or net recovery buyout.

In closing, I want to clarify several more issues. I expect FmHA to provide the opportunity for public comment on its regulations, and carefully consider those comments prior to issuing final regulations. I also expect FmHA to fully inform its borrowers of the activities which would constitute bad faith, so that borrowers clearly know what is expected of them.

I also want to clarify that it is not Congress' intent that the Office of General Counsel will be liable for its written opinions. A borrower who wishes to appeal a buyout denial based on FmHA's bad faith determination will appeal the FmHA decision, not OGC's legal opinion.

I ask unanimous consent that Senator KASSEBAUM be added as a cosponsor to S. 1894, as amended.

Mr. President, I ask unanimous consent material from the Federal Register and the Department of Agriculture be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Federal Register, Sept. 14, 1988]

*§ 1951.909(c) Eligibility.* The County Supervisor or approval official authorized by § 1951.903(b) of this subpart must find that the borrower who has applied for Primary Loan Service Programs meets all of the following requirements:

(1) The delinquency or financial stress does exist and any delinquency is due to circumstances beyond the control of the borrower due to a reduction in income which reduces the operator's cash flow to a point where outflows exceed inflows and which causes the need for Primary Loan Service Programs. A reduction of income does not by itself mean that the borrower is eligible. Acceptable reasons for reductions of income which could make a borrower eligible for Primary Loan Service Programs include:

(i) The reduction in essesntial income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control; or

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm; or

(iii) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payment cannot be made; or

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or loan market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting agreements set forth on Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," and agreements made with FmHA. Any allegations of fraud, waste, and conversion used in order to deny borrowers' requests for Primary Loan Service Programs will be substantiated by FmHA, with a written legal opinion from the Office of General Counsel, before denying the borrower's requests for such programs.

(3) All applications received from borrowers who apply for Primary Loan Servicing, even though they are not eligible, must be processed to determine whether or not a feasible plan of operation can be developed. Borrowers who do not meet the eligibility criteria as set forth in paragraphs (c)(1) and (2) of this section, must be processed in the same manner as a borrower who does not meet the feasibility requirements. See § 1951.909(h)(3)(ii) of this subpart.

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U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
*Washington, DC, March 8, 1989.*

FmHA AN No. 1877 (1951).

Subject: Information Needed in Denial of a Borrower's Primary Loan Servicing Request Based on Lack of Good Faith.

To: State Directors, District Directors and County Supervisors.

Purpose/Intended Outcome: The purpose of this Administrative Notice (AN) is to clarify the information that is necessary to determine whether the borrower is ineligible for the primary loan servicing options based on *a lack of good faith* due to fraud, waste, or conversion. Farmers Home Administration (FmHA) regulations 1951.909(c)(2) requires FmHA to substantiate "any allegations of fraud, waste, or conversion used in order to deny borrowers' requests for Primary Loan Service Programs" with a written legal opinion from the Office of the General Counsel (OGC), before denying the borrower's requests. The attached questionnnaire is a Guide Letter for this purpose. Please use the attached questionnaire or a substitute approved by your Regional OGC.

Comparison With Previous AN: No previous AN has been issued on this subject.

Implementation Responsibility: In all cases where FmHA will be denying the borrower the primary loan servicing options based on a lack of good faith due to fraud, waste, or conversion, the attached form or an OGC approved substitute will be completed to determine if there is enough documentation to justify turning down the borrower's request for the primary loan servicing options.

NEAL SOX JOHNSON,
*Acting Administrator.*

Attachment.

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GENERAL GUIDELINES FOR DETERMINATION OF LACK OF GOOD FAITH BECAUSE OF FRAUD, WASTE AND CONVERSION UNDER 17 C.F.R. SECTION 1951.909(c)(2)

The following are the general elements of fraud, waste, and conversion which will be used by the Office of the General Counsel (OGC) rendering its opinion in the possible denial of borrowers' request for Primary Loan Service servicing pursuant to 7 C.F.R. Section 1951(c)(2). Please bear in mind these are *general elements only and are furnished for FmHA's preliminary analysis only.* The particular fact situation relative to the law will dictate the contents of OGC's opinion in each individual case. Each OGC office should refer to applicable State law in determining whether the necessary elements have been met in each case.

ELEMENTS

Fraud:

(1) A false representation or omission of fact,

(2) Materiality of fact,

(3) Borrower's knowledge of its falsity,

(4) Borrower's intent that the representation or omission should be acted on by FmHA,

(5) FmHA's ignorance of its falsity,

(6) FmHA's reliance on the representation or omission, and

(7) FmHA's consequent and proximate injury or damage.

Waste:

(1) Unlawful act or omission on part of borrower,

(2) Affects FmHA security,

(3) Results in permanent injury in FmHA security, and

(4) Borrower is in lawful possession of FmHA, and security.

May be: (a) active waste—intentional destruction FmHA security,

(b) permissive waste—allowing death, decay, deterioration, disrepair, or destruction of FmHA security through inexcusable neglect or negligence, or

(c) equitable waste—allowing death, decay, deterioration, disrepair, or destruction of FmHA security by not following management practices that a prudent person would have followed under similar circumstances.

Conversion:

(1) Valid lien by FmHA in security,

(2) Willful and/or malicious disposal of security by debtor(s),

(3) Failure to obtain consent of disposal from FmHA, and

(4) Injury to FmHA.

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QUESTIONNAIRE TO BE COMPLETED AND FURNISHED TO THE OFFICE OF GENERAL COUNSEL WHEN SEEKING OPTIONS ON DENIAL OF REQUESTS FOR PRIMARY LOAN SERVICE PROGRAMS ON THE BASIS OF BAD FAITH

I. Fraud: Are you making an allegation that the borrower is not in good faith because of *fraud* against FmHA? Yes ☐ No ☐ (if yes, completely answer the following questions and furnish applicable documentation. Attach additional sheets if necessary.)

A. Did the borrower make a *false representation to* FmHA? Yes ☐ No ☐ (if yes, specifically set out the false representation or attach a copy if written.)

B. Was the false representation *material* to FmHA's decision to loan the borrower money, or to restructure, refinance, or compromise an existing loan? Yes ☐ No ☐ (If yes, specifically set out the false representation.)

C. Did the borrower know the information was false or did the borrower *intentionally* omit material information? Yes ☐ No ☐ (If yes, specifically set out why you think the borrower had knowledge of the false information or intended to omit material information.)

D. Did FmHA *know at the time* that the representation or omission made was false and intentional? Yes ☐ No ☐ (If no, when did FmHA learn of the false representation or omission of fact?)

E. Did FmHA *reply* on the false representation or omission of a material fact when it loaned the borrower money, or restructured, refinanced, or compromised an existing loan? Yes ☐ No ☐ (Specifically set out the basis for your opinion.)

F. What was the date of the alleged fraud?

G. Set out specifically the injury FmHA suffered because of the false representation or omission of a material fact.

H. What actions did FmHA take once the alleged fraud was discovered?

I. Other facts for OGC to consider in its analysis.

II. Waste: Are you making an allegation that the borrower is not in good faith because of *waste* against FmHA's security? Yes ☐ No ☐ (If yes, completely answer the following questions and furnish applicable documentation.) Attached.

A. If real estate security was involved, was borrower in lawful possession of FmHA's real security?

B. Did the borrower *actively* destroy all or part of FmHA's security? Yes ☐ No ☐ (If yes, specifically set out the fact supporting your opinion.)

C. Did the borrower allow the death, decay, deterioration, disrepair, or destruction of FmHA's security through inexcusable neglect or negligence? Yes ☐ No ☐ (If yes, speccifically set out the facts supporting your opinion.)

D. Did the borrower allow the death, decay, deterioration, disrepair, or destruction of FmHA's security by not following management practices that a prudent person would have followed under similar circumstances? Yes ☐ No ☐ (If yes, specifically set out the facts supporting your opinion.)

E. When did the alleged waste take place?

F. What actions did FmHA take once the alleged waste was discovered?

G. What permanent injury was caused to FmHA's security by the alleged act of waste? (Set out in detail the monetary loss suffered by FmHA.)

H. Other facts for OGC to consider in its analysis:

III. Conversion: Are you making an allegation that the borrower is not in good faith because of conversion of FmHA security? Yes ☐ No ☐ (If yes, completely answer the following questions and furnish application documentation. Attach additional sheets if necessary.

A. What was the type and dollar value of collateral converted. List the approximate dates of conversion and the buyer's identity as near as FmHA knows or can guess.

B. Was the collateral sold by the borrower *without* authorization, or was it sold with authorization but the borrower failed to account for the proceeds?

C. Did the borrower dispose of FmHA's security in conscious and knowing violation of the provisions of all previous agreements, instructions and regulations of FmHA? Yes ☐ No ☐ (If so, specifically set out the basis for your opinion.)

D. What use did the borrower make of the proceeds of the converted items? (If you are not sure, give your best and the basis for that opinion.)

E. Are there any aggravating or mitigating circumstances know? Yes ☐ No ☐ (If so, specifically set out the basis for your opinion.)

F. What was the date of the last previous security/collateral check by FmHA to the alleged act of conversion? (Please summarize the findings of that chattel check.)

G. Had the borrower ever converted collateral before the incident(s) in question? If so, when did it happen, what was involved, and what action did FmHA take? Also, have any new loans been granted to the borrower after the time FmHA became aware of any conversions?

H. What was the actual County Office procedure in granting approval *for this borrower* to sell collateral—not just what FmHA regulations say?

I. What excuses, statements or confessions did the borrower make regarding the missing collateral? When and to whom were these statements made?

J. Has there been a contract investigation, referral to OGC, or referral to OIG of the matter? Yes ☐ No ☐ (If so, please set out details of referral. If not, specifically state why a referral of the conversion was not made.)

K. Set out specifically the injury FmHA suffered because of alleged conversion of its security.

L. Other facts for FmHA to consider in its analysis.

Mrs. KASSEBAUM. Mr. President, this is a good bill which I am proud to cosponsor. It is basically the same legislation which Senator DOLE and I introduced earlier this year, S. 1488.

This is a technical correction to the Agricultural Credit Act of 1987 with regard to delinquent borrowers. It closes a loophole in the loan servicing provisions of Farmers Home Administration [FmHA]. The Credit Act requires all borrowers who are eligible for loan restructuring to act in good faith. Our bill requires FmHA borrowers to act in good faith to be eligible for the so-called net recovery value buyout of their loans. The problem is the existing law allows the net recovery buyout for borrowers regardless of good faith.

I would like to explain the process of how borrowers may buyout their loan under these generous provisions under the current law. All borrowers who are delinquent for 3 months may apply for loan restructuring. If the value of the restructured loan is more than the value of the security, Farmers Home must restructure the loan. If the value of the restructured loan is less than the value of the security, FmHA must offer to terminate the loan at the net recovery value. The net recovery value represents the market value of the property less the costs of foreclosure for FmHA. This is at least 25 percent below market value.

The Department of Agriculture has documented over 50 cases of fraud, illegal conversion of pledged security, and filing false financial statements by borrowers who purchased their loans at the net recovery value. Restricting buyouts in these cases alone could have saved the Government almost $10 million.

If abuses of this scale are allowed to continue, it only jeopardizes the entire borrower rights provisions of the Agricultural Credit Act. We must protect the integrity of these provisions by stopping the fraud and abuse.

This legislation also clarifies that the Secretary of Agriculture shall take into consideration unencumbered assets of the borrower before terminating any loan obligation. For example, a FmHA borrower with a debt totaling $700,000 has recently accepted a buyout at the net recovery value for $10,000. In other words, this person walked away from his debt of $700,000 to the Government for only $10,000. What he did was legal and proper under the present law. However, this same delinquent borrower owned, free and clear, over 1,100 acres of land.

This legislation directs the Secretary to deem the delinquency of the borrower within his own control if unencumbered assets could be available to remove or reduce the delinquency.

Mr. WALLOP. Mr. President, today we have the opportunity to address

some inequities and to close certain loopholes which have become apparent since the passage of the Agriculture Credit Act of 1987. This is the first of several legislative remedies we plan on introducing to address problems in the Agricultural Credit Act.

One of the loopholes that has been brought to my attention by several of my constituents from Wyoming is the ability of farmers acting in bad faith to benefit from the net recovery buyout option—the most lucrative of several restructuring options in the act.

Briefly, this provision in the debt restructuring and loan servicing section of the Agricultural Credit Act, allows an individual who is in default of his Farmers Home Administration [FmHA] loan the option of buying back that loan at a rate which is pennies on the dollar. I can understand some instances in which this provision would be in the best interest of the lender and the borrower—for example, when the cost to the Government would be more to recover the security than the actual value of the restructured loan.

However, there have been a few cases where a borrower has been allowed to purchase his loan at the net recovery value when having acted in bad faith—whether it be the unauthorized sale of secured property which is most common or some other breech of his contract with FmHA. Even in cases where bad faith has been determined by both FmHA and the USDA general counsel, U.S. attorneys have been reluctant to prosecute such cases simply because the way the law was written.

Mr. President, we know that the authors of the Agriculture Credit Act did not intend for borrowers who are less than honest to reap the benefits of the net recovery buyout option. Furthermore, the taxpayer should in no way be required to shoulder the burden of these dishonest few. Correcting this problem will save, this year alone, an estimated $11 million and will provide substantial savings in the future.

There is no doubt in any of our minds that the bad faith borrowers are the exception to the rule. Nonetheless, by closing this loophole, or I should say temporarily closing this loophole, we will stop what are essentially legal abuses of this provision by those unethical few.

As with most negotiated agreements, there must always be concessions, and this is certainly no exception. It was my position that these changes to the Agriculture Credit Act should be permanent and not expire. There is no reason a provision requiring good faith between borrowers and Farmer's Home in relation to the net recovery buyout should last only 6 months. Good faith should be required at all times if borrowers are to benefit from restructuring that is paid for by the taxpayer. Nevertheless, this compromise will allow us to begin to address this problem.

One last point, it is our intention that in the restructuring process, unincumbered assets of borrowers are to be used to lower the losses incurred by FmHA. This in no way will require the individual to liquidate holdings. However, it will take into account, and rightfully so, the value of these holdings when restructuring borrower debt.

This is a badly needed change which will in no way will hurt the farmers of America. In fact, I dare say they will be pleased to see we have acted prudently in stopping these abuses.

Mr. President, I ask that the following letter outlining a few examples of bad faith borrowers benefiting from the net recovery buyout option be printed in the RECORD following my statement. I requested that Mike Ormsby, Wyoming's State Director of FmHA provide me with this information.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AGRICULTURE HOME ADMINISTRATION,
*Casper, WY, November 9, 1989.*

Subject: Net Recovery Buyout/Bad Faith Determination.

To: Honorable Malcolm Wallop, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR WALLOP: In response to your request for information concerning abuse of the Net Recovery Buyout offer to FmHA borrowers that have not acted in good faith, we provide the following information:

There have been two cases to date in Wyoming where the Office of General Council, USDA has concurred with FmHA's determination that the borrower has acted in Bad Faith. That determination makes them ineligible for the primary service programs outlined in the Agricultural Credit Act of 1987, Public Law 100-233. It does not exclude them of the option to buy out their loans at the net recovery value of the security.

The first case involved a borrower who converted FmHA security to cash and did not apply the proceeds to the debt. The actual monetary loss in this case was $251,814. FmHA was able to document the facts and the Office of General Council concurred in the determination of Bad Faith. Even though that determination was made, the borrower now has the Net Recovery Buyout option. If they exercise that option, FmHA will accept payment of $45,361 as full settlement of their debts. This will result in an additional loss of $340,924 to FmHA.

The second case involves a borrower who prevented FmHA from checking the security since September 1984, refused to account for proceeds from the sale of the security since then and moved the security out of state without notifying FmHA or obtaining permission. The Office of General Council concurred with our determination of Bad Faith. This borrower has also filed for relief under a Chapter 12 Bankruptcy. The Bad Faith determination makes him ineligible for the primary service programs but not the Net Recovery Value Buyout. If they are allowed to buyout the security, FmHA will receive payment of $76,219 in full satisfaction of their debt. The loss to FmHA is estimated to be $727,030. This case is not resolved yet pending the outcome of the bankruptcy.

A change in the statute to prevent borrowers who have not acted in good faith from being allowed the Net Recovery Buyout option would not have a deterimental effect on borrowers in Wyoming. Based on the feedback we have received from both FmHA borrowers and other producers, we feel that it would in fact be of benefit to everyone in Wyoming.

If you need any additional information from a national perspective, please contact Ron Ence, Director, Legislative Affairs and Public Information Staff, (202) 447-6903. If I can provide any additional information for Wyoming, please let me know.

Sincerely,

MICHAEL F. ORMSBY,
*State Director.*

Mr. HARKIN. Mr. President, I am pleased to be a cosponsor of this legislation to resolve problems of interpretation and application that threaten to subvert important provisions of the Agricultural Credit Act of 1987 concerning settlement of Farmers Home Administration debt. It will protect the Government against fraud and abuse and protect borrowers against unfounded allegations of wrongdoing.

The Agriculutral Credit Act provides for two principal ways for FmHA borrowers to deal with delinquent debt which cannot be repaid in full. Primary loan servicing provides for restructuring of debt where such action will result in a recovery to the Government equal to or greater than foreclosure. If restructing is not available to the borrower under the act, the borrower is allowed to retain the collateral by paying the Government the full net amount that it would recover through foreclosure. This opportunity is called net recovery buyout.

In accordance with the Agricultural Credit Act, FmHA requires that to be eligible for loan restructuring FmHA borrowers must have acted in good faith and that the delinquency must have arisen from circumstances beyond the control of the borrower. Inexplicably, under FmHA interpretation of the act, these requirements do not apply to net recovery buyouts. Hence a borrower would be eligible for net recovery buyout even though the borrower clearly acted in bad faith or was delinquent due to circumstances not beyond the control of the borrower and was therefore ineligible for restructuring.

This bill is intended to correct this situation and ensure that FmHA borrowers are not eligible for net recovery buyouts of delinquent loans unless the borrower has acted in good faith and the delinquency arises from circum-

stances beyond the control of the borrower.

The bill also addresses the standards and procedure for assessing good faith of debt restructuring and loan servicing, including net recovery buyout. A borrower does not act with a lack of good faith where FmHA has not released essential household and farm operating expenses and the borrower sells mortgaged security and uses the proceeds to pay essential household and farm operating expenses. In addition, FmHA may not determine that a borrower has not acted in good faith unless the Office of General Counsel of the Department of Agriculture has issued a written opinion confirming the allegation of lack of good faith.

This bill does not specifically describe what activities constitute a lack of good faith. It will be the responsibility of FmHA to formulate regulations consistent with congressional intent defining what behavior evidences a lack of good faith rendering a borrower ineligible for restructing or net recovery buyout. We will carefully review FmHA's regulations. With the early expiration date of this bill, we will have an early opportunity to respond to FmHA's regulations with legislation if necessary.

In determining whether a borrower has acted in good faith it is essential that FmHA consider the intent of the borrower. Good faith is not lacking where a borrower has made an honest mistake or failed to comply with agreements or regulations because of circumstances beyond the borrower's control or where the borrower's action or inaction is based on erroneous advice from FmHA personnel. Lack of good faith involves an intent to defraud or deceive, a knowing violation of rules or agreement or knowingly making false statements.

To be eligible for loan restructuring and net recovery buyout the delinquency must be due to circumstances beyond the control of the borrower. If the borrower has unsecured, nonessential assets available to repay debts, the delinquency is not due to circumstances beyond the control of the borrower. Borrowers who have such assets should use them to repay FmHA. However, borrowers should not be forced to liquidate assets essential for earning income necessary to cover reasonable living and farm operating expenses, including repayment of principal and interest on debts.

Mr. President, I would also note that I concur in the statement of Senator CONRAD. This is good corrective legislation and I am pleased that we are acting on it today.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1894

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. ELIGIBILITY CRITERIA.

Section 353(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001(b)) is amended—

(1) by inserting "(1) IN GENERAL.—" before "To be" and indenting the margin of such paragraph two ems;

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D) and indenting the margin of each such subparagraph (as so redesignated) two ems;

(3) in paragraph (1)(B) (as so redesignated) by inserting "(in accordance with paragraph (2))" after "good faith";

(4) in paragraph (1)(C) (as so redesignated) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii) and indenting the margins of such clauses (as so redesignated) two ems; and

(5) by adding at the end thereof the following new paragraph:

"(2) FAILURE TO ACT IN GOOD FAITH.—

"(A) IN GENERAL.—For purposes of paragraph (1)(B), the Secretary shall not make a determination that a borrower has acted with a lack of good faith if such borrower has sold security mortgaged to the Secretary and used the proceeds from such sale to pay essential household and farm operating expenses, as defined by the Secretary under section 335(f), without receiving the authorization of the Secretary to sell such security in cases in which the Secretary has not released essential household and farm operating expenses.

"(B) LEGAL CLAIM.—

"(i) IN GENERAL.—In order to make a determination that a borrower has not acted in good faith as required in paragraph (1)(B), the Secretary shall obtain a written opinion from the Office of General Counsel of the Department of Agriculture stating that the borrower has not acted in good faith, as described in such paragraph.

"(ii) SUBMISSION OF LEGAL OPINION TO BORROWER.—Not later than 15 days after the date on which the Secretary obtains a written opinion under clause (i), the Secretary shall submit a copy of such opinion to the borrower.".

SEC. 2. GOOD FAITH REQUIREMENT FOR RESTRUCTURING CERTAIN LOANS.

(a) IN GENERAL.—Section 353(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001(c)) is amended—

(1) in paragraph (6)—

(A) by inserting after "recovery value" the first place such appears the following: ", if the delinquency is due to circumstances beyond the control of the borrower, if the borrower acted in good faith with the Secretary in connection with the loan, as defined in regulations and policies issued by the Secretary, and if the borrower meets the eligibility criteria established under paragraph (2) of subsection (b),"; and

(B) by striking out "45" and inserting in lieu thereof "90", and

(2) by adding at the end thereof the following new paragraph:

"(7) APPLICATION AND DATA COLLECTION.—

"(A) APPLICATION.—The requirement that the delinquency is due to circumstances beyond the control of the borrower and that a buyer act in good faith to be eligible for the termination of loan obligations under paragraph (6) shall not apply to offers of net recovery buyout made by the Secretary under this section prior to the date of enactment of this paragraph, except that such requirement shall apply, prior to such date, to borrowers determined (prior to the date of enactment of this paragraph) by the Secretary not to have acted in good faith with respect to the loan.

"(B) DATA COLLECTION.—The Secretary shall collect and make available in a timely fashion, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, the following information—

"(i) the number of borrowers who have applied for debt restructuring who are alleged, or who have been shown, to have acted in bad faith;

"(ii) the number of applications for net recovery buyout that are being held due to bad faith allegations;

"(iii) the number of subsequent appeals or reversals by the national appeals division of bad faith determinations that have occurred because of the implementation of subsection (b)(1)(B) and (b)(2);

"(iv) the amount of time required for the processing of net recovery buyout requests;

"(v) the number of borrowers who have applied for debt restructuring after the date of issuance of the first notices of the availability of loan servicing programs that—

"(I) have not been offered restructuring options by the Secretary; and

"(II) have not received a notice of intent to accelerate or to continue acceleration, a notice of borowers' rights, and forms for the making of responses to the notice of the intent of the Farmers Home Administration to accelerate or continue acceleration; and

"(vi) the number of bad faith allegations that have been submitted by the Secretary to the State director for agricultural loan programs.".

(b) TERMINATION.—The amendments made by this section shall terminate on August 31, 1990.

SEC. 3. REGULATIONS..

The Secretary of Agriculture shall promulgate regulations to implement the amendments made by this Act. Such regulations may be issued without prior public comment. If such regulations are issued without prior comment the Secretary must solicit public comment with such regulations and consider such comments in any related subsequent issuance of regulations.

Mr. KOHL. I move to reconsider the vote.

Mr. SIMPSON. I have to lay that motion on the table.

The motion to lay on the table was agreed to.

## NATIONAL CONSUMER COOPERATIVE BANK AMENDMENTS

Mr. KOHL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3720, the National Consumer Cooperative Bank amendments of 1989, now at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3720) to amend provisions of the National Consumer Cooperative Bank Act relating to the payment of interest on and the redemption of class A notes issued

by the National Consumer Cooperative Bank.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 3720) was ordered to a third reading, was read the third time, and passed.

Mr. KOHL. I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## ORDER FOR FILING OF LEGISLATIVE BUSINESS DURING ADJOURNMENT

Mr. KOHL. Mr. President, I ask unanimous consent that during the adjournment of the Senate, committees may file reported legislative business on December 13, 1989, and January 10, 1990, from 12 noon to 3 pm., with the exception of the Senate Committee on Governmental Affairs.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it so ordered.

## SENATE GALLERIES

Mr. CHAFEE. Mr. President, I notice the galleries have been cleared. Is there a reason for that? I hope the public would be permitted back into the gallery.

The PRESIDING OFFICER. The Senator's observation is well taken. The Chair, as soon as business is completed, was going to allow the galleries to be again filled.

Mr. CHAFEE. I thank the Chair.

Mr. SIMPSON. Mr. President, I thank the acting leader for his cooperation.

The PRESIDING OFFICER. The Sergeant at Arms is instructed that the galleries can now be filled with people wishing to view the proceedings of the Senate.

Mr. CHAFEE. Mr. President, might I make a further suggestion?

It would be my hope that if there are disturbances in the gallery, the individuals be removed rather than the galleries cleared. I think we have adequate staff to control the galleries, and I think it is giving in to a few malcontents, a few disturbers, to clear everybody out because there are several who are causing trouble.

Mr. President, I suspect that there will be probably more to come in who will cause trouble, but I do not think the answer is to clear all the galleries.

Obviously, the situation has not come out of control. I hope that the Sergeant at Arms would have adequate personnel, and I believe he does, to remove those who are causing the disturbances rather than having everybody, many of them innocent visitors to Washington who have come to see the Senate, forced out of the galleries after they have waited in line a considerable time to observe the proceedings.

The PRESIDING OFFICER. The Chair would respond to the Senator from Rhode Island, it is discretionary with the Chair as to whether or not the individuals should be removed from the gallery.

Mr. CHAFEE. I appreciate that, Mr. President, and I have full confidence in the Chair's judgment. I do offer that as a suggestion, because I do not think this is the last time we are going to see that occur.

I thank the Chair.

Mr. SIMPSON. Mr. President, I think my colleagues might be interested to recall that Senator BYRD, as majority leader, and Senator DOLE, as our minority leader, appointed Senator CRANSTON and myself as a working group with the two whips from the House, the majority and minority whips, to discuss security issues in the Capitol area. That was some years ago.

Our work was presented. Some did not accept that work; they felt it was intrusive, and yet you will note that we have cleared the Capitol Plaza of automobiles—that was never thought to be a possibility—because we were told by security people of the highest caliber that if we were to be the target of terrorism or simply malcontents or whoever may be involved, one of the most extraordinary ways of doing that is simply to target our cars, place a plastic explosive underneath the vehicle, so that it is parked next to the Capitol, and take a chunk of the Capitol off with it, plus a few more cars.

Then, of course, one evening right here—some may not recall—we had a late session. We would have been here. It was a Monday night. I remember there were many clustered off the floor watching various activities, including Monday night football.

We left then about 11. And at 12 o'clock, an explosive device blew in all the windows in this hall, and would have taken several Democratic and Republican Senators.

So I agree totally with Senator CHAFEE; yet, there is a sensitive balance between democracy and anarchy. I hope we can always keep the Galleries open. But in my capacity, with Senator CRANSTON, as the leader of that group, I can show you some remarkable cases of people bringing devices into the Capitol area who had a great mischief in mind.

I think it is worth considering that we should not let the actions of a few deter this great experiment that does take place in our Congress.

I did want my colleagues to know that it is a very serious issue, and if any of you wish to review any of that confidential material you are certainly welcome to do so. It is rather startling.

I thank the Chair.

## MORNING BUSINESS

Mr. KOHL. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

## NORTH DAKOTA'S U.S. SENATORS

Mr. CONRAD. Mr. President, it was 100 years ago today that North Dakota elected its first Senator. I rise today to commemorate that event as part of North Dakota's original contribution to our Federal system of representative government and to acknowledge it while my State celebrates its centennial throughout the year.

Many things have changed since 1889. One of them is how we elect U.S. Senators. Gilbert Pierce, Governor of the Dakota Territory from 1884 to 1886, was elected to this body by the North Dakota Legislature and began serving as my State's first Senator 100 years ago today, November 21, 1889.

North Dakota's second Senator also was elected to this body by the legislature of my State. He was Lyman Casey, a rancher and hardware store owner in Carrington, ND, served this body from November 25, 1889, to March 3, 1893.

North Dakotans and residents of other States began casting ballots for Senators when the 17th amendment to the U.S. Constitution took effect, in May 1913. Both Senator Pierce and Senator Casey enjoyed short one-term careers in this body, but went on to important careers in other areas after leaving this Chamber.

Neither man hailed from what was then called Dakota Territory, but settled in the Great Plains as part of the exodus from the Northeastern industrial States to the Midwest that lasted throughout the 1800's. In fact, both of North Dakota's first two Senators were born in New York State, moved to the Midwest just before the Civil War, and settled in the Dakota Territory in the early 1880's.

Senator Pierce was born in East Otto, NY, in 1839; Senator Casey was born in Livingston County, NY, in 1837, Senator Pierce moved his family from New York State to Indiana

during the antebellum period and settled in the Dakota Terrority in 1884.

Senator Casey moved from New York State to Michigan in 1853 and settled in the Dakota Territory in 1882. Senator Casey, besides being a rancher and U.S. Senator, was chairman of the North Dakota Committee on Irrigation and commissioner of Foster County, ND.

Pierce was a Senator, a lieutenant colonel for the Union during the Civil War, a member of the Indiana House of Representatives, Governor, and managing editor of the Chicago Inter-Ocean newspaper. He wrote several books, and, after his term in the Senate became the publisher and managing editor of the Minneapolis Tribune. Pierce County, ND, bears his name.

Mr. President, I have the honor of serving as the 19th Senator from North Dakota in the U.S. Senate. This has been a proud history for the State of North Dakota, being able to participate in the deliberations of this Chamber on the important policy questions facing our country.

Mr. President, in our 100th year, North Dakota wishes to recognize the importance of this Chamber and our State's contribution to it.

Mr. President, I thank the Chair. I yield the floor.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The Senator from North Dakota notes the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THE ENERGY-COMMERCE CONFERENCE REPORT AND THE DRUG BILL

Mr. WILSON. Mr. President, I rise to share with my colleagues some very good news. I am particularly pleased to be able to share a letter from the Secretary of Health and Human Services, the Honorable Louis W. Sullivan. I will explain the contents of the letter in just a moment.

Essentially, the background for the sending of this letter was the conversations that I had with the Secretary's staff last evening when confronted with a rather difficult decision. The decision was whether or not to sign the Energy-Commerce conference report that dealt with provisions of the drug bill.

Specifically, the difficulty that was presented is, as so often true in conference reports, it contained elements that were highly desirable, but it also did not contain some that I felt essential.

Unhappily, the conferees did not agree to include the random mandatory drug testing for transportation workers that has several times passed the Senate, only to be frustrated by never being really subjected to a vote of the House. The temptation to sign the report had to do with the apparent authorization of new funds for the pregnant and postpartum women recipients under the Office of Substance Abuse Prevention demonstration grant program to substantially increase that funding from the pittance that has been made available by Congress before.

It is, I think, well known to my colleagues, as I have taken much of their time concentrating upon the necessity for increased funding for this purpose, that I was obviously delighted with the opportunity to increase funding. But what I have done, after initially being so tempted that in fact my staff authorized the fixing of my signature, was to withdraw it and to enter into a negotiation with the Secretary that has resulted in his sending of this letter.

I do not mean to imply that, by that, I mean there was any great reluctance on the part of the administration, but I think this prodding has served a useful purpose. In any case, let me now share with you the contents of the letter dated November 21. It states:

DEAR SENATOR WILSON: I am writing to inform you of the Department of Health and Human Services' intention to identify resources within the Alcohol, Drug Abuse, and Mental Health Administration's (ADAMHA) budget to help end the tragedy of substance abuse during pregnancy.

Specifically, ADAMHA will provide $51 million in FY90 for the treatment of substance abusing pregnant and postpartum women and their infants under the Office Of Substance Abuse Prevention Demonstration Grant program and the National Institute of Drug Abuse (NIDA) program. In addition to the programming just mentioned, $24 million in FY90 will be provided for research under the National Institute on Alcohol Abuse and Alcoholism and NIDA to evaluate treatment methods for substance abusing pregnant and postpartum women and their infants. Included in this $24 million will be funding for additional services under the Office of Treatment Improvement.

I also wish to inform you of the Department's intention to give priority weight consideration to applications from treatment programs having waiting lists to serve pregnant and postpartum women and their infants under the newly created Wait List Grant program under ADAMHA. A total of $40 million will be available under this program upon notification by the appropriate congressional fiscal committees of the authority to spend this amount above the $100 million authorized funding level.

Finally, I wish to provide you with every assurance that discrimination will not be tolerated against applicants for ADAMHA funding that propose or provide residential or outpatient rehabilitation services in conformity with applicable federal law and under applicable requirements of State law. This includes applicants that provide services to substance abusing pregnant and postpartum women and their infants that receive treatment by order of a court or other appropriate public agency (so long as such applications include measures that encourage substance abusing pregnant and postpartum women to seek prenatal care and rehabilitation).

Mr. President, this is very good news indeed; $51 million for the treatment of substance abuse, pregnant and postpartum women and their infants under the OSAP Program, supplemented by an additional $24 million in fiscal 1990 program money from the National Institute on Alcohol Abuse and Alcoholism, will provide the kind of funding that will actually begin at least to keep faith with the exhortation from so many of us that these pregnant women, women, who have been using and find themselves pregnant, actually go to seek treatment.

In many cases, when they have sought to do so, they have been unable to because of the unavailability of services, which is why the additional $40 million under the Wait List Program is very good news.

What we will see in total is $115 million in contrast to the 4½ that has been available before. And as substantial as this increase may be, in my judgement, it still leaves unfinished the work which Congress must do to provide adequate funding for this purpose.

I say that, Mr. President, because if you take the most expensive of the treatment programs that will be authorized under the demonstration grant program, probably three or four substance abusing pregnant women or those who have delivered innocently addicted newborns, can be treated in a residential setting, even for a period of 18 months, for the cost of a single infant undergoing the kind of treatment in a neonatal intensive care unit that is necessary, first to withdraw the child and, second, to render it sufficiently healthy so that it can leave that neonatal intensive care unit.

That, of course, is only the beginning. When we asked for estimates from State and local agencies in California, we found that the average cost of medical and special compensatory education care would be $130,000 per child on well into the adolescence of that child.

For that reason, Mr. President, this letter, which I intend to distribute to my colleagues, is the kind of news that we welcome, however belated. We have been late in coming to grips with the problem, but this is a very substantial beginning, and I thank the Secretary and his staff for their cooperation. I also thank Senator HATCH and his staff for their part in these negotia-

tions. I think, very frankly, that it was well worth withholding consent to a compromise that was, by comparison, inadequate, and I also hope, Mr. President, that we will be able to achieve the kind of testing of transportation workers that is absolutely essential.

The final point here is that this letter makes clear that there will be no discrimination against those programs that do receive applicants or do receive women in need of treatment, who have been referred involuntarily by the courts or by some other appropriate public agency.

Mr. President, I ask unanimous consent that Secretary Sullivan's letter be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF
HEALTH AND HUMAN SERVICES,
*Washington, DC, November 21, 1989.*

Hon. PETE WILSON,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR WILSON: I am writing to inform you of the Department of Health and Human Services' intention to identify resources within the Alcohol, Drug Abuse, and Mental Health Administration's (ADAMHA) budget to help end the tragedy of Substance abuse during pregnancy.

Specifically, ADAMHA will provide $51 million in fiscal year 1990 for the treatment of substance abusing pregnant and postpartum women and their infants under the Office Of Substance Abuse Prevention Demonstration Grant program and the National Institute of Drug Abuse (NIDA) program. In addition to the programming just mentioned, $24 million in fiscal year 1990 will be provided for research under the National Institute on Alcohol Abuse and Alcoholism and NIDA to evaluate treatment methods for substance abusing pregnant and postpartum women and their infants. Included in this $24 million will be funding for additional services under the Office of Treatment Improvement.

I also wish to inform you of the Department's intention to give priority weight consideration to applications from treatment programs having waiting lists to serve pregnant and postpartum women and their infants under the newly created Wait List Grant program under ADAMHA. A total of $40 million will be available under this program upon notification by the appropriate congressional fiscal committees of the authority to spend this amount above the $100 million authorized funding level.

Finally, I wish to provide you with every assurance that discrimination will not be tolerated against applicants for ADAMHA funding that propose or provide residential or outpatient rehabilitation services in conformity with applicable federal law and under applicable requirements of State law. This includes applicants that provide services to substance abusing pregnant and postpartum women and their infants that receive treatment by order of a court or other appropriate public agency (so long as such applications include measures that encourage substance abusing pregnant and postpartum women to seek prenatal care and rehabilitation).

We look forward to working with you on this and related issues. Should you have any questions regarding these matters, Mark Barnes, of my staff, will be pleased to answer them. He can be contacted at 245-2641.

Sincerely,

LOUIS W. SULLIVAN, M.D.,
*Secretary.*

Mr. WILSON. I thank the Chair and yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I ask unanimous consent that I may proceed as if in morning business.

The PRESIDING OFFICER. The Senator is instructed we are in morning business.

## NEWSPRINT RECYCLING INCENTIVES ACT OF 1989

Mr. HEINZ. Mr. President, Senator TIM WIRTH, Congressman ESTEBAN TORRES, 20 other Members of Congress, and I have introduced legislation, S. 1763 in the Senate, the Newsprint Recycling Incentives Act, to stimulate the recycling of newspapers and newsprint—the most easily collectible element of solid waste in the United States.

It is a fact that the amount of solid and hazardous wastes generated by every man, woman, and child in the United States has increased by some 80 percent since 1969. Each of us throws away over 3½ pounds of garbage every single day, every man, woman, and child—enough to fill a convoy of 10-ton trucks 145,000 miles long; that is more than seven times the circumference of the planet. This incredible convoy is heading for landfills or incinerators. The former are rapidly reaching capacity; the latter pose serious air quality problems.

In my State and in most other States communities do not want either more landfills or more incinerators. We are at a crisis point. We believe we need to act decisively to reduce the waste stream, and that is what our bill seeks to do.

Paper and related products, which are 40 percent of the waste stream, are the most recyclable of solid waste. Yet, more than two-thirds of newspapers are thrown away. Of the 14 million tons of newprint used each year in the United States, only 1.4 million tons are recycled and used as newsprint. That is only 10 percent of the total. Nine and one-half million tons of newspaper are either landfilled or incinerated each and every year. If all these newspapers were placed in a football field the mountain would be 3 miles high, 60 yards by 100 yards on each side. Or if you prefer another statistical manipulation: If those newspapers were stacked on top of each other the normal way the stack of newspapers would be 129,545 miles in height. That is about halfway, literally halfway to the Moon.

Mr. President, our failure to recycle all but this nominal amount of newsprint is part of the much larger problem: our failure to wisely manage solid waste. Concern about environmental problems like this one led Senator TIM WIRTH and myself to conduct a major public policy study last year, Project 88. This report, which we released last December, provides some 36 recommendations on the use of market forces to protect the environment. A major element of this study is how such market forces can help address our solid waste crisis. By using market forces to encourage the recycling and prevention of pollution rather than trying to control after the fact, we can get the kinds of environmental protection that would be, using the traditional command and control strategies, exorbitantly costly, or maybe even impossible. But we have, we think, found a much preferable, much lower cost mechanism.

Two of the primary conclusions of Project 88 regarding solid waste management are: First, that we need to provide stable markets for recycled products and, second, that further incentives for source reduction and recycling are necessary. Solid waste continues to pile up at such an alarming rate specifically because of two factors: Markets for recyclable materials are weak and unstable; and the relatively low cost of disposal in landfills and incinerators does not reflect all the costs that we incur in creating and managing this enormous convoy of trash. Much of the pollution and waste entering the environment results from consumer products such as newspapers, used automobile oil, tires, and many others which can and should be recycled. But we are failing to recover these products simply because recycling markets are weak and disposal is still viewed as cheaper than recycling.

I shall expand briefly on these two points: stable markets for recycled materials and the true, long-term costs of continuing our throwaway society. The first is important because without some stability in the market for recyclable goods, our communities will not be able to sustain their fledgling recycling efforts. As we are now witnessing here in the District of Columbia, the newspaper collection program has been quite successful. Citizens have been very responsive when asked to separate old newspapers from trash. I have a garage full of them. However, collection is only one part of recycling. It does not end at the curb. And as an extreme example of this, the District

of Columbia government currently has no contractural outlet for the old newspapers it has collected but it "plans" and hopes to market them when prices become favorable. Meanwhile they are piling up.

Mr. President, our country is dotted with waste piles of "recyclers" who planned to sell when the market got better. We all too frequently must deal with these "recyclers" in the Superfund Program after they have abandoned these sites.

The bottom line is, unless you have a buyer for it, recycled garbage is still garbage and sometimes hazardous garbage at that.

On the second point, I believe we can demonstrate that, on a realistic total cost basis, we are prudent to favor recycling over disposal. The so-called tipping fee for placing materials in landfills has gone from a national average of $10.80 to $26.90 in just 6 years, and will continue to rise as many of our landfills close and are no longer able to subsidize free dumping. The Environmental Protection Agency estimates that some 45 percent of existing landfills will close within 2 years by the end of 1991 and some three-quarters will close by the year 2000, just 10 years from now. Notwithstanding, it is still viewed as cheaper to landfill than the recycle; particularly if one myopically only looks at tipping fees.

The analogy I would draw is that viewing "tipping fees" as being the societal cost of landfilling is the same as regarding how much the drug abuser pays for crack cocaine on the street as the societal cost of drug abuse. Clearly, it is only the tip of the iceberg.

The National Solid Waste Management Association in their annual survey concludes that the average tipping fee is only $26.93 a ton. This does not compare favorably with the average cost of $50 to $70 to de-ink newsprint. Why should we recycle when it appears to be cheaper and easier to put newspapers in landfills?

My cosponsors and I believe there are four sound reasons to reject such back-of-the-envelope economics in favor of a more thorough analysis.

First, regional tipping fees actually exceed recycling costs in many areas of this country. The averages, in other words, are misleading. In fact, 74 percent of our population lives in standard metropolitan statistical areas, SMSA's as we call them, and disposal costs in many SMSA's are frequently near or over $100 per ton. In my home State of Pennsylvania, Philadelphia is an excellent example. In 1989, Philadelphia will spend $60 million in tipping fees to dispose of 800,000 tons of solid waste, or $75 a ton, about three times more than the national average of close to $27,00. Ten years ago, Philadelphia spent only $2½ million on tipping fees. The additional $57½ million to tip about the same amount of trash, by the way, is money that cannot be spent on other priorities. It cannot be spent to prevent drug abuse. It cannot be spent to hire more police. It cannot be spent to repair streets and bridges. It is literally money thrown away.

Second, new landfill capacity is becoming increasingly costly and scarce. We are rapidly using up landfill capacity and will have to find and site new capacity, if we can, in short order. It is not likely that such capacity will be either cheap or easy to obtain. My own State has all too frequently been used in the past as the final resting place for the solid waste of other States. As we continue to consume 28.5 million cubic yards of landfill space every year—the current rate—just to throw away newspaper, we draw closer the day when you and I will have to tell our constituents that their community will be the recipient of a new landfill or incinerator. To the extent they are permitted at all, these new landfills will generally have to meet more stringent environmental standards, including double liners and leachate controls, raising the cost of disposal even more dramatically.

Third, the way the disposal of solid waste is priced sends the wrong signals to consumers. This pricing leads to excessive disposal by traditional methods, especially landfilling. In a market economy, decisions on resource use are supposed to follow from market prices. Can any of us say what it costs to throw our trash away? In general, the answer to this question is no. We ought to know what it costs to use a resource or to throw something away, but in this case we do not because citizens often are ignorant of any costs associated with trash disposal, and frequently regard disposal as free. Such programs are also normally subsidized out of general tax revenues, so that the true cost of disposal is further hidden from individual households making decisions on whether and how much to recycle. Perhaps even more significantly, households are charged the same fixed fee for waste disposal whether they put out 1 trash bag or 100 providing no incentive whatsoever for households to minimize waste. There are, however, serious practical problems with the "book" economic solution of pricing trash by its volume or weight to reflect its marginal costs: The administrative difficulty of volume pricing is outweighed only by the incentive it would impose for illegal dumping. The better alternative to weighing garbage or cleaning up after midnight dumping is to remove the easily collectible and recyclable materials from our trash.

Fourth, we must begin to be aware of the resource impacts of failing to recycle. Beyond requiring that one-half million trees be cut down every week just for our Sunday newspapers, there are some less obvious pollution impacts that result from producing the virgin newsprint to replace that which we throw away:

One, recycled paper requires 64 percent fewer kilowatt hours of energy than virgin newsprint production. Each ton recycled would save enough electricity to heat and air-condition a house for 6 months.

Two, recycling results in 74 percent less air emissions than newsprint production from virgin pulp.

Three, the recycling process uses 58 percent less water and results in 35 percent less water pollution than from virgin pulp.

All of these factors convince me that there is a strong case to be made for Federal action to provide stable markets and correct market signals for many commodities in the trash stream. This bill, which focuses on only one component, newsprint, is an important first step. I want to describe in some detail how our bill provides a framework to address these problems.

Throughout the United States, more than 1,100 communities have very responsibly instituted newspaper recycling programs. These programs were touted as self-sustaining since the community could sell the newspapers for up to $30 a ton. The irony we now face is the result of these programs' success. Because of the phenomenal response by our constitutents, these collection programs have driven the price of old newspaper waste through the floor. Our cities are now being charged as much as $10 a ton by the recyclers just to take old newspapers away. This is on top of the collection costs just to deliver the segregated newspapers to collection points. Who is the culprit here? Mr. President, it is simply the law of supply and demand. More old newspapers are supplied than there is a demand and recycling capacity for.

We can keep newspapers out of our landfills and place them back into useful commerce by harnessing the forces of supply and demand which are now working against us. Our bill will stimulate demand for these old newspapers now stacking up so neatly at our landfills. By using market forces to reduce the glut, S. 1763, the Newspaper Recycling Incentives Act, will achieve this goal at the least cost and in the least intrusive manner.

What our legislation does is to require that newsprint producers or importers certify that the newspaper you and I read is manufactured at least partially from recycled newsprint. The minimum would be set EPA beginning at current recycling levels and increased by 2 percentage points each year thereafter for the next 10 years. This new and steadily increasing demand for old newspapers will we

submit, draw the papers out of our trash and into useful products.

By establishing a positive market for old newspapers and recycled newsprint, our bill will spur investment in de-inking facilities, which are the backbone of newsprint recycling. While de-inking facilities are not limited in both number and capacity, according to EPA they can realistically increase their capacity by the 2 percent a year specified in our bill. Within just a few years Mr. President, that rate of increase would eliminate the existing surplus of old newsprint, according to analysts at the Congressional Research Service of the Library of Congress. Without our bill there will be little, if any, incentive to invest in new recycling facilities and manufacturers will continue to build capacity to produce newsprint from virgin timber.

Rather than imposing the heavy hand of Government control in the day-to-day operations of newspapers, or requiring that each newsprint manufacturer build an expensive recycling facility, our legislation grants recycling "credits" to the recyclers for the amount of old newspapers they turn into recycled newsprint. Producers or importers who lack the current capacity to recycle newsprint could purchase such credits from recyclers either indefinitely or, more likely, until it becomes economic for them to develop recycling facilities either on their own or, more likely, in a joint venture. Our bill is the least cost and most efficient means to get old newspapers out of landfills and back into useful commerce.

If, for example, the required recycling rate were 10 percent, then a producer of importer who manufactured 10 tons of newsprint would have to ensure that 1 ton had been recycled. He might comply by actually recycling newsprint himself, by purchasing 1 ton of recycled newsprint, or by purchasing a 1-ton recycling credit from another independent recycler. If he recycled more than the required, for example, 1 ton, the extra credits could be sold to other producers to meet their requirement. This credit would be a legal record that the recycler would generate by taking in and recycling newsprint. We believe that the use of recycling credits will create a vigorous and competitive market for recycling that will both allow the necessary investment in newsprint de-inking facilities to occur along with providing the stable market and incentives for recycling which are critical in dealing with the solid waste crisis.

Mr. President, I just want to illustrate how the Newsprint Recycling Incentives Act specifically supports and relates to the very responsible action being taken by publishers in my own State and elsewhere. The Commonwealth of Pennsylvania is taking a leadership role in newspaper recycling, and to help make this program a success our newspaper publishers have announced that they plan to voluntarily boost the use of recycled newsprint from 10 percent—their current level—to over 35 percent in the next 5 years. However, this will become a sincere but empty promise without the expansion of newprint recycling capacity. Our legislation will ensure that the newspapers currently choking our landfills and bankrupting our recycling programs will be turned into newsprint to support the progressive actions of the State of Pennsylvania and other publishers.

Our citizens are demanding responsible leadership and new cost-effective solutions from us, not more landfills and incinerators in their back yards. The question is no longer whether we should respond, but how. The Newsprint Recycling Incentives Act provides the surest route to ending the glut of used newspaper and driving the engine of community recycling forward again.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD, along with an article from the Wall Street Journal on this very subject.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1763

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Newsprint Recycling Incentives Act of 1989".

SEC. 2. FINDINGS.

The Congress finds that—

(1) Of the total U.S. waste-stream of 145 million metric tons per year, paper and related products compose 64 million metric tons or 40 percent of the total;

(2) 90 percent of old newspaper waste in the U.S. is not recycled and ends up in the waste-stream;

(3) State and local newspaper recycling programs have helped create a growing surplus of old newspaper waste and helped to bring about a collapse of the market for recycled newsprint;

(4) The current glut of old newspaper waste has caused the market for old newspaper waste to decline from a price of $30 per ton to a cost or loss of $10 per ton;

(5) The price of new newsprint does not reflect the increasing cost to communities of disposal and landfilling old newspaper waste, which costs currently on average are between $20 to $60 per ton;

(6) The cost of recycling old newspaper waste is substantially less than the cost of disposal;

(7) The demand for old newspaper waste needs to be increased to provide both an outlet for the rapidly increasing glut of old newspaper waste and also to provide stable markets for recyclers to invest in de-inking facilities;

(8) A minimum recycling requirement can be used to create a market which accurately reflects the societal costs of old newspaper waste;

(9) The creation of an efficient market for recycled newsprint requires that the cost of disposal be included in cost of unrecycled products; and

(10) The Administrator of the Environmental Protection Agency requires additional statutory authority to increase recycling of old newspaper waste and to stimulate demand.

SEC. 3. REQUIREMENTS TO RECYCLE NEWSPRINT.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end thereof the following:

"SEC. 4011. NEWSPAPER RECYCLING REQUIREMENTS.

"(a) GENERAL REQUIREMENT.—(1) Beginning not later than 18 months after the date of the enactment of the Newsprint Recycling Incentives Act of 1989, a producer or importer of newsprint each year shall recycle, using a method described in paragraph (2), an amount of newsprint equal to at least that amount of newsprint determined by—

"(A) multiplying the newsprint produced or imported that year by such person, by

"(B) the recycling percentage established by the Administrator under subsection (b).

"(2) A producer or importer of newsprint may comply with this subsection—

"(A) by recycling (through deinking) newsprint for purposes of producing recycled newsprint;

"(B) by purchasing recycled newsprint for purposes of combining with shipments of virgin newsprint; or

"(C) by purchasing recycling credits under the recycling credit system established pursuant to subsection (c).

"(b) RECYCLING PERCENTAGE.—The Administrator each year shall establish a recycling percentage for use under subsection (a). The percentage applicable during the first year that the requirement established by subsection (a) is in effect shall be a percentage that is two percentage points higher than the recycling rate for newsprint that exists on the date of the enactment of the Newsprint Recycling Incentives Act of 1989. Such recycling rate shall be determined by using data for 1988 or the most recent year for which data are available. Each year thereafter, until 1999, the recycling percentage shall be an additional 2 percentage points higher than the percentage of the previous year.

"(c) CREDIT SYSTEM FOR RECYCLING NEWSPRINT.—(1) Not later than 18 months after the date of the enactment of the Newsprint Recycling Incentives Act of 1989, the Administrator shall promulgate regulations to establish a system under which (A) producers or importers of recycled newsprint may create credits for used newsprint recycling, and (B) producers or importers of newsprint (virgin or recycled) may purchase such recycling credits from such recyclers, for purposes of complying with subsection (a). The regulations establishing such system shall include an incentive based component for any allocation which may be necessary (including but not limited to an auction). No person may create such credits, and no producer or importer of newsprint may purchase such credits, except in accordance with this subsection and the regulations promulgated under this subsection.

"(2) At a minimum, the regulations under subsection (c) shall include the following requirements:

"(A) the producer or importer of recycled newsprint shall maintain records of the receipt of old newsprint and other paper prod-

ucts for deinking and subsequent recycling. Such records shall be maintained for at least 2 years;

"(B) the producer of recycled newsprint shall notify the Environmental Protection Agency of their capacity to recycle old newsprint. Such notification shall state the overall newsprint capacity and that portion dedicated to deinking and recycling;

"(C) in the case of an importer to the United States, the notice required under subparagraph (B) shall be accompanied by a certification from the Trade Representative of the country shipping newsprint to the United States;

"(D) producers or importers of newsprint shall maintain records of sales of virgin and recycled newsprint, including quantities and prices of recycled newsprint and sales or other disposition of such recycling credits as may be used to demonstrate compliance with the requirements of this section. Such records shall be maintained for at least 24 months;

"(E) producers and importers shall report to the Environmental Protection Agency yearly and on an interim quarterly basis—

"(i) the amount of recycled content newsprint produced or imported each year;

"(ii) the number of credits purchased or otherwise acquired from other producers or importers; and

"(iii) the number of credits sold or otherwise distributed to other producers or importers.

"(3) The Administrator may include such other requirements in the regulations under paragraph (1) with respect to qualifications for recyclers, importers, and producers; methods for auditing compliance with the system; and enforcement of the system; as the Administrator considers necessary or appropriate for administrating the recycling credit system established under this subsection.

"(4) For purposes of this section, the term 'recycling credit' means a legal record of a recycling activity undertaken in accordance with this subsection that represents an amount of newsprint recycled for purposes of complying with this section.

"(d) REPORTS.—(1) Not later than 6 years after the date of the enactment of the Newspaper Recycling Incentives Act of 1989, the Administrator shall submit to Congress an interim report on the implementation of this section. The report shall include, at a minimum—

"(A) a discussion of the effects of the requirements of this section on the newsprint and newspaper industry and on the environment; and

"(B) an evaluation of the level of the recycling percentage under subsection (b) and recommendations on whether, and at what rate, the percentage should be increased in future years.

"(2) Not later than 10 years after such date, the Administrator shall submit to Congress a final report on the implementation of this section. The report shall include an updated version of the discussion and evaluation required in the interim report, as well as such other findings and recommendations with respect to the implementation of this section as the Administrator considers appropriate.

"(e) APPLICABILITY.—This section applies to any person who produces or imports more than 10 tons of newsprint a year.

"(f) REGULATIONS.—The Administrator shall promulgate regulations to implement this section not later than 18 months after the date of the enactment of the Newspaper Recycling Incentives Act of 1989. If the Administrator fails to promulgate such regulations by that date, the recycling percentage under subsection (b) shall be 20 percent until such time as the regulations are promulgated.

"(g) CIVIL PENALTY.—

"(1) Whoever violates this section shall be liable to the United States for a civil penalty in an amount not to exceed $2,500 for each such violation. Such civil penalty shall be assessed by the Administrator of the Environmental Protection Agency by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, a hearing on the order.

"(2) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

"(3) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

"(4) Any person who requested in accordance with this subsection a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(5) If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with this section, or

"(B) after a court in an action brought under this section has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (4) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.".

(b) TECHNICAL AMENDMENT.—The table of contents for subtitle D of the Solid Waste Disposal Act (contained in section 1001 of such Act) is amended by adding at the end thereof the following:

"Sec. 4011. Newspaper recycling requirements.".

SEC. 5. AUTHORIZATION.

There is authorized to be appropriated to the Administrator of the Environmental Protection Agency $1,200,000 to carry out the amendments made by this Act. Such funds shall be used to hire the equivalent of at least six additional full-time employees to carry out such provisions. Such funds shall remain available until expended.

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[From the Wall Street Journal, Aug. 31, 1989]

FOR RECYCLERS, THE NEWS IS LOOKING BAD—NEWSPAPER GLUT FORCES TOWNS TO END PROJECTS

(By Bill Paul)

Just 15 months ago, Joe Harrison was officiating at the ribbon-cutting ceremoney for the newly expanded recycling center in Barberton, Ohio. Setting an upbeat mood for the event, two local chicken houses gave away dinners as door prizes while disk jockeys from a nearby Akron station played records and cheered the six-year-old program to collect newspapers, glass bottles and aluminum cans.

Today Mr. Harrison feels less festive. The city official is trying to unload $250,000 of used recycling equipment. Barberton's recycling program, which used to contribute $3,000 to $5,000 a year to the little League and other community projects, is dead.

Success killed recycling in Barberton, just as it threatens community recycling programs across the U.S.

COLLECTED FOR NAUGHT

It's no secret America is having trouble grappling with the garbage crisis. Despite overflowing landfills, many U.S. cities and states refuse to grant permits for new dumps or incinerators, citing health and property-value concerns. But in their rush to mandate the only option-recycling—politicians have failed to stimulate demand for recycled goods.

"We told [elected officials] they were going to have a problem, but they didn't listen," says a frustrated John Rafferty, director of the solid-waste division of greater Minneapolis's Metropolitan Council.

The markets for recycled alumnium and glass have held up, because reusing those materials is still cheaper than starting afresh. And the plastics industry, afraid of being legislated out of business, is financing its own search for uses of recycled plastic. But the market for old newspapers, the key commodity in any recycling program because it accounts for roughly 60 percent of revenue, has collapsed this year under tremendous oversupply.

Fifteen months ago, Mr. Harrison got $30 a ton for old newspapers. Just before he shut his doors July 28, he paid a broker $10 a ton to haul papers away. The newspaper glut will cost communities more than $100 million in lost revenue this year, and the longer range implications are more worrisome. Even if newsprint makers stick to their promises of recycling more paper, it could be two or three years before they are equipped to do so. And then, production will still hinge on publisher's demand, which has been weak. The need for old newspapers, therefore, isn't likely to increase anytime soon.

"The future scares me," says Kevin Preblud, vice president of U.S. Recycling Industries Inc. in Denver. As people witness the higher costs of recycling, he worries they will lose interest in programs they once thought would be cheap, or even free, to operate.

"Recycling is entering a very dangerous period," says Jerry Powell, editor of Resource Recycling, a trade publication in Portland, Ore. "A lot of Governments are going to have trouble riding out the slump."

With more communities discontinuing paper pickup in face of the glut, "paper is going back into the trash," says Margaret Fleming, a Baltimore paper broker. (Contrary to popular belief, newspapers take decades to decompose in landfills.) And without workable recycling, communities with overflowing landfills must build unpopular, expensive disposal plants or face big recurring costs to ship garbage ever-longer distances.

Many politicians are trying to salvage newspaper recycling, and in the process are putting publishers on the spot, trying to force them to use more recycled fiber. Connecticut recently passed legislation requiring a publisher that prints in Connecticut, or that sells more than 40,000 copies of a newspaper in that state, to use 40 percent recycled fiber in at least 20 percent of the newspaper's sheets. The law takes effect in 1993 and, by 1997, 90 percent of all sheets will have to meet the 40 percent quota.

The 1,385-member American Newspaper Publishers Association is threatening to sue, arguing that such a regulated market erodes the "traditional distance between publishers and governments," according to Tonda Rush, an attorney for the association.

Ms. Rush acknowledges that publishers have had a longstanding bias against recycled newsprint, claiming inferior quality. In addition, recycled newsprint, costing about the same as new paper, has no price advantage. Ms. Rush says the bias is eroding as technology improves, but legislators appear impatient. California and Wisconsin are expected shortly to follow Connecticut's example. There's even talk in some state capitals about requiring a deposit on each newspaper, or requiring newspaper and even magazine publishers to collect their old publications.

Feeling pressured, several paper manufacturers in the past two months have announced plans to increase capacity for processing recycled paper. However, the paper makers say it will take three years to gear up fully.

Meanwhile, "I'm afraid we're going to lose the grass-roots momentum for recycling, all the Boy Scout troops and church groups," says U.S. Recycling Industries' Mr. Preblud. In New York, Rod Edwards of the American Paper Institute wonders whether cash-strapped municipalities will restart their recycling programs after the slump is over, given that recycling newspapers may still cost more than sending them to landfills. While landfills are less of an option in the jam-packed Eastern states, there is still space in the Midwest, though it is getting more expensive.

For companies like Waste Management Inc. in Chicago and Browning-Ferris Industries Inc. in Houston, the woes of community recycling programs represent a business opportunity. That's why they've added recycling to their list of disposal services they offer communities. But for communities, the professional help adds huge cost. Under some Browning-Ferris contracts, municipalities even must share the company's financial risk when prices for recyclable commodities decline.

Some towns are adding to their problems through poor collection habits. James Burke, executive vice president of Garden State Paper Co., a major recycler of newsprint, says some towns allow phone books and junk mail to get thrown into the mix, and permit bundles to be tied with such contaminants as panty hose.

TOLL ON THE MIDWEST

So far, the slide in price for old newspaper has taken its highest toll on Midwestern recycling programs because of the region's higher transportation costs to paper mills and ports.

Last month, Dane County, Wis., commissioners partially lifted a ban on landfilling old newspapers after the county's paper broker halved the amount of old newspapers he was willing to buy each month. The temporary waiver was opposed by many civic leaders who believe residents will get out of the recycling habit.

Youngstown, Ohio, quit picking up newspapers a month ago. William Dundee, the city's litter-control coordinator, says residents were advised to store old papers, but may soon be told to just throw them out. The city still collects glass and aluminum, but Mr. Dundee says he's concerned that before long, "People are going to say 'I'm wasting my time recycling'."

Roger S. Angell, a Washington, D.C., consultant to Browning-Ferris, agrees with environmentalists that the recycling movement in America could be seriously undermined as people get disillusioned by the failure of community programs.

In Minneapolis, "recycling is becoming less popular", says Mr. Rafferty, the city official, because residents heard that their newspapers were going to a landfill anyway because of the paper market's collapse. That practice has stopped, Mr. Rafferty says. However, in June the companies that collected the recyclable goods forced area governments to renegotiate contracts. As a result, garbage fees rose roughly 20%, and now the cost of recycling approximates the cost of landfilling.

"Recycling has been billed as easy to do and free," Mr. Rafferty says. "But it is neither."

Mr. HEINZ. Mr. President, I see no other Senator seeking recognition. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The point of order with respect to the absence of a quorum being raised, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Virginia is recognized.

Mr. WARNER. I thank the Chair. Mr. President, I ask unanimous consent that an individual by name of Marged Harris, who is currently working on my staff, be permitted floor privileges for the purpose of this Senator's statement.

The PRESIDENT pro tempore. Without objection, the request will be granted.

The Senator from Virginia is recognized.

Mr. WARNER. I thank the Chair.

(The remarks of Mr. WARNER pertaining to the introduction of S. 1964 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions".)

The PRESIDENT pro tempore. The Senator from Delaware is recognized.

Mr. BIDEN. I thank the Chair.

(The remarks of Mr. BIDEN pertaining to the introduction of S. 1965 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions".)

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

## THE FERTILITY CENTER AT THE UNIVERSITY OF UTAH

Mr. HATCH. Mr. President, in connection with infertility week, celebrated during the week of October 8, I am pleased to highlight the fertility center at the University of Utah for the outstanding work that is being done in the area of infertility.

The demand for infertility services has dramatically increased during the 1980's. Over 3 million couples have visited physicians for the diagnosis and treatment of infertility during this time period. The demand for sophisticated diagnosis and treatment has also increased.

The fertility center at the University of Utah has an excellent program to meet the increased demand for infertility services as well as sophisticated diagnosis and treatment methods. The center is staffed with senior level professionals who have worked together as a cohesive team for many years. They have extensive training and experience in all levels of fertility. All reasonable infertility treatments are available.

In vitro fertilization [IVF] and gamete infrafallopian transfer [GIFT] are two methods used by the center for couples who are not able to conceive using standard treatments of infertility. Embryo cryopreservation is available in association with these procedures to store for future use the excess embryos that exist after these procedures.

A report has been published by the House of Representatives Committee on Small Business dealing with consumer protection issues involving IVF. Included in the report is a survey of infertility centers throughout the Nation. The rate of success for IVF at the fertility center at the University of Utah is twice the national average. Other treatment success rates also ranked above the national average.

Even with the high technological procedures that the center offers to treat infertility, the staff is still committed to provide personal contact with the client. Sensitive issues sur-

rounding infertility problems are addressed in a caring and realistic way.

The center has taken the lead in developing thoughtful and detailed consent forms that address legal and ethical issues. These forms are reviewed by couples in consultation with the staff before any procedures are initiated.

In addition, the center is on the cutting edge of laser work associated with infertility, has the country's largest sperm bank, is the regional center for sperm storage, manages other fertility programs in the country, has developed a quality control program for fertility work done in labs, and has a training program for laboratory technicians. The center offers these services at a cost that is less than many other clinics in the country.

I want to acknoweldge the invaluable services that are provided by the fertility center at the University of Utah. The center provides a level of care and services that can serve as a model to the rest of the Nation.

## REGARDING OPERATION SMILE INTERNATIONAL, NORFOLK, VA

Mr. WARNER. Mr. President, it is with great pleasure that I pay tribute to Operation Smile International and its network of volunteers that extends throughout the world. Thanks to the efforts of more than 1,000 volunteer physicians, nurses and other health care professionals, over 3,400 needy young people in developing countries have received life changing reconstructive surgery in the past 7 years.

Founded in 1982, by Dr. Bill Magee and his wife Kathy, the Norfolk, Virginia-based nonprofit organization has grown to encompass chapters and support groups in the United States, Europe and developing countries. Across the world, 12,000 health care, education, business, and civic professionals donated their time and talents to promote peace and progress through the face of a child. Volunteers from 70 cities and 6 countries come together to work toward a common goal of restoring dignity to the disfigured.

Operation Smile International currently has programs in the Philippines, Vietnam, Colombia, Kenya, Liberia, and Ghana. The organization has been invited to work in 11 countries. Operation Smile International's projects include medical missions, medical research, medical educational programs and exchanges in the United States, and the International Youth Program.

During the 2-week medical missions, Operation Smile volunteers work hand-in-hand with their host country counterparts to provide specialized medical and surgical care to needy children and their families. Teams include pediatricians, dentists, dental hygienists, and therapists who provide overall medical care to Operation Smile patients. Operation Smile teams treat children with cleft lips and palates, club feet, burn scars, facial tumors, and urologic problems.

A simple 45-minute procedure to repair a cleft lip brings about unmeasurable results. As a child's life is transformed from one of ostracism and isolation to one of health and productivity, the entire community is touched.

Operation Smile team members serve as "ambassadors" as well as healers. In developing countries, they have met with and been endorsed by several heads of State, including Corazon Aquino of the Philippines, Samuel K. Doe of Liberia, and J.J. Rawlings of Ghana.

Operation Smile International was honored by President Ronald Reagan in 1988 as a recipient of the Presidential Award for Excellence in private sector initiatives.

Throughout the powerful vehicle of a face of a child, Operation Smile International mobilizes volunteers in developing countries to reach out to the needy, thereby celebrating the humanitarian ethic, encouraging volunteerism, rejuvenating the private sector initiative, and promoting peace throughout the world.

## AIDS UPDATE

Mr. CRANSTON. Mr. President, according to the Centers for Disease Control, as of October 31, 1989, 112,241 Americans have been diagnosed with AIDS; 66,493 Americans have died from AIDS; and 45,748 Americans are currently living with AIDS.

Mr. President, 3,074 more Americans have developed AIDS and 2,657 Americans have died from this horrible disease since I noted these statistics last month.

Mr. President, when the Congress reconvenes next year, we will be starting a new decade—the last decade of this century. The 1980's brought the arrival of a new and deadly disease to this country and, indeed, the world. As more and more people fell ill to AIDS, we struggled to make sure that all available resources were being applied to fight the insidious HIV virus.

Because of this epidemic, we have had to confront many difficult issues—the inadequacy of our health care system, the slow pace of developing and testing experimental therapies, and discrimination, to name a few. We have had setbacks, but we have also made important strides. The entire research and regulatory mechanism for testing and approving experimental drugs is undergoing significant changes. We are on the verge of passing sweeping antidiscrimination legislation for all people with disabilities, including people with AIDS. And, we have begun to address the issue of ensuring every individual with AIDS has access to needed health care services and treatments.

Mr. President, the 1990's will present many new challenges with regard to AIDS. It is my fervent hope that we will bring an end to AIDS in the 1990's, not just here in America, but throughout the world. I look forward to the new year and the new decade with that goal in mind.

## SUPERCONDUCTIVITY RESEARCH

Mr. BUMPERS. Mr. President, the Department of Defense appropriations bill that the Senate recently approved contained an extra $9.6 million over the President's budget for Superconductor Programs within the Defense Advanced Research Projects Agency [DARPA].

This additional funding should serve notice to the private sector that the Federal Government continues to have a serious interest in advancing the scope of applications using current technology and in realizing the promise of high-temperature superconductivity materials. In January of this year, the Committee to Advise the President on High Temperature Superconductivity issued a report concluding that we need to improve our development of superconductivity technologies, relative to Japan, to "maintain a lead in science and to develop the technologies required for commercial applications."

Mr. President, we can only hope to achieve and maintain a lead in technology if the Federal Government offers leadership and enters into research and development partnerships with the private sector and with the universities. The Japanese and the Europeans are already spending heavily on research in this key technology for the 21st century. We must press forward as vigorously as we can in this vital area.

Superconductivity research is an area where entrepreneurist effort and expertise will be critical. The technology is in its infancy and is slated for rapid growth. We must do all we can to let American scientific genius, and American economic genius, work together to cultivate this promising technology so that it will bear a rich harvest for all Americans.

Of all the areas of scientific endeavor now underway in world, superconductivity research, especially high temperature superconductivity research, is one of the most exciting, with potentially huge economic benefits. There is no aspect of late 20th century Western civilization that would not be propoundly changed by breakthroughs in this area. In addition, there is good and useful science

itself to be performed that will add to our understanding of this world we live in. The research is useful for its own sake. The economic benefits are a decidedly important plus.

I am pleased that the Appropriations Conference Committee of the House and Senate agreed to provide these extra funds in the Defense appropriations bill. It is my understanding that this additional funding is expected to encourage entrepreneural efforts to broaden the base of applications with the development of high temperature superconductivity thin film electronics such as Josephson junction devices.

Mr. President, I hope that DARPA would exploit important recent research contributions of the University of Arkansas and the University of Houston in their Superconductivity Program. As you can imagine, I am very proud, as are all Arkansans, of the major advances in superconductivity research that have been made at the University of Arkansas under the fine leadership of Dr. Allen Hermann and Dr. Zhengzhi Sheng and their fine staff of scientists and students.

At the same time, I am encouraged by the programs underway at the University of Colorado at Boulder, the University of South Carolina, the National Weapons Laboratories, the National Institute of Science and Technology, and by the many initiatives underway in the private sector. Such a broad-based effort augurs well for the development of this important technology.

Mr. DECONCINI. If the Senator from Arkansas would yield.

Mr. BUMPERS. I would be pleased to yield to my colleague from Arizona.

Mr. DECONCINI. I would like to associate myself with my distinguished colleague's comments on this issue. I am very pleased that the conferees on the fiscal year 1990 Defense appropriations bill wisely decided to increase DARPA's budget for Superconductivity Programs.

There is considerable interest in my State of Arizona—both in the private sector as well as at institutions of higher learning—in this research and its applicability to the commercial sector. As you will recall, Arizona has had a deep interest in superconductivity, as evidenced by the State's being selected as one of the finalists for the superconducting super collider.

I applaud my friend's interest in an action on this issue. I look forward to working with him and others on this issue in the future.

Mr. BUMPERS. I thank my distinguished colleague for his support and interest.

Mr. President, I would like to commend our distinguished chairman of the Defense Appropriations Subcommittee, Senator INOUYE, and the distinguished ranking minority member, Senator STEVENS, for their efforts in resolving this matter with the House. I also want to extend recognition to the subcommittee staff, who worked so hard in sorting our the committee's many competing priorities on this bill.

## NATIONAL VETERANS DAY, BIRMINGHAM, AL

Mr. HEFLIN. Mr. President, during the Sunday session of the U.S. Senate, November 19, 1989, I spoke about the outstanding celebration of Veterans Day in Birmingham. As a part of my speech I had inserted in the CONGRESSIONAL RECORD the outstanding speech of Vice Adm. Roger Bacon. I had hoped to also put in the RECORD the introduction of Admiral Bacon given by Rear Adm. John T. Natter, USNR. I had asked Admiral Natter to send me a copy of this introductory speech. Unfortunately, it had not arrived in my office at that time and since I thought the Sunday session might be the last day of the 1989 session, I went ahead and made my speech about Veterans Day. I have since received it. So, I would like for his introduction now to be made part of the RECORD. Admiral Bacon's address appears on pages 30125 and 30126 of the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

INTRODUCTION OF VICE ADMIRAL ROGER F. BACON, USN, BY REAR ADMIRAL JOHN T. NATTER, USNR, COMMANDER, NAVAL RESERVE READINESS COMMAND REGION 10, NEW ORLEANS, WORLD PEACE LUNCHEON, NATIONAL VETERAN'S DAY ACTIVITIES, BIRMINGHAM, AL, NOVEMBER 11, 1989

INTRODUCTION

Mr. Chairman, distinguished guests. It is a great honor to introduce our distinguished guest today. When I was asked to introduce Vice Admiral Bacon, my thoughts went back to a meeting which was held 6 to 8 months ago with the Military Affairs Committee of the Chamber of Commerce, City of Birmingham. At that meeting, Col. Bill Voigt mentioned that since this was the Navy year, we would be expected to bring in a "Big Gun". The meeting continued and at the end, as I was leaving, Bill placed his hand on my shoulder and stated "Jack, bring home the Bacon". Little did he know that he would be such a prophet.

While doing research on the name Bacon, I came upon Roger Bacon, probably the most learned man of his day during the 13th century. He was a noted English scientist, invented gunpowder, and was the manufacturer of the magnifying glass. When I asked Admiral Bacon if this particular Roger Bacon was a descendant, he stated that he was not sure, but that he would certainly take the credit.

Vice Admiral Roger F. Bacon was born in San Diego, California and raised in the State of Washington. He was graduated from the United States Naval Academy in 1959 and holds a master's degree in Computer Science, and has completed the National and International Security Course at Harvard University.

Vice Admiral Bacon commenced his Naval career as a destroyer sailor serving aboard USS ISHERWOOD (DD 520). Following his tour aboard ISHERWOOD, he attended submarine school and nuclear prototype training, then reported aboard USS HALIBUT (SSGN 587) a nuclear missile submarine where he participated in five missile patrols. His next assignments were aboard USS KAMEHAMEHA (SSBN 642), a ballistic missile submarine. He then returned as executive officer aboard USS HALIBUT. He then commenced his many commands which are legendary. First Admiral Bacon commanded USS FLASHER (SSN 613), a nuclear attack submarine, then USS PATRICK HENRY (SSBN 599), a ballistic missile nuclear submarine, then the USS HUNLEY (AS 31), a submarine tender homeported on the island of Guam.

Vice Admiral Bacon then served as Commander, Submarine Squadron One, Pearl Harbor, then he had to go to Washington. Everyone has to go to Washington at some time in their career, and have their turn in the barrel. While in Washington, he served as Director, Strategic, and Theatre Nuclear Warfare Division and as Assistant Deputy Chief of Naval Operations for Plans, Policy, and Operations.

Having enough of Washington, he received orders as Commander, Submarine Group EIGHT, Commander Submarines Mediterranean, Commander Submarine Force Sixth Fleet, and Commander Area Anti-Submarine Warfare Force Sixth Fleet. In 1988, Vice Admiral Bacon, assumed his present duties as Commander Submarine Force U.S. Atlantic Fleet. He is dual hatted as Commander, Submarines Allied Command Atlantic, a North Atlantic Treaty Organization Post.

As you now know, Vice Admiral Bacon has experienced a great deal of sea time, approximating 20 of his 30 years of active duty. He left behind his lovely wife to raise the family, and she is with us today. Ms. Joan Darby of Walnut Creek, California. Joan, will you please stand and be recognized. Joan mentioned to me that Walnut Creek, California may be named after Walnut Creek, Alabama. All of you know that Walnut Creek, Alabama is between Coopers and Verbena in Chilton County. Vice Admiral and Mrs. Bacon have two children, Roger and Jennifer. Vice Admiral Bacon comes from a rich Navy tradition. His father, the late Rear Admiral Barton E. Bacon, UNS (Ret.), commanded USS PICKEREL in the Pacific in World War II. His youngest brother, Commander Daniel K. Bacon, USN (Ret.), commanded USS PICKDOCK (SSN 621), a nuclear submarine, and his twin brother, Captain Barton E. Bacon, USN, commanded USS TROUT (SS 565) and USS CLEVELAND (LDP 7). It is a good thing that the Bacons ran out of sons, because the Navy was running out of ships.

Ladies and Gentlemen, please join me in extending a very cordial Alabama welcome to Vice Admiral Roger F. Bacon, USN, Commander, Submarine Force, U.S. Atlantic Fleet.

## PUBLIC NOT GETTING FULL STORY ON PANAMA

Mr. HELMS. Mr. President, on October 7, 1989, in his appearance at an Eagle Forum conference, Capt. G. Russell Evans, USCG, retired, delivered a speech in which he charged that the American people have not received, and are not receiving, the full

story regarding the giveaway of the Panama Canal.

I have followed the work of Captain Evans for many years—especially since the Senate give its advice and consent to ratification of the Panama Canal Treaties. At the time, Captain Evans was one of very few who had the courage to condemn this ill-conceived deal.

But, Mr. President, the United States is now seeing the fruits of its bad judgment. The proponents of these treaties repeatedly claimed that if the Senate would give its advice and consent to ratification, the countries in Latin America would respect the United States, and democracy and peace would come to the region.

Clearly, precisely the opposite has happened. Panama is now ruled by the biggest drug dealer in the Western Hemisphere. I submit that in light of recent events in Latin America, the Senate, and indeed the whole country, should have heeded the words of men like Captain Evans.

Mr. President, I ask unanimous consent that the speech given by Captain Evans on October 7, 1989, be printed in the RECORD at the conclusion of my remarks.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

PUBLIC NOT GETTING FULL STORY ON PANAMA
(By G. Russell Evans)

Every upheaval in Panama, large or small, produces the same media upheaval with the same "experts" and with the same old tired arguments: no meddling, no intervention, no military pressure, and above all, we are "honor bound" to strict observance of the Panama Treaties.

We hear these exhortations, or similar ones, from Sol Linowitz, Jimmy Carter, Elliot Abrams, Ambler Moss, and from columnists and editorial writers galore. It is unfair not to seek out the views of the other side, prominent people who are readily available and well informed on the Panama issue and the Treaties, for example: Professor of Law Charles E. Rice of Notre Dame University, Admiral Thomas H. Moorer USN (Ret.), Dr. James McClellan, Governor Meldrim Thomson, and Attorney Samuel J. Stoll, to name a few.

Dr. Rice could tell the country that the "U.S. Senate should investigate the process by which its consent to the canal treaties was obtained. The Iran-Contra scandal was of considerable less significance than this." Admiral Moorer, former Chairman of the Joint Chiefs of Staff (1970-74), has many times called the Canal the most strategic waterway in the world, more so now than ten years ago, and he added, it doesn't take a Washington Field Marshal to see what these nontreaties are doing to us.

Dr. McClellan, a foremost constitutional scholar and President of the Center for Judicial Studies, has long warned congressional leaders of the unconstitutional procedures used in "ratifying" the Treaties, often reminding them, "An Act of Congress supersedes a treaty." In like manner, former Governor Meldrim Thomson of New Hampshire has spoken and written extensively about President Carter's violations of Articles II, IV and VI of the U.S. Constitution in "ratifying" Treaties and "their great cost to American taxpayers." Attorney Sam Stoll is the author of "Canalgate: A Panama Canal Brief for the American People" (Policy Press), a prodigious collection of original source material to prove illegal Treaties, chapter and verse in toto.

All these are distinguished scholars of the Panama issue. Why are they not consulted and interviewed? Instead, here's what we get:

Sol Linowitz, a Treaties negotiator, is a top media star and he continues to mislead and paper over problems just as he did with the Treaties. To abrogate the Treaties, he says, would remove "the one legal justification we have for remaining in Panama." Not true. The original 1903 Treaty is still legal because the House of Representatives never voted to abrogate it as a "supreme Law of the Land," as required by Article VI of the U.S. Constitution. Look it up!

Mr. Linowitz has a vested interest in the 1977 Treaties, both as a negotiator and because of his Inter-American Dialogue, a group of internationalists long obsessed with surrendering the Canal to Panama. In addition, he has a knack for avoiding background investigations: He ducked one in 1962 when appointed to the U.S. Advisory Committee on International Organizations along with nine others, some Alger Hiss proteges, according to reports. He ducked another in 1977 when President Carter appointed him "temporarily" as a Treaties negotiator, thereby avoiding public disclosure of his affiliation with the Marine Midland Bank to which Panama owed $115 million in loans, obviously a conflict of interest.

So, when Sol Linowitz says, keep out of Panama, people should know where he comes from—and, God knows, someone should tell the people about Article IV of the Neutrality Treaty which requires the United States to "protect and defend the Panama Canal." Manuel Antonio Noriega's Defense Forces (PDF) have violated this treaty provision 1,153 times over the past 20 months by harassing personnel of the Canal operating agency, the Panama Canal Commission.

Former President Carter seems to avail himself of every media opportunity to continue to mislead. When he told the world after the aborted May 7th Panama elections that the U.S. is "honor bound" to observe the Panama Treaties, one can only wonder about the Carter "honor" in promising voters in 1976, "I'll never give up control of the Panama Canal," and then doing the exact opposite.

Elliot Abrams, former Assistant Secretary of State, would "freeze the treaties" until Noriega is gone in order to avoid a Noriega man as Canal Administrator on January 1, 1990. Freeze? On what authority? There is none. If we're to go by the rules that everyone's so hyped on, let's go by the rules! Let's abrogate the Treaties as illegal under the U.S. Constitution (Articles II, IV and VI), a Panama's Constitution (Articles 163 and 274) and the Vienna Convention on the Law of Treaties 1969 (Article 20.2). These violations are documented in detail in the book, "The Panama Canal Treaties Swindle: Consent to Disaster" (Signal Books) and in "Canalgate." Look them up!

Then, let's hear more about a "firm and fair" solution and less about a "kind and gentle" surrender. Let's renegotiate Treaties to provide a permanent Panama Canal Commission with U.S. chairmanship and with Panama as a respected participating junior partner.

Ambler Moss, another of the media "regulars" and Linowitz pal and Treaties negotiator, was a Carter-appointed ambassador to Panama, apparently a reward for his part in getting "ratified" Treaties. When Mr. Moss says, "More diplomacy, more negotiating," he's out of ideas and has, in effect, become a media prop.

Both Moss and Linowitz are splitting hairs when they complain of U.S. rejection of Noriega's nominee for Canal Administrator without even letting the name come up officially. A real complaint, but one you'll never hear from Moss and Linowitz, is the U.S. double standard: U.S. acceptance of the illegitimate government of dictator Omar Torrijos in 1977 in order to get "ratified" Treaties, and U.S. non-acceptance of the illegitimate government of dictator Manuel Noriega in 1989 in order to reject Panama's nominee as Canal Administrator. Think about it!

One other point: Even if a Panamanian does eventually become Canal Administrator, Panama can still have only four of the nine members of the Panama Canal Commission, according to Article II 1. (a) of the Panama Canal Treaty (page 14).

Editors, reporters, columnists, talk show hosts, producers and directors: Be fair. Be American. Listen to both sides of the Panama Canal issue.

## A TEAM "B" FOR UNITED STATES/JAPAN POLICY REVIEW LONG OVERDUE

Mr. HELMS. Mr. President, the December issue of the Foreign Service Journal includes an article entitled, "After FSX—A New Approach to U.S.-Japan Relations." I am convinced that this article may be viewed as historically significant when historians of the 21st century review the trade policy of the United States vis-a-vis Japan in the late 1980's and 1990's. It is my hope that the administration will read this article carefully and give it serious consideration.

Mr. President, the author of this article is Mr. Kevin L. Kerns, who was recently a Pearson fellow on the U.S. Senate Committee on Foreign Relations proposes that the President of the United States should create a "Team B" which would be a "specially constituted, action-oriented policy team of alternative thinkers tasked to redefine U.S. policy toward our most important partnership."

The author's argument is, Mr. President, that the current political, economic, and military relationship between the United States and Japan needs to be fundamentally reexamined. "Team B" is the mechanism by which the President can get the sound advice on Japan that he needs.

Mr. President, as many of my colleagues may agree, there is an increasing concern among Americans that Japan is gaining economic ascendency over the United States. Further, there is concern that U.S. Government policies are contributing greatly to this development.

Part of the problem, Mr. President, is that the policymakers of the immediate postwar era constructed a totally

artificial environment in which Japan could recover and grow. That relationship with Japan is today outmoded. Another part of the problem is that our policy vis-a-vis Japan is in the hands of Japan specialists who too often downplay United States interests to keep the relationship harmonious. As Kevin Kearns explains: "Now it is time for a new set of policies which respond to the current realities."

Mr. President, I urge strongly that my colleagues read this article and I ask unanimous consent that the article, "After FSX—A New Approach to U.S.-Japan Relations," from the December 1989 issue of the Foreign Service Journal, be printed in the RECORD at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Foreign Service Journal, December 1989]

AFTER FSX—A NEW APPROACH TO U.S.-JAPAN RELATIONS

(By Kevin L. Kearns)

"The U.S.-Japan relationship is the most important bilateral relationship in the world, bar none."

Ambassador Mike Mansfield made the above statement so often and it has been quoted so many times that it has become part of our collective political consciousness. Mansfield's observation is not merely a good slogan; it is true. However, that relationship is in serious trouble today. The two nations are on a collision course, headed for a continuing series of confrontations on trade, foreign investment, technology transfer, foreign aid, industrial competition, defense, and a number of other issues. Both countries want to avoid the impending battles, but neither seems to know how.

The debate that took place in Congress and the media this year over the administration's proposal to transfer F-16 technology to Japan to form the basis of a new Japanese aircraft called the FSX shook the foundations of the relationship. It was also emblematic of the larger troubles that the relationship faces. The intensity and breadth of the opposition took proponents (and even critics) of the deal by surprise. Never before had a proposal to transfer defense technology to an ally come under such widespread scrutiny.

At least temporarily, the dust is settling. The administration won close floor votes in Congress in May and again in September which permit the program to go forward. However, the debate, as painful as it was, should not be allowed to die down before the United States faces up to its full implications. The many legitimate questions about the nature and future of the U.S.-Japan relationship raised during the FSX controversy have not been dealt with satisfactorily by our policy process. If they are not faced squarely now, they lie in wait only to erupt again during the next controversy. It is unfair both to ourselves and to the Japanese not to address the underlying problems.

A NEW NATIONAL EFFORT

The United States must make a new effort on the national level to formulate a coherent policy toward Japan, one that covers the many facets of the relationship, will be uniformly implemented by the various elements of the U.S. government, and will not leave the Japanese guessing, what demand the Americans are going to make next.

President Bush, drawing on a concept that he courageously introduced when he headed the CIA, should set up a national "Team B" approach on Japan, that is, a specially constituted, action-oriented policy team of alternative thinkers tasked to redefine U.S. policy toward our most important partnership.

When President Bush originally spearheaded the Team B concept, the task was to rethink our analysis of the Soviet strategic threat. There are significant parallels between the situation that existed with regard to our thinking about the Soviet Union then and that which exists today about Japan. For 25 years a single point of view had dominated U.S. thinking about Soviet intentions and objectives in strategic forces. A coalition of scientists and government officials had come to the conclusion that since nuclear war was unwinnable, no rational actor would build up its nuclear arsenal beyond the point of deterrence. The Soviets, however, began with a different set of assumptions and reached a different set of conclusions, which they also acted upon by expanding their strategic forces beyond the point of mere deterrence.

In spite of accumulating evidence to the contrary, the deterrence coalition controlled our policy process rigidly. They shut out alternative points of view and ostracized their opponents. All the while, they maintained a special dialogue with their counterparts in the Soviet Union, who were quick to reassure them about Soviet behavior seemingly inconsistent with the Americans' beliefs. In point of fact, the Soviets were manipulating them.

Team B itself grew out of an increasing concern on the part of the President's Foreign Intelligence Advisory Board (PFIAB) that the National Intelligence Estimates it was receiving the from CIA drew incorrect conclusions from the available data and misread Soviet intentions. When George Bush took over the CIA, he changed the way business was being done by agreeing to the PFIAB's suggestion to get an alternative view of Soviet capabilities and intentions, and by setting up Team B in June 1976.

Team B sat only for about three months, yet its report broke the hold of the deterrence coalition on the policy process and brought new thinking to bear on the Soviets. Its opponents were not banished forever and the debate continues to this day, as is appropriate in a free society. The very existence of Team B created a political firestorm, with allegations that PFIAB and others were manipulating the intelligence process for their own political purposes. In the end, however, the methodology of having Team B challenge the prevailing thinking came to be generally accepted as a valid analytical approach.

The objective of today's Team B should be to take a critical look at our relationship with Japan. Unlike its predecessor, which was limited to reviewing intelligence thinking alone, it requires a broader mandate. It needs to root around in all the government agencies that have significant business with Japan, and to focus not merely on the policy (or lack of it) but also the process by which a particular agency arrives at policy. Team B's goal should be not just to develop an integrated game plan for dealing with the Japanese across the board, but also to ensure that a credible and effective policy formulation process on Japan is created in the U.S. government.

Only a broadly based effort like Team B can extricate us from the current policy muddle, caused in no small degree by the fact that U.S. thinking about Japan in general and the U.S. government's policy process in particular is carefully guarded by a coalition of Japan experts whose ideas have held sway for most of the post-war period. This collection of Japan insiders is known colloquially as the "Chrysanthemum Club" (after the floral symbol of the Japanese imperial household) or "Japan Club," because they are generally in the position of being defenders of Japanese points of view and policies. The formulation of an alternative and comprehensive set of policies by Team B will break the hold that the Chrysanthemum Club has had on U.S. government thinking about Japan and provide the president and other senior policymakers, who inherited the present situation, with much needed alternatives to our current ineffective policies.

When Japan was an impoverished and decimated country struggling to recover from the devastating effects of World War II, there may have been a legitimate rationale for some special treatment. However, the policymakers of the time constructed a totally artificial environment in which Japan could recover and grow. The problem today is that the conditions that necessitated special treatment have long since gone. The post-war period is at a close, both with the emergence of Japan as an economic superpower and the recoalesence of Western Europe. U.S. post-war foreign policy has proved very successful. Now it is time for a new set of policies which respond to the current realities. But both the Japanese and the Chrysanthemum Club have grown so used to operating within the confines of the special environment that they are not even cognizant of its artificality, a situation which has led to unrealistic analyses and expectations.

THE FSX DEAL

The Japanese and Chrysanthemum Club's perceptions of FSX are a case in point. The heat generated by the deal caught the Japanese by surprise and stung them deeply. The Japanese are clearly unhappy over the FSX debate and feel betrayed by the Chrysanthemum Club, which they perceive as having mishandled the FSX process. They had been assured that once the government-to-government Memorandum of Understanding (MOU) on FSX was signed, it would sail through Congress. (The FSX program had to be reviewed by the Congress since it surpassed certain statutory thresholds for overseas arms sales.) The MOU was, after all, a long, tedious, and technical document. It also was classified (at the Japanese government's request). So there were few people who could examine the deal closely. There was, therefore, little likelihood that the Congress or the press would pay much attention.

However, the Chrysanthemum Club, which up until the congressional notification process had skillfully defused tensions associated with the deal, misread the situation entirely. They had assumed that they would be able to handle the program strictly in their own channels, as they had so many other deals in the past. It was a fair assumption based on past experience, but, much to their chagrin, it proved dead wrong.

A small number of senators had paid attention. Troubled by what they saw when briefed on the progress of the MOU negotiations, this small circle set off the alarm inside Congress. As details of the congressional concern became public, many in the media also suggested that the Japanese refusal to buy outright a superior American fighter once again flouted free trade principles and that the transfer of F-16 technology was a massive giveaway.

Politicians, reporters, editorial writers, and public interest and industry groups feared that the FSX was a critical element in the long-standing Japanese government/industry plan to form a viable Japanese aircraft industry that would be a formidable competitor against the world-leading U.S. aerospace industry (our one remaining high-tech industry that generates trade surpluses in its sector). Intransigence on the part of Japanese government and industry during the FSX negotiations and constant backpeddling by the U.S. government only heightened the onlookers' suspicions.

Another key element was the fact that the FSX deal was taking place against a backdrop of Japan's intractable trade surpluses with the U.S. and of increasing Japanese inroads into the U.S. economy. (One startling example: the Japanese are now buying an estimated 40 percent of the start-up ventures in Silicon Valley.) Ultimately, the FSX deal fed into a galloping sense of uneasiness in this coutnry about Japanese capabilities and intentions.

Thus it was that FSX generated a national debate, one that was generally confined to the terms of the deal but which also spilled over into questioning the fundamental terms of the Japan-U.S. relationship. While its proponents had claimed that FSX would open a new era of defense industrial cooperation between the two countries, and its detractors saw it as the latest in a series of giveaways of critical technologies, the FSX became more than either had bargained for: it became a watershed in relations between the United States and Japan.

Actually that description may prove too large a claim, because right now it is only a half truth. FSX has certainly changed the way Japan will handle and approach the United States in the future, but it seems hardly to have changed the general outlook in Washington. The Departments of Commerce and Defense have agreed to cooperate in some narrow areas in defense-related MOUs, but that is it. Unfortunately, the problems associated with FSX aren't limited to the defense aerospace sector alone. And as long as the Chrysanthemum Club continues to skew the policy process in our government and paid Japanese lobbyists and academics-for-hire continue to influence disproportionately the treatment of Japan in the public realm, the United States will continue its approach to Japan in the same tired, self-defeating way.

The response to FSX in Japan is predictable: Japanese officials do not intend to be put in such a position again, In their thinking and planning, Japanese government and industry are seeking to better anticipate potential U.S. opposition and neutralize it before proceeding. For example, they apparently intend to reduce further their 40-year dependence on the Pentagon wherever possible, alleging that the United States is an unreliable partner. Keidanren, the powerful Japanese industrial federation, has publicly advocated, on behalf of its defense manufacturing sector, a significant increase in the defense R&D budget. (However, this position merely accelerates the push for independence already existing, but with the added benefit of being able to blame it on the FSX.) The former close comradery between the Department of Defense and the Japan Defense Agency—in part the result of years of one way technology transfers—has been replaced by frostiness. In addition, Japan has strengthened its resolve not to bend in the face of U.S. pressure as new MOUs are negotiated. Consequently, unless U.S. officials and industry organize to respond to the new challange, it will be even more difficult to conclude equitable arrangements than it was with the FSX.

U.S. POLICY DISARRAY

On the U.S. side in the post-FSX era, however, there is disarray in policy, not just in terms of the defense relationship, but across the board. Confusion, not cohesion, appears to be the hallmark of U.S. policy toward Japan. Commerce Secretary Robert Mosbacher, one of the few in the administration who is trying to address the policy vacuum, seems to be shut down by the defacto alliance between the free-traders and Chrysanthemum Club every time he suggests a new initiative. U.S. Trade Representative Carla Hills took a soft line on a recent trip to Tokyo, puzzling everyone—the Japanese, the media, and other U.S. officials—about the current U.S. approach to trade problems and access to the Japanese market. In spite of cooperation pledged in the wake of FSX, Defense and Commerce bureaucrats continue to fight over a range of issues. The little-known, Treasury Department-led Committee on Foreign Investment in the U.S. (CFIUS) rushes through dozens of approvals of foreign takeovers of some of our best assets with few guidelines and seemingly no second thoughts.

Thus not only are we not hard at work on a credible new way to approach the Japanese, few in government, academia, or the media see the need for one. The widespread view is that the executive branch does not have a major problem with the Japanese, but only with the legislative branch. Many believe that the FSX controversy was generated by domestic political considerations on the Hill and by a few trade hawks who oppose growing Japanese economic power.

However, such a conclusion is not only wrong but dangerous. While Washington is absorbed by literally hundreds of foreign policy issues, the Japanese are evolving and implementing new long-term strategies for dealing with the United States. They plan while we are distracted. We need new and more successful ways of dealing with Japan across the board if a cooperative relationship is to survive intact.

The policies which have guided U.S.-Japan relations since the end of the war have been shown by the persistent trade deficits and giveaways like the FSX to be bankrupt and incapable of application to changing circumstances. For example, while the U.S. trade deficit with Europe dropped significantly with the devaluation of the dollar over the last three years, the trade deficit with Japan remained steady. This phenomenon had led some analysts on Capitol Hill and elsewhere to conclude that market forces are essentially irrelevant to the U.S.-Japan trade problem. However, rather than replace wornout policies with new ones, the Chrysanthemum Club doggedly continues down the same old path.

THE UNFORTUNATE ALLIANCE

"The U.S. must learn to grow lesser as Japan grows greater." This quote from a Chrysanthemum Club member encapsulates the defeatist philosophy at the heart of their approach to the U.S.-Japan problem. Chrysanthemum Club members seem to see their function not as representing U.S. interests but as balancing the competing demands of both sides. For them a smooth relationship with Japan is an end in itself. In an age of Japanese ascendency, they resignedly view their role as one of trying to manage America's decline, to make increasing Japanese control of the U.S. economy as painless a process as possible for our institutions and the American people.

The Club is aided in its mission by an unholy alliance with the free-traders. Both, somehow fail to see the trail from predatory Japanese policies, to lost markets, to destroyed industries, to large outflows of wealth in the form of trade deficits, and finally to the resultant decline of American power and influence. They are not troubled because they see a global economy as a good, and the nation-state as an atavistic political and economic organism. They may not articulate their world view in quite these terms, but it is implicit in their handling of U.S.-Japan relations.

An additional problem is the hubris that exists in the country today about the U.S. position in the world and in history. The hubris stems from the fact that so many refuse to even consider whether America is in a state of decline and, therefore, lack the will and conviction to ensure continued U.S. economic and technological leadership. The reaction to Paul Kennedy's provocative book "The Rise and Fall of Great Powers" was telling in this regard. Although Kennedy's thesis may be faulted for being overly deterministic (i.e. that great powers cannot reverse their ultimate falls through corrective actions), the reaction of many in the policy community was simply denial; it can't be happening to us, we're America.

It is a curious misfortune that the United States has been so rich for so long, and thus so used to being rich, that the connection between money and power eludes so many Americans today. Instead, they believe that America's strength comes solely from its moral vision and the freedom and openness of American society. The implicit thinking is that when a country has moral vision, it will command attention regardless of its relative position and wealth. Unfortunately, money, not moral vision, is at the root of power in international politics. We didn't defeat Japan and Germany in World War II because we had superior morality on our side (which we did), but because we had a far superior industrial plant, which was able to sustain our effort until we were victorious.

Today, while we we transferring our wealth to the Japanese and other at an unprecedented rate, neither the Chrysanthemum Club, the free-traders, nor others see much of a problem. In spite of the rise of Japan, they believe we Americans will retain world leadership because we have the superior moral vision and experience to apply to world problems. However, we will allow the Japanese to supply a lot of the cash to solve the problems. (No wonder the Japanese chafe.)

Many in Britain also thought this way earlier in this century as their American cousins rose to world power status. But it didn't work then, with two countries that had many common points of view and cultural similarities; and it certainly won't work now with the very dissimilar American and Japanese cultures. If the United States

can't maintain the lead through its economic and technical might, then we'd better get ready to live with the Japanese agenda, which is quite different from our own.

TOWARD A REAL POLICY

What is needed right now, today, is a national effort to come to grips with this defeatist viewpoint and the larger Japan problem. We must counter the inordinate influence that various entrenched groups have over policy toward Japan and bring in fresh ideas and new policies. Efforts of individuals or think tanks toward this end are an essential part of the process but are not enough. A more sustained and serious national effort must be undertaken. This is what Team B would be all about.

Since the conventional wisdom on Japan holds sway in many executive branch bureaucracies and to a large extent in academia and the media, to staff Team B the president should draw solely on those with alternative points of view both within the government (although there aren't many) and without, particularly including the so-called trade hawks. Their instructions should be to rethink radically our relationship with Japan and to come up with a comprehensive set of proposals for dealing with the allegedly intractable problems with the Japanese. The goal should be to settle these problems in a way that secures long-term U.S. national interests, even if the relationship has to be redefined to do so.

After Team B's recommendations are developed, then let a debate ensue. The Chrysanthemum Club and the free-traders can have their cut at the proposals at that time. Putting members of either group on the B panel would subvert its mission and defeat its very purpose. It is important that Team B not be run under the auspices of the National Security Council or any other government agency. Team B must be independent of the existing bureaucratic structure, which is so heavily influenced by stale thinking about Japan, and report through its leadership directly to the president.

The president alone can act on this issue. Only he can allow Team B to get inside the various government agencies and examine their thinking in detail. In addition, it is appropriate that the president himself act to counter the gowing sense of national frustration with this issue. Polls have shown for some time that the American people feel very uneasy about encroaching Japanese dominance. And while it would be unwise to make foreign policy in response to opinion polls, nevertheless they are a useful barometer of what is on the mind of the American people. Furthermore, there can be no doubt that the Japan question is going to play an increasing role in our presidential and congressional election process.

JAPAN'S REACTION

None of this is to assume that, even if the president makes and implements a new foreign policy with respect to Japan, the Japanese are going to be so struck by the logic and forcefulness that a new, harmonious era will emerge. After all, the Japanese have been largely shielded from the give-and-take of international power politics for some time. They are deriving enormous benefit from the status quo. They spend little on defense relative to the size of their GNP, yet are protected by the American umbrella from all harm. Their production/trade machine is generating enourmous wealth for Japan, which instead of being used to better the standard of living for the Japanese people is being used to fuel the Japanese government/industry drive for industrial domination of America.

Under the current system, the Japanese can delay opening their markets (while we complain) until they can neutralize any given challenge in a particular market. Where they can't beat the competition, they buy or co-opt it. (For example, Japan can't grow enough oranges and cattle to be competitive with America's farmers in the Japanese market. When finally forced to open those markets partially to American products, as they were recently, the solution has been to move on a large scale to buy the American farms producing the products. The net result is that the Japanese markets in effect remain closed and under Japanese control.)

Japanese companies live in corporate paradise now: they have a free trader's access to the American market and mercantilist protection against foreign competition in their home market. Japanese planners see an even greater day ahead when Japanese industry dominates all the key sectors in the next century as the world technology leader. Would any nation abandon the current system which is producing such well-being, espcially in the face of demands from what they see as a corrupt and declining United States trying to bully its former client state into extending its reign as a superpower? It is not likely that the Japanese will acquiesce willingly. Any attempt to implement a newly defined relationship is certainly going to be rough sledding at first. However, if we implement sound policies and the Japanese know we are serious, the end result will be a more solid and realistic partnership.

We need the Team B approach implemented on a national level to begin to achieve an equitable distribution of burdens and benefits with Japan. The current U.S.-Japan relationship was built in an economic and political milieu that does not exist today. It cannot endure on that false foundation. It is time that we realize the stakes in the FSX program were a lot higher than whether Japan could build one military aircraft. This debate, which continues today in another form, is about our national future and the future of our relationship with Japan.

It's time for a new Team B to formulate effective policies for that future, based on sound strategic concepts, just as President Bush's original Team B defined new strategic thinking on the Soviet Union. Do we really have to fear the clash of fresh ideas with the old? Must we really behave ourselves so that the noise and heat and light of a free society openly debating critical issues don't disturb the Japanese the way the FSX debate did?

If we don't have the foresight and resolve to face this challenge squarely, then we will deserve the second-rate status to which we are rapidly sinking. Let President Bush, who demonstrated leadership and vision in granting the first Team B its charter, establish now a Team B on Japan while we still have the passion and the power to protect America's sovereignty and national interests and to achieve a balanced relationship with our Japanese partners.

## SAMUEL RAPPAPORT TRIBUTE

Mr. SPECTER. Mr. President, there are countless yardsticks against which one may measure a person for achievement and success. But the greatest of these, I believe, is charity—what one has done for his fellow man. This is the truest measure of any person. Viewed from this standpoint, Philadelphia's Samuel Rappaport is a monumental achiever.

The son of immigrant Jewish parents, Sam began his life in modest circumstances. At an early age, he learned the value of hard work and he never forgot it. He also was introduced early to great sorrow. His parents lost 14 members of their families in the Holocaust. His wife, Rita, lost 41 members of her family in this unspeakable horror.

But possessed of an unquenchable spirit, a natural talent and great energy, Samuel Rappaport worked hard and acquired wealth. He was recognized and respected as a financial investor, one who had gradually built a vast real estate empire.

Despite his considerable success, Sam never forgot his humble origins, the plight of the less fortunate or the cruel fate which had befallen his Jewish brethren. He has spent much of his life in contributing to and furthering charitable causes and in trying to strengthen the State of Israel.

From the tragedies which befell his family and his fellow Jews came a greater love for his people and for their new-found home in Israel. Over the years as he became more successful materially, Sam sought to do more and more for Israel, both personally and by inspiring others to rally to its support. Through his example, he has been able to focus worldwide attention on Israel's economic development.

Among the first in Philadelphia to purchase a $1 million Israel bond in 1982, Sam had established himself as the world's largest single investor in the Jewish state by the end of 1988. His efforts on behalf of this fledgling nation begirt by enemies have become legendary. He has shown again and again that no effort is too great if it will contribute to the State of Israel's well-being.

But Sam's charity and charitable efforts are not confined solely to Israel. Over the years, he has provided support to a huge range of charities for peoples of all faiths. He has lent support in official positions to numerous campaigns and tribute events designed to raise funds for charities and charitable institutions.

It is, therefore, fitting and appropriate that the U.S. Senate take note of the great charitable contributions of Samuel Rappaport and commend him for these successful endeavors including a major Israel bonds dinner scheduled for December 1, 1989, in Philadelphia which is projected to raise in excess of $40,000,000.

## RECOGNITION OF THANKSGIVING DAY 1989

Mr. THURMOND. Mr. President, Thursday, November 23, is Thanksgiving Day, a day to reflect and give thanks for the many blessings we have received. Thanksgiving Day 1989 is a particularly meaningful day to the residents of South Carolina, California, Alabama, New York, Puerto Rico and other areas that have recently suffered fatalities due to natural disasters. While these have been times of great suffering, it has also been a time that has shown the caring and compassion of the American people. For this we can be truly thankful.

Those who have contributed to the recovery efforts of the recent disasters are too numerous to single out. However, I would like to commend our President for the leadership he provided during these trying times. The President personally toured the devastated areas in South Carolina and California. His visit gave hope and raised spirits in my State and in California. Moreover, the President instructed his administration to do all in its power to relieve the adverse effects of these destructive forces of nature. The primary Federal disaster response agency, The Federal Emergency Management Agency [FEMA], has responded to the disaster in a gallant manner. Faced with an unprecedented number of disasters, FEMA has found their resources stretched to the limit. The officials at FEMA have diligently sought to carry out their mission with many FEMA employees working around the clock and having to spend numerous days away from their family. I would like to particularly recognize the efforts of Mr. Grant Peterson who has ably carried out his duties as the Associate Director of State and Local Programs at FEMA.

Many other Federal agencies have also contributed to the disaster relief efforts. The Small Business Administration, the Army Corps of Engineers, the Department of Justice and the Department of Transportation are among the agencies that have activated programs to help the recovery efforts. In addition, I have been pleased to work with my distinguished colleague, Senator HOLLINGS, in aggressively seeking Federal aid for South Carolina.

Mr. President, the Federal disaster efforts are designed to augment the State's emergency response. The Governors of those States that have been hit by natural disasters have responded in a prompt and effective manner. In South Carolina, Gov. Carroll Campbell has provided our State with strong leadership following the destruction of Hurricane Hugo. On September 21, 1989, Governor Campbell declared a state of emergency and ordered residents off the barrier islands. This action by the Governor has been credited with saving many lives on the South Carolina coast. The short-term and long-term recovery efforts for South Carolina are continuing. I look forward to continuing to work closely with the Governor as we rebuild our State.

Many of the unsung heroes of the recent disasters have been the local mayors, county council members, and city and county officials. I spent many days in South Carolina touring the destructed areas, and I had an opportunity to meet with many local officials. Often faced with very limited resources, these officials faced the recovery efforts with determination and optimism. Hurricane Hugo was the worst natural disaster I have witnessed in my lifetime. The local officials have been the front line in rebuilding their communities, and I commend them for their diligent service.

Mr. President, more than anything else, I have been most impressed by the outpouring of compassion by the American people. I have witnessed neighbor helping neighbor, community helping community, and employer helping employee. The day after Hurricane Hugo hit South Carolina, donations of food, clothing, and money began pouring into the State. I initiated an effort for a 2-week period to raise canned goods and funds at college football games in the Southeast. This effort resulted in donations of 6 truckloads of food and $170,000. The communities in California, Alabama, and New York have also experienced this display of good will toward one's fellowman.

Thanksgiving Day is a day to pause and reflect on the many blessings we received during the past year. The victims of the natural disasters of 1989 have learned to cherish their families and their fellowman. Just as the Pilgrims gave things to God in 1621 for the bountiful fall harvest after a dreadful winter, we too should pause to thank God for the many blessings he has bestowed upon us this past year.

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## REPEAL OF MEDICARE CATASTROPHIC COVERAGE

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3607.

The PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House further insist on its disagreement to the amendment of the Senate to the bill (H.R. 3607) entitled "An Act to repeal medicare provisions in the Medicare Catastrophic Coverage Act of 1988.".

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate recede from its amendment to H.R. 3607, the catastrophic health care bill, and that it be in order to amend the bill with the leadership amendment to be offered by Senators MITCHELL, DOLE, BENTSEN, PACKWOOD, MCCAIN, and others, and that no further amendments to the bill be in order.

The PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 1198

(Purpose: To provide for reform of the Medicare Catastrophic Coverage Act of 1988)

Mr. MITCHELL. Mr. President, I send that amendment to the desk.

The PRESIDENT pro tempore. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for himself, Mr. DOLE, Mr. BENTSEN, Mr. PACKWOOD, and Mr. MCCAIN, proposes an amendment numbered 1198.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This title may be cited as the "Medicare Catastrophic Coverage Reform Amendments of 1989".

TITLE I—PROVISIONS RELATING TO PART A OF MEDICARE PROGRAM AND SUPPLEMENTAL MEDICARE PREMIUM

SEC. 101. REVISION OF EXTENDED CARE SERVICES BENEFITS.

(a) 100 DAYS DURING EACH SPELL OF SNF CARE.—Section 1812 of the Social Security Act (42 U.S.C. 1395d) is amended—

(1) by amending paragraph (2) of subsection (a) to read as follows:

"(2)(A) post-hospital extended care services for up to 100 days during any spell of snf care, and (B) to the extent provided in subsection (f), extended care services that are not post-hospital extended care services;";

(2) by amending paragraph (1) of subsection (b) to read as follows:

"1) post-hospital extended care services furnished to the individal during a spell of snf care after such services have been furnished to the individual for 100 days during such spell, or";

(3) in subsection (e), by inserting "post-hospital" before "extended care"; and

(4) by adding at the end the following new subsection,

"(f)(1) The Secretary shall provide for coverage, under clause (B) of subsection (a)(2) of this section, of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the inclusion of such services will not result in any increase in the total of payments made under this title and will not alter the acute care nature of the benefit described in subsection (a)(2).

"(2) The Secretary may provide—

"(A) for such limitations on the scope and extent of such services described in subsection (a)(2)(B), and on the categories of indi-

viduals who may be eligible to receive such services; and

"(B) notwithstanding sections 1814, 1861(v), and 1886 for such restrictions and alternatives on the amount and methods of payment for services described in such subsection,

as may be necessary to carry out paragraph (1).".

(b) COINSURANCE.—Paragraph (3) of section 1813(a) of such Act (42 U.S.C. 1395e(a)) is amended to read as follows:

"(3) The amount payable for post-hospital extended care services furnished an individual during any spell of snf care shall be reduced by a coinsurance amount equal to one-eigth of the inpatient hospital deductible for the first period of hospitalization in a year for each day (before the 101st day) on which the individual is furnished such services after such services have been furnished to the individual for 20 days during such spell.".

(c) CONFORMING AMENDMENTS AND RETORATION OF LAW.—

(1) SPELL OF SNF CARE DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by inserting before subsection (b) the following new subsection:

"Spell of SNF Care

"(a) The term 'spell of snf care' with respect to any individual means a period of consecutive days—

"(1) beginning with the first day (not included in a previous spell of snf care) (A) on which such individual is furnished extended care services, and (B) which occurs in a month for which the individual is entitled to benefits under part A, and

"(2) ending with the close of the first period of 60 consecutive days thereafter on each of which the individual is not an inpatient of a skilled nursing facility.".

(2) CONFORMING AMENDMENTS.—(A) Except as provided in subparagraph (B)—

(i) the amendments made by subsection (d) of section 104 of the Medicare Catastrophic Coverage Act of 1988 are repealed, and

(ii) the provisions of the Social Security Act amended by such subsection shall be restored and revived as if such amendments had not been made.

(B) Subparagraph (A) shall not apply to the amendments made by paragraphs (2)(C), (2)(D), (3), (4)(A), (4)(B)(iii), (4)(B)(iv), and (7) of section 104(d) of the Medicare Catastrophic Coverage Act of 1988.

(3) ADDITIONAL CONFORMING AMENDMENT.—Title XVIII of the Social Security Act is amended by striking "spell of illness" and "spells of illness" each place either appears and inserting "spell of snf care" and "spells of snf care", respectively.

(d) EFFECTIVE DATE AND TRANSITION.—

(1) EFFECTIVE DATE.—Except as provided in this subsection, the amendments made by this section shall apply to extended care services furnished in a spell of snf care (as defined in paragraph (4)) beginning on or after January 1, 1990.

(2) TRANSITION PROVISIONS FOR POST-HOSPITAL EXTENDED CARE SERVICES.—In applying subsections (a)(2)(A) and (b)(1) of section 1812 and section 1813(a)(3) of the Social Security Act, as restored by this section, with respect to extended care services provided on or after January 1, 1990—

(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of snf care; and

(B) the limitation of coverage of extended care services to post-hospital extended care services shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30-consecutive days in which the individual is not provided inpatient hospital services or extended care services.

(3) SPELL OF SNF CARE DEFINED.—In this subsection, the term "spell of snf care" has the meaning given such term in section 1861(a) of the Social Security Act, as amended by subsection (c)(1) of this section. Days before January 1, 1990, are included in the determination of spells of snf care.

(e) STUDY.—The Comptroller General shall study the reasons for the unexpected increase in cost estimates of the extended care services benefit under title XVIII of the Social Security Act. Not later than February 1, 1990, the Comptroller General shall submit a report to Congress describing the results of the study.

SEC. 102. REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.

(a) IN GENERAL.—Section 111 of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Internal Revenue Code of 1986 and the Social Security Act amended by such section shall be restored and revived as if such section had not been enacted.

(b) EFFECTIVE DATES.—The repeal of section 111 of the Medicare Catastrophic Coverage Act of 1988 shall apply to taxable years beginning after December 31, 1988.

SEC. 103. IMPOSITION OF SECOND INPATIENT HOSPITAL DEDUCTIBLE.

(a) IN GENERAL.—Section 1813(a)(1)(A) of the Social Security Act (42 U.S.C. 1395e(a)(1)(A)) is amended—

(1) by striking "first period" and inserting "first and second periods",

(2) by striking "shall be reduced" and inserting "shall each be reduced", and

(3) by adding at the end thereof the following new sentence: "For purposes of this section, a period of hospitalization shall be considered a second period of hospitalization if such period begins more than 60 days after the end of the first period of hospitalization for the calendar year.".

(b) AMOUNT OF DEDUCTIBLES.—Section 1813(b)(1) of the Social Security Act (42 U.S.C. 1395e(b)(1)) is amended by striking the first sentence and inserting the following new sentences: "The inpatient hospital deductible for the first period of hospitalization for 1990 shall be $592. In the case of a second period of hospitalization beginning in 1990 and any subsequent year, and for no other purposes, the inpatient hospital deductible shall be 93 percent of the amount of the inpatient hospital deductible for the first period of hospitalization for that year.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to periods of hospitalization beginning after December 31, 1989.

SEC. 104. REVISION IN FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND.

(a) CHANGE IN FUNDING SOURCE.—Section 1817A(a) of the Social Security Act (42 U.S.C. 1395t–1a) is amended—

(1) in paragraph (1), by striking "and amounts appropriated under paragraph (2)" and inserting "and amounts transferred under section 1841(a) and section 204(e) of the Medicare Catastrophic Coverage Amendments of 1987",

(2) by striking paragraph (2), and

(3) by redesignating paragraph (3) as paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1990.

## TITLE II—PROVISIONS RELATING TO PART B OF THE MEDICARE PROGRAM

SEC. 201. REPEAL OF LIMITATION ON MEDICARE PART B COST-SHARING.

Subsections (a)(4), (b), and (c) of section 201 of the Medicare Catastrophic Coverage Act of 1988 are repealed and the provisions of the Social Security Act amended by such subsections shall be restored and revived as if such subsections had not been enacted.

SEC. 202. LIMITATION ON COVERED OUTPATIENT DRUGS AND DELAY IN DRUG-RELATED BENEFITS.

(a) LIMITATION OF DRUG BENEFITS TO IMMUNOSUPPRESANTS AND HOME IV DRUGS.—Section 1861(t) of the Social Security Act (42 U.S.C. 1395x(t)) is amended—

(1) in paragraph (3)(B), by striking "in 1990" and inserting "in years after 1990", and

(2) in paragraph (4)(B), by striking "1990" and inserting "1991".

(b) DELAY IN DRUG-RELATED BENEFITS.—

(1) COVERED OUTPATIENT DRUGS.—Section 202(m)(1) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(2) HOME INTRAVENOUS DRUG THERAPY SERVICES.—Section 203(g) of the Medicare Catastrophic Coverage of 1988 is amended by striking "1990" and inserting "1991".

(c) CONFORMING AND MISCELLANEOUS AMENDMENTS TO PAYMENT PROVISIONS.—

(1) CATASTROPHIC DRUG DEDUCTIBLE AMOUNT.—Section 1834(c)(1)(C) of the Social Security Act, as added by section 202(b)(4) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(A) by amending clause (i) to read as follows:

"(i) IN GENERAL.—The catastrophic drug deductible specified in this subparagraph for—

"(I) 1990 is $550, and

"(II) any succeeding year, is the catastrophic drug deductible for the previous year increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) applicable to physicians' services furnished in that succeeding year."; and

(B) in clause (iii), by striking "1992" and inserting "1990".

(2) COINSURANCE PERCENT.—Section 1834(c)(2) of such Act is amended—

(A) in subparagraph (B), by striking "100 percent" and all that follows and inserting "80 percent", and

(B) by striking subparagraphs (C) and (D).

(3) MISCELLANEOUS DELAYS.—Section 1834(c) of such Act is further amended—

(A) in paragraph (3)(A), by striking "1992" and inserting "1993", and

(B) in paragraphs (3)(C)(i) and (3)(C)(ii)(I), by striking "1990" and inserting "1991".

(3) ADMINISTRATIVE DISPENSING ALLOWANCE.—Clause (i) of section 1834(c)(4)(A) of such Act is amended to read as follows:

"(i) in 1990 or 1991, the administrative allowance under this paragraph is $4.50; or".

(4) REPEAL OF SPECIAL TREATMENT OF PREPAID ORGANIZATIONS AND PHYSICIAN GUIDE.—Section 1834(c) of such Act is further amended by striking paragraphs (6) and (7).

(5) CHANGE IN REPORTING REQUIREMENTS.—Section 1834(c)(8) of such Act is amended—

(A) in subparagraph (B), by striking "in May and November of 1989 and 1990 and in May of each succeeding year" and inserting

"in May of each year (beginning with 1990)", and

(B) by striking subparagraphs (C) through (F).

(6) DELETION OF EXTRANEOUS DEFINITION.—Section 1834(c)(9) of such Act is further amended by striking subparagraph (D).

(d) DELETION OF PROVISIONS RELATING TO PARTICIPATING PHARMACIES, SPECIAL ADMINISTRATIVE PROVISIONS, AND MODIFICATION OF HMO/CMP CONTRACTS.—Subsections (c), (e), and (f) of section 202 of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Social Security Act amended by such subsection shall be restored and revived as if such subsections had not been enacted.

(e) REPEAL OF REQUIREMENT FOR REESTIMATION OF COSTS, ADDITIONAL STUDIES, AND DEVELOPMENT OF STANDARD CLAIMS FORM.—Paragraph (2) of subsection (i), subsection (k), and subsection (l) of section 202 of the Medicare Catastrophic Coverage Act of 1988 are repealed.

(f) REPEAL OF PRESCRIPTION DRUG PAYMENT REVIEW COMMISSION.—

(1) IN GENERAL.—Section 1847 of the Social Security Act (42 U.S.C. 1395w-3), as added by section 202(j) of the Medicare Catastrophic Coverage Act of 1988, is repealed.

(2) TRANSITION.—The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act, but the Prescription Drug Payment Review Commission is authorized to continue its activities for 30 days after such date to conclude its business.

(g) CONFORMING DELAYS TO PROVISIONS RELATING TO HOME INTRAVENOUS DRUG THERAPY SERVICES.—

(1) Section 1834(d)(2) of the Social Security Act, as added by section 203(c)(1)(F) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1990" and inserting "1991".

(2) Section 203(c)(2) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1991" and inserting "1992".

(3) Section 1835(a)(2)(G) of the Social Security Act, as inserted by section 203(d)(1)(C) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1993" and inserting "1994".

(4) Section 1154(a)(16) of the Social Security Act, as added by section 203(d)(2) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1993" and inserting "1994".

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 203. CHANGES IN COVERAGE OF IN-HOME CARE.

(a) 1-YEAR DELAY IN COVERAGE.—Section 205(f) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(b) CONFORMING AMENDMENT.—Section 1861(ll) of the Social Security Act (42 U.S.C. 1395x(ll)), as added by section 205(b) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) by amending subparagraph (A) of paragraph (4) to read as follows:

"(A) has incurred out-of-pocket part B cost sharing (as defined in paragraph (5)(A)) in an amount equal to part B catastrophic limit (as determined under paragraph (5)(B)) for the year, or"; and

(2) by adding at the end the following new paragraph:

"(5) For purposes of this subsection:

"(A) The term 'out-of-pocket part B cost sharing' means, with respect to an individual covered under part B, the amounts of expenses that the individual incurs that are attributable to—

"(i) the deductions established under section 1833(b), and

"(ii) the difference between the payment amount provided under part B and the payment amount that would be provided under part B if '100 percent' and '0 percent', were substituted for '80 percent' and '20 percent', respectively, each place either appears in sections 1833(a), 1,833(i)(2), 1834(e)(1)(C), 1835(b)(2), 1866(a)(2)(A), 1881(b)(2), and 1881(b)(3).

"(B)(i) The part B catastrophic limit for 1990 is $1,780. The part B catastrophic limit for any succeeding year shall be such an amount (rounded to the nearest multiple of $1) as the Secretary estimates, for that succeeding year, will reflect a level of out-of-pocket part B expenses that ony 5.5 percent of the average number of individuals enrolled under part B (other than individuals enrolled with an eligible organization under section 1876 or an organization described in section 1833(a)(1)(A)) will equal or exceed in that succeeding year.

"(ii) Not later than September 1 of each year (beginning with 1990), the Secretary shall promulgate the part B catastrophic limit under this subparagraph for the succeeding year.".

(c) REPORT ON ALTERNATIVE ELIGIBILITY STANDARDS.—The Secretary of Health and Human Services shall submit to the Congerss by June 1, 1990, a report describing alternatives to the standards for determining the eligibility of individuals for in-home care services contained in section 1861(ll) of the Social Security Act (as amended by subsection (b)).

SEC. 204. CHANGES IN PART B MONTHLY PREMIUM FINANCING.

(a) CONSOLIDATION OF CATASTROPHIC MONTHLY PREMIUM.—

(1) IN GENERAL.—Section 1839(g)(1) of the Social Security Act (42 U.S.C. 1395r(g)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking "paragraphs (4) and (5)" and inserting "paragraphs (3) and (4)",

(ii) by striking "the sum of the catastrophic coverage monthly premium and the prescription drug monthly premium" and inserting "the catastrophic coverage monthly premium",

(iii) by striking "paragraphs (2) and (3)" and inserting "paragraph (2)",

(iv) in the column in the table relating to the catastrophic coverage monthly premium, by striking "4.90", "5.46", "$6.75", and "$7.18" and inserting "$3.90" "$4.80", "$5.60", and "$6.00", respectively, and

(v) by striking the column in the table relating to the prescription drug monthly premium; and

(B) by striking subparagraphs (B) through (D) and inserting the following:

"(B) The Secretary shall determine during September of 1990, 1991, and 1992, the monthly actuarial rate for months in the succeeding year which, if substituted for the catastrophic coverage monthly premium specified in subparagraph (A) for such months, would assure (taking into account potential contingencies) a positive balance in the Medicare Catastrophic Coverage Account at the end of the succeeding year.

"(C) If the monthly actuarial rate determined under subparagraph (B) for months in a year is less than the catastrophic coverage monthly premium otherwise specified in the table in subparagraph (A), such monthly acturial rate shall be substituted for the catastrophic coverage monthly premium under subparagraph (A) for months in the year."

(2) MONTHLY PREMIUM AFTER 1993.—Paragraph (2) of section 1839(g) of such Act is amended to read as follows:

"(2)(A) The Secretary shall determine during September of each year (beginning with 1993) the monthly actuarial rate for months in the succeeding year which, if substituted for the catastrophic coverage monthly premium specified in subparagraph (A) for such months, would assure a balance in the Medicare Catastrophic Coverage Account at the end of the succeeding year equal to 20 percent of the estimated total debits to the Account during the year.

"(B) In the case of months in a year after 1993, the catastrophic coverage monthly premium is the monthly actuarial rate determined under subparagraph (A) for months in the year.".

(3) ELIMINATION OF SEPARATE PRESCRIPTION DRUG MONTHLY PREMIUM.—Section 1839(g) of such Act is further amended by striking paragraph (3).

(4) TREATMENT OF RESIDENTS OF PUERTO RICO AND TERRITORIES.—Section 1839(g)(4) of such Act is amended to read as follows:

"(3)(A) In the case of an individual who is a resident of Puerto Rico or who is a resident of another U.S. commonwealth or territory during a month, instead of the premium increase provided under paragraph (1), subject to subsection (b), the monthly premium for each individual enrolled under this part (otherwise determined without regard to this subsection) shall be increased—

"(i) for months in 1989 by $1.30 for residents of Puerto Rico and $2.10 for residents of another U.S. commonwealth or territory,

"(ii) for months in 1990 by $1.40 for residents of Puerto Rico and $2.30 for residents of another U.S. commonwealth or territory, and

"(iii) for months in a succeeding year by a fraction (determined under subparagraph (B)) of the premium increase determined under paragraph (1) for residents of Puerto Rico and for residents of the other U.S. commonwealths and territories, respectively.

"(B) The Secretary shall from time to time establish, separately for Puerto Rico and for the other U.S. commonwealths and territories, a fraction that reflects the relative per capita outlays which are accounted for under the Medicare Catastrophic Coverage Account for residents in such respective areas compared to such per capita outlays for individuals who are resident in the 50 States and the District of Columbia.".

(5) PART B ONLY INDIVIDUALS.—Section 1839(g)(5) of such Act is amended to read as follows:

"(4)(A) In the case of a part B only individual during a month, instead of any premium increase otherwise provided under paragraph (1), subject to subsection (b), the monthly premium for each individual enrolled under this part (otherwise determined without regard to this subsection) shall be increased for months (beginning with January 1991) by a fraction (determined under subparagraph (B)) of the premium increase determined under paragraph (1).

"(B) The Secretary shall from time to time establish a fraction that reflects the relative per capita outlays which are accounted for under the Medicare Catastrophic Coverage Account for part B only individuals compared to such per capita outlays for

individuals entitled to benefits under both part A and this part.".

(6) CONFORMING AMENDMENTS.—Section 1839 of such Act is further amended—

(A) in subsection (b), by striking "(g)(6)" and inserting "(g)(5)",

(B) in subsection (g)(6), by striking "(6)(A)" and inserting "(5)" and by striking subparagraph (B),

(C) in subsection (g)(7), by striking "(7)(A) The Secretary and the Secretary of the Treasury" and inserting "(5)(A) The Secretary", and

(D) in subsection (g)(8)—

(i) by striking subparagraphs (A), (B), and (C), and

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (A), (B), and (C), respectively.

(b) PAYMENT OF PART OF PREMIUM TO COVER PART A OUTLAYS.—Section 1841(a) of the Social Security Act (42 U.S.C. 1395t(a)), as amended through the operation of subsection (c), is amended by adding at the end the following: "There is appropriated from the Trust Fund to the Federal Hospital Insurance Catastrophic Coverage Reserve Fund, from such amounts in the Trust Fund as are attributable to premium increases imposed under section 1839(g) for months after December 1989, amounts equal to the amount by which (1) the amount of outlays made, from the Federal Hospital Insurance Trust Fund, that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988, as amended (other than outlays for extended care services attributable to such amendments, except with respect to outlays attributable to section 101(d)(2) of the Medicare Catastrophic Coverage Reform Amendments of 1989), exceeds (2) amounts transferred under section 204(e) of the Medicare Catastrophic Coverage Reform Amendments of 1989 and the reductions in outlays from the Federal Hospital Insurance Trust Fund. The amounts appropriated by the proceding sentence shall be transferred from time to time (not less frequently than monthly), such amounts to be based on estimates by the Secretary of premiums and outlays described in such sentence, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than appropriate amounts.".

(c) REPEAL OF FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND.—Section 212 (other than paragraphs (3) and (4) of subsection (c)) of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Social Security Act amended by such section (other than such paragraphs) shall be restored and revived as if such amendments had not been made.

(d) AMENDMENTS TO MEDICARE CATASTROPHIC COVERAGE ACCOUNT.—Section 1841B of the Social Security Act (42 U.S.C. 1395t-2) is amended—

(1) in subsection (a), by striking ", and section 59B of the Internal Revenue Code of 1986," and by striking "and for purposes of section 59B of the Internal Revenue Code of 1986";

(2) by amending paragraph (1) of subsection (b) to read as follows:

"(1) The Account shall be—

"(A) credited for receipts of the Federal Supplementary Medical Insurance Trust Fund attributable to premiums under section 1839(g) for months beginning with January 1990,

"(B) debited for outlays under this title that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988 (as amended) and to the provisions of section 101(d)(2) of the Medicare Catastrophic Coverage Reform Amendments of 1989 with respect to services furnished on or after January 1, 1990, and;

"(C) credited for reductions in outlays under this title that are attributable to section 103 of this medicare catastrophic coverage reform amendments of 1989.";

(3) in subsection (b)(3), by striking "and the Secretary of the Treasury"; and

(4) in subsection (c)(2), by striking "and under section 59B of the Internal Revenue Code of 1986".

(e)(1)-TIME TRANSFER OF NET ADDITIONAL PREMIUMS IN 1989.—There shall be transferred, as of January 1, 1990, from the Federal Supplementary Medical Insurance Trust Fund to the Federal Hospital Insurance Catastrophic Coverage Reserve Fund an amount equal to—

(1) the amount of the premiums collected pursuant to section 1839(g) of the Social Security Act for months in 1989, minus

(2) the amount of administrative expenses incurred under part B of title XVIII of such Act before January 1, 1990, relating to implementation of the amendments made by the Medicare Catastrophic Coverage Act of 1988 and by this Act, plus

(3) the amount of interest accrued to the Federal Supplementary Medical Insurance Trust Fund attributable to balance described in paragraphs (1) and (2).

(f) CONFORMING AMENDMENTS.—

(1) Section 1844(a) of the Social Security Act (42 U.S.C. 1395 w(a)) is amended by striking "or section 59B of the Internal Revenue Code of 1986".

(2) Section 1876(a)(5) of such Act (42 U.S.C. 1395ff(a)(5)) is amended by striking ", the Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund" and inserting "and the Federal Supplementary Medical Insurance Trust Fund".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 205. CONTINUATION OF RISK-SHARING CONTRACTS WITH HEALTH MAINTENANCE ORGANIZATIONS.

Notwithstanding any other provision of this title, the amendments made by this title (other than repeal of Section 1833(c)(5) and 1834(c)(6) of the Social Security Act) shall not apply to risk-sharing contracts, for contract year 1990—

(1) with eligible organizations under section 1876 of the Social Security Act, or

(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967, or under section 222(a) of the Social Security Amendments of 1972.".

SEC. 206. CLARIFICATION OF TRANSITION FOR PPS-EXEMPT HOSPITALS.

Effective as if included in the Medicare Catastrophic Coverage Act of 1988, section 104(c)(2) of such Act is amended by striking the period at the end and inserting the following: ", without regard to whether any of such beneficiaries exhausted medicare inpatient hospital benefits before January 1, 1989.".

## TITLE III—MISCELLANEOUS

SEC. 301. TRANSITION IN MEDIGAP REGULATIONS.

(a) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 221(d) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) in the third sentence of subsection (a) and in subsection (b)(1), by striking "subsection (k)(3)" and inserting "subsection (k)(3), (k)(4), (m), and (n)";

(2) in subsection (k)—

(A) In paragraph (1)(A), by inserting "except as provided in subsection (m)," before "subsection (g)(2)(A)", and

(B) in paragraph (3), by striking "subsection (1)" and inserting "subsections (1), (m), and (n)"; and

(3) by adding at the end the following new subsections:

"(m)(1)(A) If, within the 90-day period beginning on the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection and subsection (n) referred to as the 'Association') revises the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) and adopted on September 20, 1988) to reflect the changes in law made by the Medicare Catastrophic Coverage Reform Amendments of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the amended NAIC Model Regulation (referred to in subsection (k)(1)(A)) as revised by the Association in accordance with this paragraph (in this subsection and subsection (n) referred to as the 'revised NAIC Model Regulation').

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

"(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) referred to as 'revised Federal model standards') for medicare supplemental policies to reflect the changes in law made by the Medicare Catastrophic Coverage Reform Amendments of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised Federal model standards or 1 year after the date the Secretary first promulgates such standards.

"(3) Notwithstanding any other provision of this section (except as provided in subsection (n))—

"(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a),

"(B) no certification made pursuant to subsection (a) shall remain in effect, and

"(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A),

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

"(n)(1) Until the date specified in paragraph (4), in the case of a qualifiying medicare supplemental policy described in paragraph (3) issued in a State—

"(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the transition provision described in paragraph (2), or

"(B) on or after the transition deadline, the policy is deemed to be in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term 'transition deadline' means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Secretary promulgates revised Federal model standards (as the case may be).

"(2) The transition provision described in this paragraph is—

"(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this title made by the Medicare Catastrophic Coverage Reform Amendments of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

"(B) if the Association does not provide for a transition provision by the date described in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

"(3) In paragraph (1), the term 'qualifying medicare supplemental policy' means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before the date of the enactment of this subsection.

"(4)(A) The date specified in this paragraph for a policy issued in a State is—

"(i) the first date a State adopts, after the date of the enactment of this subsection, standards equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

"(ii) the date specified in subparagraph (B), whichever is earlier.

"(B) In the case of a State which the Secretary identifies, in consultation with the Association, as—

"(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

"(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

"(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) unless each individual who is entitled to benefits under this title and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

"(A) the changes in benefits under this title effected by the Medicare Catastrophic Coverage Reform Amendments of 1989, and

"(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

"(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before the date of the enactment of this subsection, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) unless the insurer—

"(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

"(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstitution of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

"(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of the date of the enactment of this subsection, if (as of January 1, 1990) the policy under which the individual was provided coverage provides for no waiting period with respect to treatment of a pre-existing condition.".

(b) SENSE OF CONGRESS—It is the sense of Congress that States should respond, at the earliest practicable date after the date of enactment of this Act, to requests by insurers for review and approval of riders and premium adjustments for medicare supplemental policies in order to comply with the amendments made by subsection (a) and that all such premium adjustments be effective January 1, 1990.

SEC. 302. NOTICE OF CHANGES.

The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act of 1990, for a description of the changes in benefits under title XVIII of such Act made by the amendments made by this title.

SEC. 303. MISCELLANEOUS AMENDMENTS AND TECHNICAL CORRECTIONS.

(a) CORRECTIONS RELATING TO CATASTROPHIC DRUG BENEFIT.—

(1) DEFINITION OF COVERED OUTPATIENT DRUGS.—Section 1861(t)(3)(A) of the Social Security Act, as added by section 202(a)(2)(C) of the Medicare Catastrophic Coverage Act of 1988 (in this section referred to as "MCCA"), is amended—

(A) by redesignating clauses (iv) through (xiii) as clauses (vi), (vii), (viii), (ix), (x), (xii), (xiii), (xiv), (xvi), and (xviii), respectively;

(B) by inserting after clause (iii) the following:

"(iv) Diagnostic services under subsections (s)(2)(C) and (s)(3).

"(v) X-ray, radium, and radioactive isotope therapy under subsection (s)(4).";

(C) by inserting after clause (x), as so redesignated, the following:

"(xi) Parenteral nutrition nutrients under subsection (s)(8).";

(D) by inserting after clause (xvi), as so redesignated, the following:

"(xv) Partial hospitalization services (as defined in subsection (ff)).''; and

(E) by inserting after clause (xvi), as so redesignated, the following:

"(xvii) Qualified psychologist services (as defined in subsection (ii)).".

(2) COVERED HOME IV DRUGS.—Section 1861(t)(4)(A) of such Act (42 U.S.C. 1395x(t)(4)(A)) is amended by striking "dispensed" and inserting "furnished by a qualified home intravenous drug therapy provider".

(3) REFERENCES TO CATASTROPHIC DRUG DEDUCTIBLE AMOUNT.—Section 1834(c) of the Social Security Act, as added by section 202(b)(4) of MCCA, is amended—

(A) in paragraph (2)(A), by striking "under paragraph (1)(A) and except as provided in subparagraph (C)" and inserting "under paragraph (1)", and

(B) in paragraph (8)(E), by striking "paragraph (1)(A)" each place it appears and inserting "paragraph (1)".

(b) SCREENING MAMMOGRAPHY.—

(1) APPLICATION OF PARTICIPATING PHYSICIAN DIFFERENTIAL.—Section 1834(e)(4) of the Social Security Act, as added by section 204(b)(2) of MCCA, is amended by adding at the end the following new subparagraph:

"(D) APPLICATION OF PARTICIPATING PHYSICIAN DIFFERENTIAL.—In applying the limit under subparagraph (A) with respect to a nonparticipating physician, the limit applied shall be the applicable percent (as defined in the second sentence of section 1842(b)(4)(A)(iv)) of the limit otherwise established in that subparagraph.".

(2) FREQUENCY OF SCREENING.—Section 1834(e)(2)(A) of the Social Security Act, as added by section 204(b)(2) of MCCA, is amended—

(A) in clause (iii)(I), by striking "the 11 months of a previous screening mammography" and inserting "11 months following the month in which a previous screening mammography was performed",

(B) in clause (iii)(II), by striking "the 23 months of a previous screening mammography" and inserting "23 months following the month in which a previous screening mammography was performed",

(C) in clause (iv), by striking "11 months of a previous screening mammography" and inserting "11 months following the month in which a previous screening mammography was performed", and

(D) in clause (v), by striking "23 months of a previous screening mammography" and inserting "23 months following the month in which a previous screening mammography was performed".

(c) ROUNDING OF PART B PREMIUM.—Section 1839 of the Social Security Act, as amended by section 211(c)(1)(E) of MCCA, is amended—

(1) in the first sentence of subsection (b), by striking "subsections (f) and (g)(5)" and inserting "subsection (f)",

(2) in subsection (b), by inserting after the first sentence the following new sentence: "If the resulting monthly premium is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.", and

(3) in subsection (c), by striking "the foregoing provisions of this section" and inserting "subsection (a)(3) or (e)".

(d) MISCELLANEOUS.—

(1) Clause (iii) of section 1814(a)(7)(A) of the Social Security Act, added by section 104(d)(2)(C)(iii) of MCCA, is amended by moving its alignment 2 ems to the left so its alignment is the same as that of clasue (ii) of such section.

(2) Section 1842(p)(3)(B) of the Social Security Act, as added by section 202(g) of MCCA, is amended by striking "section 1842(j)(2)(A)" and inserting "subsection (j)(2)(A)".

(3) Section 221(g)(3) of MCCA is amended by striking "subsection (f)" and striking "subsection (e)".

(4) Section 1842(h)(5)(B)(iv) of the Social Security Act, as added by section 223(b)(4) of MCCA, is amended by striking "paragraph (2)(A)" and inserting "paragraph (2)".

(e) MISCELLANEOUS CORRECTIONS RELATING TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987.—

(1) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1834(b)(4)(A) of the Social Security Act, as added by section 4049(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "insurance and deductibles under section 1835(a)(1)(I)" and inserting "coinsurance and deductibles under sections 1833(a)(1)(J)".

(2) Section 1842(j)(1)(C)(vii) of the Social Security Act as added by section 4085(i)(7)(C) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "accordingly" and inserting "according".

(3) Section 1886(g)(3)(A)(iv) of the Social Security Act, as added by section 4006(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "may) be" and inserting "may be)".

(f) OTHER CORRECTIONS.—

(1) Section 1866(a)(1)(F)(i)(III) of the Social Security Act is amended by striking "fiscal year))" and inserting "fiscal year)".

(2) Section 1875(c)(7) of the Social Security Act as added by section 9316(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of this section".

(3) Section 1842(j)(2)(B) of the Social Secuirty Act, as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987, is amended by striking "paragraphs" and inserting "subsections".

## TITLE IV—MISCELLANEOUS SOCIAL SECURITY PROVISIONS

### SEC. 401. EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTHCARE BENEFITS PROVIDED BY THE EMPLOYERS.

(a) OLD-AGE SURVIVORS, AND DISABILITY, AND HOSPTIAL INSURANCE PROGRAMS.—For purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(b) RAILROAD RETIREMENT PROGRAM.—For purposes of chapter 22 of the internal Revenue Code of 1986, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(c) FEDERAL UNEMPLOYMENT PROGRAMS.—

(1) FEDERAL UNEMPLOYMENT TAX.—For purposes of chapter 23 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(2) RAILROAD UNEMPLOYMENT CONTRIBUTIONS.—For purposes of the Railroad Unemployment Insurance Act, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(3) RAILROAD UNEMPLOYMENT REPAYMENT TAX.—For purposes of chapter 23A of the Internal Revenue Code of 1986, the term "rail wages: shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(d) EFFECTIVE DATE.—This section shall apply with respect to refunds provided on or after January 1, 1989.

The PRESIDENT pro tempore. The question is on the adoption of the amendment.

Those in favor will say aye.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 1198, AS MODIFIED

Mr. MITCHELL. Mr. President, I send a modification of my amendment to the desk.

The PRESIDENT pro tempore. The Senator may modify his amendment. The clerk will state the modification.

The assistant legislative clerk read as follows:

In lieu of the language proposed in amendment numbered 1198, the modified amendment is as follows:

Mr. BENTSEN. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 1198), as modified, is as follows:

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Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This title may be cited as the "Medicare Catastrophic Coverage Reform Amendments of 1989".

## TITLE I—PROVISIONS RELATING TO PART A OF MEDICARE PROGRAM AND SUPPLEMENTAL MEDICARE PREMIUM

### SEC. 101. REVISION OF EXTENDED CARE SERVICES BENEFITS.

(a) 100 DAYS DURING EACH SPELL OF SNF CARE.—Section 1812 of the Social Security Act (42 U.S.C. 1395d) is amended—

(1) by amending paragraph (2) of subsection (a) to read as follows:

"(2)(A) post-hospital extended care services for up to 100 days during any spell of snf care, and (B) to the extent provided in subsection (f), extended care services that are not post-hospital extended care services;";

(2) by amending paragraph (1) of subsection (b) to read as follows:

"(1) post-hospital extended care services furnished to the individual during a spell of snf care after such services have been furnished to the individual for 100 days during such spell, or";

(3) in subsection (e), by inserting "post-hospital" before "extended care"; and

((4) by adding at the end the following new subsection:

"(f)(1) The Secretary shall provide for coverage, under clause (B) of subsection (a)(2) of this section, of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the inclusion of such services will not result in any increase in the total of payments made under this title and will not alter the acute care nature of the benefit described in subsection (a)(2).

"(2) The Secretary may provide—

"(A) for such limitations on the scope and extent of such services described in subsection (a)(2)(B), and on the categories of individuals who may be eligible to receive such services, and

"(B) notwithstanding sections 1814, 1861(v), and 1886 for such restrictions and alternatives on the amount and methods of payment for services described in such subsection.

as may be necessary to carry out paragraph (1).".

(b) COINSURANCE.—Paragraph (3) of section 1813(a) of such Act (42 U.S.C. 1395e(a)) is amended to read as follows:

"(3) The amount payable for post-hospital extended care services furnished an individual during any spell of snf care shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for the first period of hospitalization in a year for each day (before the 101st day) on which the individual is furnished such services after such services have been furnished to the individual for 20 days during such spell.".

(c) CONFORMING AMENDMENTS AND RESTORATION OF LAW.—

(1) SPELL OF SNF CARE DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by inserting before subsection (b) the following new subsection:

"Spell of snf Care

"(a) The term 'spell of snf care' with respect to any individual means a period of consecutive days—

"(1) beginning with the first day (not included in a previous spell of snf care) (A) on which such individual is furnished extended care services, and (B) which occurs in a month for which the individual is entitled to benefits under part A, and

"(2) ending with the close of the first period of 60 consecutive days thereafter on each of which the individual is not an inpatient of a skilled nursing facility.".

(2) CONFORMING AMENDMENTS.—(A) Except as provided in subparagraph (B)—

(i) the amendments made by subsection (d) of section 104 of the Medicare Catastrophic Coverage Act of 1988 are repealed, and

(ii) the provisions of the Social Security Act amended by such subsection shall be restored and revived as if such amendments had not been made.

(B) Subparagraph (A) shall not apply to the amendments made by paragraphs (2)(C), (2)(D), (3), (4)(A), (4)(B)(iii), (4)(B)(iv), and (7) of section 104(d) of the Medicare Catastrophic Coverage Act of 1988.

(3) ADDITIONAL CONFORMING AMENDMENT.—Title XVIII of the Social Security Act is amended by striking "spell of illness" and "spells of illness" each place either appears and inserting "spell of snf care" and "spells of snf care", respectively.

(d) EFFECTIVE DATE AND TRANSITION.—

(1) EFFECTIVE DATE.—Except as provided in this subsection, the amendments made by this section shall apply to extended care services furnished in a spell of snf care (as defined in paragraph (4)) beginning on or after January 1, 1990.

(2) TRANSITION PROVISIONS FOR POST-HOSPITAL EXTENDED CARE SERVICES.—In applying subsections (a)(2)(A) and (b)(1) of section 1812 and section 1813(a)(3) of the Social Security Act, as restored by this section, with respect to extended care services provided on or after January 1, 1990—

(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of snf care; and

(B) the limitation of coverage of extended care services to post-hospital extended care services shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30-consecutive days in which the individual is not provided inpatient hospital services or extended care services.

(3) SPELL OF SNF CARE DEFINED.—In this subsection, the term "spell of snf care" has the meaning given such term in section 1861(a) of the Social Security Act, as amended by subsection (c)(1) of this section. Days before January 1, 1990, are included in the determination of spells of snf care.

(e) STUDY.—The Comptroller General shall study the reasons for the unexpected increase in cost estimates of the extended care services benefit under title XVIII of the Social Security Act. Not later than February 1, 1990, the Comptroller General shall submit a report to Congress describing the results of the study.

SEC. 102. REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.

(a) IN GENERAL.—Section 111 of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Internal Revenue Code of 1986 and the Social Security Act amended by such section shall be restored and revived as if such section had not been enacted.

(b) EFFECTIVE DATE.—The repeal of section 111 of the Medicare Catastrophic Coverage Act of 1988 shall apply to taxable years beginning after December 31, 1988.

SEC. 103. IMPOSITION OF SECOND INPATIENT HOSPITAL DEDUCTIBLE.

(a) IN GENERAL.—Section 1813(a)(1)(A) of the Social Security Act (42 U.S.C. 1395e(a)(1)(A)) is amended—

(1) by striking "first period" and inserting "first and second periods",

(2) by striking "shall be reduced" and inserting "shall each be reduced", and

(3) by adding at the end thereof the following new sentence: "For purposes of this section, a period of hospitalization shall be considered a second period of hospitalization if such period begins more than 60 days after the end of the first period of hospitalization for the calendar year.".

(b) AMOUNT OF DEDUCTIBLES.—Section 1813(b)(1) of the Social Security Act (42 U.S.C. 1395e(b)(1)) is amended by striking the first sentence and inserting the following new sentences: "The inpatient hospital deductible for the first period of hospitalization for 1990 shall be $592. In the case of a second period of hospitalization beginning in 1990 and any subsequent year, and for no other purposes, the inpatient hospital deductible shall be 93 percent of the amount of the inpatient hospital deductible for the first period of hosptialization for that year.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to periods of hospitalization begining after December 31, 1989.

SEC. 104. REVISION IN FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.

(a) CHANGE IN FUNDING SOURCE.—Section 1817A(a) of the Social Security Act (42 U.S.C. 1395t-1a(a)) is amended—

(1) in paragraph (1), by striking "and amounts appropriated under paragraph (2)" and inserting "and amounts transferred under section 1841(a) and section 204(e) of the Medicare Catastrophic Coverage Amendments of 1987",

(2) by striking paragraph (2), and

(3) by redesignating paragraph (3) as paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1990.

## TITLE II—PROVISIONS RELATING TO PART B OF THE MEDICARE PROGRAM

SEC. 201. REPEAL OF LIMITATION ON MEDICARE PART B COST-SHARING.

Subsections (a)(4), (b), and (c) of section 201 of the Medicare Catastrophic Coverage Act of 1988 are repealed and the provisions of the Social Security Act amended by such subsections shall be restored and revived as if such subsections had not been enacted.

SEC. 202. LIMITATION ON COVERED OUTPATIENT DRUGS AND DELAY IN DRUG-RELATED BENEFITS.

(a) LIMITATION OF DRUG BENEFITS TO IMMUNO-SUPPRESSANTS AND HOME IV DRUGS.—Section 1861(t) of the Social Security Act (42 U.S.C. 1395x(t)) is amended—

(1) in paragraph (3)(B), by striking "in 1990" and inserting "in years after 1990', and

(2) in paragraph (4)(B), by striking "1990" and inserting "1991".

(b) DELAY IN DRUG-RELATED BENEFITS.—

(1) COVERED OUTPATIENT DRUGS.—Section 202(m)(1) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(2) HOME INTRAVENOUS DRUG THERAPY SERVICES.—Section 203(g) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(c) CONFORMING AND MISCELLANEOUS AMENDMENTS TO PAYMENT PROVISIONS.—

(1) CATASTROPHIC DRUG DEDUCTIBLE AMOUNT.—Section 1834(c)(1)(C) of the Social Security Act, as added by section 202(b)(4) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(A) by amending clause (i) to read as follows:

"(i) IN GENERAL.—The catastrophic drug deductible specified in this subparagraph for—

"(I) 1990 is $550, and

"(II) any succeeding year, is the catastrophic drug deductible for the previous year increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) applicable to physicians' services furnished in that succeeding year."; and

(B) in clause (iii), by striking "1992" and inserting "1990".

(2) COINSURANCE PERCENT.—Section 1834(c)(2) of such Act is amended—

(A) in subparagraph (B), by striking "100 percent" and all that follows and inserting "80 percent", and

(B) by striking paragraphs (C) and (D).

(3) MISCELLANEOUS DELAYS.—Section 1834(c) of such Act is further amended—

(A) in paragraph (3)(A), by striking "1992" and inserting "1993", and

(B) in paragraphs (3)(C)(i) and (3)(C)(ii)(I), by striking "1990" and inserting "1991".

(4) ADMINISTRATIVE DISPENSING ALLOWANCE.—Clause (i) of section 1834(c)(4)(A) of such Act is amended to read as follows:

"(i) in 1990 or 1991, the administrative allowance under this paragraph is $4.50; or".

(5) REPEAL OF SPECIAL TREATMENT OF PREPAID ORGANIZATIONS AND PHYSICIAN GUIDE.—Section 1834(c) of such Act is further amended by striking paragraphs (6) or (7).

(6) CHANGE IN REPORTING REQUIREMENTS.—Section 1834(c)(8) of such Act is amended—

(A) in subparagraph (B), by striking "in May and November of 1989 and 1990 and in May of each succeeding year" and inserting "in May of each year (beginning with 1990)", and

(B) by striking subparagraphs (C) and (F).

(7) DELETION OF EXTRANEOUS DEFINITION.—Section 1834(c)(9) of such act is further amended by striking subparagraph (D).

(d) DELETION OF PROVISIONS RELATING TO PARTICIPATING PHARMACIES, SPECIAL ADMINISTRATIVE PROVISIONS, AND MODIFICATION OF HMO/CMP CONTRACTS.—Subsections (c), (e), and (f) of section 202 of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Social Security Act amended by such subsections shall be restored and revived as if such subsections had not been enacted.

(e) REPEAL OF REQUIREMENT FOR REESTIMATION OF COSTS, ADDITIONAL STUDIES, AND DEVELOPMENT OF STANDARD CLAIMS FORM.—Paragraph (2) of subsection (i), subsection (k), and subsection (l) of section 202 of the Medicare Catastrophic Coverage Act of 1988 are repealed.

(f) REPEAL OF PRESCRIPTION DRUG PAYMENT REVIEW COMMISSION.—

(1) IN GENERAL.—Section 1847 of the Social Security Act (42 U.S.C. 1395w-3), as added by section 202(j) of the Medicare Catastrophic Coverage Act of 1988, is repealed.

(2) TRANSITION.—The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act, but the Prescription Drug Payment review Commission is authorized to continue its activities for 30 days after such date to conclude its business.

(g) CONFORMING DELAYS TO PROVISIONS RELATING TO HOME INTRAVENOUS DRUG THERAPY SERVICES.—

(1) Section 1834(d)(2) of the Social Security Act, as added by section 203(c)(1)(F) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1990" and inserting "1991".

(2) Section 203(c)(2) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1991" and inserting "1992".

(3) Section 1835(a)(2)(G) of the Social Security Act, as inserted by section 203(d)(1)(C) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1993" and inserting "1994".

(4) Section 1154(a)(16) of the Social Security Act, as added by section 203(d)(2) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1993" and inserting "1994".

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 203. CHANGES IN COVERAGE OF IN-HOME CARE.

(a) IN GENERAL.—Section 205(f) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(b) CONFORMING AMENDMENTS.—Section 1861(ll) of the Social Security Act (42 U.S.C. 1395x(ll)), as added by section 205(b) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) by amending subparagraph (A) of paragraph (4) to read as follows:

"(A) has incurred out-of-pocket part B cost sharing (as defined in paragraph (5)(A)) in an amount equal to part B catastrophic limit (as determined under paragraph (5)(B)) for the year, or"; and

(2) by adding at the end the following new paragraph:

"(5) For purposes of this subsection:

"(A) The term 'out-of-pocket part B cost sharing' means, with respect to an individual covered under part B, the amounts of expenses that the individual incurs that are attributable to—

"(i) the deductions established under section 1833(b), and

"(ii) the difference between the payment amount provided under part B and the payment amount that would be provided under part B if '100 percent' and '0 percent' were substituted for '80 percent' and '20 percent', respectively, each place either appears in sections 1833(a), 1833(i)(2), 1834(e)(1)(C), 1835(b)(2), 1866(a)(2)(A), 1881(b)(2), and 1881(b)(3).

"(B)(i) The part B catastrophic limit for 1990 is $1,780. The part B catastrophic limit for any succeeding year shall be such an amount (rounded to the nearest multiple of $1) as the Secretary estimates, for that succeeding year, will reflect a level of out-of-pocket part B expenses that only 5.5 percent of the average number of individuals enrolled under part B (other than individuals enrolled with an eligible organization under section 1876 or an organization described in section 1833(a)(1)(A)) will equal or exceed in that succeeding year.

"(ii) Not later than September 1 of each year (beginning with 1990), the Secretary shall promulgate the part B catastrophic limit under this subparagraph for the succeeding year.".

(c) REPORT ON ALTERNATIVE ELIGIBILITY STANDARDS.—The Secretary of Health and Human Services shall submit to Congress by June 1, 1990, a report describing alternatives to the standards for determining the eligibility of individuals for in-home care services contained in section 1861(ll) of the Social Security Act (as amended by subsection (b)).

SEC. 204. CHANGES IN PART B MONTHLY PREMIUM FINANCING.

(a) CONSOLIDATION OF CATASTROPHIC MONTHLY PREMIUM.—

(a) IN GENERAL.—Section 1839(g)(1) of the Social Security Act (42 U.S.C. 1395r(g)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking "paragraphs (4) and (5)" and inserting "paragraphs (3) and (4)",

(ii) by striking "the sum of the catastrophic coverage monthly premium and the prescription drug monthly premium" and inserting "the catastrophic coverage monthly premium",

(iii) by striking "paragraphs (2) and (3)" and inserting "paragraph (2)",

(iv) in the column in the table relating to the catastrophic coverage monthly premium, by striking "$4.90", "$5.46", "$3.90", "$4.80", "$5.60", and "$6.00", respectively, and

(v) by striking the column in the table relating to the prescription drug monthly premium; and

(B) by striking subparagraphs (B) through (D) and inserting the following:

"(B) The Secretary shall determine during September of 1990, 1991, and 1992, the monthly actuarial rate for months in the succeeding year which, if substituted for the catastrophic coverage monthly premium specified in subparagraph (A) for such months, would assure (taking into account potential contingencies) a positive balance in the Medicare Catastrophic Coverage Account at the end of the succeeding year.

"(C) If the monthly actuarial rate determined under subparagraph (B) for months in a year is less than the catastrophic coverage monthly premium otherwise specified in the table in subparagraph (A), such monthly actuarial rate shall be substituted for the catastrophic coverage monthly premium under subparagraph (A) for months in the year.".

(2) MONTHLY PREMIUM AFTER 1993.—Paragraph (2) of section 1839(g) of such Act is amended to read as follows:

"(2)(A) The Secretary shall determine during September of each year (beginning with 1993) the monthly actuarial rate for months in the succeeding year which, if substituted for the catastrophic coverage monthly premium specified in subparagraph (A) for such months, would assure a balance in the Medicare Catastrophic Coverage Account at the end of the succeeding year equal to 20 percent of the estimated total debits to the Account during the year.

"(B) In the case of months in a year after 1993, the catastrophic coverage monthly premium is the monthly actuarial rate determined under subparagraph (A) for months in the year.".

(3) ELIMINATION OF SEPARATE PRESCRIPTION DRUG MONTHLY PREMIUM.—Section 1839(g) of such Act is further amended by striking paragraph (3).

(4) TREATMENT OF RESIDENTS OF PUERTO RICO AND TERRITORIES.—Section 1839(g)(4) of such Act is amended to read as follows:

"(3)(A) In the case of an individual who is a resident of Puerto Rico or who is a resident of another U.S. commonwealth or territory during a month, instead of the premium increase provided under paragraph (1), subject to subsection (b), the monthly premium for each individual enrolled under this part (otherwise determined without regard to this subsection) shall be increased—

"(i) for months in 1989 by $1.30 for residents of Puerto Rico and $2.30 for residents of another U.S. commonwealth or territory,

"(ii) for months in 1990 by $1.40 for residents of Puerto Rico and $2.30 for residents of another U.S. commonwealth or territory, and

"(iii) for months in a succeeding year by a fraction (determined under subparagraph (B)) of the premium increase determined under paragraph (1) for residents of Puerto Rico and for residents of the other U.S. commonwealths and territories, respectively.

"(B) The Secretary shall from time to time establish, separately for Puerto Rico and for the other U.S. commonwealths and territories, a fraction that reflects the relative per capita outlays which are accounted for under the Medicare Catastrophic Coverage Account for residents in such respective areas compared to such per capita outlays for individuals who are residents in the 50 States and the District of Columbia.".

(5) PART B ONLY INDIVIDUALS.—Section 1839(g)(5) of such Act is amended to read as follows:

"(4)(A) In the case of a part B only individual during a month, instead of any premium increase otherwise provided under paragraph (1), subject to subsection (b), the monthly premium for each individual enrolled under this part (otherwise determined without regard to this subsection) shall be increased for months (beginning with January 1991) by a fraction (determined under subparagraph (B)) of the premium increase determined under paragraph (1).

"(B) The Secretary shall from time to time establish a fraction that reflect the relative per capita outlays which are accounted for under the Medicare Catastrophic Coverage Account for part B only individuals compared to such per capita outlays for individuals entitled to benefits under both part A and this part.".

(6) CONFORMING AMENDMENTS.—Section 1839 of such Act is further amended—

(A) is subsection (b), by striking "(g)(6)" and inserting "(g)(5)",

(B) is subsection (g)(6), by striking "(6)(A)" and inserting "(5)" and by striking subparagraph (B),

(C) is subsection (g)(7), by striking "(7)(A)" The Secretary and the Secretary of Treasury" and inserting "(5)(A) The Secretary", and

(D) in subsection (g)(8)—

(i) by striking subparagraphs "(A), (B), and (C), and

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (A), (B), and (C), respectively.

(b) PAYMENT OF PART OF PREMIUM TO COVER PART A OUTLAYS.—Section 1841(a) of the Social Security Act (42 U.S.C. 1395t(a)), as amended through the operation of subsection (c), is amended by adding at the end the following: "There is appropriated from the Trust Fund to the Federal Hospital Insurance Catastrophic Coverage Reserve Fund, from such amounts in the Trust Fund as are attributable to premium increases imposed under section 1839(g) for months after December 1989, amounts equal to the amount by which (1) the amount of outlays made, from the Federal Hospital Insurance Trust Fund, that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988, as amended (other than outlays for extended care serv-

ices attributable to such amendments, except with respect to outlays attributable to section 101(d)(2) of the Medicare Catastrophic Reform Amendments of 1989), exceeds (2) amounts transferred under section 204(e) of the Medicare Catastrophic Coverage Reform Amendments of 1989 and the reduction in outlays from the Federal Hospital Insurance Trust Fund. The amounts appropriated by the preceding sentence shall be transferred from time to time (not less frequently monthly), such amounts to be based on estimates by the Secretary of premiums and outlays described in such sentence, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than appropriate amounts.".

(c) REPEAL OF FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND.—Section 212 (other than paragraphs (3) and (4) of subsection (c)) of the Medicare Catastrophic Coverage act of 1988 is repealed and the provisions of the Social Security Act amended by such section (other than such paragraphs) shall be restored and revived as if such amendments had not been made.

(d) AMENDMENTS TO MEDICARE CATASTROPHIC COVERAGE ACCOUNT.—Section 1841B of the Social Security Act (42 U.S.C. 1395t-2) is amended—

(1) in subsection (a), by striking ", and section 59B of the Internal Revenue Code of 1986," and by striking "and for purposes of section 59B of the Internal Revenue Code of 1986";

(2) by amending paragraph (1) of subsection (b) to read as follows:

"(1) The account shall be—

"(A) credited for receipts of the Federal Supplementary Medical Insurance Trust Fund attributable to premiums under section 1839(g) for months beginning with January 1990,

"(B) debited for outlays under this title that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988 (as amended) and to the provisions of section 101(d)(2) of the Medicare Catastrophic Coverage Reform Amendments of 1989 with respect to services furnished on or after January 1, 1990, and;

"(C) credited for reductions in outlays under this title that are attributable to section 103 of the Medicare Catastrophic Coverage Reform Amendments of 1989.";

(3) in subsection (b)(3), by striking "and the Secretary of the Treasury"; and

(4) in subsection (c)(2), by striking "and under section 59B of the Internal Revenue Code of 1986".

(e) 1-TIME TRANSFER OF NET ADDITIONAL PREMIUS IN 1989.—There shall be transferred, as of January 1, 1990, from the Federal Supplementary Medical Insurance Trust Fund to the Federal Hospital Insurance Catastrophic Coverage Reserve Fund an amount equal to—

(1) the amount of the premiums collected pursuant to section 1839(g) of the Social Security Act for months in 1989, minus

(2) the amount of administrative expenses incurred under part B of title XVIII of such Act before January 1, 1990, relating to implementation of the amendments made by the Medicare Catastrophic Coverage Act of 1988 and by this Act, plus

(3) the amount of interest accrued to the Federal Supplementary Medical Insurance Trust Fund attributable to balance described in paragraphs (1) and (2).

(f) CONFORMING AMENDMENTS.—

(1) section 1844(a) of the Social Security Act (42 U.S.C. 1395w(a)) is amended by striking "or section 59B of the Internal Revenue Code of 1986".

(2) Section 1876(a)(5) of such Act (42 U.S.C. 1395ff(a)(5)) is amended by striking ", the Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund" and inserting "and the Federal Supplementary Medical Insurance Trust Fund".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 205. CONTINUATION OF RISK-SHARING CONTRACTS WITH HEALTH MAINTENANCE ORGANIZATIONS.

Notwithstanding any other provision of this title, the amendments made by this title (other than repeal of Section 1833(c)(5) and 1834(c)(6) of the Social Security Act) shall not apply to risk-sharing contracts, for contract year 1990—

(1) with eligible organizations under section 1876 of the Social Security Act, or

(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967, or under section 222(a) of the Social Security Amendments of 1972.".

SEC. 206. CLARIFICATION OF TRANSITION FOR PPS-EXEMPT HOSPITALS.

Effective as if included in the Medicare Catastrophic Coverage Act of 1988, section 104(c)(2) of such Act is amended by striking the period at the end and inserting the following: ", without regard to whether any of such beneficiaries exhausted medicare inpatient hospital benefits before January, 1989.".

## TITLE III—MISCELLANEOUS

SEC. 301. TRANSITION IN MEDIGAP REGULATIONS.

(a) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 221(d) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) in the third sentence of subsection (a) and in subsection (b)(1), by striking "subsection (k)(3)" and inserting "subsections (k)(3), (k)(4), (m), and (n)";

(2) in subsection (k)—

(A) in paragraph (1)(A), by inserting "except as provided in subsection (m)," before "subsection (g)(2)(A)", and

(B) in paragraph (3), by striking "subsection (l)" and inserting "subsections (l), (m), and (n)"; and

(3) by adding at the end the following new subsections:

"(m)(1)(A) If, within the 90-day period beginning on the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection and subsection (n) referred to as the 'Association') revises the amended NAIC Model Regulations (referred to in subsection (k)(1)(A) and adopted on September 20, 1988) to reflect the changes in law made by the Medicare Catastrophic Coverage Reform Amendments of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the amended NAIC Model Regulation (referred to in subsection (k)(1)(A)) as revised by the Association in accordance with this paragraph (in this subsection and subsection (n) referred to as the 'revised NAIC Model Regulation').

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

"(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) referred to as 'revised Federal model standards') for medicare supplemental policies to reflect the changes in law made by the Medicare Catastrophic Coverage Reform Amendments of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised Federal model standards or 1 year after the date the Secretary first promulgates such standards.

"(3) Notwithstanding any other provision of this section (except as provided in subsection (n))—

"(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a),

"(B) no certification made pursuant to subsection (a) shall remain in effect, and

"(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A),

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (2)(B) or (3)(B) (as the case may be).

"(n)(1) Until the date specified in paragraph (4), in the case of a qualifying medicare supplemental policy described in paragraph (3) issued in a State—

"(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the transition provision described in paragraph (2), or

"(B) on or after the transition deadline, the policy is deemed to be in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term "transition deadline" means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Secretary promulgates revised Federal model standards (as the case may be).

"(2) The transition provision described in this paragraph is—

"(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this title made by the Medicare Catastrophic Coverage Reform Amendments of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

"(B) if the Association does not provide for a transition provision by the date described

in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

"(3) In paragraph (1), the term 'qualifying medicare supplemental policy' means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before the date of the enactment of this subsection.

"(4)(A) The date specified in this paragraph for a policy issued in a State is—

"(i) the first date a State adopts, after the date of the enactment of this subsection, standards, equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

"(ii) the date specified in subparagraph (B),

whichever is earlier.

"(B) In the case of a State which the Secretary identifies, in consultation with the Association, as—

"(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A) (i), but

"(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

"(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) unless each individual who is entitled to benefits under this title and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

"(A) the changes in benefits under this title effected by the Medicare Catastrophic Coverage Reform Amendments of 1989, and

"(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

"(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before the date of the enactment of this subsection, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) unless the insurer—

"(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

"(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstitution of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

"(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of the date of the enactment of this subsection, if (as of January 1, 1990) the policy under which the individual was provided coverage provides for no waiting period with respect to treatment of a pre-existing condition.".

(b) SENSE OF CONGRESS.—It is the sense of Congress that States should respond, at the earliest practicable date after the date of enactment of this Act, to requests by insurers for review and approval of riders and premium adjustments for medicare supplemental policies in order to comply with the amendments made by subsection (a) and that all such premium adjustments be effective January 1, 1990.

SEC. 302. NOTICE OF CHANGES.

The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act of 1990, for a description of changes in benefits under title XVIII of such Act made by the amendments made by this title.

SEC. 303. MISCELLANEOUS AMENDMENTS AND TECHNICAL CORECTIONS.

(a) CORRECTIONS RELATING TO CATASTROPHIC DRUG BENEFIT.—

(1) DEFINITION OF COVERED OUTPATIENT DRUGS.—Section 1861(t)(3)(A) of the Social Security Act, as added by section 202(a)(2)(C) of the Medicare Catastrophic Coverage Act of 11988 (in this section referred to as "MCCA"), is amended—

(A) by redesignating clauses (iv) through (xiii) as clauses (vi), (vii), (viii), (ix), (x), (xii), (xiii), (xiv), (xvi), and (xviii), respectively;

(B) by inserting after clause (iii) the following:

"(iv) Diagnostic services under subsections (s)(2)(C) and (s)(3).

"(v) X-ray, radium, and radioactive isotope therapy under subsection (s)(4).";

(C) by inserting after clause (x), as so redesignated, the following:

"(xi) Parental nutrition nutrients under subsection (s)(8).";

(D) by inserting after clause (xvi), as so redesignated, the following:

"(xv) Partial hospitalization services (as defined in subsection (ff)).''; and

(E) by inserting after clause (xvi), as so redesignated, the following:

"(xvii) Qualified psychologist services (as defined in subsection (ii)).".

(2) COVERED HOME IV DRUGS.—Section 1861(t)(4)(A) of such Act (42 U.S.C. 1395x(t)(4)(A)) is amended by striking "dispensed" and inserting "furnished by a qualified home intravenous drug therapy provider".

(3) REFERENCES TO CATASTROPHIC DRUG DEDUCTIBLE AMOUNT.—Section 1834(c) of the Social Security Act, as added by section 202(b)(4) of MCCA, is amended—

(A) in paragraph (2)(A), by striking "under paragraph (1)(A) and except as provided in subparagraph (C)" and inserting "under paragraph (1)", and

(B) in paragraph (8)(E), by striking "paragraph (1)(A)" each place it appears and inserting "paragraph (1)".

(b) SCREENING MAMMOGRAPHY.—

(1) APPLICATION OF PARTICIPATING PHYSICIAN DIFFERENTIAL.—Section 1834(e)(4) of the Social Security Act, as added by section 204(b)(2) of MCCA, is amended by adding at the end the following new subparagraph:

"(D) APPLICATION OF PARTICIPATING PHYSICIAN DIFFERENTIAL.—In applying the limit under subparagraph (A) with respect to a nonparticipating physician, the limit applied shall be the applicable percent (as defined in the second sentence of section 1842(b)(4)(A)(iv)) of the limit otherwise established in that subparagraph.".

(2) FREQUENCY OF SCREENING.—Section 1834(e)(2)(A) of the Social Security Act, as added by section 204(b)(2) of MCCA, is amended—

(A) in clause (iii)(I), by striking "the 11 months of a previous screening mammography" and inserting "11 months following the month in which a previous screening mammography was performed",

(B) in clause (iii)(II), by striking "the 23 months of a previous screening mammography" and inserting "23 months following the month in which a previous screening mammography was performed",

(C) in clause (iv), by striking "11 months of a previous screening mammography" and inserting "11 months following the month in which a previous screening mammography was performed", and

(D) in clause (v), by striking "23 months of a previous screening mammography" and inserting "23 months following the month in which a previous screening mammography was performed".

(c) ROUNDING OF PART B PREMIUM.—Section 1839 of the Social Security Act, as amended by section 211(c)(1)(E) of MCCA, is amended—

(1) in the first sentence of subsection (b), by striking "subsections (f) and (g)(5)" and inserting "subsection (f)",

(2) in subsection (b), by inserting after the first sentence the following new sentence: "If the resulting monthly premium is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.", and

(3) in subsection (c), by striking "the foregoing provisions of this section" and inserting "subsection (a)(3) or (e)".

(d) MISCELLANEOUS.—

(1) clause (iii) of section 1814(a)(7)(A) of the Social Security Act, as added by section 104(d)(2)(C)(iii) of MCCA, is amended by moving its alignment 2 ems to the left so its alignment is the same as that of clause (ii) of such section.

(2) Section 1842(p)(3)(B) of the Social Security Act, as added by section 202(g) of MCCA, is amended by striking "section 1842(j)(2)(A)" and inserting "subsection (j)(2)(A)".

(3) Section 221(g)(3) of MCCA is amended by striking "subsection (f)" and inserting "subsection (e)".

(4) Section 1842(h)(5)(B)(iv) of the Social Security Act, as added by section 223(b)(4) of MCCA, is amended by striking "paragraph (2)(A)" and inserting "paragraph (2)".

(e) MISCELLANEOUS CORRECTIONS RELATING TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987.—

(1) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1834(b)(4)(A) of the Social Security Act, as added by section

4049(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "insurance and deductibles under section 1835(a)(1)(I)" and inserting "coinsurance and deductibles under sections 1833(a)(1)(J)".

(2) Section 1842(j)(1)(C)(vii) of the Social Security Act, as added by section 4085(i)(7)(C) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "accordingly" and inserting "according".

(3) Section 1886(g)(3)(A)(iv) of the Social Security Act, as added by section 4006(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "may) be" and inserting "may be)".

(f) OTHER CORRECTIONS.—

(1) Section 1866(a)(1)(F)(i)(III) of the Social Security Act is amended by striking "fiscal year))" and inserting "fiscal year)".

(2) Section 1875(c)(7) of the Social Security Act, as added by section 9316(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of this section".

(3) Section 1842(j)(2)(B) of the Social Security Act, as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987, is amended by striking "paragraphs" and inserting "subsections".

TITLE IV—MISCELLANEOUS SOCIAL SECURITY PROVISIONS

SEC. 401. EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTHCARE BENEFITS PROVIDED BY THE EMPLOYERS.

(a) OLD-AGE SURVIVORS, AND DISABILITY, AND HOSPITAL INSURANCE PROGRAMS.—For purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(b) RAILROAD RETIREMENT PROGRAM.—For purposes of chapter 22 of the Internal Revenue Code of 1986, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(c) FEDERAL UNEMPLOYMENT PROGRAMS.—

(1) FEDERAL UNEMPLOYMENT TAX.—For purposes of chapter 23 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(2) RAILROAD UNEMPLOYMENT CONTRIBUTIONS.—For purposes of the Railroad Unemployment Insurance Act, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(3) RAILROAD UNEMPLOYMENT REPAYMENT TAX.—For purposes of chapter 23A of the Internal Revenue Code of 1986, the term "rail wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(d) EFFECTIVE DATE.—This section shall apply with respect to refunds provided on or after January 1, 1989.

Mr. BENTSEN. Mr. President, while I am committed to repealing the supplemental premium that is in the current law, I really think it would be a serious mistake to totally repeal the catastrophic illness benefits that are in the present legislation.

That is why I support this reformed proposal. I must tell you, it is pretty thick gruel. It does not have near the benefits that I would prefer that we have. But it would repeal the supplemental premium, and that is what the public has insisted on, and we are responding to that.

But it would keep some of those benefits in the Senate bill, including the protection against catastrophic hospital bills, expanding home health benefits and hospice benefits, respite care, and immunosuppression of drugs.

It would also retain some of the screening benefits and move up some of the starting days to January 1, 1990, a year earlier than the Senate-passed bill.

This amendment would make some concessions to the House position. It would reduce the already modest premium to $3.90 in 1990, growing to a maximum of $6 in 1994.

In addition, the Secretary of Health and Human Services would be instructed to lower that premium if the benefits turned out to be overfunded.

To cover the cost of reducing the premium, the amendment calls for a second hospital deductible that would be about 93 percent of the first. In 1990, the first deductible would be $592, and the second deductible roughly $550. That second deductible would only be collected if the second hospitalization began more than 60 days after the end of the first stay.

Mr. President, the House may turn this one down, too. But I think that would be a tragic result. What we are looking at is a number of people, elderly people, who just do not have the funds to take care of some of the Medigap policies that are being offered today.

And we are being given information of very substantial increases in those premiums by the private sector. This is all going to be having some consequences, and even this one will have its deficiencies.

At some point, an older American with, say, diabetes is going to look at the mounting bills for insulin and wish we had found a better way. Somebody on beta blockers for a heart condition will wish we had found a better way. And somebody who has had a stroke, is paralyzed but alert and in a nursing home, will wish we had found a better way.

I think what we did have was perfectible. The United States is one of two countries in the industrialized world to refuse to insure all of its citizens against illness. South Africa is the other. What we have brought to this package is the best we think we can possibly hope for the House accepting.

I want to say that there are those that have opposed the particular legislation we have. I recall the other day having received a letter from the National Committee to Preserve Social Security and Medicare. They were saying they were horrified that we might repeal the catastrophic. Blue Cross-Blue Shield has informed us that if such a proposal were to carry, they would be forced to raise their Medigap rates by $5.10 a month.

What an unintentional irony, because some of these same groups were the ones that had the inflammatory and totally inaccurate letters that in turn brought us sacks of mail into our offices from people who had been hoodwinked and scared by that kind of a mailing program. But it was not all their fault.

In turn, I do not want to excuse the administration totally. Within the Republican Party itself, there were those who worked in a statesmanlike manner to preserve and improve the act, particularly the ranking minority leader, Senator DOLE; Senator SIMPSON, and Senator DURENBERGER.

Within the administration itself, Secretary Sullivan was a courageous exception. He said to take back from tens of millions of elderly Americans the comfort of knowing that serious illness will not cause them financial ruin would not only be unwise health policy, but simply would be an unforgiveable act of political expediency. He was right. It is too bad that we did not have some of the others in the administration feeling the same way, because we just should not try to decide these things on ideological grounds.

Who among us in this Chamber has been spared the pain of seeing a long, fatal illness, whether a parent, spouse, or a brother or a child? Who among us has not seen a loved one in and out of the hospital, hooked up to tubes, clinging to life?

That issue excludes none of us, even those who can write out a check to cover every cent. And that is why it is important, I think, that we work to retain whatever of these benefits that we can.

In "Alice in Wonderland" there is that wonderful saying where Alice asks the Cheshire Cat for directions. "Will you tell me, please, which way should I go from here?"

"That depends a great deal on where you want to go," says the cat.

"Well, I do not care where," Alice says.

And the cat says, "Then it does not matter much which way you go."

There are those of us in this body who know which way to go when it comes to helping elderly Americans. We think we have to do more, and we are confident that a ways down that road the American people will tell us which direction we should take, and when that day comes, nobody will be

able to toss an obstacle too high or too wide to stop us.

Mr. President, I support this amendment even with its limited applications because I think this is our best chance to avoid repeal and, hopefully, get the other body to accept it. Thank you, Mr. President.

The PRESIDENT pro tempore. The majority leader.

## UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be 40 more minutes of debate on this amendment in the usual form, equally divided, and under the control of the majority leader and the Republican leader, or their designees, and that of the 20 minutes allocated to the majority leader, 15 minutes be under the control of Senator GRAHAM, of Florida, and 5 minutes under the control of the majority leader.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I yield the floor.

Mr. DOLE. I might advise the majority leader, as far as I know, there is no request for a rollcall vote on this side.

Mr. MITCHELL. Mr. President, in response, we are currently checking to see whether there is any request here and, if there is no request, then there will not be a rollcall vote. But I will be in a position to announce that shortly.

The PRESIDENT pro tempore. Who seeks recognition? The Republican leader.

Mr. DOLE. Mr. President, I yield myself such time as I may consume, the remainder of the time under the control of the distinguished Senator from Arizona [Mr. MCCAIN].

On October 6, this body debated at some length the issue of the Medicare and catastrophic health benefits. At that time, this Senator, along with the distinguished majority leader and the distinguished chairman and ranking members of the Senate Finance Committee, supported Senator DURENBERGER's proposal that would have maintained a very small supplemental premium along with the benefits we believe to be most critical. But our colleagues disagreed, arguing that the elderly already rejected any supplemental premium, and our proposal lost on a vote of 37 to 62.

Also debated at the time was a substitute offered by Senators ROTH and DANFORTH, which this conference report proposes, to repeal the entire program. The substitute was also defeated by a vote of 26 to 73. The Senate took that position on October 6, which was the right position, and it should not now change its view.

In other words, we were 3 to 1 against repeal. I think we are still 3 to 1 against repeal. We implore our colleagues on the House side and both parties to take a look at this program, take a look at this compromise. As the distinguished chairman has pointed out, it is getting a little thin, but there is still enough there to help some people who will need help.

Many of my colleagues cautioned us against repeal at the time it was considered. In our rush to respond to those whose principal objection was the supplemental premium, they urged us not to lose sight of our ultimate goal, which is to protect those who are unprotected and those who need protection. I guess, in the frenzy of all the supplemental premium and the top 5.6 percent of the elderly in this country with an average gross income of $40,000, we maybe did not focus on the consequences of repeal because we were trying to save some little supplemental premium and some of the benefits alluded to by the chairman of the committee. But what we did in the process was to forget what would happen if we had repeal, what would happen to the sickest and most elderly and disabled that would benefit from the program.

There is no doubt that in repeal, outright repeal, we are going to benefit, as I indicated, about 5.6 percent of the elderly, who would have had to pay $800 per year in supplemental premium, but whose adjusted gross income would be somewhere in excess of $40,000. To me that is not a priority. It is not my priority. They were successful. They have been successful. They want changes. We have listened, and we have heard.

My priority is the 13 percent of the Medicare beneficiaries who would be helped by the provision providing unlimited hospitalization, the 11 percent helped by the new mammography fee screening provisions, and those helped by the new limited drug benefit. Those are the ones I am concerned about. Thirteen percent or 11 percent may not sound like much, but it translates into real people. Between 3.3 million and 3.9 million people are sick and at risk of impoverishment because of an illness. Repeal of this program and rescission of these benefits means leaving these people without our help. The Senator from Kansas, for one, thinks that is a wrong thing to do. I believe the House made the wrong decision. It is bad health policy, it is bad public policy, and the Senate should not make the same error.

I would be the first to acknowledge, as I have before on this floor, no doubt about it we probably went too far in our previous efforts to address some of the problems. This Senator refused to sign the conference report because I thought we had gone too far. But to repeat an old and overused phrase, let us not throw out the baby with the bath water, which is exactly what full repeal would do.

Let me again underscore that the ruckus raised by the elderly groups early in the year was clearly focused on existence of an income-related supplemental premium. That was the focus, and that caused the ruckus. The battle was fought and it was decided to get rid of it, get rid of the supplemental premium. There were others who were concerned that the benefits were too expensive, particularly with respect to drug coverage. That battle was also fought and decided. The drug benefit, among others, was reduced. As again the chairman pointed out, we are down to very limited drug coverage.

I guess the only question left is should we just give up and go home and forget about what little remains and forget about 3.3 to 3.9 million Americans who need help? I do not question the motives of those who want a flat out repeal. They believe there is a lot of confusion among senior citizens. They would rather address it next year. But what happens? When next year? January, February, March, April, May, June, July? It is not going to be easy to do.

I am in hopes of finally achieving a compromise. It seems to me that this is a compromise. It is a gesture toward the House. It is not my first choice, but it is better than nothing at all.

So it seems to me this is a wise decision, again, by the Senate. And, again, if there should be a vote, I bet it would be 3 to 1 at least for this compromise.

I would also implore the White House, who has been rather silent in all this debate, because they were concerned primarily early on about the costs, as they should be concerned about the costs, but now this is a program that is fully funded. It is not going to increase the deficit. We have addressed some of the concerns. In my view, it is an opportunity for the President of the United States to take the high ground, to indicate his concern for the 3 to 4 million people who might still benefit from what remains of a very sharply curtailed program.

So I hope that when we take affirmative action on the Senate side, prior to a vote on the House side, and the House will vote, that we might have the administration's position in support of this package. I think it would be very meaningful on the House side because there have been some concerns, and I can say there is no doubt about where the Secretary of Health and Human Services stands, Dr. Sullivan. He wants to retain all we can; he wants to salvage what we can.

So I say to my Republican colleagues on the House side, those on the Ways and Means Committee and others who, in some cases, said, "Let us repeal it, it is bad, bad; let us repeal it and get out of here," we have at least one more chance, one more op-

portunity to meet our responsibilities to certain Americans who, without our doing so, are going to be left helpless. It is not a partisan matter; it is a matter that has had wide support in this body on both sides of the aisle.

As I close, I again thank my colleague from Arizona, Senator MCCAIN, who has been at the forefront of this issue and continues at the forefront. Again, I urge my colleagues on the House side, and I urge my friend from Texas on the House side, Congressman BILL ARCHER, who is ranking Republican on the Ways and Means Committee, take a look at this proposal; take a look at it, take a look at the consequences if we do nothing, and then help us lead the way on the House side for a resounding vote in support of helping our senior citizens as we prepare for the holiday season.

Mr. President, any time remaining I yield to the control of the Senator from Arizona.

The PRESIDENT pro tempore. Does the Senator from Arizona [Mr. MCCAIN] wish recognition?

Mr. MCCAIN. Mr. President, may I ask how much time there is remaining on both sides.

The PRESIDENT pro tempore. Eleven minutes and thirty seconds to the side of the Senator from Arizona and 20 minutes to the other side.

Mr. GORTON. Will the Senator from Arizona yield 4 or 5 minutes to me?

Mr. MCCAIN. Mr. President, I yield 2 minutes to the Senator from Washington [Mr. GORTON].

The PRESIDENT pro tempore. The Senator from Washington [Mr. GORTON] is recognized for 2 minutes.

Mr. GORTON. Mr. President, this proposal represents the last hope this Congress has to deal responsibly with one of the great issues of 1989. That issue was triggered by the inequity of the income tax surtax attached to the catastrophic health care bill.

Under the leadership and patience of the distinguished Senator from Arizona, we have come close to success, but that Senator always has contrasted the inequity of the surtax from true catastrophic care, which he has always sought to retain.

First, he carried on a lonely fight against the establishment of both the Senate Finance Committee and most particularly the Ways and Means Committee in the House. When he finally won, in one sense he won too much and now the House of Representatives demands absolute repeal of the entire law, which is as irresponsible as doing nothing.

Now we have a chance to save long-term hospitalization for those who need it. We have a chance to save skilled nursing home transition care for those who absolutely need it. This proposal is backed by all of the major senior citizen organizations. A strong vote in favor of this compromise may yet save it. It is absolutely essential to the success of this session of the Congress of the United States.

I urge my colleges to support, and to support very strongly, the compromise language worked out by the distinguished chairman of the Finance Committee, the ranking minority member of that committee, and most particularly by the distinguished and hard-working Senator from Arizona.

The PRESIDENT pro tempore. Who yields time and to whom?

Mr. MCCAIN. Mr. President, I would ask if the Senator from Florida intends to use some of his time. We are down to less than 10 minutes.

The PRESIDENT pro tempore. Does the Senator from Florida seek recognition?

Mr. GRAHAM. Momentarily.

The PRESIDENT pro tempore. Time is running. Time will be charged equally against both sides.

Mr. MCCAIN. Mr. President, I yield myself such time as is necessary.

The PRESIDENT pro tempore. The Senator from Arizona is recognized under his own time.

Mr. MCCAIN. Mr. President, this hopefully will be the last time I speak to this issue during this session. I thank the President pro tempore for his patience toward me during this year. I would also like to express my appreciation to the distinguished chairman of the Finance Committee, who has undeservedly received criticism addressing this very difficult situation. I believe he has shown courage and dedication to the seniors of America and we are grateful for that.

Mr. President, we are here perhaps for the last time attempting to salvage something from the Catastrophic Illness Insurance Act which was passed last year. There clearly were mistakes made in that act. It provoked an outcry and firestorm amongst the seniors of this country. The majority of both bodies recognize there needs to be change. The question is what kind of change is needed.

As we know, the Senate bill, passed in October, removed the surtax and preserved the core benefits and eliminated the rest. It paid for those remaining benefits with an existing flat premium which is now $4.90 per month. It will go up by 1994 to some $10. This new proposal which we are now sending back to the House of Representatives goes up to about $6.10 in 1994.

Mr. President, if we repeal the act entirely, we will repeal the most important benefits including protection against catastrophic hospitalization bills. Millions of Americans cannot and will not be able to afford catastrophic hospitalization bills. We may be treated 20 days after the first of January to the sight of senior citizens being removed from hospitals who are critically ill, because they cannot pay those bills.

A vote for repeal is a vote to eliminate an essential benefit to this Nation's elderly women, mammography screening. There may be some question as to how much certain provisions of this bill will help senior citizens. Scientific evidence tells us that 4,000 elderly women next year will die if they do not have access to mammograms.

Who is going to answer for the deaths of those women who did not have access to mammograms and the benefit of mammography, without which, scientific evidence tells us, 4,000 will die? That is what repeal does.

It also repeals the respite care, which is so important to families, as well as those who are suffering illness. It also repeals provisions for home health care. And it also will force the House and Senate to fight this issue again next year.

Mr. President, seniors want the surtax eliminated. All seniors organizations in this country support this proposal. Everyone from the American Association of Retired Persons to the National Association of Retired Federal Employees to the National Committee to Preserve Social Security and Medicare; across the board, they want us to preserve the core benefits. I hope we will be able to do so.

This compromise represents where I believe I and others in this body were with Members of the other body, including the Secretary of Health and Human Services and representatives of the Office of Management and Budget. This compromise lowers the premiums and is fully funded in all years. The premiums are capped at $3.90 in 1990, $4.80 in 1991, $5.60 in 1992, and $6 in 1993.

Mr. President, I must again share the view of the distinguished Republican leader of the sorrow that I feel at the lack of involvement by the White House on this issue. The President and the administration, with the notable exception of the Secretary of Health and Human Services, Dr. Sullivan, has been strangely silent. They have been silent, so I am told, because of the funding aspect, the fiduciary aspects of this issue.

How can we let the funding aspects of the issue be a rationale for keeping hands off of an issue when we are talking about the lives of the weakest in our society who need the most help? That is our Nation's elderly. Mr. President, the lack of involvement on the part of the White House in my view has been without excuse.

What will happen if we repeal this legislation, as the House seems bent on doing? First of all, we will be back next year. We will be readdressing this issue because there are needs of the el-

derly that are not met. Second of all, and most tragically, we will be treated to the unhappy and tragic sight of senior citizens being removed from skilled nursing facilities because they cannot afford to pay for them; of senior citizens removed from hospitals because they cannot afford to pay the bill for catastrophic illness; of elderly women dying of cancer because they did not have access to mammograms.

Mr. President, 2 days before Thanksgiving I think this would be a terrible gift for us to present to the seniors of our society who are badly in need of the protection and help of their elected officials.

Mr. President, I reserve the remainder of my time.

The PRESIDENT pro tempore. The Senator reserves 2 minutes 4 seconds. The Senator from Florida [Mr. GRAHAM] is recognized for 15 minutes under the order.

Mr. GRAHAM. I thank the Chair.

Mr. President, I represent a State with 18 percent of its population in excess of the age of 65; perhaps 1 percent of its population over the age of 85; 2.1 million people in Florida are Medicare recipients. I cite those statistics to indicate that this is an issue of very great importance in my State.

Illustrative of that is since January our office has received over 75,000 pieces of mail relative to the Catastrophic Health Care Act. Only a handful said that they supported the act. The rest said they did not.

One of the great histories that has surrounded this congressional debate on the future of catastrophic Medicare coverage, and one that I suggest is being raised again this afternoon, is why have we not heard from the silent majority which would benefit from the expanded coverage? Why has the message that we have received been so overwhelmingly from those opposed to the act?

The reason is simple, Mr. President. The reason we have not heard from the silent majority benefiting from the Catastrophic Program is because there is no silent majority benefiting from the Catastrophic Program. Those who would benefit substantially from the additions to Medicare do not even constitute a sizable minority of the retirees.

The myth of a silent majority for mandatory government-sponsored catastrophic coverage arose in part from the overemphasis on the surtax on income as the main reason for seniors' revolt against this program.

We convinced ourselves that the reason there was opposition was totally because of the form of financing of the program. And it is true that many older Americans did not like the surtax. But they also raised legitimate questions about the benefits side of this package.

The Catastrophic Care Act amounted to massive duplication of existing coverage. Even older Americans who did not pay the surtax protested the Catastrophic Act because it had mandatory program covered items which most of them already had through private insurance and did not cover what they really wanted which was long-term care.

Before the 1988 catastrophic law was passed Medicare paid full coverage minus deductible for hospital stays of up to 60 days. Did this mean that most seniors needing longer hospitalization were left without insurance coverage after the 60-day period? That one-half to 1 percent of those who enter a hospital who stayed for more than 60 days, were they left without coverage? The answer is definitely not. Often patients reaching the end of their Medicare paid coverage for hospitalization, nearly 9 out of 10, had insurance for an extended period without the Catastrophic Care Act.

Those nine people were covered by private Medigap policies, group coverage retained from previous employers, or they were covered by Medicaid. The remaining 1 out of 10, not poor enough for Medicaid and without extended coverage, needs help. But we have constructed a 100-percent program to deal with the 10-percent problem.

The massive duplication, as disruptive as the Catastrophic Program amounts to, is wasteful and is unneeded to achieve the goal. Let me cite some statistics from my State of Florida.

As I indicated we have 2.1 million people eligible for Medicare. Of these nearly 1.1 million have purchased supplemental policies. Another 700,000, Mr. President, retirees have group coverage retained from previous employment, generally more comprehensive than supplemental coverage. That leaves about 300,000 Floridians who are covered by Medicare but did not have supplemental coverage. Of that, 370,000 were covered by Medicaid. Therefore about 230,000 Floridians or 11 percent of those eligible for Medicare rely solely on Medicare and would benefit substantially from the catastrophic additions in the 1988 act. Efforts to salvage parts of the Catastrophic Program to protect a mainly independent silent majority have the best of intentions, and I commend all of those who have worked so diligently in its behalf.

But the majority of seniors—who have been anything but silent—do not want to pay twice for duplicative benefits. I hope Congress and the administration have learned some lessons from our experience with the Catastrophic Care Act. I would suggest at least five of those lessons.

First, we should listen carefully to those affected before we legislate changes. Second, we failed to make a thorough diagnosis before we proscribe specific surgery. Third, we failed to make certain that the solution properly fits the problem that diagnosis has identified. Fourth, when we commit public resources let us make certain that we are committing them to the highest priority with the highest return.

Finally, let us not be drawn into the assumption that all perceived problems require a Federal Government response. We have a program here, Mr. President which I suggest is going to present not only challenges in health care, but challenges in a whole variety of Government programs as we face the 1990's and beyond. But we are going to have to ask a different set of questions than this Congress has been asking for most of the last 50 years, a new set of questions that relate to what is the capacity of other sectors of society, most importantly the individual Americans themselves—to take steps in their own self-protection of what will be the relationship between the Federal Government and the States and local communities in providing for health care services.

When is it going to be appropriate to use the broad sweep of Government taxation for a mandatory program when we have reached a point that we decide as a society those decisions should be removed from individual choice and determination.

I do not believe that we have arrived at such a point, tonight, Mr. President, with regard to this program. I believe we have some major challenges ahead of us in providing for the future needs of older Americans. Those challenges include how do we shift away from a crisis-oriented program that focuses on providing massive assistance after massive illness to a program that will give greater attention to prevention?

Mr. President, I conclude by saying that the best course of action for today is to repeal, start with a fresh slate. That is what the senior citizens of this country want, and that is what I believe Congress would be wise to provide.

Mr. GRASSLEY. Mr. President, the alternative before us is certainly not, in my view, as good as the original McCain proposal, which I have supported to this time, for reform of this program.

However, the current proposal does repeal the supplemental premium which has generated such opposition from many of our constituents. Furthermore, it does retain a hospital catastrophic protection feature, although it does seem to me that the addition of a second hospital deductible for a second spell of illness moves that part of the program back toward the terms of precatastrophic Medicare law.

Nevertheless, even with this second deductible spell of illness provision, the hospital provision does constitute an improvement over the program which was in place before we passed the original Medicare Catastrophic Coverage Act.

It constitutes an improvement, in that it will cost a Medicare beneficiary who faces long, or repeated, hospital stays less money than the Precatastrophic Hospital Program would have cost them. It also provides greater catastrophic protection, in that, as I understand the provision, after a second hospitalization, for which a second deductible would be charged, an individual who requires hospitalization yet again would not have to pay any additional charges for that subsequent hospital stay. It is also the case that copayments would not be required by the terms of this program as they were by the old Precatastrophic Program.

Also retained and introduced more rapidly than originally contemplated will be hospice, respite care, mammography, and "Mitchell" drug coverage. The flat, basic premium will be lower than originally contemplated, and will grow at a slower rate, thus saving beneficiaries money compared to the originally proposed flat, basic premium.

I want to reiterate to my fellow Iowans who have written to me, or called my office, or spoken to me at home on this issue that we have repealed the surtax entirely. We have lowered the flat, basic premium, while we have retained a hospital protection feature which will stand between many, many older people and financial catastrophe. And we have retained a spousal impoverishment provision which introduces into the working of the Medicaid nursing home rules, at long last, an element of humanity and sanity.

We do not know what the other body will do when it takes up this proposal. It may yet repeal the program again. If the other body does repeal again, Mr. President, I do not now know what the response of the Senate will be. I do know that I believe that the proposal we are sending to the other body, slim gruel that it may be, as some Members have said, is the responsible thing to do in these circumstances.

The PRESIDENT pro tempore. Who yields time?

Mr. McCAIN. Mr. President, we have no more requests for time. I yield back the remainder of our time.

Mr. BENTSEN. Mr. President, we are prepared and yield the remainder of our time. Mr. President, I know of no one requesting a rollcall.

Mr. McCAIN. Mr. President, I would like to ask unanimous consent to speak for 30 seconds.

The PRESIDENT pro tempore. The Senator may retrieve 30 seconds of his time.

Mr. McCAIN. Mr. President, I may seek a rollcall vote depending on what happens, not at this time, as a result of the deliberations in the other body. I would like to tell my colleagues at this time. I may seek a rollcall vote depending on what comes back from the other body.

The PRESIDENT pro tempore. All time having been yielded, the question is on agreeing to the amendment of the Senator from Maine, as modified.

The amendment (No. 1198), as modified, was agreed to.

Mr. McCAIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDENT pro tempore. The bill having been read the third time, the question is: Shall the bill pass?

So the bill (H.R. 3607), as amended, was passed.

Mr. McCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CONRAD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

## THE CONTINUING DROUGHT IN NORTH DAKOTA

Mr. CONRAD. Mr. President, I want to bring to the attention of my colleagues the latest Doane's Crop Watch information on the continuing drought across much of the country. I want to, for the benefit of my colleagues, read from their latest report. It says in part:

> The end of the 1989 growing season finds major portions of the Midwest and upper plains with soil moisture that is much below average. Our map of the current Palmer Drought readings indicates widespread moisture problems along a line from the Southwest up to the Great Lakes, plus portions of Texas, Florida, and the Pacific Northwest. Many of these areas are now entering their second and third years of below normal moisture.
>
> Prominent on the map are the severe to extreme drought readings covering nearly the entire State of North Dakota. This is the second consecutive November that this has occurred. Last year at this time, the drought extended westward across most of Montana as well. A year ago, we reported in Crop Watch the results of our analysis of 12 other widespread early November droughts in that region during the past century. The following years' spring wheat yields fell below average in 11 of those 12 cases. We warned you of the likelihood that 1989 would make the 12 of 13 such instances. Events bore this out.

Mr. President, the report concludes:

> This year we have looked back at the previous cases when most of North Dakota was locked in severe to extreme drought in early November. History shows us nine such instances since 1895, the most recent being last year. That State's following years' spring wheat yields were below average in all nine cases. Declines ranged from just 8 percent in 1940 to 52 percent in 1934; the average was 31 percent. Average winter and spring precipitation will not sufficiently recharge soils by planting time, given such severe moisture by the middle of the growing season. The continuing poor moisture situation argues for below-average spring wheat yields in North Dakota in 1990 unless moisture improves remarkably before summer.

Mr. President, my State has been absolutely devastated by 2 years of drought. What the latest Doane's Report is indicating is that we are faced with more of the same. Mr. President, I just want to let my colleagues know of this latest report, because it has profound implications for my State.

Last year, we led the Nation in personal income decline. The consequences of 3 years of severe drought in a row would truly be severe and exact an enormous hardship on the people of my State.

Mr. President, there are still legislative matters before this body, including the delay of the payback for advanced deficiency payments for barley and oat producers, that are important to the people who are suffering in my State, and I urge my colleagues, especially those who are reluctant to go along with the delay in the payback of those advanced deficiencies, to understand what is happening in my State.

I plead with them to allow that legislation to go forward. It has absolutely no budget impact. It merely shifts the payment from December 15 of this year until July of next year, all within the same fiscal year. It will not cost the Federal Government a penny, but it will allow some farm families, not only in my State but other parts of the country hard hit by drought, to have a little more pleasant Christmas.

I hope those who have their hearts hardened by financial hard times here in Washington and the budget pressure that all of us face will let up just a little bit, will say we understand, we can see that the people are hurting and need some help. That is the American way.

So I urge my colleagues who are standing in the way at this late hour to relent, to stand down, to recognize

that maybe someday they will be in the same position as the people of my State and the other parts of this country that are so hard hit by this continuing drought.

With that, Mr. President, I thank the Chair and I yield the floor.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll, the absence of a quorum having been suggested.

The legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

## NOMINATION SEQUENTIALLY REFERRED

Mr. FORD. Mr. President, I understand that this has been cleared on the Republican side. It is a sequential referral.

As if in executive session, I ask unanimous consent that when the nomination of Susan J. Crawford to be inspector general at the Department of Defense is reported by the Committee on Armed Services, it be referred to the Committee on Governmental Affairs for not to exceed 20 days.

The PRESIDENT pro tempore. Without objection, as in executive session, it is so ordered.

The Senator from Kentucky is recognized.

Mr. FORD. I thank the Chair.

(The remarks of Mr. FORD pertaining to the introduction of legislation are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Delaware is recognized.

Mr. BIDEN. I thank the Chair.

(The remarks of Mr. BIDEN pertaining to the introduction of S. 1970 and S. 1972 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll, the absence of a quorum having been suggested.

The assistant legislative clerk proceeded to call the roll.

Mr. KASTEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Wisconsin [Mr. KASTEN] is recognized.

Mr. KASTEN. Mr. President, I rise today to honor a good sailor and a good friend. Capt. Michael L. Bowman is leaving the Senate, having completed his tour of duty as Principal Deputy to the Secretary of the Navy for Senate liaison.

In that post, he was a principled and effective advocate for the needs of the U.S. Navy. I have stood with Mike on the deck of the U.S.S. *Wisconsin* and discussed the awesome task he and many others have in defending our country. He gave many of us in this body an excellent education in naval affairs, an education for which I myself am particularly indebted to him.

His courage and patriotism were in evidence in Vietnam, where he completed 200 missions flying an A-7A aircraft. And these qualities have stood him in good stead ever since.

Mike Bowman is an officer and a gentleman. We will all miss him. But I am confident that he will bring to his new task—flying the F-18 fighter-attack aircraft once again—the same commitment to excellence which he brought to his tasks as Senate liaison.

I join all my colleagues in wishing Mike and Sally Bowman a bright future.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDENT pro tempore. The Senate is in morning business and the Senator is recognized.

## AGENT ORANGE: TEN YEARS OF STRUGGLE

Mr. DASCHLE. Mr. President, we are nearing the end of this session, and it appears very likely that once again the Congress will not pass legislation to provide for compensation for victims of agent orange. There are deep-seated feelings on both sides of this issue, and I personally respect my colleagues on the other side of the aisle, as well as in the other body, who are as convinced about their point of view as I am about mine. I respect their point of view, and I hope that they will respect mine.

In that vein, with every good intention, I would like to take a few minutes this evening—I ask the Republican leader if he has an interest in speaking at the moment because I intend to take a few minutes. If he has no interest in doing so, I would like to take a few minutes to talk a little bit about why I feel the way I do and perhaps set the record straight and prepare the record for next year, because this issue is not going to go away. Hopefully, at some point, we can find a meeting of the minds; hopefully, at some point, we can take those who are adamantly opposed to doing anything with regard to agent orange compensation and bring them together with those of us who strongly feel the need to find a meaningful solution to this seemingly interminable problem.

It is my fundamental belief that agent orange victims, for whatever reason, have been singled out and have not received the care, have not received the attention, have not been given the kind of priority that virtually every other class of veteran suffering from a service-connected disability—or what he or she claims to be a service-connected disability—has received. Fifty-four diseases are currently on the VA's list of presumptive disabilities. These presumptions were made—some by Congress and some by the VA—because it was determined that they were just as connected to military service as a wound from a bullet, bomb, or grenade. That is what we are saying about diseases associated with exposure to agent orange.

I ask unanimous consent at this time to have all 54 of these diseases printed in the RECORD.

There being no objection, the material was ordered to be printed in RECORD, as follows:

Anemia, primary.
Arteriosclerosis.
Arthritis.
Atrophy, progressive muscular.
Brain hemorrhage.
Brain thrombosis.
Bronchiectasis.
Calculi of the kidney, bladder, or gallbladder.
Cardiovascular-renal disease, including hypertension.
Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocarditis.
Endocrinopathies.
Epilepsies.
Hansen's disease
Hodgkin's disease.
Leukemia.
Lupus erythematosus, systemic.
Myasthenia gravis.
Myelitis.
Myocarditis.
Nephritis.
Organic diseases of the nervous system.
Osteitis deformans (Paget's disease).
Osteomalacia.
Palsy, bulbar.
Paralysis agitans.
Psychoses.
Purpura idiopathic, hemorrhagic.
Raynaud's disease.

Sarcoidosis.
Scleroderma.
Sclerosis, amyotrophic lateral.
Sclerosis, multiple.
Syringomyelia.
Thromboangiitis obliterans (Buerger's disease).
Tuberculosis, active.
Tumors, malignant, or of the brain or spinal cord.
Ulcers, peptic (gastric or duodenal).
(A) Leukemia (other than chronic lymphocytic leukemia).
(B) Cancer of the thyroid.
(C) Cancer of the breast.
(D) Cancer of the pharynx.
(E) Cancer of the esophagus.
(F) Cancer of the stomach.
(G) Cancer of the small intestine.
(H) Cancer of the pancreas.
(I) Multiple myeloma.
(J) Lymphomas (except Hodgkins disease).
(K) Cancer of the bile ducts.
(L) Cancer of the gall bladder.
(M) Primary liver cancer (except if cirrhosis or hepatitis B is indicated.

Mr. DASCHLE. Thirteen diseases on this list are associated with atomic radiation. We passed those last year. There is also a presumption for spastic colon in former prisoners of war. That presumption was made by Congress. There is a presumption for cardiac disease in amputees. That presumption was made by the VA.

In each and every one of these cases we have given the benefit of the doubt to the veteran, as we should.

Several of the presumptive disabilities have far less evidence associating them with military service than do diseases associated with agent orange, such as soft-tissue sarcoma, non-Hodgkin's lymphoma, skin cancer, chloracne, birth defects in veterans' children, and other disabilities.

I am not here to object to those presumptions, for those veterans also deserve the benefit of the doubt. But it is important to point out that in many cases the scientific evidence is not as strong as the evidence supporting agent orange compensation, so you cannot help but sympathize with veterans suffering as a result of their exposure to agent orange who ask of us, why them and not us? Why give them the benefit of the doubt and not us?

This struggle has been going on for over 10 years. In fact, it started even before the Vietnam war began. It is becoming increasingly clear that almost 20 years ago chemical companies and military scientists knew that agent orange was at least potentially harmful to humans.

In New Jersey, insurance companies are now suing chemical companies and uncovering evidence that chemical companies knew in the 1950's, over 30 years ago, that agent orange was harmful.

I have a letter from Dr. James Clary, an Air Force scientist who served in Vietnam, saying that he and others involved in writing the history of Operation Ranch Hand, the operation that involved the actual spraying of agent orange, knew that agent orange was harmful at the time it was used.

Dr. Clary, in a letter to me dated September 9, 1988, states, and I will quote a couple of segments of the letter:

I was the scientist who prepared the final report on Ranch Hand: Herbicide Operations in Southeast Asia, July 1971, while assigned to the Department of Life Sciences, USAFA, after completing my work in Vietnam.

The current literature on dioxins and non-Hodgkin's lymphoma and soft-tissue sarcoma can be characterized by the following:

1. It underestimates (reduced risk estimates) the effect of dioxins on human tissue systems. As additional studies are completed we can expect to see even stronger correlations of dioxin exposure and NHL/STS.

2. Previous studies were not sensitive enough to detect small, but statistically significant increases in NHL/STS.

He further states in his letter:

As time progresses, and additional evidence is forthcoming, it will be increasingly difficult for anyone to deny the relationship between dioxin exposure and NHL/STS.

When we (military scientists) initiated the herbicide program in the 1960's, we were aware of the potential for damage due to dioxin contamination in the herbicide. We were even aware that the "military" formulation had a higher dioxin concentration than the "civilian" version, due to the lower cost and speed of manufacture. However, because the material was to be used on the "enemy", none of us were overly concerned. We never considered a scenario in which our own personnel would become contaminated with the herbicide. And, if we had, we would have expected our own government to give assistance to veterans so contaminated.

I might emphasize to my colleagues this was written by one of those scientists who wrote the Ranch Hand history.

If this is true, then several agencies of the Federal Government have spent decades trying to keep the truth about agent orange from the general public. You need only read Dr. Clary's letter to come to that conclusion.

In spite of Government efforts to obfuscate and manage the science, the truth has been leaking out slowly over the years. And yet there are those in this Congress, in the administration, and throughout the country who continue to claim that there is not enough evidence to support compensation. No evidence, some say. For some, hiding the truth seems to be a full-fledged obsession. Perhaps, since we have a little time, I could set the record straight tonight. Let me say at this point, Mr. President, that I have the documents to support everything I am saying tonight. If any of my colleagues would like to see any of it, they need only to contact me.

The first studies with regard to humans and agent orange occurred in the period from 1974 to 1983. Dr. Lennart Hardell was the principal author of several of the so-called Swedish studies, which began in 1974, with an additional study in 1981. These studies, for the first time, showed a link between exposure to pesticides made of agent orange components and both soft-tissue sarcoma and non-Hodgkins lymphoma.

As concerns grew, the Congress commissioned a large-scale epidemiological study, to be performed through the VA, of ground troops' exposure to agent orange and of potential health effects. It was legislation I offered in 1979.

After a series of revelations that the VA was being less than evenhanded with the study, there was general consensus that the study should be transferred from the VA to the Centers for Disease Control. We later learned that was a mistake.

Later, in 1984, the Air Force published its first morbidity report on the health status of those involved in operation Ranch Hand. The February 1984 Baseline Morbidity Report concluded that its results should be viewed as "reassuring."

During a February 1984 press conference, the Air Force emphasized that the study was "negative" and that the results were, again, "reassuring." The word "reassuring" has become very familiar, and it seems to be the only one the Air Force is willing to use to describe its findings, regardless of what the findings are. Rest assured, no matter what the study shows, it will be "reassuring." Sometimes, the evidence points to a serious problem, and, yet, the Air Force statement is, "It is reassuring."

At the same February press conference, one of the Air Force scientists—a principal investigator, chief statistician, and designer of the study—added some simple words of caution that further study was required and that some concerns remained. For having said that, he was taken off the project. We will come back to the Ranch Hand study in just a few minutes.

Later in 1984, we finally passed Public Law 98-542, compensation legislation that codified the reasonable doubt standard, provided for soft-tissue sarcoma compensation, and required the VA to establish standards for general agent orange and atomic radiation compensation. For the first time, the Congress addressed in somewhat of a comprehensive manner exposure to agent orange and what we ought to do about it. And yet, in all these years, having passed that legislation more than 6 years ago, not a single veteran was ever compensated for soft-tissue sarcoma, and to this date only a handful of veterans have received compensation for chloracne, a disease acknowledged by virtually everyone to be associated with agent orange exposure.

Although it was clear that the Veterans' Administration did not want to provide compensation, Public Law 98-542, at least in theory, established for the first time the reasonable doubt principle that might have prevented the need for further legislation had it been followed, and had the Federal Government acted in good faith in its scientific efforts.

Since 1984, Public Law 98-542 has been virtually ignored. In spite of the intent of Congress, in spite of the efforts of everyone involved in the writing of that law, in spite of our promises to veterans at that time that at long last, after all these years, they would be given the benefit of the doubt, not one veteran in this country has been compensated for any disease other than chloracne.

In 1985 and 1986, the New Jersey Agent Orange Commission reported that they were working on a blood test that could identify trace levels of dioxin and help approximate exposure in certain veterans. They pointed out that they could not rule out exposure, but that they could confirm exposure.

In the summer of 1986, the House Veterans' Affairs Subcommittee on Hospitals and Health Care hearing that I cochaired called witnesses from the Office of Technology Assessment, the Centers for Disease Control and others, to come before the Congress to explain what had happened with the CDC agent orange exposure study in recent years. OTA reported that the Centers for Disease Control had changed the protocol for the study without authorization. OTA also reported at that particular hearing that petty arguments at CDC were interfering with the study's progress and that progress had virtually come to a standstill. I should point out that this hearing reported no progress in 1986, seven years after the study was commissioned.

Well, after spending millions of dollars on the study protocol, the Centers for Disease Control suggested that a valid ground troop study could not even be done. They said there was no way to determine exposure and that military records were inadequate. They reported the last resort would be to explore blood tests for validating exposure.

The military records experts from the Army-Joint Services Environmental Support Group, led by Richard Christian, testified that military records were adequate and that, in his judgment, the Centers for Disease Control could do a valid study if they wanted to. We sent some followup questions to Mr. Christian at the time. DOD officials altered his followup testimony before it was sent to the Hill, deleting his information challenging CDC's claims. I ask unanimous consent that a DOD memo documenting this action be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SEPTEMBER 22, 1986.

A COMPARATIVE ANALYSIS OF MAJOR DIFFERENCES BETWEEN MR. RICHARD CHRISTIAN'S ORIGINAL ANSWERS AND MR. SAM BRICK'S CHANGED RESPONSES CONCERNING CONGRESSIONAL QUESTIONS FROM THE HONORABLE BOB EDGAR, THE HONORABLE TOM DASCHLE, AND THE HONORABLE TOM RIDGE

1. Congressman Daschle Question No. 1: All proposed ESG recommendations were changed. Mr Brick's version does not fully respond to the question. All reference to General Murray and his report is deleted. The original attachment which was an extract from General Murray's report was deleted by Mr. Brick. The significance of this attachment (See Tab A) verified Mr. Christian's statement concerning the bizarre methodology that CDC employed in the congressionally mandated Agent Orange Study as documented by Major General John E. Murray during his peer review of ESG.

2. Congressman Daschle Question No. 2: Mr. Brick deleted all reference to General Murray and his report. The original attachments (two) which were extracts from General Murray's report were deleted by Mr. Brick. One attachment which Mr. Brick deleted (See Tab B) was an extract detailing General Murray's recommendations for the Agent Orange Study. The other deleted attachment (See Tab C) concerned General Murray's explanation of his alternative recommendations.

3. Congressman Daschle Question No. 3: Mr. Brick deleted information concerning the problems about the blood serum study and the paragraph explaining how the Department of Justice deprived veterans of ESG's findings. OSD(HA) stated these paragraphs were personal opinions of Mr. Christian's and not official Army policy. The fact that ESG findings can be and should be used "to support contentions of veterans in civil court cases, where proof is not scientific, but based on jury findings and the preponderance of evidence" is an essential part of Mr. Christian's answer. This could realistically become the most important discovery of the Congressional Hearings.

4. Congressman Ridge Question No. 1: No changes were made.

5. Congressman Ridge Question No. 2: Mr. Brick shortened the response and deleted important and true statements from Mr. Christian's original answers. Mr. Brick deleted the statements "ESG never heard of the minimal 14-day exposure until it was discussed during the Congressional Hearings on 31 July 1986 and that ESG had never been provided an approved Exposure Opportunity Index."

6. Congressman Ridge Question No. 3: Mr. Brick deleted two paragraphs pertaining to ESG's Pilot Study that was completed in April 1986. The attachment, ESG's Pilot Study report was deleted. This deleted attachment (See Tab D) provided the first documented assessment of individual exposure opportunity and was a major part of the Special White House Science Sub-Panel conclusions and final report.

7. Congressman Ridge Question No. 4: No changes were made.

8. Congressman Ridge Question No. 5: Mr. Brick changed a definitive answer by Mr. Christian to reflect his own thoughts. Mr. Christian's answer to Congressman Ridge was an emphatic "No." Mr. Brick's explanation for the answer was different than Mr. Christian's.

9. Congressman Ridge Question No. 6: Mr. Brick deleted all of Mr. Christian's professional observations as a technical expert on the Agent Orange Epidemiological Study. Mr. Brick deleted an important statement ". . . the '14 day exposure' score was a surprise announcement at the 31 July hearing." This comment was necessary to show that CDC had never previously provided ESG an approved exposure index score.

10. Congressman Ridge Question No. 7: Mr. Brick deleted information that was necessary to clarify the answer. Mr. Christian stated, the main objective of the Pilot Study was to confirm a units' location in a sprayed area within 2 kilometer 6 days. Late in the Pilot Study ESG was requested to identify and provide exposure opportunity scores on as many men as we could to complete the Pilot Study. He also stated "all criteria requirements such as the 180 days in a line company were eliminated for the Pilot Study".

11. Congressman Ridge Question No. 8: Basically, no changes were made.

12. Congressman Ridge Question No. 9: Mr. Brick completely changed the meaning and answer to this question. All reference to General Murray and his report was deleted. Mr. Christian had stated "the less stringent the criteria, the easier to qualify study subjects. The important criteria is whether a person was exposed, regardless of rank, multiple tours, multiple re-enlistments, or time in a line company and so forth. The man's opportunity for exposure score should be the number one priority. By expanding the window out of III Corps, South Vietnam, and examining the records of 300 Battalions, the ability to identify subjects is vastly increased. General John E. Murray's report (Page 52) dated 27 May 1986, offers this as an option". (Reference Tab B of this report.)

13. Congressman Ridge Question No. 10: No changes were made.

14. Congressman Ridge Question No. 11: No changes were made.

15. Congressman Ridge Question No. 12: Mr. Brick has changed Mr. Christian's definitive answer. Mr. Brick used his own thoughts to answer this question. Mr. Christian's answer to the questions were "yes". He stated "we do our best research when we are provided data for case control studies. That is to say we are provided the names and units first. It can be, and is done. However, CDC exiled volunteers from the study".

16. Congressman Ridge Question No. 13: No changes were made.

17. Congressman Ridge Question No. 14: Mr. Brick deleted all reference to General Murray and his report. This eliminated important recommendations. Tab B of this document will show the recommendations that were deleted, thus changing Mr. Christian's answer.

18. Congressman Ridge Question No. 15: Mr. Brick deleted a sentence that states ESG will complete 143 data elements on a study subject but, CDC will disqualify the veteran later. Mr. Brick also deleted the attachment which was the Agent Orange Personnel Data Collection Form (See Tab E). Mr. Brick indicated that the form should be withdrawn as they, the Congress would not understand it. The form illustrates the enormous amount of data that had to be compiled for each veteran who met all the

criteria requirements. Even this did not insure the veteran would not be disqualified by CDC at a later date.

19. Congressman Ridge Question No. 16: No changes were made.

MAXIE M. TENBERG,
*Major, USA,*
*Chief, Scientific Support Division.*

Mr. DASCHLE. Mr. President, in September 1986, the New Jersey Agent Orange Commission announced they had tested several veterans suspected to have high agent orange levels and verified for the first time, that some Vietnam veterans were subjected to extremely high levels of dioxin exposure. They cautioned that, because of the half-life of dioxin and the fact that 20 years had passed, the blood test would drastically underestimate exposure.

At the same time, the House Energy and Commerce Committee uncovered an OMB effort to stop all dioxin research. It blasted OMB at the time for OMB's claim that there had been "enough" dioxin research and that the Federal Government should stop worrying about it.

In 1986, there was a key study involving Kansas farmers completed at the National Cancer Institute. That study indicated a sixfold increase in non-Hodgkin's lymphoma among Kansas farmers exposed to 2,4-D, a primary ingredient of agent orange.

I hope you will notice the progression of evidence here. OTA announced that CDC changed its protocol. The Army-Joint Services Environmental Support Group reported that CDC was studying the wrong people and denying the usefulness of military records that, by the way, have since been shown to be amazingly useful.

The New Jersey Agent Orange Commission came forth, and through their blood testing capability provided a major scientific breakthrough. And then the NCI study of Kansas farmers, completely independent, indicated once again a dramatic increase in the number of farmers experiencing a terminal cancer as a result of exposure to a prime ingredient of agent orange.

How much more evidence is needed? How much farther does one have to go to draw the comparison to other presumptions, to acknowledge that relationship, to do what we have said we were going to do in 1984—simply to provide the benefits of the doubt to the veteran. Not to the chemical companies, not to the Government, but to the veteran.

But the incoming tide of evidence did not stop in 1986. In 1987, a VA mortality study was released—only after being leaked to the New York Times, and it was reported in the Times that that particular study indicated a serious problem in Vietnam veterans who were likely to have been exposed to agent orange. That study, entitled "Proportionate Mortality Study of Army and Marine Corps Veterans of the Vietnam War," a Veterans' Administration study, indicated a 110-percent higher rate of non-Hodgkin's lymphoma in marines who served in heavily sprayed areas as compared with those who served in areas that were not sprayed—a 110-percent higher rate of non-Hodgkin's lymphoma.

This was not some scientist from New Jersey. This was not some group of malcontents. This was the VA itself indicating for the first time a 110-percent higher incidence of non-Hodgkin's lymphoma than is a likely result of exposure to agent orange in Vietnam.

The VA study also found a 58-percent higher rate of lung cancer. And yet, with that release of new data, the VA tried to discredit the study, tried to say that there were still some doubts about its validity, which was supported by independent scientists.

Increases in soft-tissue sarcoma and non-Hodgkin's lymphoma are found in veterans throughout the country. A Washington State study again verified that in 1987. Another VA study found an eightfold increase in soft-tissue sarcoma among veterans most likely to have been exposed to agent orange. This was of borderlne statistical significance, but the findings were nevertheless remarkable. All this as the Centers for Disease Control released its "findings" that the agent orange exposure study could not be done validly.

CDC based that announcement on a small group of veterans' blood tests, saying the people they chose for blood tests do not have enough dioxin in their blood, and concluding that military records, therefore, could not be used. Furthermore, they argue that because these few tests were "negative," the "study," which was never conducted, proves that there is no problem at all. Scientists, veterans groups and military records experts all challenge the CDC claims and called the CDC decision scientifically insupportable and medically irresponsible. Some of the people within CDC itself have since hinted that they disagreed with the decision. But there it was.

Returning to Ranch Hand, in 1987 I began my own investigation and discovered that those who have insisted that the Ranch Hand study is negative were wrong. Compensation opponents inisted that Ranch Hand offered irrefutable proof that agent orange is not a problem at all—their theory being that Ranch Handers were the most heavily exposed veterans and that they had no problems, proving that no veterans have problems relating to their exposure to agent orange. And yet, when we pressed the Ranch Hand scientists about much of this, we found there were important discrepancies between a January 1984 draft and the final February 1984 Ranch Hand report. We found that Air Force statements and Air Force facts were not the same. The facts, which had become known to the Air Force by late 1984, still had not been released.

We learned that there was an unpublished report showing a doubling of birth defects in Ranch Hand children. That was not released or discussed publicly. The January 1984 draft Ranch Hand morbidity report stated, "It is incorrect to interpret this base line study as 'negative.'" The draft also reported that the Ranch Handers were less well than the controls by a ratio was 5 to 1. It stated that the finding "clearly shows an overwhelming directionality of results: The Ranch Handers have the predominance of adverse findings." Remember those words, "not negative," Ranch Handers were worse off by 5 to 1 and an "overwhelming directionality of results."

The reason I say remember them is because they were never released in the Ranch Hand report. The Air Force chose for some reason to delete those words, those segments of the report. It was "reasurring," they said. Sure, it is reasurring if you delete some of the most damaging, the most critical information suggesting a relationship between agent orange and some of these diseases. Of course, it is reasurring. The Air Force deleted these findings from the final report at the suggestion of a Ranch Hand Advisory Committee set up by the White House Agent Orange Working Group.

They also, for whatever reason, chose to dismiss the increased birth defects in the Ranch Hand children. You did not hear about that at the 1984 press conference either.

It is no wonder when I go to the House or when I talk to people here time and again I am told, well, there was no effect, no relationship between Ranch Handers and problems associated with agent orange. Look at the report; where are the findings? They were deleted.

In 1987 Air Force scientists confirmed to me that birth defects in the Ranch Hand children are double those of children of the controls and are not "minor" as originally reported in the 1984 report. That is not TOM DASCHLE saying that; that is not some flakey scientists in South Dakota or New York or California. These are Air Force scientists who are confirming Ranch Hand information that was deleted from the 1984 report. And they also confirm that they had completed a draft report on birth defects in the Ranch Hand children in December 1984 in followup to the February 1984 Ranch Hand morbidity report. That birth defects report has never been released.

Why was it not released? Why did scientists who worked on the Ranch

Hand report not want this information to get out? Why was there a coverup? The Ranch Hand Advisory Committee under the White House Orange Working Group told them not to finish it. Later the advisory committee told them to do more work—to check some of the data.

Five years later, there is still no report. It took 10 months to write the draft, and so far it has taken 5 years to check the data. Five years later, there is still no public acknowledgement—other than what I have reported—of some of this information left out of the original report. There are several other findings that I think are very interesting, and we ought to put it in the CONGRESSIONAL RECORD as we close this session and set the stage for consideration of agent orange legislation next year.

Air Force scientists confirmed that there is an increase in skin cancers in the Ranch Hand group and that skin cancers are not related to overexposure to the Sun, as was suggested in the 1984 report. They confirmed that misclassification in the Ranch Hand exposure index is far-reaching and has the potential to hide other problems in the Ranch Hand group. They admitted that Air Force and White House management representatives became involved in scientific decisions at Ranch Hand in spite of the study protocol's ban on such involvement. The Air Force admitted that Veterans are not represented on the Ranch Hand Advisory Committee in spite of a protocol requirement that they be represented.

Yet another inconsistency was discovered through two different responses to my inquiries. We learned that there are two versions of the minutes of a February 1984 Advisory Committee meeting advising the Air Force scientists to change the conclusions in the 1984 Ranch Hand report. To change the conclusions. Keep in mind, the scientists have all been studying this. They have come together; they put all this information together; they made their report and at the very last minute, they are told by a White House advisory committee, "We do not care what you are telling us, what your conclusions may be. We want you to change the report, delete that conclusion, delete that table, minimize the relationship you are talking about.

The version of the minutes the Air Force scientists received and sent to me clearly directed the Air Force scientists to "Rephrase the statement, 'This base line report is not negative'," and to take out the table and language showing Ranch Handers were less well than the controls by a 5-to-1 ratio. The version I received from the Agent Orange Working Group dated 2 days later did not contain that language, though it was identical in almost every other way.

None of these findings were made public. By this time it was January 1988, and the public and the veterans had had no update on Ranch Hand since 1984 in spite of these findings. So you cannot help but understand why somebody, whoever it may be, in response to our desire on the basis of scientific information to provide compensation to veterans afflicted by agent orange, would point to the Ranch Hand report and say, well, there is no relationship; the Ranch Hand report says so.

It says so all right, but why it says so ought to be investigated by both the Veterans' Committees, and by everyone else interested in good government and how decisions are made in this town, because what happened there was a fraud perpetrated by people whose names we still do not know.

In January 1988, I met with Air Force scientists and representatives from the Air Force Surgeon General's office in my office. At that time, the Air Force could not explain the two versions of the minutes of the Advisory Committee meeting, but confirmed that the memo the Air Force scientists received was an accurate reflection of the meeting.

The Air Force refused my request to release the 1984 draft of the birth defects report. The Air Force scientists confirmed mistakes in the 1984 Ranch Hand morbidity report, and confirmed that three Air Force scientists, all three of whom were present—Col. William Wolfe, Dr. Richard Albanese and Dr. Joel Michalek—jointly wrote a technical paper to provide an update on the Ranch Hand results that had not been announced since late in 1984 when they were discovered in the first place.

I advised the Air Force officials at that time that either they would publish this paper and announce the changes, or I would announce them. The Air Force agreed to publish a paper written by the three scientists.

That was in January. In February, the Air Force published a technical paper with the name of only one of the scientists, Dr. Albanese, who happened to be the scientist they kicked off the Ranch Hand project in 1984. Then the Air Force set out to discredit the paper—the same paper, I might add, that they defended earlier in my office. The Air Force continues to misrepresent the Ranch Hand study findings, and in February of that year continued to call the Ranch Hand findings "negative" and "reassuring."

On May 12 of that year the Senate Veterans' Affairs Committee held a hearing. The CDC released its Agent Orange Exposure Study findings again and announced that they would terminate the study, that it could not be done. This, however, did not stop them from continuing to speak about the study as if it were proof that agent orange is not a problem—that no one was exposed. Yet, the testimony contradicted the CDC's published study results.

CDC also released its Vietnam Experience Study findings with great fanfare, saying that it, too, showed there is no problem. Yet, the testimony did not even mention an increase in non-Hodgkin's lymphoma found in the study, and CDC later suggested that the increase was not verified.

In the same hearing, the Air Force officials tried to distance themselves from the February report on Ranch Hand and to belittle its importance but admitted under questioning that it was technically correct and that all three scientists wrote it. The Air Force officials admitted at this hearing that veterans were not represented on the Ranch Hand Advisory Committee, and they had no explanation for this violation of the study protocol.

The Air Force officials denied there was any governmental interference in the Ranch Hand science in spite of the fact they had acknowledged such interference in writing to me and in a meeting in my office.

For his part, the VA Deputy Director testified at this hearing that there was not a "shred" of evidence that agent orange is associated with any veterans' disabilities. When asked what would constitute a "shred" or "reasonable doubt," the Deputy Director refused to answer, saying we should stop worrying about agent orange. He suggested that the entire problem was nothing more than a figment of veterans' imaginations.

Several days after the May 12 hearing, however, CDC acknowledged in a letter to the chairman and ranking minority member of the committee that the increase in non-Hodgkin's lymphoma was real, and bigger than first thought. A sixfold increase, they said. And yet there was no press release from CDC, no public information.

Can you blame veterans for wondering what is going on? Can you blame their families who continue to watch all of this unfold, and not share their sense of frustration, their sense of indignation at the conflicting comments, the duplicity, the obfuscation that occurs time and time again when Government officials at the highest level are being called upon to inform the public, but they cover up information instead?

You have a VA Deputy Director testifying before a committee of the Congress that there is not a "shred of evidence," in spite of the numerous suggestive studies. You have CDC saying in a public hearing with press all around that nothing is wrong, and then, just a few days later, they acknowledge in a quiet letter to the same committee that there is a sixfold

increase in non-Hodgkin's lymphoma for Vietnam veterans.

Late in 1988, CDC released its Agent Orange Exposure Study "findings" yet again in the press, and again argued that no one was exposed in spite of the fact that the study was never actually conducted.

The National Cancer Institute replicated its study of Kansas farmers in Nebraska, providing further evidence of a link between agent orange and non-Hodgkin's lymphoma. Dr. Hardell in Sweden replicated his earlier study of pesticide workers and soft-tissue sarcoma. A Massachusetts mortality study showed a fivefold increase in Vietnam veterans with soft-tissue sarcoma. Elmo Zumwalt, son of the former Chief of Naval Operations in Vietnam, who participated in some of the decisions about spraying, lost a several-year battle to non-Hodgkin's lymphoma and Hodgkin's disease. His father will carry on the battle against Government indifference to agent orange victims.

Agent orange compensation opponents, whose strategy seems to hinge on endless waiting, began to argue that we should wait for the "next" study. Congress should not act until the CDC Selected Cancers Study is concluded. They argued and continue to argue that the study will be the "definitive word" on agent orange. Here you have five specific scientific occurrences in less than 1 year, in less than 1 year, and we are told that we should not act until we get the "definitive word" by the CDC

I was just told that again a couple of days ago: "Let us not act until the Centers for Disease Control provides the 'definitive word.'" Yet, agent orange victims say there are other veterans afflicted with 54 presumptive disabilities who never had to wait for the "definitive word." There are victims of radiation exposure who are eligible for compensation for 13 different diseases who did not have to wait for the "definitive word." Let me point out that the "atomic veterans" did have to wait—for far too long—until Congress finally decided that the "definitive word" might never come. Let us not make that mistake again.

The Selected Cancer's Study, even if it were the definitive word, which it will not be, is not an agent orange study. It does not even attempt to determine exposure. How can it be the definitive word on agent orange if it does not even focus specifically on veterans affected by agent orange?

The CDC protocol acknowleges that the study does not have sufficient statistical power to detect substantial increases in rare cancers such as soft-tissue sarcoma and non-Hodgkin's lymphoma and that the problem of misclassification inherent in the study will further hinder the study's ability to detect increases. Furthermore, CDC's general handling of the Agent Orange Exposure Study and the Vietnam Experience Study calls into question the integrity of the selected Cancers Study.

You cannot blame those of us who have watched CDC in its work for the last 5 or 6 years for being skeptical about whether this definitive study is going to provide any new evidence that we have not had before, much less anything definitive. And so while we ask these veterans once more to wait, to let us get the final word next spring, they shake their heads and say, "Well, it is funny, the double standard between those other veterans and us, between the criteria that you have set out for virtually every other group and us."

Last year the Senate was once again called upon to do what it has done on several different occasions, to pass agent orange compensation legislation both independently as well as an amendment to the compensation bill. The House sent it back in the last couple of days of the 100th Congress, indicating, once again, this year there would be no legislation on agent orange.

This year has also produced evidence and new developments with regard to the case of agent orange compensation. It began when a Federal judge ruled in a lawsuit brought by the Vietnam Veterans of America that VA's agent orange rules under Public Law 98-542, the very act we passed in 1984, are too strict and do not give veterans the statutorily required benefit of the doubt. It has to be a little embarrassing, I suppose, for the VA, the so-called advocate for veterans, to be told by a judge somewhere in California that you are not doing what the law says you are supposed to do, that you are not giving the veterans the benefit of the doubt.

This is where a new Secretary stepped in, Secretary Derwinski. He had a lot of options. Secretary Derwinski could have said, well, we are going to appeal that decision because, for whatever a reason, have decided that the judge is wrong.

But for the first time someone in the VA did what he was supposed to do. For the first time someone in the VA put all politics aside and did what the law required. He gave the benefit of the doubt to the veteran. He said—and I might add he got in a lot of hot water for saying this—we are going to give the veteran the benefit of the doubt. We are not going to appeal the judge's decision.

The House Government Operations Subcommittee on Human Resources held a hearing not long ago. They concluded as a result of all the testimony they had received during that hearing that the Centers for Disease Control had badly bungled the study—either by design or by incompetence—and showed clear evidence of White House involvement in the study. Recently, the VA Advisory Committee on Environmental Hazards, the same committee that said that Veterans who were exposed to atomic radiation were not harmed by atomic radiation, were not harmed by exposure to agent orange either.

During their review of studies related to non-Hodgkin's lymphoma, inapplicable and asked who selected them. A VA lawyer responded, "I did the best I could." The studies were chosen not by a distinguished panel of independent scientists but by a VA lawyer. Remember, this VA advisory committee is the committee charged with the responsibility of providing a recommendation to the Secretary with regard to the position that this administration will take.

This committee that said that exposure to atomic radiation did not harm veterans, this committee which met for 2 days looking at all of this scientific data, 10 years' worth of information, said they could not reach a consensus.

Their "decision" was scrawled on the blackboard, and then submitted to the observers in handwritten form on a blank sheet of paper, the one I am holding up. This is a copy of what was written in hand by this "prestigious" committee on agent orange: No typed report, nothing in writing for official documentation, though a typed sheet of paper was issued to the Veterans' Committee later.

It says, "The committee does not find the evidence sufficient at the present time to assert"—"assert" is crossed out and written in instead is "conclude"—"that there is a significant statistical association between exposure to p.oxy.h. and NHL," non-Hodgkins lymphoma. "However, the committee cannot rule out such an association."

This is all we have from the committee after 2 days of work.

I ask unanimous consent it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The Committee does not find the evidence sufficient at the present time to conclude that there is a significant statistical association between exposure to p.oxy.h. and NHL. However, the Committee cannot rule out such an association.

(Mr. LAUTENBERG assumed the chair.)

Mr. DASCHLE. The advisory committee categorized studies and included in the "valid negative" category the VA's own mortality study, which is a positive study by virtually everyone's assessment. When asked for an explanation, the committee replied that any study without an exposure index would be considered negative. I should

note at this point that this means the CDC's Selected Cancers Study—the "definitive word"—is dead on arrival at the VA's advisory committee. It doesn't have an exposure index, so it apparently will not matter to the VA what it says. Well, my legislation, as I discussed, has been around this Chamber for a long time. As recently as August 3, on a vote of 92 to 8, we passed the agent orange compensation bill and sent it again over to the House. We also passed it as an amendment to the compensation bill, S. 13, by unanimous consent on October 3. That brings us to where we are tonight.

The House has chosen again not to consider legislation dealing with agent orange. In spite of the wealth of evidence from scientists all over this country—in Washington, in Washington State, in Massachusetts, in the very State represented so well by the distinguished Presiding Officer, New Jersey, in the Air Force, in the Veterans' Administration—scientists from virtually every persuasion have come to the same conclusion: That there is a relationship between agent orange and both soft-tissue sarcoma and non-Hodgkin's lymphoma; that we ought to give the benefit of the doubt to the veterans, as they so richly deserve.

Yet tonight, as we end this session, we are put in the difficult position of telling these veterans once more that they have to wait.

I do not know how much longer they have to wait. But I do know this: We are not going to quit. We are going to continue to press this issue. It is not going to go away. Sooner or later, we are going to find a way to pass this legislation—whether independently or as an amendment to another bill, I do not know.

I want to work with those in the House who have a different point of view. I intend to work in good faith to find some way to resolve this issue before the end of this Congress. We were not able to do it this session.

But I have every hope and certainly every determination that we will resolve this matter, and that the scientists who have come forth in good faith with the evidence that we have laid out tonight will do so with confidence that the Congress can respond to scientific evidence and to veterans who simply ask that we give them what we have given every other veteran who has come before the Congress asking for the benefit of the doubt.

We owe it to them, Mr. President. Let us renew our determination to respond.

(The remarks of Mr. DASCHLE pertaining to the introduction of S. 1917 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

## APPOINTMENT OF CONFEREES—H.R. 1465

The PRESIDING OFFICER. Pursuant to the order of November 19, 1989, the Chair appoints the following Senators to serve as conferees on H.R. 1465: From the Committee on the Environment and Public Works, Mr. BURDICK, Mr. MOYNIHAN, Mr. MITCHELL, Mr. BAUCUS, Mr. LAUTENBERG, Mr. BREAUX, Mr. CHAFEE, Mr. DURENBERGER, Mr. WARNER, Mr. JEFFORDS, and Mr. HUMPHREY; from the Committee on Commerce, Science, and Transportation, Mr. HOLLINGS, Mr. INOUYE, Mr. KERRY, Mr. BREAUX, Mr. DANFORTH, Mr. PACKWOOD, and Mr. STEVENS.

## STATUS OF UNITED STATES-JAPAN TRADE NEGOTIATIONS

Mr. BRYAN. Mr. President, I wish to bring to the attention of the Senate, the administration, and the Japanese Government that we in Congress are watching with great interest the progress of trade negotiations between the United States and Japan. We are watching, and we are deeply concerned.

The other day the American negotiators expressed disappointment in the course of discussions with their Japanese counterparts. Our negotiators presented a joint United States-Japan study which demonstrated that many consumer products sold in Japan cost far more than similar products sold in America and Western Europe.

This is a damning report. For years, Americans have been told in countless magazine articles, news reports, and television documentaries that if we could only compete with the Japanese we would be able to export to that country. We were told our products were too expensive.

This report should put an end to that canard once and for all. American products consistently sold for less in the United States than what the Japanese system forced them to sell for in Japan.

The lesson should be clear to everyone: if Americans, and for that matter West Europeans, make competitively priced products, the Japanese system will put an expensive hidden tariff on our products, pricing our goods out of the Japanese market.

Look at the facts: An American-manufactured pair of blue jeans sells for $32 in the United States; in Japan the same pair of jeans costs $55.63. The next time a Japanese trade minister, or for that matter an administration official, talks about free trade have him discuss blue jeans with a textile worker in South Carolina. Breakfast cereal costs $1.89 in America and sells for $3.38 in Japan. The next time a pundit on trade tells us America is at fault, have him speak to the citizens of Battle Creek, or a farmer in Iowa.

A set of American-made golf clubs that costs $420 in the United States cost $659.15 in Japan.

Mr. President, when these issues are brought up by concerned citizens they are branded as not having sufficient understanding of the cultural differences between America and Japan. Might I respectfully suggest that we do understand the meaning of cultural differences. If we discuss differing tastes in artists that is culture.

If we discuss the relative merits of the movies of Akira Kurosawa and Stephen Spielberg that is culture. If we discuss the taste of sushi versus prime rib that is culture. But, when we talk about our goods being systematically priced out of the Japanese market that is Japanese protectionism, not culture.

As the American negotiators were meeting the other day with their Japanese counterparts, it was revealed in the American press that a Japanese computer firm in competition with an American manufacturer won a substantial computer design contract by submitting a 1-yen bid. That is right. Fujitsu Ltd. underbid the American firm, by submitting a single yen bid, which amounts to a bid of less than one American penny.

And as one examines the pattern of such bids, it is revealed that Japanese firms often take turns dramatically underbidding foreign competitors. The idea apparently in submitting these obviously unrealistic proposals is to break the back of potential American competitors. These kind of tactics can only be viewed as part of a strategy to freeze out American bidders. Can one blame an American firm if their people get discouraged and pull out of the Japanese market?

Can you imagine what would happen if an American business had submitted such blatantly rigged bids? This great Chamber would boom with voices decrying protectionism. Editorial pages would justly demand a trust-busting investigation. The pundits would decry but another step toward Smoot-Hawley.

I applaud the administration's efforts to try a new approach in dealing with Japanese tactics on trade.

Ambassador Carla Hills has embarked on a creative approach in dealing with Japanese tactics.

This approach has not been without its share of critics. As these negotiations proceed, the Japanese mandarins from the Ministry of Industry and Trade should understand that should Ambassador Hills fail to make major progress that failure will not be in either country's interest. Ambassador Hills has bought time, and it is frankly up to the Japanese to use that time wisely.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BRYAN). Without objection, it is so ordered.

## HEALTH BENEFITS FOR RETIRED COAL MINERS

Mr. ROCKEFELLER. Mr. President, in September, I introduced S. 1708 to address the serious financial difficulties in the health benefit funds for retired coal miners. The legislation has gained widespread bipartisan support in both the House and the Senate. It was approved by the Senate Finance Committee in October as part of budget reconciliation legislation. Nevertheless, floor action never occurred because, along with scores of other provisions in the budget legislation, the health benefits bill was put on hold.

I did not want adjournment to occur, Mr. President, without commenting on this situation.

In a short period of time, we have made significant progress on this bill. We have obtained labor and management cooperation in addressing the problems of the funds. Members of Congress have been educated on the need to take action. Just recently the distinguished majority leader, Senator MITCHELL, and the distinguished Senator from Texas, Senator BENTSEN, the chairman of the Senate Finance Committee have written a letter to me, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
*Washington, DC, November 20, 1989.*

Hon. JOHN D. ROCKEFELLER IV,
*U.S. Senate, Washington, DC.*

DEAR JAY: With the conclusion of the first session of the 101st Congress, we want to comment on some important unfinished legislative business on which you have played a leading role in the Senate. We refer to S. 1708, your bill to restore the financial stability of the health benefit trust funds for retired coal miners. We support your efforts on this legislation.

We understand that the funds face serious financial difficulties. This is a matter of national importance and concern. Pensioners and their families across the country rely on the funds for health care and the funds are important to the stability of the coal industry.

We recognize that the Senate could not act on your bill, S. 1708, in the closing days of this session. Because of the extraordinary importance of the stability of the health benefit funds for retired coal miners, we want you to know that we are determined to see the issue addressed in the new session of Congress. We intend to work with you to address the issue, and we will find a legislative vehicle to bring the issue to the floor early in the new year.

We look forward to working with you to address this very important matter.

Sincerely,

GEORGE J. MITCHELL.
LLOYD BENTSEN.

Mr. ROCKEFELLER. They have told me that they will work with me and will find a legislative vehicle early next year to do the job.

Mr. President, that is all very good news. We can be pleased with it, but we cannot be satisfied with it. There is another aspect of the story that also must be told. Despite the progress on this issue, I am greatly troubled, and I believe the Senate should be greatly troubled, that we are concluding this session without now taking the final step—enacting the legislation to stabilize the health funds.

Those who understand what is at stake will share my dismay at the deferral of action on S. 1708. The health benefit trusts provide health benefits for 125,000 retired coal miners, average age 77 years old, and their families, living in 47 States from California to West Virginia. The funds contribute millions of dollars to the economies of many States.

In recent years, due to such causes as rapidly escalating health care costs, the two health benefit funds involved in this situation have experienced serious financial difficulties.

If allowed to continued unchecked, these difficulties could seriously erode health care delivery in West Virginia and in coal counties of States like Alabama, Arkansas, Colorado, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and Virginia, and many others.

Given what is at stake, Mr. President, how can it be that legislation to restore the financial condition of the health benefit trust funds was put on hold? The answer is a disturbing commentary on the state of politics and policymaking.

Congress and the White House had time for all the routine things that are always done, but there was not enough time to deal with what is not routine—the critical health care needs of retired coal miners.

Perhaps the best example of this inversion of priorities was the legislative quagmire created by the maneuvering over efforts by some to cut the tax on capital gains, an extraordinary debacle. This campaign came on top of unwarranted tax breaks for the affluent enacted in the previous administration. It came in the face of a tide of red ink in the budget. Health care for miners was put on hold. But we were pressed relentlessly to enact yet another tax break that would disproportionately benefit the well to do and for which those of ordinary means would have to pay.

The tax break campaign became an obsession for its chief proponents. No price was too high to pay; not the price of an increased deficit; and certainly not the price of legislative paralysis. The proponents were even willing to hold up aid to Eastern European countries struggling to throw off the shackles of dictatorship by attempting to attach onto the bill to help those Eastern Europe countries an amendment to lower the tax on capital gains.

The fight over capital gains held up budget reconciliation in the House, and it led to a legislative train wreck in the Senate. Off the track went scores of major legislative items on which great time and great effort had been expended. In a system in which one or two so-called legislative vehicles have, in fact, become the means for action on tax and benefits legislation, the derailing of the budget legislation amounts to shutting down the legislative process, and that is what happened. It may be that many of those matters that were set aside should have been set aside, but the procedural equivalent of shutting off the lights and locking the doors of the U.S. Capitol is no way to make judgments about what merits action.

What we have witnessed, Mr. President, is no less than the breakdown of the way we make laws in this country to deal with issues of major national importance. The eroding financial condition of the health benefit funds for retired coal miners is at bottom the erosion of a promise made to thousands and thousands of coal miners and their families. These are the coal miners who helped create the industrial strength of modern America, and they did it with picks and shovels. The coal they mined heated remote cabins in Vermont and New Hampshire, electrified the farms of the Tennessee Valley, and helped fire the furnaces of the American industrial heartland in war and in peace.

After the war, a bargain was struck with these coal miners. The U.S. Government ran the mines during the war. And the pension and health funds were created in negotiations after the war between President Truman's Secretary of the Interior and the United Mine Workers of America, led by a man by the name of John L. Lewis. In fact, an early trustee of these benefit funds was the late distinguished Republican leader, Senator Styles Bridges of New Hampshire.

So the Government has been involved and was involved in the creation of these trust funds. In the understanding that was reached, the coal miners agreed to the mechanization of the mines, knowing full well that many thousands of jobs, many hundreds of thousands of jobs, would be lost, but in return for certain promises on employment and benefit security. Those were the conditions. That was

the understanding. And the key element in the understanding was the fund for pensions and health benefits.

The understanding brought about labor peace in the coal fields and it transformed health care for retired miners, and in fact set a standard for industrialized workers around the world.

Acting under successive industry-wide agreements, most firms in the industry met their health benefit responsibilities. They participated in contracts and understandings, committing themselves to providing lifetime health benefits for retired coal miners.

Mr. President, when I talk about these coal miners, I want you to understand that their average age is 77 years old. They are in their nineties, they are in their eighties, seventies, sixties, the youngest of them is in his late fifties. These are the men who, after the war when the mines were the most dangerous place in the world to work, went to work to produce the coal to turn on the lights of modern America and give jobs to thousands of people all across our country. They did the work. They died. They suffered the pain. They suffered black lung. And now there are a few companies who want to forget that and who want to shirk their responsibilities.

Only in recent years, have a few companies, who were parties to the understandings, sought to repudiate their health benefit obligations.

The excuse we hear for this conduct is that rising health care costs or international competition justify turning our backs on the undertakings, on the hardships, on the suffering and the pain and the achievements of the past. Such an effort to turn the clock back on our progress in industrial conditions is sadly misguided. Industrial strength can only rest on a foundation of mutual respect and mutual support.

This is not just a matter of private commitments of concern only to private interests. The health care of 125,000 elderly miners, widows and orphans across this country is a matter of national concern. The well-being of health care providers—doctors, hospitals, and pharmacies, dependent on the payment of millions of dollars from these funds—is a matter of national concern. The stability of labor relations in the coal fields, with its implication for the future of the U.S. coal industry in global markets, is a matter of national concern.

These are all matters of national concern. The Congress of the United States exists to represent the American people on issues of the national concern. On pressing matters, the Congress should act with dispatch. The kind of paralysis that prevented action this year on S. 1708 is intolerable.

But that is not the end of the story. Many Senators share my frustration on this issue. And I believe that all Senators will share that frustration when they understand what is at stake all across this country.

No Senators have been more vigorous in their efforts to prevent the capital gains assault and other efforts to paralyze the legislative process than Majority Leader GEORGE MITCHELL and Finance Committee Chairman LLOYD BENTSEN. I am, therefore, gratified, as I said earlier, that both Senators have told me that they will work with me to find a legislative vehicle early in the next session to stabilize the financial condition of these health funds for retired coal miners.

That must be done, Mr. President. It must be done because justice must be done. And perhaps along the way, we can restore the legislative process of the Congress of the United States to its proper role as an instrument of the public will.

As for me, I intend to pursue this effort for as long as it takes. I thank the Chair and I yield the floor.

## TRIBUTE TO DAVID BLUNDY—A COURAGEOUS JOURNALIST

Mr. KENNEDY. Mr. President, Plato once wrote: "A man who is good for anything ought not to calculate the chance of living or dying, he ought only to consider whether in doing anything he is doing right or wrong." British journalist, David Blundy, did not calculate the chances of living or dying when he went to San Salvador to cover the deadly civil war that has erupted with so much tragic violence in recent days.

Last Friday, this 44-year-old father of two was killed by a sniper's bullet while walking in Mejicanos, a working-class neighborhood of San Salvador where the guerrillas and Government forces were engaged in combat just a few blocks away.

Dangerous assignments were not new for David Blundy. Often, at great risk to his own life, he went into many war-ravaged areas of the world—El Salvador, Northern Ireland, Libya, and Beirut—so the rest of us could learn about the important, and often grim, events occurring in places where most others would not dare to venture.

In writing about his friend, Andrew Blake of the Boston Globe said of Blundy: "In person, his laughter shone a light of life and humor. In print, his reporting shed the light of truth." This brave man will be deeply missed by those whose lives he touched directly and by countless more who have learned more about our common planet because of his courage and commitment. He died too young, we mourn his loss, and we condemn the senseless act that took him from us.

I ask unanimous consent that Mr. Blake's recent article and other materials on David Blundy may be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Boston Globe, Nov. 18, 1989]

VICTIM LAUGHED AMID THE DANGER

(By Andrew Blake)

British newspaper reporter David M. Blundy, 44, who worked at The Boston Globe in 1975, was killed in the fighting in El Salvador yesterday morning. With him died a piece of anyone who knew him. A piece of joy and laughter.

Blundy was my closest friend when we swapped jobs at the Sunday Times in London in 1974 and 1975. I was not really surprised he met his end in the thick of action. Blundy was always at the front, whether in Belfast, Beirut or Central America.

He was tall and gangly and full of humor. He always managed to wangle his way into dangerous places where the people could be found for the best reflection of a story. I will wager a week's pay that, if he was conscious, he had the nurses laughing while he was dying in San Salvador's Rosales Hospital.

Blundy was shot about 7:30 yesterday morning, on the job in the northern neighborhood of Mejicanos. It is unclear whether he was shot by government or rebel forces.

I remember him in my first week in London. We were sent to cover the fighting in Belfast, which was very nasty then. He had totaled three Avis cars in about a month, two of them in Irish Republican Army bombings of the Europa Hotel, where we would be staying.

We put the car in my name and took it immediately to the thick of fighting at night between IRA units and British patrols along the Falls Road. Blundy directed us through barriers, past British soldiers with automatic weapons trained on our car. He gently advised that I should lower my headlights since the troops might shoot if we had on high beams.

When nervous IRA teen-agers with handguns stopped us, Blundy talked and joked with them while we identified ourselves. He had a unique talent for putting the most dangerous of people at ease. In minutes he had them clearing a burning barrier and directing us to an IRA command patrol several blocks away, with a runner sent ahead to assure our safety.

Blundy was not a materialistic person. You could see that by his clothes or his cars. In London, where he was then separated from his wife, Ruth, my daughters and his daughter Anna often played together, Blundy piling them into a car—through the windows, since the doors would not open or were wired shut.

In Boston, he owned a couple of old wrecks, one the biggest car he could find, an Olds 98 that had a clock in the back seat that never told the same time as the one in front.

"This car is so big," he once bragged. "that the back seat is in a different time zone."

When he returned to the Sunday Times, he was assigned to cover the Middle East. Blundy was also American correspondent for the Sunday Times based in New York, and later he was Washington correspondent for the Sunday Telegaraph before moving over in September to work as Washington

correspondent for a new newspaper, the London Sunday Correspondent.

He was the author of two books, "Gaddaffi and the Libyan Revolution" and "With Geldof in Africa," about rock singer Bob Geldof's famine-relief effort.

Blundy was no stranger to El Salvador and its terrible violence. In 1981 he reported in a front-page story for the Sunday Times that army units from El Salvador and Honduras had massacred unarmed peasants, torturing many to death, including children, in the village of Las Aradas.

In person, his laughter shone a light of life and humor. In print, his reporting shed the light of truth.

I want to remember him full of life, doing battle in my kitchen with a lobster that had both claws firmly clamped on his necktie. I want to remember him laughing, full of joy, in a crazed dance with a partner that would not let go.

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[From the Sunday Times of London, Nov. 19, 1989]

LAST ASSIGNMENT IN A LONG QUEST FOR TRUTH

(By Cal McCrystal)

Journalism does not always choose its practitioners wisely. Nor does it invariably dispose of them kindly. David Blundy, war correspondent, stylist, everybody's hero and nobody's fool, was a wise choice when he joined The Sunday Times, a gangling anxiety-prone 25-year-old in 1970 and, within a few years, he soared in the journalistic firmament. The disposal on Friday of this universally admired reporter, 19 years on, in a seedy barrio of northern San Salvador was a tragic, if not unfamiliar, end.

Were he to have known that these sentences would be written about him, he would have guffawed over his double Martini and flicked the olive at the hagrographer. For it was in his nature, curiously in view of his remarkable success, to diminish his role and its effect. He agonised about his journalistic ability, even when editors were slapping his back; about his highly complicated social life, even when women were falling at his feet; and about truth, even when it was staring him in the face.

To seek the truth, about himself and the world in which he operated, David Blundy took the hard road. After Bristol University (BA Honours in English and Philosophy), the Bumley Star and the Hemel Hempstead Evening Echo, he got a job on The Sunday Times, working for the Atticus column. It was, in retrospect, a perfect start on a national newspaper, for his delving into London social life provided him with many egos for pricking (something he appeared to enjoy) and a simple, direct style that never left him.

His style may be described as non-adjectival. His subjects betrayed their own foibles without Blundy boosting them with explanatory phrases. He seldom, if ever, injected his own conclusions, even into a diligently researched story, preferring to leave it to the reader. Without question the reader drew the appropriate conclusions and remembered the writer thereafter as a reliable source.

This trait, not to mention a colourful personality, served Blundy well in his first foray into communal violence. Throughout much of the 1970s his assignment in Northern Ireland brought out some of the best of his journalism and revealed the best of his character.

For a man whose professional eye could be bleak, his professional comradeship was singularly warm and caring. He emerged from the Ulster troubles with a tough, sceptical attitude to officialdom and an admiration for colleagues who were equally prepared to risk life and limb, then carouse with him in the shebeens of the ghettos.

As his first news editor in those days, I watched with trepidation as this tall, stooping figure in a worn-out bomber jacket, one shoulder hunched higher than the other because of spinal disc problems, shambled from the building with a khaki rucksack containing notebooks, travellers' cheques, a single change of shirt and underclothes and a bottle of aftershave (his only compromise with artificial vanities), on his way to war.

Trepidation continued upon his safe return, for he would pace the room, his long, angular face anguished over some imagined or real omission from his reportage. There would be signs of despair at the way his copy was handled, black jokes about warlords and their pretensions; anxious request to go back for "another stab at it". His frequently voiced theory was that editors were an impediment to good journalism.

Blundy never really rid himself of that attitude, one that endeared him, however, to all his editors, most of whom regarded him not only as an honest, if scathing critic of their own performances but as a man who could be counted on the refresh their columns. But none of them really got to know him intimately. He was an enigma. He talked easily and entertainingly about his work, seldom about his private life.

David Michael Blundy was born in Slinfold, Sussex, and went to the City of London School. His father, who died while Blundy was the Sunday Times correspondent, in New York, had an antique business. A brief marriage produced a daughter. Anna, now at Oxford. Two years ago he became a father again—to another daughter, Charlotte. Restlessness motivated his relationships, as his career.

As New York correspondent, Blundy covered American affairs with brilliance, if with impatience. He was happiest (though that may overstate it) when allowed to go to Central America, in bloody ferment then as now.

Not a particularly courageous man in the gung-ho, let-me-at-the-action sense, he nevertheless ventured where few others dared; disappearing for days into jungles, fording treacherous rivers, enduring the stresses of fast travel and unpredictable gunmen with audacity in order to produce unique glimpses of the inferno which eventually claimed him. His articles were universally hailed, dispatches constructed with natural skill and devotion to minutiae. On his recall to London, he was an obvious choice as our Middle East correspondent.

Obvious, but not without unease. The Sunday Times had already lost two of its finest writers in that arena: Nicholas Tomalin, blown to bits on the Golan Heights; David Holden, murdered by persons unknown in Cairo.

Yet Blundy's heroic (how he would hate that word) exploits attracted sustained acclaim, from Middle East war to factional conflict, especially in his beloved Lebanon. After spells there he would return gloomily to regale his editors with anecdote in one hand and Martini in the other, before declaring: "I'm not going back to that shithole. Should I? What d'you think? Perhaps I should write a book on Gadaffi?" (He did.)

He was the paper's chief foreign correspondent before he decided, in 1986, to return to Washington, this time for The Sunday Telegraph, and more recently for the Sunday Correspondent. But Central America continued to draw him into the fire.

He arrived in San Salvador on Wednesday and went with a photographer towards the heat of that northern barrio. He paused uncertainly at a crossroad, hugging his notebook, his old green rucksack and what remained of the future. From somewhere yet unspecified the bullet struck him down.

He hadn't a chance and died in a hospital some hours later. But no grave will inter his reputation as one of Britain's best narrators of war and other social and political ineptitudes. No editor who knew him will bury his or her grief. No journalist will dispose of his memory.

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[From the Sunday Times of London, Feb. 22, 1981]

"VICTIMS OF THE MASSACRE"

(By David Blundy)

Lolita Guardado was awoken at about 4 am by a strange noise. There was the usual sound of the persistent drizzle pouring through the roof of closely packed palm leaves and through the walls of mud and sticks.

But outside, across the Sumpul river, she could hear men shouting. Groups of peasants gathered anxiously in the grey dawn to watch as Honduran soldiers formed a line on the far bank and ran to and fro, carrying stones from the riverbed. They built a low wall. Only later that day, after her family, friends and neighbours had been slaughtered, did she fully understand why they were there.

Lolita, her husband Genaro and their eight children lived, along with about 1,500 other peasants, in Las Aradas, a settlement which lies a few yards inside the Salvadorean border on the banks of the Sumpul, the frontier with Honduras.

There were few comforts. Lolita was considered fortunate because at least she had a hut. Most of the others lived under trees, with sheets of plastic to protect them from the rain. There was no electricity, no clean water, no medicine, barely enough food and no road.

But Las Aradas, they believed, had one virtue. It was so remote that they were safe from the violence between the left and the right that wracks El Salvador. They had fled from their houses and land—away from the soldiers, the national guard, the secret police, the right-wing death squads and left-wing guerrillas, to this haven.

That morning a group of 300 peasant refugees, mostly women and children, had arrived after a three-day trek through the Salvador mountains. Few of them would survive the day.

As Margarita Lopez, a bright and pretty 16-year-old, was preparing tortillas for the new refugees, 300 Salvadorean soldiers were already taking up position behind the nearest hills. Beside them, merging into the forest, were two olive green helicopter gunships each with machineguns and bombs. On the other side of the Sumpul, 150 Honduran soldiers stood behind their stone wall. The Salvadoreans call it an operacion de limpieza, a cleaning operation.

The decision to carry out the attack was made, according to Honduran sources, at a joint meeting between Honduran and Salvadorean military commanders at El Poy, a town on the border about 13 miles from Las Aradas.

The motive was clear. In the border area are the camps of the left-wing guerrillas against whom the Salvadorean ruling junta has been fighting a bloody civil war. It is also one of the main channels for arms shipments from Nicaragua and Cuba. The Hondurans were keen to help because they feared both the war spilling over into their territory and their neighbour falling into the communist hands.

The only flaw in the plan was that Las Aradas was not a guerrilla base. It seems not a shot was fired in defense by the people there. But for the Salvadorean military mind the distinction between peasant and guerrilla is academic: they are, indeed, often one and the same.

Also, the guerrillas need peasant support if they are to achieve popular insurrection, and more immediately they needed the peasants to provide food and shelter when necessary. For the Salvadoreans this made the peasants a fair military target.

The "cleaning" began at about 10 am on May 14. Margarita remembers a deafening explosion of gunfire which would continue for the next six hours: "The bullets came in fistfuls. They went through the walls of houses, people were falling and cattle were dying. The bullets were everywhere."

Genaro Guardado heard the thud of bombs falling outside his hut. With his 17-year-old daughter, Ernestina, he grabbed five children, all under 12, who were standing outside, and ran. Rosabel Sibrian, a 22-year-old, saw the gunships buzzing low over the trees and heard the rattle of their machineguns.

Then he saw soldiers standing round his friend, Amanda Rodriguez; "She begged them not to kill her. They all opened fire. They shot her 11-year-old son."

The troops had surrounded the settlement. The obvious escape route was across the river into Honduras. That was when the peasants learnt the function of the Honduran soldiers.

The peasants "ran to the river in flocks", said Genaro. It was the beginning of the rainy season and the river was flowing deep and fast. Margarita ran into the water and found it came up to her neck: "Children were drowning. The Salvadorean soldiers stood on the bank and fired at us. My two friends were killed next to me."

As Genaro jumped into the water with about 70 people, his daughter Ernestina was shot dead in the back of the head. First he walked, pulling the five children, across to the other bank. He left them there and went back for Ernestina's body. Then, carrying the body, he walked up the bank towards the Honduran soldiers: "They grabbed Ernestina and threw her into the river. Then they pushed us back into the river. We pleaded with them. Begged them. They just pushed us. They didn't fire their rifles, but they wouldn't let us through."

We returned to the Salvadorean side, to face the guns. "The Salvadoreans fired from the hip and kept their guns low. I suppose they didn't want to shoot the Honduran soldiers. But they fired into the river." Those who survived the crossing were herded together by the Salvadorean soldiers, who tied their hands and made them lie face down on the ground. "They beat us with their rifle butts. They kept asking, "Where do you keep the guns? Who are the guerrillas?"

"They took groups to one side and machinegunned them. I had my children with me. Than a soldier cut my bonds. I don't know why he did that. But I ran with my children. Only three others survived."

Roasbel Sibrian, who hid between some rocks, says the main slaughter took place on the river bank, near Las Aradas: "There were 50 soldiers and they gathered a big group together. Then they shot them. The people were screaming. Those who would not die were beaten on the heads with rifle butts."

He says, and this is corroborated by other eye-witnesses, that the soldiers were aided by members of Orden, a paramilitary right-wing group, distinctive in their black shirts with skull-and-crossbones insignia. "Some soldiers and Orden people gathered children and babies together, " said Sibrian. "I saw them throw children into the air and then slash them with long machetes. They cut their heads off and slit their bodies in two." One soldier told the mother of a child: "We are killing the children of subversion."

Sibrian tried to run downstream, carrying his baby son. Soldiers chased him and a bullet smashed into Sibrian's leg: "I couldn't run with my baby any more. I left him beside a small ditch, then rolled away and crawled through the bushes. I thought the soldiers would kill him." But, in one of the few acts of humanity carried out by the Salvadorean army that day, they did not.

"They picked him up very gently and carried him away. Later I heard they bought him milk in a local town. I think he is in a children's camp. I am trying to find him," said Sibrian.

Lolita was not so fortunate. After the first bombs dropped at 10 am, she had lost sight of her husband. So, with her brother-in-law, Angel, and three of her children, she made her way slowly upstream, hiding for long periods in the bushes until soldiers and paramilitary men had passed. She went for a mile along the Sumpul until the cordon of Honduran soldiers on the opposite bank had ended. Then, at about 4pm, she started to cross the river.

She walked over the rocks and had just reached the water when she heard rapid firing behind her and felt "a burning pain" all over her body. She fell backwards into the Sumpul. She lay in the water, her head resting on a rock. She has been hit by 15 bullets, in an arc from her thigh across the small of her back.

Two of her children lay dying in the water beside her. One died quickly—a bullet had passed through his armpit into his chest; the other, shot in the testicles, did not. "He lasted half an hour," said Lolita. "I couldn't move. I couldn't comfort him."

Her brother-in-law was dead, too. She lay with her surviving child, three-year-old Ovidio, clasped to her breast. He had been hit in the leg and the scalp.

"Ovidio kept crying and shouting. He called out: 'Uncle Angel, Uncle Angel! Come. Come see my mother. Her leg is bleeding into the water.' He kept talking to his two brothers long after they were dead. He shouted at them: 'Why don't you talk to me?' "

After dark, Lolita says that occasionally soldiers walked along the bank. She tried to hold Ovidio still and keep him quiet: "The baby cried with pain, but I told him to be silent. I heard a soldier say: 'Hit them. Hit them again.' But another soldier said: 'I have hit them already. Let's not shoot again. They will just die."

That night she felt an object bump against her in the river. Then it floated off downstream. It was, she says, the head of a child. The next morning a Honduran fisherman pulled in his nets. They contained the bodies of three dismembered children.

At noon the day after the massacre, a Roman Catholic priest from the Capuchin order walked over the hills towards the Sumpul. He noticed that the river banks looked strangely black. When he got closer he saw why. They were covered in a thick carpet of buzzards.

## THE VIETNAM MEMORIAL

Mr. SIMPSON. Mr. President, I have a couple of items while we are waiting to complete the activities that are before us. We know what those are, catastrophic health care and reconciliation, and the few other items remaining.

I was very privileged to be on the platform on Veterans Day, November 9, at the Mall, at the Vietnam Veterans Memorial, as they etched into the stone 19 additional names of persons who had been left off of that remarkable monument. The lady who read the names and placed them before the public was a lady from Wyoming, a very remarkable lady named Maria Eldredge who, with her drive and dedication and energy, assured that these other 19 names would be included. One name was of her brother, specialist Jose Lujan, a young man who died of injuries received in Vietnam, and thus the reason for the long delay and questions to be resolved about that. She read those names, beautifully and she and I placed a wreath upon that monument. It was a very impressive and moving and touching thing.

But at that ceremony our colleague, Senator JOHN WARNER, spoke, and his remarks were clear and incisive. I thought it was very impressive.

I do not usually do this. I am not a person who puts things into the CONGRESSIONAL RECORD. I think it has been misused and abused. Years ago when I was practicing law in Cody, WY, when the occupant of the Chair was involved in activities in his native State, in Illinois—and the two of us met each other when we were both in State government about 20 years ago.

I remember reading once in the CONGRESSIONAL RECORD a biscuit recipe which was certainly a dazzling thing. It was something about Aunt Mary's hard cake biscuits or some such thing, and I thought that really was a remarkable recipe. I do not know how many people copied it from the CONGRESSIONAL RECORD but nevertheless it left me an indelible impression, so I vowed I would not try to do many of those, and I have not. So I have tried to be somewhat judicious and I have failed but not this time. What our friend JOHN WARNER said is worthy of the American public to read. I ask unanimous consent that it be included in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR JOHN WARNER

Thank you Jan Scruggs. In the decade that we've been a team together, I and indeed many across America have come to recognize Jan Scruggs is truly a man of our times. He's an extraordinary man, on in whom contemporary America takes great pride.

What an honor it is for me, a humble one, to join here at this memorial with fellow veterans and their families. This memorial, to me, is one of incalculable majesty and mystique, and we gather here each year and yet everyday to honor those of Vietnam. Today we join hands across America to honor not only Vietnam veterans but all who have proudly worn the uniform of our services in the cause of freedom.

As Jan mentioned, our gathering marks the tenth anniversary of this memorial, conceived and executed by a very courageous band of individuals who in my humble judgment were guided by an act of providence.

Their foresight created not only a monument but a symbol that will stand the test of time, for all time.

Born out of controversy and built amid controversy, this memorial has not only survived but has gained the respect and the love of a grateful nation.

We must pause and ask ourselves why has this memorial become one of the two most visited sites in the capital of America.

From ancient times, humans have erected memorials to express and reflect the values of their societies.

As early as 400 B.C., Greek and Roman memorials ranged from great sculptures, columns and arches to a simple earthern mound.

One such mound of earth marks the site of the famous battle of Marathon, where in 490 B.C. the Athenians, though greatly outnumbered, successfully repelled a Persian invasion.

The famed runner who carried vital news of the battle to Athens and Sparta is reported to have collapsed and died, having uttered the immortal message, "Victory is ours."

This memorial where we gather today conveys to me and I hope to others that same message, "Victory is ours"—not the traditional military victory, but a nation approaching victory over itself.

A nation gradually healing from the enormous sacrifices made by the young people, and their families, of the Vietnam generation.

A nation which has the courage today to discard the ancient plea of the captured soldier: "Ours is not to reason why/Ours is but to do or die."

A nation that has learned that henceforth our military must go forward into battle only with a nation united behind them and a nation ready and willing to show compassion and help for them and their families forever.

Yes, ladies and gentlemen, to me this memorial is a symbol of a nation mustering the courage to become "honest" with itself—to recognize the full measure of its responsibility to those who have worn or now wear the uniforms of our military services, and equally a responsibility to the families who love them.

As we gather today to honor our veterans, in another part of the world there is another wall which is a memorial not to bravery and sacrifice, but a symbol of sinister oppression.

That wall, as we speak, is crumbling.

It falls because its foundation of communist oppression is being exposed to truth and democracy.

This time there is not one marathon runner, but literally thousands upon thousands fleeing the borders of oppression and crying aloud to the world, "Victory is ours."

Most bring with them little more than the spirit of freedom.

This victory has been won by people on one side of that infamous wall with the willingness to fight for freedom with their bare hands.

On the other side is a group of free nations who have maintained, since the closing days of World War II, a military force ready to come to their rescue.

East and West, for 40 years, have faced each other, but neither pulled the trigger. Bloodshed was largely spared by the doctrine of peace through strength.

Next week, the Congress will pass the annual legislation by which our nation maintains a strong and credible military force.

This bill will provide for one more year of peace through strength. But we must ask ourselves now, "What of the next year?"

We join in the euphoria, as witnessed in Eastern Europe, but we cannot let that same euphoria begin to erode our will to provide for America's defense at home and abroad.

Events in Eastern Europe today are being orchestrated largely by one man: Gorbachev.

But we must remind ourselves that Gorbachev has not become a pacifist.

Gorbachev has taken certain initiatives toward a more peaceful world and a more meaningful series of negotiations providing for arms control.

But we must remember that the Soviet Union still maintains the world's largest army. Their Navy continues to grow and will soon include its first American-style aircraft carrier.

Most significantly, the Soviets continue to modernize their strategic nuclear forces, including deployment of two new generations of mobile nuclear weapons.

It is clear that the Soviet Union remains a potent military threat to the security of the United States and to the free world.

Therefore, at this time we cannot abandon that doctrine of peace through strength that has served us so well these many years.

On this day, we honor all those men and women, living and dead, who has served this nation in uniform throughout its proud history.

We express special honor and reverence for those, and their families, who made the ultimate sacrifice. As someone said, "The sword that slays the warrior remains forever in the hearts of those who loved him."

We must pledge to them today that we shall always maintain a strong America, one that can answer at any time and at any place in the world to the call for freedom.

## AMBASSADOR NOBUO MATSUNAGA

Mr. SIMPSON. Mr. President, I wish to say a word of appreciation and tribute to a member of the diplomatic corps who has just departed our shores, Ambassador Nobuo Matsunaga of Japan. He has served as Japan's Ambassador to the United States since April 1985. I do not know who could have done it better under the very trying circumstances of his tenure when we went through a remarkable array of various Japan-bashing activities. It was my great good fortune that he would call me from time to time and say, "What are they doing to us?"

I would say, "Well, now, I am going to try to answer that and you will know that I am not on the Foreign Relations Committee or involved in these heavy decisions, but let me tell you what I see."

I tried to be honest and direct with him, and he was always very honest and direct with me.

He is a consummate professional. He has worked absolutely tirelessly to preserve and further good relations between our two countries. He really has done an admirable job. I wish to commend him. He served with distinction and honor.

It was my great personal privilege and that of my wife Ann to host he and his lovely wife Yuriko on a 2-day trip to my home State of Wyoming in August of this year. Their representation of the country of Japan has always been very steady, very thoughtful, very considerate.

I would also add that during that trip to Wyoming he wanted to go, and asked if he could go, to the site of the Japanese War Relocation Center which had been located between the communities of Cody and Powell, WY, in 1943, when I was 12 years old. Suddenly the third largest city in Wyoming sprang up between these two communities and some 12,000 American citizens were behind wire, barbed wire, in Park County, WY. That is where I met my friend NORM MINETA. We were in the Boy Scouts together. I first me him there, heard of him again when he was elected mayor of, I think it was San Jose, and then, of course, since I have come here I continue to enjoy that long-term friendship.

In any event, Ambassador Matsunaga and his wife wanted to see this site. It was very unique, I think, that they did. It was a gray and rainy day. There is a plaque at the historical site, but very few buildings, very few evidences of the 12,000 American citizens. Many of the parents there had children who were fighting with the U.S. Armed Forces in Italy and throughout the world. We have discussed that many times over on this floor and I do not care to address it again—few do—because most people at that time were very much in favor of that. It is easy to look back now and say, "Oh, what a terrible thing." It was. But at the time it was signed off on by some of the great civil liberterians of our time—Chief Justice Earl Warren, who I think spent the rest of his life trying to expiate his anguish and guilt about his decision as attorney general of California to sign that order. It was a wrenching time.

So Ambassador Matsunaga wanted to go there, and people there who I know and have known for years have preserved the site, taken care of it very tenderly—a couple named Chester and Mary Blackburn who were honored 2 or 3 years ago in a national magazine as being citizens of the year in the State of Wyoming for their work on that project. So they greeted us. My friends, Nobuo and Yuriko, were very touched at what this little community had done, its thoughtfulness about what had occurred. It was a very special time for us.

So he will be greatly missed in this community of Washington and in this country, and I wish him good luck and Godspeed. I also know—I do not think I divulge a confidence—that the present Prime Minister of Japan asked him to serve in a high post in his administration and he said, "I think I am ready to retire."

But I do not think they will let Nobuo Matsunaga retire, because he is too valuable to his country. If it had not been for the relationship that he had with another one we greatly love and admire from our country, former Senator Mike Mansfield, we would have had a great deal more difficulty than we did have in trade and communication.

Now as we look forward to a new chemistry between my fine friend, Ambassador Armacost, Mike Armacost, and the new Ambassador of Japan, I do hope and pray they can reach that same level of good spirit, good energy, and good diplomacy.

So to Ambassador Matsunaga and his lovely wife, Yuriko, my heartiest good wishes, that of my wife Ann and I think many, many persons in this country. God bless him, sustain him, and nurture him, and I thank him for a job well done in a very difficult time.

## CHINA

Mr. SIMPSON. In June of this year, the world was shocked and mesmerized as it watched the events unfolding in Beijing. We saw that live on television. We watched the struggle in that part of the world that was, until fairly recently, closed off from our view.

Even as we were still welcoming the opening of China's door to the world, it swiftly began to close. Just as we were welcoming them into emergence as a full partner into the global community of nations, freedom's beacon dimmed dramatically and took with it our view into a nation and a culture that represents more than one in five of all living people on the Earth.

Even though the ground of Tiananmen Square shook only briefly, its reverberations rippled continually throughout the globe—politically, culturally, and economically.

I think, here in the Nation's capital, we have tried to understand what happened and to judge the broader implications of that tragic time and that tragic night of June 4.

But our emotional reactions have given way to, I think, a bit cooler analysis now, but yet we seem to have lacked the seasoned thoughtful and focused analysis of the broader ramifications of this recent event in a nation whose history dwarfs our own.

I can tell you now I feel we have received such an analysis and review. It is not a white paper prepared by a think tank, nor does it represent the combined thinking of scholars and career Foreign Service officers. No. The review was personally prepared by the one man in this Nation whose perspective is totally unique, and whose credentials in China matters and in world affairs is internationally respected. He will go down in history as such. I have known him since he was Vice President, while my father was serving as Governor of Wyoming. I have sought his thoughtful and incisive counsel and advice over the years since then.

His name is Richard M. Nixon. He is a most remarkable national resource, and we should use him more. I hope we will.

So, Mr. President, our fine 37th President was in Beijing from October 28 until November 2, and during those 6 days he spent 20 hours in meetings with every major Chinese leader.

On his return, he briefed President Bush, Vice President QUAYLE, and other top administration officials on his findings and his observations and his judgment.

He has now provided me and several other Members of the Senate with a stunning and wholly illuminating 7-page analysis in crisp language—clear, crisp language—understandable language of the situation in China, and its relationship with our country and the rest of the world.

It is really quite a remarkable document. I was pleased he called me before he left for China and told me of his trip before it was announced. He said he would brief the President when he returned, and he hoped to visit with Members of Congress when he returned. I hope we will do that with him.

Our former President, Jimmy Carter, was here in the Capitol a few days ago. I said to him, "It is important that you be used as a resource, to share with us who are presently in Government and in Congress some of the insights you have of domestic affairs and foreign affairs."

I think it is an absolute tragedy that we do not utilize the energy, the background, and the history that former Presidents can bring to us. We have four of them as a resource: President Ford, President Reagan, President Carter, and President Nixon; and we should use them.

When you read this analysis of China, present-day China, I think you are going to see that we are making a tragic mistake by not doing just that—using these fine men.

So the document comes as the opinion of a man who was our President. In February 1972, he opened the door to China. President Nixon is known to the Chinese as the person who took the risk, and had the courage to open that door to America and to the world. His trip was a stunning success. He renewed and refreshed his credibility—for he had it already. It is just as strong today as it was then.

It is that credibility that enabled him to discuss so frankly our differing viewpoints of China's actions in April, May, and June.

President Nixon spoke with Chinese leaders not only of the events of early June; he discussed the full range of our relationship in the context of where we go from here. He spoke of China's responsibility to the world, whether or not they choose an open or closed policy; and issues such as global warming.

How can you have a debate on global warming in the world when you exclude the country where one-fifth of the people of the world live? That is what we are headed into as we build these barriers higher and higher.

China's nuclear weapon capability—we have to talk about that. Regional, as well as global disputes and relationships—he speaks of those things. Our respective role toward the Soviets, China's participation in international trade and finance, and the toughest question of all: How do we start or restart our walk down the road together as world powers—whether we like it or not?

That is where we are.

Well, President Nixon did not have to do that for us. He was not required to do that. He was not even asked. He saw a situation about which he knew a great, great deal and in which he had credibility and access superior to almost any other person.

He acted as a concerned citizen, and he was not on a government mission to China. It was a private undertaking. It was not funded by the taxpayers. It was funded by Richard Nixon. He did not ride in an Air Force plane, nor was he surrounded by phalanx of Secret Service bodyguards.

This paper of his is crisp and sharp and incisive. It is clear and logical. It is reasoned, and it is filled with insight.

I strongly commend it to my colleagues and to all others who seek to truly understand what recently happened in China, and how in the interest of world harmony and peace we should now move forward, even from powerfully different viewpoints, in an effort to open a crack in that great door and let the light of truth, free-

dom, and cooperation shine brightly through the opening in both directions.

We owe a real debt of gratitude to our fine former President—really and quite truly a man of the world.

I visited with him this afternoon by phone. I told him I had read this. I said, "You have sent it to very few, and I wonder if you would let me share it with my colleagues and with the country." He said, "If you wish."

So I shall. I hope, too, that we will get to know the new Ambassador to the United States from China, who seems to be a very interesting, responsive, and accessible man, and he can help us to begin to see where we go from here.

It is so easy—we do it beautifully here, all of us; I do, too—to just mash another country for their indiscretions. But that is what the U.N. is for. That is where you can have the wrestling match. I do not think the wrestling matches should always be here.

That does not mean we do not or should not criticize and really "lay it on," and the recent El Salvador issue is a classic example.

What a terrible turmoil from the right and the left, and we hear the debate. You hear one colleague and he is very convincing, and you hear the colleague on the other side and he is very convincing. It is tough stuff. But we are hired on to try to deal with that. We do not always do it well, but at least we do it and we try—and we do often come up short.

I am always fascinated that in this line of work people expect perfection out of us, yet, they do not have it in their own lives. In fact, the less perfection they have in their own lives, the more they dump on us. I find that they talk about control of other nations of persons. A person with less control over their own life is always trying to control somebody else's life. That is another interesting part. But I am not going to check in as the shrink of the day, and I will drop that now.

I hope that you will all agree, when you read these comments, that we must indeed be very, very cautious.

I am going to conclude on a most topical part of the situation with China. The occupant of the chair knows this issue, and others have been thoroughly involved. We have some remarkable legislation that we passed for the Chinese students who are here in America. The President said that nothing would happen to them; that they would not be returned until it was safe.

That was not enough. So we added more here, and I think the Senate did a very credible job. It was, I think, more than we have given to any other people from any other country on Earth in the same situation, but it was a credible job. Then it went to the House, and they added more and more, in a spirit of: We will show those people in China what we are doing and about freedom and the torch and the Statue of Liberty and Tiananmen Square; we will show them.

Well, I think we have. We have sanctions, which you will see from Richard Nixon's comments, which are not going to be productive for us or for them. But the one thing we have done in our excitement is that we have passed a bill now which I do not think will be signed by the President; I think it will be vetoed, because what we have done is change our visa laws and our immigration laws to provide a benefit which we do not provide to anybody under any circumstances anywhere.

In the course of it, the Chinese Government was saying something to us, and we ignored it. First, they terminated the Fulbright Scholarship Program for a year. Apparently, we did not hear that. And now they have said, if that current bill passes and becomes the law of the United States, we will terminate the Fulbright Program completely, forever, together with every other educational program in the sponsorship between the two countries.

I cannot imagine what would be worse. How does anyone imagine how Tiananmen Square came to be filled with bright people talking about freedom and democracy? It was because they smelled it here. They often got their first whiff of the action here and they then went back. Now, by that simple action, just the other day we are told that the Chinese Government will terminate the Fulbright Program. I cannot imagine what would be more absurd. We are going to let that happen, apparently. I do not think the President will. He will take flak if he vetoes it, but he will surely be able to explain it.

If it is partisan—and I think some of it in the House is—but not here. The House seems to love partisanship, because they have been mashing one poor party over there for 35 years. It is more fun to do that. Here the poor old Republicans struggled into power for a few years and let the other half see how it really is. They know the feeling. We here in the Senate understand that marvelous tension of minority and majority, and they do not always seem to, down the hall. Speaker FOLEY does; his predecessor did not understand it, and that is one of the things that brought him down. You cannot operate in a legislative arena of two parties when you have an abused minority. Under Speaker FOLEY, that does not take place.

But in any event, we have some serious problems, and I think it was partisan—I am not saying to any intense degree, but it did turn into that, and now we have a bill which may be more detrimental than we will ever know. I said to some of those who were involved in it:

If you want to think of it as partisan, why do you not visit with Bill Fulbright and inquire of him what he thinks about your activities in these last few days?

This remarkable, steady Democratic Senator from Arkansas, who changed the course of the world's human relations, must be as offended as I am to know that we would just continue to push, push, push, when we did not have to do it, and destroy the very thing that opened the avenue of life and truth and democracy and freedom that happened in April, May, and June in the People's Republic of China. We really do a beautiful job of blasting our own toes off before we ever get the pistol out of the holster.

I thank you, Mr. President, and I ask that the full text of the remarks of former President Richard Nixon be printed in the RECORD at this point.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

THE CRISIS IN SINO-AMERICAN RELATIONS

In six days in Beijing from October 28 to November 2, I had over twenty hours of one-on-one discussions with eight major Chinese leaders, including Chairman Deng Xiaoping, Premier Li Peng, General Secretary Jiang Zemin, President Yang Shangkun, the sophisticated Foreign Minister Qian Qichen, the very able Minister of Education Li Tieying, the brilliant Minister of Propaganda Li Ruihuan, and the extraordinarily competent Mayor of Shanghai Zhu Rongji. The talks were highly candid, covering the political and economic situation in China, the current crisis in U.S.-China relations, and other international issues including the Chinese assessment of Gorbachev, of the revolutionary developments in Eastern Europe, and of the current situations in Cambodia, Afghanistan, and other Third World trouble spots.

On my return, I have an eighteen-page report to President Bush containing my assessment of the Chinese leaders and suggestions as to how the Sino-American relationship might be improved. I also discussed Sino-American relations at an informal dinner the President and First Lady hosted at the White House which was attended by the Vice President, Brent Scowcroft, John Sununu, William Webster, Under Secretary of State Larry Eagleburger, and Michel Oksenberg, the NSC's China specialist in the Carter Administration. Dr. Oksenberg attended all my meetings with Chinese leaders.

Because of the sensitivity of some of the issues, I am not going to make any public statements at this time. But since I discussed the trip with each of you before departing for Beijing, I thought it would be useful if I shared with you some of my observations on the current state of Sino-American relations.

THE CRISIS IN SINO-AMERICAN RELATIONS

Sino-American relations are in the worst condition they have been in since before I went to China seventeen years ago. One of the major reasons is that Americans and Chinese see the tragic events of June 4 from totally different perspectives. The gap between us on that issue is totally unbridge-

able. I pointed out to Chinese leaders that most Americans, including many friends of China, believe that the military crackdown was brutally excessive and totally unjustified. In response, every Chinese leader I talked to insisted that the suppression of the demonstrations was necessary and jusified. They believe the American reaction was an unacceptable intrusion in their internal affairs. They believe the American media grossly exaggerated June's events. They think that the economic sanctions, cessation of high-level official contacts, and moral condemnation from a nation with inadequacies of its own is hypocritical and unjustified. They recall bygone days when their nation was bullied and exploited by outside powers. As a result, some of the Chinese leaders now exhibit a distrust of the United States that is reminiscent of the period before 1972.

Before I went to China this year, my five-year-old granddaughter, Melanie Eisenhower, asked me on the telephone whether I could speak Chinese. When I told her that I did not she responded, "Then why are you going? They won't understand you." The tragedy is that even if I had been able to speak Chinese, they would not have understood me because of our totally different views on what happened. On several occasions I referred to the use of excessive force on June 4 as a tragedy. They refused to accept that; they insisted on calling it an "incident."

In part, this may be because the Chinese word for tragedy implies that there must be a villain. As one close Chinese friend pointed out to me, no proud Chinese leader—indeed, no national leader anywhere—can ever admit that he is a villain. One top Chinese leader told me that any colleague who humiliated China in the world community by acting contrite did not deserve to be in office. Contrition may be an attractive characteristic in soap opera stars, but not in leaders, of great nations such as China. This does not mean that we excuse what happened in June. But we should adopt the same approach we used in the Shanghai Communique, acknowledging both our differences about the crackdown and our common interest in building for the future in spite of it.

CAN THE CRISIS BE RESOLVED?

There is no way we can resolve our differences on the tragic events of June. But it would compound the tragedy if we allowed them to permanently damage a relationship that has been so beneficial to the Chinese people, the American people, and the cause of peace and progress in Asia. So we must keep the events in perspective. Great as our differences are over what happened in Tiananmen Square, our differences were infinitely greater when we established relations with the PRC in 1972 after twenty-three years of no communication whatever. We disagreed with the Chinese on Vietnam, on Korea, on Japan, on Taiwan, and on philosophy. China was still in the final throes of the Cultural Revolution, during which millions had died in an ideological crackdown far more brutal than what has happened this year. But we recognized then that while we had irreconcilable differences we had one overriding common interest which brought us together—the need to develop a common policy to deter an aggressive and expansionist Soviet Union which threatened us both. Today, when the conventional wisdom is that the Soviet threat has diminished and when many even proclaim that the cold war is over, do we still have a common interest which overrides our differences? And if not, what is the glue that can keep us together in the years ahead?

DOES IT MATTER?

This brings us to an even more profound question. Why is a restoration of the previous cooperative relationship between our two countries in our interests?

1) Assuming that the cold war is over and that the Soviet Union is not a major threat to either of us—a conclusion, incidentally, that every Chinese leader I met rejects—we still have a strong strategic interest in restoring a good relationship with the PRC. President Bush will go head-to-head with Gorbachev in the Mediterranean on December 2nd. There is no question but that Gorbachev is an exciting new kind of leader of the Soviet Union. But we must also recognize that in not implementing the Brezhnev Doctrine in Hungary, Poland, and East Germany, in cutting back marginally on his military budget, and in reducing his support of his clients in the Third World, Gorbachev is simply making a virtue out of necessity. He is using his head. At a time when he is using his head, we should not lose ours. Gorbachev is not a closet democrat, a philanthropist, or a fool. His handshake will be warm, but based on his past record we can assume that he will have a card or two up his sleeve. We should never threat China as a card. But it would not serve our interests if Gorbachev was able to do so. Today, the Chinese are talking to the Russians and we are talking to the Russians. But we don't talk to each other. The suspension of high-level contracts has served its purpose in expressing our outrage at the crackdown. Now we must once again adopt a policy toward China that serves our geopolitical interests, and such a policy will require high-level contacts.

2) China is a nuclear power. Without Chinese cooperation, we cannot have an effective policy of non-proliferation of nuclear weapons and will have no leverage at all in trying to prevent the sale of missiles and other destructive weapons to countries with trouble spots like the Mideast.

3) With Japan already an economic superpower with the capability of becoming a military and political superpower, a strong, stable China with close ties to the United States is essential to balance the power of Japan and the Soviet Union in East Asia.

4) China has an indispensable role to play in the maintenance of peace and stability in the Asia-Pacific region. Peace cannot be maintained in Korea, the Taiwan issue cannot be resolved peacefully, the people of Hong Kong cannot enjoy a future as an autonomous, capitalist, and democratic entity, and peace cannot come at last to Indochina unless both the PRC and the United States are constructively and responsibly engaged in regional affairs.

5) China inevitably will become a major economic power, and its over one billion people will provide a huge market for the advanced industrial countries. Do we want to rule ourselves out and leave that potential market to the Japanese and the Europeans? Is the door which we opened with such high hopes seventeen years ago to be closed?

6) Looking to the future, China, not because of communism but in spite of it, will be an economic and military superpower. Do we want to run the risk of being an adversary rather than an ally of China in the next century?

7) Global warming is the currently fashionable topic of think tanks and on editorial pages. How can we deal with this and other environmental issues without the cooperation of one-fifth of all the people on earth?

These are just a few of the reasons that repairing the damage to the Sino-American relationship is in our interest as well as in theirs.

DOES IT MATTER TO THE CHINESE?

Despite the criticism he received for his role in the tragedy of June 4, Deng Xiaoping, who twice has been named as Time Magazine's "Man of the Year," is one of China's greatest leaders. Gorbachev's political reforms have received the headlines, but Deng's economic reforms have produced the goods. In the ten years between 1979 and 1989, the per capita income of China's one million people doubled. In the five years that Gorbachev has been in power in the Soviet Union, the per capita income of the people of the Soviet Union has gone down. This does not mean that we approve of economic reform without political reform. But political reform without economic reform, no matter how popular it is in the short run, will fail in the long run. Economic reform without political reform will succeed in the short run, but will fail in the long run unless political reforms follow. If the Deng economic reforms, combined with his opening to the West, survive him, then the pressures for political reform will inevitably bring progress on that front as well.

All the leaders I met told me that Deng's economic reforms would continue and were irreversible. But now that he has announced his retirement, there will without question be a major battle for power between the reformers and the reactionaries who want to return China to the policies that existed before 1972. In a toast at a banquet hosted by the Premier on October 30th, I said that the choice China must make is a clear one. Is China to turn away from greatness and consign itself to the backwater of oppression and stagnation? Or does it continue to venture forth on the open seas, on a journey that at times may be rough but which leads to progress, peace, and justice for its people? As I told Deng, "Everyone agrees that corruption and inflation must be rooted out. The question is, in rooting it out, do you also root out the delicate new growth of individual enterprise which under your leadership doubled the per capita income of the Chinese people between 1979 and 1989?"

The United States cannot and should not interfere with the choice that only the Chinese have a right to make. But if the United States continues a policy of isolating China, that will only be grist for the mill of the reactionaries. Contact and cooperation with all the major western countries is essential if those who support Deng's reforms and his opening to the West are to prevail in the inevitable struggle for power.

WHAT CAN BE DONE TO HEAL THE RIFT?

Action will be required by both sides if the rift between us is to be healed.

China could consider efforts to resolve the dispute over Fang Lizhi, to restore the Fulbright Program, to rescind martial law, to provide amnesty for those who engage in peaceful demonstrations, and to put out the welcome mat for tourists, students, scientists, and businessmen who wish to invest in joint ventures which would improve the lot of great numbers of Chinese people.

The United States should consider the elimination of economic sanctions, the resumption of government assistance to those who want to invest in China, and the resumption of financing of major Chinese

projects by the World Bank and other international lending organizations.

The stickiest question is who goes first. The answer is that if we are to go down the same road together, we must take steps together. On the final full day of my visit I had a fascinating talk with the widow of Chou Enlai. She is physically frail but mentally as tough as Margaret Thatcher. She takes the standard Chinese line that the United States and not China caused the present difficulties. She quotes the Chinese proverb, "He who ties a knot must untie it." If her husband had adopted that attitude in 1972, we would never have been able to agree to the Shanghai Communique. Instead we decided to disagree on issues where our differences were irreconcilable and to go forward together on the major issue which united us. We need a similar approach today.

As was the case when I set in motion the opening to China during my first days in office as President in 1969, the timing and choreography of the steps each side takes toward a restoration of our relations can only be agreed upon through private diplomacy at the highest level. For this and other reasons, the Administration should consider taking one step on its own now: the resumption of contacts between high-level Administration officials and Chinese officials. Such an action should not require China to act first, because it is entirely in our national interest to have high-level communication with a nation as important as China. Cutting ourselves off from the Chinese leaders for much longer will be detrimental to our interests in Asia and to the interests of the people of China. More important, at a time when we are talking to the Soviets and the Chinese are talking to the Soviets, the Americans and the Chinese should be talking to one another. To leave the present and future leaders of China isolated, nurturing their resentments and even hatred of the United States because of what they consider to be unjustified actions against China, is senseless and counterproductive. The Great Wall of China is very thick. It is hard enough to be heard when you are outside. As I learned in my extended talks with China's leaders, they welcome the chance to discuss our differences. And while they will not always agree with us, they are eager to join in the search for common ground.

SOME HOPEFUL NOTES

As I found when I spent an hour last Wednesday morning shaking hands with people in a busy shopping district in Beijing, there is a great wall of friendship for the United States among the Chinese people. Another very positive factor is that in our sometimes very tense discussions, not one of the Chinese leaders had a negative word to say about President Bush. They would sometimes blame the Congress, the media, and the Voice of America, but never the President. Barbara and George Bush are respected and warmly remembered in China as old friends.

Now that the sanctions bill has been reported out of committee with the Senate language virtually intact, the President will probably conclude that he has no choice politically but to sign it. We can expect some negative fallout from the Chinese on this matter, but because of their bedrock respect for the President I believe the further disruption in our relations, while unfortunate and unnecessary, will not be fatal.

I would hope that the sanctions bill will be the final backward step in this difficult episode in Sino-American relations. Lashing out at hardline Chinese leaders with further sanctions might make us feel better, but it will hurt millions of innocent Chinese people we are trying to help. The reactionaries in the Chinese leadership believe that China got along with very little contact with the West for centuries and that if necessary it can do so today. Rather than isolating China's leaders, this is the time to engage them in a constructive dialogue. George Bush knows China and is an ardent champion of American values. We should not tie his hands as he attempts to steer through these dangerous waters.

I know that there are some who believe that the United States should retreat from its responsibilities in the world and concentrate on taking care of our own problems at home. But the days when a nation could remain truly isolated from the rest of the world are gone forever. Because of the communications explosion, no nation can be an island. Ideas do not need to go across or under borders today. They go over them, and no ideological SDI can shoot them down.

On the evening of November 1st, my last night in China, I was the guest of the President of the People's Republic of China at a banquet. While my four days of conversations with him and the other leaders had been constructive, they had also been tough. They said things that I did not want to hear, and I said things that they did not want to hear. But after our talks I was hopeful enough that I struck a more optimistic note in my toast than many pundits probably expected. My closing thoughts then also make a suitable conclusion for this report: "Despite the differences that divide us today, I am more confident about the future of Sino-American relations than I was in 1972. That is because we are no longer joined together only by our fears as was the case seventeen years ago but by our hopes—our hope for economic progress for both our peoples, our hope to reduce the danger of war, our hope for a cleaner, safer world."

The PRESIDING OFFICER. Does the Senator from Rhode Island seek recognition?

Mr. CHAFEE. I do.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

## BUDGET RECONCILIATION

Mr. CHAFEE. Mr. President, I commend the efforts of the leadership in reaching this agreement. It was, without a doubt, the most frustrating conference in which any of us have participated as members of the Finance Committee.

The agreement before us saves nearly $15 billion in fiscal year 1990—the year we are now in and which started last October 1. These are real savings. They do not represent clever accounting changes that result in fictional deficit reduction. In addition, for the most part, the agreement reflects sound health and tax policy decisions.

The agreement, however, also contains an extension of the sequester until February 7. This means the sequester will be in effect for almost 5 months, which accounts for $4.3 billion of the total savings achieved in the package. While I am pleased with the overall reduction in the deficit, that we could achieve our goals this year only with across-the-board cuts is extremely disappointing.

I believe this is a sad commentary on the ability of the Congress to do its job effectively. If a family has to tighten its belt, the parents do not decide to buy less milk and go to fewer movies. Instead, they decide to cut out the movies completely and buy the same amount of milk. It would be irresponsible for them to do otherwise, just as it is irresponsible for Congress to allow automatic cuts to occur, regardless of the priority of the program affected.

It is long past time for us to act in a responsible, bipartisan manner to reduce the deficit by cutting low priority programs such as sugar subsidies, and increasing, or at least maintaining, our financial commitment to important programs such as education and health. The future of our Nation depends upon our ability today to devote our resources to these activities that truly enhance that future. We will not regain our ability to compete effectively in international markets unless we devote the necessary resources to research and development, and to educating our children. The preservation of our environment is equally important to the survival of future generations. And, the stabilizing of our health care system is essential to both the well-being of our citizens, and the strength of our economy.

Across-the-board cuts do not achieve these goals. They are blind to our priorities, and when we resort to them, we abrogate our responsibilities.

I also want to point out another facet of the agreement that causes me concern. In October, the Senate moved to strip its deficit reduction package of all items which did not bring in additional revenues or reduce spending. Important items such as the extension of mortgage revenue bonds, and low-income housing tax credits were removed from the bill along with increases in Medicaid eligibility, and enhanced Medicare benefits. Many of us in the Senate sacrificed provisions about which we felt strongly in an effort to achieve a more solid deficit reduction package. The House did not take similar action, and the agreement before us does contain many provisions which would not have survived the rule we applied in stripping the Senate bill.

The rationale for including these provisions is understandable. The Members of the House were unwilling to give up their work at the end of the year without an assurance that another vehicle would become available. Nonetheless, next year we will again

be called upon to develop a budget reconciliation package, and it is essential that we know the parameters of that bill early in the year, and that the House agrees to live within these parameters. Without such an agreement, we will find ourselves in exactly the same situation we have struggled to get out of for the past 2 months.

The Finance Committee, and certain committees in the House, for far too long, have accomplished most of their business each year as part of the reconciliation process. That is unfair to the majority of Members of the Senate because it is a protected process. It is also unfair to the public because our policy decisions may not always have been the best.

Some have lamented that restricting the contents of the reconciliation bills will signal the death of many important policy initiatives. I simply do not agree. In fact, I believe the opposite is true. I am optimistic that such an action would be a first step toward better tax and health policy actions on the part of the Finance Committee. I think it would lead us, as a committee, to begin to act as a committee should, by carefully considering, and passing, legislative initiatives separately, and by allowing the full Senate the opportunity to consider those initiatives in a deliberative manner.

This is particularly important when it comes to health care policy issues. In the United States we spend more than $500 billion each year on health care—more than any other country in the world. Yet dissatisfaction with our system is growing by leaps and bounds. There are 37 million people with no health care insurance, many of them children. The cost of health care is leading to labor problems. Companies are finding it difficult to keep up with increases in the cost of insurance. From town meetings to corporate board rooms, we are hearing about the need to address the troubling problems we face in our system.

With the exception of the Catastrophic Protection Act, reconciliation has been the only vehicle in which we have attempted to address serious, far-reaching health care problems. Yet, in the rush to complete action, I believe we have often given these problems short shrift. As the lead Republican negotiator in reconciliation conferences on health issues with the House of Representatives for the past 4 years, I have had concerns about many of our actions. At times I have felt that we had not adequately examined the impact of many of our decisions. This year that concern is magnified.

So, Mr. President, I urge the majority leader, and the Republican leader, to begin discussions with the House leadership as soon as possible to come to an agreement on this issue. I also urge the chairman and ranking member of the Finance Committee to begin to move individual legislative proposals through the committee without waiting for the reconciliation process to begin.

Now, let me review some of the important provisions included in the agreement before us. On the revenue side, the package includes two critical initiatives to address the housing needs of our citizens. We are currently enjoying the benefits of the longest peacetime economic expansion in the history of the United States. At the same time, however, it is estimated that as many as 3 million Americans are homeless. These individuals are unable to find affordable housing, much less realize the American dream of owning a home. In an effort to address this problem, we provided the States with authority to issue tax-exempt mortgage revenue bonds, and, in 1986, created the low-income housing tax credit.

Under current law, both of these provisions are scheduled to expire at the end of this year. The agreement before us will extend them for an additional 9 months. I am confident that before September of next year, we will act to extend these provisions for a longer period of time in order to ensure their future.

The package also contains important provisions to enhance the ability of U.S. business to successfully compete in the international market, and to help assure the continued vitality of our economy. Of particular importance are the 9-month extensions of the research and development tax credit, and the renewal of the moratorium on the application of the section 861-8 research and development allocation rules. Enactment of these provisions is essential to encourage the commitment of U.S. industries to long-term investments which are critical to some of our most promising research efforts.

The nations that are winning the competitiveness race are those that recognize the importance of advanced technology—because it results in new, marketable products and more efficient production and manufacturing. These countries work to attract companies that will establish research and development facilities within their borders. To achieve greater economic competitiveness we must foster, not impede, U.S. investment in research and development. We must expand, not export, our technological base. The provisions included in this agreement will help us attain these goals.

This package also includes changes in the spending programs under the Finance Committee—Medicare, Medicaid, and Social Security. Many of those changes will reduce the deficit, but overall I believe that we were also able to balance most of the spending reductions with good health care policy. The reconciliation bill will save the Federal Government money, control beneficiary out-of-pocket costs and allow physicians and hospitals to increase their charges at a reasonable rate.

The agreement includes expansions in the Medicaid Program to address the health care problems of low-income pregnant women and children. This continues our efforts over the last 5 years to ensure that our health care system provides access for the poor—especially children. The provisions we adopted include requiring States to expand the Medicaid Program to cover children up to age 6, infants and pregnant women up to 133 percent of poverty, and beefing up the preventive services provided to children.

In addition, we are able to include a provision to increase reimbursement under Medicaid to community health centers, which will increase their ability to provide health care to those who have limited incomes or are uninsured. Also included is a demonstration project to test the efficacy of a Medicaid buy-in program, such as that proposed in MedAmerica, legislation I introduced during the last session of Congress. This provision is not as broad as I would have liked, but it will assist States in their efforts to experiment with new ways of providing access to health care for children.

In the Medicare Program, the agreement contains approximately $2.8 billion in savings resulting from changes in reimbursement policies to providers. Hospitals will receive an increase in reimbursement, and we were able to eliminate the cut in indirect medical education payments to hospitals which would have had a devastating effect in Rhode Island.

The agreement includes a major overhaul in the method used to reimburse physicians under Medicare. I believe we will be revisiting this issue in the coming years to work out the glitches that will inevitably arise, but, nonetheless, it is a very positive step forward in our effort to bring the cost of the program under control. It also represents a move toward more equitable reimbursement policies which will recognize the efforts of the backbone of our system—primary care physicians.

We were also able to include much needed benefits for our elderly citizens such as the elimination of the cap on mental health services.

The agreement also includes other improvements in human resources programs. For example, the Independent Living Program provides critical services to teenagers who are leaving the foster care system to live on their own. They learn essential life skills such as how to find a job or an apartment or get a bank account—skills

that few have been able to develop while in the foster care system. The Independent Living Program has proven its worth during its now expired 3-year authorization. I am pleased that it will be reauthorized in this legislation.

Another important foster care provision extends the authority for States to transfer foster care funds to child welfare services. Some States do not need to use their whole Federal foster care allotment. Child welfare services provide prevention initiatives designed to keep families intact whenever possible. States are in terrible need of additional support for child welfare services. It is essential that this authority to transfer foster care funds to child welfare services continue. That authority has already expired but will be extended in this conference agreement.

I am pleased that the reconciliation bill also increases the social services block grant (title XX). The title XX block grant provides funding to States for a range of essential social services to children, elderly persons, and persons with disabilities. Many of the services funded by title XX are preventive and reduce the need for more costly interventions. Title XX is the primary Federal source for funding of child care for low-income working families and is a key source of support for child protective services. In addition, it is a vital source of funding for community-based services for persons with disabilities. In 1981, funds for title XX were cut by 20 percent. Subsequent small increases have not restored the lost funds. Taking inflation into account, funding for title XX today in real dollars is about half of what it was a decade ago. Thus, this increase will enable States to partially restore services to many needy individuals.

In short, Mr. President, the agreement before us contains many valuable initiatives that should be enacted. While I believe many of these initiatives do not belong in a deficit reduction bill, that is our only option this year, and I urge my colleagues to join me in supporting this agreement. However, I reiterate my earlier request that the Senate and House agree on the future of the reconciliation process so that the problems we have encountered this year are not repeated.

Mr. President, I do not see anyone else seeking recognition, so I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Rhode Island suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. I thank the Chair.

(The remarks of Mr. BOND pertaining to the introduction of S. 1977 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Iowa is recognized.

## FARM SITUATION NOT AS ROSY AS USDA FIGURES SUGGEST

Mr. HARKIN. Mr. President, the Agriculture Committee will face many issues when we begin writing a new farm bill in the next session, but the most important issue in any farm bill is whether it provides for adequate income for our farm families.

It is, therefore, critical that the debate on new farm legislation be based on accurate information concerning current economic conditions in agriculture and projections for the future.

So I was disappointed in the way that USDA recently presented the figures on farm income for 1988. USDA boasted that net cash farm income for 1988 reached a record level of $59.9 billion. And that is the way the press picked up the story—record levels of farm income. Of course, the suggestion is that farmers have never had it better.

Here we have just one more example of statistics that are true as far as they go, but incomplete and misleading as presented.

A little digging into USDA's own figures reveals that farm income for 1988 was far short of a record level if the figures are adjusted for inflation—which is the only valid way to look at them. In constant 1982 dollars, net cash income for 1988 was not $59.9 billion; it was $49.2 billion, an increase of only $200 million over the inflation-adjusted figure for 1987. In constant 1982 dollars, net cash farm income was lower in 1988 than it was in 1972—$49.8 billion, 1973—$72.6 billion, 1974—$64.5 billion and 1975—$49.9 billion. Net cash income for 1988 was thus 32 percent lower than for 1973 in constant dollars—hardly a record income for farmers.

Moreover, the $59.9 billion figure cited by USDA was for net cash income; that is, cash farm income less cash farm expenses. To get a true picture of the overall farm financial situation, we also have to look at what USDA calls "net farm income," which takes into account noncash income and expenses and changes in the value of the inventory held on the farm.

Net farm income for 1988 was $45.7 billion, which is actually lower than the level of $47.1 billion for 1987. In constant 1982 dollars, net farm income for 1988 was $37.6 billion, lower than the $40.0 billion for 1987 and, again, lower than the levels for 1972—$41.8 billion, 1973—$69.4 billion, 1974—$50.5 billion and 1975—$43.1 billion.

Mr. President, I am very concerned that these specious claims of record farm income are a part of a public relations and political strategy by the administration spin doctors to set the stage for cutting support to American agriculture in the 1990's.

To be sure, there has been significant improvement in the financial conditions in agriculture in recent years. But it is very dangerous to overstate that improvement to bring about cuts in our support to agriculture that could only cut short that recovery and return our farm sector to the grave financial situation it was in only a few years ago. In fact, difficult times lie ahead for farmers even if current levels of support are maintained, let alone reduced.

Earlier this month the Food and Agricultural Policy Research Institute [FAPRI] at Iowa State University and the University of Missouri released its projections for farm income into the early 1990's. Bear in mind that these projections are based on optimistic overall economic assumptions and on the assumption that commodity target prices will not be further reduced during that period. Nevertheless, FAPRI predicts that due to a worsening cost-price squeeze net farm income will fall from $49.23 billion in 1989 to $36.02 billion in 1996, a drop of 27 percent. However, in constant dollars adjusted for inflation, the drop in farm income would be 43 percent.

Agriculture should make its contribution to deficit reduction, but it already has contributed a great deal. Commodity program spending has fallen from nearly $26 billion in fiscal 1986 to an estimated $12 to $13 billion for fiscal 1989, and to $10 to $11 billion for fiscal 1990. It would be unfair to farm families and a threat to our food security to force agriculture to bear further significant cuts.

The administration claims farm program spending is at historically high levels. Again, this statement is true as far as it goes but is inaccurate and misleading since it ignores inflation and the overall increase in Federal spending. Commodity program spending for fiscal 1989 was about 1 percent of total Federal outlays, while it was 2.5 percent for 1970. Current outlays are not too much to spend to help maintain the most productive agricultural system in the world.

Mr. President, debate and discussion on the 1990 farm bill is a matter of great importance to my State of Iowa and to American agriculture. Therefore, unrealistic portrayals of economic conditions in agriculture and of farm program spending levels can only

impede the work on this important legislation. I hope that in crafting the 1990 farm bill we can work with the administration in a spirit of cooperation and based on accurate and fair information.

## TRIBUTE TO BETTY NIXON, SPECIAL FRIEND

Mr. SASSER. Mr. President, today, I would like to pay tribute to a truly special lady, Betty Nixon, who has served this Senator and the State of Tennessee so diligently this season and over the years.

I have known and admired Betty for many years. As a citizen activist and a member of the Nashville City Council for 12 years, Betty has worked tirelessly to improve the quality of life there. On many occasions, her tenacity of spirit and political skill were the driving force behind the city's effort for improved housing conditions, better transportation, and economic development. Betty Nixon has earned the praise from Democrats and Republicans alike for her efforts.

Earlier this year, Betty joined my Washington, DC, staff in an effort to help shape domestic policy at the Federal level. Given her vast experience with local government, Betty served me invaluably as a key adviser on State and local issues.

Through her position on the staff of the Governmental Affairs Subcommittee on General Services, Federalism, and the District of Columbia, for which I serve as chairman, Betty Nixon has led the subcommittee in a head-on asssault on the mammoth issue of America's infrastructure problems. In her no-nonsense style, Betty helped facilitate a dialog between infrastructure experts and State, Federal, and local legislators that has helped give guidance to local officials around the Nation.

Mr. President, while I could go on for a good while praising Betty Nixon's present and past achievements, I would rather take this opportunity to say a few words about this remarkable lady. While Betty has served me in a variety of ways, including campaign manager, above all, Betty is a trusted and valued friend. Since our days together at Hillsboro High School, I have always admired Betty's courage and sense of purpose.

She has that rare ability to be able to approach a topic with incredible efficiency and planning, while at the same time being ever mindful of outside factors that may reshape our world. I can say with much pride that my dear friend Betty Nixon is one of the most respected and popular elected officials in the history of Nashville.

Fortunately for the good citizens of Tennessee, Betty Nixon is returning to her home State very soon. Beginning January 1, 1990, she will be assisting Vanderbilt University in Nashville, TN, in its local, State, and Federal relations, and I know my alma mater will benefit greatly from her service. I wish Betty the very best in her new and exciting endeavor at Vanderbilt University.

## TENTH ANNIVERSARY OF VET CENTERS

Mr. CRANSTON. Mr. President, it is with great pleasure and no small amount of pride that I rise today to acknowledge the 10th anniversary of the Department of Veterans Affairs' Vietnam Veterans Outreach Centers and pay tribute to the men and women who have been involved in the program. This program and these extraordinarily dedicated individuals have provided a necessary service to veterans of that war and that era in helping them understand and cope with the problems of readjusting after the war.

Of all the efforts relating to veterans' matters that I have been involved with during my over 20 years in the Senate, the enactment of the legislation that established the VA Readjustment Counseling Program is the one of which I am most proud. Many Vietnam veterans have told me that vet centers are the best thing that the Government has done for Vietnam veterans.

When the chips are down, the strength of our Nation depends on the American men and women who answer the call to duty in military service to our country. How we treat these very special Americans and their families is an integral part of our national security. That is why I have devoted so much of my time and attention in the Senate to veterans' issues.

When I first came to the Senate in 1969, the Congress was deeply divided about the war in Vietnam, reflecting the very deep divisions throughout the Nation. Because of the terrible rancor over the war, little or no attention was being paid to the service men and women who were serving in Vietnam. My first committee assignment was as chairman of the Veterans' Affairs Subcommittee of the Labor and Public Welfare Committee. The full Veterans' Affairs Committee in the Senate was not to be established until 1971.

In my first year as subcommittee chairman, I held a series of hearings on the difficulties VA medical facilities were having in meeting the needs of Vietnam veterans. I remember in particular the testimony of one witness, a former member of the First Air Cavalry. He had been severely wounded in Vietnam, and he made this statement to the subcommittee:

> The inevitable psychological depression after injury, coupled with doubts that it may not have been worth it, comes months later like a series of secondary explosions long after the excitement of the battlefield is far behind, the reinforcement of your comrades-in-arms a thing of the past, and the individual is left alone with his injury and his self-doubts. Anyone who deals with a Vietnam returnee, wounded or not, must understand this delayed severe psychological symptom.

Although that witness was primarily addressing the situation facing Vietnam veterans who had suffered serious physical wounds during their service, the theme that he struck as to all Vietnam combat veterans was repeated by others who were working with Vietnam veterans—both those who had been physically wounded as well as those whose wounds were psychological in nature. It soon became clear that a very significant number of Vietnam veterans had psychological problems readjusting after their service in Vietnam. It was also clear that the VA in general did not have the capacity to help these veterans.

To address this need, I introduced legislation in 1971 to require the VA to provide readjustment counseling. I succeeded in having that legislation passed by the Senate, not once, but four times. It was not until June 1979, however, that the House of Representatives finally went along and the law requiring that this special new service be furnished to Vietnam-era veterans was finally enacted. The fact that this idea succeeded after 8 years was due in no small part to the efforts of that veteran whose testimony before the subcommittee I just quoted.

That veteran's name was Max Cleland and, by 1979, he had become, of course, the Administrator of Veterans' Affairs, the first and to date, the only Vietnam veteran to serve in that position. With Max pushing within the executive branch as we continued our efforts in the Congress, our dream finally became a reality. I was thrilled when the first vet center officially opened—in Tacoma, WA—in late 1979 and when I participated in the inauguration of the program in California in January 1980 at Van Nuys. I have watched the program carefully ever since.

I have been particularly pleased with the success of the storefront model which helps get away from the institutional atmosphere that turn a lot of Vietnam veterans and others off. Over the last 10 years, there have been efforts to cut back this program and terminate its funding. In 1981, the Reagan administration proposed to cut out all funding for the program and opposed any extension of when a Vietnam veteran could first request readjustment counseling. The stated justification for this was that the program had already met the need and hence there was no further basis for continuing it. I led the fight in the Senate against those proposals that year, and we were successful. In 1983, I

introduced a bill to extend the program and again was successful. As of today, eligibility to request readjustment counseling is permanent, and as a result of a law I authored in 1988, the continuation of vet centers as the method for providing that counseling is protected in law.

In 1984 and 1987, I worked with many of my colleagues in Congress to secure additional funding and personnel to support an expansion of the program. The 10th anniversary of the vet centers, with 196 centers and 827 employees, is testimony to our success and the program's success.

THE VET CENTERS PROGRAM

Mr. President, the Vietnam Veterans Outreach Centers, commonly know as vet centers, provide a broad range of services to Vietnam era veterans. With the addition this year of sites in West Virginia and Hawaii, 196 vet centers now provide readjustment counseling in all 50 States, Puerto Rico, and the Virgin Islands.

In fiscal year 1989, vet centers saw an average of 9,720 veterans each month—an increase of 6 percent over the previous fiscal year—and over the past 10 years more than 600,000 veterans have been seen by vet center staff and over 700,000 in all, including family members and closely related individuals—for a total of more than 4 million visits by veterans since the program began.

Vet center staff provide the following services: Psychological counseling (individual, group, and family), psychotherapy (individual, group, and family), outreach, networking with and referral to VA and other medical and assistive programs, employment counseling, education and career counseling, crisis counseling, community education to both professionals and nonprofessionals, substance abuse after care and referral, conjoint services at VA medical centers and clinics, and consultation to professionals whose work involves treating veterans.

A typical vet center has a staff of four—one team leader, who is usually a mental health professional such as a psychologist or an advanced-degree social worker, two counselors, and one office manager. Team leaders, by plan, spend 30 percent of their time in direct service to veterans and 70 percent of their time in administration and supervision.

Perhaps the greatest strength of the Vet Center Program is that the people who work in them are, more often than not, veterans, and a large number are Vietnam combat veterans. They bring to their work a firsthand understanding of the concerns and needs of those who will seek their help. Having made it through two tough experiences—Vietnam and readjustment to civilian life—these Vietnam veterans are in the best position to help other Vietnam veterans.

It is a truism that the best conceived governmental program—after the problems are identified, after the mission of the program is defined, after the office space is located, the funding secured, the name decided upon, and the director named—in order to succeed requires men and women who will do the job in the central office and in the field and do it well. The success of the readjustment counseling service is attributable to such individuals, whom I salute and thank for their outstanding efforts. There have been many involved with the program over the past 10 years and there are quite a few—over 50—still involved who have been with the program since the beginning. I would like to provide a special recognition for those staff of the readjustment counseling service who have been at work in this important program for the 10 years. I ask unanimous consent that the list of Readjustment Counseling Service staff with 10 years of service be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CRANSTON. Mr. President, this program has worked very well for the people it was designed to serve. I think that in many ways, the successes of the program can serve as a fine example of what is possible when Government acknowledges a problem and sets aside the political debate on the causes of the problem long enough to develop an innovative strategy to deal with those who are most strongly feeling its effects. The focus of this program was on the warrier and not the war. Regardless of the underlying issues of the causes of the Vietnam conflict and our involvement in it, one of the consequences of the endeavor was large numbers of those who served experiencing difficulties upon resuming their lives. Addressing these difficulties is the mission of the Readjustment Counseling Program, and it continues to do it most effectively.

In carrying out the mission of providing readjustment counseling to Vietnam veterans, the staff of the vet centers have gained a great deal of knowledge and insight into the long-term effects of war on the combatants. For many, the emotional and psychological wounds of war are slow in healing and difficult to understand. In the case of Vietnam veterans, recent studies indicate that there remains a great deal of work to be done to treat their mental-health problems. According to a comprehensive study on the readjustment problems of Vietnam veterans, approximately 480,000 Vietnam theater veterans are suffering from post-traumatic stress disorder [PTSD] and approximately 350,000 are still experiencing some PTSD symptoms. The expertise of vet center staff will be vital in the treatment of these veterans.

I would also like to note that in the aftermath of the October 17 earthquake in northern California, RCS personnel put aside their own concerns and apprehensions and volunteered to provide help to those—veterans and nonveterans alike—who were experiencing emotional and psychological difficulties. Their immediate actions in response to that traumatic event, including community outreach, crisis counseling, and language translation services for people dealing with Federal and local government assistance agencies, are testament to both their enhanced awareness of the mental-health needs of people exposed to danger and their professional commitment to helping those in need. I am sure that their knowledge, experience, and compassionate assistance were much appreciated by those people who were traumatized by the earthquake.

According to VA figures, more than 1,200 veterans and 6,200 nonveterans have already been assisted by RCS personnel in dealing with the aftermath of the earthquake. The comfort that was provided to both veterans and members of the communities that were hard hit by the earthquake was yet another indication of the value of this program and its dedicated and uniquely experienced staff. I am proud of their efforts and congratulate each and every one for their strong sense of community.

Mr. President, in closing I would like to note the dedicated efforts of a few individuals whose work has been much appreciated by me and, I am sure, Vietnam-era veterans throughout the country: Dr. Don Crawford, who headed up the program during its critical, formative first 2 years, and Dr. Arthur Blank, his successor who has done such an exceptional job in professionalizing, expanding, and solidifying the program during the last 8 years.

It is a pleasure to call attention to the outstanding work of these program leaders and the program's over 800 employees on the 10th anniversary of the establishment of the vet centers. I will continue my strong support for this program and the veterans who are served by it.

EXHIBIT 1

Following is a list of Readjustment Counseling Service staff who have been at work for ten years (i.e., since prior to December 31, 1979).

Frank Penacho, Providence, RI*.
Mervina Johnson, Brockton Vet Center.
Jerry Bownman, Buffalo Vet Center.
Paul Giglia, Buffalo Vet Center.
David Kowalewski, Buffalo Vet Center.
Robert Comeau, Portland Vet Center.
Lembo, Ronand New Bedford Vet Center.

*RCS Regional Manager's Office.

Joe Gelsomino, Bay Pines, FL*.
Neal, Patricia, St. Petersburg Vet Center.
Don Parker, Birmingham Vet Center.
Willie Chappell, Atlanta Vet Center.
Gale Chisholm, Jacksonville Vet Center.
Ollie McClendon, Jackson Vet Center.
George Varnadore, Chicago VVRC.
Donald O'Neal, Chicago VVRC.
Lois Miller, Cleveland Vet Center.
Thomas Maclean, Milwaukee Vet Center.
Mary Jones, Oak Park Vet Center.
Gary Sorenson, Fargo Vet Center.
William Covington, Kansas City Vet Center.
Mark Mulvihill, St. Paul Vet Center.
Michael Dafoe, Sioux Falls Vet Center.
Clarence Burr, S. Central Los Angeles Vet Center.
Jerry Melnyk, West Los Angles Vet Center.
Stephen Molnar, Honolulu Vet Center.
Kerry Merback, Las Vegas Vet Center.
James Barker, San Jose Vet Center.
William D. Hill, San Diego Vet Center.
Carrie Clark, Austin Vet Center.
Humberto Aleman, El Paso Vet Center.
Vastine Hightower, Houston Vet Center.
Harry Doughty, New Orleans Vet Center.
Herman Woodside, New Orleans Vet Center.
Doretha Solomon, New Orleans Vet Center.
Peter Sharp, Oklahoma City Vet Center.
Waymon Wilson, Oklahoma City Vet Center.
Willie McCrary, Trenton Vet Center.
Mike Lydon, Fayetteville Vet Center.
Ernest Connors, Fayetteville Vet Center.
Dennins Patterson, Norfolk Vet Center.
Paul Newton, Norfolk Vet Center.
Connie Carr, Huntington Vet Center.
Lon Campbell, Elkton Vet Center.
Jerry Muhs, Sioux Falls Vet Center.
Dave McPeak, Pittsburgh Vet Center.
Georgia Quailey, Pittsburgh Vet Center.
Priscilla Crawley, Silver Spring Vet Center.
Walter Hundley, Washington, DC Vet Center.
Mark Kaufki, Wilmington Vet Center.
Lewis Bennett, Wilmington Vet Center.
Tom Rascon, Charleston Vet Center.
Gustavo Martinez, Washington, DC (DVACO-10B/RC).

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, for the information of Senators concerned about the schedule for the remainder of this evening and this session, the House just a few moments ago began debate on the catastrophic health legislation. If the House concurs in the amendment approved earlier this evening by the Senate; that issue would then be finally disposed of and the legislation would be sent on to the President and there would be no further action required in the Senate on that matter.

If, however, that amendment fails in the House and the House then proceeds to insist on its prior position which is for repeal, the measure would come back to the Senate and the Senate would then be required to decide whether to accept the House position of repeal or leave current law in effect.

I doubt anyone can at this time predict what will occur in the House, so Senators should be aware that whether or not we have further action on catastrophic in the Senate this evening will depend upon what happens in the House on the vote or votes that they are going to be taking in about an hour on this subject.

The majority leader in the House just prior to the taking up of the catastrophic measure also announced that the House is now prepared to act on the reconciliation measure immediately following disposition of the catastrophic health legislation.

He estimated that the vote in the House on reconciliation would occur between 11:30 p.m. and midnight this evening.

As soon as the House has completed action on reconciliation, it will be delivered to the Senate and it will then be taken up here.

Earlier today the distinguished Republican leader and I both inquired of our respective caucuses as to whether any Senator would require a rollcall vote on reconciliation when we received it. At this time we have not received an indication of a request for such a vote.

That, of course, does not preclude a Senator from making that request between now and the time we get to it, which will be a few hours. But I merely advise Senators, for the benefit of planning their schedules for this evening that that is the current status.

Mr. DOLE. Mr. President, will the majority leader yield?

Mr. MITCHELL. I yield.

Mr. DOLE. The majority leader is correct. On this side there has been no request for a vote. I understand when catastrophic comes back, Senator McCAIN will not ask for a vote on this side. In fact, I think many Members have become reconciled and have already taken off. A few Members on this side headed for home for Thanksgiving.

I guess the only other question is there might possibly be a vote on the State Department authorization. I am not certain what disposition of that will be.

I know, in addition, there are a number of Senators who would like to get unanimous consent to bring up the disaster bill. I know we are still working on it. We are down to a couple of provisions. If those can be agreed to, I assume that can be done without a vote.

Mr. MITCHELL. Mr. President, a hold has been placed upon the State Department authorization bill and I intend to discuss that further with the interested Senators to see if it will be possible to bring that up this evening as well as the disaster relief bill and some other matters, none of which I hope will require votes. But Senators should be aware certainly of the possibility that a number of other measures will also be considered, hopefully by unanimous consent, later in the evening.

I wish to inquire of the distinguished Republican leader. I did not quite understand his remark regarding catastrophic and Senator McCAIN. Do I understand the Senator to say that if catastrophic comes back here and the choice we then face is repeal or current law, that Senator McCAIN would not ask for a vote? Do I take it to mean he would accept repeal?

Mr. DOLE. That is my understanding based on a conversation I had with a Senator earlier this evening, who then departed. Mr. McCAIN did not depart yet.

Mr. MITCHELL. I thank the Senator and we will watch action in the House, of course, and be prepared to proceed as promptly as possible when the relevant papers are presented to the Senate.

## DEPARTMENT OF DEFENSE

### NOMINATION OF SUSAN J. CRAWFORD TO BE INSPECTOR GENERAL

Mr. MITCHELL. Mr. President, as if in executive session, I ask unanimous consent that the nomination of Susan J. Crawford to be inspector general of the Department of Defense be discharged from the Committee on Governmental Affairs, that the Senate proceed to the immediate consideration of the nominee, that the nominee be confirmed, that any statements appear in the RECORD as if read, that the motion to reconsider be laid upon the table, and that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THE EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar No. 486, John M. Walker, Jr., to be U.S. district judge for the Second Circuit;

Calendar No. 487, Vaughn R. Walker, to be U.S. district judge for the Northern District of California;

Calendar No. 488, Edwin L. Nelson to be U.S. district judge for the Northern District of Alabama;

Calendar No. 489, G. Thomas Van Bebber to be U.S. district judge for the District of Kansas;

Calendar No. 490, Susan W. Wright to be U.S. district judge for the Eastern and Western Districts of Arkansas;

Calendar No. 491, Edward W. Nottinghan to be U.S. district judge for the District of Colorado;

Calendar No. 492, Arthur D. Spatt to be U.S. district judge for the Eastern District of New York;

Calendar No. 493, Edward J. Lodge to be U.S. district judge for the District of Idaho;

Calendar No. 494, Jean P. Bradshaw to be U.S. attorney for the Western District of Missouri;

Calendar No. 495, Joyce J. George to be U.S. attorney for the Northern District of Ohio;

Calendar No. 496, Timothy D. Leonard to be U.S. attorney for the Western District of Oklahoma;

Calendar No. 497, Gene W. Shepard to be U.S. attorney for the Southern District of Iowa;

Calendar No. 565, Philip L. Christenson to be an Assistant Administrator of the Agency for International Development;

Calendar No. 566, Gordon H. Mansfield, to be an Assistant Secretary of Housing and Urban Development;

Calendar No. 567, Jerome G. Cooper, to be an Assistant Secretary of the Air Force; and

Calendar No. 570, Adis Maria Vila, to be an Assistant Secretary of Agriculture.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

Mr. JEFFORDS. Reserving the right to object.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. Mr. President, it is very painful for me to be here this evening, for I have been placed in the position of having to disagree with the policies of my President. I have supported President Bush in most everything that he has wanted.

For instance, I believe very strongly that the President has the right and we have the obligation to support his nominees for his Cabinet, and that we lean over backward to do so. I have done that. I also feel, with respect to other members of his administration, that we again should lean over backward to give him those people that he desires to have serve him. In fact, I have personally, against great odds, stood up for one of his nominations to be part of the Department of Labor.

However, with respect to the judges, it is unfortunate that I have to stand here tonight and register some objections, for I feel that we as a body have the strong responsibility to be the ones that are those that determine who is best to be the district judge in our State.

Let me give you just a little bit of my personal background to let you know how strongly I feel on this, how strongly I feel for the judiciary. My father was the chief justice of the Vermont Supreme Court. I grew up in a judicial family. I know how important it is as to who we appoint to the courts, the integrity, the legal background, the way that they will be able to represent the finest that our judiciary deserves.

My first job after coming out of law school was to be a clerk in the U.S. district court of Vermont. I admired the man that held that job. It is my duty and obligation to make sure that those who serve Vermont in the Federal district courts are the finest that we have, and I have tried to do that.

How to select the most qualified judge to best serve the judicial district has traditionally been left to the Senator of the State of the President's party. If there is none, traditionally the Senators of the opposing party have been consulted and the party officials of the State looked to for recommendations.

If one looks back—and I would just like to briefly recount some of the history—in the Federalist papers it was pointed out in that originally there was a great debate as to who ought to appoint judges and Supreme Court judges. On the one hand, the position was that it ought to be the Senate solely that did that, subject only perhaps to the veto of the President. On the other hand, there was a feeling that a President without any check ought to be able to appoint the judiciary. A compromise was reached and it is the system we have today where the President nominates but the Senate has the right to consent and advise.

From a period of time from 1840 on, there has been a consensus over the years with the President and the Senate that, in the area of judicial appointments, no question about it, the Supreme Court is the prerogative of the President. The district judges have been the prerogative of the Senators as stated above. The circuit court was sort of in between and, depending upon circumstances, either the Senator got his nomination or sometimes that was overridden.

I would advise anyone that wants to read a thorough history of this to look at "The Advice and Consent of the Senate," by Joseph P. Harris, a study of the confirmation of appointments by the U.S. Senate. I will read the basic quote here:

> By well-established custom which has prevailed since 1840—

This was written in 1968—

> Federal district judges are normally selected by the Senators from the State in which the district is situated, provided they belong to the same party as the President.

After reading through the history of that period of time up through 1968, it is interesting to find that only on one occasion was there a serious confrontation on this issue. This was during the Hoover administration. At that time, a Senator nominated someone who President Hoover felt was totally unqualified. And the evidence was that there were many reasons to believe that that was correct. Finally, though, President Hoover consented to sending that judge's name up. He sent his people up and they lobbied strong against the name they had sent up, yet the Senate by a vote of 50 to 20 confirmed the appointment.

Many years have passed. During that period of time there has been no change in that senational prerogative.

The chipping away began during the Carter administration, when President Carter put as a qualification or a criteria to look at and said, "I want minorities and I want women when you send your nominations." This did not meet with any great objections and during that period of time the number of women and blacks and other minorities were appointed.

When President Reagan took office, he had that unusual experience of having a huge number of judges to appoint. He set up a commission to review the recommendations of the Senators. It seemed to be a deviation from the prerogatives of the Senate. However, from talking to my colleagues who were here at that time, it was a formality and not a reality. In other words, although there was clear criteria set out, the President, in no instance that I have been a made aware of, interfered with the prerogative of a Senator.

President Bush has taken office and the matters have changed rather dramatically, for what formerly was a formality is now a reality. It is the policy of this administration that any Senator must send at least three names, and it also has been made clear to me personally that they are not restricted to those names to select from. Those names are submitted to a review panel of five bureaucrats somewhere in the bowels of the Justice Department who then interview, over a number of hours, the candidates.

If they, as in my case, decide that that candidate is unacceptable, that is the end of the process. Let me leave that point as the situation in this respect. Also, though, over a deep concern for history, especially in the six-

ties as to the type of candidates that some Senators and some that came from the White House were not really qualified to be judges, the American Bar Association working with States and others set up review panels.

In my State, we have a judicial selection board of which I was one of the original sponsors and served on that board. They just render a decision as to whether or not a person is qualified.

Let me give you a little bit of Vermont history with respect to judicial appointments. My confrontation with the President on these issues is not the first one. In history, there have been a least two, to my own knowledge, and I believe more in the past. Each time, however, the Senator from my State was able to prevail and, notwithstanding the objections of the President, finally convinced the President to submit the name of his choice.

Subsequent to that period of time and during the time of Senator STAFFORD, with the consent of Senator LEAHY, a selection board was established made up not only of lawyers but business people who know Vermont and know the people of Vermont and know the lawyers of Vermont. The selection process is an extensive one. We had some 12 candidates for the vacancy in Vermont. They had a point score system to evaluate. They went through legal as well as philosophical—all across the board. There was a total of 54 points which were available to assign to a candidate. Mr. Parker received 53 of the 54 points and was the unanimous selection of the nine-person board. He was the highest by far. The next highest scorer was around 41. He has since received the unanimous endorsement of the Vermont Bar Association. He has the full support of the chairman of the Bush-Quayle State Committee.

This places me in a very difficult position, obviously, for I believe that I and I believe that the selection board of my State is much more eligible to determine as to who the best judge will be for the Vermont district court. I can find no way that the people within the administration could have conceivably come up with the determination they did for any legitimate purpose. However, this is a personal issue to me. It also affects every Senator in this body for if I am to consent to what I believe is abuse of the process, every Senator is at risk in the future, for once that precedent is broken, once we lie down and roll over, there is no doubt in my mind that this administration, which has created the biggest challenge to this, will not be the last to take away from Senators the prerogative to assume they have the right and the full right to appoint district court judges.

Earlier today, the Republican conference sent a letter to President Bush expressing the support of the almost unanimous Republican Senators asking that he follow the longstanding tradition of the Senate and accept Members' recommendations for appointments, especially my recommendation. This is not only an issue that is bothersome to me, obviously, but has bothered many of my compatriots and colleagues on the Republican side of the aisle. That was expressed by Senator COCHRAN in the New York Times this last Sunday and by Senator SIMPSON on the floor of this body yesterday.

What I intend to do today is to relieve some Senators—and the one I am holding, it is not personal—but I know the Senators who have had some of the judges have, recommended by the President and confirmed by the Senate, worked long and hard and suffered through this process successfully.

In addition to that, I have received word of substantial progress with the White House in the willingness to seriously take a look at what is going on and also to assist in reevaluating my own situation of my judge. So I am hopeful that progress has been made, and I am willing to reward it tonight by reducing the number of holds that I have.

I am hopeful that this body will support me as we go forward for I also make it very clear that although I have released the judges tonight, that if we do not receive what I consider a satisfactory reconciliation of this confrontation of the President and the Senate on the prerogatives of appointing district judges, that I intend to put a hold on all new judges that are to be confirmed by this body until such time as that prerogative has been reestablished. Therefore, I object to No. 488 and No. 490 on the list that was read by the majority leader and take away my hold on those others.

I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER (Mr. WIRTH). Objection is heard.

The Senator from Delaware.

Mr. BIDEN. Mr. President, I am going to yield to the senior Senator from Vermont, but let me first make one brief comment as the chairperson of the Judiciary Committee. Our committee has reported out in more expeditious fashion than has ever occurred the judges that have come forward.

But I also agree with the junior Senator from Vermont.

I have spoken to the Attorney General and made it clear to the White House that we no longer have the practice saying that a single Senator can kill a nomination by sending a negative so-called "blue slip" to the chairman of the Judiciary Committee. Nonetheless, it is important, and I want it to be made clear, and I hope Republicans as well as Democrats will support us on this, that unless the administration has consulted with, discussed with, and had the input of the Senators from the States from which these judges originate, they will have a great deal of difficulty moving through the committee.

That is not because we are trying to protect some ancient prerogative. There is a reason why every other President looked to the Senators for their recommendations. Unlike five bureaucrats in the White House subjecting nominees to litmus tests or any other tests, the home State senators know better the quality of the people in their States, and they know those in the bar and the bench who are going to be recommending yes or no on particular nominees. It will harm the quality of the bench for the President not to take into consideration the recommendations of those Senators from the State from which a nominee comes.

The last point I will make, and then I will yield, is that this principle also applies to those States in which there are only Democratic Senators. The idea that the President can seek only the opinion of a Republican Senator is something that is shortly going to be out of fashion in this body. Democratic Presidents sought the advice of Republican Senators. It used to be that Republican Senators could simply stop any nominee of a Democratic President and the reverse.

Under the leadership of Senator THURMOND, we stopped that practice because it is too arbitrary. But to move from that practice all the way to having the White House give no consideration to the opinion of the Senators from the State in question is absolutely wrong.

I hope we will all join together, on both sides of the aisle, and put an end to this kind of practice. So I respect the hold, even though I reported those judges out in a timely fashion.

I respect the hold that the junior Senator from Vermont is placing, and I think it is based on principle. I think the vast majority of this body support him in what he is doing on that score. Hopefully, we can sit down, Republicans and Democrats, both in the leadership and on the committee with the representatives of the White House over this next 2-month period and bring an end to this problem.

Mr. President, as the Senate has been moving toward adjournment, one of our most important responsibilities is to exercise our advise and consent power with regard to judicial nominations.

The Committee on the Judiciary has moved at a fair and reasonable pace this year on the nominees we have received.

All of the six judicial nominees still pending in our committee were sent to the Senate less than 30 days ago. In

fact, three of the nominations were received just this week.

More important, just last week the Judiciary Committee favorably reported out eight more judicial nominees.

I am disappointed that the Senate has not had an opportunity to act on any of these eight candidates, but a hold has been placed on these nominees on the floor by a member of the President's own party.

I would like to remind the White House and the Attorney General, however, that it is extremely important that they consult with home State senators before they nominate Federal judges.

They should do this for the simple reason that the home State senators know the State better, and know the people better.

The White House and Attorney General should not be bound by the views of these home State senators, but they should be bound to consult with them.

Then, perhaps, we will see an end to this recent practice of Republican Senators putting holds on the Administration's nominees.

At the beginning of the next session, I will introduce a comprehensive judgeship bill.

I hope that this will not be treated as a political issue, because we should quickly move to put in place judges where they are needed.

And many of our Federal courts desperately need new judges.

One factor in this shortage is the great new demands placed on our courts by the drug problem.

But creating new judgeships is only one element of this problem. Many Federal judges from around the country have written to me to express their concern about the delays in filling judicial vacancies.

It is true that there has been a substantial delay in filing our judicial vacancies this year.

There are 57 Federal court vacancies right now. That includes 16 court of appeals judges, and 40 district court judges, as well as 1 vacancy on the International Court of Appeals.

But the blame for the delay in filling these vacancies does not belong with the Senate, for there is no nominee for 43 of these vacancies.

This means that during its first 11 months, the Bush administration has failed to send up a nominee for more than 80 percent of the existing Federal judicial vacancies.

The administration has sent up only 23 judicial nominees to the committee this year: Six of these were held over from last year; and nine more were sent up within the past 30 days.

The committee has dealt quickly with these nominees: Nine of them have been confirmed; 8 more have been reported out of the committee; and 17 of them have had hearings.

And the committee on several occasions has waived longstanding agreements on the handling of judicial nominees to move nominations outside the normal timeframe.

There will still be some nominations that will be difficult, however, and there will be some that will take time. It took 2 full years to fully resolve the issues related to the nomination of Mr. Vaughn Walker, for example.

Mr. President, I believe the Judiciary Committee and all Senate Democrats have acted responsibly to move these judges as quickly as possible, keeping in mind that the Senate must take very seriously its constitutional duty to give its advice and consent to all nominees.

I hope that we will quit hearing these complaints about how the Judiciary Committee is acting too slowly and get on with the process of confirming qualified nominees.

So I compliment the Senator. I am confident that with the leadership of the Senator from South Carolina and others in this body we can resolve this. But I compliment the Senator for what he is doing.

I yield to my colleague, the senior Senator from Vermont, and thank him for his time.

Mr. LEAHY. Mr. President, the distinguished majority leader wishes to go forward, but I wish to compliment my good friend and distinguished colleague from Vermont [Mr. JEFFORDS], for his statement. It was well thought out and is historically accurate. As the distinguished junior Senator from New York has pointed out, it was the correct and proper statement to make.

I must say, Mr. President, that Senator JEFFORDS, if anything, has shown typical New England understatement and restraint in what he has said. I do not want anybody to think that he in any way speaks only for himelf in Vermont and has to stand alone on this. He is supported completely. I do not know of a single Vermonter who would disagree with him. He has done everything possible in this nomination. We have joined together in a bipartisan selection board, people appointed by my distinguished colleague, people appointed by the bar association; Republicans, Democrats and independents were on that selection board. The nominee recommended by my distinguished colleague, Senator JEFFORDS, was the person who got by far the highest rating.

I practiced law in Vermont, as has JIM JEFFORDS. I think we can both say there is nobody who has to deal with the judicial and legal system in Vermont who would disagree with that choice. There is nobody who has not applauded the choice from plaintiffs and defense bar, prosecution and defense bar, judiciary and nonjudiciary people who have to appear before the courts.

Now, for a year, this appointment has been languishing. Mr. President, it is said that marriages are made in heaven, but judgeships are made in the Senate. There is a reason for that. We do have a responsibility to the people in our State in helping recommendations made.

I do not want to go into some of the historic analyses of the ruler or the king sending judges off into the hinterland without any say, but there is a reason for the Senators to speak for their individual States. One way they retain that individuality is in their Federal judiciary, and the way that is guaranteed is that the Senators from those States have some say in them.

In this case Vermont has not had that say. The distinguished Senator from Vermont [Mr. JEFFORDS] has recommended the name of the best person possible for this judgeship. The President and the Attorney General ought to listen to him. I support him absolutely in this matter.

Mr. President, I yield the floor.

Mr. CONRAD. Mr. President, very briefly, I want to associate myself with the remarks of the two Senators from Vermont. This is an important principle. I hope it extends as well to the position of U.S. attorney, because aside from the judges, the position of U.S. attorney is critical in a State and the Senators ought to be consulted.

With respect to my own State, we have an opening for U.S. attorney, and I hope the White House will consult with the members of the delegation and certainly not make a recess appointment without consulting the members of the delegation for certainly there will be reaction and repercussions. Clearly, the Senators from Vermont have enunciated an important principle that applies to the office of U.S. attorney as well.

I yield the floor.

Mr. MITCHELL. Mr. President, given the objection of the distinguished junior Senator from Vermont to two of the nominees and his indication that he had no objection to the other nominees that I proposed for approval this evening, and no other objection being heard to any other nominees, I modify my unanimous-consent request to include all of the nominations which I read previously except for the two which the distinguished Senator from Vermont has objected to, those two being specifically calendar items 488 and 490. So my request now is that all of the other nominations except for those two be confirmed en bloc and the remainder of my request is as stated.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. HEFLIN. Reserving the right to object, what is the story on Mr. Nelson? Why is he being held?

Mr. JEFFORDS. If the distinguished Senator will yield, it is my understanding from discussions with his people that Alabama Senators were not consulted. It has not resulted from the process working with respect to the other nominations.

Mr. HEFLIN. Mr. Nelson's nomination was discussed by me in in the beginning. The man is qualified. I had no objections to him. We had a hearing in the Judiciary Committee. As far as I know, I do not understand why he would be singled out. From my viewpoint nothing was raised about Mr. Nelson's nomination.

Mr. JEFFORDS. I appreciate the comments of the Senator. It hurts me to have to do this, but I hope that my distinguished colleague, who I know is a judge, recognizes the prerogative of the Senate is extremely important. I know of no other way I can impress upon this body and impress upon the White House without taking this action, as much as it grieves me.

I am hopeful that we can reconcile these difficulties. As the distinguished chairman of the Senate Judiciary Committee said, he will work to make sure that a satisfactory policy results which will not make it necessary for me to exert this kind of operation to bring the attention of the country and all of our people back home to what is going on with the present policy for the nominations and the appointments of judges.

Mr. HEFLIN. Well, I just object to all of them.

Mr. WILSON addressed the Chair.

Mr. MITCHELL. Mr. President, I withdraw my request.

Mr. WILSON. Mr. President, I suggest the absence of a quorum.

Mr. MITCHELL. Mr. President, I asked my request be withdrawn.

The PRESIDING OFFICER. The request is withdrawn. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, one remaining measure on which we hope to gain action this evening is the State Department authorization bill. It has been approved by the House, and returned to the Senate. There are many important provisions in that bill, and of course it provides authorization for funding of the State Department.

I will momentarily propound a unanimous-consent request to permit the Senate to proceed to consideration of that legislation.

The PRESIDING OFFICER. If the majority leader will suspend, the Senate is not in order. Senators wishing to converse, please retire to the Cloakroom. The Senate is not in order. The majority leader.

Mr. MITCHELL. Mr. President, accordingly, I ask unanimous consent that the Senate proceed to consideration of H.R. 3792, the State Department authorization bill.

Mr. HOLLINGS. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HOLLINGS. Mr. President, may I be recognized to comment on that objection?

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, in that the Secretary of State is not attuned to this bill, he spoke with me a little bit earlier——

Mr. MOYNIHAN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator from New York makes an appropriate point of order. The Senate is not in order.

Mr. HOLLINGS. Mr. President, in that the Secretary of State is not attuned to this particular bill, he called me on it just a little while ago, and a senior Senator from the Senate Foreign Relations Committee said, "Did not we vote on this one time already, I thought it was settled?" I thought the Members ought to really understand what is at issue.

You can get a State Department authorization bill if we put the Department of State authorization in step with the Department of Commerce, the Department of Interior, the Department of Labor, the Department of Defense, and every other department of Government, and everything else.

The peculiarity of the Department of State occurred back in 1972. I am cutting it short.

Our distinguished colleague, Senator Fulbright, had quite a tiff with the Nixon administration. He could not get their attention, and the Senators as a body, I remember, felt sympathy for him. We have the famous section 15, which is the categorical prohibition against expenditure of any State Department funds——

The PRESIDING OFFICER. If the Senator will suspend, the Senate is not in order. The Chair requests Senators to the Chair's left to please retire to the Cloakroom.

The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Chair—section 15, where there is a categorical prohibition against the expenditure of any funds of the Department of State, unless it is absolutely authorized. That sounds innocent, but is very misleading. Because the truth of the matter is while we respect the authorizing committees—and incidentally, this year we went chapter and verse down the line on the Senate version when we enacted it—what happens really is that that particular section unique to the Department of State, the U.S. Information Agency, has to be waived almost every year. We waived that section when we put up our appropriations bills in 1982, 1984, 1985, 1986, 1987, and 1988, and we are doing that again in 1989.

You get a feel for the history of the reason for this is that they are very slow and sometimes do not even enact State authorization. In 1982, the authorization bill was not enacted until 11 months after the beginning of the fiscal year, and I could go down and explain each year, and the difficulties we have had.

Now, this particular section which we got together on a very agreeable basis is now being used by staff and others, I take it—and I am only quoting the ranking member on the Foreign Relations Committee, the distinguished Senator from North Carolina, Senator HELMS—to force-feed a foreign aid bill, and in turn to override the Senator from South Carolina, the Senator from New Hampshire, and those who handle State appropriations this year.

When we came to the floor, they were lying in ambush. I had studied it closely to try to find out why they took so long because again the State authorization bill was passed by the House over here on April 12.

They had a difficult time. In fact, eight attempts were made to even get a quorum on the foreign relations bill to consider it. To cut it short, they were only appointing conferees and had one conference meeting at the end of October.

So there we were again. We had done our job, done our duty, and the distinguished chairman of the Senate Appropriations Committee, Senator BYRD, was urging us: Let us go, let us go; we want to get all the appropriations bills out.

So we waited long enough. It was almost November. We brought our conference report to the floor. When it hit they all marched on with an amendment and we heard how we were allegedly trampling on the authorization process, how we were trampling, and disregarding the authorizing committee, and so on.

It was particularly nettlesome to this Senator because there was one exception for the Great Lakes Fisheries Commission and that was the exception to section 15, and at the request of the Senate Foreign Relations Committee, Senator PELL of Rhode Island.

I put the letter in the RECORD where he requested "Please exceed the authorization for me," which I did. So I not only had conformed every section to his authorization, but exceeded at his request one particular section, and was being punished on the floor.

I then gave notice when we brought the further conference report up on

November 8. I said there is no reason for me to do my thing about section 614 of the appropriation bill unless someone wants to. I said, but there is not going to be any authorization on appropriations in the Senate affecting the State Department if I could do anything about it, that I was not going to also try to get rid of this because I knew everybody understood this was an aberration and did not apply.

I referred on October 31 in debate, where Senator PELL, and I quote him as follows, on page 14408, I quote from Senator PELL.

As far as section 15 goes, I think we all believe it should be repealed and maybe that might be an action on which we could all agree and vote to repeal section 15.

Senator RUDMAN goes along and says why not do that?

Mr. PELL answers:

To my mind, it would not be a bad idea if we did do it. It would be a second-degree amendment on my amendment and have a repeal of it. I think we ought to think about it a little more thoroughly before doing it.

Then I notice after, I never did hear this on the floor, but at the very end before the rollcall, Mr. PELL said, and I quote.

Mr. President, I would also observe that in connection with section 15, I believe we should let it stand. I would not want to mislead any colleague in this regard.

Well, I do not want to mislead any colleague, either. A change has been made, I take it. At least the RECORD reflects it.

I know what I am up against. I know I have to unfortunately follow the example of Senator HELMS and Senator METZENBAUM and several others. You have to use your position around here, which I do not like doing, to try get everything back in order.

I have checked with Senator RUDMAN, our distinguished ranking member, my colleague on the other side. We are determined to call the hand here, right now. We called ahead of time.

I talked to the White House, I talked to Chairman FASCELL over on the House side. I said: When you send it over, send a clean bill. Remember, you can get it whipped right on through, but get rid of this section 15 provision which locks us up each year. I am tired of going through it and trying to explain it, because Senators are hardly listening and they are saying that this is a case of an appropriations crowd disregarding the authorization. We need to remove this so they cannot use it in the authorizing level to force-feed foreign ops, as Senator HELMS so stated.

If I do not succeed at this particular point and use every parliamentary approach that I possibly can—I have had to call off my flight, like everyone else. I happen to be giving thanks this Thanksgiving for a home. I was trying to help my family move from the one house to another house. I am thankful they have a house to move into. A lot of folks do not have any homes to move to because of Hugo. I have to get mine repaired, and, in order to do that, I have to move totally out of it.

I was planning to be down there on Monday, and we were going to be home because Monday night would be the last vote. Well, here we are. I thought I could get home tonight, and I am having to ask them to do all the work while I stay back here for a nettlesome thing of this kind.

Mind you me, they have an easy way to resolve this matter. Do not tell me about all the importance. We have the State Department appropriation pursuant to the current authorization in the law books today. We have that. That is how we finally passed it. When they sent us back with the Pell amendment to section 614, we came back and brought it out and said that State and USIA will be at the 1989 level. That was after they took out that part of our original agreement that they would be on the 1989 basis until they passed the authorization and then the 1990 would apply when they passed it. That did satisfy them. We were trampling, they said. Yet, in fact, it was they who were trampling on this particular Senator, trying to force feed Foreign Ops.

I am not going to leave myself exposed by doing a hard and conscientious job, adhering to the authorization and thereby being trampled upon. One way to avoid it is do not talk about how important the State Department is and all of that. I will tell you how unimportant they are, too, and we can save a lot of money there. I guess that is what we ought to do. I have been trying to go along with the authorization. They like this scheming and this chicanery and this devious way of trying to get a Foreign Ops passed. They have not passed one. They hardly ever pass one.

A good way to do it is take out the separate State Department section 15 and put their feet to the fire, No we cannot get anything done unless they go along. They can get everything done in 2 seconds' time. I have the amendment in my pocket to take section 15 off the staute book and send it over to the House, and the President can sign it, and everyone knows about it.

Senator PELL, initially agreed with me. We all agreed that we ought to do away with section 15 and put the State Department in step with all other departments of Government. No, they want to stand in the well here tonight and act like someone is holding up progress, when what we are trying to do is to get real progress going, we can send the State Department authorization bill, because we have already passed the appropriations and with this particular amendment, so we can stop the shenanigans.

Mr. KASTEN. Will the Senator yield?

Mr. HOLLINGS. Yes.

Mr. KASTEN. Maybe I misunderstood. What is the position in the record of the Foreign Relations Committee with regard to this section 15? It seems to me that the Senator said on the one hand and they were in favor of repealing it, and later said, at a place that was not associated with the debate in the record, that they were not.

Mr. HOLLINGS. That is right. That is all I can do is reflect them on both sides of it.

Mr. KASTEN. Is there a discrepancy in the recordkeeping, or can we go back? I do not understand. It seems to me that Senator HOLLINGS and the distinguished chairman of the Foreign Relations Committee were in accord on the repeal of this section. I happen to agree with the Senator. Why this discrepancy?

Mr. HOLLINGS. The polite thing to do—and I will let the distinguished Foreign Relations chairman, the Senator from Rhode Island, respond, but if I am reading it accurately, he took both positions. When it was clear in his mind, he said we all agree, until Senator RUDMAN said let us do it. He said, I think we ought to do it, but it would be a second-degree amendment, and he began to get hesitant, and he did not change that statement at that time. Then at the end of the particular debate, I found later on—I did not hear it—I give him credit; I guess the record is accurate, and he is on both sides of it—there is no merit whatever in section 15; unless that is the way we want to approach it, then I have the Department of Commerce, the Department of Transportation, I have space, science, and the National Science Foundation. We will put in section 15 for all the departments, Department of Defense, all the rest of them. I yield the floor.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The unanimous-consent request has been propounded by the majority leader. Objection is heard from the Senator from South Carolina, and the Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, first, to answer the question of the Senator from Wisconsin and what was raised by the Senator from South Carolina, that is correct. I misspoke at the beginning of the debate, or early in it. I said I thought it might be a good idea to repeal that particular provision. I thought about it, and two pages later—and I said prior to the vote, Mr. President, I would also observe that in connection with section 15, I believe we should let it stand. I would not want to mislead any colleague in this

regard. I did what many of us do; I took one position and thought it through and realized I was wrong and adopted another position. That is the present position I have. I do not think it should be repealed.

Mr. President, I must strenuously oppose the proposition by my distinguished colleague from South Carolina. This proposition is a repeat of the battle we fought on October 31 relating to the integrity of the authorization process. At that time the Senate decided, by a 53 to 45 vote, not to waive the requirement for an authorization prior to appropriations for the State Department and the other foreign affairs agencies. I would hope the Senate would keep that decision in mind.

Since 1972, as the Senator from South Carolina pointed out, there has been a requirement for an authorization prior to an appropriation for the Department of State, USIA, and our foreign assistance programs. A similar requirement exists for the Department of Defense. Repeal of this requirement would deprive the Foreign Relations Committee of much of its jurisdiction. More important, it would deprive the Senate of an appropriate vehicle to express its views on the key foreign policy issues of the day. Without an authorization requirement there will be little incentive for an administration to accept a foreign affairs bill from the Congress.

This move is also untimely. Both the House and the Senate have passed the Foreign Relations Authorization Act and the conference report. Unfortunately, the bill was vetoed over the excellent provisions of Senator MOYNIHAN. These provisions have now been stripped out.

As the bill now stands, it includes provisions important to the foreign affairs of the country and to many individual Senators. The authorizations in this bill will ensure the smooth functioning of the Department of State—something absolutely essential as we strive to respond to new opportunities and challenges in Eastern Europe—of the USIA, and of Radio Free Europe and Radio Liberty. Other provisions of interest include the China sanctions—a long overdue response to the brutal suppression of the prodemocracy movement last June—and tough measures to restrict our contacts with terrorists. Finally, the bill will allow us to meet our obligations to the United Nations.

All these provisions will be lost if the Hollings position prevails. The House will never accept an amendment that destroys the jurisdiction of the foreign affairs committees. Therefore, a vote for this amendment will be equivalent to a vote against full-funding for the Department of State, against Radio Free Europe and Radio Liberty, and against China sanctions.

Acceptance of the Hollings position will also undermine the regular legislative process. The intended procedure requires an authorization bill followed by an appropriations bill. The enactment of this provision would mean there is no role for the authorizing committees. I do not think the Senate should make this sort of change without careful deliberation.

Now, as a point of information, let me make a couple further points. There was no ambush of the Appropriations Committee. A letter signed by all 19 members of the Foreign Relations Committee was sent to every Senator, so it would be hard to find a single Senator who was ambushed. On the contrary, it was the Appropriations Committee that ambushed the authorizing committee. In conference, without a word of consultation to our committee, the Appropriations Committee inserted a waiver of the authorization requirement.

And this matter was thrashed out, I thought, a few days ago. I hope that vote would be allowed to stand. I hope the Senator from South Carolina might let us move ahead with this bill.

I would add that I certainly knew there were floors in the conference report. As I said on the floor the other day, I could not keep out the floors in conference after the Appropriations Committee acted as it did, inserting meager legislative language in their conference without any discussion with the authorizing committee. I would also note that the Appropriations Committee did not strictly follow our authorization levels. In addition to the sea lamprey matter—where I supported a request by the Great Lakes Senators—the Appropriations Committee ignored our authorization level for the controversial VSIA Worldnet Program. The Senate authorization bill set Worldnet at $30 million; the House authorization bill at $31 million but his committee appropriated Worldnet at $32.8 million, well beyond either authorization bill.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, objection having been heard to my request, I understand that, and therefore there will not be a State Department authorization bill so long as there is.

Mr. PELL. Mr. President, will the Senator yield?

Mr. MITCHELL. I yield.

Mr. PELL. I express my profound regret about this. We worked hard indeed to get an authorization out because there was a variety of bills and I think this kind of iconoclastic act is harmful.

I think the public should know why we do not have a State Department authorization bill. The reason we do not have a bill is because objection has been filed to it being brought up at this time. I think many of us very much regret that action being taken.

Mr. SARBANES. Mr. President, will the chairman yield?

Mr. PELL. I yield.

Mr. SARBANES. Mr. President, I simply want to support the chairman of the Foreign Relations Committee. First of all, it was not easy to pass this bill to begin with in the Senate. If Members will simply cast their minds back, we were on it a number of days in the Senate, quite a number of days, as a matter of fact. The conference was not an easy one but in the end I think a good piece of legislation was put together. This is an important piece of legislation for the national interest of the country.

My understanding is that the administration very much wants this legislation. I understand the issue which the Senator from South Carolina is raising, but it seems to me that issue could be fought on another field at another time.

There are provisions actually governing the Department of Defense, as I understand it, which are analogous to these provisions. They are not as comprehensive. But, nevertheless, they still make the same point and this legislation that is now before us, which is subsequent to the conference report, the legislation that was vetoed, vetoed because of I think a very worthy provision in it by the very able Senator from New York, a very important provision. The Senator from New York in an effort to move the legislation has been willing, in effect, to accept, as it were, the veto, and let the legislation move without his provision in it.

I simply want to strongly support the chairman in his statement that this is important legislation for the country. It represents a great deal of work on the part of the Senate, on the part of the House and on the part of both bodies moving together. I very much regret this objection. I would hope the Senator from South Carolina would reconsider it.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I join with the Senator from Maryland in expressing my deep appreciation to the Senator from Rhode Island who has done a superb job. This was one of the most difficult conferences. We had the House insisting that the foreign aid bill be included along with the authorization for the State Department. They were more than just insisting, they were demanding, in fact, of that result.

To be able to take two bills that were tremendously dissimilar and to forge them into a piece of legislation that by and large reflected the actions of this body, the Senate, and to bring back that legislation virtually intact,

in terms of how it had left this body, I think was a remarkable accomplishment and our colleague from Rhode Island deserves to be commended for that action.

One of the criticisms that all authorizing committees receive is that primarily they fail to act, they cannot get a bill out of here. If they can get a bill out of the Senate, they cannot manage to get it to conference because the House has failed to act. And even if the House has failed to act, they cannot emerge with a compromise and come back to this body.

We have all witnessed over the last decade how difficult it is for each and every authorizing committee to achieve that result.

We have fulfilled our constitutional responsibility by forging a compromise between the House and the Senate and bringing that bill back to this body.

I commend my colleague from Rhode Island.

This is a difficult moment because of my deep personal affection for my colleague from South Carolina. I probably spend more time with my colleague from South Carolina than any other Member of this body in terms of personal time and in terms of personal caring. But I must say at this particular moment our colleague from Rhode Island has fulfilled his obligation and done his job, and if we fail to recognize the obligations of this institution as a whole to the authorizing committee process, then this entire system breaks down.

I commend him for the work he has done and regret we find ourselves in this situation where that effort is apparently going by the boards. I commend him for his action.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, the distinguished Senator from Connecticut knows that I would jump at the chance to reconsider as he in several instances has changed my mind on other issues.

I have the highest regard for the Senator from Maryland and the Senator from Rhode Island. It is not the question of the hard work in getting it back. I simply object to the mischief. They have an authorization bill. They can pass it. The White House will agree in 10 seconds to do away with that section 15. I have been told that by the White House, by the State Department.

In fact, Secretary Baker said how about just doing away with section 15 for 2 years and let us see. I said, I do not want to mislead, I put it on my appropriations bill. I am going to keep on trying because the truth is we did not get that authorization in passing the appropriation bill in 1982, and had to waive it in 1984, 1985, 1986, 1987, and 1988.

And it was when I did it here in 1989, and, yes, in October. They come around now and they say, oh, no, you cannot do it. I followed the 1990 authorization bill. They said oh, no, you are taking over; you are trampling on the process. Not so. I was doing them a favor.

So now knowing what the mischief is, because we looked at the authorization bill when it came back to the Senate, and it had the floors under the appropriations in there that had been deleted by the Senate in July. They were embarrassed by it. I do not believe the distinguished chairman of the Foreign Relations Committee even knew those floors were in there. It went further. They applied section 15 to the BIB, the Board of International Broadcasting. So it is going to spread from State and USIA to BIB, and have everything in a snarl.

Foreign operations did not have an authorization bill last year, this year, or next year. There is no disaster to not having one.

I would like to have an authorization bill for NASA. I know the difficulty in working it out. I do not have me a National Aeronautics and Space Administration authorization. I am chairman of it. I have not been able to get together with the House. I have gotten together with the agency, with the administration. We have those difficulties. We do not have those dfficulties here. They have an authorization bill. They are insisting on keeping there special provision because they know how that particular level can manipulate and juggle you around and make you accept this and make you accept that and then more than anything else accept the insult that we are allegedly trampling, when in fact we conformed on every point except the one he asked us to disregard.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand that on the issue of the conference report on Drug Free Schools and Communities Act amendments, which has been enacted unanimously by Republicans and Democrats alike in the House of Representatives, there has been objection to that by the Senator from Texas.

I just want to let the membership know that we are going to have a series of rollcall votes tonight and tomorrow and into Thanksgiving if he wishes to do that because we are going to address that issue. We are going to address that issue. It has been accepted by the administration and this Senator is not going to abide by the fact that one Senator from Texas, when the Republicans and the House of Representatives did not object, a single Member did not object, that I, as the chairman of the Human Resources Committee, am prepared when we have substance in that legislation which incorporates the administration's recommendations as well as our own, and if that Senator wants to stand here through the night, the Senator from Massachusetts will be here and we will have a series of votes equal to the votes that we had when Jim Abourezk, former Senator from South Dakota, was here on the Energy Act.

I just want to let the membership know, because I will not be intimidated on that; will not be intimidated on that. It is too important in terms of the young people of this society. I have mentioned that to the majority leader and I want to mention that to the membership.

If I have the floor now, I will ask for quorum call. I yield to the majority leader in terms of the timeliness of that, but I want to indicate that I will ask for it to be a live quorum.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

(Mr. BRYAN assumed the chair.)

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

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## IMPROVEMENTS IN OPERATIONAL EFFICIENCY OF THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1877.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved,* That the bill from the Senate (S. 1877) entitled "An act to improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. REIMBURSEMENT FOR EXPENSES.

Section 803(d) of the James Madison Memorial Fellowship Act (20 U.S.C. 4502(d)) is amended to read as follows:

"(d)(1) Subject to paragraph (2), members of the Board shall serve without pay.

"(2) Members of the Board and the President, Executive Secretary, and other personnel of the Foundation shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties at rates applicable to judges of the United States under section 456(a) of title 28, United States Code.".

SEC. 2. PRESIDENT AND EXECUTIVE SECRETARY OF FOUNDATION.

Section 813 of the James Madison Memorial Fellowship Act (20 U.S.C. 4512) is amended to read as follows:

"PRESIDENT AND EXECUTIVE SECRETARY OF FOUNDATION

"SEC. 813. (a)(1) The Board may appoint a President of the Foundation to serve full-time or part-time and for such a term as the Board shall determine.

"(2) The President shall carry out such of the functions and duties of the Foundation as the Board may determine, subject to the supervision and direction of the Board.

"(3) The President shall be compensated at a rate to be determined by the Board without regard to subchapter III of chapter 53 of title 5, United States Code, not to exceed the rate for level III of the Executive Schedule under section 5314 of that title.

"(4) Sections 5532, 8344, and 8468 of title 5, United States Code, shall not apply to a person while such person is serving as President of the Foundation. The first sentence of this paragraph shall not, in the case of any individual, apply longer than December 31, 1990.

"(b)(1) There shall be an Executive Secretary of the Foundation who shall be appointed by the Board.

"(2) The Executive Secretary shall be the chief operating officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board or the President, as determined by the Board.

"(3) The Executive Secretary shall be compensated at the rate specified for employees placed in grade GS-18 of the General Schedule set forth in section 5332 of title 5, United States Code.".

SE. 3. ADMINISTRATIVE PROVISIONS.

Section 814 of the James Madison Memorial Fellowship Act (20 U.S.C. 4513) is amended—

(1) in subsection (a) by—

(A) amending paragraph (1) to read as follows:

"(1) to appoint and fix the compensation of such personnel as may be necessary to carry out this Act, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, but at General Schedule pay rates not in excess of the maximum rate for grade GS-15 of the General Schedule under section 5332 of that title;";

(B) amending paragraph (8) to read as follows:

"(8) to rent office space in the District of Columbia or its envrions;";

(C) striking "and" at the end of paragraph (9);

(D) striking "(10)" and inserting "(11)"; and

(E) inserting immediately following paragraph (9) the following new paragraph:

"(10) to expend not more than 5 percent of its annual operating budget to pay the costs of fundraising activities, including public and private gatherings; and"; and

(2) by adding at the end thereof the following new subsection:

"(c) On request of the Chairman of the Foundation, the head of a Federal agency may detail personnel of the agency to the Foundation to assist the Foundation in carrying out this Act. Details under this subsection shall be without reimbursement by the Foundation to the agency from which personnel are detailed.".

Mr. MITCHELL. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

## FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 1539, a bill to include Lake Champlain in the Clean Lakes Demonstration Program, reported today from the Environment and Public Works Committee.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1539) to amend the Federal Water Pollution Control Act.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. JEFFORDS. Mr. President, in August I was pleased to join Senator MOYNIHAN, chairman of the Subcommittee on Water Resources and author of this bill, in introducing S. 1539. Senators LEAHY and D'AMATO also joined in this important effort.

S. 1539 would amend the Clean Water Act to add Lake Champlain to the list of "clean lakes" as defined by section 314(d)(2) of the Federal Water Pollution Control Act. As America's largest fresh water lake after the great lakes, Lake Champlain is a valuable resource that is deserving of special Federal attention. The significance of the Champlain basin region is underscored by its recent designation as an international biosphere reserve by the United Nations Educational, Scientific, and Cultural Organization—the fourth largest reserve of its kind in the world and unique in that it includes densely populated areas in addition to its natural splendors.

This lake is not only invaluable to the people of Vermont and New York, but also to the people of Quebec and millions of others who come to the Lake Champlain region to enjoy this beautiful resource. In the past, the lake has been a prominent commercial transportation corridor, and more recently it has served as host to increasing recreational uses. Much of the drinking water supply for the people in the Champlain region comes from the lake. Most important, it is an integral and irreplaceable part of the New England lifestyle enjoyed by many people and envied by many more.

Chairman MOYNIHAN and I, in conjunction with the other congressional respresentatives, held a field hearing to discuss issues surrounding Lake Champlain on June 28. In a full day of events, we heard testimony from Vermont experts in Burlington, then were carried by a research vessel to Plattsburgh to hear testimony from the New York experts.

Two primary points were raised repeatedly at these hearings. First, there is a lack of historical and contemporary data on the lake. Second, a greater coordination between the State and Federal agencies and the Canadian Government is necessary. We believe that adoption of this bill would help to alleviate these problems.

We owe it to the residents of and visitors to the Champlain region, as well as to future generations to preserve the quality and diversity of Lake Champlain. A direct relationship exists between the quality of the lake and the lives and lifestyles of the people of the region. Diverse industrial growth and agriculture policies, along with increasing population are threatening the water quality of the lake. This recent accelerated growth and change is contributing to a decline in water quality in ways that are difficult to quantify. Furthermore, persistent air pollution has been affecting streams, rivers and lakes throughout the Northeast, many of which serve as tributaries to the lake.

Evidence indicates that toxic substances and bacteria are accumulating in the lake, prompting a warning against eating lake trout more than once per month and causing occasional beach closings in some of the most populated areas along the shoreline. We need to understand the effects of the increasing use of Lake Champlain in order to better protect it for all those dependent on the lake.

The importance of the lake to both the United States and Canada was recognized by the signing of the memorandum of understanding by Governors Kunin and Cuomo and Quebec's Premier Bourassa. While this is a significant step toward correcting the environmental problems of the lake, much more is needed to preserve this valuable resource. That is why I am pleased that the Senate is moving quickly to pass this important legislaton.

The limited baseline data that has been collected on the health of Lake Champlain and its value to the people of New England make Champlain a strong candidate for inclusion in the Clean Lakes Demonstration Program. One of the largest lakes in the United States, encompassing the United States and Canada, the values and the importance of Lake Champlain cannot be overstated.

The overall water quality of the lake remains good, but this will not continue to be the case if we simply retain our present practices. With luck, we will not see catastrophic events poison Lake Champlain, but without incorpo-

rating prudent measures, we may see a gradual demise of equally devastating consequences.

Finally, understanding its problems and effectively implementing a pollution reduction program at Lake Champlain could serve as an example for cleaning other lakes throughout the country. I urge my colleagues to support this bill to further the protection and preservation of one of America's finest resources.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1539

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. FINDINGS.

The Congress finds that—

Lake Champlain is the sixth largest lake in the United States, exceeded in size only by the five Great Lakes;

(2) on August 23, 1988, the State of New York, the State of Vermont, and the Canadian Province of Quebec, all of which share a common boundary on the Lake, entered into a Memorandum of Understanding to conduct cooperative planning and research for the management, protection, and enhancement of Lake Champlain and its environment;

(3) the United Nations Educational, Scientific and Cultural Organization (UNESCO) has designated Lake Champlain and the neighboring Adirondack Mountains as the Champlain-Adirondack International Biosphere Reserve, making it the fourth largest reserve of its kind in the world;

(4) toxic substances, particularly polychlorinated biphenyls (PCB's), are being accumulated by lake trout, prompting the New York State Department of Environmental Conservation and the Vermont Department of Environmental Conservation to issue a lake-wide health advisory warning against eating lake trout more than once per month; and

(5) little baseline data relative to the overall health of the Lake has been collected, and this has frustrated attempts to measure changes in the Lake's ecosystem.

SEC. 2 AMENDMENT.

Section 314(d)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1324(d)(2)) is amended by inserting immediately before "Lake Houston, Texas" the following "Lake Champlain, New York, Vermont;".

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## SURVIVAL ASSISTANCE TO VICTIMS OF CIVIL STRIFE IN CENTRAL AMERICA

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3696, survival assistance to victims of civil strife in Central America, now at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows?

A bill (H.R. 3696) to provide survival assistance to victims of civil strife in Central America.

Mr. KENNEDY. Mr. President, I am pleased to offer a bill to provide assistance to the victims of civil strife in Central America. This bill passed the House earlier today and I hope the Senate follows suit and provides swift passage.

This bill frees up previously earmarked funds for use inside Nicaragua. It is my understanding that between $8 to $9 million of these funds have not been used and the Agency for International Development has no plans to use them due to the correct earmark restrictions. The original intention of the funds was to aid child victims of the war in Nicaragua, but apparently, the Government of Nicaragaua has blocked these funds. This bill would expand their use to include all innocent victims of the turmoil in Central America.

These funds are particularly needed to meet the urgent humanitarian crisis in El Salvador. Since the FMLN attack on November 11, 1989, 1,000 people have been killed and nearly 3,000 wounded. The vast majority of the victims are innocent men, women, and children who support neither the guerrillas nor the Army.

Hospitals are overflowing with wounded civilians, medical supplies, food, water, and electricity are in short supply. School, hospitals, and countless homes have been damaged and destroyed.

The death and destruction in El Salvador over the last week is enormous and the international community must respond quickly and generously to meet the needs of the thousands of innocent victims of the civil war in El Salvador.

I urge the administration to use a substantial portion of these funds for El Salvador and hope the vast majority of the funds will be channeled through the International Committee for the Red Cross and other appropriate humanitarian, non-governmental organizations.

The United States bears a heavy responsibility for the enormous human cost of the turmoil in El Salvador. This bill will enable us to reach out and help those most in need.

I urge the Senate to support this important legislation and urge its swift passage.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 3696) was ordered to a third reading, was read the third time, and passed.

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## PALAU COMPACT OF FREE ASSOCIATION IMPLEMENTATION ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 175, the Palau Compact of Free Association Implementation Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 175) to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause, and insert in lieu thereof the following:

TITLE I—IMPLEMENTATION OF COMPACT OF FREE ASSOCIATION WITH PALAU

SEC. 101. ENTRY INTO FORCE OF COMPACT.

Notwithstanding the provisions of Section 101(d)(1)(B) of Public Law 99-658, entry into force of the Compact of Free Association between the United States and Palau (set forth in title II of Public Law 99-658 and hereafter in this joint resolution referred to as the "compact") in accordance with subsections (a) and (b) of section 101 of Public Law 99-658 (100 Stat. 3673) is hereby authorized—

(1) subject to the condition that the Compact, as approved by the Congress in Public Law 99-658, is approved by the requisite percentage of the votes cast in a referendum conducted pursuant to the Constitution of Palau, and such approval is free from any legal challenge, and

(2) upon expiration of 30 days, in which either the House of Representatives or the Senate of the United States is in session, after the President notifies the Committees on Interior and Insular Affairs and Foreign Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate of the effective date of the Compact.

SEC. 102. FISCAL PROCEDURES ASSISTANCE.

Upon request of the Government of Palau, the Secretary of the Interior shall provide assistance to the Government of Palau to develop and promulgate regula-

tions for the effective expenditure of funds received pursuant to this joint resolution, Public Laws 99-658 and 99-239, or any other Act of Congress.

SEC. 103. ANTIDRUG PROGRAM.

(a) PLAN.—The Department of the Interior shall develop, in cooperation with the Government of Palau and the National Drug Control Policy Office, a plan for an antidrug program in Palau. The plan shall be submitted to the Committees on Interior and Insular Affairs, Foreign Affairs, and Appropriations of the House of Representatives and the Committees on Energy and Natural Resources and Appropriations of the Senate by April 1, 1990. The plan shall: (1) identify the specific needs and costs of such an antidrug program; (2) shall identify all existing resources to be allocated for its implementation by the Government of the United States and the Government of Palau; and (3) shall recommend priority use for additional resources, assuming such resources are made available.

(b) AGREEMENT.—Following completion of the plan, the President and the Government of Palau shall negotitate an agreement to facilitate implementation of the plan. Such agreement may include—

(1) that the Government of Palau may request, on a long-term or case-by-case basis, that the officers of United States law enforcement agencies may conduct investigations consistent with implementation of the plan in cooperation with the law enforcement agencies of the Government of Palau;

(2) that the Government of Palau or the Government of the United States may agree to provide specific resources, on a one-time or a multiyear basis, to strengthen the antidrug program; and

(3) a specific description of the technical assistance, training, and equipment to be provided to Palau by the United States necessary to implement the plan.

SEC. 104. PUBLIC AUDITOR AND SPECIAL PROSECUTOR.

(a) Upon request of the Government of Palau the President shall provide, on a nonreimbursable basis, appropriate technical assistance to the public auditor or special prosecutor. The assistance provided pursuant to this subsection for the first five years after the effective date of the Compact shall, upon the request of the Government of Palau, and to the extent personnel are available, include (but not be limited to) the full time services of—

(1) an auditor or accountant, as determined by the public auditor, for the office of public auditor, and

(2) an attorney or investigator, as determined by the special prosecutor, for the office of special prosecutor.

SEC. 105. POWER GENERATION

Section 104(e) of Public Law 99-658 is amended to read as follows:

"(e) Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sum and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau, except under the procedures established by the Compact and its related agreements. No funds appropriated pursuant to the Compact, this Act, or any other Act for grants or other assistance to Palau may be used to satisfy any obligation or expense incurred by Palau prior to November 14, 1986, with respect to any contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau which has not been specifically authorized by Congress in advance, except that the Government of Palau may use any portion of the annual grant under section 211(b) not required to be devoted to the energy needs of those parts of Palau not served by its central power generating facilities and any portion of the funds under section 212(b) of the Compact for such purpose.".

SEC. 106. AUDIT CERTIFICATION.

The chief officer of any agency conducting an audit pursuant to paragraph (1) of sections 102(c) and 103(m) of the Compact of Free Association Act of 1985 (Public Law 99-239) and section 101(d)(1)(C) of Public Law 99-658 shall certify that audit.

SEC. 107. ACQUISITION OF DEFENSE SITES.

The provisions of title III of the Compact relating to future use by the United States of defense sites in Palau do not restrict the authority of the President of the United States to—

(1) request additional funding, subject to appropriation, related to the use of privately owned land in Palau pursuant to article II of title III of the Compact as may be appropriate in light of actual land use requirements, independent appraisals of such privately owned land accepted by both governments, and other appropriate documentation of actual land use costs; and

(2) consent to an extension of the time set forth in a subsidiary agreement to such article in which the Government of Palau is required to make such land available to the United States.

SEC. 108. FEDERAL PROGRAMS COORDINATION PERSONNEL.

The Secretary of the Interior shall station at least one professional staff person in each of the Offices of the United States Representatives in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands to provide Federal program coordination and technical assistance to such governments as authorized under Public Laws 99-239 and 99-658. In meeting the purposes of this section the Secretary shall select qualified persons following consultations with the Interagency Groups on Freely Associated State Affairs.

SEC. 109. REFERENDUM COSTS.

The Secretary of the Interior shall provide such sums as may be necessary for a further referendum on approval of the Compact, if one is required, or other appropriate costs associated with the approval process in Palau.

SEC. 110. AGREEMENTS.

(a) EFFECTIVE DATE OF CERTAIN AGREEMENTS.—An agreement between the United States and the Government of the Republic of Palau consistent with the agreements approved by Public Law 101-62 (101 Stat. 162) shall take effect without further authorization thirty days after submission to Congress.

(b) EXTENSIONS.—The provisions of article IX, paragraph 5(a) of the Agreement referred to in section 462(e) of the Compact of Free Association as approved by Public Law 99-239, and article IX, paragraph 5(a) of the agreement referred to in section 462(f) of the Compact of Free Association for Palau as approved by Public Law 99-658, are extended, in accordance with the terms thereof, until October 1, 1998, unless earlier terminated or further extended by the laws of the United States.

(c) AUTHORIZATION.—Funding to implement the provisions of this title, and for assistance to the central health care facility and the prison in Palau, and the offices of Public Auditor and Special Prosecutor as proposed in the agreement entitled "Agreement Concerning Special Programs related to the Entry into Force of the Compact of Free Association Between the Government of the United States and the Government of the Republic of Palau" signed on May 26, 1989, shall be available pursuant to the authorization in section 105(c) of Public Law 99-239 as referenced by section 102(b) of Public Law 99-658 or from funds appropriated for technical assistance to the Secretary of the Interior.

SEC. 111. MODIFICATION OF ENERGY ASSISTANCE FUNDING.

(a) The President is authorized to negotiate and conclude an agreement, including the obligation of United States funds, with the Government of Palau which shall provide the following:

(1) The sum of $28,000,000, adjusted by section 215 of the Compact at the time of its availability to Palau, shall be provided to Palau pursuant to section 211(b) of the Compact and upon entry into force of the Compact.

(2) Palau shall pay to the United States, on or before the 15th anniversary of the effective date of the Compact, an amount equal to the net economic cost to the United States of making available the section 211(b) funds in the manner specified in this subsection rather than as provided in section 211(b).

(3) Such economic cost shall reflect the time value of money and be determined using the rate determined for an equivalent loan by the Federal Financing Bank as of the date these funds are advanced, and using an inflation rate consistent with the determinations made under the provisions of section 215 of the Compact.

(4) If the Government of Palau has not paid such net economic costs to the United States by the 15th anniversary of the effective date of the Compact, then the United States shall be automatically paid such sums from the fund established under section 211(f) of the Compact.

(5) The provision of section 211(b) funds, as appropriated by Public Law 99-349 and pursuant to this subsection, shall be in fulfillment of all United States obligations under such section 211(b) of the Compact and shall be subject to section 236 of the Compact.

(b) Subject to the provisions of subsection (a) and upon the request of the Government of Palau, the sum of $28,000,000 appropriated by Public Law 99-349 to fulfill the obligations of the United States under section 211(b) of the Compact (approved in Public Law 99-658), adjusted by section 215 of such Compact, shall be provided to Palau upon entry into force of the Compact.

SEC. 112. SUBMISSION OF AGREEMENTS.

Any agreement concluded with the Government of Palau pursuant to this joint resolution including the agreement entitled "Agreement Concerning Special Programs related to the Entry into Force of the Compact of Free Association Between the Government of the United States and the Government of the Republic of Palau" signed on May 26, 1989, and any agreement which would amend, change, or terminate any such agreement, or portion thereof, shall be submitted to the Congress and may not take effect until after 30 days after the date on which such agreement is so submitted. An amendment or agreement substituting or in addition to the subsidiary agreement negotiated under section 212(a) of the Compact or

its annex shall take effect only when approved by an Act of Congress.

SEC. 113. TRANSITION FUNDING.

For the purposes of applying section 105(c)(2) of the Compact of Free Association Act of 1985 (99 Stat. 1792) to Palau, the terms "fiscal year 1987", "fiscal year 1988", and "fiscal year 1989" in section 104(c) of Public Law 99-658 shall be deemed to be the first, second, and third fiscal years, respectively, beginning after the effective date of the Compact.

TITLE II—INSULAR AREAS MATTERS

SEC. 201. CONTROLLED SUBSTANCES IN THE FREELY ASSOCIATED STATES.

(a) IN GENERAL.—The President is authorized to negotiate agreements which provide—

(1) that the United States shall carry out the provisions of part C of the Controlled Substances Act (21 U.S.C. 821 et seq.) as necessary to provide for the lawful distribution of controlled substances in the freely associated states; and

(2) that a freely associated state which institutes and maintains a voluntary system to report annual estimates of narcotics needs to the International Narcotics Control Board, and which imposes controls on imports of narcotic drugs consistent with the Single Convention on Narcotic Drugs, 1961, shall be eligible for exports of narcotic drugs from the United States in the same manner as a country meeting the requirements of subsection (a) of section 1003 of the Controlled Substances Act (21 U.S.C. 953).

(b) EFFECTIVE DATE.—Agreements concluded pursuant to this section shall become effective pursuant to section 101(f)(5) of Public Law 99-239 or section 101(d)(5) of Public Law 99-658, as may be applicable.

SEC. 202. NORTHERN MARIANAS COLLEGE.

The Northern Marianas College is hereby constituted a depository to receive Government publications, and the Superintendent of Documents shall supply to the Northern Marianas College one copy of each such publication in the same form as supplied to other designated depositories.

SEC. 203. MATCHING FUND REQUIREMENT.

The last sentence of section 501(d) of Public Law 95-134, as amended by Public Law 96-205, as amended (48 U.S.C. 1469a(d)), is amended—

(1) by inserting "any non-discretionary Federal program as it applies in" before "American Samoa"; and

(2) by inserting "or other expenditures" and "funds".

SEC. 204. VIRGIN ISLANDS.

The Revised Organic Act of the Virgin Islands is amended by striking out the second sentence of section 25 (48 U.S.C. 1615).

SEC. 205. CABRAS ISLAND.

Section 818(b)(2) of Public Law 96-418 (94 Stat. 1782) (as amended by section 504 of Public Law 98-454 (98 Stat. 1736)) is amended by striking "30 percent" and inserting "50 percent".

SEC. 206. POHNPEI HYDROPOWER ADDITION.

In addition to sums already appropriated for the Nanpil hydropower project, there are hereby authorized to be appropriated to the Secretary of the Army up to $6,500,000 for design and construction of the hydropower addition to the Nanpil project. The Secretary of the Army is directed to use any funds appropriated pursuant to this authorization for the intended purposes, and under the same terms and conditions as sums previously provided.

SEC. 207. CLARIFICATION WITH RESPECT TO ALLOTMENTS FOR TERRITORIES.

Section 901(a), Part 1, title I of the Act of June 19, 1968 (42 U.S.C. 3791(a)) is further amended in paragraph (2) by changing the proviso to read as follows: *"Provided*, That for the purpose of section 506(a), American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one state and that for these purposes 67 per centurm of the amounts allocated shall be allocated to American Samoa, and 33 per centum to the Commonwealth of the Northern Mariana Islands.".

SEC. 208. VIRGIN ISLANDS PRISON EXPANSION AND RENOVATION.

There is authorized to be appropriated $5,000,000 to the Secretary of the Interior for the Golden Grove Prison on St. Croix, United States Virgin Islands, and for renovation of and improvements of existing prison facilities.

SEC. 209. OFFICE OF THE RESIDENT REPRESENTATIVE.

Real property owned by the Commonwealth of the Northern Mariana Islands in the capital of the United States and used by the Resident Representative thereof in the discharge of his representative duties under the Covenent shall be exempt from assessment and taxation.

AMENDMENT NO. 1199

Mr. MITCHELL. Mr. President, on behalf of Senator JOHNSTON, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. JOHNSTON, proposes an amendment numbered 1199.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of section 111 insert the following new subsection:

"(c) Funding provided in Public Law 101-121 under the 'Trust Territory of the Pacific Islands' appropriation account shall remain available until expended.".

Strike section 203 and renumber the following sections accordingly.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1199) was agreed to.

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, on November 3, 1989, the Committee on Energy and Natural Resources reported House Joint Resolution 175 with an amendment in the nature of a substitute, title I of which would authorize the entry into force of the Compact of Free Association between the United States and Palau. Title II of the substitute would enact several necessary changes to law with respect to the U.S. territorial areas and is typical of the omnibus territorial measure which has passed each Congress. For additional background and a section-by-section analysis of the provisions of both titles I refer my colleagues to Senate Report 101-189.

I have requested that this measure be passed with two amendments to the committee substitute amendment. The first of these would add a new subsection (c) to section 111 to clarify that funds appropriated under the "Trust Territories of the Pacific Islands" account of Public Law 101-121 shall remain available until expended. It has always been the policy of Congress to provide these funds as "no year" funds. However, there is currently some debate as to whether the law was sufficiently explict to meet this policy in fiscal year 1990. Accordingly, and with the concurrence of the Appropriations Committees, this amendment would amend the fiscal year 1990 Appropriations Act for Interior and related agencies to clarify that the funds under this account shall be available until expended.

I hasten to add that the fact this subsection is added to section 111, regarding energy assistance funding, should not be interpreted as creating a linkage between these funds and the other funds delt with under section 111. This subsection is freestanding in its intent, but was included under this section for clerical convenience.

The second amendment I have proposed to the committee substitute would delete section 203, regarding matching fund requirements. No congressional position on this issue should be inferred by the deletion of this section. Current law is unchanged. However, we were unable to reach agreement with the House on the language of this section and want to avoid any delay in the enactment of the remainder of the resolution.

In any case, it is generally agreed that this provision of law is vague and complex and will require legislation in order to specifically identify Federal programs that apply to the insular areas, those which require a local contribution, and those which are to have a waiver of such a requirement. I stand ready to reexamine this issue and to develop language to provide the needed specificity.

In addition to these two amendments there are several general comments I would like to make regarding this resolution.

First, a principal objective of this legislation is to reduce the risk that the Palauan approval of the compact may be invalidated after the compact has been implemented. House Joint Resolution 175 reduces this risk by stating that the President's authority to implement the compact is contingent upon the Palauan approval proc-

ess being "free from any legal challenge."

In addition, the resolution requires a 30-day waiting period between the President's notification to Congress of his intent to implement the compact, and the actual implementation date. This delay provides Congress with an opportunity to review the legal situation in Palau and be reassured that the approval in Palau is, in fact, free from legal challenge.

Finally, in response to this concern, the administration has written to assure me that "the administration will consult closely * * * during the 30-day waiting period to ensure that congressional concerns * * * are considered." I assume and expect that the administration will also consult closely prior to the 30-day waiting period. After all, the objective here is not to initiate the implementation process, and to start the 30-day waiting period, until after a determination has been made that the Palauan approval process is free from legal challenge.

Mr. President, I ask that the full text of the State Department letter appear in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. JOHNSTON. Second, I would like to thank the Washington representative of the Government of Palau, Mr. Steve Kanai, for his hard work and patience while the many complex problems related to this resolution have been resolved. I particularly appreciate his promptness in providing his Government's position in support of this measure as proposed to be passed in the Senate. Mr. President, I ask that a copy of this letter from the Washington representative of Palau also appear in the RECORD following my remarks.

Third, I would like to reiterate an important point made in the committee report which is that this resolution does not approve the May 26, 1989, agreement reached in Guam between Palau and the United States. This issue is important because there are apparent inconsistencies between that agreement and the provisions of this resolution. For example, the agreement calculates the "net economic cost" described under section 111(a)(2) of the resolution as $3 million while the resolution would apply a specific formula at a future date and which would certainly not result in a calculation of exactly $3 million. The May 26 agreement cannot be elevated to the status of statutory language because that would elevate these inconsistencies to the statute books. The solution to this situation is to enact the resolution while making clear that it will govern over the agreement in the case of any inconsistency.

Finally, I would like to recall that the committee has repeatedly stressed that Palau's needs can be met through implementation of the compact, existing authorizations, and the normal appropriations process. In fact, the provisions of this resolution become increasingly irrelevant as the Appropriations Committees meet Palau's needs in the annual budget process. For example, funding for the health care facility in Palau has been provided in excess of the amount proposed in the earlier House passed version of the measure.

Mr. President, the Palau compact has been considered by the committee on several occasions. At this time, all parties appear to be in agreement and I am hopeful that this resolution will be enacted. I urge my good friends in Palau to join together to approve the compact so that we can end the outdated and ineffective relationship established under the trusteeship, and can implement a new relationship based on full self-government and mutual respect.

EXHIBIT 1

U.S. DEPARTMENTT OF STATE,
*Washington, DC.*

Hon. J. BENNETT JOHNSTON,
*Chairman, Committee on Energy and Natural Resources, U.S. Senate.*

DEAR MR. CHAIRMAN: H.J. Res. 175, "The Palau Compact of Free Association Implementation Act," as reported by the Senate Committee on Energy and Natural Resources, has been brought to my attention. Section 101 of this Resolution provides that the Palau Compact is authorized to enter into force, subject to certain conditions, 30 days after the President notifies the Committees on Interior and Insular Affairs and Foreign Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate of the effective date of the Compact.

If these provisions become law, I wish to assure you that the Administration will consult closely with these committees during the 30-day waiting period to ensure that Congressional concerns about implementation, such as the potential for invalidation of the Palauan approval process through legal challenge, are considered prior to implementation. The Administration will endeavor to keep Congress fully apprised of the Administration's plans in regard to implementation.

The Office of Management and Budget advises that from the standpoint of the Administration's position, there is no objection to the submission of this report.

Sincerely,

JANET G. MULLINS,
*Assistant Secretary, Legislative Affairs.*

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REPUBLIC OF PALAU,
WASHINGTON REPRESENTATIVE'S OFFICE,
*Washington, DC, November 15, 1989.*

Hon. J. BENNETT JOHNSTON,
*Chairman, Senate Committee on Energy and Natural Resources, Washington, DC.*

DEAR MR. CHAIRMAN: As official Washington representative of the government of the Republic of Palau, I am authorized to advise you that the government of the Republic of Palau fully supports H.J. Res. 175 as it was reported by your Committee on November 1, 1989, with the amendment to Title I of the bill that we have been advised will be offered by you when the bill is brought to the Senate floor, to wit, that Section 111 will be amended to include a new subsection (c) that will read:

"(c) Funding provided in Public Law 101-121 under the 'Trust Territory of the Pacific Islands' appropriation account shall remain available until expended."

The government of the republic of Palau looks forward to the expeditious passage of H.J. Res. 175. We appreciate your assistance in this matter, as well as your long-standing concern for the people of Palau.

Sincerely,

STEVEN KANAI.

Mr. McCLURE. Mr. President, I support the passage of House Joint Resolution 175 as amended by the Committee on Energy and Natural Resources. The committee report provides a clear explanation of the committee amendments and I will not repeat that explanation. I do think it is important to emphasize that the administration is bound by the language of this resolution in all respects and does not have discretion to implement any provision of the so-called May 1989 Guam agreement where the agreement is inconsistent with any provision of this resolution or any conditions which may be included in any Appropriation Act providing funding for any of the provisions of the agreement. I specifically want to emphasize the provision dealing with the calculation of the net economic cost to the United States of advancing funds to Palau to settle the Palauan debt on the IPSECO power project. That portion of the agreement which sets that cost at $3 million is clearly at variance with the resolution as passed by the House and reported by the Energy and Natural Resources Committee. Palau is under no obligation to accept the advance if they disagree with the calculation of the cost at the time the funds are advanced, but there is no discretion to alter the calculation.

While I am prepared to support passage of this resolution, I am concerned that Congress will no longer have any guaranteed role in the termination of the trusteeship with respect to Palau. The administration can, if it so chooses, decide to make the required findings and see an effective date without any consultation with the Congress. That has been the history of termination with respect to the Marshall Islands, the Federated States of Micronesia, and the Commonwealth of the Northern Marianas. While I would hope Palau would be different, I really do not expect it to be so. That is my one misgiving over moving this legislation. The requirement that Congress agree to the effective date was designed to ensure that there would be no hiatus between termination of the trusteeship and the implementation of the compact. With passage of this res-

olution we relinquish that check. I hope we do not regret this.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment, as amended, and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the joint resolution pass?

So the joint resolution (H.J. Res. 175), as amended, was passed.

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AMTRAK AUTHORIZATION ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 82, S. 462, Amtrak authorization.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 462) to amend the Rail Passenger Service Act to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment.

On page 2, after line 13, insert the following:

SEC. 2. (a) Section 8(a)(1)(B)(vi) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)(1)(B)(vi)) is amended by inserting "the National Railroad Passenger Corporation and" immediately after "the contribution of" in the first sentence.

(b) The amendment made by subsection (a) shall take effect on January 1, 1989.

SEC. 3. (a) Section 11504(a) of title 49, United States Code, is amended to read as follows:

"(a) No part of the compensation paid by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to an employee who performs regularly assigned duties as such an employee on a railroad in more than one State shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision of the employee's residence.".

(b) Section 11504(b) of title 49, United States Code, is amended to read as follows:

"(b) No part of the compensation paid by a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title to an employee who performs regularly assigned duties as such an employee on a motor vehicle in 2 or more States shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.".

(c) Section 11504(d) of title 49, United States Code, is amended by striking "with—" and all that follows and inserting in lieu thereof the following: "with the State and subdivision of residence of the employee.".

SEC. 4. The Rail Passenger Service Act (45 U.S.C. 501 et seq.) is amended by adding at the end the following new title:

"TITLE XI—LIMITATION ON LIABILITY

"SEC. 1101. PUNITIVE DAMAGES.

"Notwithstanding any other provision of law, punitive damages shall not be awarded against the Corporation in any civil action commenced on or after the date of enactment of this title, or against a publicly-funded commuter transportation authority or a railroad in connection with operations conducted by or on behalf of the Corporation or by or on behalf of such transportation authority.".

So as to make the bill read:

S. 462

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 601(b)(2) of the Rail Passenger Service Act (45 U.S.C. 601(b)(2)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(F) not to exceed $630,000,000 for the fiscal year ending September 30, 1989;

"(G) not to exceed $656,000,000 for the fiscal year ending September 30, 1990;

"(H) not to exceed $684,000,000 for the fiscal year ending September 30, 1991; and

"(I) not to exceed $712,000,000 for the fiscal year ending September 30, 1992.".

SEC. 2. (a) Section 8(a)(1)(B)(vi) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)(1)(B)(vi)) is amended by inserting "the National Railroad Passenger Corporation and" immediately after "the contribution of" in the first sentence.

(b) The amendment made by subsection (a) shall take effect on January 1, 1989.

SEC. 3. (a) Section 11504(a) of title 49, United States Code, amended to read as follows:

"(a) No part of the compensation paid by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to an employee who performs regularly assigned duties as such an employee on a railroad in more than one State shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.".

(b) Section 11504(b) of title 49, United States Code, is amended to read as follows:

"(b) No part of the compensation paid by a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title to an employee who performs regularly assigned duties as such an employee on a motor vehicle in 2 or more States shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.".

(c) Section 11504(d) of title 49, United States Code, is amended by striking "with—" and all that follows and inserting in lieu thereof the following: "with the State and subdivision of residence of the employee.".

SEC. 4. The Rail Passenger Service Act (45 U.S.C. 501 et seq.) is amended by adding at the end the following new title:

"TITLE XI—LIMITATIONS ON LIABILITY

"SEC. 1101. PUNITIVE DAMAGES.

"Notwithstanding any other provision of law, punitive damages shall not be awarded against the Corporation in any civil action commenced on or after the date of enactment of this title, or against a publicly-funded commuter transportation authority or a railroad in connection with operations conducted by or on behalf of the Corporation or by or on behalf of such transportation authority.".

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

AMENDMENTS NOS. 1200, 1201, 1202

Mr. MITCHELL. Mr. President, I send committee amendments to the desk and ask for their immediate consideration.

Mr. President, those are amendments to be offered by the individual Senators, Senators ROBB, ADAMS, and HARKIN.

The PRESIDING OFFICER. The clerk will report the amendments.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], proposes amendments numbered 1200 for Mr. ROBB, No. 1201 for Mr. ADAMS and Mr. GORTON, and No. 1202 for Mr. HARKIN:

AMENDMENT No. 1200

On page 3, line 20, strike out all through line 9, on page 4 and insert in lieu thereof the following:

SEC. 4. Title VIII of the Rail Passenger Service Act (45 U.S.C. 642 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 810. INCENTIVES FOR PASSENGER SERVICE AGREEMENTS.

"(a) Notwithstanding any other provision of law, in instances where a publicly funded commuter transportation authority established under Virginia law contracts to indemnify the Corporation for liability for operations conducted by or on behalf of the publicly funded commuter transportation authority or to indemnify a railroad over whose tracks such operations are conducted, liability for all claims, whether for compensatory or punitive damages, arising from any accident or incident occurring in the District of Columbia against the Corporation or the publicly funded commuter transportation authority in connection with operations conducted by or on behalf of such publicly funded commuter transportation authority, or against a railroad over whose tracks such operations were conducted at the time of the accident or incident, shall not be in an amount greater than the limits of the liability coverage maintained by the

publicly funded commuter transportation authority to indemnify the Corporation or the railroad. In no event shall the publicly funded commuter transportation authority maintain an aggregate limit of liability coverage less than $200,000,000.

"(b) This provision shall not be effective unless the Corporation or a railroad seeking coverage hereunder has entered into an operating agreement with a publicly funded commuter transportation authority established under Virginia law to provide access for revenue service to its property in connection with the operations of the publicly funded commuter transportation authority.".

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AMENDMENT No. 1201

Strike all on page 2, line 21, through page 3, line 19, and insert in lieu thereof the following:

SEC. 3. (a) Section 11504(a) of title 49, United States Code, is amended to read as follows:

"(a) No part of the compensation paid by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to an employee who performs regularly assigned duties as such an employee on a railroad in more than one State shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.".

(b) Section 11504(b) of title 49, United States Code, is amended to read as follows:

"(b)(1) No part of the compensation paid by a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title or a motor private carrier to an employee who performs regularly assigned duties in 2 or more States as such an employee with respect to a motor vehicle shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

"(2) In this subsection 'employee' has the meaning given such term in section 204 of the Motor Carrier Safety Act of 1984 (49 App. U.S.C. 2503).".

(c) Section 11504(d) of title 49, United States Code, is amended—

(1) by striking "express, sleeping car,"; and

(2) by striking "with—" and all that follows and inserting in lieu thereof the following: "with the State and subdivision of residence of the employee.".

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AMENDMENT No. 1202

On page 4, after line 9, add the following:

"SEC. 5. ROUTING FEASIBILITY STUDY.

"The National Railroad Passenger Corporation shall study the feasibility of routing trains on the Chicago and North Western Railroad through northern Illinois and central Iowa while preserving the existing service on the Burlington Northern Railroad route in Illinois and Iowa. In conducting the study, specific analysis shall be given to inconvenience to passengers because of delays that occur because of the periodic late arrival of trains that interconnect with the California Zephyr and the resulting short-term and long-term consequences on passenger revenues and operating costs of those delays on revenues. A detailed report on the findings of such study shall be submitted to the Congress within 6 months after the date of the enactment of this Act.

Mr. ROBB. Mr. President, as reported, section 4 of this bill creates an exemption from punitive damages for Amtrak and for publicly funded commuter rail operations. The amendment I offer today significantly narrows the scope of section 4, and limits the section's application to the operations in the District of Columbia of a northern Virginia commuter train, fulfilling a promise I made to my colleagues on the Commerce Committee this spring.

Enactment of this bill with the amendment I offer today will remove the most significant remaining obstacle to the commencement of commuter rail service from northern Virginia into the District of Columbia.

The process of bringing commuter rail to Manassas and Fredericksburg, and points in between, began in 1984 while I was Governor of Virginia.

From the very beginning, the issue which has stood between this good idea and its implementation has been liability. Last November, the Commonwealth of Virginia agreed to administer a liability insurance plan for commuter rail. That plan includes both commercial and self-insurance.

The State's plan provides $200 million in coverage. It provides far greater insurance protection than carried by any other commuter authority and exceeds the damages awarded in any train accident, including inter-city passenger service.

But because the Commonwealth's legislation is not effective in the District, Federal legislation is necessary if commuters are to complete the trip to Union Station.

So the amendment I offer today will cap liability arising out of the operation of the commuter train in the District of Columbia at $200 million. This $200 million exposure will be covered by the State's uniquely comprehensive plan.

Thus, the amendment is intended to address a specific need, and does not set a broader precedent.

Rather than create a blanket exemption from punitive damages for Amtrak and publicly funded commuter rail operations, as the bill currently does, this amendment is tailored to address a specific problem.

As anyone who commutes to the Capitol from Virginia on I-95 or I-66 knows, gridlock does not begin to describe the traffic conditions during rush hour. When service begins, the Virginia Railway Express will carry up to 4,000 passengers a day, or the equivalent of a lane of traffic on I-95, into Union Station.

I would like to thank the distinguished chairman of the Commerce Committee, and the chair and ranking member of the Surface Transportation Subcommittee, for their assistance in this matter.

The amendment has been cleared on both sides of the committee, and I ask for my colleagues' support. My constituents, and your employees, will be grateful for it.

AMTRAK AUTHORIZATION

Mr. WARNER. Mr. President, I rise in support of this amendment.

For the past several years, local, State, and Federal officials have been looking for creative solutions to the traffic congestion in northern Virginia.

Commuter rail service over existing tracks is one of the most promising and cost effective alternatives to more cars on Interstates 95 and 66.

Virginia is on the verge of instituting commuter rail service in norther Virginia. This amendment resolves the last major legal hurdle to putting in place rail service between Fredericksburg and Manassas, VA, and Union Station in Washington. This service will provide a real alternative to more cars on already congested highways.

This amendment is the product of much hard work and long negotiation between the parties involved. I want to commend my colleague from Virginia, Senator ROBB, for his hard work on the Commerce Committee. Likewise, Congressman STAN PARRIS "laid the tracks" on this effort 15 years ago and has been a steadfast engineer ever since.

I believe this amendment addresses everyone's concerns. While it addresses the needs of Virginia, it is narrow in scope and protects the ability of injured parties to recover full compensatory and punitive damages. It also provides for adequate liability coverage in the event of an accident.

Mr. President, we need this commuter rail service in northern Virginia. I urge my colleagues to support this amendment.

Mr. ADAMS. Mr. President, I rise with my friend and colleague from Washington State to propose an amendment that has been cleared on both sides of the aisle. On April 17, 1989, Senator GORTON and I introduced S. 815, to provide for rail and motor carrier transportation workers who work in two or more States to pay tax only in their State of residence. This bill was intended to extend similar protections to rail and motor carrier employees. S. 815 was included as part of the Amtrak reauthorization bill, S. 462, section 3.

The problem we intended to cure involved motor carriers and railroad workers who often travel through several States in the course of their employment. When States attempt to impose State income taxes on these employees who are not residents of the State, employees are faced with multiple State liability and the burdens of filing tax returns in many different States.

Unfortunately, through a technical oversight, the language in our original

bill covered all the intended rail employees, but less than half of the motor carrier employees that were intended. The original bill covered only employees of private motor carriers. Nor did it cover independent contractors, fleet operators or employees of fleet operators. Questions were also raised regarding exempt motor carriers.

Mr. GORTON. Mr. President, my friend and colleague, Senator ADAMS, is correct. We have been working together on this ongoing problem that negatively impacts the critical role employees play in this transportation industry. Today, we are offering a perfecting amendment to insure that all the intended motor carrier transportation workers receive the same protection already available to airline employees and what the bill provides to railroad employees. The language of this amendment is designed to cover all providers of motor carrier transportation services in interstate commerce by expanding the definition of motor carrier to include private motor carriers. Additionally, by incorporating the definition of employee from the Motor Carrier Safety Act of 1984 into the bill, we intend to include but not limit the definition to cover independent contractors, fleet operators or employees of fleet operators. Last, we have looked at the definition of motor carriers within subchapter II of chapter 105 of title 49, United States Code and believe that exempt motor carriers are included.

Mr. HARKIN. Mr. President, my amendment provides for a study of the feasibility of providing two Amtrak routes through Iowa and Illinois. Amtrak has operated the California Zephyr from Chicago to Salt Lake City where Amtrak provides three routes to the west coast. There has been an interest in shifting the route from the existing Burlington Northern route to the route of the Chicago North Western Railroad in central Iowa and northern Illinois. This has been studied by Amtrak on a number of occasions and Amtrak has decided not to change the route. After the last study, completed in early 1987, Amtrak indicated that it would probably move to restudy the issue in several years.

One of the key reasons for the decision not to shift the route to the Chicago North Western railroad was the quality of the track. The track on the southern route has been found to be superior in the past and partially for that reason, it was found to be a shorter route.

However, supporters of the CNW route point out that there is a larger population along that route which could increase the number of Amtrak passengers. Moreover, the Chicago North Western has made a commitment to improving its track substantially which could enhance Amtrak's desire to run trains on that route.

For many years, with relatively low passenger levels, rerouting would have been the only result without considerable subsidy by non-Amtrak sources. Rerouting would have meant an elimination of service on the Burlington Northern route. Now that Amtrak's trains are nearly full on this segment of the California Zephyr, it might be logical to run trains on both routes. The case for two routes is strengthened by delays suffered by the California Zephyr being able to proceed eastward from Salt Lake City because connecting trains reaching Salt Lake from the west coast are often late.

However, I am also told that the ability of Amtrak to operate on both routes is limited by the amount of equipment: cars and locomotives. To accomplish the goal of two routes, Amtrak would need a considerable increase in equipment. It is in the process of a capital program. But, it has a considerable way to go.

There is a provision in the House bill which calls for a study of a rerouting of the California Zephyr. Amtrak officials have noted that it does not provide for the consideration of two routes. My amendment does provide for that option.

Mr. EXON. Mr. President, the amendment is acceptable to the majority. The House amendment only provides for study of a rerouting of the California Zephyr and does not provide for an analysis of the option of two routes. Without the House amendment, I am told Amtrak would probably soon reconsider the routing of the California Zephyr. If the Senate amendment is combined with the House amendment, all options are covered.

Mr. MITCHELL. Mr. President, I urge adoption of the amendments en bloc.

The PRESIDING OFFICER. The question is on agreeing to the amendments.

The amendments (Nos. 1200, 1201, 1202) were agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1203

(Purpose: To require the Secretary of Transportation to conduct a study to determine the demand among certain railroads for Federal guarantees of obligations)

Mr. DOLE. I send an amendment to the desk on behalf of Senator PRESSLER and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] for Mr. PRESSLER, proposes an amendment numbered 1203.

At the appropriate place in the bill, add the following:

SEC. . Notwithstanding any other provision of this Act, or any other law, the Secretary of Transportation, in consultation with the Federal Railroad Administration, shall, within 120 days following the date of the enactment of this act, study and survey the potential need and demand among Class II and Class III railroads for Federal guarantees of obligations as established by section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831). Such guarantee of obligations would include funding for rehabilitation and improvement of facilities or equipment, acquisition of new railroad facilities, or refinancing of existing debt. The Secretary shall report to Congress no later than 120 days following the date of the enactment of this Act the results of such study and survey. Such report shall include an analysis of the present need and demand for Federal guarantee of railroad debt, the amount of guarantee authority required to meet that need, and a projection of demand for such Federal guarantees through fiscal year 1995.

Mr. PRESSLER. Mr. President, on September 13 of this year, the Senate approved my amendment authorizing appropriations for a program designed to provide needed financial help to regional and short-line railroads. This amendment, reviving a program created by section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, was unfortunately lost in conference with the House because of a lack of credit authority in the Transportation Appropriations Subcommittee.

I am, however, pleased that considerable progress has been made toward resurrecting section 511. I am confident that we have set the stage for successful inclusion of section 511 credit authority in the fiscal year 1991 appropriations process.

The amendment I am offering to the Amtrak authorization bill will help us build a better case for section 511 loan guarantees. The amendment instructs the Secretary of Transportation, in consultation with the Federal Railroad Administration [FRA], to study the need and demand for section 511 assistance. The report would be due within 4 months of enactment.

I know of a number of railroads throughout the country that are in need of the type of help section 511 could provide. These railroads are faced with the crushing burden of debt from the purchase and rehabilitation of rail lines. Combined with high interest rates and a short repayment period, this debt can seriously constrict cash flow.

With the Federal Government guaranteeing the refinancing of this debt by private financial institutions, we are providing an additional tool to ensure the long-term stability of rail

service to many areas of the country, many of them in rural America.

Mr. Chairman, I thank my distinguished colleague from Nebraska, Senator EXON, for acceptance of this amendment. I look forward to reviewing the valuable information that will be part of the DOT/FRA study on section 511. This information, I believe, will compel Congress to rejuvenate the program.

Mr. HARKIN. Mr. President, I am pleased to cosponsor Senator PRESSLER's amendment providing for a study of the need for Federal loan guarantees for class II and III railroads under the "511" program. I want to commend his efforts to have this program reactivated.

This program, properly administered, can be very helpful in preserving rail service and providing capital for improvement of track and equipment so service can be improved, with little cost to the Federal Government.

Many of the smaller railroads that are of vital importance in the Midwest are without sufficient capital to provide adequate service. The infusion of capital that loan guarantees under the 511 program can provide may make the difference between good rail service and abandonment.

Abandonment means higher costs for moving grain, higher costs in maintaining highways. It also means higher costs for manufacturers in moving their goods and receiving supplies.

I urge that the amendment be passed. And, I look forward to seeing the report.

Mr. HARKIN. Mr. President, I want to commend the floor manager for his leadership in looking out for the Nation's interest in rail issues and working to improve the health of our Nation's railroads. I also want to commend him for his vital efforts to improve Amtrak service.

The Commerce Committee has passed a bill, S. 1005, which clarifies the authority of the Interstate Commerce Commission concerning acquisitions of class I railroads by entities which do not already own rail property. The measure makes clear that the ICC does have that authority and sets a number of parameters on ICC consideration of such acquisitions.

A similar provision has been added to the House Amtrak reauthorization bill by Congressman ECKART.

Under present law, the Interstate Commerce Commission regularly examines acquisitions when the acquiring entity already has rail property to prevent anticompetitive railroad mergers. The ICC also regularly considers proposed abandonment of trackage—even the possible abandonment of isolated branch lines that will affect only a few shippers—to determine whether that abandonment would jeopardize the public's interests.

However, the Commission feels that it does not have the clear authority over an initial acquisition of a class I railroad by an entity which does not control or is not controlled by rail carriers. S. 1105 and the Eckart amendment seek to require that the ICC examine such transactions.

For the public interest to be properly served, the ICC needs to examine all major rail acquisitions. At this point, the ICC is primarily focused on one question: Is an acquisition anticompetitive? That consideration is, of course, important. However, there are other key questions that should be asked: Is the nature of the transaction such that it will result in a significant reduction of rail service? Will increased debt from an acquisition result in a deferral of line maintenance work? Will deferred maintenance result in reduced usage and higher operating costs? If the answers to the above questions are "yes," then won't the result be proposed abandonments? It is the ICC's obligation, in my view, to the extent possible, to consider all of these questions at the beginning—at the point at which an acquisition is proposed. The ICC must not allow itself to be placed in a position of examining a fait accompli at abandonment hearings.

Frankly, I think the ICC has construed its existing authority in a most narrow fashion. And a number of the commissioners have stated a similar view.

I do not believe that we should return to the pre-Staggers Act days of nit-picking regulation. But, I do believe that the ICC should examine acquisitions of major railroads to determine whether such acquisitions serve the public's interest.

There are situations under which an acquisition should be allowed to proceed. Specific circumstances of a railroad may demand it. For instance, we have to consider whether a merger might improve a railroad's ability to raise additional capital. This is an appropriate question for a regulatory body to ask. But the ICC should look at the needs of shippers and the interests of the public at large.

Railroads are crucial to the movement of agricultural commodities, manufactured goods, coal, and many other products. Their maintenance and continued operation at a proper level of service are essential for our national productivity.

If railroads lose considerable equity, their resilience and ability to withstand economic downturns will be diminished. And, if that occurs, the very competitiveness of our Nation will be hurt. Areas directly affected by the loss of or a sharp deterioration in rail service will be devastated. The U.S. Government provided 130 million acres to get our railroads going. If we allow major deterioration of our railroads, the taxpayers of our country will be forced to pay again.

Not long ago, the taxpayers invested over $7 billion in Conrail. Just over 2 years ago, the Federal Government sold its interest in Conrail at a significant loss in the taxpayers' investment. Now, we find that Conrail could soon be the subject of a leveraged buyout, which could place it back into financial jeopardy. According to the ICC's current way of thinking, the leveraged buyout by an entity that did not already own rail property would be none of its business. But, it would consider the individual line abandonments that could follow. This is simply not logical public policy.

I would note some specific concerns about the structure of the House provision. I believe that the final provision should clearly indicate:

First, that acquisition of control of a class I carrier includes control of a parent corporation or other entity that controls that carrier; and

Second, that a broad access to evidence and documents in the proceedings be available to the parties to the proceedings, except for items or categories of information that the Commission chooses to exclude because of its proprietary nature.

In a normal situation, I would offer an amendment to the bill including the text of S. 1005 as passed by the Commerce Committee. However, I have been told that such an amendment would likely result in lengthy debate and the failure of the bill to be considered this year.

It is important for the Senate to pass the bill as soon as possible. I do not want to hold up the measure. But, I urge that the Senate conferees carefully consider these issues and hopefully reach a conference agreement which includes these concerns.

Mr. EXON. I appreciate the Senator's remarks. I have worked with him on many rail issues and appreciate his many efforts to preserve and improve rail service which is so important to our nation. I am a strong supporter of S. 1005 and but for the fact that an amendment to include that measure to this bill would significantly delay the passage of this legislation, which is important to the health of Amtrak, I would support its passage by the Senate.

I agree to look carefully at the two specific points that the Senator listed at the end of his remarks, to see if modifications to the House provision can be included. I note that the Senator's measure as passed by the committee includes those two points.

I will do what I can to see that these issues are addressed in conference, keeping in mind that I favor legislative action in this area as a means of clarifying the ICC's jurisdiction and pre-

serving the public interest in continued rail service.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Dakota.

The amendment (No. 1203) was agreed to.

The PRESIDING OFFICER. Are there further amendments to the bill?

Mr. EXON. Mr. President, did I understand from the Chair as to whether or not there were any further amendments? Was that the question?

The PRESIDING OFFICER. That is the question.

Mr. EXON. I would simply like to have the attention of the majority leader and minority leader for just a moment. There was an amendment that was prepared to be offered to the Amtrak legislation by this Senator, an amendment worked out after very careful analysis of a whole group of options, to begin to address the difficulties that Nebraska and some other States are having with the Court's interpretation of the 4-R Act.

The night before last we tried to get clearance on this matter and there was objection to it at that time. That objection, as I understand it, still holds from the other side of the aisle.

I would simply say that I do not believe it is in the interest of Amtrak to delay the proceedings any further as long as that particular hold is on the bill. Therefore, I will not offer the amendment, so that we can move ahead. I do hope, though, that we can revisit this at some future date.

I have written several Members of the Senate whose States might be adversely affected by the Court's interpretation of the equalization provisions under the 4-R Act in the hopes the Senators I have written to will take a long look at this and check with their State officials to see whether or not the State officials believe they are being fairly treated.

I wrote that letter some time ago. As of now the only Member of the Senate that I have heard from is my colleague who is now in the Chair, who shares the concern of this Senator, Senator KERREY from Nebraska and to some extent the Senator from Missouri, Senator DANFORTH. So I am pleased to cooperate on this matter since we could not get it handled at this time, but the issue will not go away, I advise the majority leader. But I am pleased to move ahead on a very important Amtrak bill with the amendments that have been accepted and suggest that we will be revisiting it hopefully at some future date.

Mr. MITCHELL. I thank the Senator for his statement and his courtesy.

Mr. EXON. Mr. President, I ask unanimous consent that I be allowed to print in the RECORD a letter from FRA Administrator Riley and a letter from FRA Director Carmichael immediately following the remarks the Senator from Nebraska made with regard to the Amtrak legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the material was ordered to be printed in the RECORD as follows:

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL RAILROAD ADMINISTRATION,

*Washington, DC, October 4, 1988.*

Hon. J. JAMES EXON,

*Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science and Transportation, Dirksen Senate Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: Your Subcommittee recently held a hearing on Section 306 of the Railroad, Revitalization and Regulatory Reform Act of 1976 (4R Act), 49 U.S.C. 11503, which bars discriminatory state taxation of the railroads. Paragraphs (1) through (3) of Section 306 prohibit States and their subdivisions from engaging in de jure and de facto property tax discrimination; paragraph (4) prohibits any other form of state taxation that results in discriminatory treatment of a common carrier by rail.

The Department of Transportation supported enactment of Section 306 and we continue to believe that the provision is needed. When this Committee considered Section 306 in 1975, eight major railroads had gone into bankruptcy and the rest of the industry was in precarious financial condition, with return on investment industry-wide hovering between one and two percent. The financial plight of the railroads touched every employee, every shipper, and every community that depended on railroad service. Poor cash flows meant deferred maintenance, which translated into derailments, slow turnaround times, and generally unreliable service. While all shippers were affected by these conditions, rural shippers were unquestionably the hardest hit, as the railroads focused their limited resources on their heaviest density mainlines.

Discriminatory state taxation substantially contributed to the financial plight of the railroad industry in the early 1970's. Congressional analysis over a 15-year period revealed that railroads were being over-taxed by at least $50 million each year; this amounted to approximately 6 percent of the industry's net operating income ($835 million) in 1975. See H.R. Rep. 725, 94th Cong., 1st Sess. 78-80 (1975). States imposed discriminatory taxes in both the property and non-property areas. In the property area, discriminatory taxes generally took one of two forms: de jure discrimination, in which railroad property was taxed at different rates or assessed at different percentages of full value than other commercial property; and de facto discrimination, in which all property was nominally taxed and assessed at the same rates and percentages, but railroad property was either overvalued or other commercial property undervalued. Discriminatory taxation in the non-property area took a variety of forms including state gross receipt taxes, excise taxes and burdensome regulatory fees. Ultimately the shippers and consumers bore the burden for the widespread discriminatory taxation by paying higher transportation costs and receiving poorer rail service. See S. Rep. 1085, 92d Cong. 2d Sess. 4 (1972).

Unfortunately, neither the Federal nor the state courts afforded the railroads adequate relief from discriminatory state taxation prior to the enactment of Section 306. For a discussion of the deficiencies of Federal litigation see 55 Transportation Practitioners Journal 219 (1988). The deficiencies commonly found in state court litigation included the necessity of bringing multiple suits (one in each county or other taxing jurisdiction) to secure complete relief, the delay in obtaining a decision, the limited form of relief available, and the reluctance of state courts to overturn decisions of the assessing agency. See S. Rep. 1483, 90th Cong., 2d Sess. 6 (1968).

Section 306 was enacted to eliminate all forms of state tax discrimination. It places railroad property on a par, for state tax purposes, with all other commercial and industrial property. Putting railroads on an equal basis with other businesses was sound, for as one court has observed, "[t]he only simple way to prevent tax discrimination against the railroads is to tie their fate to the fate of a large and local group of taxpayers." *Kansas City S. R.R.* v. *McNamara*, 817 F.2d 368, 375 (5th Cir. 1987).

Section 306 was carefully crafted to minimize Federal interference with state tax administration. First, States were given a 3-year grace period, ending February 1979, to adjust their tax practices to eliminate unlawful discrimination. Second, the statute prohibits a court from awarding relief unless the railroad property's assessment ratio exceeds the ratio for non-railroad property by at least 5 percent. Third, the statute adopted state law regarding the burden of proof, thereby generally imposing the burden of proving assessment discrimination on the owners of the rail property. Fourth, it also leaves in place Federal courts' ordinary equitable power to structure remedies so as to avoid unjustly burdening litigants. Finally, Section 306 does not undo an entire tax assessment but only bars that portion of an assessment determined to be excessive under the assessment-ratio test, and thus protects state tax collection to the maximum extent possible, consistent with the need to eliminate discrimination. No compelling reason has been advanced either to repeal or limit the scope of Section 306. Given the always pressing need to obtain adequate tax revenues and the tempting target that railroads present—as non-voting, often non-resident companies that cannot easily remove their assets—state taxing authorities will likely revert to discriminatory taxation of railroads if given the chance. The railroad industry is no more able to bear the financial burden of discriminatory state taxation now than it was in 1975. While the industry is financially stable for the first time in nearly three decades, it remains one of the least profitable American industries. The rail industry's return on investment for 1987 was 5.6 percent while its cost of capital was 11.6 percent. An industry that cannot generate a return on capital equal to the cost of borrowing is an endangered species. These figures emphasize the extent, and at the same time the fragility, of the industry's recovery. The progress is real, but reimposition of discriminatory state taxation could erode the progress that has been made and seriously threaten the long-term financial health and viability of the railroad system. Such a result would hurt the States, shippers, and consumers, particularly in rural areas.

We therefore urge the Committee to reject any calls for repeal or weakening of Section 306 of the 4R Act.

Yours very truly,

JOHN H. RILEY,
*Administrator.*

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U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL RAILROAD ADMINISTRATION,
*Washington, DC., October 26, 1989.*

Hon. J. JAMES EXON,
*Chairman, Subcommittee on Surface Transportation, Dirksen Senate Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: I am responding to your letter of October 13, 1989, inquiring whether the Administration concurs with former Administrator John Riley's October 4, 1988, letter in which he recommended that Congress not weaken Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. 11503, which prohibits discriminatory state taxation of the railroads. I agree with former Administrator Riley's assessment that "[n]o compelling reason has been advanced either to repeal or limit the scope of Section 306." There is no merit to the concerns expressed by individual states, such as Nebraska and Kansas, that Section 306 undermines their tax systems. The states have the latitude under Section 306 to tailor their tax systems to the needs of their citizens, and the states can continue to exempt classes of commercial and industrial property from taxation, so long as they do not discriminate against railroads.

As I understand it, since the enactment of Section 306, Nebraska has exempted approximately 75 percent of all business personalty from personal property taxation. Only non-agricultural commercial and industrial business equipment and machinery is taxed. This unequal exemption system has been found to discriminate against the railroads and the rail car line companies in violation of the clear requirements of Section 306. *Trailer Train Co.* v. *Leuenberger*, No. CV87-L-29 (D. Neb. Dec. 11, 1987), *aff'd*——F.2d——No. 88-1118 (8th Cir. Dec. 19, 1988), *cert. denied*, 104 L.Ed.2d 630 (1989). While it cannot discriminate against railroads, Nebraska does have a variety of options that it can now take that are consistent with Section 306. For example: (1) it can repeal all personal property tax exemptions, thereby substantially broadening the property tax base; (2) it can exempt all business equipment, including railroad equipment, from taxation; or (3) it can exempt railroad personal property from taxation and continue to tax other business equipment. None of these alternatives requires any action by Congress.

An example of a similar problem, although not involving Section 306, occurred in Mississippi. There, the State Supreme Court forced the Tax Commission to follow the mandate of Article 4, Section 112 of the Mississippi Constitution of 1890, which required taxation to be uniform and equal throughout the state, and required property to be assessed for taxes under general laws, by uniform rules, and in proportion to its value. *State Tax Comm'n* v. *Fondren*, 387 So. 2d 387 (Miss. 1980). Section 112 was subsequently amended to permit the legislature to enact laws exempting particular species of property from taxation, in whole or in part, and to specify, for purposes of ad valorem taxes, five classes of tangible property and the assessment percentage of true value for each class.

There is no question that railroads should bear their fair share of taxes in the states in which they operate, but they cannot and should not be expected to bear the burden of other commercial and industrial residents that benefit from the protections and services provided to state government while being exempted from property taxation. If Section 306 were amended to allow states the discretion to exempt certain commercial and industrial operations from taxation, the extension of the exemptions could "swallow up" the protection provided by Section 306, thereby seriously threatening the long-term financial health of the railroad system and ultimately harming the national economy, States, shippers and consumers. *See Clinchfield R.R.*v. *Lynch*, 784 F. 2d 545, 552 (1986).

It is important to note that discriminatory state taxation is not in the long term interest of Nebraska or any other state. Ultimately, shippers and consumers bear the burden of discriminatory taxation by paying higher transportation costs and receiving poorer and less safe rail service. Rural shippers could be hard hit, as the railroads focus their limited resources on their heaviest density mainlines, and fail to maintain or abandon marginal or unprofitable lines.

It is, therefore, important for the Committee to resist the calls for modification of Section 306 if we are to avoid a repetition of the downward spiral of the railroad industry that occurred in the 1970's. If the railroads are to survive in the private sector and make a significant contribution towards eliminating the overcrowding of our highways and airways, it is essential that the rail industry be treated like other industries operating in the private sector.

I look forward to working with the Committee in addressing the Nation's overcrowded transportation infrastructure and other national transportation issues.

Sincerely,

GIL CARMICHAEL,
*Administrator.*

Mr. HOLLINGS. Mr. President, I appreciate the opportunity to express my support for the reauthorization of the National Railroad Passenger Corporation [Amtrak].

I, for one, continue to believe that the preservation of rail passenger service in the United States is an important objective. Recently, CBS aired a 1-hour show entitled "Romancing the Rails" which depicted Amtrak service as the preferred transportation alternative for many Americans. Last year, with the inclusion of its commuter operations, more than 30 million passengers rode Amtrak. Continued rail passenger service plays an important role for these individuals and the national transportation network.

In my own State, the threatened loss of Amtrak service last year to Columbia—South Carolina's seat of government and a developing economic and cultural center—evoked hundreds of calls, letters, and visits from citizens concerned about the loss of this travel alternative as well as the long-term economic implications of the loss of passenger service and the concurrent downgrading of track. Although a general agreement averting the loss of this particular service has been struck, you can imagine this scenario being played out in cities and towns across America because of the lack of Federal funding for Amtrak.

I think the record will show that Amtrak has through improved efficiency met head-on many of the challenges posed by Federal budget constraints. For example, pursuant to the Omnibus Consolidated Budget Reconciliation Act of 1985, the Congress authorized $630.3 million in funding for Amtrak in fiscal year 1988. However, the actual appropriated funding level for fiscal year 1988 was only $580.8 million. In 1989, $584 million was appropriated for Amtrak. Although Amtrak has managed to meet this challenge by improving its revenue-to-cost ratio in recent years, as well as through increased ridership and other factors, Amtrak indicates that it has reached a critical juncture and can no longer absorb severe cuts in capital grants without undermining the quality of its services. The level of assistance to Amtrak authorized in S. 462 should be sufficient to fund Amtrak's most important capital projects and thereby enable Amtrak to continue its financial progress.

In addition to authorizing funding for Amtrak, S. 462 as reported contains three additional provisions. The bill would amend the Railroad Unemployment Insurance Act to allow Amtrak to take immediate advantage of new rules for paying into the railroad unemployment trust account. The bill would also prohibit railroad and motor carrier employees who perform duties in more than one State from being subject to State income taxes in States other than the employee's State or subdivision of residence. Finally, the bill contains a provision designed to foster commuter rail service in northern Virginia. It is this final provision I wish to address in greater detail.

Since the Commerce Committee reported S. 462, substantial effort has gone into narrowing the amendment to the Rail Passenger Service Act which would have exempted Amtrak, publicly funded commuter transportation authorities, and the railroads from the award of punitive damages in cases involving passenger injuries. It was my contention then as it is now that such an amendment would have preempted many years of common law development in State courts and legislatures, without sound statistical data or evidence to support a crisis in the area of passenger-related punitive damage awards against either Amtrak, publicly funded commuter authorities or railroads.

The impetus for this provision was the need to remove a roadblock to initiation of commuter service between northern Virginia and Washington, DC. It is my understanding that an agreement has been reached between

the Richmond, Fredericksburg & Potomac Railroad in Virginia and the Norfolk Southern Railroad to permit the operation of commuter trains over the tracks of those railroads. Amtrak has reached an agreement with the Northern Virginia Transportation Commission [NVTC] to operate the service between northern Virginia and Washington. I am told that the only remaining impediment is the need for an agreement with Conrail to operate over 1.8 miles of its tracks across the Potomac River into Washington. The amendment as originally drafted and offered in committee was overly broad to deal with the specific problem impeding northern Virginia commuter rail service. The substitute language which my colleague Senator ROBB is offering during floor consideration of S. 462 is as follows:

SEC. 4. INCENTIVES FOR PASSENGER SERVICE AGREEMENTS.

(a) Notwithstanding any other provision of law, in instances where a publicly funded commuter transportation authority established under Virginia law contracts to indemnify the Corporation for liability for operations conducted by or on behalf of the publicly funded commuter transportation authority or to indemnify a railroad over whose tracks such operations are conducted, liability for all claims, whether for compensatory or punitive damages, arising from any accident or incident occurring in the District of Columbia against the Corporation or the publicly funded commuter transportation authority in connection with operations conducted by or on behalf of such publicly funded commuter transportation authority, or against a railroad over whose tracks such operations were conducted at the time of the accident or incident, shall not be in an amount greater than the limits of the liability coverage maintained by the publicly funded commuter transportation authority to indemnify the Corporation or the railroad. In no event shall the publicly funded commuter transportation authority maintain an aggregate limit of liability coverage less than $200 million.

(b) This provision shall not be effective unless the Corporation or a railroad seeking coverage hereunder has entered into an operating agreement with a publicly funded commuter transportation authority established under Virginia law to provide access for revenue service to its property in connection with the operations of the publicly funded commuter transportation authority.

The substitute language significantly narrows the scope of the amendment in that its application would be limited to railroad track in the District of Columbia over which the NVTC will operate. As the system is currently configured, this constitutes approximately 3 miles of track, and includes the specific track which has served as the roadblock to initiation of commuter service between northern Virginia and Washington, DC.

The amendment now includes a $200 million liability limitation on compensatory and punitive damage claims arising from accidents occurring in the District of Columbia against Amtrak, NVTC or a railroad over whose tracks such operations were conducted at the time of accident or incident. The substitute does not provide for any total exemption from damages.

Senator ROBB has worked so diligently to bring commuter rail service to northern Virginia. I have worked with him to narrow this provision so that it affects just the small amount of track that I have described. However, I remain opposed to any limitations on compensatory or punitive damages.

I am aware that the passenger payments arising from the tragic Chase, MD, accident were approximately $67 million, and this provides some slight sense of comfort that the $200 million liability fund may provide adequate coverage for these 3 miles of track. However, it is my belief that caps on liability undermine the fundamental policies of tort law—providing just compensation to injured victims and creating incentives for safety, and in this instance equipment and employee practices.

I would therefore emphasize that I do not view this amendment as setting a precedent, nor do I view it representing the wave of things to come. Accordingly I am agreeing to accept this provision to remove the last impediment to northern Virginia commuter rail. However, I will resist any further efforts in this regard or to expand these limitation provisions to other areas.

Mr. EXON. Mr. President, passenger rail service plays an important role in our Nation's transportation network. Last year, over 21.5 million intercity passengers traveled by Amtrak. An additional 14 million commuters rode on trains operated by Amtrak.

The legislation under consideration today, S. 462, would reauthorize funding for Amtrak for fiscal years 1989 through 1992. This legislation was introduced by myself and 14 cosponsors in February. In April, I chaired a Surface Transportation Subcommittee hearing on this proposal and that same month the full Commerce Committee ordered the measure reported with several modifications.

In addition to reauthorizing funding, S. 462 contains provisions that would result in $16 million in cost savings to Amtrak by allowing Amtrak to take immediate advantage of new rules for paying into the railroad unemployment insurance trust account. The reported measure also contains provisions regarding the taxation of certain transportation employees and to foster commuter rail service. It is my understanding that additional modifications to these last two provisions will be proposed on the floor.

Amtrak has made considerable progress since it was created in 1970 as a means of ensuring the continued presence of nationwide passenger rail service. Amtrak's progress during this time, particularly in the past decade, has been steady.

Since 1981, passenger miles—often considered the best indicator of ridership—increased over 19 percent and passenger miles per constant dollar of Federal subsidy increased over 250 percent. Passenger miles per train mile have increased 22 percent and for every mile traveled by an Amtrak train, an average of 189 passengers are aboard.

Amtrak is also making substantial progress in becoming increasingly self-sufficient. In fiscal year 1988, Amtrak covered over 69 percent of its total operating cost with its own revenue, as compared with 48 percent of its costs in fiscal year 1981. I am not aware of any passenger railroad in the world that covers more of its own costs than Amtrak.

In addition, last year, Amtrak earned a record $1.1 billion in revenue which is a 14-percent improvement over fiscal year 1987 and an 81-percent increase since fiscal year 1981.

From time to time, there are those who say that the Federal Government should end all assistance to Amtrak. Let us be clear. Those who make that argument are saying, in effect, that we should end nationwide passenger rail service. In the absence of Federal assistance, Amtrak service would come to an end, except perhaps in the highly traveled Northeast corridor. I cannot accept that as the direction we should be taking. To do so would deny the considerable achievements of Amtrak just as it would deny to the United States a form of transportation that is considered vital in virtually every industrialized nation.

Let us not forget that Amtrak plays an important role both in relieving congestion on our highways and in the air and in providing a transportation alternative for those persons for whom highway or air travel is not feasible. Amtrak also serves approximately 500 communities of which 114 have no air service, 98 have no direct intercity bus service, and 37 have neither air nor bus service.

Let me conclude by noting that while S. 462 authorizes increased funding for Amtrak, this is not intended to suggest that Amtrak will back off from the steady progress it has made in covering its operating costs. Rather, the bill's authorization levels are a recognition that much of the progress that Amtrak has made is the direct result of past capital expenditures on items like new equipment, which enabled Amtrak to improve its ontime performance. However, in recent years Federal funding cuts have left Amtrak with little to spend on needed capital improvements. The authorization levels contained in S. 462 recognize that deferred investments and maintenance cannot continue indefinitely

without jeopardizing the progress Amtrak has made. For this reason, S. 462 contains a cushion to authorize such capital expenditures, should funding for this purpose become available in the future.

In my opinion, S. 462 represents a sound proposal that will advance our Nation's transportation network. I urge its passage, swift action in conference, and favorable consideration by the President.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 2346, the House companion bill; that all after the enacting clause be stricken; that the text of S. 462, as amended, be inserted in lieu thereof; and that the bill be read a third time and passed; and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 2346), as amended, was passed.

Mr. MITCHELL. Mr. President, I move that the Senate insist on its position, and request a conference with the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 462 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

## TRADE AUTHORIZATION ACT

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1164.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1164) entitled "An act to authorize appropriations for fiscal year 1990 for the Office of the United States Trade Representative, the United States International Trade Commission, and the United States Customs Service," do pass with the following amendment:

Page 3, strike out line 1 and all that follows through page 4, line 9, and insert:

(b) APPOINTMENT OF THE COMMISSIONER OF CUSTOMS.—(1) The second sentence of the first section of the Act entitled "An Act to create a Bureau of Customs and a Bureau of Prohibition in the Department of the Treasury", approved March 3, 1927 (44 Stat. 1381, 19 U.S.C. 2071), is amended to read as follows: "The Commissioner of Customs, who shall be appointed by the President by and with the advice and consent of the Senate, shall—

"(1) be at the head of the United States Customs Service;

"(2) carry out the duties and powers prescribed by the Secretary of the Treasury; and

"(3) report to the Secretary of the Treasury through such other officials as may be designated by the Secretary.".

(2) The individual who is serving as the Commissioner of Customs on the day before the date of the enactment of this Act may continue to serve in such capacity until a Commissioner of Customs, appointed as provided in the amendment made by paragraph (1), takes office.

Mr. MITCHELL. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## ANTITERRORISM AND ARMS EXPORT AMENDMENTS ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 315, H.R. 91, an act to prohibit exports of military equipment to countries supporting international terrorism.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 91) to prohibit exports of military equipment to countries supporting international terrorism, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NOS. 1204 AND 1205

Mr. MITCHELL. Mr. President, in behalf of Senators RIEGLE and GARN, I send two amendments to the desk, and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. RIEGLE (for himself and Mr. GARN) proposes amendments numbered 1204 and 1205, en bloc.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 1204

On page 11, line 7, strike "The" and insert "With regard to munitions items controlled pursuant to this Act, the".

AMENDMENT NO. 1205

On page 19, line 17, delete all from "shall" through the second "and" on page 19, line 18.

Mr. HELMS. Mr. President, section 10 was added to the language of this act in order to provide for the legitimate exercise of individual or collective self-defense against terrorist attacks against target countries.

The right of individual or collective self-defense has existed in customary international law since the writings of Hugo Grotius and the development of classical international law during the middle of the 17th century. That is a long time and this is a widely recognized and universally accepted principle.

The right of self-defense was an established norm of international law before the U.N. Charter and has continued to be an established norm of international law since the U.N. Charter entered into force. What the charter did—and I remind my colleagues that the U.N. Charter according to the U.S. Department of State is a treaty-contract and not a legal constitution—was to codify this fundamental standard of international law. The right of self-defense against armed attack by other states, or by terrorist groups supported or tolerated by other states, has been recognized by the majority of civilized states since rise of state-supported and state-sponsored terrorism.

Both customary international law and article 51 of the U.N. Charter say that a state may defend itself against an armed attack. A terrorist armed attack is nothing more nor less than a terrorist attack directed against a state and its defenseless civilian populations. The terrorists in Israel, and also in southern Africa, utilize cross-border raids to wreak their savage depredations.

Israel has on numerous occasions gone into Lebanon to defend its population and its very survival against the PLO, the PFLP, and the Abu Nidal groups which have taken sanctuary in Lebanon. Israel also has been attacked from Syria and from Jordan in the past and quite possibly will be again attacked in the future. South Africa has suffered outright terrorist raids against defenseless civilians by the ANC and SWAPO. Those countries then took the appropriate response—the utilization of force which did not change the political independence or the territorial integrity of the states from which the terrorist attacks were launched.

Obviously, the elimination of terrorist bases will aid in the elimination of terrorism. That is why we attacked Colonel Qadhafi's Libya, and why that raid was a success. We utilized the historic and traditional right of self-defense, and Israel and other states sub-

ject to heinous terrorism have the right to do likewise.

This is a standard right recognized by international law, and there is no reason to provide specific references to any international agreements. U.S. law is based on the Constitution. That is the way it is, and that is the way it is going to be. We are supporting the national right of self-defense, indeed self-preservation, under longstanding international law.

Mr. GARN. Mr. President, I rise in support of Senate adoption of H.R. 91, the Antiterrorism and Arms Export Control Amendments Act of 1989. This legislation imposes a ban on arms trade with terrorist countries and places tighter licensing requirements on nonmilitary exports to them. This bill attempts to make sense of a very complex area of foreign policy and, while I am not in agreement with every word of it, I support its adoption.

I want to express my gratitude for the cooperation exhibited by the Foreign Relations Committee and the House Foreign Affairs Committee in working out certain concerns with the legislation on the part of the Banking Committee. The Banking Committee concerns arose because of two substantial changes being made in the Arms Export Control Act and the potential for overlap in the jurisdiction of that law and the Export Administration Act.

First, H.R. 91 would ban munitions sales, and even facilitating munitions trade, with terrorist countries "notwithstanding any other provision of law." It is unclear how this change would affect legal trade in so-called dual use items which sometimes involve overlapping jurisdiction. In addition, H.R. 91 would make determinations by the Secretary of State about items to be controlled on the munitions list "final and conclusive." Given the jurisdictional problems in the gray area of high technology items with potential military applications, these changes would likely trigger even more interagency disputes and cause unnecessary licensing problems for U.S. exporters.

To address these concerns, the involved committees agreed to modify the "notwithstanding" clause in the new section 40 of the Arms Export Control Act to make clear that application of the ban is limited to "munitions items controlled pursuant to" the arms control act. This change is intended to ensure that the munitions trade ban that is made total by this act is limited to items specifically controlled as munitions items, not goods and technology that can be legally shipped under the Export Administration Act.

A second change has been made to strike the language making control decisions under the arms act "final and conclusive." This will maintain the status quo in which any jurisdictional disputes arising over designation of an item on either the munitions list or the commodity control list would have to be resolved among the administering agencies.

I believe these are important changes that have improved the bill and I welcome the cooperation of the other committees involved in making them.

Mr. RIEGLE. Mr. President, I rise in support of adoption by the Senate of H.R. 91, the Antiterrorism and Arms Export Control Amendments Act of 1989. This legislation is designed to combat international terrorism and further the national security and foreign policy interests of the United States. It imposes a ban on the export of arms from the United States to countries that sponsor international terrorism, and also imposes tighter controls on nonmilitary exports to such countries. It is a good bill and I support its adoption. The House Foreign Affairs and Senate Foreign Relations Committees are to be commended for crafting it.

I also want to thank the chairmen and ranking members of those two committees for agreeing to the amendment that Senator GARN and I are offering. I want to give particular recognition to Congressman BERMAN for his cooperation in helping us craft this amendment in a manner that will not interfere with the purposes of H.R. 91.

The two changes that our amendment makes are actually designed to strengthen administration of the bill by heading off possible interagency disputes over a couple of its provisions. The first part of the amendment is designed to make clear that with regard to munitions items controlled pursuant to this act, this law applies notwithstanding any other provision of law in this area, except for section 614(a) of the Foreign Assistance Act of 1961. Our change is designed to make absolutely clear that the total ban on munitions sales imposed by this bill does not ban the export of nonmilitary items that might be licensed under the Export Administration Act.

A second part of our amendment strikes the language in H.R. 91 that makes a decision by the Administrator of the Arms Export Control Act as to what is a munitions item "final and conclusive." This portion of our amendment is designed to maintain the current situation in which interagency disputes as to whether an item should be on the munitions list or the commodity control list are settled among the administering agencies and ultimately the President if they can not agree. The Banking Committee made important changes to the Export Administration Act in the trade bill to ensure that interagency disputes are settled in a timely fashion and that exporters get timely decisions on whether an item can be exported. This amendment will ensure those changes are not inadvertently voided.

Again, let me thank Senators PELL and HELMS for their cooperation in shaping these two amendments.

### THE ANTITERRORISM AND ARMS EXPORT AMENDMENTS ACT OF 1989

Mr. KERRY. Mr. President, I am pleased that today the Senate is acting on the Antiterrorism and Arms Export Amendments Act of 1989, legislation I authored in this Congress as well as the last Congress. The bill's purpose is to reaffirm, strengthen, and clarify this Nation's prohibition on exports of military weapons and equipment to countries which have been designated by the Secretary of State as supporters of international terrorism. The bill also requires more detailed and periodic reporting of arms exports by the executive branch. Further, it imposes new criminal and civil penalties on violators of the prohibitions on arms exports to terrorist countries.

In 1986, section 40 of the Arms Export Control Act was amended to ban the export of items on the U.S. munitions list to any country which the Secretary of State determines repeatedly provides support for acts of international terrorism. A Presidential waiver is included in section 40 based on national interests of the United States. Any time such waiver authority is exercised, the President is required to report to Congress justifying the national interests and describing the proposed export.

Two months after enactment of this seemingly straightforward prohibition on exporting arms to terrorist states, 500 TOW missiles were shipped to Iran without notification to Congress. During the Iran/Contra investigation, repeated questions were raised as to the meaning and intent of section 40 and its relationship to other antiterrorism provisions in other laws.

Over the years, Federal law has absorbed overlapping standards that can lead to confusion and misinterpretation. There is no single standard in law for: First, determining whether a country supports international terrorism; second, identifying which U.S. official should make such a determination; third, identifying which arms are subject to restrictions; fourth, identifying the criteria that empower the President to waive statutory restrictions; and fifth, informing Congress of arms exports, including covert exports. The inconsistent provisions of existing law have blunted the effectiveness of U.S. antiterrorism policy, both in terms of Government actions and the activities of private American citizens who look to the law for guidance.

In the 100th Congress, Congressman HOWARD BERMAN of California, and Congressman HENRY J. HYDE of Illi-

nois, took the initiative to sort out the somewhat vague and ambiguous antiterrorism statutes which currently make up our antiterrorism policy. In a truly bipartisan manner, they developed legislation which states U.S. antiterrorism policy in a clear, uniform, and consistent manner. That legislation was adopted by the House of Representatives on three separate occasions in the last Congress.

In September 1988, Senators LUGAR and LAUTENBERG and I first introduced companion legislation in the Senate. Subsequent to hearings held by the Senate Foreign Relations Committee, a number of relatively minor changes were made—changes, I might add, which were made at the suggestion of the ranking minority member of the Foreign Relations Committee, Senator HELMS, and which were acceptable to the Department of State and the principal sponsors of the legislation in the House of Representatives, Congressmen BERMAN and HYDE.

Mr. President, it is high time the Senate acted on this bill designed to strengthen the statutory underpinnings of a strong U.S. antiterrorism policy.

Let me briefly describe the major objectives embodied in the bill:

First. To clarify and strengthen the prohibition on the export of military arms and equipment, "munitions items," to countries which the Secretary of State has determined repeatedly provide support for acts of international terrorism, "terrorist countries", including the imposition of criminal and civil penalties for violations of the prohibition;

Second. To establish uniform standards in the Arms Export Control Act, the Foreign Assistance Act of 1961, and the Export Administration Act of 1979 for the designation of a country as one whose government repeatedly provides support for acts of international terrorism and for the President's authority to waive statutory prohibitions or to rescind the Secretary of State's determination;

Third. To require validated licenses for the export of any goods technology which could significantly contribute to the military potential of a terrorist country or could enhance that country's ability to support international terrorism;

Fourth. To require quarterly reports from the executive branch listing all Presidential consents to transfers of munitions list items exceeding $1 million in value from a recipient country to a third country and to require quarterly reports, classified if necessary, of interagency transfers of munitions list items which will not ultimately be disposed of within the United States but excluding from such reports those munitions list items which are used solely in connection with intelligence activities and therefore subject to other reporting requirements under the National Security Act; and

Fifth. To clarify that the President's authority under the Hostage Act of 1868 to take action to release hostages cannot be carried out in a manner which would otherwise be prohibited by law.

Mr. President, the Senate Banking Committee has two amendments to the bill before us, both of which seek to avoid any unintended effect of the Export Administration Act, a matter within the jurisdiction of the Banking Committee. The first relates to a clarification that the provisions of this bill, as they relate to munitions items, will apply notwithstanding any other provision of law. The second amendment relates to new subsection 38(h) of this bill which exempts designation of munitions items by the President from judicial review, and makes a designation by the President final and conclusive. The Banking Committee amendment deletes the "final and conclusive" language, leaving the judicial review exemption intact. The committee will accept both of these provisions.

Mr. President, as I stated at the outset of my remarks, the Antiterrorism and Arms Export Amendments Act of 1989 is largely a restatement of existing law, closing potential loopholes and revising certain existing provisions to ensure that uniform standards are present in the United States Code. The bill makes no attempt to reform the personnel or structure of the National Security Council or the State, Commerce or Defense Departments. Nor does it seek to change the manner in which arms exports are approved by the U.S. Government or to impose blanket sanctions on terrorist states. The bill does not impair the President's discretionary authority. In fact, in some cases, the bill broadens the President's discretion while holding him to a reasonable standard of accountability to Congress in the exercise of that authority.

During House debate on the companion legislation to this bill last year, Congressman HYDE ably summed up the need for prompt enactment of this measure as follows:

> As serious terrorist acts proliferate and the global community struggles to respond effectively, it is now more important than ever that the United States have a consistent, clearly stated terrorist policy. This legislation is designed to help fill this need.

Mr. President, I urge adoption of H.R. 91.

The PRESIDING OFFICER. Is there further debate on the amendments? If not, the question is on agreeing to the amendments of the Senator from Michigan en bloc.

The amendments (Nos. 1204 and 1205) were agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 91), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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## INTERNATIONAL NARCOTICS CONTROL ACT—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on H.R. 3611 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3611) to combat international narcotics production and trafficking having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of today, November 21, 1989.)

Mr. HELMS. Mr. President, I am pleased that the Congress is now in a position to pass the international component of the President's Drug Program.

The bill closely resembles the House-passed bill, H.R. 3611 with several modifications.

The most important provision in the conference report is that contained in section 3. This is the provision authorizing $125 million for military and law enforcement assistance to Bolivia, Colombia, and Peru for fiscal year 1990. This is the amount requested by the President.

Unfortunately, the House conferees were insistent in maintaining subtotal allocations for various purposes, thereby potentially restricting the flexibility the President had sought and limiting the waiver authority. Of the $125 million, no more than $12.5 million may be made available for equipment, both lethal and nonlethal, to police in the three countries, and no more than $6.5 million in training for police there.

The aid is provided with a waiver of section 660 of the Foreign Assistance Act of 1961, which generally prohibits aid to foreign police forces. The Senate bill, and the administration's request had been for a permanent waiver of section 660 for Bolivia, Colombia, and Peru.

This authorization level, and the corresponding waiver, are the essential elements of this bill. Some of the other items included here have previously been included in other legislation, primarily the Foreign Operations Appropriations Act for 1990. However, because all of these bills have been heading toward enactment, there is some overlap between the bills. The administration should study the provisions carefully to avoid any unintended duplication of requirements contained in the bill.

In each case, the pending bill provides for a 1-year provision. One House provision has been changed from permanent to a 1-year waiver. The House bill contained a permanent waiver of the so-called Bumpers amendment which prohibits foreign aid for commodities which are in direct competition with U.S. commodities. The House bill would have permitted assistance for crop substitution projects in support of narcotics control activities.

However, the House bill made the waiver permanent. Mr. President, it is my judgment that the Congress should proceed cautiously in this area. We all want to assist the governments of Latin America in their efforts to be weaned from illicit drug cultivation. However, Congress needs to monitor carefully what specific crops are chosen for substitution and ensure that these do not compete with U.S. agricultural commodities.

Mr. BIDEN. Mr. President, I strongly support this bill. This legislation goes well beyond the President's own international drug bill, and provides him with important new tools to combat the international drug trade.

I would like to call attention to a number of important provisions in the bill. The first is section 10, which authorizes the President to implement "debt-for-drugs" exchanges with Bolivia, Colombia, or Peru. These swaps would provide relief on debt owed to the U.S. Government if the President determines that the country is implementing programs to reduce the flow of cocaine to the United States.

This section is intended to give the President the authority to implement the sort of debt-for-drugs swaps I suggested back in September. Such swaps are a powerful weapon in the war on drugs in the Andes. Each of the three Andean nations eligible for this debt relief have large external debt burdens. Servicing these debts in normal circumstances would be difficult; in the face of an assault by the drug traffickers—not to mention an economic downturn—it is nearly impossible.

Indeed, it is counterproductive for the United States to insist that these nations remain current on their debt payments while also requesting them to launch a full-scale war on drugs. It simply does not make sense.

Sadly, it is just another example of the lack of coordination within the U.S. Government on drug policy. With one hand, we offer millions in new assistance to the Andean nations to fight the drug war. With the other, we demand that they make good on their debts.

By swapping debt-for-drugs, we can free up significant resources within the source countries for antidrug efforts. We can provide an important boost to their economies, which are struggling to recover from a decade of recession.

I do not envision that this program will be a blank check. I fully expect that the Andean nations will use a major portion of the savings in debt service on antidrug programs. If we determine that they are not sufficiently committed to this effort, then the deal is off, and the debt payments must resume.

This type of exchange is not unique. In fact, it is modeled on "debt-for-nature" swaps that have already been negotiated with many developing nations.

The exchanges authorized in this bill are also modeled on comprehensive debt-for-drugs legislation that I am introducing in the Senate today. This legislation has been developed through extensive consultation with United States and Andean experts on debt and economic reform, as well as officials of the Andean nations.

Like the bill before us today, my bill provides for relief of the official debt held by the U.S. Government. Just as important, my proposal is also aimed at providing relief of commercial and multilateral bank debt owed by drug-producing nations.

The legislation we are about to pass today is more limited than my comprehensive proposal, but it is an important step in the right direction. I am pleased that the conference accepted this provision. I hope the President will use the legislation before us to grant relief of U.S. official debt. But the effort will be incomplete until we address each of the three types of debt owed by the Andean countries, and until we obtain the support of other nations in the developed world. That is why the more comprehensive approach I am proposing today is required.

I am also pleased with the conferees' action on section 2 of this bill, which has two parts. The first part urges the President to complete his Andean strategy by including funds for economic development and alternative employment programs in South America. Thus far, the President's plan has focused largely on law enforcement and military assistance to the Andean nations. As I have said before, this is a mistake. A policy that focuses solely on enforcement is only half a policy, because it ignores the crucial economic underpinnings of the drug trade.

This concept is fairly simple, and I am amazed that the President has decided to wait a year before addressing it. Peasants in the Andes grow coca for one reason: so they can feed their families. They do not grow coca out of spite for the United States, and they are not plotting to corrupt our citizens; they grow coca because they have no alternative. We must help the nations of the Andes provide an alternative. Without, even the best enforcement efforts will be doomed to fail, just as the best enforcement programs in this country will fail unless accompanied by treatment and education programs.

The second part of section 2 involves the upcoming Andean summit, where President Bush will meet with the leaders of Bolivia, Colombia, and Peru. The language adopted by the conferees in section 2 urges the President to raise a number of important items at the summit, including the use of debt-for-drugs exchanges. I believe, as do the officials of the Andean nations, that such swaps should be an important topic on the agenda of the summit.

The Andean summit presents the President with a unique opportunity to inject a new spirit of cooperation between the nations of the hemisphere in the war on drugs. Sadly, the record thus far has been dismal. We have often blamed the South Americans for sending drugs to our shores. Likewise, the South Americans blame the United States for creating the demand for narcotics.

There is some truth in both charges. But is we continue to engage in mutual recriminations and finger-pointing, the battle will be lost. We must join together with our neighbors to the south in a common effort against this blight on our hemisphere. The summit gives us that chance to begin anew.

But we cannot begin again without a serious agenda. This cannot be just another photo opportunity for the President. The language approved by the conferees gives President Bush a starting point to build his agenda. It is not all-inclusive. But I am hopeful that he will take our suggestions seriously, and address the important issues that we have raised in this section of the bill.

Another important provision is section 12, which urges the administration to coordinate U.S. trade and economic policy with our narcotics control objectives. This would seem to be

an obvious point, but unfortunately that has not always been the case.

Once again, we recently saw some members of the administration working against the President's drug policy. Last July, negotiations to renew the International Coffee Agreement fell apart. Much of the blame for this failure has fallen on the United States.

Regardless of the truth of this claim, one thing is clear: The United States should never have allowed the coffee agreement to collapse. Since July, the price of coffee on the world market has fallen by half. Colombia, where coffee accounts for one-third of legal exports, will lose approximately $500 million in revenues next year. United States aid to Colombia next year will be less than half that amount.

Coordination of our trade and drug policies is crucial to our success in the war on drugs. We cannot continue to run this effort from one Government agency. That is why Congress created the Drug Director's Office in the first place—to coordinate our drug policy with our other policies. The failure of the United States on the International Coffee Agreement is not an auspicious beginning for such coordination.

The bill contains several other important provisions, including a 1-year waiver of section 660 of the Foreign Assistance Act of 1961, which will allow the United States to provide law enforcement training to the police forces in Bolivia, Colombia, and Peru, and a 1-year waiver of section 620(q) of the Foreign Assistance Act, the so-called Brooke-Alexander provision, which requires the suspension of aid to any country more than 1 year behind in its repayment of official United States debt. The Drug Director, Mr. Bennett, was especially concerned about these provisions, and I hope that they will serve to increase the effectiveness of those forces in the Andes that are leading the drug fight.

In closing, Mr. President, I praise this legislation as the first step toward the use of debt-for-drugs exchanges. I believe they will be key to an effective Andean strategy, and I look forward to enactment of the comprehensive approach that I have proposed.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## NATIONAL DRUNK AND DRUGGED DRIVING AWARENESS WEEK

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 429, a joint resolution designating the week of December 10 as "National Drunk and Drugged Driving Awareness Week," just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 429) to designate the week of December 10, 1989, through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week.".

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The question is on passage of the joint resolution.

The joint resolution (H.J. Res. 429) was passed.

The preamble was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## NATIONAL ALZHEIMER'S DISEASE MONTH

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 16.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved,* That the resolution from the Senate (S.J. Res. 16) entitled "Joint resolution designating the month of November 1989 as 'National Alzheimer's Disease Months' ", do pass with the following amendments:

Page 2, line 3, strike out "the month of November 1989 is" and insert "November 1989 and November 1990 are".

Page 2, line 6, strike out "month" and insert "months".

Amend the title so as to read: "Joint resolution designating November 1989 and November 1990 as 'National Alzheimer's Disease Month'.".

Mr. PRYOR. Mr. President, late last week I was pleased to add my name as a cosponsor of S. 1255, the Alzheimer's Disease Research and Training Act of 1989.

This important legislation, introduced by Senator METZENBAUM, would implement the recommendations made earlier this year by the Advisory Panel on Alzheimer's Disease [APAD]. Established by Public Law 99-660, the APAD was appointed by the Director of the Office of Technology Assessment to advise the Department of Health and Human Services and its Council on Alzheimer's Disease, as well as the Congress, on Alzheimer's research priorities and policy recommendations.

Alzheimer's disease and other related dementias [ADRD] gradually and completely erode the mind and the personality of its victims. These chronic degenerative illnesses cause enormous hardships on spouses and other family members who shoulder the burden of caring for their loved one, often for years. Its victims are mostly the elderly, especially persons over 85 years of age.

The extent of this devastating condition is far greater than we believed it to be. Less than 2 weeks ago, in a report published in the Journal of the American Medical Association [JAMA], it was reported that nearly 4 million Americans—nearly twice previous estimates—are afflicted with Alzheimer's. This report presents the shocking findings that almost half—47.2 percent—of all persons over 85 years of age suffer from Alzheimer's disease, which more than doubles previous estimates. Among the 1.3 million Americans who reside in nursing homes, an estimated one-half to two-thirds have Alzheimer's disease or some other form of cognitive impairment.

Mr. President, in my home State, an estimated 48,000 Arkansans are afflicted with Alzheimer's disease. In Arkansas, and in every State in the Union, their numbers are expected to dramatically increase due to the burgeoning population over the age of 65. With no known means of preventing or curing Alzheimer's disease, there exists a demographic and humanitarian imperative to improve the quality of life for the millions who suffer with Alzheimer's, or care for those who do, and to prevent the onset of this insidious disease for future generations.

I share the view of the APAD, Senator METZENBAUM, and many others, that we must increase the level of essential basic research, including new research centers. We must also make a strong commitment to training professionals and other personnel who care for the ADRD population.

The Federal Government has been the largest financial supporter of research in Alzheimer's disease, contributing 90 percent of all research dollars. Yet, in 1989, less than $130 million was spent on all types of Alzheimer's disease investigation including biomedical, social, behavioral, and service-related research. This funding

represents less than one-half of 1 percent of the cost of care for individuals with Alzheimer's disease and related dementias—which is estimated now to cost society $80 billion annually.

The Alzheimer's Disease Research and Training Act of 1989 will enable us to increase these critical efforts by doubling the amount of biomedical research dollars currently spent. This should allow the funding of approximately half of all approved meritorious investigator-initiated grant proposals. This legislation would increase funding for biomedical research, expand the Alzheimer's disease research centers, establish up to 10 centers for research Alzheimer's-related services, and to train personnel working with ADRD patients.

Specifically, S. 1255 would authorize an additional $150 million for biomedical research, including $30 million for the 15 Alzheimer's disease research centers to conduct or operate longitudinal and multidisciplinary studies and clinical trials and to establish tissue banks and patient registries. In addition, funds would be used to update and expand research centers, establish offsite and satellite facilities in underserved and rural areas, and to attract young researchers, especially women and underrepresented groups, to pursue careers in fields involving biomedical, behavioral, and social aspects of Alzheimer's disease.

Recognizing the need to research the financing and delivery of health services for the victims of Alzheimer's disease, this bill also would finance the establishment of 10 centers to conduct research on key health services; and for research and evaluation of Alzheimer's disease services, psychosocial issues, and behavioral management methods, including the best methods of designing, delivering, and financing clinical care and family services for ADRD patients.

Last, funds would be authorized to train professionals and support personnel who are responsible for caring for patients with Alzheimer's disease and related dementias. Nursing home personnel and other personnel who provide patient and family counseling would be targeted for special training.

Mr. President, I would like to use this opportunity to commend the work that Arkansas' two Alzheimer's Disease and Related Disorders Association chapters—the Western Arkansas Chapter of the Alzheimer's Association in Fort Smith and the Central Arkansas Chapter of the Alzheimer's Association in Little Rock—have done to assist Alzheimer's patients and their caregivers, and to educate their communities. I would particularly like to note their efforts in establishing much needed support groups for the families of those with Alzheimer's throughout Arkansas.

In light of the recent and shocking report in JAMA, and considering that this is "National Alzheimer's Disease Month," this is an opportune time to examine our commitment to more fully tackling this serious disease. I urge my colleagues to support this timely and needed legislation for the 4 million Americans who have thus far fallen victim to Alzheimer's disease, for the millions more who will, and for their deeply committed and hard-working caregivers—those who work the "36-hour day."

Mr. MITCHELL. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## FREDERICKSBURG AND SPOTSYLVANIA COUNTY BATTLEFIELDS MEMORIAL NATIONAL PARK EXPANSION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item No. 413, H.R. 875, the Fredericksburg and Spotsylvania County Battlefield Memorial Park Expansion Act of 1989.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 875) to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park near Fredericksburg, Virginia.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park near Fredericksburg, VA, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

H.R. 875

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park Expansion Act of 1989".

SEC. 2. REVISION OF PARK BOUNDARIES.

(a) BOUNDARY REVISION.—In furtherance of the purposes of the Act entitled "An Act to establish a national military park at and near Fredericksburg, Virginia, and to mark and preserve historical points connected with the battles of Fredericksburg, Spotsylvania Court House, Wilderness, and Chancellorsville, including Salem Church, Virginia," approved February 14, 1927 (44 Stat. 1091), the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park (hereinafter in this Act referred to as the "park") shall hereafter comprise the lands and interests in lands within the boundary generally depicted as "Proposed Park Boundary" On the maps entitled "Fredericksburg and Spotsylvania National Military Park," numbered 326-40075D/89, 326-40074E/89, 326-40069B/89, 326-40070D/89, 326-40071C/89, 326-40072E/89, 326-40076A/89, 326-40073D/89, and dated June 1989. The maps shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior.

(b) EXCLUDED LANDS.—Lands and interests in lands within the boundary depicted on the maps referred to in subsection (a) as "Existing Park Boundary" but outside of the boundary depicted as "Proposed Park Boundary" are hereby excluded from the [park] *park, in accordance with the provisions of subsection 3(b).* The Secretary of the Interior (hereinafter referred to as the "Secretary") may relinquish to the Commonwealth of Virginia exclusive or concurrent legislative jurisdiction over lands excluded from the park by [subsection (a)] *this section* by filing with the Governor a notice of relinquishment. Such relinquishment shall take effect upon acceptance thereof, or as the laws of the Commonwealth may otherwise provide. [If any such lands and interests are not conveyed in an exchange under section 3(b) within five years after the enactment of this Act, the Secretary may sell any or all such lands and interests to the highest bidder and, notwithstanding any other provision of law, retain and use the proceeds to acquire lands and interests within the park.]

SEC. 3. ACQUISITIONS AND CONVEYANCES.

(a) ACQUISITION.—The Secretary is authorized to acquire lands and interests in lands within the park, by donation, purchase with donated or appropriated funds or by exchange.

[(b) EXCHANGE OF LANDS.—In acquiring lands and interests within the park by exchange, the Secretary may convey Federal lands and interests excluded from the park by section 1.]

*(b) CONVEYANCE OF LANDS EXCLUDED FROM PARK.—(1) The Secretary is authorized, in accordance with applicable existing law, to exchange Federal lands and interests excluded from the park pursuant to subsection 2(b) for the purpose of acquiring lands within the park boundary.*

*(2) If any such Federal lands or interests are not exchanged within five years after the date of enactment of this Act, the Secretary may sell any or all such lands or interests to the highest bidder, in accordance with such regulations as the Secretary may prescribe, but any such conveyance shall be at not less than the fair market value of the land or interest, as determined by the Secretary.*

*(3) All Federal lands and interests sold or exchanged pursuant to this subsection shall be subject to such terms and conditions as will assure the use of the property in a manner which, in the judgment of the Secretary, will protect the battlefield setting. Notwithstanding any other provision of law,*

*the net proceeds from any such sale or exchange shall be used, subject to appropriations, to acquire lands and interests within the park.*

(c) ALTERNATIVE ACCESS.—In order to facilitate the acquisition by the United States of existing easements or rights of access across Federal lands within the park and to provide the owners of such easements or rights of access with alternative rights of access across nonpark lands, the Secretary may acquire, by donation, purchase with donated or appropriated funds, or exchange, interests in land of similar estate across lands which are not within the park. With or without the acceptance of payment of cash to equalize the values of the properties, the Secretary may convey such nonpark lands or interests in lands to the holders of such existing easements or rights of access across Federal lands within the park in exchange for their conveyance to the United States of such easements or rights. Nothing in this Act shall prohibit the Secretary from acquiring any outstanding easements or rights of access across Federal lands by donation, purchase with donated or appropriated funds or by exchange.

(d) CONSERVATION EASEMENTS.—The Secretary is authorized to accept donations of conservation easements on lands adjacent to the park. Such conservation easements shall have the effect of protecting the scenic and historic resources on park lands and the adjacent lands or preserving the undeveloped or historic appearance of the park when viewed from within or without the park.

(e) OTHER PROVISIONS.—Within the area bounded by the Orange Turnpike, the Orange Plank Road, and McLaws Drive no improved property (as defined in section 4) may be acquired without the consent of the owner thereof unless the Secretary determines that, in his judgment, the property is subject to, or threatened with, uses which are having, or would have, an adverse impact on the park.

SEC. 4. RETAINED RIGHTS.

(a) RETENTION OF USE AND OCCUPANCY.—With the exception of property which the Secretary determines is necessary for development or public use, the owner or owners of improved property acquired pursuant to this Act may retain a right of use and occupancy of such improved property for noncommercial residential purposes for a definite term of not more than twenty-five years, or for a term ending at the death of the owner or the owner's spouse. The owner shall elect the term to be reserved, except that if the owner is a corporation, trust, partnership, or any entity other than an individual, the term shall not exceed twenty-five years. Ownership shall be determined as of June 1, 1989. Unless the property is wholly or partially donated, the Secretary shall pay to the owner the fair market value of the property on the date of such acquisition, less the fair market value of the right retained by the owner.

(b) TERMS AND CONDITIONS.—Any rights retained pursuant to this section shall be subject to such terms and conditions as the Secretary may prescribe and may be terminated by the Secretary upon his determination and after reasonable notice to the owner thereof that such property is being used for any purpose which is incompatible with the administration, protection, or public use of the park. Such right shall terminate by operation of law upon notification of the owner by the Secretary and tendering to the owner an amount equal to the fair market value of that portion of the right which remains unexpired.

(c) DEFINITION.—As used in this section, the term "improved property" means a year-round noncommercial single-family dwelling together with such land, in the same ownership as the dwelling, as the Secretary determines is reasonably necessary for the enjoyment of the dwelling for single-family residential use.

SEC. 5. INTERPRETATION.

In administering the park, the Secretary shall take such action as is necessary and appropriate to interpret, for the benefit of visitors to the park and the general public, the battles of Fredericksburg, Chancellorsville, Spotsylvania Courthouse, and the Wilderness in the larger context of the Civil War and American history, including the causes and consequences of the Civil War and including the effects of the war on all the American people, especially on the American South.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Mr. WARNER. Mr. President, on August 4 of this year, I, along with my colleagues, Senators BUMPERS and ROBB, introduced S. 1559, the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park Expansion Act of 1989. Later this year, we were pleased to have Senator JEFFORDS join us as a cosponsor. This bill consolidates and reasonably expands the boundaries of the existing Fredericksburg-Spotsylvania Park, which has jurisdiction over four battlefields which were pivotal to the course of the War Between the States.

Today, the Senate is considering H.R. 875, a bill that is identical to S. 1559. H.R. 875 was introduced by my colleague Congressman FRENCH SLAUGHTER, who represents the Seventh Congressional District of Virginia which contains the existing and proposed park land.

I am privileged to bring this legislation to the Senate because it is essential to ensure that an important part of our Nation's heritage will be preserved for future generations.

Mr. President, the present Fredericksburg-Spotsylvania County Battlefields Memorial National Military Park was established in 1927, with the acquisition of the actual fighting lines and earthworks of the above cited four key Civil War battles that occurred near Fredericksburg, VA, between 1862 and 1864. Now, suburban growth threatens the integrity of not only the fighting lines and earthworks, but of the battlefields themselves not now Federal park land. The time has come to create a boundary to protect all four important battlefields and to consolidate them onto a single integrated park.

As Congress has provided for other national parks, this bill authorizes additional land acquisition, land exchanges, acquisition of alternative rights of access and acceptance of donated conservation easements. Specifically, to assist in expanding existing boundaries, the bill requires the purchase by the National Park Service of 762 acres of private land and 593 acres in scenic easements.

Mr. President, the House of Representatives has already unanimously passed H.R. 875.

In addition, just last week, the Senate Committee on Energy and Natural Resources unanimously approved H.R. 875 with technical and conforming amendments. Congessman SLAUGHTER has indicated to me that the appropriate House committees of jurisdiction are willing to accept the Senate amendments, so that this bill can become law before sine die adjournment.

Mr. President, the Fredericksburg-Spotsylvania area was militarily significant during the Civil War because of its proximity to Richmond, the capital and industrial center of the Confederacy. Four important battles occurred on the way to Richmond: Fredericksburg, Chancellorsville, Wilderness, and Spotsylvania Court House.

The Confederate Army achieved substantial gains during both the battles of Fredericksburg, in December 1862, and Chancellorsville, in April 1863. The Confederate gain at Chancellorsville was also marred because of the loss of the famed General Stonewall Jackson. During the battles of Wilderness and Spotsyvania Court House both in May 1864, General Grant succeeded in pushing Lee back closer to Richmond, despite significant losses. Although these two battles are viewed by historians as Confederate gains, they mark the beginning of a long campaign in which the Federal Army under U.S. Grant ultimately gained its objectives.

Mr. President, the Park Service needs the authority to go forward with the acquisition of the additional land called for in this proposed legislation to guard against development threatening the historical integrity of this hallowed ground. I hope that my colleagues in the Senate will act favorably on this legislation.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendments.

The committee amendments were agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendments and third reading of the bill.

The committee amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 875), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## MEASURES PLACED ON THE CALENDAR—S. 1970 AND S. 1971

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 1970, a crime bill introduced earlier today by Senator BIDEN, and S. 1971, a crime bill introduced by Senator THURMOND, be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

## AUTHORITY FOR COMMITTEES TO FILE LEGISLATIVE CALENDAR BUSINESS ON DECEMBER 20, 1989

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senate committees may file reported legislative calendar business on December 20, 1989, in lieu of December 13, and that the second filing date and other provisions of the previous order remain in effect.

The PRESIDING OFFICER. Without objection, it is so ordered.

## EMMETT SANDERS LOCK AND DAM

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item 419, H.R. 2178, to designate the Emmett Sanders Lock and Dam.

The PRESIDING OFFICER. Without objection, the bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2178) to designate lock and dam numbered 4 on the Arkansas River, Arkansas, as the Emmett Sanders Lock and Dam.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 2178) was ordered to a third reading, was read the third time, and passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## EVERGLADES NATIONAL PARK EXPANSION AND PROTECTION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item 300, S. 724, the Everglades National Park Protection Act.

The PRESIDING OFFICER. Without objection. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 724) to modify the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with amendments as follows:

(The parts of the bill intended to be stricken are shown in bold-face brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 724

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Everglades National Park Protection and Expansion Act of 1989".

### TITLE I—EVERGLADES NATIONAL PARK EXPANSION

*[SEC. 101. FINDINGS AND PURPOSES.]*

*SEC. 101. FINDINGS, PURPOSES AND DEFINITION OF TERMS.*

(a) FINDINGS.—The Congress makes the following findings:

(1) The Everglades National Park is a nationally and internationally significant resource and the park has been adversely affected and continues to be adversely affected by external factors which have altered the ecosystem including the natural hydrologic conditions within the park.

(2) The existing boundary of Everglades National Park excludes the contiguous lands and waters of the Northeast Shark River Slough that are vital to long-term protection of the park and restoration of natural hydrologic conditions within the park.

(3) Wildlife resources and their associated habitats have been adversely impacted by the alteration of natural hydrologic conditions within the park, which has contributed to an overall decline in fishery resources and a 90 percent population loss of wading birds.

(4) Incorporation of the Northeast Shark River Slough and the East Everglades within the park will limit further losses suffered by the park due to habitat destruction outside the present park boundaries and will preserve valuable ecological resources for use and enjoyment by future generations.

(5) The State of Florida and certain of its political subdivisions or agencies have indicated a willingness to transfer approximately 35,000 acres of lands under their jurisdiction to the park in order to protect lands and water within the park, and may so transfer additional lands in the future.

(6) The State of Florida has proposed a joint Federal-State effort to protect Everglades National Park through the acquisition of additional lands.

(b) PURPOSE.—The purposes of this Act are to—

(1) increase the level of protection of the outstanding natural values of Everglades National Park and to enhance and restore the ecological values, natural hydrologic conditions, and public enjoyment of such area by adding the area commonly known as the Northeast Shark River Slough and the East Everglades to Everglades National Park; and

(2) assure that the park is managed in order to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem.

*(c) DEFINITIONS.—As used in this Act:*

*(1) The term "Secretary" means the Secretary of the Interior.*

*(2) The term "addition" means the approximately 107,600 acre area of the East Everglades area authorized to be added to Everglades National Park by this Act.*

*(3) The term "park" means the area encompassing the existing boundary of Everglades National Park and the addition area described in paragraph (2).*

*(4) The term "project" means the Central and Southern Florida Project.*

SEC. 102. BOUNDARY MODIFICATION.

**[**(a) AREA INCLUDED.—The boundary of the Everglades National Park (in this Act referred to as the "park") is hereby modified to include approximately 110,000 additional acres (in this Act referred to as the "addition") as generally depicted on the map entitled "Boundary Map, Everglades National Park Addition, Dade County, Florida", numbered 160-20,013, and dated April, 1989. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.**]**

*(a) AREA INCLUDED.—The park boundary is hereby modified to include approximately 107,600 acres as generally depicted on the map entitled "Boundary Map, Everglades National Park Addition, Dade County, Florida", numbered 160-20,013B and dated September 1989. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.*

(b) BOUNDARY ADJUSTMENT.—The Secretary **[**of the Interior (in this Act referred to as the "Secretary")**]** may from time to time make minor revisions in the boundaries of the park in accordance with section 7(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 and following). In exercising the boundary adjustment authority the Secretary shall ensure all actions will enhance resource preservation and shall not result in a net loss of acreage from the park.

(c) ACQUISITION.—(1) Within the boundaries of the addition described in subsection (a), the Secretary may acquire lands and interests in land by donation, purchase with donated or appropriated funds, or exchange. For purposes of acquiring property by exchange, the Secretary may, notwithstanding any other provision of law, exchange the approximately one acre of Federal land known as "Gilberts' Marina" for non-Federal land of equal value located within the boundaries of the addition. Any lands or interests in

land which are owned by the State of Florida or any political subdivision thereof, may be acquired only by donation.

(2) It is the express intent of Congress that acquisition within the boundaries of the addition shall be completed not later than 5 years after the date of enactment of this section. The authority provided by this section shall remain in effect until all acquisition is completed.

(d) ACQUISITION OF TRACTS PARTIALLY OUTSIDE BOUNDARIES.—When any tract of land is only partly within boundaries referred to in subsection (a), the Secretary may acquire all or any portion of the land outside of such boundaries in order to minimize the payment of severance costs. Land so acquired outside of the boundaries may be exchanged by the Secretary for non-Federal lands within the boundaries, and any land so acquired and not utilized for exchange shall be reported to the General Services Administration for disposal under the Federal Property and Administrative Services Act of 1949 (63 Stat. 377).

(e) OFFERS TO SELL.—In exercising the authority to acquire property under this Act, the Secretary shall give prompt and careful consideration to any offer made by any person owning property within the boundaries of the addition to sell such property, if such owner notifies the Secretary that the continued ownership of such property is causing, or would result in undue hardship.

(f) AUTHORIZATION OF APPROPRIATIONS.—(1) Subject to the provisions of paragraph (2), there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(2) With respect to land acquisition within the addition, not more than 80 percent of the cost of such acquisition may be provided by the Federal Government. Not less than 20 percent of such cost shall be provided by the State of Florida.

(g) ASSISTANCE.—Upon the request of the Governor of the State of Florida, the Secretary is authorized to provide technical assistance and personnel to assist in the acquisition of lands and waters within the Kissimmee River/Lake Okeechobee/Everglades Hydrologic Basin, including the Big Cypress Swamp, through the provision of Federal land acquisition personnel, practices, and procedures. The State of Florida shall reimburse the Secretary for such assistance in such amounts and at such time as agreed upon by the Secretary and the State. Notwithstanding any other provision of law, reimbursement received by the Secretary for such assistance shall be retained by the Secretary and shall be available without further appropriation for purposes of carrying out any authorized activity of the Secretary within the boundaries of the park.

SEC. 103. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the areas within the addition in accordance with this Act and other provisions of law applicable to the Everglades National Park, and with the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4). In order to further preserve and protect Everglades National Park, the Secretary shall utilize such other statutory authority as may be available to him for the preservation of wildlife and natural resources as he deems necessary to carry out the purposes of this Act.

(b) PROTECTION OF ECOSYSTEM.—The Secretary shall manage the park in order to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem.

(c) PROTECTION OF FLORA AND FAUNA.—The park shall be closed to the operation of airboats—

(1) except as provided in subsection (d); and

(2) except that within a limited capacity and on designated routes within the addition, owners of record of registered airboats in use within the addition as of January 1, 1989, shall be issued nontransferable, nonrenewable permits, for their individual lifetimes, to operate personnally-owned airboats for noncommercial use in accordance with rules prescribed by the Secretary to determine ownership and registration, establish uses, permit conditions, and penalties, and to protect the biological resources of the area.

(d) CONCESSION CONTRACTS.—The Secretary is authorized to negotiate and enter into concession contracts with the owners of commercial airboat and tour facilities in existence on or before January 1, 1989, located within the addition for the provision of such services at their current locations under such rules and conditions as he may deem necessary for the accommodation of visitors and protection of biological resources of the area.

(e) VISITOR CENTER.—The Secretary is authorized and directed to expedite the construction of the visitor center facility at Everglades City, Florida, as described in the Development Concept Plan, Gulf Coast, dated February 1989, and upon construction shall designate the visitor center facility as "The Marjory Stoneman Douglas Center" in commemoration of the vision and leadership shown by Mrs. Douglas in the protection of the Everglades and Everglades National Park.

*SEC. 104. MODIFICATION OF CERTAIN WATER PROJECTS.*

*(a) IMPROVED WATER DELIVERIES.—(1) The Secretary of the Army, in consultation with the Secretary, is authorized and directed to construct modifications to the Central and Southern Florida Project to improve water deliveries into the park and shall, to the extent practicable, take steps to restore the natural hydrological conditions within the park.*

*(2) Such modifications shall be based upon the findings of the Secretary's experimental program authorized in section 1302 of the 1984 Supplemental Appropriations Act (97 Stat. 1292) and generally as set forth in a General Design Memorandum to be prepared by the Jacksonville District entitled "Modified Water Deliveries to Everglades National Park". The Draft of such Memorandum and the Final Memorandum, as prepared by the Jacksonville District, shall be submitted as promptly as practicable to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation of the United States House of Representatives.*

*(3) Construction of project modifications authorized in this subsection and flood protection systems authorized in subsections (c) and (d) are justified by the environmental benefits to be derived by the Everglades ecosystem in general and by the park in particular and shall not require further economic justification.*

*(4) Nothing in this section shall be construed to limit the operation of project facilities to achieve their design objectives, as set forth in the Congressional authorization and any modifications thereof.*

*(b) DETERMINATION OF ADVERSE EFFECT.—(1) Upon completion of the Final Memorandum referred to in subsection (a), the Secretary of the Army, in consultation with the South Florida Water Management District, shall make a determination as to whether the residential area within the East Everglades known as the "Eight and One-Half Square Mile Area" or adjacent agricultural areas, all as generally depicted on the map referred to in subsection 102(a), will be adversely affected by project modifications authorized in subsection (a).*

*(2) In determining whether adjacent agricultural areas will be adversely affected, the Secretary of the Army shall consider the impact of any flood protection system proposed to be implemented pursuant to subsection (c) on such agricultural areas.*

*(c) FLOOD PROTECTION; EIGHT AND ONE-HALF SQUARE MILE AREA.—If the Secretary of the Army makes a determination pursuant to subsection (b) that the "Eight and One-Half Square Mile Area" will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for that portion of presently developed land within such area.*

*(d) FLOOD PROTECTION; ADJACENT AGRICULTURAL AREA.—(1) If the Secretary of the Army determines pursuant to subsection (b) that an adjacent agricultural area will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for such area. Such determination shall be based on a finding by the Secretary of the Army that:*

*(A) the adverse effect will be attributable solely to a project modification authorized in subsection (a) or to a flood protection system implemented pursuant to subsection (c), or both; and*

*(B) such modification or flood protection system will result in a substantial reduction in the economic utility of such area based on its present agricultural use.*

*(2) No project modification authorized in subsection (a) which the Secretary of the Army determines will cause an adverse effect pursuant to subsection (b) shall be made operational until the Secretary of the Army has implemented measures to prevent such adverse effect on the adjacent agricultural area: Provided, That the Secretary of the Army or the South Florida Water Management District may operate the modification to the extent that the Secretary of the Army determines that such operation will not adversely affect the adjacent agricultural area: Provided further, That any preventive measure shall be implemented in a manner that presents the least prospect of harm to the natural resources of the park.*

*(3) Any flood protection system implemented by the Secretary of the Army pursuant to this subsection shall be required only to provide for flood protection for present agricultural uses within such adjacent agricultural area.*

*(4) The acquisition of land authorized in section 102 shall not be considered a project modification.*

*(e) PERIODIC REVIEW.—(1) Not later than 18 months after the completion of the project modifications authorized in subsection (a), and periodically thereafter, the Secretary of the Army shall review the determination of adverse effect for adjacent agricultural areas.*

*(2) In conducting such review, the Secretary of the Army shall consult with all affected parties, including, but not limited to, the Secretary, the South Florida Water Management District, and agricultural users within adjacent agricultural areas.*

*(3) If, on the basis of such review, the Secretary of the Army determines that an adjacent agricultural area has been, or will be adversely affected, the Secretary of the Army is authorized and directed, in accordance with the provisions of subsection (d), to construct a flood protection system for such area: Provided, That the provisions of subsection (d)(2) shall not be applicable to a flood protection system implemented pursuant to such review.*

*(4) The provisions of this subsection shall only be applicable if the Secretary of the Army has previously made a determination that such adjacent agricultural area will not be adversely affected.*

*(f) CURRENT CANAL OPERATING LEVELS.—Nothing in this section shall be construed to require or prohibit the Secretary of the Army or the South Florida Water Management District from maintaining the water level within any project canal below the maximum authorized operating level as of the date of enactment of this Act.*

*(g) NO LIMITATION ON OTHER CLAIMS.—If the Secretary of the Army makes a determination of no adverse effect pursuant to subsection (b), such determination shall not be considered as a limitation or prohibition against any available legal remedy which may otherwise be available.*

*(h) COORDINATION.—The Secretary and the Secretary of the Army shall coordinate the construction program authorized under this section and the land acquisition program authorized in section 102 in such a manner as will permit both to proceed concurrently and as will avoid unreasonable interference with property interests prior to the acquisition of such interests by the Secretary under section 102.*

*(i) WEST DADE WELLFIELD.—No Federal license, permit, approval, right-of-way or assistance shall be granted or issued with respect to the West Dade Wellfield (to be located in the Bird Drive Drainage Basin, as identified in the Comprehensive Development Master Plan for Dade County, Florida) until the Secretary, the Governor of the State of Florida, the South Florida Water Management District, and Dade County, Florida enter into an agreement providing that the South Florida Water Management District's water use permit for the wellfield, if granted, must include the following limiting conditions: (1) the wellfield's peak pumpage rate shall not exceed 140,000,000 gallons per day; (2) the permit shall include reasonable, enforceable measures to limit demand on the wellfield in times of water shortage; and (3) if, during times of water shortage, the District fails to limit demand on the wellfield pursuant to (2), or if the District limits demand on the wellfield pursuant to (2), but the Secretary certifies that operation of the wellfield is still causing significant adverse impacts on the resources of the Park, the Governor shall require the South Florida Water Management District to take necessary actions to alleviate the adverse impact, including, but not limited to, temporary reductions in the pumpage from the wellfield.*

*(j) PROTECTION OF NATURAL VALUES.—The Secretary of the Army is directed in analysis, design and engineering associated with the development of a general design memorandum for works and operations in the "C-111 basin" area of the East Everglades, to take all measures which are feasible and consistent with the purposes of the project to protect natural values associated with Everglades National Park. Upon completion of a general design memorandum for the area, the Secretary shall prepare and transmit a report to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation of the United States House of Representatives on the status of the natural resources of the C-111 basin and functionally related lands.*

**TITLE II—FORT JEFFERSON NATIONAL MONUMENT REDESIGNATION STUDY**

**SEC. 201. FORT JEFFERSON NATIONAL MONUMENT REDESIGNATION STUDY.**

The Secretary shall prepare and transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, not later than 2 years after the date of enactment of this Act, a feasibility and suitability study of expanding and redesignating Fort Jefferson National Monument in the Dry Tortugas as Fort Jefferson National Park. The study shall include cost estimates for any necessary acquisition, development, operation, and maintenance, as well as alternatives, including a joint Federal and State management scheme, to further protect the waters, reef tracts, fisheries, and shallow banks in and around the Florida Keys and Fort Jefferson National Monument.

**AMENDMENTS NOS. 1206 AND 1207**

Mr. MITCHELL. Mr. President, I send two amendments by Senator GRAHAM, of Florida, to the desk and ask for their immediate consideration en bloc.

The PRESIDING OFFICER. Without objection. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. GRAHAM, proposes amendments numbered 1206 and 1207 en bloc.

Mr. MITCHELL. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT No. 1206

On page 9, line 23, strike "The" and insert in lieu thereof, "Upon completion of a final report by the Chief of the Army Corps of Engineers, the".

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AMENDMENT No. 1207

On page 13, beginning on line 24, strike the proviso in its entirety and insert in lieu thereof, *"Provided,* That the provisions of subsection (d)(2) shall be applicable only to the extent that the Secretary, in consultation with the Secretary of the Army, determines that the park will not be adversely affected.".

Mr. GRAHAM. Mr. President, I support the amendment to section 104(e)(3). The effect and intent of this amendment are to provide the Secretary of the Army with greater flexibility in determining the most effective manner to protect adjacent agricultural areas which are determined pursuant to a periodic review to be adversely affected. This amendment provides that the project modifications may be operated to the extent that the Secretary of the Army determines that the adjacent agricultural area is not adversely affected. However the operation of a project modification may only be limited to the extent that the Secretary of the Interior, in consultation with the Secretary of the Army, determines that the park will not be adversely affected. This amendment will allow for adjacent agricultural areas to be better protected while ensuring that the park is not damaged.

The PRESIDING OFFICER. The question is on agreeing to the amendments, en bloc, of the Senator from Florida.

The amendments were agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item 369, H.R. 1727, the House companion measure, that all after the enacting clause be stricken, that the text of S. 724, as amended, be inserted in lieu thereof, that the bill be read a third time and passed, and that the motion to reconsider the vote be laid on the table.

The PRESIDING OFFICER. Without objection. So the bill (H.R. 1727), as amended, was passed.

Mr. GRAHAM. Mr. President, I thank my good friend, Congressman DANTE FASCELL, who introduced—and succeeded in passing—this bill in the other body. I would also like to thank Senator MACK and the other members of the Florida delegation, all of whom cosponsored this vital legislation.

This act expands the Everglades National Park to the east by approximately 107,000 acres and provides for water flow modifications to restore the necessary hydrologic conditions of the park.

Everglades National Park is both a nationally and internationally significant and uniquely fragile resource. Everglades National Park has been and continues to be adversely affected by alterations in the ecosystem, including the natural hydrologic conditions within the park.

These hydrologic changes have adversely affected wildlife within the park, contributing to an overall decline in fishery resources and a 90-percent loss of wading bird populations. A variety of endangered species, including the Florida panther, reside in or roam through the park. The numbers within these species are dwindling, because the ecosystem can no longer sustain them as it once did. Northeast Shark River Slough, the area to receive modified water deliveries, is vital to long-term protection and restoration of the hydrologic conditions.

Changes to water flow would require structural and operational modifications to an existing project—which is responsible for altering the natural flow to the park. In this light, we are not seeking authorization for a new project. Rather, we are making yet one more refinement to the many changes the corps has made over the years to this project for the benefit of the environmental restoration of Everglades National Park.

For example, levee 31-west was constructed in the mid-sixties to bring additional water into Taylor Slough to benefit the park. In 1968, other modifications were made north of this area to bring needed water into the park.

Over the last 4 years, the corps has been involved in an experimental program of modified water deliveries to the park to address these very concerns. Furthermore, the corps has begun and has made substantial progress on a general design memorandum to modify canal systems to provide necessary water. Flood protection for an 8.5 square-mile residential area is included in the design memorandum and in the bill, to keep modifications from resulting in further flooding of homes.

Simultaneous authorization of land acquisition and water modifications is necessary to assure that mitigation will in fact occur. Acquiring the lands will be of little benefit without the modification of water flows over those lands.

Mr. President, this bill is the product of numerous negotiations with interested and potentially affected parties. The Governor's east Everglades land acquisition task force provided the basis from which we drafted our bill. This set the stage for the bilpartisanship which has made this bill so successful to date.

We have been careful to leave productive agricultural lands outside of the proposed boundaries, unless those lands would be inholdings far within the park border. We also provided contingency language in the remote event that these authorized water delivery modifications would present significant adverse impacts to specific agricultural areas. We have also grandfathered existing airboat operators within certain parameters to allay concerns over potential airboating prohibition.

My amendments are an attempt to conform the language with corps procedure, by making authorization contingent upon a final chief of engineers report and an attempt to clarify the review process with regard to possible adverse effects to adjacent agricultural areas.

We have fashioned, and now have the opportunity to pass, balanced bipartisan legislation which will help restore an international treasure to its closer to natural condition.

Mr. President, I encourage my colleagues to support this extremely important piece of environmental protection legislation.

EVERGLADES NATIONAL PARK

Mr. MACK. Mr. President, I rise in strong support for the passage of S. 724 the Everglades National Park Protection and Expansion Act of 1989 this evening.

The time is long past due to restore the natural hydrological conditions to the 1.4 million acre Everglades National Park. In 1947 the Everglades National Park was established to preserve the unique resources and unspoiled natural conditions of the area, which is home to more endangered species of plants and animals than any other national park. This legislation, which has the support of the entire Florida delegation, goes a long way in helping to restore the natural habitat of these endangered species that have made this precious "sea of grass" their home.

As environmental science has progressed, we have gained a better understanding of the complexities of the Everglades ecosystem and how it functions. A large, hydrologically significant section of historic Everglades that was critical to the overall healthy functioning of the system was unwisely left out of the park boundaries. This bill extends the boundary of the park to bring the entire Northeast Shark River Slough into Everglades National Park adding over 107,000 acres to the park. This will allow the restoration of historic sheet flows throughout the entire slough.

This is a strong Federal-State cooperative effort. Of the approximately 107,600 acres to be added to the park, some 43,000 are owned by the State of Florida and will be donated to the Federal Government. In addition, the purchase of privately owned lands will be on an 80 percent Federal 20 percent State cost sharing basis.

This legislation also provides important protection to land owners adjacent to the park to insure that they are not adversely affected by the increased water flows to the park. Although it is difficult to balance the needs of the park with the private property rights of the adjacent land owners I believe that this bill strikes that vital balance. The "adjacent agricultural areas" protected in the bill I interpret to mean any agricultural lands that are close enough to the project to be affected by it. Flood protection for these lands is authorized only if it is determined that the project modifications adversely affect them and the protection can then only be done in a way that would present the least prospect of harm to the natural resources of the park. The adverse affect has to result in a substantial reduction in the economic utility of such area based on its present agricultural use. I interpret this to mean that there has to be a measurable reduction in the percentage of crop yields and an actual reduction in the land's value as a result of a project modification under this bill before the construction of flood protection is authorized. Although this language specifically authorizes the Secretary of the Army to construct a flood protection system for an adversely affected agriculture area, this should not be construed as a limitation on the Secretary's authority to modify the operation of the central and south Florida project to achieve flood protection for such adversely affected area as long as it is in the best interest in the park.

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 724 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

## USE AND DISTRIBUTION OF CERTAIN INDIAN JUDGMENT FUNDS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item No. 403, S. 1096, regarding the Seminole Indians.

The PRESIDING OFFICER. Without objection. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1096) to provide for the use and distribution of funds awarded the Seminole Indians in Docket 73, 151, and 73-A of the Indian Claims Commission.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Select Committee on Indian Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

That, notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated in satisfaction of judgments awarded to the Seminole Indians in dockets 73, 151, and 73-A of the Indian

Claims Commission shall be used and distributed as provided in this Act.

SEC. 2. (a) The funds appropriated with respect to the judgments awarded to the Seminole Indians in dockets 73 and 151 of the Indian Claims Commission (less attorney fees and litigation expenses), including all interest and investment income accrued thereon, are allocated hereby as follows—

(1) 75.404 per centum of such funds are allocated to the Seminole Nation of Oklahoma; and

(2) 24.596 per centum of such funds shall be allocated among the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida and the independent Seminole Indians of Florida.

(b) The funds that are required under subsection (a) of this section to be allocated among the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida, and all of the funds appropriated with respect to the judgment awarded to the Seminole Indians in docket 73-A (less attorney fees and litigation expenses), including all interest and investment income accrued thereon, shall be allocated as follows:

(A) the Seminole Tribe of Florida, 77.20 percent;

(B) the Miccosukee Tribe of Indians of Florida, 18.16 percent; and

(C) the independent Seminole Indians of Florida (as a group), 4.64 percent.

SEC. 3. (a) A proposed plan for the use and distribution of the funds allocated to the Seminole Nation of Oklahoma under section 2 of this Act may be prepared by the governing body of the Seminole Nation of Oklahoma in consultation with the Secretary of the Interior within one hundred and eighty days of the enactment of this Act. Upon completion of such a plan, the Secretary shall submit it to the Congress without delay, together with recommendations for its approval and the reasons therefor.

(b) If a plan has not been prepared by the Seminole Nation as provided in subsection (a) of this section, the Secretary, in consultation with the Seminole Nation, shall prepare and submit a plan to the Congress for approval within one hundred and eighty days of the expiration of the period referred to in subsection (a) of this section. A copy of the plan prepared by the Secretary shall be furnished to the Seminole Nation simultaneously with its submission to the Congress.

SEC. 4. (a) Any plan for the use and distribution of the funds allocated to the Seminole Nations of Oklahoma shall provide that not less than eight (80) per centum thereof shall be set aside and programmed to serve common tribal needs, educational requirements, and such other purposes as the circumstances of the Seminole Nation of Oklahoma may determine.

(b) No per capita distribution may be made from the sum allocated to the Seminole Nation of Oklahoma, except that the investment income from not more than twenty (20) per centum of the fund may be distributed per capita from time to time in the discretion of the tribal governing authority pursuant to a distribution plan approved by the Secretary. No per capita distribution shall occur pursuant to this subsection until a roll of members of the Seminole Nation of Oklahoma born on or before and living on the date of enactment of this Act has been certified by the Secretary.

(c) The interests of minors and other legally incompetent persons who are entitled to receive any portion of such funds as are subsequently distributed to them will be protected and preserved: *Provided*, That such funds may be disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the minor or legal incompetent's health, education, welfare, or emergencies under a plan or plans approved by the Secretary and the tribal governing body of the Indian tribe involved.

(d) A plan for the use and distribution of the judgment funds referred to in this Act shall be implemented by the Secretary immediately at the end of the sixty-day period (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) beginning on the day such plan is submitted to the Congress, unless during such sixty-day period a joint resolution is enacted disapproving such plan.

(e) Tribal investment decisions under a plan shall be subject to the approval of the Secretary. Approval shall be granted within a reasonable time unless the Secretary determines, in writing, that the investment would not be reasonable or prudent or would otherwise not be in accord with the provisions of this section.

(f) Neither the United States nor the Secretary shall be liable, because of the Secretary's approval of an investment decision under this section, for any losses in connection with such investment decision.

SEC. 5. The Secretary shall pay the governing body of the Seminole Tribe of Florida such portion of the amount held in trust for that tribe under section 2 of this Act to be allocated or invested as the tribal governing body determines to be in the economic or social interest of the tribe within 60 days after submission of an appropriate resolution by the tribal governing body.

SEC. 6. Notwithstanding any other provision of this Act, no plan for the use and distribution of the share of the funds allocated to the Miccosukee Tribe of Indians of Florida shall be prepared or implemented and no funds allocated to the Miccosukee Tribe of Indians of Florida shall be distributed to the tribe, its members, or any other person unless such plan or distribution is duly authorized by the General Council of the Miccosukee Tribe or by a referendum vote of the members of the tribe duly called by the General Council of the tribe at which a negative vote is permitted. Such funds (and the interest therefrom) shall be held in trust by the United States and invested as provided in the Act of June 24, 1938 (52 Stat. 1037, as amended; 25 U.S.C. 162a), except that part or all of the amount may from time to time be paid to the governing body of the Miccosukee Tribe of Indians of Florida as may be authorized under this section.

SEC. 7. (a) The Secretary shall invest the funds allocated to the independent Seminole Indians of Florida (as a group) under section 2 in accordance with subsection (a) of the first section of the Act of June 24, 1938 (52 Stat. 1037, as amended; 25 U.S.C. 162a) until the date of which the funds are distributed under subsection (c).

(b)(1) Under regulations prescribed by the Secretary, the Secretary shall compile a roll of those independent individuals of Seminole Indian lineal descent who—

(A) were born on or before, and are living on, the date of enactment of this Act, and,

(B) are listed on or are lineal descendants of persons listed on the annotated Seminole Agency Census of 1957 as independent Seminoles, and

(C) are not members of an Indian tribe recognized by the Secretary on the most recent list of such Indian tribes published in the Federal Register.

Such persons listed on this roll shall constitute the independent Seminoles referred to in this Act.

(2) All determinations in the preparation of the roll under paragraph (1) of this subsection shall be based on timely applications for inclusions on the roll supported by evidence satisfactory to the Secretary. The Secretary shall not include any person on the roll who has not made formal application in writing to be included, and who has not met the requirements of paragraph (1) (A), (B), and (C).

(c) As soon as practicable after the roll required under subsection (b) has been compiled, the funds allocated to the independent Seminole Indians of Florida (as a group) under section 2, including all interest and investment income accrued thereon to the date of payment, except as provided for in subsection (d), shall be distributed on a per capita basis, in payments as equal as possible, only to those independent Seminole Indians of Florida enrolled under subsection (b) who make timely application to the Secretary. The Secretary shall not distribute any funds to any Seminoles who are not on the roll prepared pursuant to subsection (b) or who do not make timely application to the Secretary.

(d) Except for the persons who make application and are included on the roll prepared pursuant to section 7(b)(1), and who make application and accept a per capita share of the distribution pursuant to subsection (c), the payment and distribution of the award in accordance with this Act shall not be construed to impair, diminish or affect in any manner any rights and claims of the independent Seminole Indians, either as a group or individually, to any lands or natural resources in the State.

SEC. 8. (a) The funds allocated pursuant to this Act are hereby declared to be held in trust by the United States for the benefit of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida respectively.

(b) None of the funds held in trust by the United States under this Act (including interest and investment income accrued on such funds while such funds are held in trust by the United States), and none of the funds distributed per capita or made available under this Act for programs, shall be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita payments in excess of $2,000, any other Federal or federally assisted program.

Mr. NICKLES. Mr. President, the passage of this legislation, S. 1096, marks the end of a tragic period in the history of the proud Seminole people. The division of this judgment award will finally allow the Seminoles of Oklahoma and Florida to utilize the funds that were awarded to them in settlement with the Federal Government for lands that were taken from them in Florida.

I introduced S. 1096 on June 1, 1989, in an effort to resolve this longstand-

ing dispute. The legislation provides 75 percent of the approximately $47 million in accumulated funds to the Oklahoma Seminoles and 25 percent of the funds to the Florida Seminoles.

While the Seminole Tribe of Florida and the Seminole Nation of Oklahoma have disagreed on the proposed division of the fund, I am hopeful that the two tribes will put aside their differences and work together to the future benefit of all Seminole people. It would be unfortunate if the Goverment's settlement of this issue would further alienate the two tribes. After all, it was the Federal Government that split the tribe originally when it forced the Seminoles to remove themselves to Indian territory in what is now Oklahoma.

To conclude, I would like to thank all of those who have been involved in the settlement of this issue and in seeking a fair division of the fund. I would specifically mention Seminole Nation Chief Jerry Haney, former chiefs Edwin Tanyan and Richmond Tiger, attorneys Paul Neibell and Joe Membrino, and Pete Taylor of the Senate Select Committee on Indian Affairs. Through the efforts of these and many others, the Seminole Nation of Oklahoma will now have the ability to move forward economically to meet the health, education, and other needs of their tribal members.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1096) was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item 410, H.R. 3729, the NASA authorization.

The PRESIDING OFFICER. Without objection. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3729) to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that H.R. 3729, the fiscal year 1990 NASA authorization bill, be brought before the Senate for consideration.

Mr. President, less than 2 weeks ago, the Senate passed S. 916, its version of the fiscal year 1990 NASA authorization bill. However, due to political problems on the House side, the House was not able to further amend the Senate-passed bill and to send it back to the Senate for final passage. The House, therefore, on Monday passed a new NASA authorization bill, H.R. 3729, which is before the Senate today.

Mr. President, as the Members of the Senate understand, it gets harder and harder to do an authorization bill each year. The budget outlook gets worse, and the policy issues get more diversified. On the one hand you sit and talk about new starts for the mission to planet Earth and a Moon-Mars initiative, and on the other hand you struggle to find funds for the ongoing NASA programs, including the space station. It is not easy.

But it can be done. And I am here today to say that if the Senate agrees to the substitute that I am offering to H.R. 3729, the fiscal year 1990 NASA authorization bill, with the distinguished chairman of the subcommittee, the House hopefully will agree to these changes, and there will be a fiscal year 1990 NASA authorization bill.

Mr. President, it was not easy to resolve all of the outstanding issues this year, and many of the matters that should have been discussed we had to put off until next year due to the time constraints. However, the substitute bill we have before us is a good bill, and it is a bill that hopefully will be accepted by the House and endorsed by the administration.

The substitute that Senator GORE and I are proposing is consistent with the fiscal year 1990 VA-HUD-independent agencies appropriations bill that the President signed into law a few weeks ago; the bill is consistent with the Senate-passed NASA authorization bill; and the bill is consistent with the Budget Act.

Mr. President, the substitute is not perfect, since it is clear that the fiscal year 1990 budget requirements of NASA far exceed the totals in this bill and in the fiscal year 1990 appropriations bill. However, considering all of the obstacles that had to be overcome this year, the members of the Science, Technology, and Space Subcommittee deserve our support and our congratulations on a job well done.

Mr. President, I yield to the distinguished chairman of the subcommittee. Before I do that, I would just like to indicate that Senator GORE has done an outstanding job with this bill in the subcommittee.

Mr. GORE. Mr. President, I would like to join the distinguished chairman of the Senate Commerce Committee in sponsoring this substitute to H.R. 3729 and to thank him for his kind remarks.

It has been a difficult year, but once again we were able to put a bill together before the Senate adjourned. I must admit that each year it gets closer and closer, but I am pleased to say that the Members still feel it is important to do an annual NASA authorization bill, and that in and of itself is very important.

Mr. President, in putting the final bill together, I want to guarantee my friends on the Appropriations Committee that we honored the assumptions of the fiscal year 1990 VA-HUD-independent agencies appropriations bill—there are no floors or gimmicks in this bill, and it is consistent with the bill that President Bush recently signed into law. I also want to ensure my friends on the Budget Committee that it is so consistent with the Budget Act and that we keep our commitment to delete the private financing provisions.

I also want the supporters of the civil space program to know that we have done our best to provide the maximum amount of resources to NASA in these times of fiscal constraint.

I am sorry that we are not able to agree with all of the provisions in the House-passed bill, in particular their assumptions about expandable launch vehicles, the use of an expendable rocket for the tracking and data relay satellite [TDRS], or the offloading of space shuttle payloads in the space transportation operations account. I also am sorry that we still have differing views about the value of agency-wide multiyear authorizations. But despite our honest differences, we did make some strides, and I think we have forged a consensus on the importance next year of obtaining a multiyear authorization and appropriations for the space station program. The time has come to agree on the content and schedule of this program and to implement it.

We also were able in the fiscal year 1990 State, Justice, Commerce appropriations bill to agree on language that imposes sanctions on the launch of United States-made communications satellites by the Soviet Union in nations other than the Soviet Union—a prohibition already exists on such launches in the Soviet Union—and the

People's Republic of China. While those sanctions did not in any way affect existing laws or regulations that currently prohibit the export of any United States-made satellites to the Soviet Union for launch on an expendable launch vehicle, they did, with the language contained in section 14(e) of the fiscal year 1990 NASA authorization substitute bill that is before us today, send a message that the United States is serious about maintaining its share of the world space market and getting a better handle on what the competition looks like and what we need to do to remain competitive.

Mr. President, as the distinguished chairman of the full committee noted, it is not easy to get an authorization bill done, and next year we will be faced with some very difficult policy and budgetary choices. But I want the Members of the Senate to know that each year, the working relationship among the authorization, Budget and Appropriations Committees has improved because the chairmen and ranking members of these committees realize the importance of the Civil Space Program to the Nation's economic and national security. The members of these committees also realize that by working together and forging a consensus in the Senate, there is a better chance of getting funding and policy matters resolved. I look forward to further improving this relationship, and I hope that next year our combined efforts will enhance the availability of resources for NASA and the Civil Space Program.

Mr. President, I support the substitute that is being proposed by the distinguished chairman of the full committee, and I would hope that my colleagues would support this measure.

At this point, I would request unanimous consent that a brief summary of this bill be inserted in the RECORD.

Mr. President, there were several House initiatives that I personally find appealing; unfortunately, there was not enough time to thoroughly explore these issues.

In particular, I was most intrigued by Congressman SENSENBRENNER's fair pricing provision. As the Members of the Senate know, the bill before us today instructs the National Space Council to review the Nation's expendable launch vehicle policy, as well as our communications satellite policy. I would hope that a key element of the National Space Council review would be the provision on fair pricing contained in the House-passed bill.

Because of the fact that this issue has serious trade implications, and because of the fact the committee had already agreed to the National Space Council study, it would be premature for the committee to accept this provision. Also, the committee did not hold any hearings on the matter.

However, I can assure the distinguished ranking member of the House subcommittee that next year, the Subcommittee on Science, Technology, and Space will review this matter thoroughly.

I also want to indicate that despite the inclination of the committee to accept the House drug testing provision, we find ourselves with an interesting set of facts. First of all, a comprehensive drug testing provision initiated by the Senate Commerce Committee has been rejected in a conference with the House on drug legislation. Also, I realize that NASA will implement a random drug testing program on December 5 for officers and employees in sensitive positions. This NASA program is an outgrowth of an Executive order and the drug free workplace language that was included in last year's NASA bill—Public Law 100-685.

Nevertheless, we will take another look at this critical issue again next year. However, in the meantime, NASA will have a program in place as of this December, thanks to the influence of the distinguished Congressman from New York [Mr. SOLOMON] and other Members of the Congress.

In conclusion, I hope that the Senate will approve this substitute and the House will approve this measure and send it to the President for signature.

AMENDMENT NO. 1208

Mr. MITCHELL. Mr. President, I send to the desk a substitute amendment on behalf of Senators HOLLINGS and GORE and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. HOLLINGS (for himself and Mr. GORE), proposes an amendment numbered 1208.

Mr. MITCHELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 3729), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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## COMMEMORATIVE COINS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 1553, a commemorative coin bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1553) to require the Secretary of the Treasury to mint and issue coins in commemoration of the 100th anniversary of the statehood of Idaho, Montana, North Dakota, South Dakota, Washington and Wyoming, and other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1209

(Purpose: To provide for the minting and issuing of palladium coins)

Mr. MITCHELL. Mr. President, I send an amendment to the desk on behalf of Senator BAUCUS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. BAUCUS, proposes an amendment numbered 1209.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In section 102(a) of the bill, after "and issue" insert the following: ", in quantities sufficient to meet public demand not more than 175,000 five-dollar palladium coins and".

In section 102 of the bill, strike subsection (b) and insert the following:

(b) SPECIFICATIONS.—

(1) PALLADUIM COINS.—Each five-dollar palladium coin shall—

(A) weigh 31.103 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 23.327625 grams of palladium (.75 fine troy ounce) and not less than .5 troy ounce.

Such coins shall contain an alloy of such metals and in such proportion as may be deemed necessary by the Secretary, consistent with the limits established under this section.

(2) SILVER COINS.—The silver coins shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) be composed of 90 percent silver and 10 percent alloy.

In section 103 of the bill, strike "The Secretary" and insert "(a) SILVER.—The Secretary" and at the end thereof insert the following:

(b) PALLADIUM.—The Secretary shall obtain palladium for the coins referred to in this title by purchase of palladium mined from natural deposits in the United States within one year after the month in which the ore from which it is derived was mined and by purchase of palladium from other sources located within the United States, including palladium that is refined or recycled within the United States. The Secretary shall pay not more than the average world price for the palladium. In the absence of available supplies of such palladium at the average world price, the Secretary shall purchase supplies of palladium pursuant to the authority of the Secretary under existing law. The Secretary shall issue such regulations as may be necessary to carry out this provision.

In section 105(d) of the bill, strike "a surcharge of $7" and insert "a surcharge of $20 for the palladium coin and $7 for the silver coin".

The PRESIDING OFFICER. The question is on agreeing to the amendment?

The amendment (No. 1209) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 1553), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## REFORM OF CERTAIN HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar item 385, H.R. 1, the housing reform bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1) to amend Federal laws to reform housing, community and neighborhood development, and related programs, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

### COSPONSORS OF THE SENATE AMENDMENT TO H.R. 1

Mr. CRANSTON. Mr. President, I ask unanimous consent that the names of the following Senators from New York [Mr. D'AMATO], Michigan [Mr. RIEGLE], Utah [Mr. GARN], Nevada [Mr. BRYAN], Connecticut [Mr. DODD], Maryland [Mr. SARBANES], Tennessee [Mr. SASSER], Alabama [Mr. SHELBY], Pennsylvania [Mr. HEINZ], Missouri [Mr. BOND], Florida [Mr. MACK], Delaware [Mr. ROTH], Kansas [Mrs. KASSEBAUM], and South Dakota [Mr. PRESSLER] be added as cosponsors of the Senate amendment to H.R. 1.

The PRESIDING OFFICER. Without objection, it is so ordered.

### AMENDMENT NO. 1210

(Purpose: To provide a complete substitute)

Mr. MITCHELL. Mr. President, I send a substitute amendment to the desk on behalf of Senator CRANSTON and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL] for Mr. CRANSTON, proposes an amendment numbered 1210.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. CRANSTON. Mr. President, I am delighted that the Senate is now ready to take action on the HUD Reform Act.

This legislation is the product of intense, bipartisan cooperation among the Senate, the House and the administration during the last several weeks. I particularly want to thank members of the Senate Banking Committee for their efforts to achieve agreement.

This bill provides immediate remedies for the gross mismanagement and fraud that devastated the Nation's housing programs during the Reagan years. It has been a sordid story for 8 long years, during which housing was under attack by a Reagan administration that was busy denying problems and appointing incompetents. They were mismanaging programs and squandering scarce resources. They were slashing funds for housing the most needy and diverting much of what little remained to benefit their colleagues and political friends.

The unfolding scandal shows the extent to which the country's housing policy has been in the hands of its enemies.

The scandal has revealed the cynicism and hypocrisy of those who were trying to destroy Federal support for housing. We must not now let their corruption be used as an excuse to complete their destructive mission.

As the Reagan appointees were trying to dismantle vital housing programs, the Senate was working on a bipartisan basis with the country's housing leaders to develop a reinvigorated national housing policy.

The legislation now before the Senate provides needed reforms. Others may yet be needed. However, swift enactment of this bill prepares the ground for even more urgently needed legislation—legislation that thoroughly reforms Federal housing programs—legislation that mobilizes the country's ability to provide affordable housing for this and future generations of Americans.

Senators of both parties have agreed to move this reform legislation now and to begin immediate work to move S. 566, the National Affordable Housing Act, as early as possible next year, taking into account new housing initiatives being developed by Secretary Kemp.

Mr. President, my amendment would include almost all of the reform provisions offered by Secretary Kemp and passed by the House several days ago. It makes a number of refinements that resolve important concerns of Senators. In addition, the bill includes a number of important reform measures that have been developed in the Senate as a result of numerous hearings on the future of national housing policy, on the HUD scandal and on the financial strength of the Federal Housing Administration.

Title I of the bill contains provisions to eliminate fraud and abuse at HUD and to revitalize the FHA. The bill ensures that housing assistance will be allocated objectively on the basis of need through a fair share formula. The bill will bring funding decisions into the sunlight by requiring HUD to publish notices of funding availability, application procedures, selection criteria, and documentation to justify all actual decisions. In addition, HUD would be prohibited from disclosing funding decisions prior to formal announcement. Waivers of regulations and handbook provisions will have to be made public. It will be illegal to make funding decisions in the dark, as favors to political friends.

Applicants for assistance will be required to disclose all of the public assistance that a project is expected to

receive, the names of those people who have a financial interest in the project, and the expected sources and uses of funds for the project. No more will greedy developers be able to pyramid subsidies into windfall profits.

Consultants who are paid to influence decisions of the Department will be required to register and report regularly on their activities and compensation. It will be illegal for anyone to peddle their influence for contingent or per-unit fees.

The bill strengthens the Secretary's ability to enforce the law with civil money penalties. These penalties will apply to serious violations by applicants, consultants, mortgagees, mortgagors, lenders, GNMA issuers, and land developers. The bill provides a forceful deterrent against fraud in HUD programs, but it also provides protections against arbitrary use of these enforcement powers by the Secretary.

The bill would replace the headquarters reserve of housing assistance and the CDBG discretionary fund with much smaller fund reservations for tightly defined purposes. This would prevent any repeat of the spectacle during the Reagan years of having the Secretary allocating large volumes of money for arbitrary purposes. However, it assures that flexible funding will be available for legitimate emergencies and for high-priority special purposes. I want to stress that none of the changes made by this bill will affect any project already approved in an appropriations bill.

I want to stress that the bill does not include changes that the administration has proposed in the Community Development Block Grant Program. Senators believed strongly that these proposals were not reform but a major redirection of the CD block grant that was not well thought out. Such changes should be considered in the context of major housing legislation, which the Senate will take up early next year. Some have expressed alarm over reports that the Department may attempt through administrative action to implement some of the proposed changes to CDBG—such as a change to the proposed "proportional accounting" scheme. Such a move would clearly be inconsistent with congressional intent.

The bill would reform the Moderate Rehabilitation Program to ensure that the program meets its original objectives by limiting project size and taking into account tax benefits when calculating rental assistance.

The bill would establish two new positions within HUD to increase accountability. HUD would have a chief financial officer who would advice the Secretary, implement a financial management system and supervise HUD's financial operations. In addition, FHA would have a comptroller responsible for maintaining adequate accounting, financial control, and cash management systems in FHA.

Other provisions would significantly strengthen FHA. The Secretary would be required to periodically review and establish adequate capital requirements for coinsurers. An FHA Advisory Board made up of industry leaders, housing consumers, actuaries, and other leading experts would be established to advise the Secretary on FHA policies.

A Mortgage Review Board would be established in law and empowered to impose sanctions on lenders who violate FHA policies. HUD would be required to provide independent, annual audits of the FHA funds. All those assuming an FHA insured loan would have to undergo a credit check before they can assume the loan.

Title II of the bill would improve provisions in the 1987 Housing Act that limit arbitrary termination of low-income affordability restrictions on older, federally assisted housing.

First, the bill would extend the termination date for these limitations from February 5, 1990, to August 1, 1990. I have agreed to this 6-month extension with the greatest reluctance. When the interim solution was enacted 2 years ago, I fully intended that a permanent solution would be ready for enactment at this time. That has not happened largely because the administration has failed, until recently, to participate in any substantive discussions on this issue.

The previous administration simply failed to carry out the law: delaying regulations, refusing to ask for needed funds, interpreting legislative intent rigidly, and imposing burdensome application requirements. Only one plan of action has been approved by the Department and accepted by an owner. This 6-month extension is necessary to give Congress and the administration a chance to complete action on major housing legislation that will include a long-term prepayment solution.

However, in this interim period, the bill would contain some improved incentives for owners to extend the low-income affordability of this housing—this bill therefore makes the 1987 Housing Act more workable. These improvements are a necessary component of the short-term extender.

The revisions provide HUD with additional tools and more flexibility to ensure that the 1987 act provisions are implemented in a fair and effective manner. First, the bill would give HUD the discretion to tailor the terms of capital improvement loans—interest rate, deferred payment—where appropriate to implement a plan of action. Second, the bill would have the income mix of future tenancies to reflect the tenant profile of either January 1, 1987, or the date a plan of action is approved, whichever date has the highest proportion of very low-income occupancy. Third, the bill would require HUD, when providing short-term rental assistance, to enter into a contract to extend the term of the rental assistance for such periods as may be necessary to carry out an approved plan of action—contingent only upon future appropriations of rental assistance. Fourth, the bill would give HUD the discretion, when underwriting an insured equity loan, to assume that rental assistance will be extended for the full term of the contract described above.

Finally, the bill would clarify that the 1987 act was always meant to cover voluntary terminations of mortgage insurance as well as prepayment of mortgages. The 1987 act—although focusing primarily on prepayment—was generally concerned with all owner actions that could terminate affordability restrictions in multifamily housing.

Title II would also include a number of provisions to improve the management and preservation of the federally assisted multifamily housing inventory. First, HUD would be required to submit to the Congress an annual report providing detailed information on the property within the HUD-held and HUD-owned inventory.

Second, HUD would be required to study the physical renovation needs of the federally assisted multifamily housing inventory that is distressed and to estimate the cost of correcting deficiencies and subsequently maintaining that inventory in adequate physical condition.

Third, HUD would be encouraged to implement the property disposition demonstration contained in the 1987 act as expeditiously as possible. HUD's failure to implement this provision—as well as its general management of HUD-owned multifamily housing—has been greatly criticized in subcommittee hearings.

Fourth, HUD would be given the discretion, when underwriting a section 241 rehabilitation loan for certain multifamily housing, to assume that rental assistance will be extended for the full term of the loan. The section is meant to give HUD an improved tool in its efforts to ensure that federally assisted housing is maintained in decent, safe, and sanitary condition.

Title III extends the Flexible Subsidy Program and economic rents.

Title IV includes provisions to preserve decent affordable housing in rural areas. Currently, housing developers who receive Farmers Home section 515 loans to build multifamily rental housing can prepay their mortgages after 20 years of the 50-year mortgage term. The Senate amendment to H.R. 1 would maintain the affordability of this housing for the full

50-year mortgage term. In return, project owners could receive a guaranteed equity loan on each project, once 20 years after their original section 515 loan was made. A reserve account set up for each project would be used to offset the cost of repaying the equity loan. The provisions to eliminate the prospect of the prepayment of section 515 housing will help enormously to reduce the shortage of affordable housing in rural areas.

The other important rural housing provisions in the Senate amendment deal with accountability in the award of assistance by the Farmers Home Administration. FmHA was not subjected to the gross mismanagement that was inflicted on HUD in the recent past.

Nevertheless, preventive measures are important. Provisions in the bill dealing with FmHA closely parallel the HUD reform provisions. They would require publication and disclosure of application and selection information. They prohibit contingency fees and establish civil penalties for violations.

Title V of the bill would establish a National Commission to develop an action plan to eliminate intolerable living conditions that exist in "severely distressed" public housing projects. Across the country, affordable housing programs are burdened by the negative image created by highly visible public housing projects that are indefensible as decent, safe places to live.

The existence of these conditions is a stain on the Nation. Their elimination must be part of any effective national housing policy. Fortunately, many cities have developed effective strategies to turn around distressed projects—with the involvement of tenants, nonprofits, community and business leaders. We will build on those efforts—identifying the most severely distressed projects, drawing the lessons from successful local strategies, and providing a national action plan to eliminate unfit living conditions in these projects by the year 2000.

Many of us on the Banking Committee had hoped that funding for the Commission could be taken from funds already appropriated for fiscal year 1990. The House strenuously objected to that method of funding. We receded reluctantly and only after receiving solid assurance that funding for this vital Commission will be provided. The Commission's work must begin as soon as possible.

Title VI establishes a Commission to investigate the management and logistical problems of providing adequate housing in Indian country. This commission would develop more effective strategies for making decent housing available to Native Americans. Given the impoverished state of Indian housing, the need for such a study is beyond question. I want to thank Senators INOUYE and MCCAIN who developed the concept of this Commission in the Indian Housing Opportunity Act which they recently introduced.

Title VIII of the bill would resolve a difficult controversy created by the Reagan administration's maladministration of the section 8 New Construction and Substantial Rehabilitation Program. The bill provides a fair nationwide settlement for the past harm caused by HUD's implementation of rent comparability studies in the mid-1980's.

Owners would receive retroactive payments. HUD would be required to promulgate regulations for conducting comparability studies in the future. HUD would also be required to study alternative, administratively simpler ways to adjust rents.

Mr. President, this is a prudent and much needed reform bill. I urge my colleagues to vote for it and send it immediately to the House for final passage and the President's signature. And I invite my colleagues to join me in working for enactment early next year of the landmark housing legislation that the country sorely needs.

Mr. President, I ask unanimous consent to have a section-by-section description of this bill printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE AMENDMENT TO H.R. 1

TITLE I—REFORMS TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

*Subtitle A—Ethics*

Sec. 101. Allocation of Housing Assistance

Requires all public and Indian housing development and Section 8 assistance to be allocated through a "fair share" formula as stipulated under Section 213 of the 1974 Housing Act. Section 202 would be covered by a fair share formula that ensures that elderly housing projects will be of sufficient size to accommodate supportive services. The formula must be based on the needs of different states, areas, and communities as reflected by population, poverty, housing overcrowding, housing vacancies, substandard housing and other criteria. The Department is required to develop formulas that take into account the unique characteristics and objectives of each program for which a formula is developed. Formula allocation requirements do not apply to assistance that the Secretary determines incapable of geographic allocation, including existing contract amendments, contract renewals, assistance to families affected by prepayment, displacement assistance, and property disposition and loan management assistance.

To the maximum extent possible, allocations must be made to the smallest statistical area. Allocations to areas that are not likely to be used in a fiscal year cannot be reallocated to another state unless the Secretary determines that other areas in the same state cannot use the allocations.

Allocations to specific recipients can only be made after formula allocations and according to specific and public competition criteria.

The Department is required, to the maximum extent practicable, to time funding allocations with the appropriations timetable.

Sec. 102. HUD Accountability in Awards of Assistance

(a) Fair Notice Regarding Assistance.

(1) Publication of Notice of Availability. HUD would be required to publish in the Federal Register notice of the availability of any assistance in a manner sufficient to enable any eligible applicant to apply.

(2) Publication of Application Procedures. HUD would be required to publish in the Federal Register a description of the form(s) and procedure for applying for assistance.

(3) Publication of Selection Criteria. HUD would be required to publish in the Federal Register the selection criteria of all programs for which assistance is provided. The notice would have to specify any criteria, including measures of housing need, project merit, or efficient use of resources that the Secretary determines are appropriate.

(4) Documentation of Decisions. (A) HUD would be permitted to award or allocate assistance only in response to a written application in a form approved by the Secretary. (B) HUD would be required to ensure that awards or allocatons of assistance are supported by sufficient documentation and information. This requirement would apply both to awards or allocations made by the Secretary to a State, local government or other recipient of assistance and to any subsequent award or allocation of federal assistance by a State or local government to other recipients. (C) Information required in subparagraph (B) would be made available for public inspection.

(5) Emergency Execption. HUD would be able to waive the requirements of paragraphs (1) and (2) if the waiver is needed to permit a timely response to an emergency. The Secretary's reasons for granting such a waiver have to be published in the Federal Register.

(b) Disclosures by Applicants. An applicant for HUD assistance would be required to disclose certain information to HUD if the applicant has received or is reasonably expected to receive assistance in excess of $200,000 in the aggregate during a fiscal year. This information would include—

(1) Other Government Assistance. Any assistance from the Federal Government, a State or unit of local government that the applicant expects to receive for the project or activity.

(2) Interested Parties. The name and pecuniary interest of any person who has a pecuniary interest in the project or activity for which the applicant is seeking assistance.

(3) Expected Sources and Uses. A report of the expected sources and uses of funds that are to be made available for the project or activity.

(c) Updating of Disclosure. The applicant would be required to update the information required in the previous section within 30 days of any substantial change.

(d) Remedies and Penalties. If the Secretary reasonably concludes that a violation has occurred, the Secretary may terminate the selection process involved, rescind a funding decision, impose sanctions on the violating applicant and determine whether to permit the applicant to continue participating in the program. The Secretary may impose a civil penalty of up to $10,000 on any person of the provisions in this section.

HUD would be required to certify that housing projects receive no more assistance than is necessary to provide affordable housing, after taking into account all public assistance to the project from all sources.

Sec. 103. Prohibition of Advance Disclosure of Funding Decisions

Prohibits Department officials from disclosing selection information to persons other than those authorized by the Secretary. Information subject to the prohibition includes information contained in any application or request for assistance, information regarding funding decisions, information that the Secretary determines not to be generally available to the public, and information that is required to be confidential by law, regulation, or order.

The Secretary may impose a civil money penalty of up to $10,000 on Department employees who violate prohibitions. The Secretary must establish procedures for imposing penalties. Employees have an opportunity for an administrative law hearing and may appeal decisions to the appropriate U.S. court.

Department employees who willfully violate prohibitions are subject to criminal penalties, including 5 years imprisonment, fines or both.

Sec. 104. Reform of Headquarters Reserve

Up to 5% of assistance available for allocation under the Fair Share formula may be reserved for the Headquarters Reserve. Only four categories of Headquarters Reserve funding: unforseen housing needs due to disasters; housing needs due to emergencies other than disasters; housing needs due to settlement of litigation; and housing to support the Secretary's desegregation efforts. Unused amounts must return to program budgets. Effective for fiscal years after FY 1990.

Sec. 105. Reform Secretary's Discretionary Fund

Replaces the Discretionary Fund under CDBG with Special Purpose Grants. Grants may be used for territories and trusts, for correcting CDBG allocation errors, for historically Black colleges, and for technical assistance to States, local governments, Indian Tribes or community planning organizations. Technical assistance is defined as facilitating the skills for planning, developing, and administering eligible CDBG activities, including assessing programs.

CDBG grantees must give public notice of the availability of technical assistance funding. They must establish and publish criteria for awarding technical assistance. The Secretary must award technical assistance grants according to criteria that are published together with notices of the availability of technical assistance grants. Criteria must be established in regulation.

Sec. 106. Regulation and Handbook Waivers

Requires that approval of a regulation waiver be in writing and specify the grounds for approval. Waivers must be made by the Secretary or Assistant Secretary level staff authorized to issue waivers. Waivers must be published in the Federal Register and identify the activity, describe the regulation waived, identify the official approving the waiver, describe the grounds for approval and state how to obtain more information on the waiver.

Handbook waivers must be in writing, specify the grounds for approval, and be maintained and available for public inspection for three years.

Sec. 107. Civil Money Penalties on Mortgagees and Lenders

Amends the National Housing Act to authorize the Mortgagee Review Board to impose civil money penalties on HUD-approved mortgagees and Title I lenders who materially and knowingly violate any of the following FHA program requirements: (1) transfer of a mortgage to a mortgagee not approved by HUD; (2) transfer of a Title I loan to a lender that does not have a valid insurance contract with HUD; (3) failure to properly segregate escrow funds and use of these funds for purposes other than for which they were received; (4) violation of any contract with HUD; (5) have actual knowledge, act in deliberate ignornance of or reckless disregard of the truth or falsity of information submitted to HUD, or falsely certifying to the Secretary; (6) knowingly (which is defined as having actual knowledge of, acting in deliberate ignorance of or reckless disregard for the truth or falsity of) hiring an individual suspended or debarred from HUD programs; or (7) any other written program requirements excluding letters from HUD to a mortgagee.

The penalty is $5,000 per violation with a $1 million cap per violator. An opportunity is provided for an administrative law hearing and judicial review. In certain cases, the Secretary is required to notify the Attorney General.

Sec. 108. Civil Money Penalties on Multifamily Mortgagors

The Secretary may impose civil money penalties against mortgagors of properties that have five or more living units and have mortgages insured, coinsured or held under the National Housing Act. Penalties may be imposed for material and knowing violations of (A) an agreement entered into as a condition of transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a work out agreement; or (B) the regulatory agreement executed by the mortgagor. The maximum penalty for violations under (A) could not exceed the loss HUD would experience at a foreclosure sale, or a sale after forclosure. Penalties under (B) would be capped at $25,000 for each violation.

Four changes would be made to House language. (1) HUD would be prohibited from imposing penalties where the Department's failure to comply with existing agreements is a material cause of the owner's violation. (2) HUD would be required to approve an extension of the 60 day deadline for submitting an annual financial report where the mortgagor demonstrates that failure to comply is due to events beyond the mortgagor's control. (3) In calculating what penalty should be assessed for a particular violation, HUD shall take into account the injury to tenants. (4) Penalties would be deposited in the Flexible Subsidy Fund.

Sec. 109. Civil Money Penalties against Section 202 Mortgagors

Adds a section to Title II of the Housing Act of 1959 providing civil penalties against mortgagors of Sec. 202 elderly/handicapped housing. Penalties may be imposed for material and knowing violations of (A) an agreement entered into as a condition of transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a work out agreement; or (B) the regulatory agreement executed by the mortgagor. The maximum penalty for violations under (A) could not exceed the loss HUD would experience at a forclosure sale, or a sale after foreclosure. Penalties under (B) would be capped at $25,000 for each violation.

Four changes would be made to House language. (1) HUD would be prohibited from imposing penalties where the Department's failure to comply with existing agreements is a material cause of the owner's violation. (2) HUD's would be required to approve an extension of the 60 day deadline for submitting an annual financial report where the mortgagor demonstrates that failure to comply is due to events beyond the mortgagor's control. (3) In calculating what penalty should be assessed for a particular violation, HUD shall take into account the injury to tenants. (4) Penalties would be deposited in the Flexible Subsidy Fund.

Sec. 110. Civil Money Penalties Against GNMA Issuers

Authorizes the Secretary to penalize GNMA mortgage-backed security issuers or GNMA custodians for materially and knowingly violating the following requirements: (1) failure to make timely payments; (2) failure to properly segregate cash flow from mortgages; (3) improper use of escrows; (4) transfer of pool servicing to an issuer not approved by GNMA; (5) failure to maintain minimum net worth; (6) failure to notify GNMA of a change in business status; (7) have actual knowledge, act in deliberate ignorance of or reckless disregard of the truth or falsity of information submitted to HUD, or falsely certifying to the GNMA; (8) knowingly (which is defined as having actual knowledge of, acting in deliberate ignorance of or reckless disregard for the truth or falsity of) hiring an individual suspended or debarred from HUD programs; (9) violation of any contract with GNMA; (10) failure to comply with any other written program requirements excluding letters.

Penalty is $5,000 per violation with a maximum of $1 million per violator. There would be an opportunity for an administrative law hearing with judicial review.

Sec. 111. Civil Money Penalties for Violations of Interstate Land Sales Full Disclosure Act

Amends the Interstate Land Sales Full Disclosure Act to authorize HUD to impose civil money penalties against land developers for material and knowing violations of the Act which relate to: the failure to register non-exempt subdivisions; the failure to provide full and accurate disclosure to consumers; and the use of deception, misrepresentation, or fraud in the promotion and sale of properties. The penalties are $1,000 per violation, up to $1 million per year per violator. Provides for administrative law hearing.

Sec. 112. Registration of Consultants

Any person engaged for compensation or other consideration to influence an award or allocation of assistance would be prohibited from seeking or receiving any fee that is (A) based on the amount or units of assistance that may be awarded, or (B) contingent on an award of assistance, provided that professional services could be donated to a community housing development organization if assistance is not awarded. However, the fee may be contingent where the services are provided to a nonprofit organization.

Funding applicants must maintain records for 2 years of consultants and individuals hired to influence the Department and the fees paid for such services. Applicants must

file information with the Secretary at the beginning of each calendar year. Requirements apply to expenditures over $10,000 per year. The Secretary must keep records available for inspection for 2 years and publish the information in the Federal Register after the end of the calendar year.

Consultants and lobbyists must register with the Secretary upon being retained by an applicant and disclose who retained them. Consultants and lobbyists must disclose if they have been employed with the Federal Government during the prior 2 year period. Consultants and lobbyists must report fees received and expended to perform services and for what purposes.

Failure on the part of applicants or consultants to abide by these provisions may result in a civil penalty of up to $10,000 per violation or the amount in fees received. Violators have an opportunity for an adminstrative law hearing and may appeal to the appropriate U.S. Court.

Consultants who are fined may be banned from being paid to perform services for applicant for 3 years after receiving a penalty. Violating this provision is a felony, subject to fines and/or imprisonment for up to 5 years.

*Subtitle B—Management Reform*

Sec. 121. Establishment of HUD Chief Financial Officer

Appoints a Chief Financial Officer to advise the Secretary, implement a financial management system, supervise financial operations, assist in executing the Department's budget, and issue policies regarding the financial management of the Department.

Sec. 122. Establishment of FHA Comptroller

Establishes the Federal Housing Administration Comptroller.

Sec. 123. Expedited Rulemaking

Amends Section 7(o) congressional review procedures by changing Banking Committee review period to 15 calendar days in which to disapprove a proposed rule. Published rules would have 30 calendar days for review.

Sec. 124. Funding for Program Evaluation and Monitoring

Adds a subsection to section 7 of the HUD Act to authorize $25 million for FY 1991 for evaluating and monitoring a number of HUD programs.

No more than 50 percent of evaluation authority may be used for grants, contracts or interagency agreements. Amounts not used for grants, contracts or interagency agreements must be used to increase the Department's own monitoring and evaluation abilities. In conducting evaluations, HUD must assess the need for additional staff and funding for evaluation and monitoring. HUD must report to Congress the funds used for evaluation and analysis of the ability of the Department to evaluate and monitor programs and a statement of any staff or funding needs.

The Secretary would be required within one year to submit to Congress a strategy to ensure that HUD will have adequate information systems to report on the status of HUD programs.

Sec. 125. Section 235 Refinancing

Authorizes HUD to insure mortgages resulting from the refinancing of Section 235 mortgages. Authorizes assistance payment contracts for refinanced mortgages.

Sec. 126. Urban Homesteading

Authorizes the Secretary to take actions upon determining that property assisted through the urban homesteading program has been conveyed or used contrary to program requirements. The Secretary may impose a penalty not less than the profit realized from the conveyance or contrary use. The Secretary may revoke conveyance unless it is found that the owner has complied with program requirements.

Sec. 127. Reform of Moderate Rehabilitation Program

This section would amend section 8(e) of the 1937 Housing Act to reform the Moderate Rehabilitation Program. The section would limit assistance in any project to 100 units or less; require rehabilitation costs to be at least $3,000 per unit; require HUD to take benefits from tax credits into account when determining assistance; assistance must be allocated by formula and awarded by competition; require HUD to maintain a listing of assisted projects at headquarters.

*Subtitle C—FHA Reform*

Sec. 131. Annually Audited Financial Statements

Requires HUD to prepare and make available annual audited financial statements of the FHA funds. Statements will be prepared by an independent accounting firm.

Sec. 132. Credit Checks on FHA Assumptions

Requires lenders to undertake a credit check of any person seeking to acquire an FHA-insured single-family property. If the assumptor takes on liability, the original mortgagor must be informed how to be released from liability. Deleted the House Due on Sale provision.

Sec. 133. Repeal of Title X Land Development Program

Repeals Title X land development insurance program.

Sec. 134. Penalties in Title I Program

Authorizes the Secretary to impose civil money penalties on individuals and institutions that have a financial interest in Title I home improvement loans, who assist borrowers in applying for such loans, and knowingly submit false informaiton to lenders or the Secretary regarding such applications. The civil penalties are up to $5,000 per violation with a $1 million maximum.

Sec. 135. Notifications Regarding Suspensions of Mortgagees

Upon suspending a mortgagee from a mortgage insurance program, the Secretary must notify the Veterans' Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Farmers Home Administration and the appropriate regulatory agency that oversees the type of financial institution suspended.

Sec. 136. FHA Foreclosed Properties

Requires mortgagees to properly maintain foreclosed FHA properties until properties are conveyed.

Sec. 137. Report Regarding Providing Foreclosed Properties to 1989 Disaster Victims

The Secretaries of HUD and FmHA must study and report to Congress the feasibility of making available properties owned by the Secretaries to low-income persons whose homes in declared disaster areas were destroyed by Hurricane Hugo or the Loma Prieta earthquake. The report is due within 90 days of enactment, containing conclusions and any legislative recommendations for providing the properties.

Sec. 138. Direct Endorsement Report

Within 6 months of enactment, the Secretary must submit a report on the actions necessary to improve the monitoring of the direct endorsement program, reduce defaults under the program, and decrease fraud in the program.

Sec. 139. Coinsurance

This title would require the Secretary to review, by January 15 and July 15 of each year, the capital adequacy of co-insurers and to make adjustments to the capital requirements when needed so as to ensure the long-term financial soundness of the Federal Housing Administration funds. The Secretary is required to submit a report to Congress on the review of capital requirements and an assessment of capital adequacies twice yearly. The Secretary would also be required to submit a report to Congress on the disposition of coinsured property within the HUD inventory.

Sec. 140. FHA Management

Manager Accountability. HUD would ensure that managers of FHA programs are accountable for program operation, financing, risk management and cash management related to activities for which they are responsible.

Sec. 141. Contracting for Financial Management Support

HUD would be authorized to contract with private companies for managerial support for FHA. Private contractors would be used to assist HUD in various efforts, including but not limited to the efficient management of the insurance risk and the effective delivery of mortgage insurance.

Sec. 142. FHA Operations

(a) This section would amend section 202 of the National Housing Act. The heading of section 202 would become "FEDERAL HOUSING ADMINISTRATION OPERATIONS."

(b) The current section 202 would be redesignated "section 202(a)".

(c) The following new subsections would be added at the end of section 202 of the National Housing Act:

New (b) Advisory Board. Subsection (b) would create a 15-member Advisory Board to review the activities of the FHA and to provide advice on general policies and other matters that the Federal Housing Commissioner would deem appropriate. Members of the Advisory Board would be individuals with expertise and broad experience in housing. The Secretary of HUD would appoint 9 members; 6 members would be appointed by the Congress. At least 4 members would have private sector housing experience; 4 would have actuarial or economic experience; and 4 would have experience representing housing consumers. One member would represent rural housing interests. One member would represent housing civil rights interests. Members of the Advisory Board would represent various regions of the country. The Advisory Board would have prompt access to relevant information and would annually submit a report to Congress assessing FHA activities for the year.

New (c) Mortgagee Review Board.

(1) This paragraph would establish in law the Mortgagee Review Board ("Board"), which now operates under regulation.

(2) The Board would be composed of the current members (the Assistant Secretary for Housing/FHA Commissioner; the HUD General Counsel; the President of GNMA; and the Assistant Secretary for Administra-

tion; the Assistant Secretary for Fair Housing Enforcement when questions of discrimination arise; or their designees), plus the HUD Chief Financial Officer or his or her designee.

(3) When the Board finds a basis for administrative action against a mortgage, the Board would be authorized to take the following actions:

(A) Letter of Reprimand.—The Board could issue a letter of reprimand only once without also taking further actions under (B), (C), or (D). The letter would have to explain the violation and describe actions the mortgagee could take to correct the violation.

(B) Probation.—The Board could place a mortgagee on probation for a period not to exceed 6 months for the purpose of evaluating the mortgagee's compliance with FHA requirements or orders of the Board. During the probation period, the Board would be able to impose reasonable additional requirements on a mortgagee, including: FHA supervision of mortgagee activities; periodic reporting to the FHA Commissioner; or submission to audits by FHA or independent auditors of the mortgagee's internal financial statements or other records.

(C) Suspension.—The Board would be authorized to suspend a mortgagee's ability to do business with FHA for a period of not less than six months. The Board would have a find adequate evidence of violations and to find that the mortgagee's continued participation in FHA programs would not be in the public interest or in the interest of FHA. During the suspension period, FHA would continue to carry out audits, investigations, reviews or other administrative or legal proceedings. During the suspension period, FHA would not commit to insure any mortgage originated by the suspended mortgagee.

(D) Withdrawal.—The Board would be authorized to issue an order of withdrawal to terminate a mortgagee's participation in FHA programs if the Board found serious or repeated violations of FHA requirements. The withdrawal would be for not less than one year. Where the Board finds that the violation is egregious or willful, the withdrawal would be permanent.

(E) Settlements.—The Board would be authorized to enter into a settlement agreement with a mortgagee.

(4) The Board would have to notify the mortgagee in writing at least 30 days prior to Board consideration of an action of probation, suspension or withdrawal of the mortgagee. The notice would have to specify the alleged violations and would direct the mortgagee to provide a written reply within 30 days. If, within that period, the mortgagee asks in writing for a hearing, the Board would be required to hold a public hearing on the allegations within 30 days of receiving the request. Public notice of the hearings would have to be given pursuant to the Administrative Procedure Act. If the mortgagee failed to request a hearing within the 30 days, the mortgagee would waive the right to a hearing.

(5) HUD would have to publish in the Federal Register a description of the causes for administrative action against a mortgagee.

(6) Cease and desist orders.

(A) The Secretary, at the request of the Board, would be authorized to issue a temporary cease and desist order, pending completion of proceedings by the Board, when the Secretary finds that there is reasonable cause to believe (i) that a mortgagee is violating, has violated, or is about to violate, a law, rule or regulation or any written condition imposed by the Secretary or the Board, and (ii) that such violation could result in significant cost to the Federal Government or the public. The order would have to include a notice of the charges and would become effective when the order is served upon the mortgagee. A cease and desist order would remain effective and enforceable for a period not to exceed 30 days pending completion of Board proceedings with respect to the violation, unless th order is set aside, limited or suspended by a court under subparagraph (B). The Board would have to provide the mortgagee with a hearing as soon as practicable but not later than 30 days after the order is served.

(B) Within 10 days after the mortgagee has been served with a temporary cease and desist order, the mortgagee would be able to apply to the United States district court for the judicial district in which the home office of the mortgagee is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings related to the charges served upon the mortgagee.

(C) If the Secretary believes there is good cause to believe that mortgagee is violating, will violate, or will fail to obey, a temporary cease-and-desist order, the Secretary would be authorized to apply for an injuction to enforce the order. Courts with jurisdiction would be the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the mortgagee is located. If the court determines that there has been a violation, a threatened violation, or a failure to obey, the court would have the duty to issue the injunction.

(D) For purposes of this paragraph, the term "mortgagee" would mean a mortgagee, a branch office or subsidiary of a mortgagee, or a director, officer, employee, agent, or other person participating in the conduct of the affairs of such mortgagee.

(7) The Board would be required, after consultation with the Federal Housing Administration Advisory Board, to make recommendations to the Secretary regarding amendments to statute or regulation that the Board believes are appropriate to ensure the long term financial strength of the FHA fund and the adequate support for home mortgage credit. The Secretary would be required to make those recommendations available to the Congress together with his own recommendations within 30 days after the recommendations are received.

(d) Coordination between GNMA and FHA. Subsection (d) would require GNMA and FHA each to notify the other when it begins a proceeding that may lead to withdrawal of a mortgagee. Within 60 days of notification, the other agency would have to begin its own investigation of the mortgagee.

(e) Appraisal Standards.—(1) HUD would be required to prescribe standards for the appraisal of all property to be insured by the FHA. Such appraisals would have to be performed in accordance with uniform standards, by individuals who have demonstrated competence and whose professional conduct is subject to effective supervision. These standards would have to require at a minimum (A) that FHA appraisals be performed in accordance with generally accepted appraisal standards and (B) that each appraisal be in writing and independently and impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

Sec. 143. Elimination of Private Investors from Single Family Mortgage Insurance Program

Amends Sec. 203(g)(3) of the National Housing Act. Eliminates private investor-owners from participation in the FHA single-family insurance programs. Nonprofit housing providers and state and local housing finance agencies may continue to participate. Amendment only affects mortgages insured after date of enactment.

TITLE II—EMERGENCY LOW INCOME HOUSING PRESERVATION

Sec. 201. Extension of Restrictions on Prepayment

The February 5, 1990 deadline would be extended to September 30, 1990 to give Congress and the Administration a chance to complete action on major housing legislation with a long-term prepayment solution.

Sec. 202. Applicability to Voluntary Termination of Insurance

The bill would clarify that the 1987 Act was always intended to cover any termination of affordability restrictions, including those following a voluntary termination of mortgage insurance.

Sec. 203. Incentives to Extend Low-Income Use

(a) Loans

(1) Public entities would be made eligible mortgagors under the Section 236 program.

(2) The bill would give the Secretary the discretion to change the terms of capital improvement loans (interest rate, deferred payment) where appropriate to implement a plan of action.

(b) Criteria for Approval of Plan of Action.

(1) The income mix of future tenancies would follow either the tenant profile of January 1, 1987 or the date a plan of action is approved, whichever date has the highest proportion of very low-income occupancy, except that nothing would prevent an increase in the proportion of very low-income families occupying such housing.

(2) The Secretary would be required, when providing short-term rental assistance, to enter into a contract to extend the term of the rental assistance for such period or periods as is necessary to carry out an approved plan of action. The Secretary's performance under the contract would be contingent only upon future appropriations of rental assistance. The section would outline what procedures would govern in the event the Secretary is unable to renew expiring rental assistance.

(c) Insurance for Second Mortgage Financing.

(1) The Secretary may, when underwriting an insured equity loan, assume that rental assistance will be extended for the full term of the contract described above.

(2) Public entities would be allowed to obtain an insured equity loan to acquire a project.

(3) The Secretary would be directed, in the event he is unable to extend the term of rental assistance (i.e. necessary to service the equity loan), to take such appropriate actions to avoid default, avoid disruption of the current ownership and management of

the property or otherwise minimize the cost to the Federal Government.

Sec. 204. Management and Preservation of Federally-Assisted Housing

(a) Management and Preservation of HUD-owned and HUD-held Multifamily Housing Projects. The Secretary would be required to submit to the Congress a report providing detailed information on the property within the HUD-held and HUD-owned inventory.

(b) Rehabilitation Loans. The Secretary may, when underwriting a rehabilitation loan for federally-assisted housing, assume that rental assistance will be extended for the full term of the rehabilitation loan.

(c) Capital Assessment Study. HUD would be required to conduct a study within one year of the date of enactment to determine the physical renovation needs of the federally-assisted multifamily housing inventory that is distressed and to estimate the cost of correcting deficiencies and subsequently maintaining that inventory in adequate physical condition.

Sec. 205. Report on Property Disposition Demonstration

HUD would be required to submit to Congress within 30 days of enactment a report describing the steps that have been taken to implement Section 184 of the 1987 Act including a description of (1) the applications submitted by State housing finance agencies; (2) the actions taken by HUD to evaluate such applications; (3) the reasons for HUD's delay in approving such applications; (4) a timetable that HUD will now follow, not to exceed 3 months from date of enactment, for full implementation of the section.

Sec. 206. Prohibition on Prepayment of New Rural Housing Loans

The Secretary of Agriculture would be prohibited from accepting prepayment of loans made or insured under Section 515 180 days after the date of enactment of this Act.

Sec. 207. Equity Takeout Incentive for Rural Housing

Section 207 adds a new subsection at the end of Section 515. The new subsection would include the following paragraphs:

(1) Authority. The Secretary of Agriculture could guarantee an equity loan to an owner of Section 515 housing if the Secretary determines that it is likely that the housing will remain decent, safe and sanitary for the remaining life of the first mortgage and that the guaranteed loan is necessary to provide a fair return on investment, is the least costly alternative for the Federal Government and would not impose an undue burden on tenants or an unreasonable cost to the Federal Government.

(2) Timing. The guaranteed equity loan would be available to an owner once 20 years after the initial Section 515 loan was made.

(3) Amount of Takeout. The equity loan would be up to the difference between the outstanding principal on debt secured by the project and 90 percent of the appraised value of the project. Thus, an owner would have a continuing stake in the project of at least 10 percent of the project's appraised value after taking out an equity loan. Appraised value would be determined by two appraisers. If the two appraisers disagree, the value of the project would be determined by a third appraiser agreed on by the owner and the Secretary. The equity loan would be capped at 30 percent of the amount of the first mortgage.

(4) Reserve Account Payments. Each owner of a 515 project would make monthly payments of $2 per unit into a reserve account established by the Secretary. The payments would increase $2 annually for 20 years, except in the case of units occupied by tenants paying more than 30 percent of their income in rent. The rents for the project may increase by the amount of the reserve account payments. Payments into the reserve account would continue after 20 years, but would not increase annually.

(5) Reserve Account.

(A) The Secretary will establish an account for each owner making payments into a reserve account.

(B) When the Secretary guarantees an equity loan, the Secretary will begin making payments from the reserve account to offset the increases in rent caused by increased debt service. Payments made to the reserve account after the equity loan is guaranteed will also be used to offset the increases in rent caused by increased debt service.

(C) Any amount in the reserve account for a project beyond that necessary to offset the amortization of the equity loan for that project may be used to offset amortization of an equity loan in another project.

(D) Payments under this section are subject to appropriations acts.

(6) Owners would be required to submit to the Secretary a plan showing how they will maintain the income mix of their project, taking into account the debt service on the equity loan and the availability of assistance from the reserve account.

(7) The Secretary will issue final regulations 180 days from the date of enactment.

(8) This subsection will go into effect 180 days from the date of enactment.

TITLE III—HOUSING PROGRAM EXTENSIONS AND CHANGES

Sec. 301. Flexible Subsidy Program

The Flexible Subsidy Program would be reauthorized.

Sec. 302. Continuation of Public Housing Economic Rent

Section 304 would give public housing agencies the discretion to set ceiling rents for a five year period, in contrast to the three year limitation now established in law and the unlimited period contained in the House-passed version. The revised section would extend the terms of ceiling rents set prior to enactment of this Act for a five year period.

Sec. 303. Reciprocity in Approval of Housing Subdivisions Among Federal Agencies

Extend for 6 months the due date of a report on the housing subdivision approval policies and practices of HUD, the Department of Agriculture and the Department of Veterans Affairs.

Sec. 304. HoDAG Amendment

This section would permit the HoDAG program to be used to expand homeownership opportunities under limited circumstances. The section would apply many of the requirements and restrictions which govern the Nehemiah program to this HoDAG effort.

TITLE IV—REFORMS TO FARMERS HOME ADMINISTRATION

Sec. 401. Farmers Home Administration Accountability in the Awards of Assistance; Remedies and Penalties

Title V of the Housing Act of 1949 is amended by adding at the end: Sec. 536. (a) Notice Regarding Assistance.

The Secretary of Agriculture would be required to publish in the Federal Register notice of fund availability, application procedures, selection criteria and documentation of decisions. The Secretary could waive these requirements in response to an emergency.

The Secretary will require applicants for assistance to disclose information on other government assistance they receive, other parties that have an interest in the application and expected sources and uses of funds for program activity. Applicants would be required to update disclosed information within 30 days of any substantial change.

Lobbyists and consultants would be prohibited from receiving payments based on the amount or number of units of assistance their clients receive or on any contingency basis. They would be required to register with the Secretary and to disclose to the Secretary certain information relating to their services. They would also be required to regularly report to the Secretary on their activities.

If the Secretary finds a violation of this section occurred before a selection is made, the Secretary shall determine whether to terminate the selection process. If the selection has already been made, the Secretary may void the selection, impose various sanctions, recapture any funds dispersed or take other appropriate action. The Secretary will publish in the Federal Register a statement describing such an action.

Whoever violates this section is subject to civil penalties up to $100,000 for an individual or $1,000,000 for an applicant that is not an individual. These penalties will not limit other applicable sanctions. Penalties would be deposited in the Rural Housing Insurance Fund.

The Secretary will certify that any assistance provided is the minimum necessary to provide affordable housing, taking into account assistance from all sources.

The Secretary will promulgate regulations implementing this section within 180 days of enactment, and this section will go into effect at that time.

The Secretary will report to Congress on actions carried out under this section within 180 days of enactment of this section.

Sec. 402. Reuse of Section 515 Loan Authority

If Section 515 loan authority is obligated to a borrower, but the loan is not closed, the loan authority would remain available for lending to another borrower in the same fiscal year.

TITLE V—NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Sec. 501 Purpose

This subtitle would establish a National Commission on Severely Distressed Public Housing to (1) identify the housing projects that are in distress, (2) assess the strategies that have been used to improve severely distressed public housing, and (3) develop a national plan to eliminate the problems by the year 2000.

Sec. 502—Establishment of Commission

The National Commission on Severely Distressed Public Housing (Commission) would be established.

Sec. 503—Membership of Commission

(a) Appointment. The Commission would be composed of 18 members: (1) six members appointed by the HUD Secretary; (2) six members appointed by the Chairmen and Ranking Minority Members of the Senate Subcommittees on Housing and Urban Affairs and VA, HUD and Independ-

ent Agencies (Appropriations), and (3) six members appointed by the Chairmen and Ranking Minority Members of the House Subcommittees on Housing and Community Development and VA, HUD and Independent Agencies (Appropriations). Each set of appointments would contain two elected public officials, two experienced public housing officials, one tenant or tenant representative, and one person who is a business or labor leader or a distinguished academic in the subject of housing and urban development.

(b) Chairperson. The chairperson would be elected by the Commission.

(c) Quorum. A majority of the members of the Commission would constitute a quorum.

(d) Voting. Each member of the Commission would have one vote.

(e) Vacancies. Vacancies on the Commission would be filled in the manner in which the original appointment was made.

(f) Prohibition of Additional Pay. Commission members would serve without pay, but be reimbursed for travel and expenses.

Sec. 504. Functions of the Commission

(a) Identification of Severely Distressed Public Housing Projects. The Commission would identify distressed public housing projects and give special attention to those that (1) require major redesign; (2) are occupied predominantly by families with children; (3) are locations for recurrent vandalism and criminal activity; and (4) suffer from serious management deficiencies.

(b) Evaluation of Alternative Strategies. The Commission would evaluate the strategies that have been used by the public and private sector to eliminate unfit living conditions in public housing projects.

(c) Development of National Action Plan. The Commission would establish a national action plan to eliminate unfit living conditions in public housing by the year 2000.

(d) Final Report. Within 10 months of its establishment, the Commission would be required to submit to the Secretary and to the Congress a final report containing the information specified in the national action plan. Authorization for the Commission would sunset three months after the report is submitted.

Sec. 505. Powers of Commission

(a) Hearings. The Commission would be able to hold hearings as advisable.

(b) Rules and Regulations. The Commission would be able to draft such rules and regulations as necessary.

(c) Assistance From Federal Agencies. The Commission would be authorized to (1) secure data and information from Federal agencies and from PHAs, (2) obtain administrative support services from the General Services Administration, and (3) at the discretion of the HUD Secretary utilize detailed HUD personnel to assist the Commission in carrying out its duties.

(d) Mails. The Commission would be authorized to use the U.S. mails as other Federal agencies.

(e) Contracting. The Commission would be able to contract with private parties for necessary research and surveys.

(f) Staff. The Commission would be authorized to appoint a paid executive director and such staff as would be needed.

(g) Advisory Committee. The Commission would be considered an advisory committee.

Sec. 506. Authorization for Appropriations

There would be authorized for the purpose of this title $2 million for FY 1990 and $1 million for FY 1991. All funds appropriated under this section would remain available until expended.

Sec. 507. Sunset

The authorization for the Commission would terminate 18 months after the appointment of all members.

EXPLANATION OF TITLE V

The HUD Reform bill would establish a National Commission on Severely Distressed Public Housing. The Commission would be charged with identifying public housing developments in a severe state of distress, assessing the most promising strategies to improve the condition of these projects and developing a national action plan to eliminate by the year 2000 unfit living conditions in those public housing developments determined by the Commission to be severely distressed.

For the past fifty years, public housing has been a strong pillar of national housing policy. Most public housing in the nation consists of small garden-style apartment complexes which are well maintained and relatively indistinguishable from other subsidized or unsubsidized rental housing.

Nevertheless, among the nation's 10,000 projects, there exist a few highly visible family public housing developments with intolerable and seemingly intractable conditions that are perennially spotlighted by the media. These few large developments reflect negatively on the efforts of PHAs, nonprofit and for-profit developers across the nation to develop and maintain affordable housing for low income families. These developments also often occupy sites of a size or value which could not again be assembled for affordable housing and, thus, are a potentially valuable public resource.

The severely distressed developments typically share common characteristics. First, these developments require major redesign to correct not only for years of deferred maintenance and the physical deterioration or obsolescence of major systems but for serious flaws in the original design. Many low-rise and high-rise developments, for example, were built without attention given to security concerns. In both cases, developments are often densely populated.

Second, the families residing in these severely distressed developments are themselves distressed. The problems generally associated with the inner city poor—high rates of unemployment and teenage pregnancy, broken families, lack of adequate education, drug-use and drug-trafficking, vandalism, random violence—are magnified and exacerbated by the concentration of families with children in dense, segregated living environments. In some developments, 85 percent or more of the residents receive AFDC benefits.

Finally, some of these developments suffer from serious management problems. Some of those problems stem from forces beyond the control of public housing managers: lack of social and income diversity, inadequate operating subsidies, unpredictable modernization funds, political interference by local politicians. Yet, it is a sad fact that some PHAs no longer practice the type of on-site project management that is synonymous with good real estate management. The GAO has also informed the Committee that some PHAs do not even use project-based accounting methods so that differences in operating, maintenance and utility costs can be calculated on a project-by-project basis.

It is on these relatively few developments that the Commission would be directed to concentrate its efforts. The goal would be to recommend the means by which conditions on such sites could be dramatically improved by the turn of the century, so that both the tenants involved and the public housing program no longer will suffer from the most serious mistakes of many years past.

It is expected that the Commission would approach this task with a goal of building on the positive efforts which already have occurred in some cities with respect to such developments. The Commission should focus particular attention on instances where, through the initiatives of local housing authorities, tenant management groups or others, localities have been able to turn around their most deteriorated public housing developments.

The proposed membership of the Commission reflects the bipartisan nature of the task of addressing the most severely distressed developments. Members would be appointed in equal numbers by the Secretary of Housing and Urban Development, the Chairman and Ranking Minority Member of the Senate Subcommittee on Housing and Urban Affairs and the Chairman and Ranking Member of the House Subcommittee on Housing and Community Development. The composition of the Commission also would reflect the necessity that any efforts to rejuvenate these developments be spearheaded at the local level, have the leadership of local public housing authorities who own and are directly responsible for these properties and have substantial tenant involvement. Thus, the Commission would include two appointees from each appointing entity who are elected officials at the federal, state or local level, two public housing authority officials or their representatives and one tenant or tenant representative. In addition, the critical contributions of business, labor and academia to this effort are recognized by inclusion of one such appointee by each appointing entity.

The bill would direct the Commission to identify developments in a severe state of distress, giving special attention to family developments that share the common characteristics described above. The Commission's focus should be narrow and stay on developments where conditions do not appear susceptible to adequate improvement through better management, security or social service measures, the MROP and CIAP program (at current funding levels) or other means generally available.

The Commission would be directed to assess the most promising strategies for improving the condition of severely distressed developments. The Committee emphasizes the concern, stated in many contexts by Congress, that the preservation of low income housing is a critical objective. Although the Commission is directed to consider replacement housing efforts which have been made to date, it is generally easier to preserve low-income housing on the present sites than to amass new sites. In some cities, this may be the only practical alternative. In addition, low-income public housing is more assured of remaining an available resource in the future than private housing options. Thus, the Commission's consideration must weight heavily the extent to which intervention strategies have resulted in the retention of low income housing, particularly public housing, on present sites.

The bill lists a number of strategies which the Commission should evaluate. The list is

intended to be non-exclusive. The Commission should evaluate both interim and long-term measures needed to improve development conditions. For example, as an interim management measure, some housing authorities have relocated tenants within large distressed sites so that some parts of a site can be fully occupied and maintenance and security efforts concentrated there while other parts of the site are temporarily vacated and secured. This may be far preferable to attempting to manage a site of many partially vacant buildings, with drug dealers and other squatters attempting access to vacant apartments. There may be other security strategies which been effective to stabilize sites until enough control can be achieved to make longer-term efforts feasible. Interim repairs are often needed.

With respect to longer-term approaches, the Committee expects that the Commission would evaluate fully all strategies which have proven successful. Some housing authorities have significant experience undertaking substantial renovations in both high-rise and low-rise developments which lower site density, lower the number of children using common elevators, transform interior public areas such as entryways, corridors and stairs and reassign common outdoor space into yards accessible only to the apartments that border them. Other strategies where there may be less experience nationally, including conversion to tenant ownership, conversion to mixed-income housing and partial and full disposition, should be evaluated. As described above, the bill would direct the Commission to consider efforts to provide for replacement public housing and the success of such efforts.

The Commission's final report would include, most importantly, a national action plan for improving living conditions of severely distressed public housing developments. The action plan would (a) specify objectives that HUD could achieve in cooperation with PHAs, public housing tenants and others; (b) provide a schedule for the achievement of such objectives; (c) recommend any necessary legislative or administrative action; (d) assess how to carry out any necessary replacement; and (e) estimate the cost of carrying out specific programs and initiatives. The Commission clearly cannot plan the redevelopment of specific sites, which must be initiated locally. Instead, the Commission should recommend the tools and assistance which the federal government would need to provide to make the action plan a success.

The legislation would direct federal agencies, particularly HUD, to cooperate fully with the Commission. HUD would also be required to detail staff as needed on a non-reimbursable basis. The full cooperation of HUD will be critical so that the Commission can achieve its mandate in the short time frame allotted. HUD already has substantial materials collected from public housing authorities regarding their most severely distressed developments, from sources such as the authorities' five year CIAP modernization plans, applications for major reconstruction funding, applications for demolition or disposition, past modernization efforts such as Urban Initiatives or Targeted Projects programs and other sources. HUD also has the "Major Redesign" component of its recent study of modernization needs, undertaken by Abt Associates, and perhaps other compilations and analyses. HUD should promptly provide the Commission with the material it requests and the staff assistance it needs.

TITLE VI—THE NATIONAL COMMISSION ON AMERICAN INDIAN AND ALASKA NATIVE HOUSING

Sec. 601. Establishment

The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing would be established.

Sec. 602. Membership

(a) Appointment. The Commission would be composed of 12 members: (1) three members appointed by the HUD Secretary, (2) three members appointed by the Chairman and Ranking Minority Member of the Senate Select Committee on Indian Affairs, (3) three members appointed by the Chairman and Ranking Minority member of the House Subcommittee on Housing and Community Development, (4) three members appointed by the Chairman and Ranking Minority Member of the Senate Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs.

(b) Organization. (1) The chairperson would be elected by the Commission. (2) A majority of the members of the Commission would constitute a quorum. (3) Each member of the Commission would have one vote. (4) Vacancies on the Commission would be filled in the manner in which the original appointment was made. (5) Commission members would serve without pay, but be reimbursed for travel and expenses.

Sec. 603. Functions of the Commission

(a) The Commission would identify factors impeding the supply of Indian housing and give special attention to problems of (A) administrative capacity, (B) internal management, (C) access to financial markets, (D) infrastructure development, and (E) adequacy of existing Indian housing program.

(b) The Commission would evaluate the strategies that could be used by the public and private sector to develop housing opportunities for American Indians, Alaska Natives, and Native Hawaiians.

(c) The Commission would establish an action plan that describes (A) the legislative and regulatory reforms needed, and (B) a schedule of objectives for HUD to meet in cooperation with Indian housing authorities and tribes.

(d) Within 12 months of its establishment, the Commission would be required to submit to the Secretary and to Congress a final report containing the information specified in the action plan. Authorization for the Commission would sunset eighteen months after the appointment of all members.

Sec. 604. Powers of Commission

(a) The Commission would be able to hold hearings as advisable.

(b) The Commission would be able to draft such rules and regulations as necessary.

(c) The Commission would be authorized to (1) secure data and information from Federal agencies and from IHAs, (2) obtain administrative support services from the General Services Administration, and (3) at the discretion of the HUD Secretary utilize detailed HUD personnel to assist the Commission in carrying out its duties.

(d) The Commission would be authorized to use the U.S. mails as other Federal agencies.

(e) The Commission would be able to contract with private parties for necessary research and surveys.

(f) The Commission would be authorized to appoint a paid executive director and such staff as would be needed.

(g) The Commission would be considered an advisory committee.

Sec. 605. Authorization for Appropriations

There would be authorized for the purpose of this title $500,000 for FY 1990 and $500,000 for FY 1991. All funds appropriated under this section would remain availale until expended.

TITLE VII—COMMUNITY DEVELOPMENT

Sec. 701. Nullification of Right of Redemption of Single Family Mortgagors Under Section 312 Rehabilitation Loan Program

This section would provide, in the case of vacant and abandoned property, federal preemption of state redemption laws covering the section 312 program.

Sec. 702. CDBG Grants to Indian Tribes

This section would eliminate Indian tribes from the definition of nonentitlement communities. Not more than 1% of the funds appropriated for CDBG would be made available for Indian tribes on the basis of a competition on the basis of criteria promulgated by the Secretary. The Indian CDBG program is revised to be administered through the Office of Indian and Alaska Native Programs.

TITLE VIII—SECTION 8 RENT ADJUSTMENTS

Sec. 801. Annual Adjustment Factors for Section 8 Rents

The HUD Reform Bill seeks a fair, nationwide settlement of the harm caused by the Reagan Administration's maladministration of the Section 8 New Construction and Substantial Rehabilitation program.

As originally conceived, Section 8 rents were to be annually adjusted by a reasonable formula. These adjustments, however, were to be limited by a market reality or comparability test. The adjustments could not result in material differences between the rents charged for assisted and unassisted units.

In Rainer View Associates v. United States, the Federal district court for the Western District of Washington found that HUD's implementation of comparability studies, while authorized under the original statute, violated due process. The court found that the comparability studies performed by various field offices suffered from serious procedural deficiencies. Field offices were able to devise their own rules for comparability studies since no uniform guidelines (published or otherwise) existed. Owners in different parts of the country were, therefore, subjected to differing procedures without any justifying rationale.

On appeal, the Court of Appeals for the Ninth Circuit found that under the original contracts executed with owners, HUD chose the option of adjusting rents on the basis of a formula (the AAAF). The court held that, once HUD chose that method, HUD was prohibited from performing individualized comparability studies.

The Committee agreed with the district court's assessment of HUD's implementation of comparability studies. Owners were harmed by HUD's failure to promulgate uniform guidelines for the nation and must be compensated. The Committee did not, however, share the Ninth Circuit's interpretation of HUD's authority to perform individualized comparability studies. Clearly, a market reality test must be an integral component of the Section 8 program to ensure that HUD pays reasonable rents. The court's award of damages—retroactive payments based on the AAAF applied to the full contract rents—would have HUD paying

rents that in some areas are significantly above the local rent levels. The Administration placed the cost of compliance with the Court of Appeals decision at $600 million to $1 billion. The Administration estimates that the cost of this retroactive solution is $210 million nationwide.

The bill provides a fair nationwide settlement for the past harm caused by HUD's implementation of rent comparability studies in the mid-1980's. Owners would receive retroactive payments. HUD would be required to promulgate regulations for conducting comparability studies in the future. HUD would also be required to study alternative (perhaps administratively simpler) methodologies for adjusting rents.

*Retroactive.*—The bill would provide retroactive relief for three classes of projects:

(1) those where HUD reduced rents because of comparability studies;

(2) those where HUD increased rents by less than the full AAAF on the basis of a comparability study; and

(3) those that received no change in their rents (because the owners did not request an adjustment, fearing a comparability study and consequential reduction in rents.)

In these cases, HUD would be required to calculate retroactive payments to compensate the owners. Owners would receive such payments only upon their request. The retroactive payments would be calculated as follows:

(1) HUD would, for FY 1980 and all subsequent fiscal years, apply the AAAF to the contract rent minus the portion of the rent attributable to debt service. HUD would aggregate the rental adjustments that should have been provided in each fiscal year. The owner would then receive the amount by which those rental adjustments exceeded the rental adjustments actually approved by HUD during these fiscal years.

(2) In no case would an owner receive less than 30% of the following calculation: HUD would, for FY 1980 and subsequent fiscal years, apply the AAAF to the full contract rent. HUD would then aggregate the rental payments that should have been provided in each fiscal year. The owner would then receive the amount by which that sum exceeded the sum of rental payments actually approved by HUD during these fiscal years.

(3) Payments would be made over a 3 year period and would be provided only to the extent approved in appropriations Acts.

(4) The retroactive settlement would not apply to court judgments that are final and not appealable or settlement agreements.

*Prospective.*—The calculation described under paragraph (1) above would produce a new base rent level. If the new base rents are greater than the currently approved rents for the project, HUD would set the higher rent as the base for future rental adjustments. No currently approved rent would be reduced. This new base rent would subsequently be adjusted by the AAAF, subject to appropriate comparability limitations when promulgated under regulations.

The bill would require HUD to establish regulations (within 6 months of enactment) to implement comparability studies prospectively. These studies would be applied to a project where HUD had reason to believe that the application of the automatic annual adjustment factor would result in material differences between rents charged for the project and comparable units as HUD determines. These studies would be applied at the owner's request or where HUD deems it appropriate.

The studies would be implemented by establishing to the extent practicable a modified annual adjustment factor for a market area that is smaller than the area used under the general AAAF formula. The modified adjustment factor would be established on the basis of the results of a study conducted by HUD of the rents charged and any change in such rents over the previous year for assisted units and unassisted units of similar quality, type and age in the smaller market area. In the event HUD determined (1) that the modified annual adjustment factor could not be established or (2) that the factor when applied to a particular project violated the "material differences" test, HUD could apply an alternative methodology (including a project-based comparability study) for determining comparable rents.

HUD would also be required to conduct a study to assess other possible methods of adjusting rents in Section 8 projects. The House bill would have limited rent adjustments to increases in operating costs in certain circumstances. That additional limitation on rent adjustments has not been accepted in the Senate bill but should be studied by HUD from a legal, administrative and budgetary perspective. The study would be due not later than March 1, 1990.

Mr. RIEGLE. Mr. President, I rise today in strong support of the Senate amendment to H.R. 1, the Department of Housing and Urban Development Reform Act of 1989. The amendment before us will not only eliminate the kinds of abuses at HUD that have been highlighted in testimony before the Banking Committee and in the national media, but it will also help to restore the public's confidence that HUD can perform its job without bending to pressure from well connected developers or consultants.

Mr. President, the evidence before the Banking Committee suggests there was extensive political favoritism in awarding discretionary grants at HUD and that there was little or no program monitoring at HUD. As a result, developers were permitted to layer public subsidies until rehabilitating low-income units were the most lucrative game in town. Lenders were allowed to make a quick buck by ignoring prudent underwriting standards and leaving HUD holding the bag when projects defaulted. The list of abuses goes on and will be become longer as our investigation into this matter continues.

In the wake of this evidence, it is abundantly clear that many changes are needed to reform HUD. And although this amendment does not include all of the reform that I think are necessary, I believe it is an important step toward putting HUD back on its feet.

The amendment before us proposes ethical reforms designed to bring funding decisions into the open. Fair Share distribution will be reinstated and all jurisdictions will benefit from HUD programs. Public notice will be required for all funding decisions and advance disclosure of funding decisions by HUD officials will be forbidden. The amendment also grants HUD the authority to impose civil money penalties on HUD-approved mortgages, lenders, and Ginnie Mae issuers who recklessly disregard program requirements.

In addition to these ethical reforms, the management function at HUD will be reinvigorated by establishing a chief financial officer, an FHA controller, and increasing funding for program evaluation and monitoring. The FHA portfolio will be strengthened by creating a Mortgage Review Board to oversee operations. The Board will have the power to terminate a mortgagee from participation in FHA programs if a mortgagee violates FHA requirements. Furthermore, Ginnie Mae and FHA will be required to coordinate actions if a mortgage is forced to withdraw from participation.

The amendment also extends the restrictions on prepayment of HUD-held mortgages. The February 5, 1990 deadline set by Congress in 1987 would be extended to August 1, 1990. It is imperative that this extension be adopted in order to preserve thousands of low-income units. This extension will give Congress the opportunity to study this issue and develop a game plan for permanently preserving the affordability of these units.

I urge my colleagues to adopt this amendment and to support final passage of H.R. 1. As we are all very much aware, HUD has been wrought with severe problems over the last few years, and this bill is the first step toward putting HUD back on its feet and making housing a national priority once again.

Mr. D'AMATO. Mr. President, on October 3, 1989, Secretary Kemp introduced an administration reform proposal to clear the decks at the Department of Housing and Urban Development. The House moved quickly to pass a revised version of this reform proposal on November 14, 1989. Now, it is time for the Senate to finalize this effort.

I must commend President Bush and the administration for responding quickly to management and programmatic deficiencies at HUD. Secretary Kemp was first out of the gate to turn around the problems at HUD. He deserves a great deal of credit for being a part of the solution, not a part of the problem.

In addition, I would like to thank my congressional colleagues for pressing forward in such a timely fashion to address the urgent need for reform. With the leadership of Chairman GONZALEZ and Congressman WYLIE, the House passed a reform measure very rapidly—so rapidly that many peole believed that the Senate would not be able to respond this year. On the contrary, my Democratic and Republican colleagues in the Senate have acted urgently to address HUD

Reform legislation. My colleagues, in particular ALAN CRANSTON, should be commended for ensuring that the Senate finalized the effort to pass HUD reform this year.

The reform package that we are passing today, H.R. 1, is a revised version of legislation that was introduced just a few weeks ago, S. 1841, the administration's reform package. This legislation, of which I was an original cosponsor, was the culmination of hearings and reports relating to problems at HUD. S. 1841 was an excellent starting point for tightening up management and programs at HUD.

The bill that we are passing today is simply a revised version of S. 1841. H.R. 1 contains the vast majority of the administration's reform package plus a few provisions which are urgent in nature. First and foremost of these time sensitive provisions is the extension of the Emergency Low-Income Housing Preservation Act. This act expires on February 5, 1990. H.R. 1 provides a short-term extension to September 30, 1990, allowing the Congress additional time to devise a long-term solution to the problem.

By passing reform legislation at the end of this year, the Senate is reaffirming its commitment to making the Department an efficient agency that strives to address the housing needs of families around the Nation. We must ensure that our Federal dollars are allocated based on fairness, merit, and need. In addition, we must focus attention on administration. Poor management most affects those individuals who are in need of housing assistance.

The passage of this reform legislation also sets the foundation for working on new initiatives next year. President Bush recently introduced his new housing proposal. Both the Senate and the House have broad housing packages. I look forward to working with the administration and the House next year to advance a major overhaul of our outdated housing programs. It is my hope that the current reform package, H.R. 1, and next year's new initiatives legislation will maximize the Federal Government's potential to provide fair and effective affordable housing opportunities.

This reform package aims to make changes relating to HUD ethics, management and finance, and the operations of the Federal Housing Administration. The bill incorporates the ideas of Congress, the administration, the GAO, and the HUD inspector general. The proposal truly reflects a broad consensus of concerns about reforming the activities of the Department of Housing and Urban Development.

Let me briefly describe a few provisions in this bill. This legislation will make all funding decisions available to the public, increase accountability for such decisions, eliminate discretionary funding, create the position of a chief financial officer for the Department, and mandate regular audits of the Department.

In addition, the legislation addresses a controversial ruling in the ninth circuit relating to the Rainier View case. The Senate, House, and administration have been able to agree upon retroactive and prospective solutions to this problem. Without a legislative remedy, the Federal Government would have been forced to pay over $600 million in windfall payments to developers and owners around the Nation. The provision in this bill reduces this loss to $210 million—a savings of over $390 million. In addition, the bill ratifies the use of comparability studies. I am pleased that my colleagues and I were able to agree upon a reasonable compromise for this problem.

Section 108, the Ranier View provision, is designed to promote nationwide uniformity in the manner in which HUD implements the comparability limitation of section 8(c)(2)(C) of the 1937 act in making rent adjustments using the annual adjustment factors for section 8 projects. This would resolve past and present controversies between the Department and project owners over the use of comparability studies as an independent limit on the amount of rental adjustments which would otherwise result from the application of annual adjustment factors. It would provide fair, objective, and uniform standards for redetermining past rent adjustments where the Department's prior use of comparability studies has resulted in the reduction of the maximum monthly rent or the failure to increase rents to the amount which would otherwise result from the application of the annual adjustment factors under section 8(c)(2)(A) of the 1937 act. It would also provide for implementing section 8(c)(2)(A) in the future through regulations. The standards for the past will ensure a reasonable rate of return to the owners while effectuating the original congressional objective in 8(c)(2)(C) of avoiding excessive rents and rates of return for section 8 projects. By not only making the statutory standards for applying comparability more concrete, but further requiring HUD to promulgate regulations for future year rent adjustments, this amendment should eliminate uncertainty and contribute to smooth and effective operation of the section 8 program.

Subsection (a) provides the exclusive method by which rent adjustments for projects whose rents were limited as a result of a comparability study, or for which rent adjustments were not requested because of owner concern that such a request would have resulted in a negative adjustment to project rents, may be recalculated. Rent adjustments for such projects will be governed by this method for all contract years until the Secretary issues new regulations implementing this section. Rent adjustments for contract years after the effective date of the regulations will be governed by subsection (c).

Pursuant to subsection (a), the Secretary shall initially determine for each affected project the amount of the rent adjustment due to the anniversary date of its assistance contract falling in fiscal year 1980 by multiplying the then applicable annual adjustment factor times a figure consisting of the fiscal year 1979 contract rent minus the amount of the contract rent that is attributable to the debt service. This rent adjustment amount is to be added to the then existing rent to become the contract rent for fiscal year 1980. The same calculation is to be performed for each succeeding year. The Secretary is then to determine by how much, if any, the total amount of rent computed under this procedure for all applicable years exceeds the total amount of rent adjustments that have actually been approved for the project for these years.

In addition to making this first calculation, the Secretary shall make a good calculation as follows: 30 percent of a figure equal to the annual adjustment factor multipled by the full contract rent for the respective years, for each year on or after fiscal year 1980, aggregated for all those years, minus the sum of all rental adjustments the Secretary actually approved for those years. Where requested by the owner, the Secretary shall pay to the project owner the result of the first calculation, or the second calculation, whichever is higher, pursuant to the process described in subsection (b). Whether or not requested by the owner, the method provided by this subsection shall be the exclusive method by which retroactive payments may be made for projects subject to this subsection for all claims pertaining to the period from fiscal year 1980 until the regulations issued under subsection (e) take effect.

If the rent level for the current year calculated under the debt service calculation method described in subsection (a) is higher than the rent now in effect for the project, that higher rent shall become the effective rent due the owner this year and shall be the rent upon which future rent adjustments shall be based. However, where that recalculation under subsection (a) would result in lower rents than were previously approved by the Secretary, the Secretary may neither recapture those amounts nor lower the present contract rents.

There were also a number of provisions contained in the S. 1841, the administration's proposal, that were not

included in H.R. 1. The most noticed of these provisions are the proposed targeting reforms to the CDBG program. These provisions were not included because a number of Members in the Senate did not believe these provisions to be reforms. Instead, these provisions were seen to be policy changes. Given that these changes did not relate directly to HUD reform, many Senators felt strongly that hearings must be held on these changes before they were advanced in legislation.

In addition, the bill eliminates a number of programs which have jeopardized the soundness of the FHA funds. Specifically, the bill eliminates private investor-owners from participation in the FHA single family insurance program. This is especially significant because in 1988 although investors accounted for only 2.5 percent of FHA's new policies, they accounted for about 15 percent of the losses.

The bill also repeals the title X Land Development Program. This program has almost a 50-percent default rate. It has been used for speculative development, not affordable housing. One defaulted title X loan was used to build a development on a golf course.

I look forward to the enactment of this reform package. We have all worked hard to create a plan that will bring order to the chaos at HUD. I am eager to work with my colleagues in Congress and the administration to ensure that Federal dollars are used efficiently for those who truly need affordable housing.

Mr. KERRY. Mr. President, I rise today in support of the Senate amendment to H.R. 1, the reform bill for the Department of Housing and Urban Development. The measure currently before the Senate attempts to address and to combat the egregious system of waste, fraud, and abuse that became standard operating procedure at the Department.

The bill attempts to accomplish this by establishing a system to address reform in three principal areas: ethics reform; management reform; and reform of the Federal Housing Administration.

In addition, the bill contains a very important provision to temporarily extend the expiring use moratorium that the Congress passed in the 1987 Housing Act. This extension, coupled with the incentives included in the amendment, are of special importance both nationally and in particular to my home State of Massachusetts. The extension of the prepayment moratorium will help to prevent the displacement of thousands of low-income tenants across the country.

In the portfolio of housing managed by the Massachusetts Housing Finance Agency [MHFA], 61 developments accounting for more than 11,000 units of housing will be eligible to prepay between 1990 and 2000. In addition, another 18,000 HUD units will be eligible to prepay during that same time period. Mr. President, these units represent families and individuals who look to us to help ensure the protection of their homes. I am pleased that the Senate has worked to address this issue in the amendment before us today.

Mr. President, I must state at the outset my very serious concerns with the way in which this legislation reached the Senate floor for consideration. The bill did not go through the usual committee markup procedure and members of the committee did not have the benefit of hearings to examine some of these provisions in greater detail prior to passage on the Senate floor. Nevertheless, I recognize the need to begin to combat the abuses that have pervaded HUD. I have communicated my concerns to the leadership of the Banking Committee and as a member of the Housing Subcomittee, I am prepared to revisit these issues in a more thorough manner through the committee oversight process.

Mr. President, why is this legislation necessary? Over the last several months we have seen the unfortunate results of the abject failure of the Reagan administration to manage the Department of Housing and Urban Development in a responsible manner over the last 8 years. We have seen how the real housing needs or people throughout our country were displaced by greed, corruption, and influence. Programs and program funds designed to assist the most needy were, in fact, dispensed to those represented by consultants who had the most clout.

The severe cutbacks in housing that occurred over the last 8 years are well known to most of my colleagues. We know all too well, Mr. President, the high human cost of these cutbacks. We see these costs take their toll in the nationwide increase of homelessness: we see these costs take their toll as poor people pay upwards of 50 percent of their income for rent. We see these costs take their toll as young couples find it increasingly difficult to fulfill their dream of homeownership. These housing cutbacks, in and of themselves, are a disgrace. What is even more disgraceful and in fact is unconscionable, Mr. President is that in many cases, the limited housing resources available never reached those they were designed ot benefit.

Mr. President, families that desperately need our help in obtaining decent shelter have been hit by a double whammy in the eighties. Needed assistance has been ruthlessly slashed and the little bit remaining has been parceled out on the basis of greed not need. This must stop.

As a member of the Housing Subcommittee, I watched with dismay as these revelations came to light through testimony at Senate and House hearings and reports to the Senate Housing Subcommittee from the General Accounting Office and the HUD inspector general. In this regard, I am pleased that the Senate amendment before us today, contains key provisions that were originally included as part of the National Affordable Housing Act and were the direct result of recommendations and testimony from the hearings conducted in the Senate.

Specifically, I am pleased to see the provisions related to improving the management of the Federal Housing Administration [FHA], including the establishment of an FHA comptroller, as well as the establishment of a chief financial officer. These positions were recommended by the GAO in their report to the subcommittee and should provide for more adequate supervision and management of the financial transactions within the Department.

I am also pleased that the Senate included language to provide for increased accountability in awards that HUD distributes; for program evaluation and monitoring; clarification on the amounts of assistance projects are able to "layer"; and improvements in the HUD Coinsurance Program that will help to ensure the long-term financial soundness of the FHA funds.

With these improvements implemented at the Department of Housing and Urban Development, we in Congress must be diligent in our oversight responsibilities. We must work with the Secretary as he implements the reforms we pass today to ensure that these reforms are working effectively and in the most productive manner. We must stand prepared to refine these reforms as future experience and oversight may warrant.

Mr. President, although I am pleased that we are moving forward expeditiously to address the wrongs compounded by the neglect at HUD, I must express my disappointment with the fact that we were unable to move forward with the National Affordable Housing Act. As a result, we are doing little in the way of addressing the lack of affordable housing—the real housing crisis that exists throughout our country.

The Affordable Housing Act has been more than 3 years in the making and grew out of the Senate commissioned Task Force on Housing, the Rouse-Maxwell task force. The bill was crafted in a bipartisan manner and the Housing Subcommittee held several months of hearings on each major provision of the bill. Comments and recommendations by those concerned with as well as those affected

by the legislation were incorporated in a fair and open process.

The Affordable Housing Act is a reasonable, responsible, and long overdue renewal of the Federal Government's role in and commitment to the goals of the 1949 Housing Act—that of providing a decent home and suitable living environment for every American. It is legislation that we can all be proud of, and I reiterate my disappointment at our failure to move this measure through the Banking Committee and onto the Senate floor this year.

This failure heightens the necessity to move forward with comprehensive housing legislation early next year when the Congress returns. Passage of the reform package is only the beginning of a very large task that lies ahead of us and represents a very small part of the Job that remains to be done.

The administration recently announced its plan for housing in the 1990's and we expect to receive actual legislative language that details this proposal with more specificity, sometime in the next few months. We must move expeditiously upon our return in January to take both the administration plan and the National Affordable Housing Act and develop a comprehensive package that melds the best elements of the two.

Finally, Mr. President, I want to take a moment to express my strong support for several key provisions contained in the Senate amendment on HUD reform that is before us today. First, I am pleased that the amendment addresses the issue of the expiring provisions under the preservation title. The provisions passed as part of the 1987 act were designed to be an interim measure while Congress developed a more permanent solution to this issue. Although we have not yet refined a permanent solution, I am pleased to see added incentives in the extension included in this bill. In the 2 years that have passed since the 1987 act, HUD has only approved one plan of action. It is our sincere hope that the additional clarifications and incentives we proved today will allow HUD to move forward expeditiously during this extension period to approve plans of actions, thereby helping to avoid the unfortunate situation where thousands of low income and elderly persons could find themselves displaced.

As I mentioned previously, Massachusetts stands to lose more than 30,000 affordable rental units between 1990 and 2000. Nationally, the figure mounts to a staggering estimate of between 523,000 and 645,000 units, represents roughly 300 properties. This is the reality that faces us in the very near future in the absence of a solution on the issue of prepayment.

I am also pleased that the Senate amendment includes language which requires HUD to submit to the Congress a report providing detailed information on the property within the HUD-held and HUD-owned inventory and to conduct a study to determine the physical renovation needs of the Nation's federally assisted multifamily housing inventory. As we work to change our current pattern of shrinking Federal housing dollars, it is vitally important that we upgrade and maintain our existing housing stock.

Mr. President, although I believe we could be doing much more, I am nevertheless pleased with the bipartisan spirit and cooperation that has pervaded our bringing this amendment on HUD reform to the floor for consideration. We have a long road before us and it is my hope that the cooperation exemplified by the administration, by HUD, as well as my colleagues on both sides of the aisle and both sides of the Congress, in getting us to this point today, continues through to next year and through the arduous task that lies ahead. If this can happern, I am confident that we will begin once again to fulfill our historic role and responsibility of ensuring that the basic housing needs of our citizens and our Nation are met.

Mr. BRYAN. Mr. President, I rise in support of the bill. H.R. 1, a bill to reform the Department of Housing and Urban Development [HUD]. I commend the chairman and the ranking member on the diligent work they have done with the other body and the administration to craft a legislative solution that will begin the healing process at HUD.

Mr. President, we have witnessed over the last several months incredible revelations of political insider dealing and influence peddling of the worst kind at HUD during the Reagan administraton. Billions of dollars in desperately needed housing funds for the homeless, the poor, and those struggling to achieve the American dream of home ownership were directed to well-connected consultants and developers who reaped huge profits at public expense.

The bill before us today addresses many important, critical reforms. It applies a balanced approach, that includes disclosure for applicants, as well as, more accountability for HUD officials. H.R. 1 reallocates housing assistance through a fair share formula rather than by the discretion of political appointees. It requires public disclosure of all Government assistance when applying for HUD programs and grants. The bill will allow the Secretary of HUD to impose civil money penalties on lenders and mortgagees who violate the FHA program requirements and mortgagors who insure or coinsure mortgages under the FHA program.

Mr. Kemp has taken some bold steps to reform the FHA program and we commend him. H.R. 1 establishes a chief financial officer and a FHA comptroller to implement a financial management system and to supervise financial operations. It requires HUD to prepare and make available annual audited financial statements of the FHA funds. It also ensures that FHA managers are accountable for all program operations under their direction.

Mr. President, I am pleased we are working today to end the fraud, waste, and abuse that have plagued HUD for the last several years. However, we cannot stop here. The Banking Committee will continue to investigate the abuses at HUD and, if necessary, will introduce additional legislation.

Next we must begin to rebuild the Nation's housing policy to respond to the housing needs of our low- and middle-income families. I look forward to working with the administration and the other body next year on a creative approach to solving this crisis.

Mr. SASSER. Mr. President, one of the most flagrant examples of abuse of power and waste of precious Government resources was demonstrated at the Department of Housing and Urban Development under the past administration. Millions, perhaps billions, of dollars intended to house the very poorest segment of the population were whittled away to line the pockets of fat cat developers and well-connected consultants. When you consider that HUD has experienced budget cuts of 80 percent throughout the term of the past administration, the impact of this influence peddling on our scarce housing resources was particularly destructive.

Indeed, Mr. President, this legislation that we have before us tonight will deal with this situation. My colleague, the Senator from California, has shown remarkable leadership in crafting this legislation to end influence peddling and other abuses of HUD programs.

The reform package presently under consideration contains many provisions which will help clean up the mess at HUD and get it back on track and back to its prescribed mission—housing and community development programs for the needy.

Indeed, in this regard, I must say that HUD Under Secretary Jack Kemp has already made much progress. Most importantly, the Secretary has assembled a team of competent, professional, and dedicated public servants, people who take HUD's mission seriously.

The reform bill we are considering today is critical to the future of housing programs. The required disclosure of the HUD loan and grant award process should ensure the blatant effects of influence peddling on decisions will not be witnessed again. The required publication of all waivers approved by the Secretary will expose

these important, but potentially abused authorities, to public scrutiny and therefore, also prevent inappropriate uses. Further, I believe that the creation of a chief financial officer at HUD and a comptroller at the FHA, along with provisions requiring HUD to perform annual FHA audits and clearing HUD's authority to contract for financial assistance from qualified cousultants, should help track and coordinate just where these Federal dollars are going. Indeed, I believe these requirements will go a long way toward preventing a recurrence of the "Robin HUD" problems.

Much in line with similar legislation affecting the appropriations process, consultants representing housing projects will be required to register with HUD and will be prohibited from charging fees based on the number of units for which they obtain funding. This registration process should preclude the James Watt or Frederick Bush scenario from repeating itself.

The reform package also addresses one of the most appalling revelations made in the hearings held on the mod rehab program—the layering of subsidies. In these hearings, we heard how developers made literally millions of dollars in cash by layering the low-income tax credit on top of mod rehab subsidies. These developers then syndicated and sold the tax credit and pocketed millions before a project was even completed. The reform bill is crafted to ensure that all forms of assistance are taken into consideration before any awards are made.

Similar to the savings and loan bill, the reform bill permits the Secretary to stiffen the capital requirements for participants in the FHA multifamily coinsurance program. We have witnessed all too recently the devastating effects of allowing financial institutions to operate without adequate capital buffers and leaving the government to pick up the tab.

Most importantly, this reform bill addresses the issue of prepayment. Without the bill we were looking down the barrel of a loaded gun with the end of the prepayment moratorium on February 5, 1990. After this date, project owners would have the option of ending the low-income use of their housing. If this were to occur, over 240,000 units could be lost. The reform bill extends the prepayment moratorium until August 1 to allow time to work out incentives for the owners to keep their housing in the low-income stock.

Mr. President, I believe that it's important to enact HUD reforms as soon as possible. However, I deeply regret that we are not considering a much needed comprehensive housing bill. In that regard, it is important to note Senator CRANSTON's leadership in advancing innovative new housing programs to address the all too real housing crisis that we are now facing.

The other and much larger housing bill that Senator CRANSTON has authored—the National Affordable Housing Act—represents the type of innovation so necessary for successful new housing programs. Senator CRANSTON held one of the most extensive series of hearings that I have witnessed in my Senate career to develop this legislation. Senator CRANSTON has culled the input and expertise of housing experts such as James Rouse of the Enterprise Foundation and David Maxwell of Fannie Mae. He has also looked to governmental housing leaders such as Governor Dukakis of Massachusetts and Governor Diprete of Rhode Island and Mayor Voinovich of Cleveland, OH, and to people with actual hands-on knowledge of public housing such as tenants and administrators.

The Housing Subcommittee handled the gargantuan task of examining virtually every aspect of our Nation's housing programs through thoughtful and productive hearings. I commend the fine work of the chairman and his very capable staff.

Mr. President, I believe that one particular component of the National Affordable Housing Act, the housing opportunity partnership or HOP offers much promise. Indeed, in Chattanooga, TN, a program, Chattanooga Neighborhood Enterprise, that is the model for HOP is up and running. CNE has as its goal the rehabilitation and new construction of some 14,000 homes in the city. This is the first time that any city in America has adopted such an ambitious housing goal. HOP involves the pooling of resources of the Federal, State and local governments and private groups. Under HOP, housing can be rehabilitated, workers can aquire new skills and the dream of home ownership can be made a reality.

Besides innovative ideas like HOP, Senator CRANSTON's comprehensive housing bill will address home ownership affordability. In the 1980's home ownership for persons between the ages of 25 and 30 has dropped 20 percent. That means that 2 million fewer families own homes today than would have had the prior rate been sustained.

Mr. President, I recognized home ownership affordability as a problem some time ago. Indeed, I have introduced a bill that would help first-time home buyers realize home ownership, and 18 of my colleagues have joined me as cosponsors. My bill would ease the downpayment requirements for first-time home buyers wishing to buy a house with a FHA loan. Although this bill is not coming up for consideration this year, I will continue to pursue this and other home ownership initiatives when we come back into session. Buying a home is the single most important investment in most American's lives and we simply must not allow this important goal to slip out of young peoples' grasp.

Mr. President, the National Affordable Housing Act is an absolute must legislation in the next Congress. We have thousands of individuals—the homeless and the near homeless—who are in dire need of assistance.

However, I know that good housing programs don't come cheap. Making budget dollars available for housing will also be a top priority of mine as chairman of the Budget Committee. I will strive to provide enough room in the budget resolution to allow both the implementation of critical new housing programs and the preservation of our existing low-income housing stock.

Mr. President, in sum, we should move forward immediately with HUD reform. Next year, we need to work hard to develop a comprehensive new approach to the housing crisis. And most importantly, we must reach a consensus that affordable housing is a vital national goal that deserves a significant financial commitment on the part of Congress. I yield the floor.

Mr. DIXON. Mr. President, I support H.R. 1, the Department of Housing and Urban Development [HUD] reform legislation. I do so, however, with some reluctance.

I think it is important to act quickly on proposals to prevent abuses and mismanagement in our Federal housing programs, but I also think we need to do much more than that.

I want to commend Secretary Kemp on the steps he has taken to rid HUD of corruption. In addition, I want to recognize my colleague on the Banking Committee, Senator GRAHAM, for his leadership in the investigation of fraud and abuses in the HUD section 8 moderate rehabilitation program.

Mr. President, the fundamental problem with H.R. 1 is that it provides no new housing units.

As I have reminded my colleagues on many occasions, Federal funding for assisted-housing programs has decreased by approximately 80 percent since 1980. Many areas of the country are currently experiencing an acute shortage of available and affordable decent housing.

In addition, studies show that almost two-thirds of the poor that have found decent housing are having to pay more than half of their income in rent.

What we need today, Mr. President, is legislation to address our national housing needs—to provide Americans with affordable and available decent housing. Reform legislation is absolutely necessary, but reform legislation does not eliminate our responsibility to confront the real housing needs facing the United States today.

I am a cosponsor of S. 566, the National Affordable Housing Act. Although it is not a perfect bill, with some fine-tuning, S. 566 addresses my major housing concerns and our American national goal—that every American family is able to afford a decent home in a suitable environment.

H.R. 1 is not a bad bill, Mr. President; in fact it has many good features that I want to take a moment to describe. It is simply an incomplete bill.

One improvement to the administration's reform package that I strongly support is the enactment into law of the Mortgage Review Board and an advisory board for FHA.

Several weeks ago the Senate Banking Subcommittee, which I chair, held hearings on discrimination in home mortgage lending. The Subcommittee on Consumer and Regulatory Affairs held the hearing after receiving reports from the bank and thrift regulatory agencies about the existence of racial discrimination.

Two particularly troublesome statistics emerged. Nationally, thrifts reject black applicants for mortgage loans twice as often as whites. And, the Boston Federal Reserve found that even after taking account of the income level and housing stock of different neighborhoods, black neighborhoods still got almost a quarter fewer loans than comparable white neighborhoods. The Boston study also found that, despite often repeated claims to the contrary, unregulated mortgage companies had just as uneven a record in lending as banks and thrifts.

The Mortgagee Review and FHA advisory boards are designed to institute new procedures to eliminate fraud and abuse by mortgage lenders participating in the FHA programs. The Mortgagee Review Board would be required to take action against FHA-participating lenders who violate FHA rules.

I asked that the Assistant Secretary for Fair Housing Enforcement, the key HUD official in enforcing antidiscrimination laws, be included on the Review Board so that fair housing would become part of the Board's concerns. Further, the FHA Advisory Board would include a member who represents housing civil rights interests. These provisions have been incorporated into H.R. 1.

I believe we should use all reasonable means to raise public awareness that those lenders who discriminate will be punished and prohibited from doing business with the Federal Government.

Other sound features of the bill include:

First, establishment of a process for annual area adjustment factors for section 8 rents;

Second, new requirements on Federal Housing Administration [FHA] mortgagees to properly maintain foreclosed FHA properties until the properties are conveyed;

Third, extension of the deadline on prepayment for low-income housing preservation from February 5, 1990, until September 30, 1990. This should give Congress and the Administration a chance to complete action on major housing legislation with a long-term prepayment solution;

Fourth, creation of additional incentives to entice low-income property owners in the prepayment program to continue in it; and

Fifth, authorization for public housing agencies to set ceiling rents for a 5-year period, in contrast to the 3-year limitation now established in law.

Mr. President, I believe H.R. 1 is a good first step toward a comprehensive housing bill. Because I have received assurance from the administration and my colleagues on both sides of the aisle that a national affordable housing bill will be marked up early next year, I will support H.R. 1. With that understanding, I also call on my colleagues to support the bill.

Mr. GRAHAM. On November 16 the Senate Banking Committee adopted a resolution to create an investigative subcommittee to look into the mismanagement and abuse related to the Moderate Rehabilitation Program under section 8 of the U.S. Housing Act of 1937, and related HUD programs.

Senator MACK will be the ranking Republican member of the subcommittee, and I will serve as the chairman. We anticipate continuing our hearings after the beginning of the second session on January 23 and finishing as soon as possible thereafter. The subcommittee must provide a final report to the full Banking Committee to be referred to the Housing Subcommittee on the results of its investigation and any other reports or legislative recommendations.

In both H.R. 1 and the proposed Senate amendment, we are moving forward with reform before the investigatory subcommittee completes its hearings. I would like your assurance that should any further recommendations for reform be proposed after the subcommittee completes its hearings, you will provide an opportunity for them to be discussed and marked up as part of next year's housing bill. These recommendations may also include any revisions to the package before us today that the subcommittee considers necessary.

Mr. CRANSTON. Yes, I would be happy to give the Senator that assurance. I commend him for his leadership in forming the Banking Committee's Investigative Subcommittee on mismanagement of the Moderate Rehabilitation Program and I look forward to receiving the results of the subcommittee's investigation. If the Investigative Subcommittee recommends any new legislative proposals or changes to the package we are now debating, I am certain the subcommittee will consider them carefully. The Senator will not be precluded from bringing additional recommendations to the attention of the Housing Subcommittee for inclusion in the National Affordable Housing Act next year.

Mr. GRAHAM. Mr. President, I have also received a letter from Secretary Kemp supporting the Investigative Subcommittee's efforts which I ask unanimous consent to print in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,
*Washington, DC, November 19, 1989.*

Hon. BOB GRAHAM,
*U.S. Senator, Washington, DC.*

DEAR SENATOR GRAHAM: It is my understanding that you have been designated to chair an investigative subcommittee to further examine past abuse and mismanagement of the Section 8 Moderate Rehabilitation and other HUD programs. I believe that ensuring integrity, efficiency and fair play in HUD's programs is an ongoing process, and as we at HUD implement our own internal reforms, we will continue to give our full cooperation to Congressional oversight activities.

I appreciate that, in a spirit of bipartisanship, Congress has given expeditious consideration to my recommendations for reforms of the systemic flaws in some of HUD's programs. We are now at the threshold of enacting vital ethics, management and FHA reforms, and it is my hope that this entire package of reforms can be enacted before the end of this session.

Enactment of this reform package will help ensure the funding of HUD programs under open and competitive conditions based on merit and need. It includes ideas drawn from HUD, its Inspector General and many members of Congress. If the bipartisan package of reforms contained in H.R. 1 is adopted quickly, funding decisions in fiscal 1990 will be made under a statutory framework designed to promote openness, fairness and accountability.

When your investigative subcommittee convenes its hearings early next year, you will have HUD's full cooperation. Should those hearings lead to recommendations for further reforms or amendments to existing proposals, we will work in cooperation with your subcommittee to address them.

I look forward to the swift passage of this legislation, and to working with you in the future to ensure that HUD is fulfilling its mission of promoting housing and economic opportunity for those in need.

Very sincerely yours,

JACK KEMP.

Mr. SASSER. Mr. President, I would like to enter into a colloquy with the chairman of the Subcommittee on Housing and Urban Affairs to clarify the intent of the legislation with respect to section 801, "annual adjustment factors for section 8 rent."

At the outset, I would like to offer my congratulations to the chairman for addressing the very complex situa-

tion surrounding the Ranier View decision. Indeed, by moving quickly to enact this legislation with its Ranier View "fix," we could save the Government hundreds of millions, if not more than a billion dollars. As we all know, at a time when budget dollars for housing are at a premium and our housing needs so large, we can scarcely afford to spend $1 billion to correct past HUD errors in the administration of its programs. Thus, because of your efforts we can now focus on prospectively providing money for the programs designed to help our low- and moderate-income citizens be decently and adequately housed. For this reason and others, the chairman deserves commendation.

Mr. CRANSTON. I thank the chairman of the Budget Committee for his kind remarks and wish to acknowledge, that as a member of the Housing Subcommittee, the Senator from Tennessee played a key role in fashioning this solution.

Mr. SASSER. I wish to draw the chairman's attention to a unique situation in Tennessee. In 1979, HUD began implementing a policy of comparability in the setting of contract rents under the section 8 program in Tennessee. This policy had adverse consequences for the financial viability of several low-income housing projects in the State.

In 1981, some of my constituents entered into conversations with the HUD area office in Knoxville to see if an agreement could be reached on how the policy of comparability could be better implemented. These conversations went on for some time, and, in fact, there was a threat of litigation as the talks dragged on. Nonetheless, in June 1983 an accommodation was reached whereby the area office agreed to institute a comparability policy known as market movement. I will not attempt to explain the details of this policy, but suffice it to say that it was designed to implement comparability in a way that all parties agreed was fair. In achieving this agreement, all parties made concessions in a true negotiation. This agreement was enforced for 3 years before the HUD central office in 1986 ordered a cessation.

As you can well imagine, this did not sit well with my constituents. As a result, as part of an overall class action suit brought in the U.S. Claims Court, my constituents have separate and unique counts relating to 10 Tennessee projects asking the court to enforce what they believe to be a binding contract right under a 1983 settlement agreement with HUD.

Consequently, Mr. Chairman, I am pleased that the legislation will permit HUD to recognize a settlement agreement that involved both sides agreeing to a standard of comparability. Indeed, it is my understanding that this legislation will not preclude my constituents from pursuing their contract claim in court as to the 1983 settlement agreement.

Mr. CRANSTON. I agree with the Senator.

Mr. SASSER. I thank the Senator and yield the floor.

Mr. METZENBAUM. Mr. President, I object to proceeding to this measure by unanimous consent because I want the opportunity to offer an amendment to require banks and savings and loans to provide Government check cashing services and low-cost bank accounts to the public.

Mr. RIEGLE. I would hope that the Senator would refrain from offering his amendment. This HUD legislation is extremely important. This bill makes badly needed reforms in low income housing programs. The HUD scandals of this past spring and summer underscore that need. The bill also extends the moratorium on prepayment of HUD low income housing mortgages. Without this needed extension, owners of low-income buildings could pay off existing mortgages, raise their rents to market rates, and force low-income tenants out of their homes.

Mr. METZENBAUM. I would say to the Senator that I yield to no one in my support of low-income housing programs. However, I want to put the Senate Banking Committee on notice that there are other areas within the committee's jurisdiction where the needs of low-income Americans are not being met. Today, many elderly and low-income Americans do not have access to banking services. This is a shameful situation.

One out of five families does not have a banking or checking account. That's because many of these families simply cannot afford the huge balance requirements or costly maintenance fees charged by banks and savings and loans.

More and more people are turning to check cashing outlets to cash their social security and welfare benefit checks because the banks and savings and loans won't cash them for noncustomers. And many of these outlets are charging $5, $10 and even $30 to cash $500 Government benefit checks.

Mr. President, the banks and savings and loans are thumbing their noses at elderly and low-income Americans. And so far, Congress has been letting them get away with it.

I know the distinguished chairman of the Senate Consumer Banking Subcommittee has worked hard to fashion a compromise and I appreciate his efforts. I am also grateful for the support of the distinguished chairman of the Senate Banking Committee. They both have tried to persuade the banking industry to cooperate. But the fact is, the banks and savings and loans continue to resist. They simply do not want to cooperate.

I have had it. The banking industry and their lobbyists have no qualms asking for special treatment for themselves while ignoring the banking needs of the elderly and poor. Enough is enough.

Mr. DIXON. I appreciate the Senator from Ohio's desire to enact legislation that will ensure that the banking needs of low income and elderly Americans are met. I understand his frustration that these issues have not yet been resolved, but I hope that we can prevail upon him not to bring up his amendment at this time. I hope he will give us a little more time to work this out.

I do want to pledge to the Senator that I am continuing to work hard to achieve majority support for a proposal that addresses the objectives that the Senator supports. I want him to know that I will go to the chairman of the full committee, Senator RIEGLE, to request a markup, just as soon as I have a reasonable degree of confidence that we have achieved the necessary majority in the committee.

I am continuing to impress on my colleagues the strength of the commitment of the Senator from Ohio to these issue. I know that, until we address these issues in the committee, we can continue to expect the Senator from Ohio to offer his amendments each time a bill from the Banking Committee comes to the floor. This is one Senator that knows that these issues are not going to go away, and as chairman of the Consumer Subcommittee, I intend to fight hard to ensure that they are addressed.

Mr. RIEGLE. I understand and share the distinguished Senator from Ohio's desire to resolve these important consumer matters expeditiously. It is my intention to work with the distinguished Consumer Subcommittee chairman in attempting to achieve a successful markup of legislation on these matters and bring them to the floor at the earliest possible time. I can assure the Senator that these issues will be priority matters on the committee agenda for next year.

Mr. METZENBAUM. With those assurances, I will not offer my amendment today. However, I want to be clear that, if the Banking Committee does not move with dispatch on these measures early next year, I will bring my amendment to the floor and attach it to any appropriate vehicle I can. One way or another, we are going to vote on—and I'm confident, enact into law—check cashing and basic banking legislation before the 101st Congress adjourns. I withdraw my objection.

Mr. GARN. Mr. President, I rise today in support of the HUD reform bill which is currently before us.

This legislation is the result of the Administration, the House and Senate

working earnestly in a bipartisan effort to ensure that past abuses at HUD will not have a chance to be repeated.

In the time he has been at this post as HUD Secretary, Jack Kemp, has done yeoman's work in trying to clean house at HUD, and many of the measures in this bill come directly from the package of reform proposals he sent to Congress.

The Housing Reform Package tightens programs and areas which earlier have been rife with abuse and misuse. Also the bill imposes civil and criminal sanctions against those within and without HUD who knowingly abuse the programs and regulations of the Agency.

President Bush has recently unveiled his administration's plans for a housing bill in early 1990. The need for a comprehensive and fiscally sound bill is shared by many of us on the Banking Committee, and I for one look forward to working again in the spirit of bipartisan cooperation early in the next session to achieve the goals President Bush seeks to achieve.

Mr. D'AMATO. Mr. President, on October 3, 1989, Secretary Kemp introduced an administration reform proposal to clear the decks at the Department of Housing and Urban Development. The House moved quickly to pass a revised version of this reform proposal on November 14, 1989. Now, it is time for the Senate to finalize this effort.

I must commend President Bush and the administration for responding quickly to management and programmatic deficiencies at HUD. Secretary Kemp was first out of the gate to turn around the problems at HUD. He deserves a great deal of credit for being a part of the solution, not a part of the problem.

In addition, I would like to thank my congressional colleagues for pressing forward in such a timely fashion to address the urgent need for reform. With the leadership of Chairman GONZALEZ and Congressman WYLIE, the House passed a reform measure very rapidly—so rapidly that many people believed that the Senate would not be able to respond this year. On the contrary, my Democratic and Republican colleagues in the Senate have acted urgently to address HUD Reform legislation. My colleagues, in particular, ALAN CRANSTON, should be commended for insuring that the Senate finalized the effort to pass HUD reform this year.

In addition, this bill has a number of original cosponsors that I would like to thank at this time. In addition to myself, they include Senators RIEGLE, GARN, CRANSTON, DOMENICI, SARBANES, KASSEBAUM, BOND, SASSER, MACK, PRESSLER, HEINZ, ROTH, DODD, SHELBY, and BRYAN.

The reform package that we are passing today, H.R. 1, is a revised version of the administration's reform bill. This package was introduced in the Senate just a few weeks ago by Senators RIEGLE and GARN. I was pleased to join ALAN CRANSTON in being an original cosponsor of this legislation, S. 1841. S. 1841 was the culmination of hearings and reports relating to problems at HUD. That package was an excellent starting point for tightening up management and programs at HUD. The bill that we are passing today to the floor of the Senate builds upon this initial legislation.

The bill that we are passing today is simply a revised version of S. 1841. H.R. 1 contains the vast majority of the administration's reform package plus a few provisions which are urgent in nature. First and foremost of these time sensitive provisions is the extension of the Emergency Low-Income Housing Preservation Act. This act expires on February 5, 1990. H.R. 1 provides a short-term extension to September 30, 1990, allowing the Congress additional time to devise a long-time solution to the problem.

By passing reform legislation at the end of this year, the Senate is reaffirming its commitment to making the Department an efficient agency that strives to address the housing needs of families around the Nation. We must ensure that our Federal dollars are allocated based on fairness, merit, and need. In addition, we must focus attention on administration. Poor management most affects those individuals who are in need of housing assistance.

The passage of this reform legislation also sets the foundation for working on new initiatives next year. President Bush recently introduced his new housing proposal. Both the Senate and the House have broad housing packages. I look forward to working with the administration and the House next year to advance a major overhaul of our outdated housing programs. It is my hope that the current reform package, H.R. 1, and next year's new initiatives legislation will maximize the Federal Government's potential to provide fair and effective affordable housing opportunities.

This reform package aims to make changes relating to HUD ethics, management and finance, and the operations of the Federal Housing Administration. The bill incorporates the ideas of Congress, the administration, the GAO, and the HUD-inspector general. The proposal truly reflects a broad consensus of concerns about reforming the activities of the Department of Housing and Urban Development.

Let me briefly describe a few provisions in this bill. This legislation will make all funding decisions available to the public, increase accountability for such decisions, eliminate discretionary funding, create the position of a chief financial officer for the Department, and mandate regular audits of the Department.

In addition, the legislation addresses a controversial ruling in the ninth circuit relating to the Rainier View case. The Senate, House, and administration have been able to agree upon retroactive and prospective solutions to this problem. Without a legislative remedy, the Federal Government would have been forced to pay over $600 million in windfall payments to developers and owners around the Nation. The provision in this bill reduces this loss to $210 million—a savings of over $390 million. In addition, the bill ratifies the use of comparability studies. I am pleased that my colleagues and I were able to agree upon a reasonable compromise for this problem.

Section 108, the Rainier View provision, is designed to promote nationwide uniformity in the manner in which HUD implements the comparability limitation of section 8(c)(2)(C) of the 1937 act in making rent adjustments using the annual adjustment factors for section 8 projects. This would resolve past and present controversies between the Department and project owners over the use of comparability studies as an independent limit on the amount of rental adjustments which would otherwise result from the application of annual adjustment factors. It would provide fair, objective and uniform standards for redetermining past rent adjustments where the Department's prior use of comparability studies has resulted in the reduction of the maximum monthly rent or the failure to increase rents to the amount which would otherwise result from the application of the annual adjustment factors under section 8(c)(2)(A) of the 1937 Act. It would also provide for implementing Section 8(c)(2)(A) in the future through regulations. The standards for the past will ensure a reasonable rate of return to the owners while effectuating the original congressional objective in 8(c)(2)(C) of avoiding excessive rents and rates of return for section 8 projects. By not only making the statutory standards for applying comparability more concrete, but further requiring HUD to promulgate regulations for future year rent adjustments, this amendment should eliminate uncertainty and contribute to smooth and effective operation of the section 8 program.

Subsection (a) provides the exclusive method by which rent adjustments for projects whose rents were limited as a result of a comparability study, or for which rent adjustments were not requested because of owner concern that such a request would have resulted in

a negative adjustment to project rents, may be recalculated. Rent adjustments for such projects will be governed by this method for all contract years until the Secretary issues new regulations implementing this section. Rent adjustments for contract years after the effective date of the regulations will be governed by subsection (c).

Pursuant to subsection (a), the Secretary shall initially determine for each affected project the amount of the rent adjustment due to the anniversary date of its assistance contract falling in fiscal year 1980 by multiplying the then applicable annual adjustment factor times a figure consisting of the fiscal year 1979 contract rent minus the amount of the contract rent that is attributable to the debt service. This rent adjustment amount is to be added to the then existing rent to become the contract rent for fiscal year 1980. The same calculation is to be performed for each succeeding year. The Secretary is then to determine how much, if any, the total amount of rent computed under this procedure for all applicable years exceeds the total amount of rent adjustments that have actually been approved for the project for these years.

In addition to making this first calculation, the Secretary shall make a second calculation as follows; 30 percent of a figure equal to the annual adjustment factor multiplied by the full contract rent for the respective years, for each year on or after fiscal year 1980, aggregated for all those years, minus the sum of all rental adjustments the Secretary actually approved for those years. Where requested by the owner, the Secretary shall pay to the project owner the result of the first calculation, or the second calculation, whichever is higher, pursuant to the process described in subsection (b). Whether or not requested by the owner, the method provided by this subsection shall be the exclusive method by which retroactive payments may be made for projects subject to this subsection for all claims pertaining to the period from fiscal year 1980 until the regulations issued under subsection (e) take effect.

If the rent level for the current year calculated under the debt service calculation method described in subsection (a) is higher than the rent now in effect for the project, that higher rent shall become the effective rent due the owner this year and shall be the rent upon which future rent adjustments shall be based. However, where that recalculation under subsection (a) would result in lower rents than were previously approved by the Secretary, the Secretary may neither recapture those amounts nor lower the present contract rents.

There were also a number of provisions contained in the S. 1841, the administration's proposal, that were not included in H.R. 1. The most noticed of these provisions are the proposed targeting reforms to the CDBG Program. These provisions were not included because a number of Members in the Senate did not believe these provisions to be reforms. Instead, these provisions were seen to be policy changes. Given that these changes did not relate directly to HUD reform, many Senators felt strongly that hearings must be held on these changes before they were advanced in legislation.

In addition, the bill eliminates a number of programs which have jeopardized the soundness of the FHA funds. Specifically, the bill eliminates private investor-owners from participation in the FHA single family insurance program. This is especially significant because in 1988 although investors accounted for only 2.5 percent of FHA's new policies, they accounted for about 15 percent of these losses.

The bill also repeals the Title X: Land Development Program. This program has almost a 50-percent default rate. It has been used for speculative development, not affordable housing. One defaulted title X loan was used to build a development on a golf course.

I look forward to the enactment of this reform package. We have all worked hard to create a plan that will bring order to the chaos at HUD. I am eager to work with my colleagues in Congress and the administration to ensure that Federal dollars are used efficiently for those who truly need affordable housing.

Mr. President, there is one aspect of the legislation for Department of Housing and Urban Development reform that should be especially noted. It is the lead taken by my good friend and colleague on the Banking, Housing, and Urban Affairs Committee, the senior Senator from South Dakota [Mr. PRESSLER], concerning the Community Development Block Grant [CDBG] Program.

As you know, Mr. President, during the past 15 years, the CDBG Program has provided grants on a formula basis to entitled communities to carry out a broad range of community development activities. Grants are authorized to improve community facilities and services, to expand economic opportunities, and to restore and revitalize urban neighborhoods.

Grantees of CDBG funds must give priority to activities that will benefit low- and moderate-income families, aid in the prevention of slums and blight, or meet other community development needs that present a serious threat to the health or welfare of the community. Additionally, one provision requires that over a period of 3 years no less than 60 percent of the funds must be used for activities which benefit low- and moderate-income persons.

The bill (H.R. 1) that came over from the other body would amend the current legislation to require that not less than 75 percent of the CDBG funds be targeted to activities that benefit low- and moderate-income persons. This would be a substantial increase over the requirement contained in existing law. As the Senator from South Dakota foresaw, it would be especially detrimental for communities that do not have concentrations of low- and moderate-income persons in one area. He stressed that numerous communities throughout the Nation would be cut off from CDBG funds simply because persons of low- and moderate income were evenly dispersed in the community.

I applaud the Senator from South Dakota for taking the lead to retain the present CDBG targeting provision. Numerous State and local officials have contacted us to join in opposition to raising the targeting as provided in H.R. 1. In fact, the opposition among those officials is nearly unanimous.

So I am gratified that, following the lead of the Senator from South Dakota, we have agreed to omit the higher targeting provision from the bill now before us. Without his leadership on this issue, the higher targeting provision may very well be in this bill today. I commend Senator PRESSLER for his work on this important issue.

Mr. HEINZ. Mr. President, I rise today in support of the HUD Reform Act of 1989.

I must however temper my support and enthusiasm for this measure with a touch of realism. This bill represents only a partial completion of the tremendous task that this body set out to complete at the beginning of this first session of the 101st Congress.

Mr. President, there is much work to be done in this vital area. Let us today commit ourselves to producing in the next session a housing bill which addresses and finds solutions to the plight of the homeless. Let us commit ourselves to a bill which addresses the needs of low- and moderate-income families, many of whom are not only struggling to make ends meet but are also searching for decent and affordable housing.

And finally, let us commit ourselves to producing a bill that addresses the concerns of the millions of Americans, who today, because of the high cost of rent, health care, day care, and other factors are unable to save enough money to make the downpayment for a home. Let us commit ourselves to aiding these young- and moderate-income families in their quest for the American dream.

Mr. President, the administration has recently submitted its housing proposal to the Congress. This new ad-

ministration package combined with S. 566 incorporates many of the best ideas of both sides of the aisle and should be the vehicle of the bipartisan effort to address many of the problems in the area of housing.

Mr. President, is is my belief that the spirit of bipartisanship exhibited by this body in its quest to pass a HUD reform measure portends positive things for the future. Let us harness this spirit of cooperation and take it into the second session.

In closing, I would like to remind my colleagues that this is merely the beginning of this long and arduous process not the end. Let us not squander this opportunity to make real and substantial gains in the housing area.

Mr. GORTON. Mr. President, there is an old saying, Mr. President, that "if it ain't broke, don't fix it." That old saying has been employed far too often over the past few years by those in and around HUD who found certain programs to be quite lucrative for themselves or their friends. In fact, billions of taxpayer dollars meant for the housing needs of the poor actually went to everyone except the poor. Mr. President, the past few months of HUD scandals have proven undeniably that some of the programs and procedures at HUD are indeed broke and need fixin'.

Recognizing the urgency of reestablishing HUD's leadership in national housing policy, HUD Secretary Jack Kemp proposed a reform package that passed the House earlier this week and today is before the Senate. His plan to clear the decks and rid HUD of waste, mismanagement, and fraud, before moving forward with new policy initiatives is both a timely and correct response to these issues and I urge my colleagues to support the amendments considered today.

Secretary Kemp's reform package is designed to help ensure ethical, financial, and managerial integrity in the programs at the Department of Housing and Urban Development. This package will increase accountability and openness in HUD funding decisions—a central feature of the Secretary's plans. This package will eliminate certain discretionary funding methods and replace them with formulas and competitive processes. This package requires consultants doing business with HUD to be on record as such and be required to disclose the fees paid for their services.

Mr. President, a number of my colleagues have joined me in recent months in calling for a bold new direction and focus in our national housing policy. President Bush and Secretary Kemp have come forward with a host of new initiatives which can increase homeownership opportunities for low- and moderate-income families and create jobs and entrepreneurial activity in the Nation's distressed urban and rural communities. I will be working with my colleagues and the administration to ensure that these new initiatives are included in housing legislation next year. But for now, Mr. President, it is critical that the Congress now pass the tools of reform so desperately needed at HUD.

Mr. DOMENICI. Mr. President, I am most pleased to add my name as a cosponsor to the Senate substitute for H.R. 1.

The major thrust of this bill, HUD reform, is clearly needed, and I commend my colleagues for their fast action on this measure.

The Senate and House Banking Committees are to be commended for working hard and swiftly to provide the legislative support requested by the Secretary of Housing and Urban Development [HUD], Jack Kemp.

Secretary Kemp's own legislative initiatives have been largely accepted and amended in Congress. The administration, the Senate, and the Huse of Representatives are seeking to ensure the ehtical, financial, and managerial integrity we all expect from HUD.

As Secretary Kemp has stated, the reforms are necessary to make HUD "more effective, efficient, and responsive to those in need of its assistance."

This prompt legislative response will help the Secretary put HUD back onto a positive track after the national notoriety of the recent HUD scandals. There have been too many abuses in such programs as section 8 moderate rehabilitation, FHA coinsurance, and title X Land Development Mortgage Insurance.

Secretary Kemp has been very busy cleaning up HUD through many reforms of his won. He sent us a complete packet describing his administrative actions last July. He has been able to reduce major problems in cash management and section 8 accounting fraud. He has implemented many changes including new ethical standards of conduct.

While the Secretary has been busy using every administrative tool at his disposal, today's legislative action will surely strengthen Secretary Kemp's hand by increasing his poer to make needed reforms.

As explained in greater detail by my colleagues, this bill will ensure the following changes at HUD:

A. ETHICS

Require the "fair share" approach to the allocation of Federal funds for public housing, Indian housing, section 8 assistance, and section 202 elderly housing projects.

Promote fair competition by requiring the availability of funds and the criteria for their awards to be published in the Federal Register.

Provide for civil penalties for HUD employees who improperly disclose HUD confidential information used for the making of grants or awards.

Replaces the Community Development Block Grant Discretionary Fund with Special Purpose Grants given out under published criteria.

Provides penalties for the violation of FHA, GNMA, Interstate Land Sales Act, or other HUD program requirements.

Prohibits consultants from seeking or receiving fees based on the amount of an award or contingent on an award. Applicants will keep the records regarding related consultant fees. Consultants and lobbyists must register with the Secretary or face civil monetary penalties.

B. MANAGEMENT REFORM

Establishes a HUD Chief Financial Officer and the FHA Comptroller.

Authorizes funds for improving evaluation and information systems to better report on the status of HUD programs.

Limits the size of section 8 mod rehab projects to 100 units or less; requires the benefits from tax credits to be considered when determining assistance; requires allocations by formula; and requires HUD to maintain a listing of assisted projects at headquarters.

C. FHA REFORM

Requires annual audits of FHA funds.

Requires a credit check of any person seeking to acquire an FHA-insured single family property.

Requires the title X land development insurance program.

Requires 6-month reviews of the capital adequacy of coinsurers to ensure the long-term financial soundness of the FHA funds.

Creates a 15-member advisory board to review the activities of the FHA and specifies their duties and powers.

Requires HUD to establish uniform appraisal standards for all property to be insured by the Federal Housing Administration.

In addition to HUD reform, this bill also makes several timely changes in other housing programs.

The Farmers Home Administration will have new accountability in its awards for assistance, including the publishing of its selection criteria in the Federal Register. The Secretary of Agriculture will place similar constraints on consultants and lobbyists as the HUD Secretary.

Finally, the bill establishes two national housing commissions—one on severely distressed public housing and one on American Indian and Alaska Native Housing. These commissions will address strategies to improve the housing conditions for both groups.

In closing, Mr. President, I urge my colleagues to support Secretary Kemp's energetic approach to HUD reform by voting in favor of this bill.

Mr. KERREY. Mr. President, for the past few days I have had a hold on

H.R. 1, the so-called HUD reform bill. I placed the hold on the bill for both procedural and substantive reasons.

H.R. 1 passed the House on November 14 under expedited procedures. There was no report. It was placed on the Senate Calendar on November 15 and Senators were advised that the bill, rather than be referred to committee, would be taken from the calendar, amended and returned to the House. In the name of HUD reform, we were told, this legislation must be passed before we adjourned.

Certainly, no one questions the need for HUD reform. We are all too familiar with the stories of influence peddling, of lobbyists who approached local officials and offered to obtain grants, of raids on the taxpayers' treasury at HUD. We have all called for action. There is little doubt that HUD needs to get its own house in order. We in Congress need to help.

But, we in Congress do not need to make matters worse—and there was, still is, I believe the possibility that that is what we are about to do.

As of this morning, there is a 188-page draft amendment to H.R. 1. I do not know how many Senators have digested it all. I have not. I do not know what the legislative history will tell us. I do not know to what extent it is consistent with certain existing law, such as the Administrative Procedures Act. I think that we should know—even in the haste to leave.

I do know that the bill is far reaching and that it involves more than reform of those areas of HUD where we have seen the scandals. In fact, the legislation affects many HUD programs which we have all worked with over the years.

I do think that parts of the draft which I have had the opportunity to review are better than both the House version and earlier Senate drafts. I thank the staff of the subcommittee for its help in resolving some issues which have caused me concern.

In the House version of the legislation the community development block grant targeting requirements were to be reduced from 75 to 60 percent. I believe in targeting and I believe in economic revitalization. As Governor, I saw the uses of CDBG both in entitlement areas and in small cities. I have deep reservations about how the targeting change would have affected a rural State such as Nebraska, and I am pleased that it was deleted fron the Senate amendment.

The House version of the legislation also substantially revised the Secretary's discretionary fund. Discretionary funds are by their nature ripe for manipulation, but the discretionary fund has also served a purpose it was meant to serve—it has allowed the completion of some worthwhile projects which would not otherwise have been funded. Like all programs, it could be improved—users and interested parties could be brought in and that accomplished, but instead the agreement is apparently to throw the baby out with the bath water, at least after 1990.

Much of the bill focuses on civil monetary penalties—for mortgagees and lenders, for multifamily mortgagors, for section 202 mortgagors, and for GNMA issuers. These penalties run high—up to $1 million—and cover a broad spectrum of activities. They can apply to your local banker or your landlord. And, they are intially imposed not by a court but through an administrative proceeding. They are good and needed penalties for those who manipulate the system or violate a trust or misuse the taxpayers' money. But, if trivially or improperly applied, they may ultimately curtail needed and proper housing activity.

The subcommittee has made some modifications which are helpful in this area. They have added a "knowing and material" standard for the imposition of penalties to make it clear that the legislation is not designed to cover the trivial mistake, the inadvertent oversight. There is a reference to 5 U.S.C. 706, which relates to the scope of judicial review. The sections are, I believe, substantially improved, but ultimately, what we are doing is placing in HUD's hands an extensive, new, and untested authority. Our trust is that it will be used properly fairly and in pursuit of those who are the offenders. Were we back a couple of years, I would have great difficulty in authorizing the fox to guard the chicken coop. Now, I simply raise a red flag.

With passage pending, we must look forward to rulemaking. Section 123 is an expedited rulemaking provision. However, we have also obtained agreement that the public comment period on the regulations relating to civil monetary penalties will be no less than 60 days. In view of the expansive nature of H.R. 1 and the accelerated procedures under which it is being considered, I believe this represents a viable balance between the need to implement needed reforms expeditiously and giving realistic notice and opportunity to comment to thousands of people who will be affected.

Because of the changes which the subcommittee has made, I am willing to support H.R. 1, but I do so with lingering reservations. I would have been more comfortable with a bill which had traveled a more routine legislative path, but I am told that extension of the moratorium on prepayments, scheduled to expire in February, and the bandwagon for reform, which interestingly only picked up steam recently despite months of scandal-laden headlines, dictate that we move on. I hope that we will not be sorry.

Mr. BOND. Mr. President, I rise in support of the HUD reform legislation. This bill will give Jack Kemp the tools he needs to make changes at HUD so that we never again have to be disgusted at the sight of wealthy consultants making off with dollars intended to be used to house the poor.

This legislation removes the taint of favoritism and political chicanery from the grant making process at HUD by requiring greater accountability and disclosure from everyone involved. Disclosure of congressional involvement in HUD's funding decisions will shed more light on the process and remove suspicions of undue congressional interference.

In addition, the bill makes important managerial and programmatic reforms to protect the fiscal soundness of the FHA fund. Civil penalties for those who abuse HUD programs are stiffened. The bill extends the prepayment provisions in current law until August 1, 1990, thus preventing the disappearance of thousands of units of low-income housing. This will give Congress time to come up with a long-term solution to this difficult problem. I am pleased this bill clarifies that these provisions apply to voluntary terminations of mortgage insurance as well as prepayments.

Senator CRANSTON deserves a great deal of credit for moving this legislation through the Senate when his initial inclination was to push for reform as part of a broader housing bill. We all appreciate his willingness to allow the reform bill to pass by itself. I certainly do not want my support for reform to be construed as opposition to new housing authorization. I think that we need both new initiatives and a reform bill. I look forward to working with Senator CRANSTON, Secretary Kemp, and others to come up with a bipartisan housing authorization early in the next Congress.

There is still much to be done. It is time to raise the need for safe, decent, affordable housing to be a national priority. The Federal Government has an important role to play as a partner in joint efforts between State and local governments, nonprofits, religious institutions, and civic groups. The proper role for the Federal Government should be to provide seed money that can be leveraged with funds from States, cities, and private groups. The emphasis should be on new approaches which provide the best housing for the least amount of money. Housing programs ought to be flexible and reflect local values and priorities.

I congratulate the managers of the bill for their efforts to pass this reform legislation.

I would like to clarify a point about the disclosure provisions of this measure. I am pleased that HUD will be required to disclose both the availability of funding and the application process

for such funding, and that the documentation for all funding decisions will be open for public inspection. I have raised the concern that this full disclosure should also apply to Members of Congress who lobby HUD on behalf of particular projects.

Mr. CRANSTON. In response to the Senator's concern about this issue, I have added language in section 102(a)(4)(E) which states:

The Secretary shall ensure that each application and all related documentation and other information referred to in subparagraph (B), including any letter of support, is readily available for public inspection for a period of not less than 10 years . . .

It is my intention that this disclosure applies to Members of Congress as well as anyone else who writes in about a project. I certainly do not believe that there is anything wrong with Members of Congress contacting HUD in support of worthy projects in their States, but these contacts should also be disclosed.

Mr. D'AMATO. I agree and I support this provision as well.

Mr. BOND. I thank the managers of the bill for their support. There is no reason for Congress to exempt itself from the disclosure standards that apply to all other participants in the process, and this legislation makes that clear.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1210) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 1), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AMENDING SENATE RESOLUTION 66

Mr. MITCHELL. Mr. President, on behalf of Senators RIEGLE, GARN, GRAHAM of Florida, and MACK, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 219) to amend Senate Resolution 66, agreed to February 28, 1989, to make certain technical corrections, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. RIEGLE. Mr. President, on November 16 the Banking Committee authorized the creation of the HUD/Mod Rehab Investigation Subcommittee to investigate the program abuses surrounding section 8 moderate rehabilitation and related programs. The Banking Committee has already held a number of hearings into this area, but it has become increasing clear from the enormity of the problem—which Secretary Kemp believes has resulted in the loss of over $2 billion to HUD and the American taxpayers—that a much more dedicated effort is warranted to assure that the investigation can be completed in a timely and orderly fashion. I believe that the new HUD/Mod Rehab Investigation Subcommittee will accomplish this goal.

The resolution before us assures that this new subcommittee will have adequate financial resources and the necessary tools to complete its investigation. I want to thank Senator FORD, the distinguished chairman of the Rules Committee, and Senator ROTH, for their assistance and the assistance of their staffs in preparing this resolution, and I urge my colleagues in the Senate to support its adoption.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 219) was agreed to, as follows:

S. RES. 219

*Resolved,* That (a) section 6(b)(1) of the Senate Resolution 66 (101st Congress), agreed to February 28, 1989, is amended by striking "$1,000" and inserting "$61,000".

(b) Section 6(c)(1) of Senate Resolution 66 (101st Congress), agreed to February 28, 1989, is amended by striking "$1,000" and inserting "$81,000".

SEC. 2. HUD/MOD REHAB INVESTIGATION SUBCOMMITTEE.

Section 6 of Senate Resolution 66 (101st Congress), agreed to February 28, 1989, is amended by adding at the end thereof the following:

"(d)(1) The HUD/MOD Rehab Investigation Subcommittee (referred to as the 'subcommittee'), a duly authorized subcommittee of the Committee on Banking, Housing, and Urban Affairs, is authorized to conduct an investigation beginning on November 10, 1989, through February 28, 1991, of the management and other activities of the Department of Housing and Urban Development, which occurred before January 1, 1989, surrounding the Moderate Rehabilitation Program under section 8 of the United States Housing Act of 1937 and related programs, including the use of FHA co-insurance and low income tax credits in connection with Moderate Rehabilitation projects. Such investigation shall include past administrative or programmatic developments that contributed to fraud and abuse in the section 8 Moderate Rehabilitation Program.

"(2) For the purpose of the investigation described in paragraph (1), the Committee on Banking, Housing, and Urban Affairs is authorized (A) to require, by subpoena or order, the attendance of witnesses and the production of correspondence, books, papers, documents, and other records; (B) to notice depositions for staff members of such Committee to examine witnesses and to receive evidence at staff depositions under oath administered by an individual authorized by local law to administer oaths; and (C) to require, by subpoena or order, the attendance of witnesses and the production of such records at such staff depositions. The authority of the Committee under this paragraph shall not be delegated to the subcommittee and may be exercised only by the Committee, either by the Chairman with the agreement of the Ranking Minority Member or by a majority vote of the Committee.

"(3) The subcommittee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate Committee on Banking, Housing, and Urban Affairs to be referred to the Subcommittee on Housing at the earliest practicable date, but not later than February 28, 1991.".

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AMENDING THE FEDERAL AVIATION ACT OF 1958

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3671, an act to provide a 4-month extension of the civil penalty assessment demonstration program of the Federal Aviation Act of 1958, now held at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3671) to amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Maine?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1211

Mr. MITCHELL. Mr. President, on behalf of Senator FORD, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. FORD, proposes an amendment numbered 1211.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new sections:

SEC. 2. INSTALLATION AND EVALUATION OF COLLISION AVOIDANCE SYSTEMS.

Section 601(f) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421(f)) is amended—

(1) by redesignating paragraph (3) as paragraph (6); and

(2) by inserting immediately after paragraph (2) the following new paragraphs:

"(3) OPERATIONAL EVALUATION.—The Administrator shall institute, for a 1-year period beginning not later than December 30, 1990, a program for the operational evaluation of the collision avoidance system known as TCAS-II, in order to collect and assess safety and operational data from the civil aircraft equipped with such system. In conducting the program, the Administrator shall encourage the participation of foreign air carriers which operate civil aircraft equipped with such system.

"(4) EXTENSION OF TIME.—If the Administrator determines that extending the deadline contained in paragraph (2) is necessary—

"(A) to promote a safe and orderly transition to operation of a fleet of civil aircraft described in paragraph (2) which is equipped with the collision avoidance system known as TCAS-II, or

"(B) to promote other safety objectives,

the Administrator may extend such deadline for a period not to exceed 2 years.

"(5) COMPATIBILITY OF WINDSHEAR EQUIPMENT INSTALLATION SCHEDULE.—The Administrator shall consider the feasibility and desirability of amending the schedule for the installiation of airborne low-altitude windshear equipment in order to make such schedule compatible with the schedule for the installation of the collision avoidance system known as TCAS-II.".

SEC. 3. PENINSULA AIRPORT CONVEYANCE.

Subsection (b) of the first section of the Act entitled "An Act of authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes", approved November 6, 1986 (Public Law 99-618; 100 Stat. 3490), is amended—

(1) by paragraph (3) by striking "7.5 acres" and inserting in lieu thereof "20.5 acres"; and

(2) by striking paragraph (4).

SEC. 4. USE OF AIRPORT GENERATED REVENUES IN HAWAII.

Section 511 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2210) is amended by adding at the end thereof the following new subsection:

"(g) USE OF AIRPORT GENERATED REVENUES IN HAWAII.—

"(1) GENERAL RULE.—Notwithstanding the limitation on the use of revenues generated by airports contained in subsection (a)(12) of this section, the State of Hawaii may use for 1) highway construction projects, and 2) transportation facilities which may include access to airports, revenues generated on the sale at off-airport locations in the State of Hawaii duty-free merchandise under a contract between the State and a duty-free sales enterprise.

"(2) LIMITATIONS.—

"(A) APPLICABILITY PERIOD.—This subsection only applies to revenues generated on sales referred to in paragraph (1) in the period beginning on the date of the enactment of this subsection and ending December 31, 1995.

"(B) COVERAGE OF AIRPORT CAPITAL AND OPERATING COSTS.—The State of Hawaii may use under paragraph (1) revenues generated on sales referred to in paragraph (1) in a calendar year only if the amount of such revenues, when added to the amount of funds received in such year by the State for airport capital and operating costs from all other sources (including revenues generated by such airports from other sources and unrestricted cash on hand and including Federal funds made available under this Act for expenditure at such airports), exceeds 150 percent of the projected airport capital and operating costs for such year. Airport capital and operating costs shall be submitted to the Secretary by the State of Hawaii, and shall be deemed to be approved by the Secretary unless disapproved within 30 days of such submission. The amount of revenues generated on sales referred to in paragraph (1) in such year which the State may use under paragraph (1) may not exceed the amount of the excess determined under the preceding sentence.

"(C) AGGREGATE CAP.—Subject to subparagraph (D), the maximum amount of revenues which the State of Hawaii may use under paragraph (1) may not exceed $320,000,000 in the aggregate.

"(D) AVAILABILITY OF GRANTS UNDER SECTION 505.—To the extent the State of Hawaii foregoes all or a portion of grants available under section 505 during the applicable period referred to in subparagraph (A), the aggregate cap referred to in subparagraph (C) shall be increased by an amount equal to section 505 grants, or portions thereof, forgone, except that such 505 grants may be utilized for purposes of calculating costs under subparagraph (B).

"(3) PERIOD OF USE.—Revenues generated on sales referred to in paragraph (1) in the period of applicability set forth in paragraph (2)(A) may be used under paragraph (1) in any calendar year, including a calendar year beginning after December 31, 1995.

"(4) DEFINITIONS.—As used in this subsection—

"(A) AIRPORT CAPITAL AND OPERATING COSTS.—The term 'airport capital and operating costs' means operating expenditures, including debt service on capital projects of all airports operated by the State of Hawaii.

"(B) ADDITIONAL TERMS.—The term 'customs territory', 'duty-free sales enterprise', 'duty-free merchandise', 'exit point', and 'personal use quantities' shall have the meaning provided in section 1555(b)(8) (C), (D), (E), (F), and (G) of Title 15 of the United States Code."

SEC. 5. EXCESS LAND DISPOSAL.

Paragraph 14 of section 511(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2210(a)) is amended to read as follows:

"(14) if the airport operator or owner receives a grant before, on, or after December 31, 1987, for the purchase of land for airport development purposes (other than noise compatibility purposes)—

"(A) the owner or operator will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States proportionate share of the fair market value of the land;

"(B) such disposition will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport;

"(C) that portion of the proceeds of such disposition which is proportionate to the United States share of the cost of acquisition of such land will—

"(i) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system; or

"(ii) be paid to the Secretary for deposit in the Trust Fund if no such eligible project exists;

subject to the requirement that land shall be considered to be needed for airport purposes under this paragraph if (I) it may be needed for aeronautical purposes (including runway protection zone) or serves as noise buffer land and (II) the revenue from interim uses of such land contribute to the financial self-sufficiency of the airport, and subject to the further requirement that land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or the Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the use of such land, did not object to such use, and the land continues to be used for that purpose;".

Mr. FORD. Mr. President, I ask my colleagues to pass H.R. 3671, as amended, which will improve aviation safety and enhance airport capacity.

Last Friday, the House passed H.R. 3671, a bill to amend the Federal Aviation Act of 1958 to extend the Federal Aviation Administration [FAA] Civil Penalties Demonstration Program for another 4 months beyond the current expiration date of December 31, 1989. On October 5, the Commerce Committee had reported a bill which contained a 2-year extension of the program. Industry and some legal groups complained of the procedures FAA used in implementing the program, so the FAA asked the Administrative Conference of the United States to review the program and procedures and recommend changes needed, if any. The 4-month extension will allow the FAA to continue this important enforcement program, but will allow them to correct it in light of the administrative conference recommendations before a further extension is granted.

Mr. President, I have four amendments to this bill. The first relates to installation of a traffic collision avoidance system by the commercial airlines. In 1987, during consideration of the Airport and Airway Safety and Capacity Expansion Act, the Congress responded to growing concern about congestion around busy airports and the danger of midair collisions by requiring the installation of a traffic collision avoidance system [TCAS] on all commercial aircraft with more than 30 seats by December 30, 1991. Late last year both the Federal Aviation Administration [FAA] and the airline industry raised two concerns about the TCAS installation schedule: First, the need for an operational evaluation and test of the TCAS system prior to widespread installation and, second, the

lack of maintenance and engineering capacity to accomplish installation on schedule without significant downtime and disruption of passenger service. The Office of Technology Assessment [OTA] reviewed the program, confirmed the need for an evaluation period, and recommended extension of the installation schedule. The House introduced and passed a bill directing the FAA Administrator to undertake an operational evaluation for a year, and to extend the compliance deadline up to 2 years to December 1993, if deemed necessary to assume a safe transition.

My second amendment to H.R. 3671 is legislation which would allow the limited release of deed restrictions on property originally conveyed to the Peninsula Airport Commission, which operates the Patrick Henry Airport at Newport News, VA. The FAA has determined that the use of the land involved will not affect the operation or development of the airport. The House passed this bill, H.R. 838, in May; the Senate passed the measure with an amendment relating to a transportation fund in Hawaii in October. I am removing the Hawaii portion from this Peninsula Airport provision, and will offer the Hawaii transportation fund as my third amendment.

The third amendment would amend the Airport and Airway Improvement Act of 1982 to permit the State of Hawaii to use revenues generated by off-airport duty-free facilities for transportation-related purposes. The revenues could only be diverted if 150 percent of airport needs have been met for that specific year; the diversion applies only through December, 1995, and is capped at $500,000,000.

My last amendment would also amend the Airport and Airway Improvement Act of 1982 to allow airports greater flexibility in use of airport land. Existing law requires that if land obtained through airport grant is no longer used for the intended purpose, it must be sold and the proportionate share returned to the Airport and Airway Trust Fund. This amendment would broaden the definition of land for airport purposes so that airports may retain land which, although changed from the original purpose, still meets important airport needs. An example would be land acquired for a runway but now needed as a noise buffer. In cases where it is appropriate to sell the land, the amendment permits the Secretary to either reinvest the money in the trust fund, or to permit the use of those grant funds for other eligible airport grant projects at that airport.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1211) was agreed to.

Mr. HOLLINGS. Mr. President, the bill we are considering today is very simple. H.R. 3671 will provide for a short-term extension, through April 30, 1990, of the Federal Aviation Administration's [FAA's] civil penalty assessment demonstration program. Under this program, which was first established in 1987, the FAA is authorized to assess fines of up to $50,000 for violations of safety and security standards.

There are strong feelings related to the extension of this program. The FAA firmly believes that the program should be made permanent. Prior to the creation of the civil penalties assessment demonstration program, overburdened U.S. attorneys rarely took relatively modest civil penalty cases to trial. The result was that, as cases slipped away, morale among FAA's safety work force suffered.

This short-term continuation of the civil penalties assessment demonstration program is critical. During the 14 months in which this program has been in effect, some 4,380 cases have been initiated. The vast majority of these cases remain in the pipeline, as only a very small percentage have been closed. Without this legislation, the program will die, and those cases will slip through the cracks.

More importantly, the program has strengthened the agency's enforcement efforts. Nearly two-thirds of the cases initiated thus far by the FAA have been security related. In large part because of this program, airline industry compliance with FAA security screening standards has dramatically increased.

That increase is reason enough for extending this program. And I firmly believe that the traveling public would agree.

In addition to that provision, Mr. President, the chairman of our Aviation Subcommittee, Senator FORD, is offering an amendment, which I hope will be supported by other Senators, that would ensure that four other critical aviation matters are resolved before adjournment.

First, it will provide the FAA Administrator flexibility needed to modify the current airline compliance deadline for installing the TCAS-II airborne collision avoidance system. Airborne collision avoidance technology has been under development since the 1950's. Several approaches have been evaluated and discarded. Finally, in 1981, the FAA announced its intention to pursue a collision avoidance system that reacted to transponder signals from other aircraft. That system became known as the traffic alert and collision avoidance system, or simply, TCAS.

During debate of the 1987 legislation, I offered an amendment to mandate both the TCAS-II and Mode C transponder equipment. It had been several years since the FAA had agreed on the TCAS technology. Yet, in spite of several tragic midair collisions and record numbers of near misses, we were no closer to having an airborne collision avoidance system in place. Specifically, that amendment called for the certification and installation of TCAS-II within a 4-year period.

Last year, however, the FAA and the aviation community began expressing their concern that by mandating an absolute timeframe for finalizing development and installation of TCAS-II, Congress may have created larger, unintended problems. Specifically cited were the need for a better understanding of how TCAS-II would interact with the air traffic control system and other similarly equipped aircraft, and the lack of sufficient industry maintenance, engineering, and technical capabilities to comply with our statutory deadlines.

To get a better understanding of these concerns, the Office of Technology Assessment [OTA] was asked to evaluate and report to the committee. In large part, OTA concurred that more information was needed, recommending a joint FAA/industry evaluation program to oversee the first year of TCAS-II operation. OTA also concluded that there were sufficient reasons, including resource limitations, economic inequities among the carriers, and international implications, for Congress to consider extending the current compliance deadline. In that regard, OTA cited the fact that TCAS manufacturers must produce and deliver the equipment, airlines must redesign and modify their aircraft, and the FAA must certify the equipment and modified aircraft.

This provision follows on the OTA recommendations. First, it mandates a year-long operational evaluation of the TCAS-II collision avoidance equipment, to ensure successful interaction between aircraft equipped with TCAS-II and to measure its impact on the air traffic control system. Second, it gives FAA the authority needed to modify the compliance schedule for installation of TCAS-II, if an extension is found to be necessary.

Mr. President, the amendment also addresses a longstanding issue at Newport News, VA, by allowing the limited release of deed restrictions on property originally conveyed to the Peninsula Airport Commission, which operates the Patrick Henry Airport. Legislation similar to this was enacted during the 99th Congress, but Public Law 99-618 did not allow for the release of the 13 acres specified by this provision, or the transfer of land to private entities. Credit for enactment of this provision goes to Senator ROBB for his work within the committee and

his patience to see this provision through to final passage.

Senator FORD's amendment also provides the State of Hawaii greater flexibility in the use of funds generated at the off-airport duty-free facility in Honolulu for aviation and other transportation needs. I commend the efforts of the Senator INOUYE for his diligence in resolving this matter.

Finally, this amendment includes language to resolve a problem currently encountered by airport operators seeking to sell property not needed for airport purposes.

Mr. President, I believe the bill, as amended, responds to several aviation issues appropriately. This legislation should be adopted before we adjourn for the year. I urge my colleagues to join us in supporting its adoption.

Mr. ROBB. Mr. President, this bill will complete some unfinished business which my colleagues in the House and the Senate came close to concluding during the last two Congresses. Perhaps the third time is the charm. This bill authorizes the Secretary of Transportation to release restrictions on the use of land at the Patrick Henry Airport in Newport News, VA.

Patrick Henry Airport serves the cities of Hampton, Newport News, and Williamsburg and the counties of York and James City in Virginia, a metropolitan area of over 400,000 people—one of the fastest growing areas in the Commonwealth. Plans are well under way to build a 115,000 square foot passenger terminal to replace a 40-year-old building. Patrick Henry has ample room for growth and has the potential to become a hub which will take pressure off other regional and international airports.

The 13 acres in question were given to Newport News by the Federal Government in 1947 and are no longer needed for airport operations. The sale of the land meets the additional Federal Aviation Administration [FAA] requirements that the Airport Commission receive fair market value and that the proceeds must be used for the development, improvement, or operation of the airport.

The legislation has been reviewed and approved by the FAA and by the committees of jurisdiction in both Houses. I would like to thank Congressman HERB BATEMAN, the sponsor of a companion measure in the House; Senator HOLLINGS, chairman of the Commerce Committee; and Senator FORD, chairman of the Aviation Subcommittee for their interest and support of this measure. I urge passage of the legislation.

The PRESIDING OFFICER. Without objection, the bill is considered read the third time and passed.

So the bill (H.R. 3671), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. President, I wonder if I could have the attention of the Republican leader.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KOHL). Without objection, it is so ordered.

## EXECUTIVE SESSION

### EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar items No. 486, 487, 489, 491, 492, 493, 494, 495, 496, 497, 565, 566, 567, and 570.

I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

John M. Walker, Jr., of New York, to be U.S. circuit judge for the Second Circuit.

Vaughn R. Walker, of California, to be U.S. district judge for the northern district of California.

G. Thomas Van Bebber, of Kansas, to be U.S. district judge for the district of Kansas.

Edward W. Nottingham, of Colorado, to be U.S. district judge for the District of Colorado.

Arthur D. Spatt, of New York, to be U.S. district judge for the eastern district of New York.

Edward J. Lodge, of Idaho, to be U.S. district judge for the District of Idaho.

DEPARTMENT OF JUSTICE

Jean Paul Bradshaw, of Missouri, to be U.S. attorney for the western district of Missouri for the term of 4 years.

Joyce J. George, of Ohio, to be U.S. attorney for the northern district of Ohio for the term of 4 years.

Timothy D. Leonard, of Oklahoma, to be U.S. attorney for the western district of Oklahoma for the term of 4 years.

Gene W. Shepard, of Iowa, to be U.S. attorney for the southern district of Iowa for the term of 4 years.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Philip Lawrence Christenson, of Virginia, to be an Assistant Administrator of the Agency for International Development.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Gordon H. Mansfield, of Virginia, to be an Assistant Secretary of Housing and Urban Development.

DEPARTMENT OF DEFENSE

Jerome G. Cooper, of Alabama, to be an Assistant Secretary of the Air Force.

DEPARTMENT OF AGRICULTURE

Adis Maria Vila, of Florida, to be an Assistant Secretary of Agriculture.

STATEMENT ON NOMINATION OF TIM LEONARD TO BE U.S. ATTORNEY

Mr. NICKLES. Mr. President, I rise today in support of the nomination of Tim Leonard to be U.S. attorney for the western district of Oklahoma. His nomination was approved by the Judiciary Committee on Thursday, November 16, 1989, and I strongly recommend quick confirmation by the full Senate.

Tim Leonard has been serving as interim U.S. attorney since October. Prior to his interim appointment, Leonard practiced law in Oklahoma City. Tim Leonard is no newcomer to the political process or the law. He served in the Oklahoma State Senate from November 1979 to 1988 and was elected minority leader in 1985. This Senator had the pleasure of serving with him for a year in that body. From 1968 to 1970, Leonard served as an assistant Oklahoma attorney general. He is a graduate of the University of Oklahoma and received his law degree from OU's school of law.

A member of the U.S. Navy from 1965–68, he served in the Judge Advocate General's Office at the Pentagon for 2½ years. He is a native of Beaver, OK. He and his wife, Nancy, have three children.

Mr. President, Tim Leonard is highly qualified to perform the responsibilities and duties involved in the role of U.S. attorney. He has an impressive background of legal and governmental experience and will serve the western district of Oklahoma very well.

I strongly endorse his nomination and recommend confirmation by my colleagues in the Senate.

STATEMENT ON THE NOMINATION OF MAJ. GEN. JEROME G. COOPER, USMCR

Mr. SHELBY. Mr. President, it was my pleasure last night to report out on behalf of the Armed Services Commit-

tee the nomination of Maj. Gen. Jerome G. Cooper, U.S. Marine Corps Reserves for the position of Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations and Logistics.

I have known Gary Cooper for close to 20 years. We served together in the Alabama legislature, to which Gary was first elected in 1974 and then again in 1978. He resigned his seat in 1978 to accept appointment to Gov. Fob James' cabinet as head of the department of social services, where he served with distinction.

General Cooper has made valuable contributions to the Mobile area. As a successful businessman, Gary has volunteered his time to many a worthy casue. These contributions have been recognized by the people of Alabama. In 1974, he was named as the Omega Psi Phi fraternity Citizen of the Year. In 1977, he was recognized as the Man of the Year by the Nonpartisan Voters League. In 1979, he was awarded the M.O. Beale Scroll of Merit for good citizenship in Mobile, as well as the Man of the Year by the Notre Dame Club of Mobile.

However, it is in service to his country that General Cooper has truly distinguished himself. In 1958, after receiving a B.S. degree in finance from the University of Notre Dame, the nominee was commissioned a second lieutenant in the Marine Corps.

General Cooper served for 12 years on active duty. In Vietnam, General Cooper distinguished himself as a real hero. His heroism earned the nominee many decorations, including the Bronze Star, two Purple Hearts for wounds received in ground action, and the Vietnamese Cross of Gallantry three times.

It was during his service in Vietnam that General Cooper began to break racial barriers. In 1967, he became the first black officer in the Marine Corps to lead an infantry company into combat. Later, as a Marine Corps reservist, Gary became the first black officer to command a Marine Reserve unit. He continues to break down barriers in his civilian life.

Mr. President, I have found General Cooper to be a man of intelligence and integrity. He is a true patriot, a recognized hero. I know that his over 30 years service to his country, along with the knowledge and experience that he has gained as a successful businessman, will serve him well as the Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations and Logistics.

Mr. President, I intend to vote for my good friend, Maj. Gen. Jerome G. Cooper, and urge my colleagues to do likewise.

## UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

## PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION

## CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, WITH RELATED PROTOCOL

Mr. MITCHELL. Mr. President, I ask unanimous consent to proceed to consider the following treaties en bloc: Executive Calendar No. 7: United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; Executive Calendar No. 9: Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; and Executive Calendar No. 10: Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, with Related Protocol.

I ask unanimous consent that the several treaties be advanced through the various parliamentary stages up to and including the presentation of the various resolutions of ratification, and that the several resolutions of ratification be voted, en bloc.

I further ask unanimous consent that statements and colloquys appear at the appropriate place, as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I ask for a division, en bloc, on the three treaties.

The PRESIDING OFFICER. The question is on agreeing to the resolutions of ratification. All those in favor, please stand and be counted.

All those opposed, stand and be counted.

In the opinion of the Chair, two-thirds of those present having voted in the affirmative, the resolutions of ratification are agreed to.

The resolutions of ratification agreed to are as follows:

### UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*Resolved (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on December 20, 1988, subject to the following understandings:

(1) Nothing in this Treaty requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States.

(2) The United States shall not consider this convention as the legal basis for extradition of citizens to any country with which the United States has no bilateral extradition treaty in force.

(3) Pursuant to the rights of the United States under Article 7 of this treaty to deny requests which prejudice its essential interests, the United States shall deny a request for assistance when the designated authority, after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior government official who will have access to information to be provided under this treaty is engaged in or facilitates the production or distribution of illegal drugs.

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### PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION

*Resolved (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on February 24, 1988.

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### CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, WITH RELATED PROTOCOL

*Resolved (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and the Accompanying Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, both signed at Rome on March 10, 1988.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the motion to reconsider be laid upon the table, and that the President be notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

## STATEMENT ON THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

Mr. PELL. Mr. President, this convention, primarily a law enforcement treaty, builds upon existing international agreements to establish a new international legal regime for combating international drug trafficking. It provides new tools for police, prosecutors, and judges from the signatory nations to carry out more effectively their responsibilities across international borders. It requires each signatory nation to establish as criminal offenses under its domestic law a comprehensive list of activities involved in or related to international drug trafficking. While such offenses already exist under U.S. law, their adoption by the international community and enactment into the law of each state party will significantly strengthen the sanctions applicable to international drug trafficking around the globe.

From the outset of the development of this treaty some 4 years ago, the United States has taken a leading role in the negotiations. I believe it is important for our country to maintain its leadership role in this area by prompt Senate consent to the treaty.

## STATEMENT ON THE U.N. CONVENTION AGAINST ILLICIT DRUG TRAFFICKING

Mr. BIDEN. Mr. President, today, the Senate fulfills one of its most basic constitutional duties—giving advice and consent to an international treaty.

Few issues are of more immediate importance to the domestic and international security of the United States than the international drug trade. The international drug trade is the single most serious national security threat confronting the United States. The leaders of the international drug cartels are powerful enough to hire and equip private armies, buy elections, and intimidate foreign governments.

That is why I have been working to see that the convention is ratified.

More than 2 years ago, as chairman of the Senate International Drug Caucus, I issued a report on the first draft of the convention, including recommendations that were accepted by the U.S. negotiators and incorporated into the final treaty; and I have also chaired two hearings on the convention, receiving testimony from Attorney General Dick Thornburgh, U.N. Ambassador Thomas Pickering, and Federal, State, and local law enforcement officials in the field.

These hearings confirmed what many of us have suspected for years: The major drug kingpins have developed sophisticated international smuggling rings that take advantage of the political and legal barriers to effective transnational law enforcement. The drug cartels show no respect of the integrity of national borders, the stability of democratic institutions, or the value of basic human rights.

The new convention should help to dismantle these barriers by internationalizing the response of the civilized nations to this invidious threat. The treaty would obligate signatory countries to:

Enact measures to permit the tracing, seizure, and forfeiture of drug-related profits;

Relax bank secrecy laws, so that criminal investigators will have access to financial records and other evidence of drug and money laundering offenses;

Curtail the export of chemicals that are diverted from the legitimate market for use in the manufacture and processing of illegal drugs.

The treaty's symbolic force, however, may be its most powerful provision. For the first time, the community of nations has come together to affirm that drug trafficking and abuse is morally repugnant, and that drug dealers should never have a safe haven anywhere in the civilized nations of the world.

Ultimately, the effectiveness of any international antidrug initiative will depend on the political will and good-faith efforts of the participating countries to confront the drug trade.

That is why ratifying the treaty is not enough. The United States should act promptly to implement both the letter and the spirit of our obligations under the treaty.

STATEMENT ON UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCES

Mr. HELMS. Mr. President, today the Senate considers whether to give its consent to ratification of another U.N. convention.

I admit to being skeptical about U.N. conventions because they try to impose Third World standards on the United States and other Western nations. Occasionally, we find an international agreement that on the surface appears to have real substance to it. Indeed, the issue of drugs and the war against international narcotics traffickers is probably one of the most important issues that faces the world today.

However, all too often, in my view, the U.N. conventions make a mockery of our constitutional system. It was that lack of regard for the Constitution that prevented the Genocide Convention from being approved for nearly 40 years until some reasonable solution could be worked out regarding the constitutional objections raised by our distinguished former colleague, the former senior Senator from North Carolina, Sam Ervin. Even with these provisions, I felt obliged to vote against final passage in memory of Senator Ervin.

As received by the Foreign Relations Committee, the convention had a number of serious defects. For example, without any action on the part of the Senate during the ratification of the convention, certain provisions of the convention may be interpreted by the State Department to function as a multilateral extradition treaty. Yet at this point in time, we do not even know to which countries the United States will be obligated.

Some of the countries that have already signed are not very impressive as law-abiding countries. They include: Panama, Afghanistan, Iran, Nicaragua, and Bulgaria. We could very well find ourselves being called upon to extradite U.S. citizens to countries where legal systems lack even rudimentary due process protections or fair evidentiary proceedings. Or we may find ourselves required to give assistance under the convention to these outlaw regimes.

Similarly, right in the middle of this convention there is a multilateral MLAT Treaty. When the first MLAT was forwarded to the Senate, we were assured that MLAT's would be negotiated only with democratic countries. Then we were sent MLAT's with corrupt, narcotics trafficking countries such as Mexico and The Bahamas. Now we get a multilateral MLAT with no control over which countries the United States will be bound to assist.

In order to assure that the constitutional rights of Americans are protected and to prevent the United States from inadvertently assisting foreign officials who may be involved in drug trafficking, the Senate Foreign Relations Committee approved three understandings which I offered to protect the interests of the United States and its citizens under this convention.

Specifically, they are the understandings to clarify that the convention does not authorize actions by the United States prohibited by our Constitution, to provide that the United States will not provide any assistance under the treaty to foreign officials involved in drug trafficking, and to clarify that the United States will make no extradition under the treaty to countries with which we have no bilateral extradition treaty.

In addition, a sense-of-the-Senate resolution will be passed today in conjunction with this convention once the Senate leaves executive session and returns to legislative session. The resolution urges that no assistance be given under the convention to countries not recognized by the United States. A letter from the Legal Adviser at Department of State, Abraham D. Sofaer, has been sent to Senators informing us of its intention not to provide assistance to such countries.

PROTECTING THE U.S. CONSTITUTION

Mr. President, in October of this year, the Senate added a condition to six Mutual Legal Assistance Treaties to protect the constitutional rights of American citizens from being abridged by the treaty.

A similar condition is required—and has been approved—to this convention. Article 7 of this convention creates a giant multilateral MLAT obligating the United States to provide legal assistance and information to all parties to the convention.

One of the many things which make our country different from all others—which has made our country the envy of the world and an enduring magnet to peoples in all lands—is our steadfast adherence to the Constitution and the protections it provides to all citizens.

Despite this fact, article 7 of this convention may obligate the United States to take certain legal actions in regard to Americans without excepting those actions which may be in contravention to the Constitution.

If asked by a State to undertake an unconstitutional action, the State Department will be left in the position of either violating the constitutional rights of an American if the request is honored, or violating its obligations under international law if the request is refused.

The State Department should not—and need not be left to choose between these options. To assure that it is not, the committee accepted a condition which will clarify that no actions in contravention of the Constitution will be taken under these treaties.

It reads:

Nothing in this Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States.

PREVENTING U.S. ASSISTANCE TO DRUG TRAFFICKING OFFICIALS

Mr. President, I believe all Senators can agree that our country cannot effectively fight the drug war by making deals with the drug traffickers.

The Senate did, in fact, agree last month when it passed as a condition to six MLATs, a provision prohibiting the granting of assistance to foreign officials whom our Government believes to be involved in drug trafficking.

A similar condition is necessary for this convention, as article 7 of this convention creates a giant multilateral Mutual Legal Assistance Treaty, or MLAT, obligating the United States to provide legal assistance and information regarding drug trafficking to all parties to the conventions.

Included among current signatories are some of the most notorious drug trafficking governments in the world—including Panama, Afghanistan, Iran, Nicaragua, and Bulgaria. Other notorious drug trafficking governments such as Syria and Laos are free to sign on through the latter part of this December.

Under article 7, paragraph 1 of this convention, the United States is obligated to provide any government which is a party to the agreement with "the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings" in regards to drug trafficking.

Any of these countries may request from the United States, drug trafficking information, evidentiary items, bank records, corporate records, and business records. They may request that the United States identify or trace money or property for them, or execute searches and seizures.

How can we be certain that the United States won't be required to provide foreign officials involved in drug trafficking with proprietary U.S. information? How can we be certain that the United States won't be required by corrupt foreign officials to seize or identify assets of their "competitors"?

As with the MLATs just approved by the Senate, we simply cannot be certain—unless a condition is similarly attached to relieve the United States of the obligation to assist foreign officials who may be involved in drug trafficking.

Fortunately such a condition was accepted by the committee. It reads:

Pursuant to the rights of the United States under Article 7 of this treaty to deny requests which prejudice its essential interests, the United States shall deny a request for assistance when the designated authority, after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior government official who will have access to information to be provided under this treaty is engaged in or facilitates the production or distribution of illegal drugs.

PREVENTING ILLEGAL EXTRADITIONS OF AMERICANS

Mr. President, Article 6 of this convention states:

If a party * * * receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition.

In the past 150 years, the United States has only engaged in extradition with those countries with which the United States had extradition treaties.

In other words: No treaty—no extradition.

In Holmes versus Jennison, as well as several other cases, the Supreme Court held that no extraditions may be made to countries with which the United States has no bilateral extradition treaty.

However, the terms of this convention may be read to set up a multilateral extradition treaty, providing the legal basis by which the United States may be required to consider such requests.

Many other countries, most notably in Latin America and Europe, have provisions prohibiting the extradition of their nationals written into their constitutions. Thus, they would have to override their own constitutions in order to follow the recommendations of this convention.

This is precisely the danger of broadly based treaties and conventions for the United States—wherein a treaty may override U.S. constitutional practice. Therefore, an understanding is necessary in order to insure that the United States is afforded the same rights and protections under this convention as are other States parties.

In order to prevent the United States from being called upon to extradite U.S. citizens to countries with which the United States has no bilateral extradition treaty, the Foreign Relations Committee approved a declaration providing that:

The United States shall not consider this Convention as the legal basis for extradition of citizens to any country with which the United States has no bilateral extradition treaty in force.

PREVENTING US OBLIGATIONS TO REGIMES NOT RECOGNIZED BY THE US

Mr. President, one of the glaring problems of this convention is that it creates U.S. obligations to some of the most notorious countries of the world; some of which are involved in drug trafficking, others of which are so anti-American that we do not maintain diplomatic relations.

The United States simply cannot effectively fight the drug war by making deals with drug traffickers. But under this treaty, we will be bound and obligated to such drug trafficking countries as Panama, Afghanistan, and Iran.

It seems incongruous to me how such drug trafficking countries can be permitted to become parties to a U.N. convention aimed at stemming drug trafficking. Beyond this, it would send exactly the wrong signal for the United States to assume obligations to such countries under this convention.

At the very least, the United States should not be in the position of assuming obligations to countries which are either so involved in drug trafficking or are so anti-American that we do not maintain diplomatic relations with them.

In tandem with approval of the U.N. drug convention, it is imperative that the United States take action to ensure that it does not give de facto recognition to parties to the convention simply by virtue of executing functions under the treaty. In addition, the United States must assure order to ensure that it is not bound and obligated to countries or regimes it does not recognize. To accomplish these two goals, I offer the following resolution when the Senate returns to legislative session, which I believe the Senate will accept.

It reads:

It is the Sense of the Senate that the United States should not be bound or obligated under the United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances to cooperate with any State party with which the United States does not maintain diplomatic relations or with any regime not recognized by the United States.

The Department of State has agreed to follow the recommendations of the Senate as embodied in this resolution. This commitment was made in a letter written to me by Abraham D. Sofaer, the legal adviser at the State Department.

Mr. President, I ask unanimous consent that the text of the letter from Judge Sofaer be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF STATE,
THE LEGAL ADVISER,
*Washington, DC, November 20, 1989.*

Hon. JESSE HELMS,
*Committee on Foreign Relations, Senate.*

DEAR SENATOR HELMS: The Department understands the concerns expressed by some Senators that the United States not be required to share sensitive information relating to narcotics trafficking with General Noriega and his regime or similar regimes which we do not recognize or with which we do not have diplomatic relations. We do not believe that such sharing is required by the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs an Psychotropic Substances.

We will take a very hard look at any and all requests for information under the Convention from such regimes, should their countries become party to it, to ensure that

such requests are not likely to prejudice our sovereignty, security, order, public or other essential interests. Generally speaking, the United States would expect to refuse to share information with such regimes.

We understand that a sense of the Senate resolution will be introduced to read as follows:

It is the sense of the Senate that the United States should not be bound under this Convention to cooperate with any State party with which the United States does not maintain diplomatic relations or with any regime not recognized by the United States.

We do not oppose passage of that Senate resolution.

I wish to thank you for agreeing to introduce a specifically permitted declaration, to be part of the resolution of advice and consent, that the United States does not consider itself bound to refer disputes under the Convention to the International Court of Justice.

Sincerely,

ABRAHAM D. SOFAER.

Mr. HELMS. Mr. President, the United States simply should not undertake obligations with the likes of Noriega in Panama, Najibullah and his Soviet supplied thugs in Afghanistan, and the terrorists who run Iran. This resolution will assure that no such obligations will be undertaken.

Mr. President, the distinguished Attorney General of the United States, Dick Thornburgh, has taken a strong leadership role in the war on drugs. It was Dick Thornburgh who signed, on behalf of the United States, the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances last December in Vienna. Today, the Senate is giving its approval to the resolution of consent to the ratification of that convention.

Moreover, it is the Attorney General who will be charged with implementing the provisions of this convention. Dick Thornburgh has been deeply involved in the details of the agreement, and is eagerly looking forward to his role in enforcement. I have worked very closely with the Attorney General and the Department of Justice in perfecting issues involved in the Senate's consent to the ratification, and I wish to state my appreciation for their cooperation.

Mr. President, a few months ago, Dick Thornburgh appeared before the Senate Drug Caucus to explain the U.N. convention, and I ask unanimous consent that his remarks be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF DICK THORNBURGH

Mr. Chairman and Members of the Caucus. Thank you for inviting me to address the caucus today on a subject that I believe to be of vital importance in our ongoing international efforts to effectively deal with what President Bush has rightly called the "scourge" of illegal drugs.

I refer to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which I had the privilege of signing on behalf of the United States last December in Vienna. President Bush will shortly transmit the Convention to the Senate for ratification, and the administration is hopeful that you will move expeditiously in reviewing it and providing for your consent.

This Convention builds upon earlier United Nations actions and upon the numerous bilateral agreements we have entered into with other countries. It will assist in the eradication of drugs and drug-producing laboratories, and in preventing the transportation of precursor chemicals from this nation and others to the drug-producing countries for use in drug production. The Convention will also help to hinder the importation of drugs into the United States, and prevent the transfer of the profits of the illegal drug trade back to the drug cartels. Finally, it will enhance our ability to extradite drug criminals to the United States for trial.

Although we are scoring an increasing number of successes in the international war on drugs, our combined efforts have not kept pace with the international drug cartels. These crime conglomerates are run by shrewd and vicious drug traffickers who take full advantage of the international character of their multi-country activities to shield their illegal activities. These cartel leaders ignore our laws, and in some countries, they have so terrorized the legal system that law enforcement is severely hampered.

This new convention will assist the United States and the more than 100 signatory nations, including most of the drug consuming, as well as drug producing, countries to further challenge these international cartels.

I do not represent that this document is going to, by itself, provide the upper hand to participating nations in our war on drugs. It will, however, provide us with enhanced law enforcement tools and can lead to substantial advances in our international cooperative efforts.

Before going into the provisions of the Convention, I would like to provide the Caucus with some background.

It is important to recognize how significant a development the convention represents in the effort to combat illicit trafficking in drugs at the international level. Preparation of the Convention began some four years ago, under United Nations auspices, when the international community came to realize that stronger and broader measures for cooperative law enforcement were required to combat the growing menace of illicit trafficking.

In 1984, the General Assembly of the United Nations unanimously adopted a resolution endorsing the negotiation of a new multilateral convention to complement the two existing international drug control instruments (the 1961 Single Convention on Narcotic Drugs, amended by Protocol in 1972, and the 1972 Convention on Psychotropic Substances). Those two conventions regulated the legal production and distribution of controlled substances but do not provide an adequate legal basis for addressing and controlling the increased threat from illicit drug trafficking across international borders.

Let me take a moment to outline the terms of this historic new agreement.

First, it is important to note that it is a law enforcement convention, providing new tools for police, prosecutors and judges from the signatory nations more effectively to carry out their responsibilities across international borders, while preserving each nation's sovereignty.

This Convention will lift the veil of bank secrecy, for example, as an impediment to gathering evidence against traffickers and as a method of hiding illicit profits. Governments are also given the tools to seize illicit drug profits and use them, as we do in the United States, to enhance our law enforcement efforts.

Second, all the nations signing the Convention have agreed to exchange evidence of criminal conduct and to extradite accused traffickers so that safe havens are no longer so readily available.

The pact, in effect, tells the cartels that they are not welcome within any of our borders.

Third, the Convention provides for the supervision of the manufacturing and sale of essential and precursor chemicals for the production of illegal drugs, in terms similar to recently-enacted U.S. legislation.

Fourth, commercial carries are brought into the drug war through requirements that they make certain that commercial consignments are free from drugs. Law enforcement officials are given the authority to board, search and, if necessary, seize vessels used in the drug business.

Finally, the Convention reaffirms the need for aggressive efforts in crop eradication and demand reduction to complement its law enforcement initiatives.

While the Convention itself does not alter the laws of any nation, it commits the signers to the enactment of new legislation, where necessary, and to increased cooperation among law enforcement officials.

The United Nation's Commission on Narcotic Drugs will provide policy oversight, and the U.N. International Narcotic Control Board will play an important role in monitoring implementation of the Convention.

Full implementation of this Convention would give our children, and their children, the gift of a world cleansed of drug abuse, a world where governments carry out their responsibilities free of the corrupt influence of drug profiteers, a world where the vicious criminals now in control of transnational drug cartels are behind bars, their networks in ruins, and their seized illicit profits plowed back into more effective law enforcement.

I recognize that enactment of this treaty will not happen overnight and will not happen at all without a lot of hard work. This Convention, however, makes it far more likely that the nations of the world will be working together toward a common end.

Specific provisions of the Convention are as follows:

(1) OFFENSES AND SANCTIONS.—The Convention requires each party of establish as criminal offenses under its domestic law a comprehensive list of activities involved in or related to international drug trafficking. While such offenses already exist under United States law, their adoption by the international community and enactment into the laws of each party will significantly strengthen and unify the sanctions applicable to international drug trafficking around the globe.

Specifically, the covered offenses include: (i) the production, manufacture, distribution or sale of any narcotic drug of psychotropic substance contrary to the provisions of the 1961 Single Convention or the 1971 Psychotropic Substances Convention; (ii) the cultivation of opium poppy, coca bush

or cannabis plant contrary to those earlier conventions; (iii) the possession or purchase of any narcotic drug or psychotropic substance for the purpose of illicit trafficking; (iv) the intentional manufacture, transport or distribution of materials, equipmnet, and substances for the purpose of illicit cultivation, production, or manufacture of narcotic drugs and psychotropic substances; and (v) the organization, management, or enhancing of any of the foregoing offenses. Of equal importance, the Convention specifically requires criminalization of drug-related money laundering, including the conversion and transfer of property derived from an offense, as well as the concealment and disguise of its true nature and source.

Parties are also required, subject to their constitutional principles and basic concepts of their legal systems, to establish as criminal offenses: (i) the acquisition, possession or use of property knowingly derived from the above offenses; (ii) possession of equipment, materials and chemicals knowingly used in illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances; (iii) publicly inciting or inducing others to commit the above listed offenses; and (iv) related offenses of conspiracy, participation, and aiding and abetting.

Each party is obliged to take into account the grave nature of the offenses by making these covered acts punishable by sanctions such as imprisonment, fines, and confiscation. The Convention requires courts to take into account factual circumstances making the commission of the offenses particularly serious, such as the involvement of organized criminal groups, use of violence, victimization of minors, and the fact that the offender holds public office.

Importantly, the Convention provides that the offenses shall not be considered "fiscal offenses," "political offenses," or "regarded as politically motivated" for purposes of its confiscation, extradition, and mutual legal assistance articles.

(2) JURISDICTION.—Parties are obliged to establish jurisdiction over the covered offenses when they are committed in their territory or or board their vessel or aircraft. Parties may establish jurisdiction over offenses committed by their nationals, committed on board vessels outside their territorial waters which are properly boarded and searched, and with respect to conspiratorial offenses committed outside their terriotory with a view to commission of a covered offense within their territory.

(3) CONFISCATION.—The Convention imposes two sets of obligations regarding confiscation on parties. First, each party is required to enact domestic laws to enable it to seize, freeze, and forfeit all manner of property derived from or used in the drug offenses. Second, the Convention requires each party to assist another party upon request to identify, seize, freeze, or forfeit property within its territory that was used in or is the proceeds of an offense that occurred in the territory of the requesting party. These dual obligations to forfeit drug proceeds and instrumentalities represent a major step forward in removing the profits of illegal drug trafficking from the hands of the traffickers.

Of further importance, the confiscation article requires parties to enable their courts or other competent authorities to order the production of seizure of bank, financial and commerical records necessary to trace, identify, seize, and forfeit proceeds and instrumentalities of drug trafficking. In this connection, it specifies that parties shall not decline to act on the grounds of bank secrecy.

In addition, while acknowledging that the disposition of confiscated property and proceeds is a matter of domestic law, the Convention contemplates agreements between the parties for either contributing the value of confiscated property to inter-govermental bodies specializing in the fight against illicit drug traffic, or sharing the proceeds and property with other parties on a regular or case-by-case basis.

(4) EXTRADITION.—The Convention amends existing extradition treaties between parties to include drug and money laundering offenses as extraditable offenses and provides that they shall be extraditable offense between states that do not make extradition conditional on an extradition treaty. While although almost all United States extradition treaties include within their scope drug trafficking offenses, many do not include drug-related money laundering offenses. This provision will, therefore, have an important impact on our bilateral extradition relations.

The United States had hoped to include a broad obligation to extradite one's own nationals in this article. Unfortunately, there was overwhelming opposition from the northern European countries that, for either political or legal reasons, would not accept any provision on the extradition of their nationals, even a hortatory provision. Thus, the article contains no provision on the extradition of nationals. The article does, however, obligate a party to submit the case to its competent authorities for the purpose of prosecution when it refuses to extradite an offender because the offender is one of its nationals or because the offense occurred on its territory or on its vessel or aircraft.

(5) Mutual Legal Assistance.—The Convention provides a treaty obligation to provide mutual legal assistance to other parties in investigations, prosecutions or other judicial proceedings in relation to covered offenses. Such assistance includes, inter alia, the taking of evidence, service of documents, executing searches and seizures, examining objects and sites, providing bank, financial and business records, and identifying and tracing proceeds and instrumentalities of crime. Other forms of mutual legal assistance may be provided as allowed by the domestic law of the requested party.

Significantly, the Convention also eliminates bank secrecy as a ground for refusing a request for mutual legal assistance.

To the extent necessary, the Convention amends existing mutual legal assistance treaties to apply to offenses covered by the Convention, thereby including money laundering in the context of illegal drug trafficking. As between parties that are not parties to bilateral or multilateral treaties on mutual legal assistance, the Convention provides a basis for according such assistance, and specifies the procedures to be followed in making and executing requests. Requests may be refused only for limited specified reasons.

(6) Other Enforcement Measures.—The Convention requires parties to take specific enforcement measures to prevent illicit trafficking across national boundaries. These measures include: Controlled deliveries at international level. Each party is encouraged to allow a know shipment of narcotics to pass through its territory without immediate arrest or seizure in order to trace the onward movement of the consignment and to identify higher levels of trafficking organizations.

Commercial carriers, mails, free trade zones, and ports. Parties are required to suppress the use of commercial carriers and the mails for narcotics trafficking. Parties must also make efforts in their free trade zones and ports that are no less rigorous than those applied elsewhere in their own territory.

Traffic by sea. The Convention, consistent with the international law of the sea, authorizes a party with reasonable grounds to suspect that a vessel is engaged in illicit trafficking, to board and search that vessel with the authorization of the flag state.

Diversion of chemicals. Parties are obliged to prevent the diversion of precursor chemicals at the national level and to cooperate at the international level.

Eradication and demand reduction. Parties must prevent the illicit cultivation of and eradicate plants containing narcotic or psychotropic substances. Similarly, demand reduction as an integral drug control strategy is given appropriate emphasis.

Other measures. Parties must establish direct channels of communication among law enforcement authorities; assist in locating and identifying suspects, drugs proceeds and properties and monitor the import and export of narcotic drugs and psychotropic substances.

REGIONAL AND MULTILATERAL DRUG CONTROL EFFORTS

The United States already participates in a number of efforts to increase the level of international cooperation among law enforcement officials. The more formal efforts include our participation in the International Drug Enforcement Conference (IDEC) and the Organization of American States Inter-American Drug Abuse Control Commission (CICAD).

The United States also seeks cooperation in less formal settings. The United States Department of Justice and its components, particularly the Drug Enforcement Administration, in conjunction with the Department of State, at the request of particular countries, sponsor training programs and seminars on law enforcement techniques. Obviously, efforts at cooperation must continue on a country-to-country level, as well as on a person-to-person level. I am always heartened when I hear of the positive reception our agents and attorneys in the field receive in response to their requests for assistance.

Among the oldest of the multilateral conferences is the Franco/American/Canadian/Italian Conference. This Conference was begun in 1971 as the Franco/American Working Group to respond to the French Connection herion rings of the 1970s. Canada and Italy attended meetings for years and finally became members of the Conference. Multilateral narcotics operations are a regular topic of discussion. The next meeting will be this coming October. This will be an ideal forum in which to address the growing incidence of cocaine trafficking taking hold in Europe and Canada.

We are also very enthusiastic about the Italian-American Working Group on Organized Crime Narcotics Trafficking. Established in 1984 pursuant to meetings of the two countries' Presidents, by the Department of Justice, and the Italian Ministry of Grace and Justice, it has met twice a year and most recently met this past April to discuss drug-related and organized crime issues concerning our countries. We have conclud-

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ed a number of agreements with the Italians on such issues as joint investigations, information sharing, and extradition.

We have long engaged in a special bilateral program with the Government of Pakistan. As an example, at the eighth meeting of the Joint Working Group on Narcotics of the Pakistan/United States Commission, the Government of Pakistan expressed an interest in our precursor control program. The United States has offered Pakistan assistance to develop chemical monitor programs to restrict the illegal diversion of essential chemicals.

Initiated under the auspices of the United Nations, Heads of National Drug Law Enforcement Agencies (HONLEA) meetings have emphasized cooperation at the operational level of drug enforcement. The universal interest in improving global drug enforcement capabilities developed in these meetings have served to support broader U.N. drug control efforts such as the Convention. Each year, regional conferences are held for Asia, Africa, Mid-East and Europe, Latin America and Caribbean. The United States regularly sends representatives to these meetings. One interregional, i.e. worldwide, HONLEA was convened in June 1986 in Vienna, Austria. The Latin American and Caribbean regional HONLEA held in Lima, Peru in September 1988 was the most recent session. DEA Administrator John Lawn headed the U.S. Delegation.

IDEC

The International Drug Enforcement Conference, known as IDEC, is the most prominent and productive forum for regional cooperation for narcotics enforcement in the Americas. Partly as a result of IDEC resolutions pushing for chemical control, virtually every IDEC member nation has instituted legislation requiring controls on the movement of precursor chemicals, including our Chemical Diversion and Trafficking Act passed last year.

The United States hosted the most recent IDEC conference in April of this year in which 19 member nations and seven observer delegations participated. President Bush addressed the conference, the first time a Head of State has ever addressed the conference, highlighting the leadership role the United States has assumed.

IDEC concentrates on developing and implementing regional enforcement strategies. In 1988, thirty nations participated in the "IDEC Initiative," a month long multilateral effort in which participants exchanged intelligence, stepped up jungle laboratory and airstrip destruction patrols, and intensified vessel, cargo and aircraft monitoring scrutiny.

The results were encouraging. Over 8.5 metric tons of cocaine and 228 metric tons of marijuana were seized; 3.3 million opium poppy plants were eradicated; 31 cocaine laboratories were destroyed; thousands of gallons of precursor chemicals were confiscated; 7 airstrips were destroyed; and more than 1,700 arrests were made; and almost $4 million in cash was seized.

The unprecedented cooperation enjoyed among the participants from police agencies throughout the Americas and Europe has prompted IDEC to plan future coordinated operations. Working groups are in place and operational plans are being developed for a similar 1989 campaign. Obviously, the related details are sensitive and cannot be made public. The United States intends to fully contribute to these proposed operations, while being mindful that the strength of IDEC rests in the equal partnership of all member nations.

OAS/CICAD

The Organization of American States Inter-American Drug Abuse Control Commission, known by the acronym CICAD, at its meeting in La Paz on March 14-17, planned a ministerial-level summit meeting of drug officials for late this summer. The summit is a United States initiative, spearheaded by former Senator Paula Hawkins, the head of the United States delegation to CICAD. Among the topics to be addressed at this summit are ways of improving law enforcement cooperation among the thirty-plus member nations of the OAS and ways to reduce demand for drugs in the region.

CICAD is also sponsoring a legal development project designed to assist members to investigate and prosecute major narcotics traffickers. That project has two components. First, a group of experts will draft legislative proposals for changes in both substantive and procedural criminal laws. Second, the project will conduct training seminars and workshops for judges and prosecutors. The project is focusing its attention initially on drafting legislation or the regulation of precursor chemicals and legislative changes to modernize mutual legal assistance and extradition statutes.

EXTRADITION STATISTICS

Finally, Mr. Chairman, I would like to provide some international extradition statistics from cases handled by the Department of Justice Criminal Division on behalf of both state and federal prosecutors. All U.S. requests for extradition are coordinated by that Division.

Our extradition record is one of which we are justly proud. Once the Criminal Division is called upon to catch a fugitive who has fled overseas, the odds are that he will be caught and returned. Departmental extradition records for the thousands of fugitives whose return the United States has sought during the last 15 years from more than 250 foreign jurisdictions show that only one percent of the foreign fugitive cases handled by the Criminal Division were closed because extradition was finally and unequivocally denied by the foreign jurisdictions and two percent because we were unable to locate the fugitives. Those records further show that almost one-third of the fugitives we sought were wanted for drug trafficking offenses. Even they, the fugitives who are the most difficult to extradite because of their great resources, were able to persuade the foreign jurisdictions to deny our extradition requests in only about 6% of the cases.

Requests are currently outstanding for approximately 280 drug fugitives. Those open cases include situations in which the person has been found extraditable but is serving a prison sentence in the foreign country; cases in which the request is still being processed; and cases in which the fugitive has yet to be located. Assuming the disposition rate for these cases remains stable, close to one-third will return under formal orders of extradition; 16% will return voluntarily to avoid extradition proceedings; 13% will be deported; and 7% will be arrested either in or attempting to enter the United States. In other words, experience causes us to believe that we will be able to obtain the return of more than two-thirds of the fugitives, without regard to where they may have gone.

The disposition of the remaining cases will reflect an assortment of outcomes. For instance, about 10% of our extradition cases are closed by withdrawal of the request for extradition for various reasons (death of the witness, plea bargain, technical difficulties with the indictment, etc.) and approximately 7% of the cases are closed because the fugitive died before we could obtain his return. However, the bottom line, as I previously noted, is that only about 6% of the drug trafficking cases ends with a final denial of extradition, and only about 2% of the traffickers are never located.

Our most active treaty partner is Canada, which accounts for about one-fifth of all extradition cases. Following Canada, the United States most often seeks the return of fugitives from Great Britain, Colombia, Costa Rica, and Mexico.

Approximately 60% of all extradition requests are made on behalf of federal prosecutors with the remaining 40% being made on behalf of state and local jurisdictions. Because most crimes of violence are prosecuted by state and local prosecutors and not by the federal government, the majority of the extradition requests for such offenders was made on behalf of the states. However, the federal government makes more requests for drug offenders than the states do. The remaining fraud, embezzlement, forgery, and other non-violent, non-drug cases are fairly evenly divided between state and federal prosecutions.

Mr. Chairman, it has been my pleasure to address you today, and I am prepared to try to answer any questions you might have.

Mr. HELMS. Mr. President, as I read paragraph 4 of article 32 of the convention, it clearly states that any State party to the convention has the right to declare that it does not consider itself bound to compulsory jurisdiction of the International Court of Justice at the time of signature or ratification, acceptance or approval of this convention or accession thereto. It is my understanding that the United States will exercise its rights under paragraph 4 of article 32 at the time of accession to this convention.

Mr. PELL. The Senator from North Carolina is correct in his reading of paragraph 4 of article 32. I would hope that the administration would not exercise its right under this article to exempt the United States from the jurisdiction of the World Court. The United States has always rested its policies and rights upon a rule of law. It should continue to do so.

Mr. GRAHAM. Mr. President, I rise today in support of the U.N.'s Convention Against the Illicit Traffic in Narcotics.

In June 1989, I had the honor of meeting with the Director-General of the U.N.'s Vienna Office, Margaret Joan Anstee. Director-General Anstee has primary responsibility for U.N. drug programs. She made a very strong case for the rapid approval of the treaty by the U.S. Senate. Our meeting was followed by a hearing of the Senate Caucus on International Narcotics. During the hearing, chaired by Senator BIDEN, we heard compelling testimony from the Attorney General and the U.S. Ambassador to the United Nations, Thomas Picker-

ing. Both gentlemen argued strongly for the Senate's expeditious action on the treaty.

It is increasingly obvious that the problem of drug trafficking has become an enormous global threat. We have heard President Barco of Colombia plea for a "strong program of coordinated international action" to assist what he calls the "drug-victim nations." The Prime Minister of Jamaica, Michael Manley, has said that international drug cartels are a global threat "without precedent" and called for the formation of an international antinarcotics force. As the cartels search for customers to peddle their murderous wares, more nations are becoming alarmed at the prospect that they will be the next "drug-victim nation." Whether their country is targeted for production, for transshipment, or for final destination, leaders around the world recognize the potential vulnerability of their own societies.

It is in this atmosphere of worldwide apprehension that the Senate reviews the U.N. Convention Against Illicit Narcotics. The treaty focuses on law enforcement; its goal is to develop a global framework for cooperation in apprehension, detention, and punishment of illicit drug traffickers and manufacturers.

Mr. President, I want to note the significance of the U.N.'s efforts. Narcotics trafficking and drug abuse are not the sole problem of the United States. Cocaine imports to Western Europe have leapt 400 percent in the last year. Many developing nations are being rocked by the destabilizing and infectious force of the greed drug trafficking spawns.

The pending treaty provides the United States, and the other countries that ratify it, with new tools to help combat drug trafficking at the international level. I urge my colleagues to join me in sending the Convention Against Illicit Narcotics Trafficking to the President with the favorable consent of the Senate.

STATEMENT ON THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION

Mr. PELL. Mr. President, the protocol to the Montreal Sabotage Convention was negotiated in response to the savage terrorist attacks on the Rome and Vienna airports in December 1985. Those brutal acts, perpetrated by the Abu Nidal Organization, demonstrated that airport facilities themselves, in addition to the aircraft, must be brought under the umbrella of international antiterrorist conventions. Previous conventions, such as the 1971 Montreal Sabotage Convention and the 1970 Hague Hijacking Convention, only cover terriorist acts committed against airplanes.

This airport security protocol supplements and extends the legal framework of the Montreal Sabotage Convention—including the obligation on states parties to prosecute offenders themselves or extradite them for prosecution by other states—to encompass unlawful acts of violence committed at airports serving international civil aviation, even where such acts do not endanger the safety of aircraft in flight.

Over 70 nations have signed the protocol and 13 have deposited their instruments of ratification. The airport security protocol will contribute to the growing global efforts to restrain the growth in international terrorism.

STATEMENT ON MARITIME COUNTERTERRORISM CONVENTION AND PROTOCOL

Mr. PELL. Mr. President, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Treaty Doc. 101-1), are designed to ensure that individuals who commit acts of terrorist violence which endanger the safe navigation of a ship or the safety of a marine platform are either prosecuted in the state in which they are found or extradited to another state for prosecution.

These international agreements were negotiated in reponse to the 1985 seizure of the Italian cruise ship, the *Achille Lauro*, and the brutal, senseless murder of its American passenger, Leon Klinghoffer.

Mr. President, this convention and protocol illustrate the international resolve to work in a multilateral context to combat international terrorism. These instruments make it clear that vicious acts of violence directed against innocent victims will not be tolerated by the international community and that individuals who commit such acts will be treated as criminals and punished accordingly.

## THE EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent the Senate proceed to the Executive Calendar to consider the following nominations: Calendar No. 385, Jerry M. Hunter, to be general counsel to the National Labor Relations Board, and Calendar No. 388, Dennis M. Devaney, to be a member of the National Labor Relations Board for the remainder of the term expiring December 16, 1989.

I further ask unanimous consent that the nominees be confirmed en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

NATIONAL LABOR RELATIONS BOARD

Jerry M. Hunter, of Missouri, to be general counsel of the National Labor Relations Board for a term of 4 years.

Dennis M. Devaney, of Maryland, to be a member of the National Labor Relations Board for the remainder of the term expiring December 16, 1989.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

## DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS IN SCHOOLS

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on H.R. 3614, the Drug Free Schools and Communities Act Amendments of 1989, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3614) "to amend the Drug-Free Schools and Communities Act of 1986 to revise certain requirements relating to the provisions of drug abuse education and prevention programs in elementary and secondary schools, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. KENNEDY. Mr. President, I rise to strongly support the conference report before this body. The Drug Free Schools and Communities Act amendments are a critical weapon in our war against drugs.

Young people are experimenting with drugs. In 1987, more than 600,000 children between the ages of 12 and 17 had used cocaine within the past year. And 39 percent of our high schools seniors reported experimenting with drugs during the past year. That is almost half of our graduating class—it does not even include those who have dropped out.

Even younger children are reporting pressure to try drugs or other substances illegal for their age. Fifty-seven percent of sixth graders—children who are 11 and 12 years old—report peer pressure to smoke cigarettes; 51 percent report peer pressure

to try beer or liquor, and 33 percent report pressure to try cocaine.

We have increasing evidence that there are school-based programs to combat this tragic problem. The Kansas City midwestern prevention project studied middle school children who did and did not participate in a comprehensive antidrug program. And the results are impressive. Participants were 46 percent less likely to use marijuana, 38 percent less likely to smoke cigarettes, and 13 percent less likely to use alcohol. The control group was 2½ times more likely to use cocaine than the experimental group.

These programs work, and this legislation gives us the opportunity to bring more programs like this to school districts across the country. The Drug Free Schools and Communities Act is the major Federal program devoted to reducing drug use among school-aged youth. With the 1990 increase, it will be the second largest education program, second ony to chapter 1.

This legislation adds some new programs recommended by the administration to aid it in carrying out the war against drugs:

A new program of emergency grants will provide funds to areas with high rates of drug arrests, convictions, referrals, or other indicator of high drug use.

Model alternative schools are authorized, a program important to the administration to ensure that students expelled under antidrug program are not new dropout statistics, but have alternative school settings.

Drug testing is made a permissible use of Governors' funds for students voluntarily participating in athletic activities.

Drug free school zones are authorized as a new demonstration program.

Other changes which this act provides include a targetting of new funds to poor urban and rural areas by allocating half of the new funds above the 1989 level by the chapter 1 formula. Funds for the Governor will be capped at $100 million, providing an increase but still ensuring that most funds go to State and local educational agencies.

Programs for latchkey children, proposed by Senator ADAMS are included, as is a focus on programs for children in grades four through nine.

The bill also includes an amendment offered on this side by Senator GRAMM on behalf of the administration. The drug free schools and campus provision requires that in order to receive any Federal assistance, local educational agencies and institutions of higher education must implement a program to prevent drug use and possession by students and employees, including remedies and sanctions. School districts must include a comprehensive program of antidrug education for early education grades through grade 12.

The House amended this provision by adding a reference to the General Education Provisions Act—GEPA—which prohibits the Federal Government from prescribing curriculum. This GEPA provision was established under the Department of Education Organization Act in 1979 to prohibit the Secretary from exercising control or direction over the content of library resources, textbooks, or other instructional materials. The provision applies to all Federal education programs.

This important protection preserves the authority of State and local educational agencies to determine curriculum, textbooks, and course content. It was designed to obviate concerns over undue Federal intrusion into areas that should be within the jurisdiction of State and local governments. The Senate receded to the House on the GEPA provision so that this protection for local self-determination would apply to the Drug Education Program as well. This carries out the time-honored distinction between Federal—and State and local—responsibility for education.

We believe these programs included in this legislation are of critical importance to the war on drugs. We worked very hard to reach a consensus, not only between the two Houses of Congress, but between Democrats and Republicans. We incorporated many provisions requested by our Republican colleagues. We believe this is a good bill. It is critical to help our schools fight on the front lines of the drug war every day. I urge my colleagues to support this measure.

Mr. ADAMS. Mr. President, I rise in strong support of this bill and want to compliment both the Senate and House conferees for their efforts to bring the final version of this bill to us for consideration today. I am particularly pleased about the decision on the part of the conferees to include section 23 of the bill at my request. This section authorizes a grant program for before and after school programs for the latchkey child. My original amendment aimed at this goal passed the Senate on October 3 as part of S. 1711. The language in section 23, I believe, reflects an acceptable compromise between the Senate and House on this issue.

This is a critically important provision. There are 1.8 million latchkey children between the ages of 5 and 13 in the United States today. The National Institute on Drug Abuse has found that such latchkey children are twice as more likely to become involved in drugs than children who are supervised by an adult in their before and after school hours. If we are to win this war on drugs among our young population, we must understand that increasing communication between adults and latchkey children is an important element in this battle. The grants authorized under this bill can be used for athletic activities, creative activities in conjunction with community service organizations, education and instructional activities before and after school, and other programs which are designed to reduce the risk of drug abuse.

But the inclusion of my amendment is only one reason why we should give speedy approval to this bill today. The Drug Free Schools and Communities Act addressed in the remainder of this bill is a very important program. It is the only Federal program devoted to reducing the use of drugs among school-age youth. With the increase provided for this program in the 1990 appropriations bill, this program will become the second largest Federal education program—second only to chapter 1. With such an increase in appropriations, it is important that we see that money is spent on the antidrug programs which show the most promise.

In addition to my latchkey provision, this bill contains a number of important provisions. First, the bill authorizes, for the first time, a program of emergency grants to the Governors in 1990 and to the Secretary of Education in 1991 for areas where there are a high concentration of drug arrests, convictions, or referrals to drug treatment programs. Second, the bill makes important changes to the drug free schools formula to ensure that some of the new funds get targetted to those areas of the country with the highest poverty rates where the drug problem is the most intense. Third, the bill emphasizes the importance of programs for children in grades four through nine which use effective techniques to prevent the use of the so-called gateway drugs. This provision is modeled on efforts being used in Kansas City and in my home State, of Washington. Techniques such as peer resistance training and development of social skills in our children have been found effective in helping children resist involvement in drugs. Finally, this bill authorizes a demonstration program for drug free school zones and makes funds available to help youth in juvenile detention facilities.

In summary, Mr. President, this is a good bill. It is a needed bill. It is a progressive bill. Those who argue that this bill does not go far enough should stop to take a close look at how far the bill really does come in some very important areas in the drug war. I myself would have liked to have gone further to get a more extensive program launched for latchkey children and would have liked to see more done in this bill for children in the fourth through ninth grade span to help them resist their involvement with

gateway drugs. But this bill makes an important beginning in both of those areas, as it does in so many others.

I urge my colleagues to support this bill as it has been reported by the conferees. We cannot afford to delay our war on drugs until next year. We need to act now. The hour is already very late and the need very great.

Mr. PELL. Mr. President, I am very pleased with the agreement we have reached on H.R. 3614, the Drug Free Schools and Communities Act Amendments of 1989. Both sides have given in the process and I believe we have fashioned a strong bill as a result. This legislation makes several important changes to current law which will strengthen the ability of this program to educate America's children about the danger of using drugs.

First, the legislation drives more money to the State and local educational agencies. This change to current law is critical if we are to ensure that the Federal drug free schools assistance will reach into school district after school district across the country. It will further provide a sufficient amount of funding to school districts so that the programs will be of sufficient size and scope to have an impact.

Second, the legislation targets the new money provided in fiscal year 1990 to areas of poverty. It does so on the basis of the chapter 1 formula in the Elementary and Secondary Education Act. This change to the formula will not affect the distribution of current dollars, but will mean a change in the distribution of the new money. It will provide additional funds to urban as well as rural areas of poverty.

Every child is vulnerable to the terrible dangers of drug use and dependency. But children in areas of poverty are particularly threatened. These are the areas where drug trafficking, dealing and use are concentrated, and we need to increase our efforts to insulate children from these powerful influences in these areas.

Third, the legislation creates several new initiatives which will enhance the effectiveness of the current program. These include assistance to establish drug free school zones, emergency grants to urban and rural areas where the incidence of drug abuse is extreme, and inclusion of language proposed by Senator ADAMS to target specifically the needs of latchkey children.

Fourth, the bill provides increased emphasis upon serving juveniles in detention centers, programs to establish model alternative schools for school dropouts, and coordination with community-based organizations and nonprofit private organizations.

Mr. President, the fiscal year 1990 appropriations increase we provided of close to $200 million over fiscal year 1989 for the Drug Free Schools and Communities Act is critical to our assault on the drug problem. We must make every effort to ensure that these funds are spent wisely.

That is why the changes we are making in H.R. 3614 are so important. For, to my mind, the most effective use of our drug education dollars is that of supporting programs through our school systems. Such an effort will ensure that all students receive the kind of education that can prevent a drug problem before it starts. This is the only real method we have for making strong headway in reducing the demand. And we all know that this dreadful—and all too often lethal—situation will remain unabated unless we can meet with success in this regard.

We all recognize that there is much work to be done in this area. But I am confident that with the continued and collective efforts of the President, of the Congress, and of the American people, we can make steady progress.

Mr. HATCH. A concern raised is that the purpose of the drug-free schools and campuses provision that was added to the bill by Senator GRAMM can be ignored by schools unless the Secretary of Education has strong authority to mandate the comprehensive curriculum required by the legislation. The issue is simply too important to ensure that we succeed in this effort to reduce drug use in our schools and achieve the goal of drug-free schools.

Mr. KENNEDY. I agree with that concern. And, I think the conference agreement faithfully achieves that goal. All this language states is that the Secretary of Education cannot write the specific school curriculum himself. He can mandate comprehensive curriculum; he just cannot write the curriculum himself.

Mr. KOHL. Mr. President, I strongly support enactment of the conference report to H.R. 3614, the Drug Free Schools and Communities Act of 1989.

This conference report contains an emergency child protective services grant program, designed to address the increased risk of abuse and neglect facing countless children living in homes where one or both parents are abusing drugs or alcohol. Authorized at $40 million, this program is the first step toward addressing the enormous strains which parental substance abuse has placed upon the child welfare system.

I was pleased to sponsor this legislation as a result of testimony I received from several distinguished witnesses at a July 31, 1989 hearing in the Governmental Affairs Committee. At that hearing, Dr. Howard Fuller, social services commissioner for Milwaukee County in my State of Wisconsin; and Greg Coler, secretary of health and social services for the State of Florida, both testified that parental substance abuse has become the dominant characteristic in reported cases of severe child abuse and neglect. With budget cutbacks, staff turnover, and increased caseloads, some child welfare service systems are on the verge of collapse.

Mr. President, I wish to recognize the efforts of the distinguished chairman of the Labor and Human Resources Committee, Senator KENNEDY, and the distinguished chair of the Subcommittee on Children, Families, Drugs and Alcoholism, Senator DODD, for joining me in sponsoring the emergency child protective services grant program. I also want to commend the distinguished chair of the Select Education Subcommittee on the House Education and Labor Committee, Representative OWENS, for his leadership in sponsoring this legislation on the House side. I look forward to continuing to work with them all as we take further steps to address the crisis for children posed by parental substance abuse and reform the child welfare system.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## CHANGES IN AGRICULTURAL PROGRAMS

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1793.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved,* That the bill from the Senate (S. 1793) entitled "An Act to make technical and correcting changes in agriculture programs", do pass with the following amendment:

Strike out all after the enacting clause and insert:

*SECTION 1. OAT ACREAGE LIMITATION PROGRAM.*

*(a) IN GENERAL.—Effective only for the 1990 crop of feed grains, section 105C(f)(2)(G) of the Agricultural Act of 1949 (7 U.S.C. 1444e(f)(2)(G)) is amended—*

*(1) by inserting "(i)" after the subparagraph designation; and*

*(2) by adding at the end the following new clause:*

*"(ii) In the case of the 1990 crop of oats, the Secretary may establish a percentage reduction for oats in accordance with paragraph (1) of less than 5 percent. If the Secretary does not establish a percentage reduction requirement for oats, the Secretary shall ensure that the crop acreage bases established for the farm and the farm acreage base are not increased as a result of this clause.".*

*(b) CONFORMING AMENDMENTS.—Effective only for the 1990 crop of feed grains, section 105C of such Act is amended—*

(1) in subsection (d)(1), by adding at the end the following new subparagraph:

"(E) This subsection shall not apply to the 1990 crop of oats."; and

(2) in subsection (f)(1), by adding at the end the following new subparagraph:

"(E) As a condition of eligibility for loans, purchases, and payments for the 1990 crop of oats, the producers of oats on a farm may not plant oats in excess of the crop acreage base for the farm.".

SEC. 2. EXPORT ENHANCEMENT PROGRAM; PROMOTION OF UNITED STATES MEAT EXPORTS.

(a) COMMISSARIES.—During each of fiscal years 1990, 1991, and 1992, the Commodity Credit Corporation shall, in carrying out the export enhancement program established pursuant to section 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(f)), promote the export of United States meat, including poultry products, to commissaries on military installations in the European Community.

(b) FUNDING.—

(1) IN GENERAL.—Except as provided in paragraph (2), of the amounts made available by the Commodity Credit Corporation to exporters, processors, and foreign importers under the authority of section 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(f)) in commodities of the Commodity Credit Corporation to enhance the export of United States commodities by making the price of such commodities competitive in the world market, the Commodity Credit Corporation shall make available to carry out subsection (a) not less than $14,000,000 in funds or commodities for fiscal year 1990, not less than $9,300,000 in funds or commodities for fiscal year 1991, and not less than $4,600,000 in funds or commodities for fiscal year 1992.

(2) TRANSPORTATION COSTS.—Funds or commodities shall be made available under this section only to the extent that funds are made available by the Department of Defense for the costs of transporting the meat to the commissaries.

(c) REIMBURSEMENT OF CORPORATION.—Section 4 of the Act of July 16, 1943 (57 Stat. 566, chapter 241; 15 U.S.C. 713a) shall not apply to services performed, losses sustained, operating costs incurred, or commodities purchased or delivered by the Commodity Credit Corporation pursuant to this section.

SEC. 3. EGGS.

(a) EXEMPTED EGG PRODUCERS.—Section 12 of the Egg Research and Consumer Information Act (7 U.S.C. 2711) is amended to read as follows:

"SEC. 12. EXEMPTED EGG PRODUCERS AND BREEDING HEN FLOCKS, CONDITIONS AND PROCEDURES.

"(a) IN GENERAL.—The following shall be exempt from the specific provisions of this Act under such conditions and procedures as may be prescribed in the order or rules and regulations issued thereunder:

"(1) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 30,000 laying hens, as determined under subsection (b).

"(2) Any flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

"(b) NUMBER OF LAYING HENS.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), the aggregate number of laying hens owned by an egg producer shall include—

"(A) in cases in which the producer is an individual, laying hens owned by such producer or members of such producer's family that are effectively under the control of such producer, as determined by the Secretary;

"(B) in cases in which the producer is a general partnership or similar entity, laying hens owned by the entity and all partners or equity participants in the entity; and

"(C) in cases in which the producer holds 50 percent or more of the stock or other beneficial interest in a corporation, joint stock company, association, cooperative, limited partnership, or other similar entity, laying hens owned by the entity.

Ownership of laying hens by a trust or similar entity shall be considered ownership by the beneficiaries of the trust or other entity.

"(2) STOCK OR BENEFICIAL INTERESTS.—For purposes of paragraph (1)(C), stock or other beneficial interest in an entity that is held by—

"(A) members of the producer's family described in paragraph (1)(A);

"(B) a general partnership or similar entity in which the producer is a partner or equity participant;

"(C) the partners or equity participants in an entity of the type described in subparagraph (B); or

"(D) a corporation, joint stock company, association, cooperative, limited partnership, or other similar entity in which the producer holds 50 percent or more of the stock or other beneficial interests,

shall be considered as held by the producer.".

(b) EGG PROMOTION AND RESEARCH ORDER.—

(1) AMENDMENT.—The Secretary of Agriculture shall issue an amendment to the egg promotion and research order issued under the Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.) to implement the amendments made by this section. Such amendment shall be issued after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title. The Secretary shall issue a proposed amendment to such order not later than 30 days after the date of enactment of this Act.

(2) EFFECTIVE DATE.—The amendment to the egg promotion and research order required by paragraph (1) shall become effective no later than March 1, 1990, and shall not be subject to a referendum under the Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.).

SEC. 4. PEANUTS.

Section 8b of the Agricultural Adjustment Act (7 U.S.C. 608b), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end the following:

"(b)(1) If an agreement with the Secretary is in effect with respect to peanuts pursuant to this section—

"(A) all peanuts handled by persons who have not entered into such an agreement with the Secretary shall be subject to inspection to the same extent and manner as is required by such agreement; and

"(B) no such peanuts shall be sold or otherwise disposed of for human consumption if such peanuts fail to meet the quality requirements of such agreement.

"(2) Violation of this subsection by a person who has not entered into such an agreement shall result in the assessment by the Secretary of a penalty equal to 140 percent of the support price for quota peanuts, as determined under section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c-2), for the marketing year for the crop with respect to which such violation occurs.".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective 30 days after the date of enactment of this Act.

SEC. 5. RESEARCH INTO NEW COMMERCIAL PRODUCTS FROM NATURAL PLANT MATERIALS.

The National Agricultural Research, Extension, and Teaching Policy Act of 1977 is amended by inserting after section 1473D (7 U.S.C. 3319d) the following new section:

"SEC. 1473E. RESEARCH INTO NEW COMMERCIAL PRODUCTS FROM NATURAL PLANT MATERIALS.

"The Secretary may—

"(1) conduct fundamental and applied research related to the development of new commercial products derived from natural plant materials for industrial, medical, and agricultural applications; and

"(2) participate with colleges and universities, other Federal agencies, and private sector entities in conducting such research.".

SEC. 6. CALCULATION OF INSURANCE PREMIUMS PAID BY FARM CREDIT SYSTEM INSTITUTIONS.

(a) IN GENERAL.—Section 5.55 of the Farm Credit Act of 1971 (12 U.S.C. 2277a-4) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) AMOUNT IN FUND NOT EXCEEDING SECURE BASE AMOUNT.—

"(1) IN GENERAL.—Until the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the annual premium due from any insured System bank for any calendar year shall be equal to the sum of—

"(A) the annual average principal outstanding for such year on loans made by the bank that are in accrual status, excluding the guaranteed portions of government-guaranteed loans provided for in subparagraph (C), multiplied by 0.0015;

"(B) the annual average principal outstanding for such year on loans made by the bank that are in nonaccrual status, multiplied by 0.0025; and

"(C)(i) the annual average principal outstanding for such year on the guaranteed portions of Federal Government-guaranteed loans made by the bank that are in accrual status, multiplied by 0.00015; and

"(ii) the annual average principal outstanding for such year on the guaranteed portions of State government guaranteed loans made by the bank that are in accrual status, multiplied by 0.0003.

"(2) DEFINITION OF GOVERNMENT-GUARANTEED LOANS.—As used in this section and section 1.12(b), the term 'government-guaranteed loans' means loans or credits, or portions of loans or credits, that are guaranteed—

"(A) by the full faith and credit of the United States Government or any State government;

"(B) by an agency or other entity of the United States Government whose obligations are explicitly guaranteed by the United States Government; or

"(C) by an agency or other entity of a State government whose obligations are explicitly guaranteed by such State government.";

(2) in subsection (b), by inserting after "for the following calendar year" the following: ", as determined under subsection (a),";

(3) in subsection (c), by inserting after "at such time" the following: "(adjusted downward to exclude an amount equal to the sum of (1) 90 percent of the guaranteed portions of principal outstanding on Federal Government-guaranteed loans in accrual status made by such banks and (2) 80 percent of the guaranteed portions of principal outstanding on State government-guaranteed loans in accrual status made by such banks, as determined by the Corporation)"; and

(4) in subsection (d)—

(A) by striking "subsection (a)" in the material preceding paragraph (1) and inserting "subsections (a) and (c)";

(B) by striking "intermediate term" in the material preceding paragraph (1); and

(C) by striking paragraph (1) and inserting the following:

"(1) by any production credit association, or any other association making direct loans under authority provided under section 7.6, that is able to make such loans because such association is receiving, or has received, funds provided through the Farm Credit Bank;".

(b) CONFORMING AMENDMENTS.—(1) The first sentence of subsection (b) of section 1.12 of the Farm Credit Act of 1971 (12 U.S.C. 2020(b)) is amended by inserting after "production credit association" the following: ", other association making direct loans under the authority provided under section 7.6,".

(2) The second sentence of subsection (b) of section 1.12 of the Farm Credit Act of 1971 (12 U.S.C. 2020(b)) is amended—

(A) in paragraph (1)—

(i) by inserting before "discounted with" the following: "funded by or";

(ii) by inserting after "that are in accrual status," the following: "excluding the guaranteed portions of government-guaranteed loans provided for in paragraph (3),"; and

(iii) by striking "and" at the end;

(B) in paragraph (2)—

(i) by inserting before "discounted with" the following: "funded by or"; and

(ii) by striking the period at the end and inserting "; and"; and

(C) by inserting after paragraph (2) the following:

"(3)(A) the annual average principal outstanding for such year on the guaranteed portions of Federal government-guaranteed loans made by the association, or by the other financing institution and funded by or discounted with the Farm Credit Bank, that are in accrual status, multiplied by 0.00015; and

"(B) the annual average principal outstanding for such year on the guaranteed portions of State government-guaranteed loans made by the association, or by the other financing institution and funded by or discounted with the Farm Credit Bank, that are in accrual status, multiplied by 0.0003.".

(3) Section 5.59(b)(1) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-8(b)(1)) is amended by inserting after "any production credit association," the following: "any other association making direct loans under authority provided under section 7.6,".

(4) Section 5.61(e) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-10(e)) is amended by inserting after "production credit association" the following: "and other association making direct loans under the authority provided under section 7.6".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall be effective for insurance premiums due to the Farm Credit System Insurance Corporation under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) on or after January 1, 1990, based on the loan volume of each bank for each calendar year beginning with calendar year 1989, and shall be effective for the calculation of the initial premium payment required under section 5.56(c) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-5(c)).

SEC. 7. PURCHASES OF FINANCIAL ASSISTANCE CORPORATION STOCK BY FARM CREDIT SYSTEM INSTITUTIONS.

(a) DELAYED EFFECTIVE DATE FOR STOCK PURCHASE REQUIREMENTS.—Notwithstanding any other provision of law, the amendments to section 6.29 of the Farm Credit Act of 1971 (12 U.S.C. 2278b-9) made by section 646 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Public Law 100-460; 102 Stat. 2266) shall be effective on October 1, 1992.

(b) PAYMENTS.—

(1) FOUR ANNUAL PAYMENTS.—Notwithstanding any other provison of law, the Financial Assistance Corporation shall pay, out of the Trust Fund established under section 6.25 of the Farm Credit Act of 1971 (12 U.S.C. 2278b-5), to each of the institutions of the Farm Credit System that purchased stock in the Financial Assistance Corporation under section 6.29 of the Farm Credit Act of 1971, four annual payments as provided in this subsection.

(2) TIMING OF PAYMENTS.—The annual payments provided for by this subsection shall be made available as soon as practicable after October 1 of each of the calendar years 1989 through 1992.

(3) CALCULATION OF FIRST PAYMENT.—The first annual payment made available under this subsection shall be in an amount equal to—

(A) a percentage equal to 1.5 times the average rate of interest received by the Financial Assistance Corporation from March 30, 1988, through September 30, 1989; times

(B) the difference between $177,000,000 and 4.4 percent of the amount of the cumulative amount of the bonds issued by the Financial Assistance Corporation by September 30, 1989.

(4) CALCULATION OF REMAINING PAYMENTS.—The second, third, and fourth payments made available under this subsection shall be in an amount equal to—

(A) a percentage equal to the average rate of interest received by the Financial Assistance Corporation during each of the fiscal years 1990 through 1992; times

(B) the difference between $177,000,000 and 4.4 percent of the amount of the cumulative amount of the bonds issued by September 30 of each of such fiscal years.

(5) DISTRIBUTION OF ANNUAL PAYMENTS.—Annual payments due under this subsection shall be made available to each institution described in paragraph (1) in an amount equal to the total amount of annual payments to be made available times the ratio of the amount of stock each institution purchased divided by $177,000,000.

SEC. 8. EXEMPTION OF CERTAIN INTEREST PAYMENTS BY THE U.S. TREASURY FROM SEQUESTRATION.

Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting "Farm Credit System Financial Assistance Corporation, interest payments (20-1850-0-1-351);" after "Exchange stabilization fund (20-4444-0-3-155);".

SEC. 9. DISASTER ASSISTANCE COVERAGE FOR EARTHQUAKES.

(a) ANNUAL CROPS.—(1) Section 104(d)(1) of the Disaster Assistance Act of 1989 is amended by inserting "ornamentals affected by earthquake and" after "(including".

(2) Section 112(1) of such Act is amended by inserting ", "earthquake," after "hurricane,".

(b) ORCHARDS.—(1) Section 121(a) of the Disaster Assistance Act of 1989 is amended to read as follows:

"(a) LOSS.—Subject to the limitation in subsection (b), the Secretary of Agriculture shall provide assistance, as specified in section 122, to eligible orchardists that planted trees for commercial purposes but lost such trees as a result of freeze, earthquake, or related condition in 1989, as determined by the Secretary.".

(2) Section 122(1) of such Act is amended by inserting ", earthquake," after "freeze".

(c) FOREST CROPS.—(1) Section 131(a) of the Disaster Assistance Act of 1989 is amended to read as follows:

"(a) LOSS.—Subject to the limitation in subsection (b), the Secretary of Agriculture shall provide assistance, as specified in section 132, to eligible tree farmers that planted tree seedlings in 1988 or 1989 for commercial purposes but lost such seedlings as a result of drought, earthquake, or related condition in 1989, as determined by the Secretary.".

(2) Section 132(1) of such Act is amended by inserting ", earthquake," after "drought".

(d) DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISES.—Section 401 of the Disaster Assistance Act of 1989 is amended—

(1) in paragraph (a)(1), by inserting "earthquake," after "excessive moisture,"; and

(2) in paragraph (c)(2), by striking out "$200,000,000" and inserting "$300,000,000".

SEC. 10. TEMPORARY EXCLUSION OF CERTAIN HOUSING ASSISTANCE FROM INCOME FOR PURPOSES OF THE FOOD STAMP ACT OF 1977.

Section 807(b) of the Stewart B. McKinney Homeless Assistance Act (7 U.S.C. 2014 note) is amended by—

(1) striking "1989" and inserting "1990";

(2) redesignating paragraph (2) as paragraph (3); and

(3) inserting after paragraph (1) the following paragraph:

"(2) The Secretary shall adjust the level of benefits provided to households under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) during the period between September 30, 1989 and the effective date of this paragraph to ensure that the level of such benefits is no less than the level determined in accordance with the provisions of section 5(k)(2)(F) of the Food Stamp Act of 1977.".

SECTION 11. SUBMISSION OF ACTUAL YIELD DATA TO COUNTY COMMITTEES.

(a) SUBMISSION OF ACTUAL YIELD DATA TO COUNTY COMMITTEES.—Effective for the 1989 and 1990 crops of wheat, feed grains, upland cotton, and rice, section 506 of the Agricultural Act of 1949 (7 U.S.C. 1466) is amended by adding at the end the following new subsection:

"(e)(1) With respect to the 1989 and subsequent crop years, the Secretary shall allow producers to provide to county committees data with respect to the actual yield for each farm for each program crop. The Secretary shall maintain such data for at least five crop years after receipt in a manner that will permit the data to be used, if necessary, in the administration of the commodity programs for the 1989 and subsequent crops.

"(2) The Secretary shall provide timely notification to producers of the provisions of paragraph (1).

"(3) With respect to the 1989 crop year, the Secretary shall determine what the costs of each commodity program would be if farm

*program payment yields were determined in accordance with the methods prescribed in paragraph (4) and what the impact of such alternative methods would be on each commodity program and on producers participating in each commodity program.*

*"(4) The alternative methods of determining program payment yields for purposes of paragraph (3) shall include, at a minimum:*

*"(A) using producers' actual yields for the current crop year;*

*"(B) allowing producers the option of choosing to use their actual yields or the county average yield for the current crop year; and*

*"(C) the yield derived on the basis of the average of the actual yield per harvested acre for the crop for each of the five crop years immediately preceding such crop year, excluding the crop year with the highest yield per harvested acre, the crop year with the lowest yield per harvested acre, and any crop year in which such crop was not planted on the farm.*

*Not later than January 30, 1990, the Secretary shall report the determinations under this subsection to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.".*

*(b) SUBMISSION OF SOYBEAN ACTUAL YIELD DATA TO COUNTY COMMITTEES.—With respect to the 1989 and 1990 crop years, the Secretary shall allow producers of soybeans to provide to county committees (as defined in section 502 of the Agricultural Act of 1949 (7 U.S.C. 1462)) data with respect to the actual yield for each farm for each crop of soybeans. The Secretary shall maintain such data for at least five crop years after receipt in such a manner as to be easily accessible. The Secretary shall provide timely notification to producers of the provisions of this section.*

*SEC. 12. EXTENSION ON SALE OF RURAL DEVELOPMENT LOANS.*

*Section 1001 of the Omnibus Budget Reconciliation Act of 1986 (7 U.S.C. 1929a note) is amended by adding at the end the following new subsection:*

*"(h)(1) Notwithstanding the provisions of section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Public Law 100-460), the Secretary of Agriculture shall offer to the issuer of any unsold note or other obligation described in paragraph (2)(A) for which such issuer made the good faith deposit described in paragraph (2)(A) the opportunity to purchase such note or other obligation consistent with the provisions of this subsection and subsections (f)(2) and (f)(3).*

*"(2) The provisions of this subsection shall apply only to those issuers who:*

*"(A) on or before March 9, 1989, made a good faith deposit under this section for fiscal year 1989 with the Secretary to purchase a note or other obligation held in the Rural Development Insurance Fund; and*

*"(B) otherwise meet all eligibility criteria, as such criteria existed immediately prior to May 9, 1989, at the time the purchase occurs under this subsection.*

*"(3) The opportunity to purchase any such note or other obligation shall be held open, under the policies and procedures in effect under subsections (f)(2) and (f)(3) immediately prior to May 9, 1989, for 150 days after the date of enactment of this subsection. The Secretary shall not require any further good faith deposit from issuers who qualify under this subsection. The Secretary shall notify eligible issuers of the opportunity afforded under this subsection within 30 days after the date of enactment of this subsection and may require such issuers to express an intention to purchase their note or other obligation by a date certain.".*

AMENDMENT NO. 1212

(Purpose: To amend S. 1793, as amended by the House of Representatives to make a technical change in section 4 and section 7, and for other purposes)

Mr. MITCHELL. Mr. President, I move to concur in the amendment of the House with a further amendment, which I send to the desk on behalf of Senator LEAHY.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. LEAHY, proposes an amendment numbered 1212 to the House amendment.

The amendment is as follows:

SECTION 1. PEANUTS.

(a) On page 8, line 7, insert after "for quota peanuts" the following: "multiplied by the quantity of peanuts sold or disposed of in violation of subsection (b)(1)(B)".

(b) On page 8, beginning on line 11, strike "subsection (a) shall become effective 30 days after the date of enactment of this Act" and insert in lieu thereof "this section shall be effective with respect to the 1990 and subsequent crops of peanuts"

SEC. 2. TECHNICAL CHANGES IN SECTION 7 OF THE BILL THAT DEALS WITH PURCHASES OF FINANCIAL ASSISTANCE CORPORATION STOCK BY FARM CREDIT SYSTEM INSTITUTIONS.

(a) On page 14—

(1) line 19, strike "Trust Fund" and insert in lieu thereof "Financial Assistance Corporation Trust Fund (hereinafter in this section referred to as the 'Trust Fund')"

(2) line 20, strike "section 6.25" and insert in lieu thereof "section 6.25(b)"; and

(3) line 21, strike "U.S.C. 2278b-5" and insert in lieu thereof "U.S.C. 2278b-5(b)".

(b) On page 15—

(1) line 10, after "Corporation", insert "on assets of the Trust Fund";

(2) line 13, strike "of the amount";

(3) line 15, strike "by" and insert in lieu thereof "through";

(4) line 17, insert "annual" after "and fourth";

(5) line 21, after "poration", insert "on assets of the Trust Fund"; and

(6) line 24, strike "of the amount".

(c) On page 16, after "issued by", insert "the Financial Assistance Corporation through".

SEC. 3. PROHIBITION ON DUTY DRAWBACK CLAIMS BY EXPORTERS WHO USE CERTAIN EXPORT PROMOTION PROGRAMS.

(a) IN GENERAL.—The Secretary of Agriculture may provide that a person shall be ineligible for participation in an export program established under title I or title III of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.), or in any other export credit, credit guarantee, bonus, or other export program carried out through, or administered by, the Commodity Credit Corporation or carried out with funds made available pursuant to section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935 (7 U.S.C. 612c) with respect to the export of any agricultural commodity or product that has been or will be used as the basis for a claim of a refund, as drawback, pursuant to section 313(j)(2) of the Tariff Act of 1930 (19 U.S.C. 1313(j)(2)), of any duty, tax, or fee imposed under Federal law on an imported commodity or product.

(b) VEGETABLE OIL.—A person shall be ineligible for participation in any of the export programs referred to in subsection (a) with respect to the export of vegetable oil or a vegetable oil product that has been or will be used as the basis for a claim of a refund, as a drawback, pursuant to section 313 of the Tariff Act of 1930, of any duty, tax, or fee imposed under Federal law on an imported commodity or product.

(c) CERTIFICATION.—A person applying to export any agricultural commodity or product under the export programs referred to in subsection (a) shall certify, in accordance with regulations issued under subsection (d), that none of the commodity or product has been or will be used as the basis of a claim for any refund specified in subsection (a), except that a person applying to export any vegetable oil or vegetable oil product under such programs shall certify that none of the vegetable oil or vegetable oil product has been or will be used as the basis of a claim for any refund specified in subsection (b).

(d) REGULATIONS.—The Secretary of Agriculture shall issue regulations to carry out this section.

(e) APPLICABILITY.—This section shall not apply to quantities of agricultural commodities and products with respect to which an exporter has entered into a contract, prior to the effective date of this section, for an export sale.

AMENDMENT NO. 1213

Mr. MITCHELL. Mr. President, I send a second-degree amendment to the desk on behalf of Senators CONRAD, BOSCHWITZ, HARKIN and BAUCUS, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. CONRAD (for himself, Mr. BOSCHWITZ, Mr. HARKIN, Mr. BURNS, and Mr. BAUCUS) proposes an amendment numbered 1213 to amendment No. 1212.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment add the following:

SECTION 1. REPAYMENT OF ADVANCE DEFICIENCY PAYMENTS.

Effective only for the 1988 crops of wheat, feed grains, upland cotton, and rice, produced by producers that qualified for assistance under section 201(a) of the Disaster Assistance Act of 1988 (7 U.S.C. 1421 note) or section 101(a) of the Disaster Assistance of 1989 (7 U.S.C. 1421 note), if the Secretary of Agriculture determines that any portion of the advance deficiency payment made to producers for such crop under section 107C of the Agricultural Act of 1949 (7 U.S.C. 1445b-2) must be refunded, such refund shall not be required to be made prior to July 31, 1990.

Mr. CONRAD. Mr. President, I rise to propose an amendment to delay re-

payment of advance deficiency payments for farmers who have suffered weather related crop losses in 1988 or 1989. Senator CONRAD BURNS, Senator TOM HARKIN, Senator MAX BAUCUS, and Senator RUDY BOSCHWITZ wish to be listed as cosponsors of the bill.

I have been contacted by many farmers concerning the repayment of advance deficiency payments for crop year 1988. Louis Arnold, president of the National Barley Growers Association, representing barley growers in Washington, Idaho, Montana, North Dakota, Minnesota, and other States, has pointed out to me that barley producers, in particular, have suffered greatly due to the droughts of 1988 and 1989. He is correct.

Those members who represent barley producing areas know that barley is a unique crop. It is both a feed grain and a food grain. While most barley is used for livestock feed, a growing proportion is used for malting barley and other food uses. Barley used for malt or other foods carries a premium price which depends on the demand in a specialized market. Normally the premium runs at $0.25 to $0.35 per bushel and has only a minor effect on the average price of barley. However, due to a short crop in 1988, malt barley prices skyrocketed, commanding a premium of $2 or more per bushel above feed barley. As a consequence, the average price for all barley was pushed above the target price.

Unfortunately, most farmers sell feed barley whose price is tied to other feed grains, particularly corn. This meant that, regardless of the drought, the price of feed barley remained far below the target price for barley. In spite of this low average price for feed barley, feed barley producers are required to pay back deficiency payments on a drought shortened crop. They were unable to take advantage of high malt barley prices and, because the high malt barley prices raised the average barley price, they lost the protection of the target price. They are caught in a catch-22 situation.

Because of the inequities in the way the average price for barley is calculated, barley producers suffering from one, and in many cases two, short income years will be required to repay substantial sums this December. For many producers in North Dakota, this will simply be impossible. Net farm income in my State dropped by nearly 50 percent in the 1988 drought year. Data for 1989 is not in.

Barley producers are not asking that advance deficiency payments on their short crop be forgiven, only that repayment be delayed until July 31, 1990. By that time, barley producers will be able to produce a crop.

This will not affect the budget because it merely shifts repayment within the 1990 fiscal year. This legislation limits the delay to those producers who suffered from a weather related disaster in 1988 or 1989.

Because producers of other crops have also been economically harmed by 2 drought years, I have included other program crops in the legislation is important to our barley producers in North Dakota, Minnesota, Montana, and South Dakota who were caught in the 1988 and 1989 droughts. They are now required to repay advance deficiency payments by December 31, 1989, at a time when two droughts have made them cash poor. This bill would delay that deadline by 6 months if they qualified for disaster assistance in 1988 or 1989.

To briefly summarize: First, the bill would not have an impact on the budget since it merely shifts receipts within the fiscal year.

Second, the benefits are targeted by limiting it to farmers who qualified for disaster assistance in either 1988 or 1989.

Third, repayment would be delayed until barley growers, the hardest hit group, can plant and harvest another crop.

Fourth, barley producers, in particular, have been the victims of a farm bill catch-22; that is, the barley target price is based on feed value, but the average price used to calculate deficiency payments adds in malt barley which carried a super premium price in 1988—normally $0.25 to $0.35, but over $2 in crop year 1988. Farmers suffering from the droughts of 1988 and 1989 not only had a short crop, but since most of it was feed barley, they also lost target price protection.

Finally, there is no effect on wheat, rice, cotton, or sorghum producers whose final deficiency payments exceeded their advances. It will temporarily delay repayment for corn producers, 8 cents per bushel; oat producers, 12 cents; and barley producers, 30 cents, for the 1988 crop, if, and only if, the producer qualified for assistance in 1988 or 1989.

Mr. HARKIN. Mr. President, this is a package of several important provisions relating to agriculture, most of which were originally included in the Senate budget reconciliation measure. I am pleased to be an original cosponsor of this legislation and to see it pass in these waning hours of this session.

Mr. President, I have a few remarks regarding two sections of the bill in which I am particularly interested.

Section 2 of the bill contains provisions that earlier were included in the Senate budget reconciliation package at my request directing the Commodity Credit Corporation to make funds or commodities available over the next 3 fiscal years to promote the export of U.S. meat to commissaries on military installations in the European Community. The provision was also included in the House budget reconciliation measure.

The funds and commodities provided under this section will help to reduce the cost to military personnel and their families of purchasing U.S. meats from U.S. military commissaries in the European Community. Subsidies provided by the EC allow European meats to be sold at lower prices than nonsubsidized U.S. meats.

This section complements provisions of the 1990 Department of Defense authorization and appropriations measures. The DOD authorization bill passed by the Senate included an amendment I authored requiring the Department of Defense to sell and serve only U.S. meat and meat products in commissaries and dining halls in the European Community. I offered that amendment to correct the anomalous practice of the DOD purchasing European meat for use in U.S. military commissaries in the European Community despite the fact that the EC had banned shipments of U.S. beef into the EC.

The DOD authorization conference report directs DOD to provide U.S. beef to commissaries in Europe and authorizes the use of $10 million for this purpose. The DOD appropriations conference report directs DOD to use not less than $10 million in operations and maintenance accounts to increase the availability of U.S. beef in overseas commissaries.

The DOD authorization and appropriations measures thus direct the acquisition and transportation of U.S. beef to U.S. military commissaries in the EC and provide funding for doing so. The funds or commodities provided under section 2 of this bill will help to hold down the prices paid for U.S. meat by patrons of U.S. military commissaries in the EC.

The DOD measures refer to beef, while section 2 of this bill refers to meat. It would not be my intention that the EEP funds or commodities provided under section 2 be limited in their use only to beef. However, priority in use of the funds or commodities provided under section 2 should be given to facilitating carrying out the direction given in the DOD authorization and appropriation measures.

I also am pleased to cosponsor the amendment to this bill providing for a delay in the time for repayment of unearned advance deficiency payments on 1988 crops to no earlier than July 31, 1990, for producers who qualified for disaster payments on the 1988 or 1989 crops. This amendment is a significant one for many corn producers in my State who faced the prospect of repaying 8 cents a bushel on a part of their program yield shortly after the first of the year, at a time when they are still trying to recover from drought losses. This amendment will allow them to keep that money a

while longer to help get the crop in next spring.

Mr. President, I am grateful for the cooperation here and in the other body that has allowed the passage of this bill.

Mr. LUGAR. I want to commend my friend from North Dakota for this legislation, which should help alleviate the financial distress of some producers who, though they did not suffer a loss in 1988, did undergo weather-related damage in 1989 and would find it extremely difficult to repay unearned 1988 advance deficiency payments by the end of the year. In addition, I note that the repayment of the advance will still take place within the fiscal year 1990, and therefore total outlays will not be affected.

Mr. CONRAD. That is correct, and this is an important point because the 1990 budget reconciliation conference agreement recognizes some $54 million in savings by virtue of the fact that the repayments of these advances will occur during 1990.

Mr. LUGAR. In the event, however, that further delays in the repayment deadline were legislated, the fiscal 1990 deficit would be increased, since the repayments are a source of Federal revenue during 1990, and to the extent they do not occur, total revenues would decline. In addition, we should be concerned about setting a precedent on delaying unearned advance deficiency payments. Is that correct?

Mr. CONRAD. Yes, I share the Senator from Indiana's concern about the effects of further extension or forgiveness on the budget. With respect to the deferral of payments authorized by this amendment, I will not seek further delay in repayment except in extraordinary circumstances. Specifically I will not seek such a delay except for producers suffering crop losses of 35 percent or more in the 1990 crop year.

I also understand the Senator from Indiana's concern about setting a precedent concerning the delay in repayment of advance deficiency payments on produced bushels. The basic principle in the operation of the farm program is to guarantee producers of program crops a target price, a fair return, on their program yield. I support that principle. However, I believe that this is a special case for a number of reasons which does not set a precedent.

I have already touched on the drought situation in my State and other States. But in addition to that, the current farm program exposes barley producers, the primary beneficiaries of the delay, to an odd catch-22. As Members from barley producing States know, the primary use of barley is for feed, however, an increasing amount—20 to 30 percent—is malted for food uses. The target price for barley is set relative to the feed value, not the average feed and malt value. In most years, malt barley carries a premium of $0.25 to $0.35 per bushel, raising the average barley price used in the calculation of deficiency payments by $0.05 to $0.10 per bushel having little effect on deficiency payments.

In contrast to the normal malt barley premiums, the drought of 1988 pushed the premium over $2.00. The high malt barley prices raised the average price of barley by about $0.50 per bushel, pushing it above the target price for barley. As a consequence, while the majority of barley producers received the feed barley price in 1988, still far below the target price, they must repay an advance deficiency of $0.30 per bushel.

The underlying principle of the target price has been undermined in the case of barley. I would ask the Senator from Indiana to work with me to eliminate this inequity in the farm program as we work on the 1990 farm bill.

I want to commend my friend from Indiana for working with me on this legislation to give farmers a little more time to pay. This will enhance farmers' cash position and their financial ability to plant the 1990 crops.

The PRESIDING OFFICER. The question is on agreeing to the second-degree amendment.

The amendment (No. 1213) was agreed to.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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## CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT AMENDMENT

Mr. MITCHELL. I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 2469, a bill to limit a previous owner's right of first refusal in the case of fraud or resale, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2469) to limit a previous owner's right of first refusal in the case of fraud or resale for sales of farm property by the Farmers Home Administration and the Farm Credit System.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Maine?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1214

Mr. MITCHELL. Mr. President, I send a substitute amendment to the desk on behalf of Senator LEAHY and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. LEAHY, proposes an amendment numbered 1214.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. AMENDMENTS TO THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.

Section 335(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985(e)(1)) is amended by—

(1) in paragraph (1)(C) striking "The Secretary" and inserting "Except as provided in subparagraph (D), the Secretary";

(2) in paragraph (1) redesignating subparagraphs (D) and (E) as (F) and (G) and adding the following new subparagraphs:

"(D) The Secretary shall not give preference in the sale of property to—

"(i) any person described in subparagraph (C) who, within the preceding five years, has been finally convicted under the laws of the United States of criminally defrauding the United States Government (including any agency or authority of the Government of the United States, whether or not it is subject to review by another agency);

"(ii) the spouse or child of a previous borrower-owner, if within the preceding five years the previous borrower-owner has been finally convicted under the laws of the United States of criminally defrauding the United States Government (including any agency or authority of the Government of the United States, whether or not it is subject to review by another agency) unless the Secretary determines that such spouse or child is able to demonstrate that such convicted person will not live on, participate in the operation of, or profit from such property; or

"(iii) a stockholder in a corporation, held exclusively by members of the same family, if within the preceding five years such corporation or any stockholder therein has been finally convicted under the laws of the United States of criminally defrauding the United States Government (including any agency or authority of the Government of the United States, whether or not it is subject to review by another agency).

"(E)(i) Any person who purchases property from the Secretary pursuant to the preference set forth in subparagraph (c), or anyone who subsequently acquires title to such property from such person, shall not transfer title to the property, or any portion thereof, for a period of two years following such purchase from the Secretary. This prohibition against transfer of title shall not apply to a transfer—

"(I) to a member of such person's family if the value of any consideration received by such person for the transfer does not exceed the price paid for such purchase;

"(II) to a financial institution in connection with a mortgage to obtain financing for such real property;

"(III) by the institution specified in subclause (II) or by anyone who subsequently acquires title therefrom;

"(IV) after the then current owner dies or is declared incompetent by a court of competent jurisdiction;

"(V) by any person, if such person or a member of such person's family is stricken by a debilitating injury or debilitating illness and intends to use proceeds from the sale of such title to cover, in part, medical expenses caused by such debilitating injury or debilitating illness; or

"(VI) which the Farmers Home Administration has exempted from the two-year limitation set forth in this paragraph.

The Secretary is authorized to enforce the prohibition on the transfer of title to such real property with liens, deed restriction, or other encumbrances as determined necessary by the Secretary.

"(ii) For purposes of this subparagraph, the term 'family' consists of parents, grandparents, children, grandchildren, siblings, and spouse."; and

(3) in paragraph (10), striking "In the event" and inserting "Except as provided in subparagraphs (D) and (E), in the event".

SEC. 2. AMENDMENT TO THE FARM CREDIT ACT OF 1971.

Section 4.36 of the Farm Credit Act of 1971 (12 U.S.C. 2219a) is amended by—

(1) in subsection (h) striking "The rights" and inserting "Except as provided in subsections (j) and (k), the rights"; and

(2) adding at the end the following new subsections:

"(j) FORFEITURE OF RIGHT.—A previous owner who has been finally convicted under the laws of the United States within the preceding five years of criminally defrauding either—

"(1) an institution chartered under this Act, or

"(2) the United States Government (including any agency or authority of the Government of the United States, whether or not it is subject to review by another agency),

shall not have a right of first refusal under this section.

"(k) TRANSFER OF REAL ESTATE.—

"(1) LIMITATION ON TRANSFER.—Any previous owner who purchases acquired real estate from an institution of the system by the exercise of a right of first refusal under this section, or anyone who subsequently acquires title to such real estate from such owner, shall not transfer title in the real estate, or any portion thereof, for a period of two years following such purchase from the institution. This prohibition against transfer of title shall not apply to a transfer—

"(A) to a member of the previous owner's family if the value of any consideration received by such previous owner for the transfer does not exceed the price paid for such purchase;

"(B) to a financial institution in connection with a mortgage to obtain financing for such real estate;

"(C) by the institution specified in subparagraph (B) or by anyone who subsequently acquires title therefrom;

"(D) after the then current owner dies or is declared incompetent by a court of competent jurisdiction.

"(E) by any person, if such person or a member of such person's family is stricken by a debilitating injury or illness and intends to use proceeds from the sale of such title to cover, in part, medical expenses caused by such debilitating injury or debilitating illness; or

"(F) under circumstances as set forth by regulations of the Farm Credit Administration.

An institution of the System is authorized, pursuant to regulations issued by the Farm Credit Administration, to enforce the prohibition on the transfer of title to such real estate with liens, deed restrictions, or other encumbrances.

"(2) DEFINITION OF FAMILY MEMBERS.—For purposes of this subsection the term 'family' consists of parents, grandparents, children, grandchildren, siblings, and spouse.".

SEC. 3. IMPLEMENTATION REGULATIONS.

The Farm Credit Administration shall issue regulations to implement section 2 of this Act not later than one hundred twenty days after the date of enactment of this Act.

SEC. 4. EFFECTIVE DATE.

The amendments made by sections 1 and 2 of this Act shall be effective only for sales of property by the Secretary or by an institution of the Farm Credit System made after the date of enactment of this Act.

The PRESIDING OFFICER. Are there amendments to the substitute? If not, the question is on agreeing to the amendment in the nature of a substitute.

The amendment (No. 1214) was agreed to.

The PRESIDING OFFICER. Without objection, the bill is considered read the third time and passed.

So the bill (H.R. 2469), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## MEDICARE CATASTROPHIC COVERAGE ACT OF 1989

Mr. MITCHELL. Mr. President, earlier this evening the House of Representatives voted overwhelmingly to repeal the catastrophic health insurance program. As I advised Members of the Senate earlier today when the Senate considered this matter and adopted a modified version of the program, which was then sent to the House, if the House reaffirmed its position on repeal the matter would be back before the Senate. And I will momentarily ask that the Chair lay the matter back before the Senate.

The only choices now available to the Senate are to recede from its amendment and concur in the House position of repeal or, failing that action, permit current law to take effect. Since both Houses of Congress by overwhelming margins have expressed opposition to continuation of current law, it was and is my expectation and understanding that under those circumstances the Senate would have no alternative but to recede and to accept the finality of repeal.

I regret this ultimate decision and regret the course of events which have led us to this decision.

I believe that the problems of health care for our elderly, the enormous anxiety felt by millions of elderly Americans about the prospect of medical expenses that they are incapable of meeting, and the reality of that circumstance for a large proportion of our elderly, will require us to return to deal with this very serious national problem.

As the opposition to this program developed and increased, both in scope and in intensity, an argument was repeated over and over again by the opponents of this program that it was deficient in that it did not include any provision for long-term care of America's elderly.

I found that argument ironic because last year I spent several months developing legislation to provide long-term care for America's elderly, invited the participation of every Member of the Senate, and, with a single exception, not one who criticized this program as inadequate because it did not have long-term care, not one then chose to participate in developing a long-term care program.

Mr. President, I intend to reintroduce my legislation again next year following the report of a commission created pursuant to the catastrophic law to make recommendations to the Congress on the problem of long-term care and the problem of the lack of health insurance for millions of Americans. I hope very much that all Senators will participate in developing that legislation as well as legislation to deal with this problem.

This has been a very difficult, politically painful process, and a large number of Members of Congress have said, are saying and will say, that having been badly burned on this issue they did not want to deal with the problem anymore. That is an understandable, a very human reaction, but I hope that when we return next year it will be seen as a reaction in the heat of the moment and not one that is sufficent to meet our public responsibilities as elected officials in a representative democracy.

We have done away with the catastrophic health legislation, but the catastrophic health problem which gave rise to this legislation remains today. It ought to be clearly understood by all concerned that by repealing the legislation we have not repealed the problem. The problem is bad and getting worse. The problem is large and getting larger.

Anyone familiar with the demographic revolution through which our society is going, the aging of the population of this country, and the growing

need for health care by aging Americans must recognize that we simply must return to this problem, and we must deal with it in a way that I hope is effective and politically acceptable. It is obvious now in retrospect that whether or not this program is effective is academic because it was not politically acceptable to many Americans.

So while I regret this action, I wish to make clear my determination to attempt to deal with this problem in the context of the issues that were attempted to be addressed in this legislation, as well as long-term care, which was not addressed in this legislation, and which failure to address, in my judgment, led to the repeal of this legislation which will momentarily occur. No Senator has asked to have a rollcall vote on this amendment, so it will be by voice vote, a quiet end to a loud and long controversy but, I hope all will agree, not the end of the issue.

Mr. President, I will be pleased to yield to the distinguished Republican leader, who worked very long and hard on this matter with me and many other members of the committee. I know he shares my regret at this outcome.

Mr. DOLE. Mr. President, I thank the majority leader. I know the hour is late. I will make the same points made by the majority leader. I regret the action taken by the House, but, as I was told by one House Member afterwards, he said, "I told you 2 months ago this was going to happen. You will not listen." Maybe I did not want to listen. Maybe I felt the information that would reach the House would convince them that we ought to save something.

I do not know everything that happens around here, but I know, having been around here a while, that this year is going to end, and the next year is going to start. Even if the Senate Finance Committee and the other committees who may have jurisdiction, even under the able leadership of Senator BENTSEN and Senator PACKWOOD, started on day one, tried to put together some package to pick up the pieces and to help their 3.3 to 3.9 million older Americans who are going to be very sick without any catastrophic benefits, they could not get it done in weeks or months. Some said do not worry about that, they will be picked up by Medicaid. That is not totally accurate. Catastrophic coverage is to protect people from calamities and losses that would wipe them out.

So I hope, as the majority leader has indicated, that we can do something very early next year. But I do not see that happening real early, notwithstanding the good intentions of everyone in this Chamber, whether they were for repeal, for more or for less, becasue it just takes a long time.

What we have said, in effect, is we do not want any means testing; we want it to come in the general revenues. And I remind those who say that we just raised the debt ceiling to offer $3 trillion 2 weeks ago, I guess what we had on the House side, at least I am told, you had some on the right, some on the left—and I say that in a complimentary way, not in any critical way. And they had a collision. They had a big majority. Some wanted Government funding of everything, and some did not want any Government funding at all. Some were violently opposed to the surtax which applied primarily to about 5.6 percent of the upper-income Americans.

But in any event, the Congress has spoken. It would do us absolutely no good to try to come up with another package at this point in time; only 54 votes for what I thought was a fairly sensible package.

So I want to thank my colleagues on both sides of the aisle. This was a nonpartisan effort. Even though for whose who were for repeal it was bipartisan. For those for retaining something it was bipartisan. I think I can say that in all honesty.

I want to particularly express thanks to the Senator from Arizona, Senator MCCAIN. I disagreed with him on at least two or three votes, and had rather sharp exchanges because I felt we ought to retain more provisions than he had in mind. It turned out that I did not prevail, and in the final analysis the Senator from Arizona did not prevail. But it was not because he did not try. He never gave up.

I think his position certainly was a 99 to 0 vote, as I recall. It can always be said it was almost the unanimous position of the U.S. Senate at one time. We did not persuade the House. They are men and women of intelligence and wisdom. Maybe they are right. Maybe we should start over. Maybe we will do a better job. But I thank my colleagues for making this effort even though it was a losing effort.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. This has been a long and arduous fight to bring this through the Finance Committee and through the House committee.

They put out a great deal of this information about this program, and some of those who passed that kind of information now have a rather ironic reward—as they put out literature now talking about it is the private sector which is going to have to raise the cost on Medigap insurance.

The other problem you have as a result is the repeal of it at this late date, and the private sector will have a difficult time framing new Medigap policies to try to step in and take care of something this size.

In turn, because of the rancor, the publicity, and the bales of mail that came in, nothing is going to be turned around overnight. It is going to take some time. It is going to take a lot of work to try to be sure that we do not have a repetition of this kind of public reaction to see that we truly take care of this in a manner that can be accepted and achieve the kind of objectives that we think are so important in trying to take care of those who suffer catastrophic illness.

I regret the fact that we had repeal, and in all candor that is not my choice at all. But I admit, as chairman of the Finance Committee, we will be back to work next year with the members of that committee, who, I know, share my concerns for the elderly in these kinds of cases where they have their life savings wiped out, and often that of their kids as they come in to try to assist them.

But we will take on that task, and get on with it, and in turn, I want to say that the majority leader and the minority leader have dedicated their efforts to try to assist in this program. I commend them for it.

Secretary Sullivan has been very forthright in taking a courageous stand.

On the other hand, I must say there are those in the administration who should have assisted at a time when it was critical, and they chose not to take the position. I think that is what brought some of this about.

But, Mr. President, we will accept this tonight, and we will get on with the task next year of trying to assist and resolve this problem.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

## REPEAL OF MEDICARE CATASTROPHIC COVERAGE

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3607.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved,* That the House disagree to the amendment of the Senate to the bill (H.R. 3607) entitled "An Act to repeal medicare provisions in the Medicare Catastrophic Coverage Act of 1988.".

Mr. HATCH. Mr. President, this is not an easy issue. We are not dealing here with a simple decision.

The vote to accept the House position in favor of repeal of the Medicare Catastrophic Care Act should not be viewed as atonement for the mistakes we made when we enacted this program last year. Nor should we compound those mistakes with a new one

by repealing. Like the old adage says, two wrongs do not make a right.

I do not agree that repealing this entire program is good policy. We have already billed seniors for a core package of benefits—benefits they are already taking advantage of and that can be financed by a small flat premium.

Seniors are already receiving extended hospital benefits, expanded home health care, a deductible on blood, expanded hospice benefits, and skilled nursing facility benefits. An outright repeal of the Catastrophic Program will revoke these benefits. Many seniors will be left in the lurch.

Like 98 other Senators, I supported the McCain proposal. It was a balanced, well-reasoned approach to rectifying our mistakes in the Medicare Catastrophic Care Act without taking the draconian action of repeal. Only 28 Senators supported total repeal.

The McCain proposal, of which I was an enthusiastic cosponsor, retained many of the core benefits along with a very modest flat premium. It was manageable and it was fair. We were able to help seniors meet the increasing costs of health care without breaking them.

And, we scraped the supplemental premium, or surtax, which was the truly burdensome part of the program. Seniors had every right to be outraged that they were being taxed over and above the cost of the benefits they received so that our Federal budget balance sheet would look better.

Congressman EDWARD MADIGAN of Illinois has also suggested a compromise along the lines of the McCain plan, and I would gladly support that option if it were offered. He has proposed, for a flat $6 premium, to retain the following benefits: Expanded hospital services limited to two hospital deductions—the first deductible would be set and the second deductible would be one-half that amount—home health care expanded benefit; the limitation on the deductible for blood; the hospice benefit; mammography screening; home IV/immunosuppressive drugs; and an added a part B physician payment cap of $2,865. This could all be financed by a flat premium of $4.90 in the first year, $5.50 in 1991, and $6 in three future outyears.

As it stands, we have the opportunity to do selective surgery on the law before the additional benefits prescribed by the Medicare Catastrophic Care Act go into effect on January 1, 1990. If we repeal the act today, we will be here on January 22, when the Senate reconvenues, listening to our constituents' horror stories about seniors being forced out of hospitals because we have repealed the extended hospital care benefit.

I am sorry the conference could not agree on an approach acceptable to both Houses of Congress. I am truly sorry we are left with repeal as our only choice. It is a choice I am unwilling to make despite my strong view that the Medicare Catastrophic Care Act requires reform and that the Surtax should be repealed. Reneging on benefits we have already promised and which are affordable given a small flat premium will not get us off the hook with America's seniors.

Mr. RIEGLE. Mr. President, the Medicare Catastrophic Coverage Act provided valuable expansions in the Medicare Program including extended hospitalization, coverage of out-of-pocket physician bills after a maximum payment, expanded nursing home care, home health care, and hospice care benefits. Twenty-three percent of seniors, 7 million, are completely vulnerable to the costs of a devastating illness if these benefits are repealed—these are seniors who have no Medigap or Medicaid coverage.

Like many of my colleagues, I have heard from tens of thousands of seniors from Michigan since enactment of the Medicare Catastrophic Coverage Act. I have worked to change the law to address the concerns of our senior citizens. Most importantly, I strongly believe that the financing mechanism must be repealed. During the Senate consideration of the Catastrophic reform legislation, I offered an amendment that would have repealed the surtax, but at the same time would have retained all the benefits under current law. Unfortunately, my proposal was narrowly defeated.

Both bodies of Congress have been attempting to modify the new law in a way that is acceptable to seniors. The House has supported repeal of the laws entirely; while the Senate unanimously supported a version offered by Senator MCCAIN which repealed the surtax but retained some important benefits. The Senate and House has had a series of negotiations on these two very different proposals, but could not reach an agreement. Consequently, in order to address the concerns about the supplemental premium, the Senate reluctantly agreed to support the House bill and repeal the Medicare Catastrophic Coverage Act.

Mr. President, I am very concerned about the adverse consequences that complete repeal will have on our Nation's seniors. Twenty-three percent of seniors, 7 million, are completely vulnerable to the costs of a devastating illness if these benefits are repealed.

The new catastrophic health care benefits provided valuable expansions in nursing home coverage, home health care, respite care, hospice care, mammography, and drug benefits for the very ill. These benefits are not now widely available through Medigap supplemental insurance policies. Therefore, when this program is repealed, all seniors, including those who have supplemental policies, will lose these improved benefits.

Mr. President, in addition, I am very concerned that senior citizens will face higher health insurance costs as a result of repealing the Medicare Catastrophic Coverage Act. The Blue Cross and Blue Shield Association has projected that a total repeal of the law would result in an increase in Medigap supplemental premiums of $8 to $24 per month nationwide. This represents a 16- to 44-percent increase in premium rates. In contrast, retaining some protections, as in the McCain alternative, would have resulted in a $5 to $16 increase in rates; an increase 6 to 14 percent less than under outright repeal. Though we do not know exactly how many of our senior citizens may be affected, 25 million of the 33 million Medicare recipients carry additional supplemental insurance policies.

I am particularly concerned that Blue Cross and Blue Shield of Michigan, the largest provider of Medigap supplemental insurance, has reported that the premium rate of its high option Medigap plan—about 80 percent of seniors pick this plan—may increase by 21 percent if the Catastrophic Health Care Program is repealed next year. I am very concerned that these higher costs will make it more difficult to purchase supplemental insurance, particularly for middle to lower income individuals.

Mr. President, further Medigap protections are necessary to protect our seniors from purchasing unnecessary care. Current law applies criminal and civil penalties to those selling health insurance policies to Medicare beneficiaries if such policies duplicate Medicare or private health insurance. But this law is unenforceable because there are several loopholes. For example, duplication is permitted if a seller does not ask the beneficiary if he has other policies; duplication of Medicaid benefits is permitted; duplication of Medicare is permitted if it is not "substantial." "Substantial," however, is not defined, making the statute meaningless.

Mr. President, we need to work on preventing abuses in the sale of Medigap supplemental insurance plans and continue to ensure that our senior citizens are treated fairly.

Mr. RIEGLE. Mr. President, millions of Americans with disabling impairments desire to work and should not be discouraged from doing so. With the passage of this legislation, beneficiaries of Social Security Disability Insurance [SSDI] will be aided in their efforts to become active members of the workforce, despite their impairments.

Currently, SSDI recipients face the loss of medical insurance after attempting to return to work, if their income exceeds $300 per month.

Given their disabling impairments most SSDI recipients cannot afford to lose the necessary medical protection provided through Medicare. As a result, many of them opt not to return to work for fear of losing their health insurance. This law will now enable SSDI beneficiaries to continue to work and receive continued Medicare protection for as long as they continue to have a disabling impairment.

If the SSDI beneficiary's income is not sufficient to pay the premium for the Medicare insurance, this law provides for help in paying the premium through the Medicaid program.

A parallel set of provisions in the Supplemental Security Income Program, has been successful in encouraging disabled recipients to work. This law will do the same for disabled Social Security beneficiaries.

I feel very strongly that those people who want to work should have the opportunity to do so. A disabled person should not be punished by taking away much needed medical insurance when he or she wants to work.

We can no longer afford to let the talents of the disabled be wasted. It is time that the disabled have the opportunity to do what they can and want to do.

The integration of disabled individuals into the workforce provides both economic and societal advantages and is the most effective way to bring the disabled where they belong—mainstream America.

Mr. BRADLEY. Mr. President, this is a very sad day for the country and for America's senior citizens. The complete repeal of the catastrophic program leaves many older American's exposed to tough choices—choices between receiving needed health care or going without.

Mr. President, it was evident that changes in the catastrophic law were needed. Over this past year, I have worked for modifications in the catastrophic program. I first supported significant cuts in the so-called surtax or supplemental premium. Later I supported efforts to eliminate the supplemental premium entirely. And I even supported the last Senate offer which the House rejected. It was a far cry from the benefits in the original catastrophic program. Without a doubt, salvaging at least some of these benefits, such as hospital protection, home health care, respite care, and mammography screening, is significantly better than total repeal of the program. I cannot in my heart support efforts to entirely repeal it.

There are a lot of reasons why this repeal effort is about to pass the Congress. But tonight is not the night to explain how we have come to where we are. Suffice to say that the catastrophic legislation does not show the legislative process at its best.

Let's think for a moment about what we are about to do. Tonight, when this is repealed, we will have returned to the days when Medicare came nowhere near to covering all the elderly's hospital costs. For the elderly who have serious medical problems, these financial costs can be devastating. Repeal will also have the effect of significantly increasing the premiums senior citizens have to pay for their Medigap policies.

We know that the elderly are very concerned about long-term care coverage. There is a tremendous need for home-based long term care. The home health benefit we provided in the Catastrophic Act, which is being repealed tonight, nearly doubled the number of days of home health care. Tonight, repealing this benefit is telling people who have had strokes, hip fractures, or major surgery and need services at home to help them recover that they have to pay for these services themselves or go without.

Any repeal also eliminates Federal help for those who need special injections or infusions: People who because of intestinal cancer need to be tube fed, people with severe Parkinson's disease, people with multiple sclerosis or with hear disease and need daily injections of blood-thinning medication. Those who need this care on a daily basis simply will have to pay for it themselves.

Respite care is another very important home-based long term care service that is being repealed tonight. Because most people don't know what respite care is I'd like to take a moment to explain to members of this body. Respite care is the provision of a little relief to family caregivers who are spending their lives caring for their chronically ill spouses or parents. Often, that family member is the only thing preventing the chronically-ill person who is living at home from entering a nursing home. The respite care benefit would have given family caregivers up to 80 hours of help a year, not much in the larger picture but essential for countless families.

Mr. President, I can't in good conscience concur with wiping out such important health benefits for senior citizens and their family members who try to help them lead dignified, independent lives.

We deserve better than this. We are better than this. This repeal effort does not show America at its best—as a caring society. It is my deep hope that this Congress can return to this issue next year and that we can find it in ourselves—in our hearts and capacities—to take steps to meet the growing health care needs of our neediest senior citizens.

Mr. BOND. Mr. President, it is with some disappointment that I rise to discuss the action of the other body regarding the catastrophic act. While I am completely supportive of surtax repeal, I do have reservations about abandoning the core provisions of this bill.

Mr. President, the Senator from Arizona worked long and hard through the spring and summer to bring this issue to the floor and to force the Senate to address the legitimate objections of America's seniors to the Catastrophic Program, and for that I commend him. After months of delay we finally brought a bill to the floor to address the issue. And we voted overwhelmingly for the McCain plan, a plan which we are now forced to abandon.

Mr. President, I am sure that most of my colleagues would agree that the seniors in their States object to the financing of the program more than to its benefits. In fact, when constituents from Missouri write to me about the Medicare Catastrophic Coverage Act, they usually refer to it as the Catastrophic Tax Act.

Senior citizens from Missouri are sending me a clear signal—they want the surtax repealed. Of that there can be little debate.

Mr. President, it is common now to refer to unpopular or unworkable bills as fatally flawed. I do not believe that phrase applies to this act. I believe the one catastrophic—though not necessary fatal—mistake to which virtually all of the complaints can be traced—was that Congress decided to expand the original legislation far beyond truly catastrophic protection. The very first bill contained only protection from truly catastrophic events, was voluntary, and was to be financed entirely by the $4 per month additional premium for Medicare recipients. Once the full Congess grabbed hold of the bill, it became a Christmas tree and other benefits like financing for prescription drugs, doctors visits, became ornaments and baubles on that tree. Don't get me wrong—I think those things are important, but they are also terribly expensive and really drove the cost of the program through the ceiling.

When the Finance Committee and Ways and Means members looked at the cost of the additional benefits, they realized: First that they would have to make participation mandatory for the program to work; and second, they would have to charge the wealthier beneficiaries more than $4 per month to make it work. Those changes to pay for all the ornaments and baubles are catastrophic flaws, but they needn't be "fatal" if we scale the program back and repeal the surtax, as the Senate-passed bill proposes.

We believe, and cost estimates from CBO show us, that the highly unpopular and sometimes unfair surtax can be eliminated, repealed, without losing

the core catastrophic benefits seniors still need. The need for shelter from truly catastrophic illness has not changed. The need is the same as it was when we began this debate 3 years ago.

I am disappointed that the other body left us with the unfortunate choice of supporting a plan which eliminates the core benefits our seniors still need, while eliminating the much-hated surtax. The surtax is what is being objected to, not the additional monthly premium which I daresay few have objected to. I do not believe total repeal is the most responsible course of action we could have taken, though it is certainly more responsible than leaving the surtax in place, to take effect January 1.

Mr. President I have often stated, and still believe, that the basic, truly catastrophic protection benefits that went into effect early this year should not be repealed. These are the acute hospital care benefits, hospice care, and protection from spousal impoverishment. I do not believe seniors object to the slight monthly increase for that kind of protection. And the proposal the House rejected keeps those core benefits.

Mr. President, I am afraid that the House action will condemn us to repeat the debate we started 3 years ago. The need for protection from financial devastation from long hospital stays has not changed. The need for assurance against spousal impoverishment if one member of a family has a long and debilitating illness has not changed. Some of my colleagues point out that one very pressing need for seniors—that of long-term care—has not even been addressed yet. The Senate should discuss long-term care, but that shouldn't preempt any care, any shelter for those who suffer from catastrophic illnesses now.

Mr. President, the House had a unique opportunity to repeal the surtax and change the catastrophic act into a program that does what we intended to do 3 years ago, but instead decided to throw up its hands and wipe them clean.

Yes, there is a tidal wave of opposition to the current act, but every single Member of Congress has an obligation not to be swept aside, but to examine fully the act and the needs of all senior citizens.

I imagine the debate we will begin today—because by no means will repeal be a last step—will be a replay of the debate we had 2 years ago. January 1 when the television cameras begin focusing on the poor senior citizens being forced out of hospitals because they are no longer covered by the provisions we promised them in 1988, we in Congress will be subject to another huge firestorm, and the debate will begin anew. Everyone will want to salvage his or her own favorite provisions.

We should have passed a true catastrophic act the first time—without the pretty ornaments, and that is what we should have the courage to keep now.

From the 17,000 letters I have received on the subject, the message from my constituents is quite clear. They view the long-term hospitalization protection and spousal impoverishment protection as the most important benefits of the act, and want to keep them. They want the surtax repealed. The legislation we passed overwhemingly 6 weeks ago retains long-term hospitalization protection, and spousal impoverishment, as well as several other benefits. The benefits that are scaled back—in particular, outpatient prescription drugs—are not widely viewed by senior citizens from my State as core catastrophic benefits.

Mr. President, while repeal of the full program is the only choice available, I do believe we missed the opportunity to give seniors what they want and need—catastrophic protection at an affordable price and one that does not unfairly tax seniors hard-earned income.

Mr. PELL. Mr. President, last month the Senate revisited the Medicare Catastrophic Coverage Act of 1988 to consider several proposals designed to repeal or improve the program. After much debate, the Senate approved a plan offered by Senator JOHN MCCAIN by a vote of 99–0. The McCain proposal eliminated the program's income tax surtax while retaining many benefits of great importance to the Nation's elderly and disabled citizens. In my view, the Senate approved the McCain plan because it understood that the main objection to the catastrophic coverage program was to the surtax levied on 40 percent of the program's beneficiaries, and not to the program's benefits.

As you know, Mr. President, the House of Representatives does not view the situation quite the same way. The House view is that nothing less than total repeal of the program—including its benefits—will do, and it has maintained this position resolutely.

While I am delighted that the Congress has finally repealed the program's income tax surtax, I am disappointed that we have accepted the House proposal to repeal even the limited benefits retained in the McCain proposal, including expanded home health care coverage, respite benefits, and unlimited hospitalization.

Mr. President, I continue to be deeply concerned that a total repeal of the catastrophic coverage program will result in the abrupt withdrawal of important health care services from those elderly and disabled Americans who have already begun to receive benefits under the new program. It is unfortunate, unfair, and in many cases tragic to take away needed benefits when it is simply not necessary to do so to correct the program's deficiencies.

Today we repealed the catastrophic coverage program because the income tax surtax imposed by the program simply had to be eliminated. But by refusing to retain even the limited benefits offered by the McCain plan, the House has forced us to take away all benefits simply to ensure that the surtax is repealed.

Taking away these important benefits from the elderly and disabled is something I do with a heavy heart. While I am pleased that the Congress has finally repealed the surtax, I urge my colleagues to act quickly to replace this ill-fated program with one which fairly and equitably protects the Nation's elderly and disabled citizens against the devastating cost of catastrophic illness and long-term care.

Mr. CONRAD. Mr. President, it is with regret that I rise to support the compromise catastrophic coverage proposal before us today. I deeply appreciate the work of my distinguished colleagues in their negotiations with the House. I realize their job has been difficult—trying to convince an unwilling House that some of the benefits of the Medicare Catastrophic Coverage Act of 1988 should be retained.

With that in mind, our colleagues have brought a proposal to this Senate which they hope the House will accept. This proposal retains the important hospice, home health and respite benefits; accelerates the coverage of mammographies to January 1, 1990; modifies the hospital deductible by adding an additional deductible for illnesses which will be 93 percent of the first deductible. The proposal also completely eliminates the supplemental premium and reduces the flat premium. The flat premium will be $3.90 in 1990, $4.80 in 1991, $5.60 in 1993, and $6 in 1994.

We have traveled a long road this year in our attempts to modify the Medicare Catastrophic Coverage Act of 1988 [MCCA]. This law, passed with such bipartisan support, has literally haunted this Congress. We have cast vote after vote in an attempt to find a solution to the problems posed by this bill; namely, the high supplemental premiums and the duplicate coverage which existed between these expansions and private pension and supplemental plans.

Mr. President, I have devoted a great deal of time during this session of Congress considering what should be done to revise and improve the Medicare Catastrophic Coverage Act. I have heard from many North Dakotans, just like my colleagues have heard from their constituents; I have held community forums which have

been almost totally devoted to discussion of this issue; I have carefully studied the amendments that were debated and voted on in early October.

I have spent a great deal of time keeping seniors in my State abreast of proposed changes in the MCCA. In August, I mailed a letter to every senior in the State of North Dakota; the letter detailed the benefits of the Catastrophic Coverage Act and the financing. I asked seniors which benefits they found useful, if they supported repeal, elimination of the supplemental premium, or the establishment of an optional program. Mr. President, I have learned a great deal during the past year about what seniors do want out of the Medicare Program.

What have I found? I have found broad support for many of the original provisions of the Medicare Catastrophic Act—for the limit on out-of-pocket expenses for physician expenses; for the yearly hospital deductible; for the important hospice provisions and the critical respite and home health expansions. I have received letters from many women—describing the experiences of their mothers and friends with cancer—asking that the Federal Government continue the commitment made last year to the coverage of mammograms.

And, Mr. President, I have found anger. Anger at the high supplemental premium—some of this anger is from seniors who were convinced they would pay the maximum in supplemental premium when they certainly would not be required to do so. And there is anger from those who have saved their money, who now feel they are being penalized.

But, Mr. President, one message is clear: repeal is not the correct answer. Seniors don't want repeal. They want some of the benefits. These benefits have a real effect on people's lives. When I was in North Dakota recently, one gentleman approached me to tell me his story. He said that the MCCA paid nearly $19,000 in hospital bills in the last year, costs that would have wiped his family out—driven them into bankruptcy—had the MCCA hospital benefits not existed.

And, yet, Mr. President, I support this compromise with some level of regret. I believe this compromise does not go far enough. I believe seniors want and need more of the benefits that were contained in the original MCCA. I voted during Senate consideration of the various proposals on catastrophic coverage to retain as many of the benefits as was feasible while reducing the premiums substantially.

I believe the outcry over the MCCA reflects a growing frustration with the health care system. The crippling costs of long-term care; the escalating Medigap premiums; and an increasingly inaccessible health care system are all coalescing to create an untenable system—one that is confusing and seemingly irrational to its consumers.

Mr. President, health care costs are out of control; there is no question about that. Survey after survey reveals that costs—and the associated problems of access—are the No. 1 concern of those dealing with the system: labor, management, and all consumers.

But I do not believe we should allow concern about the entire health care system to repeal the MCCA entirely. Mr. President, repeal does not wipe the slate clean—it is a retreat, reflective of an inability to face up to the tough choices we must make in relation to the health care system. Repeal, or retreat, will make the choices all the more difficult next year.

Mr. President, I support this compromise, but regretfully. I hope the House will accept the compromise, and recede from their repeal position.

Mr. MITCHELL. Mr. President, I move that the Senate recede from its amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Will the distinguished majority leader yield, Mr. President, for 30 seconds?

Mr. MITCHELL. Yes.

Mr. BYRD. Mr. President, I wish the RECORD to show that had there been a vote, I would have voted against repeal.

## PREVENT U.S. OBLIGATIONS TO NONRECOGNIZED COUNTRIES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of an original resolution offered on behalf of the Senator from North Carolina [Mr. HELMS] expressing the sense of the Senate that the United States should not be bound under the U.N. Drug Convention to cooperate with any state party in which the United States does not maintain diplomatic relations or with any regime not recognized by the United States.

Mr. THURMOND. I send the resolution to the desk.

The PRESIDING OFFICER. The clerk will report the resolution.

Assistant legislative clerk read as follows:

Resolution (S. Res. 220) expressing the sense of the Senate that the United States should not be bound under the United Nations Drug Convention to cooperate with any state party with which the United States does not maintain diplomatic relations or with any regime not recognized by the United States.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. HELMS. Mr. President, one of the glaring problems of this convention is that it creates U.S. obligations to some of the most notorious countries of the world; some of which are involved in drug trafficking, others of which are so anti-American that we do not maintain diplomatic relations.

The United States simply cannot effectively fight the drug war by making deals with drug traffickers. But under this treaty, we will be bound and obligated to such drug trafficking countries as Panama, Afghanistan, and Iran.

It seems incongruous to me that such drug trafficking countries can be permitted to become parties to a U.N. convention aimed at stemming drug trafficking. Beyond this, it would send exactly the wrong signal for the United States to assume obligations to such countries under this convention.

At the very least, the United States should not be in the position of assuming obligations to countries which are either so involved in drug trafficking or are so anti-American that we do not maintain diplomatic relations with them.

In tandem with approval of the U.N. drug convention, it is imperative that the United States take action to ensure that it does not give de facto recognition to parties to the Convention simply by virtue of executing functions under the treaty. In addition, the United States must assure order to ensure that the it is not bound and obligated to countries or regimes it does not recognize. To accomplish these two goals, I offer the following resolution, which I believe the Senate will accept.

It reads:

It is the sense of the Senate that the United States should not be bound or obligated under the United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances to cooperate with any state party with which the United States does not maintain diplomatic relations or with any regime not recognized by the United States.

The Department of State has agreed to follow the recommendations of the Senate as embodied in this resolution. This commitment was made in a letter written to me by Abraham D. Sofaer, the legal adviser at the State Department.

Mr. President, I ask unanimous consent that the text of the letter from Judge Sofaer be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF STATE,
THE LEGAL ADVISER,
*Washington, DC, November 20, 1989.*

Hon. JESSE HELMS,
*Committee on Foreign Relations, U.S. Senate.*

DEAR SENATOR HELMS: The Department understands the concerns expressed by some Senators that the United States not be required to share sensitive information relating to narcotics trafficking with General Noriega and his regime or similar regimes which we do not recognize or with which we do not have diplomatic relations. We do not believe that such sharing is required by the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

We will take a very hard look at any and all requests for information under the Convention from such regimes, should their countries become party to it, to ensure that such requests are not likely to prejudice our sovereignty, security, *ordre public* or other essential interests. Generally speaking, the United States would expect to refuse to share information with such regimes.

We understand that a sense of the Senate resolution will be introduced to read as follows:

"It is the sense of the Senate that the United States should not be bound under its Convention to cooperate with any State party with which the United States does not maintain diplomatic relations or with any regime not recognized by the United States."

We do not oppose passage of that Senate resolution.

I wish to thank you for agreeing to introduce a specifically permitted declaration, to be part of the resolution of advice and consent, that the United States does not consider itself bound to refer disputes under the Convention to the International Court of Justice.

Sincerely,

ABRAHAM D. SOFAER.

Mr. HELMS Mr. President, the United States simply should not undertake obligations with the likes of Noriega in Panama, Najibullah and his Soviet-supplied thugs in Afghanistan, and the terrorists who run Iran. This resolution will assure that no such obligations will be undertaken.

The PRESIDING OFFICER. Is their further debate? If not, the question is on agreeing to the resolution.

The resolution was agreed to.

The resolution is as follows:

S. RES. 220

*Resolved,* That it is the sense of the Senate that the United States should not be bound under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to cooperate with any state party with which the United States does not maintain diplomatic relations or with any regime not recognized by the United States.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## OMNIBUS BUDGET RECONCILIATION ACT

Mr. MITCHELL. Mr. President, pursuant to the previous order, I submit a report of the committee of conference on H.R. 3299 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3299) to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of today, November 21, 1989.)

Mr. MITCHELL. Mr. President, I ask unanimous consent that this be considered under a time limitation of 20 minutes equally divided and controlled between Senators SASSER and DOMENICI.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, for the information of Senators, earlier this evening, on two occasions, I indicated that it was our intention to proceed to enactment of reconciliation without a rollcall vote, unless requested by any Senator. No Senator has requested such a rollcall vote.

Therefore, it is my intention to proceed to enactment of this legislation by voice vote upon the completion of the 20 minutes, or upon the yielding back of such time, if not used.

Before yielding to the distinguished chairman and ranking member of the Budget Committee, Mr. President, I want every Senator and every American to know that this reconciliation bill is the product of a long, difficult, good-faith bargaining, negotiating, and consultation series of meetings.

In that effort, the distinguished Republican leader played a very significant role, as did the chairman and ranking members of the Budget, Finance, and Appropriations Committees, as did much of the House leadership on both sides of the aisle.

But for all that, I think all those who participated would agree that the two persons most responsible for this responsible legislation are Senators SASSER and DOMENICI, chairman and ranking member of the Budget Committee. Both devoted literally hundreds of hours for preparation of this legislation in negotiation of the agreement which led to this point. Both deserve our enormous gratitude.

It has taken a long time, longer than we all had wished. The result is, I think, a product which produces meaningful deficit reduction beyond that agreed to in the so-called budget summit agreement of earlier this year.

Recognition also should be made of the two staffs of both sides, who worked through the night many evenings, many nights, and long, hard days. They are to be congratulated for their dedication and effort. Anyone that thinks Government employees do not work ought to see staff in the Budget Committee, Republican and Democratic, in action.

I commend them, and I am pleased now to yield to the distinguished chairman of the Senate Budget Committee, with my gratitude for a superb effort on his part.

The PRESIDING OFFICER. Senator SASSER.

Mr. SASSER. Mr. President, I thank the distinguished majority leader for his kind remarks.

This budget reconciliation conference report that is before us today is a result of the work and efforts of many individuals, and I want to, at the outset, thank and commend the distinguished ranking member of the Budget Committee, Senator DOMENICI, for his efforts and for his advice, and for his enormous help in putting this budget reconciliation package together.

Mr. President, the 1990 budget reconciliation conference report has certainly followed a long and winding and rocky road. I am not trying to stand here tonight and minimize the difficulties that were posed by this legislation.

Just let me say that I think the end product is one that we can take some pride in. We began this year with a bipartisan budget agreement. We began with much hope, and over a period of time, we encountered a number of difficulties, but we have overcome them all, Mr. President; and taken altogether, we have gotten the $14 billion in hard savings that were deemed necessary.

We have, in this budget reconciliation conference report, $17.7 billion in deficit reduction for fiscal year 1990, as scored by the Congressional Budget Office. I think that compares very favorably with the $12.3 billion that we would have received had we abandoned our reconciliation effort and chosen to totally embrace sequester.

There may be many or some of our colleagues who do not think those numbers ring quite true. A number of Senators think that we would save more through reconciliation in fiscal 1990.

But I would observe to my colleagues that the number frequently associated with a full sequester, $16 billion, is not accurate, does not take

into account the fact that Gramm-Rudman-Hollings provides a credit against sequester for savings that have already been achieved by the Appropriations Committee.

Mr. President, I say that my only regret relative to this budget reconciliation report that we present to the Senate this evening, or this morning, is that it does contain a 130-day sequester to the tune of $4.551 billion.

I hoped to avoid such a sequester figure, but it was unavoidable, if we were to meet the very stringent requirements that have been laid down by the administration in reaching the hard savings total.

Under CBO scoring, we have $17.755 billion in savings. When we back out certain shifts that produce savings in fiscal year 1990, but which do not produce significant outyear savings, then we find we have a hard adjusted deficit reduction package of $14.671 billion.

I say I regret the extent of sequester in this reconciliation bill, because I think, Mr. President, we are going to have to find some way in the future to deal with the problem of committees not fulfilling their reconciliation instructions, and then at the last moment the appropriated accounts having to make up the difference.

In all fairness, I do not feel that this is an equitable result for the Appropriations Committee in our bipartisan budget negotiations. The Appropriations Committee was forced to take cuts on the front end, and then we come along at the end in budget reconciliation, after other committees have not filled their full reconcilitation instructions, and we have to turn to sequester. And once again, the appropriated accounts are asked to take what I consider to be an overly hard cut.

I want to express my appreciation now for the full cooperation—I say the splendid cooperation—and forbearance of the distinguished chairman of the Appropriations Committee, Senator BYRD.

His assistance was absolutely invaluable, and without his understanding and forbearance and willingness to cooperate for the common good, I seriously doubt that we would have this reconciliation package before the body this evening.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. DASCHLE). The Senator has 3 minutes, 20 seconds remaining.

Mr. SASSER. I reserve the remainder of my time.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, let me first say to the Senate that I am very pleased that we only have 10 minutes on each side, because frankly, I am very tired, but even as tired as I am, this reconciliation bill and this year's budget process has such a great history with it that if I did not have a 10-minute limitation, I am afraid I would talk for a long time.

We produced a major reconciliation bill, and I want to thank a few people—there are many to thank—but I take a great deal of pride in this reconciliation bill.

I hope those out in the marketplace across the United States that look at our work from the standpoint of deficit reduction, will not assume this is just like all the others, because it is not. It is better than the others. It is a real deficit reduction package.

I want to remind everyone that we have grown accustomed to using reconciliation for all kinds of things. We have not been having tax bills, because we put the tax measures in reconcilitation. We have not been having Medicare reform bills because we have put Medicare reform in reconciliation. We have not been having Medicaid reform because we put them in reconciliation bills. We have some extraneous material in this bill, but not very much.

This package produces, according to the CBO, in the first year over $17 billion in savings. That means that will actually count against the deficit for 1990.

The way we figured it, and I admit we set some new rules, we are not counting things that we do not really believe should be counted. It is still $14.7 billion; the President wanted $14 billion.

The budget process asked for $13.8 billion. So on all scores it is good. Those who wanted sequester said oh, but 3 years of sequester's impact is what you are really looking for because that is real.

I ask you all to look at the table we will put in the RECORD here on the reconciliation 3-year effect and it is real. It is almost as good over 3 years as a full sequester. In fact, it is close enough where you could say they are about the same.

So those who are wondering whether we did our job this year, we did. And I, too, want to congratulate and thank a few people.

Mr. President, I have now served on the Budget Committee and I have had the pleasure of serving with three different Senators from the other side of the aisle as either chairman or ranking members while I have been either chairman or ranking member. I have to say they have all been very, very, good active participants in this complex process and each deserves great congratulations for their efforts. But tonight I want to say to Senator SASSER, the new chairman, that we could not have gotten this job done without his understanding, his hard work, and his commitment to reality. I thank him for that.

I must admit that the distinguished majority leader is right when he says without staff on this kind of bill you cannot get your work done. I want to thank and congratulate John Hilley, the staff director on the majority side; and Bill Hoagland, the minority staff director; and all who worked for them. They are absolutely the best of public servants, and without them we would not be here. I want to personally again say thank you.

But, Mr. President, the work of a reconciliation package is the work of committees, and without the help of Senator BYRD—he did not have to show up and be there. Because he wanted to help us if we needed help, he came. We did not have to worry about how is he going to make our job difficult because he wanted us to get it done.

He had with him Senator HATFIELD, and their cooperation was invaluable.

Obviously this kind of bill has turned out to be principally the work of the Ways and Means Committee in the House and Finance in the Senate. And they have a tough job.

I note that the distinguished chairman of the Finance Committee is on the floor and I want to thank him for his work. Without his diligent effort, without his agreeing to us setting some arbitrary rules for him and then his being willing to abide by them, as tough as that was, we would not be here. I want to say to the distinguished senior Senator from Texas, who is here, we had some tough negotiating as we moved through this. I hope he understands that sometimes the Senator from New Mexico—maybe it is my ancestry, but I do get a little excited from time to time and I hope I have not at any time made his job difficult, because I was really trying to get what we all wanted, a real deficit reduction package.

I guarantee that without Senator BENTSEN's willingness, Senator PACKWOOD's help, we would not be here.

Last, but not least, we have had tremendous leadership from the majority leader, a new majority leader, Senator MITCHELL, and obviously our distinguished Republican leader.

When the chips are down, when we could not get something done, when we really needed help, they were there. So my thanks to them.

Mr. President, this reconciliation bill will permit us to meet the Gramm-Rudman targets this year. It will permit us to stay on a path that brings this deficit down, year by year, so that we are moving in the right direction in a steady manner each year. This will be another one of those where it was a bit messy, but successful.

For those who thought sequester was a good approach, I had had prepared by the minority staff, and I believe it is accurate, the impact of the

1990 sequester if it had occurred. Some have run around here and across the country saying let us have the sequester. I am not critical of their position so perhaps they were just putting the pressure on us.

But nonetheless, we will have this in the RECORD for those who think it would have been nice for the United States military to have had this sequester, and to have say 229,000 American active duty military men were laid off overnight is not great for America, and all the other things that would have happened. So I ask unanimous consent that that be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

IMPACT OF FY 1990 SEQUESTER

DEFENSE PROGRAMS

According to the Final OMB Sequester Report, defense programs must be cut by $13.3 billion in budget authority and $8.1 billion in outlays from baseline function 050 levels.

However, changes in the final 1990 appropriations for defense programs reduced the amount needed to be sequestered by $5.8 billion in budget authority and $2.5 billion in outlays from the OMB baseline levels.

Further cuts of $7.5 billion in budget authority and $5.6 billion in outlays are still needed to meet the GRH requirements.

Under sequester, the 1990 budget authority will be reduced to $296.2 billion, resulting in outlays of $292.7 billion.

Real 1990 defense spending will be −4.8 percent relative to FY 1989—and will stand at the lowest level since 1983.

The impact of these sequester reductions on the 1990 appropriated levels would be to remove from the military: 3 active Army divisions; 1⅓ reserve or Guard divisions; 25 Navy ships; 4 Air Force wings; and 1 Marine Corps brigade.

Military personnel spending would be reduced by $3.2 billion, resulting in the elimination of 229,000 active duty military personnel and 63,000 reservists, according to the Department of Defense.

Since troop deployments in Europe are under negotiation with the Warsaw Pact, most of the force reductions would likely come from the Continental U.S.

Operations and Maintenance will be reduced by $1.6 billion, which would produce civilian reductions in excess of 72,000.

Procurement will be reduced by $1.6 billion, which will present contractual problems on the SRAM, Titan IV, Peacekeeper, and the advanced tactical fighter.

Research and Development would be reduced by $0.7 billion, delaying strategic and conventional modernization.

Atomic Energy, Defense will decline by $0.4 billion, delaying the nuclear waste cleanup plan.

NONDEFENSE PROGRAMS

Approximately $12.1 billion in budget authority and $8.1 billion in outlays must be cut from baseline levels for nondefense programs, according to OMB's Final Sequester Report.

Over half of all nondefense programs are exempt from sequestration, including Social Security benefits, other Federal civilian and military retirement, veterans compensation and pensions, most low-income progams, state unemployment benefits, prior legal obligations, offsetting receipts, and net interest.

Approximately $1.8 billion in outlays will come from reductions in so-called "special rules" programs—National Wool Act, special milk program, vocational rehabilitation, Stafford student loans, foster care and adoption assistance, Medicare, veterans medical care, and other health programs.

The remaining $6.3 billion in outlays reduction will come from all other nonexempt budgetary resources—annually appropriated and permanent budget authority, obligation limitations, direct loans and loan guarantees.

Even though final nondefense appropriations will add approximatley $8.1 billion in budget authority and $1.5 billion in outlays above current baseline levels, the amount to be sequestered from nondefense programs will not be increased.

In fact, for appropriation bills enacted after October 16 where individual programs are funded below baseline levels, the effect of the sequester is mitigated because any such difference applies toward meeting the sequester amount.

*Specific program impacts*

The sequester order would cut NASA funding by $593 million. The 1990 appropriations for NASA provided a $1.8 billion increase over the 1989 level, for a total of $12.4 billion. The sequester would cut $95 million from the $1.8 billion for the space station, potentially delaying completion of the space station until 1999. NASA would also institute a hiring freeze.

Uranium enrichment funding will be reduced by 5.3 percent, or $70.3 million. The Energy and Water appropriations act provides $1.4 billion for this program in 1990. This program enriches uranium for fuel in civilian nuclear reactors and for defense purposes. This reduction would affect the program's ability to meet consumer demand and maintain projected receipt levels.

Funding for the DOE research and development efforts on solar, geothermal, nuclear, and fusion technologies would be cut by $117 million, a 5.3 percent reduction from the $2.2 billion provided for 1990 in the Energy and Water Appropriations Act.

Funding for the Army Corps of Engineers budget would be reduced by $179 million from the $3.2 billion appropriated for 1990. This reduction would put the Corps' budget $263 million below its FY 1989 level. Prior to sequestration on October 16th, the 1990 Corps appropriations had already been reduced below the 1989 level. Imposing an additional 5.3 percent across-the-board cut on top of its existing budget will slow down the design and construction of water projects and impinge on the operation and maintenance of existing projects.

The Environmental Protection Agency (EPA) budget would be cut by approximately $293 million. The VA-HUD-Independent Agencies appropriations act for 1990 provides $5.6 billion for EPA. This reduction would slow EPA's efforts to implement and enforce our air, water, toxic and hazardous waste environmental laws.

Superfund, which cleans up abandoned hazardous waste dumps, would be cut $77.5 million from the $1.6 billion provided in the 1990 VA-HUD-Independent Agencies appropriations act.

Outlays of the Commodity Credit Corporation (CCC) would be reduced by $676 million to $12.1 billion. The CCC direct loan limitation would decline by $530 million to $9.5 billion, while the CCC guarantee loan limitation would fall by $301 million to $5.4 billion.

Budget authority for the Census Bureau wold be reduced by $31 million to $1.4 billion. This would result in a reduction to the quality control program which enhances the accuracy of the census. The 1990 census will be the basis for the apportionment of money for many Federal programs, as well as congressional redistricting in 1992.

The direct loan limit of the Farmers Home Administration's rural housing insurance fund would be reduced by $101 million to $1.8 billion. This will result in a reduction of 1,425 low-income rural housing units and 600 rural rental units.

Obligations under the Federal-aid Highways program would be reduced by $437 million, from the current appropriated level of $12.2 billion. This cut would result in a decrease in each state's appointment of highway funds.

Spending on FAA capital equipment would be cut by $76 million, delaying modernization of the air traffic control system.

Further, the grants-in-aid for airports program would be cut by $51 million, jeopardizing funding of new airport capacity.

The sequester would cut Mass Transit formula grants by $50 million and discretionary grants by $18 million. The reduction in formula grants would be felt in state allocations for both urban and rural transit grants and in operating assistance subsidies.

Budget authority for Community Development Block Grants (CDBG) would be reduced by $145 million to $2.8 billion. This cut would result in a $43 million reduction to the state and small cities program and $101 million reduction to the large city entitlement program.

Funding for the Department of Education would be cut by $1.0 billion in budget authority under a sequester, resulting in a post-sequester funding level of $23.4 billion in 1990. Despite this reduction, 1990 funding will increase by $569 million over 1989 levels.

For elementary and secondary education, major reductions include a cut of $251 million from the $5.4 billion appropriation for Chapter 1 (Compensatory Education for the Disadvantaged), and a cut of $66.8 million from the apppropriated level of $1.4 billion for School Improvement Program, which includes Math Science Grants and Drug Free Schools.

A sequester order reduces the Handicapped Education funding level of $2.1 billion by $108 million, and vocational and adult education funding of $1.1 billion by $59 million.

Student financial assistance funding of $6.2 billion would be reduced by a total of $319 million, which includes a $251 million cut from the Pell Grant program.

Within the Department of Health and Human Services, Human Development Services, which includes the Head Start program, would be cut by $143 million, to $2.6 billion. The Community Services Block Grant appropriation of $388 million would be reduced by $20.9 million, and the Social Services Block Grant, funded at $2.7 billion, would be cut by $143 million.

For the Department of Labor, funding of $4.0 billion for the Training and Employment Service, including the Job Training Partnership Act, would be reduced by $205.3 million. Community Service Employment for Older Americans funding of $362 million would be cut by $18.9 million.

Under the special rules in GRH, Stafford Student Loans (GSLs) are effected in two

ways: the special statutory allowance factor paid to lenders is reduced by 0.40 percent and the students' loan origination fee is increased by 0.50 percent. These provisions went into effect for new loans issued after October 1, 1989. Total reductions to BA are $42.2 million.

National Institutes of Health (NIH) funding of $7.7 billion would be reduced by nearly $0.4 billion, to a level about 2 percent above the 1989 appropriations of $7.1 billion. Because of cost increases in NIH grants, this could cut funding for about 1,000 new NIH research grants and cut the scientists receiving grants by over 500, delaying the progress being made on costly, debilitating diseases.

Payments to Medicare providers for services rendered on or after October 16 would be reduced by 2.1 percent. This will reduce 1990 outlays, currently estimated to be $100 billion, by an estimated $1.5 billion.

Low Income Home Energy Assistance (LIHEAP) would be reduced by $37 million in BA and $29 million in outlays from the 1990 appropriation of $1.4 billion in BA and $1.3 billion in outlays.

State Unemployment Insurance administrative expenses would be cut by $92 million from the 1990 appropriated level of $1.7 billion. States would have to respond by providing additional state funds, reducing staff, or closing local offices.

Spending authority for administering Social Security and SSI would be reduced by $142 million to $3.7 billion, 1 percent less than the amount available in 1989. As a result, services to beneficiaries will be slowed.

Sequestration for veterans medical care is limited to 2 percent of non-administrative expenditures; reductions in administrative expenses, however, are not limited. These rules result in a total cut of $252.1 million from the 1990 appropriation of $11.4 billion.

The $8.8 billion provided for anti-drug programs in the 1990 appropriations bills would be reduced by $0.5 billion.

The sequester order would cut the Judiciary by $75 million, resulting in delays in hearing civil and criminal cases.

Specific programs affected by the sequester include a $79 million cut for the FBI, a $29 million cut for the Drug Enforcement Administration (DEA), a $57 million cut in Immigration and Naturalization Service (INS) activities, and a $67 million cut in the Customs Service. As all of these agencies are personnel intensive, the reductions could lead to hiring freezes or RIFs, a drop in training and personnel transfers, and delays in the purchase of equipment.

Funding for the Internal Revenue Service (IRS) would be reduced by $183 million from its current appropriation of $3.5 billion. At that funding level, particularly with a reduction in collection activities, IRS would be unable to implement the compliance initiative contemplated in the summit agreement and the 1990 Budget Resolution.

Mr. DOMENICI. Mr. President, we have tried on our side in our own way—we think it is understandable—to go through this bill and explain the provisions, and they are many. The description of this conference agreement by the minority staff is a document that I think people will find helpful. You will find it is not as clean a bill as it was when it left here. But that just could not be avoided. It is one of the cleanest reconciliation bills in terms of extraneous matters that we have ever produced.

I ask that the document description of the conference agreement be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BUDGET RECONCILIATION ACT OF 1989—DESCRIPTION OF CONFERENCE AGREEMENT

SUBCONFERENCE NRC FEES

House recedes. The conference agreement would maintain NRC fees at 45 percent of the commission's budget, which would increase receipts by $54 million in FY 1990 only.

SUBCONFERENCE 2: OFFSHORE OIL POLLUTION COMPENSATION FUND

House receded to the Senate on the Offshore Oil Pollution Compensation Fund. The conference agreement would trigger a 3 cent per barrel tax on oil produced in the outer continental shelf and would increase net revenues by $9 million annually in FY 1990 and FY 1991.

SUBCONFERENCE 3: ONONDAGA LAKE STUDY

Dropped. Senate bill included this provision, which would require the Corps of Engineers to conduct a study of cleaning up Lake Onondaga in New York.

SUBCONFERENCE 4: PANAMA CANAL COMMISSION

The conferees dropped all provisions dealing with the Panama Canal Commission. This includes both authorization provisions and the $23 million in savings from interest earned on escrowed payments to Panama.

SUBCONFERENCE 5: POSTAL SERVICE ISSUES

The conference agreed to take the Postal Service off budget. This accounting change produces $1.770 billion in outlay savings in FY 1990. As an off-budget agency, neither surpluses (projected for FY 1991) nor deficits (projected for FY 1990 and 1992) of the Postal Service will be included in the calculation of the deficit.

The conferees agreed to require the Postal Service to pay cost-of-living adjustments to the Civil Service Retirement System for postal employees who retired after October 1, 1986. CBO estimates the provision will achieve $70 million in outlay savings in FY 1990, increasing to $260 million by FY 1994.

The conference agreement requires the Postal Service to pay the employer's share of health insurance premiums for survivors of postal employees who died after October 1, 1986. CBO estimates Postal Service payments to be $6 million in FY 1990 which will increase 59 $20 million in FY 1994.

The Senate conferees receded to the House and accepted a provision to shift payments by the Potal Service for workers' compensation up 15 days so a $330 million payment is made in FY 1990. Accelerating the payment date will require the Postal Service to make two payments for workers' compensation claims in FY 1990.

The conferees agreed to allow federal retirees to withdraw lump-sum retirement payments 50 percent in FY 1990 and 50 percent in FY 1991, producing full-year savings of $700 million.

The Senate receded to the House and agreed to drop a provision to require the Postal Service to make a $400 million one-time payment to the Civil Service Retirement system.

The conferees agreed to drop House provisions to increase the Postal Service's borrowing authority, to prepay FFB loans without a penalty, to invest in marketable securities, and to prohibit borrowing from the FFB.

SUBCONFERENCE 6: AGRICULTURE

The agreement would permit producers to plant soybeans, sunflowers or safflowers on up to 25 percent of their 1990 permitted acreage of program crops. This option would be available if the average market price for the 1990 soybean crop is below 110 percent of the loan rate for the 1989 soybean crop. This provision results in outlay savings of $116 million in FY 1990, $123 million in FY 1991, and no savings in FY 1992.

The conferees agreed to reduce deficiency payments for 1990 program crops. This provision results in a one-time savings of $235 million in FY 1990.

The conferees agreed to allow additional time for those producers needing to refund advance deficiency payments received for the 1988 crop. Producers who suffered a loss of their 1988 or 1989 crop due to a natural disaster could make the refund after the end of the marketing year. This provision would reduce outlays by $54 million in FY 1990 only.

In FY 1990, the Targeted Export Assistance program would be reduced to $200 million, while the Export Enhancement Program would be reduced to $566 million. CBO has scored this provision with outlay savings of $143 million in FY 1990; however, the provision was scored with an outlay cost of $12 million in FY 1991.

The conferees agreed to delay the Bumpers/Pryor amendment, which has the effect of bringing the Farm Credit Assistance Corporation on Budget, until FY 1993. In the interim, each institution of the Farm Credit Ssytem which purchased stock in the Financial Assistance Corporation will receive an annual payment. CBO estimated this provision will save $420 million in FY 1990, and $1.286 billion over three years.

The conferees agreed that the Secretary of Agriculture would offer to purchase butter for not more than $1.10 per pound; however, the Secretary has the discretion to allocate price support between the purchase prices for nonfat dry milk and butter to achieve desired savings. Preliminary CBO scoring estimated this provision would save $27 million, $33 million and $29 million in FY 1990, 1991 and 1992, respectively.

Finally, the conferees will claim credit for savings of $25 million in FY 1990 and $43 million over three years for previously passed legislation, P.L. 101-7. This law adjusts prices paid for butter and non-fat dry milk.

SUBCONFERENCE 7: FLOOD INSURANCE

The conferees agreed to drop all provisions because of the enactment of a separate measure extending the flood and crime insurance programs. PL 101-137, signed into law on November 3, will reduce FY 1990 outlays by $190 million.

SUBCONFERENCE 8: STUDENT LOANS

The conferees have achieved a total savings of $35 million in FY 1990, recommending changes to Stafford Student Loans and Supplemental Loans to Students. Outlay savings grow to $50 million in FY 1991 and $100 million in FY 1992. Most provisions have an effective date of January 1, 1990.

The changes recommended by the subconference are:

Restrict the classification of medical residents as full time students for the purpose of Stafford Student Loan eligibility (FY 1990 outlay savings of $8 million);

Eliminate schools with default rates of 30% from participating in the supplemental loan program (FY 1990 outlay savings of less than $500,000, growing to $50 million in FY 1991);

Require a 30 day delay in disbursement for supplemental loans to first year undergraduates (FY 1990 outlay savings of less than $500,000);

Establish a six month amnesty program beginning March 1, 1990 for Stafford Student Loan defaulters (FY 1990 outlay savings of $30 million; $15 million cost in FY 1991);

Require a GED for all borrowers under the supplemental loan program (FY 1990 outlay savings of less than $500,000, growing to $10 million in FY 1991);

Reduce the annual borrowing limit in the supplemental loan program (FY 1990 outlay savings of less than $500,000, growing to $10 million in FY 1991); and

Restrict Stafford loan eligibility for schools for which accreditation has been withdrawn (FY 1990 outlay savings of less than $500,000).

The conferees also agreed to a number of provisions which produce no outlay savings and would therefore be considered extraneous in the Senate under Byrd rule (d)(1)(A).

SUBCONFERENCE 9: CHILD CARE AUTHORIZATIONS

Child care authorizations are not included in the reconciliation conference agreement.

SUBCONFERENCE 10: MEDICAID AND OTHER HEALTH PROGRAMS

The conferees agreed to mandate Medicaid coverage of children up to age 6 and pregnant women under 133 percent of poverty, effective April 1, 1990. These provisions add costs of $110 million in FY 1990 and $1.5 billion over five years.

The conferees also agreed to increase Medicaid payment for health centers, mandated early and periodic screening and diagnostic services for pregnant women, and required a demonstration of the Medicaid "buy-in" concept. In total, these expansions increase outlays by $40 million in FY 1990 and $200 million over 5 years.

SUBCONFERENCE 11: VACCINE INJURY COMPENSATION

The Energy and Commerce provision included in the House bill has been dropped from reconciliation.

SUBCONFERENCE 12: MEDICARE CATASTROPHIC COVERAGE ACT

Changes to the Medicare Catastrophic Coverage Act have been dropped from reconciliation and will be enacted separately.

SUBCONFERENCE 13: SEC FEES

The House bill contained a number of provisions dealing with Securities and Exchange Commission (SEC) fees, including a plan to make the SEC a self-funding agency. The House receded to the Senate and dropped the SEC sections.

SUBCONFERENCE 14: FCC FEES

The conferees agreed to $15 million in FY 1990 Federal Communications Commission (FCC) user fees. These fees are substantially similar to the Senate-passed fees except that two fees are dropped: potentially GATT-illegal Form 740 fees and fees for amateur radio licensees. The agreed-upon fees rise to $18 million annually in the outyears.

The conference agreement does not include provisions pertaining to the Fairness Doctrine and dial-a-porn, as contained in the House bill.

SUBCONFERENCE 15: VETERANS

The conferees extended authority to collect a one percent loan origination fee charged to veterans for VA guaranteed home loans for one year. Total FY 1990 outlay savings are $169 million, falling to $10 million in FY 1991. This occurs because of the one year reauthorization; extending the program in future years will produce additional receipts.

The conferees extended until October 1, 1990, the authority for the Secretary of Veterans Affairs to sell VA vendee loans with or without recourse. Effective October 1, 1990, the Secretary would be required to sell loans without recourse only if the Secretary would receive at least the unpaid balance ("par value") of the loan. Total collections are estimated at $496 million in FY 1990.

Finally, the conferees have included language directing the scoring of proceeds from recourse loan sales as offsetting collections. CBO will not score this provision until it becomes law. Therefore, this language is considered extraneous under section (d)(1)(A) of the Byrd rule because it produces no change in outlays.

SUBCONFERENCE 16: TONGASS TIMBER/OIL SHALE

Oil shale and Tongass have been dropped. The House bill would have increased fees on oil shale patents, though it was expected that these fees would have faced court challenges. The House bill also would have repealed a permanent appropriation for timber management activities in the Tongass National Forest, cancelled contracts with timber companies, and designated additional land as wilderness areas.

SUBCONFERENCE 17: PASSENGER FEES/COAST GUARD USER FEES

The $3 per person passenger vessel fee, in both the Senate Commerce Committee title and the Finance Committee title, is included in the conference agreement. The adopted Finance Committee language generates $4 million in FY 1990 net revenues. Net revenues rise to $7 million in FY 1991 and $8 million in FY 1992. The revenues associated with this provision are included in the revenue subconference (#20).

No agreement was reached on the $50 million of Coast Guard user fees and the Senate provision was dropped.

SUBCONFERENCE 18: AVIATION/AIRPORT FEES

The proposal to raise the international airline departure fee from $3 to $6 per passenger, included in both the Senate Commerce and Finance titles, was agreed to along the lines of the language in the Finance title. This provision generates $44 million in net revenues in FY 1990. With full-year implementation in the outyears, net revenues increase to $89 million in FY 1991 and $94 million in FY 1992. The revenues associated with this provision are included in the revenue subconference (#20).

The proposal to generate $239 million from the use of federally controlled airport slots at four high-density airports was not agreed to by the House conferees and the provision was dropped.

SUBCONFERENCE 19: WAYS AND MEANS SPENDING (WELFARE AND HUMAN RESOURCES PROGRAMS)

NOTE.—See subconference 23 for description of Medicare provisions.

The conferees agreed to modify the AFDC (and Medicaid) quality control system, effective FY 1992. This also forgives states all past due penalties. CBO estimates this has no costs in FY 1990, but adds outlays of $1.3 billion in FY 1991-94. (OMB scores this provision as costing $500 million in FY 1990.)

The conferees agreed on 20 mostly minor welfare and human resources expansions. In total, these expansions add outlays of $152 million in FY 1990 and $813 million over five years. They include:

A permanent $100 million increase in the Title XX social services block grant (an entitlement) beginning in FY 1990;

A series of foster care expansions, including an extension of the independent living program through FY 1992; and

Four relatively minor expansions of the Supplemental Security Income program.

The conferees also agreed to 13 miscellaneous and technical Social Security and railroad retirement provisions which will cost $13 million in FY 1990 and $157 million FY 1990-94.

The conferees agreed to include contributions to deferred compensation plans (including 401(k) plans) in calculating the FICA wage base. This would increase revenues by $400 million in FY 1990 and $4.8 in FY 1990-94.

SUBCONFERENCE 20: REVENUES, FEES AND PENSIONS

The conference agreement exceeds the reconciliation instruction by $0.3 billion, increasing net revenues by $5.6 billion in FY 1990.

The conferees achieve $2.7 billion of these revenue gains by shifting the collection of taxes. The largest of these revenue shifts is a $2.45 billion speedup of payroll tax collections.

Besides revenue shifts, most of the remaining FY 1990 revenue increases are derived from the following provisions:

Modifications to employee benefit plan requirements (−1.2 billion);

Adjustments to corporate taxes (−0.8 billion);

A one-year suspension in the reduction of airline taxes (−0.9 billion);

A new $1.67 cent per pound tax on chlorofluorocarbons (CFC's) and other chemicals that deplete the ozone layer ($0.4 billion); and

A new 5 cent per barrel tax on all petroleum to finance an oil spill trust fund (0.1 billion).

The agreement includes $1.9 billion in revenue losers, including a nine-month extension of ten expiring tax credit provisions (a $1.4 billion FY 1990 revenue loss) and modifications to corporate alternative minimum taxes (a $0.4 billion FY 1990 revenue loss).

SUBCONFERENCE 21: SOCIAL SECURITY ADMINISTRATION

The conferees agreed to drop House provisions making the Social Security Administration an independent agency.

SUBCONFERENCE 22: ERISA AND OTHER PENSION ISSUES

The conferees have agreed to impose a mandatory civil penalty of 20 percent of a pension plan's lost assets for violating fiduciary standards under Title I of ERISA. Increased revenues of $25 million are estimated for FY 1990, increasing to only $28 million in FY 1991.

SUBCONFERENCE 23: MEDICARE PART B (INCLUDES SUMMARY OF ALL MEDICARE PROVISIONS)

The conferees agreed to provisions that achieve net savings of $3.0 billion in FY 1990 and $11.3 billion over five years.

For Medicare hospital payments, the conferees agreed to changes that produce net

savings from baseline of $640 million in FY 1990. Changes include:

A one-year extension of hospital capital payment provisions;

Legislating savings which duplicate an existing Administration regulation, limiting by 1.22 percent the payment increase for hospitals (otherwise about 5.5 percent); with further adjustments for different classes of hospitals, with rural hospitals receiving an additional 4.2 percent increase; and

Further increases in payments for "sole community" hospitals, regional referral center hospitals, cancer hospitals, Medicare-dependent hospitals, hospital-based nursing schools, and hospitals that serve a disproportionate share of low-income patients.

For Medicare physician payments, the conferees agreed to changes that save $800 million in FY 1990. The most significant change is basic reform of the physician payment system. Reform will include the phase-in of a fee schedule that will increase payments to primary care physicians and reduce payments to specialties.

Other changes in Medicare physician payments include a temporary freeze in fee updates; subsequent limits in the fee update for non-primary care physicians; and reductions targeted to "overpriced" procedures, anesthesiology and radiology services, and new physicians.

The conferees also agreed to limit payment increases for clinical laboratories, durable medical equipment, and kidney dialysis services, producing total savings of $210 million in FY 1990.

The conferees agreed to increase payments for hospice services, expand Medicare coverage of mental health services, and add coverage of psychologists, clinical social workers and pap smears. These expansions cost a total of $77 million in FY 1990.

The conferees extended for one year the expiring law that requires beneficiaries to pay 25 percent of Medicare Part B costs. CBO estimates savings of $370 million in FY 1990.

The conferees agreed to authorize IRS and HHS to exchange certain data that should improve results in collections from employer insurance before Medicare pays (Medicare Secondary Payor). This saves an estimated $325 milion in FY 1990 and $2.3 billion over five years.

SUBCONFERENCE 24: OZONE-DEPELTING CHEMICAL FEES

The Senate Environment and Finance Committees both proposed charges on the production of chlorofluorocarbons (CFCs) and other substances that deplete the ozone layer. The conference agreement drops Environment Committee's proposed fee and retains the Finance tax on these chemicals. The tax would increase revenues by $0.4 billion in FY 1990 and by $4.3 billion over the next five years.

SUBCONFERENCE 25: HEALTH CARE RESEARCH AND POLICY ISSUES

The conferees agreed to establish within the Department of Health and Human Services an agency for health care policy and research to assess outcomes of various procedures and tests. The agreement would authorize $85 million in FY 1990, increasing to $185 million by FY 1994.

SEQUESTER SAVINGS

The conference agreement would replace the sequester order currently in effect with a new order which would generate $4.551 billion in savings. This represents savings equivalent to a 130-day sequester.

The new order will be in effect for the entire fiscal year at the lowered rate.

Mr. DOMENICI. Mr. President, I suggest to fellow Senators that if they would like to know now in detail what specific implications and impacts are in this bill—I think most know—the bipartisan staff has prepared a reconciliation agreement summary and we have it at our desk. I just am showing it to you because if you would like to review and answer very specific and precise questions, they are included in this document; another tribute to the excellent staff here.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BIPARTISAN LEADERSHIP RECONCILIATION AGREEMENT

[CBO estimates; dollars in millions]

| | Deficit reduction | Adjusted [1] deficit reduction |
|---|---|---|
| Finance/Ways and Means savings: | | |
| Spending | 1,673 | 1,673 |
| Revenues | 5,628 | 2,928 |
| Subtotal | 7,301 | 4,601 |
| Social Security package within reconciliation | 385 | 385 |
| Other reconciliation savings | 4,889 | 4,505 |
| 130 day sequester | 4,551 | 4,551 |
| Debt service savings | 629 | 629 |
| Total savings | 17,755 | 14,671 |

[1] Excludes shifts; although shifts will be scored by OMB and CBO.

RECONCILIATION CONFERENCE VS. SEQUESTER

[CBO scoring, dollars in billions]

| | 1990 | 1991 | 1992 | 1990–92 |
|---|---|---|---|---|
| Reconciliation: | | | | |
| Net spending | 6.547 | 0.910 | 2.267 | 9.724 |
| Net revenues | 6.028 | 4.739 | 4.625 | 15.392 |
| Partial sequester | 4.551 | 4.700 | 4.800 | 14.051 |
| Debt service | 0.629 | 1.802 | 2.776 | 5.207 |
| Total deficit reduction | 17.755 | 12.151 | 14.468 | 44.374 |
| Sequester: | | | | |
| Spending | 12.100 | 14.100 | 15.900 | 42.100 |
| Debt Service | 0.500 | 1.700 | 3.000 | 5.200 |
| Total deficit reduction | 12.600 | 15.800 | 18.900 | 47.300 |

Note.—Outyear estimates are preliminary based on draft language.

Prepared by SBC Minority Staff November 22, 1989.

Mr. DANFORTH. Mr. President, if I can have the attention of the distinguished chairman of the Finance Committee and my friend from Oregon, the ranking member of the Finance Committee, I would like to seek a clarification of an issue related to one of the provisions included in the reconciliation tax package.

Mr. BENTSEN. My friend from Missouri has my full attention.

Mr. PACKWOOD. Yes, it is my understanding that this arises in connection with section 1253 of the Code.

Mr. DANFORTH. My colleague from Oregon is correct. Mr. President, section 1253(b) of the Internal Revenue Code states that "the term franchise includes an agreement which gives one of the parties to the agreement the right to distribute, sell or provide goods, services, or facilities within a specified area." One of the proposals considered by the Finance Committee and included in the tax provisions of the reconciliation bill now before us, was to modify the current 10-year amortization of franchises. Along those lines, there is apparently some confusion as to whether network affiliation agreements can be franchises for purposes of section 1253.

To clarify the matter I would like to ask the chairman and the ranking member whether they share my understanding that a network affiliate agreement can be a franchise for purposes of section 1253?

Mr. BENTSEN. I thank my friend from Missouri for his inquiry. Indeed, it is my understanding that a network affiliation agreement can be a franchise for purposes of section 1253. The action of the conference committee does not affect prior law regarding the definition of a franchise.

Mr. PACKWOOD. Let me concur with the remarks of the chairman and state that it is my understanding that network affiliation agreements can be franchises for purposes of section 1253, and I thank my colleague from Missouri for his inquiry.

Mr. DOMENICI. Mr. President, I note in the statement of managers on the revenue provisions of this reconciliation bill the inclusion of language regarding the funding of future child care legislation. I support child care legislation as the Senate knows.

But, I wonder if the distinguished chairman of the Budget Committee could clarify how this language might affect points of order under the Budget Act. Would this statement of managers' language in any way preclude a Senator from raising a point of order against future child care legislation if it violates the Budget Act?

Mr. SASSER. Mr. President, this report language would not preclude a Senator from raising a point of order under the Budget Act. This report language would not waive or affect the applicability of points of order under the Budget Act against future child care legislation.

Mr. DOMENICI. Mr. President, I rise to address a matter of concern to myself and to other Members of this body who may be following the pilot project of loan asset sales initiated by the Federal Government 2 years ago.

In particular, I am concerned about the language included in this conference agreement by the subconference on veterans' affairs that would alter the current budgetary treatment of proceeds received from loan asset sales with recourse to the Federal Government.

Mr. President, 2 years ago, as part of the President's credit reform proposals, a pilot project to sell the Federal Government's loan assets was initiated.

At that time, this body debated the pros and cons of loan asset sales and, in particular, the wisdom of selling loans without a Federal guarantee. Central to the debate was—and remains—the fundamental question of whether these loan sales are real deficit reduction or nothing more than a budget gimmick.

To that end, this body took the position that, for the purposes of calculating the deficit under Gramm-Rudman-Hollings, only those loan sales that were routine and ongoing in 1986 or enacted into law before September 18, 1987, can be applied against the deficit in order to meet the deficit targets established in Gramm-Rudman.

As such, loan sales conducted by the Department of Veterans Affairs count toward deficit reduction but, to score as deficit reduction, loan sales must be conducted without a Federal guarantee.

This is a very important point. The reason this is true is because loans sold with a Federal guarantee represent a contingent liability to the Federal Government. That is, the Government has an obligation to make good on any losses because of default. Because the Government retains all of the risk, proceeds from loans sold with a guarantee do not reduce outlays or the deficit.

On the other hand, loans sold without a Federal guarantee involve only an exchange of one asset—cash—for another—loans. There is no further claim on the Federal Government. Proceeds from the sale of these loans are scored as an offsetting collection, reducing the deficit.

The veterans' title includes language that changes this scoring, but only for VA loan sales. The proposed language dictates that proceeds from sales with recourse be scored as an offsetting collection, reducing the deficit.

Mr. President, a change in scorekeeping is not a simple issue. It is one that deserves careful consideration. Quite frankly, a change in accounting has potentially far-reaching consequences on the calculation of deficit targets.

The current scoring of loan sales is not an ad-hoc approach adopted by the Senate Budget Committee. This is conventional accounting practice, followed by the Office of Management and Budget and the Congressional Budget Office; it is also consistent with and based on rulings of the Financial Standards Accounting Board and the Federal bank regulators.

Mr. President, in the Senate, changes to scorekeeping are within the jurisdiction of the Committee on the Budget. The Budget Committee takes this responsibility seriously.

Scorekeeping rules serve a very specific purpose. They establish consistency in the review of bills and regulations; they are also used to prepare periodic scorekeeping reports required by the Budget Act. These reports display the current status of the budget and are subsequently used for determining congressional compliance with maximum deficit amounts, as required by Gramm-Rudman.

For these reasons, we cannot afford to allow committees to write their own accounting rules. If we do, these ad-hoc and arbitrary changes would do no more than serve the purposes of one committee at the expense of others.

Mr. President, in the coming year, this body will consider legislation to reform the budget process. Certainly, that would be a more appropriate time to consider the changes recommended by the subconference on veterans' affairs, when all interested parties can be given the chance to fully understand and debate the merits of the proposal.

I regret that my colleagues on this subconference have chosen to use this vehicle to impose a change such as this. Unfortunately, this provision was also included in the conference agreement on H.R. 901, the Veterans' Benefits Amendments of 1989, which passed the Senate yesterday evening.

Even though it now appears inevitable that this accounting change will become law, I am optimistic that we will have time to revisit the issue during the coming year.

On November 2, President Bush issued a statement calling on the Congress to pass a reconciliation bill producing $14 billion in real deficit reduction.

It has not been easy, but I believe that we have finally reached an agreement that meets the deficit reduction goals put forward by the President, goals the American people clearly support.

The conference agreement on reconciliation contains substantive changes in law that will reduce outlays, or increase revenues, by $12.6 billion in fiscal year 1990.

Not all of these savings meet the test of "real deficit reduction." The agreement includes about $3 billion in payment shifts that technically score as deficit reduction, but which will produce no lasting or meaningful budget savings.

We more than make up for these questionable savings, however, by validating a portion of the Gramm-Rudman-Hollings sequester order currently in effect. It would make permanent $4.6 billion of the $16.1 billion in savings required under the order issued by the President on October 16.

Taken together, the legislative savings, plus the sequester and interest savings, are scored by CBO as reducing the deficit by a total of $17.8 billion. Deduct the $3.1 billion in payment shifts and we will send a package to the President's desk that more than meets his $14 billion challenge.

Some will say that this is not enough; that the cuts are not real enough or deep enough; that we ought to do more.

We have heard these arguments before, but this time it's different. Instead of comparing reconciliation with what might have been, we know the alternative: the sequester.

Mr. President, I am not going to defend every component of the package before us. But I surely will defend a legislative package—deliberately drawn, carefully negotiated, and politically realistic—as an alternative to national default called the sequester.

Yes, there are questionable savings in this bill. To make up for them, we have agreed to keep in place the equivalent of 130 days of the sequester. That combination is a victory for responsible budgeting.

Some will dismiss the partial sequester as insufficiently bold. Yet just a few weeks ago, most people were calling the sequester a hollow threat which would be rolled back before we knew it.

I am sure we will hear about other questionable savings, such as taking the Postal Service off budget, for which we have not provided a sequester offset. These savings, however, were openly assumed in the April budget agreement and the congressional budget resolution. We could not change the ground rules at the last minute.

Let me offer an aside on the Postal Service. Before there is too much criticism, let me note that the bill to take the Postal Service out of the budget has 75 cosponsors in the Senate. It was going to happen. It certainly is better to use these so-called savings for deficit reduction than as an offset for new spending.

Do I think this is a good bill? Yes. Do I think that it is good enough to justify rolling back the sequester? Absolutely.

Mr. President, I am astonished that so many of my colleagues seem willing to concede defeat and allow the across-the-board sequester cuts to remain in effect. Maybe this is because we haven't felt its impact yet. If that is the case, just wait.

Maybe it is because some of my colleagues believe that a sequester is more real than the deficit reduction promised by reconciliation. But that depends on our willingness to let the sequester in place. I have my doubts about our resolve come the spring supplemental.

Or maybe it is because they believe that the sequester promises a more substantial impact on the deficit in fiscal year 1991 and beyond. That depends on our willingness to maintain the sequester-lowered base for future discretionary spending decisions. Again, I have my doubts.

This Senator has invested too much in the Federal budget process to concede defeat to formula cuts. I do not believe that 12 months under a sequester is good for the budget process, good for the Congress, or, most importantly, good for the country.

A review of the sequester impact makes clear why we must not leave a full-year sequester in place and, maybe more to the point, why it is not sustainable.

The agreement before us this evening contains legislation from eight Senate committees: Agriculture, Banking, Commerce, Energy, Environment and Public Works, Finance, Labor and Human Resources, and Veterans.

As I noted earlier, CBO estimates these legislative changes, by themselves, will produce about $12.6 billion in savings—roughly half revenues and half spending cuts.

Add to the $12.6 billion from substantive legislation $4.6 billion in sequester savings and $.6 billion in debt service and you come up with $17.8 in scorable savings. Deduct from that total $3.1 billion in payment shifts and you have a $14.7 billion deficit reduction package.

Aside from the sequester savings, some of the more significant reductions in the conference agreement include: $800 million in reductions in Medicare physician payments; $640 million from Medicare hospital payments; $235 million from the reduction in advanced deficiency payments for 1990 crops; $54 million in NRC fees; $76 million by requiring the Postal Service to pay a larger share of the retirement and health costs of its retirees; $1.2 billion in increased revenues from employee benefit modifications; and $1.7 billion in revenues from excise taxes.

Finally, Mr. President, I would like to address the matter of extraneous provisions in the conference agreement.

Just over a month ago, the Senate took an extraordinary action and stripped the reported reconciliation bill clean of extraneous matter. We applied a tough standard, dropping not only provisions which technically violated the Byrd rule but also all those which would increase the deficit.

The House took a look at what we sent them and issued a further challenge: if we would send them a clean debt limit bill, they would agree to a clean reconciliation bill. We met that challenge as well.

I regret that this conference agreement does not meet the same standards set by the Senate bill last October. But I am pleased to that some of the largest issues—child care, catastrophic, and fairness doctrine, to name just a few—will be settled outside of the reconciliation process.

That is not a complete victory, but it is certainly a step in the right direction.

In closing, Mr. President, I urge my colleagues to recognize the successes in this conference report: we have complied with the President's request for $14 billion in real deficit reduction; we have offset some of the more questionable savings with hard sequester savings; we have helped restore some semblance of reason to the legislative process, by keeping the bill relatively clean; and we have done our jobs as legislators by finding a defensible alternative to the sequester.

Mr. DOLE. Mr. President, having completed the long and painful process of negotiating a budget reconciliation package, I am pleased to report that we've worked out what I believe to be a good package.

It took a lot of hard work, a measure of compromise and perhaps a little bit of statesmanship from both parties to reach this point. But what we have is a solid agreement with real deficit savings and I'm proud of it.

THE RECONCILIATION PACKAGE ITSELF

This package will achieve more than $14 billion in real deficit reduction—in line with the President's request of November 2.

It not only achieves Medicare savings in excess of $1.5 billion, but also contains a package of reforms including a landmark restructuring of Medicare payments to physicians and a critical improvement in payments to small rural hospitals.

Other changes, such as cracking down on student loan defaults, produce deficit savings of more than $4.5 billion.

In addition, another $2.9 billion are saved from closing tax loopholes and other revenue measures.

We also have a 130-day sequester that will account for $4.5 billion of the savings.

That partial sequester will ultimately save $14 billion over 3 years—due to lower budget baselines.

Let's not forget to give credit where credit is due. It was Gramm-Rudman-Hollings that kept the pressure on—that forced us to act to avoid the pain of a full sequester.

STEAMLINING

This bill is also a major step foreward in restoring some credibility to the reconciliation process. It is not the massive catch-all bill of years gone by.

We streamlined the bill—removed a lot of the extraneous matter that was best dealt with separately.

Granted, the bill is not as clean or stripped down as was proposed by the Senate, but frankly the House had already acted when we decided to pursue the responsible course of simplifying the bill.

Perhaps, most importantly, this pared down budget bill, produced with the bipartisan cooperation of Congress and the President, sets an important precedent for next year's budget battle.

Maybe it wasn't a pretty sight, but Congress did fulfill its budget responsibilities and—at least for 1990—avoid a full Gramm-Rudman-Hollings sequester.

LET US KEEP TALKING

I have believed from the start that Congress should do what it must to avoid a total sequester. After all the people elected us to do a job. And there's nothing more basic or more central to the task of serving in Congress than making budget decisions.

Back on April 14, when the bipartisan budget accord was reached, I thought we had a good thing going. But for a variety of reasons the agreement was not implemented fully and the 1990 Federal budget process degenerated into a fiscal passion play.

Now some have suggested we abandon the idea of pursuing another budget summit next year—that it is not worth the effort—that it won't go anywhere. I couldn't disagree more.

1991: YEAR OF RECKONING

One thing is certain—next year the Congress and the President will face a Gramm-Rudman-Hollings deficit figure of $64 billion. 1991 will be a year of reckoning.

All the smoke and mirrors in the world won't get us to that figure. We will need real savings that will result only for a real effort on the part of all parties involved in the budget negotiations.

CONCLUSION

So, I would say let us start thinking tonight about next year. Let us renew our dedication to the idea of a budget summit. Let us build on the real deficit savings achieved in this reconciliation bill. Let us preserve the bipartisan spirit that produded this package.

Let us show the American people that we can do our jobs and give them the kind of leadership they are demanding.

Mr. DOMENICI. Mr. President, let me conclude this deficit reduction package is the result of a very difficult year, starting with an economic summit. We did not expect much this year. As the year went on, some very difficult subject matter arose, matters got delayed, and so we were up against some very serious deadlines and we were beginning to suffer a sequester. We had to take part of a sequester to get our numbers and our deficit reduction.

We should all understand sequester are real. We should all understand the effect of them. We have got a part year sequester that is going to be felt across the land, so we will know that if we do not get our work done under Gramm-Rudman-Hollings the penalty is an arbitrary capricious, rather Dra-

conian across-the-board type cut. We have suffered a little bit of that less because we have worked together to put a real package of deficit reduction together.

My closing remarks are without mentioning any committees. I share the concern of my colleague, the chairman. We need some way to ask the Senate to insist that committees follow their reconciliation instruction. Not that we do it, but that somehow we have the authority as an institution to get the job done, if committees that are charged with it will not do it. If we could do that, we would not have to have a sequester added to a reconciliation bill to meet the targets. We ought not be doing that.

My thanks to the administration. OBM Director Darman has been very helpful. I hope the President is as pleased with this bill as we are when he signs it. I hope he tells the American people, as we are tonight, he can do it better, that we have real deficit reduction this year, meaningful, effective, and the kind of thing we ought to all be proud of. I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Tennessee has 3 minutes 15 seconds remaining.

Mr. SASSER. Mr. President, I ask unanimous consent that the text of my full remakrs be included in the RECORD as if read. And I also ask unanimous consent that the document captioned "Bipartisan Leadership Reconciliation Agreement for Fiscal Year 1990" appear in the RECORD.

Mr. BENTSEN. Mr. President, will the chairman of the committee yield?

How much time does he have?

The PRESIDING OFFICER. The Senator has 2 minutes 40 seconds remaining.

Mr. BENTSEN. Mr. President, will be Senator yield?

Mr. SASSER. I am pleased to yield to the distinguished chairman 2 minutes if he wishes.

Mr. BENTSEN. Let us try for a minute.

Mr. SASSER. All right.

Mr. BENTSEN. Mr. President, when I hear some of the objections to raising salaries of Government officials, I cannot help but think of the incredible hours put in by my staff. I have spent a lot of time in the private sector building a business and at 5 o'clock I've watched them break for the door. Important negotiations may be underway and they would say, "Just a minute, I have to go," and they would head out. But not here. I saw members of the Finance Committee staff and I know the Budget Committee staff, the Appropriations Committee staff, working until 4, 5, 6 o'clock in the morning. In these jobs, one has to learn to sleep fast. The amount of effort they put in is incredible, and so is the quality of their work. I see the kind of offers that some of them get when they go back out in the private sector, their salaries often doubled or tripled.

The limitations on my time here are such that I cannot get into this in the detail I want to, to talk about the Van McMurtry's, the Pat Oglesby's, the Dr. Marina Weiss', what they did trying to put together budget and health legislation for this country at all hours of the day or night.

I look at the minority with Ed Mihalski and Jim Ricciuti and Shannon Salmon and Lindy Paull, and on my side, I look at Richard Lauderbaugh, Lisa Potetz, Joe Humphreys, Margaret Malone, Randy Hardock, Norm Richter, Maurice Foley, Sam Sessions, Denise Roy, Kipperly Tidball, and the trade staff—Jeff Lang, Marcia Miller, and Mike Mabile. And the list goes on and on.

The Finance Committee had approximately 70 percent of the responsibility for the revenue raised and the spending cuts made by the bill. At the request of the Budget Committee and the leadership, we took the bill reported out of the committee and stripped it down to exclude all revenue-losing or extraneous items.

We went into negotiations with the House with no chips on our side. The House did not believe we were truly going to be able to strip our bill down to this size. We did it, and we asked the House to go down that path, too. In turn, they went a long way toward meeting us.

There is nothing more important to the health of our economy than reducing the deficit. That is why we embarked on a plan of steady deficit reduction, and that is why we must continue to take our deficit reduction responsibility seriously. From the day I declined to participate in the Rose Garden ceremony celebrating a budget agreement that called for a 1-day shift in the Defense Department payroll, I have fought to make our deficit reduction effort a serious and meaningful one.

The other Finance Committee conferees and I worked hard to bring our titles of the reconciliation bill within the deficit targets we were instructed to meet without raising taxes and without using gimmicks. At the same time, and this part was at least as difficult, we fought to represent the concerns of our colleagues in the Senate and their constituents in tough negotiations with House Members who have their own concerns and their own procedural rules.

I am proud of what we have been able to accomplish with this bill. The Finance Committee titles raise over $5.3 billion in additional revenue and cut spending in health programs by over $2.7 billion. That adds up to $8 billion of real deficit reduction, not smoke and mirrors, and that's on top of $4 billion in spending cuts from partial sequestration.

We do it on the revenue side by closing loopholes for companies issuing junk bonds and banks making loans for esops that do not give employees a meaningful ownership interest, by adopting a modified administration proposal to charge producers of chemicals that deplete the ozone in our atmosphere, and by recapturing the float on taxes collected from employees that is currently earned by the employers.

We do it on the health side by spreading the burdern of cuts among hospitals, doctors, and beneficiaries as fairly as possible. We rely to a limited extent of sequester cuts for hospitals and doctors. After that, we reduce Medicare reimbursement for hospital capital payments by 15 percent an limit reimbursement on overvalued physician procedures. We institute long-term savings with a compromise physician payment reform package and an information matching program that will help ensure that employer-provided insurance pays the bills before the Federal Government does.

Speaker Foley warned us that we would not be able to force the House conferees to sign off on a clean bill, and he was right. This bill is not squeaky clean. It is the product of negotiation between a body that chose to strip down its reconciliation bill to bare essentials and a body that came to the table with a heaping plate.

But don't anybody think the Senate stripped down its reconciliation bill for nothing. In starting with a clean bill and fighting to keep a clean bill, we ended up with a responsible bill. We were able to persuade the House to strip off a staggering number of provisions. We took off all the trade provisions and scores of small revenue losers, spending increases, and extraneous provisions. Of course, we stripped off the capital gains tax cut.

But the fact remains, we couldn't get an agreement with a completely stripped down bill. So we fought to hold the line on revenue losers and spending initiatives to items that are time-sensitive and have broad support.

In the revenue title. we agreed to extend important expiring tax provisions such as the R&D credit and the low-income housing credit, to reform our civil tax penalty system and to make technical corrections to maintain the budget baseline.

On the health side, we agreed to provisions that will help support our rural hospitals and will extend Medicaid health insurance to pregnant women infants and children in families of modest means. We require doctors serving Medicaid patients to provide early periodic screening, diagnosis, and treatment.

In the income security area, this bill ensures that Social Security recipients will not lose their benefits while they appeal adverse rulings and provides that adopted children will be treated the same as natural children for Social Security purposes.

Despite the need to reduce the deficit, we felt we had to persuade the House conferees to take some objectionable deficit reducing measures out of the bill. As we have been reminded so often this year, not all revenue raisers are created equal. Even with the pressing need to reduce the deficit, we cannot fail to draw lines based on policy and fairness considerations. So we found a way to reach our deficit targets without killing nonabusive like-kind exchanges or esops, without violating international treaties by imposing a tax on foreign investors who sell stock and without taking extra cuts—beyond the sequester cuts—in indirect medical education payments to teaching hospitals.

In the end, although we ended up with more baggage on the bill than I might have preferred, the result is a highly responsible deficit reduction effort. Anybody who thinks we weren't serious about deficit reduction should just ask me. I have the scars to prove it.

We did it all without gimmicks. As I mentioned previously, the gimmick that OMB has been talking about is actually a sound money management policy that the administration first suggested as a revenue raiser. We now give employers as long as 7 days to hold—and collect interest on—the Government's FICA and income taxes collected from employers' paychecks, whether they add up to $100,000, $1 million or even tens of millions of dollars. The float recapture provision would make sure the Government gets the float on its own money by requiring next-day deposit once the employer accumulates $100,000. And, it increases the asset side of the Government's balance sheet on a permanent basis; there's no corresponding deficit increase in other years as there is when you shift a pay date from 1 year to another.

In any case, we made sure the bill meets its deficit reduction target even if you do not count the revenue from the float recapture provisions. We did it by extending sequestration cuts in Medicare to a limited extent and limiting extension of expiring provisions to 9 months of tax benefit. And still we left the float reduction provisions in place for total deficit reduction from the Finance Committee of roughly $8 billion. Although the Budget Committee will not give the Finance Committee credit for the revenue from float recapture, it will discover next year, and in each year thereafter, when baseline calculations are made and deficit reduction instructions are developed, that the reduction attributable to this revenue is real and permanent.

This bill should lay to rest the suggestion that permanent sequestration would be preferable to reconciliation. According to CBO, this package reduce the deficit by more than sequestration would; $17.4 billion versus $16.1 billion. And if we went with permanent sequestration, we would not be able to reflect changing needs and priorities by reallocating our spending dollars among programs. We would not be able to help rural and inner-city hospitals by using a lighter touch in cutting their reimbursement rates. We would not be able to extend expiring tax provisions. We do not serve the interests of the American people by abdicating our responsibility to reduce the deficit in a way that makes sense.

This has been a difficult process for all of us. There has been bitter partisan division. We have all had to give up some things that we believed were important. We have struggled to balance our responsibility to cut the deficit with the real and pressing need to spend more revenue in some areas. In the face of all that, we have done a good job. I commend this conference report to you and urge your support for it.

Once again, I commend the distinguished chairman of the Budget Committee and the ranking minority member. I also commend the majority leader, for the incredible job he did and the involvement that he had in the whole process to make it possible. I also should mention the minority leader, and the chairman of the Appropriations Committee, with his great wealth of knowledge and experience—he is I think one of the finest examples of public servants I know. Thank you very much.

Mr. BYRD. I thank the Senator.

The PRESIDING OFFICER. The Senator from Tennessee has 15 seconds.

Mr. SASSER. Mr. President, I thank the distinguished chairman of the Finance Committee for his statement and, Mr. President, I express my appreciation this evening to Dr. John Hilley, the staff director of the Senate Budget Committee for the majority staff, for the splendid work that he has done over the whole year and through Dr. Hilley express my appreciation to all those on the majority side of the Budget Committee staff who have worked such long hours and I think produced such a remarkably good work product, including Bill Dauster, chief counsel, Dr. John Callahan, and many, many others.

I wish to express my appreciation also to Bill Hoagland, the minority staff director, for his efforts on behalf of the common good. And I want to express my appreciation also to the chairman of the Senate Finance Committee for the long hours that he put in with us on these budget negotiations.

Finally, Mr. President, I seriously doubt that this conference reconciliation report would be before us this evening had it not been for the efforts of the majority leader, Senator MITCHELL, who time after time was on hand to break logjams as they occurred and, working in concert with the minority leader, Senator DOLE, finally broke the final logjam last evening. I express my profound appreciation to the majority leader and to the minority leader, Senator DOLE, for their help and support.

Mr. President, I am prepared to yield back all of my time if I have any remaining.

The PRESIDING OFFICER. All time has expired.

Mr. DOMENICI. Mr. President, I understand we are going to have a voice vote. Senator HELMS has requested that I state for the record, had we a rollcall vote, that he would have voted in opposition to the conference report; he would have voted no.

Mr. HEINZ. Did the Senator's time expire?

The PRESIDING OFFICER. All time has expired.

Mr. HEINZ. Mr. President, I ask unanimous consent to proceed for not more than 2 minutes on this.

The PRESIDING OFFICER. Is there objection?

Hearing none, it is so ordered.

Mr. HEINZ. Mr. President, I thank all Senators. I will be brief.

Mr. President. I rise to express my deep concern regarding one specific provision contained in the conference report on the reconciliation bill. While I have signed the conference agreement, and will support its passage, I do not support all of the provisions. In fact, I would like to bring to the attention of my colleagues one provision, a hidden provision, that is included in the reconciliation bill.

To be specific, included in the conference agreement is a provision that takes money from the Social Security trust funds and uses this money to help reduce the Federal deficit. This is done by raising the amount of the Social Security wage base to account for the failure to include various forms of deferred compensation such as 401 kilometer contributions in the calculation of average wages. In fiscal year 1990 the wage base would be raised by an additional $900, from $50,400 to $51,300 in fiscal year 1990, and would be indexed yearly thereafter.

Mr. President, not too long ago, this Senator stood before the Senate to urge that the Social Security Trust Fund, the Old Age Survivors and Disability Insurance Program [OASDI] be removed from the deficit reduction calculations. I urged my colleagues to

begin the practice of real fiscal discipline—and to stop deficit deception.

Now, some 2 weeks later, we have before us another classic example of deficit deception. Once again, we must decide whether we want to use Social Security funds for non-Social Security purposes. Let me explain to my colleagues how this latest form of fiscal fakery will work.

The deferred compensation provision that I spoke about earlier will raise $400 million in fiscal year 1990, and $4.8 billion over 5 years. However, only $13 million in fiscal year 1990, and a total of $157 million over 5 years will be spent on Social Security programs.

As many of my colleagues will recall, these funds were going to be used to offset the Social Security retirement test increase. This provision was included in the Senate Finance Committee reconciliation bill. However, Mr. President, the earnings test in not included in the reconciliation bill we have before us. But, the financing mechanism remains intact, and is used to cover up and obscure to the true size of this years deficit.

Let there be no mistake—it would appear very unlikely that we will ever be able to find this amount of money again to liberalize Social Security benefits. The point here is that we were going to use Social Security revenues to fund a Social Security Program—not to reduce the deficit. I ask my colleagues whether they want to intentionally withhold funds from the Social Security trust fund in order to reduce the deficit?

The change in the earnings test would have increased the amount of earnings totally exempt from reduction under the retirement test for individuals age 65 to 69 to $11,700 in 1990 and to $14,520 in 1991. The would result in an increase of about $5,000 over current law.

By increasing the amount of earnings that older Americans could earn before being penalized, tens of thousands of retirees would have an incentive to continue to work. Under this change, retirees would be be able to make the determination themselves—whether they do or do not want to continue working.

Mr. President, the provision I have just described is the best reason, I know, why we should remove the Social Security trust fund off-budget and out of the deficit reduction calculation. How many more examples do my colleagues need to see that underscore that actions like the one we are taking tonight, continue to erode the surplus of the OASDI Program—and further erode public confidence.

Mr. President, I just want to raise the issue concerning the fact that in this agreement there is—which I think is a commendable piece of work and I salute the Senator from Tennessee and the Senator from New Mexico for it—an element that troubles me and that is the use of additional revenues that have been raised from Social Security by raising the ceiling on which Social Security taxes are levied and calling that deficit reduction.

I will not give my continued speech on this subject. I think everyone has heard it. But what we have is roughly $400 million in this fiscal year, $4½ billion over 5 years, of money that is going to go in, additional money that is going to go into the Social Security trust fund. It is not going to be used for other purposes, but we are saying once again that it is used for deficit reduction purposes.

Maybe that would be all right if we did not have anything else to use the money for. And it could be argued that this money is over and above what we decided in 1983 was needed to fund the program. That would be a fair comment, except for this: Many of us have been engaged in trying to work out a liberalization of the Social Security earnings test.

The fact is that by taking this money and using it for deficit reduction, there is a very real penalty, namely, we have had to sacrifice and I think we will sacrifice the earnings test which would have in this particular instance increased the amount of earnings totally exempt from reduction under the retirement test to $11,700 in 1990 and $14,520 in 1991. That is about an increase of $5,000 over current law.

What it means is that there is going to be millions of seniors who are going to be penalized from working. I think that that is a bad policy. I think it emphasizes once again why the practice of treating Social Security revenues for other than Social Security purposes should come to a stop.

AGRICULTURAL RECONCILIATION

Mr. LEAHY. Mr. President, this omnibus budget reconciliation bill includes significant savings generated by the Agriculture Committee. In all, the committee's action alone will reduce the deficit by more than $1 billion in fiscal year 1990.

Mr. President, agriculture is doing its share in deficit reduction. No other part of the Federal budget has achieved the savings generated by farm programs since 1986. In fact, if spending on defense had fallen at the same rate as agriculture, the budget would be balanced today.

I thank members of the Agriculture Committee for working with me on this package. We tried to be fair in this bill. Those commodities that have the highest level of spending have taken the largest hit. Those that do not add to the deficit are not cut.

There is one provision in the title that I must comment on—dairy.

For the first time since 1985, the Secretary of Agriculture has the discretion not to cut the price support level for milk. And I urge him not to do so.

There have been several reports in recent weeks of shortages of milk supplies. We do not have enough cheese or milk powder to supply the school lunch and emergency feeding programs. The price of milk powder is at an all time high. Some have even called for an increase in import quotas on milk products. All of these factors point to a national concern.

Mr. President, in the Northeast, we have a shortage of milk, not a surplus. Our ice cream and cheese plants can not get enough milk from Vermont to meet demand. We have no oversupply of cheese or nonfat milk.

What we do have a surplus of in this country is butter. And this bill encourages the Department of Agriculture to set a new course in meeting this problem.

This bill calls for the Secretary to make two calculations when he determines if we have too much milk product or not. For the first time, we require the Secretary to expand his measurement of what the Government is buying, so that we have a more realistic way to determine if we have a surplus or not.

In technical terms, the package directs the Secretary of Agriculture to look at milk purchases on a total solids basis when determining the need to reduce the milk support price on the first of January. Under current practice law the Secretary considers purchases on a milkfat basis only.

Thus, to the Department of Agriculture, we have a massive surplus, but according to most press accounts, we have a shortage. Mr. President, in this environment, the last signal we need to send the Nation's dairy producers is to make less milk.

As I mentioned before, the problem is that we have a surplus of butter. The market is telling us something. Consumer tastes are changing. I have taken action to focus the dairy industry on this change and to reduce the cost of the dairy program at the same time.

Earlier this year I introduced and passed S. 553. That bill sent a strong signal to our dairy farmers. It underscored the market changes in butterfat and reduced the price the Government will pay for butter. This action also worked to the advantage of consumers by bringing down the retail cost of butter.

The bill before us now, takes this process one more step. It sets the purchase price of butter at no more than $1.10 per pound effective January 1. That act alone will save the Government more that $27 million in fiscal year 1990.

The Secretary should take one of two actions in making his support price decision.

First, as the package directs, he should look carefully at projected milk product purchases on a total solids basis. If projected total solid purchases are below the 5 billion pounds trigger established in the 1985 farm bill, he should not cut the price of milk.

Second, if he projects that the Government will buy more than 5 billion pounds due primarily to butter purchases, he should make further cuts in butter prices.

But in no case should the Secretary cut the overall price of milk.

Mr. President, we will look very closely at this issue as we develop the next farm bill. I feel very strongly that government support prices alone should not be the only tool to limit production.

Although dairy farmers are currently seeing market prices well above support levels, this situation could change next year. In the spring, milk production will rise, as it traditionally does with the change of season. Prices will fall. The question becomes, should the Federal Government work to stabilize prices or allow some of the wildest milk price gyrations since the thirties? I feel Government can and should play a role.

CHILD CARE

Mr. DODD. I would like to clarify with the distinguished majority leader, Senator MITCHELL, and the distinguished chairman of the Finance Committee, Senator BENTSEN, the meaning of certain language contained in the statement of managers to accompany H.R. 3292, the Budget Reconciliation Act of 1989.

The language in question related to the child care provisions included in title XI of the House-passed reconciliation bill. As part of the conference agreement on the bill, the House has agreed to recede to the Senate on these provisions.

In part, the statement reads as follows:

[T]he conferees intend that an extension of the telephone excise tax shall be the exclusive and only required source of funding of child care legislation that may be enacted in the second session of the 101st Congress, except to the extent that the costs of such legislation exceed the costs of the child care provisions contained in Title IX of the House-passed reconciliation bill.

Would my two distinguished colleagues clarify the purpose and intent of this language?

Mr. BENTSEN. The purpose of this language is to express an intention to hold in reserve sufficient revenue to offset the cost of child care provisions within the jurisdiction of the House Ways and Means Committee and the Senate Finance Committee which may be enacted in the second session of the 101st Congress. This language in no way prohibits or discourages congressional enactment of other child care legislation within the jurisdiction of other House and Senate committees.

Mr. MITCHELL. I concur with the comments of the distinguished chairman of the Finance Committee. The managers intend for this language to apply only to future legislation within the jurisdiction of the House Ways and Means Committee and the Senate Finance Committee. It should not be construed in any way to prejudge child care provisions under the jurisdiction of other committees which may be enacted next year.

Mr. DODD. I thank my good friends for clarifying the intent of this language. With this clarification, I believe this statement of managers is completely consistent with the formal position of the Senate on child care as embodied in S. 5, which passed the Senate on June 23, 1989. Senators MITCHELL and BENTSEN were responsible in large part for Senate passage of this legislation and I hope to have their continued support for the provisions of S. 5 as we move to enact a final child care package during the second session of the 101st Congress.

Mr. BENTSEN. I believe that this statement of managers is consistent with the Senate's formal position on child care as embodied in S. 5. It is my view that S. 5 as passed by the Senate should be the Senate's formal position in any subsequent negotiations with the House of Representatives on a final child care package during the 101st Congress.

Mr. MITCHELL. I share the views of my distinguished colleagues. As a key sponor of S. 5, I agreed to support this statement of managers language because I believe it is fully consistent with the Senate's position as embodied in S. 5. The text of S. 5 is the Senate's formal position on child care. I would not support any language which would jeopardize the viability of the ABC grant provisions of this legislation during the second session of the 101st Congress.

Mr. DODD. I thank my two colleagues for their continued support for S. 5 and for their willingness to protect the Senate's position in any subsequent child care negotiations with the House of Representatives.

I would like to address one last question to the distinguished majority leader, Senator MITCHELL. As passed by the Senate earlier this year, the fiscal year 1990 appropriations legislation for the Departments of Labor, Education, and Health and Human Services included $1.2 billion in budget authority to fund the provisions of S. 5 as passed by the Senate. During floor consideration of this measure, the Senate rejected an amendment to delete these funds by a vote of 66 to 33. Unfortunately, these funds were deleted in the final conference agreement because no child care legislation had yet been enacted into law.

I will work during the second session of the 101st Congress to ensure that the budget resolution for fiscal year 1991 includes budget authority for the child care grant provisions of S. 5. Does the majority leader share my view that next year's budget resolution should include funds for a discretionary child care grant program like that included in S. 5?

Mr. MITCHELL. As the Senator knows, I supported the inclusion of funds in the budget resolution and appropriations legislation for fiscal year 1990 to implement the grant portion of S. 5. Consistent with our deficit reduction responsibilities, I will do everything I can to ensure that fiscal year 1991 funds are reserved for this purpose. A specific source of revenue may now be available to offset the cost of future tax-related child care provisions. However, this does not obviate the need for appropriated funds for a discretionary child care grant program.

Mr. DODD. Once again, I thank Senators MITCHELL and BENTSEN for their strong support. I yield the floor.

SLOT FEES—A TAX THAT FLEECES AIR PASSENGERS

Mr. SIMON. Mr. President, I rise to thank Senator MITCHELL and Senator SASSER. Without their able leadership; airlines operating at O'Hare Airport in Chicago, LaGuardia and Kennedy International Airports in New York, and Washington's National Airport in Virginia would have borne a grossly unfair tax our of all proportion to their receipt of Federal funding; and the impacts would have been felt not only in those cities, but in others with direct access to these high density airports.

I would pay particular attention to the role of Chairman ROSTENKOWSKI, who deserves the major share of credit for his leadership in the House of Representatives in remedying this injustice. His finding that the slot fee is actually a tax without benefit of hearings before the appropriate tax committee was crucial to rejection of the proposal, as were his efforts to convince his colleagues in the other body on this issue.

While I cannot claim to speak for all of my colleagues who have opposed charging slot fees at the four U.S. airports, I would like to extend my appreciation for their opposition. On October 10, my friend and colleague, Senator LAUTENBERG of New Jersey was joined by myself and Senator DIXON of Illinois, Senators MOYNIHAN and D'AMATO of New York, Senator KOHL of Wisconsin, Senator BRADLEY of New Jersey, Senators MIKULSKI and SARBANES of Maryland. Senators DODD and SPECTER of Pennsylvania, Senator

HARKIN of Iowa, and Senator WARNER of Virginia in opposing this proposal. I know I speak for others when I say that the Senate Commerce Committee under the able leadership of Senator HOLLINGS, had one of the most difficult tasks in meeting their instructions on deficit reduction, and I am particularly grateful for Senator HOLLINGS' opposition to the slot fees as well.

On July 27 the Senate Commerce Committee approved $239 million in slot fees (averaging $72,000/per slot for fiscal year 1990) at the four designated high density airports: O'Hare, LaGuardia, Kennedy, and Washington National. This proposal is part of the $450 million budget reduction goal allotted to the Commerce Committee as its part of the budget reconciliation instructions. The slot fees would be paid by the carriers and deposited in the general fund.

The number of slots available has remained the same at these four airports since 1969 because of capacity constraints.

In 1985 the FAA, during the Reagan administration, conveyed the rights to buy or sell slots to the carriers using them, a market approach to allocating this limited public resource. This action was not sought by the airlines using these airports and, in fact, was opposed by most of them.

Limits on airport capacity under the buy-sell rule remain. But they exist at other airports as well, and will not be solved by the slot fee which is actually a tax. It walks and talks like a tax. My friends, it, indeed, is a tax, an unfair tax at that and frankly, it should be rejected. Capacity problems at O'Hare hinge in large part on the failure of FAA in past years to rebuild and modernize the air control system there.

The bill reads, the "fees shall reasonably reflect the value of each such slot to its holder." That value is a function of the revenues and profits derived from each slot.

In 1976, the U.S. Circuit Court of Appeals for the District of Columbia in its decision in a case pitting the National Cable Television Association against the Federal Communications Commission and Electronic Industries, ruled that an agency cannot calculate its fees on the basis of return on investment or profit to be derived by the recipient as a result of the benefit. Otherwise the agency is unlawfully attempting to levy a tax rather than charging a fee. This principle applies directly to the issue of slot fees. Therefore, it is clear the so-called slot fee would be imposed without public notice or a formal hearing by the committee with jurisdiction over taxes.

This proposal also assumes that both the airlines and the cities they serve have deep pockets. Levied at approximately $72,000 per slot, with 1,668 slots at Chicago's O'Hare, a grand total of $120,096,000 is targeted for the airlines and airline passengers now using O'Hare Airport to pay. This can only cause extensive harm to the economy of the city of Chicago as well as that of New York and the other cities hosting connecting carriers.

United Airlines would be assessed approximately $58,000,000. American Airlines' portion would be approximately $47,000,000. Air Wisconsin would be assessed $3,500,000, a large slice of this carrier's smaller share of revenues. Midway, like Air Wisconsin, would be paying approximately $2,500,000 that it cannot afford, given the size of its operations, for the privilege of landing at La Gaurdia in New York and at Washington National.

This tax would only worsen the problem of equity in the allocation of Federal airport revenues. Chicago's O'Hare Airport ranks 21st out of 24 of the Nation's top airports in receipt of airport improvement discretionary funding assistance between 1982 and 1987. O'Hare Airport had to increase its debt burden by over 4,000 percent over the past 6 years. The airlines there are contributing a 433-percent increase in terminal rates and a 14.5-percent increase in landing fees.

Chicago is a city of 3 million people. Like the other cities targeted to pay these slot fees, Chicago needs a large enough airport to remain in the mainstream of the national and global economy. The city of Chicago estimates that $20.2 billion, 349,000 jobs, and $6 billion in wages and salaries are directly related to O'Hare Airport.

How would this new tax affect competition? The slot fees at these few high density airports place them at a severe disadvantage compared to other airports where passengers do not have to pay this tax. This is true of connecting passengers as well as those originating in and destined for Chicago. Even higher fares would be paid by travelers between the high traffic city-pairs such as Washington-Chicago.

How would the tax affect U.S. carriers operating overseas? Retaliation against U.S. carriers by foreign governments whose carriers land at the four airports was not fully considered. Our Government has historically supported fees on U.S. carriers landing abroad based on the actual costs incurred by the foreign airports to accommodate them.

This proposal bears no relationship to the competitive issues associated with airline deregulation. It does not provide a solution to the current time lag in modernizing the airline control system to increase the margin of safety. Actually, it makes the situation worse. Traffic growth and weather delays are also experienced at other large and medium-sized commercial airports that are not subject to the high density rule or a slot fee.

## VETERANS' PROGRAMS

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs and chairman of the Senate conferees in the reconciliation subconference on veterans' programs, I rise in support of the provisions in title IX of the conference report on H.R. 3299, the 1989 budget reconciliation measure, which the subconference has agreed upon to comply with the reconciliation instructions for savings in veterans' programs. These provisions were unanimously agreed to by the Senate conferees on title IX—Senator MATSUNAGA, Senator MURKOWSKI, and myself—and satisfy the instructions in the fiscal year 1990 budget resolution—H. Con. Res. 160—directing our committee to achieve fiscal year 1990 savings of $666 million in outlays and $496 million in budget authority. I am very pleased that this legislation achieves that result without requiring any direct reductions in VA programs or benefits. However, section 9002, which postpones for a year a provision in current law that prohibits VA from conducting vendee-loan sales without recourse that fail to produce at least par value, could hurt the VA loan program by reducing revenues to the program by $37 million a year, according to the Congressional Budget Office.

### SUMMARY OF PROVISIONS OF TITLE IX

Mr. President, title IX of the conference report contains provisions that would:

First, in section 9001, extend through September 30, 1990, the 1-percent fee on VA-guaranteed home loans and vendee loans—made by the Department of Veterans Affairs to purchasers of properties acquired by VA upon foreclosure of VA-guaranteed loans—and the 0.5 percent fee on assumptions of guaranteed loans.

Second, in section 9002, postpone until October 1, 1990, the requirement, which took effect on October 1, 1989, in current law that VA sell vendee loans without recourse only if VA receives at least the unpaid balance—par value—of the loan; and reinstate until that date the requirement, which expired on September 30, 1989, that the Secretary: First, decide whether to sell vendee loans with or without resource based on which type of sale is in the best interest of the loan guaranty program; and record, report to the Senate and House Committees on Veterans' Affairs with respect to each sale.

Third, in section 9003, provide that, notwithstanding any other provision of law, such as the Congressional Budget and Impoundment Control Act of 1974—Public Law 93-344—and the Balanced Budget and Emergency Deficit Control Act of 1985—Public Law 99-177—the proceeds of with-resource vendee loan sales be credited as offsetting collections of the LGRF or any

revolving fund established in the future that received the fee for the original guaranteed loan; that the crediting be made without reduction and for the fiscal year in which the proceeds are received; and that all amounts so credited for a fiscal year offset during that fiscal year outlays of the revolving fund involved.

SUMMARY OF HOUSE AND SENATE PROVISIONS

Mr. President, title IX of the pending measure represents a compromise between the House and Senate versions of reconciliation provisions affecting veterans' programs. The far more extensive House provisions would have established a new program for VA-guaranteed home loans substantively identical to that proposed in section 2 of H.R. 1415 as passed by the House on June 6, 1989, and very similar to that proposed in sections 401 through 403 of S. 13, our committee's omnibus veterans' legislation, as reported on September 13 and passed by the Senate on October 3 in H.R. 901. The House provisions would have created a new revolving fund for loans guaranteed after September 30, 1989; would have generally increased the basic loan fee to 1.25 percent of the loan amount and made it and other loan fees permanent, rather than extending the loan fees for one year as proposed in the Senate reconciliation bill; generally would have indemnified veterans against liability to VA for guaranty payments to the holders of defaulted loans; and would have required Federal contributions of 0.25 percent of the loan for the fiscal year in which the loan was made and for each of the following two fiscal years.

The House bill also included provisions, similar to those in the Senate bill, to suspend restrictions in current law on the methods by which VA may sell vendee loans. Prior to October 1, 1989, VA could sell vendee loans to investors either with or without recourse against VA in the event that the borrower later defaults. In practical terms, loans sold with recourse are backed by the Government and produce far greater proceeds at the time of sale. Beginning October 1, 1989, current law effectively prevented VA from selling a loan without recourse by requiring that the proceeds of any such sale at least equal to the full, unpaid balance (par value) of the loan at the time of sale—a virtually impossible standard to meet. The House provision would have suspended the without-recourse prohibition until October 1, 1991; the Senate provision, until October 1, 1990.

Finally, the House provisions would have required that the proceeds of any sale of vendee loans be credited as offsetting collections of the respective revolving fund that received the fee for the original guaranteed loan secured by the same property securing the vendee loan sold. Our committee approved a similar provision in section 404(a) of S. 13 as reported on September 13 and discussed on pages 267-71 of our committee report on that bill, S. Rept. No. 101-126. A committee floor amendment dropped the provision during Senate consideration in order to avoid possible procedural delays in considering that omnibus bill, which was passed by the Senate on October 3.

CORNERSTONE OF COMPROMISE AGREEMENT

Mr. President, the compromise agreement essentially adopts the Senate provisions in their entirety, together with only the House provision that I just described, dealing with scorekeeping for certain vendee-loan sales. The House was willing to recede across the board on its loan-guaranty-program restructuring and indemnification provisions and agree to the Senate's provisions extending the loan fee and reinstating for fiscal year 1990 the opportunity for VA to sell vendee loans without recourse only—I repeat only—if the Senate accepted the House provision for the scorekeeping of proceeds of certain vendee loan sales. This provision was an integral part of our committee's deficit-reduction package.

Mr. President, let me provide some background on this rather complicated—but vitally important—issue.

BACKGROUND ON VENDEE LOAN SALES

When VA sells homes it has acquired as a result of foreclosures on VA-guaranteed loans, VA itself often finances the sale by extending credit, referred to as a vendee loan, to the purchaser. VA has sold these vendee loans to investors either with recourse, meaning that VA promises to make good on any loans that default, or without recourse, meaning that—theoretically—the investor bears the risk of defaulted loans. However, these without-recourse sales are structured by VA to divide the loan assets into two or more classes of securities, with VA retaining enough of the subordinate securities to bear all the risk of default. VA's Deputy Secretary testified before our committee on June 22, 1989, that there is little difference between VA's financial risk in a with-recourse sale and its risk in a structured, without-recourse sale—even though the latter produces far less upfront cash and incurs far greater administrative expenses than a with-recourse sale.

BUDGET GIMMICKRY

Despite the lack of any significant difference in VA's financial risks in the two types of sales, in 1987 the Office of Management and Budget [OMB], and later that year the Congressional Budget Office [CBO], adopted policies to score with-recourse sales and without-recourse sales differently for budget purposes. OMB and CBO now score the proceeds from a loan sold with recourse as though it were a loan to VA from the buyer, but score the proceeds of a without-recourse sale as deficit-reducing receipts. This policy creates an artificial bias in favor of selling loans without recourse that in turn is used to produce "gimmicked" budget reductions.

In contrast, Mr. President, the General Accounting Office, in a February 1988 report (GAO/AFMD-88-240), stated that loan asset sales generally "should not be promoted as deficit reduction tools because such sales simply shift future cash receipts to the budget year in which sales are completed." Even more to the point, the CBO analyst responsible for the VA program, in a January 11, 1989, memorandum, estimated that selling loans without recourse—rather than with recourse—actually costs taxpayers $37 million a year.

Moreover, the same CBO budget analyst testified before our Committee on June 22, 1989, that the major difference between with-recourse sales and structured, without-recourse sales is that the latter involve many more consultants, advisers, and other intermediaries—all of whom make a profit from the structured sale. With-recourse sales, by contrast, involve little guesswork in determining the value of the loans because the loans effectively are guaranteed by the full faith and credit of the U.S. Government; the selling price is directly related to the face value and interest rates of the loans.

PRIOR CONGRESSIONAL RESPONSE

In 1987, Congress enacted a provision in Public Law 100-136 effectively precluding without-recourse VA loan sales. Six weeks later, though, Congress, as part of the Economic Summit Agreement, enacted in Public Law 100-203, suspended that preclusion until October 1989, and OMB and Congress credited that action with reducing the deficit by $800 million in FY 1988 and $1 billion in fiscal year 1989—even though it achieved no real savings. As contemplated by our Committee's current reconciliation instructions, a provision in the pending conference report would postpone the preclusion of without-recourse sales for 1 more year, thus technically—though not in any real sense—achieving savings of $496 million in fiscal year 1990.

Mr. President, these kinds of phony reconciliation savings can keep being made year after year, as long as the current contrived scoring policy remains in place.

We need to prevent future use of this gimmickry—which, counting the pending reconciliation measure, has been used to achieve claimed savings of $2.3 billion over 3 fiscal years. We must permit the policy on selling vendee loans to be determined based on the best fiscal and financial inter-

ests of VA's home-loan guaranty program.

Mr. President, I urge all of my colleagues to join in support of the scorekeeping provision because it removes artificial and inequitable pressures that force VA to sell its loan assets without recourse, a method of sale which almost invariably is less profitable to VA than a with-recourse sale of the same loans. The more objective approach in the conference report would remove the artificial bias in current scorekeeping rules and restore the pre-1987 scorekeeping method of treating the proceeds of both with-recourse and without-recourse sales in the same manner. The salutory result of doing so would be to prevent an OMB/CBO scorekeeping convention from dictating public policy based on skewed technical rules rather than the best interests of veterans and the solvency of the VA home-loan guaranty program.

Mr. President, Senators also should be aware that by dictating this unwise public policy, the current scorekeeping convention hurts veterans by diminishing the viability of VA's home-loan guaranty program, which must absorb the added costs of selling loans without recourse.

CONCLUSION

Mr. President, the provisions of title IX fully vindicate the Senate position in conference. They provide for an approach to counting the proceeds of VA vendee-loan sales that is both sensible and conducive to the solvency and stability of VA's loan guaranty program. And they take a major step forward toward truth in scorekeeping under the Congressional Budget Act.

RECONCILIATION

Mr. HOLLINGS. Mr. President, I would like to take a moment to discuss the section of this reconciliation bill concerning the increased fees, fines, and penalties to be collected by the Federal Communications Commission [FCC]. These measures will bring in an estimated additional $15 million in revenues in fiscal year 1990 and even more in years to come. These increases will be in addition to the approximately $23 million in revenues that the FCC will collect under the existing fee schedule.

Congress enacted the existing fee schedule as part of the Omnibus Reconciliation Act of 1986. The bill we are considering today increases the fees contained in that act and adds several additional fees.

As a result of these changes, the FCC will collect a charge from almost every member of the public who requests authority to operate a broadcast, common carrier and private radio permit or license or requires an FCC action to allow him or her to continue to operate that permit or license. In addition, applicants for radio operator examinations and ship owners receiving inspections are also assessed charges.

Current law directs the FCC to prescribe rules and regulations to implement the fee schedule. It has done so through part 1, subpart G of its rules. 47 CFR 1.1101 et seq.; see also Report and Order on the Establishment of a Fee Collection Program, 2 FCC Rcd. 947 (1987); reconsideration granted in part, 3 FCC Rcd. 5987 (1988). It is important that the FCC implement these new fees, fines, and penalties as quickly as possible. To assist the FCC in this effort, I am submitting in the RECORD, at the request of the FCC, a section-by-section explanation, proposed by the FCC, on the new fees. This proposed explanation should answer many of the questions that will be asked by those who may have to pay these fees. Having these questions answered in advance will allow the FCC to implement the new fee schedules quickly. I expect that the FCC will be able to implement the new schedule much more quickly than the 5 months allowed under the statute.

I ask unanimous consent that this material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PRIVATE RADIO SERVICES

1. Marine Coast Stations.

d. Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license or rules. Charge applies to each initial request as well as to a modification or extension of a previously granted request.

e. Assignments (per station)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

f. Transfers of Control (per station)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

g. Request For Waiver—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (ii) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required will be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

2. Ship Stations—A mobile station in the maritime mobile service located on board a vessel which is not permanently moored and including radio station classes such as radionavigation, on-board, satellite, EPIRB, radiotelephone, and radiotelegraph.

a. New License (per application)—Request for a license to operate a new ship station including portable ship stations. Requests for a fleet license will be charged according to the number of stations requested.

b. Modification of License (per application)—Request for changes to an existing license other than a change in mailing address, name of licensee, name of vessel (which do not otherwise involve an assignment of license or transfer of control) or addition or replacement of transmitting equipment on a frequency or frequency band authorized by the present license. A fleet license will be charged based upon the number of stations renewed.

c. Renewal of License (per application)—Renewal of an existing license at the expiration of the term of authorization.

d. Request for Waiver—See 1g above. A waiver would also include a request for exemption, a modification of an existing exemption or renewal of an exemption from the provisions of law and treaty otherwise requiring the compulsory use of a ship station.

3. Operational Fixed Microwave Stations.

d. Special Temporary Authority (Initial, Modifications, Extensions)—Temporary authority granted by the Commission to operate in emergency situations; to permit restoration or relocation of existing facilities; to conduct tests to determine necessary data for an application for regular authorization; for a temporary non-recurring service; and other extraordinary circumstances. Charge applies to each initial request as well as to a modification or extension of a previously granted request.

e. Assignments (per station)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

f. Transfers of Control (per station)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

g. Request For Waiver—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (ii) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

4. Aviation (Ground Stations).

d. Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license or rules. Charge applies to each initial request as well as to a modification or extension of a previously granted request.

e. Assignments (per station)—Upon the voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

f. Transfers of Control (per station)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

g. Request For Waiver—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one

rule part. (ii) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

5. Aircraft Stations—A mobile station in the aeronautical mobile service (including an air carrier aircraft station), other than a survival craft station, located on board an aircraft.

a. New License (per application)—Request for a new license to operate an aircraft station or portable station. Requests for fleet licenses will be charged according to the number of stations requested.

b. Modification of License (per application)—Request for changes to an existing license other than a change in mailing address, name of licensee, name of vessel or addition or replacement of transmitting equipment on a frequency or frequency band authorized by the present license. A fleet license will be charged based upon the number of stations renewed.

c. Renewal of License (per application)—Renewal of an existing license at the expiration of the term of authorization. A fleet license will be charged based upon the number of stations renewed.

d. Request For Waiver—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (ii) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

6. Land Mobile Radio Stations (including Special Emergency and Public Safety Stations)—A mobile service between base stations and land mobile stations, or between land mobile stations. Special Emergency stations include stations used in the Medical Services, by rescue organizations, veterinarians, handicapped person, disaster relief organizations, school busses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. Public Safety stations include stations used in the Local Government, Police, Fire, Highway Maintenance and Forestry-Conservation Radio Services.

d. Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a license station in a manner beyond the scope of that authorized by the existing license or rules. Charge applies to each initial request as well as to a modification or extension of a previously granted request.

e. Assignments (per station)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

f. Transfers of Control (per call sign)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

g. Request For Waiver—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (ii) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

h. Reinstatement (per call sign)—An application to reinstate a license that has previously expired for less than six months.

i. Specialized Mobile Radio Systems-Base Station—A radio service in which licensees provide land mobile communications services on a commercial basis to entities eligible to be licensed under the land mobile rules, to government entities and individuals. The base station is a station at a specified site authorized to communicate with mobile stations.

(i) New License (per call sign)—Request for a license to operate a new base station in a conventional or trunked mode.

(ii) Modification of License (per call sign)—Request for changes to an existing license requiring the submission of an application for modification of license under Commission rules.

(iii) Renewal of License (per call sign)—Renewal of an existing license at the expiration of the term of authorization.

(iv) Waiting List (annual charge per application)—Application that cannot be granted due to a lack of available channels in a particular area are placed on a waiting list for that area.

(v) Special Temporary Authority (Initial, Modification, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license. Charge applies to each initial request as well as modifications or extensions of a previously granted request.

(vi) Assignments (per call sign)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

(vii) Transfers of Control (per call sign)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

(viii) Request For Waiver—(1) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that invovle no more than one station and one rule part. (2) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

(ix) Reinstatement (per call sign)—An application to reinstate a license that has previously expired for less than six months.

j. Private Carrier Licenses—A license in the private radio services that authorizes an entity to provide communications services to other private users on a commercial basis.

(i) New License (per call sign)—Request for a license to operate a new base station in a conventional or trunked mode.

(ii) Modification of License (per call sign)—Request for changes to an existing license requiring the submission of an application of modification of license under Commission rules.

(iii) Renewal of License (per call sign)—Renewal of an existing license at the expiration of the term of authorization

(iv) Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operation of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license or rules. Charge applies to each initial request as well as modifications or extensions of a previously granted request.

(v) Assignments (per call sign)—Upon a voluntary or involuntary change in ownership of an authorized radio station, the new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

(vi) Transfers of Control (per call sign)—Upon the voluntary or involuntary transfer of control of a corporation holding a license, the new owner must apply for consent to transfer control of the corporation.

(vii) Request For Waiver—(1) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (2) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

(viii) Reinstatement (per call sign)—An application to reinstate a license that has previously expired for less than six months.

7. General Mobile Radio Service (GMRS)—A land mobile radio service available to eligibles and intended primarily for short-distance, two-way personal and business communications.

a. New License (per call sign)—A new license for a GMRS system or for a station in a CMRS system. A single fee is required for up to six (6) land stations in a GMRS system, which constitutes one call sign.

b. Modifications of License (per call sign)—Modification to an existing GMRS system or station license.

c. Renewal of License (per call sign)—Renewal of an existing system or station license for another term.

d. Request For Waiver—(i) Routine (per request): All requests for waiver of the Commission's rules, including those submitted in conjunction with another application, that involve no more than one station and one rule part. (ii) Non-routine (per rule section/per station): Requests for waiver that involve more than one rule section or station. Fee required would be determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by the base fee amount.

e. Special Temporary Authority (Initial, Modifications, Extensions)—Request by a current licensee or applicant for special temporary authority not to exceed 180 days for operations of a new station or operation of a licensed station in a manner beyond the scope of that authorized by the existing license. Charge applies to each initial request as well as modifications or extensions to a previously granted request.

f. Transfer of Control (per call sign)—Consent for transfer of control of a corporation that holds a GMRS system license.

8. Restricted Radiotelephone Operator Permit—A permit that allows operation of most aircraft and aeronautical ground stations, and marine radiotelephone stations

on pleasure vessels when operator licensing is required. Also required for transmitter operation, repair and maintenance at all types of AM, FM, TV and international broadcast stations.

9. Request for Duplicate Station License (all services)—Request by an existing licensee to replace an original license that has been lost, mutilated or destroyed.

10. Hearing (Comparative New and Modifications)—Charge levied when any private radio application is designated for a comparative new hearing or modification hearing before an administrative law judge.

EQUIPMENT APPROVAL SERVICES/EXPERIMENTAL RADIO

1. Certification.

c. Modifications and Class II Permissive Changes—Modifications to previously certified equipment are permissible, provided that the variations do not affect the characteristics required to be reported to the Commission. A Class II permissive change includes those modifications which degrade the performance characteristics as reported to the Commission at the time of the initial certification.

d. Request for Confidentiality—A request included with any application for certification or a modification thereto that submitted information not be made routinely available for public inspection. The charge is in addition to the underlying application.

2. Type Acceptance.

b. Modifications and Class II Permissive Changes—Modifications to previously type accepted equipment are permissible so long as the equipment is electrically and mechanically interchangeable and will have the same basic tube or semiconductor lineup, frequency multiplication, basis frequency determining and stabilizing circuitry, basic modulator circuit and maximum power rating. A Class II permissive change includes those modifications which bring the performance of the equipment outside of the manufacturer's rated limits as originally filed but not below the minimum requirements of the FCC rules.

c. Request for Confidentiality—A request included with any application for type acceptance or a modification thereto that submitted information not be made routinely available for public inspection. The charge is in addition to the underlying application.

3. Type Approval (all devices)—An equipment authorization based upon examination and measurement of one or more sample units by the Commission.

a. With Testing (including Major Modifications)—Type approval requests for new equipment and major modifications that require testing.

b. Without Testing (including Minor Modifications)—Type approval requests for previously tested and approved equipment submitted for approval under new identification or for minor modification without testing.

c. Request for Confidentiality—A request included with any application for type approval or a modification thereto that submitted information not be made routinely available for public inspection. The charge is in addition to the underlying application.

4. Notifications—Process requires manufacturers to test devices for compliance with applicable FCC regulations and to keep records of test data. Manufacturer submits brief application for authorization of device citing that all regulatory requirements have been met.

5. Advance Approval for Subscription TV System—Licensees and permittees of TV broadcast and low power TV stations may conduct subscription operations only by using an encoding system approved in advance by the Commission.

a. Request for Confidentiality—A request included with any application for type approval or a modification thereto that submitted information not be made routinely available for public inspection. The charge is in addition to the underlying application.

6. Assignment of Grantee Code for Equipment Identification—Equipment covered by an application for equipment authorization must bear a nameplate/label displaying the FCC identifier. The applicant must request the three digit grantee code either before filing its first request for equipment authorization or simultaneously with that request. The fee is in addition to the simultaneously filed equipment authorization request.

7. Experimental Radio Service—A service in which radio waves are employed for purposes of experimentation in the radio art or for purposes of providing essential communications for research projects which could not be conducted without the benefit of such communications. Student authorizations are not included within this definition.

a. New Construction Permit and Station Authorization (per application)—Request for a combined construction permit and radio station license for base stations, fixed stations or mobile stations on either a temporary or permanent basis. Charge is on a per application basis when requests are combined in accordance with FCC rules.

b. Modification to Existing Construction Permit and Station Authorization (per application)—Request to modify a combined construction permit and station license, including the transfer of a station from temporary to permanent status. Charge is on a per application basis when requests are combined in accordance with FCC rules.

c. Renewal of Station Authorization (per application)—Renewal of an existing station authorization, including a special temporary authority, in accordance with the terms of the existing authorization. Charge is on a per application basis when requests are combined in accordance with FCC rules.

d. Assignment or Transfer of Control (per application)—Voluntary or involuntary assignment of the legal right to construct or control the use or operation of a station or voluntary or involuntary transfer of a corporation holding a station authorization.

e. Special Temporary Authority (per application)—Authorization granted when a need is shown for operation of an authorized station for a limited time only in a manner other than that specified in the existing authorization, but not in conflict with the Commission's rules.

f. Additional Charge for Applications Containing Requests to Withhold Information From Public Inspection—A request included with any application for experimental radio authorizations requesting that submitted information not be made routinely available for public inspection. The charge is in addition to the underlying application.

MASS MEDIA SERVICES

1. Commercial TV Stations—A commercial television station refers to any UHF or VHF station other than those classified by the FCC as non-commercial educational stations. A non-commercial educational television station is either a UHF or VHF station licensed to a nonprofit educational organization that is used primarily to serve the educational needs of the community, for the advancement of educational programs, or to furnish a nonprofit and non-commercial television broadcast service.

1c. Hearing (Major/Minor Change, Comparative New or Comparative Renewal)—Applications designated for hearing in mutually exclusive, comparative new construction permit, comparative renewal or major/minor change adjudicative proceedings are required to pay fees prior to the applicant's participation in the hearing.

1f. Renewal—The charge levied when filing an application for renewal of an existing license. The license periods are five years for television broadcast stations and seven years for radio broadcast stations. Auxiliary Service licenses are generally held by licensees of full service AM, FM or TV stations and are renewed automatically whenever the main station license is renewed. Auxiliary stations renewed in conjunction with the main station will not require an additional fee.

1g. Call Sign (New or Modification)—Generally a four-letter designation beginning with the letter K or W, and used to identify each commercial and noncommercial radio and television broadcast station licensed by the FCC. Fee is payable upon request for a new call sign assignment or a request for a modified call sign assignment. Fee will be in addition to any concurrently filed request for authority such as a license or assignment/transfer.

1h. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)—a grant of authority, or extension of a previous grant, to allow a permittee or licensee to operate a broadcast facility for a limited period at a specified variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station. In addition, the STA fee will apply to applicants requesting field test authority. However, in the event that circumstances beyond the control of the station force it to change its operating schedule or discontinue operations, the station may for a period of not more than 30 days cease operations without further authority from the FCC or a payment of a fee. An STA request to extend this period of discontinued operation will not require a fee.

1i. Extension of Time to Construct or Replacement of CP—A request for an extension of time to construct an AM, FM or TV station or to replace an expired construction permit for such a station.

1j. Application for Permit to Deliver Programs to Foreign Broadcast Stations—A formal or informal application under Section 325(b) of the Communications Act for authority to locate, use, or maintain a broadcast studio or other place or apparatus in connection with a foreign station consistently received in the United States.

1k. Petition for Rulemaking for Change in Community of License—Petitions filed for the amendment of the Television Table of Allotments to modify the license or permit of a UHF or VHF TV station to change the community of license or channel in the same community of license through a rule making proceeding. Upon approval of a petition, the licensee/permittee must file this fee in addition to the fee for the minor change or license change application required to effect the change.

1l. Ownership Report (per report)—A report filed with the FCC by each licensee of a commercial TV station, once a year on the anniversary of the date that its renewal application is due, or a certification that no

changes have occurred since the filing of an earlier annual report.

2. Commercial Radio Stations—A commercial radio station is any AM or FM station other than those classified by the FCC as a non-commercial educational station. A non-commercial educational radio station is any AM or FM station licensed to a nonprofit educational organization that is primarily used for the advancement of an educational program.

2c. Hearing (Major/Minor Change, Comparative New or Comparative Renewal)—See 1c.

2d. License.

(iv) FM Directional Antenna—A directional antenna is an antenna that is designed or altered for the purpose of obtaining a non-circular radiation pattern. Directional antennas may be employed for the purpose of improving service or for the purpose of using a particular site. This charge is due upon the filing of a construction permit for new or modified service.

(v) AM Remote Control—An operating system which provides sufficient control and operating paramenter monitoring capability to allow technical operation of a station outside the main facility in compliance with the rules applicable to that station and the terms of the station authorization. No authorization from the FCC is required to operate the transmission system of an AM station operating with a nondirectional antenna. A fee is charged when filing an application to operate an AM station using a directional antenna-system by remote control.

2f. Renewal—See 1f.

2g. Call Sign—See 1g.

2h. Special Temporary Authority (other than to remain silent or extend an existing STA remain silent)—See 1h.

2i. Extension of Time to Construct or Replacement of CP—See 1i.

2j. Permit to Deliver Programs to Foreign Broadstations—See 1j.

2k. Petition for Rulemaking for Change in Community of License or Higher Class Channel—Petition filed for the amendment of the FM Table of Allotments and modification of the license or permit of an FM station to another community of license or to another class of channel in the same or another community. Upon approval of this petition the licensee/permittee must file this fee in addition to the fee for its minor change or license application required to effect the change.

2l. Ownership Report (per report)—See 1l.

3. FM Translators—A station in the broadcast service operated for the purpose of retransmitting the programs and signals of an FM broacast station (either commerical or noncommerical educational), without significantly altering any characteristics of the original signal other than its frequency and amplitude, for the purpose of providing FM reception to the general public.

3d. Renewal—See 1f.

3e. Special Temporary Authority (other than to remain silent or to extend an existing STA to remain silent)—See 1h.

4. TV Translators and LPTV Stations—A television translator station is a station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station (either commerical or noncommerical), without significantly altering any characteristics of the original signal other than it frequency and amplitude, for the purpose of providing television reception to the general public. A low pwer television station is a UHF or VHF station that may orignate programming or provide a subscription television service.

4d. Renewal—See 1f.

4e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)—See 1h.

5. Auxiliary Services—(includes Remote Pickup Stations, TV Auxiliary Broadcast Stations, Aural Broadcast STL and Intercity Relay Stations, and Low Power Auxiliary Stations).

5b. Renewals—Auxiliary stations renewed in conjuction with the main station would not require a fee.

5c. Special Temporary Authority (STA)—See 1h.

6. FM/TV Boosters—An FM broadcast booster station is a station in the broadcasting service operated for the sole puroses of retransmitting the signals of an FM radio broadcast station, by amplifying and reradiating such signals, without significantly altering any characteristics of the incoming signal other than its amplitude. A television broadcast booster station is a station in the broadcast service operated by the licensee or permittee of full service television broadcast station for the purpose of retransmitting the programs and signals of such primary station without significantly altering any characterictic of the original signal other than its amplitude.

6a. New and Major Change Construction Permits—TV Boosters: A permit to construct a new station or to make major changes in previously authorized facilities. A major change includes any change in fequency; transmitting antenna system including the direction of the radiation; directive antenna pattern or transmission line; antenna hight; antenna location exceeding 200 meters; or authroized operating power. A major change also includes any modification that increases the station's signal range in any horizontal direction. FM Boosters: A permit to construct a new station or to make major changes in previouly authorized facilities. Major changes include replacement of the transmitter as a whole; a change in the transmitting antenna system, including the direction of radiation or directive antenna pattern; any change in the location of the booster except a move within the same building or upon the same pole or tower; any change in frequency; any change in antenna location exceeding 152.4 meters; change in authorized operating power; change in authorized principal community or area being served.

6b. License—Request for a license to cover a construction permit for a new station or major change in a previously authorized facility.

6c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)—See 1h.

7. International Broadcast Station—A broadcasting station employing frequencies allocated to the broadcasting service between 5,950 and 26,100 kHz, the transmissions of which are intended to be received directly by the general public in foreign countries.

7a. New Construction Permit and Facilities Change CP—A permit to construct a new International station or to make changes to an existing station.

7b. License—Request for a license to cover a construction permit. License fees are not applicable to any license modification that does not require prior authorization from the FCC.

7c. Assignment or Transfer (per station)—An assignment is the transfer by any means of an authorization from the present holder to another person as devined in Section 3(i) of the Communications Act. A transfer involves a change in the controlling interest in a corportation or partnership holding a station permit or license.

7d. Renewal—Renewal of an existing license at the expiration of the term of authorization. The license period for International stations is seven years.

7e. Frequency Assignment and Coordination (per frequency hour)—Frequency hours are requested by applicants and are assiagned by the Commission after consultation with foreign governments for use during specified hours and for transmission to specified zones or areas of reception. A frequency hour is a specific hour of the day during which a station may broadcast daily on a particalar frequency during a particular season. There are four seasons of varying lengths during the year. A request for coordination for use of a frequency for one hour per day for a six month period shall constitute a request for two frequency hours.

7f. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent—See 1h.

8. Cable Television Service.

8a. Cable Television Relay Service.

(v) Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)—In circumstances requiring immediate or temporary use of facilities, a request may be made for special temporary authority to install and operate new equipment or to operate licensed equipment in a manner different from that authorized in a station license. An STA may be granted to conduct a field survey or to conduct equipment, program, service and path tests.

8c. 76.12 Registration Statement (per statement)—A system community unit is authorized to commence operation only after filing with the Commission the requisite information pursuant to Section 76.12 of the Commission's Rules.

8d. Aeronautical Frequency Usage Notifications (per notice)—A notice filed by the operator of a cable system in accordance with section 76.615 of the rules stating that a cable system operating under sections 76.610-76.617 of the Commission's Rules is transmitting carriers or other signal components capable of delivering peak power equal to or greater than 10 -4 watts at any point in the cable system in the frequency bands 108-137 and 225-400 MHz. A fee would not be required for notifications under 76.618 of the rules.

83. Aeronautical Frequency Usage Waivers (per waiver)—An annual notice filed by the operator of a cable system notifying the Commission of all signals carried in the aeronautical radio frequency bands and before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period greater than 10 -4 watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands.

9. Direct Broadcast Satellite.

9b. Hearing (Comparative New or Major/Minor Modifications, or Comparative Renewal)—See 1c.

9c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)—See 1h.

COMMON CARRIER SERVICES

1. All Common Carrier Services.

1a. Hearing (Comparative New or Major/Minor Modifications)—An administrative proceeding initiated when an application for a new service, for major or minor changes in authorized facilities or for renewal of an authorized facility is designated for a comparative hearing before an administrative law judge.

1b. Developmental Authority—An authorization issued to communications common carriers for experimentation leading to the development of new common carrier service or for using transmitting equipment prior to FCC approval of that type of equipment. The charge for a developmental authorization is the same as for regular authority in the radio service in which developmental authorization is requested.

1c. Formal Complaints and Pole Attachment Complaints—A formal complaint is an allegation against, a common carrier resolved on a written record consisting of a complaint, answer and reply but may also include other written submissions such as briefs and written interrogatories. A pole attachment complaint is a filing by a cable television system operator, a cable television system association, a utility, an association of utilities or other entities alleging that a rate, term, or condition for a pole attachement is not just and reasonable.

2. Domestic Public Land Mobile Stations (includes Base, Dispatch, Control and Repeater Stations).

2c. Fill In Transmitter (per transmitter)—A transmitter operating within a presently authorized service contour such that the reliable service area does not exceed the already authorized service contour.

2d. Major Amendment to a Pending Application (per transmitter)—Major amendments include changes in technical proposals, amendments to proposed base station facilities, amendments that increase a CGSA or changes in beneficial ownership and control as defined in existing Commission rules.

2f. Partial Assignment (per call sign)—A partial assignment occurs when only a portion of the authorized facility is assigned or transferred to another party, whether voluntarily or involuntarily.

2i. Special Temporary Authority (per frequency/per location)—An authorization granting permission to operate a station when circumstances require immediate or temporary operation of a station. An STA also includes the authority granted to a permittee or licensee to permit operation of a station facility prior to grant of license authorization and/or the filing of certifications of construction completion.

2j. Extension of Time to Construct (per application)—A request for an additional amount of time to construct a facility beyond the established term of the construction authorization.

2k. Notice of Completion of Construction (per application)—Upon completion of construction, the certification that the facilities have been constructed as authorized or with minor modifications.

2l. Auxiliary Test Station (per transmitter)—A fixed station used for test transmissions.

2m. Subsidiary Communications Service (per request)—A one-way service using a broadcast station sub-carrier frequency.

2n. Reinstatement (per application)—A request for new authorization after the expiration of a construction authorization or license to operate.

2o. Combining Call Signs (per call sign)—A request to consolidate the facilities of one or more call signs under a single call sign.

2p. Standby Transmitter (per transmitter/per location)—A transmitter installed and maintained for use in lieu of the main transmitter only during periods when the main transmitter is out of service for maintenance or repair.

2q. 900 MHz Nationwide Paging—A one-way communications system licensed to operate on a common frequency throughout the United States. A network organizing is the licensee of a nationwide frequency responsible for organizing nad controlling its use. A network operator is an operator under control of a network organizer responsible for local distribution of nationwide pages. The network organizer and network operator are subject to renewal fees in addition to any other fees imposed on domestic public land mobile licensees or permittees.

3. Cellular Systems (per system).

3e. License to Cover Construction.

(ii) Subsequent License for Wireline Carrier—Wireline carriers are common carriers that are in the business of providing landline local exchange telephone service. When construction has been completed in accordance with the radio station authorization, the licensee shall notify the Commission. Licensees can commence service the day notification is mailed. The subsequent license refers to any license requested after an initial license has been granted.

(iii) License for Nonwireline Carrier—A common carrier engaged in the provision of Public Mobile Service which is not also in the business of providing landline local exchange service. These carriers were formerly called "miscellaneous common carriers". The charge is assessed for both initial and subsequent licenses to cover authorized construction.

(iv) Fill In License (all carriers)—Applications by cellular system licensees expanding their systems within Metropolitan Statistical Areas and Rural Service Areas during the five year fill-in period.

3g. Extension of Time to Complete Construction—See 2j.

3h. Special Temporary Authority (per system)—See 2i.

3i. Combining Cellular Geographic Service Areas (per system)—The geographic area served by a cellular system within which the licensee is authorized to provide service. Licensees may request combining their service areas under one call sign for administrative efficiency.

4. Rural Radio (includes Central Office, Interoffice or Relay Facilities)

4c. Major Amendment to Pending Application (per transmitter)—An amendment shall be deemed to be a major amendment if, as defined in current FCC rules, it changes a technical proposal, results in a substantial change in the engineering proposal, or specifies a change in beneficial ownership or control of an applicant that has not previously been approved by the Commission.

4e(iii). Partial Assignment (per call sign)—If only a portion (less than 100%) of the authorized facilities are transferred or assigned to another party, voluntarily or involuntarily, such action is considered a partial assignment.

4g. Extension of Time of Complete Construction (per application)—See 2j.

4h. Notice of Completion of Construction (per application)—See 2k.

4i. Special Temporary Authority (per frequency/per location)—See 2i.

4j. Reinstatement (per application)—See 2n.

4k. Combining Call Signs (per call sign)—See 2o.

4l. Auxiliary Test Station (per transmitter)—See 21.

4m. Standby Transmitter (per transmitter/per location)—See 2p.

5. Offshore Radio Service (Mobile, Subscriber, and Central Stations; fees would also apply to any expansion of this service into coastal waters other than the Gulf of Mexico)

5c. Fill In Transmitters)—See 2c.

5d. Major Amendment to Pending Application (per transmitter)—See 4c.

5f(iii) Partial Assignment (per call sign)—See 4e(iii).

5h. Extension of Time of Complete Construction (per application)—See 2j.

5i. Reinstatement (per application)—See 2n.

5j. Notice of Completion of Construction (per application)—See 2k.

5k. Special Temporary Authority (per frequency/per location)—See 2i.

5l. Combining Call Signs (per call sign)—See 2o.

5m. Auxiliary Test Station (per transmitter)—See 2l.

5n. Standby Transmitter (per transmitter/per location)—See 2p.

6. Point-To-Point Microwave and Local Television Radio Service.

6a. Conditional License (per station)—A construction authorization, formerly called a construction permit, issued prior to commencement of construction of a station.

6b. Major Modification of Conditional License of License Authorization (per station)—A request for a change to a previously authorized construction authorization or modification to a previously granted nonconditional license authorization for a station.

6c. Certification of Completion of Construction (per station)—Notification to the Commission that construction has been completed or that permissible changes have been made that result in a non-conditional license authorization for a station.

6d. Renewal (per licensed station)—Required renewal of a previously granted nonconditional license authorization.

6e. Assignment or Transfer (per authorized station)—Voluntary or involuntary assignment of a station or transfer of control of a corporation holding a station.

6f. Extension of Construction Authorization (per station)—Request for an extension of the time to construct contained in a previsouly granted conditional license.

6g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request)—An authorization granting permission to operate a station when circumstances require immediate or temporary operation of a station. A request for waiver of prior construction authorization permits construction before a conditional license is granted.

7. Multipoint Distribution Service (including multichannel MDS).

7a. Conditional License (per channel)—A construction authorization, formerly called a construction permit, issued prior to commencement of construction of a station.

7b. Major Modification of Conditional License of License Authorization (per station)—A request for a change to a previously authorized consruction authorization or modification to a previously granted nonconditional license authorization for a station.

7c. Certification of Completion of Construction (per channel)—Notification to the Commission that construction has been completed or that permissible changes have

been made that result in a non-conditional license authorization for a station.

7d. Renewal (per licensed station)—Required renewal of a previously granted non-conditional license authorization.

7e. Assignment or Transfer (per authorized station)—Voluntary or involuntary assignment of a station or transfer of control of a corporation holding a station.

7f. Extension of Construction Authorization (per station)—Request for an extension of the time to construct contained in a previously granted conditional license.

7g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request)—An authorization granting permission to operate a station when circumstances require immediate or temporary operation of a station. A request for waiver of prior construction authorization permits construction before a conditional license is granted.

8. Digital Electronic Message Service.

8a. Conditional License (per nodal station)—A construction authorization, formerly called a construction permit, issued prior to commencement of construction of a station.

8b. Major Modification of Conditional License of License Authorization (per nodal station)—A request for a change to a previously authorized consruction authorization or modification to a previously granted non-conditional license authorization for a station.

8c. Certification of Completion of Construction (per nodal station)—Notification to the Commission that construction has been completed or that permissible changes have been made that result in a non-conditional license authorization for a station.

8d. Renewal (per licensed nodal station)—Required renewal of a previously granted non-conditional license authorization.

8e. Assignment or Transfer (per authorized station)—Voluntary or involuntary assignment of a station or transfer of control of a corporation holding a station.

8f. Extension of Construction Authorization (per station)—Request for an extension of the time to construct contained in a previsouly granted conditional license.

8g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request)—An authorization granting permission to operate a station when circumstances require immediate or temporary operation of a station. A request for waiver of prior construction authorization permits construction of a station before a conditional license is granted.

International Fixed Public Radio (Public & Control Stations).

9e. Extension of Construction Authorization (per station)—See 2j.

9f. Special Temporary Authority or Request for Waiver (per request)—See

2i. A waiver request includes any request to suspend or modity a Commission rule.

10. Fixed-Satellite Transmit/Receive Earth Stations—Includes international and domestic earth stations operating in the ⅙ GHz and 11/12/14 GHz bands. VSAT systems are treated separately as a discrete category of applications.

10b. Modifications of License (per station)—Application to add or delete equipment or to change power, frequencies, station location, or other operating parameters.

10c. Assignment or Transfer—An assignment is the change of an authorization from the present holder to another person as defined in Section 3(i) of the Communications Act. A transfer involves the changing of control of any interest in a corporation or partnership licensed to operate an earth station that requires FCC approval. For this service the first station on the application will pay the higher fee while all other stations simultaneously transferred on the same application will pay a lesser fee.

10d. Developmental Station (per station)—An earth station that is used in the development of new techniques which give promise of improvement in the Fixed-Satellite Service; the development and testing of equipment intended for use in this service; or path loss tests necessary to resolve uncertainties associated with proposed earth stations.

10e. Renewal of License (per station)—Renewal of an existing license at the expiration of the term of authorization.

10f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request)—An authorization granting permission to operate a station when circumstances require immediate or temporary operation of a station. A request for waiver of prior construction authorization permits construction before a construction permit or license is granted.

10g. Amendment of Application (per station)—The modification, deletion or addition of information to a pending application for Commission authorization.

10h. Extension of Construction Permit (per station)—See 2j.

11. Small Transmit/Receive Earth Station (2 meters or less and operating in the ⅙ GHz frequency band).

11c. Modification of License (per station)—see 10b.

11d. Assignment or Transfer—See 10c.

11e. Development Station (per station)—See 10d.

11f. Renewal of license (per station)—See 10e.

11g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request)—See 10f.

11h. Amendment of Application (per station)—See 10g.

11i. Extension of Construction Permit (per station)—See 2j.

12. Receive Only Earth Stations.

12b. Modification of License or Registration (per station)—See 10b.

12c. Assignment or Transfer—See 10c.

12d. Renewal of License (per station)—See 10e.

12e. Amendment of Application (per station)—See 10g.

12f. Extension of Construction Permit (per station)—See 2j.

12g. Waivers (per station)—Request for waiver of the Commission's rules may be granted upon application or by the Commission on its own motion.

13. Very Small Aperture Terminal (VSAT) Systems—VSAT Systems operate in the 12/14 GHz frequency bands. Although various size small earth stations may be used, all stations of a particular size must be technically identical. Because these stations operate on a primary basis, frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more larger hub stations.

13b. Modification of License (per station)—See 10b.

13c. Assignment or Transfer of System—An assignment is the change of an authorization from the present holder to another person as defined in Section 3(i) of the Communications Act. A transfer involves the changing of control of any interest in a corporation or partnership licensed to operate an earth station that requires FCC approval.

13d. Developmental Station—See 10d.

13e. Renewal of License (per system)—See 10e.

13f. Special Temporary Authority or Waiver of prior construction authorization (per station)—See 10f.

13g. Amendment of Application (per station)—See 10g.

13h. Extension of Construction Permit (per system)—See 2j

14. Mobile-Satellite Earth Stations—Earth stations intended to be used while in motion or during halts at unspecified points and fixed hub statons used in conjunction with the network. These stations may provide a variety of land, maritime and aeronautical voice and data services. This category does not include Radiodetermination-Satellite Service earth stations, which are treated separately.

14a. Initial Application for Blanket Authorization—Application for a license to operate numerous portable mobile units.

14b. Initial Application for Individual Earth Station—Application for a license to operate a single earth station in conjunction with an existing system.

14c. Modification of License (per system)—See 10b.

14d. Assignment or Transfer (per system)—See 13c.

14e. Development Station (per station)—An earth that is used in the development of new techniques which give promise of improvement in the Mobile-Satellite Service; the development and testing of equipment intended for use in this service; or path loss tests necessary to resolve uncertainties associated with proposed earth stations.

14f. Renewal of License (per system)—See 10e.

14g. Special Temporary Authority or Waiver of prior construction authorization (per request)—See 10f.

14h. Amendment of Application (per system)—See 10g.

14i. Extension of Construction Permit (per system)—See 2j.

15. Radiodetermination-Satellite Earth Stations—A mobile earth station or a fixed hub earth station used in conjunction with a Radiodetermination-Satellite Service (RDSS) system for the purpose of providing position location information.

15a. Initial Application for Blanket Authorization—Application for a license to operate one or more earth stations in conjunction with a hub station.

15b. Initial Application for Individual Earth Station—See 14b.

15c. Modification of License (per system)—See 10b.

15d. Assignment or Transfer (per system)—See 13c.

15e. Development Station—An earth station that is used in the development of new techniques which give promise of improvement in the Radiodetermination-Satellite Service; the development and testing of equipment intended for use in this service; or path loss tests necessary to resolve uncertainties associated with proposed earth stations.

15f. Renewal of License (per system)—See 10e.

15g. Special Temporary Authority or Waiver of prior construction authorization (per request)—See 10f.

15h. Amendment of Application (per system)—See 10g.

15i. Extension of Construction Permit (per system)—See 2j.

16. Space Stations.

16b. Application for Authority to Launch & Operate—Authorization to launch a space station, or replacement, and assignment of an orbital location at which the space station is to be operated.

16c. Assignment or Transfer (per satellite)—See 10c.

16d. Modification—Application to add or delete equipment, or to change power, frequencies, station location, or other operating parameters.

16e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request)—See 10f. In addition, the STA may allow for the provision of space segment services to various points.

16f. Amendment of Application—See 10g.

16g. Extension of Construction Permit/Launch Authorization (per request)—A request to extend a required implementation milestone date (e.g., beginning or completion of construction, launch date).

17. Section 214 Applications.

17b. Cable Landing License—The authorization required for a person to land or operate in the U.S. a submarine cable which directly or indirectly connects the U.S. with any foreign country, or connects one portion of the U.S. with another portion of the U.S. This authority is not required for cables that lie wholly within the Continental U.S.

(i) Common Carrier—A common Carrier cable landing license is a request to land and operate a submarine cable by entities engaged as common carriers for hire. This request is always associated with a Section 214 application to construct and operate a submarine cable.

(ii) Non-Common Carrier—A Non-Common Carrier cable landing license is a request to land and operate a private, noncommon carrier cable by entities who do not offer service for hire to the public at large.

17e. Special Temporary Authority (all services)—See 2i.

17f. Assignments or Transfers (all services)—An assignment is the change of an authorization from the present holder to another person as defined in Section 3(i) of the Communications Act. A transfer involves a change of control of any interest in a corporation or partnership licensed to construct or operate under Section 214 of the Communications Act.

18. Recognized Private Operating Agency Status (per application)—A request by any individual or company or corporation other than a governmental establishment or agency that seeks recognition to operate an international public correspondence or radio service capable of causing harmful interference and upon which are imposed obligations provided for in Article 44 of the International Telecommunication Convention.

19. Telephone Equipment Registration—Registration of terminal equipment and circuitry connected directly to the telephone network.

20. Traiff Filings.

20a. Filing Fee—A filing is a Letter of Transmittal with accompanying tariff supplement, revised page(s), additional page(s), concurrence(s), notice of revocation, adoption notice or any other schedule(s) or rates or regulations filed in accordance with Part 61 of the Commission's rules.

20b. Special Permission Filing (per filing)—An application to waive any portion of Part 61 of the Commission's rules.

21. Accounting and Audits.

21a. Field Audit—An on-site review of a carrier's financial and operating practices, procedures and records that is designed to examine and measure the carrier's compliance with the Commission's rules and regulations.

21b. Review of Attest Audit—The review by Commission staff of an audit conducted by outside accounting firm attesting that the methods used by a Tier 1 carrier to separate its costs between regulated and nonregulated activities properly implement the procedures set forth in the carrier's cost allocation manual filed with the Commission.

21c. Review of Depreciation Update Study (Single State)—Staff review of a study prepared by a common carrier in support of its request to change the parameters underlying the rates at which it depreciates its plant. The study may cover the carrier's operations in a single state, or may include studies applicable to two to six states. The fee for depreciation rate studies is based on a single state study, with an additional charge established for each additional state.

21d. Interpretation of Accounting Rules (per request)—Request for formal interpretation of a provision of the prescribed Uniform System of Accounts (Parts 32, 34, 35). The fee would be imposed for carriers who seek a written accounting interpretation, and would be required at the time the request is filed.

21e. Petition for Waiver (per petition)—Request for waiver of any of the Commission's accounting or audit rules including the prescribed accounting rules (Part 32), separations rules (Part 36) or access charge rules (Part 69).

MISCELLANEOLUS CHARGES

1. International Telecommunications Settlements Administrative Fee for Collections (per line item—The FCC acts as a clearinghouse in processing international telecommunications settlements in the Maritime Mobile and Maritime Mobile-Satellite Services. Settlements consist of charges incurred by FCC licensees through the use of foreign telecommunications facilities while in international or foreign waters. The administrative fee would be imposed on every line item charged to the FCC and subsequently billed to its licensees, with the exception that government licensees would not be subject to the administrative fee. A line item represents the total charge billed to the Commission by a foreign country for a single radiocommunication for transmission by an FCC licensee.

2. Radio Operator Examinations.

a. Commercial Radio Operator Examination—Applicants for the Marine Radio Operator Permit, General Radiotelephone Operator License, Third Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate and First Class Radiotelegraph Operator's Certificate (and Ship Radar Endorsement) must pass an examination before being issued a license, permit or certificate. The fee would be collected with each application for an examination and is retained if the applicant fails to take the examination or does not pass the examination.

b. Renewal of Commercial Radio Operator License, Permit or Certificate-Licenses, permits or certificates are issued for five year terms and may be renewed at any time during the last year of the license term or during a five year grace period following expiration.

c. Duplicate or Replacement Radio Operator License, Permit or Certificate—The holder of a radio license, permit or certificate which has been lost, mutilated or destroyed may obtain a duplicate license document by filing an application. The holder of one of these documents whose name is legally changed or physical description is significantly altered may obtain a replacement license by filing an application. Both requests would be subject to a fee.

3. Ship Inspections.

a. Inspection of Oceangoing Vessels under Title III, Part II of the Communications Act (per inspection)—All passenger ships irrespective of size an cargo ships of 1600 gross tons and upward must have a required equipment inspection at least once every 12 months. If a reinspection is necessary at another date, an additional fee will be collected.

b. Inspection of Passenger Vessels under Title III, Part III of the Communications Act (per inspection)—United States vessels which transport more than six passengers for hire while navigating on any tidewater within the jurisdiction of U.S., including adjacent to or in the open sea, must have a required equipment inspection once every five years. If a reinspection is necessary at another date, an additional fee will be collected.

c. Inspection of Vessels under the Great Lakes Agreement (per inspection)—Each U.S. flag vessel subject to the Agreement Between the United States and Canada for Promotion of Safety on the Great Lakes by Means of Radio (1973) must have an inspection of the required radiotelephone installation not less than once every twelve months. If a reinspection is necessary at another date, an additional fee will be collected.

d. Inspection of Foreign Vessels under the Safety of Life at Sea (SOLAS) Convention (per inspection)—Foreign flag vessels engaged in international voyages must meet the terms of the SOLAS Convention and are subject to periodic inspection. If a reinspection is necessary at another date, an additional fee will be collected.

e. Temporary Waiver for Compulsorily Equipped Vessel—The Commission may grant a waiver of the annual inspection for a period not to exceed 30 days from the time of first arrival of a ship at a U.S. port directly from a foreign port for the sole purpose of enabling the vessel to proceed to another port in the United States where an inspection can be made.

## PREGNANT AND POST PARTUM SUBSTANCE ABUSING WOMEN

Mr. KOHL. Mr. President, earlier today my colleague from California, Senator WILSON, inserted a letter into the RECORD from Secretary Sullivan of the Department of Health and Human Services. This letter outlined what the Alcohol, Drug Abuse, and Mental Health Administration [ADAMHA] will spend in fiscal year 1990 on programs designed to address substance abuse by pregnant and post partum women. Given the National Public Health Emergency posed by parental substance abuse, particularly by women of childbearing age, I feel I must comment on the Secretary's letter.

The Secretary stated that in fiscal year 1990, $51 million will be provided for drug treatment programs for pregnant and post partum women under

the Office of Substance Abuse Prevention [OSAP] and the National Institute of Drug Abuse [NIDA]. He noted that $24 million will be provided for research under NIDA and the National Institute on Alcohol Abuse and Alcoholism evaluating different methods of providing such drug treatment for women. And, he stated his intention of giving priority under ADAMHA's wait list grant program to applications from treatment programs serving pregnant and post partum women.

Mr. President, I acknowledge the good intentions behind Secretary Sullivan's efforts. I know he shares the grave concern of this Senator and of colleagues on both sides of the aisle over the crisis presented by parental substance abuse. But the programs outlined in the Secretary's letter will not do much to meet the tremendous demand for services for substance abusing pregnant and post partum women and their infants.

The Office of Substance Abuse Prevention [OSAP] has just finished accepting the initial round of grant applications for the fiscal year 1990 funding cycle. This office alone has received 1,000 applications from programs designed to treat substance abuse during pregnancy and programs for high-risk youth. Even if OSAP were able to target the entire $51 million toward drug treatment for pregnant and post partum women, it could only fund 100 programs. That will only meet one-tenth of the demand. And, given such limited resources, OSAP may give greater preference to outpatient programs over the costlier residential approach. This does not include funding for research and evaluation of the effectiveness of treatment methods through NIDA or NIAAA.

Mr. President, the proposed conference agreement on H.R. 3630 would address the crisis of parental substance abuse in a concerted, comprehensive way. It would increase the setaside for women's services in the Alcohol, Drug, and Mental Health Services [ADMS] block grant from 10 to 15 percent and strengthen the language to ensure States will provide adequate treatment capacity for all substance abusing women who desire it. It would increase the fiscal year 1990 funding for the drug treatment waiting list grant program by $40 million, thereby allowing Secretary Sullivan to give priority to applications serving pregnant and post partum women.

The conference agreement would also provide $100 million for OSAP to fund treatment services for substance abusing pregnant and post partum women. Such projects, either directly or through other public or nonprofit agencies, would include outreach services, prenatal post partum health care, pediatric care, support services such as child care and transportation, education and vocational assistance, case management services, and other family supports. As such, OSAP will be able to invest in comprehensive residential and outpatient programs. As I learned at hearings I chaired earlier this year for the Governmental Affairs Committee, my State of Wisconsin—like most States—only has a handful of residential treatment beds for substance abusing mothers.

Mr. President, I have come to the floor many times over the past months to talk about the need to take swift action to address this truly national emergency. I spearheaded a bipartisan letter to President Bush. I initiated a bipartisan, bicameral briefing for staff and organizations. And, I authored a series of amendments, including the expanded OSAP Program for pregnant and post partum women enacted by the Senate. In all these efforts, I have been joined by distinguished colleagues on both sides of the aisle, including Chairman KENNEDY and Subcommittee Chairman DODD of the Labor and Human Resources Committee, Chairman GLENN of the Governmental Affairs Committee, and ranking minority members including Senators HATCH, KASSEBAUM, and HEINZ.

The message in all these activities has remained the same. Substance abusing pregnant women cannot wait for treatment. We deny them such treatment at the peril of their infants and hence, of future generations of Americans. The time has passed for speeches and good intentions. The time to act is now. I urge my colleagues to act upon the proposed conference report on H.R. 3630 before the Senate adjourns for Thanksgiving.

### OUR FUTURE'S IN JEOPARDY: THE HEALTH OF AMERICAN ADOLESCENTS

Mr. INOUYE. Mr. President, American adolescents have been characterized as the most healthy in the world. Most of them from the advantaged sectors of our society are. But significant and growing numbers, disproportionately from backgrounds of poverty and discrimination, face health conditions that we associate only with youth in developing countries:

Of all developed countries, the United States has by far the highest percentage of children—20 percent or 14 million—living their early years mired in extreme poverty. In 1979, America's poverty rate was more than twice the average of all developed countries and nearly double the highest rate of child poverty in Western Europe, United Kingdom.

While most of American children in poverty are white, they are also disproportionately children and youth of color: Forty-three percent of African-American children, 37 percent of Latino children and 75 percent of American Indian children today grow up in conditions of horrible poverty coupled with inadequate housing and nutrition.

Thirty-three percent of American children under the age of 18 have no access to health insurance.

In 1986, 12 percent had no regular source of health care.

In 1986, only 35 percent of adolescents in need of mental health service received such care, some of which was inappropriate for their problems.

Nearly 10 percent of low-income youth have never been in a dentist's office.

Roughly one-half million teenagers give birth each year, the highest rates in any industrialized country.

When these health statistics are combined with well-known educational ones, an undeniable scenario emerges. The United States is moving toward a two-tiered society, sharply segregated by race and income and threatening longstanding American ideals of opportunity and equality, if not social stability itself. We are moving toward a society, one rich and elderly, the other poor and young. The longstanding social covenants between the generations upon which our Social Security and health care financing systems rest are already severely strained.

Why be concerned about poverty, the widening gap between the rich and the poor, and the strains on the social compact between the generations? Minority children and youth today—or in some key States, the emergent majorities—will become one-third of our Nation's potential labor force in 10 years. In the State of California, 49 percent of the entire labor force will be non-Anglo in just 11 years. It should be blatantly clear that it is in our interests not to disregard the poor and minority youth who will be the backbone of our labor force and a significant part of our voting population, especially in California, Texas, Arizona, New Mexico, and Illinois by the year 2000.

These health, education, and social conditions of so many of our young Americans moved me and my distinguished colleague Senator NANCY KASSEBAUM to seek the support of 35 of our colleagues in both Houses of Congress in requesting that the U.S. Office of Technology Assessment conduct the first major assessment of adolescent health. This comprehensive study of the health status of American adolescents, the approaches and programs that have been developed to address their critical health needs, and policy options for our consideration will be released to the Congress in April 1990. We will have the unprecedented opportunity to review the careful analyses of the OTA, based on the broad participation of public and private agencies and individuals. We can initiate needed changes in ways we support the healthy development of all American youth.

We are rapidly running out of time to address so many critical issues in

the development of our youth. But I believe constructive leadership is still possible. I urge my colleagues to work on all needed fronts—health, education, economic, and labor policies—toward ensuring that America has healthy, well-educated young citizens committed to our democratic traditions as we enter the 21st century.

HEALTH CARE FOR MOTHERS AND CHILDREN

Mr. RIEGLE. Mr. President, a strong bipartisan consensus has emerged this year to expand and improve access to health care for low-income pregnant women, infants, and children.

As the chairman of the Finance Subcommittee on Health for Families and the Uninsured and a conferee on the budget reconciliation bill, I worked with the House and Senate conferees to develop a maternal and child health package for the budget reconciliation bill. This package is not as comprehensive as I would have wanted, but there was concern that the President would not agree to the package if the costs were too high. It is my hope that we have a legislative vehicle early next year for additional items we could not include this year.

The United States continues to have one of the worst infant mortality rates among industrialized countries, ranking 19th in infant mortality. And some regions face greater problems. Detroit has an exceptionally high rate of 20.4 deaths per 1,000 live births; almost twice that of the national average.

Mr. President, I am also deeply concerned about the over 12 million uninsured children in this country. In Michigan, over 300,000 children do not have health care coverage. One-third of poor children living in poverty have no health care coverage. Clearly, our Nation's public program Medicaid is an inadequate safety net for low-income children.

For this reason, the conferees focused on the high priority issue of access, particularly for this country's most vulnerable citizens. We agreed to six key improvements. The total cost is about $150 million in fiscal year 1990 and $1.7 billion over 5 years. I believe this is a good investment in our children's future.

This maternal and child health package includes vital expansions in health care coverage for pregnant women, infants, and children. The reconciliation bill would expand Medicaid coverage for pregnant women, infants, and children ages 5 and under in families with incomes below 133 percent of the Federal poverty level. The bill also includes funds for State demonstration projects to study innovative alternative health care delivery systems to improve access to health care for pregnant women and children.

The conferees also agreed to reforms in Medicaid's preventive health care program for children, the Early, Periodic Screening, Diagnosis, and Treatment [PSDT] Program, to ensure that essential preventive, screening, and diagnostic services will be available to all eligible children. In addition, we adopted needed improvements to Medicaid services provided under Community Health Centers. These provisions would improve the types of services provided as well as require adequate reimbursement to providers serving Medicaid recipients.

Finally, I am very pleased that vital improvements to the Maternal and Child Health [MCH] Services Block Grant Program were made. Authorization was increased by $125 million. In addition, important structural improvments were made to improve administration of the program. For example, more comprehensive reporting requirements and needs assessments will improve planning and accountability in the program.

Mr. President, health care for mothers and kids was on both Congress' and the Bush administration's budget agenda this year. We have included the President's proposal to expand Medicaid for pregnant women and infants up to 130 percent of the poverty level. President Bush supported health care coverage for low-income mothers and kids during the 1988 campaign.

I have introduced, as have my colleagues, Senators BENTSEN, BRADLEY, CHAFEE, and DURENBERGER, a number of bills to improve the Medicaid and Maternal and Child Health Services Block Grant Program for pregnant women, infants, and children. The strong bipartisan sponsorship of these bills indicate the support in the Congress this year to improve the health of children in this country.

I introduced the Medicaid Children's Health Improvement Act of 1989 to improve low-income children's access to health care. This bill gives States additional authority and flexibility under Medicaid to cover more needy children. My title V, Infant Mortality Reduction Act, provided supplemental funds to the MCH Block Grant and improved planning and accountability in the program.

Until we address the problem of providing comprehensive health insurance for all Americans, efforts that focus on improving the current delivery of maternity and infant care in the United States are critical. As chairman of the Subcommittee on Health for Families and the Uninsured, I will continue working with other members of the Finance and Labor and Human Resources Committee to develop a comprehensive proposal that guarantees universal access to health insurance for the over 30 million Americans who lack coverage.

UNIVERSAL ACCESS TO HEALTH CARE FOR ALL AMERICANS

Mr. President, this country must move forward as other industrialized countries have done to guarantee universal access to health care for all its citizens. It's a tragedy that over 30 million Americans have no health insurance coverage. Twelve million are children, our most valuable resource.

I am very concerned that while the United States has the highest per capital health care spending rates, our system of private, and public programs leaves huge gaps in coverage that indicates a radical maldistribution of resources.

We have learned that the uninsured span all ages, employment statuses, and income levels. Many people are falling through cracks in our employment-based system of health care. Two-thirds are employed people and their family members. Medicaid—the program for low-income people—is also inadequate, over one-third uninsured are poor. Medicaid only covers 40 percent of people with incomes below the Federal poverty level. But while this is true, important to note that 40 percent are in middle- and upper-income groups.

At the same time, the U.S. health care system is more costly than health care systems in other countries. Physician costs continue to grow 16 percent per year in the Medicare Program. In addition, our current health care system uses more resources, per capita, in the treatment of patients. For example, according to some experts, 14 percent of bypass surgeries are inappropriate and another 30 percent are questionable. In addition, some U.S. specialists fees are 3 to 5 times higher than prevailing fees in Canada.

The problem of people without health insurance pervasively affects our health care system and our ability to compete in the global market place. Uncompensated care drives up costs for everyone. Costs are shifted to private payers which drives up the cost of private health insurance.

Companies that provide health insurance are finding that their rates are going through the ceiling because they are having to carry the load of the costs that are accruing for uninsured people and uncompensated care. Even those employers most responsible carry a second burden that represents the shortfall of others that provide no health insurance at all.

This affects our ability to compete internationally. Chrysler's health care cost per vehicle, $700, exceeds our international competitors' costs by from over $300 to almost $500 per vehicle.

This problem has to be solved. If the United States is going to close the trade deficit, if we are going to lift our

national productivity and output as we must do, then everybody in the society has to be able to produce. And in order for people to be able to produce, they have to be educated and they have to be healthy. If we have people in this country that have health problems that cannot be met, then there is no way that the United States is going to be able to meet its responsibility to achieve the level of national performance needed now, and in the future, to compete in the global marketplace. So, we have to view every person in our society as a critical part of the team—of Team America.

The political dynamics around this issue have really changed. There is massive pressure for change:

Big businesses, increasingly more noncompetitive in world markets, are looking for ways to control health care costs;

Small businesses fear government-mandated health benefits for employees and are looking at alternatives to mandates;

Doctors and hospitals, concerned over reduced Medicaid/Medicare payments, want answers to the uncompensated care problem;

Labor movement has come under increasing pressure for benefit concessions due to the high cost of care;

Consumers, 60 to 67 percent in recent surveys, have expressed a need for substantial health system reform; and

Insurers are looking for new ways to keep costs down so their customers do not move to other forms of care or self-insure.

No longer questioning the merits of solving problems. Question before us today is how to accomplish the goal of universal coverage in this country.

Mr. President, I first introduced a bill on the uninsured in December 1982 and have introduced bills on this issue during the last four Congresses. I began by focusing on unemployed people without health insurance and have since broadened to more comprehensive legislation.

The Finance Subcommittee on Health for Families and the Uninsured was created to focus attention to the problems of the uninsured and develop a solution. As chairman of this subcommittee, I have held several hearings to examine problem and solutions. At a hearing I held in Southfield, MI, I learned of the problems Michigan citizens face in obtaining health care and to solicit comments and concerns on policies necessary to effectively address this problem.

A hearing in Washington explored a variety of proposals for providing universal access to health care. Senator KENNEDY testified at the hearing and we agreed to unite our committee efforts and to work together. I have organized a working group of key Senators to develop a solution that will provide universal access to health insurance for the people of this country. The fact that the two major committees on health—Finance and Labor and Human Resources—have joined forces is a significant step forward.

The working group is bipartisan including key players in health policy, Senators KENNEDY, MITCHELL, DURENBERGER, HATCH, and seven other Senators. The goal of the group is to develop a proposal that would provide universal access to health care through the private and public sectors.

The working group began meeting in early July and has spent considerable time examining the problem and potential solutions. We have developed a comprehensive list of public and private sector options and are now at the critical point of designing the proposal. Once we finalize our approach, we will distribute the proposal for comments to key national organizations and other interested parties.

We have an ambitious timetable. We plan to consider a bill next session; introduce the bill in January and go to floor late next year.

The group is considering a proposal that would be a combination of private and public approaches that together would result in universal coverage. All sectors of society would share the burden of costs. Rather than being implemented immediately, we are developing long-range plans that would be phased in over time.

Mr. President, a new group of leaders have emerged in the Senate who are willing to work with business, labor and providers and the administration. This country needs health insurance in place for everyone and the time has come to get the job done. There is both a moral imperative and an economic imperative to see that all Americans have access to high quality, affordable health care.

NONCONVENTIONAL FUELS

Mr. SIMPSON. Mr. President, present law provides an income tax credit in section 29 of the Tax Code for so-called nonconventional fuels. Under current law, this credit expires at the end of 1990. More specifically, the credit applies only to fuels produced from a well drilled or a facility placed in service before January 1, 1991.

Mr. President it has come to my attention that, notwithstanding the fact that the nonconventional fuels credit does not expire until the end of next year, there may already be some problems for projects underway with a long lead time in qualifying for the credit under the placement in service rule. As a result, these projects may have difficulty obtaining financing, even though the scheduled expiration of the credit is more than a year away.

Mr. President, it seems to me that in this kind of case the credit is not providing the kind of incentive that we want it to. We want the credit to encourage projects that will produce nonconventional fuels, but it may not do so effectively in the case of projects with a long lead time. So what I would like to see is to have the section 29 credit extended now for at least another year, or possibly to have some changes made in the way that the expiration date applies to projects with a long lead time.

The reconciliation measure reported out by the Finance Committee in October included a provision that would have extended the nonconventional fuels credit for 2 years, but this provision was stripped out of the bill along with all other revenue-losing items and so-called extraneous provisions. I understand that it was also not possible to restore this provision to the bill during the conference, given the constraints under which the conferees were operating.

Mr. President, I would like to ask the distinguished chairman of the Finance Committee, Senator BENTSEN, whether he agrees with me that the issue I have described is an important one, and whether he thinks that the Finance Committee might be able to consider this issue again next year.

Mr. BENTSEN. Mr. President, as my friend from Wyoming pointed out, the Finance Committee reported out a budget reconciliation submission that included a 2-year extension of the nonconventional fuels credit. I supported that measure strongly, and indeed included it in the Chairman's mark that I put before the committee. I agree with the Senator from Wyoming that we want the section 29 credit to function as an effective incentive for the development of alternative fuel sources.

I will be glad to work with the Senator from Wyoming to see that this issue is brought before the Finance Committee next year. I appreciate his not having pressed this issue in consideration of the limitations within which we have been constrained to work to put together the revenue portion of this budget package.

Mr. SIMPSON. Mr. President, I want to thank my friend from Texas for his cooperation on this issue, and I look forward to working with him on this issue next year.

Mr. DOLE. Mr. President, I would like to associate myself with the remarks of the Senator from Wyoming, and I also appreciate the cooperation of the distinguished chairman of the Finance Committee on this matter.

INSURANCE PLANS SUBJECT TO MINIMUM INSURANCE PREMIUM RIDER

Mr. HEINZ. Mr. President, I would like to call to the attention of the Senator from Texas, the chairman of the Finance Committee, an issue that has come to my attention relating to the deductibility of certain reserves estab-

lished in connection with group accident and health insurance plans subject to a minimum premium rider.

During the term of such riders, the employer is responsible to the insurer for funding claims up to a certain trigger-point amount on a cumulative monthly basis. These minimum premium riders do not change the risk assumed by the insurance company, and the insurer remains liable for all unpaid claims as of the date of termination of the rider. The insurance company reflects on its annual statement a liability for the future unpaid claims upon termination of the minimum premium rider in an amount essentially equal to the termination premiums.

The IRS has taken the position, in TAM 87-05-003, that an insurer in these circumstances is not entitled to a current deduction for additions to its reserve. This certainly is a classic catch 22 situation: the IRS denies a current unpaid loss deduction on the ground that the insurer's liability does not arise until some future date, and at the same time the IRS denies a current unearned premium deduction on the ground that risks insured against have occurred during the policy year.

Mr. Chairman, this is unfair, and I hope that the IRS will decide that the insurer is allowed a current deduction one way or the other. A clarification was included as an amendment to our markup of this bill, but as you recall, all of those amendments were dropped on the Senate floor. If the IRS does not decide that the insurer is allowed a current deduction in these circumstances, then I certainly hope that we will act on the matter early next year and clarify that a current deduction is allowed in this case.

Mr. BENTSEN. I am familiar with the situation that the Senator describes. As the Senator states, clarification was included in the original Finance Committee proposal. It was necessary, however, to drop that language when we moved to a so-called clean bill. I certainly hope that the Internal Revenue Service will resolve this matter in a fair and equitable manner. If they do not we will certainly look carefully at this issue again in the future.

CLARIFICATION OF THE CONFERENCE COMMITTEE BILL'S PROVISIONS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS [ESOP'S]

Mr. PACKWOOD. Mr. President, I would like to engage the chairman in a colloquy regarding the effective date of the conference committee bill's provisions relating to employee stock ownership plans or ESOP's. The bill's ESOP provisions are generally effective with respect to loans made after July 10, 1989. Other provisions, however, may apply to certain ESOP loans—including those made to finance the acquisition of employer securities by an ESOP pursuant to one or more collective bargaining agreements between employee representatives and one or more employers agreed to on or before June 6, 1989, and ratified within a reasonable period of time thereafter and which set forth material terms of the ESOP.

In some cases, as a matter of good business judgment, an employer may have executed a single loan to provide ESOP benefits to employees covered by more than one collective bargaining agreement. For instance, an employer may have made a single ESOP loan to provide ESOP benefits to employees covered under five different collective bargaining agreements, but find that only four collective bargaining agreements may meet the requirements of the bill's collective bargaining agreement exception. Yet one ESOP loan has been executed to provide ESOP benefits to the employees covered by all five collective bargaining agreements.

In such cases, I interpret the bill to allow the exception to apply to such a loan to the extent that it is used to provide ESOP benefits to employees covered by those collective bargaining agreements which meet the requirements of the exception. The transition relief would allow such an employer to receive any tax benefits that would be attributable to that part of the loan that qualifies for transitional treatment under the exception. My question is whether the chairman agrees.

Mr. BENTSEN. I agree with the distinguished Senator from Oregon. The collective bargaining agreement exception to the bill's generally effective ESOP provisions applies to any and all loans, or portions thereof, that meet the exception's requirements.

Mr. PACKWOOD. I agree and I thank the distinguished Senator for his clarification. The bill's ESOP provisions exception for collective bargaining agreements also requires that the collective bargaining agreement set forth the material terms of the ESOP loan. In some cases, I suspect, an agreement may merely incorporate by reference the material terms of a preexisting ESOP. In such cases, I assume a collective bargaining agreement that refers to terms of an employee stock ownership plan in existence on the date of the agreement would be treated as setting forth the material terms of an employee stock ownership plan. Does the chairman agree?

Mr. BENTSEN. I agree with the Senator. For the purposes of the exception to which you refer, a collective bargaining agreement shall be treated as setting forth the material terms of an employee stock ownership plan if the agreement refers to an employee stock ownership plan that was in existence on the date of the collective bargaining agreement.

Mr. PACKWOOD. I agree and I thank the chairman.

Mr. PACKWOOD. I would like to ask the chairman of the Finance Committee a question to clarify the rule in the legislation relating to the dividends paid deduction for employee stock ownership plan loans under section 404(k) of the Code.

Am I correct that under the provision, dividends on employer securities acquired with an acquisition loan may also generally be used to make payments on a loan that refinances the acquisition loan, provided the refinancing complies with the generally applicable rules relating to refinancing of employee stock ownership plan loans?

Mr. BENTSEN. The Senator is correct.

RELUCTANT SUPPORT FOR THE COMPROMISE RECONCILIATION ACT

Mr. EXON. Mr. President, I congratulate the leadership and chairman of the Senate Budget Committee for their good efforts in producing a budget agreement which enjoys the support of the President. Their job was most difficult and their efforts frequently frustrated. I respect the tireless work of the leadership.

Although there are significant areas where I disagree with the recommendations of the conference committee, I will reluctantly support this budget measure. I will support the leadership package because in spite of its shortfalls, the legislation presently before the body is preferable to the permanent sequester which would have unfairly devastated agriculture and education programs and in the defense sector would have placed our national security in considerable jeopardy. At this late date, the only choices available are sequester or reconciliation. On balance, I believe the wiser choice is reconciliation.

I express reluctance to support this package because even after it is fully enacted, it will not make a significant dent in the deficit. When the accounts are settled at the end of the fiscal year, the reductions in this package will barely cover up the shenanigans of the off-budget S&L bailout bill, and the Defense Department pay shift. The American people will see once again the Gramm-Rudman-Hollings law promises much more than it can ever deliver. The final net deficit for fiscal year 1990 will be closer to $150 billion than the promised $100 billion and when trust funds are taken out of the calculation, the true operating deficit of the U.S. Government will near, if not exceed $250 billion.

The real measure of our Nation's fiscal condition was taken just a few days ago when the Congress approved the President's request to extend the statutory debt ceiling to over $3 tril-

lion; an indebtedness which is indeed mind boggling.

In one decade, the accumulated national debt will have more than tripled. To try to visualize how much money $3 trillion represents, a friend and I did a few back of the envelope calculations and determined that if one ounce of gold is valued at $400, and 1 pound of gold valued at $6,400, it would take 7,812½ 60,000-pound truckloads of gold to pay back the $3 trillion borrowed by the United States.

Mr. President, soon gross interest on the national debt will be the biggest single expenditure of the Federal Government. This most modest deficit reduction package before the Senate this evening only taps the brakes on a nation rolling faster and faster into debt.

It is indeed tragic that in terms of deficit reduction the first year of the new administration has been wasted. The looming debt of the Nation hangs heavier today over our economic future than it did when the President assumed office.

The 20th anniversary issue of the National Journal looks at America's way of governing and adopts as a symbol of the future a bright yellow sign warning "danger thin ice." Mr. President, given the poor performance on the budget this past year, the American people have one more thing to be thankful for this Thursday and that is that America has not already broken through the ice and fallen into the frigid waters of economic decline.

Senator HOLLINGS and I have been advocates of the freeze budget for a number of years. A freeze would be a sure way to shore up America's current thin ice economics. Earlier this year we put forward such a budget proposal which would have honestly met the Gramm-Rudman deficit targets and at least doubled the true savings of the current package, but unfortunately, without the support of the President, our plan garnered only modest support.

I plead with President Bush to take his responsibility of leadership seriously and use his office to rally support for the difficult task which still lies ahead. A deficit reduction effort built on the principle of shared sacrifice will be welcomed and supported by the American people and the Congress.

Mr. President, the Nation deserves much more than today's timid action. I will support the compromise package only because it is more fair and marginally more effective than doing nothing.

Mr. METZENBAUM. Mr. President, after many weeks of negotiation, the House and Senate have finally agreed on a somewhat stripped down Budget Reconciliation Act. I want to commend Senator SASSER for his tireless efforts to put this bill together. He and his staff have put in thousands of hours, and all of us owe them a debt of gratitude.

Although I support the bill before us today, I have mixed emotions about this budget reconciliation.

I applaud the goal of trying to pass a bill that is solely aimed at deficit reduction. But in fact, there is no definition of what legislative reforms represent real deficit reduction. All of the committees involved in reconciliation worked long and hard this year to consider the proposals they agreed were necessary to amend the law and improve the fiscal well-being of the Government. By deleting many of these provisions in the name of short-term deficit reduction, we have only temporarily delayed the enactment of these needed reforms.

With respect to the provisions passed by the Senate and House Labor Committees, we have only further put off needed reform of our pension laws. The Senate Labor and Human Resources Committee had adopted provisions to protect the promised retirement needs of workers and retirees.

Since 1983, thousands of employers have been terminating their pension plans to tap into workers' retirement funds. At least 2 million workers have watched their employers take $20 billion away from their retirement. Almost 2,000 more terminations are currently pending at the IRS. Forty percent of these terminations have been related to merger and takeover activity.

It is the success of our pension system that has created this threat to the viability of pension plans. Congress allows employers to set aside workers' deferred wages tax-free in order to encourage private savings to supplement Social Security. But, the money in those funds has become too great a temptation for business to resist when they face a short-term need for cash.

Only Congress can protect those funds from raiding. The money in pension plans represents this Nation's largest pool of long-term savings. It is the retirement protection for hundreds of millions of workers and retirees. Congress must protect the retirement security of working men and women.

This issue has always been considered as part of budget reconciliation. Pension plans are tax-deferred trusts and thus, changes in pension law always affect the Federal deficit. To the extent that employers are depleting pension plan assets, they are increasing the pressure on Social Security and increasing the deficit.

Congress had previously passed legislation to create disincentives to pension plan raiding as part of the 1987 Budget Reconciliation Act. But, the reforms were deleted in conference at the last minute. The Senate Labor Committee included pension protection legislation in this year's reconciliation to address this continuing problem.

In addition, provisions to permit employers to transfer some pension moneys to meet existing corporate retiree health care liabilities were initially included in the tax committees' reconciliation provisions. The use of pension funds by employers, either through a transfer mechanism, or by terminating the plan, is two sides of the same coin. In either case, the employer is gaining access to pension assets.

The conferees agreed that it is essential that both of these pension policy issues be considered together and agreed to delete the pension transfer provision.

I regret that these issues were not resolved as part of reconciliation. I am hopeful that the Congress will consider these needed legislative reforms early next year. Congress must not turn its back on the retirement security of workers and retirees.

Finally, I would like to mention one important pension provision the conferees agreed to include in budget reconciliation. Currently, the Department of Labor has discretionary authority to issue civil penalies against fiduciaries who engage in transactions prohibited under the pension law. The conference agreement imposes a mandatory civil penalty on fiduciaries who violate their duty to use the money set aside in employee benefit plans for the exclusive benefit of participants and beneficiaries.

Growing criticism of the Department of Labor's ability to detect and deter employee benefit plan abuse has made these penalties necessary. The Labor Department oversees 5.5 million employee benefit plans, but only reviews 3,000 plans a year. Violations of the law are found in 25 percent of the plans reviewed. We cannot allow those who abuse workers' pension and welfare benefits to go unpunished.

The Department must begin to take stronger action to deter violations of ERISA. Its new civil penalty authority should provide significant help to protect the pension and welfare benefits depended upon by millions of Americans. Congress and the administration must stand together to protect the benefits promised to workers, retirees and their families.

Finally, Mr. President, the conference report on budget reconciliation contains a so-called technical amendment to section 4402(h) of the Employee Retirement Income Security Act of 1974. This is not, however, a more technical amendment. In fact, the amendment is a special relief act that applies to only one company, Lady Baltimore Foods. By this amendment, Lady Baltimore attempts for

the third time to obtain relief from its pension liabilities to the Central States Pension Fund by passage of retroactive legislation surreptitiously attached to a budget bill.

Lady Baltimore has persisted in these tactics in spite of the fact that a Federal district court has already opined that a previous version of the "Lady Baltimore Amendment" was unconstitutional. See *Robbins* v. *Lady Baltimore Foods, Inc.*, 678 F. Supp. 1323 (N.D. Ill. 1987). This bill is even worse, because it seeks to annul retroactively a final Federal court decision that compelled Lady Baltimore to pay its pension obligations, together with liquidated damages and attorney's fees for failure to pay these obligations voluntarily in a timely fashion. *Robbins* v. *Lady Baltimore Foods Inc.*, 868 F. 2d 258 (7th Cir. 1989).

The Lady Baltimore amendment is, in my opinion, unconstitutional. It applies to only one company. It interferes with the workings of the judicial branch. And, it attempts to overturn a final judgment in favor of one private party so as to benefit another private party. Regrettably, because Congress has not been providing a meaningful opportunity to debate and vote on this provision, it now falls to the courts to vindicate the rights of the pension plan and the retirees who depend upon it.

Mr. KERRY. Mr. President, I am very disappointed with this budget reconciliation agreement. It includes some very important provisions which I support and it will reduce the deficit by almost $15 billion. But this agreement makes our failure in addressing the Federal budget deficit this year very apparent.

The fiscal year 1990 budget resolution did not reflect the difficult choices we must make to seriously address the deficit. It was based on fraudulent economic assumptions and smoke and mirrors. Unfortunately, the lack of leadership from the White House that resulted in the revolution continued through the summer and fall and has now produced this agreement. To solve the deficit problem, and to make real progress on major challenges facing our Nation, we need strong leadership from President Bush. Unfortunately, we have not seen that this year.

Mr. President, I supported Gramm-Rudman-Hollings in 1985. I supported its rationale then and I continue to do so. The act is intended to force the Congress and the White House to reduce the deficit with the threat of an across-the-board sequestration if we do not do our job. The reliance of this agreement on a partial year sequestration is a testament to the lack of leadership we have seen this year on serious deficit reduction.

I sincerely hope that next year we will see an honest budget that addresses the problems the Nation faces come down from the White House and that serious budget negotiations—between the White House and the Congress, between Democrats and Republicans, and between the House and the Senate—will begin in the spring.

Mr. President, there are very important provisions in this legislation that I would like to speak to. This agreement includes a provision which will assist families who wish to take care of their severely disabled children at home by requiring that the income deeming rules be waived for severely disabled children allowing them to receive necessary SSI benefits. This provision is based on legislation I introduced in the Senate and Representatives DONNELLY and ATKINS introduced in the House.

Under current law, if a severely disabled child is cared for at home and the child's parents' income and assets are over $11,416; this income is deemed to the child, who then loses his or her personal needs allowance under SSI. On the other hand, should the child be taken care of in an institutional setting, the child will be entitled to receive necessary SSI benefits.

I am pleased that we are finally acting to remove the perverse incentive that exists for children to remain in institutions rather than at home with families. This provision is an important step in helping families make the difficult decision of how best to care for a severely disabled child. I particularly want to thank Senator MITCHELL for his help on this issue. It is clear that without his leadership and personal assistance, this inequity would not be resolved.

On a second issue, this legislation extends vital tax provisions for 9 months. The low-income housing tax credit is an important and valuable tool in the production of affordable housing. The extension of this credit is particularly important given the cutbacks in housing and housing production that we witnessed during the Reagan administration.

The low-income housing tax credit works. It has proven its effectiveness since its inception in 1986. In Massachusetts, the credit has meant the production of more than 1,500 units of affordable housing. Nationally, Mr. President, the low-income housing credit provides 100,000 units of low-income housing yearly.

The research and experimentation tax credits also work. They provide a necessary and effective incentive for research and the development of new products and technologies. I am proud to be an original cosponsor of the legislation introduced by Senators BAUCUS and DANFORTH which would permanently extend the credit. We should work to that goal next year. In a time when we are being challenged economically, this incentive is even more important.

The targeted jobs tax credit encourages employment of the hard to employ, provides them with skills and on-the-job training and experience. As sponsor of legislation to permanently extend and make the credit more attractive to employers, I will continue to fight for permanent extension.

The agreement also extends authorization for small issue bonds and mortgage revenue bonds facilitate economic development and affordable housing. These are all important provisions and I support them.

Mr. KOHL. Mr. President, this bill represents months of hard work by many fine people. They all deserve high marks for their diligence in the face of very difficult circumstances. However, Mr. President, the bill does not come close to measuring up to the needs of the times and I therefore cannot support it.

I base my opposition on two grounds: the lack of information we have on the bill and the lack of progress it makes against the deficit.

Mr. President, there's an old saying that "the devil is in the details." That saying has never been more true than with the legislation before us tonight. The bill has hundreds of pages of detailed statutory language. It will take weeks just to turn the pages, much less read through them and understand their impact.

How long have I had the bill? Less than 4 hours. Four hours, Mr. President. To be blunt, we are being asked to buy a pig in a poke. The bill is bound to contain mistakes and bad legislation. There may be another section 89 hidden somewhere in here. There may be some porkbarrel expenditures tucked away somewhere. But it takes time to find those things and we are not being given the time. That is not right. We should take the time to review this bill carefully.

What little we know about the bill is, unfortunately, not encouraging. With respect to its primary mission, deficit reduction, the bill is sadly deficient. The bill was simply unable to excape its parentage. It is borne of a flawed budget resolution and political expediency.

The budget resolution that led to this bill was based on optimistic economic assumptions and shady accounting. Those same assumptions underlie this bill and they have not come one iota closer to respectability. In addition, the bill counts moving the Postal Service off budget as contribution over a billion dollars to deficit reduction. Whether or not you support moving it off budget, and I have supported it, no one can honestly claim one dime of real deficit reduction results from this accounting shift.

Yet, even with all of these advantages, it is doubtful that this bill achieves the modest reductions called for in the budget. I cannot deny that there is some real savings in the bill, but it is a small amount. Where we needed bold action and deep reduction in the deficit, we have merely worked at the fringes.

Everyone here knows that next year, when tonight's debate has long since quieted, all this sound and fury will have signified nothing. The deficit won't even be close to the $100 billion target. We will be lucky if we break $130 billion.

The version of reconciliation passed by the Senate stripped out provisions that did not contribute to deficit reduction. While I supported many of those provisions that were taken out, while several of them responded to immediate needs in my own State, the national need for deficit reduction requires us to take a larger view.

Unfortunately, many of those provisions have found their way back into the bill reported out by the conference committee. Some of those extra costs were offset by allowing the sequester to extend into next year.

What a cost, Mr. President. In the name of some questionable and costly provisions, we will cut programs that help students and doctors and farmers. Those cuts are a function of formulae, not the result of a reasoned decision that they ought to be cut. If we are going to impose the pain of a sequester, then we should commit the savings to greater deficit reduction not further spending.

In addition, the sequester hits programs that already contributed to deficit reduction through the appropriations process. Reconciliation is supposed to reach its savings through changes in entitlements and other, nondiscretionry programs. Keeping the sequester in place wrongly shields those entitlements from reasonably cuts at the expense of many vital discretionary programs.

It has been said that this Nation is governed by leadership or by crisis. Unfortunately, on the most important economic issue confronting us, we have neither. The administration has ducked and twisted and postured itself everywhere but forward.

Until the President is ready to support serious deficit reduction, it will not happen. Without his leadership, this bill was doomed to make pitifully little progress in our fight to stop the spend-and-borrow policies of the 1980's.

At some point we are going to have to address the long-term needs of our Nation. That will involve some short term pain: some programs that won't be fully funded even though they are fully worthy of our support; some tax breaks will have to be curbed or eliminated. But until we endure the short-term pain of these measures, we will never achieve the long-term gain in our economic well being.

And until legislation in that vein emerges, I will oppose this kind of bill.

### MEDICALLY NEEDY INCOME LEVEL UNDER MEDICAID

Mr. CRANSTON. Mr. President, I want to highlight one particular provision in the budget reconciliation measure now before us. It's not a major provision, but one that is very important to elderly and disabled low-income individuals in my State and those in at least 10 other States. This provision would prohibit the Health Care Financing Administration [HCFA] from implementing until December 31, 1990, regulations concerning the medically needy income standard for single individuals under State Medicaid plans.

Mr. President, current regulation states that, in determining the medically needy income levels [MNIL] for a single person, States may utilize a methodology that is 133⅓ percent of the amount "reasonably related to the highest money payment which would ordinarily be made under the State's AFDC plan to a family of two without income and resources." The statute and regulations reflect the fact that a medically needy family of one ordinarily will be an aged, blind, or disabled adult, while an AFDC family of one ordinarily will be a child.

HCFA further clarified this regulation in the Regional Office Manual (1979), which states:

> [W]here there is no amount of payment for one person in the AFDC program which is reasonably related to the AFDC payment for two-person families, for example, because the AFDC plan does not provide for payments to single individuals, or such payments are based on reduced need standards applicable only to dependent children and are therefore not related to reasonable maintenance needs of medically needy adults, an amount for one-person families must be established by the State to meet the requirements of this provision.

The regulations and the ROM manual cited above both stress the statutory requirement of setting a MNIL for individuals on the basis of reasonable relationship to the AFDC level for a family consisting of two or more persons. HCFA's current regulations correctly interpret this to mean that even if a State has an AFDC payment level for a family of one child, since, that level is not related to the reasonable maintenance needs of medically needy adults, a State may set different levels to take into account the greater needs of adults.

Mr. President, on September 26, HCFA proposed new regulations that would forbid States from implementing the reasonable relatedness requirement when such States have an AFDC payment standard for one person. The proposed regulations would require a State to base its MNIL for one person on 133⅓ percent of the AFDC amount for one person if that State's AFDC plan contains such a payment level. This new regulation would result in a reduction of the MNIL in California, for example, of nearly 25 percent. Nearly 95,000 low-income disabled and elderly Californians would be affected. Thousands of individuals in other States would similarly be impacted.

Mr. President, although I would have preferred permanent legislation—as I had earlier advocated—to allow States that had implemented policies under the current regulations to be able to continue, I nevertheless believe that this year-long moratorium will give both the Congress and HCFA time to review carefully the proposed regulation. I urge HCFA to reconsider and not to move forward with the final rule. I intend to pursue this issue legislatively to ensure that no such action will go into effect.

Mr. President, I would like to thank the distinguished chairman of the Finance Committee, Mr. BENTSEN, for his assistance on this matter.

### POSTAL SERVICE OFF-BUDGET

Mr. CONRAD. Mr. President, I am pleased that the Budget Reconciliation Act being voted on tonight includes a provision to take the U.S. Postal Service off budget.

The Postal Service is mandated to operate in a business like manner and to conduct its finances using a business like accounting and budgeting system. Fulfilling those requirements is a very difficult proposition when Congress exerts fiscal constraints unrelated to the operation of the Postal Service. As we all know, the Budget Reconciliation Act of 1987 required the Postal Service to produce $1.2 billion in budgetary savings which resulted in fewer window hours, delayed mail sorting and less frequent mail deliveries.

There are several reasons why I believe the Postal Service should be removed from the budget. It is unique among all Federal entities: It operates on a user-funded, break-even basis. In addition, it has a very large capital improvement program. And, unlike any other Federal trust or public enterprise fund, the Postal Service provides an essential public service to virtually everyone in the country on a daily basis. Every day postal workers across the country handle millions of pieces of mail—from simple thank-you notes to huge business deals—more quickly, efficiently and cheaply than any other postal system in the world.

I applaud the action taken today to take the Postal Service off budget. It is a good move for the Postal Service and for everyone who uses the service.

### EXTENSION OF HOUSING AND JOB TAX CREDIT PROGRAMS

Mr. COATS. Mr. President, today the Senate and House conferees have

agreed to a reconciliation measure which, among other things, will extend a number of programs that were to expire at the end of this year which will benefit the taxpayers of my home State of Indiana, and are vital to our economy, to employers and to the housing needs of many Americans.

The low-income housing tax credit provides one of the few incentives for the construction, rehabilitation, and acquisition of affordable housing to be provided to low-income families. It has proved to be an effective means of stimulating low-income housing development. It is estimated that by the end of 1989, commitments will have been made for nearly 200,000 tax credit-assisted rental units to house over a half million needy Americans.

For instance, the South Bend Heritage Foundation has used this tax credit to complete the $1.3 million Historic Dunbar Corner rehab housing project. The foundation is now in the planning stage of a major new construction project called West Washington Homes, estimated to cost over $5 million, to provide affordable housing for many South Bend residents and in the process restore the quality of life for families in inner city neighborhoods. They cannot complete this important project without this tax credit program.

We must also encourage the ability of our families to achieve an essential part of the American dream—owning their own home. Mortgage revenue bonds help to reach this goal. These bonds are issued by State and local housing agencies to provide funds for home mortgages at slightly below market rates. This program helps young Hoosier families to purchase their first home. The qualified mortgage bond tax credit program should be extended.

The targeted jobs tax credit gives businesses an incentive to provide meaningful training and jobs for Indiana workers who might otherwise be unemployed. It will help to keep Hoosier businesses competitive in the United States and the world economy, and it will provide needed skills to provide our workforce competitive in the job market. This program deserves to be extended because it helps employers and workers alike.

As I have cosponsored legislation to extend these tax credit programs, I am pleased that they will be renewed for 9 months, and I have urged the President to sign the reconciliation package into law. However, I am sorry they will not be extended longer, and I shall be back next year to push for their extension beyond 9 months because they are essential to Indiana's economy and our neediest families.

Mr. President, I shall vote for this reconciliation package and I urge my colleagues to do the same.

## THE DEDICATED AND ABLE FINANCE COMMITTEE STAFF

Mr. BENTSEN. Mr. President, in the final days and hours of this session, no one has worked harder or longer than the dedicated staff members of the Senate Finance Committee. I want to take a few moments to pay tribute to these unsung heroes of the legislative process and to offer my personal words of thanks.

The Finance Committee was deeply involved in numerous issues which did not get resolved until these last hectic days. Of the 748 pages of the reconciliation bill, 678 contained matters within the jurisdiction of our committee. In addition, we had to handle issues which arose on other bills: Catastrophic health insurance; assistance to Poland and Hungary; capital gains; extension of expiring tax provisions; steel trade liberalization; and the authorization bill for the U.S. Trade Representative, the International Trade Commission, and the Customs Service. These many measures required close monitoring by the staff, the drafting of detailed technical provisions, preparation of explanatory materials, and attendance at seemingly endless meetings.

These complex matters require unusual skills and exceptional talents in the best of times. I am proud to report, Mr. President, that the Finance staff demonstrated their superb professionalism even under the most trying conditions of the past few days.

At my right hand throughout the year and especially in recent days has been Van McMurtry, staff director and chief counsel to the Finance Committee. Van remained calm in the midst of turmoil, with sound judgments and careful management despite the many pressures. His extraordinary efforts helped make it possible for all these matters to be brought to decision and implemented.

Mr. President, as always, one of our most complicated and sensitive tasks is making changes in the Tax Code. We all should be especially grateful to Pat Oglesby, chief tax counsel for the committee, for his tireless efforts during the long negotiations over the many tax provisions in the reconciliation bill and elsewhere, and for his unfailing comprehension of even the most arcane tax issues.

Pat was ably assisted by several other tax specialists on the Finance Committee staff who deserve our commendation: Sam Sessions, Maurice Foley, Randy Hardock, Norm Richter, Don Spellman, George Leventhal, Ann Goshorn, and Jenny Finneran.

Mr. President, no staff member showed more grace or faced more pressure this year than Dr. Marina Weiss, our chief analyst for health and human services. No issues were more contentious than those related to catastrophic health insurance. Marina helped all of us to work our way through the rough waters and rocky shoals.

I also want to thank the other dedicated staff members who have worked so hard on health and spending issues: Joe Humphreys, Margaret Malone, Richard Lauderbaugh, Lisa Potetz, Kipperly Tidball, Donna Ridenour, and Jeanne Roby.

While trade issues were not as numerous as last year, they still were important questions in recent weeks. For their ready expertise, careful analysis, and exceptional efforts, I want to commend the trade staff of the Finance Committee: chief international trade counsel Jeff Lang, Mike Mabile, Marcia Miller, Liese Wright, Jennifer Bergstrom, and Gayle Fralin.

Many other staff members made superhuman efforts despite little sleep and end-of-session confusion. I want to congratulate chief economist Bill Halter for his dedication and expertise; Chris Peacock and Laura Wilcox for their skill and care in explaining our decisions to the news media; Gloria Fralin and Judy Jackson, plus our receptionists and hearing clerks, for seeing to it that messages were relayed and materials made ready for meetings. All of these people worked in the background to make the legislative process smoother.

Mr. President, I also want to make special mention of Denise Roy, my legislative assistant who is the key link between my personal staff and the Finance Committee staff. Denise performed an inherently difficult task with extraordinary skill. She helped me on a great many issues and always showed keen insights and good cheer.

These talented staff people are an asset to the entire Senate, not just the Finance Committee. They make it possible for us to accomplish what we intend as national policy, and to avoid mistakes from ignorance or inadvertence. We make the decisions, but their dedicated efforts make it easier for us to make sound judgments.

I wish them a well-deserved rest, both because of their excellent performance this year and because they, and we, face another busy year in 1990.

The PRESIDING OFFICER. The Senator's time has expired.

All time has now expired.

The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote.

Mr. SASSER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXPRESSION OF THANKS

Mr. BYRD. Mr. President, I did not want to take time during the discussion of the reconciliation bill, but I do want to thank a number of persons. I want to thank, first of all, the majority leader, who has worked very, very hard in this long and contentious effort, worked diligently, hard. and long to bring this measure to fruition. I know because I have gone home late in the evenings and he has been here for quite a long time after I have gone home. He is entitled to the plaudits and to the gratitude of his colleagues and the country.

Mr. President, I wish to thank the chairman of the Budget Committee and the ranking member. They are two individuals who have likewise spent many, many hours on this. I have known that our cause was in good hands.

The Senator from Tennessee has, in this first year of the chairmanship, proved himself to be a workman worthy of his hire. He has been considerate of me and the Appropriations Committee. He is a member of the Appropriations Committee, a very valuable member of it. But, likewise, we are in his debt. And I thank the ranking member, Senator DOMENICI, who is a hard worker and a very skillful member of the Budget Committee, with long experience on the committee.

I thank Senator BENTSEN also. I have known Senator BENTSEN many times to be handed a difficult job and he has always willingly indicated that he would take the difficult chore and do his best. And so he has been a good soldier, and he did the same in this instance.

When the Senate decided that the reconciliation bill should be stripped down under the leadership of both of our elected leaders, our party leaders—and I have indicated before that they showed statesmanship—and when they led that effort, Senator BENTSEN did his best. As he indicated at that time and as he has indicated tonight, he went to conference without many chips because the bill had been stripped here.

Mr. President, I thank the staffs too. I will not go over what has been said, but there are going to be some Senators who one day will learn that in making it possible that we might continue to earn honoraria, we are going to see some good staff people slip away from the Senate. We have made it possible now for the House and for the executive branch and for the judiciary to have increases in their pay.

I think it goes beyond time that that was done. But we denied Senators an increase equal to that of the other body. I have already expressed my viewpoint on that. We are going to find that after passage of time, that staff people have families also. They have to think about educating their children. If they can go on where they can get more money for their skills and their talents, why, I do not think we can blame them.

So as we congratulate our staffs and thank them for their dedication, their hard work, and all they do to help us from day to day, I think we are going to learn that it takes sometimes a little more than dedication to put bread on the table.

I hope that over the next few months that some of us will have time to have some second thoughts about how we failed the other evening to do what was the right thing.

Mr. President, finally, let me say this. The Appropriations Committee, as Senator SASSER has said, did its work, did its duty, and lived up to the budget resolution that the Senate adopted, and we paid on the front end. We lived within our allocations.

Every subcommittee chairman, every subcommittee lived within its allocations that were distributed among the subcommittees several months ago. So we paid our way and we played our part.

In the last few days, because there is going to be a sequester, the Appropriations Committee again had to yield in order that we might finally have a reconciliation bill.

When the leader came to me to say, "Can you help us," I could have turned that leader down, and I felt that we have to sacrifice. So that was the attitude that I chose.

First, it was a 2-month sequester, and then a 3-month, and then I was asked, "Could you live with 4 months?" And then finally, "Can you live with 1 more week?"

I felt it my duty to cooperate with my leader, but I have to say tonight that the Appropriations Committee has done more than its part. The people who are going to suffer in this country are those who need health services and those who need job training, our health research, our energy research.

The discretionary domestic programs are going to suffer because out of a total of $4.5 billion that are being sequestered, $2 billion will be coming from defense, $1 billion from domestic discretionary, and $1.5 billion from sequestrable entitlements, making a total of $4.5 billion that the Appropriations Committee should not have had to bear.

So approximately 70 percent sequestered would come from appropriated funds. So appropriations have paid at the front end and at the end. So the Appropriations Committee has borne the brunt. I think this is an indiscriminate meat-ax approach. I do not think we can continue to go on like this.

But I wanted to say those things for the RECORD, Mr. President, because there is such a thing as cooperation and I like to do my share, but I think it has really been unfair to the Appropriations Committee and the people out there in the country who suffer the consequences.

I yield the floor.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TIME TO RENEW OUR COMMITMENT TO HOUSING AND THE HOMELESS

Mr. ROCKEFELLER. Mr. President, I would like to take this opportunity before the U.S. Senate adjourns for the holiday season to reaffirm my commitment to housing and helping the homeless. As we plan to celebrate Thanksgiving at home, spending precious time with our own families, I believe it is important to remember those families who do not have a home. As we count our personal blessings, we should remember those families who are struggling to survive the cold in substandard shells which are unsafe and deteriorating and do not truly qualify as a home.

It is a tragedy that in our prosperous country, some 100,000 children must go to sleep each night without a place to call home. This problem is not limited to just our urban cities, it extends to all areas of our country. Unfortunately, West Virginia is not immune.

In a survey done by the West Virginia Coalition for the Homeless during last year's holiday season, over 200 children were homeless. The agency's report, entitled "The Smallest Victims," calls attention to the needs of homeless children. These children face enormous obstacles because they lack homes and the stable environment needed for children to learn and grow. Homeless children often miss school as they move from shelter to shelter. They lack basic health care and proper nutrition, which lead to future physical and psychological growth and development problems.

The West Virginia survey concludes: "These [homeless] children are not the problem, they are just children—the smallest victims."

This survey challenges us to address the problem of homelessness and its root causes, primarily the lack of safe, affordable housing.

At this time of year, I want to commend the outstanding private, charitable organizations and generous donors that persevere so valiantly in my State and across the country to provide food and shelter for families in need. These groups do an outstanding job day in and day out, and they take the time to

make a special effort to provide holiday cheer to those who would otherwise have to do without. These groups deserve our support and admiration.

But we, in Congress, need to do more to help the overwhelming number of homeless families and individuals. We need to provide emergency shelter and food for struggling families. We must support transitional housing that provides shelter and the social services the homeless need to get back on their feet and into safe, permanent homes.

Most importantly, the long-term answer for homeless families is not just shelters, but a far larger supply of decent housing stock.

As Congress begins to consider new housing policies, we must also focus on the issue of substandard housing. We need to reach out and help those families and senior citizens who are struggling to survive in rundown houses or shacks without clean water, proper sewage or safe electricity. Estimates regarding substandard housing in my State are alarming; almost 40,000 houses without complete plumbing, 150,000 houses without central heat, and more than 30,000 overcrowded homes.

The rural homelessness project completed a study of living conditions in two rural West Virginia counties last year. Instead of gathering numbers and statistics, the researcher sought the stories of the families struggling to make ends meet and officials who don't have the resources needed to help. The stories are heart-wrenching and give an extraordinary account of the human suffering associated with rural homelessness and substandard housing.

It is painfully apparent that our country must invest more in housing. The American dream of having a place to call home is one that should be within the reach of all.

As an original cosponsor of the Mitchell-Danforth proposal to extend the low-income housing tax credit, I am pleased to see that Congress overcame many difficult, legislative hurdles to extend this critical program in the final reconciliation package. Created in 1986, this credit has emerged as the primary tax incentive for stimulating low-income housing production and rehabilitation. This program has pumped millions of dollars into low-income housing projects in my State of West Virginia and hundreds of millions of dollars nationwide. It has proved to be an effective tool in developing low-income housing and certainly deserves to be extended.

Mr. President, I am heartened by the new commitment to housing expressed by Secretary Kemp and President Bush. After almost a decade of decline and mismanagement, it is good to see that our Housing Secretary is engaged and active. Secretary Kemp is proposing reform, sponsoring new initiatives, and most importantly, seeking to work with Congress on Federal housing policy.

If we are to succeed in increasing affordable housing in West Virginia and across the country, it will be crucial for the administration to work closely with Congress. We are all aware of the Federal budget deficit and the constraints it places on Federal programs and initiatives. But we must respond creatively and look for ways to make the investments required for the future—investments in housing, investments in economic development and essential programs necessary to meet the basic needs of our people and our Nation.

## SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1990

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 448, a supplemental appropriations bill for title XX, social services block grant, that it be considered without amendment, read for the third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the joint resolution (H.J. Res. 448) was passed.

Mr. BYRD. Mr. President, this joint resolution provides a supplemental appropriation of $100,000,000 for the social services block grant. It passed the House in anticipation of enactment of authorizing legislation in the reconciliation bill, and includes a proviso making the funds contingent upon such authorization.

Funding for the social services block grant has been essentially frozen for the last 5 years at the authorized ceiling of $2.7 billion. This increase is needed to help meet increasing demands for a wide variety of social services, such as: Preventing child abuse; assisting the handicapped and the elderly; and augmenting day care. The States and local areas decide the priorities for which the funds are utilized.

Mr. President, the social services block grant, authorized under title XX of the Social Security Act, is an appropriated entitlement program. The regular Labor-HHS-Education appropriations bill, signed into law today, fully funds the existing $2.7 billion entitlement. This supplemental fulfills our commitment to fully fund the additional $100 million provided as part of reconciliation. Mr. President, I urge adoption of this joint resolution.

Mr. HATFIELD. Mr. President, I concur in the support for this joint resolution expressed by the chairman of the Committee on Appropriations. As ranking member of the full committee and a member of the Labor, Health and Human Services, and Education Subcommittee, I am pleased to join with the chairman in responding expeditiously to the increased authority provided in the reconciliation legislation for the title XX program.

Authorized in fiscal year 1982, the title XX State block grant consolidated funding from grants to States for social services, child day care grants, and State and local training and retraining grants. States have broad flexibility to use funds for programs they determine foster self-sufficiency and reduce dependence on public assistance. In practicality, these Federal funds augment State programs providing child care for low-income working parents, supportive services for the elderly, child protective services, and community-based services for the disabled.

It has been 5 years since the social services block grant has received an increase in authorization and appropriation. In that time period, however, the needs of the poor, the helpless, and the elderly have not stood still. States and localities are confronted with growing problems of child abuse and neglect. They are wrestling with limited availability of affordable child care for low-income families, and the aging of our Nation's population is increasing the need for supportive and protective services for the elderly.

Clearly, Mr. President, the Senate's action this evening to increase funds for these services is warranted. I urge the Senate to adopt House Joint Resolution 448. It provides a needed inflationary increase for the title XX program that is long overdue.

Mr. HARKIN. Mr. President, I am pleased that Senator BYRD, chairman of the Senate Appropriations Committee, has brought this matter for additional funding for the title XX block grant program to the Senate floor. This program provides funding for the full array of social services and the resolution before us, House Joint Resolution 448, will provide an additional $100 million for title XX subject to an increased authorization included in the reconciliation legislation.

In the regular Labor, Health and Human Services, and Education appropriations bill which was signed into law earlier today by the President, $2.7 billion is provided for title XX social services. This program has essentially been frozen at this level since fiscal year 1983. The program is available for a broad array of social services provided at State discretion through State programs. These programs include adoption assistance, protective services for children and adults relating to family violence, child abuse, child neglect, child care, and transportation services to assist program clients. These services can be used to assist the elderly, the aged, the blind, emotionally disturbed, physically

handicapped, and other individuals both old and young to achieve or maintain economic self-support to prevent, reduce and eliminate dependency.

Mr. President, I compliment our full committee chairman, Senator BYRD, on expediting this matter and bringing it to the floor today in the final hours of this session of Congress. I must also take this opportunity to compliment Chairman BYRD on his successful efforts to protect and preserve the prerogatives of the Appropriations Committee not only in this matter but in his successful efforts to prevent spending floors from being included in authorizing legislation.

## TIED AID CREDIT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of H.R. 2494, the international banking bill, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2494) to reauthorize the Export-Import Bank title VIII tied aid credit fund and pilot interest subsidy program, and so forth.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1216

Mr. MITCHELL. Mr. President, I send to the desk an amendment on behalf of Senators PELL, HELMS, RIEGLE, and GARN and ask for its immediate consideration.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. PELL (for himself, Mr. HELMS, Mr. RIEGLE, and Mr. GARN), proposes an amendment numbered 1216.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. RIEGLE. Mr. President, I rise to support Senate passage of H.R. 2494, the International Development and Finance Act of 1989. This act, among other things, reauthorizes the Export-Import Bank's tied aid credit fund and gives the Bank the authority it needs to start a pilot interest subsidy program to help U.S. exporters compete in international markets.

On October 3 of this year, the Senate, by unanimous consent, passed S. 1704, a bill reported by the Banking Committee on September 20, 1989 to reauthorize the Eximbank's tied aid credit war chest and to give the bank authority to launch a 2-year interest subsidy pilot program.

On October 18, the House passed H.R. 2494, a six-title bill, the first title of which also extended the expiration date of the Eximbank's tied aid credit war chest. The other five titles of the House bill dealt with various international finance matters such as: First, requiring banks to increase their loan loss reserves against their international debt exposure; and second, providing a capital increase for the Inter-American Development Bank. Some of the matters in the six-title House bill were within the exclusive jurisdiction of the Banking Committee, while others were exclusively within the Foreign Relations Committee's jurisdiction. Others such as title III, dealing with the International Monetary Fund, are within the shared jurisdiction of both committees. In contrast to the situation in the Senate, all six titles of the House bill are within the exclusive jurisdiction of one committee, the House Banking Committee.

After passage of the House bill staff from the Senate Banking Committee along with staff from the Senate Foreign Relations and House Banking Committees began meetings to work out legislation acceptable to all three committees. The en bloc series of amendments that are being offered by the Senate to H.R. 2494 are the result of those staff negotiations which have produced provisions acceptable to all members of our respective committees. These amendments will, among other things, reauthorize the Eximbank's tied aid credit war chest for 2 years and provide $300 million to back the Treasury Department's effort to negotiate an end to that pernicious trade practice. It also calls on Federal bank regulators to pay increased attention to the reserve practices of banks against their outstanding loans to highly indebted countries. Additional provisions of the amendment reconcile other differences the House and Senate had about various other provisions of the House bill.

While I do not favor every proviso of the package amendment, I think it is a fair compromise that can result in final passage of this much-needed legislation. I thank Senator SARBANES, the chairman of our committee's International Finance Subcommittee for the leadership he has taken with regard to this bill. I also very much appreciate the support and cooperation Senator GARN, the ranking member of our committee, gave us in shaping this compromise. I should note that the Treasury Department also supports this package amendment and final passage of H.R. 2494.

Mr. GARN. Mr. President, I rise today in support of H.R. 2494, the International Development and Finance Act of 1989, as amended by the package of compromise proposals worked out by the Senate Banking, Senate Foreign Relations, and House Banking Committees, and the administration.

I strongly support the provisions of the bill that are within the jurisdiction of the Banking Committee. Most important, the bill will give the Export-Import Bank expanded authority to provide competitive export financing to U.S. companies, including funding of an aggressive tied aid credit program and initiation of an experimental interest subsidy program as an alternative to limited direct credits. These provisions are based on legislation proposals I cosponsored with Senator HEINZ.

The bill also direct closer regulation of commercial banks' LDC exposure and provides modest encouragement for the banks to contribute LDC loans in support of development and environmental programs in developing countries. While I had serious concerns about the reserving language in the form originally adopted by the House, I believe the compromise provision simply encourages the regulators to review LDC exposure carefully and is on acceptable addition to current law.

Finally, the bill permits the United States to participate in the ongoing replenishment of the Inter-American Development Bank and in a special IMF facility for the poorest countries. While the Banking Committee did not address these matters, the administration strongly supports these provisions because they will give Treasury the tools necessary to pursue critical management reforms in the Inter-American Bank and to influence IMF policies in the poorest countries. In addition, Treasury wants the Eximbank tied aid credit authority to support their efforts to negotiate an end to predatory tied aid credit financing in the OECD.

On balance, I believe this is a good bill that will make a modest step toward ensuring greater export competitiveness. It enjoys strong administration support and I urge its enactment.

Mr. PELL. Mr. President, today the Senate is considering H.R. 2494. This bill contains authorizations for some very important international programs. This legislation provides authorizations in the following areas:

Continues the Export-Import Bank tied aid credit fund for an additional 3 years;

Authorizes U.S. participation in the eighth replenishment of the resources of the Inter-American Development Bank;

Authorizes U.S. participation in the enhanced structural adjustment facili-

ty of the International Monetary Fund—a program designed to assist highly indebted African countries in coping with their debt crisis;

Seeks to improve the safety and soundness of the U.S. banking system and encourage the reduction of the debt of highly indebted countries; and

Encourages the multilateral development banks to engage in environmentally sustainable lending practices and to give greater priority to poverty alleviation in their lending programs.

Most of the international programs covered by this legislation fall within the jurisdiction of the Committee on Foreign Relations. In fact, by and large the committee has already reported out legislation authorizing these programs as part of other legislation pending on the calendar. However, there were a number of areas in which the pending legislation where the House bill has crossed into the jurisdiction of the Senate Banking Committee.

We have been very fortunate to have been able to work with the Senate Banking Committee to craft the omnibus amendment which will be offered today by myself, my distinguished ranking member, Senator HELMS, together with Senators RIEGLE and GARN, in their capacities as chairman and ranking member of the Senate Banking Committee. I believe the modifications contained in the omnibus amendment will enhance support for this legislation in the Senate.

I urge my colleagues to adopt both the amendment and the bill, as amended so that the House may act on this matter before the end of the 1st session of the 101st Congress.

Mr. SARBANES. Mr. President, I rise in support of H.R. 2494, the International Development and Finance Act of 1989, and the proposed Senate amendment to the act.

On October 3, 1989, the Senate passed S. 1704, a bill reported by the Banking Committee on September 20, 1989, to reauthorize the Export-Import Bank's tied aid credit fund, known as the war chest, and to give the Bank authority to establish a 2-year interest subsidy pilot program.

The House of Representatives passed H.R. 2949 on October 31, 1989. This bill also extended the authorization of the Export-Import Bank's tied aid credit fund and, in addition, dealt with a number of other very important international financial issues.

This bill merits expeditious action for a number of reasons. First, the bill contains the authorization for the tied aid credit fund of the Export-Import Bank. The Senate amendment to the House bill, reflecting the contents of S. 1704, would provide a 2-year, $300 million authorization for the tied aid credit fund. This authorization, larger than the 1-year, $100 million administration request, is intended to show a continuing commitment by the Congress to the tied aid credit fund at a funding level which will make it a credible lever in negotiations and a meaningful resource to respond to the tied aid credit practices of other countries. The 2-year authorization is intended to coincide approximately with the negotiating period needed to achieve a new agreement. The administration is about to embark on a new series of negotiations to achieve an agreement to restrict further the use of tied aid credits. They should be able to enter these negotiations with the authorization of the tied aid credit fund renewed.

Second, the bill contains the administration request for the U.S. contribution to the capital increase for the Inter-American Development Bank [IDB]. The U.S. joined in the negotiations among the member governments of the IDB to reach agreement on the request for a capital increase. The agreement for the capital increase request includes a package of reforms in the mnagement of the IDB. The IDB now requires the U.S. contribution in order for its Board of Governors to approve the capital increase and carry out its business for the new year. Since the United States played an important role in reaching the agreement for the capital increase request, it is of particular importance that the U.S. contribution be made in a timely manner.

Third, the bill also contains the administration request for the U.S. contribution to the interest subsidy account of the enhanced structural adjustment facility [ESAF] of the International Monetary Fund. The concept of creating an enhanced structural adjustment facility to provide long-term, low interest loans to the poorest of the developing countries to enable them to clear away arrears that may have built up on some of their shorter term loans was first proposed by the United States. The facility has worked well in practice and it is appropriate that the United States should continue to contribute to the support of the faculty.

Fourth, the Senate amendment takes recognition of the fact that most U.S. commercial banks have significantly increased their reserves for possible losses for loans to highly indebted countries during the last 3 years and particularly in recent months. The amendments requires the Federal bank regulators to review the exposure to risk of U.S. commercial banks to the highly indebted countries and provide direction to such institutions regarding additions to general and special reserves maintained by each banking institution required by the agencies arising from the review.

Fifth, the Senate amendment also clarifies the House provision which gives guidance to Federal bank regulators on regulatory and accounting treatment of debt for development swaps in order to encourage such swaps.

Finally, the bill contains very important environmental provisions designed to commit the multilateral bombs to greater attention to environmental concerns in carrying out their development policies. This is a most important step forward in the effect to protect and enhance our environment.

Mr. President, this is a very important piece of legislation and I am very pleased we were able to reach agreement on it.

Mr. LAUTENBERG. Mr. President, I rise in support of section 521 of H.R. 2494 which is based on S. 1045, the National Environmental Policy on International Financing Act of 1989. S. 1045, which was introduced by Senator SYMMS and which I cosponsored, passed the Subcommittee on Superfund, Ocean and Water Protection which I chair on August 1.

Section 521 would require the preparation and, with certain exceptions, the public disclosure of environmental assessments on proposed multilateral bank projects before the United States could vote in favor of the project.

Since 1984, the United States has sought to encourage the use of diplomatic channels to promote environmental consideration of loans by the banks. Unfortunately, the banks have been extremely slow to address the envoronmental concerns of their loans.

And their decisions have a significant impact on the environment. Every year, the multilateral banks lend $25 billion to Third World countries to finance development projects. Some projects have resulted in significant deforestation, soil erosion, and desertification. They can deplate the natural resource base, devastate large areas, and result in unsustainable development.

Some of the most egregious projects are documented in a Sierra Club brochure, "International Development Lending Reform," portions of which I ask unanimous consent be included in the RECORD at the conclusion of my statement.

The banks should not be providing support for such projects. And the United States must use its influence to see that these projects are not funded. We in the United States have learned that the environmental impact process, established by the National Environmental Policy Act, provides an effective way to identify environmental problems and develop alternatives which avoid adverse effects. An essential component of this process is public involvement in the review of the assessment.

The environmental impact assessment process can and must be used by the multilateral banks to avoid significant adverse environmental impacts of

their projects in the Third World. I ask unanimous consent that a document prepared by the Council on Environmental Quality, "Environmental Impact Assessment: What It Is and Why International Development Organizations Need It," be included in the RECORD following my statement.

S. 1045 would require the banks to consider environmental statements in making lending decisions and require that those statements be made available to the public. But I believe the United States must make it clear that we can't support projects when we don't know anything about the environmental impacts of the project.

At my subcommittee markup, I offered an amendment which would put an action-forcing mechanism into the bill. The amendment would require that U.S. representatives to the banks oppose or abstain from votes on loans having a significant environmental effect unless an environmental assessment was prepared and made available to the public.

Mr. President, I regret that section 521 contains a number of exceptions to the public disclosure provisions of S. 1045. Nevertheless, I am pleased section 521 otherwise follows the approach my subcommittee adopted in S. 1045. And I ask unanimous consent that a copy of a letter written by a number of environmental groups in support of the amendment I offered to S. 1045 in my subcommittee be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SIERRA CLUB, 1989-90 CONSERVATION CAMPAIGN, INTERNATIONAL DEVELOPMENT LENDING REFORM

Massive deforestation, erosion, and desertification, often caused by desperately poor (and rapidly growing) populations over-exploiting marginal lands, are devastating vast areas of the developing world, depleting the natural resource base, and threatening the biological foundations of the global economy. At the same time, developing nations are being pressed by the multilateal development banks (MDBs) to embark on large-scale, energy-intensive, resource-exploitative development.

Every year, the MDBs—including the World Bank and its regional counterparts, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank—lend some $25 billion to Third World countries to finance such development projects as roads, dams, and electric power plants. Ironically, many of the projects intended to enhance the well-being of these countries have done just the opposite, wreaking tremendous damage on the environment and inflicting hardship on indigenous peoples. These disasters continue to occur even though many of the MDBs have adopted formal environmental policies to guide their development planning.

Indigenous peoples usually have no voice in project design. Moreover, citizens in the countries that fund the MDBs are usually unaware of how their tax dollars allocated to the MDBs are spent.

The Sierra Club, along with other environmental and indigenous-peoples'-rights organizations throughout the world, is working to get the MDBs to uphold their commitment to fund only environmentally sound projects.

The Sierra Club is focusing its efforts on five World Bank-funded projects that, unless significantly altered or halted, promise tremendous environmental destruction, especially of tropical forests.

1. SRI LANKA—NATIONAL FOREST PLAN

Sri Lanka, a small island-nation off the southern coast of India, enjoyed 11,000 square miles of tropical forest in 1956. Half of that is gone today. The World Bank is now considering funding a $25-million, five-year Forestry Sector Development Plan intended to restore the country's forest lands. The plan, however, emphasizes timber production and other exploitative uses of the forest, with minimal regard for the environment. If it is carried out, Sri Lanka's remaining virgin forests would be eliminated.

The Sierra Club urges the World Bank to withhold funding until the plan is revised to ensure the long-term protection of Sri Lanka's forests. Specifically, the Club supports the guidelines developed by the the Sri Lanka Wildlife & Nature Protection Society which would better integrate forestry and watershed management.

2. INDIA—SINGRAULI POWER PROJECT

Less than 30 years ago, the Singrauli region of India was covered with rich forests inhabited by tigers, wild boar, deer, and 300,000 people who maintained a subsistence agricultural economy. Then, in the early 1960s, a large-scale industrialization project was begun in the region, including construction of the Singrauli Super Thermal Plant (SSTP) and the Didhichua Coal Mine.

SSTP's ash dump has blown ash into the adjacent reservoir, causing severe flooding and air pollution, and has so encrusted the soil that agriculture is almost impossible. The Didhichua Coal Mine is still in the early stages of development, but its present and future impacts on the environment and the indigenous people are staggering.

Since 1977, the World Bank has been party to the destruction, committing $850 million for development in Singrauli. The Indian government, for its part, has failed to conduct any environmental impact assessments.

The Sierra Club urges the World Bank to complete an environmental impact assessment for these projects as a first step in addressing the ongoing human and environmental tragedy in Singrauli.

3. INDIA—SARDAR SAROVAR DAM

The partially built Sardar Sarovar Dam is part of a development scheme involving the construction of 30 major dams, 135 medium-size dams, and 3,000 small dams on the Narmada River over the next 50 years. While providing irrigation and hydroelectric power to parts of four states in western India, the dams would require the resettlement of more than 1.5 million people. The Sardar Sarovar Dam alone would forcibly displace 80,000 people along the river, and would further accelerate deforestation, erosion and other environmental degradation in the surrounding lands.

In 1985, the World Bank approved a loan and credits totaling $450 million for the construction of the dam. Despite the ensuing public outcry, including massive demonstrations at the dam site, the World Bank has done nothing to promote the completion of the dam's environmental and public health impacts assessment. It has violated its own policy on involuntary resettlement, by failing to adequately inform and involve the affected populations in the project and resettlement planning.

The Sierra Club calls for the timely completion of environmental impact studies and an immediate halt to dam disbursements until the Indian state governments—in collaboration with local communities—ensure a comprehensive resettlement and rehabilitation process.

4. BRAZIL—POWER SECTOR LOAN

In 1986, the World Bank approved a $500 million loan to Brazil for the planning and construction of dams and power plants. Several of the dams, were environmental disasters, displacing thousands of people and flooding vast tracts of tropical forests.

Now, the World Bank is considering a second $500 million loan to Brazil for the construction of some 145 major hydroelectric dams, four of which will damage national parks and other protected areas. All in all, the planned hydroprojects will flood approximately 60 million acres of tropical forest and threaten the well-being of thousands of indigenous people who rely on the forests for food, fuel and shelter.

The Sierra Club opposes the Power Sector Loan unless environmental and human rights problems are resolved.

5. BRAZIL—CARAJAS IRON ORE PROJECT

In 1982, the World Bank provided $304.5 million in loans to Brazil's government-controlled mining company, Campanhia Vale do Rio Doce (CVRD), to construct the Carajas iron ore mine and an 890-kilometer railroad to transport the ore. Now CVRD wants to build 11 smelters along the path of the railroad. To fire these smelters, 58,000 square miles of pristine Amazon forests will need to be converted to charcoal, transforming one of the world's richest biological treasures into an irreparable wasteland. The smelters have been approved by the Brazilian government, but not the World Bank. Funding for their construction would be provided by the bank's controversial second Power Sector Loan.

The smelters will also spell disaster for the indigenous people living in the 23 reserves in the project area, as their lands will likely be razed for charcoal production by migrants and squatters desperate for income. The indigenous people themselves—who suffer from a declining standard of living due to the invasion of their lands—will find it hard to resist the qucik money they could earn for supplying charcoal to the smelters.

The Sierra Club urges the World Bank to press the Brazilian government to halt the smelter projects and to develop alternatives that will not result in massive deforestation and the continuing cycle of rural poverty.

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ENVIRONMENTAL IMPACT ASSESSMENT: WHAT IT IS AND WHY INTERNATIONAL DEVELOPMENT ORGANIZATIONS NEED IT

(By Edward E. Yates, Staff Attorney, Executive Office of the President, Council on Environmental Quality)

INTRODUCTION

The relationship of economic development to natural resource productivity and environmental quality is an issue that has come to the spotlight in recent years. Many projects funded by multilateral and bilateral development organizations have been beset by serious economic and technical

problems due to the lack of analysis of important "external" factors, such as environmental degradation, natural resource productivity and socio-economic impacts. How to promote economic development without causing environmental degradation and the ensuing reduction in social welfare is now being intensely debated within national political fora and within international development organizations working to develop and strengthen national economies.

A number of developing countries require EIA for project development and additional countries are now developing EIA systems. Different methodologies for integrating the environmental dimension into economic planning processes have been presented to and adopted by various international organizations concerned with development, such as the Organisation for Economic Co-operation and Development [1] (OECD) and the United Nations.[2] Other development organizations are currently examining methods by which environmental factors can be integrated into their economnic development planning processes. This paper will explain the oldest, most technically developed and proven process, Environmental Impact Assessment, and why it is the best available technology for this necessary integration.

WHAT IS ENVIRONMENTAL IMPACT ASSESSMENT?

"Environmental Impact Assessment [EIA] is a formal study process used to predict the environmental consequences of proposed major development [programs and] projects. Such projects may include, for example, building a hydroelectric dam or a factory, irrigating a large valley, or developing a harbour.

"An EIA concentrates on problems, conflicts or natural resource constraints that could affect the viability of a project. It also examines how the project might cause harm to people, their homeland or their livelihoods, or to other nearby developments. After predicting potential problems, the EIA identifies measures to minimize the problems and outlines ways to improve the project's suitability for its proposed environment.

"The aim of an EIA is to ensure that potential problems are foreseen and addressed at an early stage in the project's planning and design. To achieve this aim, the assessment's findings are communicated to all the various groups who will make decisions about the proposed project: the project developers and their investors, as well as regulators, planners, [political leaders and the public]. Having read the conclusions of an Environmental Impact Assessment, project planners and engineers can shape the project so that its benefits can be achieved and sustained without causing inadvertent problems."

WHY DEVELOPMENT AGENCIES NEED EIA

Development funding agencies are primarily concerned with implementing projects with an acceptable economic rate of return that are replicable and relatively easy to implement. Currently, the dominant approach for project analysis and planning in the development organizations is usually an emphasis on engineering feasibility and economic efficiency criteria. Project officials want to get projects done and concentrate on economic benefits. This is often combined with a resistance to comprehensive assessment of the external effects or distribution of those effects.

These agencies, however, should also serve developmental interests concerned with delivering the benefits of development projects to all sections of the population, including the poorer sections. In attempting to carry out both these functions, development agencies need to ensure that funding activities do not cause environmental degradation or loss of natural system productivity.

Often, projects planned and financed by development agencies are designed from the point of view of insulated officials where local socio-political factors are not adequately examined. A project that has been designed to suit the local environment, by utilizing EIA to take ecological and socio-economic factors into account, is more likely to be completed on time and within budget, and is more likely to avoid difficulties during implementation and operation.

Also, a project that yields its benefits without causing serious problems is more likely to bring credit and recognition. Development agencies have recently been under intense pressure from non-governmental organizations, the press and ultimately, their supporting governments to reassess the way projects are approved. Experience of agencies that have utilized EIA is that a project that has had the input of various actors and interests will avoid political or emotional demonstrations and objections that often increase costs and occasionally stop projects.

EIA IN PRACTICE

In an increasingly large number of countries, local government, non-governmental organizations and consultants are preparing the EIAs. In practice, it is unusual that rigid or procedurally elaborate systems are set in place for EIA, as is normally imagined. The process is a fluid one in which great flexibility is given to officials on several levels. The administrative or political system will influence how EIA is implemented in a particular institution. Much depends on the capability and interest of the personnel carrying out the process and on the technical resources available for implementation. (Horberry, p. 13). EIA then, must be designed and carried out in accordance with the particular institutional changes and reforms that are necessary.

EIA is a process, not a document, and does have basic elements that can be incorporated into the existing project cycles currently utilized by development agencies. The basic concepts involved in EIA are fairly simple and can be readily applied to most development agency institutions. All major projects and programs contemplated by a development agency should be subject to the EIA process and should include the following concepts:

Establishing the scope of the assessment. By determining which impacts, actors and issues are most important, the focus of the EIA can be narrowed, making the document produced more useful to the decision-maker, reducing time and expense.

Identification and Prediction of the project's impacts. There are many different methodologies in existence to identify and predict what will happen as the result of the program or project. Often, much of this work is done during the scoping phase.

Analysis of alternatives to the proposed project. Here, all reasonable alternative methods of coming to the project goal (e.g. utilization of alternative energy sources to meet energy needs or alternative routes in transportation projects) should be considered and evaluated alongside the proposed project or program. One alternative can be "no-action."

Development of methods to mitigate the project's impacts. Another key element to EIA is the effort to set out and develop ways in which the adverse impacts of the project can be reduced. This can be done through use of pollution control technology, changing engineering designs, relocating disposal sites, providing institutional support to personnel, etc.

Documentation and Consideration of the EIA by those approving and supervising the project. Like any other feasibility study, the documentation prepared during the EIA process should be submitted along with the proposal and taken into account by the decision-maker. There are various types of documentation and ways to assure that the EIA is indeed considered by the key personnel.

Monitoring of the project's impacts and effectiveness of mitigation methods. This can take the form of a project or loan maintenance agreement and is done to assess if the country or individuals implementing the project have carried out the requirements.

Public Participation is a process that goes on throughout EIA. This includes both those who have a direct authority over some aspect of the project and those who can contribute facts, ideas or concerns to the study including, other governmental agencies, engineers, economists, technical personnel and representatives of interested or affected groups. How public involvement is incorporated is, again, left up to the agency or government implementing EIA.

CONCEPTIONS AND MISCONCEPTIONS REGARDING EIA

*EIA is anti-development*

EIA is a process for generating the necessary information for decision-makers concerns with choosing the best options for planning projects that are sustainable. Indeed, EIA does not mandate that any particular decision be made; EIA simply *provides* the data and analysis with which one can make the most informed decision. It is rare that the identification of a previously unforeseen, adverse impact will lead to the abandonment of a project.[1]

EIA therefore, provides the decision maker with information on issues and problems that can identify a project as being environmentally unsound, just as an economic feasibility study can show a project to be economically unsound. While certain elements within an agency or government may contend that development agency standards and conditions are a form of imperialism, no reasonable person or government agency official would condemn economic analysis because it shows a particular project to be unsound. (Ahmad, p. 5). The socio-economic and environmental analysis in an EIA should be viewed similarly.

*EIA is very expensive*

When examined as a cost, separate and above the cost of a project, EIA may seem expensive. However, if the cost of an EIA is included in project design funds, the percentage of project cost is actually quite low. Based on available date, a median figure for

[1] Organisation for Economic Co-operation and Development, Recommendations of the Council on Measures Required to Facilitate the Environmental Assessment of Development Assistance Projects and Programmes. C(86)26, Paris, 1986.

[2] Goals and Principles for Environmental Impact Assessment UNEP/GC.14/17, Nairobi, 1987.

[1] That a problematic project is abandoned in the early stages before substantial funds have been expended should, however, be viewed as positive aspect of EIA.

the cost of EIA would be the range of 0.5% to 1.0% of project or programme construction cost. In Thailand, suggested allowances for environmental studies range from 0.1% of estimated construction cost for large projects (construction costs of more than US $250 million) to 1.1% for small projects (construction costs of less than US $1 million).

EIA is not an opportunity for applied research or academic study. It is a process in which specific proposals can be analyzed in a cost-effective manner. One of the main goals of EIA is to reduce future costs by determining what unforeseen problems exist.

*EIA is not effective*

The EIA process is often criticized as being ineffective because it is often carried out only to justify a project after it is already planned. EIA however, is envisaged as an integral part of the planning process in which it is done early in the planning process and required for any decision concerning approval of the project or an entire program. Observers of EIA in both Latin America (Dias Moreira, p. 247) and Asia (Htun, p. 238) point out that EIA has often been applied too late in the planning process to be effective and that an earlier incorporation of EIA is necessary.

There is no doubt that development agencies need broad knowledge of a country's natural resources in order to supply guidance concerning which type of projects are most appropriate for a given resource base. However, general guidance or objectives given in country profiles or country/regional action plans are *not* substitutes for the project specific investigation, coordination and analysis that is required by EIA.

*The recipient or borrowing countries should prepare the EIAs*

That EIA should be integrated into developing countries' planning processes is an important and accurate observation: many government programs and projects are implemented without development agency assistance or funds. EIA should be linked with a natural resource planning strategy on a national level. To say, however, that development agencies funded projects originate in government planning offices, would be misleading. Projects that governments eventually execute either originate in the development agencies or are closely followed and altered by the development agencies from the time of their inception.

Further, many developing countries do not have the possibility of establishing EIA in the short term. The technical expertise and political will necessary for the establishment of an effective EIA process are lacking in many countries. In the period in which effective national EIA is becoming a reality, development organizations have a responsibility to assist developing countries in developing EIA to: (1) provide support for institutional development and training in the integration of EIA into the project planning and implementation process, and (2) promote the use of local government, the private sector and NGOs in the preparation of EIAs. This assistance also provides support for those officials and organizations in developing countries that do want to intitiate a process in which environmental and socio-economic impacts are identified and analyzed.

CONCLUSION

EIA, if fully implemented, can help development agencies avoid some of the mistakes that have been difficult to foresee in the last 20-30 years of development planning. In fact, many international organizations, such as UNEP and OECD, have already established guidelines or requirements concerning utilization of EIA for development planning projects. EIA will not change or adversely interfere with the mission of a large international organization. It can, however, be utilized to produce projects that have been thoroughly examined and evaluated and based on economically and environmentally sound design so that the agency's mission is furthered.

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SIERRA CLUB,
*Washington, DC, July 31, 1989.*

Hon FRANK LAUTENBERG,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR LAUTENBERG: We are writing to inform you of our support for your proposed amendment to strengthen the Symms' "National Environmental Policy on International Financing Act of 1989" (S. 1045), when it is added to the Office of Environmental Quality reauthorization bill (S. 1089) by your Subcommittee on Superfund. Ocean and Water Protection.

Because of the disastrous record of the multilateral development banks (MDBs) in supporting ill-planned and ill-advised development projects in the Third World, you and the other members of the Senate Environment Committee have cosponsored Senator Symms legislation which directs the Treasury Department to press the MDBs to adopt an environmental impact assessment (EIA) process and to make the assessments available to Treasury prior to the funding vote.

We agree with you that the Symms Bill needs an action-forcing mechanism. This bill only urges the Treasury to press the Banks to institutionalize an environmental assessment process. Given the past performance of the Banks, this languages is unlikely to bring about any meaningful reform within the Banks.

As you know, the world leaders at the Paris economic summit called upon ". . . the Bank and regional development banks to integrate environmental considerations into their activities". We strongly support your amendment because it would convert these sentiments into action.

We thank you for your concern and support of this effort to reform the lending practices of the MDBs.

Sincerely,

LARRY WILLIAMS,
*Washington Director,*
*International Program.*

On behalf of: David Wirth, Senior Attorney, Natural Resources Defense Council; Stewart Hudson, Legislative Representative, National Wildlife Federation; Brent Blackwelder, Vice-President, Environmental Policy Institute/ Friends of the Earth/Oceanic Society; Buce Rich, Senior Attorney, Environmental Defense Fund.

Mr. HEINZ. Mr. President, I rise today in support of H.R. 2494, the International Development and Finance Act of 1989. This bill will give the Bank expanded authority to provide competitive export financing to U.S. companies, an essential ingredient in our efforts to meet the export challenge of what is facing the United States.

The challenge is demonstrated by five successive U.S. trade deficits over $100 billion. We are spending more than we produce, investing more than we save, and relying on foreign capital to make up the difference. Despite substantial growth in U.S. exports over the last few years, we remain a very long way from balance in our external accounts. We need a substantial reorientation of our economy toward exporting if we hope to pay our way in the world and control our own destiny.

Much of the burden to make those export sales rests with the business community. The private sector has to look abroad for new markets and win sales based on price, quality and service. But U.S. industry will not succeed without a strong effort by the public sector to eliminate budget deficits, ensure stable and competitive exchange rates, break down foreign trade barriers, and neutralize predatory export financing.

The Export-Import Bank has a critical role to play in combating predatory official financing by foreign governments and supporting trade with the developing world. Selling to LDC markets has never been easy or risk-free. But in the wake of the LDC debt problem, commercial trade finance has become scarce and sales are being lost to aid financing and mixed credit offers by our trade competitors.

Other countries are prepared to make unlimited use of official credit and gladly misuse aid programs to win sales. The Bush administration has documented $400 to $800 million of sales lost to mixed credits each year and $4 to $6 billion of aid-funded capital projects closed to U.S. businessmen. Other estimates are much higher. In the face of this challenge, Eximbank has no authority to match foreign mixed credits and its direct loan program is fully 90 percent smaller than its level in the early 1980's.

Clearly, the shortest route to a stronger Eximbank would be to direct major new budget resources into the Bank, but that is unlikely under present budget conditions. A second-best solution is to grant the Bank broader authority and greater flexibility to use its limited resources to best advantage. I am pleased today to support this bill which gives Eximbank a

measure of the additional authority and flexibility I believe is needed.

The bill makes two changes to the Bank charter, providing additional mixed credit funding and adding interest subsidy authority for the next 2 years. The bill authorizes use of $300 million in fiscal years 1990 and 1991 to combat mixed credits, and provides for more aggressive use of funds than in the expiring mixed credit warchest. The bill also authorizes an experimental interest subsidy program for 2 years. This will provide the Bank an opportunity to develop a workable interest subsidy program that offers the advantage of 10-to-1 leverage of appropriated funds.

My primary concern with the bill is that it stops short of giving the Bank full discretion over its programs during the remaining 3 years of its current authorization as I had proposed in my bill, S. 1217. Bank management is in the best position to decide how to make its programs work and should not have to check every policy decision with the Treasury, OMB, or the Congress. Such second-guessing will limit program effectiveness.

This is a particular concern for the Treasury-controlled mixed credit fund. The bill usefully expands the mandate of the warchest in order to encourage Treasury to be more aggressive in its use. However, experience shows that Treasury is unlikely to take this problem seriously. The original warchest was intended to support Treasury's efforts to negotiate an effective mixed credit agreement in the OECD. The negotiations produced an agreement but no reduction in use of mixed credits. Nonetheless, once the negotiation was over, the warchest was shelved.

The best way to make sure this does not happen again is to let the Export-Import Bank go after markets and take away sales wherever the practice exists and the funds are available. If Treasury makes serious headway against tied aid credits in negotiations, the practice will decline and so will U.S. mixed credit offers.

Even with this reservation, I believe this is a good bill that the administration can support. It represents a very small step toward ensuring that competitiveness becomes a concrete U.S. policy rather than a campaign theme. I urge the support of my colleagues for a strengthened Export-Import Bank.

ENVIRONMENTAL PROVISIONS

I am delighted that the measure before us retains critical environmental provisions which Congressman JOHN EDWARD PORTER, Senator WIRTH, and I worked on for many months. Last July I offered similar language to the State Department authorization and with the help of Senators SARBANES, LUGAR, BIDEN, PELL and the cosponsorship of Senators WIRTH, SPECTER, and WILSON that measure passed the Senate. While we could not retain those provisions in the State Department measure, I believe my colleagues have brilliantly married my amendment with those provisions developed by the House Banking Committee.

Let me emphasize, Mr. President, the importance of the new environmental provisions in H.R. 2494. The burden of debt on developing nations—estimated at $1.3 trillion—is placing ever greater emphasis on short-term use of resources in order to gain badly needed foreign exchange. The resulting over exploitation of fragile ecosystems destroys the very resources these nations need for future growth. These same ecosystems—particularly tropical forests—are quite literally the keys to the diversity of life.

Their destruction does more than imperil the long-term economic growth of developing nations; their destruction imperils the planet's ability to transpire carbon dioxide and to moderate some effects of global climate change.

Each year, an area of rainforest equal in size to Belgium—28 million acres—is cleared. Every minute a piece of tropical forest the size of 10 city blocks vanishes.

At present rates of deforestation, most of the world's rainforests will be destroyed by the year 2060.

Developing nations in tropical climates often cannot support their own development. Nearly 90 percent of their capital investment comes from either private lenders or multilateral development banks such as the World Bank, the Inter-American Development Bank, and the African Development Bank.

Too often the aid provided by these banks has been environmentally destructive. Roads to nowhere, dams that flood irreplaceable ecosystems, energy sector loans have produced more pollution and less energy security. And there's more.

H.R. 2494 would direct U.S. executive directors at multilateral development banks to create environmental departments at each bank. These departments would be responsible for undertaking environmental and resource conservation programs, including programs which promote sustainable development and debt for nature exchanges, and to develop and monitor strict environmental guidelines and policies to govern lending activities.

The Secretaries of Treasury and State are directed to negotiate with other bank member nations to promote policies which reduce debtor nations debt burden and to simultaneously support sustainable development policies in those nations.

The legislation also provides a definition of sustainable development which I have developed with experts at the Smithsonian, environmental organizations, and my colleagues on the Foreign Relations Committee. Its purpose is to guide the administration where it seeks to support sustainable development programs.

Mr. President, I think it is very significant that at this cross-roads, a time when only a few years remain for us to take action to prevent catastrophic problems in future years, the Congress of the United States have developed a meaningful and comprehensive response. I commend by colleagues and hope that H.R. 2494 will be quickly enacted and fully enforced.

Mr. HELMS. Mr. President, I appreciate the willingness of the chairman of the Foreign Relations Committee and the chairman and ranking member of the Banking Committee to reach an agreement on several issues related to this bill that are of concern to me.

Most importantly, the Export-Import Bank would be prohibited from financing any trade with, extending any loan, credit, credit guarantee, insurance or reinsurance to the People's Republic of China. However, such a prohibition does not apply to food or agricultural commodities.

Mr. President, the provision complements other prohibitions contained in the State Department authorization bill, H.R. 1487, with respect to sanctions against the Government of the People's Republic of China.

Obviously, all of these sanctions are in response to the brutal, unwarranted attack on prodemocracy demonstrators on June 3 and 4, 1989, by the Government of China and the subsequent repression in that country.

This Senator was concerned soon after the massacre in Beijing that the Chinese Communists were gambling that the West's wrath would subside and that the situation in China would return to business-as-usual in short order.

Well, Mr. President, it has been 5 months since the massacre and some things, unfortunately, do appear to be returning to normal. American businesses are scrambling to go back in to make money in China. The conscience of the American Government appears to have a low threshold memory.

This Senator has not forgotten. And surely the democratic forces in China have not forgotten.

They must be assured that the U.S. Congress has not forgotten as well. We need to address these issues by removing United States subsidies related to doing business in the People's Republic of China.

Newsweek magazine reported on August 28, 1989, that "the State Department has quietly given the Export-Import Bank the green light to offer preliminary commitments for

more than $45 million in loans or loan guarantees to five United States firms wanting to do business in China. The first, including Westinghouse, are bidding on oil-drilling, refining and nuclear-power projects."

The Journal of Commerce reported on November 13, 1989, that the Eximbank "is seriously considering a subsidy for the financing of United States goods going to China's Shanghai subway system."

Mr. President, it is for precisely these reasons that legislation is necessary to prohibit such projects. On a case-by-case basis, the President, under the provision, has the authority to waive the prohibition if he finds it "in the national interest" to do so. However, Mr. President, none of the projects that have been described in the press would appear to fit such an exception. I expect the President will not waive the prohibition without serious consideration about the consequences in each case.

Mr. President, it is important to note that since the massive crackdown in Communist China on June 3 and 4, the situation there has continued to deteriorate. The Chinese Government, after having killed hundreds of pro-democracy demonstrators, has engaged in a systematic campaign to imprison and intimidate thousands of others.

The brutality of the government has been demonstrated more recently by Chinese police pointing rifles at the children of United States diplomats. The guns were not loaded, as it turned out, but the children and their parents had no way of knowning that, and the action was clearly provocative.

The President's initial actions need to be reinforced with sanctions against the government aimed at stopping the flow of U.S. business investment subsidized by U.S. taxpayers.

Mr. President, the en bloc package of amendments to the International Development and Finance Act of 1989 contains a provision intended to bring some degree of accountability to the Inter-American Development Bank, IDB. This provision could easily be described as the IDB Accountability Act of 1989, inasmuch as it is an appropriate response to the unconscionable mismanagement at the IDB.

Under pressure from the United States Government, in 1983 the IDB stopped approving any new loans for the Communist Government of Nicaragua. Since Nicaragua failed to make payments on past IDB loans, in July 1987, the IDB also created disbursements of any funds approved prior to 1983.

However, on November 11, 1987—in a duplicitous attempt to secure capital from the Bank—the Communist government of Nicaragua reportedly cabled the IDB headquarters in Washington to announce that they were transferring more than $14 million in back payments to IDB accounts. Without checking any records or accounts, the officals at the IDB blindly took the Sandinistas at their word. Operating under the false assumption that Nicaragua had met its arrearage obligations, the IDB just 5 days later approved a $11.1 million loan to Nicaragua.

The very next day, the Communist government of Nicaragua deposited $8.7 million into IDB accounts. So, for bookkeeping purposes, the Sandinistas claimed that their arrears were paid. But the money they used formally to pay off their arrears was obtained under the pretense that they were out of arrears in the first place. That was not all. On November 18 and 19 the IDB approved even more loans for Nicaragua. Altogether under this scheme, Nicaragua received $22.5 million over the course of one week.

Mr. President, clearly the IDB officials were asleep at the switch or deliberately deceptive. It is frightening to think that all a government must do is send a letter saying that their arrears are paid in order to get the IDB "gravy train" flowing. But that is exactly what happened. No one checked to see if any money from the Sandinistas was, in fact, credited to IDB accounts. The Bank apparently took Sandinista promises at face value, in complete contravention of the Bank's charter.

Yet, this whole episode went completely unnoticed until it was uncovered by the Washington Times in January 1988.

Mr. President, I ask unanimous consent that the text of three editorials on the "IDB-Sandinista Affair" that appeared in the Washington Times be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Mr. President, as soon as I learned about these outrageous loans by the IDB, I called for an investigation by the General Accounting Office. The GAO however was stymied in its efforts to conduct a comprehensive review of this episode because the IDB refused to turn over important documents. The final GAO report issued just 4 months ago concludes: "The IDB President stated that these procedural weaknesses would be corrected and IDB issued revised procedures in 1988 could prevent such occurrences in the future." However, the report goes on to state: "Because we do not have direct authority to audit IDB's internal records, we could not independently determine how the November 1987 disbursements were actually used, or confirm whether IDB had implemented the revised procedures."

In short, the IDB expects the U.S. taxpayer to pour millions of dollars into their reserves, without permitting access to any of their internal documents. This is an outrage. And now after refusing to permit a full investigation, the IDB has come to us with hat-in-hand asking the United States to pay 34.5% of the Bank's overall replenishment.

Mr. President, I am determined to get to the bottom of this matter. I believe that the U.S. taxpayers have a right to know where their money is going. Therefore, I am offering a provision that prevents the Secretary of the Treasury from making any payments to the IDB, unless the U.S. Executive Director of the Bank certifies to Congress the following:

First, that the Bank has given the Comptroller General of the United States access to the audit memorandum of the Bank concerning the November 1987 disbursement of funds to Nicaragua;

Second, that the Bank has implemented and is continuing to implement revised procedures issued in 1988 for collecting loans services payments;

Third, that the revised procedures satisfy the recommendations of the auditor general of the Bank; and

Fourth, that the Comptroller of the United States has access to all documents of the Bank under the same terms and conditions as such documents are made available to the U.S. Executive Director of the Bank.

Mr. President, this provision sends a strong message to the IDB that the U.S. taxpayer is fed up with its flagrant disregard for the most elementary banking practices. It forces the IDB to provide some accountability for its actions. I urge my colleagues to support it.

EXHIBIT 1

[From the Washington Times, Jan. 5, 1988]

THE IDB-SANDINISTA AFFAIR

The Washington Times has uncovered a multimillion-dollar banking scam that has provided much-needed hard currency to the Sandinista government of Nicaragua and may permit the bankrupt regime to receive new loans from the Inter-American Development Bank. The case provides a perfect example of how multilateral lending institutions adopt their own political agendas, and shows why the United States should withdraw from the IDB in favor of bilateral or strictly private-sector aid to other nations.

Nicaragua, thanks to its Bulgarian economic advisers, is a textbook case of socialist mismanagement. The U.S. dollar exchange rate for Nicaraguan cordobas in 1979 was 14 to 1. It is now 30,000 to 1. The nation's foreign debt has mushroomed from $1.6 billion to over $6 billion, a rate of indebtedness per capita that exceeds that of Brazil or Mexico. The economy is in a state of collapse.

Nicaragua after late 1986 ceased making loan payments to the IDB. The IDB approved no new loans, but it continued to disburse funds to Nicaragua on previously approved loans. (When the IDB lends money for development projects, funds typically are disbursed over the life of the project.) In July 1987, the IDB took the unprecen-

dented step of formally notifying Nicaragua, a member country, that Nicaragua's payment delinquency had forced the bank to suspend the disbursement of funds for previously approved projects. As of November 1987, the IDB had held back over $14 million in scheduled disbursements to Nicaragua. But during a period that coincided with Daniel Ortega's visit to Washington, something happened.

On Wednesday, Nov. 11, Nicaragua cabled the IDB that it was paying up over $11 million and that these funds would be transferred into IDB bank accounts in various countries. Despite the fact that it would be several days before the Washington office of the IDB could confirm that "good funds" had been received—and despite the fact that Nicaragua, by then about $14 million in arrears, had made no payments to the bank since the previous year—the IDB promptly cabled Nicaragua's central bank that because the repayment would return Nicaragua to good standing, the bank would release $14 million in previously withheld disbursements.

The following Monday, Nov. 16, the IDB wired Nicaragua $11 million and credited an additional $3 million against Nicaragua's back interest payments, although the bank had not yet received the promised funds from Nicaragua. The very next day, the IDB received the bulk of the $11 million Nicaragua had promised to pay. According to one IDB official, "it was all rigged to happen simultaneously." Officials of the bank describe the money as having been "round-tripped," meaning that Nicaragua used the new funds received from the IDB to repay the IDB.

A source familiar with customary IDB practices said that for the bank to release new funds before the promised payments had been received was "a serious irregularity. Had normal procedures been followed, Nicaragua might not have gotten the new funds." Interestingly, the head of the IDB's office in Nicaragua, Pablo Linares, a Venezuelan said to be close to the Sandinistas, was reported to have been in Washington on a quiet visit to the bank around the time these events occurred.

Through this scam, Nicaragua was able to wipe clean its arrearages, regain good standing with the IDB, resume receiving disbursements from the bank and also become eligible for new loans and credits. That is a neat trick for an insolvent country in desperate need of hard currency for things like weapons, oil, planes, designer eyeglasses, American PR firms and congressional lobbyists—not to mention Humberto Ortega's secret Swiss bank account.

There also is evidence that currency exchange rates were juggled to give Nicaragua several hundred times the amount of hard currency it should have received. The IDB eschwered the market exchange rate of 30,000 to 1 and gave U.S. dollars to Nicaragua at the Sandinista-set rate of 70 cordobas per dollar. As a result, Nicaraguan development projects that should have gotten just $33,000 at the real rate of exchange (one billion cordobas) received $14 million.

The IDB—35 percent funded by the United States—has a lot of questions to answer, especially since more than one-third of that $14 million come out of the U.S. treasury. If the IDB is so politicized as to rig loan scams in order to bail out the Sandinistas, U.S. funding for the bank must end. Congress, which got so outraged over several million of the Nicaraguan resistance, certainly should hold hearings on a diversion of funds to the Sandinistas through a legally suspect money-laundering operation.

If the U.S. government conducted its Latin American development activities on a bilateral basis, it could control the use of its own money. Instead, it has turned millions over to an "independent" institution that has used American money to fight American interests. When one accounts for indirect aid through conduits such as the IDB, the United States has channeled more money to the Sandinistas over the last nine years than it has to Nicaragua's democratic resistance. And if that's not a proper subject for a congressional investigation, we don't know what is.

We reported recently that the Inter-American Development Bank and the Sandinista government of Nicaragua had "rigged" a series of transactions in such a way as to restore the regime's eligibility for bank loans without really having to repay the bank. The IDB-Sandinista tango occurred in three steps: Nicaragua's central bank notified the IDB that is was paying off $14 million in overdue debts—but no money was actually sent. The IDB then lifted its suspension of payments to Nicaragua, wired Nicaragua $11 million in new funds and credited an additional $3 million against backdue interest payments. The next day, Nicaragua wired the $11 million back to the IDB. Bank sources contend that the financially moribund Nicaraguan government would never have formally promised payment to the IDB (it had been a year since the Sandinistas' last loan payment) unless it has already arranged to have the bank wire the regime new funds.

Citing our report, Rep. Jack Kemp quickly called for a congressional investigation of the IDB's banking practices and a hold on the Treasury Department's replenishment negotiations with the bank. Secretary of the Treasury James Baker in a letter to Mr. Kemp linked the U.S. position on replenishment negotiations to the investigation of the IDB-Sandinista affair. He wrote that "Negotiations for a new IDB replensihment are at an impasse over a number of issues, including the proposal to give donor countries a greater say in the decision-making process. In addition it is clear that the issue raised by The Washington Times must also be clarified before any IDB replenishment can go forward." Mr. Baker has asked for the bank's auditor general to investigate the charges of IDB-Sandinista collusion, noting that the "allegations are indeed troubling, and would have serious ramifications for our relations with the IDB if they are true."

The IDB's official response, that the transactions reflect the bank's "normal procedures," strengthens Mr. Baker's chief objection to IDB replenishment—the institution's poor banking procedures.

The IDB operates under a bizarre system in which the borrowing countries control the bank's loans, administration and policies. Not surprisingly, the United States which provides 35 percent of the bank's funds, wants donor countries to get a largre role in bank management and greater control over the use of their money. The IDB-Sandinista affair has helped bring to the surface a number of complaints that should have been aired long ago: politicization, financial mismanagement, failed development policies, etc. The IDB must resolve these problems before it can make any claim for more money from American taxpayers.

The United States has spent billions of dollars over the years in contributions to international lending institutions that in turn imposed draconian loan conditions on developing countries. The result was that "aid" actually hurt the beneficiaries. The IDB now has come up with a new twist—bailing out repressive regimes by means of very questionable banking policies. Congress indeed should investigate the IDB-Sandinista connection, and the administration must make it clear that if the IDB doesn't come up with some good answers or some good changes, we won't come up with more money.

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[From the Washington Times, Mar. 23, 1988]

MORE IDB-SANDINISTA FLIM-FLAM

As the Inter-American Development Bank concludes its annual meeting in Caracas, new charges of collusion between the bank and the communist government of Nicaragua have emerged. These reports shed additional light on the money recycling scam between the IDB and the Sandinistas, in which development funds were "round-tripped" from the bank to Managua and then back to the bank in order to wipe out the Nicaraguan government's $14 million in arrearages and restore its eligibility for loans.

The new information about the IDB-Sandinista affair reveals that what first appeared to be a "wash" transaction—meaning that Nicaragua returned as much money as it received—actually was a multi-million dollar gain for Nicaragua. According to bank sources, at the time that the round-tripping of funds occurred last November, the IDB awarded the bankrupt Sandinista regime an additional $8.1 million in desperately needed letter-of-credit guarantees. These transactions occured at a point when the Sandinistas had made no payments to the bank in a year and had been formally suspended from receiving new IDB funds or credits.

The IDB has publicly insisted that it wired new funds to Nicaragua because the Sandinista junta had promised to pay up all its back-due payments. But despite the IDB's subsequent claim that Nicaragua "paid up all the outstanding principal and interest," bank sources say the Sandinistas never came out of the red. That's because when IDB management calculated how much money Nicaragua owed, it used a noncurrent record that did not include three scheduled repayments totaling $1.6 million that the Sandinistas had failed to make in the prior week.

The timing of the IDB-Sandinista affair seems to have taken deliberate advantage of bookkeeping lags at the bank. Had the scheme been tied a week later, the three additional unpaid amounts would have shown up on reports, forcing Nicaragua to come up with additional funds. Instead, the disbursements released by the IDB neatly matched Nicaragua's past due obligations. The paperwork sailed through the bank at lightning speed, a rare phenomenon.

Since then, Nicaragua has run up a total of $5.5 million in arrearages, which include the $1.6 million mentioned above. This sum, added to the $8.1 million in credit guarantees, makes the Sandinista "profit" $13.6 million—so far. One bank source describes the IDB-Sandinista affair as "a very well-organized campaign to restore Nicaragua to good standing and get maximum cash benefit"—without actually paying its loan obligations!

Even before this latest disclosure, Rep. Jack Kemp had argued that the United

States withhold replenishment funding for the IDB pending full investigation of the IDB-Sandinista affair, and Treasury Secretary James A. Baker III had agreed. Rep. Jim Bunning further pressed the point in hearings last week where it was disclosed that the IDB auditor general's office has completed an investigation of the affair, but the bank's permanent staff refuses to share the results with the United States—or even the directors and governors of the bank.

Conciliatory works from bank officials in Caracas this week thus should not dissuade the administration. More than ever before, the United States should make clear that it won't add a penny to the bank until the completion of a full investigation and the satisfaction resolution of the IDB-Sandinista affair.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1216) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 2494), as amended, was passed.

Mr. MITCHELL. I move to reconsider the vote.

Mr. HENIZ. I move to lay that motion on the table.

The motion lay on the table was agreed to.

## AUTHORIZATION FOR DISTRIBUTION OF FILM ENTITLED "A TRIBUTE TO MICKEY LELAND"

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item No. 337, H.R. 3294, an act to authorize distribution within the United States of the USIA film entitled "A Tribute to Mickey Leland."

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3294) to authorize distribution within the United States of the United States Information Agency film entitled "A Tribute to Mickey Leland."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 3294) was ordered to a third reading, was read the third time, and passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## MEDICAID LONG-TERM DEMONSTRATION PROJECT

Mr. HEINZ. Mr. President, I send a bill to the desk on behalf of Senator COATS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1998) to provide for Medicaid long-term care demonstration project waiver.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

MEDICAID LONG-TERM CARE INSURANCE DEMONSTRATION PROJECT

Mr. COATS. Mr. President, this amendment would allow nine States to proceed with an innovative demonstration project that would make long-term care insurance more appealing to the consumer and, at a minimum, be cost neutral for Medicaid.

There are currently a total of nine State projects to test a public/private partnership to fund nursing home care, and a continuum of community based services. Eight of these, including the program in Indiana, have been funded in part by the Robert Wood Johnson Foundation, which has a well deserved reputation for sponsoring creative ideas in health care.

All of these States must give the Secretary of Health and Human Services assurances that their proposal is revenue neutral. However, all of them been designed to save Medicaid millions of dollars. I believe that it is incumbent on us to pursue every credible means to lower health care costs, especially when we can help people avoid the painful humiliation of impoverishing themselves to pay for long-term care.

Although there is some variation in the public/private partnerships in these nine States, they all need authority to waive Medicaid eligibility requirements as to income and assets for seniors who purchase a qualifying policy. Let me explain how it would work in Indiana. If someone purchased a policy that provided a minimum level of long-term care coverage, the State would agree to cover them with Medicaid if they still needed long-term care after their policy benefits expired. The advantage for the senior is that instead of being forced to spend down to $1,500 in assets, the Senior could keep assets that equal the value of the benefits paid by the policy.

Mr. President, everybody wins under this proposal. Individuals get the security of knowing that their long-term care needs will be taken care of without spending down to Medicaid eligibility levels if they purchase qualified insurance. The State and Federal Government will save enormous amounts of money Medicaid would otherwise be forced to spend on individuals who did not have this incentive to purchase long-term care insurance. The program works because all qualified policies cover a longer period than the average patient stays in a nursing home.

Under current law, there are no provisions allowing HCFA to waive Medicaid income and asset eligibility standard for these demonstration programs. In 1988 when I was a member of the other body, I was joined by a number of Congressman in requesting an extended waiver. HCFA denied that request. This amendment would give the Secretary of HHS the authority to grant such a waiver if the requesting State met several conditions including budget neutrality.

The Indiana program, like all of these plans, has strong cost control features. A coordinated case management component will insure that participants are guided to wise choices among the range of nursing home and community based services that will be available. This is a particularly important feature because participants often are frail or in ill health when these services are needed. A case manager can identify the most cost effective service that meets the persons needs.

The quality of services is addressed in the Indiana plan through a series of standards that insurance plans must meet that exceed those established by the National Association of Insurance Commissioners [NAIC]. For example, insurers must clearly disclose the availability of State sponsored counseling, consumer education, complaint handling and appeal mechanisms. Also, policies must guarantee consumers the option of buying inflation protection or must provide another mechanism by which the value of coverage will keep pace with changes in the cost of care.

We are all concerned about the budget impact of all the legislative proposals we consider, and I am pleased to state that this amendment would be budget neutral in fiscal year 1990. CBO Director Robert Reischauer made this determination in an October 5, 1989 letter to Chairman BENTSEN. I would like to ask unanimous consent that this letter be included in the RECORD with my statement.

Mr. President, this amendment deserves our support if we are serious

about cutting the cost of health care and increasing the quality of services available to our seniors. We simply can- not afford to ignore innovative public/private partnerships that take advantage of the resources and flexibility of States and the private sector. I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1998

*Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled,* That this act may be cited as the "Medicaid Long-Term Care Demonstration Project Waiver Act of 1989."

SEC. 5606A. MEDICAID LONG-TERM CARE INSURANCE DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall provide for a demonstration project in the States of Indiana, Illinois, Wisconsin, Oregon, California, Connecticut, Massachusetts, New York, and New Jersey. Such project shall allow individuals with income and resources above eligibility levels for receipt of medical assistance under title XIX of the Social Security Act to receive long-term care benefits under the State plan for medical assistance if such an individual purchases a State approved long-term care insurance policy covering long-term care for a period preceding such an individual's eligibility for medical assistance under title XIX of the Social Security Act.

(b) WAIVER OF CERTAIN REQUIREMENTS.—The Secretary in providing for the demonstration project described in subsection (a), shall waive the following requirements in title XIX of the Social Security Act with respect to such projects:

(1) Sections 1901, 1902(a)(10) (A) and (C), 1903(a)(1), and 1903 (f), relating to categorical and income eligibility limits.

(2) Sections 1902(a)(10) (A) and (D), relating to amount, duration, and scope of services; and to diagnosis, type of illness, or condition.

(3) Sections 1902(a)(23), relating to freedom of choice.

(4) Sections (a)(1), relating to statewideness.

(5) Sections 1902(a)(10), matter following (E) and 1902(a)(17), relating to comparability.

(6) Sections 1902(a)(14), relating to premiums.

(7) Section 1902(a)(18), relating to liens and recovery of assets.

(8) Sections 1902 (50) and (51), relating to personal needs allowance, protection of community spouse, and transfer of assets.

(c) STATE ASSURANCES.—The State shall provide assurances to the Secretary that—

(1) the estimated average per capita and aggregate expenditures for long-term care services for individuals under the waiver will not exceed estimated average per capita and aggregate expenditures for such services for such individuals under the State plan in the absence of the waiver;

(2) it will continue to make long-term care services available under the plan to any individual who would be entitled to long-term care services under the plan as in effect before the waiver (except to the extent that subsequent Federal legislation specifically requires changes in eligibility for such services under the plan); and

(3) it will not approve a long-term care insurance policy unless it meets standards at least as stringent as those set forth in the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act as of June 1989.

(d) APPLICATION, DURATION, AND ELIGIBILITY.—

(1) The Secretary shall either approve of disapprove the application of the State to participate in a demonstration project described in this section within 90 days of receipt of such application. The Secretary shall award the demonstration project in a budget-neutral manner.

(2) The demonstration project under this section shall be for an initial period of 5 years. The Secretary shall provide for renewal of those demonstration projects for an additional 5 years which the Secretary determines have met the requirements of this section.

(3) An individual who participates in a demonstration project under this section shall remain eligible for long-term care services under the State plan after the expiration of such project.

(e) ANNUAL STATE REPORTS.—The State shall annually (during the duration of such project) report to the Secretary on—

(1) the number of individuals enrolled in the demonstration project in such State;

(2) the number of enrollees actualy receiving long-term care services under such demonstration project (whether through long-term care insurance or medical assistance under title XIX of the Social Security Act);

(3) the number of enrollees actually receiving long-term care in the form of medical assistance;

(4) the average income, age, and assets of each enrollee; and

(5) the number and characteristics of private insurers with policies approved by the State under the demonstration project.

(f) SECRETARY'S REPORT.—The Secretary shall report to Congress on the demonstration project established under this section not later than 4 years after the date of enactment of this section. Such report shall summarize and analyze information reported by the State under subsection (e), and shall evaluate the cost effectiveness of the demonstration project and make recommendations with respect to the desirability and appropriateness of authorizing any State to make long-term care services available on a similar basis.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## CLARIFICATION OF THE ADMINISTRATIVE PROCEDURES OF THE NATIONAL COMMISSION ON RESPONSIBILITIES FOR FINANCING POST SECONDARY EDUCATION

Mr. HEINZ. Mr. President, I send a bill to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1999) to amend the Higher Education Act of 1965 to clarify the administrative procedures of the National Commission on Responsibilities for financing post secondary education.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill.

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1999

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Section 1321 of the Higher Education Act of 1965 (20 U.S.C. 1221-1) as amended by inserting after subsection "d" the following:

"(e) ADMINISTRATION OF THE COMMISSION.—

"(1) RATE OF PAY.—Members of the Commission who are not full-time officers or employees of the United States and who are not Members of Congress may, while serving on business of the Commission, be compensated at a rate not to exceed the rate specified at the time of such service for Grade GS-18 of the General Schedule as authorized by section 5332 of title 5, United States Code, for each day, or any part of a day, they are engaged in the actual performance of Commission duties, including travel time; and while so serving away from their homes or regular places of business, all members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

"(2) TEMPORARY EXEMPTION.—Subject to such rules as may be adopted by the Commission, the Chairperson, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General pay rates, shall have the power to—

"(A) appoints a Director or Executive Director who shall be paid at a rate not to exceed the rate of basic pay for GS-18 of the General Schedule; and

"(B) appoint and fix the compensation at a rate not to exceed the rate payable at the GS-18 rate of such other personnel as the Chairperson considers necessary.

"(3) AUTHORITY TO CONTRACT.—Subject to the Federal Property and Administrative Services Act of 1949, as amended, the Commission is authorized to enter into contracts with Federal and State agencies, private firms, institutions, and individuals for the conduct of activities necessary to the discharge of its duties and responsibilities.

"(4) SOURCE OF ADMINISTRATIVE SUPPORT.—Financial and administrative support services (including those related to budget and accounting, financial reporting, payroll and personnel) shall be provided to the Commission by the General Services Administration (or other appropriate organization) for which payment shall be made in advance, or by reimbursement, from funds of the Commission, in such amounts as may be agreed by the Chairperson of the Commission and the Administrator of General Services.

"(5) AUTHORITY TO HIRE EXPERTS AND CONSULTANTS.—The Commission is authorized to procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, United States Code, but at rates not to exceed the rate specified at the time of such service for grade GS-18. Experts and consultants may be employed without compensation if they agree to do so in advance.

"(6) AUTHORITY FOR DETAIL OF EMPLOYEES.—Upon request of the Commission, the head of any federal agency is authorized to detail on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section.";

And redesignating subsection "e" and "f" as "f" and "g" respectively.

At the appropriate place, insert the following:

TITLE VIII—HIGHER EDUCATION

SEC. 801. ELIGIBILITY FOR EDUCATION PROGRAMS.

"(a) HIGHER EDUCATION.—Section 484 of the Higher Education Act of 1965 is amended by adding a new subsection (k) at the end thereof:

"(k) STUDENTS ATTENDING INSTITUTIONS IN THE FREELY ASSOCIATED STATES AND ELIGIBILITY FOR TRIO PROGRAMS.—Notwithstanding any other provision of law, a student who meets the requirements of paragraph (a)(5) of this section or who is a resident of the freely associated states, and who attends a public or nonprofit institution of higher education located in any of the freely associated states rather than a State, shall be eligible, if otherwise qualified, for assistance under subpart 1, 2, or 4 of part A or part C of this title."

(b) TERRITORIAL TEACHER TRAINING ASSISTANCE PROGRAM.—Section 4502 of the Elementary and Secondary Education Act of 1965 is amended by striking "the Northern Mariana Islands, and the Trust Territory of the Pacific Islands" each place it appears and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands, Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia".

(c) TECHNICAL AMENDMENT.—Section 1204(a) of the Higher Education Act of 1965 is amended by striking out "Trust Territories of the Pacific Islands, and the Northern Mariana Islands" and inserting "Commonwealth of the Northern Mariana Islands, Palau, and, subject to the provisions of Public Law 99-239, the Federated States of Micronesia, and the Republic of the Marshall Islands.".

SEC. 802. DEFINITION.

Section 545 of the Higher Education Act is amended in paragraph (3) by striking "the Trust Territory of the Pacific Islands" and inserting in lieu thereof "the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau".

SEC. 803. TREATMENT OF TERRITORIES AND TERRITORIAL STUDENT ASSISTANCE.

Section 1204 of the Higher Education Act of 1965 is amended by inserting at the end thereof the following new subsection (d):

"(d) Notwithstanding any other provision of law, an institution of higher education that is located in any of the freely associated states, rather than a State, shall be eligible, if otherwise qualified, for assistance under subpart 4 of part A of title IV of this Act.".

TITLE IX—ELEMENTARY AND SECONDARY EDUCATION

SEC. 901. TECHNICAL AMENDMENTS.

(a) ELEMENTARY AND SECONDARY EDUCATION.—The Elementary and Secondary Education Act of 1965 is amended—

(1) in sections 1005(a), 1006(a)(1)(A), 1291, 2004(a), and 4502 by striking "and the Trust Territory of the Pacific Islands" each place such term appears and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau";

(2) in sections 1404, 1405(a)(2)(A), 1405(a)(2)(B) and 1471(22) by striking "or the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau"; and

(3) in sections 1511(a)(1), 2104(a)(1), 5112(a)(1) and 5141(b)(6) by striking "the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau".

(b) ADULT EDUCATION ACT.—The Adult Education Act is amended—

(1) in sections 312(7) and 371(b)(7)(B)(i) by striking "the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau" and

(2) in sections 313(b) and 361(a) by striking "and the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau".

(c) STAR SCHOOLS PROGRAM.—Section 907(8) of the Star Schools Program Assistance Act is amended by striking "the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau".

(d) EDUCATION OF THE HANDICAPPED.—The Education of the Handicapped Act is amended in—

(1) Section 602(a)(6) by striking "or the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau";

(2) Section 611(a)(2) by striking "and the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau"; and

(3) Section 611(e)(1) by striking "and the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau"

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## LABOR-MANAGEMENT RELATIONS ACT AMENDMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of S. 1949, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1949) to amend the Labor-Management Relations Act of 1947 to permit parties engaged in the collective bargaining to bargin over the establishment and administration of trust funds to provide financial assistance for employee housing.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1217

Mr. MITCHELL. Mr. President, I send a substitute amendment to the desk in behalf of Senator KENNEDY, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. KENNEDY, (for himself and Mr. HATCH), proposes an amendment numbered 1217.

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. EMPLOYEE HOUSING TRUST FUNDS.

Section 302(c)(7) of the Labor Management Relations Act of 1947 (29 U.S.C. 186(c)(7)) is amended—

(1) by striking out "or" at the end of the subparagraph (A); and

(2) by inserting ", or (C) financial assistance for employee housing" after "dependents of employees" in subparagraph (B).

Mr. KENNEDY. Mr. President, today the Senate is taking up S. 1949, legislation I introduced which will provide an opportunity for management and labor to negotiate trust funds addressing one of the most pressing issues of our day; affordable housing.

I am proud to be joined by Senator HATCH as a cosponsor of the substitute amendment we are offering to S. 1949. The substitute makes no substantive change in S. 1949, but it does clarify where the language of S. 1949 is to appear in the current statute.

This legislation was made possible, and made necessary, by an innovative collective bargaining agreement negotiated in my home State in Massachusetts. A contract negotiated between Local 26 of the Hotel Employees and Restaurant Employees Union, under the leadership of Domenic Bozzotto, and the Boston hotels provides for a joint trust fund for housing assistance to employees.

The agreement provides that employers will contribute 5 cents an hour for the purpose of financial assistance for employee housing. The funds will be expended or used as collateral for mortgage assistance, closing costs and bank fees, favorable interest rates, down payment assistance, or rental security deposits. However, the agreement also requires Congress amend the law to explicitly provide for such a trust before May 31, 1990, or the sums would be transferred into the health and welfare fund.

Management and labor agreed that this issue needed to be addressed, and they agreed to this unprecedented arrangement. Both the local union and the local hotel management are to be commended for this innovative and creative contract.

For the housing trust fund to become a reality, however, Congress must amend the Labor Management Relations Act. The legislation we are considering today will make clear that a trust fund providing financial assistance for employee housing is permissible trust fund under the Labor Management Relations Act.

The legislation does not create any new mandatory subjects of bargaining for employers. It amends section 302(c)(7), which already provides for education and child care trusts, and which are explicitly designated as permissible subjects of bargaining. Neither party can be required to bargain over these issues, and refusal to bargain does not constitute an unfair labor practice.

The education and child care trusts were added in 1969, and have resulted in many collective bargaining agreements for education scholarships and child care centers for employees and their families.

There is widespread recognition of the difficulties that workers face in finding affordable housing. Yet there is little agreement on the appropriate solution to this growing crisis, and even less agreement about where the money come from and how much we should spend.

I urge the Senate to adopt this worthwhile addition to the Labor Management Relations Act. Employers and employees should have this option under the collective-bargaining process, and we should do all we can to encourage them to address it.

As one of the hotel managers noted in his letter to me in support of this legislative change:

Housing is one of the most severe problems many of our employees face, and I am very supportive of any effort to assist our people in finding affordable housing for themselves and their families.

In this case, labor and management in Boston have agreed on an effective approach to better housing. They need no money from the Congress for this trust fund to become a reality: All they require is permission to do so under the Labor-Management Relations Act.

I hope we can quickly enact this legislation into law, so that those who wish to address the increasingly pressing problem of affordable housing as part of the collective bargaining process may be able to do so.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of this bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1949

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. EMPLOYEE HOUSING TRUST FUNDS.

Section 302(c)(7) of the Labor Management Relations Act of 1947 (29 U.S.C. 186(c)(7)) is amended—

(1) by striking out "or" at the end of subparagraph (A); and

(2) by inserting ", or (C) financial assistance for employee housing" after "dependents of employees" in subparagraph (B).

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, a few minutes ago we passed a tie aid credit bill relating to the authorities of the Export-Import Bank bill. I want to thank one Senator in particular who had sought to strengthen that legislation. I refer to the distinguished junior Senator from Idaho, Senator STEVE SYMMS. He has a great interest in strengthening the Inter-American Development Bank in their environmental commitment, and in their ability to do a better job of protecting the environment in those countries where they make loans.

He has been pressing very strongly in that record. I want to commend him for the effort he has made. It has made a real impact on this and other legislation. What the Senator has done is to significantly press for environmental improvement. I want to recognize his efforts and commend him strongly for that interest.

Mr. President, I yield the floor.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## RETURN OF CERTAIN NOMINATIONS TO THE PRESIDENT

Mr. MITCHELL. Mr. President, I have a unanimous-consent request that permits most of the pending nominations to remain in status quo during the sine die adjournment of the Senate. If this unanimous-consent request is not approved, all nominations are automatically returned to the President under the provisions of rule XXXI.

Of the nominations being returned to the President, 39 are nominations submitted by former President Reagan. These nominees are being returned because there has been no indication that the administration wishes to have the Senate confirm these nominees.

Nominees to be representatives at the 33d Session of the General Conference of the International Atomic Energy Agency are being returned because this meeting has concluded.

The balance of the list consists of seven nominations and promotions which are being returned for a variety of reasons. Some are being sent back at the request of the majority, and others at the request of the minority and the White House.

Mr. President, I send the list to the desk with an explanatory statement.

STATUS OF NOMINATIONS

Mr. President, last week I stated that I would confirm as many of the pending nominations as possible prior to the sine die adjournment of the 1st session of the 101st Congress. I am pleased to report that a total of 422 nominations have been confirmed by the Senate during the first session of this Congress. Sixty-four nominations are pending before committees. Only four nominations remain on the Executive Calendar.

Of the pending nominations, 40, more than half, have been received by the Senate since November 1. Senator DOLE gave me a list of 88 nominations that the White House wanted confirmed prior to our adjournment. Senate committees worked very hard to report as many nominations as possible, and since November 13, the Senate has confirmed more than half the nominations on this list. The 55 nominees from this list confirmed by the Senate during the past week represent a high degree of cooperation by Senators on both sides of the aisle.

As I have stated before, the right of the President to make recess appointments during a period of sine die ad-

journments is not in question. I remain convinced, however, that this should be a rare occurrence in truly emergency situations.

During the previous administration, the President agreed to notify the majority leader prior to the announcement of a recess appointment during sine die adjournment. I hope that President Bush will continue this practice.

I ask unanimous consent that a list of nominations pending in Senate committees and on the Executive Calendar as of the close of business on November 22 be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

Department of Agriculture: James Cason.

U.S. Representative to 33rd Session of the General Conference of the International Atomic Energy Agency: James D. Watkins, Richard T. Kennedy, Michael H. Newlin.

Inter-American Foundation: John C. Duncan.

Advisory Board for Radio Broadcasting to Cuba: F. Clifton White.

Peace Corps National Advisory Council: Peter L. Boynton, Robert W. Hazlett, Creighton E. Mershon, John J. Petillo, Alice R. Thompson, Colleen T. White, John Bigelow, Marc L. Holtzman, Maureen O'Hara, Josephine K. Olsen, Gary D. Robinson, Sue Wagner.

Board for International Broadcasting: Arch Madsen.

Overseas Private Investment Corporation: Clarence J. Brown.

U.S. Marshal for D.C. Superior Court: Ronald Hein.

U.S. Army—To be a permanent Brigadier General: John R. Bozeman.

Board of Regents of the Uniformed Services University of the Health Sciences: George T. Harding.

Administrator of the Economic Regulatory Administration: Chandler L. van Orman.

Director of Women's Bureau, Department of Labor: Jill Houghton Emery.

Member board of directors, Legal Services Corporation: J. Blakeley Hall.

Railroad Retirement Board: Thomas J. Simon.

National Advisory Council on Educational Research and Improvement: William G. Goetz, Donald M. Clark, Carl M. Kuttler.

Board of Trustees, James Madison, Memorial Fellowship Foundation: Delba Winthrop, Lance Banning, Joan R. Challinor.

National Commission on Libraries and Information Science: Elinor H. Swaim, Wanda L. Forbes, Margaret Phelan, Charles E. Reid.

National Council on Disability: John A. Gannon, George H. Oberle, Margaret C. Hager.

National Council on the Arts, National Foundation on the Arts and the Humanities: Earl R. Mandle, Gary L. McDowell, Jeanne J. Smoot.

National Science Board: Arden L. Bement, D. Allan Bromley.

Department of State: Jerry A. Moore, Joy A. Silverman.

Career member of the Senior Foreign Service, class of counselor: Timothy C. Brown.

National Labor Relations Board: Donald F. Rodgers.

NOMINATIONS PENDING IN SENATE COMMITTEES AND ON EXECUTIVE CALENDAR (AS OF CLOSE OF BUSINESS, NOVEMBER 22, 1989)

This list shows on a committee by committee basis the name of nominee, position nominated for, and date nominated by the President.

Nominations pending on the Executive Calendar are listed under the reporting committees with the name of the nominee, position, and Executive Calendar number.

*Agriculture*

Nominations on the Calendar: None.

Nominations pending in Committee:

Margot E. Machol, Commodity Futures Trading Commission, Commissioner, Sept. 8.

Leon Snead, Inspector General, Dept. of Agriculture, Oct. 3.

LaVern G. Ausman, Administrator, Farmers Home Administration, Nov. 14

*Armed Services*

Nominations on the Calendar: None.

Nominations pending in Committee:

Victor Stello, to be Asst. Sec. of Energy, July 24.

Stephen Conver, to be Asst. Sec. of the Army, Nov. 21.

William J. Haynes II, to be General Counsel, Dept. of Army, Nov. 21.

*Banking*

Nominations on the Calendar: None.

Nominations pending in Committee:

Michael P. Galvin, Asst Sec. Dept of Commerce, August 4.

Frank B. Sollars, Member of the Board of Directors, National Consumer Cooperative Bank, Sept. 6.

Carol M. Marshall, to be Superintendent of the Mint of the U.S., Nov. 17.

Arthur J. Hill, to be President, Government National Mortgage Association, Nov. 21.

*Commerce*

Nominations on the Calendar: None.

Nominations pending in Committee:

Sue Coughlin, Member of the National Transportation Safety Board, June 21 (NO).

Barry L. Harris, Deputy Administrator of the Federal Aviation Administration, Dept. of Transportation, Nov. 6.

Edward J. Philbin, to be a Member of the Interstate Commerce Commission, Nov. 9.

John W. Lyons, to be Director of the National Institute of Standards and Technology, Nov. 17.

James B. Edwards, to be a Member of the Board of Directors of the Communications Satellite Corporation, Nov. 17.

William D. Hathaway, to be a Federal Maritime Commissioner, Nov. 20.

*Energy*

Nominations on the Calendar: None.

Nominations pending in Committee: None.

*Environment*

Nominations on the Calendar: None.

Nominations pending in Committee:

Jacqueline L. Phillips, Federal Cochairman, Appalachian Regional Commission, Sept. 6.

Hilda G. Legg, Alternate Federal Cochairman, Appalachian Regional Commission, Oct. 4.

*Finance*

Nominations on the Calendar: None.

Nominations pending in Committee:

Abraham N. M. Shashy, Asst. General Counsel in the Dept. of the Treasury (Chief for the Internal Revenue Service), Nov. 2.

Martin H. Gerry, Asst. Secretary of Health & Human Services, Nov. 13.

Gail R. Wilensky, to be Administrator of the Health Care Financing Administration, Nov. 17.

Peter K. Nunez, to be an Asst. Sec. of Treasury, Nov. 20.

*Foreign Relations*

Nominations pending on the Calendar: None.

Nominations pending in Committee:

C-career NC-non-career.

Eric M. Javits (NC), to be Amb. to Venezuela, July 11.

Ronald J. Sorini (NC), for rank of Amb. as U.S. Negotiator on Textile Matters, August 2.

Larry K. Mellinger (NC), U.S. Executive Director, Inter-American Development Bank, Oct. 30.

Albert W. Angulo (NC), U.S. Alternate Executive Director, Inter-American Development Bank, Oct. 30.

Hilary P. Cleveland (NC), Commissioner on the part of the U.S. International Joint Commission, U.S. and Canada, Nov. 1.

Robert G. Joseph, (C), rank of Ambassador during his tenure of service as U.S. Commissioner on the U.S.-USSR Standing Consultative Commission, Nov. 8.

H. Douglas Barclay, Member of Board of Directors, Overseas Private Investment Corp., Nov. 13.

Robert W. Farrand, Ambassador to Papua, New Guinea and Solomon Island, and Republic of Vanuatu, Nov. 17.

J. Steven Rhodes, Ambassador to Zimbabwe, Nov. 17.

John J. Maresca, rank of Ambassador during his tenure of service as Head of the United States Delegation to the Conference on Confidence and Security Building Measures, Nov. 17.

David C. Fields, Director of the Office of Foreign Mission, with rank of Ambassador, Nov. 20.

Henrietta H. Holsman, Assistant Administrator of the Agency for International Development, Nov. 20.

*Governmental Affairs*

Nominations on the Calendar: None.

Nominations pending in Committee:

George W. Haley, Commissioner, Postal Rate Commission, Sept. 12.

Barbara E. Bryant, Director of the Census, Dept. of Commerce, Oct. 6.

Richard G. Austin, Administrator, General Services Administration, Oct. 11.

Allan V. Burman, Administrator for Federal Procurement Policy, Oct. 25.

*Judiciary*

Nominations pending on the Calendar:

Edwin L. Nelson, U.S. District Judge for the Northern District of Alabama, (Cal. #488).

Susan Webber Wright, U.S. District Judge for the Eastern and Western Districts of Arkansas, (Cal. #490).

Nominations pending in Committee:

Michael J. Norton, U.S. Attorney for the District of Colorado, Sept. 15.

Harry F. Manbeck, Commission of Patents and Trademarks, Dept. of Commerce, Oct. 12.

Robert W. Sweet, Administrator of the Office of Juvenile Justice and Delinquency Prevention, Oct. 13.

Clarence Thomas, U.S. Circuit for the District of Columbia Circuit, Oct. 30.

Scott A. Sewell, U.S. Marshal for the District of Maryland, Nov. 8.

Douglas B. Comer, Deputy Commissioner of Patents and Trademarks, Dept. of Commerce, Nov. 8.

Gerald E. Rosen, to be U.S. District Judge for the Eastern District of Michigan, Nov. 9.

Donald J. Lee, to be U.S. District Judge for the Western District of Pennsylvania, Nov. 9.

Walter J. Bamberg, U.S. Marshal for the Eastern District of Alabama, Nov. 13.

Donald E. Crowl, U.S. Marshal for the Northern District of Oklahoma, Nov. 13.

Charles E. Healey, U.S. Marshal for the Northern District of New York, Nov. 13.

Craig L. Meacham, U.S. Marshal for the Central District of California, Nov. 13.

James Y. Stewart, U.S. Marshal for the Eastern District of California, Nov. 13.

Ronald F. Ederer, U.S. Attorney for the Western District of Texas, Nov. 15.

Rhesa H. Barksdale, to be U.S. Circuit Judge for the Fifth Circuit, Nov. 17.

Jacques L. Wiener, Jr., to be U.S. Circuit Judge for the Fifth Circuit, Nov. 17.

Ronald L. Buckwalter, to be U.S. District Judge for the Eastern District of Pennsylvania, Nov. 17.

Robert F. Gilbert, to be U.S. Marshal for the District of New Hampshire, Nov. 17.

*Labor and Human Resources*

Nominations pending on the Calendar:

Clifford R. Oviatt, Member, Natl Labor Relations Board, (Cal. 386).

Dennis M. Devaney, Member, Natl Labor Relations Board for term of five years expiring December 16, 1994 (Cal. 389).

Nominations Pending in Committee:

Edwin G. Foulke, Member, Occupational Safety and Health Review Commission, Sept. 26.

Bernard E. DeLury, Director, Federal Mediation and Conciliation Service, Sept. 27.

John T. MacDonald, to be Asst. Secretary for Elementary and Secondary Education, Dept. of Education, Nov. 15.

Donald G. Wiseman, to be a Member of the Occupational Safety & Health Review Commission, Nov. 21.

Tony E. Gallegos, to be a Member of the Equal Employment Opportunity Commission, Nov. 21.

*Indian Affairs*

Nominations pending in Committee:

No nominations pending.

*Intelligence*

Nominations pending in Committee:

No nominations pending.

*Rules*

Nominations pending in Committee:

Robert W. Houk, Public Printer, GPO, Nov. 7.

*Small Business*

Nominations pending in Committee:

Kyo Jhin, Chief Counsel for Advocacy, Small Business Administration, June 23.

*Veterans' Affairs*

Nominations on the Calendar: None.

Nominations pending in Committee:

Hart T. Mankin, Associate Judge of the U.S. Court of Veterans Appeals, Sept. 29.

## SCHEDULE FOR NEXT YEAR

Mr. MITCHELL. Mr. President, it is my intention to circulate the recess schedule for the second session of the 101st Congress to all Senators within the next 2 weeks. In order to assist the Senators in their planning for the immediate future, the Senate will reconvene on Tuesday, January 23. The traditional February recess period will be the week of February 12 through Monday, February 19. The Senate will reconvene on Tuesday, February 20. I hope that this information will be useful to Senators. I will provide a complete schedule for next year by the end of this month.

Mr. President, I am pleased to yield to the distinguished Republican leader if he wishes to make comment, or does he yield the floor?

## NOMINATIONS

Mr. DOLE. Mr. President, I think we have made progress on the nominations, and I do not remember the exact numbers the majority leader referred to, but I do regret that we are sending back the nomination of Joy Silverman to be Ambassador to Barbados, whose nomination was sent July 11, 1989, to the Senate.

A hearing was held in the Foreign Relations Committee on September 28, 1989. In addition to the hearing, there have been several further requests by Senators to examine her finances, which involved investigators going to New York to examine her private papers with respect to the campaign contributions.

Since then, there have been repeated attempts to block her nomination from committee consideration. Several times the nomination was placed on the schedule for consideration. There was objection from the Democratic side.

Another nominee that has been around for some time is Ronald Sorini to be Negotiator on Textile Matters. That nomination was received by the Senate August 2, 1989. A hearing was held in the Foreign Relations Committee in early November. Since the hearing, there have been several attempts to report the nomination out of committee—all to no avail.

I think, generally, we have been able to complete committee action on nominees, bring them to the floor for an up-or-down vote. That is my view. We ought to have a vote in the Senate, not in the committee. I regret that in these cases, and perhaps others, that we have not had expeditious handling of the nominations.

I also acknowledge that many of the nominations have not been here long. I certainly do not fault anybody in the majority for not moving nominations, if the requests for nominees have not been here long enough. I think, generally, this past week we have had a good success. I think the record should also reflect that two of the nominees that were not confirmed were being held by a Member on this side of the aisle—three nominees, I guess, were not confirmed, being held by a Member on this side.

I have no further statement. I think the record should reflect that we have some concerns. Some have been satisfied. A few are caused on this side, and some are because of the lateness of the nominations, and others, on which the committee just has not acted. I have nothing further.

## INTERSESSION POCKET VETOES

Mr. MITCHELL. Mr. President, as the 101st Congress approaches the end of its first session, it would be useful to review the appropriate procedure in the event that the President determines to veto any bill during the forthcoming intersession adjournment.

Under article I, section 7, of the Constitution every bill which has passed the two Houses of Congress must be presented to the President. If he signs the bill, it becomes law with his approval. If he disapproves the bill, the Constitution provides that he should return the bill with his objections to the House in which it originated. In order to override the President's veto, two-thirds of each House must vote to pass the bill over his objections.

In order to provide sufficient but not unlimited time for the President to act, the Constitution provides that a bill will become law without the President's signature if he does not return it to the originating House within 10 days—Sundays excepted—after it has been presented to him. There is a narrow exception to this constitutional rule. An unsigned bill will not become a law if, in the words of the Constitution, "the Congress by their Adjournment prevents its Return."

As Senator Howard Baker described to the Senate in 1984, "[a]s long as an officer in the House which originates a bill is authorized to receive a veto message from the President during an adjournment, that adjournment would not prevent the President from returning a bill with his objections." 130 Cong. Rec. 566 (1984). Both Houses have provided for that authority. Rule III.5 of the House provides that "[t]he Clerk is authorized to receive messages from the President and from the Senate at any time that the House is not in session." At the beginning of this Congress, the Senate by unanimous consent provided "that for the duration of the 101st Congress, when the Senate is in recess or adjournment, the Secretary of the Senate be authorized to receive messages from the President of the United States.* * *" 135 Cong. Rec. S8 (daily ed. Jan. 3, 1989).

It is, of course, our hope that the measures that the Congress is sending to the President will obtain his approval. However, if the President concludes that any of those measures should not become law, the designation by each House of an officer to receive Presidential veto messages guarantees that the President will be able

during the adjournment to exercise his constitutional power to disapprove legislation. These designations also assure that the Congress will be able to exercise its constitutional power to consider the President's objections when the Congress returns from its adjournment, and to override his veto if that is thought to be appropriate. It must always be remembered that the Constitution grants to the President only a qualified negative over acts of Congress, and preserves to the Congress the power to enact laws over the President's veto.

Mr. President, I suggest the absence of a quorum.

Mr. SARBANES. Will the majority leader refrain from that?

Mr. MITCHELL. Mr. President, I withhold.

## NOMINATION OF JOY A. SILVERMAN

Mr. SARBANES. Mr. President, I just wanted to say a word or two about the nomination of Joy A. Silverman to which the minority leader referred.

First, I want to make it very clear that what has been happening not only in her instance but in others is that the President early on will indicate that he intends to make a nomination. Everyone thinks that at that point the nomination has come to the Senate, and when it is considered much later by the Senate, the onus is placed on the Senate for not having dealt with it sooner.

In this instance, for example, it was in March that it appeared in the press that this nomination was to be made and, in fact, it was on March 21 that Mrs. Silverman filled out her questionnaire.

The nomination was not actually sent to the Senate until July 11. At that time the papers were not sent. They were not sent until 10 days later. Of course, the Senate began a recess in August and returned on September 6. Mrs. Silverman was scheduled for a hearing at the end of that month. A day before the hearing was to happen, the State Department submitted corrected forms with respect to her papers with respect to political contributions.

The corrected forms in fact raised a number of additional questions and those were then subsequently carefully looked into in order that the Foreign Relations Committee and the Senate might have a complete picture of what her finances were. We now appear to have a picture as the result of the work of the committee's staff but it was not before us at the time of the submission of the nominee's papers.

I ask unanimous consent to include in the RECORD a table indicating the full picture of political contributions developed by the committee's inquiry.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONTRIBUTIONS TO MAJOR GOP CAUSES, 1987–89

| GOP recipient | Joy and Jeffrey Silverman | Plygem | Total |
|---|---|---|---|
| Republican Eagles | $10,000 | | $10,000 |
| Repub. Nat'l State election commission | 106,000 | $53,160 | 159,160 |
| N.Y. County Republican Committee | 2,000 | 1,000 | 3,000 |
| Suffolk County Republican Committee | 1,000 | | 1,000 |
| Republican Party of N.Y. State | | 10,000 | 10,000 |
| Illinois Republican State Committee | | 10,000 | 10,000 |
| Pennsylvania Republican State Committee | | 10,000 | 10,000 |
| Bush for President Compliance Committee | 2,000 | | 2,000 |
| Bush for President | 2,000 | | 2,000 |
| Presidential Trust | 10,000 | | 10,000 |
| Fund for America's Future | 10,000 | | 10,000 |
| SENATE | | | |
| GOP Senatorial Inner Circle | 5,750 | | 5,750 |
| National Republican Senate Committee | 750 | 5,000 | 5,750 |
| N.Y. State Republican Senate Committee | 10,000 | | 10,000 |
| Senate Victory '88 | 1,000 | | 1,000 |
| Individual Republican Senate races (total) | 13,700 | 2,000 | [1] 17,700 |
| MISCELLANEOUS | | | |
| N.Y. Salute | | 5,000 | 5,000 |
| Republ. Nat'l Convention Gala | 2,000 | | 2,000 |
| Presidential Gala | | 25,000 | 25,000 |
| Total | 176,000 | [2] 121,160 | 299,360 |

[1] Also includes $2,000 contribution from son (Evan Marc).
[2] Jeffrey Silverman says that a portion ($38,160) of this amount was for inaugural events.

Mr. SARBANES. Mr. President, it is true the nomination was laid over for a week in the committee at the time it first was placed on the agenda on November 9. We were then still trying to pull together all the material. When it did come up at last Friday's business meeting, a quorum was lost when the nomination was being debated and it was therefore not in order to act on the nomination.

So I just wanted to get the information in the RECORD in terms of the sequence of considering this matter. It is no secret that I regard this as an egregious nomination. It relates to the point I have been making with respect to some other nominations for ambassadorships and that is that the only basis on which they are being made is on the basis of very large campaign contributions.

But I do want to make the point in this instance because of the new submission that was made by the administration itself just a day before the hearing was to be held, in effect, admitting major discrepancies and errors in the original submission, that it was necessary then to engage in a thorough inquiry in order to make sure that the latest material before the committee was in fact accurate.

The table which has been submitted is an indication, of course, of the significance of political contributions in the nomination. An examination of the nominees ability and experience provides no basis for an ambassadorial assignment.

I ask unanimous consent to print in the RECORD a letter from the Department of State dated September 27, transmitting "corrected" materials the day before the hearing on Mrs. Silverman took place, and of course it was these corrections that raised questions about the political contributions submissions and required the inquiry which was then undertaken.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE,
*Washington, DC, September 27, 1989.*

Hon. CLAIBORNE PELL,
*Chairman, Senate Foreign Relations Committee, United States Senate.*

DEAR MR. CHAIRMAN: Ambassador-designate to Barbados, Joy A. Silverman, has made corrections in the materials she submitted to the Committee. Attached please find corrected versions of Appendix "C" and the answers to Part B, Question 6 that covers the same time period. We regret any inconvenience to the Committee.

Sincerely,

JANET G. MULLINS,
*Assistant Secretary, Legislative Affairs.*

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, and a withdrawal, which were referred to the appropriate committees.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

### ENROLLED BILLS SIGNED

At 12:24 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 1487. An act to authorize appropriations for fiscal years 1990 and 1991 for the Department of State, and for other purposes.

H.R. 2712. An act to facilitate the adjustment or change of status of Chinese nationals in the United States by waiving the 2-year foreign residence requirement for "J" nonimmigrants.

H.R. 3743. An act making appropriations for foreign operations, export financing,

and related programs for the fiscal year ending September 30, 1990, and for other purposes.

H.R. 3746. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1990, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore [Mr. BYRD].

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At 2:43 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House further insists upon its disagreement to the amendment of the Senate to the bill (H.R. 3607) to repeal Medicare provisions in the Medicare Catastrophic Coverage Act of 1988.

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At 5:15 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3611) to combat international narcotics production and trafficking.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing vote of the two Houses on the amendment of the Senate to the bill (H.R. 3614) to amend the Drug-Free Schools and Communities Act of 1986 to revise certain requirements relating to the provision of drug abuse education and prevention programs in elementary and secondary schools, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 3620) to clarify the Food Security Act of 1985.

The message also announced that the House agrees to the amendment of the Senate to the amendments of the House to the bill (S. 974) to designate certain lands in the State of Nevada as wilderness, and for other purposes.

The message further announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 429. Joint resolution to designate the week of December 10, 1989, through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week."

At 10:09 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill and joint resolution, without amendment:

S. 1960. An act to authorize the food stamp portion of the Minnesota Family Investment Plan; and

S.J. Res. 205. Joint resolution designating December 3 through 9, 1989, as "National Cities Fight Back Against Drugs Week."

The message also announced that the House has passed the bill (S. 1877) to improve the operational efficiency of the James Madison Memorial Fellowship Foundation; with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (S. 2459) to authorize appropriations for the Coast Guard for fiscal year 1990, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 3259) to amend the Immigration and Nationality Act to provide for adjustment of status, without regard to numerical limitations, for certain H-1 nonimmigrant nurses and to establish conditions for the admission, during a 5-year period, of nurses as temporary workers.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 3629) extending the authority of the Secretary of Commerce to conduct the quarterly financial report program under section 91 of title 13, United States Code, through September 30, 1993.

The message also announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 3792. An act to authorize appropriations for fiscal years 1990 and 1991 for the Department of State, and for other purposes; and

H.J. Res. 448. Joint resolution making supplemental appropriations for the fiscal year 1990, and for other purposes.

At 12:30 a.m. (November 22, 1989), a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3299) to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3607) to repeal medicare provisions in the Medicare Catastrophic Coverage Act of 1988.

The message further announced that pursuant to the provisions of 22 United States Code 276d, the Speaker appoints as members of the United States delegation to attend the meeting of the Canada-United States Interparliamentary Group the following Members on the part of the House: Mr. GEJDENSON, Chairman; Mr. FASCELL, Vice Chairman; Mr. HAMILTON, Mr. GIBBONS, Mr. OBERSTAR, Mr. FEIGHAN, Ms. SLAUGHTER, Mr. BROOMFIELD, Mr. HORTON, Mr. MILLER of Washington, Mr. WALSH, and Mr. UPTON.

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At 2:48 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 449. Joint resolution providing for the convening of the second session of the One Hundred First Congress.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 239. Concurrent resolution providing for the sine die adjourment of the first session of the One Hundred First Congress.

The message further announced that the House has agreed to the following resolution:

H. Res. 301. A resolution providing for the appointment of a committee on the part of the House of notify the President that the two Houses are ready to adjourn.

At 3:37 a.m. a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 3671) to amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 875) to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park near Fredericksburg, VA.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 91) to prohibit exports of military equipment to countries supporting international terrorism.

The message also announced that the House agrees to the amendment of the Senate to the joint resolution (H.J. Res. 175) to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes.

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At 3:55 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 241. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3607.

## MEASURES REFERRED

The following bills and joint resolutions previously received from the House of Representatives for concurrence were read the first and second times by unanimous consent and referred as indicated:

H.R. 94. An act to amend the Federal Fire Prevention and Control Act of 1974 to allow for the development and issuance of guidelines concerning the use and installation of automatic sprinkler systems and smoke detectors in places of public accommodation affecting commerce, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 435. An act to amend the Appalachian Regional Development Act of 1965 to include Columbiana County, Ohio, as part of the Appalachian region; to the Committee on Environment and Public Works.

H.R. 897. An act authorizing the National Oceanic and Atmospheric Administration to modernize and expand its fleet of ocean research vessels, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 1602. An act to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 2581. A bill to authorize the Federal Aviation Administration to establish an aviation research grant program; to the Committee on Commerce, Science, and Transportation.

H.R. 2612. An act to provide temporary authority to certain employees of the Panama Canal Commission to purchase food and other goods at any commissary or exchange store located in Panama which is operated by any military department of the United States; to the Committee on Armed Services.

H.R. 3311. An act to designate the Federal building located at 350 South Main Street in Salt Lake City, UT, as the "Frank E. Moss United States Courthouse"; to the Committee on Environment and Public Works.

H.R. 3589. An act to amend the Disaster Assistance Act of 1989 to provide assistance to agriculture producers suffering from earthquakes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 3593. An act to provide emergency assistance to areas that sustained damages as a result of Hurricane Hugo, and for other purposes; to the Committee on Environment and Public Works.

H.R. 3694. An act to authorize reimbursement by the Secretary of the Interior of certain expenditures at the Minidoka Project, Idaho and Wyoming; to the Committee on Energy and Natural Resources.

H.J. Res. 140. Joint resolution designating March 11 through March 17, 1990, as "Deaf Awareness Week"; to the Committee on the Judiciary.

H.J. Res. 430. Joint resolution to designate December 1, 1989, as "World AIDS Day"; to the Committee on the Judiciary.

The following concurrent resolution, previously received from the House of Representatives for concurrence, was read, and referred as indicated:

H. Con. Res. 214. Concurrent resolution in support of regional efforts to end driftnet fishing in the South Pacific; to the Committee on Foreign Relations.

H. Con. Res. 220. Concurrent resolution expressing the sense of the Congress that all retirement benefits are exempt from sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 and that any such benefits sequestered under the Presidential order of October 16, 1989, should be restored; to the Committee on Governmental Affairs.

H. Con. Res. 236. Concurrent resolution expressing the sense of the Congress deploring the escalating violence in El Salvador; condemning the killing of innocent civilians, including six Jesuit priests; and calling for an immediate cessation of hostilities; to the Committee on Foreign Relations.

## MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

S. 1970. A bill to establish constitutional procedures for the imposition of the sentence of death, and for other purposes;

S. 1971. A bill to establish a constitutional death penalty and strengthen and improve Federal criminal penalties and procedures; and

H.R. 3792. An act to authorize appropriations for fiscal years 1990, and 1991 for the Department of State, and for other purposes.

The following concurrent resolution was read, and placed on the calendar:

H. Con Res. 228. Concurrent resolution to express the sense of the Congress regarding the 25th anniversary of Volunteers in Service to America.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers reports, and documents which were referred as indicated:

EC-1998. A communication from the Secretary to the Interstate Commerce Commission transmitting, pursuant to law, notice of the extension of time for acting on the appeal in "Coal Trading Corporation, Et Al v. The Baltimore and Ohio Railroad Company Et Al."; to the Committee on Commerce, Science, and Transportation.

EC-1999. A communication from the Assistant Secretary of the Army (Civil Works) transmitting, pursuant to law, a report on the Army's review and comments on certain projects subject to section 903(a) review; to the Committee on Environment and Public Works.

EC-2000. A communication from the chairman of the Jacob K. Javits Fellowship Board, transmitting, pursuant to law, the second report of the board; to the Committee on Labor and Human Resources.

EC-2001. A communication from the Chief Judge of the United States Tax Court, transmitting, pursuant to law, the actuarial reports for the U.S. Tax Court Judges Retirement and Survivor Annuity Plans for the year ending December 31, 1987; to the Committee on Governmental Affairs.

EC-2002. A communication from the chairman of the Federal Election Commission, transmitting, pursuant to law, the proposed regulations governing foreign nationals; to the Committee on Rules and Administration.

## PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-382. A resolution adopted by the Senate of the Commonwealth of Pennsylvania; to the Committee on Energy and Natural Resources.

"SENATE OF PENNSYLVANIA—RESOLUTION

"Whereas, On Monday, September 18, Hurricane Hugo hit Puerto Rico with savage winds approaching 125 mph and left behind nearly 28,000 people homeless and 29 dead; and

"Whereas, While it is still too soon to assess the total damage, the final figure will run into the millions of dollars—not even counting the personal tragedies being experienced by these citizens of the United States; and

"Whereas, Puerto Rico became part of the United States in 1898, and its citizens received citizenship status through the Jones Act of 1917 and continue to proudly proclaim their allegiance to the United States of America; and

"Whereas, The Commonwealth of Puerto Rico and its 3,000,000 inhabitants—who are fellow brothers and sisters—need all forms of assistance as quickly as it can be mobilized; therefore be it

*"Resolved,* That the Senate of Pennsylvania hereby urge all the legislative members of the General Assembly to lend their support to the relief effort; and encourage that all relief efforts—both monetary and in-kind contributions—be directed to the Puerto Rican Disaster Relief Fund, c/o Office of the Commonwealth of Puerto Rico, 500-06 North 6th Street, Philadelphia, PA 19123; and be it further

*"Resolved,* That copies of this resolution be immediately transmitted to Governor Robert Casey, to the presiding members of each house of Congress, to each member of Congress from Pennsylvania, to U.S. Senators Arlen Specter and John Heinz; and President George Bush."

POM-383. A resolution adopted by the Executive Committee of the Western Legislative Conference of the Council of State Governments urging a prompt resolution of Guam's political status with the United States; to the Committee on Energy and Natural Resources.

POM-384. A petition from a citizen of the District of Columbia praying for a redress of grievances relative to his practice of medicine; to the Committee on the Judiciary.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

H.R. 875. A bill to expand the boundaries of the Fredericksburg-Spotsylvania National Military Park near Fredericksburg, VA (Rept. No. 101-220).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 1109. A bill to amend the Carl D. Perkins Vocational Education Act to extend the authorities contained in such act through the fiscal year 1995 (Rept. No. 101-221).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment:

S. 1963. A bill to amend the Public Health Service Act to facilitate the revitalization of the Commissioned Corps of the Public Health Service, and for other purposes (Rept. No. 101-222).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 640. A bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents (Rept. No. 101-223).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute.

S. 1005. A bill to the sale, purchase, or other acquisition of certain railroads (Rept. No. 101-224).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1009. A bill to amend section 315 of the Communication Act of 1934 with respect to the purchase of broadcasting time by candidates for public office (Rept. No. 101-225).

By Mr. INOUYE, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 1846. A bill to make miscellaneous amendments to Indian laws, and for other purposes (Rept. No. 101-226).

By Mr. BURDICK, from the Committee on Environment and Public Works, without amendment:

S. 2178. A bill to designate lock and dam numbered 4 on the Arkansas River, AR, as the "Emmett Sanders Lock and Dam."

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services:

Susan J. Crawford, of Maryland, to be Inspector General, Department of Defense.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GLENN (for himself, Mr. HATFIELD, Mr. ADAMS, Mr. KENNEDY, Mr. SANFORD, Mr. PACKWOOD, Mr. STEVENS, Mr. NUNN, Mr. JEFFORDS, Mr. BINGAMAN, Mr. KOHL, Mr. FOWLER, Mr. LIEBERMAN, Mr. LEVIN, Mr. HEINZ, and Mr. WARNER):

S. 1950. A bill to establish Regional Science, Mathematics and Technology Education Consortiums, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HATFIELD (for himself, Mr. GLENN, Mr. ADAMS, Mr. PACKWOOD, Mr. JEFFORDS, Mr. BINGAMAN, Mr. FOWLER, Mr. LIEBERMAN, Mr. KOHL, Mr. NUNN, and Mr. WARNER):

S. 1951. A bill to promote interagency cooperation in the area of science, mathematics and technology education; to the Committee on Governmental Affairs.

By Mr. BAUCUS (for himself, Mr. CONRAD, Mr. HEFLIN, and Mr. GORTON):

S. 1952. A bill to amend the Food Security Act of 1985 to reauthorize the targeted export assistance program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SPECTER:

S. 1953. A bill to provide that the United States District Court for the Eastern District of Pennsylvania shall also sit in Lancaster, PA; to the Committee on the Judiciary.

By Mr. HEFLIN:

S. 1954. A bill for the relief of Sven O. Spjuth, M.D., Margareta Barbaro Eriksson Spjuth, and Martin Sven Olof Spjuth; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Mr. DECONCINI, Mr. THURMOND, Mr. SPECTER, Mr. BYRD, Mr. HATCH, Mr. SHELBY, Mr. DOLE, Mr. HEFLIN, Mr. GRASSLEY, Mr. LIEBERMAN, Mr. STEVENS, Mr. MACK, Mr. GORTON, Mr. MCCONNELL, Mr. GRAMM, Mr. SYMMS, Mr. WILSON, Mr. KASTEN, Mr. PRESSLER, Mrs. KASSEBAUM, Mr. MURKOWSKI, Mr. GARN, Mr. BURNS, Mr. WARNER, Mr. LOTT, Mr. WALLOP, Mr. NICKLES, Mr. HELMS, Mr. COATS, Mr. MCCLURE, Mr. ARMSTRONG, Mr. COCHRAN, Mr. HEINZ, Mr. MCCAIN, and Mr. LUGAR):

S. 1955. A bill to amend the Controlled Substances Act to provide the death penalty for engaging in a continuing criminal drug enterprise involving a large quantity of drugs; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Mr. DOLE, Mr. DECONCINI, Mr. KERRY, Mr. SPECTER, Mr. DURENBERGER, Mr. LIEBERMAN, Mr. HATCH, Mr. DOMENICI, Mr. GRAHAM, Mr. WILSON, Mr. COATS, and Mr. LOTT):

S. 1956. A bill to amend the Internal Revenue Code of 1986 to provide a mechanism for taxpayers to designate any portion of any overpayment of income tax and to contribute other amounts, for payments to fight the war on drugs and for other purposes; to the Committee on Finance.

By Mr. LEVIN (for himself, Mr. COHEN, Mr. GLENN, and Mr. ROTH):

S. 1957. A bill to provide for the efficient and cost effective acquisition of nondevelopmental items for federal agencies, and for other purposes; to the Committee on Governmental Affairs.

By Mr. METZENBAUM (for himself, Mr. ADAMS, Mr. GLENN, and Mr. WIRTH):

S. 1958. A bill to amend the Occupational Safety and Health Act of 1970 to improve and enforce standards for employee health and safety at Department of Energy nuclear facilities and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SIMON:

S. 1959. A bill to authorize the establishment of the National African-American Heritage Memorial Museum within the Smithsonian Institution; to the Committee on Rules and Administration.

By Mr. BOSCHWITZ:

S. 1960. A bill to authorize the food stamp portion of the Minnesota Family Investment Plan; considered and passed.

By Mr. KERRY:

S. 1961. A bill to amend the Higher Education Act of 1965 to establish a teacher fellowship program for the improvement of teacher education, and for other purposes; to the Committee on Labor and Human Resources.

S. 1962. A bill to amend the Higher Education Act of 1965 to establish a technology fellowship program for the improvement of graduate instruction in science, technology and engineering and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KENNEDY:

S. 1963. A bill to amend the Public Health Service Act to facilitate the revitalization of the Commissioned Corps of the Public Health Service, and for other purposes; from the Committee on Labor and Human Resources; placed on the calendar.

By Mr. WARNER:

S. 1964. A bill to require the President to make an annual report on the national environmental strategy of the United States to Congress; to the Committee on Environment and Public Works.

By Mr. BIDEN (for himself and Mr. REID):

S. 1965. A bill to protect the rights of victims of crime, establish a Federal victims' bill of rights for children, and improve the response of the criminal justice system and related agencies to incidents of child abuse; to the Committee on the Judiciary.

By Mr. JOHNSTON (for himself and Mr. MCCLURE):

S. 1966. A bill to focus on existing programs in nuclear fission research at the Department of Energy and establish a program for research, development, and demonstration of advanced technologies for the generation of commercial electric power from nuclear fission, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. KERRY:

S. 1967. A bill to amend the Housing and Community Development Act of 1987 to improve the enterprise zone development program, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DANFORTH (for himself, Mr. BENTSEN, Mr. HEINZ, and Mr. DURENBERGER):

S. 1968. A bill to amend the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701) relating to the relative competitiveness of industry in the United States; to the Committee on Commerce, Science, and Transportation.

By Mr. FORD:

S. 1969. A bill to amend the Water Development Act of 1986; to the Committee on Environment and Public Works.

By Mr. BIDEN:

S. 1970. A bill to establish constitutional procedures for the imposition of the sentence of death, and for other purposes; placed on the calendar.

By Mr. THURMOND:

S. 1971. A bill to establish a constitutional death penalty and strengthen and improve Federal criminal penalties and procedures; placed on the calendar.

By Mr. BIDEN:

S. 1972. A bill to enhance the ability of the Federal Government to enforce the criminal laws in drug cases and for other purposes; to the Committee on the Judiciary.

By Mr. MCCONNELL:

S. 1973. A bill to establish the Kentucky Wildlife Refuge; to the Committee on Envornment and Public Works.

By Mr. HARKIN (for himself, Mr. MCCAIN, Mr. INOUYE, and Mr. SIMON).

S. 1974. A bill to require new televisions to have built in decoder circuitry; to the Committee on Commerce, Science, and Transportation.

By Mr. KERRY:

S. 1975. A bill to temporarily suspend the duty on certain aluminum plates sheets, and strips that are products of Bahrain; to the Committee on Finance.

By Mr. JOHNSTON (for himself, Mr. GORE, and Mr. MCCLURE):

S. 1976. A bill to provide for continued United States leadership in high performance computing; to the Committee on Energy and Natural Resources

By Mr. DASCHLE (for himself, Mr. BOND, Mr. KERREY, and Mr. LEAHY):

S. 1977. A bill to amend the United States Grain Standards Act to improve the competitive position of United States grain in international and domestic markets to facilitate the communication of quality characteristics that final buyers of grain desire, to provide certain incentives to producers of high quality grain, and to improve the quality of farm-owned and Federally owned reserve grain stocks, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GLENN (for himself, Mr. MOYNIHAN, Mr. RIEGLE, Mr. KENNEDY, Mr. DIXON Mr. SASSER Mr. LIEBERMAN, and Mr. BENTSEN:

S. 1978. A bill to establish as an executive department of the Government a Department of Industry and Technology, to establish within such Department the Advanced Civilian Technology Agency, to add the Secretaries of the Treasury and Industry and Technology and the United States Trade Representative to the National Security Council, and for other purposes; to the Committee on Governmental Affairs.

By Mr. INOUYE:

S. 1979. A bill to remove certain barriers to the free exercise of, and to ensure equal respect for, and treatment of, traditional religious practices by Indians Alaska Natives and Native Hawaiians; to the Select Committee on Indian Affairs.

S. 1980. A bill to provide for the repatriation of Native American group or cultural patrimony; to the Select Committee on Indian Affairs.

By Mr. HOLLINGS:

S. 1981. A bill to permit the Bell Telephone Companies to conduct research on, design, and manufacture telecommunications equipment and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BURDICK:

S. 1982. A bill to amend title 38, United States Code, to require that there be at least one regional office of the Department of Veterans Affairs in each State within the United States; to the Committee on Veterans Affairs.

By Mr. LEAHY:

S. 1983. A bill to expand the inspection by the Secretary of Agriculture of the Nation's food supply to ensure the safety and wholesomeness of the nation's supply of fish, shellfish and other marine food; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. ROTH: (for himself, Mr. BIDEN, and Mr. REID):

S. 1984. A bill to establish a Federal Strategic Drug Center; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 1985. A bill entitled the "Walkill River National Wildlife Refuge Act"; to the Committee on Environment and Public Works.

By Mr. KENNEDY (for himself and Mr. HATCH):

S. 1986. A bill to amend the Public Health Service Act to establish an Agency for Health Care Policy and Research, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. RIEGLE:

S. 1987. A bill for the relief of Roger Eric Lord; to the Committee on the Judiciary.

By Mr. BOSCHWITZ:

S. 1988. A bill to amend the Consolidated Farm and Rural Development Act and the Farm Credit Act of 1971; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. WILSON (for himself, Mr. BOREN, and Mr. DOLE):

S. 1989. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to prohibit the export of unregistered pesticides, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. PELL (for himself and Mr. CHAFEE):

S. 1990. A bill to establish the Cliff Walk National Historic Site; to the Committee on Energy and Natural Resources.

By Mr. BIDEN:

S. 1991. A bill to provide for eradication of drug production in certain foreign countries through debt for drugs exchanges; to the Committee on Foreign Relations.

By Mr. HOLLINGS:

S. 1992. An original bill to require the Federal Communications Commission to ensure that broadcasters provide children's television programming that meets the educational and informational needs of the child audience, and for other purposes; placed on the calendar.

By Mr. RIEGLE:

S. 1993. A bill for the relief of Maria Erica Bartski; to the Committee on the Judiciary.

By Mr. HATCH (for himself and Mr. KENNEDY):

S. 1994. A bill to amend title XXI of the Public Health Service Act to provide for the establishment of an atmospheric nuclear testing compensation program, and for other purposes; to the Committee on the Judiciary.

By Mr. DECONCINI:

S. 1995. A bill to amend title II of the Social Security Act to increase the amount of earnings exempt from reduction under the retirement test, to eliminate such test in 1995, and for other purposes; to the Committee on Finance.

By Mr. HATFIELD:

S. 1996. A bill to provide for a comprehensive review by the Secretary of the Interior of western water resource problems and programs administered by the Geological Survey, the Bureau of Reclamation, and other operations of the Department of the Interior, and for other purposes; to the Committee on Energy and Natural Resources.

S. 1997. A bill to amend section 311 of the Older Americans Act of 1965 to require the Secretary of Agriculture to provide assistance for 2 meals served daily per person; to the Committee on Labor and Human Resources

By Mr. HEINZ (for Mr. COATS):

S. 1998. A bill entitled the "Medicaid Long Term Demonstration Project Waiver Act of 1989"; considered and passed.

By Mr. HEINZ (for Mr. JEFFORDS (for himself and Mr. PELL)):

S. 1999. A bill to amend the Higher Education Act of 1965 to clarify the administrative procedures of the National Commission on Responsibilities for Financing Postsecondary Education; considered and passed.

By Mr. HEINZ (for Mr. THURMOND):

S. 2000. A bill to amend Disaster Assistance Act of 1989 to provide assistance to agricultural producers suffering from earthquakes; placed on the calendar.

By Mr. HEFLIN:

S.J. Res. 232. Joint resolution proposing an amendment to the Constitution of the United States with respect to the impeachment of judges; to the Committee on the Judiciary.

S.J. Res. 233. Joint resolution proposing an amendment to the Constitution of the United States with respect to the impeachment of Article III judges; to the Committee on the Judiciary.

By Mr. BRADLEY:

S.J. Res. 234. Joint resolution to amend one of the reservations under which the United States consented to and participates in the Delaware River Basin Compact; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MITCHELL (for himself, Mr. DOLE, Mr. KENNEDY, Mr. EXON, Mr. REID, Mr. DIXON, Mr. MATSUNAGA, Mr. LEVIN, Mr. KASTEN, Mrs. KASSEBAUM, Mr. MCCAIN, Mr. SIMPSON, Mr. WILSON, Mr. DECONCINI, Ms. MIKULSKI, Mr. LIEBERMAN, Mr. NUNN, Mr. ROBB, Mr. GRAHAM, Mr. WIRTH, Mr. INOUYE, Mr. GLENN, Mr. COHEN, Mr. DURENBERGER, Mr. DOMENICI, Mr. LAUTENBERG, Mr. GARN, and Mr. SYMMS):

S. Res. 217. Resolution deploring the escalating violence in El Salvador; condemning the killing of innocent civilians, including six Jesuit priests; and calling for an immediate cessation of hostilities; considered and agreed to.

By Mr. SPECTER:

S. Res. 218. Resolution expressing the sense of the Senate regarding the President's agenda for the drug summit; to the Committee on Foreign Relations.

By Mr. MITCHELL (for Mr. RIEGLE (for himself, Mr. GARN, Mr. GRAHAM and Mr. MACK)):

S. Res. 219. Resolution to amend Senate Resolution 66, agreed to February 28, 1989, to make certain technical corrections, and for other purposes; considered and agreed to.

By Mr. THURMOND (for Mr. HELMS):

S. Res. 220. Resolution expressing the sense of the Senate that the United States should not be bound under the United Nations Drug Convention to cooperate with any State party with which the United States does not maintain diplomatic relations or with any regime not recognized by the United States; considered and agreed to.

By Mr. DOLE:

S. Res. 221. Resolution tendering the thanks of the Senate to the Vice President

for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. MITCHELL:

S. Res. 222. Resolution tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

S. Res. 223. Resolution to commend the exemplary leadership of the Minority Leader; considered and agreed to.

By Mr. DOLE:

S. Res. 224. Resolution to commend the exemplary leadership of the Majority Leader; considered and agreed to.

By Mr. MITCHELL:

S. Res. 225. Resolution tendering the thanks of the Senate to the Senate Staff for courteous, dignified, and impartial manner in which they have assisted the deliberations of the Senate; considered and agreed to.

S. Res. 226. Resolution authorizing the President of the Senate, the President of the Senate pro tempore, and the Majority and Minority Leaders to make certain appointments after the sine die adjournment of the present session; considered and agreed to.

S. Res. 227. Resolution appointing a committee to notify the President concerning the proposed adjournment of the session; considered and agreed to.

By Mr. SIMON (for himself, Mr. HELMS, and Mr. MACK):

S. Con. Res. 85. Concurrent resolution concerning the establishment of a multilateral initiative to promote confidence among the people of Hong Kong; to the Committee on Foreign Relations.

By Mr. HELMS (for himself, Mr. MACK, Mr. BINGAMAN, Mr. SIMON, and Mr. GORE):

S. Con. Res. 86. Concurrent resolution concerning ballistic missile proliferation by the People's Republic of China; to the Committee on Foreign Relations.

By Mr. KENNEDY (for himself, Mr. PELL, Mr. SARBANES, Mr. BIDEN, Mr. PRESSLER, and Mr. CRANSTON):

S. Con. Res. 87. Concurrent resolution in support of the United Nations Secretary General's current efforts regarding Cyprus; to the Committee on Foreign Relations.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GLENN (for himself, Mr. HATFIELD, Mr. ADAMS, Mr. KENNEDY, Mr. SANFORD, Mr. PACKWOOD, Mr. STEVENS, Mr. NUNN, Mr. JEFFORDS, Mr. BINGAMAN, Mr. KOHL, Mr. FOWLER, Mr. LIEBERMAN, Mr. LEVIN, Mr. HEINZ, and Mr. WARNER):

S. 1950. A bill to establish regional science, mathematics, and technology education consortiums, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HATFIELD (for himself, Mr. GLENN, Mr. ADAMS, Mr. PACKWOOD, Mr. JEFFORDS, Mr. BINGAMAN, Mr. FOWLER, Mr. LIEBERMAN, Mr. KOHL, Mr. NUNN, and Mr. WARNER):

S. 1951. A bill to promote interagency cooperation in the area of science, mathematics, and technology education; to the Committee on Governmental Affairs.

### SCIENCE, MATHEMATICS, AND TECHNOLOGY EDUCATION AND COOPERATION

Mr. GLENN. Mr. President, today my good friend and colleague, Senator HATFIELD, and I are introducing what we believe to be the most comprehensive package of science and mathematics education initiatives in this Congress. This bipartisan package is a followup to Senate Concurrent Resolution 52, a resolution Senator HATFIELD and I introduced earlier this session declaring that science and mathematics education should be a national priority. At its introduction, we promised that someday we would follow up our words with deeds. Today is that day.

Mr. President, at the outset, I want to commend my colleague for his cooperation and leadership throughout the development of this package. We worked together very closely. In fact, this could be the Hatfield-Glenn or Glenn-Hatfield package—given the joint effort that went into it. The work on these bills over the last 6 months has truly been a joint enterprise.

Senator HATFIELD and I worked closely on developing a package of initiatives that will offer a promise of real reform, and we feel we have succeeded.

Our package of science and math education initiatives has several parts.

The cornerstone of our efforts is title I of our first bill. In it is a proposal to establish 10 regional consortiums that would bring state-of-the-art science and mathematics and instructional materials to the attention of the Nation's classroom teachers.

Second, title II would create a national clearinghouse for science, mathematics, and technology education materials. Title III would support important initiatives in informal science education.

The second bill would establish a Federal interagency council on science and math education.

We want to urge our colleagues to join us as original cosponsors. Consider these three important points.

First and most important, we believe, is that these proposals, which were developed in close consultation with educators and teachers, will make a difference. Our package will produce real improvements in the way this country teaches its young people science and math.

Second, our package of proposals has already won important bipartisan support. Joining us as original cosponsors are Senators ADAMS, KENNEDY, SANFORD, PACKWOOD, STEVENS, NUNN, JEFFORDS, BINGAMAN, KOHL, FOWLER, LIEBERMAN, LEVIN, and HEINZ.

Further, it has won important support from the education community. The National Science Teachers Association endorsed our first bill, calling it "an essential component for national reform" and "one of the most important acts to be proposed by this Congress regarding education." We are proud of that.

In addition, the bill has been endorsed by the National Parent-Teachers Association, the National Association of Secondary School Principals, National Center for Improving Science Education, the Triangle Coalition for Science and Technology Education, American Association of Physics Teachers and the Council for Educational Development and Research. These are frontline organizations dealing with education.

Finally, our package will not break the bank. The price tag was kept to a very, very modest $25 million in spending through innovative use of cost sharing and matching grants. By leveraging resources in the private sector, our bills make the Federal dollar go further.

Why is reform necessary? The United States now operates in a global market that places a high premium on technological innovation. More than 70 percent of the goods manufactured in the United States now compete with merchandise made overseas. Consider also our staggering trade deficit, the very measure of U.S. competitiveness overseas.

In the future, our factories and laboratories will need a first-rate technical work force. Yet this country, this United States of America, this leader in education in the past, this envy of the world, will not produce or may not produce enough scientists, engineers, and technical personnel to meet the demands, even minimum demands, of a dynamic, high technology economy. Further, American students rank near the bottom in international comparisons of achievement levels in science and math. We must overhaul science and math education in this country if the next generation is to prosper in an increasingly competitive world.

Every new report on American education produces another horror story that has to make you wonder how we ever let it get to this.

Mr. President, the United States because what it is not just because of the great resources that we have but because we emphasize two things: One is education and the other basic research.

Education in this country was not just for the kids from the castle. It was for every young person. We have done better than any place else in this world up to now—up to now. But now we have serious competition.

The second area is basic research. We led the world. We plowed more of our gross national product back into basic research than any nation in this world.

If we go back and look at the colonial village, it made no difference whether anybody came through it in a year's period of time. The cabbage grower was down the street, the buggy maker was on corner, the cobbler another. What happened then? The cobbler became all of New England, the buggy maker became Detroit, the cabbage grower went to Imperial, CA. What happened next? The buggy maker is now 25 percent Japanese, the cobbler is in Italy and Korea, and hundreds of millions of tons of food flow all over this world. So we are no longer an insulated United States of America with oceans that separate it from everywhere else. We are part of the global community.

Every new report on education produces another horror story that has to make you wonder: How did we ever let it get to this.

The same nation that landed a man on the Moon and returned him safely to Earth educates fewer than one out of every five high school graduates in the laws of physics.

The same nation that has produced more Nobel laureates in chemistry than any other nation lets half of its young people graduate from high school without taking a single course in chemistry.

Finally, American school children are routinely outperformed in international comparisons of science and math performance—outperformed by students from our chief trade rivals. In fact—and this is a staggering figure to me—this country's high schools graduate 700,000 functionally illiterate young people a year. And that does not include those who dropped out.

Moreover, declining birth rates and interest in scientific careers among American young people, plus increasing numbers of students traditionally underrepresented in science and engineering, namely, minorities and women, portend an almost certain shortage of scientific personnel. It is not only scientists, engineers or research people we are talking about. It is the technologically competent workers who have to man these industries of the future, and that is what we are trying to address.

Mr. President, let me describe the rationale for title I, the regional consortiums. Senator HATFIELD and I believe that in order to reform science education in this country, we must look to the beginning of the education in this country, we must look to the beginning of the educational pipeline for the source of the problem as well as the solution.

One of the greatest obstacles to getting more young people—especially female and minority students—interested in a technical career are the science and math courses themselves.

A number of influential reports have concluded that anachronistic curricula, poor teaching and inadequate materials in our elementary and secondary schools have contributed to this crisis. According to "The Nation at Risk," the report of the National Commission on Excellence in Education:

> Science courses must be revised and updated * * *. New, equally demanding mathematics curricula need to be developed * * *. Textbooks and other tools of learning and teaching should be upgraded and updated to assure more rigorous content.

Educating Americans for the 21st century, a report issued by the National Science Board, makes a similar point:

> Promoting the learning of mathematics, science and technology will require fundamental changes in both what is learned and how it is taught * * *. The substance of mathematics and science courses must be reviewed and improved, and technology must become an integral part of the study of science, mathematics and other subjects.

More recently, the National Governors' Association in its report "Results in Education 1989," concluded that "curriculum and instruction must be modified to promote the acquisition of higher-order skills, not just basic skills, by all students." The same report found that "the curriculum most prevalent in American schools is significantly flawed."

Similar calls for reform have been issued by the American Association for the Advancement of Science, the National Science Teachers Association, and the National Council of Teachers of Mathematics.

Luckily, private efforts are underway all over this country to rewrite, reform, and reinvigorate science and mathematics curriculum. That is where those efforts should take place—in private hands. That is a strength of American education.

It is our goal to make these developments available to schools and teachers that want them.

Our proposal for 10 regional consortiums would bridge the gap that now exists between the Ivory Tower, laboratory-like settings where science and math curriculums are frequently developed and the real world where it is taught.

Dissemination would take place in several important steps:

First, teachers would be involved in selecting the exemplary curriculum that is most appropriate for them and their classrooms. Then, they would learn how to teach the new science and math courses. And finally, lead teachers would be trained to instruct their peers in the use of new material.

The key to effective reform is collaboration. The regional consortiums would maintain strong links with all the groups that have a stake in education, including teachers, the business community, school districts, science museums, higher education, and the State education departments. Reinforcing their ties to the community would be the requirement that the consortiums secure as much as 25 to 50 percent of their funds from these stakeholders.

There will be little improvement in science and math education unless teachers participate in the implementation of new curriculums. Consequently, under our proposal, teachers would play a critical role in the process, working side-by-side with educators and other curriculum specialists in adapting and implementing curriculums. Also, school administrators, board members, parents and community, and business leaders would participate as well, thereby enabling them to facilitate change in their schools and communities.

Regional consortiums would be selected through an open competition process using peer review. Although the program will be housed at the Education Department, the selection of consortiums will be done on a joint basis by the Department and the National Science Foundation. This collaboration at the Federal level may be unprecedented and is critical to the successful operation of the consortiums.

Senator HATFIELD and I will also propose the establishment of a national clearinghouse for science, math, and technology education materials. Its goals: Provide a central library and data base of the Nation's model science programs. The clearinghouse would serve the regional consortiums and schools by acting as a central source of information on what science and math courses are available in this country.

Title III of the bill would support important informal education initiatives. The NSF would be directed to enhance the development of personnel to staff the Nation's science centers and museums, planetariums, zoos, and other informal education institutions. There is no better way to spark a child's interest in science than a trip to the zoo or a science center. Every city in America should strive to have a first class science museum or science center. Unless we have the personnel to staff them, this will never happen.

The bill also supports other important informal education programs. Through the community extension program, the science activities of community-based organizations, such as recreational clubs, youth organizations, and libraries, are strengthened. Integrating science into these predominantly nonscience activities will help reach a whole new audience of young people—and potential scientists. Our innovation fund will also support the development of projects that could serve as models for replication.

Finally, our second bill, introduced by Senator HATFIELD, would establish a permanent Federal interagency

council for science and math education. Over a dozen Federal agencies—in addition to the NSF and the Education Department—have science education programs. Better coordination of these immense resources would contribute to education reform in this country. That is our goal for the council.

Mr. President, again I urge my colleagues to cosponsor this bill. Science and math curriculums in this country must be improved. As the world becomes evermore technological, all of our young people will have to understand the basic mathematics and scientific principles in order to function in our society. The stakes could not be higher.

I think our package of science and math education initiatives is a very significant move forward. I have been very proud to work with Senator HATFIELD, who has a long record of interest and leadership in education. We look forward to getting our colleagues' support so that the Senate can pass our bills next year.

I will ask that the text of our two bills be printed in the RECORD beginning at the end of Senator HATFIELD'S remarks.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The distinguished senior Senator from Oregon is recognized.

Mr. HATFIELD. I thank the Chair.

Mr. President, I rise, with my distinguished colleague from Ohio [Mr. GLENN] to continue our effort to respond to one of the most troublesome problems facing our Nation: the fate of our children in an increasingly technological world.

Recently, an elementary school child in Missouri stated: "Science class is where we learn how tomorrow happen." Mr. President, it is my fear, that tomorrow is in trouble.

Last June I called upon this body to recognize science, mathematics and technology education as a national priority. Today I intend to take this action one step further. Senator GLENN and I are introducing legislation which will begin the formulation of a long-needed blueprint for the role of the Federal Government in precollege science and mathematics education reform.

We all know the dismal statistics which illustrate the magnitude of the problem. Simply stated, our demand for scientists and engineers is outstripping our supply. Since 1976, the demand for scientists and engineers has increased 85 percent in every sector of our economy.

In fact, the Bureau of Labor Statistic reports that an average of 138,500 jobs requiring engineering degrees will open up in every year between 1982 and 1995. Yet a declining quantity of young people, particularly women and minorities, are interested in pursuing careers in engineering, science and mathematics.

We are clearly standing at a crossroads, as a true emergency in science and mathematics education takes shape all around us. Our children are not competitive internationally and are increasingly uninterested in these fields—or do not have the skills to pursue the necessary education.

The percentage of college freshmen choosing to major in engineering has declined 21 percent in the last 10 years, while the percentage choosing to major in computer science has declined 75 percent. In 1986, 55 percent of all doctoral degrees in engineering awarded in the United States went to foreign students, and 23 percent of all doctoral degrees in science went to foreign students.

To further exacerbate the problem, our changing demographics are startling. Blacks and Hispanics currently make up 20 percent of the U.S. population, but account for less than 2 percent of doctoral degrees in science and engineering.

By the year 2020, these gwo groups will make up one-third of the American population, and yet we are failing to incorporate them into the science and engineering pipeline. Today, 63 percent of the 22 year-olds in the United States are neither white nor male and the percentage is increasing: we must tap into that pool.

This supply and demand crisis has implications for virtually every national and international challenge we face today: productivity here at home, competitiveness abroad, and our national security—not just bombs and bullets, but health, housing and the education of our children. The competition for the limited pool of scientists in the future will ultimately touch everyone.

And so it is to this end, Mr. President, that Senator GLENN and I have been working on legislation to develop a framework for the Federal Government to address the deficiencies in science and mathematics education. Today we are introducing two bills.

The first bill establishes a permanent, Federal interagency coordinating council to provide collaboration amongst the Federal mission agencies in science and mathematics educational activities and opportunities. We propose that this council be chaired by the Presidential Science Adviser, who has already been a strong advocate for establishing science literacy as a national priority.

The second bill, the Excellence in Science, Mathematics and Technology Education Act of 1990, offers a comprehensive strategy for addressing the emerging deficiencies in these subject matters.

We are proposing a national network of regional consortiums—consortiums in the true meaning of the word—a bringing together of existing resources in nine different regions throughout the United States. The mission of the consortiums will be to provide technical assistance and dissemination of resources to large and small, urban and rural school districts. We propose involvement of both formal and informal education structures, post-secondary educators, teachers, administrators, and the private sector.

Our legislation also establishes a national clearinghouse of science, mathematics, and technology education materials. This important mechanism will provide linkages not only between the nine consortiums, but within communities and the public by utilizing online computer capability to simplify access to state-of-the-art curriculum and teacher enhancement resources.

Finally, our legislation will provide key financial support to the informal science education community for further development of interactive hands-on science exhibits. We will reach out to museums, learning centers, zoos, libraries and churches. Whatever the structure which intrigues and touches the child.

Additionally, in search of innovative model programs, I am delighted that our legislation will include demonstration funding for model programs in space science education, global environment and health care education, intergenerational volunteer programs with senior citizens, and early childhood science materials for use in Head Start classrooms.

This legislation truly represents strength in numbers—in collaboration and consolidation of resources. The partnerships encouraged by our legislation will play a critical role in addressing science and mathematics educational reform. The bills have the support of some of our most influential education advocates and have already been discussed in preliminary hearings before the Governmental Affairs Committee and the Labor and Human Resources Committee.

This legislation has been widely circulated to both national and State science and mathematics education organizations, and has received the endorsements of the National Science Teachers Association, the National Parent-Teacher Association, the National Association of Secondary School Principals, the National Center for Improving Science Education, the Triangle Coalition for Science and Technology Education, the American Association of Physics Teachers, and the Council for Educational Development and Research.

I am confident that my colleagues on both sides of the aisle will agree: education is our gateway to the 21st century. I do not mean to suggest that we should focus our attention exclusively on science and mathematics education—whether it is geography or

history or a hundred other disciplines—all education at all levels is critical to our furture, our children's future and our Nation's future.

Mr. President, today represents a first step. A first step toward developing a Federal blueprint for science and mathematics education reform. We must heed the warning signs and address this problem in its infancy, before it grows beyond our grasp. We have identified the problem, and we have focused national attention on the crisis. Through this legislation, I would like to think we have also begun to develop the solution. Now all we need is the political will to act.

We must join forces, Mr. President, to chart a new course for the 1990's and beyond, so that our children can unlock the mysteries of the scientific world.

Mr. President, I do not know of any subject that touches the lives of every person in our country today as much as the ability to produce in our educational institutions the young women and young men who will take their positions in the fields of science and research. It is very obvious, as one looks around, one cannot help but find great changes that have occured in our industrial economic society. Today, it is increasingly dependent upon the abilities of our scientists and engineers, and I think that is very obvious whether we live in one part of the country or another part of the country.

To illustrate that point, Hewlett-Packard, which is one of our outstanding industries in the field of high tech, has indicated that over 50 percent of the products that they now produce and sell in the world market are the results of the last 3 years of research and development. It is but one indication of the importance of our ability to produce the scientists upon which our private sector depends.

If you go to Kalamazoo, MI, you will find that in the pharmaceutical house of Upjohn, they feel this is of such significance to their future that they have undertaken an initiative within the county amongst the 12 high schools, the secondary schools, to produce a quality experience in the fields of science and math for those outstanding young students in those 12 high schools in Kalamazoo. It is but illustrative of many private industries which are engaged now in trying to add, trying to complement, and trying to raise a quality of education in those fields upon which they are so dependent.

If you look at the SDI project in the military budget, you will find that over 100,000 scientists and engineers are engaged in that one military project alone, so the military is very definitely dependent upon the future of the quantity and the quality of our young scientists and engineers.

Mr. President, in the field of health, there is no area that touches every American life more precisely than the ability to counteract disease or ailments that debilitate and deny people a healthy normal life.

Today, we are increasing our dollars for medical research at such a rate that we will soon find it difficult to keep up with the demands in medical science.

So every direction you turn, you find that this is one area of our curriculum that has increasing importance to our future. But look at that curriculum today. We have 25,000 public schools in this country; 7,000 of them have abandoned the teaching of physics; 4,000 have abandoned the teaching of chemistry; 2,000 have abandoned the teaching of biology; and of those schools still teaching these science programs, only a little more than one-third of them have the capability of a laboratory hands-on experience for the students.

No wonder that Senator GLENN speaks to the fact that we are not competitive in the world today amongst the industrial nations of the world, amongst the students of these countries. We are denying our students the opportunity to study these subjects because we cannot find the teachers qualified to teach them. One-half of the high school teachers in math and science today are not qualified to be certified by their agencies. Three-fourths of those teaching in the middle schools are not qualified to be certified by their agencies. And so it is that we do have a national crisis. It is a quiet crisis. It has not become the front page news story, but we can certainly find many of the other front page news stories that have a relationship to our failure to maintain the quantity and quality necessary to produce the scientists and engineers.

Between now and 1995, 138,000 engineers per year could be employed gainfully in this country because of the demand. But I say to my colleagues we will need 300,000 teachers between now and 1995 to teach math and science to fill those vacancies and to produce the curriculum necessary in all of our high schools.

So Senator GLENN and others who have joined us hope to take the first small step. I know the Senator from Ohio, my colleague, and I would not say this is the full answer, that this is the panacea, but certainly, Mr. President, this is the first major step.

I urge my colleagues to join us in the introduction of this bill.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1950

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Excellence in Science, Mathematics, and Technology Education Act of 1990".

SEC. 2. FINDINGS.

The Congress finds that—

(1) a scientifically and mathematically literate citizenry is crucial to the economic prosperity of the United States;

(2) technological innovation, which is vital to maintaining American competitiveness in the international economy, depends on the development of a highly skilled technical work force;

(3) as science and technology continue to infuse debate on public policy issues, scientific and mathematic literacy will become requisite for responsible, informed citizenship;

(4) achievement levels of American elementary and secondary school students continue to fall and compare unfavorably to achievement levels of students from other industrialized countries;

(5) the United States faces a potential shortage of scientists, engineers and science, mathematics and technology teachers because of declining interest among American students in the natural sciences, mathematics and engineering, and increasing numbers of women and minorities, groups traditionally underrepresented in scientific and technical fields;

(6) increasing the numbers of women, minorities and members of the general population in scientific and technical fields will require a reinvigoration of mathematics and science instruction at the elementary and secondary education levels;

(7) science, mathematics, and technology education materials in the Nation's elementary and secondary schools are frequently outdated and often fail to benefit from diffuse educational research and development efforts;

(8) revitalization of science, mathematics, and technology education is well beyond the ability of any single State or school district, and will require a collaboration by the private sector and state, local and Federal governments;

(9) classroom teachers and administrators must be actively involved in the reform of science, mathematics, and technology education and trained in the use of new instructional materials if the effectiveness of such reform is to be maximized;

(10) informal educational experiences in which individuals learn through out-of-school activities, such as educational enhancement programs and interactive exhibits, can support formal education by inspiring and motivating students, and by creating a foundation of physical experiences upon which educators can build;

(11) outstanding informal education exhibits and education programs should be replicated throughout the Nation and extended to both urban and rural settings, through cooperative agreements with public libraries, churches, youth groups, and other community-based institutions; and

(12) the National Science Foundation, the Department of Education and several other Federal agencies have science and mathematics education programs, and better coordination of their efforts could have a significant impact on educational reform in the areas of mathematics and science.

SEC. 3. STATEMENT OF PURPOSE.

The purposes of this Act are to—

(1) establish a leadership role for the Federal Government in promoting pre-college

science, mathematics, and technology education reform;

(2) develop regional consortiums to actively involve local and State governments, the academic community and the private sector in the revitalization of elementary and secondary mathematics and science education;

(3) disseminate and implement science, mathematics, and technology education instruction materials in the Nation's elementary and secondary schools that will raise the level of science and mathematics literacy of all Americans, and will interest more students, especially minorities and women, in scientific careers;

(4) involve classroom teachers and administrators in identifying and disseminating a body of knowledge on effective teaching in science, mathematics and technology;

(5) provide for the meaningful participation of classroom teachers and administrators in the adaptation and implementation of new instruction materials which promote attainment of higher standards such as those currently identified by leading educators and education associations;

(6) train teachers in the use of new instruction materials, teaching methods and content; and

(7) expose more students and the population at large to informal science and technology learning experiences:

(8) encourage the replication of informal education museum exhibits and programs to both rural and urban communities, through collaborative agreements with community-based institutions; and

(9) provide support to science museums and other informal education providers to increase development and dissemination of innovative science and mathematics programs.

## TITLE I—REGIONAL SCIENCE, MATHEMATICS, AND TECHNOLOGY EDUCATION CONSORTIUMS

### SEC. 101. PROGRAM ESTABLISHED

(a) IN GENERAL.—The Secretary of Education (hereinafter referred to as the "Secretary"), in consultation with the Director of the National Science Foundation (hereinafter referred to as the "Director"), shall carry out a merit-based competitive program of awarding grants to establish and operate regional science, mathematics, and technology education consortiums (hereinafter referred to as the "Regional Consortiums") for the purpose of disseminating and implementing exemplary science, mathematics and technology education instruction materials, teaching methods and assessment tools for use by elementary and secondary school students.

(b) LOCATION OF REGIONAL CONSORTIUMS.—The Secretary shall, in accordance with the provisions of this title, award 1 grant to an eligible entity in each region.

(c) COORDINATION.—To the maximum extent possible, the Secretary and the Director shall jointly carry out the provisions of this title.

(d) GRANT TERM AND REVIEW.—Grants under this title shall be awarded for a period of not more than 5 years and shall be reviewed no later than 30 months from the date the grant is awarded. Grants shall be awarded no later than 12 months from date of enactment.

(e) AMOUNT.—In making grants under this title, the Secretary shall assure that there is a relatively equal distribution among the regions of the funds made available, but that the Secretary may award additional funds to a regional consortium on the basis of population and geographical conditions of the region being served.

### SEC. 102. DEFINITIONS.

For purposes of this title—

(1) term "eligible entity" means—

(A) a private nonprofit organization;

(B) an institution of post-secondary education;

(C) a public agency;

(D) an interstate agency established by compact;

(E) a State or local educational agency;

(F) a regional educational laboratory and the research and development centers established under section 405(d)(4)(A) of the General Education Provisions Act;

(G) a professional scientific and mathematics association;

(H) an educational association;

(I) a museum;

(J) a library;

(K) an educational television station;

(L) Historically Black Colleges; or

(M) a combination of the entities set forth in paragraphs (1) through (12)

(2) the term "region" means a region of the United States served by a regional education laboratory that is supported by the Secretary pursuant to section 405(d)(4)(A)(i) of the General Education Provisions Act; and

(3) the term "regional consortium" means a regional science, mathematics, and technology education consortiums established pursuant to section 101(a).

### SEC. 103. USE OF FUNDS

(a) IN GENERAL.—Funds provided under this title shall be used by the Regional Consortiums, under the direction of a regional board, to—

(1) identify, adapt, disseminate, and implement science, mathematics, and technology education instruction materials, teaching methods and assessment tools for use by elementary and secondary school students;

(2) train classroom teachers and administrators in the use of science, mathematics, and technology education instruction materials, teaching methods and assessment tools;

(3) qualify classroom teachers to train other teachers in the use of such instruction materials, teaching methods and assessment tools in the classroom;

(4) work with classroom teachers in the identification and adaptation of such instruction materials, teaching methods and assessment tools for use in classrooms within the region;

(5) assist classroom teachers, where appropriate, in securing training to enhance such teacher's subject knowledge and teaching skills in the areas of science, mathematics, and technology education;

(6) offer fellowships, internships, or summer programs to enable teachers to participate in the activities of the Regional Consortiums;

(7) disseminate information regarding informal science, mathematics, and technology education activities and programs offered by Federal agencies and private or public agencies and institutions within the region;

(8) evaluate the effectiveness of such instruction materials, teaching methods and assessment tools for and in elementary and secondary schools located throughout the region;

(9) collect data on activities assisted under this title in order to evaluate the effectiveness of the activities of the Regional Consortiums;

(10) maintain on-line computer networks with all Regional Consortiums and the National Clearinghouse described in title II;

(11) assist local and state educators in identifying science equipment needs; and

(12) establish programs and activities designed to meet the needs of groups that are underrepresented in, and underserved by, science, mathematics, and technology education.

### SEC. 104. APPLICATION AND REVIEW.

(a) IN GENERAL.—Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such additional information as the Secretary, in consultation with the Director, may reasonably require. Each such application shall—

(1) demonstrate that the eligible entity shall implement and disseminate science, mathematics and technology education instruction materials, teaching methods and assessment tools through a consortium of the region's science and mathematics education organizations and agencies;

(2) demonstrate that the eligible entity shall carry out the functions of the regional consortium at the direction of a regional board;

(3) describe the activities for which assistance is sought;

(4) demonstrate the capability to properly and effectively implement and disseminate science, mathematics, and technology education instruction materials, teaching methods, and assessment tools; and

(5) provide assurances that emphasis will be given to programs and activities designed to meet the needs of groups that are underrepresented in, and underserved by, science, mathematics, and technology education.

(b) APPROVAL OF APPLICATION.—

(1) IN GENERAL.—The Secretary, in consultation with the Director, shall approve applications submitted pursuant to subsection (a) in accordance with the criteria and procedures established under paragraph (2).

(2) SELECTION CRITERIA AND PROCEDURES.—The Secretary and the Director shall jointly develop procedures and criteria designed to ensure that grants are awarded on the basis of merit as determined by the peer review process described in paragraph (3).

(3) PEER REVIEW.—(a) The Secretary, in consultation with the Director, shall establish for each region a panel which shall conduct the technical review of the applications from such region for grants under this title and submit its recommendation to the Secretary and Director. The Secretary and Director shall each appoint one-half of the members of each panel, who, to the extent feasible, shall reside in the region for which applications are being considered. Each panel shall include representatives of—

(i) science and mathematics education and teaching;

(ii) state and local education agencies;

(iii) post-secondary education community;

(iv) informal education community;

(v) practicing scientists, engineers, and mathematicians;

(vi) the business community; and

(vii) groups that are underrepresented in, and underserved by, science, mathematics, and technology education.

(b) The Secretary, in consultation with the Director, shall establish a national panel, or to the extent necessary, panels, to review the recommendation made by each regional technical review panel and submit to the Secretary and Director final recom-

mendations for awards of grants under this title. The Secretary and the Director shall each appoint one half of the members of such panel or panels.

SEC. 105. REGIONAL BOARDS.

Each eligible entity receiving a grant under this title shall establish a regional board to oversee the administration and establishment of program priorities for the Regional Consortium established by such eligible entity. Such regional board shall include at least one representative of each agency or organization participating in the regional consortium, and if not represented on the consortium, at least one representative of—

(1) State education agencies;

(2) local education agencies, including representatives of large, small, urban and rural school districts;

(3) teachers;

(4) institutions of post-secondary education including science and mathematics educators;

(5) the business community;

(6) professional scientific and mathematics associations;

(7) parents;

(8) informal education organizations;

(9) regional education laboratories; and

(10) groups that are underrepresented in, and underserved by, science, mathematics and technology education.

SEC. 106. PAYMENTS; FEDERAL SHARE; NON-FEDERAL SHARE.

(a) PAYMENTS.—The Secretary shall pay to each eligible entity having an application approved under section 104 the Federal share of the cost of the activities described in the application.

(b) FEDERAL SHARE.—The Federal share—

(1) for the first, second, and third fiscal years in which an eligible entity receives assistance shall be 75 percent;

(2) for the fourth such year shall be 60 percent; and

(3) for the fifth and each succeeding such year shall be 50 percent.

(c) NON-FEDERAL SHARE.—(1) The non-Federal share of payments under this section may be in cash or in kind, fairly evaluated, including facilities, overhead, equipment, or services. Such non-Federal share may also include funds received by State and local education agencies from Federal science and mathematics education programs.

(2) Each eligible entity having an application approved under section 104 shall pay the non-Federal share in accordance with the following requirements:

(A) At least 10 percent of the cost of activities described in the application shall be furnished by business concerns within the region.

(B) At least 10 percent of the cost of activities described in the application shall be furnished by local education agencies in the region and a majority of the States in the region.

(C) The balance of the cost of activities described in the application of the non-Federal share may be furnished by members of the regional consortium, institutions of higher education, professional scientific and mathematics associations, philanthropies, or other public and private agencies, institutions or organizations.

SEC. 107. EVALUATION.

Each eligible entity receiving a grant under this title shall collect sufficient data on, and evaluate the effectiveness of, the programs conducted at the Regional Consortiums. At the end of each grant period, the Secretary and the Director shall submit to Congress a report on the effectiveness of the programs conducted at each Regional Consortium.

SEC. 108. ADMINISTRATIVE COSTS.

The Secretary shall make available to the Director 1 percent of the funds appropriated under this title for administrative costs.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $15,000,000 for the fiscal year 1990, and such sums as may be necessary for each of the fiscal years, 1991, 1992, 1993, and 1994 to carry out the provisions of this title.

## TITLE II—NATIONAL CLEARINGHOUSE FOR SCIENCE, MATHEMATICS, AND TECHNOLOGY EDUCATION MATERIALS

SEC. 201. CLEARINGHOUSE ESTABLISHED.

The Secretary, in consultation with the Director, is authorized to carry out a merit-based, competitive program of awarding a grant or contract to establish a National Clearinghouse for Science, Mathematics, and Technology Education Materials (hereinafter referred to as the "Clearinghouse").

SEC. 202. USE OF FUNDS.

(a) IN GENERAL.—The grant awarded under this title shall be used to—

(1) maintain a permanent repository of pre-college science, mathematics, and technology education instruction materials and programs for use by the Regional Consortiums established under title I of this Act and the general public;

(2) maintain a permanent repository of all pre-college science, mathematics, and technology education instruction materials and programs developed with Federal and non-Federal funds, including, but not limited to, such instructional materials developed by the National Science Foundation, the Department of Education and State and National Eisenhower mathematics and science programs;

(3) compile information on all science, mathematics, and technology education programs administered by each Federal agency or department;

(4) cooperate with identifiable and existing data bases containing science and mathematics curriculum and instructional materials, Federal and non-Federal, in carrying out the functions under this Title; and

(5) disseminate information regarding such science, mathematics and technology education materials and programs among identifiable and existing dissemination networks and to the Regional Consortiums through a single on-line computer data base that can be readily accessed and utilized, publications and other media.

(b) The Clearinghouse shall employ both traditional and the most technologically-advanced methods for storing materials and disseminating it to the Regional Consortiums and the public.

SEC. 203. PROGRAMS AND MATERIALS.

Each Federal agency or department which has supported or supports the development of a science, mathematics, or technology education instruction material or program, including the National Science Foundation and the Department of Education, shall submit to the Clearinghouse a sufficient number of copies of such material or program for the Clearinghouse and each Regional Consortium.

SEC. 204. SELECTION CRITERIA.

The Secretary shall establish a peer review process to select the recipient of the award under this Act.

SEC. 205. STEERING COMMITTEE.

The Secretary shall appoint a steering committee composed of representatives of the National Science Foundation and Department of Education to recommend policies and activities for the Clearinghouse.

SEC. 206. DISSEMINATION COSTS.

The National Clearinghouse shall expend one-third of the funds received pursuant to this Title on the dissemination of materials to the Regional Consortiums.

SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $3,000,000 for the fiscal year 1990 and such sums as may be necessary for fiscal years 1991, 1992, 1993, and 1994 to carry out the provisions of this title.

## TITLE III—INFORMAL EDUCATION ENHANCEMENT PROGRAMS

SEC. 301. INFORMAL EDUCATION FELLOWSHIP AND PROFESSIONAL ENHANCEMENT PROGRAM

(a) PROGRAM AUTHORIZED.—The National Science Foundation is authorized to establish and conduct merit based, competitive programs which award fellowships and make grants to conduct professional enhancement activities in order to increase the pool of experienced and talented informal science education professionals and consultants and foster the involvement of such individuals in local science and technology education programs and services.

(b) FELLOWSHIPS.—The Foundation shall award fellowships to—

(1) persons educated in one or more scientific or educational disciplines to enable such persons to work with experienced informal science education professionals and to learn techniques of applying science concepts to hands-on interactive learning and educational programs;

(2) informal science education personnel, upon recommendation of the institution where such individuals work, for participation in exchange, intern, or professional development programs;

(3) consulting scientists, exhibit designers, and program developers to work with informal science education institutions and programs on scientific project or program development activities.

(c) PROFESSIONAL ENHANCEMENT AWARDS.—The Foundation shall award grants to private, nonprofit, informal science education organizations to conduct field-wide professional enhancement seminars, workshops, mentor partnerships, programs and exhibit development projects

SEC. 304. COMMUNITY EXTENSION PROGRAM

The Foundation is authorized to carry out a merit-based program of awarding grants to private, nonprofit informal science education organizations in partnership with community organizations, such as public libraries, churches, youth organizations, and professional societies to make available interactive science exhibits and programs for rural and urban, economically disadvantaged population centers.

SEC. 305. INNOVATION GRANTS.

(a) IN GENERAL.—The Foundation is authorized to carry out a program of awarding grants to private, nonprofit organizations for the development of innovative activities or programs which shall serve as models for replication. Innovation grants shall be awarded to—

(1) develop intergenerational projects which will train senior citizen volunteers in the implementation of interactive science

processes and activities for use by elementary and secondary students;

(2) develop an interactive activity or program for use by elementary and secondary students on—

(a) space and planetary science;

(b) global environmental education; and

(c) health science.

(3) establish a Science Start model program to adapt and disseminate early childhood science instruction materials for use in Head Start classrooms or by pre-kindergarten children;

(4) establish partnerships between elementary and secondary school teachers and college and university scientists and mathematicians for in-service training;

(5) develop a program to use new and emerging technologies to enhance the teaching and learning of mathematics or science in elementary and secondary schools.

SEC. 306. MATCHING REQUIREMENTS.

Grants awarded under this title shall be awarded through a system requiring matching of the Federal grant. The minimum amount required as a match shall be equal to a percentage of the grant that is determined by the National Science Foundation. Funds made available may include in-kind services or resources, fairly evaluated.

SEC. 307. DEFINITIONS.

For the purpose of this title—

(1) the term "informal science education institution or organization" means a nonprofit institution providing interactive exhibits, demonstrations, and informal educational programs designed to further public understanding of science and technology which are interdisciplinary in nature, and which are available to the general public;

(2) the term "educational programs" includes scientific and technological exhibits developed for public view, curriculum enhancement programs, teacher training programs, student educational kits, broadcast programs, extracurricular activities, and other services provided by informal education entities;

(3) the term "informal science education" means educational activities, materials, and resources which may be used to supplement or enhance specific curriculum in the classroom or may be used outside the classroom in voluntary or recreational settings; and

(4) the term "science" means all physical and biological sciences, mathematics, technology, and engineering.

SEC. 308. ADMINISTRATION.

The programs authorized in this Title shall be administered, either directly or by contract, through the Science and Engineering Education Directorate of the Foundation.

SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $7,000,000 for fiscal year 1990 and such sums as may be necessary for fiscal years 1991, 1992, 1993, and 1994 to carry out the provisions of this title.

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S. 1951

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. FINDINGS.

The Congress finds that—

(1) several Federal agencies have strong education programs with applications to mathematics and science education; and

(2) better coordination of the efforts being undertaken by the National Science Foundation, the Department of Education and other Federal agencies could have a significant impact on educational

SEC. 2. DEFINITIONS.

For purposes of this Act the term—

(1) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, including any Government corporation; and

(2) "member agency" means any Federal agency which is represented on the Interagency Council on Science, Mathematics, and Technology Education.

SEC. 3. INTERAGENCY COUNCIL ON SCIENCE, MATHEMATICS, AND TECHNOLOGY EDUCATION.

(a) ESTABLISHMENT OF INTERAGENCY COUNCIL.—Within ninety days after the date of the enactment of this Act, the President shall establish the Interagency Council on Science, Mathematics, and Technology Education (hereafter referred to as the "Interagency Council"). The membership of the Interagency Council shall include the—

(1) Director of the Office of Science and Technology Policy;

(2) Secretary of Education;

(3) Director of the National Science Foundation;

(4) Secretary of Energy;

(5) Secretary of Defense;

(6) Secretary of Agriculture;

(7) Secretary of Labor;

(8) Secretary of Health and Human Services;

(9) Secretary of Transportation;

(10) Administrator of the National Aeronautics and Space Administration;

(11) Administrator of the Environmental Protection Agency; and

(12) any other Federal officials involved in science, mathematics, and technology education which the Chairman may consider appropriate.

(b) CHAIRMAN.—The Director of the Office of Science and Technology Policy shall serve as Chairman of the Interagency Council.

(c) DUTIES.—The Interagency Council shall—

(1) review and identify the science, mathematics, and technology education programs and activities of each member agency to ensure coordination among such agencies;

(2) identify and make recommendations for eliminating conflicts, inconsistencies, and unnecessary duplications between or among such programs of member agencies;

(3) facilitate interagency communication on such programs and activities carried on by Federal agencies; and

(4) contract with the National Academy of Sciences for an evaluation of the effectiveness of member agencies in disseminating such programs and activities to the public and among member agencies.

(d) BIENNIAL REPORT.—The Interagency Council shall prepare a report that—

(1) reviews and identifies the science, mathematics, and technology education programs and activities of each member agency to ensure coordination among such agencies;

(2) identifies and makes recommendations for eliminating conflicts, inconsistencies, and unnecessary duplications in such programs and activities;

(3) identifies the major policy goals of such programs and activities carried on by member agencies;

(4) shall be submitted to the President, the Congress, and the head of each member agency no later than two years after the date of enactment of this Act and every two years thereafter, and shall be made available to the public.

(e) MEETINGS.—The Interagency Council shall hold no fewer than three meetings in each calendar year. Within ninety days after the date of the enactment of this Act, the Chairman shall call the first meeting of the Interagency Council.

(f) ADVISORY COUNCIL.—The Interagency Council is authorized to establish, if necessary, an advisory committee on science, mathematics, and technology education.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $300,000 for fiscal year 1990 and such sums as may be necessary for each of the succeeding four fiscal years to carry out the provisions of this Act.

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By Mr. BAUCUS (for himself, Mr. CONRAD, Mr. HEFLIN, and Mr. GORTON):

S. 1952. A bill to amend the Food Security Act of 1985 to reauthorize the targeted export assistance program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

TARGETED EXPORT ASSISTANCE PROGRAM REAUTHORIZATION

● Mr. BAUCUS. Mr. President, I rise today to introduce legislation to reauthorize funding for the Targeted Export Assistance Program on behalf of myself and Senator HEFLIN, Senator CONRAD and Senator GORTON.

Since its original authorization under the Food Security Act of 1985, the TEA program has played an important role in offsetting the adverse effects of foreign unfair trade practices. TEA provides private sector agricultural groups in the United States with funds to carry out overseas market development activities including advertising, trade shows, product demonstrations and market research. It offers priority assistance to agricultural commodities or food products affected by section 301 action or related retaliatory measures taken by foreign governments.

In congressional testimony, USDA officials have described TEA as the star of its export programs. According to agricultural association reports, it has become one of U.S. agriculture's most effective tools to counteract the effects of foreign unfair trading practices. TEA funds have been used to promote U.S. products including lumber, beef, wheat, cotton, rice, peanuts, wine and tobacco, to name a few. As a result of this program, participants attest to significant increases in the value of their exports since 1985. Small and large companies in virtually all 50 States currently participate or have participated in the program.

In addition to the economic benefits for U.S. agricultural exporters, the TEA program sends a clear message to our international trading partners that the United States is serious in its efforts to break down agricultural trade barriers.

Through private sector contribution requirements, the TEA program is also

an excellent example of how public and private funds can be combined into an effective partnership to promote U.S. exports.

Unfortunately, the TEA program is scheduled to expire after fiscal year 1990. I introduce this legislation in hopes that U.S. agricultural exporters can continue to benefit from this successful program, and to reaffirm the U.S. commitment to the creation of a level playing field in agricultural trade. I hope that this legislation can be included to the 1990 farm bill.

The proposed legislation reauthorizes the TEA program for 5 years at a rate of $325 million for each fiscal year from 1991-1995.

Incorporating GAO's recommendations from a review of the current TEA programs, this legislation will require that the Foreign Agricultural Service document funding allocation decisions and participant eligibility for export assistance.

In addition, this legislation will require a second GAO oversight report due after 1 year of program operation. The report will be issued to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

TEA remains a higly effective program to address the concerns of U.S. agricultural exporters at a time when Congress is actively looking for ways to challenge unfair trade practices, improve competitiveness and reduce the U.S. trade deficit.●

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By Mr. SPECTER:

S. 1953. A bill to provide that the U.S. District Court for the Eastern District of Pennsylvania shall also sit in Lancaster, PA; to the Committee on the Judiciary.

U.S. DISTRICT COURT IN LANCASTER, PA

Mr. SPECTER. Mr. President, the purpose of my appearance on the Senate floor today is to introduce legislation, along with my distinguished colleague from Pennsylvania, Senator HEINZ, to establish a satellite Federal court in Lancaster, PA. The time is now right, Mr. President, for the establishment of the satellite court at Lancaster because last Friday President Bush submitted the name of common pleas court Judge Buckwalter for confirmation to the Federal court.

Lancaster, PA, is a thriving, large community which warrants having access to a Federal court. Our courts ought to be located to serve the people who go to court, the litigants and their counsel, without being required to travel long distances.

In the United States we are blessed with the best judicial system ever conceived by man, where disputes are litigated in a peaceful, sensible way, where the courts are open to protect individual rights, and resolve contests which must be decided by courts; perhaps by juries.

But unless people have access in a reasonable manner to the courts, they are denied the opportunity of the great Federal system which we have.

While Lancaster County has an outstanding court of common pleas it is appropriate and necessary that the citizens of Lancaster have access to a Federal court.

This legislation, with the appointment of this judge, would accomplish that. Just a week ago, Mr. President, a week ago yesterday on November 13, a Federal courtroom was dedicated in Johnstown, PA, after very considerable effort by the Pennsylvania delegation to establish that courtroom there.

Congressman MURTHA and I and Senator HEINZ had that courtroom established. Already it has had more filings in its short existence than a county court in Erie has.

People have been compelled to drive as much as 4 hours from places like Huntington, PA, or less than 3 hours from Altoona or 2 hours from Johnstown, traveling to Pittsburgh, and it is important to our Federal system that to the maximum extent possible, Federal courts be established to serve the people in the locale where the people are. The establishment of a satellite court in Lancaster will accomplish that very important purpose for that very important growing and thriving community.

Now that President Bush has submitted the name of Judge Ronald L. Buckwalter to the U.S. Senate for confirmation for the U.S. District Court for the Eastern District of Pennsylvania, I believe the time is ripe to establish a satellite Federal court in Lancaster, PA.

The Federal courts can best serve the people of the United States if they are conveniently located to the maximum extent possible. For that reason, Senator HEINZ and I recently initiated action to place a satellite court for the western district of Pennsylvania in Johnstown, PA.

That satellite courtroom was recently dedicated in an impressive ceremony on Monday, November 13, 1989. At that time, Chief Judge Maurice B. Cohill, Jr. of the western district noted that the Johnstown satellite Federal court had already had more filings in its initial period than the long-established Federal court in Erie, PA. By saying that, I do not mean to suggest that the Erie court is unnecessary, but to emphasize the importance of the Johnstown court.

There has been a longstanding satellite court for the eastern district of Pennsylvania in Reading where judges E. Mac Troutman and Daniel H. Huyett III have presided. More recently, a satellite court for the eastern district of Pennsylvania has been established for Allentown where Judge Edward N. Cahn presides.

As a practical matter, it is important to have someone from the area designated to sit in the satellite court. It was for that reason that Senator HEINZ and I discussed in advance the Johnstown satellite court with Judge D. Brooks Smith of Altoona before we recommended him to President Reagan for appointment to the Federal court. Similarly, we have ascertained that Judge Buckwalter is willing to preside over a satellite court in Lancaster, PA.

We are interested in opening such satellite courts in order to better accommodate the parties to litigation and their counsel in the areas where they live. There is lengthy travel involved for Lancaster area residents who travel to the city of Philadelphia. There was lengthy travel involved for residence of Huntingdon, Altoona, Johnstown, and their environs to Pittsburgh to have access to a Federal court.

In establishing such a satellite court, it is important that the presiding judges not counter our intent to have the court in a locale convenient to the litigants so that, for example, the presiding judge in Lancaster should not hear cases there where the parties would be more conveniently served in other established locales. To the extent that the workload in any particular satellite court does not find sufficient cases from that locale, then the judge who customarily sits at that satellite court should be assigned to an existing location convenient to the parties in the litigation over which that judge presides.

In the United States, we are blessed with a wonderful judicial system. Our courts distinguish America from other countries in the administration of justice and the protection of individual rights. While the Common Pleas Court of Lancaster County has an excellent reputation, it is still important for residents of the area to have equal access to the Federal court system. For this reason, we believe the establishment of a satellite court in Lancaster with the confirmation of a Lancaster County judge will best serve the people of that area.

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By Mr. D'AMATO (for himself, Mr. DECONCINI, Mr. THURMOND, Mr. SPECTER, Mr. BYRD, Mr. HATCH, Mr. SHELBY, Mr. DOLE, Mr. HEFLIN, Mr. GRASSLEY, Mr. LIEBERMAN, Mr. STEVENS, Mr. MACK, Mr. GORTON, Mr. MCCONNELL, Mr. GRAMM, Mr. SYMMS, Mr. WILSON, Mr. KASTEN, Mr. PRESSLER, Mrs. KASSEBAUM, Mr. MURKOWSKI, Mr. GARN, Mr. BURNS, Mr. WARNER, Mr. LOTT, Mr. WALLOP, Mr. NICKLES, Mr.

HELMS, Mr. COATS, Mr. MCCLURE, Mr. ARMSTRONG, Mr. COCHRAN, Mr. HEINZ, Mr. MCCAIN, and Mr. LUGAR):

S. 1955. A bill to amend the Controlled Substances Act to provide the death penalty for engaging in a continuing criminal drug enterprise involving a large quantity of drugs; to the Committee on the Judiciary.

DRUG KINGPIN DEATH PENALTY ACT

Mr. D'AMATO. Mr. President, I said I would introduce two bills. The second bill will be controversial, as it should be, because it calls for drastic action.

It calls for the U.S. Government, saying we are going to fight for the American people, to see to it that there is domestic tranquillity in our streets, and it calls for the imposition of the death penalty for the major drug kingpin. It is called the Drug Kingpin Death Penalty Act. It is supported on a bipartisan basis. This bill is supported by the Republican leader, who is a cosponsor, Senator DOLE; my good friend and distinguished leader in the area of law enforcement, a member of the Judiciary Committee, Senator SPECTER; Senator ROBERT C. BYRD of West Virginia; and many others. It has 34 cosponsors.

Mr. President, this bill sends a message. It says that if you are going to be involved in the business of death, in the sale and distribution of large quantities of cocaine, heroin, and other drugs, if you are going to be involved in a criminal enterprise that takes in $10 million a year, understand what you are doing because you are killing, and you are participating in the death of innocents throughout the country—those who die of overdoses, and those who die because of the criminal activity of others.

This bill should be enacted because it sends a clear message that we are not going to allow our people to be beaten to the ground. They are crying out in desperation in community after community.

It sends a message, if there is just one major dealer who is executed, that we are serious. That it is not just rhetoric.

I am not suggesting we are going to win the drug war simply because we have the imposition of the death penalty for the major drug kingpin, but it is about time that we said we are serious, we are going to back it up, and let him fear as he has created fear throughout our country.

Mr. President, I believe that the imposition of the death penalty as it relates to the leadership of the major drug elements in this country is fair and proper.

Mr. President, last year, we enacted a Federal death penalty for drug-related killings. It sends a message that these drug assassinations will not be tolerated—and they are now punishable by society's ultimate penalty.

Today I am introducing the Drug Kingpin Death Penalty Act with 34 cosponsors—Senators DECONCINI, THURMOND, SPECTER, BYRD, HATCH, DOLE, HEFLIN, GRASSLEY, SHELBY, STEVENS, LIEBERMAN, MACK, GORTON, MCCONNELL, GRAMM, SYMMS, WILSON, KASTEN, PRESSLER, KASSEBAUM, MURKOWSKI, GARN, BURNS, WARNER, LOTT, NICKLES, HELMS, MCCLURE, WALLOP, COATS, ARMSTRONG, HEINZ, and MCCAIN. Our bill provides for the death penalty for major drug dealers or traffickers—whether there is a killing or not.

I ask unanimous consent that the full text of this bill be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, a major drug dealer is defined at 21 U.S.C. 848(b) as the leader of a continuing criminal enterprise that—

(A) Manufacturers or distributes: 30 kilograms (66 pounds) of heroin; 150 kilograms (330 pounds) of cocaine; 1.5 kilograms (3.3 pounds) of cocaine base or crack; 3 kilograms (6.6 pounds) of PCP; 0.3 kilograms (0.66 pounds) of LSD; 12 kilograms (26.4 pounds) of piperidine (used to make PCP); 30,000 kilograms (66,000 pounds) of marijuana; 3 kilograms (6.6 pounds) of methamphetamine; or

(B) Received $10 million during any 12-month period from the manufacture, importation, or distribution of such drugs.

The Justice Department is convinced that the death penalty for major drug dealers is constitutional. On October 2, 1989, Assistant Attorney General Ed Dennis, Jr., testified before the Senate Judiciary Committee:

> We believe that imposition of the death penalty on the leadership of major drug organizations would be constitutionally permissible because of the enormous magnitude of the public harm they cause and the depraved state of mind—the reckless disregard for human life—involved in managing these death-dealing enterprises.

I realize some opponents of the death penalty will say that only crimes involving a killing can be punished by the death penalty. Not only does the Justice Department disagree; no Supreme Court decision is definitive on this issue. Also, there are Federal death penalty statutes for other crimes not directly involving the taking of another life, including treason, espionage, and airliner hijackings.

Drug trafficking is such a destructive crime that the death penalty can be a proportionate and constitutional punishment. Evidence of that fact includes the following:

First. The U.S. Department of Justice reports that in 1986 nearly 30 percent of the inmates convicted of murder were under the influence of a drug at the time of the offense. According to the 1988 Bureau of Justice Assistance Report on Drug Control, cities in America are reporting that from a third to a half of their homicides are drug related.

Second. According to the President's national drug control strategy, three-fourths of all robberies and half of all felony assaults by young people now involve drug users. Reports of bystander deaths due to drug-related gunfights and drive-by shootings continue to climb.

Third. The national drug control strategy contains the following information on the percentage of male arrestees testing positive for drugs in 12 cities. In Chicago and San Diego, more than 80 percent tested positive for drugs. In Philadelphia, Portland, Miami, Birmingham, Los Angeles, New Orleans, Dallas, San Antonio, and Fort Lauderdale, well over 60 percent of male arrestees tested positive for drugs.

Fourth. The national drug control strategy also reports that as many as 200,000 babies are born each year to mothers who use drugs. Many of these infants suffer low birth weight, severe and often permanent mental and physical dysfunction or impairment, or signs of actual drug dependence. Many other such babies—born many weeks or months premature—do not survive past infancy.

Fifth. In one 12-month period in Miami, 573 narcotics users were responsible for 6,000 robberies and assaults, 6,700 burglaries, nearly 900 vehicle thefts, and more than 26,000 prostitution offenses.

Sixth. According to a 1983 study—conducted by researchers at Temple University, the Johns Hopkins University School of Medicine, and the University of Maryland—354 heroin addicts in Baltimore committed over 770,000 crimes over a 9-year period. These researchers estimate that narcotics addicts in the United States commit over 50 million crimes per year.

Seventh. In the 4-year period from 1985 through 1988, the drug abuse warning network reports that over 14,000 overdose deaths were reported in 26 metropolitan areas, excluding New York City.

Eighth. One-half of all AIDS deaths are drug related; and 75 percent of infant AIDS cases are attributable to drug use.

Mr. President, the drug traffickers know it is not one death, but tens of thousands of deaths, that result from their crimes. Despite this knowledge, they continue to distribute their poisons, completely indifferent to the death and devastation they cause. As much as—if not more than—any murderer, they are guilty of a reckless disregard for human life.

This act has been carefully drafted to provide for the procedures, guidelines, and aggravating and mitigating factors necessary under a long series of Supreme Court cases starting with *Furman* v. *Georgia*, 408 U.S. 238 (1972).

The drug traffickers are destroying the domestic tranquility promised in the Constitution. They are killing our children by the thousands. They are destroying lives by the millions. They are tearing at the fabric of this Nation. It is time to stop the carnage. It is time to put the drug traffickers to death.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1955

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 408(e)(1)(A) of the Controlled Substances Act (21 U.S.C. 848(e)(1)(A)) is amended to read as follows:

"(A) any person—

"(i) engaging in a continuing criminal enterprise as provided in paragraph (1) and subparagraphs (A) and (B) of paragraph (2) of subsection (b); or

"(ii) engaging in or working in furtherance of a continuing criminal enterprise or any person engaging in an offense punishable under section 401(b)(1)(A) of this title or section 1010(b)(1) of the Controlled Substances Import and Export Act who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results,

may be sentenced to death, but if such person is not sentenced to death, such person shall be imprisoned for life; and

"(B) any person during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of this subchapter or subchapter II of this chapter who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, State, or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties and such killing results, may be sentenced to death, but if such person is not sentenced to death, such person shall be imprisoned for life.".

(b) Section 408(k) of the Controlled Substances Act (21 U.S.C. 848(k)) is amended by—

(1) inserting "(1)" after "(k)"; and

(2) inserting "or (o)" after "(n)" in the second sentence; and

(3) striking all after the second sentence and inserting the following:

"(2) A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established for purposes of this subsection, regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. The jury or the court, regardless of its findings with respect to aggravating and mitigating factors, is never required to impose a death sentence and the jury shall be so instructed.

"(3) With respect to an offense described in subsection (e)(1)(A)(i), if one of the aggravating factors set forth in subsection (o)(1) of this section and another of the aggravating factors set forth in paragraphs (2) through (9) of subsection (o) of this section is found to exist, a special finding identifying any other aggravating factor for which notice has been provided under subsection (h)(1)(B) of this section may be returned. If an aggravating factor set forth in subsection (o)(1) is not found to exist or an aggravating factor set forth in subsection (o)(1) of this section is found to exist but no other aggravating factor set forth in subsection (o) is found to exist, the court shall impose a sentence other than death authorized by law. If an aggravating factor set forth in subsection (o)(1) of this section and one or more of the aggravating factors set forth in paragraphs (2) through (9) of subsection (o) of this section are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall recommend that a sentence of death shall be imposed rather than a sentence of life imprisonment without possibility of release or some other lesser sentence.

"(4) With respect to an offense described in subsection (e)(1)(A)(ii), if one of the aggravating factors set forth in subsection (n)(1) of this section and another of the aggravating factors set forth in paragraphs (2) through (12) of subsection (n) of this section is found to exist, a special finding identifying any other aggravating factor for which notice has been provided under subsection (h)(1)(B) of this section, may be returned. If an aggravating factor set forth in subsection (n)(1) of this section is not found to exist or an aggravating factor set forth in subsection (n)(1) of this section is found to exist but no other aggravating factor set forth in subsection (n) is found to exist, the court shall impose a sentence other than death, authorized by law. If an aggravating factor set forth in subsection (n)(1) of this section and one or more of the other aggravating factors set forth in subsection (n) of this section are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall recommend that a sentence of death shall be imposed rather than a sentence of life imprisonment without possibility of release or some other lesser sentence.".

(c) Subsection (n) of section 408 of the Controlled Substances Act (21 U.S.C. 848(n)) is amended in the matter before paragraph (1) by striking "subsection (e)" and inserting "subparagraphs (A)(ii) and (B) of paragraph (1) of subsection (e)".

(d) Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by—

(1) redesignating subsections (o), (p), (q), and (r), as subsections (p), (q), (r) and (s), respectively; and

(2) adding after subsection (n) the following new subsection:

"(o) If the defendant is found guilty or pleads guilty to an offense under subsection (e)(1)(A)(i) of this section, the following aggravating factors are the only aggravating factors that shall be considered unless notice of additional aggravating factors is provided under subsection (h)(1)(B) of this section:

"(1) The defendant—

"(A) has previously been convicted of another offense involving trafficking, importation, or exportation of controlled substances for which a sentence of life imprisonment was authorized by statute;

"(B) in the commission of the offense knowingly created a grave risk of danger to the public; or

"(C) intentionally and specifically engaged in an act, knowing that the act created a grave risk of death to a person, such that participation in the act constituted a reckless disregard for human life.

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of 2 or more State or Federal offenses punishable by a term of imprisonment of more than 1 year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of 2 or more State or Federal offenses punishable by a term of imprisonment of more than 1 year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (e)(1)(A) of this section, the defendant knowingly created a grave risk of death to 1 or more persons.

"(6) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(7) The defendant committed the offense after substantial planning and premeditation.

"(8) The defendant had previously been convicted of violating this subchapter or subchapter II of this chapter for which a sentence of 5 or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise.

"(9) The violation of this subchapter in relation to which the conduct described in subsection (e) of this section occurred was a violation of section 405.".

(e) Section 408(b)(2)(A) of the Controlled Substances Act is amended by striking "subsection (d)(1)" and inserting "subsection (c)(1)".

Mr. BYRD. Mr. President, I am pleased to join with the honorable Senator from New York as a cosponsor of this bill. The Drug Kingpin Death Penalty Act is a measure whose time is long overdue. Drug addiction and substance abuse are quickly becoming our country's greatest threat. Rates of drug-related crimes, including homicide, are rising all across the country. The number of drug-related emergency hospital admissions increased by 121 percent between 1985 and 1988. As many as 100,000 babies are born each year to mothers who use drugs. Intravenous drug use is now the single largest source of new AIDS virus infec-

tions. A U.S. Chamber of Commerce estimate put annual gross illegal drug sales at $110 billion—more than our total gross agricultural income, and more than double the profits enjoyed by the Fortune 500 companies combined.

Mr. President, these figures are not to be taken lightly. Drug abuse is our country's greatest enemy, and it is time for Congress to continue its earlier commitment to provide a cohesive policy to fight this war. There have been many late nights this session spent on this floor debating America's policy for dealing with our drug crisis. To the Senate's credit, we have passed legislation that increases our Nation's law enforcement programs, adding much-needed additional Federal, State, and local law enforcement officers, prosecutors, judges, courtrooms, and jails. And we haven't stopped there. We went on to pass sweeping legislative programs that provide for additional drug treatment, education, and prevention programs. When the President went before the Nation in September and announced his proposal for addressing our country's drug problem, I met with my fellow colleagues on the Appropriations Committee and together we worked out a funding formula to provide even more money than the President requested to address our country's drug problem.

Clearly this body has worked together to make our war on drugs a No. 1 priority. I am pleased to continue this commitment by cosponsoring S. 1955, which provides for the death penalty for major drug dealers or drug traffickers, even if their crime does not directly involve a killing. It is time for us to send a signal to these major drug operators that their actions in manufacturing or distributing huge quantities of drugs are as horrendous as an individual who has committed first-degree murder. Their actions should be subject to the same penalty as that of murder, and their actions should be subject to a sentence of death, if a judge determines it is appropriate.

The Drug Kingpin Death Penalty Act takes away the limits under present law of imposing a life sentence on a major drug trafficker, and instead, allows the judge to use his discretion, and if the case circumstances so warrant, apply a sentence of death. The bill provides that an individual who is found to be "a principal administrator, organizer, or leader" of a continuing criminal enterprise whose crime involves the manufacture or distribution of huge quantities of drugs, generally 300 times the basic felony amounts described in section 841(b)(1)(B) of title 21 of the U.S. Code, as being subject to the penalty of death. A continuing criminal enterprise has five elements.

First. The defendant's conduct must constitute a felony violation of Federal narcotics law;

Second. That conduct must take place as part of a continuing series of violations. Federal courts have held this means at least 3 drug felonies;

Third. The defendant must undertake this activity in concert with five or more persons;

Fourth. The defendant must act as the organizer, supervisor, or manager—"kingpin" of this criminal enterprise; and

Fifth. The defendant must obtain substantial income or resources from the enterprise.

A major drug trafficker is also one whose enterprise receives $10 million in gross receipts during any 12-month period for the manufacture, importation, or distribution of drugs. An example of the quantities that would subject a convicted drug dealer to the death penalty would be 30 kilograms—66 pounds—of heroin, or 150 kilograms—330 pounds—of cocaine.

Drugs are laying waste to the future of our country. For us to truly rid our society of the drug scourge that afflicts us, we must not only increase law enforcement programs, drug treatment, prevention, and education programs, but we must also send a signal that drug manufacturing and distribution are as horrendous a crime as first-degree murder, and as such, are punishable to the same extent as first-degree murder.

I am pleased to join as a cosponsor of this legislation, and I urge my fellow colleagues to join me in support of this proposal.

Mr. DECONCINI. Mr. President, I rise today to voice my support for the Drug Kingpin Death Penalty Act introduced by my colleague from New York, Senator D'AMATO. I have had the opportunity to work with Senator D'AMATO on many anticrime initiatives in the past, and I am proud to be an original cosponsor of the bill he introduces here today. I salute him for his continued leadership in the struggle against crime and drugs in this Nation.

Mr. President, last year this body overwhelmingly approved legislation that makes the death penalty available for drug kingpins who engage in murder for hire. The legislation introduced here today will make that same penalty available in cases of large scale drug trafficking, even if no death is proven to result from the activity. However, there should be no question in anyone's mind that deaths and misery inevitably result wherever drug trafficking is present. The persons who engage in this traffic destroy lives, careers, and entire families in order to accumulate illegal wealth. They sow addiction and despair in order to reap enormous profits. Their pernicious influence strikes at the old and young, at men and women, at infants, and even at the unborn. These drug kingpins know precisely what they are doing, and they are hideously efficient at their trade.

I believe that the ultimate penalty should be available for those who so coldly and calculatingly engage in this degradation and destruction of human life. Our society affirms that the death penalty should be available to express our outrage at particularly depraved and inhuman crimes. Drug trafficking is unquestionably such a crime. The death penalty serves the legitimate purposes of retribution that is just and appropriate for this crime.

The death penalty also serves to send a strong message, in unambiguous terms, to those who traffic in drugs. This is a serious problem, threatening the very fabric of our society, and we as a society must respond in an equally serious manner. Most people fear death more than anything else, and so common sense tells us that the death penalty is a more effective deterrant than anything else. The logic of that message is clear and simple. Drug kingpins will have no difficulty understanding that message. I urge all of my colleagues to aid us in ending this parasitic trade in drugs by supporting this legislation.

Mr. NICKLES. Mr. President, I rise in support of the Drug Kingpin Death Penalty Act, introduced by Senator D'AMATO. I am pleased to cosponsor this proposal.

President Bush identified the drug war as one of the most pressing problems facing our Nation in his inaugural address. In September, the President offered his plan for a national strategy to fight drugs. Since then, we in the Congress have spent a lot of time talking about the war on drugs. We have taken a step here and a step there toward increasing the Nation's ability to defend itself against this blight. Unfortunately, however, the one thing Congress hasn't yet done is convince the drug pushers of America that we are out to get them. We have talked about getting serious on drug crime, but we haven't really convinced anyone.

This bill is convincing. Extending the death penalty for major drug dealers or traffickers is convincing evidence of the collective will of Congress to end the flow of drugs through the United States. This bill would authorize the death penalty for drug traffickers and dealers who run a continuing criminal enterprise involving the manufacture or distribution of extremely large quantities of drugs—at least 66 pounds of heroin and 330 pounds of cocaine. In addition, targeted criminals would be those whose businesses make $10 million a year pushing illegal drugs. There is no clearer message Congress can send to these drug orga-

nizations than the message that they can die for their actions.

Mr. President, the criminals this bill focuses on are major players in a dangerous game. They are flagrant violators of countless laws. They are embroiled in criminal enterprises, which traffic hundreds of pounds of heroin and cocaine a year—maybe thousands. They make millions of dollars by feeding off of other people, going about their illegal activity with total disregard for the lives their product destroys.

Why? Because they can. Right now, these unscrupulous drug dealers think the benefits are worth the risks. They may lose some money, maybe some property, maybe even spend some time in jail. So what? Their criminal enterprise continues and they just start over again once they are out of jail. We're going to have to increase the risk.

We must take a stand against these drug pushers. It is time to show our mettle and our commitment to the drug war by striking at those who supply the poison that is destroying so many American lives.

I urge my colleagues to support this necessary legislation.

Mr. SPECTER. Mr. President, I want to congratulate our distinguished colleagues from New York, Senator D'AMATO, for the introduction of legislation today and to compliment him more broadly for the leadership that he has shown in the war against drugs as well as for his leadership generally.

Senator D'AMATO and I have discussed the legislation which he has introduced today. As a matter of fact, I have introduced similar legislation. It is important legislation. We will have an ample opportunity, in fact perhaps an excessive opportunity to discuss this legislation on the floor of the Senate at the appropriate time.

Mr. THURMOND. Mr. President, I rise today to join with my distinguished colleagues Senators D'AMATO and DECONCINI and 26 cosponsors in introducing legislation to provide the death penalty for individuals who engage in large-scale drug trafficking activities. This legislation would provide the death penalty for major drug kingpins, who are currently subject only to mandatory life imprisonment, regardless of whether there is a killing.

Last year, Congress passed legislation to provide the death penalty for murders by drug kingpins and for drug-related murders of law enforcement officers. By passing this important legislation as part of the Anti-Drug Abuse Act of 1988, Congress acknowledged that capital punishment is indeed a needed and proper weapon in our Nation's effort to fight the drug war. This action on the part of the 100th Congress was a valuable first step. However, it is appropriate that we go one step further. We must send a signal that our Nation is prepared to appropriately punish those who cause so many deaths—major drug kingpins. Drug kingpins must be held accountable for untold, senseless deaths caused by the use of dangerous drugs and the violent killings associated with its distribution. Drug kingpins must face the responsibility for drug-related murders which occur on our streets every day. They are just as culpable as those who pull the trigger.

Mr. President, this bill provides that major drug traffickers—organizers, leaders, or administrators of continuing criminal enterprises—may be subject to the death penalty if the enterprise traffics in 30 kilograms of heroin, 150 kilograms of cocaine, or other major amounts of illicit narcotics. They may also be subject to the death penalty if the criminal enterprise receives $10 million in gross receipts during any 12-month period from the manufacture, importation, or distribution of illicit drugs. Under current law, these individuals are subject to mandatory life imprisonment. Clearly, this legislation focuses only on the major narcotics trafficker—the most heartless, ruthless dope dealer.

Regarding constitutional procedures, this legislation builds upon the death penalty procedures put in place last year. In 1972, the Supreme Court decision of Furman versus Georgia rendered the Federal death penalty unconstitutional. Subsequently, in a series of landmark decisions handed down in 1976, the Supreme Court determined that the death penalty is constitutional when imposed under certain procedures specifically designed to guard against the jury using its unfettered discretion. Numerous cases in recent years have defined the circumstances and means by which the death penalty may be implemented. The procedures passed last year and the additional procedures included in this bill satisfy the constitutional standards set by the Supreme Court.

The bill mandates a bifurcated process which the factfinder must follow when determining whether a sentence of death is justified. This process consists of a first hearing to determine the guilt or innocence of the defendant and a second hearing to determine whether the death penalty should be imposed. The factfinder, whether the jury or judge, would have to make a series of determinations before a sentence of death could be imposed. First, the defendant has to qualify as a major drug trafficker, as defined earlier. In addition, the factfinder must determine that special threshold requirements exist. These threshold factors are: First, the defendant has previously been convicted of another major drug offense for which a sentence of life was authorized by statute; second, in the commission of the offense for which he is being punished, the defendant knowingly created a grave risk of danger to the public; or third, the defendant intentionally and specifically engaged in the crime, knowing that the crime created a grave risk of death to a person, such that his participation constituted reckless disregard for human life. If none of these are found to exist, a sentence other than death would have to be imposed. If the required threshold factor is found to exist, the factfinder would have to make a special finding as to the existence of a statutory aggravating factor presented at the hearing. All findings with respect to an aggravating factor must be unanimous. Only those factors found to exist by unanimous vote may be considered in the final weighing process. Finally, the factfinder will weigh all of the aggravating factors found to exist against all the mitigating factors to determine whether the aggravating factors sufficiently outweigh the mitigating factors. During this process, any member of the jury who finds the existence of a mitigating factor may consider such factor established for the purposes of weighing as to whether the death penalty should be applied. If the jury or judge does in fact determine that the aggravating factors sufficiently outweigh the mitigating factors, a death sentence could then be appropriately imposed.

Mr. President, briefly, I will discuss why the death penalty is constitutional for offenses where no death results. Opponents of this legislation will claim that it is unconstitutional to execute an individual where death has not resulted. Yet, the Supreme Court has not directly addressed this issue. The eighth amendment's rule of proportionality requires that the severity of punishment be proportionate to: First, the gravity of the injury caused by the offense, and second, the moral culpability, or blameworthiness, of the offender's state of mind. I believe that the death penalty for certain cases of large-scale drug trafficking meets this burden.

In fact, the Department of Justice takes the position that Congress may constitutionally impose such a penalty on major drug traffickers. As stated by Assistant Attorney General Ed Dennis at a recent Senate Judiciary Committee hearing on the death penalty, "Not since the dawn of the nuclear age, have we faced a threat more pernicious, more dangerous to the security and welfare of the Nation than the current crisis involving the large-scale importation and sale of narcotics." In 1983, it was estimated that the cost of drug abuse to America in terms of lost productivity, crime, and health care services was almost $60 billion. In New York City, in 1988, 90 percent of all male arrestees tested positive for drug use. According to the Department of

Justice, over 22 million Americans have tried cocaine and there are between 2 and 3 million cocaine addicts in the United States today. In addition, there are as many as 750,000 heroin addicts. These figures reflect that the importation, manufacture, and abuse of illicit narcotics is indeed one of the greatest problems affecting the health, welfare, and security of our Nation.

Mr. President, recent Supreme Court decisions also support the claim that such a penalty is constitutional. In Tison versus Arizona, the Court found that reckless indifference to the value of human life may be every bit as shocking to the moral sense as any specific intent to kill. The Court stated in its conclusion "that the reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making a capital sentencing judgment. * * *" Most major drug traffickers do act with reckless disregard for human life and should be subject to the death penalty. In fact, one of the threshold factors discussed earlier requires that the defendant have acted with reckless disregard for human life.

Large scale drug traffickers ruthlessly threaten millions of people and engage in this destructive behavior purely for pecuniary gain. The Supreme Court in Gregg versus Georgia determined that the issue of whether the defendant acted for pecuniary gain is a factor to be considered relevant in determining blameworthiness and the appropriate punishment. These cases clearly support the argument that the death penalty is constitutional for nonhomicidal drug traffickers.

In closing, the link between the activities of large-scale drug enterprises and death is unquestionable. It is disturbing that rates of drug related murders continue to rise in cities across our Nation. Reports of bystander deaths due to drug related gun fights and drive-by shootings continue to climb. According to drug czar William Bennett, intravenous drug use is now the single largest source of new AIDS virus infections, and as much as one-half of all AIDS deaths are drug related. According to the Department of Justice, in the 4-year period from 1985 to 1988, over 14,000 overdose deaths were reported in 26 metropolitan areas, excluding New York City. It is time for Congress to broaden the category of offenses for which the death penalty can be applied to include those individuals who pose the greatest threat to our Nation's health and safety—drug kingpins. Enactment of this legislation will send a strong, clear message to those who choose to import and distribute large amounts of illicit narcotics. If you choose to commit such acts—you will face the ultimate punishment. Without question, this legislation, if enacted, will deter big-time narcotics dealers from commission of their heinous acts. We should not hesitate any longer. The law-abiding citizens of our Nation demand action and they demand it now.

For these reasons, I urge my colleagues to take swift action on this vital legislation.

Mr. HEFLIN. Mr. President, I rise today as an original cosponsor of legislation providing for capital punishment for large-scale drug dealing and trafficking, whether or not a killing results.

This bill reflects the position of the Justice Department that capital punishment for the leaders of major drug organizations is constitutional because of their criminally depraved state of mind, their reckless disregard for human life, and the enormous public harm they are causing. Furthermore, there are death penalty statutes for other crimes not directly involving the taking of another life. These other crimes include treason, espionage, and airline hijackings.

The Drug Kingpin Death Penalty Act uses the same definition of a major drug trafficker that current law uses, but where the law now only provides for life imprisonment for the crime of large-scale trafficking, this bill authorizes the death penalty.

A major drug trafficker subject to the death penalty would therefore be defined as "a principal administrator, organizer, or leader" of a continuing criminal enterprise whose crime involves the manufacture or distribution of huge quantities of drugs—300 times the basic felony amounts. A major trafficker is also one whose enterprise receives $10 million in gross receipts during any 12-month period for the manufacture, importation, or distribution of drugs.

I am a firm believer that the only way to win the war on drugs is by decreasing the demand for drugs through education. However, it will take quite some time to achieve this result. Therefore, we must act now in curbing the supply of drugs to our country. This bill will take that timely step by acting as a further deterrent to these drug kingpins.

Drug traffickers are continuing to be major contributors to the erosion of our society's foundation, and it is time for society to defend itself by invoking capital punishment. I, therefore, urge my colleagues to join me in supporting the Drug Kingpin Death Penalty Act.

By Mr. D'AMATO (for himself, Mr. DOLE, Mr. DECONCINI, Mr. KERRY, Mr. SPECTER, Mr. DURENBERGER, Mr. LIEBERMAN, Mr. HATCH, Mr. DOMENICI, Mr. GRAHAM, Mr. WILSON, Mr. COATS, and Mr. LOTT):

S. 1956. A bill to amend the Internal Revenue Code of 1986 to provide a mechanism for taxpayers to designate any portion of any overpayment of income tax, and to contribute other amounts, for payment to fight the war on drugs, and for other purposes; to the Committee on the Judiciary.

CITIZENS DRUG CONTROL CONTRIBUTIONS ACT

Mr. D'AMATO. Mr. President, today I introduce two bills, both of them designed to respond to the greatest challenge that this Nation faces and that is the drug epidemic, the scourge of drugs. It has taken over control of so many of our communities, forced people to live in fear, and indeed in many cases it has made them prisoners in their own homes. This is not only the fate of large urban centers in America, but we find in small hamlets, communities that heretofore have been safe, which have been serene and have provided domestic tranquillity, have become battlegrounds.

One of those bills is a measure I believe will have the complete support of not only the U.S. Senate but the entire Congress, and it is called the "Citizens Drug Control Contributions Act of 1989."

Mr. President, I introduce this bill on behalf of myself, the Republican leader, Senator DOLE, as well as Senators DURENBERGER, DECONCINI, KERRY of Massachusetts, GRAHAM of Florida, SPECTER, WILSON, LIEBERMAN, HATCH, DOMENICI, COATS, and LOTT. Under the provisions of this bill, the American taxpayers would be permitted to use their Federal income tax returns to contribute voluntarily to a fund devoted exclusively to fighting the drug war. The money contributed will be used for prosecutors, drug treatment counselors, and more effective education, prevention, and law enforcement programs.

I am convinced that millions of Americans who are deeply concerned with this issue, who ask what can I do, how can I become involved in fighting this war, will, if this bill is enacted, take that opportunity and use the checkoff system that will be provided as it relates to their income taxes.

I believe this legislation will give us the opportunity to raise hundreds of millions of dollars for this battle.

Mr. President, I rise today to introduce the Drug Control Contributions Act of 1989, a bill to permit Americans to make voluntary contributions to the special forfeiture fund to aid in our way against illegal drugs.

Mr. President, I introduce this legislation on behalf of myself, the Republican leader, Senator DOLE, as well as

Senators DURENBERGER, DECONCINI, KERRY of Massachusetts, GRAHAM of Florida, SPECTER, WILSON, LIEBERMAN, HATCH, DOMENICI, COATS, and LOTT.

Under our bill, American taxpayers would be permitted to use their Federal income tax return to contribute voluntarily to a fund devoted exclusively to fighting the drug war.

The money contributed will be used for more prosecutors, more drug treatment counselors, and more effective education, prevention, and law enforcement programs—more weapons in our fight against illegal drug use.

I am convinced that millions of Americans, deeply concerned about this issue, want to become personally involved in fighting this war—they just do not know how they can help. This bill provides them with a way.

Under this legislation, taxpayers will be permitted to designate that part of their Federal income tax refund be deposited in the special forfeiture fund Congress created in the Anti-Drug Abuse Act of 1988.

Even if a taxpayer is not entitled to a refund, this legislation would permit the use of the Federal tax form to make a voluntary contribution.

Unlike the Presidential campaign fund checkoff, by which taxpayers can designate one dollar of tax already being paid, this proposal permits new resources to be contributed to the drug war.

According to the Internal Revenue Service, in 1988, of the approximately 107 million individual income tax returns filed, about 79.7 million individual taxpayers received $73.8 billion in refunds—including $412 million in interest.

Individual refunds averaged $921 in 1988.

If only those taxpayers who receive refunds contributed just $12.50, that would translate into $1 billion in additional funds for the special forfeiture fund—to be used exclusively for the war on illegal drug use.

By anybody's standards, Mr. President, that is a lot of money—and it is urgently needed.

The President, in consultation with the Director for National Drug Control Policy (the "Drug Czar"), will submit requests to Congress for use of amounts in the fund to expand drug control efforts by providing a balance among Federal, State, and local anti-drug programs, and all the various drug control approaches, including prevention, education, treatment, and law enforcement programs.

This is a streamlined, nonbureaucratic proposal designed to give our drug war an infusion of additional resources for our fight against illegal drugs. Our legislation has bipartisan support.

On October 5, 1989, I withdrew an amendment to S. 1711, the bill to implement the President's national drug control strategy. That amendment was identical to the bill I am introducing today. At the request of the Chairman of the Finance Committee, I agreed to lay aside that amendment and offer it at a different time. The time has come now for me to introduce it.

There is no more important cause than to rid this country of the menace of illegal drugs—a cancer that is killing our Nation's young people. I am confident that most Americans want to volunteer their assistance to wage this war, and this is one way we can all join the fight.

Mr. President, I ask unanimous consent that a copy of our legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed.

S. 1956

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Citizens Drug Control Contributions Act of 1989".

SEC. 2. STATEMENT OF CONGRESSIONAL FINDINGS.

(a) FINDINGS.—The Congress finds that—

(1) there is an epidemic of illegal drug use that threatens the well-being of our Nation and its people;

(2) the epidemic of illegal drug use poses a national crisis of unprecedented peace time proportions, warranting the use of extraordinary measures;

(3) solving this crisis will require a massive expenditure of resources in drug education, prevention, interdiction, enforcement, and related programs;

(4) there currently are inadequate resources available at the Federal level to address this crisis; and

(5) the American people are prepared to devote additional resources in the war against drugs.

SEC. 3. DESIGNATION OF OVERPAYMENTS AND CONTRIBUTIONS FOR SPECIAL FORFEITURE FUND.

(a) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end thereof the following new part:

"PART IX—DESIGNATION OF OVERPAYMENTS AND CONTRIBUTIONS FOR THE SPECIAL FORFEITURE FUND

"SEC. 6097. AMOUNTS FOR THE SPECIAL FORFEITURE FUND.

"(a) IN GENERAL.—With respect to the return of an individual (other than a nonresident alien) for the taxable year of the tax imposed by chapter 1, such taxpayer may designate that—

"(1) a portion (not less than $5) of an overpayment of any tax reported on such return (as determined for refund under section 6402), and

"(2) any cash contribution (not less than $5) that the taxpayer includes with such return,

be paid over to the Special Forfeiture Fund established in section 6073 of the Anti-Drug Abuse Act of 1988.

"(b) MANNER AND TIME OF DESIGNATION.—Any designation under subsection (a) may be made with respect to any taxable year only at the time of filing the original return of the tax imposed by chapter 1 for such taxable year.

"(c) OVERPAYMENTS TREATED AS REFUNDED.—For purposes of this title, any overpayment of tax designated under subsection (a) shall be treated as being refunded to the taxpayer as of the last date prescribed for filing the return of tax imposed by chapter 1 (determined with regard to extensions) or, if later, the date the return is filed."

(b) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 61 of such Code is amended by adding at the end thereof the following new item:

"Part IX. Designation of overpayment and contributions for special forfeiture fund.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

SEC. 4. THE SPECIAL FORFEITURE FUND.

(a) PAYMENT.—Section 6073(b) of the Anti-Drug Abuse Act of 1988 is amended by—

(1) inserting "(1)" after "(b)"; and

(2) adding at the end thereof the following:

"(2) Beginning fiscal year 1991, there shall be deposited in the Fund such amounts as may be credited to the Fund as provided in section 6097 of the Internal Revenue Code of 1986.".

(b) ADMINISTRATIVE EXPENSES.—Section 6073(a) is amended by inserting after "in appropriations acts" the following: "and with respect to such amounts as may be deposited in the Fund under subsection (b)(2) to pay the administrative expenses allowable to—

"(1) modifying the individual income tax return forms to carry out section 6097 of the Internal Revenue Code of 1986, and

"(2) processing amounts received under section 6097 of the Internal Revenue Code of 1986 and transferring such amounts to such Fund".

(c) CONSIDERATIONS.—Section 6073(d) of the Anti-Drug Abuse Act of 1988 is amended by inserting after "Drug Control Strategy" the following: "and with respect to the deposits made under subsection (b)(2), attempt to maximize drug control efforts by providing a balance among Federal, State, and local anti-drug programs and the various drug control approaches, including prevention, education, treatment, and law enforcement programs".

(d) CONFORMING AMENDMENTS.—Section 6073(d) of the Anti-Drug Abuse Act of 1988 is amended by inserting after "This request" the following: ", with respect to the deposits made under subsection (b)(1),".

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By Mr. LEVIN (for himself, Mr. COHEN, Mr. GLENN, and Mr. ROTH):

S. 1957. A bill to provide for the efficient and cost effective acquisition of nondevelopment items for Federal agencies, and for other purposes; to the Committee on Governmental Affairs.

NONDEVELOPMENTAL ITEMS ACQUISITIONS ACT OF 1989

● Mr. LEVIN. Mr. President, I am pleased to introduce the Nondevelopmental Items Acquisition Act of 1989 on behalf of myself and my colleagues, Senators COHEN, GLENN, and ROTH.

For the last 3 years, I have worked to encourage the Department of Defense to stop spending taxpayer dollars to design and build new products

when available products could meet the Department's needs. It only makes sense that products that are already in use—known as "Nondevelopmental items" or "NDI's"—are cheaper and easier to purchase than new, military-unique items. For example, it is a lot easier to order a standard heat pump from an existing manufacturer than it is to design and build new ones from scratch for DOD alone.

Unfortunately, DOD's acquisition system has a longstanding bias in favor of products that are specially designed for the Department of Defense. Specifications developed by the Department are frequently so complex that products have to be specially tailored to meet them. Moreover, even when DOD does decide to purchase an existing product, current laws and regulations pose substantial barriers that can discourage commercial manufacturers from selling to the Government.

After years of frustrating inaction by DOD, I think that we are finally starting to show some progress on this front. In 1987, we enacted a provision—section 907 of that year's DOD Authorization Act—which required DOD to simplify its product specifications so that they could be met by NDI's wherever possible, and to identify and remove impediments to the acquisition of such NDI's.

Until this year, section 907 was virtually ignored by the Department of Defense. On May 16 and June 1 of this year, the Governmental Affairs Subcommittee on Oversight of Government Management, which I chair, and of which Senator COHEN is the ranking minority member, held hearings on DOD's implementation of section 907.

At the first hearing, numerous industry representatives testified about DOD's inaction and the frustrating obstacles they continued to encounter in their efforts to sell NDI's to the Department of Defense.

At a second hearing, Deputy Secretary of Defense Donald Atwood agreed that there were substantial problems in this area and stated that he would make increased acquisition of NDI's a top priority of the Department.

In October, the subcommittee issued a report on DOD's efforts to purchase NDI's, which included 16 recommendations for action by the Department. Many of these recommendations are included in an amendment that I offered to this year's DOD authorization bill, which would require the Department to take concrete steps to reduce or eliminate specific impediments to the acquisition of NDI's. This amendment is included in the bill that has been sent to the President.

Since the time of our hearings, DOD has substantially increased the resources and personnel dedicated to the NDI issue. The Department has published an ambitious 31-point plan to encourage the purchase of NDI's, and has already begun a regulatory review aimed at eliminating impediments to such acquisition. It has identified 11,336 nonstandard contract clauses that are included in defense contracts, and slated two-thirds of them for elimination.

Mr. President, I am pleased that the Department of Defense finally appears to be taking the acquisition of NDI's seriously. However, DOD is not the only Federal agency that could purchase more NDI's, and DOD is not the only agency that discourages such purchases by imposing inappropriate and burdensome requirements on contractors. Many of the same contract requirements that have been identified as impediments to the purchase of NDI's by DOD apply to other Federal agencies as well. Moreover, numerous contractor representatives have indicated that they have the same problems trying to sell NDI's to civilian agencies that they have experienced with DOD.

Mr. President, the Competition in Contracting Act and the Federal Acquisition Regulation establish the principle that we should have a single, uniform Federal contracting system. Since CICA was enacted in 1984, Senator COHEN and I have worked together to ensure that this uniformity is maintained.

The bill that I am introducing today with Senators COHEN, GLENN, and ROTH would require civilian agencies to take the same steps to encourage the acquisition of NDI's that are already required of DOD under the 1987 Authorization Act, or would be required of DOD under this year's DOD bill.

The bill would promote the acquisition of NDI's by requiring agencies to:

First. Purchase NDI's to the maximum extent possible;

Second. Simplify their product requirements, telling companies what they want, rather than how to build it;

Third. Eliminate unnecessary and burdensome contract clauses that serve as an impediment to NDI contracts;

Fourth. Tailor appropriate inspection requirements for NDI's.

Fifth. Reduce paperwork requirements for contractors in NDI contracts;

Sixth. Enhance training for acquisition personnel in the procurement of NDI's; and

Seventh. Designate officials responsible for promoting the acquisition of NDI's.

Mr. President, the Nondevelopmental Items Acquisition Act of 1989 is a commonsense proposal that will help save taxpayer dollars. I hope that my colleagues will join me in supporting this effort.●

By Mr. METZENBAUM (for himself, Mr. ADAMS, Mr. GLENN, and Mr. WIRTH):

S. 1958. A bill to amend the Occupational Safety and Health Act of 1970 to improve and enforce standards for employee health and safety at Department of Energy nuclear facilities, and for other purposes; to the Committee on Energy and Natural Resources.

NUCLEAR FACILITIES OCCUPATIONAL SAFETY IMPROVEMENT ACT OF 1989

● Mr. METZENBAUM. Mr. President, I rise to introduce the Nuclear Facilities Occupational Safety Improvement Act of 1989. This act is cosponsored by Senators ADAMS, GLENN, and WIRTH. Companion legislation, H.R. 3521, has been introduced in the House by Representative GAYDOS.

It is now clear that our Nation's nuclear weapons plants are an environmental and safety time bomb. These plants, including several located in my State of Ohio, are either owned or under the control of the U.S. Department of Energy [DOE]. For 40 years, DOE has had the dual responsibility of ensuring production of our nuclear arsenal and maintaining safety and health at the plants.

As we have learned, DOE focused on production to the total exclusion of safety and health. Now we must pay the price for years of neglect and mismanagement. We will be cleaning up these facilities well into the 21st century at a cost of hundreds of billions of dollars.

But it would be irresponsible to invest that enormous amount of time and money relying on the same management structure that created this crisis. Energy Secretary Watkins has made a personal commitment to clean-up these plants and to improve safety and health enforcement. I have no doubt that the Secretary's commitment is sincere. But in the face of a systemic failure, one person's commitment is not enough.

We need reforms and we need them now. We owe it to the workers and to the neighbors of these plants who have to live with the critical health, safety, and environmental problems every day. These people are on the front lines of this nuclear crisis. They are not willing to wait any longer for improvements in the way these plants operate—nor should they have to.

That is why I am introducing this bill. Its primary purposes are: First, to shift safety and health responsibility at these plants from the production experts at the DOE to the occupational safety and health experts at the Department of Labor; second, to create safeguards for workers to ensure that safety and health concerns are placed on equal footing with demands for production.

The Nuclear Facilities Occupational Safety Improvement Act applies the

regulations and standards of the Occupational Safety and Health Act to these Government-owned nuclear facilities. Secretary Watkins has endorsed this approach in his 10-point initiative to clean up these plants.

But the bill goes further—it also transfers enforcement and regulatory authority for safety and health to the Occupational Safety and Health Administration [OSHA]. This provision recognizes that DOE cannot and should not police its own plants for safety and health compliance. For example, OSHA inspectors recently accompanied DOE tiger team inspectors at several nuclear facilities. We have just learned that during these visits, the OSHA inspectors uncovered hundreds of OSH Act violations at each plant.

Workers at these plants deserve to be protected by the qualified, neutral occupational experts at OSHA. This is a major new responsibility for OSHA. To fulfill this new obligation, the bill authorizes no less than 50 new compliance officers dedicated to addressing safety and health compliance at the DOE facilities. The bill transfers all DOE occupational safety and health funds and personnel to OSHA. Because of this transfer, more than 30 professional staff directly involved in safety and health at DOE will be transferred to OSHA.

A similar transfer occurred in 1977 when we created the Mine Safety and Health Administration in the Department of Labor. The new agency was created by transferring existing mine safety activities in the Department of Interior, which was primarily concerned with production, to the Department of Labor, which had existing safety expertise.

The other structural change in the bill is to transfer all occupational safety and health research, education and worker training from DOE to the National Institute for Occupational Safety and Health [NIOSH], the Government's occupational health experts. The bill requires DOE and its contractors to cooperate with OSHA and NIOSH investigators and to grant full access to the plants for inspections. There should be no fear that outside access to these plants will compromise national security because the bill contains safeguards to protect confidential information.

In addition to the structural changes, the bill establishes new programs to enhance safety and health at these facilities. It creates a safety training program at DOE plants where workers will learn about such things as health hazards, radiation exposure, decontamination techniques and the use of personal protective equipment.

The bill also requires that a joint labor/management health and safety committee be established at each DOE facility. By working together, workers and management will be able to develop and enforce an effective safety and health policy that takes into account the unique circumstances of each facility.

Workers at these plants have been exposed to a wide range of toxic and hazardous substances. For example, in the course of developing the atomic bomb in the 1940's and 1950's, thousands of workers, including a number of scientists, were exposed to beryllium, which causes lung disease. Several years ago, DOE announced a beryllium notification program to inform those workers of the risks of their exposure so they could seek medical examinations and treatment if there is manifestation of a disease. Regrettably, but not surprisingly, DOE has not implemented the program—it is caught in the familiar traps of internal DOE bureaucracy.

This bill, expanding on the beryllium notification program, authorizes medical examinations for DOE nuclear workers. It also creates a continuing medical surveillance program to monitor health conditions of DOE nuclear workers who have been exposed to toxic substances and radiation. Both the examinations and the surveillance program will be paid for by DOE. A health advisory committee, comprised of the Secretary of Labor, and representatives from NIOSH, DOE and occupational safety and health experts, will oversee these new programs.

Finally, the bill provides whistleblower protection to workers at these DOE plants. Earlier this year I chaired a labor subcommittee hearing on protection for workers who blow the whistle on health and safety complaints. One of the witnesses at that hearing, a DOE nuclear worker from the Hanford facility, testified about how he was harassed out of a job after he testified before a congressional committee about safety problems at the plant. DOE subsequently admitted in public testimony that the employee had been harassed unfairly, but the department had been unable to protect him from retaliation.

That is an intolerable situation that should never happen again. Therefore, this bill expressly extends the whistleblower protections of the Energy Reorganization Act to the workers at these DOE facilities.

In addition, consistent with S. 436, the Metzenbaum-Grassley Employee Health and Safety Whistleblower Protection Act, this bill provides DOE nuclear whistleblowers with: First, a 180-day statute of limitations; second, protection for refusal to participate in illegal or dangerous practices; third, temporary reinstatement after a showing of cause; fourth, subpoena power for the Secretary of Labor; and fifth, a burden of proof identical to the one adopted by the unanimous Congress earlier this year for civil service whistleblowers.

Safety and health has taken a backseat to production for too long at our nuclear plants. This bill is an attempt to restore some balance to the program. Our nuclear workers are critical to national defense and security. They risk their lives and health to protect the health and safety of their great country. They deserve decent protection for their own safety and health. I urge my colleagues to support this legislation.

I ask that the bill be printed in the RECORD immediately following this statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1958

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nuclear Facilities Occupational Safety Improvement Act of 1989".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) worker health and safety at Department of Energy nuclear facilities could be substantially improved by applying standards developed by experts in the field of occupational health and safety;

(2) the Secretary of Labor has a long-standing responsibility for the health and safety of workers (including the enforcement of occupational health and safety standards and other protective labor standard programs) and could provide substantial assistance in developing, improving, and enforcing such standards at Department of Energy nuclear facilities;

(3) the Secretary of Health and Human Services has a continuing responsibility for evaluating health and safety needs related to radiation and toxic substances standards and could provide substantial assistance in improving and enforcing such standards at Department of Energy nuclear facilities; and

(4) the Secretary of Energy is developing an Applied Research, Development, Demonstration, Testing, and Evaluation Plan for Environmental Restoration and Waste Management, in part, to develop and implement new environmentally efficient production and waste minimization technologies, and implementation of such new technologies will require such Secretary to adequately research the occupational health, safety and training aspects of such technology implementation.

(b) PURPOSE.—The purpose of this Act and the amendments made by this Act are to improve and enforce standards for employee health and safety at Department of Energy nuclear facilities.

SEC. 3. APPLICATION OF OSHA TO DOE NUCLEAR FACILITIES.

(a) GENERAL RULE.—Section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)) is amended—

(1) by striking "Nothing" and inserting "(A) Except as provided in subparagraph (B), nothing"; and

(2) by adding at the end the following new subparagraph:

"(B) Notwithstanding any other provision of this Act, this Act shall apply with respect to employment performed in the following Federal nuclear facilities under the control or jurisdiction of the Department of Energy:

"(i) A Department of Energy defense nuclear facility as defined by section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g)).

"(ii) A production facility (as defined by section 11(v) of such Act (42 U.S.C. 2014(v))).

"(iii) A utilization facility (as defined by section 11(cc) of such Act (42 U.S.C. 2014(cc))).

"(iv) A facility for the storage or disposal of hazardous or radioactive materials that is owned by the Department of Energy, including soil discharge facilities.

"(v) Any other facility subject to such Act (42 U.S.C. 2011 et seq.).".

(b) REGULATIONS AND STANDARDS.—

(1) CURRENT REGULATIONS AND STANDARDS.—All regulations and standards relating to occupational health and safety applicable to the Department of Energy nuclear facilities described in section 4(b)(1)(B) of the Occupational Safety and Health Act of 1970 (as amended by subsection (a) of this section) that are in effect on the effective date of this Act shall remain in effect until superseded by regulations and standards promulgated by the Secretary of Labor in accordance with paragraph (2).

(2) REVISED REGULATIONS AND STANDARDS.—The Secretary of Labor shall promulgate specific regulations to govern the application of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to such Department of Energy nuclear facilities. The regulations shall include—

(A) the occupational health and safety standards to be applied to such facilities; and

(B) the manner and process for enforcement of the standards, which shall include provisions for—

(i) the safeguarding of information, consistent with the needs of employees of the Occupational Safety and Health Administration;

(ii) mechanisms and processes for enforcement, including the right of entry for unannounced inspections without probable cause;

(iii) receipt of complaints from individuals and protection of the individuals from retribution for making complaints;

(iv) procedures for inspection at such facilities not less than once each year; and

(v) such other regulations as are necessary to carry out this Act and the amendments made by this Act.

SEC. 4. COOPERATION WITH INSPECTIONS AND INVESTIGATIONS.

Section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657) is amended by adding at the end the following new subsection:

"(h)(1) Except as provided in paragraph (2), the Secretary of Energy and each contractor operating a Department of Energy nuclear facility described in section 4(b)(1)(B) shall—

"(A) cooperate with the Secretary of Labor and the Secretary of Health and Human Services in the conduct of an inspection or investigation under this Act at such facility;

"(B) grant access to such facility to enable the conduct of such inspection or investigation; and

"(C) provide such information as is necessary to conduct such inspection or investigation.

"(2) To protect the confidentiality of information, the Secretary of Energy may deny access to any person who—

"(A) has not been granted a security clearance or access authorization by the Secretary; or

"(B) does not require such access in connection with the duties of such person to enforce this Act.".

SEC. 5. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.

(a) ADDITIONAL OSHA COMPLIANCE OFFICERS.—

(1) AUTHORIZATION.—The Secretary of Labor is authorized to increase the personnel of the Occupational Safety and Health Administration by not less than 50 compliance officers in order to meet the requirements of this Act and the amendments made by this Act.

(2) USE.—The additional personnel shall be used solely in regard to inspections of Department of Energy nuclear facilities described in section 4(b)(1)(B) of the Occupational Safety and Health Act of 1970 (as added by section 3(a) of this Act).

(3) COMPENSATION COSTS.—Compensation costs for the additional personnel authorized under this subsection shall be borne by the transfer of appropriations provided for in subsection (b) and by such additional funds as may be necessary.

(4) NUMBER OF COMPLIANCE OFFICERS PER FACILITY.—

(A) INITIAL PERIOD.—Effective during the 3-year period beginning on the effective date of this subsection, not less than one full-time compliance officer of the Occupational Safety and Health Administration shall be present at each facility referred to in paragraph (2).

(B) SUBSEQUENT PERIOD.—Effective 3 years after the effective date of this subsection, the Secretary of Labor may reduce the personnel of the Occupational Safety and Health Administration at facilities referred to in paragraph (2) on a certification by the Secretary to Congress that such reduction will not increase the risk of hazards to employees at the facilities.

(b) TRANSFER.—

(1) IN GENERAL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions transferred by this Act and the amendments made by this Act shall be transferred from the Department of Energy to the Secretary of Labor for appropriate allocation within the Department of Labor. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(2) EFFECT ON PERSONNEL.—The transfer pursuant to this subsection of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department of Labor.

(3) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, shall make such determinations as may be necessary with regard to the functions transferred by this Act and the amendments made by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out this Act and the amendments made by this Act.

(4) SES POSITIONS.—After consultation with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget is authorized, at such time as the Director of the Office of Management and Budget provides, to make such determinations as may be necessary with regard to the transfer of positions within the Senior Executive Service in connection with functions transferred by this Act and the amendments made by this Act.

SEC. 6. WORKER TRAINING REQUIREMENTS.

Section 21 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) is amended by adding at the end the following new subsection:

"(d)(1) Not later than 30 days after the effective date of this subsection, the Secretary shall promulgate interim regulations to provide for the training of employees employed at Department of Energy nuclear facilities described in section 4(b)(1)(B).

"(2) Regulations promulgated under this subsection shall include training requirements for existing and newly implemented technologies related to—

"(A) health hazard evaluation;

"(B) use of personal protective equipment;

"(C) radiation exposure;

"(D) decontamination requirements;

"(E) facility and site safety and health plans;

"(F) health effects;

"(G) hazard communications;

"(H) employee rights and responsibilities; and

"(I) research regarding the occupational health and safety aspects of implementing new technologies.

"(3) Such training requirements shall—

"(A) apply to all employees whether employed by a contractor or a subcontractor; and

"(B) provide for participation by the employee representatives of such employees.

"(4) Regulations promulgated under this subsection shall—

"(A) include specific requirements for curriculum content and minimum duration of training; and

"(B) provide for approval by the Secretary of the course content and personnel conducting the training.

"(5) The interim regulations shall be in effect until the effective date of the final regulations issued under paragraph (6).

"(6)(A) Not later than 180 days after the effective date of this subsection, the Secretary shall propose final regulations to provide for the training of employees employed at facilities referred to in paragraph (1).

"(B) Not later than 1 year after the effective date of this subsection, the Secretary shall promulgate final regulations to provide for training of such employees.

"(C) Such final regulations shall comply with each of the requirements for the interim regulations established under paragraphs (2) through (4).".

SEC. 7. PERFORMANCE OF NIOSH FUNCTIONS AT DOE NUCLEAR FACILITIES.

Section 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671) is amend-

ed by adding at the end the following new subsection:

"(g)(1) Notwithstanding any other provision of this Act, the Director and the Institute shall perform functions authorized by this section at Department of Energy nuclear facilities described in section 4(b)(1)(B).

"(2) The Institute shall review and make recommendations on the research and training programs, contracts, and grants of the Secretary of Energy to ensure the adequacy of the occupational health and safety aspects of newly implemented technologies.

"(3) The Institute shall conduct hazard evaluations at such facilities, including ionizing radiation evaluations.".

SEC. 8. MEDICAL EXAMINATIONS OF EMPLOYEES AT DOE NUCLEAR FACILITIES.

Section 27 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 676) is amended to read as follows:

"SEC. 27. MEDICAL EXAMINATIONS OF EMPLOYEES AT DOE NUCLEAR FACILITIES.

"(a) CURRENT AND NEW EMPLOYEES.—

"(1) INITIAL EXAMINATION.—Not later than 90 days after the effective date of this section, all employees employed at Department of Energy nuclear facilities described in section 4(b)(1)(B) on or after the effective date of this section shall be given baseline medical examinations.

"(2) GUIDELINES.—Examinations conducted under this section shall be conducted in accordance with guidelines developed by the Health Advisory Committee established under subsection (d).

"(3) SUBSEQUENT EXAMINATIONS.—Subsequent examinations shall be given to each employee referred to in paragraph (1), as recommended by the Health Advisory Committee, for the life of the employee.

"(4) HIGH RISK EMPLOYEES.—Where appropriate, examinations shall be given under this subsection to family members who are determined to be at high risk of disease because of the exposure of an employee in the workplace.

"(b) FORMER EMPLOYEES.—

"(1) IN GENERAL.—All former employees employed at facilities described in subsection (a)(1) prior to the effective date of this section, and their families, shall be offered participation in a medical surveillance program designed to focus on work-related exposures to toxic substances and radiation.

"(2) ADMINISTRATION.—Such program shall include any treatment for illnesses designated by the Health Advisory Committee to be occupationally related.

"(c) CONTRACTORS.—A person that enters into a contract with a facility described in subsection (a)(1) shall maintain on a full-time basis an occupational health physician and supporting medical staff, in accordance with guidelines issued by the Health Advisory Committee.

"(d) HEALTH ADVISORY COMMITTEE.—

"(1) ESTABLISHMENT.—There shall be established a Health Advisory Committee to assist in carrying out this section.

"(2) COMPOSITION.—The Health Advisory Committee shall be composed of—

"(A) two representatives of the National Institute for Occupational Safety and Health, appointed by the Secretary of Health and Human Services;

"(B) two representatives of the Department of Energy, appointed by the Secretary of Energy;

"(C) two representatives of the occupational safety and health community, appointed by the Secretary of Labor; and

"(D) the Secretary of Labor, who shall serve as chairperson.

"(3) DUTIES.—The Health Advisory Committee shall—

"(A) not later than 90 days after the effective date of this section, review existing medical studies that relate to the administration of this section;

"(B) issue guidelines for baseline health examinations for employees and family members covered by this section;

"(C) issue guidelines for lifetime medical surveillance for employees covered by this section; and

"(D) develop standards for Department of Energy contractor medical staff covered by this section, which shall be present at each facility referred to in subsection (a)(1).

"(e) AVAILABILITY OF INFORMATION.—All information from medical examinations described in subsection (c) shall be available to individual employees and their representatives. Aggregate information from such examinations shall be available to the public.

"(f) COST.—The cost of the program established under this section shall be borne by the Department of Energy.

"(g) REGULATIONS.—The Secretary, in coordination with the Secretary of Energy, shall promulgate such regulations as are necessary to carry out this section.".

SEC. 9. LABOR-MANAGEMENT HEALTH AND SAFETY COMMITTEES AT DOE NUCLEAR FACILITIES.

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) is amended—

(1) by redesignating sections 28 through 33 as sections 29 through 34, respectively; and

(2) by inserting after section 27 (as amended by section 8 of this Act) the following new section:

"SEC. 28. LABOR-MANAGEMENT HEALTH AND SAFETY COMMITTEES AT DOE NUCLEAR FACILITIES.

"(a) ESTABLISHMENT.—Each Department of Energy nuclear facility described in section 4(b)(1)(B) shall have a labor-management health and safety committee established in accordance with this section.

"(b) MEMBERSHIP.—

"(1) IN GENERAL.—Each committee of a facility established under this section shall consist of—

"(A) the senior Department of Energy official at the facility;

"(B) the government contractor facility manager; and

"(C) an employee representative for each labor organization elected or appointed by the employees within that facility.

"(2) LIABILITY.—Participation by employee representatives shall not cause the representatives or their collective bargaining agent to be liable for the actions of the committee.

"(c) ADMINISTRATION.—

"(1) MEETINGS.—A committee established under this section shall meet at least monthly.

"(2) REIMBURSEMENT.—An employee representative on a committee established at a facility shall be reimbursed by the government contractor at the facility for reasonable expenses incurred in serving on the committee.

"(d) POWERS.—A committee established under this section shall have the authority to—

"(1) review the health and safety policy of a facility referred to in subsection (a); and

"(2) make findings with respect to the health and safety of the operations at such facility, and if a committee finds that the operations constitute an imminent and substantial hazard to the health and safety of the personnel, the committee shall immediately notify the Secretary of Energy and the Defense Facility Nuclear Safety Board, and if the Secretary of Energy does not cease such hazardous operations, petition the Environmental Protection Agency or the Occupational Health and Safety Administration, as appropriate to restrain, using appropriate enforcement authority, such hazardous operations.".

SEC. 10. WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF DOE NUCLEAR FACILITIES.

(a) AMENDMENTS.—Section 210 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851) (as added by section 10 of Public Law 95-601) is amended—

(1) by striking subsection (a) and inserting the following new subsection:

"(a) No employer, including a Commission licensee, an applicant for a Commission license, a contractor or subcontractor of a Commission licensee or applicant, or a contractor of a Department of Energy nuclear facility described in section 4(b)(1)(B) of the Occupational Safety and Health Act of 1970 or subcontractor thereof (hereinafter referred to in this section as a 'DOE nuclear facility contractor') may discharge any employee (including an employee of a DOE nuclear facility contractor) or otherwise discriminate against any employee (including an employee of a DOE nuclear facility contractor), with respect to the compensation, terms, conditions, or privileges of employment of the employee because the employee (or any person acting pursuant to a request of the employee)—

"(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act, the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), a Federal or State environmental law, or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or a proceeding for the administration or enforcement of any requirement imposed under any such provision of law;

"(2) testified or is about to testify in any such proceeding;

"(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out any provision of law referred to in paragraph (1); or

"(4) in the case of a DOE nuclear facility contractor, refused to participate in an activity, policy, or practice at the facility—

"(A) if such participation constituted a violation of a provision of law referred to in paragraph (1); or

"(B) because of the reasonable apprehension of the employee of serious injury to the employee or the public due to an unsafe condition at the facility, except that the unsafe condition causing the apprehension of injury of the employee shall be of such nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a bona fide danger of an accident, injury, or serious impairment of health, resulting from the unsafe condition,

except that, before refusing to participate under this paragraph, the employee shall have sought from the employer of the employee, and been unable to obtain, correction of the violation or unsafe condition.";

(2) in subsection (b)(1)—

(A) by striking "Any" and inserting "(A) Except as provided in subparagraph (B), any"; and

(B) by adding at the end the following new subparagraph:

"(B) Any employee of a DOE nuclear facility contractor who believes the employee has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within 180 days after such alleged violation occurs, file (or have filed by any person on behalf of the employee) a complaint with the Secretary of Labor alleging such discharge or discrimination. On receipt of such a complaint, the Secretary of Labor shall notify the person named in the complaint, the Secretary of Energy, and any Federal agency that may have jurisdiction over the activity, policy, or practice alleged in the complaint of the filing of the complaint.";

(3) in subsection (b)(2)—

(A) in subparagraph (A)—

(i) in the first sentence, by striking "paragraph (1)" and inserting "paragraph (1)(A)"; and

(ii) in the third sentence, by striking "subparagraph (B)" and inserting "subparagraph (C)";

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following new subparagraph:

"(B)(i) Within 60 days of receipt of a complaint filed under paragraph (1)(B), the Secretary of Labor shall conduct an investigation, determine whether there is reasonable cause to believe that the complaint has merit, and notify the complainant and the person alleged to have committed a violation of this section of the findings of the Secretary.

"(ii) If the Secretary of Labor has concluded that there is reasonable cause to believe that a violation has occurred, the Secretary shall accompany the findings of the Secretary with a preliminary order providing the relief prescribed by subparagraph (C).

"(iii) Within 30 days after issuance of the preliminary order, the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record, except that the filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order.

"(iv) Such hearing shall be expeditiously conducted.

"(v) If a hearing is not timely requested, the preliminary order shall be deemed a final order which is not subject to judicial review.

"(vi) On the conclusion of such hearing, the Secretary of Labor shall issue a final order within 120 days after the conclusion of such hearing.

"(vii) In the interim, such proceedings may be terminated at any time on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

"(viii) In all hearings conducted pursuant to this subparagraph, once the complainant has established by a preponderance of the evidence that an activity protected by subsection (a) was a contributing factor in the alleged discharge or discrimination, the burden of proof shall be on the respondent to prove by clear and convincing evidence that the alleged discharge or discrimination would have occurred even if the employee had not engaged in activities protected by subsection (a).";

(4) in subsection (c)(1), by inserting after the third sentence the following new sentence: "In the case of the review of an order issued under subsection (b)(2)(B), such review shall be heard and decided expeditiously.";

(5) in subsection (g), by striking "requirement of this Act or of the Atomic Energy Act of 1954, as amended" and inserting "provision of law referred to in subsection (a)(1)"; and

(6) by adding at the end the following new subsection:

"(h) For purpose of any hearing or investigation provided for in this section, the provisions of sections 9 and 10 (relating to attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act (15 U.S.C. 49 and 50) shall be applicable to the jurisdiction, powers, and duties of the Secretary of Labor.".

(b) REDESIGNATION.—Section 210 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851) (as added by section 10 of Public Law 95-601 and amended by subsection (a) of this section) is redesignated as section 211 of the Energy Reorganization Act of 1974.

SEC. 11. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall become effective on the date of enactment of this Act.●

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By Mr. SIMON:

S. 1959. A bill to authorize the establishment of the National African-American Heritage Memorial Museum within the Smithsonian Institution; to the Committee on Rules and Administration.

NATIONAL AFRICAN-AMERICAN HERITAGE MEMORIAL MUSEUM

● Mr. SIMON. Mr. President, I am pleased to introduce a bill that would authorize the establishment of the National African-American Heritage Memorial Museum within the Smithsonian Institution. It is an honor to be associated with legislation that will inspire and educate people of the United States and the world regarding the cultural legacy of African-Americans.

Mr. President, part of America's strength is America's diversity. We are truly one out of many. The rich heritage of the United States is a tightly woven fabric formed by the contributions of its diverse population. A fundamental thread of the American fabric is the history, culture, and art of African-Americans.

The Nation's Capital is home to the most comprehensive collection of American art and culture in the world. But the collection is far from complete. African-Americans make up 12 percent of the population in the United States, yet they do not have a significant space in a national permanent collection. There are many private museums, such as the DuSable Museum in Chicago and the Dunham Fund for the Research and Development of Cultural Arts in East St. Louis, that are dedicated to the presentation of African-American heritage. These museums contribute greatly to their communities. I believe, however, that we should establish a truly national African-American Heritage Museum—a museum that can stand as a national and international center for displaying and preserving African-American art, history, and culture.

Mr. President, when we understand our history, we can better understand ourselves. The history of the United States has been a history of struggle and conflict fueled by the belief in individuals freedoms. The heritage of African-Americans reflects a unique yet vitally important account of what is so fundamentally American, the pursuit of the freedoms afforded to all in a democracy.

Author James Baldwin writes about the African-American experience in his renowned book, "A Fire Next Time." Baldwin comments about the place of African-American in the American experience. He writes:

I am proud of these people not because of their color but because of their intelligence and their spiritual force and their beauty. The country should be proud of them too, but alas, not many people in this country even know of their existence. And the reason for this ignorance is that a knowledge of the role these people play—and played—in American life would reveal more about Americans than Americans wish to know.

Baldwin continues:

But in our time, as in every time, the impossible is the least that one can demand—and one is after all, emboldened by the spectacle of human history in general, and American Negro history in particular, for it testifies to nothing less than perpetual achievement of the impossible.

The message of James Baldwin, which confirms the African experience as a truly American experience, must be passed along to this Nation's schoolchildren. Museums are educational tools of immense power. Today we have 40 million schoolchildren, 16.2 percent of whom are African-American. These children need to learn about their ancestors' role in shaping this Nation just as all children and all Americans need to learn about the contributions of African-Americans.

I believe there is another issue at stake here, and that is the issue of communication. The diverse population of American society can communicate with one another, not just through words, but through the common experience of being American. Museums reflect the cultural content people share. Museums also represent the heritage of one country to another. Of the nearly 30 million visitors to the Smithsonian every year, many are from other countries. These travelers use museums to gain cultural impressions and information. If we are to preserve and present the American heritage to all Americans and to the world, as I think we should, we must include as part of any repository, the history, art, and contributions of African-Americans.

Mr. President, we cannot leave the tapestry of the American experience and history unfinished and incomplete—we should include the contributions made by all Americans. We should have a National African-American Heritage Memorial Museum.

Mr. President, I ask that unanimous consent that the full text of the bill be inserted into the RECORD following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1959

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "National African-American Heritage Memorial Museum Act".

SEC. 2. FINDINGS.

(a) FINDINGS.—The Congress finds that—

(1) the presentation and preservation of African-American history and culture with the National Park System and other Federal agencies is inadequate;

(2) the inadequate presentation and preservation of African-American history and culture seriously restricts the ability of the people of the United States, particularly African-Americans, to understand themselves and their past;

(3) African-American history includes the varied experiences of Africans in slavery and freedom and the continued struggles for full recognition of citizenship and treatment with human dignity;

(4) in enacting Public Law 99-511, the Congress encouraged support for the establishment of a commemorative structure within the National Park System, or on other Federal lands, dedicated to the promotion of understanding, knowledge, opportunity, and equality for all people.

(5) the establishment of a national memorial museum and the conducting of interpretive and educational programs, dedicated to the heritage and culture of African-Americans, will help to inspire and educate the people of the United States regarding the cultural legacy of African-Americans and the contributions made by African-Americans to the society of the United States; and

(6) the Smithsonian Institution employs thousands of individuals and operates 14 museums and galleries and 5 major research facilities, but only 1 of its institutions is devoted solely to African-American art or history.

SEC. 3. ESTABLISHMENT OF THE NATIONAL AFRICAN-AMERICAN HERITAGE MEMORIAL MUSEUM.

There is established within the Smithsonian Institution a Memorial Museum which shall be known as the "National African-American Heritage Memorial Museum". The purposes of the Memorial Museum are to provide—

(1) a center for scholarship relating to African-American history and culture;

(2) a location for permanent and temporary exhibits documenting African-American history and culture;

(3) a location for the collection and study of artifacts and documents relating to African-American history and culture; and

(4) a location for various special events relating to African-American history and culture.

SEC. 4. CONSTRUCTION OF THE NATIONAL AFRICAN-AMERICAN HERITAGE MEMORIAL MUSEUM.

(a) CONSTRUCTION.—The Board of Regents shall provide for the design and construction of a building to be known as the National African-American Heritage Memorial Museum. The design and construction of the building shall be carried out as follows:

(1) PREPARATION OF ARCHITECTURAL PLANS.—The Board of Regents shall provide for the preparation of architectural and engineering designs, plans, and specifications. The Memorial Museum shall be at least 377,000 square feet in size. The designs, plans and specifications shall be approved by the National Capital Planning Commission before construction begins.

(2) SITE.—The Memorial Museum shall be constructed and permanently located in Washington, District of Columbia. The specific site of the Memorial Museum shall be approved by the National Capital Planning Commission and shall be chosen from among available lands of the National Park Service on the Mall in Washington, District of Columbia, and any other available Federal lands in close proximity to the Mall in Washington, District of Columbia.

SEC. 5. BOARD OF TRUSTEES OF MEMORIAL MUSEUM.

(a) ESTABLISHMENT AND APPOINTMENT.—There is established in the Smithsonian Institution the Board of Trustees of the National African-American Heritage Memorial Museum. The Board of Trustees shall be composed of 19 members, appointed by the President, as follows:

(1) The Secretary of the Smithsonian Institution.

(2) An Assistant Secretary of the Smithsonian Institution designated by the Board of Regents.

(3) 3 individuals from a list of 6 individuals recommended by the Speaker of the House of Representatives who are knowledgable or active with respect to African-American history or culture.

(4) 3 individuals from a list of 6 individuals recommended by the President pro tempore of the Senate who are knowledgable or active with respect to African-American history or culture.

(5) 7 individuals who are members of the National Council for Education and Economic Development, Incorporated.

(6) 4 individuals who are recommended by the Board of the African-American Museum Association.

(b) TERMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), members of the Board of Trustees shall be appointed for terms of 4 years. Members may be reappointed.

(2) STAGGERED TERMS.—The terms of 7 of the members initially appointed under paragraphs (3) through (5) of subsection (a), as designated by the President at the time of appointment, shall expire at the end of the 2-year period beginning on the day of appointment.

(c) VACANCIES.—A vacancy on the Board of Trustees shall not affect its powers and shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of the term.

(d) NONCOMPENSATION.—Except as provided in subsection (e), members of the Board of Trustees shall serve without pay.

(e) PER DIEM.—While away from their homes or regular places of business in performance of the duties of the Board of Trustees, members of the Board of Trustees shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(f) CHAIRPERSON.—The Board of Trustees shall elect a chairperson by a majority of the members of the Board.

(g) BYLAWS.—The Board of Trustees may adopt any bylaws and regulations necessary to carry out its duties under this Act.

(h) MEETINGS.—The Board of Trustees shall meet at the call of the chairperson or upon the written request of a majority of its members, but shall meet not less than 2 times each year.

(i) QUORUM.—A majority of the Board of Trustees shall constitute a quorum for purposes of conducting business, but a lesser number may receive information on behalf of the Board of Trustees.

SEC. 6. DUTIES OF THE BOARD OF TRUSTEES OF THE MEMORIAL MUSEUM.

(a) IN GENERAL.—The Board of Trustees shall—

(1) recommend annual operating budgets for the Memorial Museum;

(2) subject to the general policy established by the Board of Regents, have the sole authority to—

(A) loan, exchange, sell, or otherwise dispose of any part of the collections of the Memorial Museum, but only if the funds generated by such disposition are used for additions to the collections of the Memorial Museum or for additions to the endowment of the Memorial Museum,

(B) subject to the availability of funds and the provisions of annual budgets of the Memorial Museum, purchase, accept, borrow, or otherwise acquire artifacts and other property for addition to the collections of the Memorial Museum, and

(C) establish policy with respect to the utilization of the collections of the Memorial Museum;

(3) subject to the general policy established by the Board of Regents, have authority to—

(A) provide for restoration, preservation, and maintenance of the collections of the Memorial Museum,

(B) solicit funds for the Memorial Museum and determine the purposes to which those funds shall be applied,

(C) approve expenditures from the endowment of the Memorial Museum, or of income generated from the endowment, for any purpose of the Memorial Museum,

(D) consult with and advise the Director of the Memorial Museum on annual budgets to be recommended to the Board of Regents and otherwise consult with, advise, and support the Director in the operation of the Memorial Museum,

(E) provide for the exhibition of African-American objects and artifacts from the collections of the Memorial Museum in museums and institutions affiliated with the Memorial Museum,

(F) conduct programs of research and evaluation with respect to the collections of the Memorial Museum,

(G) conduct educational programs with respect to the collections of the Memorial Museum, and

(H) develop and implement policy as to the method of display of the African-American objects and artifacts in the collections of the Memorial Museum;

(4) adopt bylaws to carry out the functions of the Board of Trustees;

(5) report annually to the Board of Regents on the acquisition, disposition, and display of African-American objects and artifacts and on other appropriate matters; and

(6) submit an annual report to the Congress which includes the proceedings of the Board of Trustees and a full account of the financial operations of the Board of Trustees for the preceding fiscal year.

(b) EDUCATION AND PRESERVATION PROGRAMS.—The Board of Trustees of the National African-American Heritage Memorial Museum shall, in consultation with the National Council for Education and Economic Development, Incorporated, establish programs through the Memorial Museum and other appropriate organizations and institutions (including historically black colleges and universities), for the following:

(1) EDUCATION AND INTERPRETATION.—Education and promotion of understanding regarding the life and culture of African-Americans and the role of African-Americans in the history of the United States.

(2) RESEARCH REGARDING AFRICAN-AMERICANS.—Research and scholarship relating to the history and culture of African-Americans.

(3) RESEARCH OF HOLDINGS.—Research and scholarship relating to the property and holdings of the Memorial Museum.

(4) EXHIBITIONS.—The exhibition and circulation of materials relating to the heritage and culture of African-Americans.

(c) ADVISORY COMMITTEE.—The Board of Trustees may provide for a committee to advise the Board of Trustees on matters relating to the Memorial Museum, as follows:

(1) QUALIFICATIONS.—A committee under this subsection shall be composed of individuals who are recognized in their professions for their knowledge of, experience with, or interest in aspects of African-American history or culture.

(2) NON-FEDERAL STATUS AND EXPENSES.—Members of a committee under this subsection shall not be considered officers or employees of the Federal Government by reason of their service on the committee. Members of the committee shall serve without compensation, but may receive reimbursement for travel, subsistence, and other expenses as determined by the Board.

SEC. 7. DIRECTOR AND STAFF.

The Secretary of the Smithsonian Institution, with the advice and consent of the Board of Trustees, shall appoint and fix the compensation and duties of a Director, Assistant Director, Secretary, and Chief Curator of the Memorial Museum and any other officers and employees necessary for the operation of the Memorial Museum and carrying out the duties of the Board. The Director, Assistant Director, Secretary, and Chief Curator shall be qualified through experience and training to perform the duties of their offices.

SEC. 8. PROGRAMS AND OPERATION OF MEMORIAL MUSEUM.

(a) NATIONAL TRUST FOR AFRICAN-AMERICAN MUSEUMS.—The Board of Regents, in consultation with the Board of Trustees, shall establish an agency in the Memorial Museum to be known as the National Trust for African-American Museums. The purpose of the Trust shall be to collect and acquire items relating to African-American history and culture, develop programs to enhance the care and management of collections of the Trust and other museums, train and develop professionals and paraprofessionals for African-American museums, and provide information and education for the public regarding the contributions of African-Americans to the history of the United States.

(b) AFFILIATE PROGRAM.—

(1) ESTABLISHMENT.—The Board of Regents shall, in consultation with the Board of Trustees, and with the ongoing assistance and participation of the African-American Museum Association, sponsor, coordinate, and administer programs for museums throughout the United States relating to African-American heritage and culture, and shall establish a program by which museums and institutions may become affiliated with the National African-American Heritage Memorial Museum for the purpose of the following:

(A) PROGRAM PARTICIPATION.—Participation in programs under subsection (a).

(B) EXCHANGE.—Exchange of Knowledge, materials, and personnel and exhibition of the holdings of the Memorial Museum in locations other than the Memorial Museum.

(C) COORDINATION OF ACTIVITIES.—Coordination of other activities of the affiliated museums and institutions to educate the people of the United States regarding the culture and heritage of African-Americans.

(2) USE OF NAME OF NATIONAL MUSEUM.—The Board of Regents shall determine the circumstances under which an institution or a museum affiliated with the National African-American Heritage Memorial Museum under this subsection may use the name of the Memorial Museum in connection with the affiliated institution or museum.

(3) SCHOMBURG CENTER FOR STUDY OF AFRO-AMERICAN LIFE AND HISTORY.—The Board of Regents, in consultation with the Board of Trustees, may make agreements and coordinate programs for cooperative research and other activities to promote the purpose of this Act with the Schomburg Center for Study of African-American Life and History in New York and other similar entities. The Schomburg Center may become an affiliated institution in the manner provided under this subsection.

SEC. 9. AUTHORITY OF NATIONAL COUNCIL FOR EDUCATION AND ECONOMIC DEVELOPMENT.

(a) MANAGEMENT OF MEMORIAL MUSEUM FUNDS BEFORE APPOINTMENT OF BOARD.—Before the appointment of the Board of Trustees of the National African-American Heritage Memorial Museum under section 5(a), the National Council for Education and Economic Development, Incorporated, may solicit, accept, hold, and administer gifts, bequests, and devises of money, securities, and other property of any character for the benefit of the Memorial Museum. Unless otherwise restricted by the terms of the gift, bequest or devise, the Council is authorized to sell, exchange, and invest the money, securities, and other property for the benefit of the Memorial Museum, as the Council determines appropriate. Any income shall be deposited when collected, in the manner the Council determines appropriate and may be expended by the Council to further the purposes of this Act and for the liquidation of any debt incurred in furthering such purposes.

(b) TRANSFER OF FUNDS TO BOARD.—As soon as practicable after the appointment of the Board of Trustees under section 5(a), the Council shall transfer to the Board of Trustees any money, securities, and other property held or deposited by the Council, and any earnings under subsection (a) on such property. The Board of Trustees shall use the property to further the purposes of this Act.

(c) REIMBURSEMENT OF DEBT.—The Board of Trustees may reimburse the Council for any debts incurred by the Council under this Act.

(d) REQUESTED ASSISTANCE.—The Board of Trustees may request the Council to provide the following assistance to the Board of Trustees:

(1) ADVICE.—Advice with regard to the Memorial Museum.

(2) FUNDRAISING.—Assistance in soliciting donations for the benefit of the Memorial Museum and holding such donations until they can be transferred to the Board of Trustees.

SEC. 10. AUDITS BY GAO.

The General Accounting Office shall review and audit annually the accounts of the Smithsonian Institution, the Board of Trustees, and the Council that pertain to the Memorial Museum and shall report to the Congress the findings of the audits, together with any recommendations regarding the ability of the Memorial Museum to fulfill current and future obligations.

SEC. 11. DEFINITIONS.

For purposes of this Act:

(1) The term "Board of Regents" means the Board of Regents of the Smithsonian Institution.

(2) The term "Board of Trustees" means the Board of Trustees of the National African-American Heritage Memorial Museum established in section 5(a).

(3) The term "Council" means the National Council for Education and Economic Development, Incorporated.

(4) The term "Memorial Museum" means the National African-American Heritage Memorial Museum established under section 3.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act, $10,000,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years.●

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By Mr. KERRY:

S. 1961. A bill to amend the Higher Education Act of 1965 to establish a teacher fellowship program for the improvement of teacher education, and for other purposes; to the Committee on Labor and Human Resources.

S. 1962. A bill to amend the Higher Education Act of 1965 to establish a technology fellowship program for the improvement of graduate instruction in science, technology, and engineering, and for other purposes; to the Committee on Labor and Human Resources.

TEACHER FELLOWSHIP ACT AND SCIENCE AND TECHNOLOGY FELLOWSHIP ACT

Mr. KERRY. Mr. President, today I rise to introduce two bills designed to encourage our best undergraduate and graduate students to enter the teaching profession. Our educational system makes a vital contribution to our society and our economy. Our schools educate our workers, our citizens, our immigrants, our disadvantaged. Our schools can only be as good as our teachers. We must do all that we can to ensure that our teachers are the very best.

Conflicting pressures on the schools, combined with limited resources, has placed a tremendous set of demands on our teachers. Our children must be educated to be good citizens so that we can function as a society. Our schools provide opportunity for the disadvantaged to break the cycle of poverty. All too often, schools and teachers are asked to provide a refuge from drug and crime plagued streets and disintegrating families. Schools teach new Americans our history and our language.

To compete successfully in an increasingly competitive world marketplace, our children must be educated and trained so that they will be able to adapt to rapidly changing technologies. Improvements in our education system must be a key ingredient in our economic competitiveness strategy.

All too often, the skills our students learn do not match the skills required by the workplace. Lack of preparation is not just a problem for employers who have growing difficulty finding qualified employees. It is a tragedy for our young people and a national disgrace; illiteracy and a lack of learning skills all too often mean a life of dead end jobs with little security. It is a threat to our Nation's economic security and our society; millions of poorly educated adults lower our economic productivity and ability to compete internationally.

Before young people enter the work force, they must be challenged in school to be the best. But for our students to be the best, they must be taught by teachers who are the best. Many of our teachers are and we must reward them. Good teachers inspire their students, give them confidence, and instill curiosity and a lifelong love of learning.

But we must work to ensure that all of our teachers are the best. Today, we face a serious shortage of teachers, especially in the sciences. Clearly, we must make teaching a more attractive career. We must give teachers the respect due them as professionals.

Instead of honoring teachers and valuing them, our society has sent messages that teachers are not important. We must change how we think of the teaching profession if we are to seriously address the problems in our schools.

The problem of shortages is only growing worse. Too many experienced teachers are leaving the profession—they retire, burn out, or take jobs that pay more. Not enough students choose to become teachers to fill the gaps. Students who consider teaching are discouraged from entering the career by friends and family.

We will see a growing problem in the 1990's; there will be shortages across-the-board just as there are in science education and in other areas.

Obviously, one of the most important decisions an individual makes is his or her decision to enter a career or profession. As a nation and a society, we must revalue teaching so that the decision to enter the profession is more attractive. We simply cannot expect to teach an increasingly more difficult-to-teach student body and an increasingly sophisticated curriculum, unless we can attract many more of the highest quality and best trained graduates of our colleges and universities to teaching.

The legislation I am introducing today creates fellowships to encourage undergraduate and graduate students to enter teaching. Financial incentives are absolutely necessary. When I ask a group of college students, "Who plans to enter teaching?" rarely do I see a hand raised in response. It is no surprise that we face a severe shortage of teachers. How, in today's society, can we ask math or science majors and graduate students to teach for a salary of $18,000 or $20,000 when within months they can earn two or three times that in the private sector? Financial incentives are only one part of the solution, but they are an important one.

The Teaching Fellowship Act of 1989 will encourage students to become teachers in public elementary and secondary schools by establishing a fellowship program for juniors and seniors in college who maintain at least a B average who choose to enter the teaching profession. The amount of the fellowships would equal the total expense of attending a public university but not less than $7,500 a year. Fellows will be required to participate in preservice training while in school and in-service training during the first 2-years they are teaching.

In return for each year of fellowship support, the student would be required to teach in a public elementary or secondary school for 2 years. If the student, upon graduation, does not enter the teaching profession, he or she will be responsible for paying back the fellowship, plus market interest. If the student teaches for less than the time for which he or she is committed, the amount of the fellowship and penalty to be paid back will decrease accordingly.

Teacher fellows would be awarded to students who will pursue teaching careers in critical areas. These areas would be defined by State partnerships comprised of representatives of the business community, local school officials, teacher organizations, universities, and parents. The critical areas should include mathematics, science, language, special education, and education of the handicapped. The partnership would award fellowships to students showing strong commitment to teaching in primary and secondary schools and good academic records.

Our best teachers must be recognized—by their peers, by their communities. The Teacher Fellowship Act will create "excellence in teaching" fellowships to honor teachers with at least 7 years of experience in teaching in critical areas. The amount of the fellowship will equal the teacher's salary for 1 year and allow the teacher to take sabbaticals to pursue interests that will enhance his or her teaching. Many States, including Massachusetts, have established similar sabbatical programs. I feel they make an important contribution to the further development of teaching.

Higher education is also in the midst of the crisis in the teaching profession. Our colleges and universities have tremendous difficulty recruiting and retaining young faculty in the sciences. The Science and Technology Fellowship Act of 1989 encourages graduate students in the sciences to teach in public institutions of higher education. It also works through a partnership which would provide fellowships to graduate students in science, engineering, or technology who choose to teach in colleges and universities. These fellows would also be required to teach 2 years for each year of fellowship assistance.

These two bills will help our effort to make teaching a more attractive career choice. I hope to see these bills enacted next year. The growing crisis in our schools and in teaching requires quick action; our students and our teachers deserve nothing less.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1961

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION. 1. This Act may be cited as the "Teacher Fellowship Act of 1989".

PROGRAM AUTHORIZED

SEC. 2. Title V of the Higher Education Act of 1965 is amended by inserting at the end thereof the following new part:

"Part F—Teacher Fellowships

"STATEMENT OF PURPOSE

"SEC. 581. The purposes of this part are to provide—

"(1) financial assistance to State teacher fellowship partnerships for the establishment of teacher fellowship programs which award fellowships to juniors and seniors in college, and graduate students, who agree to teach in the Nations' public elementary and secondary schools; and

(2) recognition for excellent teachers.

"DEFINITIONS

"SEC. 582. As used in this part—

"(1) the term 'critical area' means the geographic or substantive area of study which the State, in consultation with the business community, local school officials, teacher organizations, universities and parents, determines to be a critical area, such as math-

ematics, science, languages, special education, and education of the handicapped;

"(2) the term 'State teacher fellowship partnership' means—

"(A) the State agency on higher education; and

"(B) private business concerns and industry groups located within the State; and

"(3) the term 'State agency for higher education' means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

"PROGRAM AUTHORIZED

"SEC. 583. (a) IN GENERAL.—The Secretary is authorized, in accordance with the provisions of this part, to make grants to State teacher fellowship partnerships to carry out the fellowship program authorized by this part in order to improve teacher education in critical areas.

"(b) PARTNERSHIP.—Each State receiving an allotment pursuant to section 584 shall form one teacher fellowship partnership to carry out the provisions of this subpart.

"(c) AMOUNT.—Each State teacher fellowship partnership receiving a grant under this part shall pay to individuals awarded teacher fellowships under this part the total cost of attending a public institution of higher education, consistent with prevailing practices under comparable federally supported program.

"(d) MINIMUM AMOUNT.—No fellowship paid to a single recipient shall be less than $7,500 in any year.

"(e) LIMITATION.—Teacher fellowships shall be awarded for only one academic year of study and shall be renewable for a period not to exceed 2 years of undergraduate study and 2 years of graduate study.

"(f) CITIZENSHIP.—Each recipient of a teacher fellowship under this part shall be a citizen of the United States.

"(g) FELLOWSHIP PORTABILITY.—Each recipient shall be entitled to use the teacher fellowship in an undergraduate or graduate program at any accredited institution of higher education in which the recipient may decide to enroll.

"(h) SPECIAL RULE.—Students receiving teacher fellowships under this part shall be known as 'teaching scholars'.

"ALLOTMENT TO STATES

"SEC. 584. (a) PER CAPITA ALLOCATION.—From the sums appropriated pursuant to the authority of section 589 and the sums available under section 588(b) for any fiscal year, the Secretary shall allocate to each State an amount which bears the same ratio to such sums as the number of students enrolled in institutions of higher education in the State in the fiscal year preceding the year in which the determination is made bears to all such students in all States.

"(b) REALLOTMENT.—The amount of any State's allotment under subsection (a) for any fiscal year to carry out this part which the Secretary determines will not be required for that fiscal year to carry out this part shall be available for reallotment from time to time, on such dates during that year as the Secretary may fix, to other States in proportion to the original allotments to those States under subsection (a) for that year but with such proportionate amount for any of those other States being reduced to the extent it exceeds the sum the Secretary estimates that State needs and will be able to use for that year; and the total of those reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amounts reallotted to a State under this subsection during a year shall be deemed a part of its allotment under subsection (a) for that year.

"(c) USE OF MOST RECENT SATISFACTORY DATA.—For the purpose of this section, the Secretary shall use the most recent satisfactory data available.

"STATE APPLICATIONS

"SEC. 585. (a) APPLICATION REQUIRED.—Each State teacher fellowship partnership desiring to receive assistance under this part shall prepare and submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(b) CONTENTS OF APPLICATION.—Each such application shall—

"(1) describe the teacher fellowship program to be conducted by the State teacher fellowship partnership in the State, including the selection procedures which the partnership establishes consistent with section 586;

"(2) describe the provisions of any agreement entered into by the State teacher fellowship partnership which will encourage the participation of private business concerns and industry groups in meeting the non-Federal share of the program for which assistance is sought;

"(3) provide assurances that in carrying out the fellowship program authorized by this part the State teacher fellowship partnership will pay from non-Federal sources the non-Federal share of the cost of the program and provide assurances that—

"(A) at least 33 percent of the funds for each such program will be furnished by the private business concerns and industry groups participating in the program; and

"(B) at least 33 percent of the funds will be supplied by—

"(i) the State;

"(ii) the institutions of higher education participating in the program; and

"(iii) other parties participating in the program;

"(4) provide assurances that each recipient of a fellowship under this part will enter into an agreement with the State teacher fellowship partnership (or a State agency designated by the teacher fellowship partnership) pursuant to the provisions of section 586(d);

"(5) provide for appeal procedures under which a recipient may appeal any determination of noncompliance with any provision under this part; and

"(6) provide assurances that the State teacher fellowship partnership will assure that efforts are made to attract students from all backgrounds to teach in the program assisted under this part.

"FELLOWSHIPS

"SEC. 586. (a) SELECTION PROCEDURES.—(1) Each State teacher fellowship partnership shall establish selection procedures designed to select individuals from the State to receive teacher fellowships.

"(2) Teacher fellowships awarded under this part shall be awarded without regard to sex, race, handicapping condition, creed, or economic background.

"(b) CRITERIA.—Each State teacher fellowship partnership shall select teacher scholars on the basis of the student's commitment to teaching and academic record.

"(c) ELIGIBILITY.—(1) A student awarded a teacher fellowship under the provisions of this part shall continue to receive the payments provided in this part only during such periods as the State teacher fellowship partnership finds that the student is—

"(A) maintaining a 3.0 grade point average; and

"(B) devoting full time to study or research designed to prepare the student for a career of teaching in public elementary and secondary schools; and

"(C) not otherwise engaging in gainful employment other than employment approved by the State teacher fellowship partnership.

"(2) The amount of any payment to an individual engaged in such gainful employment as described in paragraph (1)(C) shall be appropriately reduced pursuant to regulation.

(d) STUDENT AGREEMENT.—Each student awarded a fellowship under the provisions of this part shall enter into an agreement with the State teacher fellowship partnership. Each such agreement shall—

(1) require the student to teach in a public elementary or secondary school for a period of not less than 2 years for each year a teacher fellowship was awarded to each student;

(2) contain assurances that the student will repay all of the teacher fellowship awarded plus interest in the event that the conditions of paragraph (1) are not complied with, for reasons beyond the control of the student; and

(3) contain assurances that the student will participate in Federal, State or local pre-service and in-service teacher training programs—

(A) while receiving a teacher fellowship; and

(B) during the first 2 years of teaching; and

(4) fully disclose the terms and conditions under which the teacher fellowship under this part is provided and under which repayment may be required if the conditions of paragraph (2) are not met.

"(e) REPORTS.—The State teacher fellowship partnership is authorized to require reports containing such information, in such form and to be filed at such times as it determines necessary, from any individual awarded a fellowship under the provisions of this subpart. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education approved by the State teacher fellowship partnership, stating that such individual is making satisfactory progress in, and is devoting at least one-half of the full-time academic workload to, the program for which the fellowship was awarded.

"(f) LIMITATIONS.—No teacher fellowship shall be awarded under this part for study at a school or department of divinity.

"(g) INTERRUPTIONS OF STUDY.—The institution of higher education may allow a teacher fellowship recipient to interrupt periods of study for a period not to exceed 12 months for the purpose of work, travel, or independent study away from the campus, if such independent study is supportive of the fellowship recipient's academic program, and shall continue payments for those 12-month periods during which the student is pursuing travel or independent study supportive of the recipient's academic program.

"FELLOWSHIP REPAYMENT PROVISIONS

"SEC. 587. (a) IN GENERAL.—(1) Each teacher fellowship recipient found to be in noncompliance with the provisions of this part shall be required to repay to the revolving fund established by the Secretary under

subsection (b), over a period of not more than 7 years—

"(A) the total amount of fellowship awarded under this part plus interest not lower than the rate of interest of 91-day Treasury bills auctioned for the 3-month period for which the determination of noncompliance is made; and

"(B) where applicable, reasonable collection fees.

"(2) Each recipient of a teacher fellowship who teaches for less than the period required under section 586(d) shall have the repayment provisions of subsection (a) ratably reduced.

"(3) Each State may waive the repayment provisions of this section for comparable military or national service.

"(4) In carrying out the provisions of this part, the State teacher fellowship partnership may use the exceptions to repayment provisions described in section 558 of this Act.

"(b) REVOLVING FUND.—(1) The Secretary shall establish a revolving fund. The Secretary shall deposit all repayments of teacher fellowships into such revolving fund.

"(2) Sums in the revolving funds shall be available for payments to State teacher partnerships on a fiscal year basis in accordance with the provisions of section 584.

"EXCELLENCE IN TEACHING FELLOWSHIPS

"SEC. 588. (a) IN GENERAL.—Each State receiving an allotment under section 584 may award Excellence in Teaching Fellowships to outstanding teachers who have at least 7 years of teaching experience in critical areas.

"(b) AMOUNT.—The amount of the Excellence-in-Teaching Fellowship awarded under subsection (a) shall be equal to the teachers annual salary for the year preceding the year in which the fellowship is awarded.

"(c) USE OF FUNDS.—Each teacher receiving an Excellence in Teaching Fellowship may use such funds to take a 1-year sabbatical from teaching to—

"(1) work with teachers and students within the State to promote the teaching profession by sharing expertise and experience with such individuals; and

"(2) participate in specialized programs to enhance such teacher's teaching skills.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 589. (a) IN GENERAL.—There are authorized to be appropriated to carry out this part (other than section 588) such sums as may be necessary for the fiscal year 1990 and for each of the four succeeding fiscal years thereafter.

"(b) EXCELLENCE IN TEACHING.—There are authorized to carry out section 588 such sums as may be necessary for the fiscal year 1990 and for each fiscal year thereafter.".

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S. 1962

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Science and Technology Fellowship Act of 1989".

PROGRAM AUTHORIZED

SEC. 2. Title IX of the Higher Education Act of 1965 is amended—

(1) by redesignating part G as part H;

(2) by redesignating section 971 as section 991; and

(3) by inserting after part F the following new part:

"PART G—TECHNOLOGY FELLOWSHIP ASSISTANCE PROGRAM

"STATEMENT OF PURPOSE

"SEC. 971. It is the purpose of this part to provide financial assistance to State programs for the joint participation of institutions of higher education and private business concerns and industry groups under which fellowships will be awarded in the fields of science, engineering, and technology in order to improve graduate education in science, engineering, and technology.

"DEFINITIONS

"SEC. 972. As used in this part—

"(1) the term 'State graduate fellowship partnership' means—

"(A) the State agency on higher education; and

"(B) private business concerns and industry groups located within the State; and

"(2) the term 'State agency on higher education' means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

"PROGRAM AUTHORIZED

"SEC. 973. (a) IN GENERAL.—The Secretary is authorized, in accordance with the provisions of this part, to make grants to State graduate fellowship partnerships to carry out the graduate fellowship program authorized by this part in order to improve graduate education in science, engineering, and technology.

"(b) PARTNERSHIP.—Each State receiving an allotment pursuant to section 974 shall form one graduate fellowship partnership to carry out the provisions of this subpart.

"(c) AMOUNT.—Each State graduate fellowship partnership receiving a grant under this part shall pay to individuals awarded fellowships under this part the total cost of attending a public institution of higher education, consistent with prevailing practices under comparable federally supported programs.

"(d) MINIMUM AMOUNT.—No fellowship paid to a single recipient shall be less than $7,500 in any year.

"(e) LIMITATION.—Fellowships shall be awarded for only one academic year of study and shall be renewable for a period not to exceed 4 years of graduate study.

"(f) CITIZENSHIP.—Each recipient of a graduate fellowship under this part shall be a citizen of the United States .

"(g) FELLOWSHIP PORTABILITY.—Each recipient of a fellowship under this part shall be entitled to use the fellowship in a graduate program in science, engineering, or technology at any accredited institution of higher education in which the recipient may decide to enroll.

"ALLOTMENT TO STATES

"SEC. 974. (a) PER CAPITA ALLOCATION.—From the sums appropriated pursuant to section 977(h) and the sums available under section 977(b) for any fiscal year, the Secretary shall allocate to each State an amount which bears the same ratio to such sums as the number of graduate students enrolled in science, engineering, or technology programs in institutions of higher education in the State in the fiscal year preceding the year in which the determination is made bears to all such students in all States.

"(b) REALLOTMENT.—The amount of any State's allotment under subsection (a) for any fiscal year to carry out this part which the Secretary determines will not be required for that fiscal year to carry out this part shall be available for reallotment from time to time, on such dates during that year as the Secretary may fix, to other States in proportion to the orginal allotments to those States under subsection (a) for that year but with such proportionate amount for any of those other States being reduced to the extent it exceeds the sum the Secretary estimates that State needs and will be able to use for that year; and the total of those reductions shall be similary reallotted among the States whose proportionate amounts were not so reduced. Any amounts reallotted to a State under this subsection during a year shall be deemed a part of its allotment under subsection (a) for that year.

"(c) USE OF MOST RECENT SATISFACTORY DATA.—For the purpose of this section, the Secretary shall use the most recent satisfactory data available.

"STATE APPLICATIONS

"SEC. 975. (a) APPLICATION REQUIRED.—Each State graduate fellowship partnership desiring to receive assistance under this part shall prepare and submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(b) CONTENTS OF APPLICATION.—Each such application shall—

"(1) describe the graduate fellowship program to be conducted by the State graduate fellowship partnership in the State, including the selection procedures which the partnership establishes consistent with section 976;

"(2) describe the provisions of any agreement entered into by the State graudate fellowship partnership which will encourage the participation of private business concerns and industry groups in meeting the non-Federal share of the program for which assistance is sought;

"(3) provide assurances that in carrying out the fellowship program authorized by this part the State graduate fellowship partnership will pay from non-Federal sources the non-Federal share of the cost of the program and provide assurances that—

"(A) at least 33 percent of the funds for each such program will be furnished by the private business concerns and industry groups participating in the program; and

"(B) at least 33 percent of the funds will be supplied by—

"(i) the State;

"(ii) the institutions of higher education participating in the program; and

"(iii) other parties participating in the program;

"(4) provide assurances that each recipient of a fellowship under this part will enter into an agreement with the State graduate fellowship partnership (or a State agency designated by the graduate fellowship partnership) pursuant to the provisions of section 976(d);

"(5) provide for appeal procedures under which a recipient may appeal any determination of noncompliance with any provision under this part; and

"(6) provide assurances that the State graduate fellowship partnership will assure that efforts are made to attract students from all backgrounds to teach in the program assisted under this part.

"FELLOWSHIPS

"SEC. 976. (a) SELECTION PROCEDURES.—(1) Each State graduate fellowship partnership shall establish selection procedures designed

to select individuals from the State to receive fellowships for study in the fields of science, engineering, or technology leading to a graduate degree at institutions of higher education.

"(2) Fellowships awarded under this part shall be awarded without regard to sex, race, handicapping condition, creed, or economic background.

"(b) CRITERIA.—Each State graduate fellowship partnership shall select graduate fellowship recipients on the basis of the student's commitment to teaching and academic record.

"(c) ELIGIBILITY.—(1) A student awarded a graduate fellowship under the provisions of this part shall continue to receive the payments provided in this part only during such periods as the State graduate fellowship partnership finds that the student is—

"(A) maintaining a 3.0 grade point average; and

"(B) devoting full time to study or research in the fields of science, engineering or technology; and

"(C) not otherwise engaging in gainful employment other than employment approved by the State graduate fellowship partnership.

"(2) The amount of any payment to an individual engaged in such gainful employment as described in paragraph (1)(C) shall be appropriately reduced pursuant to regulation.

"(d) STUDENT AGREEMENT.—Each student awarded a fellowship under the provisions of this part shall enter into an agreement with the State graduate fellowship partnership. Each such agreement shall—

"(1) require the student to teach in a public institution of higher education for a period of not less than 2 years for each year a graduate fellowship was awarded to such student;

"(2) contain assurances that the student will repay all of the graduate fellowship awarded plus interest and a penalty in the event that the conditions of paragraph (1) are not complied with, except when such conditions are not complied with for reasons beyond the control of the student; and

"(3) fully disclose the terms and conditions under which the graduate fellowship under this part is provided and under which repayment may be required if the conditions of paragraph (2) are not met.

"(e) REPORTS.—The State graduate fellowship partnership is authorized to require reports containing such information, in such form and to be filed at such times as it determines necessary, from any individual awarded a fellowship under the provisions of this subpart. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education approved by the State graduate fellowship partnership, stating that such individual is making satisfactory progress in, and is devoting at least one-half of the full-time academic workload to, the program for which the fellowship was awarded.

"(f) LIMITATIONS.—(1) No graduate fellowship shall be awarded under this part for study at a school or department of divinity.

"(g) INTERRUPTIONS OF STUDY.—The institution of higher education may allow a graduate fellowship recipient to interrupt periods of study for a period not to exceed 12 months for the purpose of work, travel, or independent study away from the campus, if such independent study is supportive of the fellowship recipient's academic program, and shall continue payments for those 12-month periods during which the student is pursuing travel or independent study supportive of the recipient's academic program.

"FELLOWSHIP REPAYMENT PROVISIONS

"SEC. 977. (a) IN GENERAL.—(1) Each graduate fellowship recipient found to be in noncompliance with the provisions of this part shall be required to repay to the revolving fund established by the Secretary under subsection (b), over a period of not more than 7 years—

"(A) the total amount of fellowship awarded under this part plus interest not lower than the rate of interest of 91-day Treasury bills auctioned for the 3-month period for which the determination of noncompliance is made;

"(B) 50 percent of the total amount calculated under paragraph (1); and

"(C) where applicable, reasonable collection fees.

"(2) Each recipient of a graduate fellowship who teaches for less than the period required under section 976(d) shall have the repayment provisions of subsection (a) ratably reduced.

"(3) Each State may waive the repayment provisions of this section for comparable military or national service.

"(4) In carrying out the provisions of this part, the State graduate fellowship partnership may use the exceptions to repayment provisions described in section 558 of this act.

"(b) REVOLVING FUND.—(1) The Secretary shall establish a revolving fund. The Secretary shall deposit all repayments of graduate fellowships into such revolving fund.

"(2) Sums in the revolving fund shall be available for payments to State graduate fellowship partnerships on a fiscal year basis in accordance with the provisions of section 974.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 3. Section 991 of the Higher Education Act of 1965 (as amended in section 2 of this Act) is further amended by—

(1) redesignating subsection (g) as subsection (h), and

(2) adding after subsection (f) the following new subsection (g):

"(g) PART G..—There are authorized to be appropriated to carry out part G of this title such sums for the fiscal year 1990 and for each of the four succeeding fiscal years as may be necessary.".

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By Mr. WARNER:

S. 1964. A bill to require the President to make an annual report on the National Environmental Strategy of the United States to Congress; to the Committee on Environment and Public Works.

REPORT ON NATIONAL ENVIRONMENTAL STRATEGY

Mr. WARNER. Mr. President, I will be introducing momentarily a bill, and I am going to depart from custom and first acknowledge my profound gratitude to two individuals who have worked with this Senator on this bill.

One, Les Brownlee, who is a senior member of the Senate Armed Services Committee staff. The next, Ms. McMurray, who assists me with my work on the Senate Environment and Public Works Committee.

These individuals have provided a great deal of insight on this particular piece of legislation, and I owe them a considerable debt of gratitude, which I wish to acknowledge before speaking to the bill.

Mr. President, today I plan to introduce legislation which I believe will have a major and positive impact on the Nation's growing interest in preserving our environment for present, as well as future generations.

As a member of the Environment and Public Works Committee, I have had the opportunity to consider many legislative proposals designed to protect the environment.

As the interest in the environment increases—as it should increase across America, and particularly with Members of the Congress—so do the number of legislative proposals coming from the Congress, as well as the executive branch and, indeed, equally important, from the private sector.

In my judgment, it is now time to achieve a greater coordination of the growing number of ideas, and to determine with greater definition exactly who—that is, which agency of the Federal or State government, or both—has the responsibility to enforce the laws and the policies for our environment.

In my view, there is a serious need to require a more structured, disciplined, and coordinated approach to our environment—not just the problems associated with the environment, but let us say to the bright future which we all hope is in store for our environment.

Drawing on the experience I have had in the field of national security, where organization, planning, coordination, and the wise use of limited resources are essential, I have decided to recommend that the Congress consider enactment of a law requiring procedures not dissimilar to those that we apply in the national defense area.

Specifically, several years ago I introduced the National Security Strategy Act, recognizing that at that time we needed to do a better job in formulating and articulating our national security strategy and in balancing our commitments and obligations with the resources we had available.

The executive branch and the Congress eventually accepted this concept, and it was put into law. That law requires that each year, following the budget submission, the President forward to the Congress the "National Security Strategy of the United States."

That report acts as a road map for the Congress as it proceeds to perform its oversight responsibility and, indeed, puts the administration's imprimatur on national security policy in terms of its own policies and priorities for the fiscal year.

I believe the time has come to apply the same serious approach that we have toward national defense to the environment. In my view, just as we

develop a comprehensive national strategy for national security, we should develop a report of equal importance for the Nation's environment. Such an annual report from the President to Congress would better optimize the use of our resources and coordinate more effectively the efforts of all our governmental departments and agencies, together with the several States and the private sector.

Therefore, Mr. President, I am today introducing the National Environmental Strategy Act. Specifically, the act would require the President annually to submit a report to the Congress—contemporaneous with the budget submission to the Congress—describing the administration's strategy for improving the environment, both nationally and internationally.

Under the act, the report would provide an annual update on our plans and strategy to meet the environmental challenges we face today and tomorrow. In addition, formulation and preparation of this strategy described in the report would provide the coordination necessary to optimize the efforts of several governmental departments, agencies, and bureaus involved in these issues. Just as Congress uses the defense report, the environment report would provide guidance to the several committees of the Congress as they perform their annual review of Government policies and programs.

Likewise, the private sector would be better informed as to the status of the programs advanced by the President at the time of the annual budget message.

Mr. President, President Bush should be commended for moving aggressively to take steps within the Federal Government to create, as he puts it, "a new attitude on the environment." What is more, EPA Administrator William K. Reilly has followed the President's lead by moving positively in many areas, including the improvement of international cooperation, to protect the environment.

Although the Federal Government is doing much in the environmental area, in my judgment a more coherent approach for dealing with environmental problems can be attained. The United States needs a national environmental strategy which is long-term, comprehensive, multidimensional, and integrated. Further, the strategy must be drawn in sufficient detail to serve as a basis for congressional budget decisions, executive branch implementation, and public international undertaking and support.

The report called for by the legislation should be sufficiently detailed to assist the Congress in allocating funds to support the environment-related policies, plans, and programs of our Government. It should include a comprehensive discussion of national and global environmental problems, as well as a comprehensive description and assessment of programs of all U.S. departments and agencies responsible for such issues.

This one document will provide a single source of current and future plans. The U.S. national environmental strategy clearly needs to be integrated with the other policies, programs, plans, and activities of the Federal and State Governments. Accordingly, the report required by this legislation would also provide details on how the President plans to coordinate the overall Nation's environmental strategy with the science and technology, technology transfer, and national security strategist of the United States.

Moreover, the U.S. national environmental strategy must be integrated as much as possible with the environment-related policies, strategies, plans, and forms of foreign nations and international bodies.

I urge my colleagues to support this legislation. There is so much for each of us to do to protect our environment. A national environmental strategy for the United States is one more essential step in the right direction. I urge my colleagues to comment on this proposal, and further, I urge the private sector to comment on this bill in the hopes that it can be strengthened prior to its consideration by the Committee on Environment and Public Works, a committee on which I am privileged to serve.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1964

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. NATIONAL ENVIRONMENTAL STRATEGY REPORT.

(a) Each year, on the date on which the President delivers his budget to Congress, the President shall transmit to Congress a detailed and comprehensive written report on the National Environmental Strategy of the United States.

(b) The report referred to in subsection (a) shall be sufficiently detailed to assist Congress in allocating funds to support all of the environment-related policies, plans, and programs of the United States Government, and specifically shall include—

(1) a comprehensive discussion of national and global environmental problems, including but not limited to: indoor and outdoor air pollution, water pollution, atmospheric changes, stratospheric ozone depletion, damage to terrestrial systems, deforestation, regulation of pesticides and toxic substances, solid and hazardous waste management, ecosystem protection (wetlands, estuaries, groundwater, and the sea), overpopulation, preservation of animal and plant species, and soil erosion;

(2) a comprehensive description and assessment of the policies and programs of all departments and agencies of the United States Government responsible for issues listed in subparagraph (1). The description and assessment shall include a discussion of—

(A) the long-term objectives of such policies and programs;

(B) existing and proposed funding levels;

(C) the impact of each policy and program on pollution prevention, emergency preparedness and response, risk assessment, land management, and technology transfer; and

(D) the impact of each on relations with other nations, treaties, membership in international organizations, and funding of programs for global environmental protection;

(3) a description and assessment of the integration and coordination of policies, plans, and environmental programs of the United States Government with—

(A) the other policies and programs of the United States Government;

(B) the environmental policies and programs of the 50 State governments, the District of Columbia, the territories of the United States and all metropolitan areas in the United States with a population greater than one million inhabitants;

(C) the environmental policies and programs of major national and international nonprofit conservation organizations;

(4) a description and assessment of all efforts by the United States Government to effectively integrate its National Environmental Strategy with—

(A) the science and technology strategy of the United States Government, including objectives, priorities, timing, funding details, and expected results of all environmental research and development supported by the United States Government and of all efforts at international cooperation on environmental research and development;

(B) the national energy strategy of the United States Government, including objectives, priorities, timing, funding details, and expected results of all efforts supported by the United States Government aimed at: reducing energy demand, improving energy efficiency and conservation, fuel-switching, using safe nuclear power reactors, employing clean coal technology, promoting renewable energy sources, promoting research and possible use of alternative fuels, promoting biomass research, promoting energy research and development in general, and advancing international energy cooperation;

(C) the national environmental education strategy of the United States Government, including objectives, priorities, timing, funding details, and expected results of all domestic and international education efforts supported by the United States to improve both public participation and awareness of the need for environmental protection;

(D) the technology transfer strategy of the United States Government, including objectives, priorities, timing, funding details, and expected results of all domestic and international environmental technology transfer efforts to foster collaboration and cooperation between Federal agencies and State and local governments, universities, nonprofit conservation organizations, and private industry in order to improve the competitiveness of the United States in the world marketplace and promote environmental technology advancement; and

(E) the national security strategy of the United States Government, including objectives, priorities, timing, funding, and expected results of the national security programs to be most compatible with requirements

for environmental preservation, while accomplishing missions essential to national security;

(5) an assessment of the overall effectiveness of the National Environmental Strategy of the United States, including a description of—

(A) the organizational processes utilized to provide a body of environmental information and to evaluate the results of environmental programs;

(B) the use of statistical methods;

(C) the degree to which the strategy is long-term, comprehensive, integrated, flexible, and oriented toward achieving broad consensus in both the United States and abroad; and

(D) recommendations on ways in which the Congress can assist the President in making the strategy more effective;

(6) such other pertinent information as may be necessary—

(A) to provide information to Congress on matters relating to the overall National Environmental Strategy of the United States Government; and

(B) to develop national programs coordinated with those formulated on an international level.

(c) The report referred to in subsection (a) shall be transmitted in an unclassified form.

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By Mr. BIDEN (for himself and Mr. REID):

S. 1965. A bill to protect the rights of victims of crime, establish a Federal victims' bill of rights for children, and improve the response of the criminal justice system and related agencies to incidents of child abuse; to the Committee on the Judiciary.

VICTIMS OF CHILD ABUSE ACT

Mr. BIDEN. Mr. President, it is a pleasure, as I introduce this bill, that the Presiding Officer, as a Senator from West Virginia, is someone who had dealt with and knows a great deal about the subject to which I am about to speak, although I have not spoken to him about it. I remember when he was on the Judiciary Committee. One of the matters of great concern to him over his years on the Judiciary Committee was the question of the abuse of children in our society and, in particular, the way in which the criminal justice system and the social services system designed to help those children who are abused sometime inadvertently, unintentionally works against their interests.

Mr. President, I rise today to introduce a very important piece of legislation.

I realize that it is somewhat presumptuous for any Member of the Senate to stand and say, "I rise to introduce a piece of important legislation." It is a self-serving statement to make, and I say that not because I think what I am about to introduce is so important because I offered it, but I say it because the subject matter to which this legislation speaks is of fundamental importance.

This legislation deals with the victims of child abuse. I have titled the bill "The Victims of Child Abuse Act of 1989." It is my sincere hope that this bill will bring justice to the lives of children who have suffered a great injustice, knowing full well that you never can fully heal the wounds. There are always scars that are left.

But there is much more that we could do for the victims, those children, who have suffered the great injustice of physical or sexual abuse at the hands of a stranger, a neighbor, a trusted adult, and in many cases a family member.

Mr. President, about 2 million American children were abused in 1988—2 million American children. No one knows how high that count will go for 1989. Many experts with whom we have spoken, though, believe that there will be a record number of child abuse cases in this coming calendar year. More children may be beaten, assaulted, and sexually abused this year than any year in the history of our country. It is logical to ask why. Why is that happening?

To search for answers to this painful question the Judiciary Committee held some hearings earlier this year and we heard some startling testimony, ghastly stories from several witnesses who painted a picture of an epidemic of child abuse that is weeping this Nation. Though there are several factors which have contributed to this epidemic, one stands out among all others—drugs. Rampant drug use is destroying our families, and battering our children in the process.

Drug-abusing parents are neglectful at best, and more often they are violent and destructive. Worse still, we heard horrible, horrible cases of parents selling their children into prostitution to support their, the parents', drug habit.

Unfortunately, Mr. President, these are not simply 1 or 2 or 5 or 10 isolated instances throughout this country. They are much more than that. It is hard to believe that these sorts of things are happening in America in 1989, and worse still that they are liable to get worse in 1990. But they are happening. America's children, our children—and they are our children—are being subjected to unprecedented horrors. We cannot permit it to go unnoticed, and we cannot permit ourselves to do anything except to try to stop it. We must attempt to stop that abuse. And we must go further still, for right now too many victims of child abuse find themselves the victims of a second tragedy when they wind up in the hands of our judicial and social service systems in the United States.

The trauma of child abuse yields to the trauma of system abuse. This too must be dealt with.

Some of the answers to this crisis of abuse and of an abusive system must come in the reform of the social service system in this country. It is my understanding that the Committee on Labor and Human Resources is working on legislation that would improve increased social services, services desperately needed to help families prevent child abuse in the first instance.

There are other answers, however, that must come from our criminal justice system. These matters are in the jurisdiction of the committee that I have the privilege of chairing, and they are the subject of the legislation that I will introduce very shortly. The bill I am introducing seeks to reform the criminal justice system to achieve three major goals.

First, to swiftly, and I must say harshly, bring to the bar of justice those who abuse children;

Second, we must deal with the victims more gently;

And, third, we must handle child abuse cases much more efficiently.

Mr. President, you have heard and you have yourself—I have heard you say that justice delayed is justice denied. That is no more certain than in the case of an abused child who gets either tangled up in the legal system or the social welfare system of this social service system of this country. We just compound the abuse that that child has already suffered. We do it unintentionally but nonetheless it is done.

The legislation I am introducing, hopefully, will make our children safer from abuse through several very special measures. I would like to list them now, if I may, Mr. President.

The first is that for the first time ever it makes the abuse of a child a Federal crime by creating a new Federal felony of drug-related child abuse. Under my bill anyone who abuses a child while he is using drugs, sells drugs, or for the purpose of buying or dealing in drugs, any such criminal, will face the risk of felony prosecution in the Federal court system.

Second, the bill provides for a 25-year mandatory sentence for habitual child offenders, whether the prior offense was in a State court or a Federal court.

Third, the bill funds programs that coordinate the work of prosecutors and social workers handling child abuse cases—social workers and the prosecutors at the front end of this process—so the child does not fall into that void that does more damage to the child in the process of bringing an offender to the bar of justice.

Such efforts promise to make courts and the court process less painful for the child victim, and prosecutions more successful in bringing the perpetrators of such crimes to justice.

Fourth, the bill guarantees that every child who comes to court will have a special advocate to protect his or her rights; someone to look out for the child, someone to look out for the

child if the system threatens to do more harm than good to the child.

Fifth, the bill finances specialized training for judges who handle child abuse cases, for many judges agree, and have so indicated, that such training is desperately needed, and desperately needed at the present time—again, not because the judges on the bench now are not good women and men, but because in most cases they come from disciplines, although within the law, disciplines that are unfamiliar with the special needs of a child who may be the victim of a serious physical or sexual abuse. And I do not even know why I use those terms differently. They are interchangeable. Sexual abuse is a physical abuse of a child.

But there are special requirements, special knowledge, and special training that judges need to be able to sensibly and sensitively handle those cases so a child does not become more victimized, rather than have their problem solved.

Sixth, and finally, the bill contains two provisions for which I must give, and we all should give, special credit to Senator REID of Nevada. These provisions are based on the child victims' bill he introduced months ago, and are similar to the provisions included in the revised revision of that legislation he reintroduced yesterday. They are modifications to the rules of criminal procedure to protect child victims when they testify as witnesses in court, and a requirement that a criminal background check be conducted on potential Federal employees who work with children.

Let me again credit Senator REID with the outstanding leadership he has provided and shown in this area. As I have said before, two of the seven provisions in my bill were first suggested by Senator REID, and he should be credited with it. I look forward to working with Senator REID as I seek to move this package through the committee early next year and on to the floor as quickly as possible.

In closing, Mr. President, I note that in the next few days, we will be going home and enjoying the holidays with our spouses and our children. For families, these days are warm and restful. But as we enjoy these times, we should not forget the other children, America's children, abused children, in the days ahead when they will only be the victims of more abuse and more violence and exploitation.

Child abuse reaches its peak around the holidays, Mr. President. For most of us, this is a season to be jolly, but for almost 1 million children, a silent night is the very most they can hope for, and what they often pray for.

Mr. President, when we come back next year, I hope that we can take the time to concentrate on this issue and to take concrete steps to make sure that the record-breaking horror of 1989 is replaced by better days for our children in 1990.

Mr. President, I ask unanimous consent that the following analysis of the first section of the bill I introduced today entitled the Victims of Child Abuse Act of 1989 be printed in the Record following my remarks.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

ANALYSIS OF AMENDMENT TO TITLE 18 REGARDING DRUG-RELATED CHILD ABUSE

This section gives the Federal courts jurisdiction over sexual offenses and crimes of violence involving children where the offense was related to a Federal drug violation.

Subsection (a) provides that any person who commits a crime of violence, as defined in section 16 of title 18, is guilty of a class B felony if the victim is a child. A class B felony is punishable by 25 years in prison and/or a $250,000 fine. 18 U.S.C. 3581. This provision does not expand the definition of a crime of violence in any way, but merely provides for more serious punishment when the victim is a child and the jurisdictional requirements are satisfied. The intent of this provision is to provide Federal jurisdiction over such offenses in order to ensure the availability of adequate punishment. In cases where there is already Federal jurisdiction over the offense, the prosecutor would retain the discretion to bring charges under any other statute as appropriate.

Under subsection (b), there would be Federal jurisdiction for an offense described in this section if the offense was committed in furtherance of, during and in relation to, or as part of an attempt to conceal, any violation of the Federal drug laws as set forth in the Controlled Substances Act and the Controlled Substances Import and Export Act. This provision is purely jurisdictional and is not an element of the offense.

The phrase "during and in relation to" is derived from 18 U.S.C. 924(c) and has the same meaning as it does in that statute. The phrase "in furtherance of" is derived from 18 U.S.C. 1952(a)(2) and has the same meaning as it does in that statute.

Subsection (c) contains an instruction to the U.S. Sentencing Commission to establish a mandatory sentencing guideline to ensure that a person who violates this statute after having previously been convicted on two separate occasions of a sex offense or crime of violence against a child receives the maximum sentence.

Mr. REID. Mr. President, I commend Senator BIDEN for recognizing the great need for a Federal law that protects victims of child abuse. I am sure that all children, their parents, child advocacy groups, and victims' rights groups join with me in thanking you for taking a leadership role on this issue. I look forward to working with you to bring our colleagues' attention and support to this legislation.

My interest in providing in-court protections for child victims began a few years ago, when I learned that the Justice Department had found that 90 percent of all child abuse cases did not go forward to prosecution. One primary reason for children being kept out of the courtroom—a primary reason why many child abusers are left free to abuse other innocent children or continue to abuse the same child—is that we parents do not want our children to suffer any more than they already have. We don't want them to be victimized again—this time through the judicial process.

Just the past Sunday I introduced S. 1923, the "Child Victim's Bill of Rights." My legislation offers many protections for children both in and outside of the Federal court system. S. 1923 allows a child to testify in a room other than the courtroom in order to reduce trauma; allows the use of a child's recorded deposition; allows the use of anatomical dolls, puppets, or other toys to help a child describe possible sexual abuse; allows for the child to be accompanied to a court proceeding by a parent, counselor, or court-appointed guardian; and ensures a speedy trial to minimize the time and length of a child's stress.

Further protections which extend beyond the courtroom include: Mandatory criminal background checks of those who work with children in Federal facilities or on Federal lands; mandatory reporting of suspected child abuse by certain people who work with children in Federal facilities or on Federal lands; a prohibition on the release of a child witness' name and address; and an extension of the statute of limitations so that there is no limit on prosecution if a victim of abuse was under 18 years of age at the time of the crime.

I am pleased to hear that many provisions of my bill are included in Senator BIDEN's legislation. As I said on Sunday, much of the language of S. 1923 has been a collaborative effort.

Since the time in March when I first introduced child victim protection legislation to the present day, I have worked closely with the American Bar Association's National Resource Center for Child Advocacy and Protection, the National Victim Center, the National District Attorneys' Associations National Center for Prosecution of Child Abuse, National Center for Missing and Exploited Children, and the National Organization for Victim Assistance, to create a bill which offers much needed, effective provisions for the protection of our children in and outside of the courts.

I look forward to working with these child and victim advocacy groups during the entire legislative process. I encourage the Senator and his staff to also work closely with these groups that are all too familiar with the terrible realities of child abuse.

Again, I commend the chairman of the Judiciary Committee. His legislation includes much of my bill, and that is good; but he expands his legislation further, and that is better. I am pleased to see that under the chairman's legislation, repeat child abusers

will be faced with a mandatory 25-year sentence. I applaud strong and swift action to put those that abuse young people in a place where they can no longer cause severe physical and psychological damage—damage that can last the lifetime of that child, and the lifetime of this society.

I trust the Judiciary Committee will hold hearings on the Victims of Child Abuse Act soon after we come back from the holiday break. We must act quickly—our children cannot wait.

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By Mr. JOHNSTON (for himself and Mr. McCLURE):

S. 1966. A bill to focus existing programs in nuclear fission research at the Department of Energy and establish a program for research, development, and demonstration of advanced technologies for the generation of commercial electric power from nuclear fission, and for other purposes; to the Committee on Energy and Natural Resources.

ADVANCED NUCLEAR REACTOR RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT

● Mr. JOHNSTON. Mr. President, today I am introducing with Senator McCLURE the Advanced Nuclear Reactor Research, Development, and Demonstration Act of 1989. The purpose of this legislation is to redirect and focus the nuclear reactor research programs of the Department of Energy to ensure that advanced nuclear technologies will be available and on the shelf when new nuclear reactors are needed to generate electricity. The legislation directs the Secretary of Energy to reach decisions about existing nuclear research and development programs of the Department of Energy and to make decisions about whether to develop and demonstrate new reactor technologies in cooperation with the private sector.

It is essential that we preserve the nuclear option in the United States, where over 100 nuclear plants are operating in this country, producing close to 20 percent of our total supply of electricity. Most of these plants will continue to operate for some time into the future, but we will also need to build new nuclear plants that will be ready to produce power in the next century.

In order to build new plants, we must be sure that the technology is proven and that there is a product on the shelf to be built. Utilities need to be sure that the product will be licensable and cost effective, and that it will satisfy public concerns about safety and the environment. We need to plan now to be able to meet these needs in the future.

Approximately $300 to $350 million is requested annually by the Department of Energy for programs within the Office of Nuclear Energy. I am concerned, however, that an increasing percentage of that funding is being directed toward research and development for space and defense needs and on operating costs for facilities owned by the Department. Only about $50 to $60 million can be realistically identified as R&D related to civilian nuclear power. Essentially, we continue year after year to support space and defense programs and to pay the mortgage on increasingly obsolete facilities.

I want to have a nuclear R&D program that hastens the revival of the nuclear option—that moves forward the day when utilities will order nuclear plants if they need them. I do not believe we can accomplish this goal until a greater percentage of the resources are focused on R&D dedicated to civilian nuclear power. The program that we have now is in a kind of limbo born of the interaction of a funding squeeze with a failure of leadership. That situation can be turned around—and it must be—but this will require the Secretary of Energy to make some hard decisions on the future funding of existing nuclear R&D programs and on whether to develop and demonstrate new technologies.

The bill we are introducing today sets up a process for the Secretary of Energy to make those decisions. First, the bill requires the Secretary to conduct a series of hearings to examine the need for the demonstration of nuclear reactor technology and the status, prospects, and funding sources for existing R&D programs. After analyzing the information gathered from those hearings, the Secretary is required to decide whether to solicit private sector participation in one or more demonstration projects and whether to continue support of existing R&D programs.

The bill authorizes two types of demonstration projects that could be supported in part by the Department of Energy. First, the bill authorizes a demonstration of the institutional processes of siting, financing, and licensing of nuclear reactors. The Secretary of Energy would be authorized to work with private parties to encourage the construction and operation of nuclear electric generation facilities. The Secretary's role would be as an ombudsman for siting, financing, and licensing of these facilities. No Federal funds would be expended to finance these facilities unless the Nuclear Regulatory Commission imposes new requirements after the project receives its construction license. The private sector would be responsible for all cost overruns. A licensing hearing after construction but prior to operation of such a facility would be held only under specific circumstances set forth in the bill.

A second type of demonstration project—a commercial demonstration of advanced reactor technology—would also be authorized by this legislation. Under the provisions of the bill, the Secretary would solicit proposals for commercial demonstration of advanced technologies that exhibit passive safety features, utilize modular construction techniques, and are adaptable to standardized design, construction, and licensing. Acceptable proposals would have to provide at least 50 percent private financing and a commitment for private assumption of all cost overruns. Any facility would be subject to licensing by the Nuclear Regulatory Commission, with a hearing after construction but prior to operation held only under specific circumstances set forth in the bill.

Personally, I believe that we should commit to the building of a demonstration project. I believe that if we can build and convincingly demonstrate the safe operation of a new nuclear reactor then we will have made great strides toward the revival of nuclear power in this country. It is not that our current nuclear reactors are unsafe—in fact, their safety record is quite enviable. But, I believe that we must work harder to convince the public of that safety. And I believe that can be accomplished by the successful demonstration of an advanced nuclear reactor.

This legislation would leave the decision on whether to support one or more demonstration projects to the Secretary of Energy. That is the appropriate place for such decisions to be made. These decisions will not be easy ones—a decision to provide financial support to a demonstration project will likely come at the expense of existing programs. But I believe it is time to make those decisions. We have continued to support obsolete programs for too long. We need to refocus our existing R&D programs, and we need to do it soon. This legislation would set up the process for making these very important decisions.

I ask unanimous consent that the tax of the bill and a summary and section-by-section analysis be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1966

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled.*

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Advanced Nuclear Reactor Research, Development, and Demonstration Act of 1989.".

SEC. 2. FINDINGS PURPOSES, AND DEFINITIONS.

(a) FINDINGS.—Congress finds that—

(1) energy generated from nuclear fission now supplants the burning of fossil fuels in an economical fashion and contributes substantially to the provision of needed supplies of electricity while reducing the rate and scope of global environmental pollution; and

(2) it is in the national interest for the federal government to provide leadership in encouraging advanced technologies for gen-

eration of electricity from nuclear fission, so that such technologies may be adopted as needed.

(b) PURPOSES.—The purposes of this Act are to—

(1) require the Secretary to make decisions that will focus programs of the Department for research, development, and demonstration of technologies for the generation of commercial electric power from nuclear fission;

(2) authorize the Secretary to encourage the use where needed of technologies for the generation of commercial electric power from nuclear fission; and

(3) ensure the timely availability of advanced technologies for the generation of commercial electric power from nuclear fission.

(c) DEFINITIONS.—For purposes of this Act, the term—

(1) "Commission" means the Nuclear Regulatory Commission;

(2) "Department" means the Department of Energy; and

(3) "Secretary" means the Secretary of Energy.

SEC. 3. PROGRAM.

(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—The Secretary shall carry out a comprehensive program of research, development, and demonstration in accordance with the provisions of this Act to encourage application of technologies for the generation of commercial electric power from nuclear fission that to the maximum extent practicable—

(1) are cost-effective in comparison to alternative sources of commercial electric power of comparable availability, reliability, and impact on the rate and scope of global climate change;

(2) can utilize modular construction techniques;

(3) are adaptable to standardized design, construction, and licensing;

(4) exhibit passive safety features; and

(5) incorporate features that discourage diversion of fissile material for use in nuclear weapons.

(b) CERTIFIED DESIGNS.—(1) The program of the Secretary under subsection (a) shall include appropriate steps for the development and submission for certification by the Commission of completed standard designs for commercial nuclear reactor facilities employing nuclear reactor technologies that the Secretary determines exhibit the characteristics set forth in subsection (a).

(2) The Secretary shall provide Congress with an annual report describing the progress in the previous year in certifying standard reactor designs under paragraph (1) and setting forth plans for the certification program for the coming year.

SEC. 4. DECISIONS BY THE SECRETARY.

(a) HEARINGS.—Within 60 days after the date of the enactment of this Act, the Secretary shall begin hearings to develop information upon which to base the decisions and recommendations required by this section.

(b) HEARINGS ON FUTURE PROGRAM.—These hearings shall examine—

(1) the need for, and the potential for adoption in the future by electric utilities or other entities of, technologies that are available or under development for the generation of energy from nuclear fission;

(2) how much time and resources would be required, under optimal circumstances, to complete research and development on each of the technologies now under development by the Department to the point that each would be ready for a demonstration of the technology;

(3) how the federal government, acting through the Secretary (including actions of the Secretary under this Act), can be effective in ensuring the availability of these technologies when they may be needed; and

(4) whether the Secretary should solicit cooperation from the private sector in carrying out the nuclear reactor demonstration programs authorized in sections 5 and 6.

(c) HEARINGS ON EXISTING PROGRAMS.—These hearings shall also examine the status, future prospects, and funding sources for programs of the Secretary for research, development, and demonstration of technologies for the generation of energy from nuclear fission in existence on the date of the enactment of this Act, including programs provided for in appropriations Acts as—

(1) Light Water Reactor research and development;

(2) Advanced Reactor Systems (including the High-Temperature Gas Reactor Program, the Liquid Metal Reactor Program, and the Integral Fast Reactor Program);

(3) Space and Defense Power Systems (including the SP-100 Program);

(4) Advanced Nuclear Systems; and

(5) Facilities (including the Fast Flux Test Facility, Experimental Breeder Reactor-II, and the Energy Technology Engineering Center).

(d) In carrying out the hearings under paragraph (1) the Secretary shall offer members of the public opportunity to provide information and comment and solicit the views of the Commission and other interested parties.

(e) REPORT.—(1) The hearings shall conclude no later than 180 days after the date of the enactment of this Act.

(2) Within 90 days after the conclusion of the hearings the Secretary shall submit to Congress a report summarizing the results of the hearings and setting forth the Secretary's plan for implementing the remaining provisions of this Act. The report shall indicate how the Secretary's plan will further each of the purposes of this Act set forth in section 2(b). In developing the plan the Secretary shall take into account—

(A) the views received during the hearings;

(B) the need, as determined by the Secretary, for available commercial electric power supply technologies based on nuclear fission and the time when this need will become urgent; and

(C) the probability that the Secretary's actions under this section will contribute substantially to the availability of commercial electric power technologies based on nuclear fission consistent with the need for these technologies.

(f) DECISION ABOUT FUTURE DEMONSTRATION PROGRAMS.—As part of the report under subsection (e) the Secretary shall issue a decision whether or not to conduct the solicitations authorized under sections 5 and 6, together with the reasons for this decision.

(g) RECOMMENDATIONS ABOUT EXISTING NUCLEAR FISSION RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

(1) As part of the report under subsection (e), the Secretary shall issue a decision whether to support each of the programs and facilities of the Department of Energy for research, development, and demonstration of technologies for the generation of energy from nuclear fission that are in existence on the date of the enactment of this Act. The Secretary shall promptly transmit to Congress written recommendations about the disposition of such programs under this paragraph.

(2) The Secretary may recommend providing support for any such program or facility under the authorization set forth in section 7 only to the extent that activities under this Act are carried out under the program or at the facility.

(3) The Secretary may recommend termination of support for any program or facility or continued operation of the program for facility under alternative methods of support, including support authorized under section 7, support using other appropriations available under other appropriate authority of the Secretary if any, support through user charges to be paid by federal agencies or other users of the program or facility for activities carried out, or any combination thereof.

SEC. 5. DEMONSTRATION OF SITING, LICENSING, AND FINANCING OF NUCLEAR REACTOR TECHNOLOGY.

(a) USE OF AUTHORITY OF THE SECRETARY.—The Secretary shall use the authority under this section and other authorities available to the Secretary to encourage the siting, financing, licensing, construction, and operation of facilities for the generation of commercial electric power from nuclear fission in regions where the Secretary, after consultation with appropriate agencies in the affected states, finds a need for additional electric generating capacity.

(b) SOLICITATION.—At any time after publication of the report under subsection 4(e), the Secretary, in consultation with the Commission, may solicit proposals for collaboration with one or more private parties who agree to become applicants for all necessary permits for the construction and operation of facilities for the generation of commercial electric power from nuclear fission. In any solicitation under this subsection, the Secretary shall offer, in the case of accepted proposals, to—

(1) assist in the identification of private financing arrangements that to the maximum extent practicable under existing law minimize the risk in financing the construction and operation of the proposed facility;

(2) appear on behalf of applicants before any authority, including the Commission or appropriate state and local regulatory authorities, with jurisdiction over the proposed facility;

(3) be responsible for the costs of any new requirements imposed by the Commission after issuance by the Commission of a license for the construction of the proposed facility, provided that the federal government shares equitably in the revenues from operation by the facility; and

(4) otherwise seek to expedite the construction and operation of the proposed facility using authority available to the Secretary under existing law.

(c) COMMENT.—The Secretary shall offer an opportunity for interested persons, including the Commission, to comment on any proposal received under subsection (b). The Secretary shall offer technical assistance to any applicant whose proposal shows promise for selection under this subsection and shall permit such applicant to modify his proposal. The Secretary shall consult with the Commission on ways to improve the prospects for licensing any proposed facility that may be acceptable under this subsection.

(d) SELECTION.—

(1) The Secretary shall decide whether to select any proposal received under this section within 180 days after the corresponding initial proposal is submitted.

(2) The decision to accept any proposal shall be transmitted promptly to Congress, and not less than 45 days shall pass before such decision is effective.

(3) The interpretation and application of the selection criteria set forth in subparagraphs (A) through (F) are within the sole discretion of the Secretary. In deciding whether to select a proposal under this section the Secretary shall take into account—

(A) the extent to which the technology proposed exhibits the characteristics set forth in section 3(a);

(B) whether acceptance of the proposal will encourage use of a standard reactor design for the technology in question;

(C) the probability that the facility can be successfully financed, constructed, and licensed;

(D) the probability under the proposal that the federal government will receive an equitable share of revenues from operation of the proposed facility;

(E) the importance of the Secretary's contribution under this section to successful construction and operation of the proposed facility; and

(F) the extent to which the successful construction and operation of the facility will improve the availability of technologies for generating commercial electric power from nuclear fission.

(e) FUNDING.—To the extent provided in advance in appropriations Acts, the Secretary may provide funds to cover costs referred to in subsection (b)(3).

(f) LICENSING.—

(1)(A) The facilities covered by any proposal selected under subsection (d) shall be subject to Commission licensing as provided by the Atomic Energy Act of 1954, as amended, and this paragraph.

(B) The Commission may issue a combined construction permit and operating license for a facility covered by a proposal selected under subsection (d) after providing an opportunity for a hearing under section 189a. of the Atomic Energy Act, if the Commission finds that there is reasonable assurance that the facility will be constructed and will operate in conformity with the application for the facility, applicable provisions of the Atomic Energy Act, and applicable regulations of the Commission. The Commission shall ensure through inspections, tests and analyses that construction is completed in conformity with the combined construction permit and operating license.

(C) Before operation of any facility licensed under this subsection, the Commission shall publish in the Federal Register a notice of the intended operation of the facility, and shall provide a thirty-day period within which any person may file a written objection to operation of the facility on the ground that the facility has not been constructed or will not operate in conformity with the license. The objection must set forth with specificity and in reasonable detail the facts and arguments upon which the objection is based, and may be accompanied by a request for a hearing. Unless a prior hearing is granted in accordance with the requirements of this subsection, operation of the facility shall commence and the Commission shall publish a brief statement of any issues raised in the objection and their resolution by the Commission.

(D) The Commission may designate an issue under subparagraph (C) only if—

(i) the issue consists of a substantial dispute of fact necessary for the Commission's decision that cannot be resolved with sufficient accuracy except at a hearing; and

(ii) a showing has been made that there has been nonconformance with the license that has not been corrected and that could materially and adversely affect the safe operation of the facility.

Following completion of any hearing, the Commission shall decide whether or not to modify or condition the license.

(2) Within two years after selection of a proposal under subsection (d), the Secretary, in consultation with the Commission, shall identify changes in Commission regulations that would improve, consistent with existing law, prospects for the successful licensing of the facilities covered by such proposal.

SEC. 6. DEMONSTRATION OF ADVANCED REACTOR TECHNOLOGY.

(a) USE OF AUTHORITY OF THE SECRETARY.—The Secretary shall use the authority under this section and other authority available to the Secretary to demonstrate promising technologies for the generation of commercial electric power from nuclear fission.

(b) REQUEST FOR PROPOSALS.—

(1) Within 90 days after the publication of the report under subsection 4(e), the Secretary, after consultation with the Commission, may issue a draft request for proposals for the construction of a commercial-scale demonstration reactor employing advanced technology for the generation of commercial electric power from nuclear fission that—

(A) exhibits the characteristics set forth in section 3(a);

(B) minimizes to the extent practicable the volume or toxic lifetime of nuclear waste produced and the cost of nuclear waste disposal;

(C) is reasonably designed to maximize acceptance by the public, the financial community, electric utilities, state electric utility regulators, and the Commission; and

(D) could provide commercial electric power to a utility grid as soon as practicable but no later than the year 2010.

(2) Any proposal under paragraph (1) shall—

(A) set forth the management structure for the project specifying a single entity that will be in control of the project; and

(B) indicate how this structure ensures timely operation of the facility within the budget proposed.

(3) The Secretary shall offer an opportunity for interested persons to comment on the draft request for proposals. The Commission shall comment on such draft request. The Secretary shall consider and publish a summary response to any comments received within 90 days after issuance of the draft request for proposals.

(4)(A) Within 180 days after publication of the report under subsection 4(b)(2), the Secretary may issue a request for a competition among proposals for funding under this section. Final proposals may be submitted to the Secretary within 180 days after the request for proposals is issued under this paragraph, except that the Secretary may extend this deadline for up to an additional 180 days if the Secretary determines that such extension is necessary to permit promising proposals to be submitted.

(B) The Secretary may provide technical assistance for the development of proposals the Secretary considers promising.

(C) If at any time it appears that there will be insufficient competition among proposals under this section, the Secretary may modify and reissue the request for proposals under subparagraph (A) so as to encourage the submission of additional potentially acceptable proposals.

(5)(A) The Secretary shall decide whether to select any proposal received under this section within 180 days after the corresponding initial proposal is submitted.

(B) The decision to accept any proposal shall be transmitted promptly to Congress, and a period of 45 days shall elapse before such acceptance is effective.

(C) The interpretation and application of the selection criteria set forth in clauses (i) through (vii) are within the sole discretion of the Secretary. In deciding whether to select a proposal under this section the Secretary shall take into account—

(i) the extent to which the technology proposed exhibits the characteristics set forth in section 3(a);

(ii) the probability that the demonstration project can be successfully financed, constructed, and licensed;

(iii) the importance of the federal contribution under this subsection to successful demonstration of the technology proposed;

(iv) the extent to which the successful construction of the demonstration project will improve the availability of advanced technologies for generating commercial electric power from nuclear fission;

(v) the probability that technology and design features exhibited by the project can be deployed commercially by the utility industry in a timely fashion to supply the nuclear generating capacity reasonably expected to be required;

(vi) the probability under the proposal that the federal government receive an equitable share of revenues from operation of the proposed facility; and

(vii) the extent to which selection of the project otherwise furthers the purposes of this Act.

(c) FUNDING.—To the extent provided in advance in appropriations Acts, the Secretary may provide funds for construction of a demonstration project under an acceptable proposal selected under subsection (b). Such funds may be provided only if the proposal selected by the Secretary provides for—

(1) at least 50 percentum of project costs to be provided from non-federal sources; and

(2) non-federal financial responsibility for any and all costs in excess of the specific amounts authorized by the Secretary to be paid under the accepted proposal.

(d) LICENSING.—

(1) any demonstration project under this subsection shall be subject to licensing requirements of the Atomic Energy Act of 1954, as amended, as if such project were a commercial utilization facility under such Act, and may be issued a combined construction permit and operating license in accordance with the provisions of section 5(f)(1).

(2) Within one year after selection by the Secretary of a proposal under subsection (a)(4), the Secretary, in consultation with the Commission, shall identify changes in Commission regulations that would improve, consistent with existing law, prospects for the successful licensing of the demonstration project under this subsection.

SEC. 7. APPROPRIATIONS.

(a) APPROPRIATIONS.—

(1) No more funds may be appropriated to carry out the purposes of this Act set forth in section 2(b) than the amounts set forth

in paragraph (2). This Act shall be the exclusive source of authorization for appropriations of funds to support any activities of the Secretary for research, development and demonstration technologies for the generation of commercial electric power from nuciear fission.

(2)(A) For the fiscal year beginning on October 1, 1991, not more than $100 million may be appropriated for activities described in paragraph (1).

(B) For the fiscal year beginning October 1, 1992, not more than $200 million may be appropriated for activities described in paragraph (1).

(C) For the fiscal year beginning October 1, 1993, not more than $200 million may be appropriated for activities described in paragraph (1).

(D) For fiscal years beginning October 1, 1994, and thereafter, such sums as may be necessary may be appropriated for activities described in paragraph (1).

(b) RESEARCH, DEVELOPMENT, AND DEMONSTRATION FUNDING.—In accordance with the provisions of appropriations Acts, the Secretary—

(1) may use a portion of the funds authorized to be appropriated under this Act to pay the federal share of support authorized under sections 5 and 6.

(2) may reserve a portion of the funds authorized to be appropriated under this Act for ongoing research and development on technologies that exhibit the characteristics set forth in section 3(a), including research and development necessary for any project under sections 5 and 6.

SEC. 8. REPORTS.

(a) RECOMMENDATIONS BY THE COMMISSION.—

(1) Within two years after the selection of a proposal under section 6, the Commission, after consultation with the Secretary and opportunity for public comment, shall submit to Congress specific recommendations for changes in law that the Commission finds necessary for the timely licensing, consistent with the public health and safety, of commercial nuclear power reactors whose design is based on the demonstration project under section 6.

(2) The Secretary shall provide Congress with the comments on the recommendations of the Commission submitted under paragraph (1).

(b) REPORT BY THE COMMISSION.—

(1)(A) In order to assess whether the purposes of this Act may be achieved in whole or in part by the availability in the United States of nculear reactor technologies already in use or under development in other nations, the Secretary shall review commercial nuclear reactor technologies in use or under development in other nations and, within one year after the date of the enactment of this section, provide Congress and the Commission with an initial assessment of the extent to which any such technologies may exhibit characteristics set forth in paragraph (1), (2) and (4) of subsection 3(a).

(B) If the Secretary finds that a technology reviewed under subparagraph (A) has the potential to exhibit such characteristics, he shall identify the technology and include a thorough discussion of his findings in the assessment under this paragraph.

(2) Within one year after receipt of the Secretary's initial assessment under paragraph (1), the Commission shall report to Congress on the problems of licensing under the Atomic Energy Act of 1954, as amended, of commercial nuclear reactor technologies that the Secretary has identified under subparagraph (1)(B).

(3) Before submitting the report under paragraph (2) the Commission shall make available to the public a draft report and provide opportunity for comment on the draft report.

(4) The report of the Commission under paragraph (2) shall identify specific impediments to licensing under the Atomic Energy Act of 1954, as amended, for each technology considered and shall indicate how, or if, such impediments might be removed by amendments to law or regulation consistent with the public health and safety.

(c) REPORT BY THE SECRETARY.—The Secretary, in consultation with the Commission, shall submit an annual report to Congress on activities under this Act assessing the progress during the previous year in achieving the purposes of this Act and the prospects for further progress in the coming year.

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BACKGROUND AND SUMMARY—ADVANCED NUCLEAR REACTOR RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1989

PURPOSE OF THE LEGISLATION

The purpose of this legislation is refocus and restructure the nuclear energy programs of the Department of Energy in a way that encourages the generation of commercial electric power from nuclear fission and ensures the timely availability of advanced nuclear technologies.

The bill would direct the Secretary of Energy to reach decisions about the civilian nuclear research, development, and demonstration programs of the Department of Energy. The Secretary is required to make decisions about whether to develop and demonstrate improved nuclear reactor technologies in cooperation with the private sector and to make decisions about the restructuring of existing nuclear research programs of the Department.

The bill requires the Secretary to conduct a series of hearings to examine: The need for the demonstration of new and improved nuclear reactor technology; and the status, prospects, and funding sources for existing nuclear research, development, and demonstration programs.

After analyzing the information gathered at these hearings, the Secretary is required to decide whether to solicit private sector participation in the demonstration projects authorized in sections 5 and 6 and whether or how to continue to support existing nuclear research and development programs of the Department.

There are two principal types of demonstration project authorized in the event the Secretary decides to go forward with demonstrations:

First, a demonstration of siting, licensing, and financial arrangements for nuclear reactor technology. The bill authorizes the Secretary of Energy to act as an ombudsman for the siting, financing, and licensing of nuclear power reactor facilities employing currently available technology, for example, one of the evolutionary light-water reactor designs recently developed by U.S. manufacturers.

No federal funds would be expended to finance these facilities unless the Nuclear Regulatory Commission imposes new requirements after the project receives its construction license. The private sector would be responsible for all cost overruns.

The Secretary would assist willing applicants in developing innovative private financing and in testing the recently adopted "standardization" rules of the Nuclear Regulatory Commission. A hearing after construction but prior to operation of any facility under this Act would be held only under specific circumstances set forth in the bill.

Second, a demonstration of advanced nuclear reactor technology. The bill requires the Secretary to solicit proposals for the commercial demonstration of advanced nuclear reactor technologies that exhibit passive safety features, can utilize modular construction techniques, are adaptable to standardized design, construction, and licensing. Examples of technologies that could be proposed are advanced light-water reactor, a high-temperature gas-cooled reactor, or a liquid-metal cooled reactor.

Acceptable proposals would have to provide at least 50 percent private financing and commitment for private assumption of all cost overruns. Any facility would be subject to Commission licensing, with a hearing after construction but prior to operation held only under specific circumstances set forth in the bill.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the Act may be cited as the "Advanced Nuclear Reactor Research, Development, and Demonstration Act of 1989".

Section 2 sets forth the findings, purposes and definitions for the Act. Included is a finding that it is in the national interest for the federal government to provide leadership in encouraging technologies for the generation of electricity from nuclear fission, so that such technologies may be adopted as needed.

Section 3(a) requires the Secretary to carry out a program of research, development, and demonstration for commercial application of nuclear fission technologies that to the maximum extent practicable:

(1) are cost effective in comparison to alternative sources of electricity of comparable availability, reliability, and impact on the rate and scope of global climate change;

(2) can use modular construction techniques;

(3) are adaptable to standardized design, construction, and licensing;

(4) exhibit passive safety features; and

(5) incorporate features that discourage diversion of fissile meterial for nuclear weapons.

Section 3(b) requires the program to include appropriate steps for the development of standard designs for commercial reactor facilities that would be submitted to the Nuclear Regulatory Commission for approval.

Section 4(a) requires the Secretary to hold hearings to develop the information needed to make the decisions and recommendations required by the section.

Section 4(b) requires the Secretary to hold hearings on the future nuclear research, development, and demonstration programs: on the need for, and potential for adoption of, nuclear electric generation technologies, on how this Act should be implemented to ensure the availability of these technologies when they may be needed, and whether the Secretary should solicit cooperation from the private sector in carrying out nuclear reactor demonstration programs authorized in sections 5 and 6.

Section 4(c) requires the Secretary to hold hearings on existing nuclear research, development, and demonstration programs: on their status, prospects, and funding sources.

Section 4(d) requires the Secretary to offer opportunity for public comment and

to solicit the views of the Commission in carrying out the hearings.

Section 4(e) provides that the hearings will conclude 180 days after the date of the enactment of the Act and requires the Secretary to submit a report to Congress within 90 days after the conclusion of the hearings on his plans for implementing the Act.

Section 4(f) requires the Secretary to issue a decision about whether to carry out the demonstration programs authorized under sections 5 and 6 as part of the report under subsection (e).

Section 4(g) requires the Secretary to make recommendations about the existing nuclear research, development, and demonstration programs of the Department as part of the report under subsection (e).

The Secretary is required to make recommendations on the restructuring of existing programs for civilian nuclear power research, development, and demonstration and for the support of facilities in existence on the date of the enactment of the Act.

Section 5 provides for a demonstration of siting, licensing, and financing arrangements for nuclear reactor technology. This section attempts to encourage innovative institutional arrangements to secure new orders for nuclear reactor technologies that have evolved from those at currently operating plants.

This section authorizes the Secretary to work with private parties to encourage the construction and operation of nuclear electric generation facilities in regions where the Secretary, after consultation with affected states, finds a need for additional electric generating capacity. The Secretary would offer to:

(1) assist in the identification of innovative private financing arrangements;

(2) appear on behalf of applicants before regulatory authorities;

(3) be responsible for the costs of any new requirements imposed by the Commission after issuance of a construction license; and

(4) otherwise seek to expedite the construction of the proposed facility.

The Secretary would select proposals under this section only after opportunity for public comment and only if the proposals meet criteria set forth in the subsection 5(d). These criteria include the probability that the government will receive an equitable share of the revenues from the operation of the proposed facility.

The facilities under this section would be subject to licensing by the Nuclear Regulatory Commission, except that a hearing after construction and before operation would be held only if:

(1) an issue is raised that consists of a substantial dispute of fact that is necessary for decision and cannot be resolved without a hearing; and

(2) a showing is made that there has been nonconformance with the license that has not been corrected and that could materially and adversely affect the safe operation of the facility.

Section 6 addresses the demonstration of advanced nuclear reactor technologies at commercial scale. This section requires the Secretary to solicit proposals for a commercial demonstration of an advanced civilian nuclear power reactor technologies that exhibit the characteristics set forth in section 3 and which meet additional criteria set forth in the paragraph 6(a)(1).

The goal would be the provision of electricity to a utility grid by at least one demonstration reactor as soon as practicable, but not later than the year 2010. The Secretary would select acceptable proposals under criteria set forth in paragraph 6(a)(5). These criteria include the probability that the government will receive an equitable share of the revenues from the operation of the proposed facility.

At least 50 percent of the financing for the demonstration project must come from non-federal sources, and non-federal responsibility for cost overruns must be assured. The demonstration project would be subject to licensing by the Nuclear Regulatory Commission, subject to the same stipulations applicable to the demonstration under section 5.

Section 7 limits appropriations for activities of the Secretary for research, development, and demonstration of technologies for the generation of commercial nuclear fission power to the amounts authorized in this section. These amounts are: $100 million for fiscal year 1991; $200 million for fiscal year 1992; $200 million for fiscal year 1993; and such sums as may be necessary thereafter.

Because of the large amounts in the nuclear energy budget now devoted to space and defense applications of fission power and support of nuclear research facilities, these amounts represent an increase over the amounts in the Department of Energy fiscal year 1990 nuclear energy budget available for research, development, and demonstration of technologies for the generation of commercial electricity from nuclear fission power. Space and defense applications and support for facilities unrelated to research, development, and demonstration of technology for the generation of commercial electric power from nuclear fission would no longer be carried within the nuclear energy account, but would be funded elsewhere within the Department's budget.

Section 8 requires the Commission and the Secretary to prepare and submit to Congress certain reports.●

● Mr. McCLURE. Mr. President, today I am pleased to cosponsor S. 1966, the Advanced Nuclear Reactor Research, Development, and Demonstration Act of 1989.

This measure recognizes the critical role that nuclear power must play in any long-term strategy to combat global climate change. Equally important, this measure will ensure the timely, commercial availability of advanced nuclear reactor technologies with passive safety features.

A simple repackaging of current light-water reactor technologies will not be adequate. Consequently the need exists to restructure DOE's civilian nuclear energy research, development and demonstration programs. This legislation begins that process as a joint effort between the administration and the Congress. I would hope that we could take affirmative action during this Congress to see that this and other measures dealing with the future of research, development and demonstration of civilian nuclear power will soon have the force of law.

Mr. President, as we are all aware, global climate change is an international concern. Major initiatives are needed to improve energy efficiency and expand the use of renewable energy resources. And nuclear power offers potentially significant benefits in this effort. However, a simple repackaging of current light-water reactor technologies will not be adequate to the task. If the long-term benefits of nuclear power for the generation of electricity are to be achieved, there is a need for commercially available, advanced nuclear technologies that exhibit passively safe features.

The purpose of this legislation is to foster the public debate that must precede the formulation of national policies and Federal programs that achieve this objective. Three major program initiatives are authorized to accomplished this objective: First, the Secretary of Energy is directed to take appropriate steps to test the recently adopted NRC standardization rules. Under this initiative, the Secretary is to encourage U.S. manufacturers to develop standardized designs and submit them to the NRC for certification. Among other requirements, such nuclear technologies must exhibit passive safety features and utilize modular construction techniques. Examples of such technologies include the so-called evolutionary light-water reactor technologies being developed by U.S. manufacturers.

In general Federal financial assistance would not be available to finance these facilities. The exception would be those instances where the NRC imposed new requirements after issuance of a construction license and prior to operation of any facility.

The second initiative requires the Secretary to refocus and restructure DOE's nuclear energy research, development and demonstration programs to place greater emphasis on advanced nuclear technologies, such as advanced light-water reactors, high-temperature gas-cooled reactors and liquid-metal-cooled reactors, for the generation of electricity. For too long these programs have needed programmatic direction, including defined developmental objectives. What goals now exist were for the most part established by the Congress.

As currently structured, DOE's "supposed" civilian nuclear programs placed too much emphasis on defense and space reactor developments. Consequently, they now need to be restructured to reflect the purposes outlined in this legislation. Space and defense nuclear technologies should no longer be funded within this program, but should be carried elsewhere within the DOE budget and restructured to reflect the needs and requirements of their intended users.

In order to achieve this restructuring, the bill requires the Secretary of Energy to convene hearings to examine the need for joint industry-government demonstration of improved and new technologies for the civilian generation of electricity. In the process,

the Secretary is required to review existing research, development and demonstration programs of the Department of Energy and make recommendations to the Congress regarding the restructuring of current programs to place greater emphasis on commercial electric power generation.

Any such restructuring would require concurrence by the Congress. In anticipation of a refocusing of the DOE's civilian nuclear research and development programs, this legislation proposes a nominal increase in appropriations for research, development and demonstration of technologies for the generation of commercial nuclear fission research. Annual appropriations $100 million for fiscal year 1991 and $200 million for each of fiscal years 1992 and 1993 are authorized.

The third initiative in this legislation provides authority for the Secretary of Energy to undertake commercial demonstration of advanced nuclear reactor technologies. A principal requirement is that such technologies exhibit passively safe features. They also must be of modular design and be capable of NRC licensure as standardized designs. Possible examples include advanced light-water reactors, high-temperature gas-cooled reactors, or liquid-metal-cooled reactors.

Any such demonstrations would be subject to NRC licensure, with a hearing after construction and prior to operations only under specific circumstances.

Mr. President, issues of growing concern—global warming and increased foreign energy imports—are causing even the former opponents of nuclear power to take a second look at this domestic energy resource. For environmental, economic and national security reasons, nuclear power is again becoming a sound energy option.

What we aim to do in this legislation is to establish a strategy that will foster the development of a new generation of advanced commercial nuclear reactors in the 1990's.●

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By Mr. KERRY:

S. 1967. A bill to amend the Housing and Community Development Act of 1987 to improve the Enterprise Zone Development Program, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

DRUG ZONE TO OPPORTUNITY ZONE DEVELOPMENT ACT

● Mr. KERRY. Mr. President, I rise today, to introduce the Drug Zone to Opportunity Zone Development Act, legislation that builds upon current enterprise zone proposals. The Drug Zone to Opportunity Zone Development Act attempts to address the needs of our distressed communities in three important ways: First, the bill provides for automatic enterprise zone eligibility for areas designated as high intensity drug areas; second, the bill provides for a capital loan and grant program funded through a revolving loan fund for eligible entities within a designated enterprise zone; and third, the bill establishes a National Enterprise Zone Development Corps.

Mr. President, the current crisis of our national drug epidemic is well known to most of my colleagues. One of the deficiencies in our plans to deal with this crisis is our failure to identify and respond to the economic conditions that are so conducive to the rampant growth of drug abuse and drug crime. Until we come to grips with and address the relationship between drugs and the lack of economic and educational opportunity, and the general lack of any reason for optimism which dominates areas where the drug problem is so rampant, a gaping hole will continue to exist in our war on drugs.

As we consider the broader measures needed to address these issues, at a minimum, we should begin to create real economic opportunity in those communities revaged by drugs. Increasing police, drug education, drug treatment and prison beds, while crucial, will not be enough. We must work the drug culture out of these communities in a wholesale way.

The legislation I am introducing today makes a small step in that direction. The designation of an area as a high-intensity drug area is an indicator of the magnitude of need within a community. It follows that an area faced with this degree of need, both economic and social, should automatically be eligible for the opportunities provided by an enterprise zone.

The Capital Loan/Grant Program and the revolving loan fund is a recognition that the element that is missing from most current enterprise zone proposals is an infusion of capital to private businesses and nonproft enterprises in these areas in order to leverage more substantial investment in these distressed areas. Federal funds would be used to capitalize a permanent enterprise zone revolving loan fund. The revolving loan fund would be capitalized with an initial investment of $50 million and would be funded yearly until the investment reached $200 million.

The revolving loan fund would be used to provide loans and grants to State and local governments, nonprofit agencies or private enterprises located within designated enterprise zones. These loans and grants could be used for a number of activities and services including job creation; job-specific skills training; community infrastructure improvements; and to meet critical social needs, including crime control, drug-abuse, child-care and homeless assistance.

To date, the majority of enterprise zone bills have emphasized tax incentives and regulatory relief as ways to encourage companies to move to expand into the Nation's distressed urban and rural areas. Some of these proposals are very sound and deserve careful consideration by Congress and I support some tax incentives for this purpose. One of the major criticisms, however, has been that these proposals do not address the capital needs of businesses starting up in the zone. Tax incentives may entice healthy or expanding firms, but do not really play a role in starting up new firms.

In addition, tax incentives do little to address the social and economic needs of the distressed area. By allowing funds to be used flexibly within the zone for activities currently allowed under the Community Development Block Grant Program [CDBG], the bill encourages the success of not only the business enterprises located within the zone, but the success of the larger community as well.

Finally, the bill would establish a National Enterprise Development Corps, made up of men and women from the business and labor community whose time and talent would be made available by their employers to assist businesses or non-profit organizations within designated enterprise zones with entrepreneurial assistance, management expertise or technical assistance. Since management and technical assistance is often a major factor in the success of many small businesses and nonprofit organizations, this corps of talented and experienced business entrepreneurs and corporate executives would serve as management specialists and/or business advisers and would participate for 1 year at a time with the public or nonprofit organizations in the zone.

As a member of the Subcommittee on Housing, I plan to actively work with my colleagues on the Banking Committee as we consider comprehensive housing legislation early next year, and it is my hope to have this proposal considered as part of whatever package we develop. In addition, during a recent hearing of the Small Business Committee on enterprise zones, I had the opportunity to share the ideas contained in this legislation with Secretary Kemp. The Secretary found the proposals to have great merit and I plan to work with him to refine this measure in a way that best serves those it is intended to benefit.

Mr. President, this legislation does not purport to be either the sole or the final solution to the dilemma facing our most distressed urban and rural areas. It is, however, a step in the right direction of substituting hope and opportunity for the despair so prevalent today.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1967

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Drug Zone to Opportunity Zone Development Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress hereby finds that—

(1) the current enterprise zone proposals emphasize the importance of tax incentives and regulatory changes;

(2) the enterprise zone proposals focus on the need to create jobs in distressed areas;

(3) most small to medium sized businesses fail due to lack of capital and technical assistance; and

(4) there are communities throughout our country held captive to the onslaught of drugs, where poverty and despair run rampant and drug-dependent economies have replaced productive economies.

(b) PURPOSES.—The purposes of this Act are—

(1) to supplement current enterprise zone proposals and legislation with a capital program to provide funds for job creation, job-specific skills training and critical social needs in an effort to revitalize urban and rural distressed areas;

(2) to provide automatic enterprise zone eligibility to areas designated as high-intensity drug zones, and

(3) to create an Enterprise Development Corps to provide free managerial and technical assistance.

TITLE I—REVOLVING FUND

SEC. 101. ESTABLISHMENT OF REVOLVING FUND.

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a revolving loan fund to be known as the "Enterprise Zone Development Fund" (hereafter referred to as the "Fund"), consisting of such amounts as may be appropriated or credited to such fund.

(b) GENERAL AUTHORITY.—The Secretary of Housing and Urban Development (hereafter referred to as the "Secretary") shall, from amounts appropriated and credited pursuant to section 103, make loans and grants to eligible applicants for the purposes described in subsection (j).

(c) AMOUNT OF LINES OF CREDIT.—The Secretary shall provide lines of credit in amounts determined appropriate by the Secretary, but in no event shall any such line exceed $1,000,000 to any designated enterprise zone. The Secretary shall determine the period of time for the line of credit.

(d) ELIGIBLE RECIPIENTS.—Loans and grants from the Fund may be made to a State Government, a local government, a nonprofit agency, or a private enterprise, if such government, agency, or enterprise is—

(1)(A) located in or is a part of a designated enterprise zone, as defined under section 701 of the Housing and Community Development Act of 1987 (42 U.S.C. 11501), or

(B) located in or is a part of a high intensity drug trafficking area, as defined in section 1005(c) of the National Narcotics Leadership Act of 1988, and

(2) certified by the appropriate State agency as eligible to receive a loan.

(e) FEDERAL SHARE.—

(1) IN GENERAL.—The Federal share for any project for which a loan is made under this Act shall not exceed 50 percent of the cost of such project.

(2) DETERMINATION OF NON-FEDERAL MATCH.—Federal funds granted under the Community Development Block Grant program, the Urban Development Action Grant program, the Department of Labor Job Training Partnership Act program and the Economic Development Act may be considered non-Federal funds for the purposes of paragraph (1).

(f) PREFERENCES IN SELECTION CRITERIA.—In making awards pursuant to this Act, the Secretary shall review the following factors:

(1) Whether the project will create or retain a significant number of jobs or businesses.

(2) Whether the activities of the project are consistent with the general development plans of the State and local government for the area.

(3) Whether the project will provide additional resources to the designated area.

(4) Whether the applicant has extensive experience in serving local credit needs and has the ability to serve the local population.

(g) ELIGIBLE ACTIVITIES.—The allocation of loans and grants from the Fund are to be used flexibly by the local zone to address the development and revitalization of the designated geographic area. Activities and services for which a loan or grant may be made under this Act may include:

(1) COMMUNITY IMPROVEMENTS.—Loans and grants may be made under this Act to a local government to improve community facilities such as water and waste water facilities, roads, sidewalks, and commercial and residential property rehabilitation in a designated enterprise zone.

(2) JOB CREATION.—Grants, low-interest loans, or loan guarantees may be made to a business, locally approved nonprofit agency, or private enterprise in a designated enterprise zone to—

(A) purchase equipment,

(B) purchase inventory,

(C) start a new business or expand an existing business, and

(D) provide working capital, if such grant, loan, or guarantee can reasonably be expected to result in the creation of jobs in such area.

(3) COMMUNITY CONSORTIUMS.—Communities located within the designated enterprise zones will be encouraged to establish a consortium of local lending institutions to review loan applications and to provide technical assistance to small business applicants.

(4) SKILLS TRAINING.—Loans and grants may be made to an enterprise, union, or nonprofit organization for job specific skills training for people in designated enterprise zones. Emphasis must be placed on on-the-job training, basic skills training, and literacy assistance.

(5) CRITICAL SOCIAL NEEDS.—Loans and grants may be made to a local government, a nonprofit organization, or a private enterprise located in a designated enterprise zone to meet social needs such as crime control, drug abuse, child-care, and homeless assistance.

(k) LIMITATION ON FUNDS DISTRIBUTION.—Not more than 25 percent of the funds appropriated for any fiscal year shall be used as grants for the activities described in subsection (g)(1).

SEC. 102. REGULATIONS.

The Secretary, after consultation with the Administrator of the Small Business Administration, shall promulgate regulations to carry out the provisions of this Act.

SEC. 103. APPROPRIATIONS.

There is hereby authorized to be appropriated $200,000,000 for fiscal years 1990, 1991, 1992, and 1993, without fiscal year limitation.

SEC. 104. MANAGEMENT OF FUND.

(a) TRANSFER OF CERTAIN AMOUNTS.—The following amounts shall be credited to the Fund:

(1) Amounts (including interest) repaid or recovered from loans made under this Act.

(2) Amounts appropriated pursuant to section 103.

(3) Amounts credited pursuant to subsection (b).

(b) INVESTMENT.—

(1) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund established under this Act as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(A) on original issue at issue price, or

(B) by purchase of outstanding obligations at the market price.

(2) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(3) INTEREST ON CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of any obligations held in the Fund shall be credited to and form a part of the Fund.

TITLE II—ENTERPRISE DEVELOPMENT CORPS

SEC. 201. CREATION OF CORPS.

(a) IN GENERAL.—The Secretary of the Department of Housing and Urban Development (hereafter referred to as the "Secretary") shall encourage the business and labor community to donate their time and effort to establish an Enterprise Development Corps (hereafter referred to as the "Corps"). The Corps shall consist of individuals with entrepreneurial and technical skills.

(b) USE OF CORPS.—The Secretary shall make available technical assistance through the Corps to an enterprise zone development agency, a small business located in a designated enterprise zone (as defined under section 701 of the Housing and Community Development Act of 1987 (42 U.S.C. 11501), or a community based organization working on development of the specified zone, pursuant to regulations promulgated by the Secretary.

SEC. 202. EVALUATION.

The Secretary shall commission a fair and objective process and outcome evaluation of the Drug Zone to Opportunity Zone Development Act.●

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By Mr. DANFORTH (for himself, Mr. BENTSEN, Mr. HEINZ, and Mr. DURENBERGER):

S. 1968. A bill to amend the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701) relating to the relative competitiveness of industry in the United States; to the Committee on Commerce, Science, and Transportation.

ANNUAL ASSESSMENT OF UNITED STATES COMPETITIVENESS

● Mr. DANFORTH. Mr. President, I am pleased to be joined by three of my distinguished colleagues, Mr. BENTSEN,

Mr. HEINZ, and Mr. DURENBERGER, in introducing legislation to provide for an annual assessment of U.S. competitiveness across a wide range of industries.

Much has been written recently on the subject of declining American competitiveness. Because this is a complex and multifaceted issue, there is necessarily a diversity of opinion on how serious the competitiveness problem is and what our response should be. A front-page article in yesterday's Washington Post aptly highlights the differences of opinion—within both the private sector and the Government—on how to encourage competitiveness in leading-edge industries. I ask unanimous consent that the text of that article be reprinted in full in the RECORD following my remarks.

Regardless of where one comes out on this question, it is clear that our competitive position in the global economy has weakened. For example, according to the Department of Commerce, U.S. market share in several key industries—such as semiconductors, machine tools, and consumer electronics—has eroded substantially during the past two decades. Similarly, a 1988 National Planning Association study on American competitiveness indicates that our productivity lead—a key measure of competitiveness—has been cut substantially and, in some sectors, has been surpassed by Japanese productivity. According to the same study, the gap between American incomes and living standards and those of our major trading partners also has narrowed significantly in recent years. According to the Council on Competitiveness, the United States devotes a smaller share of its R&D budget to non-defense efforts than do other major industrialized nations. Of all the major industrialized nations, in the non-defense category the United States spends the smallest percentage on R&D directly related to industrial growth. Finally, it is widely accepted that while the United States excels in inventing new technologies, our recent track record in the race to commercialize new developments has been poor.

While the weaknesses in our competitive position have become evident, some of our major trading partners also have made it no secret that they plan to develop and maintain at any cost a competitive presence in certain leading-edge industries and technologies.

Earlier this year, during the Senate's deliberations on the FSX deal with Japan, I suggested that we should think carefully about the implications of giving a significant leg up to a potential competitor. It is no secret that Japan has identified aerospace as one of its core technologies for the 21st century and that it has a specific game plan for developing a viable competitive presence in yet another leading-edge industry in which the United States traditionally has maintained a comparative advantage. A recent article in the Economist magazine confirms Japan's intentions. Reporting on MITI's plan to expand dramatically Japan's presence in the commercial aerospace industry within the next decade, the article indicates that Japan's trade ministry has said it will assist Japanese firms in their efforts to get into the commercial aircraft industry's big league.

Japan's prowess in encouraging competitiveness in key industries is legion. It utilizes a highly effective combination of massive subsidies, hefty import protection, and, where necessary, technology transfers to encourage competitiveness in certain industries, and the results have been remarkably successful. Whether or not you call this targeting, the fact is, it is a concerted strategy that has worked well for Japan.

Japan is not the only country that utilizes such coordinated government tactics. Our difficulties with massive European government support for the Airbus consortium have been a source of constant friction between the United States and the EC for much of this decade.

Nor is aerospace the only sector in which we face such challenges. The Europeans are financing projects to foster the development of advanced telecommunications technology, new generations of semiconductors, and HDTV technology, just to name a few.

A central question in the competitiveness debate concerns the role of the Federal Government in promoting competitiveness. What can and should the Government do, if anything, to encourage or restore competitiveness in various industries? Should we focus on specific sectors or technologies, or should we restrict our attention to macro-level policies designed to create an overall atmosphere which encourages competitiveness? What are we currently doing, and where should we go from here?

Despite the fact that several books and articles have been written on the competitiveness issue and a number of bills have been introduced which address various aspects of the issue, I think these fundamental questions remain unanswered. And until we answer them definitively, we cannot develop a coherent strategy to address the economic challenges that lie ahead.

At the moment, the administration does not seem to be focusing on this matter. Indeed, there is sharp disagreement within the executive branch on the extent of the problem, and few seem to be considering the possible constructive solutions. The highly publicized difference of opinion within the administration about whether the Federal Government should have a major role in encouraging the development and commercialization of HDTV technology is evidence of a fundamental lack of consensus on how to approach the competitiveness question.

At the same time, Congress is approaching the issue in a fragmented fashion. Many of the current proposals amount to something of a technology du jour approach, where we debate the pros and cons of providing Federal assistance to a given industry or to develop a particular technology. A few years ago it was semiconductor manufacturing technology, then superconductivity, and, more recently, HDTV.

My guess is that there are a wide range of sectors and technologies in which we must maintain a competitive presence if we are to retain a preeminent role in the global economy. But I am not convinced that Congress has sufficient information—or expertise—to determine which of those sectors we should focus on.

The legislation I am introducing today is aimed at developing a comprehensive information base on the relative competitiveness of a wide range of U.S. industries.

Specifically, the bill requires the Secretary of Commerce to compile a report on industries that are critical to maintaining U.S. economic security and global competitiveness and which also benefit from coordinated government assistance in other countries. The report is to provide a comparative assessment of what we are doing to encourage competitiveness in these industries relative to what other countries are doing. Since a static snapshot of our relative competitive position would not reflect the inevitable changes in the world economy, the report is to be updated annually.

The competitiveness assessment I am proposing today is akin to the National Trade Estimates [NTE] report which we created in the 1984 Trade Act. The NTE report has been an essential component in the U.S. effort to develop a coherent strategy against unfair foreign trade barriers. Similarly, the report mandated by this legislation is meant to be a broad-based source of information on which to base future policy decisions. It is designed to provide a comprehensive look at what we are doing—and not doing—to maintain our competitive position relative to our trading partners. The report will enable us to get away from our fragmented approach to this critical question and will provide a benchmark for U.S. action aimed at promoting competitiveness in key industries.

Some may view this legislation as a means to force the administration to parrot the industrial policies of our key trading partners. It is not. It is in-

tended to force the administration to look at this issue in a more comprehensive fashion than it has so far. This is an absolutely essential, if fairly modest, first step toward developing policies that will enable us to meet the challenges of an increasingly competitive global economy.

Mr. President, maintaining the economic security of our Nation in the face of growing competitive challenges around the world must be a top priority for the 1990's. We must have a coherent and aggressive strategy to retain our competitive edge in a wide range of sectors, particularly those that rely on advanced technology, innovation and extensive R&D.

The bill I am introducing today is a necessary first step toward increasing awareness of our competitive situation so that we are able to answer these fundamental challenges. It is my hope that other Senators will join in cosponsoring this legislation and that we can act on it early in the next session of the 101st Congress. This issue demands our immediate attention.

Mr. President, I ask unanimous consent that the text of the legislation be printed in full in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1968

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

AMENDMENT

SECTION 1. The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701) is amended by adding at the end thereof the following new section:

"SEC. 21. ACTIONS CONCERNING THE RELATIVE COMPETITIVENESS OF UNITED STATES INDUSTRY.

"(a) ASSESSMENT OF RELATIVE COMPETITIVENESS.—

"(1) IN GENERAL.—Not later than the date on which the initial report is required under subsection (b), the Secretary of Commerce shall identify those industries or sectors which—

"(A) the Secretary of Commerce determines are or are likely to be critical to maintaining future United States economic security and global competitiveness; and

"(B) in other countries, are the beneficiaries of coordinated government policies, programs, practices, or support aimed at enabling domestic producers in those countries to remain or to become globally competitive.

"(2) FACTORS TO CONSIDER IN IDENTIFYING INDUSTRIES.—In identifying industries or sectors under paragraph (1), the factors that the Secretary of Commerce shall consider include, but are not limited to—

"(A) those industries that involve use or development of advanced technology;

"(B) high value-added;

"(C) innovation;

"(D) research and development as percent of sales, where this figure is at least twice the national average; and

"(E) above average potential growth of domestic and international markets.

"(3) FOREIGN COUNTRY POLICIES, PROGRAMS, PRACTICES, OR SUPPORT TO CONSIDER.—For purposes of paragraph (1)(B), the policies, programs, practices, or support which the Secretary of Commerce shall take into account include, but are not limited to—

"(A) protection of the home market;

"(B) tax policies;

"(C) export promotion policies or programs;

"(D) antitrust exemptions;

"(E) regulatory policies;

"(F) patent policies;

"(G) assistance in developing and implementing technology;

"(H) technical or extension services; and

"(I) other forms of financial assistance.

"(4) ANNUAL REVISIONS AND UPDATES.—The Secretary of Commerce shall annually revise and update the analysis under paragraph (1).

"(b) REPORT TO CONGRESS.—

"(1) IN GENERAL.—On or before the date which is 6 months after the date of enactment of this section and each calendar year thereafter, the Secretary of Commerce shall submit the analysis under subsection (a) to the appropriate committees of the Senate and House of Representatives.

"(2) INFORMATION TO BE INCLUDED IN REPORT.—The Secretary of Commerce shall include in each report submitted under paragraph (1) information including, but not limited to, the following—

"(A) what other countries are doing to assist or encourage the industries or sectors identified in subsection (a) to remain or to become globally competitive;

"(B) what the United States is doing, if anything, to assist or encourage the industries or sectors identified in subsection (a) to remain or to become globally competitive;

"(C) what impediments exist to encouraging increased competitiveness of these United States industries or sectors; and

"(D) what the United States plans to do, if anything, to assist or encourage these industries or sectors to remain or to become globally competitive.

"(c) ASSISTANCE OF OTHER AGENCIES.—

"(1) PROVIDING INFORMATION.—The head of each department or agency of the executive branch of the Government, including any independent agency, shall furnish to the Secretary of Commerce or to the appropriate agency, upon request of the Secretary of Commerce, such data, reports, and other information as is necessary for the Secretary of Commerce to carry out the functions required under this section.

"(2) RESTRICTIONS ON RELEASE OR USE OF INFORMATION.—Nothing in this subsection shall authorize the release of information to, or the use of information by, the Secretary of Commerce in a manner inconsistent with law or any procedure established pursuant thereto.

"(3) PERSONNEL AND SERVICES.—The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Secretary of Commerce may request to assist in carrying out the functions required under this section.".

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[From the Washington Post, Nov. 20, 1989]

HIGH-TECH STRATEGY STRUGGLE: U.S. FIRMS SEEK A NEW DIRECTION FOR 1990'S

(By Evelyn Richards)

PALO ALTO, CA.—T.J. Rodgers as a blond-haired, four-mile-a-day jogger whose Silicon Valley company has grown 60-fold in five years. To succeed, the 41-year-old maverick says, it's best to go it alone because when the government meddles in the fast-paced world of electronics, "you get a dime's worth of benefit for every dollar spent."

Robert Noyce, 61, is a square-jawed founding father of America's $15 billion-a-year semiconductor industry, a man whose name is synonymous with innovation, creativity and sharp thinking. Noyce—who heads Sematech, an Austin, Tex., consortium funded by industry and the federal government—thinks that the country's very survival as an economic power is endangered without government involvement.

The sharply contrasting views of Rodgers and Noyce, men who share the same roots and much the same dreams, reflect the deepening tensions and growing confusion within the U.S. electronics industry, the nation's largest manufacturing sector.

As high-tech firms grope for a strategy that will lead them through the 1990's, they are largely unable to agree on how to compete—and when to cooperate—in the face of growing international competition. Underlying the struggle to build consistent high-tech policies is a gnawing concern: Today, leading-edge industries like computers, telecommunications and aerospace are facing the same threats from intensifying overseas competition that weakened the U.S. steel and auto manufacturing industries and virtually wiped out the consumer electronics industry in the 1980s.

This tension spread last week to Capitol Hill when a furor erupted over reports that the Bush administration wants to curtail federal support of certain high-tech research projects.

Among the areas said to be targeted are the widely publicized reseach efforts in advanced "high-definition" television (HDTV) and perhaps the $100 million earmarked for Noyce's Sematech, which is pursuing techniques for making semiconductors, the chips that are the nerve centers of anything electronic.

Increased by the reported policy shift, a bipartisan group of legislators fired off a letter to President Bush, warning that "eliminating America's few strategic technology initiatives will cause permanent damage to both our defense and commercial industrial bases."

Lawmakers supporting the projects join a widening group in industry and academia who believe that America's military strength is closely tied to the health of its commercial industries. They argue that small amounts of federal funding for technologies with applications in both the civilian and military sectors can make a big difference in America's ability to maintain a strong defense, compete in increasingly competitive global markets and—ultimately—to maintain a healthy standard of living.

Their views have won support in Congress, where, for example, budget negotiators recently increased 1990 funding for the Pentagon's HDTV research program to $30 million from $10 million, with the caveat that the added money be spent only after clearer objectives are established.

Others argue that government involvement in technologies with only loose military ties smacks of industrial policy. Budget Director Richard Darman and the administration's chief economic advisor, Michael Boskin, are said to be leading an effort to squash any attempt by the government to "pick winners and losers" in the private sector.

While federal officials argue over how involved the government should get in helping the technology sector, the industry is wrestling with some approaches of its own

to counter foreign competition. But it is no more united than Washington on how to move from a period of complete independence to an era where there is increasing pressure to cooperate.

"I don't think the whole [electronics] industry speaks with a common voice," said Gordon Moore, chairman of Intel Corp. of Santa Clara, Calif., the country's third-largest maker of semiconductors. "Each of us looks toward optimizing his own position. When you expand our charter to try to solve the country's problems, it gets outside of what we can handle very well."

One approach that has gained popularity in recent years is cooperation through groups known as consortia, where member firms—often each other's competitors—share the risks of costly research.

More than 100 joint research operations have been formed since such ventures were allowed under a 1984 act. And although the most celebrated of those, Sematech, is said to be on course, many of the other ventures have yet to bear fruit.

Even the most ambitious of those joint efforts—an alliance that would go beyond research into cooperative manufacturing—seems to be stumbling. Called U.S. Memories, its members include leading computer and semiconductor makers who set a year-end deadline for attracting enough participants to make the project viable.

The goal of U.S. Memories is to set up a factory that would produce key computer-memory chips. U.S. computer makers, the members said, are becoming too dependent on Japanese suppliers of such parts. They argued that if Japanese firms are allowed to control the industry—and reap huge profits—these same firms will be able to make increasing inroads into computer markets where Americans still dominate.

But several leading U.S. computer makers—among them Apple Computer Inc. and Sun Microsystems Inc.—have declined to join U.S Memories.

One reason, industry observers speculated, is because of the growing internationalization of the electronics industry, a trend that is occurring at the same time that many are calling for cooperative nationalistic actions.

As these firms form tighter relationships with Japanese suppliers, they may not want to offend those suppliers by joining groups that only take American members. Sun Microsystems, for example, has extensive customer and supplier relationships with Fujitsu Ltd. of Japan.

The reticent U.S. firms also may be unwilling to take on a substantial financial risk to secure U.S. suppliers when their foreign sources seem plenty capable of handling the job.

These computer makers may have "struck so many bargain with firms overseas that the idea of drawing national boundaries to define who their collaborators are is not a conceivable option anymore," said Richard Samuels, a Japan specialist at the Massachusetts Institute of Technology.

The trend is a double-edged sword: "It restrains aggressive behavior against the U.S.," Samuels said, but "it creates dependence on others who may not share your visions . . . and it may not improve the welfare of Americans."

The semiconductor-makers themselves are tying up more overseas arrangements. Both Texas Instruments Inc. and Motorola Inc. have engaged in key techology-sharing arrangements with Japanese firms, for example.

The tensions between globalism and nationalism also became apparent earlier this month when makers of U.S. semiconductors said they were working with the Europeans and Japanese to secure a role as suppliers to their emerging HDTV industries. The move raises questions about where the loyalties of U.S. semiconductor makers would rest if foreign firms tried to establish an HDTV beachhead in this country.

All the while, the industry continues to look to Washington for help in tax, trade and research matters. Today a panel of industry and government leaders will propose reviving a consumer electronics industry by forming a multibillion-dollar capital pool with some sort of federal support.

And recently, chip industry insiders have been probing Washington to see whether the government would be inclined to block a rumored Japanese purchase of a key semiconductor-equipment unit of Perkin-Elmer Corp. of Norwalk, Conn.

Even International Business Machines Corps., whose $60 billion in sales make it by far the largest U.S. computer producer, is turning to other firms and the government for help.

Saying it is spending hundreds of millions of dollars to develop a new way to inscribe microscopic circuits for use in making semiconductors, a process called X-ray lithography, the company has said it can't support the technology alone. So far, it has attracted Motorola into its fold and has secured some Pentagon funding.

Many such pleas land at the doorstep of the Defense Advanced Research Projects Agency (DARPA), an arm of the Pentagon that for 31 years quietly funded research projects in companies and universities. Though its budget is relatively small—it represents about 3 percent of Pentagon spending on research and testing—its programs have had considerable impact on advancing military and civilian computer technologies.

With its support of HDTV research, DARPA this year leaped into the limelight—thereby generating much of the technology policy debate now enveloping Washington.

As the agency moves forward, even exploring the possibility of getting financial paybacks from the commercial use of the technologies it supports, it has received a word of caution from a Senate subcommittee.

DARPA, the defense appropriations panel said, "is embarking upon relatively uncharted waters."●

● Mr. HEINZ. Mr. President, I am pleased to add my name as cosponsor of this bill introduced by the Senator from Missouri [Mr. DANFORTH]. The bill would amend the 1980 Stevenson-Wydler Technology Innovation Act to further enhance the competitiveness of American industry.

There is no question our competitiveness could use some enhancement. American industries have faced increasing foreign competition, in large part from Japan, since 1980. In consumer electronics, for example, only 40 percent of U.S. consumption is produced in this country. Japan, in contrast, produces more than twice what it consumes domestically. Foreign-owned firms control nearly 90 percent of the U.S. television market. In computers, our surplus has declined steadily since 1980, and currently we produce only 5 percent more than we consume. In electronic components—semiconductors, resistors, capacitors, et cetera—we became a net importer in 1982. What is particularly distressing in these sectors is the demonstrated ability of Japanese firms to catch up and pass United States firms while spending significantly less capital on R&D, plants, and equipment. The continuation of this trend poses profound dangers not just for our economic viability but for our ability to achieve our political objectives around the world. If we are economically weak, we cannot be politically strong. Clearly, we need to do a better job of making sure critical U.S. industries maintain their competitiveness.

The bill attempts to do that by applying the current national trade estimate concept embodied in the last two trade acts to the question of domestic industrial competitiveness. Specifically, the bill would require the Secretary of Commerce to compile annually a list of industries and industrial sectors which are critical to maintaining our economic and global security and which are also beneficiaries of foreign government assistance that enhance their competitiveness. The report would focus on, but is not limited to, industries that involve the use and development of advanced technology, research, and innovation.

This will accomplish two things. It will require the Commerce Department to make some important judgments as to what is critical to our economic survival. Some may call that industrial policy, but the simple act of identifying what is important can only be considered a basic function of government. If we don't know what we ought to care about, we cannot make intelligent policy choices.

Second, the bill will require our Government to monitor closely what both we and others are doing to assist and encourage critical industries to remain globally competitive. That is an essential step in assessing our own relative competitiveness, as well as an effective means of compiling information about deviations from market principles in other countries.

Trying to increase Government sensitivity to the competitiveness problem is an important step in the right direction. To further enhance the usefulness of the proposal, however, I would suggest a further level of detail in the report; namely the inclusion of a list of product lines, industries, and markets which are related to the sectors and markets identified as critical and earnings which are essential to those sectors or industries in sustaining necessary levels of research and development. This enhancement is necessary to get a clear picture of exactly what is critical to our industrial infrastructure, because, in a highly integrated economy like ours, industries do not

simply exist in isolation. For example, in the case of high definition television, EDTV, criticality is defined not simply by its end product—a more sophisticated television set—although end product viability is an essential element since it attracts investment and, in turn, produces profits for future R&D. But it is also defined by the many other sectors that will utilize the flat screen display technology or integrated circuits developed for HDTV. A narrow definition risks missing both these equally important related sectors, and it risks ignoring the accurate road map to understanding how foreign governments create and maintain competitiveness in the same sectors.

Mr. President, the importance of this bill in helping us establish a competitiveness profile for ourselves and our trading partners cannot be underestimated. I hope all Senators will support it, along with the addition I will propose at the appropriate time.●

By Mr. FORD:

S. 1969. A bill to amend the Water Development Act of 1986; to the Committee on Environment and Public Works.

AMENDING THE WATER DEVELOPMENT ACT OF 1986

Mr. FORD. Mr. President, the U.S. Army Corps of Engineers has made the determination that there is no longer a Federal interest in locks and dams 5 through 14 on the Kentucky River. Consequently, it is moving to divest itself of the structures, having signed a memorandum of understanding with the Commonwealth of Kentucky in 1985 and having secured authorization for such divestiture in the Wate Development Act of 1986.

The orderly transition of operation and maintenance responsibility of locks and dams 5 through 14 was to occur on October 15, 1988, according to the memorandum of understanding. Because the transition was to occur in the first year of the administration of Gov. Wallace Wilkinson, he asked the Kentucky congressional delegation to help secure a year's delay so that the State might find funding for the facilities' upkeep and become familiar with the technical details of operation and maintenance.

Unfortunately, the Commonwealth of Kentucky has found it necessary to file suit against the Corps of Engineers. The problem, Mr. President, is that, while there are no longer navigation and flood control benefits to be derived from the Kentucky River locks and dams 5 through 14, they now provide the water supply for 600,000 people in central Kentucky. Furthermore, the structures are in such a condition of disrepair that the Commonwealth will have to do instant repairs worth several millions of dollars just to keep the structures from falling into the water. If any of those pools lost, the consequences for half a million people will be immediate and dire—in other words, no water.

The memorandum of understanding clearly commits the Corps of Engineers to performing major maintenance as well as routine maintenance. Major maintenance is defined in section 2(b)(2) as "that activity necessary to restore operational adequacy or structural integrity in situations such as those here listed: * * * Failure or imminent threat of failure of major L/D components such as: dam, gates, walls." And section 4(h), entitled "Corps Responsibilities," states that "The corps will be responsible for major maintenance. * * *" It is obvious to the most casual observer that major maintenance has not been done.

This is why the Commonwealth of Kentucky has been forced to file suit in U.S. district court and is why I introduce legislation today concurrently with my colleague from the Sixth District of Kentucky, Congressman LARRY HOPKINS, to see that proper maintenance—maintenance as set forth in a legal contract, is performed prior to the orderly transition of locks and dams 5 through 14 from the Corps of Engineers to Kentucky. I have already discussed my legislation with the Committee on Environment and Public Works and I am hopeful that it will be adopted by the full Senate during the second session of the 101st Congress.

Mr. President, the thrust of this legislation is the least that should be done for the people of central Kentucky. For over 100 years they have been dependent upon these locks and dams for their water supply, only to find that the rug is about to be pulled out from under them, that the very existence of the structures is in peril. Understandably, the Commonwealth of Kentucky does not have in its inventory the engineering expertise to repair the structure, must less the money to do so.

The ultimate authority to which we look in this Nation is the Federal Government. If it cannot be relief upon to keep its trust, we have nothing.

I ask unanimous consent that the text of the bill and a copy of the memorandum of understanding between the Commonwealth of Kentucky and the Corps of Engineers be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1969

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Army shall not proceed with the divestiture of Locks and Dams 5 through 14 of the Kentucky River, Kentucky, pursuant to Section 301(a) of the Water Development Act of 1986 (P.L. 99-662) until such time as he has complied with the terms of the Memorandum of Understanding between the United States Army Corps of Engineers and the Commonwealth of Kentucky as approved by the Louisville District Engineer on February 22, 1985.

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES ARMY CORPS OF ENGINEERS AND THE COMMONWEALTH OF KENTUCKY

Subject: Operation and Maintenance of Kentucky River Locks and Dams Nos. 5 Through 14.

1. PURPOSE

The purpose of this Memorandum of Understanding (hereinafter referred to as "MOU") is to establish general relations and procedures under which the Commonwealth of Kentucky (hereinafter referred to as the "State") and the U.S. Army Corps of Engineers (hereinafter referred to as the "Corps") will (1) implement a lease agreement for renewed operation and maintenance of Locks and Dams 5 through 14 on the Kentucky River, (2) define the support role and maintenance obligation of the Corps, and (3) determine the respective rights, duties and responsibilities of the State and the Corps, pending proposed divestiture by the United States.

2. DEFINITIONS

For the purpose of this MOU, the following terms are defined:

a. "Transition Period" means the period beginning when this MOU is signed, and ending 15 October 1988, or upon the transfer of fee title to the State if such event occurs on or before 15 October 1988.

b. "Navigation Maintenance" is the work required to protect, repair, or replace the system as constructed, modified, or rehabilitated. Navigation maintenance is further categorized as follows:

(1) "Routine Maintenance" is that activity necessary to prevent premature failure of project components, or to restore operational capability of project components in situations such as those here listed: Lubrication of moving parts; electrical or hydraulic repairs; mowing, painting, or grounds maintenance; building repairs; repair/replacement of ancillary lock equipment such as drills, drill stands, and rackbars; maintenance of access roadways; concrete patching; maintenance of utilities; water, wastewater, fuel, electricity; esplanade maintenance and repair; "stripping" of locks during high water conditions; washing and cleaning of locks following high water conditions; flushing of locks to remove silt deposits; posting and maintaining safety/danger signs; and drift removal in upper approach and gate recesses.

(2) "Major Maintenance" is that activity necessary to restore operational adequacy or structural integrity in situations such as those here listed: Gate leaf rehabilitation; timber replacement; valve repairs involving diving or dewatering; failure or imminent threat of failure of major L/D components such as: dam, gates, walls; and extensive refacing of lock walls.

(3) "Channel Maintenance" is that work required to maintain the necessary river channel dimensions; it includes channel snagging and buoy placement and maintenance.

3. CORRESPONDENCE

a. Correspondence of a policy forming nature, or which states the legal/philosophical position of either party hereto, will be exchanged between the offices of the Secretary of the Kentucky Natural Resources

and Environmental Protection Cabinet and the District Engineer, Louisville District, U.S. Army Corps of Engineers, Louisville, Kentucky.

b. Correspondence of a routine nature will be exchanged between any office or personnel of the Natural Resources and Environmental Protection Cabinet, as designated by the Secretary of said Cabinet, and such personnel of the Real Estate, Operations, or Engineering Divisions of the Corps, as the District Engineer designates.

4. CORPS RESPONSIBILITIES

a. The Corps will have responsibility for performing one-time maintenance and repairs as may be necessary to make Kentucky River Locks and Dams Nos. 5 through 14 (hereinafter referred to as the Facilities) operational, or in operating order. "Operational" and in "operating order" shall consist of the conditions which the Corps would normally establish as necessary for safe operation and use of the said Facilities for navigation, subject, however, to availability of funds. Dredging will be performed in and around the Locks 5 through 14, and in the channel as necessary so as to establish a channel suitable for pleasure boat transit. Snagging will be performed only in the main channel of the Kentucky River as required to make said channel useable.

b. Corps personnel will train State personnel in the proper use of the equipment needed to operate and maintain the Facilities, and will render such other advice and consultation as State personnel may require regarding utilization and maintenance of the said Facilities. As a part of the proposed training of State personnel, the Corps will provide a work area in the Louisville District Office, together with such supplies and equipment as may be needed to provide the requisite amount of training, in addition to necessary field training at one or more of the Facilities. The Corps will not permanently station any government employee at the locks for training or operational purposes.

c. The Corps will operate and maintain Locks and Dams Nos. 1 through 4 on the Kentucky River, under the same terms and conditions as it has in the past, subject to availability of funds. It shall be necessary, at times, to temporarily close Locks 1 through 4 to all navigation for periods of time needed to perform routine maintenance, major maintenance and channel maintenance.

d. The Corps will assemble, from available records, data concerning annual costs of maintaining the Facilities for the period from 1969 to date, and shall provide this information to the State.

e. The Corps will continue to maintain and sell to the public, navigation charts for the Kentucky River Locks and Dams 5 through 14 during the transition period. Maintenance of these navigational charts by the Corps will cease at the end of the transition period or upon transfer of title to the Facilities, whichever occurs first.

f. The Corps will provide engineering assistance (investigation, design, and estimates) for Locks and Dams 5 through 14 during the transition period. After transfer of title to the State, these services will continue to be available on a reimbursable basis if the State elects to use them.

g. To the extent that the law and regulations may permit, the Corps will make every effort to have title to the Facilities vested in the State, and in accordance with the State's plan and/or implementation schedule. The transfer contemplated will include the fee simple title to all lands, structures, locks, dams, operating equipment, buoys, safety equipment and appurtenances, subject to encumbrances of record and all leases, licenses, easements or permits granted by the Corps at Locks and Dams 5 through 14.

h. The Corps will be responsible for major maintenance and channel maintenance for Locks and Dams 5 through 14 until 15 October 1986. From 15 October 1986 to 15 October 1988, the Corps will be responsible only for major maintenance of Locks and Dams 5 through 8.

i. The Government shall not be responsible or liable for injuries to persons or damage to property when such injuries or damages are caused by or result from the State's operation and maintenance of the facilities and are not due to the negligence of the Government.

5. STATE RESPONSIBILITIES

a. The State will demonstrate its interest in acquiring ownership of the Facilities by making a good faith effort to bring about enactment of legislation and appropriations needed to (1) accept the fee simple title to all lands, structures, locks, dams, operating equipment, buoys, safety equipment and appurtenances in accordance with paragraph 4g above and (2) operate and maintain the Facilities during the transition period.

b. After initial restoration of electrical service by the Corps, the State will be responsible for maintaining utilities at Locks 5 through 14 and shall pay all utility bills incident to operation and maintenance of the Facilities.

c. The State will perform all routine maintenance on Locks and Dams 5 through 14 for the transition period. From 15 October 1986 to 15 October 1988, the State will be responsible for all channel maintenance and also for major maintenance on Locks and Dams 9 through 14.

6. LEASE AGREEMENT

The Corps and the State shall negotiate a lease agreement for the purpose of establishing conditions of use, said lease to be effective during the transition period or until the lease is terminated or revoked. Execution of the lease on behalf of the Government by the Secretary of the Army will be delayed approximately 60 to 90 days while the proposal instrument is forwarded and reviewed through Department of the Army channels.

7. FERC LICENSES

The Facilities are subject to present and/or future licenses, if any, granted by the Federal Energy Regulatory Commission ("FERC") for study and/or construction of hydroelectric power generating facilities and appurtenant uses. The State and the Corps will cooperate with the Federal Energy Regulatory Commission in the performance of that agency's mission during the period that Locks and Dams 5 through 14 are federally-owned facilities.

8. MODIFICATION

New or revised Federal or State legislation or policy directives covering the subject matter of this MOU may necessitate changes to this agreement.

a. Necessary modifications to this Memorandum of Understanding may be initiated by representatives of either the Corps or the State. Any such modification shall be reduced to writing and made a Supplemental Agreement hereto.

b. Modification will be submitted for consideration and acceptance by the same level of authority as executed the original MOU.

9. EFFECTIVE DATE

This agreement will take effect upon execution by authorized representatives of the State and the Corps.

10. TERMINATION

This MOU will terminate on 15 October 1988 unless earlier termination is agreed to by the parties. Either party retains the right to unilaterally withdraw from this agreement, effective 30 days after providing formal notice to do so, signed by a duly authorized representative of the MOU's signatories.

Approved this 22nd day of February 1985.

DWAYNE G. LEE,
*Colonel, Corps of Engineers District Engineer.*
*Charlotte E. Baldwin,*
*Secretary, Natural Resources and Environmental Protection Cabinet.*

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By Mr. McCONNELL:

S. 1973. A bill to establish the Kentucky National Wildlife Refuge; to the Committee on Environment and Public Works.

ESTABLISHMENT OF THE KENTUCKY NATIONAL WILDLIFE REFUGE

Mr. McCONNELL. Mr. President, I rise today to introduce a bill authorizing and directing the Secretary of the Interior to establish a new national wildlife refuge in my home State of Kentucky.

Mr. President, the National Wildlife Refuge System was begun in 1903 under President Theodore Roosevelt. The system is the world's largest collection of lands managed specifically for wild animals. The National Wildlife Refuge System includes over 450 refuges in 49 States, encompassing more than 90 million acres of this Nation's best wildlife habitats.

This system of wildlife refuges plays a vital role in preserving endangered and threatened species of animals and birds. For many of these creatures, having a habitat secured within a refuge is the difference between survival and extinction. National wildlife refuges also conserve habitat for plants and many species of resident mammals, fish, insects, amphibians, and reptiles. Refuges also provide a habitat for wintering and migrating waterfowl. Finally, many of these refuges provide excellent recreational and educational opportunities, including hunting, fishing, bird-watching and photography.

Mr. President, the National Wildlife Refuge System is indeed a great U.S. resource. However, in the opinion of this Senator, the System contains one serious flaw. While there are one or more national wildlife refuges in each of 49 States, my State of Kentucky does not yet have one.

The bill I am introducing today will rectify this situation. Under my bill, approximately 10,000 acres of land in Carlisle County in western Kentucky will be approved for purposes of creating the Kentucky National Wildlife Refuge. The land has already been

studied and designated ideal for this purpose by the Kentucky Department of Fish and Wildlife Resources and the Federal Fish and Wildlife Service.

Federal and State fish and wildlife biologists have examined the site and consider it a key to meeting the habitat goals presented in the North American waterfowl plan. The site is strategically located in a region heavily utilized by migrating and wintering waterfowl, including mallard, blue-winged teal, and wood ducks. The location and geographical nature of the site enable it to provide habitat types and sanctuary needs not currently available in western Kentucky.

This project has the support of State and local officials and of sportsman and nature enthusiasts around the State.

Mr. President, setting this land aside as a refuge will produce obvious benefits for Carlisle County and for Kentucky. The Kentucky National Wildlife Refuge will provide excellent recreational and educational opportunities for the citizens of Kentucky, economic opportunities for the residents of Carlisle County, and secure habitat for the diverse wildlife of the region.

At the same time, setting aside this land as a refuge will also signal the commitment of the United States to maintaining and preserving open lands and wildlife.

I thank my Senate colleagues in advance for their assistance to my State in obtaining its first national wildlife refuge and for their commitment to the National Wildlife Refuge System. I ask that a copy of this legislation appear in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1973

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

FINDINGS AND PURPOSE

SECTION 1. The Congress finds that—

(1) thousands of acres of bottomland hardwoods are being cleared each year in the Mississippi River Delta;

(2) these forested wetlands represent one of the most valuable and productive wildlife habitat types in the United States;

(3) the Columbus Bottom area of Carlisle County, Kentucky, is a backwater wetland complex, including bottomland hardwoods, which constitutes important breeding habitat for the wood ducks, and wintering and migrating habitat for Canadian geese, mallards, blue-wing teal, and wood ducks; and

(4) protection and enhancement of this area through inclusion in the National Wildlife Refuge System would help meet the habitat protection goals of the North American Waterfowl Management Plan.

(b). PURPOSE.—The Kentucky National Wildlife Refuge is established and shall be managed for the purposes of—

(1) management and enhancement of migratory waterfowl populations;

(2) general wildlife management as a unit of the National Wildlife Refuge System; and

(3) to the extent compatible with subparagraphs (1) and (2), wildlife-oriented recreational and education opportunities.

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) the term "refuge" means the Kentucky National Wildlife Refuge; and

(2) the term "Secretary" means the Secretary of the Interior, acting through the United States Fish and Wildlife Service.

ESTABLISHMENT OF REFUGE

SEC. 3. (a) The Secretary is authorized to acquire approximately 10,000 acres of lands, waters, or interests therein, as depicted upon a map entitled "Kentucky National Wildlife Refuge", dated November 1989, and available for inspection at appropriate offices of United States Fish and Wildlife Service. When sufficient property within the boundaries has been acquired to constitute an area that can be effectively managed as a refuge, the Secretary shall establish the refuge by publishing a notice to that effect in the Federal Register.

(b) The Secretary may make such minor adjustments in the boundaries designated under subsection (a) as may be appropriate to facilitate acquisition of property within the refuge or to otherwise carry out the purposes of this Act.

ADMINISTRATION

SEC. 4. The Secretary shall administer all lands, waters and interests therein acquired under this Act in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee). The Secretary may utilize such additional statutory authority as may be available to him for conservation and development of wildlife and natural resources, water supplies and water control structures, outdoor recreational activities, and interpretive education as he deems appropriate to carry out the purposes of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. There are authorized to be appropriated such sums as may be necessary for the acquisition of lands, waters and interests therein, and for construction and development of refuge facilities, including water supplies and water control structures, to remain available until expended.

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By Mr. BIDEN:

S. 1970. A bill to establish constitutional procedures for the imposition of the sentence of death, and for other purposes;

S. 1972. A bill to enhance the ability of the Federal Government to enforce the criminal laws in drug cases, and for other purposes; to the Committee on the Judiciary.

CONSTITUTIONAL PROCEDURES FOR IMPOSITION OF SENTENCE OF DEATH AND FEDERAL CRIME CONTROL ACT

Mr. BIDEN. Mr. President, I rise to introduce a hopefully comprehensive piece of legislation relating to, once again, the criminal justice system, a piece of legislation designed to battle, in my view and in the view of many, the No. 1 problem facing our cities, our towns, and our rural areas, and that is the epidemic of crime that is sweeping our Nation.

Mr. President, each day 100,000 Americans are victimized by crime, 100,000; each night, millions more barricade themselves inside their homes out of fear of becoming the next victim.

We all know that fear, Mr. President. We feel it in our hearts every day. I feel it when my wife goes to the grocery store in the evening, and wonder when she loads the groceries into the back of the car in the parking lot whether or not she will be safe.

I feel it, as all of us do, when I call my mother in the evening just to make sure she is all right, and she is not at all infirm. She is a healthy vital woman who needs no assistance. I call her, as many of us do, just to make sure that she is safe, nothing more, nothing less.

Mr. President, we all know that more can be done. What can we do about the problem? In my view, the most important thing we can do to reduce the amount of crime in America is to reduce the level of drug use in America. That is why I have sponsored numerous antidrug measures with the help and leadership, on many occasions of the Presiding Officer, the Senator from West Virginia, over the past 10 years. And why most recently I spent, along with the Presiding Officer, many days on the Senate floor and many more days in meetings, supporting the passage of a $9 billion antidrug package and a 300-page drug strategy bill.

Mr. President, these measures would put more police strike forces on the streets; add more Federal drug agents, prosecutors, and judges; increase drug protection and education; boost drug prevention efforts, such as a plan to put girls and boys clubs in every housing project; crack down on crack houses; and seize the narco-terrorists wherever they can be found and bring them to justice; aid the coca-producing countries in reducing the economic addiction to drugs; and build more prisons, lengthen sentences so that drug traffickers are locked up for a long, long time.

These measures, Mr. President, are the key to the long-term crime problems in America. But drug legislation is our most important crime-fighting initiative. The President has called on this body to pass separate anticrime legislation.

So today, Mr. President, I am introducing some legislative alternatives to the President's anticrime package. I am prepared to have these alternatives considered right now, Mr. President. When I say right now, the past week or until the time we go out. But the majority leader, in consultation with, and I believe at the request of, the Republican leader and the White House, asked to defer action on this legislation until next year, and I obviously have acceded to that request.

In anticipation of our consideration of these anticrime measures next year, Mr. President, I am introducing two bills today, I want to point out, first, though, how much of the President's May crime package has already been approved by the Senate and the House.

Mr. President, since January, we have had to hear and listen to the President and administration officials talk about their efforts on an anticrime package. They introduced the so-called anticrime package, different from the drug bill, in May. I had to listen through the summer, Mr. President, and in the fall about this anticrime package that was not being moved on by the Democratic Congress, and by the Democatic Senate in particular, and even more particularly the Senate Judiciary Committee.

Mr. President, I would like to point out how much of that May crime package we have heard so much about has already been approved by the House and the Senate. Every single penny the President asked for in his May crime package has already been passed and sent to the President's desk. We have granted him every single FBI agent, every single new drug enforcement agent, every single new prosecutor, every single marshal and firearms agent the President has asked for. We have given him every dollar for all the new prison construction he has asked for and wants, and we have approved his entire request for local law enforcement assistance. We have already done this, and much more, as the Presiding Officer knows, with the help and leadership of the Presiding Officer.

On top of the President's crime budget, the Senate added another $100 million to boost local law enforcement; that is, we have almost doubled the President's proposed increase for local police officers and prosecutors. And once again this year, as we did virtually every year in the Reagan administration in the previous 8 years, the Democratic Congress has approved more funds for fighting crime than the Republican President has asked for.

I say this, Mr. President, not to make a case that we do more or less than the President, but in the hopes that we will, as we go into next year in continuing to attempt to deal with the drug and crime problem in this country, depoliticize it and set the facts straight as to whether or not this Congress has been responsive to the President's request.

As a result of this action, the aforesaid action that I have mentioned, that we have taken today, only 4 of the 19 principal issues included in the President's May crime bill remain to be addressed by the U.S. Senate. And these four issues, I must say parenthetically, do not do much to impact on drugs, if at all, and, arguably, may or may not reduce crime. But only four are left: The death penalty, which in other forms we have addressed on the floor of the Senate this year with the President's death penalty provision; the habeas corpus reform initiative; the exclusionary rule; and firearms legislation.

On the last point, Mr. President, we passed a firearms bill out of the Judiciary Committee, which has the objection of the President and many of our Members on the floor here.

The first bill that I will be introducing in a moment, Mr. President, addresses these four issues: death penalty, habeas corpus, exclusionary rule, and firearms legislation, plus two additional matters identified for action in the September drug funding agreement, and that is international money laundering and the Justice Department reorganization initiatives which I have proposed. These six matters, Mr. President, are contained in my first bill that I will be introducing today. When I introduce that bill at the appropriate time, Mr. President, I will ask that it be sent to the desk and ask unanimous consent that it be held at the desk until the close of business today. I am not asking that at this moment.

To reiterate, Mr. President. this bill will contain six matters. It is my understanding that this bill, the first bill I will introduce, will be the vehicle that the majority leader moves to when we proceed in February to our unanimous-consent agreement to deal with the death penalty, exclusionary rule, and habeas corpus, as well as firearms.

As I said before, Mr. President, this bill addresses the four remaining issues of the President's May crime bill. When the Senate takes up this bill, we will have considered all of the elements of the President's proposal. I will not detail now the specific differences between my proposals on the death penalty, on habeas corpus, on assault weapons, and exclusionary rule, and the President's proposals. The materials I will be submitting to the Senate at the appropriate time will detail these differences. I also will not take time now to detail two added items—money laundering and the Justice Department reorganization—which are also explained in the materials that I will attach to this statement, Mr. President.

The point I do want to make, though, Mr. President, is that I do not believe and have not believed that the President's four remaining proposals, characterized as anticrime, even as improved, in my view, by the legislation that I am introducing, I am not convinced will do very much to produce any significant change in the crime picture in America; that is, whether one agrees with him or not, the President's proposals on these issues have little to do with attacking the amount of crime we have in this country. The reality of these proposals will do little, if anything. They, in fact, Mr. President, do not measure up to the rhetoric that their supporters use when describing the need for changes in the death penalty, exclusionary rule, and habeas corpus.

Take just one example: the President's proposal on the death penalty. I have included this proposal in my bill with some modifications. I have proposed and introduced a death penalty that will prevent, as best we can, the execution of innocent juveniles, mentally retarded persons, of those who may be victims of racial bias. Under the President's bill, Mr. President, the death penalty will only be imposed for crimes that occur very rarely.

People should understand, when we talk about passing a death penalty bill that I have supported in various forms in this body, that we are talking about the death penalty in circumstances where the Federal Government has jurisdiction. We do not have jurisdiction when a crime, a wanton murder, is committed at a 7-Eleven store in suburban Wilmington, DE, or California or anywhere else. That is a State matter. So the scope of changing the Federal law relating to the death penalty is very narrow. Yet, if you listen to my friends who say, if we pass the Federal death penalty bill, we would have a great impact on the millions of crimes committed in America, that is, to say the least, Mr. President, a significant exaggeration.

For example, under the President's death penalty bill as he introduced it, it would only be imposed rarely, like the murder of a poultry inspector, for example, Not many poultry inspectors are murdered, but it would cover that, Mr. President. The President's bill, if you look at all of the changes he suggests in death penalties and look at the entire last year, we can only find where the President's bill would have resulted in a maximum of 28 cases, 28 over the past 3 years combined, and 16 of those cases were on Indian reservations, because there is Federal jurisdiction over Indian reservations.

So, Mr. President, as one who supports the death penalty in certain circumstances, I am not arguing we should not have the death penalty, but I am arguing, as we suggest this is some great panacea to end crime, if the President's death penalty bill had been in effect for the past 3 years, it would have applied to only 28 cases. That is not likely to stem crime in America.

This notion, by the way, if you look at it, we are talking about four impositions; four times death would have been imposed if the President's bill had been in place. Does anyone really

think that is going to help solve the crime problem, the crime epidemic in America? Even if you are a death penalty supporter, do you think those added four death sentences will do much to make our streets safer, make it more likely my wife can shop with inpunity in the evening at the Acme store and walk into the parking lot; make it more likely that you are not going to become the victim of a wanton crime resulting in your death because we have those provisions?

Keep in mind, these four new death sentences the President wants are not for drug cases. I want to say, as we end this session and this calendar year, again and again and again, the President, God bless him, talks about the death penalty for drug kingpins. He has that already. You and I voted to give him that authority a year ago last September. It exists in the law and, to the best of our knowledge, there is not a single case that has been brought by the Justice Department under the death penalty provisions that we passed, that he has authority to ask for the death penalty for drug kingpins.

Mr. President, the new authority the President wants is for murder while wrecking a train, and no one in this body rides a train more than this Senator. So I am all for it. I ride it twice a day every day.

The other thing that the President wants a death penalty for is for robbing the U.S. mails and similar provisions.

Because the President's proposal, the subject of my first bill, will not do very much to reduce crime in this Senator's opinion, although I am prepared to support a number of them with modification, I am introducing a second crime bill as well. I want to make this clear. It is a little confusing. We made an agreement—we, the Senate. We said in a compromise that we would make sure the President had an opportunity to have the four remaining provisions of his crime bill voted on this year. The Republican leader approached the Democratic leader and said let us put off that agreement until next year. The White House apparently concurred, according to the minority leader. So we are going to address those four items next year when we come back in February. But there is a second point that I wish to make that all four of those items, if they were passed today, would have very little impact on crime in America. That is why I feel compelled to introduce a second larger and broader crime bill.

The second bill, unlike the first one, is one that I wholeheartedly support. It is a collection of crime-fighting measures drafted by several Democratic Senators and Congressmen, many of which have previously passed the Senate or the Judiciary Committee. This bill is our alternative to the President's approach to dealing with crime. Our crime bill contains 15 major provisions that are not contained in the President's so-called crime bill.

What would this bill do, Mr. President? Among other things, it would do some of the following: It would add 1,000 new FBI agents; 350 new drug enforcement agents; 300 new Federal prosecutors. It would launch a new rural antidrug initiative, because drugs are in rural America and impacting on them as much as they are on our urban areas. It would boost aid to State and local police forces to $600 million a year, almost double the President's September proposal. It would regulate the manufacture and sale of assault weapons.

Mr. President, I, like you and many others here, met with the President of Colombia. We said, what can we do, Mr. President? He said the three most important things you can do for me is get the coffee agreement back in place so our farmers can make some money, No. 1; No. 2, stop the shipment of American chemicals, precursor chemicals to Colombia to allow our Medellin cartel folks to make this cocaine; and No. 3, for Lord sake, stop selling our criminals your guns.

Is that not interesting? The President of a country under siege comes to this country and says, "Please, stop selling assault weapons." Our President says, "We're not going to import certain assault weapons." But we continue to manufacture and sell them to other countries. Is it not incredible? We say do not send us your assault weapons but we are going to take our assault weapons and send them to you so your criminals can shoot up your judiciary, intimidate your government so they can make their drugs to send back to us and ruin our country. Fascinating. Fascinating.

But this bill that I am proposing today proposes to do something about the manufacture and sale of assault weapons. It also detains drug criminals before they are sentenced. We have a problem, Mr. President. These folks get convicted; they post bond; and they leave before they are sentenced. It attacks the problems of juvenile gangs and it gives the Government of the United States new power to close down crack houses, as well as the government of locales to close down crack houses. It creates a disaster relief program for cities suffering from crime and drug disasters.

Mr. President, this bill would do all this and much more. This bill, my second bill, is a real crime bill. This bill would really attack the crime problem in America by attacking its roots in our streets, our cities, our towns, our rural areas, inviting cops to the beat and drug agents to the streets, inviting judges and prosecutors to the courtroom to put criminals away and by attacking gangs and corrupted officials and felons who commit crimes with guns.

When the Senate takes up the bill we have agreed to consider, my first bill based on the items the President has proposed to fight crime, I will offer this second bill as added legislation.

Mr. President, I would like now to send both bills to the desk. Bill No. 1 is the bill containing the four provisions we have agreed to address, plus two I have added, according to our unanimous-consent agreement. I send that to the desk and I ask on that bill No. 1, Mr. President, that there be unanimous consent that it be held at the desk until the close of business today.

The PRESIDENT pro tempore. Without objection, the bill may be introduced. Without objection, the bill may be held at the desk in accordance with the request.

Mr. BIDEN. Mr. President, I send the second bill to the desk, the broader crime bill, and I ask that that be appropriately referred.

The PRESIDENT pro tempore. Without objection the second bill will be introduced and will be received and appropriately referred.

Mr. BIDEN. Mr. President, I ask unanimous consent that the text of the bills, accompanying section-by-section analyses, and side-by-side comparisons of both bills be printed in the RECORD.

The PRESIDENT pro tempore. Without objection the requests of the Senator will be granted and the first bill will also be appropriately held at the desk in accordance with the request for the remainder of this day.

Mr. BIDEN. Mr. President, there is obviously much more to say but my colleagues have heard me speak so much on the crime and drug problem I think I should give them a Thanksgiving gift and not speak more to the issue.

I speak to it as much as I do, Mr. President, because I believe that there is no more serious problem facing this country than the drug problem. The drug problem spawns over 60 percent of the crime in America. We must address both. I believe, if we have the will and the imagination, we can do both. This is not a hopeless situation. If we persist, we can prevail.

I look forward to in the next calendar year, working hopefully somewhat more harmoniously with the White House and the Justice Department, and Dr. Bennett, because this is not a partisan matter. This is a matter of interest to all Americans. I stand ready, and I have said so—I have recently spoken to Dr. Bennett—to cooperate with them as long as we begin to talk and there is not a decision made down-

town that this is more of a political issue than a substantive issue.

I thank my colleagues and Presiding Officer for allowing me to trespass on their time, and for the interest of the Chair.

S. 1970

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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TITLE I—DEATH PENALTY

SEC. 101. SHORT TITLE.

This title may be cited as the "Federal Death Penalty Act of 1989".

SEC. 102. CONSTITUTIONAL PROCEDURES FOR THE IMPOSITION OF THE SENTENCE OF DEATH.

(a) IN GENERAL.—Part II of title 18 of the United States Code is amended by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH SENTENCE

"Sec.
"3591. Sentence of death.
"3592. Factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
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**"§ 3591. Sentence of death**

"A defendant who has been found guilty of—

"(a) an offense described in section 794 or section 2381 of this title;

"(b) an offense described in section 1751(c) of this title, if the offense, as determined beyond a reasonable doubt at the hearing under section 3593, constitutes an attempt to kill the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President; or

"(c) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593—

"(1) intentionally killed the victim;

"(2) intentionally inflicted serious bodily injury that resulted in the death of the victim;

"(3) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or

"(4) intentionally and specifically engaged in an act, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified; provided that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

**"§ 3592. Factors to be considered in determining whether a sentence of death is justified**

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is to be imposed on a defendant, the finder of fact shall consider mitigating factors, including the following:

"(1) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) The defendant is punishable as a principal (as defined in section 2 of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

"(4) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of murder, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"(5) The defendant was youthful, although not under the age of 18.

"(6) The defendant did not have a significant prior criminal record.

"(7) The defendant committed the offense under severe mental or emotional disturbance.

"(8) Another defendant or defendants, equally culpable in the crime, will not be punished by death.

"(9) The victim consented to the criminal conduct that resulted in the victim's death.

"(10) That other factors in the defendant's background or character mitigate against imposition of the death sentence.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(a), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) the defendant has previously been convicted of another offense involving espionage or treason for which either a sentence of life imprisonment or death was authorized by statute;

"(2) in the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security; and

"(3) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (b) or (c), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) the death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 751 (prisoners in cus-

tody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property in interstate commerce by explosives), section 1118 (prisoners serving life term), section 1201 (kidnaping), or section 2381 (treason) of this title, or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n)) (aircraft piracy);

"(2) the defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute;

"(3) the defendant has previously been convicted of two or more Federal or State offenses, punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person;

"(4) the defendant, in the commission of the offense, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense;

"(5) the defendant committed the offense in an especially heinous, cruel, or depraved manner;

"(6) the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value;

"(7) the defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value;

"(8) the defendant committed the offense after planning and premeditation to cause the death of a person or commit an act of terrorism;

"(9) the defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance;

"(10) the victim was particularly vulnerable due to old age, youth, or infirmity;

"(11) the defendant had previously been convicted of violating title II or title III of the Controlled Substances Act for which a sentence of 5 or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise;

"(12) the defendant violated section 408(c) of the Controlled Substances Act to the extent that the conduct described in section 408(c) of such Act was a violation of section 405 of such Act; or

"(13) the defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice-President-elect, the Vice-President-designate, or, if there is no Vice President, the officer next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if he is in the United States on official business; or

"(D) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

"(i) while he is engaged in the performance of his official duties;

"(ii) because of the performance of his official duties; or

"(iii) because of his status as a public servant.

For purposes of this subparagraph, a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

**"§ 3593. Special hearing to determine whether a sentence of death is justified**

"(a) NOTICE BY THE GOVERNMENT.—If, in a case involving an offense described in section 3591, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(1) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter and that the government will seek the sentence of death; and

"(2) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of or pleads guilty to an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty or pleads guilty to an offense under section 3591, no presentence report shall be prepared. At the sentencing hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under section 3592. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The government shall open the argument. The defendant shall be permitted to reply. The government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur with the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(a), an aggravating factor required to be considered under section 3592(b) is found to exist; or

"(2) an offense described in section 3591 (b) or (c), an aggravating factor required to be considered under section 3592(c) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether all the aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall recommend whether a sentence of death shall be imposed rather than some other lesser sentence. The jury or the court, if there is no jury, regardless of its findings with respect

to aggravating and mitigating factors, is never required to impose a death sentence, and the jury shall be so instructed.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or any victim may be.

**"§ 3594. Imposition of a sentence of death**

"Upon a finding under section 3593(e) that a sentence of death is justified, the court shall sentence the defendant to death. Upon a finding under section 3593(e) that a sentence of death is not justified, or under section 3593(d) that no aggravating factor required to be found exists, the court shall impose any sentence other than death that is authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without parole.

**"§ 3595. Review of a sentence of death**

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of an aggravating factor required to be considered under section 3592;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

**"§ 3596. Implementation of a sentence of death**

"(a) A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law.

"(b) A sentence of death shall not be carried out upon a woman while she is pregnant.

"(c) A sentence of death shall not be carried out upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability—

"(1) cannot understand the nature of the pending proceedings, what such person was tried for, the reason for the punishment, or the nature of the punishment; or

"(2) lacks the capacity to recognize or understand facts which would make the punishment unjust or unlawful, or lacks the ability to convey such information to counsel or to the court.

**"§ 3597. Use of State facilities**

"(a) IN GENERAL.—A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"(b) EXCUSE OF AN EMPLOYEE ON MORAL OR RELIGIOUS GROUNDS.—No employee of any State department of corrections or the Federal Bureau of Prisons and no employee providing services to that department or bureau under contract shall be required, as a condition of that employment, or contractual obligation to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participation in executions' includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.".

(b) REPEAL.—Sections 3566 and 3567 of title 18, United States Code, are hereby repealed.

(c) AMENDMENTS TO CHAPTER ANALYSIS.—(1) The chapter analysis of part II of title 18, United States Code, is amended by adding the following new item after the item relating to chapter 227:

"228. Death sentence ..... 3591".

(2) The section analysis of chapter 227 of title 18, United States Code, is amended by amending the items relating to sections 3566 and 3567 to read as follows:

"3566. Repealed.
"3567. Repealed.".

SEC. 103. CONFORMING CHANGES IN TITLE 18.

(a) AIRCRAFTS AND MOTOR VEHICLES.—Section 34 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the section.

(b) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking the period at the end of the section and inserting ", except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.".

(c) EXPLOSIVE MATERIALS.—(1) Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(2) Section 844(f) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(3) Section 844(i) of title 18, United States Code, is amended by striking the words "as provided in section 34 of this title".

(d) MURDER.—(1) The second undesignated paragraph of section 1111(b) of title 18, United States Code, is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;".

(2) Section 1116(a) of title 18, United States Code, is amended by striking "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and".

(e) KIDNAPPING.—Section 1201(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(f) NONMAILABLE INJURIOUS ARTICLES.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the paragraph.

(g) PRESIDENTIAL ASSASSINATIONS.—Subsection (c) of section 1751 of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to kill the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President.".

(h) WRECKING TRAINS.—The second to the last undesignated paragraph of section 1992 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the section.

(i) BANK ROBBERY.—Section 2113(e) of title 18, United States Code, is amended by striking "or punished by death if the verdict of the jury shall so direct" and inserting "or if death results shall be punished by death or life imprisonment".

(j) HOSTAGE TAKING.—Section 1203(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(k) RACKETEERING.—(1) Section 1958 of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting "and if death results, shall be punished by death or life imprisonment, or shall be fined not more than $250,000, or both".

(2) Section 1959(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine of not more than $250,000, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine of not more than $250,000, or both;".

(l) GENOCIDE.—Section 1091(b)(1) of title 18, United States Code, is amended by striking "a fine of not more than $1,000,000 or imprisonment for life," and inserting ", where death results, a fine of not more than $1,000,000, or imprisonment for life or a sentence of death,".

SEC. 104. CONFORMING AMENDMENT TO FEDERAL AVIATION ACT OF 1954.

Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1473), is amended by striking subsection (c).

SEC. 105. APPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

The provisions of chapter 228 of title 18, United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801).

SEC. 106. MURDER BY A FEDERAL PRISONER.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 1118. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal correctional institution under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of parole.

"(b) For the purposes of this section—

"(1) the term 'Federal correctional institution' means any Federal prison, Federal correctional facility, Federal community program center, or Federal halfway house;

"(2) the term 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death; and

"(3) the term 'murders' means committing first degree or second degree murder as defined by section 1111 of this title.".

(b) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following:

"1118. Murder by a Federal prisoner.".

SEC. 107. RACIAL JUSTICE ACT OF 1989.

(a) SHORT TITLE.—This section may be cited as the "Racial Justice Act of 1989".

(b) FINDINGS.—The Congress finds that—

(1) section 5 of the fourteenth amendment of the United States Constitution calls upon Congress to enforce the Constitution's promise of equality under law;

(2) equality under law is tested most profoundly by whether a legal system tolerates race playing a role in the determination of whether and when to administer the ultimate penalty of death;

(3) the death penalty is being administered in a pattern that evidences a significant risk that the race of the defendant, or the race of the victim against whom the crime was committed, influences the likelihood that the defendant will be sentenced to death;

(4) the Constitution's guarantee of equal justice for all is jeopardized when the death penalty is imposed in a pattern in which the likelihood of a death sentence is affected by the race of the perpetrator or of the victim;

(5) the United States Supreme Court has concluded that the Federal judiciary is institutionally unable to eliminate this jeopardy to equal justice in the absence of proof that a legislature, prosecutor, judge, or jury acted with racially invidious and discriminatory motives in the case of a particular defendant;

(6) the interest in ensuring equal justice under law may be harmed, not only by decisions motivated by explicit racial bias, but also by government rules, policies, and practices that operate to reinforce the subordinate status to which racial minorities were relegated in our society;

(7) the institutional need of courts to identify invidiously motivated perpetrators is not shared by Congress, which is empowered by section 5 of the fourteenth amendment to take system-wide, preventive measures not only to eliminate adjudicated instances of official race discrimination but also to eradicate wide-scale patterns and practices that entail an intolerable danger that persons of different races would be treated differently; and

(8) the persistent racial problems pervading the implementation of the death penalty in many parts of this Nation require the Government of the United States to counteract the lingering effects of racial prejudice in order to enforce the constitutional guarantee of equal justice for all Americans.

(c) AMENDMENT TO TITLE 28.—

(1) PROCEDURE.—Part VI of title 28, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 177—RACIALLY DISCRIMINATORY CAPITAL SENTENCING

"Sec.
"2921. Definitions.
"2922. Prohibition on the imposition or execution of the death penalty in a racially discriminatory pattern.
"2923. Data on death penalty cases.
"2924. Enforcement of the chapter.
"2925. Construction of chapter.

"§ 2921. Definitions

"For purposes of the chapter—

"(1) the term 'a racially discriminatory pattern' means a situation in which sentences of death are imposed more frequently—

"(A) upon persons of one race than upon persons of another race; or

"(B) as punishment for crimes against persons of one race than as punishment for crimes against persons of another race,

and the greater frequency is not explained by pertinent nonracial circumstances;

"(2) the term 'death-eligible crime' means a crime for which death is a punishment that is authorized by law to be imposed under any circumstances upon a conviction of that crime;

"(3) the term 'case of death-eligible crime' means a case in which the complaint, indictment, information, or any other initial or subsequent charging paper charges any person with a death-eligible crime; and

"(4) the term 'State or Federal entity' means any State, the District of Columbia, the United States, any territory thereof, and any subdivision or authority of any of these entities that is empowered to provide by law that death be imposed as punishment for crime.

"§ 2922. Prohibition on the imposition or execution of the death penalty in a racially discriminatory pattern

"(a) PROHIBITION.—It is unlawful to impose or execute sentences of death under color of State or Federal law in a racially discriminatory pattern. No person shall be put to death in the execution of a sentence imposed pursuant to any law if that person's death sentence furthers a racially discriminatory pattern.

"(b) ESTABLISHMENT OF A PATTERN.—To establish that a racially discriminatory pattern exists for purposes of this chapter—

"(1) ordinary methods of statistical proof shall suffice; and

"(2) it shall not be necessary to show discriminatory motive, intent, or purpose on the part of any individual or institution.

"(c) PRIMA FACIE SHOWING.—(1) To establish a prima facie showing of a racially discriminatory pattern for purposes of this chapter, it shall suffice that death sentences are being imposed or executed—

"(A) upon persons of one race with a frequency that is disproportionate to their representation among the numbers of persons arrested for, charged with, or convicted of, death-eligible crimes; or

"(B) as punishment for crimes against persons of one race with a frequency that is disproportionate to their representation among persons against whom death-eligible crimes have been committed.

"(2) To rebut a prima facie showing of a racially discriminatory pattern, a State or Federal entity must establish by clear and convincing evidence that identifiable and pertinent nonracial factors persuasively explain the observable racial disparities comprising the pattern.

"§ 2923. Data on death penalty cases

"(a) DESIGNATION OF AGENCY.—Any State or Federal entity that provides by law for death to be imposed as a punishment for any crime shall designate a central agency to collect and maintain pertinent data on the charging, disposition, and sentencing patterns for all cases of death-eligible crimes.

"(b) RESPONSIBILITIES OF CENTRAL AGENCY.—Each central agency designated pursuant to subsection (a) shall—

"(1) affirmatively monitor compliance with this chapter by local officials and agencies;

"(2) devise and distribute to every local official or agency responsible for the investigation or prosecution of death-eligible crimes a standard form to collect pertinent data;

"(3) maintain all standard forms, compile and index all information contained in the forms, and make both the forms and the compiled information publicly available;

"(4) maintain a centralized, alphabetically indexed file of all police and investigative reports transmitted to it by local officials or agencies in every case of death-eligible crime; and

"(5) allow access to its file of police and investigative reports to the counsel of record for any person charged with any death-eligible crime or sentenced to death who has made or intends to make a claim under section 2922 and it may also allow access to this file to other persons.

"(c) RESPONSIBILITY OF LOCAL OFFICIAL.—(1) Each local official responsible for the investigation or prosecution of death-eligible crimes shall—

"(A) complete the standard form developed pursuant to subsection (b)(2) on every case of death-eligible crime; and

"(B) transmit the standard form to the central agency no later than 3 months after the disposition of each such case whether that disposition is by dismissal of charges, reduction of charges, acceptance of a plea of guilty to the death-eligible crime or to another crime, acquittal, conviction, or any decision not to proceed with prosecution.

"(2) In addition to the standard form, the local official or agency shall transmit to the central agency one copy of all police and investigative reports made in connection with each case of death-eligible crime.

"(d) PERTINENT DATA.—The pertinent data required in the standard form shall be designated by the central agency but shall include, at a minimum, the following information:

"(1) pertinent demographic information on all persons charged with the crime and all victims (including race, sex, age, and national origin);

"(2) information on the principal features of the crime;

"(3) information on the aggravating and mitigating factors of the crime, including the background and character of every person charged with the crime; and

"(4) a narrative summary of the crime.

**"§ 2924. Enforcement of the Chapter**

"(a) ACTION UNDER SECTIONS 2241, 2254, OR 2255 OF THIS TITLE.—In any action brought in a court of the United States within the jurisdiction conferred by sections 2241, 2254, or 2255, in which any person raises a claim under section 2922—

"(1) the court shall appoint counsel for any such person who is financially unable to retain counsel; and

"(2) the court shall furnish investigative, expert or other services necessary for the adequate development of the claim to any such person who is financially unable to obtain such services.

"(b) DETERMINATION BY A STATE COURT.—Notwithstanding section 2254, no determination on the merits of a factual issue made by a State court pertinent to any claim under section 2922 shall be presumed to be correct unless—

"(1) the State is in compliance with section 2923;

"(2) the determination was made in a proceeding in a State court in which the person asserting the claim was afforded rights to the appointment of counsel and to the furnishing of investigative, expert and other services necessary for the adequate development of the claim which were substantially equivalent to those provided by subsection (a); and

"(3) the determination is one which is otherwise entitled to be presumed to be correct under the criteria specified in section 2254.

**"§ 2925. Construction of chapter**

"Nothing contained in this chapter shall be construed to affect in one way or the other the lawfulness of any sentence of death that does not violate section 2922.".

(2) AMENDMENT TO TABLE OF CHAPTERS.—The table of chapters of part VI of title 28, United States Code, is amended by adding at the end thereof the following new item:

"177. Racially Discriminatory Capital Sentencing ..... 2921.".

(d) ACTIONS PRIOR TO THE DATE OF ENACTMENT.—No person shall be barred from raising any claim under section 2922 of title 28, United States Code, as added by this section, on the ground of having failed to raise or to prosecute the same or a similar claim prior to enactment of the section nor by reason of any adjudication rendered prior to its enactment.

## TITLE II—HABEAS CORPUS REFORM

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Habeas Corpus Reform Act of 1989".

**SEC. 202. SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES.**

Title 28, United States Code, is amended by inserting the following new chapter immediately following chapter 153:

**"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES**

"Sec.

"2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

"2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

"2258. Filing of habeas corpus petition; time requirements; tolling rules.

"2259. Evidentiary hearings; scope of Federal review; district court adjudication.

"2260. Certificate of probable cause inapplicable.

"2261. Counsel in capital cases; trial and post-conviction; standards.

"2262. Law controlling in Federal habeas corpus proceedings; retroactivity.

**"§ 2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment**

"(a) This chapter shall apply to cases arising under section 2254 of this title brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if subsections (b) and (c) are satisfied.

"(b) This chapter is applicable if a State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable fees and litigation expenses of competent counsel consistent with section 2261 of this title.

"(c)(1) Upon receipt of notice that counsel has been appointed to represent a prisoner under sentence of death after the prisoner's conviction and sentence have been upheld on direct review in a State court of last resort and in the Supreme Court of the United States if application is made to that court, the State court of last resort shall enter an order confirming the appointment and shall direct its clerk to forward the record of the case to the attorney appointed.

"(2) Upon receipt of notice that counsel has been offered to, but declined by, such a prisoner, the State court of last resort shall direct an appropriate court or judge to hold a hearing, at which the prisoner and the attorney offered to the prisoner shall be present, to determine whether the prisoner is competent to decide whether to accept or reject the appointment of counsel and whether, if competent, the prisoner knowingly and intelligently waives the appointment of counsel. The court or judge shall report its determinations to the State court of last resort, which shall review the determinations for error. If the State court of last resort concludes that the prisoner is incompetent and does not waive counsel, the court shall enter an order confirming the appointment of the attorney assigned to the prisoner by the appointing authority and shall direct the clerk to forward the record to the attorney appointed. If the court concludes that the prisoner is competent and waives counsel, the court shall enter an order that counsel need not be appointed and shall direct the clerk to forward the record to the prisoner; provided that nothing in this section requires the appointment of counsel to a prisoner who is not indigent.

"(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner in State collateral proceedings shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(e) The ineffectiveness or incompetence of counsel appointed under this chapter during State or Federal collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under this chapter or section 2254 of this title. This limitation shall not preclude the appointment of different counsel at any phase of State or Federal post-conviction proceedings.

**"§ 2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions**

"(a) Upon the entry in the State court of last resort of an order pursuant to section 2256(c) of this title, a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed pursuant to section 2254 of this title. The application must recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

"(b) A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus petition under section 2254 of this title within the time required in section 2258 of this title; or

"(2) upon completion of district court and court of appeals review under section 2254 of this title the petition for relief is denied and—

"(A) the time for filing a petition for certiorari has expired and no petition has been filed;

"(B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or

"(C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a court of competent jurisdiction, in the presence of counsel and after having been advised of the consequences of his decision, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254 of this title.

"(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution or grant relief in a capital case unless—

"(1) the basis for the stay and request for relief is a claim not previously presented by the prisoner in the State or Federal courts, and the failure to raise the claim is—

"(A) the result of State action in violation of the Constitution or laws of the United States;

"(B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

"(C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence; or

"(2) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the jury's determination of guilt on the offense or offenses for which the death penalty was imposed; or

"(3) a stay and consideration of the requested relief are necessary to prevent a miscarriage of justice.

**"§ 2258. Filing of habeas corpus petition; time requirements; tolling rules**

"Any petition for habeas corpus relief under section 2254 of this title must be filed in the appropriate district court not later than 365 days after the date of filing in the State court of last resort of an order issued in compliance with section 2256(c) of this title. The time requirements established by this section shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner seeks review of a capital sentence that has been affirmed on direct appeal by the court of last resort of the State or has otherwise become final for State law purposes;

"(2) during any period in which a State prisoner under capital sentence has a properly filed request for post-conviction review pending before a State court of competent jurisdiction; if all State filing rules are met in a timely manner, this period shall run continuously from the date that the State prisoner initially files for post-conviction review until final disposition of the case by the State court of last resort, and further until final disposition of the matter by the Supreme Court of the United States, if a timely petition for review is filed; and

"(3) during an additional period not to exceed 90 days, if counsel for the State prisoner—

"(A) moves for an extension of time in the United States district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254 of this title; and

"(B) makes a showing of good cause for counsel's inability to file the habeas corpus petition within the 365-day period established by this section.

**"§ 2259. Evidentiary hearings; scope of Federal review; district court adjudication**

"(a) Whenever a State prisoner under a capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall—

"(1) determine the sufficiency of the evidentiary record for habeas corpus review; and

"(2) conduct any requested evidentiary hearing necessary to complete the record for habeas corpus review.

"(b) Upon the development of a complete evidentiary record, the district court shall rule on the merits of the claims properly before it.

"(c)(1) Except as provided in paragraph (2), a district court may refuse to consider a claim under this section if—

"(A) the prisoner previously failed to raise the claim in State court at the time and in the manner prescribed by State law;

"(B) the State courts, for that reason, refused or would refuse to entertain the claim; and

"(C) such refusal would constitute an adequate and independent State law ground that would foreclose direct review of the State court judgment in the United States Supreme Court.

"(2) A district court shall consider a claim under this section if the prisoner shows that the failure to raise the claim in a State court was due to the ignorance or neglect of the prisoner or counsel or if the failure to consider such a claim would result in a miscarriage of justice.

**"§ 2260. Certificate of probable cause inapplicable**

"The requirement of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to this chapter except when a second or successive petition is filed.

**"§ 2261. Counsel in capital cases; trial and post-conviction; standards**

"(a) A mechanism for the provision of counsel services to indigents sufficient to invoke the provisions of this chapter under section 2256(b) of this title shall provide for counsel to indigents charged with offenses for which capital punishment is sought, to indigents who have been sentenced to death and who seek appellate or collateral review in State court, and to indigents who have been sentenced to death and who seek certiorari review in the United States Supreme Court.

"(b)(1) In the case of an appointment made before trial, at least one attorney appointed under this chapter must have been admitted to practice in the court in which the prosecution is to be tried for not less than 5 years, and must have had not less than 3 years' experience in the trial of felony prosecutions in that court.

"(2) In the case of an appointment made after trial, at least one attorney appointed under this chapter must have been admitted to practice in the court of last resort of the State for not less than 5 years, and must have had not less than 3 years' experience in the handling of appeals in that State courts in felony cases.

"(3) Notwithstanding this subsection, a court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable the attorney to properly represent the defendant, with due consideration of the seriousness of the possible penalty and the unique and complex nature of the litigation.

"(c) Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or issues relating to sentence, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment of fees and expenses therefor, under subsection (d). Upon finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision of and payment of such services nunc pro tunc.

"(d) Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to an attorney appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under subsection (c), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of this subsection.

**"§ 2262. Law controlling in Federal habeas corpus proceedings; retroactivity**

"In cases subject to this chapter, all claims shall be governed by the law as it was when the petitioner's sentence became final, supplemented by any interim change in the law, if the court determines, in light of the purpose to be served by the change, the extent of reliance on previous law by law enforcement authorities, and the effect on the administration of justice, that it would be just to give the prisoner the benefit of the interim change in the law.".

## TITLE III—EXCLUSIONARY RULE

**SEC. 301. SEARCHES AND SEIZURES PURSUANT TO AN INVALID WARRANT.**

(a) IN GENERAL.—Chapter 109 of title 18, United States Code, is amended by adding at the end thereof the following new section:

**"§ 2237. Evidence obtained by invalid warrant**

"Evidence which is obtained as a result of search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the Fourth Amendment to the Constitution of the United States, if the search or seizure was carried out in reasonable reliance on a warrant issued by a detached and neutral magistrate ultimately found to be invalid, unless—

"(1) the judicial officer in issuing the warrant was materially misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth;

"(2) the judicial officer provided approval of the warrant without exercising a neutral and detached review of the application for the warrant;

"(3) the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or

"(4) the warrant is so facially deficient that the executing officers could not reasonably presume it to be valid.".

(b) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 109 of title 18, United States Code, is amended by adding at the end thereof the following:

"2237. Evidence obtained by invalid warrant.".

## TITLE IV—ASSAULT WEAPONS

**SEC. 401. SHORT TITLE.**

This title may be cited as the "Antidrug, Assault Weapons Limitation Act of 1989".

**SEC. 402. UNLAWFUL ACTS.**

Section 922 of title 18, United States Code, is amended by adding at the end thereof the following:

"(q)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer, import, transport, ship, receive, or possess any assault weapon.

"(2) This subsection does not apply with respect to—

"(A) transferring, importing, transporting, shipping, and receiving to or by, or possession by or under, authority of the United States or any department or agency thereof, or of any State or any department, agency, or political subdivision thereof, of such an assault weapon, or

"(B) any lawful transferring, transporting, shipping, receiving, or possession of such a weapon that was lawfully possessed before the effective date of this subsection.

"(r)(1) It shall be unlawful for any person to sell, ship, or deliver an assault weapon to

any person who does not fill out a form 4473 (pursuant to 27 CFR 178.124), or equivalent, in the purchase of such assault weapon.

"(2) It shall be unlawful for any person to purchase, possess, or accept delivery of an assault weapon unless such person has filled out such a form 4473, or equivalent, in the purchase of such assault weapon.

"(3) If a person purchases an assault weapon from anyone other than a licensed dealer, both the purchaser and the seller shall maintain a record of the sale on the seller's original copy of such form 4473, or equivalent. The purchaser and seller shall both retain copies of such form for all subsequent transactions regarding such assault weapon.

"(4) Any current owner of an assault weapon that requires retention of form 4473, or equivalent, pursuant to the provisions of this subsection who, prior to the effective date of this subsection purchased such a weapon, shall, within 90 days after the issuing of regulations by the Secretary pursuant to paragraph (5), request a copy of such form from any licensed dealer, as defined in this title, in accordance with such regulations.

"(5) The Secretary shall, within 90 days after the date of enactment of this section, prescribe regulations for the request and delivery of such form 4473, or equivalent.".

SEC. 403. DEFINITIONS.

Section 921(a) of title 18, United States Code, is amended by adding at the end thereof the following:

"(25) The term 'assault weapon' means any firearm designated as an assault weapon in this paragraph, including:

"(A) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),

"(B) Action Arms Israeli Military Industries UZI and Galil,

"(C) Beretta AR-70 (SC-70),

"(D) Colt AR-15 and CAR-15,

"(E) Fabrique Nationale FN/FAL, FN/LAR, and FNC,

"(F) MAC 10 and MAC 11,

"(G) Steyr AUG,

"(H) INTRATEC TEC-9, and

"(I) Street Sweeper and Striker 12.".

SEC. 404. SECRETARY TO RECOMMEND DESIGNATION AS ASSAULT WEAPON.

Chapter 44 of title 18, United States Code, is amended—

(1) by adding at the end thereof the following new section:

"§ 931. Additional assault weapons

"The Secretary, in consultation with the Attorney General, may, when appropriate, recommend to the Congress the addition or deletion of firearms to be designated as assault weapons."; and

(2) in the table of sections by adding at the end thereof the following new item:

"931. Additional assault weapons.".

SEC. 405. ENHANCED PENALTIES.

Section 924(c) of title 18, United States Code, is amended by inserting "and if the firearm is an assault weapon, to imprisonment for 10 years," after "sentenced to imprisonment for five years,".

SEC. 406. PENALTIES FOR IMPROPER TRANSFER, STEALING FIREARM, OR SMUGGLING A FIREARM IN DRUG-RELATED OFFENSE.

Section 924 of title 18, United States Code, is amended by—

(1) redesignating subsections (f) and (g), and any references to such subsections, as added by section 6211 of Public Law 100-690, as subsections (g) and (h), respectively; and

(2) adding at the end thereof the following:

"(i) Whoever knowingly fails to acquire form 4473, or equivalent (pursuant to 27 CFR 178.124), with respect to the lawful transferring, transporting, shipping, receiving, or possessing of any assault weapon, as required by the provisions of this chapter, shall be fined under this title, imprisoned for not more than 6 months, or both.

"(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not less than 2 or more than 10 years, and may be fined under this title.

"(k) Whoever, with the intent to engage in, or to promote, conduct which—

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3));

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned for not more than 10 years, fined under this title, or both.".

SEC. 407. DISABILITY.

Section 922(g)(1) of title 18, United States Code, is amended by inserting before the semicolon at the end thereof the following: "or a violation of section 924(i) of this chapter".

SEC. 408. REVOCATION OF SUPERVISED RELEASE.

Section 3583 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the court has provided, as a condition of supervised release, that the defendant refrain from possessing a firearm, and if the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of supervised release, the court shall, after a hearing pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation, revoke the term of supervised release and, subject to the limitations of paragraph (e)(3) of this section, require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision.".

SEC. 409. STUDY BY ATTORNEY GENERAL.

(a) IN GENERAL.—The Attorney General is authorized and directed to investigate and study the effect of the provisions of this title and the amendments made by this title and any impact therefrom on violent and drug trafficking crime. Such study shall be done over a period of 18 months, commencing 12 months after the date of enactment of this title.

(b) REPORT.—No later than 30 months after the date of enactment of this title, the Attorney General shall prepare and submit to the Senate of the United States, a report setting forth in detail the findings and determinations made pursuant to subsection (a).

SEC. 410. SUNSET PROVISION.

Unless otherwise provided, this title and the amendments made by this title shall become effective 30 days after the date of enactment of this title. This title, except for paragraph (1) of section 406, portions of paragraph (2) of section 406 adding subsections (j) and (k) to section 924 of title 18, United States Code, and section 408, shall be effective for a period of 3 years. At the end of such 3-year period this title and the amendments made by this title, except for paragraph (1) of section 406, portions of paragraph (2) of section 406 adding subsection (j) and (k) to section 924 of title 18, United States Code, and section 408, shall be repealed.

## TITLE V—INTERNATIONAL MONEY LAUNDERING

SEC. 501. REPORTS ON USES MADE OF CURRENCY TRANSACTION REPORTS.

(a) REPORT TO CONGRESS ON USE OF TRANSACTION REPORTS.—Not later than 180 days after the effective date of this section, and annually thereafter for 3 years, the Secretary of the Treasury shall report to the Congress the following:

(1) the number of each type of report filed pursuant to subchapter II of chapter 53 of title 31, United States Code (or regulations promulgated thereunder) in the previous fiscal year;

(2) the number of reports filed pursuant to section 6050I of the Internal Revenue Code of 1986 (regarding transactions involving currency) in the previous fiscal year;

(3) an estimate of the rate of compliance with the reporting requirements by persons required to file the reports referred to in paragraphs (1) and (2);

(4) the manner in which the Department of the Treasury and other agencies of the United States collect, organize, analyze and use the reports referred to in paragraphs (1) and (2) to support investigations and prosecutions of (A) violations of the criminal laws of the United States, (B) violations of the laws of foreign countries, and (C) civil enforcement of the laws of the United States including the provisions regarding asset forfeiture;

(5) a summary of sanctions imposed in the previous fiscal year against persons who failed to comply with the reporting requirements referred to paragraphs (1) and (2), and other steps taken to ensure maximum compliance;

(6) a summary of criminal indictments filed in the previous fiscal year which resulted, in large part, from investigations initiated by analysis of the reports referred to in paragraphs (1) and (2); and

(7) a summary of criminal indictments filed in the previous fiscal year which resulted, in large part, from investigations initiated by information regarding suspicious financial transactions provided voluntarily by financial institutions.

(b) ADVISORY GROUP ON REPORTING REQUIREMENTS.—Not later than 90 days after the effective date of this section, the Secretary shall establish an Advisory Group on Reports on Monetary Instruments Transactions consisting of representatives of the Department of the Treasury and of financial institutions and other persons subject to the reporting requirements referred to in paragraphs (1) and (2) of subsection (a). The Advisory Group shall provide a means by which the Secretary—

(1) informs private sector representatives, on a regular basis, of the ways in which the reports referred to in subsections (a) (1) and (2) have been used for the purposes described in subsection (a)(4);

(2) informs private sector representatives, on a regular basis, of how information regarding suspicious financial transactions provided voluntarily by financial institutions has been used for the purposes described in subsection (a)(4); and

(3) receives advice on the manner in which the reporting requirements referred to in subsections (a) (1) and (2) should be modified to enhance the ability of law enforcement agencies to use the information provided for law enforcement purposes.

SEC. 502. ELECTRONIC SCANNING OF CERTAIN UNITED STATES CURRENCY NOTES.

(a) ELECTRONIC SCANNING TASK FORCE.—(1) Not more than thirty days after the date of enactment of this section, the Secretary of the Treasury (hereafter in this section referred to as the "Secretary") shall appoint an Electronic Scanning Task Force (hereafter in this section referred to as the "Task Force") to—

(A) study methods of printing on United States currency notes issued under section 51115 of title 31, United States Code, in denominations of $10 or more a serial number on each such United States currency note that may be read by electronic scanning;

(B) make an assessment of the cost of implementing such electronic scanning of such United States currency notes; and

(C) make recommendations about the amount of time needed to implement such electronic scanning.

(2) In appointing members to the Task Force described in subsection (a), the Secretary shall appoint such number of members as the Secretary determines to be appropriate. The Secretary, shall, at a minimum appoint to the Task Force—

(A) the Assistant Secretary for Enforcement in the Department of the Treasury (who shall serve as a nonvoting, ex officio member); and

(B) at least one recognized expert from each of the following fields relating to electronic scanning technology:

(i) coding,

(ii) symbology,

(iii) scanning systems,

(iv) computer data compilation, and

(v) printing technology.

(3) Except as provided in paragraph (2)(A), no individual who is a full-time employee of the Federal Government may serve as a member of the Task Force.

(4) The provisions of the Federal Advisory Committee Act shall not apply with respect to the Task Force.

(5) Members of the Task Force shall, while attending meetings and conferences of the Task Force or otherwise engaging in the business of the Task Force (including travel time), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS-18 of the General Schedule established under section 5332 of title 5, United States Code.

(6) While away from their homes or regular places of business on the business of the Task Force, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(7) Upon the issuance of the report by the Secretary under subsection (b), the Task Force shall cease to exist.

(b) REPORT TO THE CONGRESS.—Not later than one hundred and eighty days after the date of enactment of this section, the Secretary shall issue a report to the appropriate committees of the Congress that summarizes the findings and recommendations of the Task Force under subsection (a)(1), and includes any additional recommendations by the Secretary.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 503. CONFORMING AMENDMENT OF PROVISION RELATING TO THE EQUITABLE TRANSFER TO A PARTICIPATING FOREIGN NATION OF FORFEITED PROPERTY OR PROCEEDS.

Section 981(i) of title 18, United States Code, is amended—

(1) by striking "In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall, to the extent provided by treaty, apply:";

(2) in paragraph (1), by striking the first two sentences and inserting the following: "Whenever property is civilly or criminally forfeited under this chapter, the Attorney General may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer (i) has been agreed to by the Secretary of State, (ii) is authorized in an international agreement between the United States and the foreign country, and (iii) is made to a country that, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961."; and

(3) in paragraph (1), by striking the last sentence.

SEC. 504. ADDITION OF CONFORMING PREDICATE MONEY LAUNDERING REFERENCES TO "INSIDER" EXEMPTION FROM THE RIGHT TO FINANCIAL PRIVACY ACT.

Section 1113(l)(2) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(l)(2)) is amended by inserting "or of section 1956 or 1957 of title 18, United States Code" after "any provision of subchapter II of chapter 53 of title 31, United States Code".

SEC. 505. CLARIFICATION OF DEFINITION OF "MONETARY INSTRUMENTS".

Section 1956(c)(5) of title 18, United States Code, is amended to read as follows:

"(5) the term 'monetary instruments' means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;".

SEC. 506. MONEY LAUNDERING AMENDMENTS.

Section 1956(c)(1) is amended by striking "State or Federal" and inserting "State, Federal, or foreign".

SEC. 507. DEFINITION OF "SPECIFIED UNLAWFUL ACTIVITY" FOR MONEY LAUNDERING STATUTE.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting "sections 1005-07 (relating to false statements by an employee of a financial institution), section 1014 (relating to false statements in connection with loan and credit applications)," after "section 875 (relating to interstate communications),"; and

(2) by striking "section 1344 (relating to bank fraud),".

SEC. 508. RIGHT TO FINANCIAL PRIVACY ACT AMENDMENT.

Section 1103(c) of the Right to Financial Privacy Act (12 U.S.C. 3403(c)) is amended in the last sentence—

(1) by striking "or" after "such disclosure" and inserting a comma; and

(2) by inserting before the period the following:

", or for a refusal to do business with that customer after having made such disclosure".

SEC. 509. CORRECTION OF ERRONEOUS PREDICATE OFFENSE REFERENCE UNDER 18 U.S.C. 1956.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking out "section 310 of the Controlled Substances Act (21 U.S.C. 830) (relating to precursor and essential chemicals)" and inserting in lieu thereof "a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals)".

SEC. 510. KNOWLEDGE REQUIREMENT FOR INTERNATIONAL MONEY LAUNDERING.

Section 1956(a)(2) of title 18, United States Code, is amended—

(1) in paragraph (2) by inserting at the end the following: "For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true."; and

(2) in paragraph (3) by striking "For purposes of this paragraph" and inserting "For purposes of this paragraph and paragraph (2)".

## TITLE VI—ORGANIZED CRIME AND DANGEROUS DRUG DIVISION

### Subtitle A—Establishment of an Organized Crime and Dangerous Drugs Division in the Department of Justice

SEC. 601. SHORT TITLE.

This title may be cited as the "Justice Department Organized Crime and Drug Enforcement Enhancement Act of 1989".

SEC. 602. FINDINGS.

The Congress finds that—

(1) organized criminal activity contributes significantly to the importation, distribution, and sale of illegal and dangerous drugs;

(2) trends in drug trafficking patterns necessitate a response that gives significant weight to—

(A) the prosecution of drug related crimes; and

(B) the forfeiture and seizure of assets and other civil remedies used to strike at the inherent strength of the drug networks and groups;

(3) the structure of the Department of Justice Criminal Division is inadequate to address such drug-related problems; and

(4) the prosecutorial resources devoted to such problems have been inadequately organized.

SEC. 603. PURPOSES.

The purposes of this title are to—

(1) establish a new division in the Department of Justice by combining the resources of the Criminal Division and the United States Attorneys offices used for the eradication of organized crime, narcotics, and dangerous drugs with additional resources needed to pursue civil sanctions;

(2) enhance the ability of the Department of Justice to deal with international criminal activity;

(3) enhance the ability of the Department of Justice to maintain a vigorous criminal and equally important civil assault upon organized criminal groups and narcotics traffickers both domestic and international;

(4) enhance the ability of the Department of Justice to attack money laundering activities, both domestic and international; and

(5) maintain the level of effort of the Department of Justice against traditional organized crime activity through the maintenance of independent strike forces.

SEC. 604. ESTABLISHMENT OF ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION.

(a) ESTABLISHMENT.—There is established within the Department of Justice, the Organized Crime and Dangerous Drugs Division, which shall consist initially of the following units and programs of the Department of Justice as they were organized and were functioning on September 30, 1989:

(1) the Organized Crime and Racketeering Section of the Criminal Division and all subordinate strike forces therein;

(2) the Narcotic and Dangerous Drug Section of the Criminal Division;

(3) the Asset Forfeiture Office of the Criminal Division; and

(4) the Organized Crime Drug Enforcement Task Force Program.

(b) TRANSFER.—(1) There are transferred to the Organized Crime and Dangerous Drugs Division—

(A) all functions of each office and program described under subsection (a) (1), (2), (3), and (4) exercised on September 30, 1989; and

(B) all personnel and available funds of each such office and program.

(2) For the purposes of paragraph (1)(A) the term "functions" means all duties, obligations, powers, authorities, responsibilities, rights, privileges, activities, and programs.

SEC. 605. ASSISTANT ATTORNEY GENERAL FOR ORGANIZED CRIME AND DANGEROUS DRUGS.

(a) ASSISTANT ATTORNEY GENERAL.—There shall be at the head of the Organized Crime and Dangerous Drugs Division established by this title, an Assistant Attorney General of the Department of Justice for the Organized Crime and Dangerous Drugs Division, who shall—

(1) be appointed by the President, by and with the advice and consent of the Senate;

(2) report directly to the Attorney General of the United States;

(3) coordinate all activities and policies of the Division with the Director of National Drug Control Policy; and

(4) ensure that all investigations and prosecutions are coordinated within the Department of Justice to provide the greatest use of civil proceedings and forfeitures to attack the financial resources of organized criminal and narcotics enterprises.

(b) COMPENSATION.—(1) Section 5315 of title 5, United States Code, is amended by striking out:

"Assistant Attorneys General (10)."

and inserting in lieu thereof:

"Assistant Attorneys General (11).".

(2) The Assistant Attorney General of the Organized Crime and Dangerous Drugs Division shall be paid at the rate of basic pay payable for level IV of the Executive Schedule.

SEC. 606. DEPUTY ASSISTANT ATTORNEY GENERAL.

(a) ESTABLISHMENT.—There is established the position of Deputy Assistant Attorney General of the Organized Crime and Dangerous Drugs Division, who shall report directly and be responsible to the Assistant Attorney General of the Organized Crime and Dangerous Drugs Division.

(b) COMPENSATION.—The Deputy Assistant Attorney General of the Organized Crime and Dangerous Drugs Division shall be paid the rate of basic pay payable for level V of the Executive Schedule.

SEC. 607. ADMINISTRATIVE ORGANIZATION OF THE DIVISION.

There shall be established within the Organized Crime and Dangerous Drugs Division such sections and offices as the Attorney General shall deem appropriate to maintain or increase the level of enforcement activities in the following areas:

(1) Criminal Racketeering (including all activities and personnel transferred from the Organized Crime and Racketeering Section dealing with criminal investigation and prosecution of traditional organized crime, other than civil proceedings or forfeiture);

(2) Criminal Narcotics Trafficking (including all activities and personnel transferred from the Criminal Division and the Organized Crime Drug Enforcement Task Force Program dealing with large scale drug trafficking);

(3) Money laundering (including all activities transferred from the Criminal Division and Organized Crime Drug Enforcement Task Force Program dealing with money laundering investigations and the negotiation of international agreements on financial crimes);

(4) Asset Forfeiture (including all activities and personnel transferred from the Criminal Division dealing with asset forfeiture);

(5) International Crime (indicating the activities and functions set forth in Subtitle B of this title); and

(6) Civil Enforcement (including activities and personnel currently engaged in civil enforcement of the drug and racketeering laws and such additional personnel as may be added pursuant to this Act).

SEC. 608. COORDINATION AND ENHANCEMENT OF FIELD ACTIVITIES.

(a) ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION.—The Attorney General shall establish no fewer than 20 field offices of the Organized Crime and Dangerous Drug Division. All such field offices of the Division shall be known as Organized Crime and Dangerous Drug Strike Forces.

(b) OFFICES IN SAME AREA.—If two or more sections of the Division establish field offices in the same metropolitan area, such offices shall—

(A) be in the same location;

(B) coordinate activities; and

(C) be organized as separate sections of a strike force.

(c) TRANSITION.—(1) Consistent with the provisions of this title—

(A) the Organized Crime and Racketeering Section of the Criminal Division is redesignated as the Criminal Racketeering Section of the Organized Crime and Dangerous Drug Division; and

(B) the Organized Crime Strike Forces are redesignated as the field offices of the Division.

(2) Within 180 days after the date of the enactment of this subtitle, the Attorney General shall transfer all attorneys and support staff assigned to the Organized Crime Drug Enforcement Task Forces before such date to the Organized Crime and Dangerous Drug Division and designated the Criminal Narcotics Section. The Assistant Attorney General for such Division shall assign such personnel to the field offices of the Division, with the initial assignments being made to the cities where units of such Task Forces were located before the date of enactment of this subtitle.

(3)(A) Consistent with the provisions of this title, the Asset Forfeiture Office of the Criminal Division is redesignated as the Asset Forfeiture and Civil Enforcement Section of the Organized Crime and Dangerous Drug Division.

(B) Within 180 days after the date of the enactment of this subtitle, the Assistant Attorney General shall establish field offices of the Asset Forfeiture and Civil Enforcement Section of the Organized Crime and Dangerous Drug Division which shall include—

(i) agents from the United States Drug Enforcement Administration, the Federal Bureau of Investigation, the Internal Revenue Service, and United States Marshals Office; and

(ii) other individuals experienced, trained and expert in complex financial transactions involving cash, notes, securities, and similar negotiable instruments, with a special expertise in banking matters and business dealings.

(d) DIFFERENT ORGANIZATIONAL STRUCTURE.—Nothing in subsection (c) shall prevent the Attorney General, consistent with the purposes of this title and the provisions of section 607, from instituting a different organizational structure within the Organized Crime and Dangerous Drug Division as the Attorney General shall deem appropriate following a period of transition.

(e) STRIKE FORCES PLANS.—(1) The agents assigned to the Organized Crime and Dangerous Drug Strike Forces (including all agents assigned to the Organized Crime Drug Enforcement Task Forces program before the date of enactment of this title) shall be dedicated exclusively to and located with the Strike Forces so that the Strike Forces personnel may develop expertise and function as a working unit.

(2) The agents assigned to the Strike Forces from the various participating agencies shall be given credit for the work of the Strike Forces, regardless of the statutory authority used to prosecute Strike Force cases.

(f) REPORT.—Within 1 year after the date of the enactment of this title, the Assistant Attorney General for Organized Crime and Dangerous Drugs in consultation with the Director of National Drug Control Policy, shall report to the Congress on the areas of the United States (especially the southwest border of the United States) that may require increased assistance from the Department of Justice through the establishment of additional strike forces.

(g) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $45,000,000 for salaries and expenses of the Organized Crime and Dangerous Drug Division of the Department of Justice for fiscal year 1990.

(2) Any appropriation of funds authorized under paragraph (1) shall be—

(A) in addition to any appropriations requested by the President in the 1990 fiscal year budget submitted by the President to the Congress for fiscal year 1990, or provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1990; and

(B) used to increase the number of field attorneys and related support staff by no fewer than 100 full-time equivalent posi-

tions over such personnel levels employed at the Department of Justice on September 30, 1989, assigned to the Organized Crime and Racketeering Section Strike Forces and Organized Crime Drug Task Forces.

**Subtitle B—International Prosecution Teams**

SEC. 611. INTERNATIONAL PROSECUTION TEAMS.

(a) FINDINGS.—The Congress finds that—

(1) Drug trafficking, organized crime, and money laundering are problems that are international in scope.

(2) The traditional focus of United States law enforcement agencies on domestic criminal activity has restricted the development of the necessary expertise and coordination to address the international aspects of these problems adequately.

(3) The Justice Department must expand its resources and reorganize its components to engage in new responsibilities and activities involving international crime.

(4) Other agencies, particularly those involved in intelligence gathering, international banking, foreign policy, and national defense, must coordinate their activities with the Justice Department to support its effort to combat international crime.

(b) INTERNATIONAL DRUG ENFORCEMENT TEAMS.—In addition to the components and functions otherwise specified in this chapter, the Organized Crime and Dangerous Drug Division shall include no fewer than 10 International Drug Enforcement Teams devoted exclusively to investigating, prosecuting and supporting the investigation and prosecution of international drug cases. Such teams shall be responsible for developing expertise in handling civil and criminal cases involving extradition, money laundering, drug-related corruption, and other complex cases relating to international drug trafficking.

(c) RELATIONSHIP OF TEAM MEMBERS.—Organized Crime and Dangerous Drug Division personnel assigned to the International Drug Enforcement Teams shall work closely with, and where practical be co-located with, agents and liaison personnel of the various law enforcement, diplomatic, intelligence, and military agencies who shall be assigned as necessary to the enforcement teams.

(d) GOALS.—The teams shall be organized to—

(1) increase the expertise of the Department of Justice in matters relating to international law enforcement and foreign policy;

(2) direct intelligence efforts toward gathering information and evidence that can be used by civilian authorities in criminal and civil cases while protecting the assets and methods of United States agencies;

(3) improve coordination among United States and foreign agencies responsible for law enforcement, foreign policy, and international banking;

(4) target resources toward cases with maximum impact on international narcotics trafficking;

(5) gain the cooperation of private entities in the United States and foreign countries whose cooperation in cases involving money laundering and other drug-related financial crimes is essential; and

(6) assist other countries to enact laws and negotiate treaties to assist in the suppression of international money laundering and narcotics trafficking.

**S. 1970—SECTION ANALYSIS OF BIDEN CRIME BILL**

TITLE I—DEATH PENALTY

Title I contains the provisions of S. 32 as reported by the Judiciary Committee. See S. Rep. No. 101-170, 101st Cong., 1st Sess. (1989). S. 32 would enact death penalty procedures for 23 federal crimes including 16 that already carry the death penalty as the maximum punishment, six for which the maximum punishment would be increased from life in prison to death, and one new offense punishable by death that would be created by the bill. The bill also contains the Racial Justice Act which was adopted as an amendment to S. 32 by the Judiciary Committee.

TITLE II—HABEAS CORPUS REFORM

Title II contains the provisions of S. 1757, a bill introduced by Senator Biden to revise the procedures for federal habeas corpus review of state death sentences. The provisions of the bill and the Powell Committee report on which the bill was modeled are described in the Congressional Record, daily ed., October 16, 1986, beginning at S13472. These provisions adopt the Powell Committee's recommendation to limit federal habeas review to one full and fair proceeding following state proceedings at which the state would be required to appoint competent counsel to represent the defendant at all stages.

TITLE III—EXCLUSIONARY RULE

Title III codifies the decision of the Supreme Court in *United States* v. *Leon*, 468 U.S. 897 (1984), which created a good faith exception to the exclusionary rule in cases involving search warrants. This provision is identical to the one that passed the Senate in 1988 as Section 2769 of S. 2852, the Senate version of the Anti-Drug Abuse Act of 1988.

The codification of the Supreme Court rule, of course, only applies to federal cases. State criminal procedure is governed by state rules, statutes and judicial interpretations which, in turn, must be consistent with the Supreme Court's interpretation of the Fourth Amendment.

TITLE IV—ASSAULT WEAPONS

Title IV contains the provisions of S. 747, the Anti-Drug, Assault Weapons Limitation Act of 1989. This provision would ban the importation, manufacture, sale and possession of nine specified semi-automatic weapons, and would provide new penalties, and increase existing penalties, for certain offenses involving firearms. See S. Rep. No. 101-160, 101st Cong., 1st Sess. (1989).[1]

TITLE V—INTERNATIONAL MONEY LAUNDERING

Section 501 relates to the various reports that individuals and financial institutions must file in accordance with recently enacted anti-money laundering statutes. The provision requires the Secretary of the Treasury to report to Congress on the degree to which these statutes are being complied with and on the uses the government is making of the reports that are filed. Subsection (b) further requires the Secretary to establish an advisory group to inform representatives of the financial industry of these matters. The intent of this latter provision to encourage greater compliance with the reporting requirements, and to promote greater voluntary disclosures of unlawful financial activity, by letting the financial industry know that the information provided to the government serves a useful and important law enforcement purpose.

Sections 502 through 506 were passed by the Senate as part of S. 1711, the 1989 drug bill.

Section 502 (Section 1619 of S. 1711) creates an Electronic Scanning Task Force to study methods of printing serial numbers on U.S. currency that may be read by electronic scanning.

Section 503 (Section 710 of S. 1711) authorizes the equitable transfer to a participating foreign nation of forfeited property. Sections 6074 and 7366 of the Anti-Drug Abuse Act of 1988 amended 21 U.S.C. 881(e) and 19 U.S.C. 1616a, respectively, in an identical manner to provide for the equitable sharing with a foreign nation of forfeited property or the proceeds thereform where the foreign nation participated in the seizure or forfeiture of the property. Under the Anti-Drug Abuse Act amendments, transfers of property to participating foreign nations may be made where three conditions are satisfied: (1) the Secretary of State concurs, (2) the transfer is authorized in an international agreement between the United States and the foreign country, and (3) the country has been certified under section 481(h) of the Foreign Assistance Act of 1961.

In thus amending the law to permit sharing of forfeited property or proceeds with foreign nations, Congress neglected to make a conforming amendment to 18 U.S.C. 981(i), which before the enactment of the Anti-Drug Abuse Act of 1988 was the only statute authorizing transfers of forfeited property to a foreign country. Under 18 U.S.C. 981(i), however, such transfers could only be made "to the extent provided by treaty"—a restriction which rendered the provision virtually useless from a practical standpoint and which was the reason for seeking the amendments in the Anti-Drug Abuse Act of 1988 that relaxed the requirement so as to permit such transfers pursuant to an international agreement.

Section 504 (Section 1205 of S.1711) makes a minor amendment to the Right to Financial Privacy Act to conform to provisions of the 1988 drug bill. Section 6186 of the Anti-Drug Abuse Act of 1988 created an exemption from the Right to Financial Privacy Act of 1978 for the financial records of "insiders". It provided that the Act does not apply to the transfer of financial records of financial institution officers, directors, controlling shareholders or certain major borrowers to federal or State law enforcement agencies where such records may be relevant to possible crimes against financial institutions or supervisory agencies by such persons, or to possible money laundering violations covered by the Bank Secrecy Act. The latter Act is described by reference to "any provision of subchapter II of chapter 53 of title 31, United States Code."

The quoted exemption for insider records pertaining to title 31 money laundering offenses should logically also encompass money laundering offenses under 18 U.S.C. 1956 and 1957, since such offenses fall equally within the rationale and purpose of the provision. The instant amendment would accomplish this conforming addition.

Section 505 (Section 1206 of S. 1711) is technical and clarifying and is not intended to have any substantive effect. The current definition of "monetary instrument" in 18 U.S.C. 1956(c)(5) is not subdivided into paragraphs (i) and (ii) as is proposed here. Thus,

[1] While title IV is substantively identical to S. 747, certain sections have been redesignated to correct codification errors.

even though currently no comma precedes the phrase "in bearer form or otherwise in such form that title thereto passes upon delivery", and even though that phrase, in the present statute, is repeated after both "investment securities" and "negotiable instruments", both indicating that the "in bearer form" phrase was meant to modify only "investment securities" and "negotiable instruments", prosecutors have encountered repeated questions as to whether the "in bearer form" limitation is applicable also to travelers' checks, personal checks, bank checks, and money orders. Such a reading would restrict the operation of the money laundering offenses to which the definition of "monetary instrument" is applicable in a manner inconsistent with the intent of Congress, and no case law exists to support this strained interpretation. Nevertheless, because the issue appears to be a persistent source of confusion and a potential source of litigation, a clarifying amendment would seem worthwhile. By subdividing the definition into two branches, the amendment makes clear that the phrase "in bearer form . . ." modifies only the categories of "investment securities" and "negotiable instruments" in the statute.

Section 506 (Section 1502 of S.1711)[2] resolves a minor inconsistency in the money laundering statute. That statute makes it an offense to launder the proceeds of any form of "specified unlawful activity". It is not required that the launderer know what form of unlawful activity was involved as long as he knows that it was some offense that would be a felony under "state or federal law."

The inconsistency is that while the "specified unlawful activity" could be an offense under foreign law, section 1956(c)(7)(B), the knowledge requirement relates only to "state or federal law". Thus a person who launders the proceeds of a foreign offense might not be prosecutable under the statute as currently drafted because the underlying offense would not be covered by the knowledge requirement. The amendment resolves this possible problem by expanding the knowledge requirement to include foreign offenses.

Section 507 amends the anti-money laundering statute, 18 U.S.C. 1956, to conform with certain provisions in the Financial Institutes Reform, Recovery and Enforcement Act of 1989 (FIRRE Act), Pub. L. 101-73. That act amended, increased the penalties for, and provided for forfeiture relating to violations of several offenses relating to financial institutions. The conforming amendment adds these same offenses (sections 1005, 1006, 1007, and 1014 of title 18) to the definition of "specified unlawful activity" in the money laundering statute. A second conforming amendment strikes the reference to section 1344 from this definition since that reference was made redundant by the addition of section 1344 to the list of predicates for RICO violation, 18 U.S.C. 1961, in the FIRRE Act.

Section 508 amends a provision of the Anti-Drug Abuse Act of 1986 that gave financial institutions immunity from certain civil lawsuits filled by a bank customer when the institution voluntarily discloses to the government that the customer may be engaging in criminal activity. The 1986 provision currently protects the institution from a suit based on the disclosure itself, or on the institution's failure to notify the customer of the disclosure. The amendment would add protection from a suit based on the institution's refusal to do business with the customer following the disclosure.

The amendment addresses a problem that arises whenever a financial institution discloses to the government that a customer may be engaged in criminal activity. If the institution makes such a disclosure but continues to do business with the customer, it may become criminally liable for participating in activity that it had reason to believe was unlawful. But if the institution refuses to continue to do business with the customer, it may be liable for damages in a civil suit if the customer suffers injury as a result of the disclosure but turns out to have been innocent.

The 1986 amendment was designed to further voluntary cooperation with federal criminal law enforcement by financial institutions. The amendment in this section is consistent with this purpose.

Section 509 contains the provisions of Section 1202 of S. 1711 making a technical correction to the list of predicate offenses in 18 U.S.C. 1956(c)(7)(D). Section 6466 of the Anti-Drug Abuse Act of 1988 amended the definition of "specified unlawful activity" for the purposes of the money laundering statute, 18 U.S.C. 1956, to include a reference to section 310 of the Controlled Substances Act, 21 U.S.C. 830, relating to precursor and essential chemicals. That reference, however, is to a provision that contains no criminal penalty but rather only a direction to keep records and file reports regarding such chemicals. Felony penalties are set forth elsewhere in the Chemical Diversion and Trafficking Act of 1988 for importing, exporting, possessing or distributing a listed chemical with intent to manufacture a controlled substance and for other miscellaneous trafficking-type offenses involving listed chemicals. Misdemeanor penalties are set forth for recordkeeping violations. It is thus evident that the reference to 21 U.S.C. 830 in section 1956(c)(7)(D) is incorrect. An appropriate reference is provided by the amendment here to any felony violation, i.e., trafficking-type offenses, of the Chemical Diversion and Trafficking Act of 1988 involving precursor and essential chemicals.

Section 510 amends the money laundering statute to enhance the effectiveness of undercover operations against international money launderers. Section 6465 of the Anti-Drug Abuse Act of 1988 amended the money laundering statute, 18 U.S.C. 1956, to permit a conviction for conducting financial transaction involving property that the defendant believed—based on the representation of an undercover law enforcement officer—to be the proceeds of unlawful activity. This amendment made it possible for federal law enforcement agents to conduct undercover operations against money launderers by posing as drug traffickers.

The 1988 amendment, however, applied only to the offense of conducting a financial transaction. Logically, it should also have applied to the offense of transporting or transmitting the proceeds of unlawful activity by wire or some other means, as set forth in section 1956(a)(2). This section makes that conforming amendment to subsection (a)(2). It is necessary to allow federal agents to maintain undercover operations against international money launderers who knowingly participate in wire transfers of the proceeds of unlawful activity.

[2] A complete analysis of title XV of S.1711 appears in the CONGRESSIONAL RECORD, daily ed., October 5, 1989, beginning at S12748.

TITLE VI—ORGANIZED CRIME AND DANGEROUS DRUG DIVISION

Title VI creates within the Department of Justice a new Organized Crime and Dangerous Drugs Division. The purpose of the reorganization of the Justice Department is to centralize and expand the federal law enforcement effort against high level drug traffickers, to combine the anti-drug law enforcement effort with the effort against traditional organized crime, to raise the level of attention given to civil enforcement and asset forfeiture, and to increase the Justice Department's ability to handle matters like international drug trafficking that involve relations with foreign governments and crimes that cross national boundaries.

Presently the Justice Department's effort in all of these areas is divided, uncoordinated and plagued by turf battles. Traditional organized crime prosecution has been the responsibility of the Organized Crime and Racketeering Section of the Criminal Division which has headquarters in Washington and strike force field offices in 23 cities. In contrast, prosecution of drug trafficking organizations is handled by the Organized Crime Drug Enforcement Task Forces. These offices are divided among dozens of separate U.S. Attorneys offices and lack any coordinated policy structure. They also have overlapping jurisdiction with the strike forces, but even where organized crime strike forces operate in the same cities as drug enforcement task forces, they remain separate operations in separate locations reporting through separate chains of command. A plan to merge the strike forces into the U.S. Attorneys' offices would make this situation worse by removing the one successful feature of the current organization—the centralized control of policy making—without improving upon the lack of coordination and overlapping jurisdiction among these units.

The responsibility for money laundering prosecutions and for civil enforcement and asset forfeiture is similarly divided. Money laundering prosecutions are handled by the U.S. Attorneys and by two different sections of the Criminal Division in Washington. Assets forfeitures are handled by special Assistant U.S. Attorneys hired under the 1988 Anti-Drug Abuse Act for that purpose, by the Asset Forfeiture Office in the Criminal Division, and by a new coordinating group in the Deputy Attorney General's Office. And as organizations staffed primarily by career prosecutors, both the Criminal Division and the Drug Enforcement Task Forces have been slow to devote resources to civil enforcement.

Finally, the Justice Department has been very slow to recognize the need to expand its role in international relations. The lack of attention this issue was dramatized in 1989 when the Attorney General announced his intention to create an Office of International Affairs in the Department without mentioning that an Office of International Affairs has existed in the Criminal Division for years.

The new division would combine all of these units and functions. The Organized Crime and Racketeering Section, Narcotics and Dangerous Drugs Section, and Assets Forfeiture Office would be transferred to the new division from the Criminal Division, and the OCDETFs would be transferred to the new division from the U.S. Attorneys offices. The new division would have both civil and criminal responsibility, and would have strike forces in various cities that included

civil and criminal components. The new division would maintain separate sections dedicated to traditional organized crime and to high level drug trafficking, respectively, but where both sections maintained strike forces in the same city, they would be co-located and would operate as sections of one unified strike force. Policy would be made in a centralized fashion at the Division level.

The last section of this title adds specialized International Drug Enforcement Teams to the newly created Organized Crime and Dangerous Drugs Division. These teams would be devoted exclusively to investigating and prosecuting international drug cases, particularly those involving extradition, money laundering, drug-related corruption and other complex cases.

The purpose of these teams would be to increase the expertise of the Department of Justice in matters relating to international law enforcement and foreign policy. These teams would be unique in that they would include both investigative agents and prosecutors from DEA, FBI, Customs, Coast Guard, IRS and the Department of Justice and State, as well as liaison personnel from the U.S. military and intelligence agencies. These personnel would have specialized training in criminal law enforcement so that U.S. Intelligence efforts could be directed toward gathering information and evidence that can be used by civilian authorities in criminal prosecutions while protecting the sources and methods of U.S. agencies.

In addition to the advantages of improving coordination and targeting resources toward major foreign drug cases, the incorporation of State Departemnt personnel in these teams should help the United States formulate effective diplomatic strategies for cases that have a major impact on U.S. foreign policy, including cases involving extradition and high-level officials corruption.

At least 10 international drug prosecution teams should be established and operational within 12 months. Each team would consist of at between 20 and 25 agents and prosecutors, with a total estimated cost for the 10 teams of $25 million. The total authorization for the new Division is $45 million (exclusive of the amount authorized separately for the Organized Crime Drug Enforcement Task Forces) which includes the amount authorized for the international prosecution teams, $12 million transferred from the Criminal Division that is presently used in anti-drug efforts, and $8 million for additional prosecutors and staff.

SIDE-BY-SIDE COMPARISON OF BIDEN AND BUSH CRIME BILLS

| Issue | Biden crime bill 1 | Bush bill, S. 1225 |
|---|---|---|
| Death Penalty | Provides death penalty procedures for 23 federal offenses. Adds more procedural protections and the Racial Justice Act (S. 32 as reported by the Judiciary Committee). | Provides death penalty procedures for 23 federal offenses. |
| Habeas Corpus | Contains the recommendations of the Powell Committee on habeas reform in capital cases as modified to add procedural safeguards (S. 1757 Sen. Biden's bill). | Provides for revision of habeas corpus procedure for all classes of offenses. |

SIDE-BY-SIDE COMPARISON OF BIDEN AND BUSH CRIME BILLS—Continued

| Issue | Biden crime bill 1 | Bush bill, S. 1225 |
|---|---|---|
| Exclusionary Rule | Codifies the good faith exception as stated by the Supreme Court in United States v. Leon. (Sec. 2769 of S. 2852, 100th Cong. which passed the Senate). | Creates a good faith exception that goes beyond what the Supreme Court has approved in cases when no search warrant is obtained. |
| Assault Weapons | Bans manufacture, sale and possession of 9 weapons (from S. 747, reported by Judiciary Committee), and bans export of assault weapons. | Bans only the domestic assembly of weapons that may not be imported. Permits export of such weapons and does not ban any domestic weapons. Bans large capacity magazines and gun clips. |
| Money Laundering | Requires Secretary of the Treasury to inform Congress regarding uses made of currency transaction reports. Authorizes undercover investigations of international money laundering. | No provision. |
| Justice Department | Increases the ability of the Justice Department to attack organized crime, drug trafficking, money laundering and international crime by creating a new Organized Crime and Dangerous Drug Division. | Do. |

S. 1972

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Crime Control Act of 1989".

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## TITLE I—STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

### SEC. 101. BASE ALLOCATION FOR DRUG ENFORCEMENT GRANTS.

Paragraph (5) of section 1001(a) of part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(5) There are authorized to be appropriated $600,000,000 for fiscal year 1990 and such sums as may be necessary for each of the fiscal years 1991 and 1992 to carry out the programs under parts D and E of this title.".

### SEC. 102. COMMUNITY SUBSTANCE ABUSE PREVENTION ACT.

(a) This section may be cited as the "Department of Justice Community Substance Abuse Prevention Act of 1989".

(b)(1) COMMUNITY PARTNERSHIPS.—Part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end thereof the following:

"Subpart 4—Community Coalitions on Substance Abuse

"GRANTS TO COMBAT SUBSTANCE ABUSE

"SEC. 531. (a) DEFINITION.—As used in this section, the term 'eligible coalition' means an association, consisting of at least seven organizations, agencies, and individuals that are concerned about preventing substance abuse, that shall include—

"(1) public and private organizations and agencies that represent law enforcement, schools, health and social service agencies, and community-based organizations; and

"(2) representatives of three of the following groups: the clergy, academia, business, parents, youth, the media, civic and fraternal groups, or other nongovernmental interested parties.

"(b) GRANT PROGRAM.—The Attorney General, acting through the Director of the Bureau of Justice Assistance, shall make grants to eligible coalitions in order to—

"(1) plan and implement comprehensive long-term strategies for substance abuse prevention;

"(2) develop a detailed assessment of existing substance abuse prevention programs and activities to determine community resources and to identify major gaps and barriers in such programs and activities;

"(3) identify and solicit funding sources to enable such programs and activities to become self-sustaining;

"(4) develop a consensus regarding the priorities of a community concerning substance abuse;

"(5) develop a plan to implement such priorities; and

"(6) coordinate substance abuse services and activities, including prevention activities in the schools or communities and substance abuse treatment programs.

"(c) COMMUNITY PARTICIPATION.—In developing and implementing a substance abuse prevention program, a coalition receiving funds under subsection (b) shall—

"(1) emphasize and encourage substantial voluntary participation in the community, especially among individuals involved with youth such as teachers, coaches, parents, and clergy; and

"(2) emphasize and encourage the involvement of businesses, civic groups, and other community organizations and members.

"(d) APPLICATION.—An eligible coalition shall submit an application to the Attorney General in order to receive a grant under this section. Such application shall—

"(1) describe and, to the extent possible, document the nature and extent of the substance abuse problem, emphasizing who is at risk and specifying which groups of individuals should be targeted for prevention and intervention;

"(2) describe the activities needing financial assistance;

"(3) identify participating agencies, organizations, and individuals;

"(4) identify the agency, organization, or individual that has responsibility for leading the coalition, and provide assurances that such agency, organization or individual has previous substance abuse prevention experience;

"(5) describe a mechanism to evaluate the success of the coalition in developing and carrying out the substance abuse prevention plan referred to in subsection (b)(5) and to report on such plan to the Attorney General on an annual basis; and

"(6) contain such additional information and assurances as the Attorney General may prescribe.

"(e) PRIORITY.—In awarding grants under this section, the Attorney General shall give priority to a community that—

"(1) provides evidence of significant substance abuse;

"(2) proposes a comprehensive and multifaceted approach to eliminating substance abuse;

"(3) encourages the involvement of businesses and community leaders in substance abuse prevention activities;

"(4) demonstrates a commitment and a high priority for preventing substance abuse; and

"(5) demonstrates support from the community and State and local agencies for efforts to eliminate substance abuse.

"(f) REVIEW.—Each coalition receiving money pursuant to the provisions of this section shall submit an annual report to the Attorney General evaluating the effectiveness of the plan described in subsection (b)(5) and containing such additional information as the Attorney General may prescribe. The Attorney General, in conjunction with the Director of the Bureau of Justice Assistance, shall submit an annual review to the Committees on the Judiciary of the United States Senate and United States House of Representatives. Such review shall—

"(1) evaluate the grant program established in this section to determine its effectiveness;

"(2) implement necessary changes to the program that can be done by the Attorney General; and

"(3) recommend any statutory changes that are necessary.

"(g) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated to carry out the provisions of this section, $15,000,000 for fiscal year 1990, $20,000,000 for fiscal year 1991, and $25,000,000 for fiscal year 1992.".

(2) The table of sections of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end thereof the following:

"SUBPART 4—COMMUNITY COALITION ON SUBSTANCE ABUSE

"Sec. 531. Grants to combat substance abuse.".

SEC. 103. ASSISTING STATE AND LOCAL PROSECUTORS.

(a) IN GENERAL.—Within 90 days after the enactment of this section, the Attorney General shall direct each of the several United States attorneys to—

(1) in consultation with the chief prosecutor in each State or local jurisdiction within the district, establish a program whereby all cases involving persons arrested on a designated day each month for offenses that are felony violations of the Controlled Substances Act or the Controlled Substances Export and Import Act are presented to a Federal grand jury and, if indicted, are prosecuted in Federal court; and

(2) in conjunction with State and local officials and the local heads of Federal law enforcement agencies, establish a program aimed at using Federal laws to seize and forfeit the automobiles of persons who use such vehicles in the commission of drug-related offenses, particularly drug-related offenses involving personal use quantities of drugs.

(b) REPORT.—Not less than 180 days after the enactment of this section, and annually thereafter, the Attorney General shall prepare a detailed report outlining what steps each United States attorney has taken to implement the directives issued pursuant to subsection (a) of this section and a complete statistical analysis of the accomplishments achieved under this section.

(c) NO RIGHTS CREATED.—Nothing in this section shall be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding.

## TITLE II—FEDERAL LAW ENFORCEMENT AND JUDICIAL ASSISTANCE

SEC. 201. ADDITIONAL AUTHORIZATIONS.

There are authorized to be appropriated for the fiscal year ending September 30, 1990, the following sums (which shall be in addition to any other appropriations):

(1) For the Federal Bureau of Investigation: $57,000,000 for the hiring of additional agents and support personnel to be dedicated to the investigation of drug trafficking organizations;

(2) For the Drug Enforcement Administration: $47,500,000 which shall include—

(A) not to exceed $10,000,000 for enforcing provisions of Federal law regarding precursor and essential chemicals; and

(B) not to exceed $37,500,000 for assigning not fewer than 250 agents to rural areas where State and local law enforcement agencies have identified the distribution of "crack" cocaine and/or the manufacture and distribution of methamphetamine to be a serious law enforcement problem that exceeds the resources of local law enforcement, and involves trafficking across State or national boundaries;

(3) For the United States Courts: $9,000,000 for additional probation officers, judges, magistrates and other personnel including not to exceed $2,000,000 for training, document production, and other expenses related to the implementation of the Federal sentencing guidelines;

(4) For the United States Attorneys: $24,000,000 for additional prosecutors and staff to implement a program of prosecuting in Federal court drug offenses arising out of arrests and investigations conducted by State and local law enforcement agencies;

(5) For Defender Services: $8,000,000 for the defense of persons prosecuted in Federal court for drug offenses arising out of arrests and investigations conducted by State and local law enforcement agencies; and

(6) For the United States Marshals: $9,000,000.

SEC. 202. AUTHORIZING ADDITIONAL JUDICIAL POSITIONS.

(a) UNITED STATES DISTRICT COURT JUDGES.—(1) In accordance with the provisions of paragraph (2), the President shall appoint, by and with the advice and consent of the Senate, twenty district judges in addition to those appointed pursuant to section 133 of title 28, United States Code.

(2) Prior to the appointment of any judge pursuant to paragraph (1), the number and locations of such judges among the several judicial districts shall be established by law after consideration, by the Congress, of the recommendations of the Judicial Conference of the United States submitted pursuant to subsection (b).

(b) JUDICIAL CONFERENCE.—The Judicial Conference of the United States shall prepare a report evaluating the impact of drug-related criminal activity on the Federal district courts. Such report shall contain recommendations as to how the additional United States District Court judges should be allocated based on criminal drug-related felony filings per judgeship in each district. The report shall be transmitted to the Committees on the Judiciary of the United States Senate and the House of Representatives not later than 120 days after the date of enactment of this section.

## TITLE III—RURAL DRUG ENFORCEMENT

SEC. 301. SHORT TITLE.

This title may be cited as the "Rural Drug Enforcement Act".

SEC. 302. LEADERSHIP ON RURAL DRUG POLICY.

(a) DESIGNATION OF OFFICIAL.—The Director of National Drug Control Policy (hereafter in this title referred to as the "Director") shall designate an official in the Office of National Drug Control Policy to act as the Rural Drug Policy Coordinator.

(b) DUTIES OF OFFICIAL.—The Rural Drug Policy Coordinator shall—

(1) examine the special needs of rural areas in drug interdiction;

(2) recommend to the Director policy options for the enhancement of drug interdiction in rural areas;

(3) coordinate the drug interdiction efforts of Federal agencies (including the Drug Enforcement Administration, Bureau of Land Management, the Bureau of Indian Affairs, and the National Forest Service) in rural areas; and

(4) make available to law enforcement agencies in rural areas materials pertinent to drug interdiction in rural areas.

SEC. 303. RURAL DRUG ENFORCEMENT ASSISTANCE.

(a) IN GENERAL.—Part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding a new section 509 as follows:

"RURAL DRUG ENFORCEMENT ASSISTANCE

"SEC. 509. (a) There is authorized to be appropriated $20,000,000 for fiscal year 1990 and such sums as may be necessary for each of the fiscal years 1991 and 1992.

"(b) Of the total amount appropriated for this section in any fiscal year:

"(1) 50 per centum shall be allocated to and shared equally among rural States as described in subsection (c); and

"(2) 50 per centum shall be allocated to the remaining States for use in non-metropolitan areas within those States, as follows:

"(A) $100,000 to each nonrural State; and

"(B) of the total funds remaining after the allocation in clause (A), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described as the population of such State bears to the population of all States.

"(c) For the purpose of subsections (b) and (c), the term 'rural State' means a State that has a population density of fifty-two or fewer persons per square mile or a State in which the largest county has fewer than one hundred and fifty thousand people.".

(b) SEPARATE GRANT REQUEST.—Section 503(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)) is amended by—

(1) at the end of paragraph (10) strike the "." and insert in lieu thereof "; and";

(2) inserting a new paragraph (11) as follows:

"(11) A separate and detailed request for a grant under section 509 of this subpart, including how the funds provided by a grant under section 506 shall be coordinated with funds provided by a grant under section 509.".

SEC. 304. FEDERAL DRUG ENFORCEMENT ASSISTANCE.

(a) GENERAL STATE ASSISTANCE.—In order to provide adequate Federal drug enforcement assistance to each of the several States, and to encourage Federal, State and local drug enforcement cooperation, the Attorney General shall attempt to assign not less than ten Drug Enforcement Administration special agents to each of the several States.

(b) RURAL STATES.—In order to provide adequate Federal drug enforcement assistance to rural States for any rural State that is currently assigned less than ten Drug Enforcement Administration special agents, the Attorney General shall attempt to assign not less than four additional Drug Enforcement Administration special agents to each rural State as defined in section 303 of this title.

SEC. 305. TRAINING FOR RURAL LAW ENFORCEMENT OFFICERS.

(a) IN GENERAL.—The Secretary of the Treasury, acting through the Federal Law Enforcement Training Center, shall develop a drug training program for law enforcement officers in rural areas.

(b) TRAINING.—By not later than September 30, 1991, the Secretary of the Treasury shall double the number of law enforcement officers from rural jurisdictions in each of the several States that receive drug enforcement training.

(c) AUTHORIZATION.—There is authorized to be appropriated $1,000,000 for fiscal year 1990 and such sums as may be necessary for each of the fiscal years 1991 and 1992 to carry out the purposes of this title.

## TITLE IV—MANDATORY DETENTION

SEC. 401. SHORT TITLE.

This title may be cited as the "Mandatory Detention for Offenders Convicted of Serious Crimes Act".

SEC. 402. MANDATORY DETENTION.

(a) PENDING SENTENCE.—Subsection (a) of section 3143 of title 18, United States Code, is amended by—

(1) striking "The judicial officer" and inserting:

"(1) Except as provided in paragraph (2), the judicial officer"; and

(2) inserting at the end thereof the following:

"(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless—

"(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

"(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

"(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.".

(b) PENDING APPEAL.—Subsection (b) of section 3143 of title 18, United States Code, is amended by—

(1) striking "The judicial officer" and inserting:

"(1) Except as provided in paragraph (2), the judicial officer";

(2) redesignating subparagraphs (A), (B), (C), and (D) of paragraph (2) as clauses (i), (ii), (iii), and (iv), respectively;

(3) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B); and

(4) adding at the end thereof the following:

"(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained.".

(c) EXCEPTIONAL CASES.—Subsection (c) of section 3145 of title 18, United States Code, is amended by adding at the end the following: "Upon an appeal of the Government, a person who has been detained by the judicial officer pursuant to section 3143 (a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143 (a)(1) or (b)(1), may be ordered released, under appropriate conditions, by a court of appeals or a judge thereof, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.".

SEC. 403. TECHNICAL AMENDMENTS.

(a) CORRECTION OF MISSPELLED WORD.—Subsection (a)(1) of section 3143 of title 18, United States Code, is amended by striking "waiting" and inserting "awaiting".

(b) CORRECTION OF REFERENCE TO REPEALED PROVISION.—Subsections (e) and (f) of section 3142 of title 18, United States Code, are each amended by striking "section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)" and inserting "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

## TITLE V—FORFEITURE

SEC. 501. USES OF JUSTICE FORFEITURE FUND.

(a) PURCHASE OF FIREARMS.—Section 524(c)(1) of title 28, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (G);

(2) by redesignating subparagraph (H) as subparagraph (I);

(3) by inserting a new subparagraph (H) as follows:

"(H) for any fiscal year, not to exceed $10,000,000 for the purchase of firearms, ammunition, protective body armor, and other personal safety equipment for investigative and enforcement personnel of the Drug Enforcement Administration, Federal Bureau of Investigation, United States Marshals Service, and the Immigration and Naturalization Service who devote a substantial amount of their time to drug law enforcement activities; and";

(4) in subparagraph (A)(ii) by—

(A) inserting a comma after "forfeitable assets";

(B) inserting "or listed chemicals (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))" after "storage, protection, and destruction of controlled substances".

(5) in subparagraph (B) by inserting before the semicolon ", or the money laundering offenses set forth in sections 1956 and 1957 of title 18 and sections 5313(a) and 5324 of title 31"; and

(6) in subparagraph (C) by inserting before the semicolon "or the money laundering provisions in sections 981 and 982 of title 18".

(b) DEFINITIONS AND PROCEDURES.—Subsection 524(c) of title 28, United States Code, is amended by adding at the end the following new paragraphs:

"(11) For the purposes of this subsection, the term 'firearm' means any rifle, handheld pistol or revolver, or other weapon that is authorized by the Attorney General, or his designee, to be carried by personnel of the Drug Enforcement Administration, Federal Bureau of Investigation, United States Marshals Service, and the Immigration and Naturalization Service.

"(12) Following the completion of procedures for the forfeiture of property pursuant to any law enforced or administered by the Department, the Attorney General is authorized, at his or her discretion, to warrant clear title to any subsequent purchaser or transferee of such property.".

(c) CONFORMING AMENDMENT.—Section 524(c)(9) of title 28, United States Code, is amended by striking "and (G)" and inserting "(G) and (H)".

SEC. 502. INCREASING EFFECTIVENESS OF ADMINISTRATIVE FORFEITURES.

(a) AMENDMENTS TO THE TARIFF ACT OF 1930.—Subsection (a) of section 607 of the Tariff Act of 1930 (19 U.S.C. 1607(a)) is amended—

(1) in paragraph (1) by striking "$100,000" and inserting "$500,000";

(2) by striking "or" at the end of paragraph (2); and

(3) by inserting "or" after the semicolon at the end of paragraph (3); and

(4) by adding after paragraph (3) the following:

"(4) such seized merchandise is monetary instruments;".

(b) CONFORMING AMENDMENT.—The section heading for section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) is amended to read as follows:

"SEC. 1607. SEIZURE; VALUE $500,000 OR LESS, PROHIBITED ARTICLES, TRANSPORTING CONVEYANCES.".

SEC. 503. FORFEITURE OF INSTRUMENTALITIES OF A FOREIGN DRUG OFFENSE.

Section 981(a)(1)(B) of title 18, United States Code, is amended—

(1) by inserting after "proceeds obtained directly or indirectly from" the words "or which represents the instrumentalities of"; and

(2) by adding at the end thereof the following: "No conveyance shall be forfeited under this paragraph to the extent of an interest of an owner by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.".

SEC. 504. CLOSING OF LOOPHOLE TO DEFEAT CRIMINAL FORFEITURE THROUGH BANKRUPTCY.

(a) TITLE 18.—Section 1963(a) of title 18, United States Code, is amended by inserting after "shall forfeit to the United States irrespective of any provision of State law" the following: ", or of any bankruptcy proceeding instituted after or in contemplation of a prosecution under this chapter".

(b) THE CONTROLLED SUBSTANCES ACT.—Section 413(a) of the Controlled Substances Act (21 U.S.C. 853(a)) is amended by inserting after "shall forfeit to the United States, irrespective of any provision of State law" the following: ", or of any bankruptcy proceeding instituted after or in contemplation of a prosecution of such violation".

SEC. 505. NONABATEMENT OF CRIMINAL FORFEITURE WHEN DEFENDANT DIES PENDING APPEAL.

(a) TITLE 18.—Section 1963 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(n) An order of forfeiture under this section shall not abate by reason of the death thereafter of any or all of the defendants or petitioners or potential petitioners.".

(b) THE CONTROLLED SUBSTANCES ACT.—Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding at the end thereof the following new subsection:

"Nonabatement of Forfeiture Order

"(q) An order of forfeiture under this section shall not abate by reason of the death thereafter of any or all of the defendants or petitioners or potential petitioners.".

SEC. 506. FORFEITURE OF PERSONAL PROPERTY USED TO FACILITATE A DRUG OFFENSE.

Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended by adding at the end thereof the following new paragraph:

"(10) Any weapon, computer, or electronic communications device used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) and any proceeds traceable to such property.".

SEC. 507. FORFEITURE OF PROCEEDS TRACEABLE TO CONVEYANCES USED TO FACILITATE DRUG VIOLATIONS.

Section 511(a)(4) of the Controlled Substances Act (21 U.S.C. 881(a)(4)) is amended—

(1) by inserting "and any proceeds traceable to such conveyances" after "property described in paragraph (1) or (2),";

(2) in subparagraph (A), by inserting ", and no proceeds traceable to such conveyance," before "shall be forfeited"; and

(3) in subparagraphs (B) and (C), by inserting "and no proceeds traceable to such conveyance" before "shall be forfeited".

SEC. 508. CLARIFICATION OF ATTORNEY GENERAL'S FORFEITURE SALE AUTHORITY.

Section 511(e)(1)(B) of the Controlled Substances Act (21 U.S.C. 881(e)(1)(B)) and section 2254(f)(2) of title 18, United States Code, are each amended by inserting ", by public sale or any other commercially feasible means," after "sell".

SEC. 509. CLARIFICATION OF CIVIL FORFEITURE SEIZURE WARRANT AUTHORITY.

Section 981(b)(2) of title 18, United States Code, is amended by striking "has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure" and inserting "has obtained a warrant for such seizure in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure".

SEC. 510. FORFEITURE AND DESTRUCTION OF DANGEROUS, TOXIC, AND HAZARDOUS MATERIALS.

Section 511(f) of the Controlled Substances Act (21 U.S.C. 881(f)) is amended by inserting "; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a) (2) or (3) which cannot be separated safely from such raw materials or products" after "this title" wherever it appears.

SEC. 511. ELIMINATION OF RESTRICTION ON DISPOSAL OF JUDICIALLY FORFEITED PROPERTY BY THE TREASURY DEPARTMENT AND THE POSTAL SERVICE.

Section 981(e) of title 18, United States Code, is amended by striking "The authority granted to the Secretary of the Treasury and the Postal Service pursuant to this subsection shall apply only to property that has been administratively forfeited.".

SEC. 512. FORFEITABILITY OF REAL PROPERTY UNDER GAMBLING STATUTE.

(a) IN GENERAL.—Section 1955(d) of title 18, United States Code, is amended to read as follows:

"(d) Any person convicted of a violation of this section shall forfeit to the United States, irrespective of any provision of State law, or of any bankruptcy proceeding instituted after or in contemplation of a prosecution under this section—

"(1) any property constituting or derived from any proceeds the person obtained, directly or indirectly, as a result of such violation; and

"(2) any of the person's property used or intended to be used, in any manner or part, to commit or to facilitate the commission of such violation.

The provisions of section 413 of the Controlled Substances Act (21 U.S.C. 853) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.".

(b) TECHNICAL AMENDMENT.—Section 1955(a) of title 18 is amended by striking out "shall be fined not more than $20,000 or" and inserting "shall be fined under this title,".

SEC. 513. CUSTOMS FORFEITURE FUND.

Section 613A, subsection (a)(3)(F), of the Tariff Act of 1930 (19 U.S.C. 1613b) is amended to read as follows: "payment of overtime, salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in assisting the United States Customs Service in law enforcement activities.".

SEC. 514. USE OF GRAND JURY INFORMATION FOR CIVIL FORFEITURES.

Section 3322(a) of title 18, United States Code, is amended—

(1) by striking "concerning a banking law violation";

(2) by inserting ", section 1964 of this title, or the civil enforcement provisions of the Controlled Substances Act," after "the Financial Institutions Reform, Recovery and Enforcement Act of 1989"; and

(3) by striking "under section 981" and all that follows up to the period and inserting "proceeding under any law of the United States".

## TITLE VI—PUBLIC CORRUPTION

SEC. 601. SHORT TITLE.

This title may be cited as the "Anti-Corruption Act of 1989".

SEC. 602. OFFENSE.

Chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 225. Public corruption

"(a) Whoever, in a circumstance described in subsection (d), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the honest services of an official or employee of such State, political subdivision, or Indian tribal government shall be fined under this title, or imprisoned for not more than ten years, or both.

"(b) Whoever, in a circumstance described in subsection (d), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of a fair and impartially conducted election process in any primary, run-off, special, or general election—

"(1) through the procurement, casting, or tabulation of ballots that are materially false, fictitious, or fraudulent or that are invalid, under the laws of the State in which the election is held;

"(2) through paying or offering to pay any person for voting;

"(3) through the procurement or submission of voter registrations that contain false material information, or omit material information; or

"(4) through the filing of any report required to be filed under State law regarding an election campaign that contains false material information or omits material information,

shall be fined under this title or imprisoned for not more than ten years, or both.

"(c) Whoever, being a public official or an official or employee of a State, political subdivision of a State, or Indian tribal government in a circumstance described in subsection (d), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the right to have the affairs of the State, political subdivision, or Indian tribal government conducted on the basis of complete, true, and accurate material information, shall be fined

under this title or imprisoned for not more than ten years, or both.

"(d) The circumstances referred to in subsections (a), (b), and (c) are that—

"(1) for the purpose of executing or concealing such scheme or artifice or attempting to do so, the person so doing—

"(A) places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing;

"(B) transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds;

"(C) transports or causes to be transported any person or thing, or induces any person to travel in or to be transported in, interstate or foreign commerce; or

"(D) uses or causes to use of any facility of interstate or foreign commerce;

"(2) the scheme or artifice affects or constitutes an attempt to affect in any manner or degree, or would if executed or concealed so affect, interstate or foreign commerce; or

"(3) as applied to an offense under subsection (b), an objective of the scheme or artifice is to secure the election of an official who, if elected, would have some authority over the administration of funds derived from an Act of Congress totaling $10,000 or more during the twelve-month period immediately preceding or following the election or date of the offense.

"(e) Whoever deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of the United States of the honest services of a public official or person who has been selected to be a public official shall be fined under this title or imprisoned for not more than ten years, or both.

"(f) Whoever being an official, or public official, or person who has been selected to be a public official, directly or indirectly, discharges, demotes, suspends, threatens, harasses, or, in any manner, discriminates against any employee or official of the United States or any State or political subdivision of such State, or endeavors to do so, in order to carry out or to conceal any scheme or artifice described in this section, shall be fined under this title or subject to imprisonment of up to five years or both.

"(g)(1) Any employee or official of the United States or any State or political subdivision of such State who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of lawful acts done by the employee as a result of a violation of subsection (e) or because of actions by the employee on behalf of himself or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such a prosecution) may in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, three times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including reasonable litigation costs and reasonable attorney's fees.

"(2) An individual is not eligible for such relief if that individual participated in the violation of this section with respect to which such relief would be awarded.

"(3) A civil action or proceeding authorized by this subsection shall be stayed by a court upon the certification of an attorney for the Government, stating that such action or proceeding may adversely affect the interests of the Government in an ongoing criminal investigation or proceeding. The attorney for the Government shall promptly notify the court when the stay may be lifted without such adverse effects.

"(h) For purposes of this section—

"(1) the term 'State' means a State of the United States, the District of Columbia, Puerto Rico, and any other commonwealth, territory, or possession of the United States;

"(2) the terms 'public official' and 'person who has been selected to be a public official' have the meaning set forth in section 201 of this title; the terms 'public official', and 'person who has been selected to be a public official' shall also include any person acting or pretending to act under color of official authority;

"(3) the term 'official' includes—

"(A) any person employed by, exercising any authority derived from, or holding any position in an Indian tribal government or the government of a State or any subdivision of the executive, legislative, judicial, or other branch of government thereof, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established and subject to control by a government or governments for the execution of a governmental or intergovernmental program;

"(B) any person acting or pretending to act under color of official authority; and

"(C) includes any person who has been nominated, appointed or selected to be an official or who has been officially informed that he or she will be so nominated, appointed or selected;

"(4) the term 'under color of official authority' includes any person who represents that he or she controls, is an agent of, or otherwise acts on behalf of an official, public official, and person who has been selected to be a public official; and

"(5) the term 'uses any facility of interstate or foreign commerce' includes the intrastate use of any facility that may also be used in interstate or foreign commerce.".

SEC. 603. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF SECTIONS.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following item:

"225. Public Corruption.".

(b) RICO.—Section 1961(1) of title 18, United States Code, is amended by inserting "section 225 (relating to public corruption)," after "section 224 (relating to sports bribery),".

(c) INTERRUPTION OF COMMUNICATIONS.—Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 225 (relating to public corruption)," after "section 224 (bribery in sporting contests),".

SEC. 604. INTERSTATE COMMERCE.

(a) IN GENERAL.—Section 1343 of title 18, United States Code, is amended by—

(1) striking "transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds" and inserting "uses or causes to be used any facility of interstate or foreign commerce"; and

(2) inserting "or attempting to do so" after "for the purpose of executing such scheme or artifice".

(b) CONFORMING AMENDMENTS.—(1) The heading of section 1343 of title 18, United States Code, is amended by striking "Fraud by wire, radio, or television" and inserting "Fraud by use of facility of interstate commerce".

(2) The chapter analysis for chapter 63 of title 18, United States Code, is amended by striking the analysis for section 1343 and inserting the following:

"1343. Fraud by use of facility of interstate commerce.".

SEC. 605. NARCOTICS-RELATED PUBLIC CORRUPTION.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by inserting after section 219 the following new section:

"§ 220. Narcotics and public corruption

"(a) Any public official who, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person in return for—

"(1) being influenced in the performance or nonperformance of any official act; or

"(2) being influenced to commit or to aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State;

shall be guilty of a class B felony.

"(b) Any person who, directly or indirectly, corruptly gives, offers, or promises anything of value to any public official, or offers or promises any public official to give anything of value to any other person, with intent—

"(1) to influence any official act;

"(2) to influence such public official to commit or aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State; or

"(3) to influence such public official to do or to omit to do any act in violation of such official's lawful duty;

shall be guilty of a class B felony.

"(c) There shall be Federal jurisdiction over an offense described in this section if such offense involves, is part of, or is intended to further or to conceal the illegal possession, importation, manufacture, transportation, or distribution of any controlled substance or controlled substance analogue.

"(d) For the purpose of this section—

"(1) the term 'public official' means—

"(A) an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof in any official function, under or by authority of any such department, agency, or branch of Government;

"(B) a juror;

"(C) an officer or employee or person acting for or on behalf of the government of any State, territory, or possession of the United States (including the District of Columbia), or any political subdivision thereof, in any official function, under or by the authority of any such State, territory, possession, or political subdivision; or

"(D) any person who has been nominated or appointed to be a public official as defined in subparagraph (A), (B), or (C), or has been officially informed that he or she will be so nominated or appointed;

"(2) the term 'official act' means any decision, action, or conduct regarding any ques-

tion, matter, proceeding, cause, suit, investigation, or prosecution which may at any time be pending, or which may be brought before any public official, in such official's official capacity, or in such official's place of trust or profit; and

"(3) the terms 'controlled substance' and 'controlled substance analogue' have the meaning set forth in section 102 of the Controlled Substances Act.".

(b) CONFORMING AMENDMENTS.—(1) Section 1961(1) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "Section 201 (relating to bribery),"; and

(2) Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "section 201 (bribery of public officials and witnesses),".

(c) SECTION ANALYSIS.—The section analysis at the beginning of chapter 11, title 18, United States Code, is amended by inserting the following:

"220. Narcotics and public corruption.".

## TITLE VII—CIVIL ENFORCEMENT

SEC. 701. EVICTION FROM PLACES MAINTAINED FOR MANUFACTURING, DISTRIBUTING, OR USING CONTROLLED SUBSTANCES.

Section 416 of the Controlled Substances Act (21 U.S.C. 856) is amended by adding at the end the following:

"(c) The Attorney General may bring a civil action against any person who violates the provisions of this section. The action may be brought in any district court of the United States or the United States courts of any territory in which the violation is taking place. The court in which such action is brought shall determine the existence of a violation by a preponderance of the evidence, and shall have the power to assess a civil penalty of up to $100,000 and to grant such other relief including injunctions and evictions as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.".

SEC. 702. USE OF CIVIL INJUNCTIVE REMEDIES, FORFEITURE SANCTIONS, AND OTHER REMEDIES AGAINST DRUG OFFENDERS.

The Attorney General shall—

(1) aggressively pursue the use of criminal penalties authorized by section 1963 of title 18, United States Code, civil remedies authorized by section 1964 of title 18, United States Code, and other equitable remedies against drug offenders, including injunctions, stay-away orders, and forfeiture sanctions; and

(2) submit a report to Congress annually on the manner and extent to which such remedies are being used and the effect of such use in curtailing drug trafficking. The amendments made by this section shall take effect one day after enactment.

## TITLE VII—JUVENILE JUSTICE ANTI-GANG PROGRAM

SEC. 801. GRANT PROGRAM.

The Juvenile Justice and Delinquency Prevention Act of 1974 is amended in part B by—

(1) inserting after the heading for such part the following:

"Subpart J—General Grant Programs";

and

(2) adding at the end thereof a new subpart III, as follows:

### "Subpart III—Juvenile Drug Trafficking and Prevention Grants

"FORMULA GRANTS

"SEC. 231. (a) The Administrator is authorized to make grants to States and units of general local government or combinations thereof to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective programs to reduce the use and sale of illegal drugs by juveniles, including education, prevention, treatment and enforcement programs.

"(b) The grants made under this section can be used for any of the following specific purposes:

"(1) To reduce the participation of juveniles in drug related crimes (including drug trafficking and drug use), particularly in and around elementary and secondary schools;

"(2) To develop within the juvenile justice system, including the juvenile corrections system, new and innovative means to address the problems of juveniles convicted of serious criminal, drug-related and gang-related offenses;

"(3) To reduce juvenile involvement in organized crime, drug and gang-related activity, particularly activities that involve the distribution of drugs by or to juveniles;

"(4) To reduce juvenile drug and gang-related activity in public housing projects;

"(5) To provide technical assistance and training to personnel and agencies responsible for the adjudicatory and corrections components of the juvenile justice system to identify drug-dependent juvenile offenders and to provide appropriate counseling and treatment to such offenders;

"(6) To promote the involvement of juveniles in lawful activities, including in-school education and prevention programs and after-school programs;

"(7) To facilitate Federal and State cooperation with local school officials to develop education, prevention and treatment programs for juveniles who are likely to participate in the drug trafficking, drug use or gang-related activities;

"(8) To prevent juvenile drug and gang involvement in public housing projects through programs establishing youth sports and other activities, including girls club, boys club, scout troops, and little league;

"(9) To provide pre- and post-trial drug abuse treatment to juveniles in the juvenile justice system; with the highest possible priority to providing drug abuse treatment to drug-dependent pregnant juveniles and drug-dependent juvenile mothers; and

"(10) To provide drug abuse education and prevention involving police and juvenile justice personnel in demand reduction programs.

"(c) Of the funds made available to each State under this section (Formula Grants) 50 per centum of the funds made available to each State in any fiscal year shall be used for juvenile drug supply reduction programs and 50 per centum shall be used for juvenile drug demand reduction programs.

"SPECIAL EMPHASIS DRUG DEMAND REDUCTION AND ENFORCEMENT GRANTS

"SEC. 232. (a) The purpose of this section is to provide additional Federal assistance and support to identify promising new juvenile drug demand reduction and enforcement programs, to replicate and demonstrate these programs to serve as national, regional or local models that could be used, in whole or in part, by other public and private juvenile justice programs, and to provide technical assistance and training to public or private organizations to implement similar programs. In making grants under this section, the Administrator shall give priority to programs aimed at juvenile involvement in organized gang- and drug-related activities, including supply and demand reduction programs.

"(b) The Administrator is authorized to make grants to, or enter into contracts with, public or private agencies, institutions, or organizations or individuals to carry out any purpose authorized in section 231. The Administrator shall have final authority over all funds awarded under this subchapter.

"(c) Of the total amount appropriated for this subchapter, 20 per centum shall be reserved and set aside for this section in a special discretionary fund for use by the Administrator to carry out the purposes specified in section 231. Grants made under this section may be made for amounts up to 100 per centum of the costs of the programs or projects.

"AUTHORIZATION

"SEC. 233. There is authorized to be appropriated $100,000,000 in fiscal year 1990 and such sums as may be necessary in each of the fiscal years 1991 and 1992 to carry out the purposes of this subpart.

"ALLOCATION OF FUND

"SEC. 234. Of the total amounts appropriated under this subpart in any fiscal year to carry out the purposes of section 231 (Formula Grants) the amount remaining after setting aside the amounts required to be reserved to carry out section 232 (Discretionary Grants) shall be allocated as follows:

"(1) $400,000 shall be allocated to each of the participating States;

"(2) Of the total funds remaining after the allocation under paragraph (a), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

"APPLICATION

"SEC. 235. (a) Each State applying for grants under section 231 (Formula Grants) and each public or private entity applying for grants under section 232 (Discretionary Grants) shall submit an application to the Administrator in such form and containing such information as the Administrator shall prescribe.

"(b) To the extent practical, the Administrator shall prescribe regulations governing applications for this subpart that are substantially similar to the applications required under part I (general juvenile justice formula grant) and part C (special emphasis prevention and treatment grants), including the procedures relating to competition.

"(c) In addition to the requirements prescribed in subsection (b), each State application submitted under section 231 shall include a detailed description of how the funds made available shall be coordinated with Federal assistance provided in parts B and C of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 and by the Bureau of Justice Assistance under the Drug Control and System Improvement Grant program.

"REVIEW AND APPROVAL OF APPLICATIONS

"SEC. 236. The procedures and time limits imposed on the Federal and State Governments under sections 505 and 508 respectively, of title I of the Omnibus Crime Control

and Safe Streets Act of 1968 relating to the review of applications and distribution of Federal funds shall apply to the review of applications and distribution of funds under this subpart.".

SEC. 802. CONFORMING AMENDMENTS.

(a) Section 291 of title II of the Juvenile Justice Delinquency Prevention Act of 1974 (42 U.S.C. 5671) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "(other than part D)";

(B) and by striking paragraph (2) in its entirety; and

(2) in subsection (b) by striking "(other than part D)".

(b) Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 is hereby repealed.

(c) Part E of title II of such Act is redesignated as part D.

SEC. 803. TREATMENT OF VIOLENT JUVENILES AS ADULTS.

(a) DESIGNATION OF UNNUMBERED PARAGRAPHS.—Section 5032 of title 18, United States Code, is amended by designating unnumbered paragraphs (1) through (11) as subsections (a) through (k), respectively.

(b) JURISDICTION OVER CERTAIN FIREARMS OFFENSES.—Section 5032(a) of title 18, United States Code, as so designated by this section, is amended by striking "922(p)" and inserting "924 (b), (g), or (h)".

(c) ADULT STATUS OF JUVENILES WHO COMMIT FIREARMS OFFENSES.—Section 5032(d) of title 18, United States Code, as so designated by this section is amended—

(1) by striking "A juvenile" and inserting "(1) Except as provided in paragraphs (2) and (3), a juvenile";

(2) by striking ", except that," and designating the following matter up to the semicolon as paragraph (2);

(3) by striking "however" after the semicolon and designating the remaining matter as paragraph (3); and

(4) by inserting in paragraph (2) "or section 924 (b), (g), or (h) of this title," after "959),".

(d) FACTORS FOR TRANSFERRING A JUVENILE TO ADULT STATUS.—Section 5032(e) of title 18, United States Code, as so designated by this section, is amended—

(1) by inserting "(1)" before "Evidence";

(2) by striking "intellectual development and psychological maturity;" and inserting "level of intellectual development and maturity; and";

(3) by inserting ", such as rehabilitation and substance abuse treatment," after "past treatment efforts";

(4) by striking "; the availability of programs designed to treat the juvenile's behavorial problems"; and

(5) by adding at the end the following:

"(2) In considering the nature of the offense, as required by this subsection, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use and distribution of controlled substances or firearms. Such factors, if found to exist, shall weigh heavily in favor of a transfer to adult status, but the absence of such factors shall not preclude a transfer to adult status.".

(e) WAIVING CONFIDENTIALITY IN CERTAIN JUVENILE PROCEEDINGS.—Section 5038 of title 18, United States Code, is amended by adding at the end the following:

"(g) In addition to any other provision of this section regarding disclosure of records if the law of the State in which a Federal juvenile delinquency proceeding takes place would permit or require the disclosure of records and information relating to a juvenile delinquency proceeding in certain circumstances, such disclosure shall be permitted under this section whenever the same circumstances exist.".

(f) CONFORMING AMENDMENT ADDING CERTAIN CONTROLLED SUBSTANCES OFFENSES AS REQUIRING FINGERPRINTING AND RECORDS FOR RECIDIVIST JUVENILES.—Sections 5038 (d) and (f) of title 18, United States Code, are amended by striking out "or an offense described in section 841, 952(a), 955, or 959, of title 21," and inserting in lieu thereof "or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841) or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, or 960(b) (1), (2), or (3)), or section 924(b), (g) or (h) of this title,".

SEC. 804. SERIOUS DRUG OFFENSES BY JUVENILES AS ARMED CAREER CRIMINAL ACT PREDICATES.

(a) ACT OF JUVENILE DELINQUENCY.—Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking out "or" at the end of clause (i);

(2) by striking out "and" at the end of clause (ii) and inserting in lieu thereof "or"; and

(3) by adding a new clause (iii), as follows:

"(iii) any act of juvenile delinquency that if committed by an adult would be punishable under section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)); and".

(b) SERIOUS DRUG OFFENSE.—Section 924(e)(2)(C) of title 18, United States Code, is amended by adding "or serious drug offense" after "violent felony".

SEC. 805. REDESIGNATION OF CONFUSING SECTIONS IN THE CONTROLLED SUBSTANCES ACT PERTAINING TO CHILDREN.

(a) SECTION 405—NEW SECTION 418.—(1) Section 405 of the Controlled Substances Act is redesignated as section 418.

(2) Section 418 of such Act (as redesignated by paragraph (1)) is amended—

(A) in subsection (a), by striking "section 405A" and inserting "section 419"; and

(B) in subsection (b) by striking "section 405A" and inserting "section 419".

(b) SECTION 405A—NEW SECTION 419.—Section 405A of the Controlled Substances Act is redesignated as section 419.

(c) SECTION 405B—NEW SECTION 420.—Section 405B of the Controlled Substances Act is redesignated as section 420.

(d) TRANSFER OF SECTION 5301 OF THE ANTI-DRUG ABUSE ACT OF 1988—NEW SECTION 421.—(1) Section 5301 of the Anti-Drug Abuse Act of 1988 is—

(A) transferred to the Controlled Substances Act; and

(B) redesignated as section 421 of the Controlled Substances Act.

(2) Section 421(a)(1) of the Controlled Substances Act, as amended by paragraph (1) of this subsection, is amended by striking "(as such terms are defined for purposes of the Controlled Substances Act)".

(e) CONFORMING AMENDMENTS TO OTHER SECTIONS.—(1) Section 401(b) of the Controlled Substances Act is amended by striking "section 405, 405A, or 405B" and inserting "section 418, 419, or 420".

(2) Section 401(c) of the Controlled Substances Act is amended by striking "section 405, 405A, or 405B" and inserting "section 418, 419, or 420".

(f) AMENDMENT TO TABLE OF CONTENTS.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended in part D of title II by striking the items for sections 405, 405A, and 405B and inserting at the end thereof the following:

"418. Distribution to persons under age twenty-one.

"419. Distribution or manufacturing in or near schools and colleges.

"420. Employment of persons under 18 years of age.

"421. Denial of Federal benefits to drug traffickers and possessors.".

(g) TRANSFER OF SECTION 6486 OF THE ANTI-DRUG ABUSE ACT OF 1988—NEW SECTION 405.—(1) Section 6486 of the Anti-Drug Abuse Act of 1988 is—

(A) transferred to the Controlled Substances Act; and

(B) redesignated as section 405 of the Controlled Substances Act.

(2) Section 405 of the Controlled Substances Act, as amended by paragraph (1) of this subsection, is amended—

(A) in subsection (a), by—

(i) striking "of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A))"; and

(ii) striking "of that Act (21 U.S.C. 841(b)(1)(A))";

(B) in subsection (c), by striking "as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)";

(C) in subsection (j)(4), by striking "as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)".

(3) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (as amended by subsection (c) of this section) is amended in part D of title II by inserting after the item for section 404 the following:

"405. Civil penalty for possession of small amounts of certain controlled substances.".

(h) PART E OF THE CONTROLLED SUBSTANCES ACT.—

(1) SECTION 511A—NEW SECTION 518.—Section 511A of the Controlled Substances Act is redesignated as section 518.

(2) TRANSFER OF SECTION 1764 OF THE FOOD SECURITY ACT OF 1985.—Section 1764 of the Food Security Act of 1985 is—

(A) transferred to the Controlled Substances Act; and

(B) redesignated as section 519 of the Controlled Substances Act.

(3) AMENDMENT TO TABLE OF CONTENTS.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended in part E of title II by striking the items for section 511A and inserting at the end thereof the following:

"518. Expedited procedures for seized conveyances.

"519. Production control of controlled substances.".

SEC. 806. CLARIFICATION OF ENHANCED PENALTIES UNDER CONTROLLED SUBSTANCES ACT.

(a) SECTION 418 (OLD SECTION 405).—Section 418 of the Controlled Substances Act (as redesignated by section 1507 of this Act) is amended—

(1) in subsection (a), by striking "punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by section 401(b)" and inserting "subject to (1) twice the maximum punishment authorized by section 401(b)"; and

(2) in subsection (b), by striking "punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b)" and inserting "subject to (1) three times the maximum punishment authorized by section 401(b)".

(b) SECTION 419 (OLD SECTION 405A).—Section 419 of the Controlled Substances Act (as redesignated by section 1507 of this Act) is amended—

(1) in subsection (a), by striking "punishable (1) by a term of imprisonment, or a fine, or both, up to twice that authorized by section 401(b)" and inserting "subject to (1) twice the maximum punishment authorized by section 401(b)"; and

(2) in subsection (b)(1), by striking subparagraph (B) and inserting "(B) three times the maximum punishment authorized by section 401(b) for a first offense".

(c) SECTION 420 (OLD SECTION 405B).—Section 420 of the Controlled Substances Act (as redesignated by section 1507 of this Act) is amended—

(1) in subsection (b), by striking "is punishable by a term of imprisonment up to twice that authorized, or up to twice the fine authorized, or both," and inserting "is subject to twice the maximum punishment otherwise authorized"; and

(2) in subsection (c), by striking "is punishable by a term of imprisonment up to three times that authorized, or up to three times the fine authorized, or both," and inserting "is subject to three times the maximum punishment otherwise authorized".

## TITLE IX—EMERGENCY FEDERAL ASSISTANCE TO DRUG DISASTER AREAS

### SEC. 901. DECLARATION OF DRUG DISASTER AREAS.

(a) PRESIDENTIAL DECLARATION.—In the event that a major drug-related emergency exists throughout a State or a part of a State, the President may, in consultation with the Director of National Drug Control Policy and other appropriate officials declare such State or part of a State to be a drug disaster area and may take any and all necessary actions authorized by this title or otherwise authorized by law.

(b) DEFINITION.—For the purposes of this title, the term "major drug-related emergency" means any occasion or instance in which drug trafficking, drug abuse, or drug-related violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

### SEC. 902. PROCEDURE FOR DECLARATION.

(a) APPLICATION.—(1) All requests for a declaration by the President designating an area to be a drug disaster area shall be made, in writing, by the Governor or chief executive officer of any affected State or local government, respectively, and shall be forwarded to the President through the Director of National Drug Control Policy (referred to as the "Director") in such form as the Director may by regulation require. Such a request shall be based on a written finding that the major drug-related emergency is of such severity and magnitude that effective response is beyond the capabilities of the State or local government and that Federal assistance is necessary.

(2) As part of a request for a declaration by the President under this section, and as a prerequisite to Federal drug disaster assistance under this title, the governor or chief executive officer shall—

(A) take appropriate response action under State or local law and furnish such information on the nature and amount of State and local resources which have been or will be committed to alleviating the major drug-related emergency;

(B) certify that State and local government obligations and expenditures will comply with all applicable cost-sharing requirements of this title; and

(C) submit a detailed plan outlining the State or local government's short- and long-term plans to respond to the major drug-related emergency, specifying the types and levels of Federal assistance requesting, and including explicit goals (where possible quantitative goals) and timetables and shall specify how Federal assistance provided under this title is intended to achieve such goals.

(b) REVIEW AND DECLARATION.—The Director shall review any request submitted pursuant to this title and forward the application, along with a recommendation to the President on whether to approve or disapprove the application, within 30 days after receiving such application. Based on the application and the recommendation of the Director, the President may declare an area to be a drug disaster area under this title.

### SEC. 903. FEDERAL MONETARY ASSISTANCE.

(a) IN GENERAL.—The President is authorized to make grants to State or local governments of up to, in the aggregate for any single major drug-related emergency, $50,000,000.

(b) FEDERAL SHARE.—The Federal share of assistance under this section shall not be greater than 75 percent of the costs necessary to implement the short- and long-term plan outlined in subsection 902(b) of this title.

(c) LIMITS ON ASSISTANCE.—Federal assistance under this title shall not be provided to a drug disaster area for more than 1 year. In any case where Federal assistance is provided under this title, the Governor or chief executive officer may apply to the President, through the Director, for an extension of assistance beyond 1 year. The President, based on the recommendation of the Director, may extend the provision of Federal assistance for not more than an additional 180 days.

### SEC. 904. NONMONETARY ASSISTANCE.

In addition to the assistance provided under section 903, the President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts;

(2) coordinate all drug disaster assistance provided by Federal agencies, private organizations, and State and local governments; and

(3) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

### SEC. 905. ISSUANCE OF IMPLEMENTING REGULATIONS.

Within 90 days after the enactment of this title, the Director shall issue regulations to implement this title, including such regulations as may be necessary relating to applications for Federal assistance and the provision of Federal monetary and nonmonetary assistance.

### SEC. 906. AUDIT BY COMPTROLLER GENERAL.

The Comptroller General shall conduct an audit of any Federal assistance (both monetary and nonmonetary) of an amount greater than $100,000 provided to a State or local government under this title, including an evaluation of the effectiveness of such assistance based on the goals contained in the application for assistance.

### SEC. 907. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year 1990, 1991, 1992, 1993 and 1994, $300,000,000 to carry out the purposes of this title.

## TITLE X—POLICE CORPS

### SEC. 1001. SHORT TITLE.

This Act may be cited as the "Police Corps Act".

### SEC. 1002. PURPOSES.

The purposes of this Act are to—

(1) address the very high level of violent crime and neighborhood deterioration afflicting communities throughout the Nation by substantially increasing the number of trained police on community patrol;

(2) provide educational assistance to those students of ability, character, and dedication who possess a sincere interest in dedicating 4 years to public service and law enforcement; and

(3) establish opportunities for meaningful community service in exchange for educational assistance.

### SEC. 1003. DEFINITIONS.

For the purposes of this Act—

(1) the term "academic year" means a traditional academic year beginning in August or September and ending in the following May or June;

(2) the term "dependent child" means a natural or adopted child or stepchild of a law enforcement officer who at the time of the officer's death—

(A) was no more than 21 years old; or

(B) if older than 21 years, was in fact dependent on the child's parents for at least one-half of the child's support (excluding educational expenses), as determined by the Director;

(3) the term "Director" means the Director of the Office of the Police Corps appointed pursuant to section 1004(b);

(4) the term "educational expenses" means expenses that are directly attributable to—

(A) a course of education leading to the award of the baccalaureate degree; or

(B) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses;

(5) the term "participant" means a participant in the Police Corps program selected pursuant to section 1006;

(6) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands; and

(7) the term "State Police Corps program" means a State police corps program approved under section 1609.

### SEC. 1004. ESTABLISHMENT OF OFFICE OF THE POLICE CORPS.

(a) ESTABLISHMENT.—There is established in the Department of Justice, under the general authority of the Attorney General, an Office of the Police Corps.

(b) APPOINTMENT OF DIRECTOR.—The Office of the Police Corps shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) RESPONSIBILITIES OF DIRECTOR.—The Director shall be responsible for the administration of the Police Corps program pursu-

ant to this title and shall have authority to promulgate regulations to implement this title.

SEC. 1005. EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—(1) The Director is authorized to pay the educational expenses of a participant in a State Police Corps program, by—

(A) entering into an agreement to repay, and repaying, an educational loan; and

(B) entering into an agreement to repay, and repaying, a participant for educational expenses paid out of the participant's funds.

(2) It is the intent of this Act that there shall be no more than 25,000 participants in each graduating class. The Director shall approve State plans providing in the aggregate for such enrollment of applicants as shall assure, as nearly as possible, annual graduating classes of 25,000. In a year in which applications are received in a number greater than that which will produce, in the judgment of the Director, a graduating class of more than 25,000, the Director shall, in deciding which applications to grant, give preference to those who will be participating in State plans that provide law enforcement personnel to areas of greatest need.

(3) Except for payments of interest on an educational loan, repayment under an agreement made pursuant to paragraph (1) shall be made following completion of a participant's course of educational study, Federal training, and service as required by this Act.

(4) Repayment of an educational loan made pursuant to paragraph (1) may be made in the form of direct payment to a lender or reimbursement of a participant for payments made to a lender.

(5) An educational loan that may be repaid under paragraph (1) is a loan made pursuant to or in connection with a Federal, State, local, or private loan or loan guarantee program designated by the Director and other loans that meet terms prescribed by the Director by regulation.

(b) ADMISSION OF APPLICANTS.—An applicant may be admitted into a State Police Corps program either before commencement of or during the applicant's course of educational study.

(c) PAYMENT OF EDUCATIONAL EXPENSES.—(1) The Director may agree to repay an educational loan and to reimburse a participant for expenditures made prior to or after the time that a participant applies for admission to a State Police Corps program.

(2) The amounts of educational expenses that the Secretary may pay under this section are limited as follows:

(A)(i) The amount of educational expenses incurred by a participant to cover the cost of an academic year of study that the Director may pay is limited to $10,000.

(ii) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of educational expenses incurred by a participant to cover the cost of such a calendar year that the Director may pay is limited to $13,333.

(B) The amount of educational expenses incurred by a participant to cover the cost of undergraduate and graduate study is limited to $40,000 in the aggregate, regardless whether the time of study exceeds 4 years.

(d) DIRECTOR'S OBLIGATION TO PAY.—(1) The Director's obligation to pay a participant's educational expenses under this section shall be void, and the Director shall be entitled to recover from the participant the amount of any interest on an educational loan that the Director has paid, if the participant fails to complete satisfactorily—

(A) the course of educational study undertaken by the participant;

(B) Federal training as required by section 7; and

(C) service as required by section 8;

unless the failure is the result of death or permanent physical or emotional disability.

(2) For the purpose of paragraph (1), a participant shall be deemed to have completed satisfactorily—

(A) an educational course of study upon receipt of a baccalaureate degree (in the case of educational expenses incurred to cover the cost of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of educational expenses incurred to cover the cost of graduate study);

(B) Federal training upon certification by the Director of Training that the participant has met such performance standards as may be established pursuant to section 1007(d); and

(C) service on a police force upon completion of 4 years of service on the force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the police force of which the participant is a member.

(3) As a condition to payment of educational expenses of a participant who fails to complete a course of educational study, training, or service as a result of permanent physical or emotional disability, the Director may require the participant to perform appropriate alternative community service.

(e) DEPENDENT CHILD.—A dependent child of a law enforcement officer—

(1) who is a member of a State or local police force or is a Federal criminal investigator or uniformed police officer,

(2) who is not a participant in the Police Corps program, but

(3) who serves in a State for which the Director has approved a Police Corps plan, and

(4) who is killed in the course of performing police duties,

shall be entitled to the educational assistance authorized in this section. Such dependent child shall not incur any service obligation in exchange for the educational assistance provided in this section.

(f) GROSS INCOME.—For purposes of section 61 of the Internal Revenue Code of 1986, a participant's or a dependent child's gross income shall not include any amount paid as educational assistance under this section or as a stipend under section 1007.

SEC. 1006. SELECTION OF PARTICIPANTS.

(a) IN GENERAL.—Participants in State Police Corps programs shall be selected on a competitive basis by each State under regulations prescribed by the Director.

(b) SELECTION CRITERIA AND QUALIFICATIONS.—(1) In order to participate in a State Police Corps program, a participant must—

(A) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(B) meet the requirements for admission as a trainee of the State or local police force to which the participant will be assigned pursuant to section 1009(c)(5), including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the State police shall not disqualify the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer;

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree and will then accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State;

(F) in the case of a participant desiring to undertake or continue graduate study, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the State police or in a local police department, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience.

(2)(A) Until the date that is 5 years after the date of enactment of this title, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph (A) shall not be counted toward satisfaction of the participant's 4-year service obligation under section 1608, and such a participant shall be subject to the same benefits and obligations under this Act as other participants, including those stated in section (b)(1) (E) and (F).

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of section 1008, such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(c) RECRUITMENT OF MINORITIES.—Each State participating in the Police Corps program shall make special efforts to seek and recruit applicants from among members of racial and ethnic groups whose representation on the police forces within the State is substantially less than in the population of the State as a whole. This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (a) and (b).

(d) ENROLLMENT OF APPLICANT.—(1) An applicant shall be accepted into a State Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, an institution of higher education (as described in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)))—

(A) as a full-time student in an undergraduate program; or

(B) for purposes of taking a graduate course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(e) LEAVE OF ABSENCE.—(1) A participant in a State Police Corps program who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) due to temporary physical or emotional disability shall be granted such leave of absence by the State.

(2) A participant who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason other than those listed in paragraph (1) may be granted such leave of absence by the State.

(3) If a participant who has taken a leave of absence pursuant to paragraph (1) or (2) fails or is unable to resume educational study, training, or service after the expiration of the leave of absence, the provision of section 5(c) shall apply.

(f) IN-STATE TUITION.—At least 50 percent of the applicants admitted to a State Police Corps program must qualify for and be obligated to pay no more than the in-State tuition rates at the institutions they attend.

SEC. 1007. LAW ENFORCEMENT TRAINING.

(a) IN GENERAL.—The Director shall establish up to 3 training centers to provide training to participants in State Police Corps programs.

(b) TRAINING SESSIONS.—A participant in a State Police Corps program shall attend two 8-week training sessions at a training center, at times determined by the Director.

(c) COURSE OF TRAINING.—The training sessions at training centers established under this section shall be designed to provide basic law enforcement training, including vigorous physical and mental training to teach participants self-discipline and organizational loyalty and to impart knowledge and understanding of legal processes and law enforcement.

(d) EVALUATION OF PARTICIPANTS.—A participant shall be evaluated during training for mental, physical, and emotional fitness, and shall be required to meet performance standards prescribed by the Board of Directors established pursuant to subsection (f) at the conclusion of each training session in order to remain in the Police Corps program.

(e) STIPEND.—The Director shall pay participants in training sessions a stipend of $250 a week during training.

(f) BOARD OF DIRECTORS.—(1) The training centers shall be administered by a Board of Directors (in this subpart referred to as the 'Board'). The Board shall consist of—

(A) 9 persons outstanding in the fields of law enforcement, education, law and law enforcement education who shall be appointed by the President, by and with the advice and consent of the Senate, 2 of whom shall be members of a national police labor organization and 2 of whom shall be members of a national police management organization;

(B) the Attorney General or a designee of the Attorney General, who shall be an ex officio member; and

(C) the Director, who shall serve as chairman.

(2) The term of office of a member of the Board (other than the Attorney General or designee of the Attorney General and other than the Director) shall be 6 years, except that—

(A) a member appointed to fill a vacancy occurring before the expiration of the term for which the appointee's predecessor was appointed shall be appointed for the remainder of such term;

(B) the terms of office of the members first taking office shall expire, as designated by the President at the time of the appointment, three at the end of 2 years, three at the end of 4 years, and three at the end of 6 years; and

(C) a member whose term of office has expired shall continue to serve until the member's successor is appointed.

(3) Members of the Board, while away from their homes or regular places of business in the performance of services for the Board, shall be entitled to receive compensation at a rate to be fixed by the Director, not exceeding $100 a day, and shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(4) The Director shall obtain the services of such military and civilian instructors and administrative and other employees as may be necessary to operate the training centers. The Director is authorized to enter into contracts with individuals, institutions of learning, and government agencies (including State and local police forces) to obtain the services of persons qualified to participate in and contribute to the training process.

(5) The Director is authorized to enter into agreements with agencies of the Federal Government to utilize on a reimbursable basis space in Federal buildings and other resources.

(6) The Director may authorize such expenditures as are necessary for the effective maintenance of the training centers, including purchases of supplies, uniforms, and educational materials, and the provision of subsistence, quarters, and medical care to participants.

(g) FURTHER TRAINING.—The 16 weeks of Federal training authorized in this section is intended to serve as basic law enforcement training but not to exclude further training of participants by the State and local authorities to which they will be assigned. Each State plan approved by the Director under section 1009 shall include assurances that following completion of Federal training each participant shall receive appropriate additional training by the State or local authority to which the participant is assigned. The time spent by a participant in such additional training, but not the time spent in Federal training, shall be counted toward fulfillment of the participant's 4-year service obligation.

SEC. 1008. SERVICE OBLIGATION.

(a) SWEARING IN.—Upon satisfactory completion of the Federal training program established in section 7 and meeting the requirements of the police force to which the participant is assigned, a participant shall be sworn in as a member of the police force to which the participant is assigned pursuant to the State Police Corps plan, and shall serve for 4 years as a member of that police force.

(b) RIGHTS AND RESPONSIBILITIES.—A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the police force of which the participant is a member, including those contained in applicable agreements with labor organizations and those provided by State and local law.

(c) DISCIPLINE.—If the police force of which the participant is a member subjects the participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 1005, the Director may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, upon satisfactory completion of that service, provide assistance pursuant to section 1005.

SEC. 1009. APPROVAL OF STATE PROGRAMS.

(a) SUBMISSION OF STATE PLANS.—To participate in the Police Corps program under this title, a State shall submit to the Director a plan for implementing a State Police Corps program for such State, in a manner consistent with the requirements set forth in this title.

(b) APPROVAL OF STATE PLANS.—The Director shall approve a State Police Corps plan that complies with the program requirements set forth in this section.

(c) CONTENTS OF STATE PLANS.—Each State Police Corps plan shall—

(1) provide for the screening and selection of participants in accordance with the criteria set out in section 1006;

(2) state procedures governing the assignment of participants in the Police Corps program to State and local police forces (no more than 10 percent of all the participants assigned in each year by each State to be assigned to a statewide police force or forces);

(3) provide that participants shall be assigned to those geographic areas in which—

(A) there is the greatest need for additional law enforcement personnel; and

(B) the participants will be used most effectively;

(4) provide that to the extent consistent with paragraph (3), a participant shall be assigned to an area near the participant's home or such other place as the participant may request;

(5) provide that to the extent feasible, a participant's assignment shall be made at the time the participant is accepted into the program, subject to change—

(A) prior to commencement of a participant's fourth year of undergraduate study, under such circumstances as the plan may specify; and

(B) from commencement of a participant's fourth year of undergraduate study until completion of 4 years of police service by participant, only for compelling reasons or to meet the needs of the State Police Corps program and only with the consent of the participant;

(6) provide that no participant shall be assigned to serve with a local police force—

(A) whose size has declined by more than 5 percent since June 21, 1989; or

(B) which has members who have been laid off but not retired;

(7) provide that participants shall be placed and to the extent feasible kept on community and preventive patrol;

(8) assure that participants will receive effective training and leadership;

(9) provide that the State may decline to offer a participant an appointment following completion of Federal training, or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures stated in the plan; and

(10) provide that a participant shall, while serving as a member of a police force, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other

police officers of the same rank and tenure in the police force of which the participant is a member.

SEC. 1010. REPORTS TO PRESIDENT AND CONGRESS.

Not later than April 1 of each year, the Director shall submit a report to the President and to the Speaker of the House of Representatives and the President of the Senate. Such report shall—

(1) state the number of current and past participants in the Police Corps program, broken down according to the levels of educational study in which they are engaged and years of service they have served on police forces (including service following completion of the 4-year service obligation);

(2) describe the geographic dispersion of participants;

(3) describe the structure and progress of the program; and

(4) discuss the perceived strength and weakness of the program and any proposals for changes in the program.

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Justice to carry out this title, for fiscal year 1990, such sums as may be necessary to carry out the provisions of this Act, and for each fiscal year thereafter such sums as may be authorized in the annual authorization Act for such year.

## TITLE XI—FIREARMS AND RELATED AMENDMENTS

SEC. 1101. PROHIBITION AGAINST TRANSFERRING FIREARMS TO NONRESIDENTS.

Section 922(a)(5) of title 18, United States Code, is amended by striking out "resides" and all that follows through "(or other than that in which its place of business is located if the transferor is a corporation or other business entity);" and inserting in lieu thereof "does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides;".

SEC. 1102. COMMERCE NEXUS FOR TRAFFICKING IN STOLEN FIREARMS.

(a) SECTION 922(j).—Section 922(j) of title 18, United States Code, is amended by striking out "or which constitutes," and inserting in lieu thereof "which constitutes, or which has been shipped or transported in,".

(b) SECTION 922(k).—Section 922(k) of title 18, United States Code, is amended by inserting "or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce" after "altered".

SEC. 1103. TECHNICAL AMENDMENTS.

(a) Section 923(d)(1)(B) of title 18, United States Code, is amended by striking out "(h)" and inserting in lieu thereof "(n)";

(b) Section 925(a)(1) of title 18, United States Code, is amended by inserting "possession," before "or importation";

(c) Section 925(c) of title 18, United States Code, is amended by striking out "conviction" the first and third place such term appears and inserting in lieu thereof "disability" and by striking out "by reason of such a conviction";

(d) Section 924(a) of title 18, United States Code, is amended by striking out ", and shall become eligible for parole as the Parole Commission shall determine" in both places those words appear. This amendment shall be effective with respect to any offense committed after November 1, 1987.

(e) Section 924(g) of title 18, United States Code, is amended by inserting "or with reasonable cause to believe" after "knowing".

SEC. 1104. DISPOSITION OF FORFEITED FIREARMS.

Subsection 5872(b) of the Internal Revenue Code of 1986 (26 U.S.C. 5872(b)), is amended to read as follows:

"(b) DISPOSAL.—In the case of the forfeiture of any firearm, where there is no remission or mitigation of forfeiture thereof—

"(1) The Secretary may retain the firearm for official use of the Department of the Treasury or, if not so retained, offer to transfer the weapon without charge to any other executive department or independent establishment of the Government for official use by it and, if the offer is accepted, so transfer the firearm;

"(2) If the firearm is not disposed of pursuant to paragraph (1), is a firearm other than a machinegun or a firearm forfeited for a violation of this chapter, is a firearm that in the opinion of the Secretary is not so defective that its disposition pursuant to this paragraph would create an unreasonable risk of a malfunction likely to result in death or bodily injury, and is a firearm which (in the judgment of the Secretary, taking into consideration evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less) derives a substantial part of its monetary value from the fact that it is novel, rare, or because of its association with some historical figure, period, or event the Secretary may sell such firearm, after public notice, at public sale to a dealer licensed under the provisions of chapter 44 of title 18, United States Code;

"(3) If the firearm has not been disposed of pursuant to paragraphs (1) or (2), the Secretary shall transfer the firearm to the Administrator of General Services, General Services Administration, who shall destroy or provide for the destruction of such firearm; and

"(4) No decision or action of the Secretary pursuant to this subsection shall be subject to judicial review.".

SEC. 1105. CLARIFICATION OF "BURGLARY" UNDER THE ARMED CAREER CRIMINAL STATUTE.

Section 924(e)(2) of title 18, United States Code, is amended by adding a new subparagraph, as follows:

"(D) the term 'burglary' means any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is the property of another with intent to engage in conduct constituting a Federal or State offense.".

SEC. 1106. CLARIFICATION OF DEFINITION OF CONVICTION.

Section 921(a)(20) of title 18, United States Code, is amended by adding at the end the following: "Notwithstanding the previous sentence, if the conviction was for a violent felony involving the threatened or actual use of a firearm or explosive or was for a serious drug offense, as defined in section 924(e) of this title, the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, expunction or restoration of civil rights".

SEC. 1107. PERMITTING CONSIDERATION OF PRETRIAL DETENTION FOR CERTAIN FIREARMS AND EXPLOSIVES OFFENSES.

Section 3142(f)(1) of title 18, United States Code, is amended by—

(1) striking out "or" before subparagraph (D);

(2) redesignating subparagraph (D) as subparagraph (E); and

(3) inserting a new subparagraph (D) as follows:

"(D) an offense under section 844(a) that is a violation of subsection (d), (h), or (i) of section 842 or an offense under section 924(a) that is a violation of subsection (d), (g), (h), (i), (j), (o), (q), or (s) of section 922; or".

SEC. 1108. THEFT OF FIREARMS AND EXPLOSIVES.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(k) Whoever steals any explosives materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not less than two or more than ten years, and may be fined under this title.".

SEC. 1109. BAR ON SALE OF FIREARMS AND EXPLOSIVES TO OR POSSESSION OF FIREARMS AND EXPLOSIVES BY PERSONS CONVICTED OF A VIOLENT OR SERIOUS DRUG MISDEMEANOR.

(a) FIREARMS.—Sections 842(d)(2) and 922(d)(1) of title 18, United States Code, are each amended by inserting ", or has been convicted in any court of any crime of violence involving use of a firearm or destructive device or misdemeanor drug or narcotic offense (as defined in section 404(c) of the Controlled Substances Act, 21 U.S.C. 844(c)) for which the penalty imposed was greater than 6 months. It is a bar to a prosecution under this section that the conviction for a misdemeanor drug or narcotic offense occurred prior to the date of enactment of this Act" after "crime punishable by imprisonment for a term exceeding one year";

(b) EXPLOSIVES.—Sections 842(i)(1) and 922(g)(1) of title 18, United States Code, are each amended by inserting "or has been convicted in any court of any crime of violence involving use of a firearm or destructive device or misdemeanor drug or narcotic offense (as defined in section 404(c) of the Controlled Substances Act, 21 U.S.C. 844(c)) for which the maximum penalty is greater than 6 months. It is a bar to a prosecution under this section that the conviction for a serious misdemeanor drug or narcotic offense occurred prior to the date of enactment of this Act" after "crime punishable by imprisonment for a term exceeding one year";

SEC. 1110. POSSESSION OF A FIREARM OR AN EXPLOSIVE DURING THE COMMISSION OF A FELONY.

(a) FIREARMS.—Section 924(c) of title 18, United States Code, is amended by striking out "uses or carries a firearm" and inserting in lieu thereof "uses, carries, or otherwise possesses a firearm".

(b) EXPLOSIVES.—Section 844(h) of title 18, United States Code, is amended by striking out "carries an explosive during" and inserting in lieu thereof "carries or otherwise possesses an explosive during".

SEC. 1111. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.

Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (a)(1)(B), by striking out "(a)(6),"; and

(2) in subsection (a)(2), by inserting "(a)(6)," after "subsections".

SEC. 1112. INCREASED PENALTY FOR SECOND OFFENSE OF USING AN EXPLOSIVE TO COMMIT A FEDERAL FELONY.

Section 844(h) of title 18, United States Code, is amended by striking out "ten

years" and inserting in lieu thereof "twenty years".

SEC. 1113. DOMESTIC ASSEMBLY OR EXPORTATION OF ASSAULT WEAPONS AND NONIMPORTABLE FIREARMS.

(a) DEFINITION.—Section 921(a) of title 18, United States Code, is further amended by adding at the end of thereof a new paragraph as follows:

"(26) The term 'semiautomatic rifle' means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge."

(b) UNLAWFUL ACT.—Section 922 of title 18, United States Code is further amended by adding at the end thereof a new subsection as follows:

"(s)(1) Except as provided in paragraph (2), it shall be unlawful for any person to assemble or export—

"(A) any assault weapon; or

"(B) any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes.

"(2) This subsection shall not apply to—

"(A) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof;

"(B) assembly operations for any such rifle or shotgun by a licensed manufacturer that were taking place in the United States before May 15, 1989; or

"(C) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Secretary.".

(c) TECHNICAL AMENDMENT.—Section 924(a)(1)(B) of title 18, United States Code is amended by striking out "or (k)" and inserting in lieu thereof "(k), or (s)".

SEC. 1114. CLARIFICATION OF PENALTY ENHANCEMENT.

Section 924(c) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as (4) and (5), respectively;

(2) in the second sentence of paragraph (1), by striking "In the case of his second or subsequent conviction under this subsection" and inserting "(2) When a person is sentenced under this subsection for an offense that was committed after a prior sentence under this subsection has become final"; and

(3) in the third sentence of paragraph (1), by inserting "(3)" before "Notwithstanding" and by striking "convicted of a violation of" and inserting "sentenced pursuant to".

SEC. 1115. MINIMUM PENALTY RELATING TO SHORT-BARRELED SHOTGUNS AND OTHER FIREARMS.

Section 924(c) of title 18, United States Code, is amended by inserting "and if the firearm is a short-barreled rifle, short-barreled shotgun, or a destructive device, to imprisonment for ten years," after "sentenced to imprisonment for five years,".

## TITLE XII—MISCELLANEOUS CRIMINAL LAW IMPROVEMENTS

SEC. 1201. RECEIVING STOLEN PROPERTY.

(a) IN GENERAL.—Chapter 1 of title 18, United States Code, is amended by adding at the end thereof a new section, as follows:

**"§ 21. Stolen or counterfeit nature of property for certain crimes defined**

"Wherever in this title it is an element of an offense that any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated and that the defendant knew that the property was of such character, such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated. For purposes of this section, the term "official representation" means any representation made by a Federal law enforcement officer (as defined in section 115) or by another person at the direction or with the approval of such an officer.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following:

"21. Stolen or counterfeit nature of property for certain crimes defined.".

SEC. 1202. CLARIFICATION OF NARCOTIC OR OTHER DANGEROUS DRUGS UNDER THE RICO STATUTE.

Section 1961(1) of title 18, United States Code, is amended by striking out "narcotic or other dangerous drugs" each place those words appear and inserting in lieu thereof "a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)".

SEC. 1203. MARITIME DRUG LAW ENFORCEMENT AMENDMENTS.

Sections 3142 (e) and (f) of title 18, United States Code, and sections 994(h) (1) and (2) of title 28, United States Code, are each amended by striking out "section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)" and inserting in lieu thereof "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

SEC. 1204. CONFORMING AMENDMENTS TO RECIDIVIST PENALTY PROVISIONS OF THE CONTROLLED SUBSTANCES ACT AND THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.

(a) Sections 401(b)(1) (B), (C), and (D) of the Controlled Substances Act (21 U.S.C. 841(b)(1) (B), (C), and (D)) and sections 1010(b) (1), (2), and (3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b) (1), (2), and (3)) are each amended in the sentence or sentences beginning "If any person commits" by striking out "one or more prior convictions" through "have become final" and inserting in lieu thereof "a prior conviction for a felony drug offense has become final".

(b) Section 1012(b) of the Controlled Substances Import and Export Act (21 U.S.C. 962(b)) is amended by striking out "one or more prior convictions of him for a felony under any provision of this subchapter or subchapter I of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant drugs, have become final" and inserting in lieu thereof "one or more prior convictions of such person for a felony drug offense have become final".

(c) Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended by striking out the sentence beginning "For purposes of this subparagraph, the term 'felony drug offense' means".

SEC. 1205. CLARIFICATION OF MANDATORY MINIMUM PENALTY FOR SERIOUS CRACK POSSESSION.

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended in the third sentence by striking out "shall be fined under title 18, United States Code, or imprisoned not less than 5 years and not more than 20 years, or both," and inserting in lieu thereof "shall be imprisoned not less than 5 years and not more than 20 years, and fined a minimum of $1,000,".

SEC. 1206. CORRECTION OF AN ERROR RELATING TO THE QUANTITY OF METHAMPHETAMINE NECESSARY TO TRIGGER A MANDATORY MINIMUM PENALTY.

Section 401(b)(1)(A)(viii) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)(viii)) is amended by striking out "or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting in lieu thereof "or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine".

SEC. 1207. CONFORMING AMENDMENT TO CONSPIRACY AND ATTEMPT PENALTY UNDER THE MARITIME DRUG LAW ENFORCEMENT ACT.

Section 3(j) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(j)) is amended by striking out "is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment" and inserting in lieu thereof "shall be subject to the same penalties as those".

SEC. 1208. CONFORMING AMENDMENTS TO CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT RELATING TO METHAMPHETAMINE.

(a) Section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) is amended by—

(1) striking out "or" at the end of subparagraph (F);

(2) inserting "or" at the end of subparagraph (G); and

(3) adding a new subparagraph (H), as follows:

"(H) 100 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.".

(b) Section 1010(b)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(2)) is amended by—

(1) striking out "or" at the end of subparagraph (F);

(2) inserting "or" at the end of subparagraph (G); and

(3) adding a new subparagraph (H), as follows:

"(H) 10 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.".

SEC. 1209. MODIFICATION OF APPROVAL REQUIREMENTS FOR GOVERNMENT SENTENCE APPEALS.

Section 3742(b) of title 18, United States Code, is amended by striking out "The Government, with the personal approval of the Attorney General or the Solicitor General, may file a notice of appeal in the district court for review of" and inserting in lieu thereof "The Government, with the approval of the Attorney General or the Solicitor General, may appeal".

SEC. 1210. PENALTY FOR CERTAIN ACCESSORY AFTER THE FACT OFFENSES.

Section 3 of title 18, United States Code, is amended by striking out "ten years" and inserting in lieu thereof "twenty years".

SEC. 1211. DELETION OF REQUIREMENT FOR SOLICITOR GENERAL APPROVAL OF APPEAL TO A DISTRICT COURT FROM A SENTENCE IMPOSED BY A MAGISTRATE.

Section 3742(g) of title 18, United States Code, is amended by inserting "(except for the requirement of approval by the Attorney General or the Solicitor General in the case of a Government appeal)" after "and this section shall apply".

SEC. 1212. RESTORATION OF INADVERTENTLY DELETED DIAL-A-PORN REMEDIES.

Section 223(b) of the Communications Act of 1934 (47 U.S.C. 223(b)) is amended by adding at the end thereof the following paragraphs:

"(3) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

"(4)(A) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1) shall be subject to a civil fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

"(B) A fine under this paragraph may be assessed either—

"(i) by a court, pursuant to a civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

"(ii) by the Commission after appropriate administrative proceedings.

"(5) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1).".

SEC. 1213. CORRECTION OF MISSPELLED WORDS, TYPOGRAPHICAL ERRORS, AND MISDESIGNATIONS.

(a) Section 102(32)(A) of the Controlled Substances Act (21 U.S.C. 802(32)(A)) is amended by striking out "stimulent" each place that word appears and inserting in lieu thereof "stimulant";

(b) Section 1010(b)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(2)) is amended by striking out "suspervised" each place that word appears and inserting in lieu thereof "supervised";

(c) Sections 401(b)(1)(A)(ii)(IV) and 401(b)(1)(B)(ii)(IV) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)(ii)(IV) and 841(b)(1)(B)(ii)(IV) are amended by striking out "any of the substance" and inserting in lieu thereof "any of the substances";

(d) Section 151 of title 18, United States Code, is amended by striking out "mean" and inserting in lieu thereof "means";

(e) Section 665(c) of title 18, United States Code, is amended by striking out "Any person whoever" and inserting in lieu thereof "Any person who";

(f) Section 794(d)(4) of title 18, United States Code, is amended by striking out "all amount" and inserting in lieu thereof "all amounts";

(g) The second section 798 of title 18, United States Code, entitled "Temporary extension of section 794" is designated as section 800 of such title, and the table of sections for chapter 37 of such title is amended accordingly;

(h) Section 3125(d) of title 18, United States Code, is amended by striking out "A provider for a wire or electronic service," and inserting in lieu thereof "A provider of a wire or electronic service,";

(i) Section 4285 of title 18, United States Code, is amended by striking out "exced" and inserting in lieu thereof "exceed";

(j) Sections 405(b), 405A(b), and 405B(c) of the Controlled Substances Act (21 U.S.C. 845(b), 845a(b), and 845(c)) are amended by striking out "have become final" and inserting in lieu thereof "has become final";

(k) Section 510(b)(3) of the Controlled Substances Act (21 U.S.C. 880(b)(3)) is amended by striking out "paragraph (5)" and inserting in lieu thereof "paragraph (4)";

(l) Section 12 of title 18, United States Code, is amended by striking out "every officer and employee of that Service, whether he has taken the oath of office" and inserting in lieu thereof "every officer and employee of that Service, whether or not such officer or employee has taken the oath of office";

(m) Section 1546(a) of title 18, United States Code is amended by striking out "Shall be fined not more than in accordance with this title" and inserting in lieu thereof "Shall be fined in accordance with this title";

(n) Section 3563(b)(3) of title 18, United States Code, is amended by striking out "section 3663 and 3664" and inserting in lieu thereof "sections 3663 and 3664";

(o) Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking out "paraphenalia" and inserting in lieu thereof "paraphernalia";

(p) Section 219(c) of title 18, United States Code, is amended by striking out "branch of Governments" and inserting in lieu thereof "branch of Government";

(q) Section 513(c)(3) of title 18, United States Code, is amended by striking out "15 U.S.C. 1693(c)" and inserting in lieu thereof "15 U.S.C. 1693n(c)";

(r) Section 665 of title 18, United States Code, is amended in the section heading by striking out both colons and inserting in lieu thereof semicolons;

(s) Section 844(d) of title 18, United States Code, is amended by striking out "this subsection," and inserting in lieu thereof "this subsection,";

(t) Section 1466(b) of title 18, United States Code, is amended—

(1) by striking out "this subsection" and inserting in lieu thereof "this section"; and

(2) by striking out "subsection (b)" and inserting in lieu thereof "this subsection";

(u) Section 1963(a) of title 18, United States Code, is amended by striking out "both.," and inserting in lieu thereof "both,";

(v) Section 2254(e) of title 18, United States Code, is amended by inserting the following subsection heading: "Non-applicability to visual depictions.—";

(w) Section 3583(e) of title 18, United States Code, is amended—

(1) in paragraph (2) by striking out "or" after the semicolon;

(2) in paragraph (3) by striking out the period and inserting in lieu thereof "; or"; and

(3) by redesignating paragraph "(5)" as paragraph "(4)";

(x) Section 3077(4) of title 18, United States Code, is amended by striking out the semicolon at the end and inserting in lieu thereof a period;

(y) Section 3166(b)(8) of title 18, United States Code, is amended by striking out "extention" and inserting in lieu thereof "extension"; and

(z) Section 4352(c) of title 18, United States Code, is amended by striking out "Each recipient of assistance under this shall" and inserting in lieu thereof "Each recipient of assistance under this title shall".

SEC. 1214. CORRECTION OF ERRONEOUS CROSS-REFERENCE.

Section 2703(d) of title 18, United States Code, is amended by striking out "section 3126(2)(A) of this title" and inserting in lieu thereof "section 3127(2)(A) of this title".

SEC. 1215. CONFORMING AMENDMENT TO THE ELECTRONIC COMMUNICATIONS PRIVACY ACT.

Section 2705(a)(1)(B) of title 18, United States Code, is amended by inserting "or trial" after "grand jury".

SEC. 1216. REDESIGNATION OF PARAGRAPHS IN WIRETAP LAW.

Section 2516(1) of title 18, United States Code, is amended—

(1) by redesignating the first paragraph (m) which reads "any conspiracy to commit any of the foregoing offenses." as paragraph (o);

(2) by striking out "and" at the end of paragraph (m); and

(3) by striking out the period at the end of paragraph (n) and inserting in lieu thereof "; and".

SEC. 1217. TABLE OF SECTIONS AMENDMENT FOR THE INTERSTATE AGREEMENT ON DETAINERS.

The table of sections for the Interstate Agreement on Detainers Act (84 Stat. 1397) is amended by adding at the end thereof the following: "9. Special Provisions when United States is a Receiving State.".

SEC. 1218. APPLICATION OF VARIOUS OFFENSES TO POSSESSIONS AND TERRITORIES.

(a) Section 232 of title 18, United States Code, is amended by adding a new subsection, as follows:

"(8) The term 'State' includes a State of the United States, and any commonwealth, territory, or possession of the United States.".

(b) Section 245 of title 18, United States Code, is amended by adding a new subsection, as follows:

"(d) For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(c) Section 402 of title 18, United States Code, is amended by adding a new undesignated paragraph, as follows:

"For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(d) Section 666(d) of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding a new paragraph, as follows:

"(4) the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(e) Sections 1028(d)(5) and 1030(e)(3) of title 18, United States Code, are each amended by inserting "commonwealth,"

before "possession or territory of the United States".

(f) Section 1029(f) of title 18, United States Code, is amended by adding at the end the following: "For purposes of this subsection, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(g) Section 1084(e) of title 18, United States Code, is amended by inserting "commonwealth," before "territory or possession of the United States".

(h) Section 1114 of title 18, United States Code, is amended by inserting "or any other commonwealth, territory, or possession" after "the Virgin Islands".

(i) Section 1952(b) of title 18, United States Code, is amended—

(1) by inserting "(i)" after "As used in this section"; and

(2) by inserting "and (ii) the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States" before the period.

(j) Section 1956(c) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(8) the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(k) Section 1958(b) of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding a new paragraph (3), as follows:

"(3) 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(l) Section 2313 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "Whoever"; and

(2) by adding a new subsection, as follows:

"(b) For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(m) Section 2315 of title 18, United States Code, is amended by adding at the end the following undesignated paragraph:

"For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(n) Section 5032 of title 18, United States Code, is amended—

(1) in the second undesignated paragraph, by adding at the end the following: "For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."; and

(2) in the third undesignated paragraph, by striking out "to the authorities of a State or the District of Columbia" and inserting in lieu thereof "to the authorities of a State".

SEC. 1219. REPEAL OF ANTIQUATED OFFENSE AND DELETION OF TABLE REFERENCES TO REPEALED OFFENSES.

(a) Section 45 of title 18, United States Code, is repealed.

(b) The table of sections for chapter 3 of title 18, United States Code, is amended by striking out the items relating to sections 43, 44, and 45.

SEC. 1220. REPEAL OF OTHER OUTMODED OFFENSES AND RELATED PROVISIONS.

(a) Section 969 of title 18, United States Code, is repealed and the table of sections for chapter 45 of title 18, United States Code, is amended by striking out the items relating to sections 968 and 969.

(b) Sections 2198 and 3286 of title 18, United States Code, are repealed and the respective tables of sections in chapter 107 and 213 are amended by striking out the items relating to sections 2198 and 3286.

SEC. 1221. DELETION OF REDUNDANT PROVISION AND CORRECTION OF CITATIONS IN WIRETAP LAW.

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (c), by striking out "the section in chapter 65 relating to destruction of an energy facility,"; and

(2) in paragraph (j), by striking out "any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code" and inserting in lieu thereof "any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) (49 U.S.C. App. 1679a(o)(2)) or sections 902 (i) or (n) of the Federal Aviation Act of 1958 (relating to aircraft piracy) (49 U.S.C. App. 1472(i) or (n))".

SEC. 1222. CONFORMING JURISDICTIONAL AMENDMENT FOR SECTION 2314 TO COVER FRAUDULENT SCHEMES INVOLVING FOREIGN AS WELL AS INTERSTATE TRAVEL.

The second paragraph of section 2314 of title 18, United States Code, is amended by inserting "or foreign" after "interstate".

SEC. 1223. CLARIFICATION OF ONE-YEAR PERIOD.

Section 666(d) of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding a new paragraph, as follows:

"(4) the term 'in any one-year period' means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.".

SEC. 1224. REPEAL OF PROVISIONS JUDICIALLY DETERMINED TO BE INVALID.

(a) Section 1730 of title 18, United States Code, is amended by striking out ", if the portrayal does not tend to discredit that service".

(b) Section 1714 of title 18, United States Code, is repealed and the section analysis for such section in chapter 83 of title 18 is repealed.

(c) Section 1718 of title 18, United States Code, is repealed and the section analysis for such section in chapter 83 of title 18 is likewise repealed.

SEC. 1225. DELETION OF REQUIREMENT OF PERSONAL APPROVAL OF ATTORNEY GENERAL FOR PROSECUTIONS UNDER THE ATOMIC ENERGY ACT.

Section 221(c) of the Atomic Energy Act of 1954 (42 U.S.C. 2271(c)) is amended by striking out "That no action shall be brought under section 222, 223, 224, 225, or 226 except by the express direction of the Attorney General: *And provided further,*".

SEC. 1226. TECHNICAL CORRECTION TO PROVISION FOR COMPUTING MARSHAL'S COMMISSION.

Section 1921(c)(1) of title 28, United States Code, is amended in the second sentence by striking out "If the property is to be disposed of by marshal's sale" and inserting in lieu thereof "if the property is not disposed of by marshal's sale".

SEC. 1227. CORRECTION OF CROSS-REFERENCE.

Section 4247(h) of title 18, United States Code, is amended by striking out "subsection (e) of section 4241, 4243, 4244, 4245, or 4246," and inserting in lieu thereof "subsection (e) of section 4241, 4244, 4245, or 4246, or subsection (f) of section 4243,".

SEC. 1228. SEXUAL ABUSE AMENDMENTS RELATING TO MINORS.

(a) INCLUSION OF THIRTEEN- AND FOURTEEN-YEAR-OLDS.—Section 2241(c) of title 18, United States Code, is amended to read as follows:

"(c) WITH CHILDREN.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who—

"(1) has not attained the age of twelve years; or

"(2) has attained the age of twelve years but has not attained the age of fourteen years, and is at least four years younger than the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.".

(b) CONFORMING AMENDMENT FOR STATE OF MIND PROOF REQUIREMENT.—Section 2241(d) of title 18, United States Code, is amended by striking out "knew" and all that follows and inserting in lieu thereof "knew—

"(1) the age of the other person engaging in the sexual act; or

"(2) that the requisite age difference existed between the persons so engaging.".

(c) CONFORMING AMENDMENT TO SECTION 2243.—Paragraph (1) of section 2243(a) of title 18, United States Code, is amended by striking out "12" and inserting "14" in lieu thereof.

(d) DEFINITIONS OF SEXUAL ACT AND SEXUAL CONTACT REGARDING PERSONS UNDER SIXTEEN YEARS OF AGE.—Paragraph (2) of section 2245 of title 18, United States Code, is amended—

(1) in subparagraph (B) by striking out "or" after the semicolon;

(2) in subparagraph (C) by striking out "; and" and inserting "; or" in lieu thereof; and

(3) by inserting a new subparagraph (D) as follows:

"(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;".

(e) CONFORMING AMENDMENT TO DEFINITION OF SEXUAL CONTACT.—Paragraph (3) of section 2245 of title 18, United States Code, is amended by inserting ", but does not include the conduct described in paragraph (2)(D)" after "of any person" the second place it appears.

(f) DESIGNATION OF SECTION.—Section 2245 of title 18, United States Code, is redesignated section 2246.

(g) PENALTIES FOR SUBSEQUENT OFFENSES.—Chapter 109A of title 18, United States Code, is amended by inserting the following new section after section 2244:

"§ 2245. Penalties for subsequent offenses

"Any person who violates a provision of this chapter after a prior conviction under a provision of this chapter or the law of a State (as defined in section 513 of this title) for conduct proscribed by this chapter has become final is punishable by a term of imprisonment up to twice that otherwise authorized.".

(h) TABLE OF SECTIONS.—The table of sections for chapter 109A of title 18, United States Code, is amended by—

(1) striking out "2245" and inserting "2246" in lieu thereof; and

(2) inserting the following after the item relating to section 2244:

"2245. Penalties for subsequent offenses.".

SEC. 1229. CORRECTION OF MISPLACED PHRASE IN 18 U.S.C. 3289.

Section 3289 of title 18, United States Code, is amended by striking out "or, in the event of an appeal, within sixty days of the date the dismissal of the indictment or information becomes final," and inserting that same stricken language after "within six months of the expiration of the statute of limitations,".

SEC. 1230. TECHNICAL AMENDMENTS.

(a) ELIMINATION OF DUPLICATE SECTION NUMBER.—(1) Section 3117 of title 18, United States Code, as enacted by Public Law 100-690, is redesignated as section 3118.

(2) The section analysis for chapter 205 of title 18, United States Code, is amended by striking "3117. Implied consent for certain tests" and inserting "3118. Implied consent for certain tests".

(b) INSERTION OF MISSING WORD.—Section 1716A of title 18, United States Code, is amended by inserting "fined" after "shall be".

(c) CORRECTION OF CROSS-REFERENCE.—Section 1958 of title 18, United States Code, is amended by—

(1) striking "1952B" and inserting "1959";

(2) inserting "or who conspires to do so" before "shall be fined" the first place it appears; and

(3) striking "not more than $10,000", "not more than $20,000", and "not more than $50,000", and inserting in each instance "under this title".

(d) ELIMINATION OF LANGUAGE MISTAKENLY INCLUDED.—Section 3125(a)(2) is amended by—

(1) striking the quotation marks;

(2) inserting a comma after "installation and use"; and

(3) beginning the indentation of the text following such comma at the margin.

(e) CORRECTION OF CROSS-REFERENCE.—Section 1791(b) of title 18, United States Code, is amended by striking "(c)" and inserting "(d)" each place it appears.

(f) ELIMINATION OF DUPLICATIVE PENALTY.—Section 1864 of title 18, United States Code, is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as (c).

SEC. 1231. CLARIFICATION RELATING TO POLLUTING FEDERAL LANDS.

Section 401(b)(6) of the Controlled Substances Act (21 U.S.C. 841(b)(6)) is amended by striking "who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land," and inserting "who knowingly uses a poison, chemical, or other hazardous substance on Federal land with the intent to commit an act in violation of subsection (a),".

SEC. 1232. REVOCATION OF PROBATION FOR POSSESSION OF CONTROLLED SUBSTANCE.

Section 3565(a) of title 18, United States Code, is amended—

(1) by striking "to not less than one-third of the original sentence" and inserting "to a term of imprisonment that was available under subchapter A at the time of the initial sentencing"; and

(2) by striking "of modifying" and inserting "or modifying".

SEC. 1233. EXCEPTION TO BAR ON PROBATION FOR COOPERATING WITNESSES.

Section 3553(e) of title 18, United States Code, is amended by—

(1) inserting "a" before "minimum sentence", and inserting after "minimum sentence" the following: ", or to impose a term of probation notwithstanding any statutory bar to such sentence,"; and

(2) striking the last sentence and inserting: "Such sentence shall be imposed in accordance with the sentencing guidelines and with the policy statements issued by the Sentencing Commission".

SEC. 1234. PEREMPTORY CHALLENGES.

Rule 24(b) of the Federal Rules of Criminal Procedure is amended to read as follows:

"(b) PEREMPTORY CHALLENGES.—If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, each side is entitled to 8 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow both sides additional peremptory challenges: *Provided*, That the Government shall not have more challenges than the total allocated to all defendants. The court may permit multiple defendants to exercise peremptory challenges separately or jointly.".

SEC. 1235. AMENDMENT TO WIRETAP STATUTE.

Section 2517 of title 18, United States Code, is amended by adding at the end thereof the following:

"(6) Any person—

(a) who has obtained, during the course of official duties, knowledge of any wiretap or oral communication which has been intercepted by any means authorized under this chapter during the course of official duties;

(b) who is aware that the information was intercepted in connection with a criminal investigation; and

(c) who discloses the contents of that communication, other than in a manner authorized by law,

shall be fined under this title, imprisoned for not more that 5 years, or both. This paragraph shall not apply to the disclosure of information that has been lawfully disclosed previously to the person to whom disclosure is made.

"(7) Any person—

(a) who has obtained knowledge of any wiretap or oral communication which has been intercepted by any means authorized under this chapter;

(b) who is aware that the information was intercepted in connection with a criminal investigation; and

(c) who discloses the contents of that communication in order to obstruct, impede, or interfere with a criminal investigation,

shall be fined under this title, imprisoned for not more than 5 years, or both."

## TITLE XIII—ASSAULT WEAPONS

SEC. 1301 SHORT TITLE.

This title may be cited as the "Antidrug, Assault Weapons Limitation Act of 1989".

SEC 1302. UNLAWFUL ACTS.

Section 922 of title 18, United States Code, is amended by adding at the end thereof the following:

"(q)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer, import, transport, ship, receive, or possess any assault weapons.

"(2) This subsection does not apply with respect to—

"(A) transferring, importing, transporting, shipping, and receiving to or by, or possession by or under, authority of the United States or any department or agency thereof, or of any State or any department, agency, or political subdivision thereof, of such an assault weapon, or

"(B) any lawful transferring, transporting, shipping, receiving, or possession of such a weapon that was lawfully possessed before the effective date of this subsection.

"(r)(1) Is shall be unlawful for any person to sell, ship, or deliver an assault weapon to any person who does not fill out a form 4473 (pursuant to 27 CFR 178.124), or equivalent, in the purchase of such assault weapon.

"(2) It shall be unlawful for any person to purchase, possess, or accept delivery of an assault weapon unless such person has filled out such a form 4473, or equivalent, in the purchase of such assault weapons.

"(3) If a person purchases an assault weapon from anyone other than a licensed dealer, both the purchaser and the seller shall maintain a record of the sale on the seller's original copy of such form 4473, or equivalent. The purchaser and seller shall both retain copies of such form for all subsequent transactions regarding such assault weapon.

"(4) Any current owner of an assault weapon that requires retention of form 4473, or equivalent, pursuant to the provisions of this subsection who, prior to the effective date of this subsection purchased such a weapon, shall, within 90 days after the issuing of regulations by the Secretary pursuant to paragraph (5), request a copy of such form from any licensed dealer, as defined in this title, in accordance with such regulations.

"(5) The Secretary shall, within 90 days after the date of enactment of this section, prescribe regulations for the request and delivery of such form 4473, or equivalent.".

SEC. 1303. DEFINITIONS.

Section 921(a) of title 18, United States Code, is amended by adding at the end thereof the following:

"(25) The term 'assault weapon' means any firearm designated as an assault weapon in this paragraph, including:

"(A) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),

"(B) Action Arms Israeli Military Industries UZI and Galil,

"(C) Beretta AR-70 (SC-70),

"(D) Colt AR-15 and CAR-15,

"(E) Fabrique Nationale FN/FAL, FN/LAR, and FNC,

"(F) MAC 10 and MAC 11,

"(G) Steyr AUG,

"(H) INTRATEC TEC-9, and

"(I) Street Sweeper and Striker 12.".

SEC. 1304. SECRETARY TO RECOMMEND DESIGNATION AS ASSAULT WEAPON.

Chapter 44 of title 18, United States Code, is amended—

(1) by adding at the end thereof the following new section:

"§ 931. Additional assault weapons

"The Secretary, in consultation with the Attorney General, may, when appropriate, recommend to the Congress the addition or deletion of firearms to be designated as assault weapons."; and

(2) in the table of sections by adding at the end thereof the following new item:

"931. Additional assault weapons.".

SEC. 1305. ENHANCED PENALTIES.

Section 924(c) of title 18, United States Code, is amended by inserting "and if the firearm is an assault weapon, to imprisonment for 10 years," after "sentenced to imprisonment for five years,".

SEC. 1306. PENALTIES FOR IMPROPER TRANSFER, STEALING FIREARM, OR SMUGGLING A FIREARM IN DRUG-RELATED OFFENSE.

Section 924 of title 18, United States Code, is amended by—

(1) redesignating subsections (f) and (g), and any references to such subsections, as added by section 6211 of Public Law 100-690, as subsections (g) and (h), respectively; and

(2) adding at the end thereof the following:

"(i) Whoever knowingly fails to acquire form 4473, or equivalent (pursuant to 27 CFR 178.124), with respect to the lawful transferring, transporting, shipping, receiving, or possessing of any assault weapon, as required by the provisions of this chapter, shall be fined under this title, imprisoned for not more than 6 months, or both.

"(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not less than 2 or more than 10 years, and may be fined under this title.

"(k) Whoever, with the intent to engage in, or to promote, conduct which—

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

"(3) constitutes a crime of violence (as defined in subsection (c)93));

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned for not more than 10 years, fined under this title, or both.".

SEC. 1307. DISABILITY.

Section 922(g)(1) of title 18, United States Code, is amended by inserting before the semicolon at the end thereof the following: "or a violation of section 924(i) of this chapter".

SEC. 1308. REVOCATION OF SUPERVISED RELEASE.

Section 3583 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the court has provided, as a condition of supervised release, that the defendant refrain from possessing a firearm, and if the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of supervised release, the court shall, after a hearing pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation, revoke the term of supervised release and, subject to the limitations of paragraph (e)(3) of this section, require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision.".

SEC. 1309. STUDY BY ATTORNEY GENERAL.

(a) IN GENERAL.—The Attorney General is authorized and directed to investigate and study the effect of the provisions of this title and the amendments made by this title and any impact therefrom on violent and drug trafficking crime. Such study shall be done over a period of 18 months, commencing 12 months after the date of enactment of this title.

(b) REPORT.—No later than 30 months after the date of enactment of this title, the Attorney General shall prepare and submit to the Senate of the United States, a report setting forth in detail the findings and determinations made pursuant to subsection (a).

SEC. 1310. SUNSET PROVISION.

Unless otherwise provided, this title and the amendments made by this title shall become effective 30 days after the date of enactment of this title. This title, except for paragraph (1) of section 406, portions of paragraph (2) of section 406 adding subsections (j) and (k) to section 924 of title 18, United States Code, and section 408, shall be effective for a period of 3 years. At the end of such 3-year period this title and the amendments made by this title, except for paragraph (1) of section 406, portions of paragraph (2) of section 406 adding subsections (j) and (k) to section 924 of title 18, United States Code, and section 408, shall be repealed.

## TITLE VIV—INTERNATIONAL MONEY LAUNDERING

SEC. 1401. REPORTS ON USES MADE OF CURRENCY TRANSACTION REPORTS.

(a) REPORT TO CONGRESS ON USE OF TRANSACTION REPORTS.—Not later than 180 days after the effective date of this section, and annually thereafter for 3 years, the Secretary of the Treasury shall report to the Congress the following:

(1) the number of each type of report filed pursuant to subchapter II of chapter 53 of title 31, United States Code (or regulations promulgated thereunder) in the previous fiscal year;

(2) the number of reports filed pursuant to section 60501 of the Internal Revenue Code of 1986 (regarding transactions involving currency) in the previous fiscal year;

(3) an estimate of the rate of compliance with the reporting requirements by persons required to file the reports referred to in paragraphs (1) and (2);

(4) the manner in which the Department of the Treasury and other agencies of the United States collect, organize, analyze and use the reports referred to in paragraphs (1) and (2) to support investigations and prosecutions of (A) violations of the criminal laws of the United States, (B) violations of the laws of foreign countries, and (C) civil enforcement of the laws of the United States including the provisions regarding asset forfeiture;

(5) a summary of sanctions imposed in the previous fiscal year against persons who failed to comply with the reporting requirements referred to paragraphs (1) and (2), and other steps taken to ensure maximum compliance;

(6) a summary of criminal indictments filed in the previous fiscal year which resulted, in large part, from investigations initiated by analysis of the reports referred to in paragraphs (1) and (2); and

(7) a summary of criminal indictments filed in the previous fiscal year which resulted, in large part, from investigations initiated by information regarding suspicious financial transactions provided voluntarily by financial institutions.

(b) ADVISORY GROUP ON REPORTING REQUIREMENTS.—Not later than 90 days after the effective date of this section, the Secretary shall establish an Advisory Group on Reports on Monetary Instruments Transactions consisting of representatives of the Department of the Treasury and of financial institutions and other persons subject to the reporting requirements referred to in paragraphs (1) and (2) of subsection (a). The Advisory Group shall provide a means by which the Secretary—

(1) informs private sector representatives, on a regular basis, of the ways in which the reports referred to in subsections (a) (1) and (2) have been used for the purposes described in subsection (a)(4);

(2) informs private sector representatives, on a regular basis, of how information regarding suspicious financial transactions provided voluntarily by financial institutions has been used or the purposes described in subsection (a)(4); and

(3) receives advice on the manner in which the reporting requirements referred to in subsections (a) (1) and (2) should be modified to enhance the ability of law enforcement agencies to use the information provided for law enforcement purposes.

SEC. 1402. ELECTRONIC SCANNING OF CERTAIN UNITED STATES CURRENCY NOTES.

(a) ELECTRONIC SCANNING TASK FORCE.—(1) Not more than thirty days after the date of enactment of this section, the Secretary of the Treasury (hereafter in this section referred to as the "Secretary") shall appoint an Electronic Scanning Task Force (hereafter in the section referred to as the "Task Force") to—

(A) study methods of printing on United States currency notes issued under section 51115 of title 31, United States Code, in denominations of $10 or more a serial number on each such United States currency note that may be read by electronic scanning;

(B) make an assessment of the cost of implementing such electronic scanning of such United States currency notes; and

(C) make recommendations about the amount of time needed to implement such electronic scanning.

(2) In appointing members to the Task Force described in subsection (a), the Secretary shall appoint such number of members as the Secretary determines to be appropriate. The Secretary, shall, at a minimum appoint to the Task Force—

(A) the Assistant Secretary for Enforcement in the Department of the Treasury (who will serve as a nonvoting, ex officio member); and

(b) at least one recognized expert from each of the following fields relating to electronic scanning technology:

(i) coding,

(ii) symbology,

(iii) scanning systems,

(iv) computer data compilation, and

(v) printing technology.

(3) Except as provided in paragraph (2)(A), no individual who is a full-time employee of the Federal Government may serve as a member of the Task Force.

(4) The provisions of the Federal Advisory Committee Act shall not apply with respect to the Task Force.

(5) Members of the Task Force shall, while attending meetings and conferences of the Task Force or otherwise engaging in the business of the Task Force (including travel time), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS-18 of the General Schedule established under section 5332 of title 5, United States Code.

(6) While away from their homes or regular places of business on the business of the Task Force, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(7) Upon the issuance of the report by the Secretary under subsection (b), the Task Force shall cease to exist.

(b) REPORT TO THE CONGRESS.—Not later than one hundred and eighty days after the date of enactment of this section, the Secretary shall issue a report to the appropriate committees of the Congress that summarizes the findings and recommendations of the Task Force under subsection (a)(1) and includes any additional recommendations by the Secretary.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 1403. CONFORMING AMENDMENT OF PROVISION RELATING TO THE EQUITABLE TRANSFER TO A PARTICIPATING FOREIGN NATION OF FORFEITED PROPERTY OR PROCEEDS.

Section 981(i) of title 18, United States Code, is amended—

(1) by striking "In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall, to the extent provided by treaty, apply:";

(2) in paragraph (1), by striking the first two sentences and inserting the following: "Whenever property is civilly or criminally forfeited under this chapter, the Attorney General may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer (i) has been agreed to by the Secretary of State, (ii) is authorized in an international agreement between the United States and the foreign country, and (iii) is made to a country that if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961."; and

(3) in paragraph (1), by striking the last sentence.

SEC. 1404. ADDITION OF CONFORMING PREDICATE MONEY LAUNDERING REFERENCES TO "INSIDER" EXEMPTION FROM THE RIGHT TO FINANCIAL PRIVACY ACT.

Section 1113(l)(2) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(l)(2)) is amended by inserting "or of section 1956 or 1957 of title 18, United States Code" after "any provision of subchapter II of chapter 53 of title 31, United States Code".

SEC. 1405. CLARIFICATION OF DEFINITIONS OF "MONETARY INSTRUMENTS".

Section 1956(c)(5) of title 18, United States Code is amended to read as follows:

"(5) the term 'monetary instruments' means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;".

SEC. 1406. MONEY LAUNDERING AMENDMENTS.

Section 1956(c)(1) is amended by striking "State or Federal" and insert "State, Federal, or foreign".

SEC. 1407. DEFINITION OF "SPECIFIED UNLAWFUL ACTIVITY" FOR MONEY LAUNDERING STATUTE.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting "sections 1005–07 (relating to false statements by an employee of a financial institution), section 1014 (relating to false statements in connection with loan and credit applications)," after "section 875 (relating to interstate communications),"; and

(2) by striking "section 1344 (relating to bank fraud),".

SEC. 1408. RIGHT TO FINANCIAL PRIVACY ACT AMENDMENT.

Section 1103(c) of the Right to Financial Privacy Act (12 U.S.C. 3403(c)) is amended in the last sentence—

(1) by striking "or" after "such disclosure" and inserting a comma; and

(2) by inserting before the period the following: ", or for a refusal to do business with that customer after having made such disclosure".

SEC. 1409. CORRECTION OF ERRONEOUS PREDICATE OFFENSE REFERENCE UNDER 18 U.S.C. 1956.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking out "section 310 of the Controlled Substances Act (21 U.S.C. 830) (relating to precursor and essential chemicals)" and inserting in lieu thereof "a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals)".

SEC. 1410. KNOWLEDGE REQUIREMENT FOR INTERNATIONAL MONEY LAUNDERING.

Section 1956(a)(2) of title 18, United States Code, is amended—

(1) in paragraph (2) by inserting at the end the following: "For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believe such representations to be true."; and

(2) in paragraph (3) by striking "For purposes of this paragraph" and inserting "For purposes of this paragraph and paragraph (2)".

## TITLE XV—ORGANIZED CRIME AND DANGEROUS DRUG DIVISION

### Subtitle A—Establishment of an Organized Crime and Dangerous Drugs Division in the Department of Justice

SEC. 1501. SHORT TITLE.

This title may be cited as the "Justice Department Organized Crime and Drug Enforcement Enhancement Act of 1989".

SEC. 1502. FINDING.

The Congress finds that—

(1) organized criminal activity contributes significantly to the importation, distribution, and sale of illegal and dangerous drugs;

(2) trends in drug trafficking patterns necessitate a response that gives significant weight to—

(A) the prosecution of drug related crimes; and

(B) the forfeiture and seizure of assets and other civil remedies used to strike at the inherent strength of the drug networks and groups;

(3) the structure of the Department of Justice Criminal Division is inadequate to address such drug-related problems; and

(4) the prosecutorial resources devoted to such problems have been inadequately organized.

SEC. 1503. PURPOSES.

The purposes of this title are to—

(1) establish a new division in the Department of Justice by combining the resources of the Criminal Division and the United States Attorneys offices used for the eradication of organized crime, narcotics, and dangerous drugs with additional resources needed to pursue civil sanctions;

(2) enhance the ability of the Department of Justice to deal with international criminal activity;

(3) enhance the ability of the Department of Justice to maintain a vigorous criminal and equally important civil assault upon organized criminal groups and narcotics traffickers both domestic and international;

(4) enhance the ability of the Department of Justice to attack money laundering activities, both domestic and international; and

(5) maintain the level of effort of the Department of Justice against traditional organized crime activity through the maintenance of independent strike forces.

SEC. 1504. ESTABLISHMENT OF ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION.

(a) ESTABLISHMENT.—There is established within the Department of Justice, the Organized Crime and Dangerous Drugs Division, which shall consist initially of the following units and programs of the Department of Justice as they were organized and were functioning on September 30, 1989:

(1) the Organized Crime and Racketeering Section of the Criminal Division and all subordinate strike forces therein;

(2) the Narcotic and Dangerous Drug Section of the Criminal Division;

(3) the Asset Forfeiture Office of the Criminal Division; and

(4) the Organized Crime Drug Enforcement Task Force Program.

(b) TRANSFER.—(1) There are transferred to the Organized Crime and Dangerous Drugs Division—

(A) all functions of each office and program described under subsection (a) (1), (2), (3), and (4) exercised on September 30, 1989; and

(B) all personnel and available funds of each such office and program.

(2) For the purposes of paragraph (1)(A) the term "functions" means all duties, obligations, powers, authorities, responsibilities, rights, privileges, activities, and programs.

SEC. 1505. ASSISTANT ATTORNEY GENERAL FOR ORGANIZED CRIME AND DANGEROUS DRUGS.

(a) ASSISTANT ATTORNEY GENERAL.—There shall be at the head of the Organized Crime and Dangerous Drugs Division established by this title, an Assistant Attorney General of the Department of Justice for the Organized Crime and Dangerous Drugs Division, who shall—

(1) be appointed by the President, by and with the advice and consent of the Senate;

(2) report directly to the Attorney General of the United States;

(3) coordinate all activities and policies of the Division with the Director of National Drug Control Policy; and

(4) ensure that all investigations and prosecutions are coordinated within the Department of Justice to provide the greatest use of civil proceedings and forfeitures to attack the financial resources of organized criminal and narcotics enterprises.

(b) COMPENSATION.—(1) Section 5315 of title 5, United States Code, is amended by striking out:

"Assistant Attorneys General (10)." and inserting in lieu thereof:

"Assistant Attorneys General (11).".

(2) The Assistant Attorney General of the Organized Crime and Dangerous Drugs Division shall be paid at the rate of basic pay payable for level IV of the Executive Schedule.

SEC. 1506. DEPUTY ASSISTANT ATTORNEY GENERAL.

(a) ESTABLISHMENT.—There is established the position of Deputy Assistant Attorney General of the Organized Crime and Dangerous Drugs Division, who shall report directly and be responsible to the Assistant Attorney General of the Organized Crime and Dangerous Drugs Division.

(b) COMPENSATION.—The Deputy Assistant Attorney General of the Organized Crime and Dangerous Drugs Division shall be paid the rate of basic pay payable for level V of the Executive Schedule.

SEC. 1507. ADMINISTRATIVE ORGANIZATION OF THE DIVISION.

There shall be established within the Organized Crime and Dangerous Drugs Division such sections and offices as the Attorney General shall deem appropriate to maintain or increase the level of enforcement activities in the following areas:

(1) Criminal Racketeering (including of all activities and personnel transferred from the Organized Crime and Racketeering Section dealing with criminal investigation and prosecution of traditional organized crime, other than civil proceedings or forfeiture);

(2) Criminal Narcotics Trafficking (including all activities and personnel transferred from the Criminal Division and the Organized Crime Drug Enforcement Task Force Program dealing with large scale drug trafficking);

(3) Money laundering (including all activities transferred from the Criminal Division and Organized Crime Drug Enforcement Task Force Program dealing with money laundering investigations and the negotiation of international agreements on financial crimes);

(4) Asset Forfeiture (including all activities and personnel transferred from the Criminal Division dealing with asset forfeiture);

(5) International Crime (indicating the activities and functions set forth in Subtitle B of this title); and

(6) Civil Enforcement (including activities and personnel currently engaged in civil enforcement of the drug and racketeering laws and such additional personnel as may be added pursuant to this Act).

SEC. 1508. COORDINATION AND ENHANCEMENT OF FIELD ACTIVITIES.

(a) ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION.—The Attorney General shall establish no fewer than 20 field offices of the Organized Crime and Dangerous Drug Division. All such field offices of the Division shall be known as Organized Crime and Dangerous Drug Strike Forces.

(b) OFFICES IN SAME AREA.—If two or more sections of the Division establish field offices in the same metropolitan area, such offices shall—

(A) be in the same location;

(B) coordinate activities; and

(C) be organized as separate sections of a strike force.

(c) TRANSITION.—(1) Consistent with the provisions of this title—

(A) the Organized Crime and Racketeering Section of the Criminal Division is redesignated as the Criminal Racketeering Section of the Organized Crime and Dangerous Drug Division; and

(B) the Organized Crime Strike Forces are redesignated as the field offices of the Division.

(2) Within 180 days after the date of the enactment of this subtitle, the Attorney General shall transfer all attorneys and support staff assigned to the Organized Crime Drug Enforcement Task Forces before such date to the Organized Crime and Dangerous Drug Division and designated the Criminal Narcotics Section. The Assistant Attorney General for such Division shall assign such personnel to the field offices of the Division, with the initial assignments being made to the cities where units of such Task Forces were located before the date of enactment of this subtitle.

(3)(A) Consistent with the provisions of this title, the Asset Forfeiture Office of the Criminal Division is redesignated as the Asset Forfeiture and Civil Enforcement Section of the Organized Crime and Dangerous Drug Division.

(B) Within 180 days after the date of the enactment of this subtitle, the Assistant Attorney General shall establish field offices of the Asset Forfeiture and Civil Enforcement Section of the Organized Crime and Dangerous Drug Division which shall include—

(i) agents from the United States Drug Enforcement Administration, the Federal Bureau of Investigation, the Internal Revenue Service, and United States Marshals Office; and

(ii) other individuals experienced, trained and expert in complex financial transactions involving cash, notes, securities, and similar negotiable instruments, with a special expertise in banking matters and business dealings.

(d) DIFFERENT ORGANIZATIONAL STRUCTURE.—Nothing in subsection (c) shall prevent the Attorney General, consistent with the purposes of this title and the provisions of section 607, from instituting a different organizational structure within the Organized Crime and Dangerous Drug Division as the Attorney General shall deem appropriate following a period of transition.

(e) STRIKE FORCES PLANS.—(1) The agents assigned to the Organized Crime and Dangerous Drug Strike Forces (including all agents assigned to the Organized Crime Drug Enforcement Task Forces program before the date of enactment of this title) shall be dedicated exclusively to and located with the Strike Forces so that the Strike Forces personnel may develop expertise and function as a working unit.

(2) The agents assigned to the Strike Forces from the various participating agencies shall be given credit for the work of the Strike Forces, regardless of the statutory authority used to prosecute Strike Forces cases.

(f) REPORT.—Within 1 year after the date of the enactment of this title, the Assistant Attorney General for Organized Crime and Dangerous Drugs in consultation with the Director of National Drug Control Policy, shall report to the Congress on the areas of the United States (especially the southwest border of the United States) that may require increased assistance from the Department of Justice through the establishment of additional strike forces.

(g) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $45,000,000 for salaries and expenses of the Organized Crime and Dangerous Drug Division of the Department of Justice for fiscal year 1990.

(2) Any appropriation of funds authorized under paragraph (1) shall be—

(A) in addition to any appropriations requested by the President in the 1990 fiscal year budget submitted by the President to the Congress for fiscal year 1990, or provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1990; and

(B) used to increase the number of field attorneys and related support staff by no fewer than 100 full-time equivalent positions over such personnel levels employed at the Department of Justice on September 30, 1989, assigned to the Organized Crime and Racketeering Section Strike Forces and Organized Crime Drug Task Forces.

Subtitle B—International Prosecution Teams

SEC. 1511. INTERNATIONAL PROSECUTION TEAMS.

(a) FINDINGS.—The Congress finds that—

(1) Drug trafficking, organized crime, and money laundering are problems that are international in scope.

(2) The traditional focus of United States law enforcement agencies on domestic criminal activity has restricted the development of the necessary expertise and coordination to address the international aspects of these problems adequately.

(3) The Justice Department must expand its resources and reorganize its component to engage in new responsibilities and activities involving international crime.

(4) Other agencies, particularly those involved in intelligence gathering, international banking, foreign policy, and national defense, must coordinate their activities with the Justice Department to support its effort to combat international crime.

(b) INTERNATIONAL DRUG ENFORCEMENT TEAMS.—In addition to the components and functions otherwise specified in this chapter, the Organized Crime and Dangerous Drug Division shall include no fewer than 10 International Drug Enforcement Teams devoted exclusively to investigating prosecuting and supporting the investigation and prosecution of international drug cases. Such teams shall be responsible for developing expertise in handling civil and criminal cases involving extradition, money laundering, drug-related corruption, and other complex cases relating to international drug trafficking.

(c) RELATIONSHIP OF TEAM MEMBERS.—Organized Crime and Dangerous Drug Division personnel assigned to the International Drug Enforcement Teams shall work closely with, and where practical be co-located with, agents and liaison personnel of the various law enforcement, diplomatic, intelligence, and military agencies who shall be assigned as necessary to the enforcement teams.

(d) GOALS.—The teams shall be organized to—

(1) increase the expertise of the Department of Justice in matters relating to international law enforcement and foreign policy;

(2) direct intelligence efforts toward gathering information and evidence that can be used by civilian authorities in criminal and civil cases while protecting the assets and methods of United States agencies;

(3) improve coordination among United States and foreign agencies responsible for law enforcement, foreign policy, and international banking;

(4) target resources toward cases with maximum impact on international narcotics trafficking;

(5) gain the cooperation of private entities in the United States and foreign countries whose cooperation in cases involving money laundering and other drug-related financial crimes is essential; and

(6) assist other countries to enact laws and negotiate treaties to assist in the suppression of international money laundering and narcotics trafficking.

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## S. 1972—Section Analysis of Biden Crime Bill

### TITLE I—STATE/LOCAL LAW ENFORCEMENT ASSISTANCE

Section 101 increases the authorization for the Drug Control and System Improvement Grant Program (42 U.S.C. 3750, et seq.) in fiscal 1990 from $350 million to $600 million. This program was streamlined and consolidated in the Anti-Drug Abuse Act of 1988. The additional funds are critically needed to assist state and local law enforcement agencies in their fight against drug trafficking and abuse, particularly given the high priority that the National Drug Control Strategy places on state and local enforcement efforts.

Section 102 creates a new $15 million community action drug grant program in the Bureau of Justice Assistance. These grants will provide federal "seed" money for up to 3,000 community groups composed of business, civic, neighborhood and religious organizations that work with police and other anti-drug agencies to fight back in drug-plagued areas.

Section 103 directs federal prosecutors to assist their state and local counterparts by making federal grand juries and courts available for drug prosecutions. State and local courts are presently overwhelmed by the increase in drug prosecutions. Too many prosecutions that should be brought are dropped because of lack of resources. But virtually all state drug offenses may be prosecuted in federal court under the provisions of the Controlled Substance Act. Often, the federal offenses carry higher penalties.

The provision in section 103 would require U.S. Attorneys to establish a working relationship with all state and local prosecutors in their districts whereby all cases arising from arrests on a given day each month would be presented to federal grand juries and, if indictments are returned, tried in federal court.

### TITLE II—FEDERAL LAW ENFORCEMENT AND JUDICIAL ASSISTANCE

Title II provides funding increases for major components of the federal criminal justice system in order to put more agents on the streets, more prosecutors in the court rooms, and more judges on the bench.

Section 201 boosts spending by more than $150 million for the following:

Federal Bureau of Invesigation: $57,000,000. In testimony before the Senate Judiciary Committee, FBI Director William S. Sessions testified that his agency is only able to investigate one-third of the drug trafficking networks that the FBI has identified. The additional funds will enable the FBI to add 1,000 new positions to their drug-trafficking efforts, enough to attack the major drug organization that the FBI has identified.

Drug Enforcement Administration: $47,500,000. The additional funds for DEA are earmarked for two high-priority programs; precursor chemicals and rural drug enforcement. Despite the passage of the Chemical Diversion and Trafficking Act in the 1988 drug bill, and the critical role that chemical diversion efforts are supposed to play in the National Drug Control Strategy, since 1986 no positions have been added to the DEA unit charged with chemical diversion efforts. The funding increases in this section will add almost 100 DEA new agents and investigators to use the powerful tools that Congress has given the Administration to crack down on chemical diversion efforts. This section also boosts DEA funding by $37.5 million for 250 agents to be assigned solely to drug trafficking cases in rural areas. It is the intent of Congress that these funds be used to implement section 904 of this Act, which directs the Attorney General to assign not less than 10 DEA agents to every state and to add an additional 4 agents to each rural state.

United States Courts: $9,000,000. To address the backlog of drug-related cases in federal courts, this section authorizes additional funding for probation officers, judges, magistrates and other judicial personnel, including not more than $2 million for necessary expenses to implement the federal sentencing guidelines.

United States Attorneys: $24,000,000. More than 300 additional federal prosecutors and related staff positions will be added to handle the increased number of drug cases brought by the investigative personnel authorized in this section.

Defender Services: $8,000,000. Additional funds are also provided for the defense of persons prosecuted in federal court for drug offenses arising out of arrests and investigations conducted by state and local law enforcement agencies under section 103 (assisting state and local prosecutors) of this Act.

United States Marshals: $9,000,000. U.S. Marshals play a critical role in the adjudication of drug-related cases, providing judicial and witness security, subpoena process and prisoner transportation. This additional funding will ensure that the Marshals Service is capable to meeting the increased workload that will result from the funding increases provided in this section.

Section 202 authorizes 20 new federal judgeships to be assigned to areas with heavy drug-related caseloads. The number and location of the additional judicial positions shall be established by law, after consideration of the recommendations of the Judicial Conference of the United States. Subsection (b) requires the Judicial Conference to prepare on the drug-related caseload of the federal courts, including recommendations as to the assignment of the additional judgeships authorized under this section among the several judicial districts.

### TITLE III—RURAL DRUG ENFORCEMENT

The purpose of title III is to strengthen the federal commitment to rural drug enforcement efforts. Many rural police agencies simply do not have the manpower or expertise to attack the multistate and multinational drug trafficking organizations that are expanding their networks into rural towns and communities. The provisions in title IX should expand the federal government's direct attack on drug dealers in rural areas, while also empowering state and local agencies to target such organizations through financial and technical assistance and training.

To ensure that the needs of rural areas are incorporated into the national drug strategy, section 302 requires the Director of National Drug Control Policy to designate an existing official in his office to be responsible for rural drug policy issues.

Section 303 creates a new $20 million grant program to state and local law enforcement agencies in rural areas. Each state will receive a minimum of $100,000. Of the remaining funds, fifty percent will be allocated among the rural states, defined as those states with a population density of 52 persons per square mile or less. The remaining funds will be distributed to the non-rural states on a population basis for use by rural agencies in those states.

To strengthen the direct federal commitment to rural drug enforcement efforts, and to expand and promote cooperation among federal, state and local agencies in rural areas, section 304 directs the Attorney General to assign not less than 10 DEA agents in each state and not less than 4 additional DEA agents in each rural state.

Section 305 is designed to improve the ability of state and local law enforcement agencies combat drug trafficking through expanded training at the Federal Law Enforcement Center in Glynco, Georgia. This section directs the Secretary of the Treasury to develop a specialized drug enforcement training program for rural police agencies and to double the total number of law enforcement officers from rural jurisdictions that receive training at the center.

### TITLE IV—MANDATORY DETENTION PENDING SENTENCING AND APPEAL

Title IV is derived from S. 1259, a bill introduced by Senator Simon. The bill amends the Bail Reform Act (18 U.S.C. 3143) to provide that all defendants convicted of crimes of violence, offenses carrying maximum terms of life in prison or death, and drug offenses with a maximum sentence of ten years or more must be detained while awaiting sentence and while awaiting the disposition of any appeal. Sec. 1181 provides for exceptions only where the government is not recommending a sentence of incarceration and the court finds that the defendant is not likely to flee or pose a danger to the community, or where the court finds that the defendant's motion for a new trial or acquittal is likely to be granted.

Senator Simon's statement introducing the bill appears in the Congressional Record, June 23, 1989, at S7511.

### TITLE V—FORFEITURE

Sections 501 through 511 contain various forfeiture amendments passed by the Senate in title VII of S. 1711. An analysis of these amendments appears in the Congressional Record, daily ed., October 4, 1989, at S12622.

Section 512 contains the provisions of Section 1509 of S. 1711 regarding the forfeiture provisions of the federal anti-gambling statute, 18 U.S.C. 1955. An analysis of this amendment appears in the Congressional Record, daily ed., October 5, 1989, at S12749.

Section 513 contains the provisions of Section 1613 of S.1711 which makes certain amendments to the statute governing the disposition of assets from the Customs Forfeiture Fund.

Section 514 amends 18 U.S.C. 3322 to allow government attorneys to use grand jury information in connection with civil forfeitures. Section 3322, enacted by Section 964 of the Financial Institutions Reform Recovery and Enforcement Act of 1989, authorizes the disclosure of grand jury information to an attorney for the government for use in enforcing the civil provisions of the Act, and in connection with civil forfeiture authorized by law for banking violations.

The provision was limited to banking law violations because the jurisdiction of the legislative committees that drafted the Act was limited to such offenses. The reasons for the provision, however, apply with equal force to other violations for which current law authorizes civil enforcement and forfeiture. The amendment in Section 514 simply expands the existing provision to cover civil enforcement of the racketeering and drug laws, and civil forfeiture where such forfeiture is already authorized.

As already provided in 18 U.S.C. 3328(a), the disclosure could be made only to an attorney for the government, and only for the specified purposes. This will enable an Assistant U.S. Attorney who is responsible for civil matters such as forfeiture of drug proceeds to use information compiled by another Assistant in the same office who is responsible for criminal prosecutions.

TITLE VI—PUBLIC CORRUPTION

Title VI contains the new public corruption statutes passed by the Senate in title IV of S.1711. The first statute is derived from S. 327, the bill introduced by Senator Biden and others in February, 1989, that remedies the problems presented by the Supreme Court decision in *United States v. McNally*. The second statute is the narcotics-related public corruption statute passed by the Senate in the 1988 drug bill.

A section-by-section analysis of these provisions as included in S.1711 appears in the Congressional Record, daily ed., October 4, 1989, at S12624.

TITLE VII—CIVIL ENFORCEMENT

Title VII contains two provisions included in title VIII of S. 1711. Section 416 of the Controlled Substances Act (21 U.S.C. 856) makes it a crime to operate a place for the purpose of manufacturing, distributing or using a controlled substance. This covers places such as "shooting galleries" and "crack houses." Presently this provision is enforceable only as a criminal offense which carries a maximum term of 20 years of a fine of up to $500,000.

Section 701 of the bill amends this provision to provide for civil enforcement. Under the amendment, the Attorney General could shut down a crack house by seeking a civil injunction or eviction and could seek a civil penalty of up to $100,000. The maximum civil penalty is set substantially lower than the maximum criminal fine to make clear that this is a civil regulatory action, not a substitute for charging and proving a criminal offense.

Section 702 concerns the Justice Department's use of the RICO statute against drug traffickers. More than 25 percent of the criminal RICO cases filed by the Department in the past five years have involved drug cases. The amendment, however, encourages the Department to make greater use of the forfeiture laws in such cases, and to make greater use of civil RICO to in drug cases where that approach might be more effective and efficient than criminal prosecution.

TITLE VIII—JUVENILE JUSTICE

Sections 801 and 802 comprise title X of S. 1711 which provides for certain juvenile drug trafficking and prevention grants.

Section 803 is derived from H.R. 2976, a bill introduced by Rep. Wyden. This provision amends Section 5032 of title 18, United States Code, to enhance the ability of federal prosecutors to obtain jurisdiction over violent juvenile offenders, and to prosecute such offenders as adults in federal court.

Subsection (a) merely designates the currently unnumbered paragraphs of Section 5032 as subsections (a) through (k).

Subsection (b) adds three firearms offenses to the list of offenses over which the United States has juvenile delinquency jurisdiction. The three offenses, codified as subsections (b), (g) and (h) of 18 U.S.C. 924, relate to traveling from one State to another to transfer or purchase a firearm with intent to commit a drug violation or crime of violence, and to transferring a firearm knowing that it will be used in a crime of violence or drug trafficking crime.

Subsection (c) adds these same firearms offenses to the list of offenses for which a juvenile may be treated as an adult in some circumstances.

Subsection (d) modifies the list of factors that the court must consider in determining whether to transfer a juvenile to adult status. First, the phrase "intellectual development and psychological maturity" is changed to "level of intellectual development and maturity." The purpose of the change is to eliminate the word "psychological" which is too limiting; the court should consider all aspects of the maturity level including the social and emotional aspects.

Second, the amendment amplifies the requirement that the court consider past exposure to treatment programs by inserting "rehabilitation and substance abuse treatment" as examples of the types of programs that may have been made available to the juvenile in the past. The amendment also deletes the reference to the availability of federal treatment programs as a factor since such programs rarely exist in the federal system.

Finally the amendment provides that the court should consider whether the offense was indicative of the juvenile's involvement in a gang or other organization involved in drug and firearms offenses. To the extent that the juvenile was a leader of such an organization, or otherwise encouraged other young people to become involved in violent, drug-related activity, that factor should weigh heavily in favor of treating the juvenile as an adult. This provision is aimed at juvenile gang leaders who are spreading drugs and violence in their communities and other places.

Subsection (e) modifies the disclosure rules governing juvenile court records to permit disclosure of such records where a court of the state in which the federal proceeding takes place would permit such disclosure.

Finally, subsection (f) makes technical conforming amendments to 18 U.S.C. 5038 to allow the provisions of that statute regarding fingerprinting and recording keeping requirements for recidivist juveniles to apply to each of the offenses listed in section 5032(a). This amendment was passed by the Senate in substantially the same form as Section 1208 of S.1711.

Section 804 extends the Armed Career Criminal Act (18 U.S.C. 924(e)) to include drug offenses committed by juveniles, but only in those instances where the offense was extremely serious, as defined by 21 U.S.C. 841(b)(1)(A).

Finally, sections 805–06 make certain technical corrections to the provisions of the Controlled Substances Act regarding distribution of drugs to and by children. These provisions were passed by the Senate as Secton 1507 and 1508 of S.1711. See Congressional Record, daily ed., October 1989, at S12749.

TITLE XI—DRUG DISASTER AREAS

This title creates a new $300 million program to provide emergency assistance to state and local "drug disaster" areas. It authorizes the President, based on the recommendations of the National Drug Director, to declare certain areas as "drug disaster areas." The bill is modeled on the federal disaster relief program, and requires that applications for disaster relief funds be made by governors and mayors.

Monetary assistance includes federal grants of up to 75 percent of the relief services, with the states responsible for the remaining 25 percent. Non-monetary assistance can include federal personnel, equipment, supplies, facilities, communications support, and technical and advisory services.

TITLE X—POLICE CORPS

This title incorporates S.1298, the Police Corps bill introduced by Senators Specter, Sasser and others. A section analysis of the bill appears in the Congressional Record, July 12, 1989, at S7808.

TITLE XI—FIREARMS PROVISIONS

This title includes the sundry firearms provisions and penalties set forth in title I of S.1225 that were not included in the DeConcini assault weapons bill. These provisions, which are mostly minor and technical in nature, appeared in section 101–105, 107–08, 11 (paragraph 2) 112, 113, and 115–117 of S.1225 (see Section-by-Section Analysis, *Cong. Record*, June 22, 1989, S.7268–70).

The provisions are included without change except for the following. Section (formerly 108), providing for pretrial detention in cases involving firearms violations, is expended to include violations of the assault weapons provisions of this bill which will be codified in 18 U.S.C. 922(q) and (s).

The provision in section 1109 (formerly 112) prohibiting possession of a firearm by persons with prior misdemeanor convictions is limited to prior convictions for crimes of violence involving use of a firearm and drug cases for which the penalty imposed was greater than 6 months.

Section 1113 (formerly 117) modifies the proposed ban on the domestic assembly of those semi-automatic weapons that the Secretary of the Treasury has barred from importation. As modified, the provision removes the loophole that would have permitted the assembly of such weapons for exportation. It also bans the export of any of the assault weapons defined in title IV of this bill.

Section 1114 was passed by the Senate as Section 1512 of S. 1711. It clarifies that the mandatory penalty for carrying a firearm in a crime of violence is a penalty enhancement, not a separate crime. 18 U.S.C. 924(c). This codifies the consensus among the circuit courts on this issue. It also clarifies that the mandatory 20 year penalty for second offenders applies to offenses committed after a previous sentence under 924(c) has become final. This resolves an ambiguity discussed in *United States* v. *Rawlings*, 821 F.2d 1543 (11th Cir. 1987) and conforms to the penalty for subsequent of-

fenders under the narcotics laws, 21 U.S.C. 841(b)(1)(A). Finally, the amendment designates portions of paragraph (1) as separate paragraphs for clarity. This provision has no substantive effect.

Finally, Section 1115 contains the provision in Section 311 of S. 1711 introduced by Senator Simon that would raise the penalty enhancement for the use of a sawed-off shotgun in a crime of violence from 5 years to 10 years.

TITLE XII—MISCELLANEOUS CRIMINAL LAW IMPROVEMENTS

Section 1201 is intended to make it easier to convict a "fence" of receiving stolen property by modifiying certain archaic common law presumptions. Frequently, the only way to catch a "fence" is to wait until stolen property is recovered by federal agents and then to allow it to be delivered to the "fence" by undercover agents. When the fence receives the property, believing it to be stolen, he is arrested.

Several courts, however, in cases involving these facts, have applied a common law rule that property is no longer considered "stolen" once the police have custody of it. Application of such a rule, of course, requires acquittal, since a fence cannot be convicted of receiving stolen property if the property is not considered "stolen" at the time it is received.

This provision would amend all of the federal receiving-stolen-property statutes to provide that it is sufficient if the fence receives the property believing it to have been stolen because a law enforcement officer has represented it as such.

This is modeled on a provision included in the 1988 drug bill by Senator Biden that amended the money laundering statute to apply to money that the launderer believed was the proceeds of illegal activity because a law enforcement officer had represented it as such. See Section 6465 of the Anti-Drug Abuse Act of 1988.

The remaining sections of this title were all passed by the Senate in titles twelve through fifteen of S. 1711. The following is an analysis of those provisions for which no analysis has appeared in the Congressional Record previously.

Section 1202. The phrase "narcotic or other dangerous drugs", which appears twice in the provision of RICO setting forth the predicate offenses, is outmoded and imprecise. The amendment substitutes the phrase "controlled substances" as defined by the Controlled Substances Act, 21 U.S.C. 802, which is used in more modern statutes. While the definition of "narcotic or other dangerous drugs" in RICO is proabably the same as the definition of "controlled substances," some litigation has ensued over whether marihuana is a "dangerous drug," and the potential for unncessary future litigation as to this and other substances exists. See, e.g., *United States* v. *Williams*, 809 F.2d 1072, 1096 (5th Cir. 1987); *United States* v. *Ryland*, 806 F.2d 941 (9th Cir. 1986), cert. denied, 107 S. Ct. 2199 (1987)).

Section 1203 makes certain technical amendments to 18 U.S.C. 3142 and 28 U.S.C. 994 relating to maritime drug law enforcement. The Act of September 15, 1980, referred to in those sections, which embodied various drug offenses on the high seas, was replaced by sections 3201 and 3202 of Public Law 99-570 (the Anti-Drug Abuse Act of 1986) by a similar series of offenses denominated as the "Maritime Drug Law Enforcement Act" and codified in title 46 Appendix. The amendments merely substitute the current and correct citation in each statute.

Section 1204 amends the general penalty provisions of the the federal drug statutes to conform to amendments made in section 6452 of the Anti-Drug Abuse Act of 1988. Section 6452 eliminated verbose language in 21 U.S.C. 841(b)(1)(A) describing the types of drug offenses for which recidivists are subject to enhanced penalties and replaced it with the term "felony drug offense". This section extends this simplification to the other subparagraphs of section 841(b) as well as to the counterpart provisions of section 960(b) and 962(b).

Section 1205 clarifies the mandatory minimum penalty for serious crack possession as enacted in Section 6371 of the Anti-Drug Abuse Act of 1988. The statute currently requires the imposition of a fine "under title 18" or a five to twenty year prison term, or both. Taken literally, this language could be interpreted to mean that a court could comply with the provisions by imposing only a fine. In keeping with the original intent, the amendment makes clear that the minimum term of incarceration is mandatory in all cases.

Section 1206 is technical and corrects an apparent printing error in the enrolled bill text of section 6470 of the Anti-Drug Abuse Act of 1988 relating to the amount of methamphetamine necessary to trigger a ten-year mandatory minimum penalty. Under section 6470 as passed by both the House and Senate (see, e.g., page 11168 of the Congressional Record of October 21, 1988), that amount was "1 kilogram or more of a mixture or substance containing methamphetamine." Through an apparent printing error, "1 kilogram" was changed to "100 grams", the same as the amount that triggers the five-year mandatory minimum term. This amendment corrects this error.

Section 1207 makes an amendment to the conspiracy and attempt penalty provisions in the Maritime Drug Law Enforcement Act to bring it into conformity with the like penalty provisions in the Controlled Substances Act and the Controlled Substances Import and Export Act, as amended by section 6470 of the Anti-Drug Abuse Act of 1988. The effect of the amendment is to make conspiracies and attempts to violate the provisions of the Maritime Drug Law Enforcement Act subject to the "same penalties" as those prescribed for substantive violations.

Section 1208 makes conforming amendments to the provisions in Anti-Drug Act of 1988 relating to methamphetamine. As mentioned in the discussion of Section 1206, supra, the Anti-Drug Abuse Act enacted certain penalties for trafficking in methamphetamine under the Controlled Substances Act, but failed to make comparable amendments with respect to be importation of methamphetamine under the Controlled Substances Import and Export Act, 21 U.S.C. 960(b). That Act otherwise penalizes importation of controlled substances in a manner identical to the provisions of the domestic trafficking statute, 21 U.S.C. 841(b). This section, which makes the necessary conforming amendments, is of particular importance to district such as Hawaii where typically methamphetamine is imported.

Section 1209 eliminates the requirement of "personal" approval by the Solicitor General for the taking of a government appeal of sentence so that, as is the practice for all other government appeals, a deputy Solicitor General may authorize such an appeal when appropriate or necessary. Secondly, this section provides that the approval of the Solicitor General need not occur at the time the appeal is filed—a requirement that presently causes practical problems and results in less actual screening by the Solicitor General's Office than in other cases—but rather may occur after a protective notice of appeal has been filed, in accordance with prevailing practice in all other government appeal situations.

Section 1210 increases the maximum penalty under 18 U.S.C. 3, the accessory after the fact statute, to twenty years. A similar amendment (increasing the penalty to 25 years) was passed by the Senate in 1988 as § 154(e) of S. 2485 and as § 2654 of S. 2852, the omnibus drug bill. A substantial upward adjustment is needed to correct an anomaly under which the offense of being an accessory after the fact to an offense that carries life imprisonment, presently fixed under 18 U.S.C. 3 at a maximum of ten years, is less than the penalty under that same statute for being an accessory after the fact to other felonies not as serious. Specifically, 18 U.S.C. 3 provides generally that the penalty for a violation thereof shall be up to one-half the maximum penalty prescribed for the offense to which the defendant was an accessory. (This rule cannot, however, be applied to maximum life imprisonment offenses since it is not apparent what half of "life" would be). Thus, in the case of a twenty-five or thirty-year offense, such as aggravated bank robbery or certain drug crimes, the available accessory penalty would actually exceed that imposable for the more heinous offense of being an accessory to murder or espionage, both of which carry maximum life sentences. The proposed amendment would cure this inconsistency.

Section 1211 removes the requirement of personal approval by the Attorney General or Solicitor General for appeals from sentences imposed by a United States magistrate to a district court. 18 U.S.C. 3542(f). The time for government appeal of magistrates' sentences is only ten days (as provided by Rule 7(a) of the Rules of Procedure for the Trial of Misdemeanors before United States Magistrates), rather than the thirty days granted the government under Rule 4(b) of the Federal Rules of Appellate Procedure for appeals of sentences imposed by a district court. Second, it makes little sense to require high level Department of Justice review of government appeals from sentences imposed by magistrates, who only possess the authority to try cases and to enter sentences upon conviction for misdemeanors. See 28 U.S.C. 636; 18 U.S.C. 3401. The Solicitor General's Office, which bears the brunt of the current requirement, has strongly recommended that it be relieved of the need to approve government sentence appeals from sentences imposed by magistrates, and the proposed amendment would accomplish that result.

Section 1212 restores to 47 U.S.C. 223(b) three paragraphs creating additional sanctions and remedies against obscene telephone communications that were repealed inadvertently by the Anti-Drug Abuse Act of 1988. Section 7524 of that Act strengthened the laws against obscene and indecent telephone communications, codified in 47 U.S.C. 223(b), by increasing the penalty for obscene communications from six months to two years' imprisonment. As enacted, this provision was made to constitute the entirety of subsection (b). This had the unintended effect of repealing three previously extant paragraphs which created additional criminal and civil fines and an injunctive

remedy for violations of paragraphs (1) and (2).

This section restores those three paragraphs to 47 U.S.C. 223(b), as applicable only to paragraph (1), relating to obscene communications, in substantively identical form. The proposed amendment would not, however, restore these additional remedies with respect to paragraph (2) of 47 U.S.C. 223(b) relating to indecent communications, since the Supreme Court in *Sable Communications of California, Inc.* v. *Federal Communications Commission*, — U.S. — (decided June 23, 1989), struck down the provisions of paragraph (2) as violative of the First Amendment, while sustaining the provisions of paragraph (1) against a similar challenge.

Section 1213. These provisions are purely technical and are largely self-explanatory. The need for the eleventh amendment arises from section 6452 of the Anti-Drug Abuse Act of 1988, which changed the phrase "a prior conviction or convictions" to "a prior conviction", thereby creating a singular subject which no longer agrees with the verb "have".

Section 1214. Section 7039 of the Anti-Drug Abuse Act of 1988 amended 18 U.S.C. 2703(d) to provide that the orders there provided for could be issued by any court that is a court of competent jurisdiction defined in "section 3126(2)(A)" of title 18. However, in section 7092(a)(1) of that same Act section 3126 was renumbered as section 3127. Accordingly, the reference in section 2703(d) needs to be conformed.

Section 1215. Section 7038 of the Anti-Drug Abuse Act of 1988 amended 18 U.S.C. 2703(b) to add trial subpoenas, in addition to grand jury subpoenas, to the enumerated types of legal process by which access may be obtained by the government to the contents of certain electronic communications. The amendment adopted in section 7038, however, failed to make a similar conforming addition of trial subpoenas to section 2705(a)(1)(B), which provides for the obtaining of court orders, upon a proper showing of need, directing the non-disclosure to other persons of the use by the government of a means of obtaining access under section 2703(b). This amendment would effect that conforming change.

Section 1216 is necessitated by the fact that section 7525 of the Anti-Drug Abuse Act of 1988 inadvertently created two paragraphs lettered "(m)" in 18 U.S.C. 2516(1), the statute which sets forth predicate offenses and acts for which a wiretap order may be issued. The proposed amendment would redesignate the paragraph (m) which reads "any conspiracy to commit any of the foregoing offenses," and which clearly belongs at the end of the subsection, as paragraph (o).

Section 1217 is a technical amendment. Section 7059 of the Anti-Drug Abuse Act of 1988 amended the Interstate Agreement on Detainers Act to add a new section 9, but failed to make a corresponding amendment to the table of sections for the Act. The amendment makes the appropriate addition to the table of sections.

Section 1218 is identical to Section 1510 of S. 1711 which is described in the Congressional Record, daily ed., October 5, 1989 at S12749 (discussion of "section 76" relating to territories and possessions).

Section 1219. 18 U.S.C. 45, enacted in 1918, makes it an offense to kill, capture, possess, or detain a carrier pigeon owned by the United States. Since, for many years, the United States has not used carrier pigeons for communication and since the theft or killing of any United States owned pigeons is in any event adequately covered by other statutes (e.g. 18 U.S.C. 641, 1361), there is no longer a need for this offense. The deletion of the items in chapter 3 of title 18 is purely technical and reflects the prior repeal of sections 43 and 44 as well as the repeal of section 45 in this amendment.

Section 1220 repeals other outmoded offenses. 18 U.S.C. 969, enacted in the early 1900s, punishes by up to three months in prison the export of arms, intoxicating liquor, explosives, or opium to "any aboriginal native of any of the Pacific Islands lying within" a described area of the Pacific "not being within the protection of any civilized power". The area described in the statute includes Guam, Samoa, and parts of the Northern Mariana Islands and Hawaii, among other places. The original rationale for the provision, which was supported by missionary societies, was to avoid sales "for the purpose of so infuriating these tribes that they may kill the civilized portion of the people that are on those islands". 35 Cong. Rec. 1202 (1902). The provision should be repealed, having outlived its usefulness and because it is currently offensive. The Northern Marianas Commission on Federal Laws recently recommended repeal (see Report, p. 130).

The amendment repealing 18 U.S.C. 2198 and 3286 relates to a misdemeanor offense in 18 U.S.C. 2198 dating from 1860 that punishes an officer or seaman on board an American vessel who, by promise of marriage, exercise of authority, solicitation, the making of gifts, or by threats, "seduces and has illicit connection with any female passenger". No reported prosecutions under this statute exist and its provisions are either outmoded or, insofar as coverage of threats or the seduction of any minors may be concerned, fully covered by the provisions of chapter 109A of title 18, relating to a panoply of sexual offenses committed in the special maritime and territorial jurisdiction of the United States. The Sentencing Reform Act of 1984 repealed a related provision in former 18 U.S.C. 3614 that permitted a court to direct that any fine imposed for a conviction under section 2198 be used for the benefit of the seduced passenger "or her child, if she have any."

Section 1221 contains two purely technical amendments. 18 U.S.C. 2516(1)(a) includes as predicate wiretap offenses all felonies in chapter 65 of title 18. Thus, the reference in 18 U.S.C. 2516(1)(c) to "the section in chapter 65 relating to destruction of an energy facility", which is a felony (see 18 U.S.C. 1366), is redundant and is accordingly deleted.

18 U.S.C. 2516(1)(j) presently refers to two offenses as sections of "title 49" of the United States Code. Those citations are, however, no longer accurate. Moreover the current title to which the offenses are classified (title 49 Appendix) is uncodified. Therefore, the amendment substitutues the correct references for these offenses.

Section 1222 amends the second paragraph of 18 U.S.C. 2314 relating to fraud in which the interstate travel of the victim is a prime ingredient to include foreign travel. The section's other paragraphs, penalizing the transportation of various items of stolen or counterfeited character, extend both to interstate and foreign commerce transportation.

Section 1223. Congress in 1984 enacted 18 U.S.C. 666, a theft and bribery offense in which the existence of federal jurisdiction is dependent upon whether an organization or a State or local government receives a specified amount of federal funds "in any one year period". No definition of the "one year period" is provided, and the legislative history is silent. The plausible interpretations are at least three: (1) that the one year period refers to the calendar year in which the offense occurred; (2) that it refers to the fiscal year in which the offense occurred; or (3) that it refers to a year as measured from, or surrounding, the date of the offense. The government appears in at least two cases to have taken the position that the latter interpretation is correct. See *United States* v. *Westmoreland*, 841 F.2d 572, 575 (5th Cir. 1988); *United States* v. *Smith*, 659 F. Supp. 833, 834 (S.D. Miss. 1987). Because it is important that the concept of the relevant one year period in this statute be clarified and needless litigation thereby avoided, the amendment proposed here would add language specifying that the one year period refers to an interval of twelve months before, after, or surrounding, the commission of the offense.

Section 1224 repeals three provisions of law judicially determined to be invalid. 18 U.S.C. 1730 is a petty offense with no reported prosecutions. Its first paragraph punishes a person who, "not being connected with the letter-carrier branch of the Postal Service, wears the uniform or badge" which is prescribed by such Service for its letter carriers. The second paragraph contains an exemption for actors and actresses in a theatrical production who wear the Postal Service uniform or badge "while portraying a member of that service, if the portrayal does not tend to discredit that service." An identical provision in 10 U.S.C. 772(f), relating to the unauthorized wearing of the uniform of a member of the United States armed forces, was found by the Supreme Court to be an unconstitutional infringement of the First Amendment right of free speech. *Schacht* v. *United States*, 398 U.S. 58 (1970).

18 U.S.C. 1714, enacted in 1939, has had one reported prosecution. The statute makes it a misdemeanor knowingly to mail any book or other written or printed material "giving or offering to give information concerning where or how or through whom a divorce may be secured in a foreign country, and designed to solicit business in connection with the procurement thereof". This statute was declared facially invalid under the First Amendment in the only reported prosecution to be brought under it. *Hiett* v. *United States*, 415 F. 2d 664 (5th Cir. 1969), cert. denied, 397 U.S. 936 (1970).

18 U.S.C. 1718, enacted in 1872, makes it a misdemeanor to place in the mails any matter on the outside cover of which is written or printed any "epithet, term, or language of libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another". Although there were some early, successful prosecutions under this statute, the Eighth Circuit, in an exhaustive opinion, declared the provision to be facially violative of the First Amendment in 1973. *Tollett* v. *United States*, 485 F.2d 1087. A district court similarly found the statute unconstitutional in 1974. *United States* v. *Handler*, 383 F. Supp. 1287 (D. Md.). The government did not seek review of either ruling.

Section 1225 deletes a provision of the Atomic Energy Act of 1954 (42 U.S.C. 2271) that appears to require the personal approv-

al of the Attorney General before any criminal prosecution is brought for violation of certain enumerated sections (i.e. 42 U.S.C. 2272 through 2276). Violations of the Atomic Energy Act are no more serious than violations of other federal criminal statutes, including the related provisions of title 18 involving the unauthorized disclosure of classified or national defense information (e.g. 18 U.S.C. 793, 794, 798), yet no other federal criminal statutes, even those that carry a death penalty, require the personal approval of the Attorney General in order merely to commence a prosecution. The personal approval requirement in 42 U.S.C. 2271(c) has resulted in delays in initiating routine prosecutions and an understandable tendency on the part of Department of Justice prosecutors to look for alternative statutory vehicles, such as the less serious general false statement statute, 18 U.S.C. 1001. The elimination of the personal approval requirement would simplify Department of Justice internal procedures and thereby should result in an increase in the number of justified prosecutions initiated under the Act, while making the practice with respect to the bringing of Atomic Energy Act prosecutions consistent with that for all other violations of federal criminal laws.

Section 1226 corrects a technical drafting error in section 7608 of the Anti-Drug Abuse Act of 1988 with respect to 28 U.S.C. 1921(c). That provision sets forth the methods for determining a marshal's commission on certain sales of property. The first sentence of 28 U.S.C. 1921(c) provides the formula for computing the commission on a marshal's sale of seized or levied property. The second sentence should have addressed the setting of commissions when seized or levied property is *not* disposed of by the traditional marshal's sale. Instead, due to a drafting mistake, the second sentence is written so as also to apply to the sale situation, by virtue of the words "If the property is to be disposed of by marshal's sale". The proposed amendment would cure this drafting error and effectuate the clear intent of the subsection, by substituting the word "not" for the words "to be" in the quoted phrase.

Section 1227 corrects an erroneous cross-reference in 18 U.S.C. 4247(h), a provision which gives to a person hospitalized on grounds of mental illness a right to file a court motion seeking to be discharged, irrespective of whether the director of the medical facility has filed a certificate recommending such discharge pursuant to "subsequent (e) of section 4241, 4243, 4244, 4245, or 4246". The error results from the fact that the "discharge" subsection for section 4243, unlike that for the other specified sections, is (f) rather than (e).

Section 1228 amends the statutes relating to sexual abuse crimes committed in the special maritime and territorial jurisdiction of the United States to provide higher penalties for offenses involving minors over the age of 12. Currently, the most serious class of sexual offenses, aggravated sexual abuse, includes engaging in a sexual act with a minor who is under 12 years of age, for which the maximum punishment is life imprisonment. 18 U.S.C. 2241(c). Abusive sexual contact crimes with children under 12 years of age are subject to a maximum term of imprisonment of 10 years. 18 U.S.C. 2244(a)(1). However, sexual act and sexual contact offenses with children between the ages of 12 and 16 are subject to much lower penalties, absent threat or force. Such sexual acts and sexual contacts are punishable by only five and two years' imprisonment, respectively. 18 U.S.C. 2243(a) and 2244(a)(3).

The current law does not adequately protect young teenagers from sexual abuse by adults. The proposed amendments in subsection (a) would remedy this problem by increasing the age from 12 to 14 for the most serious class of sexual offenses. Under the amendment sexual acts with children under the age of 14 would be punishable by up to life imprisonment, while sexual contact offenses with such children would be punishable by up to 10 years' imprisonment. The amendment, however, recognizes that non-forcible sexual acts and contacts between teen-agers of approximately the same age should not be criminal offenses. The amendment in subsection (a) excepts sexual acts with minors between the ages of 12 and 14 if the offender is less than four years older than the child. This exception applies under current law to offenses involving minors between the ages of 12 and 16. 18 U.S.C. 2243(a).

Subsections (d) and (e) redefine the terms "sexual act" and "sexual contact" in 18 U.S.C. 2245 (2) and (3) to include within the former definition intentional touching, not through the clothing, of the genitals of a person who is less than 16 years of age, provided the intent element common to the other touching offenses is present. This form of molestation can be as detrimental to a child as the conduct currently covered by the term sexual act. Moreover, there is a gender-based imbalance in the definitions of sexual act and sexual contact. Specifically, sexual touching that involves even a slight degree of penetration of a genital or anal opening constitutes a sexual act, rather than a sexual contact, and the former is punished more severely than the latter under the existing statutory scheme. Since penetration is more likely with female than male victims, fondling offenses would more likely constitute sexual acts when committed with females than with males. The amendment corrects this gender-based imbalance by treating all direct genital touching of children under the age of 16, with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person as sexual acts, rather than sexual contacts, regardless of whether penetration has occurred. Moreover, the difficulties of proving penetration for offenses in which there are typically no witnesses would be eliminated under the amendment. The proposed amendment does not alter the definitions of sexual act and sexual contact for adult victims.

Subsection (g) amends the penalties applicable to the sexual offense statutes in chapter 109A of title 18 by providing that second or subsequent offenses are punishable by a term of imprisonment of up to twice that otherwise authorized. The prior conviction may be either a violation of the chapter or a violation of State law for conduct proscribed by chapter 109A.

Section 1229 is technical and corrects a drafting error in section 7081(b) of the Anti-Drug Abuse Act of 1988. Section 7081 amended two companion statutes, 18 U.S.C. 3288 and 3289, providing time to file a new indictment or information in the event of dismissal either shortly before the statute of limitations is due to expire (section 3289) or after it has expired (section 3288). In both instances, the intended result was to permit a new indictment or information to be filed within six months of the date of the dismissal or, in the event of appeal, within 60 days of the date the dismissal becomes final. This amendment was accurately effected for section 3288, but the operative phrase in section 3289 was inserted in the wrong place in the statute where it makes no sense. The proposed amendment would remedy this mistake and make section 3289 parallel to section 3288.

Sections 1230 through 1234 are identical to Sections 1501, 1504, 1505, 1506 and 1513 of S. 1711 which are discussed in the Congressional Record, dail ed., October 5, 1989, at S12748-49.

Section 1235 is a proposal authored by Senator Pryor which deals with the unauthorized disclosure of information obtained by the government during the course of court-authorized electronic surveillance. The first part of the provision amends 18 U.S.C. 2517 to make it a crime for a government official who does not work for a law enforcement agency (such as a judge) to disclose the contents of an intercepted communication. (Law enforcement officials are prohibited from making such disclosures by other provisions of current law.) The second part of the provision makes it a crime for anyone to disclose the contents of an intercepted communication with the specific intent to obstruct any criminal investigation. Significantly, specific intent to obstruct is not an element of the first provision.

### TITLE XIII—ASSAULT WEAPONS

Title XIII contains the provisions of S. 747, the Anti-Drug, Assault Weapons Limitation Act of 1989. This provision would ban the importation, manufacture, sale and possession of nine specified semi-automatic weapons, and would provide new penalties, and increase existing penalties, for certain offenses involving firearms. See S. Rep. No. 101-160, 101st Cong., 1st Sess. (1989).[1]

### TITLE XIV—INTERNATIONAL MONEY LAUNDERING

Section 1401 relates to the various reports that individuals and financial institutions must file in accordance with recently enacted anti-money laundering statutes. The provision requires the Secretary of the Treasury to report to Congress on the degree to which these statutes are being complied with and on the uses the government is making of the reports that are filed. Subsection (b) further requires the Secretary to establish and advisory group to inform representatives of the financial industry of these matters. The intent of this latter provision to encourage greater compliance with the reporting requirements, and to promote greater voluntary disclosures of unlawful financial activity, by letting the financial industry know that the information provided to the government serves a useful and important law enforcement purpose.

Sections 1402 through 1406 were passed by the Senate as part of S. 1711, the 1989 drug bill.

Section 1402 (Section 1619 of S. 1711) creates an Electronic Scanning Task Force to study methods of printing serial numbers on U.S. currency that may be read by electronic scanning.

Section 1403 (Section 710 of S. 1711) authorizes the equitable transfer to a participating foreign nation of forfeited property. Sections 6074 and 7366 of the Anti-Drug

[1] While title IV is substantively identical to S. 747, certain sections have been redesignated to correct codification errors.

Abuse Act of 1988 amended 21 U.S.C. 881(e) and 19 U.S.C. 1616a, respectively, in an identical manner to provide for the equitable sharing with a foreign nation of forfeited property or the proceeds therefrom where the foreign nation participated in the seizure or forfeiture of the property. Under the Anti-Drug Abuse Act amendments, transfers of property to participating foreign nations may be made where three conditions are satisfied: (1) the Secretary of State concurs, (2) the transfer is authorized in an international agreement between the United States and the foreign country, and (3) the country has been certified under section 481(h) of the Foreign Assistance Act of 1961.

In thus amending the law to permit sharing of forfeited property or proceeds with foreign nations, Congress neglected to make a conforming amendment to 18 U.S.C. 981(i), which before the enactment of the Anti-Drug Abuse Act of 1988 was the only statute authorizing transfers of forfeited property to a foreign country. Under 18 U.S.C. 981(i), however, such transfers could only be made "to the extent provided by treaty"—a restriction which rendered the provision virtually useless from a practical standpoint and which was the reason for seeking the amendments in the Anti-Drug Abuse Act of 1988 that relaxed the requirement so as to permit such transfers pursuant to an international agreement.

Section 1404 (Section 1205 of S. 1711) makes a minor amendment to the Right to Financial Privacy Act to conform to provisions of the 1988 drug bill. Section 6186 of the Anti-Drug Abuse Act of 1988 created an exemption from the Right to Financial Privacy Act of 1978 for the financial records of "insiders". It provided that the Act does not apply to the transfer of financial records of financial institution officers, directors, controlling shareholders or certain major borrowers to federal or State law enforcement agencies where such records may be relevant to possible crimes against financial institutions or supervisory agencies by such persons, or to possible money laundering violations covered by the Bank Secrecy Act. The latter Act is described by reference to "any provision of subchapter II of chapter 53 of title 31, United States Code."

The quoted exemption for insider records pertaining to title 31 money laundering offenses should logically also encompass money laundering offenses under 18 U.S.C. 1956 and 1957, since such offenses fall equally within the rationale and purpose of the provision. The instant amendment would accomplish this conforming addition.

Section 1405 (Section 1206 of S. 1711) is technical and clarifying and is not intended to have any substantive effect. The current definition of "monetary instrument" in 18 U.S.C. 1956(c)(5) is not subdivided into paragraphs (i) and (ii) as is proposed here. Thus, even though currently no comma precedes the phrase "in bearer form or otherwise in such form that title thereto passes upon delivery", and even though that phrase, in the present statute, is repeated after both "investment securities" and "negotiable instruments", both indicating that the "in bearer form" phrase was meant to modify only "investment securities" and "negotiable instruments", prosecutors have encountered repeated questions as to whether the "in bearer form" limitation is applicable also to travelers' checks, personal checks, bank checks, and money orders. Such a reading would restrict the operation of the money laundering offenses to which the definition of "monetary instrument" is applicable in a manner inconsistent with the intent of Congress, and no case law exists to support this strained interpretation. Nevertheless, because the issue appears to be a persistent source of confusion and a potential source of litigation, a clarifying amendment would seem worthwhile. By subdividing the definition into two branches, the amendment makes clear that the phase "in bearer form . . ." modifies only the categories of "investment securities" and "negotiable instruments" in the statute.

Section 1406 (Section 1502 of S. 1711)[2] resolves a minor inconsistency in the money laundering statute. That statute makes it an offense to launder the proceeds of any form of "specified unlawful activity". It is not required that the launderer know what form of unlawful activity was involved as long as he knows that it was some offense that would be a felony under "state or federal law."

The inconsistency is that while the "specified unlawful activity" could be an offense under foreign law, section 1956(c)(7)(B), the knowledge requirement relates only to "state or federal law". Thus a person who launders the proceeds of a foreign offense might not be prosecutable under the statute as currently drafted because the underlying offense would not be covered by the knowledge requirement. The amendment resolves this possible problem by expanding the knowledge requirement to include foreign offenses.

Section 1407 amends the anti-money laundering statute, 18 U.S.C. 1956, to conform with certain provisions in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRRE Act), Pub. L. 101-73. That Act amended, increased the penalties for, and provided for forfeiture relating to violations of several offenses relating to financial institutions. The conforming amendment adds these same offenses (sections 1005, 1006, 1007, and 1014 of title 18) to the definition of "specified unlawful activity" in the money laundering statute. A second conforming amendment strikes the reference to section 1344 from this definition since that reference was made redundant by the addition of section 1344 to the list of predicates for a RICO violation, 18 U.S.C. 1961, in the FIRRE Act.

Section 1408 amends a provision of the Anti-Drug Abuse Act of 1986 that gave financial institutions immunity from certain civil lawsuits filed by a bank customer when the institution voluntarily discloses to the government that the customer may be engaging in criminal activity. The 1986 provision currently protects the institution from a suit based on the disclosure itself, or on the institution's failure to notify the customer of the disclosure. The amendment would add protection from a suit based on the institution's refusal to do business with the customer following the disclosure.

The amendment addresses a problem that arises whenever a financial institution discloses to the government that a customer may be engaged in criminal activity. If the institution makes such a disclosure but continues to do business with the customer, it may become criminally liable for participating in activity that it had reason to believe was unlawful. But if the institution refuses to continue to do business with the customer, it may be liable for damages in a civil suit if the customer suffers injury as a result of the disclosure but turns out to have been innocent.

The 1986 amendment was designed to further voluntary cooperation with federal criminal law enforcement by financial institutions. The amendment in this section is consistent with this purpose.

Section 1409 contains the provisions of Section 1202 of S. 1711 making a technical correction to the list of predicate offenses in 18 U.S.C. 1956(c)(7)(D). Section 6466 of the Anti-Drug Abuse Act of 1988 amended the definition of "specified unlawful activity" for the purposes of the money laundering statute, 18 U.S.C. 1956, to include a reference to section 310 of the Controlled Substances Act, 21 U.S.C. 830, relating to precursor and essential chemicals. That reference, however, is to a provision that contains no criminal penalty but rather only a direction to keep records and file reports regarding such chemicals. Felony penalties are set forth elsewhere in the Chemical Diversion and Trafficking Act of 1988 for importing, exporting, possessing or distributing a listed chemical with intent to manufacture a controlled substance and for other miscellaneous trafficking-type offenses involving listed chemicals. Misdemeanor penalties are set forth for recordkeeping violations. It is thus evident that the reference to 21 U.S.C. 830 in section 1956(c)(7)(D) is incorrect. An appropriate reference is provided by the amendment here to any felony violation, i.e., trafficking-type offenses, of the Chemical Diversion and Trafficking Act of 1988 involving precursor and essential chemicals.

Section 1410 amends the money laundering statute to enhance the effectiveness of undercover operations against international money launderers. Section 6465 of the Anti-Drug Abuse Act of 1988 amended the money laundering statute, 18 U.S.C. 1956, to permit a conviction for conducting a financial transaction involving property that the defendant believed—based on the representation of an undercover law enforcement officer—to be the proceeds of unlawful activity. This amendment made it possible for federal law enforcement agents to conduct undercover operations against money launderers by posing as drug traffickers.

The 1988 amendment, however, applied only to the offense of conducting a financial transaction. Logically, it should also have applied to the offense of transporting or transmitting the proceeds of unlawful activity by wire or some other means, as set forth in section 1956(a)(2). This section makes that conforming amendment to subsection (a)(2). It is necessary to allow federal agents to maintain undercover operations against international money launderers who knowingly participate in wire transfers of the proceeds of unlawful activity.

### TITLE XV—ORGANIZED CRIME AND DANGEROUS DRUG DIVISION

Title XV creates within the Department of Justice a new Organized Crime and Dangerous Drugs Division. The purpose of the reorganization of the Justice Department is to centralize and expand the federal law enforcement effort against high level drug traffickers, to combine the anti-drug law enforcement effort with the effort against traditional organized crime, to raise the level of attention given to civil enforcement and asset forfeiture, and to increase the Justice Department's ability to handle matters like international drug trafficking that involve

[2] A complete analysis of title XV of S. 1711 appears in the Congressional Record, daily ed., October 5, 1989, beginning at S12748.

relations with foreign governments and crimes that cross national boundaries.

Presently the Justice Department's effort in all of these areas is divided, uncoordinated and plagued by turf battles. Traditional organized crime prosecution has been the responsibility of the Organized Crime and Racketeering Section of the Criminal Division which has headquarters in Washington and strike force field offices in 23 cities. In contrast, prosecution of drug trafficking organizations is handled by the Organized Crime Drug Enforcement Task Forces. These offices are divided among dozens of separate U.S. Attorneys offices and lack any coordinated policy structure. They also have overlapping jurisdiction with the strike forces, but even where organized crime strike forces operate in the same cities as drug enforcement task forces, they remain separate operations in separate locations reporting through separate chains of command. A plan to merge the strike forces into the U.S. Attorneys' offices would make this situation worse by removing the one successful feature of the current organization—the centralized control of policy making—without improving upon the lack of coordination and overlapping jurisdiction among these units.

The responsibility for money laundering prosecutions and for civil enforcement and asset forfeiture is similarly divided. Money laundering prosecutions are handled by the U.S. Attorneys and by two different sections of the Criminal Division in Washington. Asset forfeitures are handled by special Assistant U.S. Attorneys hired under the 1988 Anti-Drug Abuse Act for that purpose, by the Asset Forfeiture Office in the Criminal Division, and by a new coordinating group in the Deputy Attorney General's Office. And as organizations staffed primarily by career prosecutors, both the Criminal Division and the Drug Enforcement Task Forces have been slow to devote resources to civil enforcement.

Finally, the Justice Department has been very slow to recognize the need to expand its role in international relations. The lack of attention to this issue was dramatized in 1989 when the Attorney General announced his intention to create an Office of International Affairs in the Department without mentioning that an Office of International Affairs has existed in the Criminal Division for years.

The new division would combine all of these units and functions. The Organized Crime and Racketeering Section, Narcotics and Dangerous Drugs Section, and Asset Forfeiture Office would be transferred to the new division from the Criminal Division, and the OCDETFs would be transferred to the new division from the U.S. Attorneys offices. The new division would have both civil and criminal responsibility, and would have strike forces in various cities that included civil and criminal components. The new division would maintain separate sections dedicated to traditional organized crime and to high level drug trafficking, respectively, but where both sections maintained strike forces in the same city, they would be co-located and would operate as sections of one unified strike force. Policy would be made in a centralized fashion at the Division level.

The last section of this title adds specialized International Drug Enforcement Teams to the newly created Organized Crime and Dangerous Drugs Division. These teams would be devoted exclusively to investigating and prosecuting international drug cases, particularly those involving extradition, money laundering, drug-related corruption and other complex cases.

The purpose of these teams would be to increase the expertise of the Department of Justice in matters relating to international law enforcement and foreign policy. These teams would be unique in that they would include both investigative agents and prosecutors from DEA, FBI, Customs, Coast Guard, IRS and the Department of Justice and State, as well as liaison personnel from the U.S. military and intelligence agencies. These personnel would have specialized training in criminal law enforcement so that U.S. intelligence efforts could be directed toward gathering information and evidence that can be used by civilian authorities in criminal prosecutions while protecting the sources and methods of U.S. agencies.

In addition to the advantages of improving coordination and targeting resources toward major foreign drug cases, the incorporation of State Department personnel in these teams should help the United States formulate effective diplomatic strategies for cases that have a major impact on U.S. foreign policy, including cases involving extradition and high-level official corruption.

At least 10 international drug prosecution teams should be established and operational within 12 months. Each team would consist of at between 20 and 25 agents and prosecutors, with a total estimated cost for the 10 teams of $25 million. The total authorization for the new Division is $45 million (exclusive of the amount authorized separately for the Organized Crime Drug Enforcement Task Forces) which includes the amount authorized for the international prosecution teams, $12 million transferred from the Criminal Division that is presently used in anti-drug efforts, and $8 million for additional prosecutors and staff.

SIDE-BY-SIDE COMPARISON OF BIDEN AND BUSH CRIME BILLS

| | Biden crime bill 2 | Bush bill, S. 1225 |
|---|---|---|
| State/Local | Expands aid to local law enforcement to $600 million. Also directs U.S. Attorneys to relieve the workload of local prosecutors in drug cases. | No provision, but Bush drug strategy calls for $350 million in aid. |
| Fed. Law Enforcem | Adds 1,000 new FBI agents, 350 DEA agents and 300 prosecutors and staff, and creates 20 new federal judgeships. | No provision. |
| Rural Drug Enforcem | Contains the Rural Drug Enforcement Act (S. 1353 introduced by Sens. Pryor and Baucus) to boost aid to rural police agencies fighting drugs. | Do. |
| Mandatory Detention | Makes it mandatory that persons convicted of drug offenses be incarcerated pending sentencing and appeal. (S. 1259, Sen. Simon's bill). | Do. |
| Forfeiture | Contains numerous enhancements to the civil and criminal forfeiture statutes (in S. 1711 with additions). | Do. |
| Public Corruption | Creates two new statutes providing authority for federal prosecutors to attack public corruption on the state and local level (in S. 1711). | Do. |
| Civil Enforcement | Gives the Attorney General civil authority to shut down crack houses (in S. 1711). | Do. |

SIDE-BY-SIDE COMPARISON OF BIDEN AND BUSH CRIME BILLS—Continued

| | Biden crime bill 2 | Bush bill, S. 1225 |
|---|---|---|
| Juvenile Gangs | Authorizes additional appropriations for anti-gang grant programs (in S. 1711). Expands federal jurisdiction over juvenile offenses involving guns. | Do. |
| Drug Disaster Areas | Creates a disaster relief program that provides aid to communities suffering from a high level of drug trafficking activity (Cranston, Kennedy, Biden proposal). | Do. |
| Police Corps | Creates a program modeled on the Peace Corps to attract more people into law enforcement (S. 1299, by Sens. Sasser and Specter). | Do. |
| Firearms Penalties | Makes numerous enhancements to current penalties for gun-related offenses. | Makes numerous enhancements to current penalties for gun-related offenses. |
| Property Crime | Revises common law rule to permit undercover investigations of receivers of stolen property. | No provision. |
| Justice Dept. Auth | No provision | Reauthorizes all Justice Department programs for fiscal 1990. |
| Assault Weapons | Bans manufacture, sale and possession of 9 weapons (from S. 747, reported by Judiciary Committee), and bans export of assault weapons. | Bans only the domestic assembly of weapons that may not be imported. Permits export of such weapons and does not ban any domestic weapons. Bans large capacity magazines and gun clips. |
| Money Laundering | Requires Secretary of the Treasury to inform Congress regarding uses made of currency transaction reports. Authorizes undercover investigations of international money laundering. | No provision. |
| Justice Department | Increases the ability of the Justice Department to attack organized crime, drug trafficking, money laundering and international crime by creating a new Organized Crime and Dangerous Drug Division. | Do. |

By Mr. THURMOND:

S. 1971. A bill to establish a constitutional death penalty and strengthen and improve Federal criminal penalties and procedures.

VIOLENT CRIME CONTROL AND CRIMINAL PROCEDURES REFORM ACT

Mr. THURMOND. Mr. President, today, I rise to introduce a sweeping anti-violent and anti-drug-related crime measure which embodies several of the legislative proposals before the Senate. The Violent Crime Control and Criminal Procedures Reform Act of 1989 is vitally important legislation designed to combat the growing problem of drug and related violent crime.

Without question, we are in the midst of a drug and violent crime epidemic. Nightly newscasts are full of scenes of law enforcement officials making raids on inner city and suburban crack houses while drug-related murders continue to rise in cities across our Nation. Reports of bystander deaths due to drug-related gun

fights and drive-by shootings continue to climb. In New York City, in 1988, 90 percent of all male arrestees tested positive for drug use.

The scourge of the drug epidemic has its grip upon the throat of our Nation. It threatens to strangle the very life out of all its victims; the most disturbing of which are our children. According to the Department of Justice, 17 percent of America's high school students have used cocaine and 50 percent have used marijuana. The problem of drug use among our children is compounded when one sees how widespread the problem is among the rest of our Nation. According to the Department of Justice, over 22 million Americans have tried cocaine and there are between 2 and 3 million cocaine addicts in the United States today. These figures reflect the need for a stronger national effort to halt the spread of drug abuse.

Recently, Congress recognized the urgent need to stem the spread of drug-related crime when it created the Office of National Drug Control Policy. Under the direction of drug czar William Bennett, the Office provided the Bush administration with a comprehensive strategy for action. Included in that strategy, which Congress has funded, were short- and long-term goals for the reduction of drug abuse. Implicit throughout the strategy is the realization that in order to eliminate drug-related violent crime, we must reform the very laws and procedures by which we punish violent offenders. It is this aspect of the President's national drug control strategy which this legislation addresses.

Mr. President, on Sunday, November 19, the Senate entered into a unanimous-consent agreement which states that the majority leader, after consultation with the Republican leader, may move to proceed to the consideration of legislation incorporating death penalty, habeas corpus reform, exclusionary rule, firearms legislation, and other legislative proposals at any time beginning Wednesday, February 7, 1989. This unanimous-consent agreement was originally entered into as part of the earlier negotiations surrounding the funding of President Bush's national drug control strategy. It was agreed by the leadership that the criminal reform proposals implicit in the strategy should be considered on the floor. It is for this reason that I am introducing the legislation and I urge the leadership to proceed to this bill when the Senate chooses to comply with the unanimous-consent agreement.

Mr. President, title 1 of this legislation embodies S. 32, the Federal Death Penalty Act of 1989, which I introduced on the first day of this Congress and which now has 23 cosponsors. This title establishes constitutional procedures for the implementation of the Federal death penalty. It authorizes the death penalty for, among other things, murder, espionage, treason, murder for hire, and certain attempts to assassinate the President. S. 32 was recently reported by the Senate Judiciary Committee and a bill almost identical to this provision passed the Senate in February 1984 by a vote of 63 to 32. I would strongly urge Congress to take this opportunity to consider this important issue and send a death penalty bill to the President so that individuals who commit heinous drug-related murders can be appropriately punished. We simply cannot delay action upon a comprehensive death penalty while violent drug dealers and traffickers are allowed to prey upon innocent victims. I believe that S. 32 should be considered by the Senate as opposed to any other death penalty legislation. It is a balanced approach that provides constitutional, streamlined procedures for imposition of the death penalty.

Included as title 2 of this legislation is language to reform current habeas corpus procedures which will minimize Federal judicial interference with State criminal convictions and deal with common abuses typical of habeas prisoner petitions. This title is identical to S. 88 on which, along with other legislative proposals, the Senate Judiciary Committee recently held a hearing. Finality of litigation and the elimination of the habeas abuse which currently surrounds State death penalty convictions is critical. Legislation which reforms the current habeas process must be meaningful reform which effectively addresses this problem. I believe S. 88, which passed the Senate in 1983 by a vote of 67 to 9, fits this requirement.

Additionally, this package includes as title 3, a codification of the good faith exception to the exclusionary rule that has been recognized by the Supreme Court. All too often in violent crime and drug cases, evidence is excluded at trial simply because the law enforcement officer innocently violated search and seizure rules. However, the Supreme Court has recognized that the exclusionary rule should not be used when the police officer has acted in good faith. This provision addresses a legal loophole which allows drug offenders and violent criminals to go free despite the ruling of the Supreme Court even when the officer acted in good faith. When a law enforcement officer acts in good faith compliance with the fourth amendment, allowing a violent drug offender to go free on a mere technicality does not serve the ends of justice.

Mr. President, the violent Crime Control and Criminal Procedures Reform Act of 1989 also addresses the need to punish those who commit drug-related and other violent crimes with firearms. Title 4 of this legislation, among other things, permits consideration of pretrial detention for certain firearms and explosive offenses, requires mandatory revocation of supervised release for possession of a firearm, and increases penalties for giving false information in connection with the acquisition of a firearm. Enhanced and manadatory penalties for those who commit, and provide the means for others to commit, violent crime should be key components of any criminal legislation. It is imperative that we make substantial prison time a certainty for the drug traffickers and other criminals who prey upon the innocent in our society.

Title 5 of this legislation provides for mandatory drug testing of drug-related and firearms-related defendants on postconviction release. Title 6 of the bill incorporates S. 326 which passed the Senate as an amendment to S. 1711. The purpose of this provision is to make it possible, once again, to prosecute and send to prison persons who corrupt the administration of government at the Federal, State, and local level. Finally, this bill includes a provision which authorizes the use of officially sanctioned undercover sting operations to combat crimes of trafficking in, or receiving, stolen or counterfeited property.

Mr. President, the link between drugs and violent crime is clear and unquestionable. The rates of drug-related murder and violent crime in general continue to rise in cities across our Nation. Almost any night you can watch television and see report after report of vicious murders and the killing of innocent bystanders due to a drug-related turf battle or a drive by shooting. Crack cocaine has brought with it a level of violence we have never seen with other drugs. Desperate addicts have turned to armed robbery and other crimes to finance their habit. Unquestionably, with drugs comes violence. We, as a nation, have seen how crack has turned the drug problem into a violent crime issue. Parents not only fear that their children will use drugs, but also fear that their children will be gunned down in their once safe schools and communities.

In closing, the fight to win the war on drugs will not be easy. Yet, one just has to witness the crime, violence, and death drugs have caused this Nation to know that we must enact a comprehensive death penalty, enhance the penalties for those who use firearms to commit crimes, and reform the criminal procedures which cause so much delay and injustice within our criminal justice system. The American people demand action. We should not hesitate any longer to pass this important legislation. Yet, when Congress chooses to act upon comprehensive

crime control measures, it should take steps to ensure that the legislation can be effectively implemented and that it is real reform. For Congress to pass cumbersome and ineffective legislation which can never be utilized and promote it to the American people as real habeas reform or authentic death penalty legislation would be a disservice to the American people. The innocent, law-abiding citizens of this Nation deserve tough, effective anticrime legislation to ensure that those who commit violent crime face strong, forceful punishment.

For this reason, I urge my colleagues to take swift action upon this legislation. There is no doubt that this bill encompasses the real reform America wants and so greatly deserves.

Mr. President, I ask unanimous consent that the full text of this bill appear in the CONGRESSIONAL RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1971

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Violent Crime Control and Criminal Procedures Reform Act of 1989".

SEC. 2. TABLE OF CONTENTS.

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Sec. 2. Table of contents.

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Sec. 701. Facilitation of undercover investigations.

TITLE I—FEDERAL DEATH PENALTY ACT OF 1989

SEC. 101. SHORT TITLE.

This title may be cited as the "Federal Death Penalty Act of 1989".

SEC. 102. CONSTITUTIONAL PROCEDURES FOR THE IMPOSITION OF THE SENTENCE OF DEATH.

(a) IN GENERAL.—Part II of title 18 of the United States Code is amended by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH SENTENCE

"Sec.
"3591. Sentence of death.
"3592. Factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
"3597. Use of State facilities.

**"§ 3591. Sentence of death**

"A defendant who has been found guilty of—

"(a) an offense described in section 794 or section 2381 of this title;

"(b) an offense described in section 1751(c) of this title, if the offense, as determined beyond a reasonable doubt at the hearing under section 3593, constitutes an attempt to kill the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President; or

"(c) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593—

"(1) intentionally killed the victim;

"(2) intentionally inflicted serious bodily injury that resulted in the death of the victim;

"(3) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or

"(4) intentionally and specifically engaged in an act, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified; provided that no person may be sentenced to death who was less than 16 years of age at the time of the offense.

**"§ 3592. Factors to be considered in determining whether a sentence of death is justified**

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution;

"(2) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; and

"(3) the defendant was an accomplice whose participation in the offense was relatively minor.

The jury, or if there is no jury, the court, shall consider whether any other mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(a), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) the defendant has previously been convicted of another offense involving espionage or treason for which either a sentence of life imprisonment or death was authorized by statute;

"(2) in the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security; and

"(3) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (b) or (c), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) the death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property in interstate commerce by explosives), section 1118 (prisoners serving life term), section 1201 (kidnaping), or section 2381 (treason) of this title, or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n)) (aircraft piracy);

"(2) the defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute;

"(3) the defendant has previously been convicted of two or more Federal or State offenses, punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person;

"(4) the defendant, in the commission of the offense, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense;

"(5) the defendant committed the offense in an especially heinous, cruel, or depraved manner;

"(6) the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value;

"(7) the defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value;

"(8) the defendant committed the offense after planning and premeditation to cause the death of a person or commit an act of terrorism;

"(9) the defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance;

"(10) the victim was particularly vulnerable due to old age, youth, or infirmity;

"(11) the defendant had previously been convicted of violating title II or title III of the Controlled Substances Act for which a sentence of 5 or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise;

"(12) the defendant violated section 408(c) of the Controlled Substances Act to the extent that the conduct described in section 408(c) of such Act was a violation of section 405 of such Act; or

"(13) the defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice-President-elect, the Vice-President-designate, or, if there is no Vice President, the officer next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if he is in the United States on official business; or

"(D) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

"(i) while he is engaged in the performance of his official duties;

"(ii) because of the performance of his official duties; or

"(iii) because of his status as a public servant.

For purposes of this subparagraph, a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

**"§ 3593. Special hearing to determine whether a sentence of death is justified**

"(a) NOTICE BY THE GOVERNMENT.—If, in a case involving an offense described in section 3591, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(1) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter and that the government will seek the sentence of death; and

"(2) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of or pleads guilty to an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty or pleads guilty to an offense under section 3591, no presentence report shall be prepared. At the sentencing hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under section 3592. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The government shall open the argument. The defendant shall be permitted to reply. The government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return a special finding as to each mitigating and aggravating factor, concerning which information is presented at the hearing, required to be considered under section 3592. The jury must find the existence of an aggravating factor by a unanimous vote, although it is unnecessary that there be a unanimous vote on any specific aggravating factor if a majority of the jury finds the existence of such a specific factor. A finding with respect to a mitigating factor may be made by one or more members of the jury and any member of the jury who finds the existence of a mitigating factor may consider such a factor established for purposes of this section, regardless of the number of jurors who consider that the factor has been established.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(a), an aggravating factor required to be considered under section 3592(b) is found to exist; or

"(2) an offense described in section 3591 (b) or (c), an aggravating factor required to be considered under section 3592(c) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether all the aggravating factors found to exist sufficiently outweigh all the mitigating factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, national origin, creed, or sex of the defendant was not involved in reaching the juror's individual decision.

**"§ 3594. Imposition of a sentence of death**

"Upon a finding under section 3593(e) that a sentence of death is justified, the court shall sentence the defendant to death. Upon a finding under section 3593(e) that a sentence of death is not justified, or under section 3593(d) that no aggravating factor required to be found exists, the court shall impose any sentence other than death that is authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without parole.

**"§ 3595. Review of a sentence of death**

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of an aggravating factor required to be considered under section 3592;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

**"§ 3596. Implementation of a sentence of death**

"A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.

**"§ 3597. Use of State facilities**

"(a) IN GENERAL.—A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"(b) EXCUSE OF AN EMPLOYEE ON MORAL OR RELIGIOUS GROUNDS.—No employee of any State department of corrections or the Federal Bureau of Prisons and no employee providing services to that department or bureau under contract shall be required, as a condition of that employment, or contractual obligation to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participation in executions' includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.".

(b) REPEAL.—Sections 3566 and 3567 of title 18, United States Code, are hereby repealed.

(c) AMENDMENTS TO CHAPTER ANALYSIS.—(1) The chapter analysis of part II of title 18, United States Code, is amended by adding the following new item after the item relating to chapter 227:

"228. Death sentence ..... 3591.".

(2) The section analysis of chapter 227 of title 18, United States Code, is amended by amending the items relating to sections 3566 and 3567 to read as follows:

"3566. Repealed.

"3567. Repealed.".

SEC. 103. CONFORMING CHANGES IN TITLE 18.

(a) AIRCRAFTS AND MOTOR VEHICLES.—Section 34 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the section.

(b) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking the period at the end of the section and inserting ", except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.".

(c) EXPLOSIVE MATERIALS.—(1) Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(2) Section 844(f) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(3) Section 844(i) of title 18, United States Code, is amended by striking the words "as provided in section 34 of this title".

(d) MURDER.—(1) The second undesignated paragraph of section 1111(b) of title 18, United States Code, is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;".

(2) Section 1116(a) of title 18, United States Code, is amended by striking "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and".

(e) KIDNAPPING.—Section 1201(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(f) NONMAILABLE INJURIOUS ARTICLES.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the paragraph.

(g) PRESIDENTIAL ASSASSINATIONS.—Subsection (c) of section 1751 of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to kill the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President.".

(h) WRECKING TRAINS.—The second to the last undesignated paragraph of section 1992 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the section.

(i) BANK ROBBERY.—Section 2113(e) of title 18, United States Code, is amended by striking "or punished by death if the verdict of the jury shall so direct" and inserting "or if death results shall be punished by death or life imprisonment".

(j) HOSTAGE TAKING.—Section 1203(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(k) RACKETEERING.—(1) Section 1952A(a) of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting "and if death results, shall be punished by death or

life imprisonment, or shall be fined not more than $250,000, or both".

(2) Section 1952B(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine of not more than $250,000, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine of not more than $250,000, or both;".

(l) GENOCIDE.—Section 1091(b)(1) of title 18, United States Code, is amended by striking "a fine of not more than $1,000,000 or imprisonment for life," and inserting ", where death results, a fine of not more than $1,000,000, or imprisonment for life or a sentence of death,".

SEC. 104. CONFORMING AMENDMENT TO FEDERAL AVIATION ACT OF 1954.

Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1473), is amended by striking subsection (c).

SEC. 105. CONTROLLED SUBSTANCES ACT.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by striking subsections (g) through (r).

SEC. 106. APPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

The provisions of chapter 228 of title 18, United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801).

SEC. 107. MURDER BY A FEDERAL PRISONER.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 1118. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal correctional institution under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without possibility of parole.

"(b) For the purposes of this section—

"(1) the term 'Federal correctional institution' means any Federal prison, Federal correctional facility, Federal community program center, or Federal halfway house;

"(2) the term 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death; and

"(3) the term 'murders' means committing first degree or second degree murder as defined by section 1111 of this title.".

(b) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following:

"1118. Murder by a Federal prisoner.".

## TITLE II—REFORM OF PROCEDURES FOR COLLATERAL REVIEW OF CRIMINAL JUDGMENTS

SEC. 201. SHORT TITLE.

This title may be cited as the "Reform of Federal Intervention in State Proceedings Act of 1989".

SEC. 202. FINALITY OF DETERMINATION.

Section 2244 of title 28, United States Code, is amended by adding at the end thereof the following new subsections:

"(d) When a person in custody pursuant to the judgment of a State court fails to raise a claim in State proceedings at the time or in the manner required by State rules of procedure, the claim shall not be entertained in an application for a writ of habeas corpus unless actual prejudice resulted to the applicant from the alleged denial of the Federal right asserted and—

"(1) the failure to raise the claim properly or to have it heard in State proceedings was the result of State action in violation of the Constitution or laws of the United States;

"(2) the Federal right asserted was newly recognized by the Supreme Court subsequent to the procedural default and is retroactively applicable; or

"(3) the factual predicate of the claim could not have been discovered through the exercise of reasonable diligence prior to the procedural default.

"(e) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of the following times:

"(1) the time at which State remedies are exhausted;

"(2) the time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action;

"(3) the time at which the Federal right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.".

SEC. 203. APPEAL.

Section 2253 of title 28, United States Code, is amended to read as follows:

"§ 2253. Appeal

"(a) In a habeas corpus proceeding or a proceeding under section 2255 of this title before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

"(b) There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

"(c) An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, or from the final order in a proceeding under section 2255 of this title, unless a circuit justice or judge issues a certificate of probable cause.".

SEC. 204. FEDERAL RULES OF APPELLATE PROCEDURE.

Federal rule of appellate procedure 22 is amended to read as follows:

"RULE 22

"HABEAS CORPUS AND § 2255 PROCEEDINGS

"(a) Application for an Original Writ of Habeas Corpus. An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

"(b) Necessity of Certificate of Probable Cause for Appeal. In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and in a motion proceeding pursuant to section 2255 of title 28, United States Code, an appeal by the applicant or movant may not proceed unless a circuit judge issues a certificate of probable cause. If a request for a certificate of probable cause is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or the government or its representative, a certificate of probable cause is not required.".

SEC. 205. STATE CUSTODY; REMEDIES IN FEDERAL COURTS.

Section 2254 of title 28, United States Code, is amended by—

(1) redesignating subsections "(e)" and "(f)" as subsections "(f)" and "(g)", respectively;

(2) amending subsection (b) to read as follows:

"(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the States.";

(3) by redesignating subsection "(d)" as subsection "(e)", and amending it to read as follows:

"(e) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a full and fair determination of a factual issue made in the case by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting this presumption by clear and convincing evidence."; and

(4) by adding a new subsection (d) as follows:

"(d) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that has been fully and fairly adjudicated in State proceedings.".

SEC. 206. FEDERAL CUSTODY; REMEDIES ON MOTION ATTACKING SENTENCE.

Section 2255 of title 28, United States Code, is amended by striking the second paragraph and the penultimate paragraph thereof, and by adding at the end thereof the following new paragraphs:

"When a person fails to raise a claim at the time or in the manner required by Federal rules of procedure, the claim shall not be entertained in a motion under this section unless actual prejudice resulted to the movant from the alleged denial of the right asserted and—

"(1) the failure to raise the claim properly, or to have it heard, was the result of governmental action in violation of the Constitution or laws of the United States;

"(2) the right asserted was newly recognized by the Supreme Court subsequent to the procedural default and is retroactively applicable; or

"(3) the factual predicate of the claim could not have been discovered through the exercise of reasonable diligence prior to the procedural default.

"A two-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of the following times:

"(1) the time at which the judgment of conviction becomes final;

"(2) the time at which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, where the movant was prevented from making a motion by such governmental action;

"(3) the time at which the right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.".

## TITLE III—EXCLUSIONARY RULE LIMITATION ACT OF 1989

### SEC. 301. SHORT TITLE.

This title may be cited as the "Exclusionary Rule Limitation Act of 1989".

### SEC. 302. AMENDMENT TO TITLE 18.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding the following two sections:

**"§ 3508. Limitation of the fourth amendment exclusionary rule**

"Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was undertaken in an objectively reasonable belief that it was in conformity with the fourth amendment. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable belief, unless the warrant was obtained through intentional and material misrepresentation.

**"§ 3509. General limitation of the exclusionary rule**

"Except as specifically provided by statute or rule of procedure, evidence which is otherwise admissible shall not be excluded in a proceeding in a court of the United States on the ground that the evidence was obtained in violation of a statute or rule of procedure, or of a regulation issued pursuant thereto.".

(b) TABLE OF SECTIONS.—The table of sections of chapter 223 of title 18, United States Code, is amended by adding at the end thereof:

"3508. Limitation of the fourth amendment exclusionary rule.
"3509. General limitation of the exclusionary rule.".

## TITLE IV—FIREARMS AND RELATED AMENDMENTS

### SEC. 401. PROHIBITION AGAINST TRANSFERRING FIREARMS TO NONRESIDENTS.

Section 922(a)(5) of title 18, United States Code, is amended by striking out "resides" and all that follows through "(or other than that in which its place of business is located if the transferor is a corporation or other business entity);" and inserting in lieu thereof "does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides;".

### SEC. 402. COMMERCE NEXUS FOR TRAFFICKING IN STOLEN FIREARMS.

(a) STOLEN FIREARMS AND AMMUNITION.—Section 922(j) of title 18, United States Code, is amended by striking out "or which constitutes," and inserting in lieu thereof "which constitutes, or which has been shipped or transported in,".

(b) MANUFACTURER'S SERIAL NUMBER.—Section 922(k) of title 18, United States Code, is amended by inserting "or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce" after "altered".

### SEC. 403. TECHNICAL AMENDMENTS.

(a) REDESIGNATION.—Section 923(d)(1)(B) of title 18, United States Code, is amended by striking out "(h)" and inserting in lieu thereof "(n)";

(b) INCLUSION OF POSSESSION.—Section 925(a)(1) of title 18, United States Code, is amended by inserting "possession," before "or importation";

(c) DISABILITY.—Section 925(c) of title 18, United States Code, is amended by striking out "conviction" the first and third place such term appears and inserting in lieu thereof "disability" and by striking out "by reason of such a conviction";

(d) ELIMINATION OF PAROLE REFERENCE.—Section 924(a) of title 18, United States Code, is amended by striking out ", and shall become eligible for parole as the Parole Commission shall determine" in both places those words appear. This amendment shall be effective with respect to any offense committed after November 1, 1987.

### SEC. 404. DISPOSITION OF FORFEITED FIREARMS.

Subsection 5872(b) of title 26, United States Code, is amended to read as follows:

"(b) DISPOSAL.—In the case of the forfeiture of any firearm, where there is no remission or mitigation of forfeiture thereof—

"(1) the Secretary may retain the firearm for official use of the Department of the Treasury or, if not so retained, offer to transfer the weapon without charge to any other executive department or independent establishment of the Government for official use by it and, if the offer is accepted, so transfer the firearm;

"(2) if the firearm is not disposed of pursuant to paragraph (1), is a firearm other than a machinegun or a firearm forfeited for a violation of this chapter, is a firearm that in the opinion of the Secretary is not so defective that its disposition pursuant to this paragraph would create an unreasonable risk of a malfunction likely to result in death or bodily injury, and is a firearm which (in the judgment of the Secretary, taking into consideration evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less) derives a substantial part of its monetary value from the fact that it is novel, rare, or because of its association with some historical figure, period, or event the Secretary may sell such firearm, after public notice, at public sale to a dealer licensed under the provisions of chapter 44 of title 18, United States Code;

"(3) if the firearm has not been disposed of pursuant to paragraphs (1) or (2), the Secretary shall transfer the firearm to the Administrator of General Services, General Services Administration, who shall destroy or provide for the destruction of such firearm; and

"(4) no decision or action of the Secretary pursuant to this subsection shall be subject to judicial review.".

### SEC. 405. CLARIFICATION OF "BURGLARY" UNDER THE ARMED CAREER CRIMINAL STATUTE.

Section 924(e)(2) of title 18, United States Code, is amended by adding a new subparagraph, as follows:

"(D) the term 'burglary' means any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is the property of another with intent to engage in conduct constituting a Federal or State offense.".

### SEC. 406. SERIOUS DRUG OFFENSES BY JUVENILES AS ARMED CAREER CRIMINAL ACT PREDICATES.

Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking out "or" at the end of clause (i);

(2) by striking out "and" at the end of clause (ii) and inserting in lieu thereof "or"; and

(3) by adding a new clause (iii), as follows:

"(iii) any act of juvenile delinquency that if committed by an adult would be a serious drug offense described in this paragraph; and".

### SEC. 407. CLARIFICATION OF DEFINITION OF CONVICTION.

Section 921(a)(20) of title 18, United States Code, is amended by adding at the end the following: "Notwithstanding the previous sentence, if the conviction was for a violent felony involving the threatened or actual use of a firearm or explosive or was for a serious drug offense, as defined in section 924(e) of this title, the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, expunction or restoration of civil rights".

### SEC. 408. PERMITTING CONSIDERATION OF PRETRIAL DETENTION FOR CERTAIN FIREARMS AND EXPLOSIVES OFFENSES.

Section 3142(f)(1) of title 18, United States Code, is amended by—

(1) striking out "or" before subparagraph (D);

(2) redesignating subparagraph (D) as subparagraph (E); and

(3) inserting a new subparagraph (D) as follows:

"(D) an offense under 18 U.S.C. 844(a) that is a violation of 18 U.S.C. 842 (d), (h), or (i), or an offense under 18 U.S.C. 924(a) that is a violation of 18 U.S.C. 922 (d), (g), (h), (i), (j), or (o); or".

### SEC. 409. ENHANCED PENALTY FOR USE OF SEMIAUTOMATIC FIREARM DURING A CRIME OF VIOLENCE OR DRUG TRAFFICKING OFFENSE.

(a) IN GENERAL.—Section 924(c) of title 18, United States Code, is amended by inserting "and if the firearm is a semiautomatic firearm, to imprisonment for ten years," after "sentenced to imprisonment for five years,";

(b) DEFINITION.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(25) the term 'semiautomatic firearm' means any repeating firearm which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.".

SEC. 410. SMUGGLING FIREARMS IN AID OF DRUG TRAFFICKING.

Section 924 of title 18, United States Code, is amended by adding at the end thereof the following:

"(h) Whoever, with the intent to engage in, or to promote, conduct which—

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substances (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3));

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned for not more than ten years, fined under this title, or both.".

SEC. 411. THEFT OF FIREARMS AND EXPLOSIVES.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end the following:

"(i) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not less than two or more than ten years, and may be fined under this title.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(k) Whoever steals any explosives materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not less than two or more than ten years, and may be fined under this title.".

SEC. 412. BAR ON SALE OF FIREARMS AND EXPLOSIVES TO OR POSSESSION OF FIREARMS AND EXPLOSIVES BY PERSONS CONVICTED OF A VIOLENT OR SERIOUS DRUG MISDEMEANOR.

(a) SALE OR DISPOSAL.—Sections 842(d)(2) and 922(d)(1) of title 18, United States Code, are each amended by inserting ", or has been convicted in any court of any crime of violence or serious misdemeanor drug or narcotic offense (as defined in section 404(c) of the Controlled Substances Act, 21 U.S.C. 844(c)). It is a bar to a prosecution under this section that the conviction for a serious misdemeanor drug or narcotic offense occurred prior to the date of enactment of this Act" after "crime punishable by imprisonment for a term exceeding one year";

(b) SHIPMENT.—Sections 842(i)(1) and 922(g)(1) of title 18, United States Code, are each amended by inserting "or has been convicted in any court of any crime of violence or serious misdemeanor drug or narcotic offense (as defined in section 404(c) of the Controlled Substances Act, 21 U.S.C. 844(c)). It is a bar to a prosecution under this section that the conviction for a serious misdemeanor drug or narcotic offense occurred prior to the date of enactment of this Act" after "crime punishable by imprisonment for a term exceeding one year";

(c) DEFINITIONS.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(q) For purposes of this section and section 842 of this title—

"(1) the term 'crime of violence' means an offense that has as an element the use of physical force against the person of another with intent to cause bodily harm to such person; and

"(2) the term 'serious misdemeanor' means an offense for which the maximum term of imprisonment is greater than six months.".

SEC. 413. POSSESSION OF A FIREARM OR AN EXPLOSIVE DURING THE COMMISSION OF A FELONY.

(a) FIREARMS.—Section 924(c) of title 18, United States Code, is amended by striking out "uses or carries a firearm" and inserting in lieu thereof "uses, carries, or otherwise possesses a firearm".

(b) EXPLOSIVES.—Section 844(h) of title 18, United States Code, is amended by striking out "carries an explosive during" and inserting in lieu thereof "carries or otherwise possesses an explosive during".

SEC. 414. MANDATORY REVOCATION OF SUPERVISED RELEASE FOR POSSESSION OF A FIREARM.

Section 3583 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the court has provided, as a condition of supervised release, that the defendant refrain from possessing a firearm, and if the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of supervised release, the court shall, after a hearing pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation, revoke the term of supervised release and, subject to the limitations of paragraph (e)(3) of this section, require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision.".

SEC. 415. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.

Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (a)(1)(B), by striking out "(a)(6),"; and

(2) in subsection (a)(2), by inserting "(a)(6)," after "subsections".

SEC. 416. INCREASED PENALTY FOR SECOND OFFENSE OF USING AN EXPLOSIVE TO COMMIT A FEDERAL FELONY.

Section 844(h) of title 18, United States Code, is amended by striking out "ten years" and inserting in lieu thereof "twenty years".

SEC. 417. AMENDMENTS TO CHAPTER 44 OF TITLE 18, UNITED STATES CODE, RELATING TO THE DOMESTIC ASSEMBLY OF NONIMPORTABLE FIREARMS.

(a) DEFINITION.—Section 921(a) of title 18, United States Code is amended by adding at the end of thereof a new paragraph as follows:

"(26) The term 'semiautomatic rifle' means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.".

(b) ASSEMBLY OF A FIREARM.—Section 922 of title 18, United States Code is amended by adding at the end thereof a new subsection as follows:

"(s) It shall be unlawful for any person to assemble, from imported parts, any semiautomatic rifle or any semiautomatic shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

"(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof;

"(2) assembly operations for any such rifle or shotgun by a licensed manufacturer that were taking place in the United States before May 15, 1989;

"(3) the assembly of any such rifle or shotgun for the purpose of exportation;

"(4) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Secretary; or

"(5) the assembly of any rifle or shotgun that was lawfully imported.".

(c) REDESIGNATION.—Section 924(a)(1)(B) of title 18, United States Code is amended by striking out "or (k)" and inserting in lieu thereof "(k), or (s)".

SEC. 418. IN APPLICABILITY OF ENHANCED PENALTY IN PRESENCE OF MITIGATING CIRCUMSTANCES.

The amendment of section 409(a) of this title shall not apply in sentencing a defendant who establishes that—

(1) he used the firearm to protect himself or another person from an immediate danger of death or injury arising from the unlawful use or threat of force by the person against whom the firearm was used;

(2) he used the firearm to protect the person or property of himself or another against actually occurring or immediately threatened felonious conduct by the person against whom the firearm was used; or

(3) he used the firearm to effect the arrest or prevent the escape of a person in immediate flight after the commission of a felony. Notwithstanding the foregoing, this section is not applicable if the defendant engaged or participated in criminal conduct that gave rise to the occasion for the defendant's use of the firearm.

## TITLE V—DRUG TESTING OF DEFENDANTS ON POST-CONVICTION RELEASE

SEC. 501. DRUG TESTING PROGRAM.

(a) IN GENERAL.—Chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3608. Drug testing of defendants on post-conviction release

"The Director of the Administrative Office of the United States Courts shall, as soon as is practicable after the effective date of this section, establish a program of drug testing of criminal defendants on post-conviction release. In each district where it is feasible to do so, the chief probation officer shall arrange for the drug testing of defendants on post-conviction release pursuant to a conviction for a felony or other offense described in section 3563(a)(4) of this title.".

(b) SECTION ANALYSIS.—The section analysis for chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following:

"3608. Drug testing of defendants on post-conviction release".

SEC. 502. OTHER AMENDMENTS.

(a) PROBATION.—Section 3563(a) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking out "and";

(2) in paragraph (3), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding a new paragraph (4), as follows:

"(4) for a felony, an offense involving a firearm as defined in section 921 of this title, a drug or narcotic offense as defined in section 404(c) of the Controlled Substances Act (21 U.S.C. 844(c)), or a crime of violence as defined in section 16 of this title, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated upon request of the Director of the Administrative Office of the United States Court, or the Director's designee. No action may be taken against a defendant pursuant to a drug test administered in accordance with this paragraph or sections 3583(d) or 4209(a) of this title, unless the drug test confirmation is a urine drug test confirmed using gas chromatography techniques or such test as the Director of the Administrative Office of the United States Court after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy.".

(b) SUPERVISED RELEASE.—Section 3583(d) of title 18, United States Code, is amended by inserting after the first sentence the following: "For a defendant convicted of a felony or other offense described in section 3563(a)(4) of this title, the court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title".

(c) PAROLE.—Section 4209(a) of title 18, United States Code, is amended by inserting after the first sentence the following: "If the parolee has been convicted of a felony or other offense described in section 3563(a)(4) of this title, the Commission shall also impose as a condition of parole that the parolee refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the Commission) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title."

## TITLE VI—PUBLIC CORRUPTION

**SEC. 601. SHORT TITLE.**

This title may be cited as the "Anti-Corruption Act of 1989".

**SEC. 602. OFFENSE.**

Chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new section:

**"§ 225. Public corruption**

"(a) Whoever, in a circumstance described in subsection (d), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the honest services of an official or employee of such State, political subdivision, or Indian tribal government shall be fined under this title, or imprisoned for not more than 20 years, or both.

"(b) Whoever, in a circumstance described in subsection (d), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of a fair and impartially conducted election process in any primary, run-off, special or general election—

"(1) through the procurement, casting, or tabulation of ballots that are materially false, fictitious, or fraudulent or that are invalid, under the laws of the State in which the election is held:

"(2) through paying or offering to pay any person for voting:

"(3) through the procurement or submission of voter registrations that contain false material information, or omit material information; or

"(4) through the filing of any report required to be filed under State law regarding an election campaign that contains false material information or omits material information,

shall be fined under this title or imprisoned for not more than 10 years, or both.

"(c) Whoever, being a public official or an official or employee of a State, political subdivision of a State, or Indian tribal government in a circumstance described in subsection (d), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the right to have the affairs of the State, political subdivision, or Indian tribal government conducted on the basis of complete, true, and accurate material information, shall be fined under this title or imprisoned for not more than 20 years, or both.

"(d) The circumstances referred to in subsections (a), (b), and (c) are that—

"(1) for the purpose of executing or concealing such scheme or artifice or attempting to do so, the person so doing—

"(A) places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing:

"(B) transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds;

"(C) transports or causes to be transported any person or thing, or induces any person to travel in or to be transported in, interstate or foreign commerce; or

"(D) uses or causes to use of any facility of interstate or foreign commerce;

"(2) the scheme or artifice affects or constitutes an attempt to affect in any manner or degree, or would if executed or concealed so affect, interstate or foreign commerce; or

"(3) as applied to an offense under subsection (b), an objective of the scheme or artifice is to secure the election of an official who, if elected, would have some authority over the administration of funds derived from an Act of Congress totaling $10,000 or more during the 12-month period immediately preceding or following the election or date of the offense.

"(e) Whoever deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of the United States of the honest services of a public official or person who has been selected to be a public official shall be fined under this title or imprisoned for not more than 20 years, or both.

"(f) Whoever being an official, or public official, or person who has been selected to be a public official, directly or indirectly, discharges, demotes, suspends, threatens, harasses, or, in any manner, discriminates against any employee or official of the United States or any State or political subdivision of such State, or endeavors to do so, in order to carry out or to conceal any scheme or artifice described in this section, shall be fined under this title or subject to imprisonment of up to 5 years or both.

"(g)(1) Any employee or official of the United States or any State or political subdivision of such State who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of lawful acts done by the employee as a result of a violation of subsection (e) or because of actions by the employee on behalf of himself or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such a prosecution) may in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, three times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including reasonable litigation costs and reasonable attorney's fees.

"(2) An individual is not eligible for such relief if that individual participated in the violation of this section with respect to which such relief would be awarded.

"(3) A civil action or proceeding authorized by this subsection shall be stayed by a court upon the certification of an attorney for the Government, stating that such action or proceeding may adversely affect the interests of the Government in an ongoing criminal investigation or proceeding. The attorney for the Government shall promptly notify the court when the stay may be lifted without such adverse effects.

"(h) For purposes of this section—

"(1) the term 'State' means a State of the United States, the District of Columbia, Puerto Rico, and any other commonwealth, territory, or possession of the United States;

"(2) the terms 'public official' and 'person who has been selected to be a public official'; have the meaning set forth in section 201 of this title; the terms 'public official', and 'person who has been selected to be a public official' shall also include any person acting or pretending to act under color of official authority;

"(3) the term 'official' includes—

"(A) any person employed by, exercising any authority derived from, or holding any position in an Indian tribal government or the government of a State or any subdivision of the executive, legislative, judicial, or other branch of government thereof, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established and subject to control by a government or governments for the execution of a governmental or intergovernmental program;

"(B) any person acting or pretending to act under color of official authority; and

"(C) includes any person who has been nominated, appointed or selected to be an official or who has been officially informed that he or she will be so nominated, appointed or selected;

"(4) the term 'under color of official authority' includes any person who represents that he or she controls, is an agent of, or otherwise acts on behalf of an official,

public official, and person who has been selected to be a public official; and

"(5) the term 'uses any facility of interstate or foreign commerce' includes the intrastate use of any facility that may also be used in interstate or foreign commerce.".

SEC. 603. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF SECTIONS.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following item:

"225. Public Corruption.".

(b) RICO.—Section 1961(1) of title 18, United States Code is amended by inserting "section 225 (relating to public corruption)," after "section 224 (relating to sports bribery),".

(c) INTERRUPTION OF COMMUNICATIONS.—Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 225 (relating to public corruption)," after "section 224 (bribery in sporting contests),".

SEC. 604. INTERSTATE COMMERCE.

(a) IN GENERAL.—Section 1343 of title 18, United States Code, is amended by—

(1) striking "transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds" and inserting "uses or causes to be used any facility of interstate of foreign commerce"; and

(2) inserting "or attempting to do so" after "for the purpose of executing such scheme or artifice".

(b) CONFORMING AMENDMENTS.—(1) The heading of section 1343 of title 18, United States Code, is amended by striking "Fraud by wire, radio, or television" and inserting "Fraud by use of facility of interstate commerce".

(2) The chapter analysis for chapter 63 of title 18, United States Code, is amended by striking the analysis for section 1343 and inserting the following:

"1343. Fraud by use of facility of interstate commerce.".

SEC. 605. NARCOTICS-RELATED PUBLIC CORRUPTION.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by inserting after section 219 the following new section:

**"§ 220. Narcotics and public corruption**

"(a) Any public official who, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person in return for—

"(1) being influenced in the performance or nonperformance of any official act; or

"(2) being influenced to commit or to aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State;

shall be guilty of a class B felony.

"(b) Any person who, directly or indirectly, corruptly gives, offers, or promises anything of value to any public official, or offers or promises any public official to give anything of value to any other person, with intent—

"(1) to influence any official act;

"(2) to influence such public official to commit or aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State; or

"(3) to influence such public official to do or to omit to do any act in violation of such official's lawful duty;

shall be guilty of a class B felony.

"(c) There shall be Federal jurisdiction over an offense described in this section if such offense involves, is part of, or is intended to further or to conceal the illegal possession, importation, manufacture, transportation, or distribution of any controlled substance or controlled substance analogue.

"(d) For the purpose of this section—

"(1) the term 'public official' means—

"(A) an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof in any official function, under or by authority of any such department, agency, or branch of Government;

"(B) a juror;

"(C) an officer or employee or person acting for or on behalf of the government of any State, territory, or possession of the United States (including the District of Columbia), or any political subdivision thereof, in any official function, under or by the authority of any such State, territory, possession, or political subdivision; or

"(D) any person who has been nominated or appointed to be a public official as defined in subparagraph (A), (B), or (C), or has been officially informed that he or she will be so nominated or appointed;

"(2) the term 'official act' means any decision, action, or conduct regarding any question, matter, proceeding, cause, suit, investigation, or prosecution which may at any time be pending, or which may be brought before any public official, in such official's official capacity, or in such official's place of trust or profit; and

"(3) the terms 'controlled substance' and 'controlled substance analogue' have the meaning set forth in section 102 of the Controlled Substances Act.".

"(b) CONFORMING AMENDMENTS.—(1) Section 1961(1) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "Section 201 (relating to bribery),"; and

"(2) Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "section 201 (bribery of public officials and witnesses),".

"(c) SECTION ANALYSIS.—The section analysis at the beginning of chapter 11, title 18, United States Code, is amended by inserting after section 219 the following:

"220. Narcotics and public corruption.".

## TITLE VII—FACILITATION OF UNDERCOVER INVESTIGATIONS

SEC. 701. FACILITATION OF UNDERCOVER INVESTIGATIONS.

"(a) IN GENERAL.—Chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following new section:

**"§ 21. Stolen or Counterfeit Nature of Property for Certain Crimes Defined**

"(a) Wherever in this title it is an element of an offense that any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated and that the defendant knew that the property was of such character, such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated.

"(b) For purposes of this section, the term 'official representation' means any representation made by a Federal law enforcement officer (as defined in section 115 of this title) or by another person at the direction or with the approval of such an officer.".

"(c) TABLE OF SECTIONS.—The table of sections for chapter 1 of title, 18, United States Code, is amended by adding at the end thereof the following:

**"§ 21. Stolen or Counterfeit Nature of Property for Certain Crimes Defined.".**

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By Mr. HARKIN (for himself, Mr. MCCAIN, Mr. INOUYE, and Mr. SIMON):

S. 1974. A bill to require new televisions to have built-in decorder circuitry; to the Committee on Commerce, Science, and Transportation.

TELEVISION DECODER CIRCUITRY ACT

● Mr. HARKIN. Mr. President, I rise to introduce the Television Decoder Circuitry Act of 1989. Cosponsors of this legislation include Senators MCCAIN, INOUYE, and SIMON. Today, television has become a pervasive and integral part of sharing information in American society. Television is not only a medium of entertainment, it also provides a vital link to the world, providing news, and serving an ever increasing educational role. Unfortunately, many Americans with hearing impairments are denied full and equal access to this critical source of communication and information which is routinely taken for granted by the hearing population.

With the availability of closed-television, deaf and hard of hearing individuals have access to the information provided via the television. Unfortunately, because of the current high cost of decoders, the gap between the number of individuals whose homes are capable of receiving captions and the number of individuals who can benefit from receiving captions is immense.

The Television Decoder Circuitry Act of 1989 addresses this situation by requiring televisions with screens 13 inches or larger to have built-in decoder circuitry to display closed-captioned television transmissions. This built-in decoder circuitry will greatly increase the audience that can be served by closed-caption television by dramatically reducing the cost of the decoder which is necessary to have to receive closed-captioned television. An increased market will be a real incentive to the television broadcasting industry to provide more closed-captioned programming. Thus, this legislation is the critical next step to establishing a self-sustaining captioning industry.

HISTORY OF CAPTIONING

Until the 1970's, deaf and hearing-impaired persons had no access to television. The development of captioned television has made it possible for millions of persons with hearing impairments to see what television has to

say. Beginning in the early 1970's, open captions were available on a few public television programs. These were produced by the Caption Center at Boston's public TV station, WGBH, with Federal funding. Open captions appear on all television receivers and cannot be turned off by the viewer. Since it was assumed that hearing viewers would object to widespread open captioning, the Public Broadcasting Service [PBS], with Federal funding, began developing closed captioning. Closed captions are included in a video signal as invisible data and are seen only by users of special decoding devices.

In 1976, the Federal Communication Commission [FCC] reserved line 21 of the TV broadcast signal for transmitting closed captions, but did not impose requirements for mandatory captioning. In 1979, the National Captioning Institute [NCI] was founded with Federal startup funds as a nonprofit corporation, and was charged with providing closed captioning services to the television industry using line 21 technology. In 1980, close-captioned TV services began as a cooperative agreement between NCI, the American Broadcasting Co. [ABC], the National Broadcasting Company [NBC], PBS, and Sears, Roebuck & Co. ABC, NBC, and PBS agreed to caption up to 16 hours of their programming per week and Sears agreed to manufacture and sell decoders. In 1984, the Columbia Broadcasting System, Inc. [CBS] agreed to transmit closed captions using both line 21 and its own teletext technologies.

Currently, the Federal Government funds about 40 percent of closed captioning services. Federal funds are also provided through the Department of Education for a variety of captioning activities, including captioning of local and national news, children's programs, syndicated programs, sports programming, prime-time movies, and activities for public awareness of captioning.

NEED FOR LEGISLATION

During this decade, the amount of closed captioned television programming has dramatically increased. As I previously mentioned, in the early eighties, only 16 hours of prime-time television was close-captioned. The Commission on the Education of the Deaf reported that at the end of 1987, there were more than 125 hours of weekly programming closed captioned. This year, 100 percent of prime-time television is captioned, as are most major sporting events. However, the maintenance and growth of closed-captioned television programming depends on the wide use of the decoder.

ABC told the Commission that if:

Decoders were more widely used and viewership to grow, the marketplace can be relied upon to increase captioning because more viewers would be reached at a decreased per capita cost. Increased decoder ownership—not just more captioning—is required for a strong, self-sustaining captioning service.

NCI concurs that the future of closed captioned TV service is:

Inextricably tied to the number of households who access it. In order to eliminate the need for ongoing federal funds and to make the captioned service economically viable and self-sustaining, captioning must reach into at least 500,000 homes and ideally 1,000,000 by 1990.

The Commission on the Education of the Deaf cited that the low number of decoders purchased by consumers resulted in a lack of commercial incentives for private funding of captioning services and was one of the main impediments to a self-sustaining captioning industry. Since 1979, only 170,000 decoders have been sold. In order for the networks to maintain the current level of close-captioned programming, approximately 1 million homes need to be able to receive closed captioned broadcasts.

Thus, by installing a very low cost decoder module in televisions, more decoders will be in more homes. With captioned television available in more homes, the networks are given the incentive to close-caption more of their programs.

AUDIENCE

The potential audience for closed-captioned programming is immense. Over 24 million people in the United States are deaf or hearing-impaired. Over 38 percent of older Americans are hearing impaired. However, these populations are not the only ones who can benefit from closed-captioned television.

With greater exposure to closed-captioned television, we can facilitate the acquisition of the English language for deaf and hard of hearing youth and adults, and thus improve their reading skills. Language acquisition has been closely linked with learning skills. I am also looking forward to seeing the use of captioned television as a means to improve the literacy skills of hearing persons whose first language is English and of those who are learning English as a second language.

Several studies have indicated that exposure to closed-captioned television improves students' word recognition, reading comprehension, and language retention skills and was a motivational tool for learning. Captioned television gives the student reinforcement as to what is actually being said. He or she sees what is being said at the same time it is said. We all learn language through exposure and repetition of words. With the increased availability of captioned television, I think we will see more and more of a connection between access to captions and learning.

But much of this large audience will not benefit from closed-captioned television because of the cost of purchasing a separate decoder. Today, a consumer must buy a separate decoder and connect it to a television in order to receive the closed-captioned television service. The cost of these separate decoders is between $160 and $200. Even at these prices, many of the potential audience cannot afford decoders. Moreover, many older Americans have been reluctant to purchase a separate decoder because of the stigma attached to that purchase.

PROVISIONS OF THE BILL

Today, technology is available to ensure an increased market for closed-captioned television. That technology would enable decoder circuitry to be built right into new television sets at a nominal cost by the end of 1991. Several companies are currently working on this technology, and have indicated that this built-in decoder circuitry chip can be manufactured for as low as $5.

This bill would require that all new televisions with screens 13 inches or larger, whether manufactured in the United States or imported for use in the United States, be equipped with this built-in decoder circuitry designed to display closed captioned television transmissions. This bill would further require the FCC to promulgate rules providing performance and display standards for this built-in decoder circuitry. Such rules shall require that all such built-in circuitry be able to receive and display closed captioning which have been transmitted by way of line 21 of the vertical blanking interval. The act provides that this decoder circuitry will be built into televisions by October 1, 1992.

CONCLUSION

The Television Decoder Circuitry Act of 1989 is endorsed by key organizations representing deaf and hearing impaired people, including Gallaudet University, the National Association of the Deaf, the Alexander Graham Bell Association for the Deaf, the American Speech-Language-Hearing Association, the American Society for Deaf Children, the National Center for Law and the Deaf, and Self-Help-for-the-Hard-of-Hearing. In addition, this legislation has been endorsed by key literacy groups including U.S. Program of Laubach Literacy International, and the Literacy Volunteers of America, Inc.

Mr. President, this bill is designed to ensure that captioned television reaches the millions of Americans who could benefit from this technology and to enable the captioning industry to become self-sustaining. I urge my colleagues to join me in supporting this legislation.●

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By Mr. JOHNSTON (for himself, Mr. GORE, and Mr. MCCLURE):

S. 1976. A bill to provide for continued United States leadership in high-

performance computing; to the Committee on Energy and Natural Resources.

DEPARTMENT OF ENERGY HIGH-PERFORMANCE COMPUTING ACT

● Mr. JOHNSTON. Mr. President, today I introduce a bill entitled the "Department of Energy High-Performance Computing Act of 1989." The bill directs the Department of Energy to develop a long-range strategy for research and development of high-performance computing. The Secretary of Energy is directed to establish a national research and education computer network. The bill stimulates research on software technology and promotes the rapid distribution of computer software. The development of high-performance computing systems is accelerated. Finally, the Department of Energy's investment in basic research is increased.

The United States created the supercomputer industry. U.S. companies are the leaders in world supercomputer markets. However, United States firms are increasingly vulnerable to a focused strategy by the Japanese.

The three Japanese supercomputer companies dwarf the size of the three largest United States companies. The highest performing memory components useful for supercomputers are no longer made in the United States. They are made in Japan and are not available for export to the United States. However, the Japanese computers using the memory components are available for export.

Japan has nearly twice as much supercomputer power in their universities as does the United States. Yet, their student and faculty population is only one-sixth the size of that in the United States. In Japan, the Government directly encourages supercomputer research and use. Research and development in the United States has traditionally been diverse and uncoordinated.

To overcome the United States vulnerability in supercomputers will require an integrated, cooperative effort among industry, universities and Government. A solution will require coordination by Government to a degree seldom achieved in this country in peacetime.

Senator GORE has already introduced a comprehensive bill to establish a national framework to direct our Nation's supercomputer research. I applaud his efforts. Today, Senator MCCLURE and I join together with him. The bill we introduce today complements his. Together we hope to achieve legislation that will establish the level of coordination needed to assure this Nation's continued leadership in supercomputers.

The Department of Energy has always had a key role in high-performance computing research. In 1976, when Seymour Cray emerged with the world's first real supercomputer, it was the Los Alamos National Laboratory that purchased the new computer for $13 million. For some time, only the U.S. Government purchased Cray's machines. Today, however, supercomputers are widely used by both Government and industry. Minisupercomputers are available for as little as $100,000. By 1992, the supercomputer market will total well over $3 billion.

My bill authorizes the Secretary of Energy to immediately develop and implement a long-range plan for high-performance computing at the Department of Energy. The bill sets out the Department of Energy's role in the national high performance computing program established by Senator GORE's bill. The Secretary will cooperate with other Federal agencies to establish a multi-gigabit-per-second national research and education computer network by 1996. The network will link Government, industry, and the higher education community. Computer users at more than 1,000 universities, Federal laboratories, and industry research centers will have access to supercomputers, computer data bases, and other research facilities. The network will be unequaled anywhere in the world.

The Department of Energy has developed considerable expertise in software development. My bill provides for increased research and development of high-performance computer software for application in high-energy physics, fusion energy research, engineering, materials science, astrophysics, climate modeling, genetics, and other fields.

The Secretary of Energy is directed to expand the Department's role in the research and development of high-performance computer systems. Funding will be provided for all aspects of high-performance computer systems.

The Department of Energy will continue to purchase early model computer systems. This will stimulate hardware and software development by reducing the research and development risk of U.S. manufacturers developing high-performance computer systems.

In order to direct the long-term national need for high-performance computing, the Secretary will support basic research on computer technology. Research in advanced semiconductor chip designs and advanced software will be promoted. Technology transfer mechanisms will be created. This will ensure that the results of basic research are readily available to U.S. industry.

Mr. President, the solution to the problems of the U.S. supercomputer manufacturers lies in the United States taking positive actions at home. The United States must get its technology base in order: In semiconductors, in supercomputers, and in software. I believe that between Senator GORE's bill and the bill introduced today, we can find an acceptable institutional framework in which Government, industry, and academia can cooperate to keep the United States as the leader in supercomputers.

Mr. President, I ask unanimous consent that the text of the bill and the section-by-section analysis of its provisions be entered into the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1976

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,* That this Act may be referred to as the "Department of Energy High-Performance Computing Act of 1989".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares the following:

(1) In the last twenty years, computing technology has transformed America's research laboratories, factories, and offices, and become indispensable to our way of life.

(2) Rapid advances in computing technology have resulted in uses for computers unimaginable only five or ten years ago. Many of these advances are a result of research and development on supercomputers, advanced computer software, and other aspects of high-performance computing technology.

(3) High-performance computing is a powerful tool to increase productivity in industrial design and manufacturing, scientific research, communications, and information management.

(4) The United States currently leads the world in the development and use of high-performance computing. However, that lead is increasingly being challenged, and American firms share of the multi-billion-dollar world market for both high-performance computer systems and other computers is shrinking.

(5) In order to strengthen America's computer industry and to assist the entire manufacturing sector, the Federal Government must provide leadership in the development and application of high-performance computer technology. In particular, the Federal Government should create a National High-Performance Computing Program to support the development of a high-capacity, national research and education computer network; facilitate the development of software for research, education, and industrial applications; continue to fund basic research; and provide for the training of computer scientists and computational scientists.

(6) Several Federal agencies have on-going high-performance computing research and development programs which can contribute to a National High-Performance Computing Program. Such a program would provide additional funding for these existing programs, create new research and development programs, and improve coordination between the various agency programs.

(7) A September 1989 report by the Office of Science and Technology Policy entitled "The Federal High Performance Computing Program" outlining a research and development plan provides a framework for such a program.

(8) The Department of Energy, in order to fulfill its mission to conduct energy research and direct the Nation's nuclear weap-

ons program, has established several high-performance computing research and development programs. High energy physics, materials sciences, fusion energy research, human genetics research, oil and gas exploration, nuclear reactor design, and nuclear weapons design all rely heavily on high-performance computing.

(9) The Department of Energy has extensive high-performance computing facilities and has played a key role in developing software and applications for supercomputers. It has funded research in mathematical and computational sciences, has developed new designs for supercomputers, and has established advanced computer networks for connecting supercomputers and other computers throughout the country.

(10) By building upon existing Department of Energy high-performance computing research and development programs, the Department of Energy can play a key role in a National High-Performance Computing Program.

(b) PURPOSE.—It is the purpose of the Congress in this Act to authorize the Secretary of Energy to—

(1) develop a long range strategy for research, development, and application of high-performance computing;

(2) implement that strategy in conjunction with other Federal agencies as part of a National High-Performance Computing Program; and

(3) ensure the appropriate transfer of high-performance computing technology to United States industry.

(c) DEFINITIONS.—

(1) "Secretary" means the Secretary of Energy.

(2) "Department" means the Department of Energy.

DEPARTMENT OF ENERGY HIGH-PERFORMANCE COMPUTING PLAN

SEC. 3. (a) The Secretary is authorized to immediately develop and implement a long-range plan for high-performance computing at the Department of Energy. The Secretary shall develop the plan within one year after the date of enactment of this Act. The plan shall cover the fiscal year the plan is implemented and at least the next four years. The plan shall thereafter be updated annually.

(b) The plan shall—

(1) summarize ongoing high-performance computing programs at the Department of Energy.

(2) detail the Department of Energy's contribution to a National High-Performance Computing Program to expand Federal support for research, development, and application of high-performance computing technology in order to—

(A) establisn a high-capacity national research and education computer network;

(B) develop data bases, services, and research facilities which would be available for access over such a national network;

(C) stimulate research on software technology;

(D) promote the more rapid development and wider distribution of computer software;

(E) accelerate the development of computer systems; and

(F) invest in basic research and education.

(3) establish the goals and priorities for research, development, and application of high-performance computing at the Department of Energy for the time period covered by the plan.

(4) describe the levels of funding for each aspect of high-performance computing, including basic research, hardware and software development, education, acquisition and operating expenses for computers and computer networks, and education.

(5) define the role of each of the Department of Energy's national laboratories involved in research, development, and application of high-performance computing technology.

(6) set a timetable for creation and implementation of technology transfer mechanisms to ensure that the results of research funded under the plan are readily available to United States industry.

THE NATIONAL RESEARCH AND EDUCATION NETWORK

SEC. 4. (a) As part of a National High-Performance Computing Program, the Secretary shall, in cooperation with the Director of the National Science Foundation, the Secretary of Defense, the Secretary of the Department of Commerce, the Administrator of the National Aeronautics and Space Administration, and other appropriate agencies, provide for the establishment of a national multi-gigabit-per-second research and education computer network by 1993, to be known as the National Research and Education Network (NREN).

(b) The Network shall—

(a) link government, industry, and the higher education community;

(2) provide computer users at more than 1,000 universities, Federal laboratories, and industrial laboratories with access to supercomputers, computer data bases, and other research facilities;

(3) be developed in close cooperation with the computer and telecommunications industry;

(4) be designed and developed with the advice of potential users in government, industry, and the higher education community;

(5) be established in a manner which fosters and maintains competition in high speed data networking within the telecommunications industry;

(6) have accounting mechanisms which allow users or groups of users to be charged for their usage of the network, where appropriate; and

(7) be phased out when commercial networks can meet the networking needs of American researchers.

(c) The Department of Energy shall—

(1) provide networking support for the energy research community;

(2) provide for interconnection of existing computer networks run by the Department and other agencies, where appropriate;

(3) participate, with other Federal agencies, in the development and testing of advanced prototype networks;

(4) conduct research and development of advanced networking technology, particularly for supercomputers;

(5) develop technology to support computer-based collaboration that allows researchers around the Nation to share information and instrumentation using computer networks; and

(6) take an active role in the interagency coordinating committees established to develop the National Research ar ' Education Network.

(d) There is authorized to be appropriated to the Secretary for the purposes of this title, $10,000,000 for fiscal year 1991, $15,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, and $25,000,000 for fiscal year 1994, and $30,000,00 for fiscal year 1995.

SOFTWARE

SEC. 5. (a) In accordance with the plan outlined in Section 3, the Secretary shall provide for research and development of high-performance computer software for application in high-energy physics, fusion energy research, engineering, materials sciences, astrophysics, climate modeling, genetics, and other fields. The Secretary shall also provide for the development of improved software tools and components to facilitate the development of software for high-performance computer systems.

(b) The Secretary shall define and provide advanced software technology support to research groups collaborating to address so-called Grand Challenge problems in science and engineering. A Grand Challenge is a fundamental problem in science and engineering, with broad economic and scientific impact, whose solution will require the application of the high performance computing resources.

(1) The Grand Challenges to be addressed include but are not limited to—

(A) Prediction of Global Change. The goal is to understand the coupled atmosphere, ocean, biosphere system in enough detail to be able to make long-range predictions about its behavior and determine its response to man-caused releases of carbon dioxide, methane, chlorofluorocarbons, and other gases.

(B) Materials Sciences. The goal is to use high-performance computing technology to improve our understanding of the atomic nature of materials, enabling the design and production of improved semiconductors, superconductors, ceramics, and other materials.

(C) Human Genome. The goal is to use high-performance computing technology to analyze, store, and disseminate data on the molecular structure of the DNA that expresses the tens of thousands of genes carried by each human being. Identification of these genes would lead to a better understanding and possibly treatment of genetic diseases, cancer, and other diseases.

(D) Nuclear Fusion. The goal is to use supercomputer models to understand the physics of plasmas at the very high temperatures required for nuclear fusion.

(E) Energy Efficiency. The goal is to use supercomputer models to better understand combustion in order to design more efficient engines and furnaces.

(F) Enhanced Oil and Gas Recovery. The goal is to use supercomputer models to locate and better exploit oil and gas fields.

(2) The Secretary shall focus research on those Grand Challenges that are of greatest importance to the Nation, will benefit most from the application of high-performance computing, and are most consistent with the mission of the Department of Energy.

(3) The Secretary shall establish collaborative research groups consisting of scientists and engineers concerned with a particular Grand Challenge, software and systems engineers, and algorithm designers, and provide them with—

(A) computational and experimental facilities, including supercomputers for numerical modeling;

(B) access to the National Research and Educational Network and other computer networks, and;

(C) access to and technology for effectively utilizing scientific data bases.

(d) The Secretary shall establish programs to develop software tools and components to accelerate development of software

for computers, especially supercomputers. Such programs would fund research on fundamental algorithms, models of computation, program analysis, and new programming languages. Particular emphasis should be given to development of programming languages, compilers, operating systems, and software tools for parallel computer systems.

(e) The Secretary shall establish high-performance computing research centers to accelerate the development and application of new generations of high-performance computing technology by enabling researchers to explore applications of this new technology.

(1) Most of these centers would be located within existing computer research organizations funded by the Department of Energy;

(2) These centers could facilitate research on the Grand Challenges and other applications;

(3) Both new and existing Department of Energy supercomputer centers shall help provide the national research community with access to supercomputers because researchers developing algorithms, software tools, and operating systems require access to new generation technology; and

(4) These centers shall provide access to a variety of different high-performance computer systems with different computer architectures.

(f) There is authorized to be appropriated to the Secretary for research and development on scientific Grand Challenges, development of advanced software technology, and creation of high-performance computing research centers, in accordance with the purposes of this section, $30,000,000 for fiscal year 1991, $45,000,000 for fiscal year 1992, $60,000,000 for fiscal year 1993, $75,000,000 for fiscal year 1994, and $90,000,000 for fiscal year 1995.

HIGH-PERFORMANCE COMPUTER SYSTEMS

SEC. 6. (a) In accordance with the plan required in Section 3, the Secretary shall provide for support of research and development of high-performance computer systems. Funding shall be provided for—

(1) research and development in the national laboratories, universities, and industry on all aspects of high-performance computer systems including processors, memory, mass storage devices, input/output devices, and associated system software.

(2) increased research in—

(a) computer science

(b) parallel computer architectures

(c) optoelectronics

(d) mass storage technology

(3) development of tools for the rapid design, prototyping, and integration of high-performance computing systems.

(b) In addition, the Department of Energy shall purchase early market and production model computer systems and subsystems for use both in high-performance computing research centers and for other research programs within the Department. Such purchases will—

(1) stimulate hardware and software development by reducing the research and development risk of United States manufacturers developing high-performance computer systems, and;

(2) provide manufacturers with valuable tests of their new systems.

(c) There is authorized to be appropriated to the Secretary for research and development, procuring, and testing of high-performance computer systems, $15,000,000 for fiscal year 1991, $25,000,000 for fiscal year 1992, $35,000,000 for fiscal year 1993, $45,000,000 for fiscal year 1994, and $55,000,000 for fiscal year 1995.

BASIC RESEARCH AND EDUCATION

Sec. 7. (a) In order to address the long-term national need for high-performance computing, the Secretary shall—

(1) support basic research on computer technology, including research on advanced semiconductor computer chip designs, new materials for integrated circuits, improved integrated circuit fabrication techniques, photonics, and superconducting computer components;

(2) support basic research on computing technology, including basic research on algorithms, software languages and tools, architectures, systems software, networks, distributed computing, and symbolic processing;

(3) create technology transfer mechanisms to ensure that the results of basic research are readily available to United States industry;

(4) promote basic research in computer science, computational science, electrical engineering, and materials sciences; and

(5) educate and train more researchers in computer science and computational science by—

(A) making the national laboratories available to senior graduate students, post-doctoral fellows, and faculty from the Nation's universities;

(B) expanding summer science programs for high school students;

(C) providing computer facilities to universities throughout the country; and

(D) establishing more cooperative research programs with the academic computational science community.

(b) There is authorized to be appropriated to the Secretary for the purposes of this section, $10,000,000 for fiscal year 1991, $15,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, $25,000,000 for fiscal year 1994, and $30,000,000 for fiscal year 1995.

GOVERNMENT AND PRIVATE SECTOR COOPERATION

Sec. 8. (a) The Secretary may cooperate with, solicit help from, provide funds to, or enter into contracts with private contractors, industry, government, universities, or any other person or entity the Secretary deems necessary in carrying out the provisions of this Act.

(b) The Secretary shall cooperate with other Federal agencies in carrying out the provisions of this Act, particularly the National Science Foundation, the Department of Commerce (particularly the National Institute of Standards and Technology), the National Aeronautics and Space Administration, the Department of Defense, and the Office of Science and Technology Policy.

REPORT REQUIREMENT

Sec. 9. The Secretary shall within one year after the date of enactment of this Act, report to the Congress regarding the implementation of this Act, and thereafter, provide annual reports to the Congress.

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SECTION-BY-SECTION ANALYSIS—THE DEPARTMENT OF ENERGY HIGH-PERFORMANCE COMPUTING ACT OF 1989

SEC. 2. FINDINGS AND PURPOSES.

The United States currently leads the world in the development and use of high-performance computing. However, that lead is increasingly being challenged. In order to strengthen America's computer industry, the federal government must provide leadership in the development of high-performance computer technology. The federal government should establish a national research and education network, facilitate the development of software, continue to fund basic research and provide for the training of computer scientists and computational scientists.

The Department of Energy has extensive high-performance computing facilities and has played a key role in developing software and applications for supercomputers. By building upon existing Department of Energy programs, the Department of Energy can play a key role in a National High-Performance Computing Program.

The purpose of the Act is to authorize the Secretary of Energy to develop a long range strategy for research in high performance computing. The Secretary is to then implement the strategy in conjunction with other federal agencies as detailed in a National High Performance Computer Program.

SEC. 3. THE DEPARTMENT OF ENERGY HIGH-PERFORMANCE COMPUTING PLAN.

The Secretary is authorized to develop a long range plan for high-performance computing at the Department of Energy. The plan will be developed within one year and updated annually.

The plan will summarize ongoing high-performance computing programs at the Department of Energy. It will detail the Department of Energy's contribution to a National High-Performance Computing Program. Under the National Program, a national network will be established, data bases will be developed that will be available for access via the network, there will be wider distribution of software technology, the development of computer systems will be accelerated and the Nation's overall investment in basic research will be substantially increased.

The plan will also establish the goals and priorities for reseach, development, and application of high-performance computing at the Department of Energy. The levels of funding for each aspect of high-performance computing will be set out. The role of each Department of Energy national laboratory will be defined.

SEC. 4. THE NATIONAL RESEARCH AND EDUCATION NETWORK [NREN].

As part of the National High-Performance Computing Program, the Secretary of Energy in cooperation with the Director of the National Science Foundation, the Secretary of Defense, the Secretary of the Department of Commerce, the Administrator of the National Aeronautics and Space Administration and other appropriate agencies, will establish a national multi-gigabit-per-second research and education network.

The network will link government, industry, and the higher education community. Over 1,000 users will have access to supercomputers and computer data bases. The network will be developed in close cooperation with government and industry. It will have accounting mechanisms which will allow users to be charged for their usage of the network. When commercial networks can meet the needs of American researchers, the network will be phased out.

The Department of Energy will provide support for the energy research community, interconnect existing computer networks, help develop and test advanced prototype networks which will allow researches around the nation to share information.

There is authorized to be appropriated to the Secretary for the network, $10,000,000 for fiscal year 1991, $15,000,000 for fiscal

year 1992, $20,000,000 for fiscal year 1993, $25,000,000 for fiscal year 1994, and $30,000,000 for fiscal year 1995.

SEC. 5. SOFTWARE.

The Secretary will provide for research and development of high-performance computer software for application in high-energy physics, fusion energy research, engineering, materials science, astrophysics, climate modeling, genetics, and other fields.

The Secretary will define and provide advanced software technology to address so-called Grand Challenge problems. A Grand Challenge is a fundamental problems in science and engineering, with broad economic and scientific impact, whose solution will require the application of the high performance computing resources.

Grand Challenges to be addressed include prediction of global changes, problems in materials science, mapping the human gene, nuclear fusion, energy efficiency and enhanced oil and gas recovery.

The Secretary will establish collaborative scientific research groups and provide them with computational and experimental facilities, access to supercomputers and access to scientific data bases.

The Secretary will establish high-performance computing research centers to accelerate the development and application of new generations of high-performance computing technology. Most of the centers would be located within existing facilities. The centers will help provide the national research community with access to supercomputers.

There is authorized to be appropriated to the Secretary for research on scientific Grand Challenges, development of advanced software technology, and the creation of high-performance computing research centers, $30,000,000 for fiscal year 1991, $45,000,000 for fiscal year 1992, $60,000,000 for fiscal year 1993, $75,000,000 for fiscal year 1994, and $90,000,000 for fiscal year 1995.

SEC. 6. HIGH PERFORMANCE COMPUTER SYSTEMS.

The Secretary will support research and development of high-performance computer systems. Funding will be provided for research and development on all aspects of high-performance computer systems including processors, memory, mass storage devices, input/output devices, and associated system software. Research will be increased in computer science, parallel computer architectures, optoelectronics and mass storage technology.

The Secretary will purchase early market and production model computer systems for use in the Department of Energy's research programs. Such purchases will stimulate hardware and software development and provide manufacturers with valuable tests of their new systems.

There is authorized to be appropriated to the Secretary for research and development, procuring, and testing of high-performance computer systems, $15,000,000 for fiscal year 1991, $25,000,000 for fiscal year 1992, $35,000,000 for fiscal year 1993, $45,000,000 for fiscal year 1994, and $55,000,000 for fiscal year 1995.

SEC. 7. BASIC RESEARCH AND EDUCATION.

In order to address the long-term national need for high-performance computing, the Secretary shall support basic research on computer technology. Research will focus on advanced semiconductor computer chip designs, improved integrated circuits, superconducting computer components, software, networks, computational science, electrical engineering and materials science.

Technology transfer mechanisms will be created to ensure that the results of basic research are readily available to United States industry.

More researchers in computer science will be educated and trained. The national laboratories will be made available to senior graduate students, post-doctoral fellows and faculty from the Nation's universities. Summer science programs for high school students will be expanded. Computer facilities will be provided to universities throughout the country. More cooperative research programs will be established in the academic computational science community.

There is authorized to be appropriated to the Secretary for these purposes, $10,000,000 for fiscal year 1991, $15,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, $25,000,000 for fiscal year 1994, and $30,000,000 for fiscal year 1995.

SEC. 8. GOVERNMENT AND PRIVATE SECTOR COOPERATION.

The Secretary of Energy may cooperate with, solicit help from, provide funds to, or enter into contracts with private contractors, industry, government, universities, or any other person or entity. The Secretary is to cooperate with other federal agencies to carry out the provisions of the Act.

SEC. 9. REPORT REQUIREMENTS.

Within one year after the date of enactment, the Secretary of Energy shall report to the Congress regarding the implementation of the Act, and annually thereafter.●

● Mr. GORE. Mr. President, I am glad to join my colleague, Senator JOHNSTON, in introducing the Department of Energy High-Performance Computing Act of 1989. This is a critically important bill which will help ensure that the United States continues to be at the leading edge of computing technology. It will accelerate the development of new generations of supercomputers and of new uses for these powerful machines. It will provide funding for a National Research and Education Network which will give researchers around the country access to supercomputers, data bases, and other research facilities. It will help ensure that America's scientists and engineers in our universities, our national laboratories, and our industrial laboratories have access to the supercomputers they need. In many areas of research, including global climate modeling, aeronautics, and geophysics, researchers are facing computational problems that overwhelm the capacity of today's most powerful supercomputers. This bill will fund the development of supercomputers that will provide benefits to all branches of science and engineering.

This technology will help American industry design and manufacture better products. Already, in firm after firm, million-dollar supercomputers are paying for themselves in terms of productivity gains. High-technology firms are in the vanguard, using supercomputers to design faster computer chips and quieter, more efficient airplanes. In the world of finance, companies are using ever-larger computers to store and sort out mountains of economic data, such as stock and commodity prices, in order to catch market trends. In smokestack industries, advanced computers and networks are being used to streamline manufacturing. Computers are replacing blueprints on the shop floor.

Supercomputers are allowing engineers to design better products without having to build and test dozens of prototypes. In some cases, advanced computers are cutting the time it takes to design a new product by 50 to 75 percent. That means beating the foreign competition to the market, and that means more jobs for Americans.

Last May, I introduced S. 1067, the National High-Performance Computer Technology Act of 1989. It laid out an ambitious, 5-year program to roughly double Federal funding for advanced computing and networking. The bill authorized an additional $1.75 million for research and development programs at NASA, the National Science Foundation, the Department of Defense, the Department of Energy, and the Department of Commerce. Implementing such a broad program will require cooperation among Federal agencies and among congressional committees.

Fortunately, the agencies are already working together to create and implement this program. In September, the Office of Science and Technology Policy released a report entitled "The Federal High Performance Computing Program" which parallels the program called for in S. 1067. This report represents the combined efforts of researchers from more than half a dozen Federal agencies.

It is clear that both the agencies and the Congress recognize the need for more investment in computing technology. And both the agencies and the Congress recognize the need for a broad, multiagency approach. A National High-Performance Computing Program is too large to be implemented by one agency; we need to use the scientific and technical expertise available throughout our research agencies.

When I introduced S. 1067, I made clear that it was the first of many steps needed to create a National High Performance Computing Program. The bill that Senator JOHNSTON and I have drafted represents an essential next step. It defines and authorizes the Department of Energy's part of the multiagency program proposed in S. 1067. This is a critical part of the program because the DOE national laboratories have extensive supercomputing facilities and a great deal of expertise in computing research and development. At last count, DOE had more than three dozen supercomputers and was spending more than $35 million a year on computer science

and computational science research. In my own State of Tennessee, researchers at the Oak Ridge National Laboratory have been developing exciting new applications for supercomputers. They are working closely with researchers at the University of Tennessee and have helped create a number of new high-technology businesses in eastern Tennessee that specialize in advanced computer hardware and software.

I look forward to working with Senator JOHNSTON and other members of the Energy Committee as they examine the role that DOE can play in developing and promoting the use of high-performance computing in the United States. This technology offers so many exciting opportunities, but the Congress and the administration must move quickly if we are to take advantage of them. The various committees of the House and Senate must work together and with the administration to make a National High-Performance Computing Program a reality. We cannot let partisan politics or jurisdictional concerns slow us down.

I hope that my colleague will join me in cosponsoring this important legislation, because as a witness at a Science Subcommittee hearing on S. 1067 said last June, "It's time to get on with it." The legislation we are introducing today helps us do just that.●

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By Mr. DASCHLE (for himself, Mr. BOND, Mr. KERREY, and Mr. LEAHY):

S. 1977. A bill to amend the United States Grain Standards Act to improve the competitive position of U.S. grain in international and domestic markets, to facilitate the communication of quality characteristics that final buyers of grain desire, to provide certain incentives to producers of high-quality grain, and to improve the quality of farmer-owned and federally owned reserve grain stocks, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

GRAIN QUALITY INCENTIVES ACT

Mr. DASCHLE. Mr. President, as chairman of the Subcommittee on Agricultural Research and General Legislation, and on behalf of members of the subcommittee, Senator BOND and Senator KERREY, of Nebraska, and the chairman of the Agriculture Committee, Senator LEAHY, I am introducing today the Grain Quality Incentive Act. Our goal is to begin a serious consideration of policies and practices that may improve the ability of the United States to export the highest quality grain possible.

Such consideration is necessary because more and more we are confronted with evidence that there are problems in our grain marketing system that weaken our ability to stay competitive in export markets.

This legislation deals with grain quality in a comprehensive way. The subcommittee has been working on this legislation for some time, listening to a wide range of viewpoints on the basic issues, as well as the proposed remedies.

After months of research, including a hearing in South Dakota in March, our staff has produced a proposal that has been discussed with representatives from throughout the farming community, as well as the grain trade.

These discussions have been very lively, and we present a proposal today that we know will be controversial, and we expect will receive some strong reaction from certain segments of the industry.

However, a clear message has come through at all the meetings and discussions we have had: All segments of the industry agree that more can be done to improve grain quality, and a legislative stimulus is an important part of seeing that the job gets done.

We are committed to providing the necessary legislation. Market conditions may not be crying out for change now, but a period of relative calm is precisely the time to consider these issues, so that they can be reviewed on their merit and not in a more heated political context.

As comprehensive as this proposal is, in my view, this legislation could be made even stronger. I favor the consideration of proposals to establish a utility grade for grain, and to prohibit blending of that grade with higher grades.

I feel strongly that these proposals are needed to make sure our customers receive the high-quality grain they expect. These proposals are not included in this bill for now. But I want to emphasize that I reserve the right to attempt to amend this bill at some point to include these proposals.

As we have discussed potential legislation, I have been amazed at how easily the complexity of the issues surrounding grain quality has allowed confusion over the contents and intentions of this legislation to develop.

I am therefore particularly pleased to be able to introduce the bill before the recess. It will now be possible for everyone with an interest in this subject to review in black and white the proposals we are considering, rather than hearsay around town and around the country.

I hope all interested parties will review the issues raised by the legislation and work with my colleagues and myself over the break.

I hope we can develop a consensus on the provisions quickly, so we can come back in January ready to hold hearings on the legislation and then move to markup.

I want to emphasize that this legislation is clearly a bipartisan product. I particularly want to thank Senator BOND and his staff, who worked with me and my staff in developing this legislation.

Furthermore, I want to call attention to the remarks of President Bush in which he promised that his administration will "modernize our grain standards and export procedures."

Our initial conversations with the White House and USDA indicate that we can work together to get the job of improving grain quality done.

Mr. President, I ask unanimous consent that the full text of my prepared statement appear in the RECORD, along with a summary of the legislation and the text of the bill itself.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PREPARED STATEMENT OF SENATOR TOM DASCHLE

Mr. President, as Chairman of the Subcommittee on Agricultural Research and General Legislation and on behalf of other members of the Subcommittee—Senators BOND and KERREY of Nebraska—and the Chairman of the Agriculture Committee, Senator LEAHY, I am introducing today the Grain Quality Incentives Act. Our goal is to begin a serious consideration of policies and practices that may improve the ability of the United States to export the highest quality grain possible. Such consideration is necessary because more and more we are confronted with evidence that there are problems in our grain marketing system that weaken our ability to stay competitive in export markets.

America's farmers have been concerned over grain quality for years. This concern stems from personal experience as well as complaints from foreign buyers. Whether they are the wheat millers, bakers and noodle makers in Japan, Korea, Algeria, Iraq and Taiwan, or the corn and soybean feed mills and crushing plants in Japan, Taiwan, Germany and Spain, more and more foreign buyers of U.S. grain report that the United States has a quality problem. World export-price and market-share data also tell us we have a problem. Now, the Office of Technology Assessment (OTA), after a thorough study including a survey of foreign buyers, has confirmed what many of us feared: that the U.S. marketing system is not as responsive as it should be, or could be, to the concerns among foreign buyers over grain quality. As these concerns mount, OTA warns the United States' share of export markets, and the prices our farmers receive, may suffer.

It is important to note, that while OTA identifies these problems, it also finds that the U.S. grain marketing system is strong and healthy. The system holds advantages that will keep it prominent in world trade. Nevertheless—and this is the encouraging aspect of the OTA report—with modest improvements, the U.S. grain marketing system can respond to these quality issues. Buyers can be assured that they will be able to buy the specific quality of grain that they are looking for, and farmers can be assured that the clean, high-quality grains they grow reach the buyer.

One central finding in the OTA report is that economic incentives in the U.S. grain marketing system work against maintaining practices that enhance grain quality. Plant breeders emphasize yield over quality be-

cause farmers are more interested in yields. Farmers want higher yields because government programs reward volume, with little or no reward for quality. Furthermore, farmers are discouraged from producing top-quality grain because the commercial market offers few rewards, tending to blend down the quality of the grain. The lack of minimum quality standards permits blending from a wide range of qualities.

The Subcommittee believes that incentives can be created in the system to improve grain quality. We are going to work closely with everyone in the grain industry to determine what policy changes are needed and can be accomplished. We will work with Secretary Yeutter and the Department of Agriculture to determine what changes can be made through administration, or may require legislation. By improving grain quality, we do not intend to provide every customer with a Cadillac when all they may want is a Chevy. Our goal is to make sure every customer wanting and able to purchase the highest quality grain will come to the United States as a preferred supplier.

The legislation we are introducing today deals with grain quality in a comprehensive way. The Subcommittee has been working on this legislation for some time. We wanted to make sure we obtain a wide range of viewpoints on the basic issues, as well as the proposed remedies. We started with a field hearing in March in South Dakota to learn how the grain industry, and farmers in particular, reacted to the OTA report. After months of research, staff produced proposals that have been discussed with representatives from throughout the farming community and the grain trade.

We present a proposal today that we know will be controversial and that we expect will receive some strong reaction from certain segments of the industry. We are committed to action to improve the quality of grain exports. Market conditions may not be crying out for change now, but a period of relative calm is precisely the time to consider these issues, so that they can be reviewed on their merit, and not in a more heated political context.

As comprehensive as this proposal is, in my view, this legislation could be made even stronger. I favor the consideration of proposals to establish a utility grade for grain and to prohibit blending that grade with higher grades. I feel strongly that these proposals are needed to make sure our customers receive the high quality grain they expect. These proposals are not included in this bill for now, but I reserve the right to attempt to amend this bill at some point to include these proposals.

I want to emphasize that this legislation is a bipartisan product. I want particularly to thank Senator BOND and his staff who worked with me and my staff in developing this legislation. Furthermore, Mr. President, I want to call attention to remarks by President Bush in which he promised that his administration "will modernize our grain standards an export procedures."

The President pointed out the reality on which this legislation is based: "In a buyer's market our foreign customers can get grain from many sources, much of it excellent quality." He said, "We will ensure that the quality of U.S. grain is at least as good as that sold by other nations at the same price. We will make certain that our foreign customers receive grain of the quality they pay for."

Today, with the introduction of this legislation, we join President Bush in working to achieve these goals.

Finally, Jasper Womach, working for the Subcommittee, deserves special credit for his efforts on this legislation.

S. 1977

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Grain Quality Incentives Act of 1989".

(b) TABLE OF CONTENTS.—The table of contents is as follows:


Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. References.

TITLE I—COORDINATION AND IMPLEMENTATION OF GRAIN QUALITY IMPROVEMENTS

Sec. 101. Coordination of Federal activities and programs.
Sec. 102. Benefits and costs associated with improved grain quality.
Sec. 103. Standardizing unofficial inspections.
Sec. 104. Report on international harmonization of standards and tests.
Sec. 105. Sense of Congress cooperative enforcement of Federal grain purity requirements.

TITLE II—IMPROVING THE CLEANLINESS OF GRAIN EXPORTS

Sec. 201. Improving the cleanliness of grain exports.

TITLE III—IMPROVING THE PHYSICAL SOUNDNESS AND PURITY OF EXPORT GRAIN

Sec. 301. Improving the physical soundness and purity of export grain.

TITLE IV—EXPORT REQUIREMENTS AND STANDARDS

Sec. 401. Cargo loading requirements.

TITLE V—CLASSIFICATION, GRADES AND STANDARDS DESIGN CRITERIA

Sec. 501. Classification, grades and standards design criteria.

TITLE VI—GRAIN QUALITY RESEARCH AND TESTING

Sec. 601. Sense of Congress concerning end-use performance research.
Sec. 602. Sense of Congress concerning cooperation on objective testing.
Sec. 603. Sense of Congress concerning tests for purity.

TITLE VII—VARIETY PERFORMANCE INFORMATION

Sec. 701. Seed variety registration.
Sec. 702. Use of variety information.
Sec. 703. Survey of grain varieties.

TITLE VIII—PRICE SUPPORT LOAN INCENTIVES FOR CLEAN GRAIN

Sec. 801. Quality goals for Commodity Credit Corporation programs.
Sec. 802. Price support loan incentives for clean grain.

TITLE IX—FARMER-OWNED RESERVE QUALITY REQUIREMENTS

Sec. 901. Commodity Credit Corporation receival standards for reserve grain.
Sec. 902. Entry quality standards for all grains.

TITLE X—QUALITY REQUIREMENTS FOR COMMODITY CREDIT CORPORATION-OWNED GRAIN

Sec. 1001. Quality requirements for Commodity Credit Corporation-owned grain.

TITLE XI—EXPORT ENHANCEMENT PROGRAM

Sec. 1101. Export enhancement program.

TITLE XII—CROP INSURANCE COVERAGE FOR LOSS OF QUALITY

Sec. 1201. Crop insurance coverage for loss of quality.

TITLE XIII—DISASTER PAYMENTS FOR LOSS OF QUALITY

Sec. 1301. Disaster payments for loss of quality.

TITLE XIV—ASSISTANCE FOR IMPROVEMENTS IN GRAIN QUALITY

Sec. 1401. Authority to assist farmers and elevator operators.
Sec. 1402. Report concerning assistance for improvements in grain.


SEC. 2. FINDINGS.

Congress finds that—

(1) the United States grain production and marketing industry is fundamentally sound and strong, making the United States a dominant competitor in world export markets;

(2) increasing demand for higher quality grain on the part of major importers, and greater attention to quality on the part of major competing exporters necessitates that the United States improve the quality of its grain exports in order to maintain a strong competitive position in world grain markets;

(3) buyers want cleaner grain because—

(A) ocean freight transportation costs accrue on nongrain material;

(B) duties must often be paid on nongrain material just as such duties are paid on grain imports;

(C) there may not be markets for screenings;

(D) environmental restrictions can complicate and increase the cost of unloading activities and disposal of screenings;

(E) some buyers lack cleaning capabilities; and

(F) cleaner grain maintains its condition better during storage and shipping;

(4) increased automation and continuous flow processing and manufacturing technology necessitate greater consistency of performance;

(5) increased knowledge and awareness of the composition and intrinsic characteristics of grain that have value to end-users are making buyers more alert to quality differences among suppliers;

(6) competing major grain exporters are recognized as providing high quality grain as a result of a combination of rigid controls on variety release or mandatory handling and storage requirements, or centralized control over exports;

(7) neither commercial markets nor Federal price support programs effectively communicate and reward end-use quality characteristics of grain;

(8) the key to improving grain quality in the United States depends on—

(A) the increased knowledge of end-user performance characteristics by plant breeders, producers, and marketers;

(B) the modification of grain grades and standards to properly reflect characteristics important to intermediate and end-users;

(C) improvements in the cleanliness and sanitary condition of United States grain; and

(D) quality based incentives through Federal government programs and the marketplace; and

(9) the grain industry has worked diligently through the advisory council to the Federal Grain Inspection Service and through a long series of unofficial grain quality workshop meetings to address grain quality issues, and such efforts are applauded and encouraged to continue as a method of assisting the Secretary of Agriculture in implementing legislation that will improve the quality of United States grain and improve the competitiveness of the United States in international trade.

SEC. 3. REFERENCES.

Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the United States Grain Standards Act (7 U.S.C. 71 et seq.).

## TITLE I—COORDINATION AND IMPLEMENTATION OF GRAIN QUALITY IMPROVEMENTS

SEC. 101. COORDINATION OF FEDERAL ACTIVITIES AND PROGRAMS.

The Act is amended by adding at the end thereof the following new section:

"SEC. 22. GRAIN QUALITY COORDINATOR.

"(a) APPOINTMENT.—The Secretary shall designate an individual to serve as the Grain Quality Coordinator (hereinafter referred to as the 'Coordinator') to carry out the duties described in subsection (b).

"(b) DUTIES.—The Coordinator shall be responsible for—

"(1) monitoring the activities of the Department of Agriculture with respect to domestic grain to insure that such activities are consistent with the provisions of this Act, (and other agricultural Acts) as such Acts relate to improving grain quality;

"(2) serving as the Federal government coordinator with respect to activities effecting domestic grain, to insure that such activities are consistent with the goal of improving grain quality;

"(3) preparing and submitting, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, reports concerning—

"(A) actions undertaken by the Department of Agriculture—

"(i) to improve the quality of domestic grain; and

"(ii) that are inconsistent with the goal of improving grain quality;

"(B) conditions in the production and marketing sectors that discourage the making of improvements in grain quality; and

"(C) recommendations for legislative or regulatory changes that may be made to assist in the correction of problems with domestic grain.".

SEC. 102. BENEFITS AND COSTS ASSOCIATED WITH IMPROVED GRAIN QUALITY.

Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall prepare and submit, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report that shall contain—

(1) the results of an economic analysis concerning the costs and benefits, including the anticipated distribution of such costs and benefits, associated with the improvement in the quality of United States grain; and

(2) an analysis of the extent to which the improvement in the quality of grain exported from the United States can be expected to affect the competitive position of the United States in world grain markets.

SEC. 103. STANDARDIZING UNOFFICIAL INSPECTIONS.

(a) IN GENERAL.—The Act is amended by inserting after section 7B (7 U.S.C. 79b) the following new section:

"SEC. 7C. STANDARDIZING UNOFFICIAL INSPECTIONS.

"(a) GENERAL MONITORING PROCEDURES.—To insure that producers are treated uniformly in delivering grain, and to facilitate the grain price supports program under the Agricultural Act of 1949 and grain quality marketing incentives under this or other Acts, the Administrator shall develop procedures to be used in the conducting of unofficial inspections of grain by handlers where such inspections result in price adjustments for such grain, and shall develop national guidelines with respect to such inspections.

"(b) TESTING PROCEDURES.—To insure the uniformity of tests and testing equipment used in unofficial inspections for the application of grain standards under subsection (a), the Administrator shall develop procedures for approving the testing instruments, techniques, calibration of equipment, and procedures used in such unofficial inspections.".

(b) UNITED STATES WAREHOUSE ACT.—Section 15 of the United States Warehouse Act (7 U.S.C. 256) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Any fungible"; and

(2) by adding at the end thereof the following new subsection:

"(b) UNOFFICIAL INSPECTIONS.—Notwithstanding any other provision of law, in conducting unofficial inspections, a licensed warehouse shall use grain sampling procedures, testing techniques, and standards approved by the Federal Grain Inspection Service.".

SEC. 104. REPORT ON INTERNATIONAL HARMONIZATION OF STANDARDS AND TESTS.

(a) IN GENERAL.—Not later than December 31, 1992, the Secretary of Agriculture shall prepare and submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report, in accordance with subsection (b), concerning the harmonization of United States grain standards, tests, and testing equipment with those of foreign nations.

(b) CONTENTS.—The report submitted under subsection (a) shall contain—

(1) an evaluation of the grain standards, tests, and testing equipment of major grain trading nations;

(2) recommendations concerning the practicality and desirability, considering benefits and costs to the United States, of achieving a harmonization of grain standards, tests, and equipment among nations in order to facilitate trade and improve the competitive position of the United States; and

(3) any other information that the Secretary of Agriculture determines necessary.

SEC. 105. SENSE OF CONGRESS COOPERATIVE ENFORCEMENT OF FEDERAL GRAIN PURITY REQUIREMENTS.

(a) FINDINGS.—Congress finds that the laws and regulations related to the purity and safety of grain that are administered by the Food and Drug Administration and the Environmental Protection Agency, serve to insure the integrity of the United States as a supplier of wholesome grain.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal agencies that are responsible for enforcing the laws and regulations relating to the quality, purity, and safety of grain marketed both domestically and in foreign nations, should seek assistance from and cooperate with the Federal Grain Inspection Service in enforcing such laws and regulations.

## TITLE II—IMPROVING THE CLEANLINESS OF GRAIN EXPORTS

SEC. 201. IMPROVING THE CLEANLINESS OF GRAIN EXPORTS.

The Act is amended by inserting after section 4 (7 U.S.C. 76) the following new section:

"SEC. 4A. IMPROVING THE CLEANLINESS OF GRAIN EXPORTS.

"(a) CLEANLINESS.—

"(1) IN GENERAL.—Exporters of high quality grain from the United States shall meet the standards of cleanliness commonly achieved by competing exporters.

"(2) REGULATIONS.—Not later than 120 days after the date of enactment of this section, the Secretary, acting through the Administrator, shall promulgate regulations to carry out paragraph (1).

"(b) REMOVAL OF FOREIGN MATERIAL.—Not later than 5 years after the date of enactment of this section, the Administrator shall enforce limits on easily removable nongrain material in grain for grades number 1, 2, and 3 that shall be comparable to levels of cleanliness met by major competing grain exporting nations as determined by the Administrator.

"(c) PHASE IN PERIOD.—The Secretary, acting through the Administrator, shall phase in the requirements of this section by—

"(1) in the case of subsection (a), by incrementally increasing the level of cleanliness required compared to foreign nations; and

"(2) in the case of subsection (b), by incrementally decreasing the limit on nongrain material permitted in shipments of grades number 1, 2, and 3 grain.".

## TITLE III—IMPROVING THE PHYSICAL SOUNDNESS AND PURITY OF EXPORT GRAIN

SEC. 301. IMPROVING THE PHYSICAL SOUNDNESS AND PURITY OF EXPORT GRAIN.

The Act (as amended by section 101) is further amended by adding at the end thereof the following new section:

"SEC. 23. IMPROVING THE PHYSICAL SOUNDNESS AND PURITY OF EXPORT GRAIN.

"(a) QUALITY OF EXPORTED GRAIN.—The Administrator shall establish procedures that ensure the receipt, by a foreign purchaser that specifies a certain grade of grain in a grain purchase contract, of grain under such contract that is suitably sound and pure considering the contract grade specification, the end-use performance goals of the purchaser, and the condition of comparable grain being supplied by other grain exporting nations.

"(b) PROCEDURES.—

"(1) DETERMINATION.—In carrying out subsection (a), the Administrator shall make a determination establishing the adverse conditions that shall make grain unacceptable for its normal intended uses in foreign markets or for its classification in a certain grade.

"(2) EVALUATION.—In establishing procedures for making the determination under paragraph (1), the Administrator shall

evaluate the grade determining factors and factor limits in existence on the date of enactment of this section, to determine the suitability of the use of such factors as contract specifications for end-users. Such evaluation shall include an assessment of whether changes in factors and factor limits by themselves, or in combination with a prohibition of blending, will achieve the requirements of subsection (a). Such evaluation shall be completed not later than December 31, 1991.

"(3) ESTABLISHMENT OF FACTORS.—After the completion of the evaluation conducted under paragraph (2), the Administrator shall specify grade-determining factors and limits that shall be applicable under this section to grain that is exported. Such factors shall permit grain that is exported to be classified in a manner that is comparable to grains of other countries that are of similar quality and performance standards. The Administrator may phase in the factor limits applicable under this section but such limits shall be fully implemented not later than 5 years after the date of enactment of this section.

"(4) BLENDING.—

"(A) IN GENERAL.—The Administrator may prohibit blending of low quality grain with grain of other qualities to market such low quality grain as that of a higher quality if the Administrator determines that such action is necessary or practical to ensure that grains marketed as grades 1, 2, or 3 meets the factor limits established under this subsection. High quality grain may be blended with a lower quality grain if such grain will be marketed as such a lower quality. No prohibition on blending shall be construed to restrict the marketing of such low quality grain.

"(B) IMPLEMENTATION.—If the Administrator prohibits blending under this subsection, the Administrator shall promulgate such regulations as are necessary to carry out this section.".

## TITLE IV—EXPORT REQUIREMENTS AND STANDARDS

### SEC. 401. CARGO LOADING REQUIREMENTS.

Section 7 (7 U.S.C. 79) is amended by adding at the end thereof the following new subsection:

"(k) Except as otherwise authorized by the Administrator, on the request of a purchaser, all grain that is officially inspected and officially weighed for export shall be loaded aboard the final carrier according to a plan that statistically assures fairness by favoring neither the buyer nor the seller in meeting the requirements specified by the delivery contract.".

## TITLE V—CLASSIFICATION, GRADES AND STANDARDS DESIGN CRITERIA

### SEC. 501. CLASSIFICATION, GRADES AND STANDARDS DESIGN CRITERIA.

Section 4 (7 U.S.C. 76) is amended by adding at the end thereof the following new subsection:

"(d)(1)(A) The Administrator shall develop and implement a classification, grades and standards design framework, to structure grain standards established under this section. Such framework shall be designed to make it possible to modify standards to accommodate scientific advances in testing and new knowledge concerning the factors influencing storability and end-use performance of grain.

"(B) In developing the framework under paragraph (1), the Administrator shall develop a grain classification and grading system and establish factor limits for each grain, within the constraints of existing testing technology, known factors influencing end-use characteristics and storability, and practical handling and transportation technology.

"(C) Not later than December 31, 1991, the Administrator shall develop a schedule for implementing the classification, grades, and standards under subparagraph (B), and such schedule shall be submitted to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

"(D) Implementation of the classes, grades and standards proposed under this paragraph shall begin immediately on completion of the report required under subparagraph (C).

"(2) In establishing standards under paragraph (1), the Administrator shall adopt an economic value based system of class-determining factors, grade-determining factors, nongrade-determining factors, and optional factors that—

"(A) define uniform and descriptive terms to facilitate trade;

"(B) provide final and intermediate users with sufficient information to enable such users to determine the quality of grain for marketing and end use; and

"(C) enables the market to establish quality improvement incentives for grain.

"(3) Within the system referred to in paragraph (2)—

"(A) class-determining factors shall separate grain into categories based on differing major end uses of such grain;

"(B) grade-determining factors shall—

"(i) relate to the physical soundness and purity of the grain (that affect the storability and end-use propensities of the grain) and the effect of such on the economic value of such grain to the end user, and

"(ii) be separated into three grade categories that differentiate between descending levels of the physical soundness and purity of the grain, that are generally acceptable to a majority of major intermediate and end-uers, as determined by the Secretary;

"(C) nongrade-determining factors shall relate to the physical condition, composition and intrinsic characteristics of the grain which are important to the major end and intermediate users;

"(D) optional factors shall relate to characteristics or conditions of the grain that are important to a limited number of final and intermediate users, or that relate to adverse conditions that arise only occasionally or in isolated locations; and

"(E) grain shall only be tested and the results reported for conditions relating to grade-determining and nongrade-determining factors in official inspections, and other factors determined in inspections shall not be reported except when requested or when the Administrator determines the conditions exists that warrant the routine testing of optional factors.

"(4) The Administrator shall establish a separate grade designation for grain that includes damage levels, impurities, or other conditions that make such grain generally unsuitable for the normal intended uses of such grain.".

## TITLE VI—GRAIN QUALITY RESEARCH AND TESTING

### SEC. 601. SENSE OF CONGRESS CONCERNING END-USE PERFORMANCE RESEARCH.

(a) FINDINGS.—Congress finds that—

(1) research concerning the end-use performance of grain conducted by the Agricultural Research Service and land-grant universities is critical to improving the quality and competitiveness of United States grains in domestic and world markets;

(2) the work done by the Agricultural Research Service wheat quality laboratories has proven valuable to improving the understanding of individuals concerning the relationships between the physical and chemical properties of wheat and the performance of such in milling and baking; and

(3) research conducted by the Agricultural Research Service and at land-grant universities concerning the composition of corn and soybean varieties has proven valuable to feed and food users.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Agriculture, and in particular the Agricultural Research Service and land-grant universities, should examine their financial priorities and place increased emphasis on grain variety evaluation and the development of objective tests for the end-use properties of grains.

### SEC. 602. SENSE OF CONGRESS CONCERNING COOPERATION IN OBJECTIVE TESTING.

(a) FINDING.—Congress finds that the close cooperative relationship that exists between the Federal Grain Inspection Service, the Agricultural Research Service, and land grant universities has proven highly beneficial in identifying grain quality-related characteristics, developing tests, and designing grain standards.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the cooperative efforts described in subsection (a), including the sharing of funds and personnel, should be strongly encouraged, and that the Federal Grain Inspection Service should continue to utilize the research capabilities of the Agricultural Research Service and the land-grant universities in such efforts.

### SEC. 603. SENSE OF CONGRESS CONCERNING TESTS FOR PURITY.

(a) FINDING.—Congress finds that consumers, both internationally and domestically, are aware of, and concerned with, the purity of their food supply.

(b) SENSE OF CONGRESS.—It is the sense of Congress that in order to assure buyers of the purity of United States grain, the Federal Grain Inspection Service should, as soon as practical, implement tests for mycotoxins and pesticide residues and incorporate the limits on the presence of such impurities in grain, as established by the Food and Drug Administration and the Environmental Protection Agency, into the official grain grade classification system established under the United States Grain Standards Act (7 U.S.C. 71 et seq.).

## TITLE VII—VARIETY PERFORMANCE INFORMATION

### SEC. 701. SEED VARIETY REGISTRATION.

Section 201(a) of the Federal Seed Act (7 U.S.C. 1571(a)) is amended—

(1) in paragraph (10), by striking out the period and inserting in lieu thereof "; and"; and

(2) by adding at the end thereof the following new paragraph:

"(11) Specifications of certain variety and quality performance characteristics of the seeds, as approved by the Secretary, including those that are—

"(A) agronomic in nature and most important to producers; and

"(B) physical, compositional, and intrinsic in nature and most important to the end-users.".

SEC. 702. USE OF VARIETY INFORMATION

Section 7 (7 U.S.C. 79) (as amended by section 601) is further amended by adding at the end thereof the following new subsection:

"(l) If the variety name of a grain is required by a warehouse for proper classification or separation of grain by a warehouse, the warehouse receipt for deliveries of such grain from producers shall state the name of the grain variety. If producers do not know or provide the variety of the grain being delivered the designation for classification purposes may be stated as 'unknown'. If several varieties of grain are interplanted or harvested together the designation for classification purposes may be stated as 'mixed'.".

SEC. 703. SURVEY OF GRAIN VARIETIES.

The National Agricultural Statistics Service shall periodically compile, prepare and submit, to the Secretary of Agriculture and to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report that contains data concerning the varieties of major grains produced in the United States. Such report shall provide data relating plantings of grains to agronomic performance and end-use properties of the varieties of such grain.

## TITLE VIII—PRICE SUPPORT LOAN INCENTIVES FOR CLEAN GRAIN

SEC. 801. QUALITY GOALS FOR COMMODITY CREDIT CORPORATION PROGRAMS.

The Secretary of Agriculture, in administering the programs under the Agricultural Act of 1949, or in administering any other agricultural programs through the Commodity Credit Corporation, shall give consideration to the direct and indirect impact that such programs have on the quality of crops and livestock produced in the United States.

SEC. 802. PRICE SUPPORT LOAN INCENTIVES FOR CLEAN GRAIN.

It is the sense of Congress that as part of the price support and production adjustment programs established for 1991 and subsequent crop years—

(1) grain price support loans should reflect quality characteristics through a schedule of premiums;

(2) a special loan premium should be established for clean grain at a level that will sufficiently reward producers to encourage the marketing of cleaner grain;

(3)(A) grain pledged as collateral for a price support loan from the Commodity Credit Corporation should be inspected to determine the condition and quality of the grain relative to the schedule of premiums that apply to such loans; and

(B) grain pledged as collateral for a price support loan that has not been inspected for quality should be ineligible for quality premiums; and

(4)(A) any grain forfeited to the Commodity Credit Corporation under a nonrecourse loan should be inspected according to approved procedures to determine the condition and quality of the grain; and

(B) an adjustment should be made to the loan proceeds for changes in condition and quality of the grain.

## TITLE IX—FARMER-OWNED RESERVE QUALITY REQUIREMENTS

SEC. 901. COMMODITY CREDIT CORPORATION RECEIVAL STANDARDS FOR RESERVE GRAIN.

Section 110(j) of the Agricultural Act of 1949 (7 U.S.C. 1445e(j)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) Any grain stored under the producer storage program that is forfeited by the producer to the Commodity Credit Corporation shall be equal to or exceed the quality of the grain that was pledged by such producer as collateral in order to fully satisfy the original storage contract. The Secretary shall impose discounts for any deterioration in such quality. Such discounts shall be substantial enough to discourage the forfeiture of low quality grain.".

SEC. 902. ENTRY QUALITY STANDARDS FOR ALL GRAINS.

Section 110 of the Agricultural Act of 1949 (7 U.S.C. 1445e) is amended by adding at the end thereof the following new subsection:

"(k) In announcing the terms and conditions of the producer storage program under subsection (c)(1), the Secretary shall set standards concerning the quality of grain that shall be allowed to be stored under the program, and such standards shall ensure that only high quality clean grain shall be stored under such program. The Secretary shall establish grain maintenance and stock rotation requirements to ensure that quality is maintained for the duration of the storage period.".

## TITLE X—QUALITY REQUIREMENTS FOR COMMODITY CREDIT CORPORATION OWNED GRAIN

SEC. 1001. QUALITY REQUIREMENTS FOR COMMODITY CREDIT CORPORATION OWNED GRAIN.

The Act (7 U.S.C. 71 et seq) (as amended by sections 101, and 301) is further amended by adding at the end thereof the following new section:

"SEC. 24. QUALITY REQUIREMENTS FOR COMMODITY CREDIT CORPORATION OWNED GRAIN.

"(a) ESTABLISHMENT OF MINIMUM STANDARDS.—Notwithstanding any other provision of law, the Secretary, acting through the Administrator, shall establish minimum quality standards that shall apply to grain that is to be stored by the Commodity Credit Corporation for long periods of time. In establishing such standards, the Secretary shall take into consideration factors related to the storability of grain.

"(b) INSPECTION OF GRAIN ACQUISITIONS.—The Commodity Credit Corporation shall establish and implement a procedure to monitor the condition of grain stored by such Corporation to insure that the quality of such grain is maintained.

"(c) DISPOSAL OF OFF-QUALITY GRAIN.—Grain that is acquired by the Commodity Credit Corporation that does not meet the minimum quality grade standards established under subsection (a), or grain stored by such Corporation that fails to meet such standards at any time during storage, shall be marketed in such a manner as to insure that it is not blended into other grain intended to be marketed as meeting number 1, 2, or 3 grade standards.".

## TITLE XI—EXPORT ENHANCEMENT PROGRAM

SEC. 1101. EXPORT ENHANCEMENT PROGRAM.

Section 1127 of the Food Security Act of 1985 (7 U.S.C. 1736v) is amended—

(1) in subsection (b)—

(A) by striking out "and" at the end of paragraph (4);

(B) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(6) shall authorize the drafting of export contracts in a manner that would facilitate the export of high quality grain, as determined under standards established by the Administrator of the Federal Grain Inspection Service under the United States Grain Standards Act (7 U.S.C. 71 et seq.), that may contain requirements for the payment of bonuses under this section to exporters.".

(2) in subsection (h), by striking out "1990" and inserting in lieu thereof "1995".

## TITLE XII—CROP INSURANCE COVERAGE FOR LOSS OF QUALITY

SEC. 1201. CROP INSURANCE COVERAGE FOR LOSS OF QUALITY.

Section 508(a) of the Federal Crop Insurance Act (7 U.S.C. 1508(a)) is amended—

(1) in the second sentence, by inserting ", or in the case of grains the loss of the quality of such commodity," after "insured commodity"; and

(2) by inserting after the eight sentence the following new sentence: "Any insurance offered to grain producers shall make available protection against loss in the quality of the grain, as determined by the Corporation in consultation with the Administrator of the Federal Grain Inspection Service, if such grain is of sufficiently poor quality, as a result of any unavoidable causes, to be classified by the Administrator as unacceptable as grade 3 grain.".

## TITLE XIII—DISASTER PAYMENTS FOR LOSS OF QUALITY

SEC. 1301. DISASTER PAYMENTS FOR LOSS OF QUALITY.

Section 105(a) of the Disaster Assistance Act of 1989 (Public Law 101-82; 103 Stat. 572) is amended by adding at the end thereof the following new sentence: "Such additional payments shall include payment for the loss of the quality of grain if such crop of grain is damaged or contaminated in excess of factor limitations established for grade 3 grain under the United States Grain Standards Act.".

## TITLE XIV—ASSISTANCE FOR IMPROVEMENTS IN GRAIN QUALITY

SEC. 1401. AUTHORITY TO ASSIST FARMERS AND ELEVATOR OPERATORS.

The Secretary of Agriculture may provide financial assistance (including cost sharing, loans and grants) and technical assistance to grain producers and elevator operators to assist such producers and operators in installing or improving grain cleaning, drying or storage equipment. Financial assistance may be provided by or through the Commodity Credit Corporation or other agency administered by the Department of Agriculture that provides cost sharing, loans, or grants.

SEC. 1402. REPORT CONCERNING ASSISTANCE FOR IMPROVEMENTS IN GRAIN.

Not later than June 30, 1991, the Secretary of Agriculture shall prepare and submit, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report, together with recommendations on program implementation, that shall contain the results of an investigation conducted by such Secretary concerning the alternative forms of financial assistance (including cost sharing, loans, and grants) and technical assistance that may be provided to grain producers and operators of grain elevators to assist such producers and operators in installing or improving grain cleaning, drying, or storage equipment to improve the cleanliness and quality of grain produced in the United States.

EXPLANATION OF THE PROVISIONS OF THE GRAIN QUALITY INCENTIVES ACT OF 1989

TITLE I—COORDINATION AND IMPLEMENTATION OF GRAIN QUALITY IMPROVEMENTS

Sec. 101. The Secretary of Agriculture is directed to designate an official responsible for monitoring activities of the USDA to insure they are consistent with improvements in grain quality. That official shall serve in a coordinating capacity across agency jurisidiction to insure that independent agency actions are consistent with the goal of improved quality. The official shall report to Congress on actions taken by the USDA that help to improve quality, activities of the USDA that are inconsistent with the goal of improved grain quality, conditions in the production and marketing sectors that discourage improvements in grain quality, and opportunities for change that would help correct the problem conditions.

Sec. 102. The USDA shall conduct an economic analysis, quantifying where possible the expected economic benefits and costs, and the distribution of those benefits and costs, from improvements in U.S. grain quality. The study will examine how improvements in the quality of export grain can be expected to affect the competitive position of the United States in world markets. The study shall be completed within 180 days of enactment.

Sec. 103. To help assure that farmers are treated uniformly when they deliver grain, and to facilitate price support program and market incentives for quality improvements by distinguishing between high and low quality grain, FGIS shall supervise the unofficial inspections of handlers receiving grain from farmers where the inspection results affect price adjustments. To assure accuracy and uniformity of these unofficial inspections, FGIS shall develop a program for approving testing equipment and supervising the calibration and testing procedures that shall be used. It is not intended that unofficial inspections correspond to official inspections. FGIS shall fully recognize the differences in objectives and capabilities between country elevator inspections and official inspections.

Sec. 104. The USDA shall examine and evaluate the grain standards, tests, and testing equipment of other major grain trading nations to better understand the differences from those used in the United States. Consideration shall be given to opportunities for better harmonizing standards, tests, and equipment among nations in order to facilitate trade and improve the competitive position of the United States. The study shall be completed by December 31, 1992.

Sec. 105. Congress recognizes that laws and regulations administered by FDA and EPA related to the purity and safety of grain serve to insure the integrity of this Nation as a supplier of wholesome grain. It is the sense of Congress that agencies responsible for enforcing laws and regulations related to the quality, purity and safety of grain marketed domestically and to foreign buyers should seek assistance from and cooperate with FGIS in enforcing those laws and regulations.

TITLE II—IMPROVING THE CLEANLINESS OF GRAIN EXPORTS

Sec. 201. Exports of grain sold as grades No. 1, 2, and 3, shall be required to meet, within 5 years, the levels of cleanliness commonly achieved by competing exporters. FGIS shall establish tolerance limits for nongrain material allowed in such export shipments. FGIS shall phase in tighter export tolerances so that within a commercially practical time the United States is at least meeting the cleanliness levels of major competing grain exporters.

TITLE III—IMPROVING THE PHYSICAL SOUNDNESS AND PURITY OF EXPORT GRAIN

Sec. 301. FGIS shall determine the adverse conditions that make grain unacceptable for normal intended uses in foreign markets. The Secretary shall take such action as is necessary to insure that foreign buyers specifying grades No. 1, 2, and 3, in purchase contracts receive grain that is suitably sound and pure considering end-use performance goals and the condition of grain being supplied by other exporting nations.

To acheive the objectives stated above, FGIS shall evaluate the current grade-determining factors and factor limits to ascertain their suitability as contract specifications for end-users. Where practical, the grade-determining factors and limits shall be specified with tolerances sufficiently restrictive that within 5 years the grain being exported as No. 1, 2, and 3, is of at least comparable soundness and purity with that of our competitors and meets the performance needs of most end-users.

FGIS, should it deem such action necessary or more practical to meet the performance quality goals of grades No. 1, 2, and 3, shall have the authority to make it illegal to blend particularly low quality grain with higher quality grades for purposes of marketing such low quality grain as grades No. 1, 2, and 3. There shall be no constraints on blending or selling higher quality grain with low quality grain for purposes of marketing the combination as something other than grades No. 1, 2, and 3. It is not intended that any prohibition on blending, by itself, will restrict the marketing and use of low quality grain. Buyers seeking quality levels less than the limits specified for grades No. 1, 2, and 3, will be able to specifiy in purchase contracts the higher levels of damage or impurities they will accept.

TITLE IV—EXPORT REQUIREMENTS AND STANDARDS

Sec. 401. Except as otherwise authorized by the Administrator, all grain officially inspected and officially weighed for export shall be loaded aboard the final carrier according to a plan that statistically assures fairness by favoring neither the buyer nor the seller in meeting the requirements specified by the delivery contract.

TITLE V—CLASSIFICATION, GRADES AND STANDARDS DESIGN CRITERIA

Sec. 501. The Administrator shall adopt, by December 31, 1991, an economic value based framework for grain standards that: define uniform and descriptive terms to facilitate trade, provide final and intermediate users information to determine the quality (value) of grain for marketing and end use, and enable to market to establish quality improvement incentives. Any revisions in the current grades and standards necessitated by this action shall proceed through the normal regulatory process for implementation.

Test factors shall be grouped into four categories: class-determining factors, grade-determining factors, nongrade-determining factors, and optional factors.

Class-determining factors are those that separate grain into major categories based on differing major end-uses. The classes are the broadest groupings and form the initial basis for segregation into marketing categories.

Grade-determining factors are those that relate to the physical soundness and purity (sanitary condition) of the grain. Grade-determining factors are those that affect economic value for most all final or intermediate users. Higher test levels for damage or impurities imply a lower economic value. Grades No. 1, 2, 3, shall be established as the intended commercial grades for general grain merchandising. Factors related to soundness and purity that affect storability and end-use performance shall be identified as grade-determining factors. Individual factor tolerances shall be established where it is possible to identify and test for conditions that substantially relate to or reflect end-use performance. Testing and measurement shall always be reported on these factors when official inspections are conducted.

Nongrade-determining factors relate to the physical, compositional, and intrinsic characteristics important to the major final and intermediate users. Nongrade-determining factors reflect characteristics that have value to most intermediate and end-users, but the desired level differs among uses. These factors shall all be tested and the measurements reported as part of an official inspection, but no judgment is implied about whether one level is better than another. Buyers will be expected to make their own determination of the importance or value of these factors.

Optional factors relate to characteristics or conditions important to a few final and intermediate users, or relate to adverse conditions that arise only occasionally or in isolated locations. Generally, testing and measurement of these factors is not justified except for those buyers who specifically request them, or when adverse conditions warrant. Upon request by buyers or sellers, these factors will be tested during an official inspection. Where exceptional production, storage, or marketing conditions warrant, optional factors may be temporarily applied on a mandatory basis and in limited locations.

A separate grade designation or several special grade designations shall be established for grain that includes damage levels, impurities, or other conditions that make it unsuitable for normal intended uses. This grade or grades encompass grain that exceeds the grade-determining factor tolerances of No. 1, 2, and 3. It also includes grain exhibiting other conditions making it of distinctly low quality in terms of storability or normal commercial use. Such grain may be suitable for only limited or restricted uses under normal handling, storage, and shipping practices. FDA and EPA action limits on mycotoxins, pesticide residues, and other contaminants shall be incorporated into the factors that apply to this grade.

TITLE VI—GRAIN QUALITY RESEARCH AND TESTING

Sec. 601. It is the sense of Congress that research on the end-use performance of grain by the Agricultural Research Service and land-grant universities is critical to improving the quality and competitiveness of U.S. grains in domestic and world markets. The work done by the Agricultural Research Service wheat quality laboratories has proven valuable to improved understanding of the relationships between the physical and chemical properties of wheat and performance in milling and baking. Likewise, research done by the Agricultural Research Service and land-grant universities on the composition of corn and soybean varieties and resulting value as feed and

food is very important. The USDA, and in particular the Agricultural Research Service and land-grant universities, are directed to examine their financial priorities and give increased emphasis to variety evaluation and development of objective tests for end-use properties.

Sec. 602. It is the sense of Congress that a close cooperative relationship between the Federal Grain Inspection Service, Agricultural Research Service, and land-grant universities has proven highly beneficial in identifying quality-related characteristics, developing tests, and designing standards. Such cooperative efforts, including the sharing of funds and personnel is strongly encouraged. It is anticipated that FGIS will continue to utilize the research capabilities of the Agricultural Research Service and the land-grant universities in these efforts.

Sec. 603. Consumers, both internationally and domestically, are aware of and concerned about the purity of their food supply. To assure buyers of the purity of U.S. grain, it is the sense of Congress that FGIS shall, as rapidly as practical, implement tests for mycotoxins and pesticide residues. Limits for these impurities, when established by FDA and EPA, shall be incorporated into the system of official grain grades and standards.

TITLE VII—VARIETY PERFORMANCE INFORMATION

Sec. 701. Measures and indicators of agronomic and end-use performance shall be provided as standardized information on the seed labels of grain.

Sec. 702. If variety names are required by warehouses for proper classification and separation of grain during storage and marketing, it shall be required that the warehouse receipt for grain deliveries by farmers show the name of the grain variety. It is expected that warehousemen will collect variety information through self-certification by farmers. Where farmers do not provide the name of variety being delivered the designation could simply be "unknown." Where several varieties are interplanted and/or harvested together, the designation could be "mixed."

Sec. 703. The National Agricultural Statistics Service shall periodically compile and report data on varieties of major grains produced in the United States. The report shall relate plantings to agronomic performance and end-use properties of the varieties.

TITLE VIII—PRICE SUPPORT LOAN INCENTIVES FOR CLEAN GRAIN

Sec. 801. In carrying out programs of farm income and price support or other operations of the Commodity Credit Corporation, consideration shall be given to the direct and indirect on the quality of crops and livestock produced in the United States, with quality improvement incorporated as a design feature where possible.

Sec. 802. It is the sense of Congress that, within the operation of CCC commodity price support programs, a special loan premium shall be established for clean grain. Premiums for other quality factors shall be incorporated into the price support programs as determined appropriate to encourage and reward the production and marketing of high quality grain. The Secertary shall make adjustments as needed in loan premiums to prevent them from encouraging forfeiture of loan collateral.

TITLE IX—FARMER-OWNED RESERVE QUALITY REQUIREMENTS

Sec. 901. Grain that is forfeited to CCC from the farmer-owned reserve shall at least equal the quality that was pledged as collateral or be discounted.

Sec. 902. CCC shall adopt rules for the entry and maintenance of grain in the farmer-owned reserve to assure its storability and assure that its quality has not deteriorated by the time it is removed from the reserve program.

TITLE X—QUALITY REQUIREMENTS FOR COMMODITY CREDIT CORPORATION-OWNED GRAIN

Sec. 1001. Grain owned by CCC shall be of high enough quality to store well. Its condition shall be maintained. Any low quality grain acquired or grain that goes out of condition shall be marketed in such a manner as to insure that it is not blended into other grain being marketed as grades No. 1, 2, or 3.

TITLE XI—EXPORT ENHANCEMENT PROGRAM

Sec. 1101. The Export Enhancement Program shall incorporate grain quality as a factor for targeting commodities and countries when appropriate.

TITLE XII—CROP INSURANCE COVERAGE FOR LOSS OF QUALITY

Sec. 1201. The Federal Crop Insurance Corporation shall include coverage for losses of crop quality below grade No. 3 in multiperil insurance policies available to grain producers.

TITLE XIII—DISASTER PAYMENTS FOR LOSS OF QUALITY

Sec. 1301. Disaster payment provisions under price support programs or special disaster assistance programs shall include payment for loss of quality if grain is substantially damaged beyond the tolerances for grade 3 as a result of unavoidable adverse weather, pest, or disease conditions.

TITLE XIV—ASSISTANCE FOR IMPROVEMENTS IN GRAIN QUALITY

Sec. 1401. The Secretary of Agriculture is authorized to provide financial assistance (including cost sharing, loans, and grants) and technical assistance to farmers and elevators to help them install, improve, and properly operate grain cleaning, grain drying, or grain storage equipment that will help improve the cleanliness and quality of grain in the United States.

Sec. 1402. The Secretary is directed to investigate and report to Congress on alternative financial assistance and technical assistance that can be provided to farmers and elevators. This report shall be completed, with recommendations for implementation, by June 30, 1991.

Mr. BOND. Mr. President, agricultural exports are one of the few bright spots in our trade sector. For the 1989 fiscal year, the United States had an estimated $18 billion agricultural trade surplus. In fact, this trade surplus has increased every year since the implementation of the Food Security Act of 1985.

Is this surplus a fluke? I don't think so. In the Food Security Act of 1985, the United States signaled its intent to restore its competitiveness in international markets. Today, agricultural exports support more than 900,000 full-time jobs and account for more than one-quarter of the value of Missouri's total farm marketings.

Furthermore, the Bush administration is working hard to open new markets for our agricultural products. The Uruguay round of GATT negotiations is our best hope of reducing, or eliminating, barriers to trade worldwide. While it is premature to predict success, we do know that the United States would benefit from less-restrictive trade. The U.S. Department of Agriculture [USDA] has estimated the monetary value of a successful Uruguay round are $33 billion, one-quarter of which would benefit the United States.

Mr. President, if we are to take advantage of these new opportunities, the United States can no longer hope to compete on strictly a price basis. In the 1970's, one-third of the world supplied grain to two-third's of the world's people. Today, two-third's of the world supplies grain to the other third. In the future it is clear that quality will determine who wins and loses. It is for this reason that Senator DASCHLE and I are introducing the Grain Quality Incentives Act of 1989.

This legislation was designed to improve the competitive position of U.S. grain in international and domestic markets, facilitate the communication of quality characteristics important to end users, provide incentives to producers of high quality grain and to improve the quality of grain held in federally owned storage. In short, this bill recognizes the increasing importance placed on quality and identifies improvements, from the field to the export terminal, which will reflect more accurately those characteristics of importance to end-users.

This bill does in no way denigrate the progress which has been made in grain quality over the past couple of years. The Federal Grain Inspection Service [FGIS], through its Grain Quality Workshops, is to be commended for proposing and implementing several initiatives designed to improve grain quality. USDA has prohibited adding or recombining dockage, foreign material, and dust at export terminals, revised standards related to insect infestation, examined quality premiums and modified loading plans. However, now is not the time to slacken our commitment to quality; to the contrary, we should build upon this solid foundation.

The Grain Quality Incentives Act of 1989 recognizes the improvements made in recent years yet builds upon the findings of the recent Office of Technology Assessment [OTA] report entitled, "Enhancing the Quality of U.S. Grain For International Trade." The report states "the Nation has developed the reputation as a consistent supplier for any type of grain desired; to become a supplier of high quality grains, it must become more quality-conscious and develop a reputation as a supplier of high quality. The United States must understand the specific requirements of its customers in order to deliver the quality requested and to

become more aware of the dynamic issues surrounding the qualities required by the marketplace."

Mr. President, the advantages of clean grain go beyond the export market. For example, clean grain improves elevator safety, reduces insect damage, and lowers the cost associated with drying, aeration, transportation, and handling. Clean grain also increases storage capacity by removing dockage and increasing test weight. In aggregate, these factors can add up to significant savings for farmers, elevator operators and exporters.

The Grain Quality Incentives Act of 1989 includes a wide array of measures to improve grain quality. These measures begin in the laboratory; we must do a better job of producing those varieties which better reflect end-use characteristics. Advances in genetic engineering may soon eliminate the current tradeoff between yield and quality.

Of particular importance, the bill requires the Secretary of Agriculture to conduct a quantitative analysis of the costs and benefits associated with improved grain quality. The analysis will include the extent to which improved quality will affect the competitive position of the United States.

The bill also amends the Federal Seed Act to require that seed labels include information regarding specific end-use characteristics. This information will allow producers to base their planting decisions on agronomic and economic information.

The quality of grain owned by the Commodity Credit Corporation, or stored under the Farmer-Owned Reserve, would be increased as the Secretary is required to set minimal receival standards. These standards should ensure that the quality of this grain is maintained throughout the storage period. These provisions should ensure that buyers receive what they pay for, not simply what is available.

Mr. President, it is not clear where our quality problems begin. Perhaps nowhere are these problems more unwanted than at the export terminal. It is here that we earn our reputation—a reputation that should include both quality and consistency. This bill recognizes these principles by requiring all grain, destined for export, to be loaded in a manner which favors neither the buyer nor seller. When a shipment is split among several buyers, we shouldn't have to worry that one will end up with 75-percent foreign material and 25-percent clean grain.

As I mentioned earlier, this bill will build upon a solid foundation of progress in the quality area. While some may disagree with particular provisions of the bill, I believe it will lead to productive discussions of our grain quality goals. We have worked to encourage input from many different sectors of the grain trade—exporters, processors, commodity groups and general farm organizations—and will continue to seek input with the hope of improving the bill as it moves through the process.

Mr. President, the challenge is increased competition; the opportunity is improved quality, leading to improved sales. Success in the next decade, even the next century, will depend on how efficiently the United States is able to produce relative to our competitors. I believe Missouri farmers will agree that we must continue to modify our current system to enhance our ability to provide high-quality products at competitive prices.

In closing, I express my appreciation to my distinguished colleague from South Dakota, Senator DASCHLE, for his work on this bill. We have worked closely to craft legislation which would transcend party lines; I believe we have accomplished that. Also, I commend Mr. Jasper Womach for the tremendous job he has done on this very complex issue. He has literally worked day and night to put this package together prior to adjournment. I very much appreciate his diligence and thank him for a job well done.

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By Mr. GLENN (for himself, Mr. MOYNIHAN, Mr. RIEGLE, Mr. KENNEDY, Mr. DIXON, Mr. SASSER, Mr. LIEBERMAN, and Mr. BENTSEN):

S. 1978. A bill to establish as an executive department of the Government a Department of Industry and Technology, to establish within such Department the Advanced Civilian Technology Agency, to add the Secretaries of the Treasury and Industry and Technology and the U.S. Trade Representative to the National Security Council, and for other purposes; to the Committee on Governmental Affairs.

TRADE AND TECHNOLOGY PROMOTION ACT

● Mr. GLENN. Mr. President, I rise to introduce a bill titled the Trade and Technology Promotion Act of 1989. This legislation offers a solution to a fundamental aspect of the competitiveness problem we are facing today.

After months of listening to the debate and discussion in Congress and around the Nation about the issue of U.S. competitiveness, I have become convinced that one of the fundamental sources of the problem is simply this: The structural organization and function of some of the Federal Government's key agencies are simply out of step with the dramatic changes which have occurred in the American economy in the last decade. We now live in a global marketplace, and one in which technology is playing an increasingly important role.

As a result, I firmly believe that the key to the United States regaining its international competitiveness requires a two-pronged strategy: First, strengthening our trade and commercial promotion apparatus; and second, providing incentives for the judicious development and application of advanced technologies and the organizational changes within government that will help these new technologies work.

This legislation takes a vital step forward in reclaiming America's economic strength and enhancing our Nation's ability to compete in the global marketplace of the 1990's and beyond. The bill addresses several key aspects of the way our businesses and our Federal Government deal with trade, technology, and other competitiveness challenges.

Among other things, the bill transforms the Federal structure responsible for promoting U.S. trade and technology interests by reorganizing the Department of Commerce into a new Department of Industry and Technology, whose primary mission will be to enhance American competitiveness and marry commercial promotion activities—both domestic and international—with technology development activities; it establishes the Advanced Civilian Technology Agency, a civilian counterpart of DARPA, to lay the basis for industry-led, public-private partnerships that promote more rapid development of technological advances and their application to new products and processes; it raises the profile of international trade issues in our national security agenda by placing top economic cabinet officers on the National Security Council; and it increases the importance of science and technology in Presidential decision-making by elevating the post of Science Adviser to the President and giving it a new, statutory basis.

To date, much of the effort to regain our competitiveness has focused on ways to reduce foreign barriers to our exports, including Super 301 and the current structural impediments initiative with Japan. These measures form a vital part of our trade agenda, since they assure workers, farmers, and businesses that if they take the tough steps needed to restore the Nation's economic vitality, their Government will act to open foreign markets to their products. But even if these and other competitiveness tools are used aggressively, they are only part of the story. As foreign barriers are removed and a more level playing field is created, American business must be prepared to take full advantage of the opportunities. This is the main purpose of my bill.

Many of the provisions in this legislation were contained in a bill I introduced last Congress. Throughout the first session of this Congress I met with a number of colleagues here in the Senate as well as with administra-

tion officials and I believe this revision of last year's effort represents a significant improvement.

Like last Congress, I am happy that a companion to this bill will be introduced in the House. That effort is spearheaded by Majority Leader GEPHARDT along with Congressmen LEVINE and LEVIN.

THE DEPARTMENT OF INDUSTRY AND TECHNOLOGY

My staff has consulted extensively with government organization experts and former senior Commerce Department officials, and the clearest fact which emerges about the Department of Commerce's mission today is that it has no clear mission. The individuals who run the Department of Commerce including the Secretary, have done a tremendous job in fulfilling the many and varied goals and responsibilities given to them. But even they, and I have the highest respect for their abilities, cannot create an efficient and smooth-running organization out of chaos.

Among Commerce's problems is an artificial bifurcation between domestic and international commercial policymaking activities. In today's global economy, we cannot afford to draw that distinction, and it is increasingly to our disadvantage to shut our eyes to the reality of the marketplace and insist that we can actually separate domestic and international economic concerns. The new Department of Industry and Technology will have an Under Secretary for Industry, who will integrate economic affairs, both at home and abroad.

My bill also gives to the new Department a greater statutory requirement to support American exports. It greatly strengthens the U.S. and Foreign Commercial Service and creates an interagency export enhancement committee to work with U.S. businesses to identify and exploit foreign market opportunities.

These changes are needed if we are to give American business a fighting chance overseas. At present, our Federal Government's level of support for exports, as represented by the resources made available to the U.S. and Foreign Commercial Service, ranks at the bottom of all major industrialized countries. U.S. exporters, especially small businesses, have to work their way through a maze of some 20 Federal agencies that have a role in carrying out trade promotion policy.

Further, some other of our various trade promotion agencies work in isolation and often at cross purposes from one another. Independent trade and investment agencies like the Overseas Private Investment Corporation [OPIC], Eximbank, and the Trade and Development Program are left without an overall strategy to coordinate their efforts. The restructuring provided for in my bill addresses these problems.

I have thought for many years that America needs to be more aware of the crucial role technology plays in affecting our position in the world economy. Without it we would not enjoy the industrial and military strength that we do today; if we do not continue to explore the outer reaches of our universe of knowledge, we will no longer have any claim to a position of leadership in the world.

The root of America's technology problem is not in our ability to conduct basic scientific research, but rather in our ability to bridge the gap between the lab and the marketplace. Our Government does not have a formally stated policy for civilian technology development and applications. For all intents and purposes, we are the only major industrial country without one. I know this has come about because we have been so far ahead of the pack that everyone else needed a technology policy. But unfortunately we no longer live in a world where our technological preeminence is a matter of assertion. If we don't take careful steps now, we will find ourselves at the back of the pack, not at the front. We need to change our current ad hoc policy of dealing with technological problems as they arise and move toward a more thoughtful, lasting policy.

As one looks at the structure of the current Department of Commerce, we see that technology concerns are somewhat scattered, and that there is no effective champion for the development of technology and its application. The Under Secretary for Technology in the new Department of Industry and Technology will serve this purpose. All of the technology-related offices from the former Department of Commerce will be under the control of the new Under Secretary for Technology, except for the National Oceanic and Atmospheric Administration, which will be spun off and attached to EPA. Moreover, the Under Secretary for Technology has deliberately been placed on equal footing with the Under Secretary for Industry to emphasize that the new Department's mission is to develop policies which foster the integration of trade promotion and technology promotion concerns.

THE ADVANCED CIVILIAN TECHNOLOGY AGENCY

Perhaps the most important aspect of the legislation I am introducing today and, frankly, the piece I am most excited about, is the creation of the Advanced Civilian Technology Agency, which will be housed in the new Department of Industry and Technology. ACTA will be a civilian counterpart to DARPA, the Defense Advanced Research Projects Agency. It will provide seed money for specific projects in high-risk, long-term, high-impact areas of generic technological development and application that are not otherwise being addressed by the private sector. ACTA will work with the private sector to identify and foster the development and commercial application of emerging generic technologies. ACTA programs will encompass the entire range of technological development and application, from idea exploration to prototype development, leading to commercialization by industry.

ACTA will provide funding on a cost-sharing basis with industry, and it will be able to recover its cost share from profitable projects. Initiatives such as Sematech are a type of effort ACTA would support. Similarly, ACTA could fund the kind of ventures that have been proposed in areas such as high definition imaging systems, biotechnology, and superconductivity.

We must recognize that the nature of the innovation process has dramatically changed. The image of a small group of scientists or inventors engaged in the discovery, development, and marketing of new products and processes is gone forever. Today, huge capital commitments are often required for major R&D projects, sometimes making it difficult for even the largest firms to go it alone. Moreover, because of a time compression in the flow of new technologies across national borders, U.S. companies are losing markets to foreign firms who take the results of our R&D and rapidly apply them to new products and processes.

Our major trading rivals have government structures in place which help their companies transform scientific discoveries into new products and processes—and to do so quickly. In contrast, rather than systematically supporting and facilitating vital applications of research and development in civilian areas, our Government tends to adopt an arm's length approach and employs an idiosyncratic method of dealing with technology policy. ACTA will provide the focus that is sorely needed.

THE NATIONAL SECURITY COUNCIL

My legislation places the Secretaries of Industry and Technology and the Treasury as well as the U.S. Trade Representative on the National Security Council [NSC], and increases the NSC's capacity to address economic and trade issues by providing additional staff and resources specifically for this purpose.

Today, economics, foreign policy, and national security are inextricably linked. Recent polls show that most Americans see our economic problems as a greater threat to our national security than Soviet missiles. They recognize that, in the final analysis, our ability to influence world events is anchored in the strength of our economy.

Throughout the post-World War II period, we have relegated economic considerations to a secondary role in our national security agenda, sacrificing the long-term health of our economy in pursuit of foreign policy and defense concerns. We kept our markets open to promote economic growth abroad, without insisting on equal access to foreign markets. We supplied the capital to rebuild Europe and help developing nations, transferred technology freely abroad, and used our wealth and research capacity to ensure Western security, while nations under our defense umbrella invested in commercial expansion. Such measures helped bring much of the world to a new level of peace and prosperity, but at a great cost to our economy.

We cannot abandon our world leadership role, but neither can we afford to ignore the impact of foreign policy decisions on the state of our economy. And yet we continue to exclude our top economic decisionmakers from strategic discussions of national security. Negotiations with Japan on the FSX coproduction agreement for example, continued for 3 years without significant input from the Commerce Secretary or the U.S. Trade Representative. Yet the results of this flawed deal could have a disastrous impact on the health of America's aerospace industry. My bill ensures that commercial and economic factors will be fully considered in the development of U.S. strategic and foreign policy.

ASSISTANT TO THE PRESIDENT FOR SCIENCE AND TECHNOLOGY

An important measure—both substantively and symbolically—in my bill is the establishment of a permanent statutory position of Assistant to the President for Science and Technology, to be on par with the President's National Security Adviser. In addition to closely advising the President on issues in the science and technology field, the Assistant to the President for Science and Technology will be charged with helping to coordinate the executive branch's strategy to reassert America's scientific and technological excellence.

It is no coincidence that the rising economic fortunes of countries like Japan, West Germany, and the Far Eastern NIC's correspond to a growing emphasis in these countries on science and technology. With half our population, Japan produces twice as many engineers and scientists as we do. The number of United States patents issued to American inventors has dropped by nearly 10 percent in recent years, while United States patents issued to Japanese inventors have increased fourfold. Other countries have now supplanted the United States to dominate world markets in advanced machine tools, lasers, robotics, and telecommunications. Moreover, institutions such as the Defense Science Board now warn that our leadership in various science and engineering academic fields threatens to pass from the United States to other nations.

We must respond to our growing weakness in these areas in the same way that Americans responded three decades ago to the launch of the Soviet Sputnik satellite; that is, with a new dedication to excellence in science and technology. The position of Assistant to the President for Science and Technology will be the focus for such an effort.

CONCLUSION

It is obvious that the global economy and America's role as an international competitor have changed dramatically. Today we are far more dependent on trade in a world that contains many more trading powers. About one-fifth of our GNP arises directly from international trade, and some 5 million American jobs depend on exports—more than in any other nation. Moreover, our economic rivals—both the traditional ones, such as Japan and Europe, and new ones like the NIC's—have embarked on a deliberate strategy of international economic competition. It is high time that we, too, forge a conscious competitive trade and technology strategy. Modifying our Government policymaking structure is a necessary and important component of that process.

I am under no illusions that this legislation alone will solve all of our competitiveness difficulties. Indeed, it cannot hope to solve the immediate problem of the trade deficit. For this, we must rely on reducing the Federal budget deficit, on our trading partners' increasing the consumption of our goods, and on the realignment of exchange rates with respect to our major trading partners, the European Community and Japan, as well as the NIC's.

Mr. President, we have all heard of, read about, and seen many reasons to do something about the threat to American competitiveness. The legislation I am introducing today will form the foundation for a renewed partnership between Government and American business which will lead to greater prosperity for the entire country.

The costs associated with implementing this initiative are relatively small—the transformation of the Department of Commerce has been designed to be virtually personnel- and revenue-neutral, and funding for ACTA is at a very modest level. On the other hand, the benefits associated with these changes will be large. Not only will we reap the benefits of creating a bona fide technology policy, but the new Department of Industry and Technology and ACTA will play well-defined and active roles in advancing America's future economic success. The costs associated with putting off these changes, however, are great.

I am well aware that in matters of Government reorganization, there is not a single right answer. However, I believe that this legislation, in refining—indeed, transforming—Government's role in the nexus of trade and technology concerns, goes to the heart of the country's competitiveness problems. I hope my colleagues will join with me to move this bill through the Congress and on to the President for his signature.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

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*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Trade and Technology Promotion Act of 1989".

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## TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS.

The Congress finds that—

(1) the expansion of United States participation in international trade through aggressive promotion and marketing of United States goods and services and accelerated technology development and application are principal national goals;

(2) the economy of the United States is so inextricably linked with the international economic system that all domestic economic sectors are influenced by the dynamics of global trade and investment;

(3) the expansion of United States participation in international trade and investment will improve the general welfare of the people of the United States by increasing demand for United States products and services, creating jobs, and increasing the gross national product;

(4) the national security of the United States will be enhanced by a stronger domestic economy;

(5) the Federal Government can enhance the capability of United States businesses to compete in foreign markets by acting to—

(A) reduce political and economic barriers to sales and investments by such businesses;

(B) promote American goods and services in foreign countries;

(C) encourage aggressive participation by the private sector in the international marketplace; and

(D) develop policies to enhance productivity and the development and application of technological advances;

(6) to achieve the important goals described in paragraph (1) through the means described in paragraph (5), the United States needs to establish a cohesive national policy to—

(A) restore the competitive edge to United States industries, and

(B) provide appropriate incentives for the development and application of advances in technology;

(7) effective and efficient Government action to enhance the capability of United States businesses to compete in foreign markets requires coordination and development and implementation of Government policies relating to—

(A) international trade and investment;

(B) national and economic security; and

(C) technology interests of the United States;

(8) a lack of analytical capability and knowledge concerning the competitive position and prospects of United States industries relative to foreign market opportunities greatly hampers or delays the ability of the United States to formulate responsible policies regarding economic competitiveness, technology development and application, and trade;

(9) Government organization should proceed from the recognition that—

(A) there is a critical need to link policies which enhance competitiveness, technology development and application, and national security; and

(B) analyses and policies regarding domestic markets should be integrated with analyses and policies regarding the international markets in which United States businesses compete;

(10) it is in the national interest for the Federal Government to encourage and, in selected cases, provide limited financial support to industry led private sector research and development projects to—

(A) foster research and development in economically critical generic areas of technology; and

(B) increase the rate of development of technology and its generic application to products and processes;

(11) the organizational structure of Government administration of international trade and investment activities, domestic economic promotion and growth activities, technology advancement activities and national security activities is lacking in the elements necessary to carry out the goals described in paragraph (1) and is inconsistent with the findings under paragraphs (9) and (10); and

(12) the reorganization of Government functions relating to international trade and investment, domestic economic promotion and growth, technology development and application, and national security through the establishment of a Department of Industry and Technology, an Advanced Civilian Technology Agency, an expanded National Security Council, and an Assistant to the President for Science and Technology, among other efforts, will eliminate the inconsistencies described in paragraph (11) and will substantially enhance the economic well-being of the United States.

SEC. 102. DEFINITIONS.

As used in this Act, unless otherwise provided or indicated by the context—

(1) the term "administrative and support functions" includes legal functions, investigative functions, budget preparation and analysis functions, administrative functions, public information functions, and congressional relations functions carried out by the Department and such other support services as may be determined by the Secretary;

(2) the term "Advisory Board" means the National Advanced Civilian Technology Advisory Board established by section 213;

(3) the term "Agency" means the Advanced Civilian Technology Agency established by section 211;

(4) the term "Department" means the Department of Industry and Technology;

(5) the term "executive department" has the meaning given to the term "Executive department" by section 101 of title 5, United States Code;

(6) the term "Federal agency" has the meaning given to the term "agency" by section 551(1) of such title;

(7) the term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program;

(8) the term "office" includes any office, administration, agency, institute, unit, organizational entity, or component thereof;

(9) the term "Secretary" means the Secretary of Industry and Technology;

(10) the term "foreign company or entity" means a company or other entity in which majority ownership or control is held by individuals who are not citizens of the United States or Canada; and

(11) the term "North American company or entity" means a company or other business entity in which majority ownership or control is held by individuals who are citizens of the United States, or citizens of Canada, or a combination of individuals who

are United States and Canadian citizens, except that such term includes a company or entity owned or controlled by Canadian citizens only if, in the judgment of the Secretary, the company or entity is not acting, with respect to a federally supported research and development project, as an agent or intermediary for a third-country company, entity, or foreign government.

## TITLE II—DEPARTMENT OF INDUSTRY AND TECHNOLOGY

### PART A—ESTABLISHMENT, ORGANIZATION, OFFICERS AND ADMINISTRATION

SEC. 201. ESTABLISHMENT OF DEPARTMENT.

There is established an executive department to be known as the Department of Industry and Technology.

SEC. 202. PRINCIPAL OFFICERS.

(a) SECRETARY.—The Department shall be administered by a Secretary of Industry and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) DEPUTY SECRETARY.—

(1) There shall be in the Department a Deputy Secretary of Industry and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall perform such functions as the Secretary may prescribe.

(2) The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Deputy Secretary shall act for and exercise the functions of the Secretary until the absence or disability of the Secretary no longer exists or a successor to the Secretary has been appointed by the President and confirmed by the Senate.

SEC. 203. FUNCTIONS OF THE SECRETARY.

In addition to the functions transferred to and assigned to the Secretary by this title, such other functions as the President may assign or delegate to the Secretary, and such other functions as the Secretary may, after the effective date of this title, be required to carry out by law, the Secretary shall—

(1) seek and promote new opportunities for United States products and services to compete in the world marketplace;

(2) assist businesses in developing export markets;

(3) support State governments involved in attracting international investment and expanding foreign markets for goods and services produced in such States;

(4) analyze domestic and international economic trends and developments in order to understand and foster the conditions that enhance productivity and advances in technology development and application;

(5) serve as the principal advisor to the President on government policies designed to contribute to the enhancement of the ability of United States products and services to compete in international markets;

(6) serve as the principal advisor to the President in identifying and assessing the consequences of any government policies which adversely affect, or have the potential to adversely affect, the competitiveness of United States products and services;

(7) promote cooperation between business and government in order to—

(A) improve economic performance, technology development and application, and the ability of United States companies to compete in international markets; and

(B) facilitate consultation and communication between the Federal Government and the private sector concerning domestic economic performance and prospects as well as the performance and prospects of foreign competitors;

(8) exercise responsibility, through the Stevenson-Wydler Technology Innovation Act of 1980 and other policies, for the Federal Government's role in encouraging technological innovation for civilian purposes;

(9) serve as the principal advisor to the President in formulating and carrying out policies which advance the development and application of technology to civilian goods and services;

(10) promote and facilitate the development and application of new technology in order to provide new products and materials for the civilian marketplace and new processes to improve the productivity and quality of civilian goods and services;

(11) carry out the functions specified in part B;

(12) carry out the functions specified in part C;

(13) carry out the functions specified in part D;

(14) carry out the functions specified in part E;

(15) carry out the functions specified in part F;

(16) develop policies and practices to encourage technological considerations during the development of economic policies and activities for the Nation;

(17) assist United States businesses to consider the role of, and the implications of, advances in domestic and foreign technology;

(18) monitor civilian technology development programs, including cooperative research and development centers and cooperative technology programs;

(19) promote and undertake the development, collection, analysis, and dissemination of—

(A) data and information relating to the development and use of foreign and domestic technology; and

(B) economic and technological information relating to the activities of the Secretary and the Department;

(20) assist interested trade associations, State technology agencies, and universities to disseminate information on new product and process technologies to interested businesses and other entities throughout the United States;

(21) develop, in cooperation with other appropriate Federal agencies, long-range programs to promote American international economic and technology policy interests; and

(22) mobilize and facilitate the participation of United States private capital and skills in the development of the economic and social progress of friendly developing nations and regions.

SEC. 204. OFFICE OF THE UNDER SECRETARY FOR INDUSTRY.

(a) ESTABLISHMENT.—

(1) There shall be in the Department the Office of the Under Secretary for Industry. The Office of the Under Secretary for Industry shall be administered by the Under Secretary of Industry and Technology for Industry, who shall be appointed by the President, by and with the advice and consent of the Senate. Such Office shall be composed of—

(A) the Office of Economic Analysis established by subsection (b);

(B) the Office of Trade Development established by subsection (c);

(C) the United States and Foreign Commercial Service established by subsection (d);

(D) the Economic Development Administration established by subsection (e);

(E) the Bureau of the Census established by subsection (f);

(F) the Minority Business Development Agency established by subsection (g);

(G) the Office of Travel and Tourism established by subsection (h);

(H) the Office of International Economic Policy established by subsection (i); and

(I) the Office the Chief Economist established under subsection (j).

(2) The Secretary, through the Under Secretary for Industry, shall carry out all functions transferred to the Secretary under section 261 which, on the day before the effective date of this title, were performed by the Secretary of Commerce through the Under Secretary of Commerce for International Trade (other than the functions described in subsection (d) of section 206).

(b) OFFICE OF ECONOMIC ANALYSIS.—There shall be in the Department the Office of Economic Analysis. Such Office shall be administered by the Director of Economic Analysis, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Industry and the Director of Economic Analysis, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of—

(1) the Director of the Bureau of Economic Analysis of the Department of Commerce;

(2) the Office of Economic Conditions of the Department of Commerce; and

(3) the Office of Business Analysis of the Department of Commerce.

(c) OFFICE OF TRADE DEVELOPMENT.—There shall be in the Department the Office of Trade Development. Such Office shall be administered by the Assistant Secretary for Trade Development, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Industry and the Assistant Secretary for Trade Development, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Assistant Secretary of Commerce for Trade Development.

(d) UNITED STATES AND FOREIGN COMMERCIAL SERVICE.—

(1) ESTABLISHMENT OF SERVICE.—There shall be in the Department the United States and Foreign Commercial Service. Such Service shall be administered by the Director General of the United States and Foreign Commercial Service, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Industry and the Director General of the United States and Foreign Commercial Service, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secre-

tary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Director General of the United States and Foreign Commercial Service of the Department of Commerce.

(2) FUNCTIONS.—In addition to the functions transferred to and assigned to the Director General of the United States and Foreign Commercial Service by this subsection, such other functions as the President or Secretary of Industry and Technology may assign or delegate to the Director General of the United States and Foreign Commercial Service, and such other functions as the Director General of the United States and Foreign Commercial Service may, after the effective date of this title, be required to carry out by law, the Director General of the United States and Foreign Commercial Service shall—

(A) promote the sale of United States exports, assist United States businesses identify export opportunities, and develop foreign markets for United States products and services, and

(B) pursue other activities related to trade policy and trade interests in support of the activities described in subparagraph (A).

(3) EXPORT MARKET DEVELOPMENT PLAN.—

(A) The Director General, with the advice and approval of the Secretary, through the Under Secretary for Industry, shall develop and submit to the Congress one year after enactment of this title a five-year export market development plan. The Director General shall update the plan annually.

(B) In developing the plan, the Director General shall consider, though not limit the plan to—

(i) the activities of the Director General, the Assistant Secretary for International Economic Policy, and the Assistant Secretary for Trade Development to ensure that United States exporters are getting the greatest possible benefit from the Department of Industry and Technology's export promotion programs;

(ii) the programs developed and planned by the Director General to increase the number of the United States firms, particularly small and medium-size firms, that are exporting their products or services overseas and the number of products and services sold by United States firms overseas;

(iii) the improvements that the Director General is making in the Service's system of gathering information on export market opportunities and providing such information to United States exporters in a timely and usable manner;

(iv) the efforts that the Director General and the Assistant Secretary for Trade Development are making to enhance Federal and State cooperation in achieving an increase in United States exports;

(v) the steps that the Director General is taking, with United States embassies abroad, to improve the coordination between domestic and overseas offices of the Service;

(vi) the methods which the Director General is using to ensure that United States exporters arrive overseas prepared to deal with foreign customers; and

(vii) the steps that Director General is taking, with United States embassies abroad, to improve the services available to United States businesses at overseas posts.

(4) SMALL BUSINESS SPECIALIST.—

(A) The Administrator of the Small Business Administration shall assign a small business specialist to each district and branch office maintained in the United States by the United States and Foreign Commercial Service.

(B) The small business specialist shall report to the manager of the office to which such specialist is assigned and shall be responsible for—

(i) helping to increase the Service's responsiveness to small businesses, and

(ii) assisting small businesses to compete in international markets.

(5) USER FEES.—(A) Notwithstanding any other provision of law, all user fees collected by the United States and Foreign Commercial Service in the United States and abroad shall be retained by the United States and Foreign Commercial Service and shall be available to carry out the continuing operation of, and to strengthen, the programs from which such fees were derived.

(B) Such fees shall—

(i) be based on the cost of providing service; and

(ii) be collected and deposited in a revolving fund established by the Director General of the United States and Foreign Commercial Service to remain available for carrying out the purposes of the Service.

(6) EXPORT OPPORTUNITIES OFFICE.—

(A) There is established within the United States and Foreign Commercial Service an Export Opportunities Office which shall make available to United States businesses timely and comprehensive information pertaining to United States export opportunities gathered by all United States Government agencies, including the Department of Industry and Technology, the Department of State, the Overseas Private Investment Corporation, the Export-Import Bank of the United States, the Department of the Treasury, the United States Customs Service, and the Agency for International Development. All Federal agencies shall consult and cooperate with, and furnish information to, the Export Opportunities Office to assist it in carrying out its function.

(B) In addition, the Export Opportunities Office shall seek to coordinate its activities with those of not-for-profit groups involved in promoting United States exports and shall seek to serve as a clearinghouse for information on the export promotion services of such groups. The groups that the Export Opportunities Office shall seek to coordinate with include, but are not limited to, State, local, and regional government export assistance agencies, port authorities, and trade associations.

(C) The Export Opportunities Office also shall—

(i) provide technical and managerial assistance to small export business concerns, by advising and counseling on matters in connection with exporting United States goods and services. This assistance shall include but not be limited to information on foreign market opportunities, government and private institutions and practices relevant to export market development in particular foreign countries, and general information on the particular social, cultural, political, legal and historical circumstances in specific foreign countries. This assistance shall be provided by cooperating and advising with voluntary business, professional, education, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies.

(ii) establish, conduct, and publicize, and recruit, select, and train volunteers for volunteer programs, including a Volunteer Export Assistance Corps (hereinafter referred to as "VEAC") for the purposes stated in subparagraph (i). In particular, the Office shall seek to recruit retired employees of the Foreign Service and the United States and Foreign Commercial Service for the VEAC, as well as other retired government officials and retired and active business executives with export expertise. To facilitate the implementation of these volunteer programs the Office may maintain at its headquarters and pay the expenses of a team of volunteers subject to any conditions and limitations as the Director General deems appropriate.

(iii) allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (i) and (ii) to use the Office's facilities and related material and services as the Director General deems appropriate, including clerical and stenographic services:

(A) these volunteers, while carrying out activities under this paragraph shall be deemed Federal employees for the purposes of the Federal tort claims provisions in Title 38; and for the purposes of subchapter I of chapter 81 of Title 5 (relative to compensation to Federal employees for work injuries) and shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of Title 5 and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS-11 employee; and

(B) the Director General is authorized to reimburse volunteers for all necessary out-of-pocket expenses incident to their provision of services under this chapter, or in connection with attendance at meetings sponsored by the Office, or for the cost of malpractice insurance, as the Director General shall determine, in accordance with regulation which he or she shall prescribe, and, while they are carrying out activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of Title 5 for individuals serving without pay.

(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to paragraph (C) shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

(E) Notwithstanding any other provision of law and pursuant to regulation which the Director General shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings arising directly out of the performance of activities pursuant to paragraph (C), to which volunteers have been made parties.

(F) In carrying out its functions under paragraph (C), the Office is authorized to accept, in the name of the Office, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and further, to accept gratuitous service and facilities.

(G) The Export Opportunities Office shall be headquartered in Washington, D.C., and shall disseminate its information through all offices of the United States and Foreign Commercial Service.

(7) PRIORITY COUNTRIES AND PRIORITY PRACTICES.—For each country designated as a priority country under Section 301 of the Trade Act of 1974 as amended by P.L. 100-418, or for each practice designated as a priority practice under such Section, the United States and Foreign Commercial Service shall obligate an additional five full-time equivalent positions above the number of full-time equivalent positions allocated for such country's foreign operations at the time of such country's designation as a priority country or as a country for which there is a priority practice. Additional full-time equivalent positions may be designated above this amount at the discretion of the Director General of the United States and Foreign Commercial Service. These full-time equivalent positions shall be allocated to such country's foreign operations and shall have as their primary duty, the direction to develop export opportunities in that country listed as a priority or in such practices that have been defined as priorities. These additional positions shall be allocated for a period of not less that 3 years.

(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $120,000,000 in fiscal year 1991 and $160,000,000 in fiscal year 1992 to carry out the activities of the United States and Foreign Commercial Service. Amounts appropriated under this section shall be available—

(A) to employ personnel in sufficient numbers to fill all authorized positions in domestic and foreign offices of the United States and Foreign Commercial Service;

(B) to increase by 75 the number of full-time equivalent positions allocated to foreign operations; and

(C) to provide adequate funding for foreign and domestic offices of the United States and Foreign Commercial Service—

(i) to maintain up-to-date commercial libraries,

(ii) to undertake necessary in-country travel,

(iii) to print newsletters,

(iv) to pay ordinary office expenses,

(v) to train trade specialists and other staff members, and

(vi) to provide adequate funding for the Commercial Information Management System; and

(vii) to cover other necessary expenses.

(e) ECONOMIC DEVELOPMENT ADMINISTRATION.—There shall be in the Department the Economic Development Administration. The Economic Development Administration shall be administered by the Assistant Secretary for Economic Development, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Industry and the Assistant Secretary for Economic Development, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Assistant Secretary of Commerce for Economic Development.

(f) BUREAU OF THE CENSUS.—There shall be in the Department the Bureau of the Census. Such Bureau shall be administered by the Director of the Census, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Industry and the Director of the Census, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Director of the Census of the Department of Commerce.

(g) MINORITY BUSINESS DEVELOPMENT AGENCY.—There shall be in the Department the Minority Business Development Agency. Such Agency shall be administered by a Director, who shall be appointed by the Secretary. The Secretary, through the Under Secretary for Industry and the Director of the Minority Business Development Agency, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Director of the Minority Business Development Agency.

(h) OFFICE OF TRAVEL AND TOURISM.—There shall be in the Department the Office of Travel and Tourism. Such Office shall be administered by an Assistant Secretary, who shall be appointed by the President, by and with the advice of the Senate. The Secretary, through the Under Secretary for Industry and the Assistant Secretary for Travel and Tourism, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Under Secretary of Commerce for Travel and Tourism.

(i) OFFICE OF INTERNATIONAL ECONOMIC POLICY.—There shall be in the Department the Office of International Economic Policy. Such Office shall be administered by an Assistant Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Industry and the Assistant Secretary for International Economic Policy shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Assistant Secretary of Commerce for International Economic Policy.

(j) OFFICE OF CHIEF ECONOMIST.—There shall be within the Office of the Under Secretary for Industry the Office of the Chief Economist. Such Office shall be headed by the Chief Economist, who shall be appointed by the Secretary. The Secretary, through the Under Secretary for Industry and the Chief Economist, shall carry out all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Chief Economist of the Department of Commerce.

SEC. 205. OFFICE OF THE UNDER SECRETARY FOR TECHNOLOGY.

(a) ESTABLISHMENT.—

(1) There shall be in the Department the Office of the Under Secretary for Technology. Such Office shall be administered by the Under Secretary of Industry and Technology for Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. Such Office shall be composed of—

(A) the Advanced Civilian Technology Agency established by section 211;

(B) the Office of Technology Information established by subsection (b);

(C) the Patent and Trademark Office established by subsection (c);

(D) the National Institute of Standards and Technology established by subsection (d);

(E) the Office of Communications and Information established by subsection (e);

(F) the Office of Technology Policy established by subsection (f); and

(G) the Office of Commercial Affairs established by subsection (g).

(2) The Secretary, through the Under Secretary of Industry and Technology for Technology, shall—

(A) carry out all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Under Secretary of Commerce for Technology; and

(B) coordinate such functions with the Assistant to the President for Science and Technology established under section 401.

(b) OFFICE OF TECHNOLOGY INFORMATION.—

(1) There shall be in the Department the Office of Technology Information. Such Office shall be administered by the Assistant Secretary for Technology Information, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Technology and the Assistant Secretary for Technology Information, shall carry out the functions of the Secretary described in section 203(19)(A).

(2) There shall be in the Office of Technology Information the National Technical Information Service. The National Technical Information Service shall be headed by the Director of the National Technical Information Service, who shall be appointed by the Secretary. The Secretary, through the Under Secretary for Technology, the Assistant Secretary for Technology Information and the Director of the National Technical Information Service, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Director of the National Technical Information Service of the Department of Commerce.

(3)(A) There shall be in the Office of Technology Information the Office of International Technology Monitoring. Such Office shall be headed by a Director of International Technology Monitoring, who shall be appointed by the Secretary.

(B) The Secretary, through the Under Secretary for Technology, the Assistant Secretary for Technology Information and the Director of International Technology Monitoring, shall—

(i) establish a clearinghouse to coordinate and disseminate information obtained by the Federal Government regarding develop-

ments in science and technology throughout the world;

(ii) work with other Federal agencies to identify emerging areas of technology throughout the world;

(iii) identify the requirements of the public and private sectors for information concerning scientific and technological information and disseminate such requirements to all Federal agencies;

(iv) develop and administer a program involving the identification of the ownership of United States patents, including an identification of each firm or person owning such a patent and the country in which each owner of such a patent resides or does business;

(v) assess trends relating to ownership of patents throughout the world;

(vi) assure regular reviews of such information by relevant industry sector advisory committees and experts at Federal laboratories; and

(vii) assure broad private sector knowledge of, and access to, findings, data, and other information made or acquired by the Director in carrying out this paragraph.

(C) All Federal agencies shall coordinate with the Director of the Office of International Technology Monitoring the activities of such agencies with respect to the collection of information regarding technological and scientific developments worldwide.

(c) PATENT AND TRADEMARK OFFICE.—There shall be in the Department the Patent and Trademark Office. The Patent and Trademark Office shall be administered by the Commissioner for Patents and Trademarks, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Technology and the Commissioner for Patents and Trademarks, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Assistant Secretary of Commerce and Commissioner for Patents and Trademarks.

(d) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—There shall be in the Department the National Institute of Standards and Technology. The National Institute of Standards and Technology shall be administered by the Director of the National Institute of Standards and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Technology and the Director of the National Institute of Standards and Technology, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Director of the National Institute of Standards and Technology of the Department of Commerce.

(e) OFFICE OF COMMUNICATIONS AND INFORMATION.—There shall be in the Department the Office of Communications and Information. The Office of Communications and Information shall be administered by the Assistant Secretary for Communications and Information, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary of Industry and Technology and the Assistant Secretary for Communications and Information, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Assistant Secretary of Commerce for Communications and Information.

(f) OFFICE OF TECHNOLOGY POLICY.—There shall be in the Department the Office of Technology Policy. The Office of Technology Policy shall be administered by the Assistant Secretary for Technology Policy, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Technology and the Assistant Secretary for Technology Policy, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Assistant Secretary of Commerce for Technology Policy.

(g) OFFICE OF COMMERCIAL AFFAIRS.—There shall be in the Department the Office of Commercial Affairs. The Office of Commercial Affairs shall be administered by the Assistant Secretary for Commercial Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary, through the Under Secretary for Technology and the Assistant Secretary for Commercial Affairs, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were, on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Assistant Secretary for Commercial Affairs of the Department of Commerce.

SEC. 206. OFFICE OF THE UNDERSECRETARY FOR TRADE ENFORCEMENT.

(a) ESTABLISHMENT.—

(1) There shall be in the Department the Office of the Under Secretary for Trade Enforcement. Such Office shall be administered by the Under Secretary of Industry and Technology for Trade Enforcement, who shall be appointed by the President, by and with the advice and consent of the Senate. Such Office shall be composed of—

(A) the Export Enforcement Office established by subsection (b);

(B) the Export Administration Office established by subsection (c); and

(C) the Import Administration Office established by (d).

(b) EXPORT ENFORCEMENT OFFICE.—There shall be in the Department the Office of Export Enforcement. The Office of Export Enforcement shall be administered by the Assistant Secretary for Export Enforcement, who shall be appointed by the President with the advice and consent of the Senate. The Secretary, through the Under Secretary for Trade Enforcement and the Assistant Secretary for Export Enforcement shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were on the day before the effective date of this title, performed by the Secretary of Commerce of the Department of Commerce, as the case my be, through or under the direction of the Assistant Secretary of Commerce for Export Enforcement.

(c) EXPORT ADMINISTRATION.—There shall be in the Department the Office of Export Administration. The Office of Export Administration shall be administered by the Assistant Secretary for Export Administration, who shall be appointed by the President with the advice and consent of the Senate. The Secretary, through the Under Secretary for Trade Enforcement and the Assistant Secretary for Export Administration shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case my be, through or under the direction of the Assistant Secretary of Commerce for Export Administration.

(d) IMPORT ADMINISTRATION.—There shall be in the Department the Office of Import Administration. The Office of Import Administration shall be administered by the Assistant Secretary for Import Administration, who shall be appointed by the President with the advice and consent of the Senate. The Secretary, through the Under Secretary for Trade Enforcement and the Assistant Secretary for Import Administration shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 261 that were on the day before the effective date of this title, performed by the Secretary of Commerce or the Department of Commerce, as the case my be, through or under the direction of the Assistant Secretary of Commerce for Import Administration.

SEC. 207. ADDITIONAL OFFICERS.

(a) ASSISTANT SECRETARIES.—There shall be in the Department two additional Assistant Secretaries of Industry and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. Each additional Assistant Secretary of Industry and Technology shall perform such functions as the Secretary may prescribe.

(b) GENERAL COUNSEL.—There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall provide legal assistance to the Secretary concerning the activities, programs, and policies of the Department.

(c) INSPECTOR GENERAL.—There shall be in the Department an Inspector General who shall be appointed in accordance with the Inspector General Act of 1978, as amended by section 284(h) of this Act.

SEC. 208. ANNUAL EXPORT OPPORTUNITIES REPORT.

(a) The Secretary of Industry and Technology shall submit to the Congress annually a report on the opportunities and obstacles for U.S. exporters in specific foreign countries, over the next five years.

(b) The report shall include a comprehensive assessment prepared by the Ambassador in each foreign country with which the United States has a significant trading relationship.

(c) the comprehensive assessment shall be prepared by each Ambassador in consultation with—

(1) the U.S. and Foreign Commercial Service officers in such foreign country;

(2) U.S. business firms engaged in export-related activities in such foreign country; and

(3) Federal and State agencies that promote exports to such foreign country.

(d) The report shall include information on—

(1) specific export opportunities in each foreign country with which the U.S. has a significant trading relationship, over the next five years;

(2) specific industrial sector within such foreign country that have high export potential such as—

(A) size of market;

(B) nature of distribution system for products;

(C) state of competition;

(D) significant applicable laws, regulations, specifications, and standards;

(E) senior level government officials; and

(F) trade associations and other contact points;

(3) each foreign country with which the U.S. has a significant trading relationship, generally, such as—

(A) the general economic conditions;

(B) common business practices;

(C) significant tariff and trade barriers; and

(D) other significant laws and regulations regarding imports, licensing, and the protection of intellectual property;

(4) export financing available for such foreign country, including availability of such financing through public sources;

(5) opportunities in such foreign country for transactions involving barter and counter-trade; and

(6) export and export promotion activities in such foreign country undertaken by competitors to U.S. goods and services and by their governments; and

(7) any other information that the Secretary determines would be useful to promote U.S. exports to such foreign countries.

(e) The report shall be made available to the public through the Export Opportunities Office and the Export Promotion Data System.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

Unless otherwise specified, there are authorized to be appropriated such sums as are necessary to carry out the provisions of this part. Amounts appropriated under this section shall be available until expended.

## PART B—ADVANCED CIVILIAN TECHNOLOGY AGENCY

SEC. 211. ESTABLISHMENT OF AGENCY.

There shall be in the Department the Advanced Civilian Technology Agency. The Agency shall be administered by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 212. FUNCTIONS OF AGENCY.

(a) IN GENERAL.—The Secretary, through the Under Secretary for Technology and the Administrator of the Agency, shall—

(1) generally promote and assist in the development of advanced technologies and the generic application of such technologies to civilian products, processes and services;

(2) contribute to United States economic competitiveness by supporting generic research and development projects by businesses, academic institutions, and private laboratories that are intended to advance civilian technological developments and facilitate the more rapid commercialization of new products, processes, and services based on such developments;

(3) support the projects described under paragraph (2) that range from idea exploration to prototype development and address long-term, high risk areas of technological research, development, and application that are not otherwise being adequately developed by the private sector, but are likely to yield important benefits to the Nation; and

(4) provide the funds to start the projects and accomplish the functions described under paragraphs (2) and (3) by making grants and entering into contracts and cooperative agreements in accordance with section 214.

(b) ADMINISTRATION.—In carrying out this part, the Secretary, through the Administrator of the Agency, shall—

(1) coordinate activities of the Agency with activities conducted by the National Institute of Standards and Technology, the Defense Advanced Research Projects Agency, and the National Science Foundation;

(2) obtain the advice and assistance of the heads of Federal agencies involved in the conduct of research and development and the heads of Federal laboratories.

(c) AGENCY STAFF.—The Administrator shall ensure that Agency staff—

(1) consists of professional personnel, to number not more than forty persons, who shall be responsible for overall program preparation and management;

(2) includes senior scientific, engineering, and technical personnel recruited primarily from industry;

(3) may be obtained using mechanisms such as intergovernmental personnel agreements and industrial loan programs; and

(4) at the senior professional level shall not be long-term employees of the Agency.

SEC. 213. NATIONAL ADVANCED CIVILIAN TECHNOLOGY ADVISORY BOARD.

(a) ESTABLISHMENT.—There shall be within the Agency the National Advanced Civilian Technology Advisory Board. The Advisory Board shall provide advice to the Secretary, the Under Secretary for Technology, and the Administrator of the Agency with respect to the policies, programs, and activities of the Agency.

(b) MEMBERSHIP.—

(1) The Advisory Board shall consist of—

(A) twenty-one members appointed by the Secretary in accordance with the requirements of paragraph (2); and

(B) the Director of the Defense Advanced Research Projects Agency and the Director of the National Science Foundation, who shall be ex officio members.

(2)(A) Members of the Advisory Board appointed under paragraph (1)(A) shall—

(i) be broadly representative of the various sectors of United States industries, including manufacturing, advanced technology production and services, finance, transportation, energy, materials production, telecommunications, biotechnology, and medicine; and

(ii) include representatives of small, medium, and large businesses.

(B) At least fourteen members of the Advisory Board shall be representatives of industries and the remaining members of the Advisory Board shall be representatives of academic institutions, State and local governments, and nonprofit private organizations.

(C) In appointing members to the Advisory Board, the Secretary shall consult with representatives of various groups representing business concerns.

(c) APPOINTMENT OF FIRST MEMBERS.—Members of the Advisory Board shall be appointed by the Secretary within sixty days after the effective date of this title.

(d) TERM OF MEMBERSHIP.—Each member of the Advisory Board appointed under subsection (b)(1)(A) shall be appointed for a term of three years, except that of the members first appointed, seven shall be appointed for a term of one year, seven shall be appointed for a term of two years, and seven shall be appointed for a term of three years, as designated by the Secretary at the time of appointment.

(e) VACANCIES.—A vacancy in the Advisory Board shall be filled in the same manner as the original appointment was made. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member of the Advisory Board may serve after the expiration of the member's term until a successor has taken office.

(f) EFFECT OF VACANCIES.—A vacancy in the Advisory Board shall not affect its powers.

(g) CHAIRMAN.—The members of the Advisory Board shall elect a Chairman from among the members of the Advisory Board.

(h) QUORUM.—Eleven members of the Advisory Board shall constitute a quorum.

(i) MEETINGS.—The Advisory Board shall hold its first meeting on a date specified by the Secretary which is not later than ninety days after the effective date of this title. Thereafter, the Advisory Board shall meet at the call of the Chairman or a majority of its members, but shall meet at least four times each year.

(j) COMPENSATION AND EXPENSES.—

(1) Each member of the Advisory Board shall serve without compensation.

(2) While away from their homes or regular places of business in the performance of duties for the Advisory Board, all members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

SEC. 214. GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.

(a) AUTHORITY.—

(1) The Secretary, through the Administrator of the Agency, shall make grants and enter into contracts and cooperative agreements with research and development entities in order to support projects for—

(A) research and development of new or advanced technology of potentially significant long term value to the civilian sector of the United States economy, and

(B) research and development concerning the generic commercial adaptation of such technology. Grants, contracts, and cooperative agreements under this section shall be designed to support projects which are high risk and which have the potential for eventual and substantial widespread commercial application.

(2) In order to receive a grant, contract, or cooperative agreement under this section, a research and development entity—

(A) shall demonstrate to the Secretary significant and substantial experience in research and technology development and management in the project area in which the grant, contract, or cooperative agreement is being sought; and

(B) may consist of a consortia of private firms, academic institutions, or public or nonprofit entities, or any combination thereof.

(3) During any period when an individual or an officer or employee of a private firm, academic institution, or public or nonprofit private entity is a member of the Advisory Board, such individual, officer, or employee,

and such firm, institution, or entity, may not receive a grant, contract, or cooperative agreement under this section.

(b) GENERAL TERMS AND CONDITIONS FOR AGENCY FUNDING OF PROJECTS.—

(1) Subsequent to any appropriation made pursuant to the authorization in this part, the Secretary through the Administrator shall invite requests for financial support from existing or proposed research and development projects. If requests are made, the Secretary through the Administrator, after an appropriate review of the technical and economic merits of each request by the Board, shall judge which individual requests or combination thereof, if any, merit support and shall decide what type and level of support each such meritorious project shall receive, except that the Secretary through the Administrator shall make no award of any funds appropriated pursuant to an authorization contained in this part unless and until—

(A) the project is led by a North American company or entity, as specified in (a)(2)(B) of this section;

(B) the project demonstrates that it has raised, or has firm commitments for, private funds which exceed the level of Federal funds that the project has requested from the Administrator;

(C) the project has developed and submitted to the Administrator a business plan which, in the judgment of the Administrator after review by the Board, adequately—

(i) states a clear and focused research and development agenda, including the prototype products or production processes to be created;

(ii) provides assurance that the project will have a sound management team;

(iii) demonstrates that a party to the project, acting on the project's behalf, has filed a written notification with the Attorney General and the Federal Trade Commission, as required under section 6 of the National Cooperative Research Act of 1984 (15 U.S.C. 4305);

(iv) provides, as appropriate, for participation in the project small businesses owned by United States citizens;

(v) sets forth provisions regarding the disposition of intellectual property resulting from the project, including the rapid transfer of that intellectual property to members of the project; the licensing, as appropriate, of the intellectual property to other North American companies or entities and to foreign companies or entities and, as appropriate, requirements for royalties which will return funds to the investors in the project, including the United States Government; and

(vi) sets forth reporting and auditing procedures; and

(D) the Secretary through the Administrator, after a review of the business plan by the Board, judges that the proposed research and development project and the proposed management team have high technical merit.

(2) The Secretary through the Administrator may not make an award to a project for the performance of research and development, or for the construction of any research or other facility, unless the award is made using competitive or other merit-based procedures.

(c) PARTICIPATION AND LICENSING BY FOREIGN COMPANIES OR ENTITIES.—

(1)(A) No project which contains a foreign company or entity or a subsidiary thereof shall be eligible to receive financial support from the Secretary through the Administrator, and no foreign company or entity shall participate in any project which has received financial support from the Secretary through the Administrator, unless—

(i) the foreign company or entity is prepared to make material contributions to the project, and the Secretary through the Administrator, after review by the Board and consultation with the North American companies or entities belonging to the project or proposed project, certifies that the foreign company's or entity's contributions and its participation in the project would be in the interests of the United States;

(ii) the foreign company or entity agrees to make a substantial commitment with respect to any technology arising from the project to manufacture within the United States products resulting from that technology, to procure parts and materials from competitive North American suppliers, and to support a North American supplier infrastructure; and

(iii) the foreign company's or entity's home government affords reciprocal treatment to United States companies or entities comparable to that afforded the foreign company or entity in the United States, as evidenced by affording comparable opportunities for United States companies or entities to participate in any projects similar to those authorized under this part; affording local investment opportunities for United States companies or entities that are comparable to investment opportunities for foreign companies or entities in the United States; and affording adequate and effective protection for the intellectual property rights of United States companies and entities.

(B) In the event the Secretary through the Administrator certifies a foreign company or entity under subparagraph (A)(i) of this paragraph and certifies that the foreign company or entity meets the requirements set forth under subparagraphs (A)(ii) and (A)(iii) of this paragraph, the Secretary through the Administrator shall waive the prohibition on the foreign company's or entity's participation and allow the foreign company or entity to participate in the project, subject to such terms and conditions as the Secretary through the Administrator may specify.

(C) The Secretary through the Administrator shall monitor the participation of any foreign company or entity allowed into a project supported the Agency and shall suspend the foreign company or entity and its employees from continued participation in the project if the Secretary through the Administrator determines that the foreign company or entity or its home government has failed to satisfy any of the criteria set forth in subparagraphs (A)(i) through (A)(iii) of this paragraph or any of the terms and conditions the Secretary through the Administrator may set under subparagraph (B) of this paragraph.

(2) The Secretary through the Administrator shall prescribe such rules and collect such information as may be necessary to monitor and enforce any requirements set forth in paragraph (1) of this subsection.

(d) COORDINATION.—When reviewing requests for support for proposed projects, and when monitoring the progress of supported projects, the Administrator, in conjunction with the Board, shall, as appropriate, coordinate with the the Director of the National Institute for Standards and Technology, the Director of the Defense Advanced Research Projects Agency, the Director of the National Science Foundation, and other senior Federal officials to ensure cooperation and coordination in Federal technology programs and to avoid unnecessary duplication of effort. The Administrator is authorized to work with other appropriate Federal officials to form interagency working groups or special project offices to coordinate the Agency's activities.

(e) FEDERAL SHARE.—The Secretary, through the Administrator, shall determine the Federal share and the non-Federal share of the costs of each project supported with a grant, contract, or cooperative agreement under this section.

(f) RECOVERY PROVISIONS.—Each grant, contract, or cooperative agreement entered into under this section shall contain such provisions as the Secretary through the Administrator considers appropriate to enable the United States to recover all or part of the funds provided to a project under the grant, contract, or cooperative agreement in any case in which the technology developed under such grant, contract, or cooperative agreement results in long-term profits for such project or the participants in such project.

(g) REVOLVING FUND.—The amount of any payment received by the Federal Government pursuant to subsection (f) shall be credited to an account established by the Secretary for use by the Agency in the future funding of grants, contracts, or cooperative agreements authorized by this section.

(h) LIMITATION.—The authority of the Secretary through the Administrator to enter into grants, contracts, or cooperative agreements under this section shall be to such extent or in such amounts as may be provided in appropriation Acts.

SEC. 215. AUTHORIZATION OF APPROPRIATIONS.

To carry out this part, there are authorized to be appropriated $100,000,000 for fiscal year 1991, $160,000,000 for fiscal year 1992, and $240,000,000 for fiscal year 1993.

## PART C—EXPORT-IMPORT BANK OF THE UNITED STATES

SEC. 221. BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK.

(a) MEMBERSHIP OF BOARD OF DIRECTORS.—Section 3(c)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(c)(1)) is amended to read as follows:

"(1) There shall be a Board of Directors of the Bank consisting of the Secretary of Industry and Technology who shall serve as Chairman, the President of the Export-Import Bank who shall serve as Vice Chairman, the First Vice President of the Export-Import Bank, and two additional persons appointed by the President by and with the advice and consent of the Senate.".

(b) EXCLUSION.—The first sentence of section 3(c)(8)(A) is amended by inserting "(but not including the Secretary of Industry and Technology)" after "First Vice President of the Bank,".

SEC. 222. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this part. Amounts appropriated under this section shall be available until expended.

## PART D—OVERSEAS PRIVATE INVESTMENT CORPORATION

SEC. 231. BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION.

The second and third sentences of section 233(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2193(b)) are amended to read as follows: "The Secretary of Industry and

Technology shall be the Chairman of the Board. The Director of the United States International Development Cooperation Agency shall be the Vice Chairman of the Board.".

SEC. 232. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this part. Amounts appropriated under this section shall be available until expended.

PART E—THE NATIONAL SECURITY COUNCIL

SEC. 241. COMPOSITION OF THE NATIONAL SECURITY COUNCIL.

Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended—

(1) in clause (6) of the fourth sentence by striking "and";

(2) by redesignating clause (7) of such sentence as clause (10); and

(3) by inserting after clause (6) of such sentence the following:

"(7) the Secretary of Industry and Technology;

"(8) the Secretary of the Treasury;

"(9) the United States Trade Representative; and".

SEC. 242. STAFF EMPLOYEES OF THE NATIONAL SECURITY COUNCIL.

Section 101(c) of the National Security Act of 1947 (50 U.S.C. 402(c)) is amended by adding at the end thereof the following: "Such personnel shall include a sufficient number of senior level staff such that there is both balance between foreign policy and national security expertise and economics expertise and the individual interests and needs of the members of the National Security Council are fully met. ".

SEC. 243. PRESIDENT'S ECONOMIC SECURITY ADVISORY BOARD.

(a) ESTABLISHMENT.—There is established within the Executive Office of the President, the President's Economic Security Advisory Board (referred to hereafter in this section as the Board). The Board shall consist of not more than fourteen members, who shall serve at the pleasure of the President and shall be appointed by the President from among distinguished citizens outside the government who are qualified on the basis of achievement, experience, and independence. The President shall establish the terms of the members upon their appointment. To the extent practicable, one-third of the Board at any one time shall be comprised of members whose current term of service does not exceed two years. The President shall designate a Chairman and Vice Chairman from among the members. The Board shall utilize full-time staff and consultants as authorized by the President. Such staff shall be headed by an Executive Director, appointed by the President.

(b) DUTIES AND AUTHORITY.—

(1) The Board shall assess the quality, quantity, and adequacy of information and data on, and analysis of, policies, programs and activities related to the economic security interests of the United States. The Board shall have the authority to continually review the performance of all agencies of the Federal Government that are engaged in the collection, evaluation, or production of such information, data, and analysis.

(2) The Board shall report its advice directly to the President. The Board shall report periodically, but at least semiannually, concerning its findings and appraisals and shall make appropriate recommendations for actions to improve the performance of agencies' efforts to enhance the economic security of the United States.

(3) The Board shall receive, consider, and recommend appropriate action with respect to matters, identified to the Board by the Secretary of Industry and Technology, the Secretary of the Treasury, the United States Trade Representative, or the heads of other government agencies, in which the support of the Board will further the economic security interests of the United States. With respect to matters deemed appropriate by the President, the Board shall advise and make recommendations to the Secretary of Industry and Technology, the Secretary of the Treasury, the United States Trade Representative, or the heads of other government agencies, concerning ways to achieve increased effectiveness in meeting national economic security needs.

(4) The Board shall have access to the full extent permitted by applicable law to all information necessary to carry out its duties in the possession of any agency of the Federal Government. Information made available to the Board shall be given all necessary security protection in accordance with applicable laws and regulations. Each member of the Board, each member of the Board's staff, and each of the Board's consultants shall execute an agreement never to reveal any classified information obtained by virtue of his or her service with the Board except to the President or to such persons as the President may designate.

(5)(A) ANNUAL REPORT.—(i) Not later than March 15 of each year, the Board, in consultation with the Secretary of Industry and Technology, shall submit to the President and the Senate Committees on Governmental Affairs and Commerce, Science, and Transportation and the House Committees on Science, Space, and Technology and Energy and Commerce a list of technologies considered by the Board to be critical to the long-term competitiveness of the United States, and in which United States technological leadership is endangered.

(ii) In selecting the technologies to be included in the report, the Board shall consider (1) the number of North American firms engaged in the development, production or sale of each technology and whether the number and the vitality of those firms is sufficient to ensuring long-term United States competitiveness in that technology; and (2) the importance of the technology to a broad segment of the United States' civilian economic base.

(B) CONTENT OF REPORT.—The report submitted under subsection (A) shall include, with respect to each technology included in the report, the following:

(i) The reasons for selecting such technology;

(ii) The amounts contained in the budget of the Department of Industry and Technology for the support of the development of such technology for the fiscal year in which the report is submitted; and

(iii) A comparison of the relative positions of the United States and other industrialized countries in the development of such technology and the extent to which the United States should depend on other countries for the development of such technology.

(c) COMPENSATION AND EXPENSES.—Members of the Board shall serve without compensation, but may receive transportation, expenses, and per diem allowance as authorized by law, Staff and consultants to the Board shall receive pay and allowances as authorized by the President.

SEC. 244. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this part. Amounts appropriated under this section shall be available until expended.

PART F—INTERAGENCY EXPORT ENHANCEMENT COMMITTEE

SEC. 251. ESTABLISHMENT AND DUTIES.

(a) ESTABLISHMENT.—There is established, within the Executive Office of the President, the Interagency Export Enhancement Committee (hereafter referred to in this part as the Committee) which shall be composed of—

(1) the Secretary of Industry and Technology, who shall serve as Chairman of the Committee;

(2) the United States Trade Representative, who shall serve as Chairman Pro Tempore of the Committee;

(3) the Secretary of Treasury;

(4) the Secretary of State;

(5) the Secretary of Agriculture;

(6) the Secretary of Defense;

(7) the Secretary of Labor; and

(8) the Administrator of the Small Business Administration.

(b) APPOINTMENT.—The President may appoint to the Committee such other officers and officials as he determines necessary.

(c) FUNCTIONS.—The Secretary of Industry and Technology shall, with the advice and assistance of the Committee—

(1) coordinate the domestic and international programs, plans, and policies of all Federal agencies related to the enhancement of United States export capabilities and opportunities that involve—

(A) reviewing the programs, plans, policies, and accomplishments of all Federal departments and agencies engaged in United States export enhancement activities; and

(B) ensuring cooperation and resolving any differences arising among Federal departments and agencies with respect to their United States export enhancement activities;

(2) develop and transmit to the Congress, no later than September 1 of each year, a policy plan which—

(A) applies to the succeeding fiscal year;

(B) contains an estimate of funding requirements for each Federal agency and department for export enhancement activities taking place in the succeeding fiscal year;

(C) ensures that Federal policy responses to United States export enhancement—

(i) are effectively coordinated among all Federal agencies; and

(ii) take account of the capabilities to and opportunities for export in the United States small business community; and

(D) makes recommendations for legislation as the Secretary may consider necessary or desirable for the attainment of the objectives identified by the Committee;

(3) develop and submit to the Congress on September 1, every other year a report detailing the Committee's progress toward meeting the goals under paragraph (2); and

(4) submit an annual report to the Congress assessing the efforts of the governments of the nations that are major trading rivals of the United States, to promote their respective exports.

(d) ADMINISTRATIVE PROVISIONS.—(1) The Committee shall appoint an Executive Director who shall be compensated at a rate not to exceed the rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code. With the approval of the Com-

mittee, the Executive Director may appoint and fix the compensation of not more than three additional professional staff members for the Committee.

(2) Upon the request of the Committee, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Committee to assist the Committee in carrying out its duties.

(3) The Secretary of Industry and Technology shall provide to the Committee such administrative and support service as the Committee may request.

(e) CONSULTATION.—In carrying out this section, the Secretary and the Committee shall—

(1) use such other Federal staff, interagency, and advisory groups as are necessary and appropriate; and

(2) consult with non-Federal organizations, such as State governments, public policy research institutions, universities, and industry.

(f) FURNISHING OF INFORMATION.—The Committee may secure directly from any Federal agency such information as may be necessary to enable the Committee to carry out this section. Upon request of the Chairman, the head of such agency shall furnish such information to the Committee.

SEC. 252. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this part. Amounts appropriated under this section shall be available until expended.

PART G—TRANSFERS TO THE DEPARTMENT

SEC. 261. TRANSFERS FROM THE DEPARTMENT OF COMMERCE.

Except for functions transferred by title III, there are transferred to the Secretary—

(1) all functions of the Secretary of Commerce;

(2) all functions of the Department of Commerce; and

(3) all functions of, and all functions performed under the direction of, all officers and employees of the Department of Commerce.

SEC. 262. TRANSFER FROM THE DEPARTMENT OF STATE.

There are transferred to the Secretary all functions of the Trade Development Program of the Department of State, which shall be administered by the Secretary through the Assistant Secretary for Trade Development of the Office of Trade Development established under section 204(c).

PART H—ADMINISTRATIVE PROVISIONS

SEC. 271. PERSONNEL PROVISIONS.

(a) APPOINTMENTS.—The Secretary may appoint and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as may be necessary to carry out the functions of the Secretary and the Department. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(b) SENIOR EXECUTIVE SERVICE.—

(1) At the request of the Secretary, the Director of the Office of Personnel Management shall, under section 5108 of title 5, United States Code, provide for the establishment in each of the grade levels GS-16, GS-17, and GS-18, and in the Senior Executive Service, of a number of positions in the Department equal to the number of positions in that grade level which were used primarily for the performance of functions transferred by this title and which were assigned and filled on the day before the effective date of this title.

(2) Appointments to positions provided for under this subsection may be made without regard to the provisions of section 3324 of title 5, United States Code, if the individual appointed in such position is an individual who is transferred in connection with the transfer of functions and offices under this title and, on the day before the effective date of this title, holds a position and has duties comparable to those of the position to which appointed under this subsection.

(3) The authority under this subsection with respect to any position established at the grade level GS-16, GS-17, or GS-18 shall terminate when the person first appointed to fill such position ceases to hold such position.

(4) For purposes of section 414(a)(3)(A) of the Civil Service Reform Act of 1978, an individual appointed under this subsection shall be deemed to occupy the same position as the individual occupied on the day before the effective date of this title.

(c) EXPERTS AND CONSULTANTS.—The Secretary may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate such experts and consultants for each day (including traveltime) at rates not in excess of the rate of pay for grade GS-18 of the General Schedule under section 5332 of such title. The Secretary may pay experts and consultants who are serving away from their homes or regular place of business travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of such title for persons in Government service employed intermittently.

(d) VOLUNTEER SERVICE.—

(1)(A) The Secretary is authorized to accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31, United States Code, if such services will not be used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) The Secretary is authorized to accept volunteer service in accordance with the provisions of section 3111 of title 5, United States Code.

(2) The Secretary is authorized to provide for incidental expenses, including but not limited to transportation, lodging, and subsistence for individuals who provide voluntary services under subparagraph (A) or (B) of paragraph (1).

(3) An individual who provides voluntary services under paragraph (1)(A) shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

SEC. 272. DELEGATION AND ASSIGNMENT.

Except where otherwise expressly prohibited by law or otherwise provided by this title, the Secretary may delegate any of the functions transferred to the Secretary by this title and any function transferred or granted to the Secretary after the effective date of this title to such officers and employees of the Department as the Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions by the Secretary under this section or under any other provision of this title shall relieve the Secretary of responsibility for the administration of such functions.

SEC. 273. SUCCESSION.

(a) IN GENERAL.—Subject to the authority of the President, and except as provided in section 112(b), the Secretary shall prescribe the order by which officers of the Department who are appointed by the President, by and with the advice and consent of the Senate, shall act for, and perform the functions of, the Secretary or any other officer of the Department appointed by the President, by and with the advice and consent of the Senate, during the absence or disability of the Secretary or such other officer, or in the event of a vacancy in the office of the Secretary or such other officer.

(b) PERIOD OF SERVICE.—Notwithstanding any other provision of law, and unless the President directs otherwise, an individual acting for the Secretary or another officer of the Department pursuant to subsection (a) shall continue to serve in that capacity until the absence or disability of the Secretary or such other officer no longer exists or a successor to the Secretary or such other officer has been appointed by the President and confirmed by the Senate.

SEC. 274. REORGANIZATION.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary is authorized to allocate or reallocate functions among the officers of the Department, and to establish, consolidate, alter, or discontinue such organizational entities in the Department as may be necessary or appropriate.

(b) EXCEPTION.—The authority of the Secretary under subsection (a) does not apply to any office established in the Department by this title or any other function which this title specifies shall be performed by a particular officer or employee of the Department.

SEC. 275. RULES.

The Secretary is authorized to prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.

SEC. 276. WORKING CAPITAL FUND.

(a) ESTABLISHMENT.—The Secretary is authorized to establish for the Department a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as the Secretary shall find to be desirable in the interest of economy and efficiency, including—

(1) a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its components;

(2) central messenger, mail, and telephone service and other telecommunications services;

(3) office space, central services for document reproduction and for graphics and visual aids;

(4) a central library service; and

(5) such other services as may be approved by the Director of the Office of Management and Budget.

(b) CAPITAL.—The capital of the fund shall consist of any appropriations made for the purpose of providing working capital and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. The fund shall be reimbursed in advance from available

funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus of the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain the fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to those services which the Secretary determines will be performed.

SEC. 277. CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.

(a) AUTHORITY.—Subject to the provisions of the Federal Property and Administrative Services Act of 1949, the Secretary may make, enter into, and perform such contracts, leases, cooperative agreements, grants, or other similar transactions with public agencies, private organizations, and persons, and make payments (in lump sum or installments, and by way of advance or reimbursement, and, in the case of any grant, with necessary adjustments on account of overpayments and underpayments) as the Secretary considers necessary or appropriate to carry out the functions of the Secretary or the Department.

(b) LIMITATION.—Notwithstanding any other provision of this title, the authority to enter into contracts or to make payments under this title shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. This subsection does not apply with respect to the authority granted under section 281.

SEC. 278. PUBLICATIONS.

Subject to such procedures of the Director of the Office of Management and Budget may prescribe, the Secretary may disseminate in the form of reports or publications such information as the Secretary considers appropriat

SEC. 279. USE OF FACILITIES.

(a) USE BY SECRETARY.—With their consent, the Secretary, with or without reimbursement, may use the research, services, equipment, and facilities of—

(1) an individual;

(2) any public or private nonprofit agency or organization, including any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(3) any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; or

(4) any foreign government, in carrying out any function of the Secretary or the Department.

(b) USE BY OTHERS.—The Secretary, under terms, at rates, and for periods that the Secretary considers to be in the public interest, may permit the use by public and private agencies, corporations, associations or other organizations, or by individuals, of any real property, or any facility, structure or other improvement thereon, under the custody of the Secretary. The Secretary may require permittees under this section to maintain or recondition, at their own expense, the real property, facilities, structures, and improvements used by such permittees.

SEC. 280. FIELD OFFICES.

The Secretary may establish, alter, consolidate, maintain, or discontinue State, regional, district, local, or other field offices as the Secretary finds necessary or appropriate to perform any function of the Secretary or the Department.

SEC. 281. GIFTS AND BEQUESTS.

(a) GENERAL AUTHORITY.—The Secretary is authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the United States Treasury in a separate fund and shall be disbursed on order of the Secretary. Property accepted pursuant to this paragraph, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(b) TAX STATUS.—For the purpose of Federal income, estate, and gift taxes, and State taxes, property accepted under subsection (a) shall be considered a gift or bequest to or for the use of the United States.

(c) INVESTMENTS.—Upon the request of the Secretary, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any moneys contained in the fund provided for in subsection (a). Income accruing from such securities, and from any other property held by the Secretary pursuant to subsection (a), shall be deposited to the credit of the fund, and shall be disbursed upon order of the Secretary.

SEC. 282. SEAL OF DEPARTMENT.

The Secretary shall cause a seal of office to be made for the Department of such design as the Secretary shall approve. Judicial notice shall be taken of such seal.

SEC. 283. ANNUAL REPORT.

The Secretary shall, as soon as practicable after the end of each fiscal year, prepare and transmit a written report to the President for transmission to the Congress on the activities of the Department during such fiscal year.

SEC. 284. CONFORMING AMENDMENTS.

(a) ORDER OF SUCCESSION.—Section 19(d)(1) of title 3, United States Code, is amended by striking out "Secretary of Commerce," and inserting in lieu thereof "Secretary of Industry and Technology,".

(b) DEFINITION OF EXECUTIVE DEPARTMENT.—Section 101 of title 5, United States Code, is amended by striking out the item relating to the Department of Commerce and inserting in lieu thereof the following:

"The Department of Industry and Technology.".

(c) SALARY OF SECRETARY.—Section 5312 of such title is amended—

(1) by striking out the item relating to the Secretary of Commerce; and

(2) by adding at the end thereof the following:

"Secretary of Industry and Technology.".

(d) OFFICIALS AT LEVEL II.—Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following:

"Deputy Secretary, Department of Industry and Technology.

"Under Secretary of Industry and Technology for Industry.

"Under Secretary of Industry and Technology for Technology.

"Under Secretary of Industry and Technology for Trade Enforcement.".

(e) OFFICIALS AT LEVEL III.—Section 5314 of such title is amended—

(1) by striking out the item relating to the Under Secretary of Commerce, the Under Secretary of Commerce for Economic Affairs, and the Under Secretary of Commerce for Travel and Tourism; and

(2) by adding at the end thereof the following:

"Director of the Office of Economic Analysis, Department of Industry and Technology.

"Assistant Secretary for Trade Development, Department of Industry and Technology.

"Director General of the United States and Foreign Commercial Service, Department of Industry and Technology.

"Administrator of the Advanced Civilian Technology Agency, Department of Industry and Technology.

"Director of the National Institute of Standards and Technology, Department of Industry and Technology.".

(f) OFFICIALS AT LEVEL IV.—Section 5315 of such title is amended—

(1) by striking out the item relating to the Assistant Secretaries of Commerce;

(2) by striking out the item relating to the General Counsel of the Department of Commerce;

(3) by striking out the item relating to the Director of the National Institute of Standards and Technology of the Department of Commerce; and

(4) by adding at the end thereof the following:

"Assistant Secretary of Industry and Technology for Export Enforcement.

"Assistant Secretary of Industry and Technology for Export Administration.

"Assistant Secretary of Industry and Technology for Import Administration.

"Assistant Secretary of Industry and Technology for Travel and Tourism.

"Assistant Secretary of Industry and Technology for International Economic Policy.

"Assistant Secretary of Industry and Technology for Commercial Affairs.

"Assistant Secretary of Industry and Technology for Technology Policy.

"Assistant Secretary of Industry and Technology for Technology Information.

"Assistant Secretary of Industry and Technology for Communications and Information.

"Commissioner of Patents and Trademarks, Department of Industry and Technology.".

(g) OFFICIALS AT LEVEL V.—Section 5316 of such title is amended—

(1) by striking out the item relating to the Commissioner of Patents, Department of Commerce;

(2) by striking out the item relating to the Director of the Bureau of the Census, Department of Commerce;

(3) by striking out the item relating to the National Export Expansion Coordinator, Department of Commerce;

(4) by striking out the item relating to the Director, United States Travel Service, Department of Commerce;

(5) by striking out the item relating to the Inspector General, Department of Commerce; and

(6) by adding at the end thereof the following:

"Assistant Secretary of Industry and Technology for Economic Development.

"Director of the Bureau of the Census, Department of Industry and Technology.

"Director of the National Technical Information Service, Department of Industry and Technology.

"Director of the Minority Business Development Agency, Department of Industry and Technology.

"Director of the Office of International Technology Monitoring, Department of Industry and Technology.

"Additional Assistant Secretaries of Industry and Technology (2).

"General Counsel, Department of Industry and Technology.

"Inspector General, Department of Industry and Technology.".

(h) INSPECTOR GENERAL.—The Inspector General Act of 1978 is amended—

(1) in subsection 9(a)(1)—

(A) by striking out subparagraph (B);

(B) by redesignating subparagraphs (C) through (G) as subparagraphs (B) through (F), respectively; and

(C) by inserting before subparagraph (H) the following:

"(G) of the Department of Industry and Technology, all functions of the Inspector General of the Department of Commerce and the Office of the Inspector General of the Department of Commerce relating to the functions transferred to the Secretary of Industry and Technology by section 261 of the Trade and Technology Promotion Act of 1989;";

(2) by striking out "Commerce," each place it appears in section 11; and

(3) by inserting "Industry and Technology," after "Urban Development," each place it appears in such section.

SEC. 285. REPEALS.

(a) TERMINATION OF DEPARTMENT OF COMMERCE.—

(1) The first section of the Act entitled "An Act to establish the Department of Commerce and Labor", approved February 14, 1903 (15 U.S.C. 1501), is repealed.

(2) The first section of the Act entitled "An Act to create a Department of Labor", approved March 4, 1913 (15 U.S.C. 1501), is amended by striking out beginning with "and the Department of Commerce and Labor" through "accordingly".

(b) TERMINATION OF UNDER SECRETARY OF COMMERCE.—Subsection (a) of the first section of the Act entitled "An Act to authorize an Under Secretary of Commerce for Economic Affairs", approved June 16, 1982 (96 Stat. 115; 15 U.S.C. 1503a), is repealed.

(c) TERMINATION OF ASSISTANT SECRETARY OF COMMERCE.—The Act entitled "An Act to provide for the appointment of one additional Assistant Secretary of Commerce, and for other purposes", approved July 15, 1947 (15 U.S.C. 1505), is repealed.

(d) CONFORMING AMENDMENT.—The first sentence of section 304 of the Department of Commerce Appropriation Act, 1955 (15 U.S.C. 1506), is repealed.

(e) TERMINATION OF ASSISTANT SECRETARY OF COMMERCE.—The Act entitled "An Act to authorize an additional Assistant Secretary of Commerce", approved February 16, 1962 (15 U.S.C. 1507), is repealed.

(f) CONFORMING AMENDMENT.—Subsection (a) of section 9 of the Maritime Appropriation Authorization Act for Fiscal Year 1978 (15 U.S.C. 1507b), is repealed.

(g) TERMINATION OF SOLICITOR.—

(1) The first section of the Act of March 18, 1904 33 Stat. 135, chapter 716; 15 U.S.C. 1508), is amended by striking out the paragraph relating to the Office of the Solicitor of the Department of Commerce and Labor.

(2) Section 2 of the Act of July 17, 1952 (66 Stat. 758, chapter 932; 15 U.S.C. 1508), is repealed.

(h) OTHER TECHNICAL AMENDMENTS.—

(1) Sections 4 and 12 of the Act entitled "An Act to Establish the Department of Commerce and Labor", approved February 14, 1903 (15 U.S.C. 1511), are repealed.

(2) The first section of the Act of August 23, 1912 (37 Stat. 407, chapter 350; 15 U.S.C. 1511), is amended by striking out the paragraph relating to the Bureau of Foreign and Domestic Commerce.

(3) The first section of the Act of January 5, 1923 (42 Stat. 1109, chapter 23; 15 U.S.C. 1511), is repealed.

(4) The first section of the Act of May 27, 1936 (49 Stat. 1380, chapter 463; 15 U.S.C. 1511), is repealed.

(i) CONFORMING AMENDMENT.—Section 8 of the Act entitled "An Act to establish the Department of Commerce and Labor", approved February 14, 1903 (15 U.S.C. 1519), is repealed.

(j) TERMINATION OF WORKING CAPITAL FUND.—Title III of the Act entitled "An Act making appropriations for the Departments of State, Justice, and Commerce for the fiscal year ending June 30, 1945, and for other purposes", approved June 28, 1944 (15 U.S.C. 1521), is amended by striking out the paragraph relating to the working capital fund of the Department of Commerce.

(k) CONFORMING AMENDMENT.—Sections 1, 2, and 3 of Public Law 88-611 (15 U.S.C. 1522, 1523, and 1524) are repealed.

## TITLE III—ESTABLISHMENT OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION WITHIN THE ENVIRONMENTAL PROTECTION AGENCY

### PART A—ESTABLISHMENT OF ADMINISTRATION

SEC. 301. SHORT TITLE.

This title may be cited as the "National Oceanic and Atmospheric Administration Act of 1989".

SEC. 302. DEFINITIONS.

For the purposes of this title—

(1) the term "Administration" means the National Oceanic and Atmospheric Administration established under section 303; and

(2) the term "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration appointed under section 304(a).

SEC. 303. ESTABLISHMENT.

There is established within the Environmental Protection Agency the National Oceanic and Atmospheric Administration. The Administration shall succeed the National Oceanic and Atmospheric Administration of the Department of Commerce in existence on the day before the effective date of this Act.

SEC. 304. OFFICERS.

(a) ADMINISTRATOR.—The Administration shall be administered by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall carry out all functions transferred to the Administrator by this Act and shall have authority and control over all personnel, programs, and activities of the Administration.

(b) DEPUTY ADMINISTRATOR.—There shall be in the Administration a Deputy Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions as the Administrator shall prescribe. The Deputy Administrator shall act for and perform the functions of the Administrator during the absence or disability of the Administrator, or in the event of a vacancy in the office of the Administrator.

(c) ASSOCIATE ADMINISTRATOR.—There shall be in the Administration an Associate Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Associate Administrator shall perform such functions as the Administrator shall prescribe. The Associate Administrator shall act for and perform the functions of the Administrator during the absence or disability of the Administrator and the Deputy Administrator or in the event of a vacancy in both of those offices.

(d) ASSISTANT ADMINISTRATORS.—There shall be in the Administration not less than five and not more than seven Assistant Administrators, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Administrators shall perform such functions as the Administrator shall prescribe. The Administrator shall designate the order in which the Assistant Administrators shall act for and perform the functions of the Administrator during the absence or disability of the Administrator, the Deputy Administrator, and the Associate Administrator, or in the event of vacancies in all of those offices.

(e) GENERAL COUNSEL.—There shall be in the Administration a General Counsel, who shall be appointed by the President, by and with the advise and consent of the Senate. The General Counsel shall be the chief legal officer for all legal matters arising from the conduct of the functions of the Administration.

(f) COMMISSIONED OFFICER CORPS.—(1) There shall be in the Administration a Commissioned Officer Corps, which shall be the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration established by Reorganization Plan No. 4 of 1970. Members of the Corps, including those appointed after the effective date of this Act, shall be entitled to all rights, privileges, and benefits available under any law to commissioned officers of the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration of the Department of Commerce on the day before the effective date of this Act.

(2) All laws and regulations applicable to commissioned officers of the National Oceanic and Atmospheric Administration of the Department of Commerce on the day before the effective date of this Act shall be applicable to commissioned officers of the Administration.

(g) NAVAL DEPUTY TO THE ADMINISTRATOR.—The Secretary of the Navy may detail to the Administrator, on an additional-duty basis, a Navy flag officer of the rank of rear admiral, who shall serve and be designated as the Naval Deputy to the Administrator. The Naval Deputy shall—

(1) act as a liaison between the Administrator and the Secretary of the Navy in order to avoid duplication of Federal oceanographic activities;

(2) act to maintain a close relationship between the Administration and the Navy in research and development; and

(3) ensure that national security considerations are addressed by the Administrator in formulating policies.

(h) DIRECTOR OF NATIONAL SEA GRANT COLLEGE PROGRAM.—(1) There shall be in the Administration a Director of the National Sea Grant College Program, who shall be appointed by the Administrator and who shall be a qualified individual who has knowledge or expertise in fields relating to ocean and coastal resources and appropriate administrative experience. The Director of the Na-

tional Sea Grant College program shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be compensated at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title.

(2) The Director of the National Sea Grant College program shall administer the National Sea Grant College program subject to the supervision of the Administrator and in accordance with functions prescribed by law or by the Administrator.

SEC. 305. TRANSFER OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION FROM THE DEPARTMENT OF COMMERCE.

(a) TRANSFER.—The National Oceanic and Atmospheric Administration of the Department of Commerce is transferred to the Administration within the Environmental Protection Agency.

(b) TRANSFER OF FUNCTIONS OF SECRETARY OF COMMERCE.—All functions of the Secretary of Commerce or the Department of Commerce with respect to or being administered through the National Oceanic and Atmospheric Administration of the Department of Commerce or the Administrator of such Administration on the day before the effective date of this Act are transferred to the Administrator appointed under section 304(a).

(c) FUNCTIONS OF ADMINISTRATOR.—All functions of the National Oceanic and Atmospheric Administration of the Department of Commerce or the Administrator of such Administration are transferred to the Administrator appointed under section 304(a).

SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the provisions in this part. Amounts appropriated under this section shall be available until expended.

PART B—ADMINISTRATIVE PROVISIONS

SEC. 311. REGULATORY AUTHORITY.

In the performance of the functions of the Administrator and the Administration, the Administrator is authorized to make, promulgate, issue, rescind, and amend rules and regulations. The promulgation of such rules and regulations—

(1) shall be governed by the provisions of chapter 5 of the United States Code; and

(2) shall be after notice and opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, authorities, councils, and other interested public and private parties.

SEC. 312. DELEGATION.

Except as otherwise provided in this Act, the Administrator may delegate any function to such officers and employees of the Administration as the Administrator may designate, and may authorize such successive redelegations of such functions in the Administration as may be necessary or appropriate. No delegation of functions by the Administrator under this section or under any other provision of this Act shall relieve the Administrator of responsibility for the administration of such functions.

SEC. 313. PERSONNEL AND SERVICES.

(a) COMPENSATION.—In the performance of the functions of the Administrator and in addition to the officers provided for by section 304, the Administrator is authorized to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and compensated in accordance with title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Administrator is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

(c) TRANSPORTATION EXPENSES.—The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5, United States Code.

(d) DETAIL OF PERSONNEL.—The Administrator is authorized to utilize, on a reimbursable basis, the services of personnel of any Federal agency. With the approval of the President, the Administrator is authorized to enter into cooperative agreements under which members of the Army, Navy, Air Force, and Marine Corps may be detailed by the Secretary of the Army, the Navy, or the Air Force, as the case may be, to assist the Administrator in carrying out the functions of the Administrator. Members of the Army, Navy, Air Force, or Marine Corps detailed to carry out functions under this section shall carry out such functions to the same extent as that to which such members might be lawfully assigned in the Department of Defense.

(e) ADVISORY COMMITTEES.—The Administrator is authorized to appoint such advisory committees as may be appropriate for purposes of consultation and advice to the Administration in carrying out the functions of the Administration.

(f) VOLUNTARY SERVICES.—(1)(A) The Administrator is authorized to accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31, United States Code, if such services will not be used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) The Administrator is authorized to accept volunteer service in accordance with the provisions of section 3111 of title 5, United States Code.

(2) The Administrator is authorized to provide for incidental expenses, including but not limited to transportation, lodging, and subsistence for such volunteers.

(3) An individual who provides voluntary services under paragraph (1)(A) of this subsection shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

SEC. 314. CONTRACTS.

The Administrator is authorized, without regard to the provisions of section 3324 of title 31, United States Code, to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the administration. The Administrator may enter into such contracts, leases, agreements, and transactions with any Federal agency or any instrumentality of the United States, or with any State, territory, or possession, or with any political subdivision thereof, or with any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate. The authority of the Administrator to enter into contracts and leases under this section shall be to such extent or in such amounts as are provided in appropriation Acts.

SEC. 315. USE OF FACILITIES.

With their consent, the Administrator may, with or without reimbursement, use the services, equipment, personnel, and facilities of Federal agencies and other public and private agencies, and may cooperate with other public and private agencies and instrumentalities in the use of services, equipment, personnel, and facilities. The head of each Federal agency shall cooperate fully with the Administrator in making the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. The head of a Federal agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, without reimbursement, supplies and equipment other than administrative supplies or equipment.

SEC. 316. SERVICE CHARGES.

(a) FEES.—Notwithstanding any other provision of law, the Administrator may establish reasonable fees and commissions with respect to applications, documents, awards, loans, grants, research data, services, and assistance and may change and abolish such fees and commissions. Prior to establishing, changing, or abolishing any schedule of fees or commissions under this section, the Administrator may submit such schedule to the Congress.

(b) DEPOSIT FOR SERVICES.—The Administrator is authorized to require a deposit before the Administrator provides any item, information, service, or assistance for which a fee or commission is required under this section.

(c) DEPOSIT OF MONEYS.—Moneys received under this section shall be deposited with the Treasury in a special account for use by the Administrator and are authorized to be appropriated and made available until expended.

(d) ESTABLISHMENT OF FEES.—In establishing reasonable fees or commissions under this section, the Administrator may take into consideration—

(1) the actual costs which will be incurred in providing items, information, services, or assistance;

(2) the efficiency of the Government in providing such items, information, services, or assistance;

(3) the portion of the cost that will be incurred in providing such items, information, services, or assistance which may be attributed to benefits for the general public interest rather than to exclusive benefits for the applicant;

(4) any public service which occurs through the provision of such items, information, services, or assistance; and

(5) such other factors as the Administrator considers relevant.

(e) REFUNDS.—In any case in which the Administrator determines that any person has made a payment which is not required under this section or has made a payment which is in excess of the amount required under this section, the Administrator, upon application or otherwise, may cause a refund to be made from applicable funds.

SEC. 317. ACQUISITION OF PROPERTY.

(a) ACQUISITION.—The Administrator is authorized to—

(1) acquire (by purchase, lease, condemnation, or otherwise) construct, improve, repair, operate, and maintain—

(A) laboratories;

(B) research and testing sites and facilities;

(C) quarters and related accommodations for employees and dependents of employees of the Administration; and

(D) such other real and personal property (including patents), or any interest therein within and outside the continental United States, as the Administrator considers necessary;

(2) lease to others such real and personal property; and

(3) provide by contract or otherwise for eating facilities and other necessary facilities for the welfare of employees of the Administration at its installations and to purchase and maintain equipment therefor.

(b) TITLE TO PROPERTY.—Title to any property or interest therein acquired pursuant to this section shall be in the United States.

(c) LIMITATION.—The authority granted by subsection (a) of this section shall be available only with respect to facilities of a special purpose nature that cannot readily be reassigned from similar Federal activities and are not otherwise available for assignment to the Administration by the Administrator of General Services.

(d) APPROPRIATION LIMITATION.—The authority of the Administrator to enter into contracts and leases under this section shall be to such extent or in such amounts as are provided in appropriation Acts.

SEC. 318. FACILITIES AT REMOTE LOCATIONS.

(a) AUTHORIZATION.—The Administrator is authorized to provide, construct, or maintain for employees and their dependents stationed at remote locations as necessary and when not otherwise available at such remote locations—

(1) emergency medical services and supplies;

(2) food and other subsistence supplies;

(3) meeting facilities;

(4) audiovisual equipment, accessories, and supplies for recreation and training;

(5) reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) living and working quarters and facilities; and

(7) transportation for school-age dependents of employees to the nearest appropriate educational facilities.

(b) SERVICES AND SUPPLIES.—The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of such subsection shall be at prices reflecting reasonable value as determined by the Administrator.

(c) DEPOSIT OF PROCEEDS.—Proceeds derived from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Administrator to pay directly the cost of work or services provided under this section, to repay or make advances to appropriations of funds which do or will bear all or a part of such cost, or to refund excess sums when necessary, except that such payments may be credited to a service or working capital fund otherwise established by law, and used under the law governing such funds if the fund is available for use by the Administrator for performing the work or services for which payment is received.

SEC. 319. COPYRIGHTS AND PATENTS.

The Administrator is authorized to acquire any of the following described rights if the property acquired thereby is for use in, or is useful to, the performance of functions of the Administrator or the Administration:

(1) Copyrights, patents, and applications for patents, designs, processes, specifications, and data.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Releases, before an action is brought, for past infringement of patents of copyrights.

SEC. 320. GIFTS AND BEQUESTS.

The Administrator is authorized to accept, hold, administer and utilize gifts, donations, or bequests of property, real or personal, tangible or intangible, and contributions of money for purposes of aiding or facilitating the work of the Administrator or the Administration. For the purposes of Federal income, estate, and gift taxes, and State taxes, property accepted under this subsection shall be considered a gift or bequest to the United States.

SEC. 321. TRANSFERS OF FUNDS FROM OTHER FEDERAL AGENCIES.

The Administrator is authorized to accept transfers from other Federal agencies of funds which are available to carry out functions transferred by this Act to the Administrator or functions assigned by law to the Administrator after the date of enactment of this Act.

SEC. 322. WORKING CAPITAL FUND.

(a) ESTABLISHMENT.—The Administrator is authorized to establish for the Administration a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as the Administrator shall find to be desirable in the interest of economy and efficiency, including such services as—

(1) a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Administration and its components;

(2) central messenger, mail, and telephone service and other communications service;

(3) office space, central services for document reproduction and for graphics and visual aids; and

(4) a central library service.

(b) DEPOSITS IN AND USE OF THE FUND.—The capital of the fund shall consist of any appropriations made for the purpose of providing working capital and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Administrator may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Administration, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus of the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain such fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to those services which the Administrator determines will be performed.

SEC. 323. SEAL OF ADMINISTRATION.

The Administrator shall cause a seal of office to be made for the Administration of such design as the Administrator shall approve. Judicial notice shall be taken of such seal.

SEC. 324. ANNUAL REPORT.

(a) SUBMISSION OF REPORT.—As soon as is practicable after the close of each fiscal year, the Administrator shall submit to the President a report on the activities of the Administration during the preceding fiscal year. The President shall transmit each such report to the Speaker of the House of Representatives and the President pro tempore of the Senate not later than December 31 of each year.

(b) FURNISHING OF INFORMATION.—Each Federal agency shall, without charge, provide the Administrator with such data and information as the Administrator may request to carry out this section. Each Federal agency shall, on a cost reimbursable basis, provide the Administrator with such services and personnel as the Administrator may request to carry out this section.

(c) CONTENTS OF REPORT.—(1) The Administrator is authorized to include in the report required by subsection (a) for each fiscal year a report on any program or activity carried out by the Administrator during such fiscal year.

(2) Notwithstanding any other provision of law, the inclusion by the Administrator in the report required by subsection (a) for any fiscal year of a report on any program or activity carried out by the Administrator during such fiscal year shall be considered compliance with any requirement established by law or regulation that the Administrator prepare a report with respect to the administration of such program or activity during all or part of such fiscal year. If the Administrator includes in the report required under subsection (a) for any fiscal year a report on any program or activity, the Administrator shall include in such report all items required to be included in the report with respect to such program or activity required to be prepared by law or regulation.

SEC. 325. STATUS OF ADMINISTRATION.

(a) STATUS AS AGENCY.—For purposes of section 552b of title 5, United States Code, the Administration is an agency. For purposes of chapter 9 of such title, the Administration is an independent regulatory agency.

(b) BUDGET AND SPENDING.—The Administrator appointed under section 304(a) shall administer the National Oceanic and Atmospheric Administration with regard to budgetary and spending functions of the Administration in the same manner as in effect before the effective date of this title.

SEC. 326. SALARY OF ASSISTANT ADMINISTRATORS.

Section 5316 of title 5, United States Code is further amended—

(1) by striking out the items relating to the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, and the Assistant Administrators, National Oceanic and Atmospheric Administration; and

(2) by adding at the end thereof the following: "Assistant Administrators, National Oceanic and Atmospheric Administration.".

SEC. 327. ANNUAL AUTHORIZATION AND APPROPRIATION REQUEST.

(a) STATEMENT OF SUPPORT FOR REQUEST.—In each annual authorization and appro-

priation request, the Administrator of the Environmental Protection Agency shall identify the portion of that request intended for the support of the Administration and include a statement by the Administration—

(1) showing the amount requested by the Administration in its budgetary presentation to the Administrator and the Office of Management and Budget; and

(2) an assessment of the budgetary needs of the Administration.

(b) CONCURRENT TRANSMISSION OF CERTAIN INFORMATION TO THE CONGRESS.—Whenever the Administration submits to the Administrator of the Environmental Protection Agency, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Administration shall concurrently transmit a copy thereof to the appropriate committees of Congress.

## TITLE IV—ASSISTANT TO THE PRESIDENT FOR SCIENCE AND TECHNOLOGY

### SEC. 401. ESTABLISHMENT.

There is established in the Executive Office of the President an Assistant to the President for Science and Technology (hereafter in this title referred to as the Assistant). The individual appointed by the President, by and with the advice and consent of the Senate, as the Director of the Office of Science and Technology Policy under section 203 of the Presidential Science and Technology Advisory Organization Act of 1976 (42 U.S.C. 6612) shall concurrently serve as the Assistant.

### SEC. 402. FUNCTIONS OF THE ASSISTANT TO THE PRESIDENT FOR SCIENCE AND TECHNOLOGY.

In addition to such other functions and activities as the President may assign, the Assistant shall—

(1) serve as the Director of the Office of Science and Technology Policy; and

(2) coordinate such functions with the functions exercised under section 205(a)(2) by the Under Secretary of Industry and Technology for Technology.

### SEC. 403. CONFORMING AMENDMENT.

Section 203 of the Presidential Science and Technology Advisory Organization Act of 1976 (42 U.S.C. 6612) is amended by inserting after the first sentence "The Director shall serve concurrently as the Assistant to the President for Science and Technology established under section 401 of the Trade and Technology Promotion Act of 1989.".

### SEC. 404. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title. Amounts appropriated under this section shall be available until expended.

## TITLE V—OVERSEAS LIBRARY OF CONGRESS TRADE OFFICE

### SEC. 501. TRADE INFORMATION OFFICE OF THE LIBRARY OF CONGRESS.

Section 203 of the Legislative Reorganization Act of 1946 (2 U.S.C. 166) is amended—

(1) in subsection (c)(2)—

(A) in the first sentence by inserting ", an Assistant Director for Trade Information," after "Congressional Research Service"; and

(B) in the second sentence by inserting "and the Assistant Director for Trade Information" after "Deputy Director";

(2) in subsection (d)—

(A) in paragraph (7) by striking out "and" at the end thereof;

(B) in paragraph (8) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new paragraph:

"(9) through the Office of Trade Information established under subsection (j), provide Members of Congress with analyses, data, and other information concerning United States and foreign trade and investment."; and

(3) by redesignating subsection (j) as subsection (k), and inserting after subsection (i) the following:

"(j)(1) The Librarian of Congress shall establish within the Congressional Research Service an Office of Trade Information (hereafter in this subsection referred to as the Office). The function of the Office is to provide Members of Congress with analyses, data, and other information concerning United States and foreign trade and investment.

"(2) The Office shall be headed by the Assistant Director for Trade Information.

"(3) The Librarian of Congress, upon the recommendation of the Director and the Assistant Director for Trade Information, shall assign as many specialists and senior specialists to the Office as is necessary to carry out the functions of the Office.

"(4) The Librarian of Congress, upon the recommendation of the Director and Assistant Director for Trade Information, shall, not later than 6 months after the date of the enactment of this subsection, establish on a trial basis a field branch of the Office in a foreign country with which the United States conducts a significant volume of trade. The purpose of the trial field branch is to assess the feasibility and desirability of establishment by the Congressional Research Service of other field branches in other foreign countries. The staff of the field branch office shall—

"(A) be staffed by individuals proficient in the language of the country within which the field branch office is located; and

"(B) compile periodic reports of key economic, political and cultural trends in the country.

"(5) Eighteen months after the date of the enactment of this subsection, and annually thereafter, the Librarian of Congress, with the assistance of the Director and the Assistant Director for Trade Information, shall prepare and submit to the Speaker of the House and the President Pro Tempore of the Senate a report on the Office of Trade Information. The report shall include—

"(A) an assessment of the ability of the Office to supply to Members of Congress in a timely manner analyses, data, and other information concerning United States and foreign trade and investment;

"(B) an evaluation of whether the information disseminated by the Office is duplicative of information available to Members of Congress from other sources;

"(C) a description of the operation of the field branch established in this subsection; and

"(D) a discussion of whether the field branch established in this subsection should be continued, the manner in which operations may be improved, and whether more such field branches should be established in other foreign nations.".

### SEC. 502. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title. Amounts appropriated under this section shall be available until expended.

## TITLE VI—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

### SEC. 601. TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.

Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions and offices transferred by this Act, subject to section 1531 of title 31, United States Code, shall be transferred to the head of the Federal agency to which such functions or offices are transferred by this Act. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

### SEC. 602. INCIDENTAL TRANSFERS.

(a) TRANSFERS BY OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized to make such determinations as may be necessary with regard to the functions and offices transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions and offices, as may be necessary to carry out the provisions of this Act. The Director shall provide for the termination of the affairs of all entities terminated by this Act and for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(b) SENIOR EXECUTIVE SERVICE POSITIONS.—After consultation with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget is authorized, at such times as the Director of the Office of Management and Budget may provide, to make such determinations as may be necessary with regard to the transfer of positions within the Senior Executive Service in connection with the functions and offices transferred by this Act.

(c) ADDITIONAL TRANSFERS.—Any function of the Secretary of Commerce or the Department of Commerce which—

(1) is not transferred by titles II and III of this Act; and

(2) is incidental to, necessary for, or primarily related to, the performance of a function transferred by any such title,

is transferred to the head of the Federal agency to which the related function is transferred by such title.

### SEC. 603. EFFECT ON PERSONNEL.

(a) SEPARATION OR REDUCTION.—Except as otherwise provided by this Act, the transfer pursuant to this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer of such employee under this Act.

(b) CONTINUATION IN SERVICE.—Any person who, on the day preceding the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in a Federal agency to

which functions are transferred by this Act to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(c) TERMINATION OF INCUMBENTS.—Except for members of the Foreign Service, positions whose incumbents are appointed by the President, by and with the advice and consent of the Senate, the functions of which are transferred by this Act, shall terminate on the effective date of this Act.

SEC. 604. SAVINGS PROVISIONS.

(a) IN GENERAL.—All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges that—

(1) have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred by this Act; and

(2) are in effect when this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the head of the Federal agency to which such functions are transferred by this Act, a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS.—(1) The provisions of this Act shall not affect any proceedings, including notices of proposed rule making, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the Department of Commerce, the Department of State, or any other agency under which functions are transferred under this Act, or any office thereof with respect to functions transferred by this Act; but such proceedings or applications, to the extent that they relate to functions transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made under such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the head of the Federal agency to which such functions are transferred by this Act, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary of Commerce, the Secretary of State, and the head of each Federal agency to which functions are transferred by this Act are authorized to issue regulations providing for the orderly transfer of proceedings continued under paragraph (1).

(c) ACTIONS.—Except as provided in subsection (e)—

(1) the provisions of this Act do not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) ABATEMENT OF ACTIONS.—No action or other proceeding commenced by or against any officer in his official capacity as an officer of the Department of Commerce, the Department of State, or any other agency under which functions are transferred under this Act, with respect to functions transferred by this Act shall abate by reason of the enactment of this Act. No cause of action by or against the Department of Commerce, the Department of State, or any other Federal agency, with respect to functions transferred by this Act, or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this Act. Causes of action and actions with respect to a function or office transferred by this Act, or other proceedings may be asserted by or against the United States or an official of the Federal agency to which such function or office is transferred by this Act, as may be appropriate, and, in an action pending when this Act takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this subsection.

(e) PARTIES TO ACTIONS.—If, before the date on which this Act takes effect, the Department of Commerce, the Department of State, or any agency under which functions were transferred by this Act or any officer thereof in his official capacity, is a party to an action, and under this Act any function of such Department, agency, or officer is transferred to a Federal agency, then such action shall be continued with the head of such agency substituted or added as a party.

(f) ORDERS AND ACTIONS.—Orders and actions of the head of a Federal agency in the exercise of functions transferred to the head of such agency by this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the Department of Commerce, the Department of State, or any agency under which functions were transferred by this Act or any office or officer thereof, in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the head of the Federal agency to which such function is transferred by this Act.

SEC. 605. SEPARABILITY.

If a provision of this Act or its application to any person or circumstance is held invalid, neither the remainder of this Act nor the application of the provision to other persons or circumstances shall be affected.

SEC. 606. TRANSITION.

With the consent of the Secretary of Commerce, Secretary of State, or the head of any agency under which functions are transferred by this Act, as the case may be, the head of each Federal agency to which functions or offices are transferred by this Act is authorized to utilize—

(1) the services of such officers, employees, and other personnel such Departments or agencies, as the case may be, with respect to functions or offices transferred to that agency by this Act; and

(2) funds appropriated to such functions or offices for such period of time as may reasonably be needed to facilitate the orderly implementation of this Act.

SEC. 607. REFERENCES.

With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to—

(1) the Secretary of Commerce; or

(2) the Department of Commerce or any officer or office thereof,

shall be considered to refer to the head of the Federal agency to whom such functions were transferred by this Act.

TITLE VII—MISCELLANEOUS

SEC. 701. EFFECTIVE DATE; INTERIM APPOINTMENTS; AUTHORIZATION.

(a) EFFECTIVE DATE.—

(1) This Act shall take effect on January 20, 1991, except that—

(A) section 606 shall take effect on the date of enactment; and

(B) at any time after the date of enactment of this Act—

(i) the officers provided for in this Act may be nominated and appointed, as provided in this Act;

(ii) the Secretary of Commerce and the Secretary may promulgate regulations under section 604(b)(2).

(2) Funds available to the Department of Commerce (or any official or component thereof), with respect to the functions transferred by this Act, may be used, with approval of the Director of the Office of Management and Budget, to pay the compensation and expenses of an officer appointed under paragraph (1) who will carry out such functions until funds for that purpose are otherwise available.

(b) INTERIM APPOINTMENTS.—

(1) If one or more officers required by this Act to be appointed by and with the advice and consent of the Senate have not entered upon office on the effective date of this Act and notwithstanding any other provision of law, the President may designate any officer who was appointed by and with the advice and consent of the Senate, and who was such an officer on the day before the effective date of this Act, to act in the office until it is filled as provided by this Act.

(2) Any officer acting in an office pursuant to paragraph (1) shall receive compensation at the rate prescribed by this Act for such office.

(c) AUTHORIZATION OF APPROPRIATIONS.—Except as otherwise provided in this Act, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. Amounts appropriated under this section shall be available until expended.●

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By Mr. INOUYE:

S. 1979. A bill to remove certain barriers to the free exercise of, and to ensure equal respect for, and treatment of, traditional religious practices by Indians, Alaska Natives, and Native Hawaiians; to the Committee on Indian Affairs; and

S. 1980. A bill to provide for the repatriation of Native American group or cultural patrimony; to the Committee on Indian Affairs.

NATIVE AMERICAN CULTURAL AND RELIGIOUS LEGISLATION

● Mr. INOUYE. Mr. President, I am pleased to introduce two bills today, the first to amend the American Indian Religious Freedom Act, and the second to provide for the repatriation of Native American group or cultural patrimony. Both bills are critical to the continued well-being and perpetuation of Native American cultures.

Mr. President, the ability to exercise traditional practices is essential to the survival of any people and any culture. While we as Americans claim to accept

this principle and have stated it as Federal policy for Native Americans, the rights of the native people of this land to practice their cultures have not been adequately respected or protected.

Lands sacred to Native Americans have been taken away and developed in a manner insensitive to the beliefs and traditions of the people who lived on them for hundreds of years, long before Europeans arrived on the shores that now constitute the United States. Native Americans have been studied by nonnatives more than any other group of people. Yet there is little evidence that this research has benefited Native Americans. The human remains of Native Americans are displayed in museums as objects that are not quite human. Yet we are living in an age of enlightenment. This unacceptable attitude toward and treatment of people who are alive and well and to whom we have legal and moral obligations must be reversed. The bills I am proposing are only small steps toward the fulfillment of our responsibilities to the people whom we have made wards of this Nation.

Mr. President, as you know, when Congress passed the American Indian Religious Freedom Act in 1978—Public Law 95-341—it set forth the policy of the United States to protect and preserve the right of American Indian, Eskimo, Aleut, and Native Hawaiian people to believe, express, and exercise their traditional religions.

Pursuant to the provisions of the act, Federal agencies are required by law to respect the customs, ceremonies, and traditions of Native American religions. The act provided that within 1 year of the law's enactment, Federal agencies would examine their policies and procedures, and work with native traditional and tribal leaders to assure minimal interference with the religious practices of native people. In August 1979, the Federal agencies task force charged with this responsibility submitted its report to Congress.

The report concluded that due to ignorance and attitudes, Federal policies and practices were directly or indirectly hostile toward native traditional religions or simply indifferent to their religious values. There were indications that Native American people were denied access to sacred sites on Federal land for the purpose of worship and in cases where they did gain access, they were often disturbed during their worship by Federal officials and the public. In addition, some sacred sites were needlessly put to other uses which have desecrated them. Native Americans have been denied the opportunity to gather natural substances which have a sacred or religious significance, and have been disturbed in their use of these natural substances. Finally, Native American beliefs involving care and treatment for the dead have not been respected by public officials and restrictions have been imposed by public institutions, such as schools and prisons, on the rights of Native Americans to practice their religious beliefs. Although many recommendations regarding legislative action were made in the report, none were forthcoming from the administration to Congress on the issue of removal of the identified barriers to Indian religious freedom.

In recent years, a number of court cases have emerged involving the right of Native Americans to engage in traditional religious practices. In a case decided by the U.S. Supreme Court in 1988 involving the construction of a road and allowing timber operations in a part of a national forest used for religious purposes by various Indian tribes—Lyng versus Northwest Indian Cemetery Protective Association—the Court held that the first amendment's protection of free exercise of religion did not prohibit the Federal activity. The Court viewed the case as one in which the "Government action would interfere significantly with private persons' ability to pursue spiritual fulfillment according to their own religious beliefs," but not as a case in which affected individuals would be "coerced by the Government's action into violating their religious beliefs."

This ruling has the potential effect of requiring the courts to use a more difficult test than the balancing test that most courts that deal with Native American free exercise claims have used. Since most claims are already being denied by the courts, use of an even more stringent test may defeat even more claims.

It is clear that there must be a rebalancing of governmental interests against Native American religious interests. The amendments to the American Indian Religious Freedom Act that I am introducing today would create an appropriate balance.

The second bill calls for the repatriation of Native American groups or cultural patrimony and human remains. The Smithsonian Institution set a precedent for the Nation when it agreed to return remains and artifacts in its collection that belong to Native Americans. It was a courageous step and one that I hope will be followed by all museums and institutions throughout this country that are holding remains and patrimony that rightly belong to Native Americans.

Ideally, it should be incumbent on the museum community itself, including anthropologists, archaeologists, and museum professionals to set ethical standards that respect the rights of other human beings and groups of people. In practice, however, not all institutions and individuals who engage in the excavation, collection, or trade of Native American artifacts respect the rights of Native Americans.

The legislation that I am proposing would not affect anyone or any institution that has practiced sound ethical standards. I believe this bill is fair and will statutorily provide a much needed standard for the treatment of Native American remains, artifacts, and cultural patrimony.●

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By Mr. HOLLINGS:

S. 1981. A bill to permit the Bell Telephone Companies to conduct research on, design, and manufacture telecommunications equipment, and for other purposes; to the Committee on Commerce, Science, and Transportation.

TELECOMMUNICATIONS EQUIPMENT, RESEARCH, AND MANUFACTURING COMPETITION ACT

Mr. HOLLINGS. Mr. President, in 1984, the modification of final judgment [MFJ], which ended the AT&T antitrust suit, took effect. The MFJ bars the design and development, as well as the fabrication, of telecommunications equipment by the Bell Operating Companies [BOC's]. This includes network equipment as well as customer premises equipment.

After much consideration, I believe that Congress should consider whether to lift this restriction in order to enhance the Nation's industrial competitiveness. That is why I am introducing legislation today to lift this restriction. The manufacturing restriction is one that touches most fundamentally on the issue of American competitiveness. As we all know, this is a matter foremost on our minds.

There is no doubt that this is major legislation that will require serious analysis by the Congress. I hope that we will begin considering this measure during the next session. I look forward to the debate that ensues.

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By Mr. BURDICK:

S. 1982. A bill to amend title 38, United States Code, to require that there be at least one regional office of the Department of Veterans Affairs in each State within the United States; to the Committee on Veterans' Affairs.

DEPARTMENT OF VETERANS AFFAIRS REGIONAL OFFICES

Mr. BURDICK. Mr. President, today I am introducing a bill to require that the Department of Veterans Affairs [VA] maintain at least one regional office in every State in the United States.

I believe this legislation is necessary in order to ensure that our Nation's veterans are provided quick information and access to VA programs and services. My State has only one regional office, and recent events have led North Dakota veterans to be concerned that the future of that office is threatened.

The VA regional office in Fargo serves a population of 105,000 veterans in North Dakota and western Minnesota. Most of the employees are natives of the region, and they bring to their work a special understanding of the unique concerns of area veterans. At the Fargo office, each veteran is given the opportunity for face-to-face interaction with a counselor or other professional who works with the veteran to solve his or her problems. It is crucial that this personal contact be maintained, and one way to move toward that goal is to require that there be at least one regional office in each State. Inherent in the legislation is the understanding that each regional office would offer the full range of access to VA programs and services.

Let us join together to make sure that all veterans, regardless of their place of residence, be it rural or urban, have equal access to VA programs and services.

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By Mr. LEAHY:

S. 1983. A bill to expand the inspection by the Secretary of Agriculture of the Nation's food supply to ensure the safety and wholesomeness of the Nation's supply of fish, shellfish, and other marine food; to the Committee on Agriculture, Nutrition, and Forestry.

CONSUMER SEAFOOD SAFETY ACT

● Mr. LEAHY. Mr. President, today I am introducing the Consumer Seafood Safety Act of 1989, a bill I am pleased to say has been characterized by Public Voice as providing "far reaching protections for the consumer."

Public Voice has also said that this bill "fills critical gaps in Government protection of the Nation's food supply."

In recent months, the evening news has been filled with stories raising questions about the safety of our food. Fish found with chemical and pesticide residue are among the food safety problems reported.

There have also been several stories on inspection programs—or I should say lack of inspection programs—for the Nation's seafood supply. Currently less than 12 percent of American seafood undergoes some kind of inspection or grading—and these programs are designed more for grading product than for ensuring safety. Only 7 percent of the almost 2,000 seafood processors participate in these voluntary inspection programs.

Food safety is not just a media issue. American consumers are concerned and worried. We have one of the safest food supplies in the world but we should—and can—make the best better. Fish inspection is one area ripe for improvement.

This is particularly important now that fish consumption was at an all time high in 1987. It fell in 1988, in part due to consumer concerns.

Seafood must be inspected. Twenty percent of all reported foodborne illnesses are caused by contaminated seafood. While mandatory Federal inspection cannot completely eliminate all contaminants from the marketplace, it will make our seafood safer and reduce the risk of illness to consumers.

We have made some real progress on this issue. Industry now agrees with consumer organizations that a mandatory inspection program is needed. All sides agree on several critical issues on implementation of the program.

In the past, there has been some disagreement as to which agency should oversee the program. For this reason, I asked Department of Agriculture, the Food and Drug Administration, and the National Oceanic and Atmospheric Administration to testify before the Senate Agriculture Committee on October 24, 1989.

Based on the testimony given, USDA, while not perfect, is clearly the appropriate agency to run the program. Both Ellen Haas, and her consumer organization, Public Voice, and industry agree as well.

FDA does not have the capability to oversee the program. In contrast, USDA already has several broad programs in place today to inspect flesh food. Seafood is the only flesh product not inspected by USDA. Rather than creating overlapping responsibilities between the different agencies, it makes more sense to have one agency—USDA—oversee all flesh food inspection, including fish.

The majority leader has already introduced fish inspection legislation (S. 1245) which I and a full quarter of the Senate have cosponsored. I commend his action.

Senator MITCHELL's bill was an important first step. It was introduced to consolidate a number of the ideas that consumer organizations and industry share.

The bill does resolve several specifics which need to be a part of the final fish inspection package. Inspection is not just an industry marketing tool. It is first and foremost a bill to provide strong consumer protection.

The legislation I am introducing today expands on Senator MITCHELL's bill to provide the kind of strong consumer protection that is needed.

This bill is realistic. It will not shut down the seafood industry. But if the industry wants a seal of inspection, they must meet some exact principles.

There are several important developments in this seafood inspection legislation.

First. Vessel certification. Fish and fish products come primarily from the sea, harvested by vessels. Mishandling the fish at the initial harvest point, may allow a contaminant to enter the food chain. For that reason, it is essential that establish standards for vessels. The standards need to reflect the vessel size, amount of time the boat is at sea, the type of catch and other factors. I want a realistic program which does not ignore the point of harvest.

Second. Chemical and microbiological standards. In several cases, States have called for a moratorium on the consumption of specific fish taken from certain waters due to high levels of chemical or microbiological contaminants. What one State calls for, may or may not be carried out by a neighboring State. Continuity is essential.

Third. State programs. State programs that meet or exceed Federal inspection programs should make up a part of fish inspection, just as State meat inspection programs are part of our Federal meat inspection system. States who wish should be allowed to implement programs more oriented toward public health than the Federal program.

Fourth. Imported products. The United States is one of the largest importers of fish and fish products in the world. A growing amount of that product comes from developing countries—countries that do not have even a rudimentary inspection or sanitation programs. This bill bans importing from a country that without an inspection program meeting standards set by the Secretary of Agriculture.

Fifth. Hazard analysis critical control point. The bill directs the Secretary to develop the inspection program to ensure that the public health is protected. The program will carefully look at the process of moving fish and fish products from the water to the table. Efforts will focus on the steps in the process that the fish or fish product becomes adulterated.

Sixth. Whistleblower protection. A Federal fish inspection program will be a less than continuous program. We financially cannot put an inspector on each and every boat. We need an effective employee protection plan to make the program work.

Seventh. Mislabeling or misbranding. Once a fish has been caught, cleaned and processed into fish blocks, it is difficult to tell the different species apart. This bill allows the Secretary to withhold misbranded product. Consumers who pay for crab, should get what they pay for—crab, not some imitation.

Mr. President, the other provisions in this bill expands on those proposed by the majority leader in his bill. This bill contains provisions I consider an important part of a good package.

I have no misperceptions. We have a lot of work to do in developing the final legislation. There are compromises that will have to be made.

But the only legislation I will support is one that provides strong consumer protection.●

By Mr. ROTH (for himself, Mr. BIDEN, and Mr. REID):

S. 1984. A bill to establish a Federal Strategic Drug Center; to the Committee on the Judiciary.

STRATEGIC DRUG INTELLIGENCE ACT

● Mr. ROTH. Mr. President, today I am introducing a bill to create a National Strategic Drug Intelligence Center. I am pleased that my colleague from Delaware, Senator BIDEN, as well as Senator REID of Nevada are cosponsors of this important legislation. Senator BIDEN has long been a leader in the war against illegal drugs, particularly in efforts to better coordinate the Government's antidrug efforts and to reduce bureaucratic infighting.

A few months ago, the Permanent Subcommittee on Investigations held hearings on the structure and operations of international drug trafficking organizations. One of the most disturbing findings resulting from the subcommittee's 12-month investigation is the tremendous gap in our Government's knowledge about these organizations. Moreover, the information our law enforcement agencies and intelligence-gathering agencies do have is not always put to good use. What is clear is that the small-time amateur cocaine distributors of 15 years ago have developed into large, sophisticated, illegal conglomerates that routinely terrorize their adversaries whether they be rival gangs or Government officials. These groups can easily absorb the costs of destroyed labs and arrests of mid-level traffickers as the cost of doing business. In short, we must change our strategy—we must start thinking smart.

But in order to think smart, we must know more. We must do a better job of gathering, analyzing and using drug related intelligence.

We have been hitting the enemy where it does not hurt. This must change. If we hope to succeed against the cocaine cartels, we need a new approach to the war on drugs that emphasizes long-term strategy over "bang-and-bust" tactics. Our efforts thus far are reminiscent of the failed "body count" approach used in Vietnam. In order to identify, attack and dismantle these international drug organizations, we need a new coordinated intelligence strategy which will identify the enemy and its weaknesses. We must target the enemy's vulnerabilities whether it is transportation routes, money laundering or precursor chemicals. No general goes into battle without good intelligence.

Our bill would establish an executive agency called the Strategy Drug Intelligence Center. President Bush's drug strategy calls for a working group to consider the concept of such a center now. All the witnesses at PSI's hearings supported the concept of a national Drug Intelligence Center. Though there may be some debate on the details, there is no debate on the concept. I believe we need to take the concept one step further and create this center. The sooner the center becomes operational, the sooner we can score victories against the enemy.

The purpose of the center is to create a much-needed, centralized computerized data base that will collect and collate information contributed by Federal law enforcement agencies and intelligence-gathering agencies with drug enforcement and control responsibilities. This information system will provide a comprehensive analysis of the structure and operations of the drug trafficking organizations so that we fully understand the weak chinks in the enemy's armor.

All Federal drug enforcement agencies and other appropriate agencies will participate in the center. The center will be managed by an executive director selected by the Director of the National Drug Control Policy from the agencies of the Department of Justice responsible for drug enforcement and control. Members of participating agencies such as FBI, DEA and Customs, will serve on an Advisory Board, which will consult with the executive agent on policy matters related to the center. We are not proposing to duplicate enforcement and intelligence efforts currently in place. Our legislation will simply centralize all the drug intelligence available so that it can be more effectively utilized. It is a commonsense proposal.

The need for a strategic intelligence center is patently clear. Much of the relevant information on the drug organizations the Government possesses is contained in manual files that cannot be used easily or effectively. No single agency has ready access to all the data needed to produce a comprehesive understanding of the international and domestic drug trafficking organizations. This must change. Strategic intelligence is our "lethal weapon" against the enemy. Creation of the Strategic Drug Intelligence Center is the first step toward dismantling the organizations themselves. I urge my colleagues to support this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1984

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This section may be cited as the "Strategic Drug Intelligence Act of 1989".

SEC. 2. FINDINGS.

The Congress finds that—

(1) intelligence information sharing among Federal agencies concerned with drug enforcement is essential to implement the National Drug Control Strategy;

(2) much of the relevant information the Federal Government possesses related to foreign and domestic drug trafficking organizations is in manual files which cannot be used easily, quickly or completely;

(3) each Federal agency responsible for drug enforcement and control maintains its own files which, by their nature, are difficult to share with other agencies:

(4) no Federal agency responsible for drug enforcement and control has ready access to all the data needed to produce a comprehensive understanding of international and domestic trafficking organizations; and

(5) there is no centralized data base of information which can be fully utilized by responsible Federal agencies.

SEC. 3. ESTABLISHMENT AND RESPONSIBILITIES OF CENTER.

(a) ESTABLISHMENT OF THE CENTER.—There is established an executive agency to be known as the "Strategic Drug Intelligence Center" (referred to as the "Center"). To the fullest extent practicable, the personnel and equipment of the Center shall be co-located. Upon the appropriation of funds for the Center, the Center shall employ not less than 300 people of which the following agencies shall provide the following personnel:

(1) not less than 75 employees from the Drug Enforcement Administration;

(2) not less than 75 employees from the Federal Bureau of Investigation;

(3) not less than 50 employees from the Customs Service;

(4) not less than 50 employees from the Department of Defense; and

(5) not less than 50 employees from participating agencies selected by the Director of National Drug Control Policy.

During their tenure at the Center, employees shall report to the Executive Director who shall be responsible for their performance evaluation.

(b) RESPONSIBILITIES OF THE CENTER.—The Center shall—

(1) assimilate, collect and analyze drug enforcement-related data and intelligence of participating agencies:

(2) produce comprehensive analyses of foreign and domestic drug trafficking organizations, patterns and trends;

(3) create and maintain a state-of-the-art computer data base for drug-related strategic intelligence;

(4) publish quarterly statistics on drug trafficking and abuse patterns and indicators for each major drug of abuse in the United States, including statistics on price, purity and availability; and

(5) disseminate comprehensive drug enforcement-related intelligence to appropriate intelligence and law enforcement agencies.

(c) DATE OF OPERATION.—The Center shall begin operations not later than 90 days after funds are appropriated for the Center.

SEC. 4. MANAGEMENT OF CENTER.

(a) ESTABLISHMENT OF ADVISORY BOARD.—There shall be an Advisory Board consisting of the Executive Director, a representative of each agency participating in the Center and representatives from state and local agencies selected by the Director of National Drug Control Policy. The Advisory Board shall be chaired by the Deputy Director of National Drug Control Policy for Supply Reduction. The Advisory Board shall con-

sult with the Executive Director in establishing the policies of the Center.

(b) DESIGNATION OF EXECUTIVE DIRECTOR.—There shall be an Executive Director, designated by the Director of National Drug Control Policy, who shall be responsible for the management and operations of the Center. The Executive Director shall be selected from one of the Department of Justice agencies responsible for drug enforcement.

(c) RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR.—The Executive Director, in consultation with the Advisory Board, shall—

(1) allocate the Center's funding;

(2) determine the Center's priorities;

(3) adopt procedures governing access to information contained in the data bases.

SEC. 5. PLAN FOR CENTER.

Not later than 90 days from the date of enactment of this act, the Executive Director, in consultation with the Advisory Board, shall develop and submit to the Judiciary Committees of the Senate and House of Representatives a plan for the management and operation of the Center which shall include a design and format for the data base to be established by the Center. The plan shall utilize existing drug enforcement-related intelligence resources and shall not duplicate current information systems. To the fullest extent possible, existing drug enforcement-related intelligence data and systems shall be consolidated and integrated into the Center.

SEC. 6. PARTICIPATING AGENCIES.

The following agencies shall participate in the establishment of the strategic drug intelligence data base and shall contribute data as required by the Advisory Board:

(1) the Office of National Drug Control Policy;

(2) the Drug Enforcement Administration;

(3) the Federal Bureau of Investigation;

(4) the Internal Revenue Service;

(5) the Immigration and Naturalization Service;

(6) the Customs Service;

(7) the Coast Guard;

(8) the Department of Defense; and

(9) other executive agencies as designated by the Director of National Drug Control Policy.

SEC. 7. INTELLIGENCE COMMUNITY PARTICIPATION.

The Directors of the Central Intelligence Agency, the Defense Intelligence Agency and the National Security Agency shall appoint members from their respective agencies to serve on the Advisory Board. Within 180 days after enactment of this act, the agencies within the United States intelligence community shall submit to the Director of National Drug Control Policy a plan for integration of drug related intelligence information generated by such agencies into the Center.

SEC. 8. INTELLIGENCE COMMUNITY COOPERATION.

It is the sense of the Congress that the agencies within the United States intelligence community shall cooperate, consistent with applicable law, including section 1004(a) of Public Law number 100-690, and the protection of intelligence sources and methods, with the Center in the execution of its responsibilities.

SEC. 9. AVAILABILITY OF INFORMATION.

The information in each data base established by the Center shall be available to appropriate representatives from participating agencies pursuant to the procedures adopted by the Executive Director and the Advisory Board.

SEC. 10. SECURITY OF CENTER.

The Executive Director shall take all reasonable, and necessary actions to ensure security for the Center, including the protection of sources and methods of drug enforcement-related intelligence.

SEC. 11. REPORTS AND EVALUATION.

Not later than one year after the date of enactment of this legislation and not later than March 1 of each year thereafter, the Executive Director shall submit to the Judiciary Committees of the Senate and House of Representatives a report evaluating the performance of the Center and the participation of each of the contributing agencies to the data base of the Center.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

For purposes of carrying out this Act, there are authorized to be appropriated $100,000,000 for fiscal year 1991 and such sums as may be necessary for each of the three succeeding fiscal years, which amounts shall remain available until expended.●

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● Mr. BIDEN. Mr. President, today, I am pleased to join Senator ROTH in introducing the Strategic Drug Intelligence Act of 1989.

This legislation will establish a single, national center that combines the drug intelligence gathered by DEA, FBI, Customs and other agencies; analyzes that data with state-of-the-art computer systems; and distributes this information to Federal, State, and local drug enforcement agencies across the country.

The major international drug cartels are the biggest and most sophisticated criminal organizations in modern history. Unfortunately, U.S. drug-fighting agencies have refused to share intelligence data about these criminal organizations, undermining our efforts to bring these drug traffickers to justice. One of the most embarrassing—and troubling—examples came to light at a Judiciary Committee hearing that I chaired earlier this year.

The witness, Max Mermelstein, a convicted high-ranking member of the Medellin cocaine cartel, told the committee that he was summoned by a Federal drug agency to corroborate information provided by an informant who was cooperating with another Federal agency. After several minutes, the agent discovered a very embarrassing fact—Max had been summoned to corroborate his own story! How did this happen? Because the agencies refused to tell each other the names of the informants.

Unfortunately, this example is not unique. U.S. drug enforcement agencies frequently refuse to share intelligence information. In many cases, however, they can't share such information, if they wanted to. The agencies maintain separate files, in separate computer systems.

By establishing a consolidated national drug intelligence center, this legislation will ensure that law enforcement agencies throughout the country get accurate, up-to-date information they need on the smuggling routes and tactics of domestic and international drug trafficking organizations. Specifically, the bill:

Establishes a consolidated national drug intelligence center in the executive branch;

Creates an advisory board, chaired by the Deputy Director of National Drug Control Policy for Supply Reduction and composed of representatives from Federal, State, and local law enforcement agencies, to develop policy for the center;

Calls for an Executive Director, to be selected from the Justice Department, to be responsible for the day-to-day management and operation of the center;

Requires the center to issue a quarterly report on drug abuse statistics, including the use, price, purity, and availability of every major category of illegal drug used in the United States. This information should give the American people a regular "report card" on the progress that we are making in the war against drugs.

Provides $100 million for personnel and equipment to establish, operate, and staff the center. This level of funding should be adequate to hire up to 300 employees from DEA, FBI, the Customs Service, the Pentagon, and other Federal agencies.

Most important of all, the bill requires that the center combine the many overlapping and duplicative drug-related intelligence systems of Federal agencies in the new center. Rather than simply creating another antidrug bureaucracy, this bill will streamline and consolidate Federal drug intelligence efforts. And to foster day-to-day cooperation, the bill requires that the center's computer systems and personnel to be colocated.

But this bill can't legislate cooperation. One of the primary responsibilities of the Director of National Drug Control Policy is to coordinate Federal antidrug efforts. Nowhere will this job be more difficult—and more important—than in assigning the responsibility to manage and operate this center to one agency, while ensuring that the other Federal drug-fighting agencies participate fully in sharing intelligence information.

Mr. President, this bill presents a unique opportunity to improve the effectiveness of our National Drug Control Strategy. I commend Senator ROTH for his work on this issue, and I look forward to working with him to get this bill passed.●

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By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 1985. A bill entitled the "Walkill River National Wildlife Refuge Act; to the Committee on Environment and Public Works.

WALKILL RIVER NATIONAL WILDLIFE REFUGE ACT

Mr. LAUTENBERG. Mr. President, I rise to introduce the Walkill National Wildlife Refuge Act. I am pleased to be joined today by Senator BRADLEY. The Walkill National Wildlife Refuge Act authorizes the creation of a wildlife refuge along the Walkill River and its associated riverine wetland habitat in the Townships of Hardyston, Wantage, and Vernon, NJ. This will be the fifth national wildlife refuge created in New Jersey. It will add approximately 7,500 acres to the 45,000 acres already designated as part of the National Wildlife Refuge System in New Jersey.

New Jersey is one of the most densely populated States in the Nation. Open space is disappearing at an alarming pace. Last year, approximately 28,000 acres of land were taken out of their natural state. The loss of open space diminishes the quality of life for State residents. Recreational opportunities for hiking, fishing, camping, or bird watching are lost when land is unwisely developed. Precious natural resources such as fish, plants and wildlife, many of which are endangered species, can be lost without a plan to conserve and protect them.

The creation of the Walkill National Wildlife Refuge will protect valuable natural resources, enhance recreational opportunities, and maintain a beautiful area of our State. The Walkill National Wildlife Refuge Act would insure that the refuge is managed with the overall objective of protecting all the various and unique resources within the refuge area. This includes preserving the land, protecting the water quality, and conserving and enhancing the populations of fish, wildlife and plants. The act would require the maintenance of the migratory and nesting habitats for Atlantic Flyway migratory black duck populations. Compatible scientific research, environmental education, and fish and wildlife oriented recreation opportunities are provided for as well.

The creation of a refuge along the Walkill River has widespread support. The New Jersey Department of Environmental Protection, the U.S. Department of Interior, and the U.S. Environmental Protection Agency have recognized the value of the Walkill River area and the need for its preservation. Many private citizens and recreation associations have heartily endorsed the creation of this refuge. I believe that Congress should express its support for the creation of the Walkill National Wildlife Refuge.

Mr. President, I ask that the full text of the bill to create the Walkill National Wildlife Refuge be printed in the RECORD at the conclusion of my remarks.

Mr. President, I ask that an editorial, "A Home for the Heron" as appeared in the Record of Hackensack, NJ, on February 16, 1989, be printed in the RECORD at the conclusion of my remarks.

Mr. President, preserving open space, protecting natural resources, and enhancing outdoor recreational opportunities are the priorities of this legislation. I urge my colleagues to join in supporting this legislation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1985

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Walkill River National Wildlife Refuge Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Walkill River and associated riverine wetland habitat dividing the townships of Hardyston, Wantage, and Vernon, New Jersey, has been identified as one of the few high-quality waterfowl concentration areas remaining in the northwestern portion of the State and a valuable wildlife habitat used by a variety of migratory birds including waterfowl, raptors, passerines, and marsh and water birds;

(2) the Walkill River area—

(A) provides a migratory and nesting habitat for Atlantic Flyway migratory black duck populations;

(B) has been identified by the United States Fish and Wildlife Service as an important black duck habitat; and

(C) is a high priority of the North America Waterfowl Management Plan;

(3) the Walkill River area is home to several New Jersey State-listed rare and endangered plant and animal species; and

(4) designation of the Walkill River area as a national wildlife refuge would significantly aid in the conservation of wildlife and other natural resources.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(1) the term "refuge" means the Walkill River National Wildlife Refuge;

(2) the term "Secretary" means the Secretary of the Interior; and

(3) the term "selection area" means the lands, wetlands, and waters of the Walkill River in the State of New Jersey.

SEC. 4. ESTABLISHMENT OF REFUGE.

(a) DESIGNATION OF AREA.—Not later than 1 year after the date of enactment of this Act, the Secretary shall designate approximately 7,500 acres of land and waters within the selection area for inclusion in the refuge.

(b) MAP.—After making the designation described in subsection (a), the Secretary shall—

(1) produce a map depicting the boundaries of the designated area of the refuge;

(2) publish in the Federal Register and in newspapers of local circulation a notice of availability of the map; and

(3) place the map on file and make it available for inspection in the office of the Director of the United States Fish and Wildlife Service and in the appropriate offices of the United States Fish and Wildlife Service in the State of New Jersey.

(c) BOUNDARY REVISIONS.—The Secretary may make such minor revisions in the boundaries designed under subsection (a) as may be appropriate to carry out this Act or to facilitate the acquisition of property within the refuge.

(d) ACQUISITION.—After determination of the boundaries of the refuge in accordance with subsection (a), the Secretary is authorized to acquire the lands and waters, or interests therein, within the boundary of the refuge.

(e) ESTABLISHMENT.—The Secretary shall establish the refuge by publication of a notice in the Federal Register and publications of local circulation when sufficient property has been acquired within the boundary of the refuge to constitute an area that can be effectively managed as a national wildlife refuge.

SEC. 5. PURPOSES.

The primary purposes for which the refuge is established—

(1) to preserve and enhance the refuge's lands and waters in a manner that will conserve the natural diversity of fish, wildlife, plants, and their habitats for present and future generations;

(2) to conserve and enhance populations of fish, wildlife, and plants within the refuge, including populations of black ducks and other waterfowl, raptors, passerines, and marsh and water birds;

(3) to protect and enhance the water quality of aquatic habitats within the refuge;

(4) to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats; and

(5) to provide opportunities for compatible scientific research, environmental education, and fish and wildlife-oriented recreation.

SEC. 6. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer all lands, waters, and interests therein acquired under this Act in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

(b) OTHER STATUTORY AUTHORITY.—The Secretary may utilize such other statutory authority as is available to the Secretary for the conservation and development of wildlife and natural resources, the development of recreational opportunities, and interpretive education, as the Secretary considers appropriate to carry out this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of the Interior—

(1) such sums as are necessary for the acquisition of lands and waters designated pursuant to section 4(a); and

(2) such sums as are necessary for the development, operation, and maintenance of the refuge.

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[From the Hackensack (NJ) Record, Feb. 16, 1989]

A HOME FOR THE HERON

The Wallkill River is a plain river, muddy and brown. But it is home nonetheless to rare turtles and to beaver, otter, and families of sleek mink streaking along river banks. In Sussex County, where the river meets the New York State border, the Wallkill is also the habitat of endangered birds; bobolink, two species of owl, the red-shouldered hawk, and the smoke-colored great blue heron. The river and its banks are also host to several species of rare water-loving plants.

To protect this rich treasure of wildlife, the U.S. Fish and Wildlife Service has proposed a 7,500-acre preserve along a six-mile length of the Wallkill in Sussex County.

The acquisition, which could cost as much as $30 million, is planned to take several decades. The wildlife service says it will not condemn land or force any owners to move, but buy up acreage as it becomes available. The service has learned from the bitter experience of the Tocks Island project in the Sixties that public anger over aggressive land-grabs can kill government projects. That is what happened to the proposed Tocks Island dam and its related mammoth water-supply and recreation plan. Wholesale condemnation so outraged the region that Congress killed the project.

Some naturalists complain that the gradual approach favored by the wildlife service is too slow and will result in the loss of some animal populations. That risk seems small. Land not bought by the service would stay in the hands of the present owners, and be passed down to their heirs. The land, presently dotted with only a few homes and farms, couldn't be developed because once it came on the market, it would be bought by the service.

It's important to remember that while the Wallkill area is still remote and countrified, it is surrounded on all sides by rapidly developing communities in New Jersey and New York State. Sussex County municipalities such as Hardyston and Vernon are worried about the loss of tax revenues from potential private development. They should be aware that property values around a refuge almost always rise, because people like to live next to a refuge. Rep. Marge Roukema, R-Ridgewood, who represents the refuge area in Sussex, supports the proposal. A spokesman for her office said that reactions so far had been cautiously optimistic.

Congress should swiftly approve the refuge designation to the Wallkill tract, so the process of acquisition can get underway. The present plan of gradual acquisition has advantages: It is nonthreatening to local residents, and it spends scarce federal dollars slowly. If, at some later date, private development appears to threaten the species the Wildlife Service wants to protect, the service can appeal to Congress for expedited funding. Either way, the heron and the other denizens of the Wallkill should have their refuge.

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By Mr. BOSCHWITZ:

S. 1988. A bill to amend the Consolidated Farm and Rural Development Act and the Farm Credit Act of 1971; to the Committee on Agriculture, Nutrition, and Forestry.

BORROWER RIGHTS PROVISIONS OF THE AGRICULTURE CREDIT ACT

● Mr. BOSCHWITZ. Mr. President, today I am introducing legislation aimed at correcting problems that have resulted from some borrower rights provisions of the Agricultural Credit Act of 1987.

As a principal coauthor of the 1987 bill, I supported providing a right of first refusal for farmers who were forced off their farms through foreclosure. This allows former owners the first opportunity to purchase property, to stay on their land, and to continue farming. The right of first refusal applied to both Farmers Home Administration [FmHA] borrowers and Farm Credit System [FCS] borrowers.

However, I have been disturbed by reports that some former owners have been using this privilege solely for the purpose of selling the property to another person. Some of the former owners have gone so far as to seek prospective buyers for their former property. In other cases, those with the financial resources to purchase farmland are also approaching former owners who have the right of first refusal, in order to make a deal on the resale of the land.

Clearly, in drafting this right of first refusal provision in the 1987 bill, we intended to help farmers forced off their land to continue farming, not to make a profit on selling their former land to someone else. My bill prohibits the resale of land for two years after the former owner has exercised his or her right of first refusal.

My bill also resolves another problem. Currently persons who have been convicted of fraud against the Federal Government or the Farm Credit System would still be allowed to exercise their right of first refusal. My bill would remove the right of first refusal, granted to FmHA borrowers in the 1987 bill, for those who have been convicted of fraud against the Federal Government within the preceding 5 years. In the case of FCS borrowers, it would affect those who have been convicted of fraud against either the Federal Government or any FCS institution within the preceding 5 years.

Representative GLENN ENGLISH sponsored a similar bill which has already been passed by the House of Representatives. I will continue to push for Senate passage of this measure to tighten up some loopholes regarding the right of first refusal for FmHA and FCS borrowers and to ensure that law-abiding farmers will still be able to exercise their right of first refusal.

Mr. President, I urge my cosponsors to support this legislation.●

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By Mr. WILSON (for himself, Mr. BOREN, and Mr. DOLE):

S. 1989. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to prohibit the export of unregistered pesticides, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

GLOBAL BAN ON DANGEROUS PESTICIDES ACT

● Mr. WILSON. Mr. President, I can think of no duty the Congress performs more important than ensuring the health and safety of our citizenry.

Recently, the safety and wholesomeness of our Nation's food supply has come under increasing public and Federal scrutiny, especially when it comes to the proper use of pesticides on the food we grow here at home and the food we import from overseas.

Pesticide sales worldwide are increasing dramatically. From 1977 to 1987, the international agricultural chemical market doubled in size to more than $17 billion.

Between 400 and 600 million pounds of U.S. manufactured pesticides are exported by the United States each year. About a quarter of the pesticides exported are not registered for use in the United States.

Pesticides not registered by EPA include pesticides that have been canceled or suspended for use in the United States because they may cause cancer or otherwise endanger humans, wildlife, or the environment.

Others have been voluntarily taken off the market by manufacturers for economic considerations or concern over the potential adverse health or environmental effects.

These nonregistered pesticides are allowed to be exported because of a loophole in the Federal Insecticide, Fungicide, and Rodenticide Act—the law that governs the sale and use of pesticides.

All that is needed to export a banned pesticide is for the foreign purchaser to sign a statement acknowledging that the pesticide is not registered for use in the United States.

Mr. President, if nonregistered pesticides are banned in the United States, they should not be used in any other country where they may endanger the health of others.

It is wrong to protect the health of Americans, but allow dangerous pesticides to poison citizens in other countries.

There is also the added danger that unregistered pesticides exported to foreign growers will eventually get back into our food chain.

The Food and Drug Administration monitors produce imported into the United States. But only a small fraction of all shipments is tested. And tests are not sufficiently comprehensive to detect all unregistered pesticides.

The problem of unregistered pesticides showing up on food imported into the United States is particularly troublesome when considering both the escalation of pesticides used by developing countries and the escalation of their exports of produce back to the United States.

The United States currently imports more than 20 million tons of food annually—an increase of almost 45 percent from a decade ago.

According to EPA, the United States supplies approximately half of the pesticides used by Latin American countries—many of which are unregistered. At the same time, increasing quantities of fruits and vegetables are being grown in these countries specifically for shipment back to the United States.

Clearly, the unfettered export of dangerous pesticides poses a public

health risk of international dimensions.

Finally, in addition to health concerns, the export of pesticides banned in the United States creates a competitive inequity between foreign and American farmers and growers.

Requiring U.S. growers to use what are often more expensive pesticides, while making available to foreign competitors less expensive pesticides, puts Americans at a competitive disadvantage.

The result of this inequity is to deny our growers a level playing field on which to compete.

Mr. President, to protect the health of citizens of all countries, to protect American consumers, and to ensure U.S. growers are not placed at an unfair disadvantage concerning pesticide use, today I am introducing "The Global Ban on Dangerous Pesticides Act."

The legislation is comprised of two major initiatives:

First, exports of unregistered pesticides would not be permitted unless the Administrator of the EPA determines that there is a greater risk to the public health from not exporting the pesticide.

Second, EPA would be required, in coordination with other Federal agencies, to convene an international conference of foreign governments for the purpose of banning dangerous pesticides.

Dangerous pesticides include those pesticides that fail to meet the registration requirements established by EPA or are considered by international or regional governmental organizations to have environmental and safety costs that are not outweighed by public health benefits.

This international meeting would be similar to the conference of nations held in 1987 that yielded what is commonly termed, the Montreal protocol whereby the United States and 47 other signatories agreed to the worldwide reduction by 1999 of 50 percent of chlorofluorocarbons from the 1986 level.

Finally, EPA would be required to report to the Congress, within 6 months after enactment of the act, on the progress undertaken by EPA to convene this conference.

Mr. President, some will say that we are simply exporting jobs by prohibiting the export of unregistered pesticides.

I strongly disagree. What we are exporting is sound public health policy.

In 1987, I introduced the "Safe Food Imports Act." That bill required the Food and Drug Administration to strengthen its monitoring and testing procedures of imported produce for illegal pesticide residues. The provisions of that bill were incorporated into the omnibus trade bill that became law in 1988.

It is clear that we must do more.

Not only is a serious health threat posed to the consumer, but our growers are denied a level playing field on which to compete against foreign-grown produce.

There is no equity for the American farmer in allowing a grower in a foreign country to use a pesticide that has been banned in the United States because it is considered unsafe.

Mr. President, we must look forward to the 21st century and make decisions—today—that will ensure a safe food supply in the next century.

The United States is in an enviable—and unique—position to bring foreign governments together in an international forum on the use of dangerous pesticides.

Mr. President, there is no question that pesticides enhance the yield and quality of our Nation's food supply. As laudable as that goal may be, it must yield to the need to protect the public health of the consumer.

With this legislation, the United States can guide the way toward a safer food supply not simply for the consumers in this country—but for consumers in every country. I urge my colleagues to join me in this effort.●

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By Mr. PELL (for himself and Mr. CHAFEE):

S. 1990. A bill to establish the Cliff Walk National Historic Site; to the Committee on Energy and Natural Resources.

CLIFF WALK NATIONAL HISTORIC SITE

● Mr. PELL. Mr. President, I am introducing legislation with my colleague, the junior Senator from Rhode Island [Mr. CHAFEE], that I hope will prove to be an important step toward the preservation and continued public use of the Cliff Walk in Newport, RI.

My legislation is a modest measure that would establish the Cliff Walk National Historic Site, a unit of the National Park System. It also directs the Secretary of the Army to make repairs and improvements to the Cliff Walk to make the walk safe and to enhance its natural and cultural values.

The legislation directs the Secretary of the Interior to develop a joint management agreement for the maintenance and interpretation of the Cliff Walk, using the resources of the National Park Service, State and local agencies, and private persons and organizations.

Finally, this bill would authorize $3 million for the necessary work to repair and preserve the Cliff Walk.

This measure was prompted by an excellent report by the National Park Service. The report was the result of a bill that I introduced 2 years ago directing the National Park Service to study the Cliff Walk as a candidate for inclusion as a unit of the National Park System.

The report, titled "The Cliff Walk—A Special Resource Study," includes the following summary:

The Cliff Walk is a nationally significant resource when viewed in any but the narrowest perspective. Its management and protection must be built on recognition of the collective value of its natural, cultural, scenic and recreational resources.

In addition, the study found that,

Evaluation of the natural, specifically geological, resources of the Cliff Walk area supports the view that the Cliff Walk is indeed a special place, and that its significance is due to a collocation of resources which distinguishes it from other special coastal areas.

One result of the study, I am happy to report, was a recommendation by one of the National Park Service's consultants that the Cliff Walk receive national natural landmark status—a view endorsed during formal peer review by three other prominent geologists.

There is considerable and apparently growing support for making Cliff Walk a unit of the National Park System. I have encountered this support from Newport residents, including neighbors whose property abuts the Cliff Walk, from visitors to Rhode Island and from local, State, and Federal officials.

Cliff Walk is a place of unique natural and architectural beauty—a priceless part of our Nation's heritage. Hundreds of thousands of visitors from throughout our Nation and from other countries enjoy this unique beauty each year.

The National Park Service designated Cliff Walk as a national recreational trail in 1975. Although this national honor was most welcome, it has not and will not keep portions of Cliff Walk from falling into the sea.

As I said when I introduced the measure authorizing the study, this magnificent 3.5 mile walk, with the ocean's rugged coastline on one side and some of Newport's most elegant and historic mansions on the other, is gradually loosing a continuing battle with the elements.

Sections of Cliff Walk are crumbling into the ocean and other sections have eroded away until visitors are forced to leap from rock to rock along the coast.

The need is urgent to assure continued public use and enjoyment of this nationally recognized recreational, cultural and historic treasure. We must act soon or we may lose much of the substantial Federal investment that already has been made in Cliff Walk.

It seems clear that one way to assure continued Federal protection of Cliff Walk is to make it a unit of the National Park Service. I am sure Cliff Walk is a national treasure worthy of such a constant Federal commitment.

In the past, the maintenance of Cliff Walk has been approached on a catch-

as-catch-can basis. We always seem to be a day late and a dollar short. It has become all too evident that we are gradually losing the battle to make Cliff Walk safe for our citizens.

Current estimates of work that needs to be done on Cliff Walk total nearly $3 million. That work would make Cliff Walk safer, for now, but a continuing management agreement—coupled with status as a unit of the National Park System—would address the need for preservation, interpretation, and future maintenance.

The National Park Service has only one facility in Rhode Island, the 4½-acre Roger Williams National Memorial in downtown Providence.

It was my legislation which increased the authorization and secured the funding to establish that national memorial park, which honors Roger Williams and his legacy of religious freedom. I think, however, Rhode Island should expect more than one National Park Service facility as our fair share.

As a matter of record, I want to note that I am a resident of Newport and that my home abuts Cliff Walk. I am enthusiastic about preserving the walk, but I will exclude myself from any plans for the portion of Cliff Walk that runs across my property.

I am sure that Cliff Walk would be an excellent addition to the National Park System—another jewel in the diadem of priceless natural and cultural treasures that the Park Service helps to preserve and conserve for all our citizens.

To that end, I am introducing legislation to establish the Cliff Walk Historic Site, a unit of the National Park System. I am gratified that the entire Rhode Island congressional delegation is joining in this effort.

Just as Senator CHAFEE is joining with me in introducing this measure in the Senate, I am pleased to report that Representative RONALD K. MACHTLEY is sponsoring a companion bill in the House, with Representative CLAUDINE SCHNEIDER as a cosponsor.

Mr. President, I ask unanimous consent that the full text of our bill, titled the "Cliff Walk National Historic Site Act," be printed in the CONGRESSIONAL RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1990

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cliff Walk National Historic Site Act".

SEC. 2. ESTABLISHMENT OF PARK.

(a) IN GENERAL.—There is established as a unit of the National Park System the Cliff Walk National Historic Site (referred to as the "Cliff Walk").

(b) AREA INCLUDED.—The Cliff Walk shall consist of lands and interests in land comprising the walkway of approximately 3½ miles and varying widths known as the Cliff Walk in Newport, Rhode Island, as generally depicted in the map contained in the study entitled "The Cliff Walk—A Special Resource Study" dated July 1989, prepared by the National Park Service.

(c) MAP.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior shall make available for public inspection in the office of the National Park Service in Washington, D.C., a map showing the lands and interests in land comprising the Cliff Walk.

SEC. 3. REPAIR, MAINTENANCE, AND INTERPRETATION.

(a) REPAIR AND IMPROVEMENT OF THE CLIFF WALK.—The Secretary of the Army shall make repairs and improvements to portions of the Cliff Walk as necessary to make the walk safe and to enhance its natural and cultural values.

(b) MAINTENANCE AND INTERPRETATION OF THE CLIFF WALK.—The Secretary of the Interior, in cooperation with State and local officials and other interested persons, shall develop a joint management agreement providing for the maintenance and interpretation of the Cliff Walk using the resources of the National Park Service, State and local agencies, and private persons and organizations.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $3,000,000 for repair and improvement of the Cliff Walk.●

● Mr. CHAFEE. Mr. President, I am pleased to join with my colleague from Rhode Island in introducing this important piece of legislation in the Senate.

This bill continues efforts we began nearly 3 years ago, when Congress passed legislation requesting a Park Service study of the Cliff Walk as a candidate for inclusion in our National Park System. This study found the Cliff Walk to be a nationally significant resource deserving of protection. The Rhode Island Department of Environmental Management agrees, and supports the walk's designation as a unit of our national parks.

Designated a National Recreational Trail in 1975, the Cliff Walk is a beautiful 3½ mile stretch of Rhode Island's coastline. Long appreciated by residents and tourists alike, the Cliff Walk is an important part of our Nation's natural heritage and a treasure that we in Rhode Island cherish.

Unfortunately, the integrity of the walk is being threatened daily by natural forces. Many areas of the walk show severe erosion damage, or have fallen away altogether. If the erosion continues unattended, the Cliff Walk will literally disappear.

Mr. President, this bill will ensure that the historic Cliff Walk survives for the enjoyment of future generations. It makes the Cliff Walk area, as depicted in a recent Park Service study, part of the National Park Service. Second, the Secretary of the Interior will work with local groups and officials to develop a maintenance plan for the Cliff Walk, a plan that will utilize the resources of the Park Service, State and local agencies, and private organizations. Third, the Army Corps of Engineers will lend a hand in making the repairs and improvements necessary to ensure that the Cliff Walk is safe. Finally, an authorization of $3 million is included to help fund the repair and maintenance work.

Mr. President, this bill will help preserve a beautiful natural treasure: the Newport Cliff Walk. I urge my colleagues to join me in supporting this legislation.●

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By Mr. BIDEN:

S. 1991. A bill to provide for eradication of drug production in certain foreign countries through debt-for-drugs exchanges; to the Committee on Foreign Relations.

DEBT FOR DRUGS EXCHANGE ACT

● Mr. BIDEN. Mr. President, today I am introducing legislation that offers a mechanism for addressing two serious problems afflicting the Andean region of South America—debt and drugs.

The link between these twin plagues has become more obvious in recent years, especially in the Andean drug-producing nations of Bolivia, Colombia, and Peru. The economies of these nations have become virtually hooked on drugs. Repatriated cocaine profits dwarf legal exports, and account for a large portion of their foreign reserves.

More than a million families of the Andean nations have become economically dependent, either directly or indirectly, on the drug trade. As many as 500,000 Bolivians, nearly one-third of the labor force, are reliant on the drug trade, in one form or another, for their livelihood. Little wonder that a former Bolivian Finance Minister once remarked: "If narcotics were to disappear overnight, we would have rampant unemployment. There would be open protest and violence."

In the context of these facts, a crackdown on the drug trade carries an obvious risk for the Andean nations—a loss of revenues which are needed to service the foreign debt. It is, to use an old phrase, a Hobson's choice.

Unfortunately, the national drug control strategy proposed by the President earlier this fall barely mentions the debt problem in South America. This shows a tragic misunderstanding of the motivations driving coca growing and trade. Debt burdened economies cannot support the legal alternatives necessary to draw workers and capital away from drug production. This is also a tactical mistake, simply because servicing huge external debts deprives the Andean antidrug governments of the very resources needed to maintain pressure on the traffickers.

Last year, Bolivian debt obligations to the United States equaled approximately $20 million, while our drug as-

sistance to Bolivia was only $10 million. Colombia has faced an even greater strain on its Treasury, paying the United States nearly $200 million per year while receiving less than $10 million in antidrug aid. And these payments to the U.S. Government represent only a fraction of the funds which these countries must forfeit each year to foreign creditors.

These debt demands are increasing at a time when the nations of the region are less able to meet their obligations. Prices for commodities—the major legal export for the Andean nations—remain depressed. For example, the recent collapse of the International Coffee Agreement could cost Colombia as much as $500 million in annual revenues. In addition, the recent crackdown by the Government of Colombia has already led to a decline in investment, an increase in capital flight, and a drop in tourist revenue.

In short, asking these nations to wage a full-scale war on drugs and repay their debts in full, is asking the impossible. I propose a way out, through a swap of debt relief for their commitment to devote a portion of the savings to antidrug programs.

I model this approach on debt-for-nature swaps that have already been successfully negotiated in the developing world. Unlike those efforts, however, which made a very small dent in the debt problem, my approach would provide significant debt relief, providing important breathing room for the Andean economies.

These debt-for-drugs exchanges are a mechanism through which creditor governments, including the United States, can help support the antinarcotics activities of the Andean countries by providing coordinated and comprehensive debt relief.

Under this bill, debt held by commercial banks—both in this country and in other nations of the developed world—would be purchased on the secondary market at discounted prices with contributions from the United States, as well as our allies in Canada, Japan, and Europe. The United Nations Fund for Drug Abuse Control [UNFDAC] would act as a debt purchasing agent for the contributors. UNFDAC would also be charged with negotiating a debt-for-drugs agreement with each of the target debtor nations. In order to receive cancellation or redemption of the debts held by UNFDAC, a debtor government would be required to commit to take specific actions in combating the drug trade.

This exchange would be contingent on specific goals and criteria set out in the agreement, which would be reviewed by the contributing nations. If a debtor nation failed to live up to its end of the bargain, then the agreement would be canceled, and the debt obligations reinstated.

This bill also includes a method for creditor governments to contribute a portion of the official, or bilateral debt they hold against the Andean countries. These debts are substantial. In 1987, Bolivia's official bilateral debts totaled $2.6 billion, out of a total external debt of $5.6 billion; for Colombia, this debt was $3.5 billion, out of a total debt of $18 billion; and for Peru, official debt was $4.8 billion, out of a total debt of $15 billion.

The United States holds a significant portion of bilateral Andean debt. Many Americans are unaware that some of our foreign aid program is on a loan—rather than grant—basis. Thus, these nations owe money directly to the U.S. Treasury.

I propose relieving some of this U.S.-held debt, through a two-step process. The United States would provide a 1-year moratorium on debt service for a country participating in a debt-for-drugs exchange. If, after 1 year, a recipient country has fulfilled its commitments under a debt-for-drugs agreement, its overall debt obligation to the United States would be reduced by a sum equal to the debt which could have been purchased at secondary market prices with the original amount of debt service forgiven.

For example, under this bill, the United States would absolve Bolivia from the $20 million in debt service due next year. At the end of 1990, if Bolivia had fulfilled its commitment under the debt-for-drugs agreement, the United States would provide a larger write down of the overall Bolivian debt burden based on the initial debt service contribution. In this case, since Bolivan debt is currently valued at 10 cents on the dollar, the United States initial $20 million would, in effect, have purchased $200 million in debt.

Relief of this bilateral debt is not unprecedented. For the past few years, the United States has allowed several close allies to refinance their obligations to the Treasury. Surely our friends in South America on the front lines of the drug war deserve similar treatment. Indeed, if we cannot afford them similar treatment, we are not serious about the drug war.

Finally, the bill calls on the U.S. executive directors of the multilateral lending institutions, such as the World Bank and the Inter-American Development Bank, to use their lending policies and expertise to support and facilitate debt-for-drugs exchanges. The debt-for-drugs forum would provide an opportunity to coordinate our instructions to these banks with the directions our allies will give to their bank representatives.

This bill has been developed through extensive consultation with United States and Andean experts on debt and economic reform, as well as with officials of the Andean nations. I do not pretend, however, that this is the final product. I am fully aware that it could be further improved. On that note, I welcome assistance from any of my colleagues, from the administration, and from other experts in this field. I plan to hold hearings on this legislation during the adjournment of the Senate and in 1990, and fully expect that it will be amended. But I wanted my colleagues and the administration to be aware that I intend to move forward with this idea.

In fact, the idea is already making progress. Earlier today, as part of H.R. 3611, the International Narcotics Control Act, both Houses of Congress authorized the President to implement debt-for-drugs exchanges with Bolivia, Colombia, or Peru, on United States official debt. Both Houses also passed a provision urging the President to put the debt-for-drugs plan on the agenda for next year's Andean summit. I am very pleased that my debt-for-drugs proposal has already gained partial support from my colleagues. But I believe that a more comprehensive approach—which addresses all types of debt and involves other creditor nations—is required.

Mr. President, the drug menace affects the nations of the Americans with an equal vengeance, tearing apart our families, our institutions, and our societies. The symptoms of this problem—individual and national drug dependence, corruption and violence—are felt across our hemisphere. The nations of the hemisphere must work together to attack this problem, or together we will continue to suffer the consequences. Swapping debt for drugs is one way for all Americans—North and South—to make common cause against the blight on our hemisphere.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1991

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Debt-for-Drugs Exchange Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) narcotics production and trafficking are inextricably linked to the severe debt crisis in Latin America;

(2) more than 90 percent of the world's supply of coca leaf is cultivated and processed in Bolivia, Colombia, and Peru;

(3) the National Drug Control Strategy of September 5, 1989, proposes large increases in United States economic and military assistance to Bolivia, Colombia, and Peru;

(4) Bolivia, Colombia, and Peru each has a large external debt burden that makes it difficult to finance anti-drug efforts;

(5) by providing debt relief in exchange for anti-drug efforts by drug-producing countries, including Bolivia, Colombia, and Peru, the world's developed countries can simultaneously facilitate reduction of the burden of external indebtedness and increase the resources available for anti-drug efforts;

(6) such heavily indebted countries may desire to facilitate such 'debt-for-drugs exchanges' to the maximum extent consistent with sound domestic economic management and minimization of inflationary impact;

(7) similar exchanges of "debt-for-nature" and "debt-for-equity" have been effected in the developing world with the encouragement of the United States Government; and

(8) the United States has provided relief on payments of bilateral debt for important allies in the Middle East and Europe, including Israel, Jordan, Spain, Pakistan, and Turkey.

SEC. 3. ROLE OF THE UNITED NATIONS FUND FOR DRUG ABUSE CONTROL.

(a) UNFDAC PROGRAM.—The United States representatives to the United Nations should use the voice and vote of the United States to propose the establishment within the United Nations Fund for Drug Abuse Control (hereafter in this Act referred to as "UNFDAC") of a program of debt-for-drugs exchanges whereby UNFDAC would be authorized to enter into agreements, subject to the terms and conditions of section 4, with eligible countries whereby each such country would agree to specific measurements and goals for efforts to combat the international drug trade in exchange for—

(1) the cancellation of up to 20 percent of its foreign commercial indebtedness, to be purchased by UNFDAC on the commercial secondary market; and

(2) the commitment to cancel a specified amount of government-to-government indebtedness held by that country's creditor governments.

(b) CONTRIBUTIONS AUTHORIZED.—For purposes of carrying out subsection (a)(1), the Secretary of State is authorized, subject to subsection (c), to commit the United States to contribute to UNFDAC an amount equal to one-third of the amount required to purchase indebtedness under subsection (a)(1).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of State such sums as may be necessary to make contributions under subsection (b).

SEC. 4. AGREEMENT FOR DEBT-FOR-DRUG EXCHANGES.

Each agreement negotiated under the auspices of UNFDAC shall be subject to the following terms and conditions:

(1) Debt-for-drugs exchanges will be based on the amount of debt assistance resources, as provided by the participating creditor governments in return for the degree of anti-drug efforts, as negotiated by UNFDAC and each participating country. In exchange for the cancellation or redemption of the debt of the government of the participating country, that country shall make a financial resource or policy commitment to take certain actions to combat the international drug trade, including efforts to—

(A) reduce drug production and drug trafficking within its territory, including activities to promote illicit crop eradication and substitution;

(B) increase drug interdiction and enforcement;

(C) increase identification of and elimination of illicit drug trafficking airstrips;

(D) increase seizures of coca leaf, cocaine HCL/base, and marijuana;

(E) increase arrests of drug traffickers;

(F) increase identification of and seizure of assets earned through illegal drug trafficking;

(G) increase drug treatment programs;

(H) increase the identification of and elimination of illicit drug laboratories; and

(I) increase the identification and elimination of the trafficking of precursor chemicals for the use in production of illegal drugs.

(2) Measurement of progress under paragraph (1) in a particular year should include—

(A) measurement of—

(i) the number of hectares of coca crop eradicated,

(ii) the number of hectares under coca cultivation,

(iii) the number of hectares of illicit coca crop replaced by legal crops, and

(iv) the number of coca growers who switch to licit crop cultivation; and

(B) any other measurements as agreed upon by the participating countries and UNFDAC with approval of two-thirds of the participating creditor governments.

(3) The agreement will include provisions to reinstate debt obligations and release parties to the agreement from their commitments under that agreement, if after one year from the agreement date the terms of such agreement have not been fulfilled.

(4) The agreement and the debt-for-drugs exchange will only take effect after two-thirds of the participating creditor governments making contributions to UNFDAC for this purpose have approved the terms of the agreement. Participating creditor governments will make their contributions and commitments known before negotiations on the agreements begin, and participating creditor governments will be bound by the two-thirds approval even if they remain in dissent.

(5) An advisory role (non-voting representation in the UNFDAC and creditor governments negotiating groups) should be provided for representatives from the major multilateral economic institutions to ensure the debt-for-drugs exchanges would be in keeping with other ongoing debt reduction and economic reform measures.

SEC. 5. GOVERNMENT-TO-GOVERNMENT DEBT FOR DRUGS EXCHANGES.

(a) MORATORIUM ON DEBT REPAYMENT.—The obligation of a participating country to make the first scheduled payment on indebtedness to the United States Government that would otherwise be due after the agreement date is hereby canceled.

(b) REDUCTION OF DEBT OBLIGATIONS.—(1) Subject to paragraph (2), on the date on which the second payment that would otherwise be due after the agreement date from a participating country on indebtedness to the United States Government, there shall be deducted from the total principal amount of indebtedness by that country to the United States Government an amount equal to the amount of face-value indebtedness which could have been purchased as of that date on the commercial secondary market with the amount of the payment that was forgiven under subsection (a).

(2) Paragraph (1) shall not apply if the terms of the debt-for-drugs agreement described in section 4 have not been met after one year.

(c) BUDGET ACT COMPLIANCE.—The authorities of subsections (a) and (b) shall be exercised only in such amounts and to such an extent as are provided in an appropriation Act.

SEC. 6. MULTILATERAL DEBT.

(a) ROLE OF UNITED STATES EXECUTIVE DIRECTORS.—The Secretary of the Treasury shall instruct the United States executive directors of the International Bank for Reconstruction and Development, International Development Association, and Inter-American Development Bank—

(1) to provide advice and assistance, as appropriate, to borrowing and lending country governments desiring to execute debt-for-drugs exchanges; and

(2) to consider, as an important factor in making loans and negotiating payment schedules for borrowing governments of drug-producing countries, the history of compliance by such governments with, and the extent to which such governments have honored, agreements entered into as part of any debt-for-drugs exchange.

SEC. 7. COMMITMENTS FROM OTHER CREDITOR GOVERNMENTS.

The President, the Secretary of State, the Secretary of the Treasury, and the Director for National Drug Control Policy should—

(1) organize a consultative group of creditor governments in an appropriate forum in which creditor governments could make contributions and commitments to be used to facilitate debt-for-drugs exchanges; and

(2) encourage other creditor governments to participate in the consultative group described in paragraph (1), and support debt-for-drugs exchanges—

(A) by contributing funds to UNFDAC to purchase the foreign commercial indebtedness of participating countries for use in debt-for-drugs exchanges;

(B) by committing a portion of their government-held debt for use in debt-for-drugs exchanges; and

(C) by coordinating their instructions to their multilateral bank directors to promote bank policies which will reinforce, facilitate, and support debt-for-drugs exchanges.

SEC. 8. WAIVER OF EXISTING LAW.

The provisions of this Act shall apply notwithstanding any other provision of law.

SEC. 9. DEFINITIONS.

For purposes of this Act—

(1) the term "agreement date" means, with respect to a specific country, the date on which that country has entered into an agreement described in section 4;

(2) the term "eligible country" means Bolivia, Colombia, or Peru;

(3) the term "participating country" means an eligible country which has entered into an agreement described in section 4;

(4) the term "foreign commercial indebtedness" means the debt obligations of a country to foreign, private lending institutions;

(5) the term "creditor government" means any government with public or private lending institutions within its jurisdiction which hold debt obligations, official or commercial, of an eligible country;

(6) the term "participating creditor government" means any creditor government which contributes funds for the purchase of commercial debt or makes commitments of government-held debt of eligible countries to UNFDAC for the purposes of debt-for-drugs exchanges;

(7) the term "debt-for-drugs agreement" means a written accord between UNFDAC and a participating country, approved by two-thirds of participating creditor govern-

ments, which sets the terms of a debt-for drugs exchange; and

(8) the term "debt-for-drugs exchange" means the provision of debt relief by creditor governments to a participating country under the terms of a debt-for-drugs agreement.●

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By Mr. HATCH (for himself and Mr. KENNEDY):

S. 1994. A bill to amend title XXI of the Public Health Service Act to provide for the establishment of an atmospheric nuclear testing compensation program, and for other purposes; to the Committee on the Judiciary.

NATIONAL ATMOSPHERIC NUCLEAR TESTING COMPENSATION ACT

Mr. HATCH. Mr. President, in November 1985, a historic vote occurred on the Senate floor. With that vote, the U.S. Government admitted that because of its open-air testing of atomic bombs, innocent citizens had actually developed, and in some cases died from, cancer. To help remedy the damage that occurred from that testing, the legislation upon which we favorably voted created a trust fund from which those innocent citizens could receive compensation for their injuries and loss of life. The historic vote to which I have referred occurred on a Senate resolution regarding the Compact of Free Association with the Governments of Micronesia. And the innocent citizens to whom I referred were, of course, foreign citizens who happened to live on the islands that were downwind of the atomic testing that occurred at the Pacific testing site.

Mr. President, beyond the fact that the Government was admitting its responsibility for the cancers which were contracted by these islanders, the vote was historic for another important reason. That vote was also historic because it failed to address the exact same suffering that occurred right here within the borders of the United States, due to the open-air testing at the Nevada test site.

While the Senate was debating the Marshall Islands compact, I offered an amendment which would also have provided a trust fund for those U.S. citizens who lived downwind of open air atomic testing. This amendment was not the product of some last minute thought but was the product of years of research and testimony before the Senate Labor Committee. It was well conceived and offered a meaningful solution and remedy to the people of southern Nevada, southern Utah, and northwestern Arizona, who were betrayed by their own Government during the testing period.

Unfortunately, that amendment failed to survive a tabling motion by just eight votes. There were several reasons for that outcome, and I understand why some of my colleagues took the positions that they did. But the issue has not gone away.

While we were debating this legislative solution to the problem, 1,200 downwind plaintiffs brought suit against the Federal Government, alleging that the fallout caused cancer to them or their relatives. In May 1984, the first 24 of these cases were decided in *Allen* v. *U.S.*, 588 F.Supp. 247 (1984), a 419-page opinion handed down by U.S. District Judge Bruce Jenkins. In Allen, the court determined that there was negligence and made awards to 10 of the 24 plaintiffs.

Several findings by the court are of particular interest because they verified many of the same findings uncovered in the numerous hearings of the Senate Labor Committee. First, the court ruled that the Federal Government had a special duty of care in protecting American citizens from the nuclear fallout. This was particularly so because of the presence of children in residential communities which were in the immediate path of the fallout. To make matters worse, scientists had already demonstrated that children were far more likely than adults to develop cancer from radiation. One would think that the Government would have at least made vigorous attempts to safeguard the children.

But the court found that the Federal Government did not even approach meeting its duty of care regarding the Americans who lived in the shadow of the nuclear blasts. Judge Jenkins stated:

> This court is convinced that that part of the program of public safety, the public information program was badly flawed, and that during the operation of that program, the information given to the off-site public as to the long-term biological consequences of exposure to ionizing radiation was woefully deficient—indeed, essentially non-existent. The off-site personnel failed to adequately inform persons at risk of what the government knew or could foresee concerning long-term biological consequences of radiation fallout exposure; failed to adequately instruct persons at hazard how to avoid or how to minimize such risk; failed to adequately, contemporaneously, and thoroughly measure and monitor such fallout so as to be able to inform persons at risk of the extent of the hazard faced by each; failed to explain the increased risks of radiation to children, infants and pregnant mothers; failed to warn of the risk of feeding farm animals with forage dusted with radioactive fallout, failed to warn of the dangers of fallout entering the food chain and the potential long-term biological risks involved in eating of such food—particularly to children; and failed to adequately, intensively and periodically advise persons at risk to do the simple things learned in prior Pacific experiments and laboratory practice, namely to stay indoors and under cover, shower, wash clothes, scrub and clean food, and if deeply worried, to evacuate or leave the area for other locations of less potential contamination. (588 F.Supp. at 404).

The Americans who lived in the arid environs of the Nevada test site were patriotic. If they had been told the dangers of the fallout, straight out—they would have still supported their Government. But they would have also gotten indoors during the blasts and their aftermath. They would have kept their children indoors. They would have washed themselves and their clothes more often during the fallout. They would have tried to avoid contamination of the food they provided their families.

I do not believe that there was any malicious intent on the part of the responsible Federal officials. Nonetheless, their failure to care properly for the downwinders was unconscionable.

For this failure alone—for this negligence—there should be recompense; but the Federal Tort Claims Act, which governed these actions brought against the Government, required more than a demonstration of egregious dereliction. The law also required a demonstration through a preponderance of the evidence that the nuclear fallout was the proximate cause of the cancers in question.

The dearth of dose data made impossible the construction of standard radiogenic cancer cases by the downwinders against the Government. These data do not exist because the Government negligently failed to gather these data. Therefore, the Government made it exceedingly difficult, if not impossible, for the downwinders to prove their cases under a standard interpretation of the Federal Tort Claims Act. Moreover, this Federal negligence makes it unlikely that we will ever know the actual health effects of the fallout.

In the Allen case, the court had much to say about the failure of the Government to monitor adequately the radiation doses of the people who lived with the fallout, but the judge summed it up best when he stated:

> Careful review of the numerous relevant documents, reports and statements which are now a part of the record in this case compels this court to conclude that the monitoring activities conducted in the areas surrounding the Nevada test site in an effort to ascertain external doses of radiation were persistently negligent in philosophy and action. * * * (id. at 381)
>
> Test personnel were commonly assigned film badges and dosimeters; residents were not. Test personnel were regularly directed to shower, bathe, change and launder clothing, decontaminate vehicles, buildings and work areas and to exercise care to avoid ingesting or inhaling fallout materials. * * * Although the same or even stricter exposure standards were to be applied to the off-site population, no general direction was given to residents to shower or bathe carefully, change and launder clothing; except for brief efforts at washing vehicles at roadblocks, decontamination activities in the communities were minimal. This disparity ran contrary to the public-related obligations recognized by the Government. (id. at 387).

The glaring deficiencies in the Federal data on doses also became evident during the 1979 congressional hearings. Embarrassment over these defi-

ciencies at that time prodded the Department of Energy to begin the off-site radiation exposure review project [ORERP] which has since spent millions of dollars attempting to reconstruct the doses through an array of clever techniques. However eminent and resourceful the scientists involved, I cannot imagine their succeeding in providing estimates that will be approximately accurate for individual claimants. Several of the people who wore off-site monitors during the bomb tests have reported that the fallout readings could vary substantially depending on whether one was measuring at the ground level, at waist level, or over at a bush 10 feet distant. The radiation blew and swirled with the wind and was concentrated or dispersed according to topography. The downwinders were here and there, going about their daily business in the course of an entire decade of nuclear explosions. How can anyone now reconstruct the dose that any individual downwinder accrued?

Considering the court's awareness of the scope and implications of the Federal Government's negligence in this matter, and considering the court's decision in favor of a substantial portion of the first 24 plaintiffs, one might question why the issue should not be left to the courts, why there is a need for remedial legislation. There is one simple answer to this question.

The Department of Justice successfully appealed the Allen decision to the Tenth Circuit Court of Appeals, which found the Federal Government immune from liability under the Federal Tort Claims Act because the nuclear testing was a discretionary Governmental function, for which the act provides a liability exemption. (816 F.2d 1417 (1987)). The Supreme Court has since refused to hear the case on appeal. (484 U.S. 1004 (1988)). Despite Judge Jenkin's innovative interpretation of the law in awarding damages for some of the claimants, for all intents and purposes, these civilian downwind victims have exhausted their court remedies with nothing to show for their suffering.

Though the requirements of justice should mean success for the plaintiffs, the letter of the law in these cases was against them. It is not the responsibility of the courts to rewrite the law to accommodate special circumstances such as these. Such is the province of the Congress.

Mr. President, even more appalling than the plight faced by the downwinders, if such is possible, is the case of those who mined uranium in Colorado, New Mexico, Arizona, and Utah from 1947 to 1961. During this period, the Federal Government controlled all aspects of the production of nuclear fuel. Even though the Government had adequate warning of the hazards involved, these miners, most of whom were native Americans, were sent into inadequately ventilated mines with virtually no instruction regarding the dangers of ionizing radiation. These individuals sometimes ate their lunches in these mines, and often failed to bathe when they returned home in the evening. They had no idea of the danger. Consequently many miners inhaled radon daughters that eventually yielded substantial doses of ionizing radiation. As a result, these miners have a substantially elevated cancer rate.

Not surprisingly, the miners were subject to the same callousness that was endured by the downwinders. For technical, legal reasons, most of the miners with radiogenic cancer have a claim on neither the mining companies nor the State workers compensation boards. They also met the same result as the downwinders in their efforts to sue the Federal Government.

These miners played a vital role in the protection of our country. The uranium that they mined was used to fuel our Federal nuclear program, and it is only fitting that these miners also be given a proper legal remedy.

Last year, Congress overwhelmingly approved H.R. 1811, now Public Law 100-321, to provide assistance to the veterans who were exposed to the harmful effects of atomic radiation while in the line of duty. Under the provisions of that law, those veterans who develop any of several listed cancers and who can establish that they participated in nuclear weapons tests or in the occupation of Hiroshima or Nagasaki are presumed to have developed the diseases as a result of their service. These veterans are then entitled to Veterans' Administration assistance.

Several of the factors involving the test site downwinders indicate an even greater need to provide for some form of compensation. Many of the downwinders were young children, still in their developmental years and highly susceptible to the damaging effects of the radiation, as opposed to the military population which generally consisted of healthy, young adult males. The average time of exposure for those in the military varied from a few weeks to a few months, while the average downwinder was exposed anywhere from slightly less than a year to more than 20 years, resulting in a much larger cumulative lifetime exposure rate. Residents in the Utah, Nevada, and Arizona downwind locations were more likely to have consumed locally grown food and dairy products that were affected by fallout for long periods of time. Such a diet would produce an even greater chance for internal exposure.

It is clear that if the Federal Government has a duty to compensate the Marshall Islanders and the atomic veterans, it also has a duty to compensate the test site downwinders and the uranium miners.

During the 1984 hearings on the Micronesian Compact of Free Association, I asked representatives of the administration whether they saw any reason why this Government should show our own American citizens any less courtesy and compassion than we are showing the people of the Marshall Islands, and whether there was any reason why we should not provide to our own people a remedy that we are providing to the people of the Marshall Islands. The representatives of the administration could think of no reason why the Americans should not be treated the same as the Marshall Islanders. This is not surprising, since there is no reason why the American downwinders should not receive some form of compensation to provide them at long last with both the appearance and the reality of justice. The bill before the Senate today will provide that justice.

Based on the procedure already enacted into law for the National Vaccine Injury Compensation Program, this bill will provide compensation for both the downwind victims and the uranium miners. A master of the U.S. Claims Court would be given exclusive jurisdiction to hear claims and render judgments for money damages to be paid from a $100 million trust fund.

To be eligible to file a claim, those exposed to downwind fallout radiation must have lived for at least a year in the designated area during the times of the above ground atomic tests and developed one of the following types of diseases: leukemia—other than chronic lymphatic leukemia—multiple myeloma, or cancer of the thyroid, lung, female breast, stomach, colon, esophagus, or urinary tract.

They will have 2 years following the discovery of their cancer or the enactment of this bill to file their claims, and the master must render a decision within 12 months after hearing the case. Upon a finding that the requirements to file a claim have been met, a one-time $50,000 compassionate award will be made to the claimant or his or her estate.

To be eligible for a mining claim, an individual must have been employed in the uranium mines located in Colorado, New Mexico, Arizona, or Utah during the years from 1947 through 1971 and must have been exposed to 100 or more working level months if a nonsmoker or 250 or more working level months if a smoker. These claimants must then have contracted lung cancer or other serious respiratory disease.

Again, these claimants will have 2 years following the discovery of their cancer or the enactment of this bill to file their claims, and the master must render a decision within 12 months

after hearing the case. Upon a finding that the requirements to file a claim have been met, a one-time $100,000 compassionate award will be made to the claimant or his or her estate.

The bill would limit attorney or agent fees to 10 percent of any damages paid and would not affect any insurance claims.

Some will undoubtedly complain about the costs that might be associated with helping these victims. But it is not that much, considering the harm that was done. It will amount to only a fraction of what the downwinders and miners have spent because of the problems that the Government has caused. According to the General Accounting Office, the Federal Government has spent over $2 billion to study the health effects of radiation. We have spent well over $100 million to clean up uranium tailings. We have spent over $100 million to treat and study the people of Nagasaki and Hiroshima. We have continued to spend hundreds of millions of dollars on underground nuclear testing. Surely, we can find funds to help compensate these victims of the cold war.

I will close with two thoughts. First, hardly any complaint about the fallout has been heard from Las Vegas, which is quite close to the Nevada test site, or from Los Angeles which is not that far away. The reason is simple. The masters of the Nevada test site would not detonate a nuclear bomb when the wind was blowing toward either of these two cities. They exercised this restraint because they considered the fallout dangerous. They only exploded a bomb when the wind was blowing into southern Utah, and then they hastened to assure the people there that there was no danger.

And finally, I wonder sometimes what each of my colleagues might say to a proposal to put an atmospheric nuclear bomb testing ground in his or her own State, or in the State next door. What if the idea were to put one in New Hampshire, New Jersey, or Montana, what would the Members of Congress from these States say? Would they oppose such a move? I suspect so. I suspect that every elected official would oppose such a facility being in his or her State, vehemently. I suspect that the people of the State, whatever the State, would react vehemently as well. This suggests to me that the American people and this Congress implicitly understand the burden the downwinders bore and the contribution they have made. Therefore, I urge my colleagues to do the right thing and to support legislation to provide justice to these Americans.

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By Mr. DECONCINI:

S. 1995. A bill to amend title II of the Social Security Act to increase the amount of earnings exempt from reduction under the retirement test, to eliminate such test in 1995, and for other purposes; to the Committee on Finance.

RETIREMENT TEST EXEMPTION AMOUNT

Mr. DECONCINI. Mr. President, I rise today once again to sponsor legislation to remove a blight upon our Nation's elderly—the Social Security earnings ceiling upon workers age 65 and older. While there may be a more flagrant example of an idea whose time has come and gone, I can honestly report I do not know what idea that would be. Over time, the earnings test has come to work against, not for, the very people the Social Security system was intended to protect. Worse yet, the earnings test works its injustice in the most regressive way imaginable.

The bill I am introducing today itself is not a new idea; repealing or reforming the so-called retirement test has been proposed in nearly every Congress since passage of the original Social Security Act in 1939. Indeed, since I have been in the Senate, I have cosponsored or sponsored efforts every year to repeal the earnings test or reduce its impact. What is new about this bill is its approach to repeal. This bill differs from others as it provides relief to all Social Security recipients, regardless of age or income level, and it does so without undue cost to the Social Security trust fund.

This legislation improves upon other proposals which merely raise the earnings level by eliminating the test altogether after repeal offsets are fully phased-in over 5 years. In addition, the bill improves upon repeal legislation by significantly reducing its costs—it does so by providing a fair rate of return to recipients in order to induce them to defer receipt of old age pension benefits while they continue to earn wages.

Mr. President, I do not believe for a moment that any of my colleagues would describe an average Social Security benefit as an exorbitant sum upon which to live. Even when one adds to that meager amount the sum of $8,880, the maximum earnings amount before which benefits are reduced, the total equals only $15,324 in pretax income. To put that sum in perspective, that's about half the pay raise which we recently approved for Members of the House of Representatives, and much less than twice the sum approved for Senators. Even if we were to double the maximum earnings ceiling today, that sum still could not be reasonably described as a staggering sum upon which to live.

As our beloved colleague from Florida, an American who was unequaled in his commitment to the elderly, the late Representative Claude Pepper, once said:

> When the social security program was enacted in 1935, the earnings limitation attracted scant attention. Life expectancy and inflation were at much lower levels than at present. A worker was expected to retire at age 65, if not sooner.
>
> The current earnings test is predicated on the expectations of a bygone era. Today, Americans reaching the age of 65 can expect to live for 16½ more years. The average individual monthly social security benefit will not allow one to retire for that length of time.
>
> In addition, fewer older people intend to spend 16 years in the rocking chair. Today, older Americans are demanding the right to stay on the job. With today's skyrocketing consumer prices, many older Americans have no choice but to stay on the job.
>
> Given today's realities, it is simply unfair. It is unfair and it is bad social policy.

Mr. President, nothing has changed since Representative Pepper challenged Congress to correct this inequity 10 years ago. The reality today is that the choice to work or receive full benefits remains not a choice at all; financial or health-related financial considerations require that too many of our elderly give up all or most of the Social Security benefits which they have worked and paid for over several decades. I share our late friend's belief that limiting seniors' incomes in this way is unwise, unjust and reflects poorly upon a nation who owes a great debt of gratitude to these same individuals for building the foundation of the bountiful economy we now enjoy.

Mr. President, an obligation that is readily assumed by most civilized societies is to care for its elderly. It is a principle rooted in the universal structure of the family, and expanded upon by many employers. Since the 1930's, and the advent of the Social Security system, the U.S. Government has also assumed part of that obligation.

But in administering that system, I believe, we have made some unfortunate errors. By merely establishing an eligibility age for Social Security recipients, we have to a certain extent implied that once an individual reaches that age he can be counted among the elderly or aged, and thus should no longer contribute to society. Also implicit is that he is no longer able to contribute to his own well-being. We have for all practical purposes taken the definition of caring to its literal extreme—we imply that once an individual requires care from the Social Security system, the care he receives should be limited to Social Security.

Neither of these assumptions is, of course, absolute or even intended. But they are both implied by the rule which limits the amount of outside income a 65-year-old Social Security recipient can earn to a meager $8,880, then taxes any amount earned above that at an astonishing 50-percent rate until the person reaches age 70.

This rule, of course, applies to all Social Security recipients, all of whom have spent most of all of their adult lives contributing to the system, fully

and legitimately expecting the Government to hold up its end of the bargain when they retire. But consider the average American who reaches the eligibility age and finds he still possesses the skills or talents that have served and supported him throughout his working life. His choice is to quit working and draw Social Security only, or to continue working and also draw Social Security, and pay inordinately high taxes on the income he is still earning. Such a system clearly discourages the work ethic upon which this Nation was built. And by implying that a person should not contribute to the economy past a certain age, it conspires to strip an elderly person of that which he cherishes most: his dignity.

Mr. President, the major argument for repealing the ceiling is equity for older persons. The money older persons pay into Social Security is theirs. It does not belong to the Government and, for the most part, our Government should have no say in how it is paid back. Even if one does not accept the premise, one must acknowledge that the policy unfairly discriminates against the elderly who are still contributing to our national economy. Sadly, our national policy dictates that Social Security recipients only lose benefits because they work, not because they earn income. Nonworking seniors receiving equivalent sums of unearned income through passive investments or deferred compensation do not lose a single dollar. The same is true if a nonworking recipient earns millions per year in unearned income. Moreover, once the individual reaches age 70, they are also exempt from the earnings test.

It is hard to believe that such a regressive policy exists in our land. However, it is even harder to imagine that we maintain this outdated policy based upon some notion that its elimination is somehow inconsistent with the social insurance nature of the system. However, the Social Security system has never been a pure social insurance system; almost from the beginning, older recipients received an annuity and younger received earnings replacement compensation. While I agree that government should target its assistance to those most in need, the current income eligibility criteria must be considered to be ill-conceived and unsuited to achieving its own stated intent—to promote social equity.

Not only does the worker pay tax premiums during his working lifetime, but economists have clearly demonstrated that the tax on the employer is also a tax on labor. In effect, the employer passes on his share of the Social Security payroll tax to the workers in the form of lower wages.

By the time a worker reaches age 65, I believe he has earned his Social Security annuity. To require an older person to give up gainful employment is attaching a cruel penalty upon a pension which he has bought and earned.

There are two other reasons for repealing the wage ceiling. I remind my colleagues that the American Medical Association has reported that older persons suffer serious physical and mental harm by being induced to retire sooner than they would otherwise wish. The result, higher health care costs for the individual as well as Federal and State governments in the form of higher Medicare costs. In turn, the added, yet preventable, strain upon medical care facilities causes inflationary pressures upon medical care costs.

Lastly, another reason for repeal is the heavy drain upon the national economy caused by the loss of skills and production of older persons who withdraw from the labor force in order to collect their full Social Security checks. In a time of shortages in many sectors of the labor market, maintenance of a policy which encourages greater erosion of the labor market's pool of skilled and professional talent simply makes no sense at all.

The opponents of repeal of the earnings tests argue the cost is too great for the relief granted to too few. They argue repeal, if it should ever be enacted, should occur only after the more pressing problem of the aged, poor, disabled, and such have been met. The opposition asserts it certainly should not come at a time when the deficit looms large and higher priority uses of public funds than removal of the retirement test are casualties in the war against inflation.

Mr. President, of course, I agree that the aged and infirmed should be provided a higher standard of living. This Senator has fought throughout my career in the Senate as hard as any of the opponents of repeal of the earnings test to assure that the twilight of our seniors' lives is not spent anguishing over very difficult decisions: whether to eat or stay warm, or the choice between decent housing and vital health care. However, the legacy of neglect of the poor or infirmed elderly from the past decade is no reason to erect a barrier to progress in today's battle for equality for the working elderly.

I object most strenuously to the opposition to the resolution of a fundamental social equity issue solely on the grounds that the Congress has failed to satisfactorily address another compelling need. Such a tactic pits one inequity against another in competition for redress—whatever the result, both are diminished. The Senate recently rejected such a strategy to defeat passage of the Japanese reparations bill, and I trust it will again muster the courage to reject this tactic if it continues to be used to block earnings test reform or repeal legislation.

Moreover, I am troubled that the same old cost arguments are offered against repeal legislation, and all assumptions are resolved against the proposal—that is, assuming the greatest cost. Again, I argue that the costs are exaggerated by the methodology which ignores how much the test costs the overall economy in terms of lost production. The problem simply exists that no reliable data exists upon which to calculate the offset—this does not mean that a significant loss in production does not occur. In addition, the lost income and payroll tax revenue to Federal, State, and local governments is also not included in the computation of the cost of earnings test repeal legislation. Some economists have estimated as much as 80 percent of the total repeal cost would be offset by increased income and payroll tax revenues alone.

The legislation I am offering also provides for an acceleration of the delayed retirement credit [DRC] schedule enacted as part of the Social Security Amendments of 1983 which will reduce the long-term costs of earnings test repeal for individuals age 65 to 69. This provision increases the delayed retirement credit to an actuarially fair rate, 8 percent, by 1995, 13 years earlier than previously scheduled by law. The consequence of this schedule change does have its costs, but its minimal short-term costs, approximately $300 million over 5 years, are more than offset by its significant cost-cutting effects upon earnings test repeal legislation for individuals ages 65 to 69. That repeal, if implemented today without the DRC and deferred compensation provisions included in this bill, would cost $23.9 to $24.5 billion over 5 years. Again, these cost estimates do not include offsets for increased income and payroll tax revenues.

Mr. President, the point is that by combining the best ideas in several proposals, we have an opportunity to correct this injustice to the over 600,000 working retirees without or with negligible additional cost to the Social Security system. I urge my fellow collegues to join with me in support of this bill to give back to older persons what they have earned and help the economy by regaining use of the talents of experienced workers.

Mr. President, I ask unanimous consent that the text of the bill appear at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1995

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. RETIREMENT TEST EXEMPT AMOUNT INCREASED TO $11,700 IN 1990 AND $14,520 IN 1991.

(a) IN GENERAL.—Subparagraph (D) of section 203(f)(8) of the Social Security Act (42 U.S.C. 403(f)(8)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(i) $975.00 for each month of any taxable year ending after 1989 and before 1991, and

"(ii) $1210.00 for each month of any taxable year ending after 1990 and before 1992.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1989.

SEC. 2. REPEAL OF EARNINGS TEST IN 1996 FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.

(a) IN GENERAL.—Effective with respect to taxable years beginning after 1995—

(1) clause (B) in the third sentence of section 203(f)(1) of the Social Security Act (42 U.S.C. 403(f)(1)) is amended by striking out "age seventy" and inserting in lieu thereof "retirement age (as defined in section 216(l))"; and

(2) section 203(f)(3) of such Act (42 U.S.C. 403(f)(3)) is amended—

(A) by striking out "33½ percent" and all that follows through "other individual" and inserting in lieu thereof "50 percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8)", and

(B) by striking out "age 70" and inserting in lieu thereof "retirement age (as defined in section 216(l))".

(b) CONFORMING AND RELATED AMENDMENTS.—Effective with respect to taxable years beginning after 1995—

(1) section 203(c)(1) of the Social Security Act (42 U.S.C. 403(c)(1)) is amended by striking out "is under the age of seventy" and inserting in lieu thereof "is under retirement age (as defined in section 216(l))";

(2) the last sentence of subsection (c) of section 203 of such Act (42 U.S.C. 403) is amended by striking out "nor shall any deduction" and all that follows and inserting in lieu thereof "nor shall any deduction be made under this subsection from any widow's or widower's insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60.";

(3) paragraphs (1)(A) and (2) of section 203(d) of such Act (42 U.S.C. 403(d)) are each amended by striking out "under the age of seventy" and inserting in lieu thereof "under retirement age (as defined in section 216(l))";

(4) section 203(f)(1) of such Act (42 U.S.C. 403(f)(1)) is amended by striking out clause (D) and inserting in lieu thereof the following: "(D) for which such individual is entitled to widow's or widower's insurance benefits if such individual became so entitled prior to attaining age 60, or";

(5) subparagraph (D) of section 203(f)(5) of such Act (42 U.S.C. 403(f)(5)) is amended—

(A) by striking out "(D) In the case of" and all that follows down through "(ii) an individual" and inserting in lieu thereof the following:

"(D) An individual";

(B) by striking out "other income" the first place t appears and inserting in lieu thereof "income";

(C) by striking out "became entitled to such benefits" and all that follows and inserting in lieu thereof "became entitled to such benefits, there shall be excluded from gross income any such other income."; and

(D) by shifting such subparagraph as so amended to the left to the extent necessary to align its left margin with that of subparagraphs (A) through (C) of such section;

(6) section 203(f)(8)(A) of such Act (42 U.S.C. 403(f)(8)(A)) is amended by striking out "the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable" and inserting in lieu thereof "the new exempt amount which is to be applicable";

(7) section 203(f)(8)(B) of such Act (42 U.S.C. 403(f)(8)(B)) is amended—

(A) by striking out all that precedes clause (i) and inserting in lieu thereof the following:

"(B) The exempt amount which is applicable for each month of a particular taxable year shall be whichever of the following is the larger—";

(B) by striking out "corresponding" in clause (i); and

(C) by striking out "an exempt amount" in the matter following clause (ii) and inserting in lieu thereof "the exempt amount";

(8) section 203(f)(8)(D) of such Act (42 U.S.C. 403(f)(8)(D)) (as amended by section 1(a) of this Act) is repealed;

(9) section 203(f)(9) of such Act (42 U.S.C. 403(f)(9)) is repealed;

(10) section 203(h)(1)(A) of such Act (42 U.S.C. 403(h)(1)(A)) is amended by striking out "age 70" each place it appears and inserting in lieu thereof "retirement age (as defined in section 216(l))";

(11) section 203(j) of such Act (42 U.S.C. 403(j)) is amended to read as follows:

"Attainment of Retirement Age

"(j) For purposes of this section—

"(1) an individual shall be considered as having attained retirement age (as defined in section 216(l)) during the entire month in which he attains such age; and

"(2) the term 'retirement age (as defined in section 216(l))', with respect to any individual entitled to monthly insurance benefits under section 202, means the retirement age (as so defined) which is applicable in the case of old-age insurance benefits, regardless of whether or not the particular benefits to which the individual is entitled (or the only such benefits) are old-age insurance benefits.";

(12) section 202(w)(2)(B)(ii) of such Act (42 U.S.C. 402(w)(2)(B)(ii)) is amended—

(A) by striking out "either"; and

(B) by striking out "or suffered deductions under section 203(b) or 203(c) in amounts equal to the amount of such benefit"; and

(13) the second sentence of section 223(d)(4) of such Act (42 U.S.C. 423(d)(4)) (as amended by section 1(b) of this Act) is further amended by striking out "without regard to any increase in such amount resulting from a law enacted in 1988" and inserting in lieu thereof "but for the liberalization and repeal of the earnings test for such individuals in 1996".

(c) STUDY BY CONGRESSIONAL BUDGET OFFICE.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Congressional Budget Office shall conduct a study of the following:

(A) the distribution of benefit increases for individuals in various earning categories which would result from the elimination of, and from various alternative levels of increases in the exempt earnings amount under, the retirement test under section 203(b) of the Social Security Act,

(B) the impact on the Federal Old Age and Survivors Insurance Trust Fund which would be derived from such an elimination and such increases, and

(C) the impact on labor force participation which would be derived from such an elimination and such increases.

(2) REPORT.—The Congressional Budget Office shall report the results of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, together with any recommendations, not later than June 1, 1990.

SEC. 3. REDUCTION FACTOR WITH RESPECT TO CERTAIN EARNINGS LOWERED TO 25 PERCENT.

(a) IN GENERAL.—Paragraph (3) of section 203(f) of the Social Security Act (42 U.S.C. 403(f)) is amended by striking out "33⅓ percent" and all that follows through "paragraph (8)" and inserting in lieu thereof "equal to the sum of (A) 25 percent of so much of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) as does not exceed $5,000, and (B) 33⅓ percent of so much of such earnings in excess of such product as exceeds $5,000,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1990.

SEC. 4. INCLUSION OF CERTAIN DEFERRED COMPENSATION IN DETERMINATION OF WAGE-BASED ADJUSTMENTS.

(a) IN GENERAL.—Section 209 of the Social Security Act (42 U.S.C. 409) is amended by adding at the end the following new subsection:

"(k)(1) For purposes of sections 203(f)(8)(B)(ii), 213(d)(2)(B), 215(a)(1)(B)(ii), 215(b)(3)(A)(ii), 224(f)(2)(B), and 230(b)(2) (and for purposes of determinations under section 230(b)(2) as in effect immediately prior to the enactment of the Social Security Amendments of 1977), the term 'deemed average total wages' for any particular calendar year means the product of—

"(A) the SSA average wage index (as defined in section 215(i)(1)(G) and promulgated by the Secretary) for the calendar year preceding such particular calendar year, and

"(B) the quotient obtained by dividing—

"(i) the average of total wages (as defined in regulations of the Secretary and computed without regard to the limitation specified in subsection (a)(1) and by including deferred compensation amounts) reported to the Secretary of the Treasury or his delegate for such particular calendar year, by

"(ii) the average of total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year preceding such particular calendar year.

"(2) For purposes of paragraph (1), the term 'deferred compensation amount' means—

"(A) any amount excluded from gross income under chapter 1 of the Internal Revenue Code of 1986 by reason of section 402(a)(8), 402(h)(1)(B), or 457(a) of such Code or by reason of a salary reduction agreement under section 403(b) of such Code,

"(B) any amount with respect to which a deduction is allowable under chapter 1 of such Code by reason of a contribution to a plan described in section 501(c)(18) of such Code, and

"(C) to the extent provided in regulations of the Secretary, deferred compensation provided under any arrangement, agreement, or plan referred to in subsection (i) or (j).".

(b) CONFORMING AMENDMENTS.—

(1) Sections 203(f)(8)(B)(ii), 215(b)(3)(A)(ii), and 230(b)(2)(A) of the Social Security Act (42 U.S.C. 403(f)(8)(B)(ii)(I), 415(b)(3)(A)(ii)(I), and 430(b)(2)(A)), as amended by subsection (d)(2)(A)(i), are each further amended—

(A) by striking out "the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)(1)) reported to the Secretary of the Treasury or his delegate" and inserting in lieu thereof "the deemed average total wages (as defined in section 209(k)(1))";

(B) by striking out "the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate" and inserting in lieu thereof "the deemed average total wages (as so defined)"; and

(C) in section 215(b)(3)(A)(ii)(I), by striking out "(after 1976)".

(2) Sections 213(d)(2)(B), 215(a)(1)(B)(ii), and 224(f)(2)(B) of the Social Security Act (42 U.S.C. 413(d)(2)(B), 415(a)(1)(B)(ii), and 424a(f)(2)(B)), as amended by subsection (d)(2)(A)(i), are each further amended—

(A) by striking out "the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)(1)) reported to the Secretary of the Treasury or his delegate" and inserting in lieu thereof "the deemed average total wages (as defined in section 209(k)(1))";

(B) in section 213(d)(2)(B) and 215(a)(1)(B)(ii)(II), by striking out "(as so defined and computed)" and inserting in lieu thereof "(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)(1))"; and

(C) in section 224(f)(2)(B)(ii), by inserting "(I)" after "(ii)", by striking out "as so defined and computed)" and inserting in lieu thereof "(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)(1))", and by inserting after "disability)" the following: ", if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 209(k)(1)) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990".

(3) Section 215(i)(1)(G) of the Social Security Act (42 U.S.C. 415(i)(1)(G)) is amended by striking out "the average of the total wages reported to the Secretary of the Treasury or his delegate as determined for purposes of subsection (b)(3)(A)(ii)" and inserting in lieu thereof "the amount determined for such calendar year under subsection (b)(3)(A)(ii)(I)".

(4) Section 215(a)(1)(C)(ii) of the Social Security Act (42 U.S.C. 415(a)(1)(C)(ii)) is amended by striking out "change," and inserting in lieu thereof "change (except that, for purposes of subsection (b)(2)(A) of such section 230 as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wages (within the meaning of section 209(k)(1)) for such calendar year).".

(5) Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) is amended by striking out "change." and inserting in lieu thereof "change (except that, for purposes of subsection (b)(2)(A) of such section 230 as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wage (within the meaning of section 209(k)(1)) for such calendar year).".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall apply with respect to the computation of average total wage amounts (under the amended provisions) for calendar years after 1990.

(2) TRANSITIONAL RULE.—For purposes of determining the contribution and benefit base for 1990, 1991, and 1992 under section 230(b) of the Social Security Act (42 U.S.C. 430(b)) (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977)—

(A) the average of total wages for 1988 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which has been determined to be the average of total wages for 1987,

(B) the average of total wages for 1989 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which would have been determined to be the average of total wages for 1988 without regard to subparagraph (A), and

(C) the average of total wages reported to the Secretary of the Treasury for 1990 shall be deemed to be equal to the product of—

(i) the SSA average wage index (as defined in section 215(i)(1)(G) of the Social Security Act (42 U.S.C. 415(i)(1)(G)) and promulgated by the Secretary) for 1989, and

(ii) the quotient obtained by dividing—

(I) the average of total wages (as defined in regulations of the Secretary and computed without regard to the limitations of section 209(a)(1) of the Social Security Act (42 U.S.C. 409(a)(1)) and by including deferred compensation amounts, within the meaning of section 209(k)(2) of such Act (as added by this section) reported to the Secretary of the Treasury or his delegate for 1990, by

(II) the average of total wages (as so defined and computed without regard to the limitations specified in such section 209(a)(1) and by excluding deferred compensation amounts within the meaning of such section 209(k)(2)) reported to the Secretary of the Treasury or his delegate for 1989.

(3) DETERMINATION OF CONTRIBUTION AND BENEFIT BASE FOR 1993.—For purposes of determining the contribution and benefit base for 1993 under section 230(b) of the Social Security Act (42 U.S.C. 430(b)) (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977), the average of total wages for 1990 shall be determined without regard to subparagraph (C) of paragraph (2).

(d) CLERICAL AMENDMENTS.—

(1) DESIGNATION OF UNDESIGNATED PROVISIONS.—Section 209 of the Social Security Act (42 U.S.C. 409) is further amended—

(A) by redesignating paragraphs (1) through (9) of subsection (a) as subparagraphs (A) through (I), respectively;

(B) by redesignating clauses (1) through (3) of subsection (b) as clauses (A) through (B), respectively;

(C) by redesignating clauses (1) through (9) of subsection (e) as clauses (A) through (I), respectively;

(D) by redesignating paragraphs (1) and (2) of subsection (f) as subparagraphs (A) and (B), respectively;

(E) by redesignating paragraphs (1), (2), and (3) of subsection (g) as subparagraphs (A), (B), and (C), respectively;

(F) in subsection (h), by redesignating clauses (i), (ii), and (iii) as clauses (I), (II), and (III), respectively, by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii), respectively, and by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(G) by redesignating paragraphs (1) and (2) of subsection (l) as subparagraphs (A) and (B), respectively;

(H) by redesignating paragraphs (1) and (2) of subsection (m) as subparagraphs (A) and (B), respectively;

(I) by redesignating paragraphs (1) and (2) of subsection (p) as subparagraphs (A) and (B), respectively;

(J) by redesignating subsections (a), (b), (d), (e), (f), (g), (h), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), and (t) (in the matter preceding subsection (k) added by subsection (a) of this section, and as amended by the preceding provisions of this paragraph) as paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (18), respectively;

(K) by inserting "(a)" after "SEC. 209.";

(L) by striking out "Nothing in the regulations" and inserting in lieu thereof the following:

"(b) Nothing in the regulations";

(M) in the undesignated paragraph commencing with "For purposes of this title, in the case of domestic service", by inserting "(c)" at the beginning thereof, and by striking out "subsection (g)(2)" each place it appears and inserting in lieu thereof "subsection (a)(6)(B)";

(N) in the undesignated paragraph commencing with "For purposes of this title, in the case of an individual performing service, as a member", by inserting "(d)" at the beginning thereof, and by striking out "subsection (a)" and inserting in lieu thereof "subsection (a)(1)";

(O) by inserting "(e)" at the beginning of the undesignated paragraph commencing with "For purposes of this title, in the case of an individual performing service, as a volunteer";

(P) by inserting "(f)" at the beginning of the undesignated paragraph commencing with "For purposes of this title, tips received";

(Q) by inserting "(g)" at the beginning of the undesignated paragraph commencing with "For purposes of this title, in any case where";

(R) by inserting "(h)" at the beginning of the undesignated paragraph commencing with "For purposes of this title, in the case of an individual performing service under the provisions";

(S) by inserting "(i)" at the beginning of the undesignated paragraph commencing with "Nothing in any of the foregoing"; and

(T) by inserting "(j)" at the beginning of the undesignated paragraph commencing with "Any amount deferred".

(2) CONFORMING AMENDMENTS.—

(A) Title II of the Social Security Act (42 U.S.C. 401 et seq.) is amended—

(i) in sections 203(f)(8)(B)(ii)(I), 213(d)(2)(B), 215(a)(1)(B)(ii)(I), 215(b)(3)(A)(ii)(I), 224(f)(2)(B)(i), and 230(b)(2)(A), by striking out "section 209(a)" and inserting in lieu thereof "section 209(a)(1)";

(ii) in section 203(f)(5)(C), by striking out "subsections (a), (g)(2), (g)(3), (h)(2), and (j) of section 209" and inserting in lieu thereof "paragraphs (1), (6)(B), (6)(C), (7)(B), and (8) of section 209(a)";

(iii) in clauses (B) and (C) of the last sentence of section 224(a), by striking out "209(a)" and inserting in lieu thereof "209(a)(1)";

(iv) in section 217(b)(1), by striking out "209(e)(2)" and inserting in lieu thereof "209(a)(4)(B)";

(v) in section 218(c)(5), by striking out "paragraph (2) of section 209(h)" and inserting in lieu thereof "subparagraph (B) of section 209(a)(7)"; and

(vi) in section 203(f)(5)(C)(ii), by striking out "209(m)(2)" and inserting in lieu thereof "209(a)(11)(B)".

(B)(i) Section 6(f)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(f)(1)) is amended by striking out "209(g)" and inserting in lieu thereof "209(a)(6)".

(ii) Section 1(h)(5)(iii) of the Railroad Retirement Act of 1974 (45 U.S.C. 231(h)(5)(iii)) is amended by striking out "the third paragraph of section 209" and inserting in lieu thereof "section 209(d)".

SEC. 5. ACCELERATION OF INCREASES IN THE DELAYED RETIREMENT CREDIT.

(a) IN GENERAL.—Section 202(w)(6) of the Social Security Act (42 U.S.C. 402(w)(6)) is amended—

(1) by amending subparagraphs (C) and (D) to read as follows:

"(C) 7/24 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in calendar year 1987;";

"(D) 1/3 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in calendar year 1988;";

(b) by inserting a new subparagraph (E):

"(E) in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 1988 and before 1992, a percentage equal to the applicable percentage in effect under this paragraph for persons who first became eligible for an old-age insurance benefit in the preceding calendar year (as increased pursuant to this subparagraph), plus 1/2 of 1 percent;"; and

(c) by adding at the end, after and below the new subparagraph (E), the following: "except that the 'applicable percentage' is 2/3 of 1 percent for each increment month (as defined in paragraph (2)) after 1994.".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective upon the date of enactment of this Act.

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By Mr. HATFIELD:

S. 1996. A bill to provide for a comprehensive review by the Secretary of the Interior of western water resource problems and programs administered by the Geological Survey, the Bureau of Reclamation, and other operations of the Department of the Interior, and for other purposes; to the Committee on Energy and Natural Resources.

WESTERN WATER POLICY REVIEW ACT

● Mr. HATFIELD. Mr. President, I rise today to introduce the Western Water Policy Review Act of 1989. This legislation establishes an advisory commission to the Secretary of the Interior that will study the institutional framework surrounding Federal water policy affecting the 19 Western States. In addition to studying current policy, the Commission will be charged with recommending changes to establish a more coherent decisionmaking process.

With each passing year, conserving and coordinating the use of our finite water resource in an age of growing demand becomes more critical. The possibility of a water crisis is truly frightening. I have always believed that the next major war will be fought over access to raw materials—principally water or oil. While countries can function without oil, they cannot survive without water. Unlike other resource shortages, a water crisis cannot be solved by the development of an alternative. We have only one option available: the conservation and wise distribution of our exisitng water resources.

In the West, the lack of available water has translated into the construction of water projects designed to harness streams and rivers that are key to the water supply of that region. Unfortunately, during the 1970's and 1980's, while we maintained a sharp focus on the future of the Nation's oil supply, we failed to recognize our water supply as equally important to our national security. Instead, water projects have been viewed unfairly as pork projects and budget busters.

Consequently, Federal funding for water projects, excluding wastewater treatment, declined 70 percent from 1976 to 1984—a decline that has continued in recent years. This is unfortunate in light of the fact that competing uses of water have been increasing. Water is not only needed for consumption, but also for agriculture, energy production, most industrial operations, and transportation. In addition, the importance of instream values such as recreation and protecting fish runs are increasingly being recognized.

Our usage of water is growing rapidly. The per capita consumption in this country today is around 1,400 gallons per day—including a personal consumption average of approximately 100 gallons a day; 90 percent of our water use goes to agriculture and industrial production. To produce a hamburger, fries, and a coke at McDonald's, it takes 1,500 gallons of water. To produce the average car it takes roughly 100,000 gallons of water—30,000 gallons just for the tires.

Unfortunately, our water supply is not unlimited and, in fact, supply problems point to an impending water crisis. For instance, the largest aquifer in the country, the Ogallala, which stretches 800 miles from South Dakota to Texas, has 200 wells pumping water to eight States. It should be noted that most of the world's food is produced in this area. Over a large area of the southern plains, the aquifer is already half depleted.

In the Colorado River Basin, the yearly water consumption exceeds supply by 5 percent, creating a water deficit. The Colorado River is increasingly salty and water tables have fallen precipitously in areas around Phoenix and Tucson.

How should we cope with this dwindling water supply? While water policy has traditionally been made at the State and local level, the Federal Government has been involved in three specific aspects of local water systems—funding water impoundment and storage systems, setting safe drinking water standards, and providing funding to assist local governments in constructing waste water treatment facilities. In addition, the Federal Government has played a major role in assuring the safe navigation of our waterways.

Unfortunately, we lack the mechanisms for achieving a smooth and coordinated response to those objectives. There are at least 13 congressional committees that deal with water resource issues. In the executive branch, there are eight Cabinet level departments, six independent agencies, and two White House offices all charged with responsibilities relating to national water policy. Needless to say, this has created some confusion.

A recent white paper on Federal water policy coordination authored by the Western Governors' Association [WGA] concluded that:

> Federal water policy lacks a unifying vision or even a set of guiding principles . . . A host of on-the-ground problems are created by, or at least are related to, the absence of a unifying vision, including redundance of functions across programs, protracted disputes, inter-agency turf battles, absence of policies, and lack of finality of many water disputes.

Mr. President, let me share a couple of examples cited by the WGA as indicative of the Federal coordination problem. Hundreds of millions of dollars are currently being spent to control salinity in the Colorado River Basin because the Bureau of Reclamation did not consider the effect of its irrigation programs on the country's obligations to deliver relatively salt-free water to Mexico. In Nebraska, the Bureau built a storage facility that will be without water in the early 1990's in part because an agency of the Department of Agriculture, the Soil Conservation Service, was assisting farmers upstream from the project to use ground water that was connected to the Bureau's surface water supply for the project.

This lack of a coordinated water policy prevents us from achieving broad policy objectives. The protection of wetlands—a hot issue this Congress—is an example. There are numerous examples of disputes between the Army Corps of Engineers and the U.S. Environmental Protection Agency on the suitability of wetlands protection. Add in various other Federal agencies with wetlands responsibilities like the Forest Service, the Fish and Wildlife Service, the Soil Conservation Service, and other Federal land managers, the jurisdictional collisions can only delay and thus hurt the ultimate goal of providing ongoing protection to wetland areas.

Mr. President, the legislation that I am introducing today would help address the current confusion in the development and implementation of Federal water policy as it relates to Western States. It would require the Commission to review all Federal programs and agencies that deal with water policy, recommending whether they should be continued, and if so, how they should be managed. In addition, the bill requires a review of the history and effectiveness of past institutional arrangements and whether additional storage or other projects are needed.

As my colleagues are aware, water policy issues vary greatly between the Western and Eastern regions of the United States. Because the problems of each region are so different, the solutions to them have also differed. This legislation only deals with one-half of the equation. However, just as Western States are impacted by the inefficiencies of our current national water policy, so are the Eastern States affected. I would like to leave the door open to expanding this legislation in order to look at the total picture.

Mr. President, we cannot continue to manage a resource so vital to our existence in such a haphazard way. I hope that my colleagues will join with me in the search for some coherence in both the creation and implementation of Federal water policy. This bill lays the groundwork for that search.●

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By Mr. HATFIELD:

S. 1997. A bill to amend section 311 of the Older Americans Act of 1965 to require the Secretary of Agriculture to provide assistance for two meals served daily per person; to the Committee on Labor and Human Resources.

ENHANCED NUTRITION FOR THE ELDERLY

● Mr. HATFIELD. Mr. President, In 1990, our Nation will celebrate the 25th anniversary of the Older Americans Act. This tremendously successful legislation is now facing a new challenge as our Nation's older Americans are rapidly growing in number.

When Congress passed the Older Americans Act in 1965, it created a new Federal program specifically designed to meet the social service needs of our elderly citizens. Today, while several Federal programs offer key support to the elderly, the Older Americans Act remains the major vehicle for the organization and delivery of community-based services. Included in this umbrella are nutrition services, multipurpose senior centers, training and research projects, community service employment, and personal health education programs for older Americans.

Congress exhibited great foresight when it enacted the Older Americans Act. The long-needed infrastructure established by the legislation allows for coordination and interaction amongst local, State, and Federal resources to ensure a comprehensive support network for older Americans. Enhanced coordination is increasingly important today, as the growing number of older individuals require additional support and assistance in their communities.

During the last 25 years, total appropriations have grown from $6.5 million in fiscal year 1966 to $1.3 billion in fiscal year 1990 for all Older Americans Act programs. The act has developed from a program of small grants in 1966 to one that now supports over 670 local area agencies on aging, 57 State agencies on aging, and over 27,000 local service providers. Approximately 9 millon persons are served through the supportive services program and 232 million meals were served to older persons in fiscal year 1987. And 350,000 volunteers, 80 percent of whom were 60 years or older, offered their services to operate the nutrition programs.

In my own State of Oregon, the Loaves and Fishes Centers of Multnomah, Washington, and Clackamas Counties served approximately 1 million meals this year, at a rate of 4,000 meals per day. Over 1,500 older Americans in Oregon have been reached through this nutrition program, through a network of over 9,000 volunteers who drive and deliver the meals. But most strikingly, Oregon is experiencing a 10-percent increase per year in the demand for home-delivered meals, through the Meals-on-Wheels Program.

It is clear that there is a tremendous need in our communities for home meals and other services. Current estimates indicate that approximately 10 to 15 percent of our elderly citizens who are in nursing homes are there because they are unable to meet their nutritional needs in their own home or community. The demand for these services is proliferating all around us.

And so, Mr. President, it is with great pride that I rise today to recognize the history of the Older Americans Act and to offer legislation which will further enhance and expand nutrition programs for the elderly under the Act. Similar legislation has been introduced by Congressman THOMAS DOWNEY in the House.

Senior citizen meal providers across the country currently provide the elderly with one meal per day, for which they are reimbursed with funds from the Older Americans Act. While many of these providers would like to offer a second meal or a take-home snack, they are unable to secure reimbursement under existing regulations.

Under current law, the Secretary of Agriculture is directed to provide food or cash at a specific rate of payment per meal served to our older Americans. It is unclear, however, whether every meal served must meet stated nutritional standards, or whether when two or three meals a day are served, the average meal must meet stated standards. My legislation will provide reimbursement for more than one meal per day, if the average of all meals served in a day meet nutritional standards, as identified by the National Research Council of the National Academy of Sciences.

This bill will increase the food available to our elderly population by removing a major barrier to serving two meals a day: the size required of the second meal for reimbursement. It will enhance the scope of the Older Americans Act by allowing senior citizen meal providers to serve a large hot meal to be supplemented by a smaller sack dinner consisting of a sandwich and fruit or something similar.

This will be an important improvement Mr. President, which will benefit many of our most neediest and vulnerable senior citizens. It is consistent with the USDA Elderly Feeding Program's 1987 Amendments—Public Law 100-175. Prior to 1987, the program was forced to reduce its rate of reimbursement because meal demands exceeded available funds. This was corrected in 1987 when Congress agreed to set the reimbursement rate at an average of 56.76 cents per meal no matter how many meals were served. This more secure funding base sets the stage for my legislation, which will provide for a second meal reimbursement.

Mr. President, senior citizen meal providers should be able to serve the elderly better through small improvements such as the one I am proposing. They will be able to better assist older Americans to maintain their independence and remain in their communities. I urge my colleagues to recognize the nutritional needs of the elderly by cosponsoring this legislation.●

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By Mr. HEFLIN:

S.J. Res. 232. Joint resolution proposing an amendment to the Constitution of the United States with respect

to the impeachment of judges; to the Committee on the Judiciary.

S.J. Res. 233. Joint resolution proposing an amendment to the Constitution of the United States with respect to the impeachment of article III judges; to the Committee on the Judiciary.

CONSTITUTIONAL AMENDMENT REGARDING THE IMPEACHMENT OF JUDGES

Mr. HEFLIN. Mr. President, today, I take the opportunity to rise to introduce two constitutional amendments. Both resolutions provide for a constitutional amendment for procedures for the discipline and removal of Federal judges. The change provided by one or the other of such amendments is both timely and necessary.

As I have continually stated, the current procedure for impeaching Federal judges is lacking in basic principles and procedures. This problem was poignantly depicted during the 99th Congress with the trial of Judge Claiborne. The recent impeachment proceedings against Judges Hastings and Nixon have reenforced my view that change is warranted. It is unrealistic to expect 100 Senators to gather and act as both judge and jury. The largest number of Senators present during any of the recent proceedings has never exceeded two-thirds of the membership of the Senate except when votes were taken, and the same was true in the Claiborne case. I firmly believe that a better system can be devised which will better serve the ends of justice.

To highlight the need for reform, I believe our present system for removing Federal judges runs dangerously close to violating the fifth amendment due process rights of these judges. The fifth amendment provides that an individual may not be deprived of life, liberty, or property, without due process of law. I firmly believe that Federal judges have such a right, and that right warrants due process protections.

The Supreme Court in *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), determined that a property right existed for public employees in their continued employment. This case stands for the proposition that public employees cannot be denied employment without the due process of law. In another decision, the Court held that the disbarment of an attorney is a punishment or penalty on a lawyer thereby entitling attorneys to due process protections. *In re Ruffalo*, 390 U.S. 544, 550 (1968), rehearing denied 391 U.S. 961. Similarly, I believe Federal judges have constitutional property rights in their continued employment as officers of the court.

In carrying out this analysis, once a constitutional right has been established, the remaining question is what process is due the individual possessing the right. I believe that our current system for removal does not provide the procedural due process protections envisioned by the framers of the Constitution. In determining procedural due process rights, the Supreme Court currently follows the guidelines which it laid out in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). In that case, the Court describes a balancing test to determine what process is due an individual. The Court outlined three necessary factors to balance as follows:

"First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requisites would entail." 424 U.S. at 335. These factors are then balanced to determine what process is due an individual with a constitutional interest at stake.

Applying the three factors outlined by the Court in Mathews versus Eldridge, it becomes apparent that the current impeachment procedures used by the Senate are highly suspect. First, the private interest at stake is an individual's ability to continue to sit as a Federal judge. Our notions of justice rely on the importance and qualifications ascribed to those persons who sit on the Federal bench. For many individuals, the opportunity to sit on the Federal bench is the pinnacle of the legal profession. Obviously, in the case of impeachments, the Government is effecting an important and prized private interest. Second, the risk of an erroneous deprivation of the private interest is made abundantly clear when more than one-third of the Senators heard little or none of the arguments and presentations of positions during the deliberations before the Senate. The requirement of a two-third vote for removal points up the gravity of such a risk. Also, the probable value of additional or substitute procedural safeguards is extremely high. Requiring mandatory attendance is impossible. By offering this legislation today I am recognizing the dire need and value to be found in alternative methods for removing Federal judges from office. Many States have concluded that there are better alternative methods and have substituted a different practice and procedure for removal of judges. Clearly, the merits of an alternative system should be on the mind of any Senator who has sat on one of the special committees to take evidence against a Federal judge. The final interest to be balanced is the Government's interest. The legislative burdens and responsibilities of today's Congress are very heavy. To have the additional responsibility of removing Federal judges from office, in addition to a large legislative workload, no longer makes sense. Clearly, the legislative interest in changing the current system is undisputably high. By balancing these three factors, I have come to the conclusion that our current impeachment process is constitutionally suspect and mandates change.

Further, applying the sixth amendment's guarantee of the impartiality of a jury to the impeachment process, a number of constitutional concerns are again raised. As part of Public Law 91-589, found at 2 U.S.C. 168, Congress authorized the printing of an annotated version of the Constitution. Part of that legislation provides that every Member of Congress be provided with this book. As a resource tool, this book is excellent, and it is constantly maintained by the Congressional Research Service and the Library of Congress. The book contains a discussion of the impartiality requirement of the sixth amendment, and it notes that the requirement is twofold. "Constitution of the United States of America—analysis and Interpretation," 1344 (1987). The first impartiality requirement, the need for a representative cross-section of a community, is arguably not applicable to the impeachment process, however, I believe the second requirement is fully applicable.

The second requirement for impartiality is that: "There must be the assurance that the jurors chosen are unbiased, [and] willing to decide the case on the basis of the evidence presented." *Id.* This requirement is applicable to the Senate. Although I believe that my colleagues are unbiased in their review of an impeachment case, I further believe that a substantial number of them are unable to decide the case on the basis of the evidence presented. The many demands and requirements placed upon a Member of the Senate today simply preclude a Member from thoughtfully considering the evidence presented at the impeachment trial. Some Senators just do not have the time. In describing the importance of impartiality, the Supreme Court has noted that: "The failure to accord an accused a fair hearing violates even the minimal standards of due process." *Irvin* v. *Doud*, 366 U.S. 717, 722 (1961). Therefore, since the essential components of impartiality are arguably not fully present in the Senate's current impeachment practices, it follows that the Senate is arguably violating the due process rights of judges called before it to answer articles of impeachment. Given the constitutional importance of the impeachment process, the prospect that the Senate fails to act impartially is simply not an acceptable proposition.

A final analogy is in order in describing the constitutional principals at work in an impeachment proceeding. During the course of a trial a judge has the responsibility to insure a fair and impartial jury hears the case. In exercising this duty, Federal case law provides that a judge may remove a juror for sleeping during the course of a trial, *United States* v. *Smith*, 550 F.2d 277, 285 (5th Cir. 1977), being drunk during the course of a trial, *United States* v. *Jones*, 534 F.2d 1344, 1346 (9th Cir. 1976), or suffering some other type of disability, *Green* v. *Zant*, 715 F.2d 551, 556 (11th Cir. 1985). Obviously the purpose of this removal is to protect the integrity of the trial. Case law clearly recognizes the judicial responsibility to remove a juror when facts are presented, such as a juror sleeping, which indicate that the juror's ability to perform his duty will be impaired. *United States* v. *Cameron*, 464 F.2d 333, 335 (3d Cir. 1972). Allowing a trial to continue with a sleeping juror simply violates fundamental notions of fairness. A Senator who has not gained a competent grasp of the applicable facts and adequately deliberated is similar to that sleeping juror. The Constitution principles of due process, impartiality, and fairness require the Senate to protect the rights of those individuals who face the prospect of an impeachment trial.

I believe that it is clear that the methods of impeachment and removal from office are cumbersome and out of date. The U.S. Congress is very different from the institution which was created over 200 years ago. Today, it is much larger and faces an extremely divergent and complex workload. Further, the demands on a Senator's time have also increased dramatically. A U.S. Senator no longer has the option of devoting all of his time to a lengthy and complicated impeachment trial of a Federal judge. Due to these factors, and being cognizant of the need to protect the rights of those individuals brought before the Senate to face an impeachment trial, I believe that a change is necessary.

Today, I am proposing two different pieces of legislation to amend the Constitution. One resolution is lengthy and delineates a sophisticated and complex means for judicial discipline. The heart of this first proposal is a bifurcated system in which two independent groups serve the functions of a grand jury and trial court. This proposal is modeled upon various State systems of judicial discipline, including Alabama. A primary benefit of this proposal is that it provides a concrete constitutional proposal from which to work. On the other hand, the second resolution which I am introducing today provides for a very brief amendment to the Constitution. This second proposal generally allows Congress the ability to establish procedures for the discipline and removal of Federal judicial officers. This provision is valuable in that it gives Congress a great deal of flexibility in establishing a legislative system for judicial discipline or removal.

Both of these proposals are meritorious in its own way, and each has its own strong and weak points. An important provision found in both resolutions is that judges may be suspended, with or without pay, if convicted or indicted for a felony. I believe that this is a critical issue which must be addressed. One reason is that most people do not believe that a convicted felon should be allowed to continue to receive a judicial salary or act as a judge, after indictment, exercising judicial functions.

As I mentioned earlier, during an impeachment the Senate functions as judge and jury. Therefore, in closing, I want to bring to the Senate's attention the Supreme Court's descriptions of the function of a jury. In *Williams* v. *Florida*, 399 U.S. 78 (1970), the Court stated: "The essential feature of a jury obviously lies in the interposition between the accused and his accuser of a commonsense judgment of a group of laymen, and in the community participation and shared responsibility that results from that group's determination of guilt or innocence." Id. at 100. The Court has further noted: "The purpose of a jury is to guard against the exercise of arbitrary power—to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned biased response of a judge." *Taylor* v. *Louisiana*, 419 U.S. 522, 530 (1975). In reflecting upon these descriptions of the function of a jury, I am drawn to the unfortunate conclusion that the Senate is not adequately fulfilling its constitutional responsibilities.

We have recently concluded two difficult and time-consuming impeachment trials, and further actions potentially loom on the horizon. I believe that since the number of Federal judges has dramatically increased, we may face an ever-increasing problem. Obviously, this problem will not simply go away.

Therefore, today I call upon my colleagues to join me in devising a method for the removal of Federal judges which is both fair to the individual and protects an essential character of our Federal system—an independent judiciary. We must do better, we must address this problem, and I feel that both of these proposals can act as a starting place for addressing this critical issue of impeachment reform.

Mr. President, I will explain one of the constitutional amendments a little more in detail. The other constitutional amendment in broad language, allows the Congress to be able to establish practices and procedures for the removal of judges and judicial officers from their office.

The other is a more specific constitutional amendment setting up specific practices and the procedures. It has two bodies, two entities. The first is a judicial inquiry commission, which is in effect a grand jury.

Then there is a second entity, a court of the judiciary, which is similar to a trial jury or the way the Senate now acts in regard to the impeachment process.

These two entities have seven members each. They are identical in composition. The Supreme Court of the United States would appoint three judges, two from the district courts and one from the circuit court of appeals. Then the Speaker of the House would appoint a lawyer and the President pro tempore of the Senate would appoint a lawyer. The other two members are nonlawyers which are appointed by the President of the United States.

In addition to its power of removal, there would be other sanctions that could be applied, such as suspension with and without pay, and reprimand.

The States have looked at the impeachment process, and a great number of them have substituted a different system than the old cumbersome impeachment process that we still have.

There are other provisions in this specific amendment. For example, it will say that a judge will be disqualified from serving as a judge but shall not lose his salary while there is pending an indictment or an information charging him with a crime punishable as a felony, but if he is convicted then the judge shall not receive or be entitled to the salary and it shall be suspended as of the date of such conviction. However, if his conviction were to be reversed by an appellate court then he would be entitled to reinstatement and reimbursement in regard to his suspended pay.

In Alabama we have a similar procedure. It has worked well. It has been employed regarding removal. It has also been involved in matters which deserve lesser sanctions, such as suspension and reprimand.

I, therefore, submit these constitutional amendments and I hope that my colleagues will give careful attention to them. I believe that our process today is cumbersome and unworkable. It is impossible for 100 Members of a body to act as jurors.

During the time that we had the last two hearings here in the Senate pertaining to the removal of judges, I counted those present and at no times were there two-thirds of the Members of the Senate present. The require-

ment of the Constitution is that there has to be a vote of two-thirds vote. Therefore, I think that shows a defect in the operation of the system that we presently have.

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By Mr. BRADLEY:

S.J. Res. 234. Joint resolution to amend one of the reservations under which the United States consented to and participated in the Delaware River Basin Compact; to the Committee on the Judiciary.

AMENDING THE DELAWARE RIVER BASIN COMPACT

● Mr. BRADLEY. Mr. President, today I am introducing legislation to amend the interstate compact which in 1961 created the Delaware River Basin Commission [DRBC]. This commission has the task of managing water supplies in the basin, a task that is ever more difficult given the growing regional population. This amendment will assist the commission with its responsibilities and allow the enlargement of an existing flood control dam, F.E. Walter, for water storage.

In a typical year, between 42 and 46 inches of rain fall in the river basin. In contrast to the more arid western States, this rainfall represents a rich abundance. Yet notwithstanding these riches, the basin has endured five drought warnings or emergencies since 1980. For much of the spring, in fact, the river basin was in a state of drought emergency. Had it not been for the record rainfall in late spring, the summer probably would have been punctuated by water use curtailments, emergency water conservation measures, and daily reports on the movement of a perilous salt line that crept inexorably upriver and threatened some of the most productive and crucial aquifers in the region.

The bill that I introduce today amends section 15.1(b) of the Delaware River Basin Compact. Section 15.1(b) pertains specifically to the financing of water projects supported by the DRBC and is contained in the Federal reservations of the compact.

As I stated earlier, Mr. President, the DRBC is responsible for assuring adequate supplies of water for present and future uses and for adequate streamflows to repel salinity in the Delaware River estuary. To address these goals, the DRBC has developed a three-pronged approach:

First, water conservation;

Second, curtailing out-of-basin diversions to New York City and northern New Jersey as are authorized by a 1954 U.S. Supreme Court Decree; and

Third, providing additional reservoir storage for release during dry periods.

To accomplish the latter, the commission has already sponsored two Army Corps of Engineers water supply storage reservoir projects—Beltzville and Blue Marsh. The DRBC is presently repaying the Federal Government for such water supply storage through a user fee system authorized under section 3.7 of the compact. However, the DRBC can charge only post-compact water users because of the limitations in section 15.1(b) of the compact, even though precompact users benefit from such projects.

An additional project is needed to provide adequate water storage or insurance during drought periods. This project—the F.E. Walter Dam—is currently a U.S. Army Corps of Engineers facility that serves major flood control purposes, but is also authorized by Congress to be modified to include the much-needed permanent storage for water supply and salinity control.

The problem is, the present post-compact water customers, which number only 44, are now paying annually $1.3 million toward the cost of the Beltzville and Blue Marsh reservoirs. For the DRBC to move ahead with the F.E. Walter project, an additional annual revenue stream of roughly $8 million is needed. This would place an unfair and insupportable burden on so few users—especially since all compact users benefit in some way from such water supply storage and attendant reservoir releases.

Mr. President, there could be a certain amount of controversy surrounding this initiative. This legislation does not impose any new charges on water users. But, it allows the DRBC to do so. Since most of those who currently tap into the Delaware were grandfathered by the 1961 compact and have not been paying fees, I do anticipate an active debate over the level and assessment of fees. Indeed, such a debate is already occurring.

In part, this legislation has been designed to address some of these concerns. Notably, the bill clearly limits the purpose of new fees to the repayment of obligations incurred in the construction and operation of three dams: the Beltzville and Blue Marsh facilities, which have already been constructed; and the enlargement of the F.E. Walter Dam. Additionally, the legislation attempts to underscore the Federal partnership through substantial cost-sharing. The legislation emphasizes that a significant portion of the enlarged dam will serve to repel salt water from the Delaware Bay during drought and prevent an ecological catastrophe. Such a purpose has broad impacts and implications and is analogous, in many ways, to the dam's current use to mitigate flood damage.

The bill also includes an acknowledgment of the agricultural elements of the F.E. Walters project. As a result of this legislation, farmers in the region will have to support an equitable share of the project. I know this is of particular concern to the distinguished Senator from Delaware, Senator BIDEN, who is also the chairman of the committee of jurisdiction, the Judiciary Committee. However, it is the Federal tradition to assist in the repayment of investment in agricultural irrigation water. This tradition was reffirmed in the 1986 Clean Water Act amendments. My bill will allow an appropriate reduction in the water bills to our farmers. Without the Federal help, New Jersey farmers, for example, would have been expected to contribute nearly $120,000 annually toward the project's cost. My legislation will enable a reduction by two-thirds of this yearly burden to roughly $40,000.

The DRBC has prepared preliminary estimates of the local costs of building the F.E. Walter Dam. The cost will vary with locale, since not all communities rely equally on Delaware River water or benefit equally from the project. The commission has calculated some examples of the expected increase in an average family's yearly bill:

| | |
|---|---|
| Wilmington | $0.24 |
| Philadelphia | .42 |
| Bethlehem | .21 |
| Allentown | .42 |
| Reading | .21 |
| Camden | 2.46 |
| Trenton | .42 |
| D&R canal user | 2.23 |

Mr. President, this legislation is supported by the DRBC and the Governors of the Delaware River States. Nevertheless, it will not be easy to gain passage of this legislation. I will be requesting hearings in the Senate so that all concerned parties can present their arguments and suggest amendments. I stand ready to negotiate with all my colleagues in order to address any of their concerns. It is my expectation that the legislation could be modified before final passage.

I have also held extensive discussions with House Members. Congressman PAUL KANJORSKI, notably, has been intensely involved and has made a significant effort to resolve the issues associated with this legislation. I look forward to the Congressman's continued presence in this debate and greatly appreciate his guidance and perspective.

I ask unanimous consent that the text of this legislation be printed following my remarks.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 234

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 15.1(b) of the Delaware River Basin Compact (75 Stat. 713) is amended by striking the period at the end thereof and inserting ": *Provided further,* That nothing in this reservation shall prevent the Commission from imposing charges authorized by the Compact for water withdrawals or diversions which could lawfully have been made without charge on the effective date of the Compact involving facilities within the Basin for purposes other than commercial

navigation, subject to the following conditions:

(1) Revenues from such charges shall be used solely to finance the construction, reconstruction, repair, operation, maintenance, and associated project costs of—

(A) the Blue Marsh Reservoir Project;

(B) the Beltzville Reservoir Project; and

(C) the Francis E. Walter Reservior Modification Project.

(2) In imposing such charges the Commission shall adopt a fair and equitable schedule of charges which—

(A) considers the benefits derived from the projects;

(B) is consistent with the purposes of the Compact; and

(C) is limited to users located within the Commission's Sub-basins 2 through 10.

(3) The proposed Francis E. Walter Reservoir Project shall include, out of 70,000 acre-feet of storage for water supplies—

(A) 18.4 percent for flow augmentation to repel salinity; and

(B) 1.6 percent for flow augmentation to replace agricultural irrigation depletive use.

*Provided further,* That Federal funds appropriated for the 18.4 percent of storage capacity described in paragraph (3)(A), representing the total storage attributable to salinity control plus 65 percent of the storage attributable to agricultural irrigation, shall be nonreimbursable.

(b) The Congress consents to the amendment of the Delaware River Basin Compact made in subsection (a).●

## ADDITIONAL COSPONSORS

S. 63

At the request of Mr. BREAUX, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Michigan [Mr. RIEGLE], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 63, a bill to amend title XVIII of the Social Security Act to provide independence to clinical social workers with respect to services furnished at a comprehensive outpatient rehabilitation facility.

S. 135

At the request of Mr. SASSER, his name was added as a cosponsor of S. 135, a bill to amend title 5, United States Code to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

S. 346

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 346, a bill to amend the Alaska National Interest Lands Conservation Act, and for other purposes.

S. 419

At the request of Mr. SIMON, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 419, a bill to provide for the collection of data about crimes motivated by race, religion, ethnicity, or sexual orientation.

S. 458

At the request of Mr. DECONCINI, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 458, a bill to provide for a General Accounting Office investigation and report on conditions of displaced Salvadorans and Nicaraguans to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Salvadorans and Nicaraguans, and for other purposes.

S. 619

At the request of Mr. SARBANES, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of S. 619, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia.

S. 626

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 626, a bill to amend the Lanham Trademark Act regarding gray market goods.

S. 670

At the request of Mr. ARMSTRONG, the names of the Senator from Vermont [Mr. JEFFORDS], the Senator from Iowa [Mr. HARKIN], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 670, a bill to recognize the organization known as The Retired Enlisted Association, Incorporated.

S. 932

At the request of Mr. HATFIELD, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 932, a bill to amend the Solid Waste Disposal Act so as to authorize the Environmental Protection Agency to take certain action to protect the environment; to mitigate water pollution; to reduce solid waste and the cost in connection with the disposal of such waste through recycling; and for other purposes.

S. 972

At the request of Mr. WIRTH, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 972, a bill to transfer to the Secretary of Health and Human Services the authority of the Secretary of Energy to conduct epidemiological studies of the effects of radiation, and for other purposes.

S. 980

At the request of Mr. MITCHELL, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 980, a bill to amend the Internal Revenue Code of 1986 to improve the effectiveness of the low-income housing credit.

S. 1310

At the request of Mr. SIMON, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 1310, a bill to eliminate illiteracy by the year 2000, to strengthen and coordinate literacy programs, and for other purposes.

S. 1321

At the request of Mr. PRESSLER, the name of the Senator from Mississippi [Mr. LOTT] and the Senator from California [Mr. CRANSTON] were added as cosponsors of S. 1321, a bill to amend the Public Health Service Act to provide assistance for education, research, and treatment programs relating to Alzheimer's disease and related disorders and to amend the Social Security Act to improve the provision of services under the Medicare and Medicaid programs to individuals with such disease or disorders.

S. 1325

At the request of Mr. RIEGLE, the name of the Senator from Rhode Island [Mr. PELL] and the Senator from Washington [Mr. GORTON] were added as cosponsors of S. 1325, a bill to amend the Export Administration Act of 1979 to extend indefinitely the current provisions governing the export of certain domestically produced crude oil.

S. 1399

At the request of Mr. SARBANES, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1399, a bill to improve forest management in urban areas and other communities, and for other purposes.

S. 1458

At the request of Mr. WALLOP, the names of the Senator from Indiana [Mr. COATS] and the Senator from Washington [Mr. GORTON] were added as a cosponsor of S. 1458, a bill to amend chapter 6 of title 5, United States Code, relating to regulatory flexibility analysis.

S. 1564

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1564, a bill to amend title 28, United States Code, to make additional exceptions to the immunity of the property of a foreign state from attachment or execution.

S. 1653

At the request of Mr. HEINZ, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 1653, a bill to preserve the solvency of the railroad retirement system.

S. 1695

At the request of Mr. CONRAD, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 1695, a bill to provide financial assistance to conduct agricultural research and to commercialize such research, and for other purposes.

S. 1751

At the request of Mr. GORTON, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of

S. 1751, a bill to prohibit the use of refrigerated motor vehicles for the transportation of solid waste, to prohibit the use of cargo tanks in providing motor vehicle transportation of food and hazardous materials, and for other purposes.

S. 1758

At the request of Mr. GLENN, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 1758, a bill to provide for the establishment of an Office for Small Government Advocacy, and for other purposes.

S. 1779

At the request of Mr. BENTSEN, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 1779, a bill to change the tariff treatment of certain brooms wholly or in part of broom corn.

S. 1791

At the request of Mr. ROCKEFELLER, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of S. 1791, a bill to amend the International Travel Act of 1961 to assist in the growth of international travel and tourism into the United States, and for other purposes.

S. 1834

At the request of Mr. LIEBERMAN, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 1834, a bill to recognize and grant a Federal charter to the organization known as the Supreme Court Historical Society.

S. 1848

At the request of Mr. BINGAMAN, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 1848, a bill to establish a research and demonstration program to promote cofiring of natural gas and coal in certain boilers and to provide Federal funding to carry out the program.

S. 1883

At the request of Mr. KENNEDY, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1883, a bill to amend the Public Service Act to establish a center for tobacco products, to inform the public hazards of tobacco use, to disclose and restrict additives to such products, and to require labeling of such products to provide information concerning such products to the public, and for other purposes.

S. 1890

At the request of Mr. THURMOND, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor of S. 1890, a bill to amend title 5, United States Code, to provide relief from certain inequities remaining in the crediting of National Guard technician service in connection with civil service retirement, and for other purposes.

S. 1894

At the request of Mr. CONRAD, the names of the Senator from Iowa [Mr. HARKIN] and the Senator from Wyoming [Mr. WALLOP] were added as cosponsors of S. 1894, a bill to amend the Consolidated Farm and Rural Development Act to require borrowers to act in good faith with respect to restructuring loans made or guaranteed under such Act, and for other purposes.

S. 1906

At the request of Mr. BURNS, the names of the Senator from Washington [Mr. GORTON], the Senator from Idaho [Mr. SYMMS], the Senator from Colorado [Mr. WIRTH], and the Senator from Idaho [Mr. MCCLURE] were added as cosponsors of S. 1906, a bill to authorize the Secretary of the Interior to construct, operate and maintain a water treatment plant for the purpose of treating water discharged from the Anaconda Mines near Butte, MT, in order to meet water quality standards, and for other purposes.

S. 1911

At the request of Mr. DODD, the names of the Senator from Illinois [Mr. SIMON] and the Senator from Colorado [Mr. WIRTH] were added as cosponsors of S. 1911, a bill to provide assistance in the development of new or improved programs to help younger individuals through grants to the States for community planning, services, and training; to establish within the Department of Health and Human Services an operating agency to be designated as the Administration on Children, Youth, and Families; to provide for a White House Conference on Young Americans; and for other purposes.

SENATE JOINT RESOLUTION 103

At the request of Mr. BRADLEY, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Missouri [Mr. DANFORTH], the Senator from Illinois [Mr. DIXON], the Senator from Texas [Mr. GRAMM], the Senator from Virginia [Mr. WARNER], the Senator from Georgia [Mr. FOWLER], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of Senate Joint Resolution 103, a joint resolution to designate the period commencing February 18, 1990, and ending February 24, 1990, as "National Visiting Nurse Associations Week."

SENATE JOINT RESOLUTION 224

At the request of Mr. BYRD, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of Senate Joint Resolution 224, a joint resolution to designate the month of May 1990 as "National Trauma Awareness Month."

SENATE CONCURRENT RESOLUTION 63

At the request of Mr. BREAUX, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Michigan [Mr. RIEGLE], and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Concurrent Resolution 63, a concurrent resolution to recognize the uniqueness of and express strong support for the maritime policy of the United States and to urge the President in the strongest possible terms to ensure that the United States does not propose maritime transportation services for inclusion in the General Agreement on Tariffs and Trade discussions and that any proposal that would consider maritime transportation as an area for negotiation is actively opposed by the United States.

## SENATE CONCURRENT RESOLUTION—85 CONCERNING HONG KONG RESIDENTS

Mr. SIMON (for himself, Mr. HELMS and Mr. MACK) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 85

Whereas the Sino-British Joint Declaration on the Future of Hong Kong provides for the reversion of Hong Kong to China on July 1, 1997, after which Hong Kong will become a Special Administrative Region of the People's Republic of China;

Whereas the Joint Declaration states that the People's Republic of China will provide that the Hong Kong Special Administrative Region will retain its economic and social systems for at least 50 years after 1997, have a "high degree of autonomy", and have executive, legislative, and independent judicial power (including the power of final adjudication);

Whereas the Joint Declaration further provides that the laws of Hong Kong, which are based on a foundation of equity and common law principles and provide substantial protections for individual rights, will remain basically unchanged for at least 50 years after 1997;

Whereas the current draft of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China provides that freedoms of speech, assembly, and association are to be maintained in Hong Kong after 1997;

Whereas the United States, with about $6,000,000,000 in direct foreign investment and bilateral trade estimated at $16,000,000,000, has a strong interest in a stable and economically prosperous Hong Kong after 1997;

Whereas the United Kingdom and other industrialized nations also have strong interests in a stable and economically prosperous Hong Kong, which is now the 11th largest trading entity in the world;

Whereas the Joint Declaration provides that Hong Kong Special Administrative Region "may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions, and relevant international organizations," and "will retain the status of an international financial centre";

Whereas measures to enhance this status, including efforts to establish the offices of major public international organizations in the Special Administrative Region, would

help to promote confidence in the future of Hong Kong;

Whereas the stability necessary for ensuring prosperity in Hong Kong will be best secured if the citizens of Hong Kong are confident that their basic freedoms will be maintained after 1997;

Whereas confidence in the future of Hong Kong was severely eroded by the Chinese Government's June 1989 suppression of the prodemocracy movement in China;

Whereas the suppression of the prodemocracy movement has heightened concerns that the political situation in Hong Kong could seriously deteriorate after 1997 and that Hong Kong residents might be deprived of their basic freedoms;

Whereas the erosion of confidence in the future of Hong Kong threatens to lead to large scale emigration from Hong Kong, including emigration of civil servants, professionals, skilled workers, and other members of the population who are essential for the economic and social development of Hong Kong;

Whereas Hong Kong residents would be less likely to attempt to leave Hong Kong prior to 1997 if they believed they could leave Hong Kong after 1997 should the guarantees contained in the Joint Declaration and the Basic Law not be honored; and

Whereas early provision to qualified Hong Kong residents of a right of abode outside Hong Kong could encourage them to remain in Hong Kong if that right remained valid after 1997; Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That the Congress—

(1) would welcome the Government of the United Kingdom leading an international effort to develop a multilateral initiative designed to provide a substantial and significant number of Hong Kong residents with a right of abode outside Hong Kong that would permit them to remain in Hong Kong after 1997 without forfeiting that right;

(2) urges the President to encourage and work with the Government of the United Kingdom in commencing discussions with members of the European Community, Canada, Australia, Japan, and other willing nations to develop and implement this multilateral initiative; and

(3) calls on the President to discuss with the Prime Minister of the Government of the United Kingdom the possibility of convening a multilateral conference on Hong Kong to ensure international cooperation and understanding regarding this multilateral initiative.

● Mr. SIMON. Mr. President, I rise for the purpose of introducing a resolution that puts our Government on record in favor of positive international efforts to enhance and safeguard the status of Hong Kong residents.

I am pleased to be joined in introducing this resolution by our colleague from North Carolina, JESSE HELMS, the ranking member of the Senate Foreign Relations Committee. This resolution is identical to one introduced by Representative STEPHEN SOLARZ, chairman of the House Subcommittee on Asian and Pacific Affairs.

Mr. President, in the past few months we have witnessed truly historic changes in the Soviet Union and Eastern Europe. At this extraordinary time, however, we can not forget about what is going on across the Pacific Ocean. July 1, 1997, the date when Hong Kong reverts from Great Britain to China, looms closer all the time. It is in our national interest, and the world's interest, that international attention be devoted to the situation that is facing the people of Hong Kong.

Our resolution puts Congress on record as encouraging the Government of the United Kingdom to lead an international effort to address the needs of the people of Hong Kong. The bloodshed at Tiananmen Square clearly suggests the repression that could face Hong Kong residents after 1997. We are hopeful that the economic, social, and political development of Hong Kong can continue beyond 1997. But we must do more than hope.

This resolution starts a process for the institution of a multilateral initiative designed to provide a substantial and significant number of Hong Kong residents with a right of abode outside Hong Kong that would permit them to remain in Hong Kong after 1997 without forfeiting that right. This effort will be vastly more successful with the cooperation of all interested members of the international community, including Canada, Australia, and Japan as well as the United Kingdom and Western Europe and this resolution envisions their participation.●

Mr. HELMS. Mr. President, I am pleased to cosponsor this resolution with Senator SIMON concerning the future of Hong Kong. The same language was introduced last week by Congressman SOLARZ and 20 cosponsors.

This resolution will encourage the residents of Hong Kong—who are fearful, indeed terrified, of Chinese management of Hong Kong in 1997—to obtain the right of abode in a second country while remaining in Hong Kong after 1997. The legislation is aimed at stabilizing the situation in Hong Kong by stemming the immediate flow of refugees.

In addition, the proposed legislation calls on both the Government of the United Kingdom and the President to lead an international conference on Hong Kong which would encourage our allies to follow the same measures.

This legislation is an important step in reassuring the residents of Hong Kong of our concern in the aftermath of the Tienanmen massacre. Since the brutal events of June 4, the Chinese Government has given the United States no reason to trust their professed benign treatment of Hong Kong after 1997. Hong Kong has a strong democratic system and a tradition of political freedom which is threatened by imposition of the Communist system.

The Chinese Communists are of two minds about Hong Kong. They want to milk the capitalist cow but they don't like the influence Hong Kong's freedoms have on South China. As demonstrated in Beijing in June, the Chinese Government will do anything, including using deadly force, to stop freedom and preserve Communist institutions.

Today, a top Chinese official in Hong Kong, Li Hou, was quoted by the Washington Times as saying China is "worried that Hong Kong will become a base for subversive activities against the Chinese central government and the socialists systems on the mainland."

Mr. Li Hou has confirmed the dark policy China is planning for Hong Kong after 1997. China will take measures in Hong Kong's postcolonial constitution to prevent foreign contacts and foreign nationals from the legislature, effectively keeping out everyone but the Chinese Communists from Hong Kong after its reversion to China.

Every day brings more news of freedom being stifled in mainland China—more arrests, executions, forced labor, and torture. Accordingly, every day the hope of Hong Kong fades as 1997 looms closer.

It is time for the free world to consider its responsibilities to the people of Hong Kong.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Kuwait Al-Qabas, July 26, 1989]

GOVERNMENT REPORTEDLY REQUESTS CHINESE MISSILES

Syria has asked China to supply it with M-9 missiles which have a range of 600 km and are capable of carrying a conventional, nuclear, or chemical warhead weighing 1,000 kg.

The Soviet Union earlier refused to supply Syria with Sophisticated SS-23 Spider missiles which have a range of 500 km and carry a warhead weighing 1,000 kg.

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[From the Defense & Foreign Affairs Weekly, June 5, 1989]

SYRIA REPORTED TO HAVE ACQUIRED PRC BALLISTIC MISSILES

Syria was reported to have signed a contract May 18 for the acquisition of an unspecified number of MS-9 East Wind SSMs and CSS-2 MRBMs from the People's Republic of China. The deal was financed in full by Saudi Arabia. Syria had placed an order with the PRC for a number of MS-9s in August 1988 and it is unclear at this time if the current contract represents a continuation of the 1988 deal or an entirely new order. In any case, the acquisition of the CSS-2 is a new development and one that should be watched closely. The CSS-2 is self-guided and capable of striking targets accurately at ranges of up to 2700 km. Saudi Arabia had previously financed its own purchase of CSS-2s.

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[From the Abu Dhabi Al-Ittihad, July 31, 1989]

AL-ITTIHAD ON M-9 MISSILE DEAL WITH CHINA

Al-Ittihad has learned from specialized U.S. defense sources that on 18 May, Syria

signed an official agreement with China in accordance with which Syria will receive an undefined number of Chinese-made 500 km-range M-9 surface-to-surface ballistic missiles. These sources added that Syria's approach to obtain these missiles came after it was unable to obtain the new 500 km-range SS-23 missiles from the USSR as these missiles are included in the treaty on removing intermediate-range nuclear missiles between Washington and Moscow.

Neutral Western military sources affirm that if this American information on the Syrian-Chinese deal proves to be correct this will constitute an important qualitative step because these missiles will provide Syria with long-range strategic deterrent capabilities and with huge devastating capabilities it did not previously possess.

It is noteworthy that Syria now possesses 36 launching pads for the Soviet 180 km-range SS-21 missiles and 24 launching pads for the 300 km-range SS-Scud missiles.

## SENATE CONCURRENT RESOLUTION 86—CONCERNING BALLISTIC MISSILE PROLIFERATION BY THE PEOPLE'S REPUBLIC OF CHINA

Mr. HELMS (for himself, Mr. MACK, Mr. BINGAMAN, Mr. SIMON, and Mr. GORE) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 86

Whereas the proliferation of ballistic missiles poses a grave threat to stability in the Middle East and other regions of the world;

Whereas it has consistently been the policy of the United States to oppose the transfer of ballistic missiles and associated technology;

Whereas it is United States policy to support universal adherence to the principles of the Missile Technology Control Regime;

Whereas the United States and the Union of Soviet Socialist Republics agreed to ban an entire class of ballistic missiles under the Intermediate Nuclear Forces (INF) Treaty; and

Whereas there have been persistent recent reports of the willingness of the People's Republic of China to provide ballistic missiles to certain countries: Now, therefore, be it

*Resolved by the United States Senate (the House of Representatives concurring)* in Congress assembled:

1. that the President should use his offices immediately to inform the People's Republic of China in the strongest possible terms of United States concerns over missile proliferation;

2. that it is the sense of Congress that a productive relationship between the United States and the People's Republic of China is predicated on Chinese restraint in supplying ballistic missiles to unstable regimes or areas of the world; and

3. that the President should take into account Chinese actions regarding the spread of ballistic missiles and associated technology in considering assistance to the Chinese space program, including licenses for the export of satellites from the United States for launch by China.

Mr. HELMS. Mr. President, perhaps the greatest threat to peace and stability in the Middle East is the proliferation of chemical weapons and ballistic missiles among anti-American regimes in that volatile region.

Over recent months, reports have surfaced that Communist China may be back in the business of peddling sophisticated missiles to such Middle Eastern countries. Today, I am pleased to offer this resolution aimed at compelling the Chinese to refrain from any such missile sales. This resolution is cosponsored by Senators MACK, GORE, BINGAMAN, and SIMON.

Specifically, the resolution notes that the proliferation of ballistic missiles poses a grave threat to the Middle East and other regions of the world. It takes notice of the recent reports of Chinese missile sales to the Middle East. It calls on the President to bring this to the attention of Communist Chinese authorities and asks the President to take these sales into account when considering licenses for the Chinese to launch Western satellites.

The resolution is intended to send a signal to the administration regarding the proposed issuance of licenses to export United States satellites for launch on Chinese missiles. In particular, it arises out of concerns over the missile sales and how they were addressed in the Poland-Hungary aid conference report.

While I was disappointed to see a prohibition on assisting the Chinese missile program dropped by the conferees, I was pleased to learn that it was done so after a high-ranking State Department official provided assurances that no plans were known of to short circuit Congress by approving the export of satellites for launch on Chinese missiles.

Mr. President, I have for sometime been concerned that the United States may be in the position of indirectly assisting Chinese missile sales to anti-American radical regimes in the Middle East. If the export of such satellites were to be licensed, that is just what would occur.

The Chinese missile program will be provided with valuable new technology, additional funds, and new found credibility. Precisely the wrong signal will be sent to the Chinese about their missile sales.

The Chinese will be assisted in their efforts to build better, more advanced, more accurate and more deadly missiles for sale to Iraq, Syria, Libya, and Iran so that these countries will have better missiles to fire at Israel.

The United States will become partners in China's dirty business of peddling missiles to these radical countries—unless the licenses for launch of these satellites is withheld until we can be certain China is not in the business of peddling missiles to America's enemies in the Middle East.

In order to obtain some assurance from the administration that it would not be approving exports of satellites during the congressional recess, I offered an amendment to the Poland aid bill which provided that:

The United States Government shall not assist any missile program of the People's Republic of China in any manner, until the President certifies to Congress that China is not currently supplying ballistic missiles or missile technology to Iran, Iraq, Syria or Libya, and has provided reasonable assurances that no future sales of missiles or missile technology to such countries are planned.

This amendment was almost exactly the same as an amendment approved by the Senate as part of the 1989 foreign operations appropriations bill.

That amendment was subsequently rejected by the House on the basis of a reported commitment received by the administration from the Communist Chinese that no further missile sales would be made to Iran, Iraq, Syria, and Libya.

At the time my amendment was rejected by the House, it was widely suggested that the issue be revisited in the event that the Chinese did not abide by their reported commitment.

It now appears as though China may not be abiding by this commitment. A New York Times story of November 8, 1989, titled "U.S. Worries That China May Again Sell Missiles," reported that a senior official of the Arms Control and Disarmament Agency told a conference that the United States is concerned that Communist China may drop its commitment not to sell missiles or missile technology.

According to a number of Western and Arab sources, Syria and China signed an agreement on May 18, 1989 under which China would provide Syria with a number of M-9 surface-to-surface ballistic missiles.

Mr. President, I ask unanimous consent that news stories documenting the China-Syria deal be printed in the record at the conclusion of my remarks.

Mr. President, these news reports are entirely consistent with an analysis published by the Congressional Research Service in February of this year. In that analysis, exports speculated that Syria may be in the market for the Chinese M-9 missile.

According to an unclassified Defense Intelligence Agency report, the M-9 is a solid-fuel missile with a range of 375 miles. The M-9 is highly mobile and can be set up, ready to fire in half an hour. It can carry nuclear, chemical, biological or conventional war heads.

The M-9 is, in fact, the Chinese equivalent of the Soviet SS-23 missile, the same one covered by the intermediate nuclear forces, or INF Agreement, with the Soviets.

On March 1, 1989 the Director of the Central Intelligence Agency, Hon. William Webster, told the Senate Foreign Relations Committee in a public

session that Syria has a poison gas plant in production.

Three hundred and seventy-five miles is more than enough to cover all of Israel and threaten our forces off Lebanon. M-9 missiles in the hands of the Syrians would not only alter the balance of power in the Middle East, they would also effectively destroy the missile technology control regime, our multilateral effort to control the spread of ballistic missiles.

It is worth noting that the deal was signed on May 18, before martial law was declared in Beijing and before the massacre of June 4. Therefore, no one can suggest that putting sanctions on Communist China made them do this. Since an agreement is only signed at the end of the negotiation, it is likely that discussions of this deal began much earlier in the spring, perhaps in March.

Mr. President, China today is a military dictatorship. Power is in the hands of the military control commission, not the civilian government or even the Communist Party. It was the Chinese Communist Army which massacred the prodemocracy demonstrators in Tienanmen Square.

It is also the Chinese Communist Army which designs, develops, tests and deploys ballistic missiles. One of these missiles, the Long March, can be used to launch nuclear warheads or to put satellites in orbit. In order to finance the development of their next generation of ballistic missiles, the Chinese Communists have offered, at a cut rate, to launch Western communications satellites.

At least three contracts have been signed, two with Australia and one with a group of countries in Southeast Asia and Hong Kong. If the contracts go through, the Chinese ballistic missile teams would receive $25 million for each launch.

Let me emphasize that we are talking about a minimum of $75 million in hard currency going right into the bank account of the Chinese Communist ballistic missile developers.

After the massacre at Tienanmen one of the first sanctions considered by the Congress was a restriction on Chinese launches of Western satellites. The satellites typically have dual-use components and can be restricted by the State Department through the denial of a munitions license.

Restrictions on Chinese satellite launches have been placed in both the State, Justice, Commerce appropriations bills and the State Department authorization bill. However, the restrictions in both bills can be waived if the President determines that it is in the national interest to do so.

The information relative to the Chinese M-9 missile sale to Syria became available after the Senate authorizations and appropriations bills were approved. Senator SIMON and I decided that there should be a tougher restriction on satellite launches and the amendment to prohibit the satellite launches was attached to the Poland aid bill.

At the same time concerns are being raised that China may be back in the business of peddling missiles, it has been reported that the State Department was planning to issue a license to permit the Chinese to launch a United States satellite on a Chinese missile while Congress is out of town.

In light of all of the new reported developments regarding Chinese missile sales, and the inability of the administration to make any definite public determination as to the intentions of the Chinese in this regard, it would be an outrageous act of bad faith if the State Department were to go ahead with the licensing while Congress is in recess.

When the conferees met to discuss the language in the Poland bill restricting the satellite exports, Deputy Assistant Secretary of State Lorne Craner assured the conferees that he knew of no plan by the administration to grant, during the congressional recess, the licenses for export of United States satellites for launch by the Communist Chinese.

With this assurance, the immediate purpose for the section of the Senate bill prohibiting satellite exports to China was satisfied, and the conferees dropped the restrictive language.

Mr. President, relations between the executive and legislative branches are based on mutual trust. Without such trust we cannot function. The conferees have taken the word of the State Department on this issue a day after the Washington Times reported on November 16 that the State Department is moving behind the scenes to lift the restrictions on satellite launches.

There is no denying that Capitol Hill is awash with rumors that the State Department is waiting until the session ends and then it plans to move.

If the State Department should license the export of United States satellites to China before Congress returns and can be given the full picture as to China's alleged plans to peddle missiles to the Middle East, it would severely strain relations with the executive branch, and would yield troublesome consequences for the ability of the Department to work with the Hill in the future.

## SENATE CONCURRENT RESOLUTION 87—SUPPORTING THE U.N. SECRETARY GENERAL'S CURRENT EFFORTS REGARDING CYPRUS

Mr. KENNEDY (for himself, Mr. PELL, Mr. SARBANES, Mr. BIDEN, Mr. PRESSLER, and Mr. CRANSTON) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 87

Whereas the United States and Cyprus have close, long-standing ties;

Whereas resolution of the Cyprus conflict is important for peace and stability in the Eastern Mediterranean and to the interests of the United States;

Whereas the Secretary General of the United Nations has sponsored a direct, high-level intercommunal dialogue on Cyprus;

Whereas the Secretary General's July 1989 ideas that emerged from discussions between President Vassiliou and Mr. Denktash constitute an important step in the search for a solution on Cyprus; and

Whereas recent changes in the international environment have created an unprecedented opportunity for progress in resolving regional conflicts around the world, including the Cyprus problem: Now therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That the Congress—

(1) declares its support for the United Nations Secretary General's current effort regarding Cyprus;

(2) finds that continuation of meaningful talks on Cyprus is indispensable to the peaceful resolution of the conflict; and

(3) encourages both parties on Cyprus to resume negotiations under the auspices of the Secretary General and according to the procedures outlined by the Secretary General.

Mr. KENNEDY. Mr. President, I send to the desk a resolution on behalf of Senators PELL, SARBANES, BIDEN, PRESSLER, CRANSTON, and myself in support of the U.N. Secretary General's peace initiatives on Cyprus.

With this resolution, the Congress will declare its support for Secretary General Perez de Cuellar's efforts to bring about a peaceful resolution of the 15-year-old tragedy on Cyprus. It encourages both parties on Cyprus to resume negotiations under the auspices of the Secretary General.

On July 20, 1974, Turkish forces invaded Cyprus taking 37 percent of the land and in the process forcing a third of the Greek Cypriot population to flee their homes. Fifteen years later, the country remains divided by the green line, which is monitored by the United Nations. The continuing failure to resolve this bitter conflict has brought extraordinary hardship to that country's people, with serious consequences for relations between Greece and Turkey and with the United States, the European Community, NATO, and the other nations of the Mediterranean.

The current effort to reach a settlement began in August 1988, when Cypriot President George Vassiliou and Turkish Cypriot leader Rauf Denktash accepted the Secretary General's invitation to meet and hold direct talks to achieve a negotiated settlement. Between August 1988, and June 1989, the two leaders met for more

than 100 hours in Nicosia and on several occasions in New York under the auspices of the U.N. Secretary General.

Last summer, the Secretary General offered a set of ideas for resolving the conflict based on the previous discussions of President Vassiliou and Mr. Denktash. Unfortunately, the two leaders have not met since June. President Vassiliou has indicated his willingness to consider the Secretary General's ideas as the basis for further discussion, but so far Mr. Denktash has refused to do so. The Secretary General has said that the ideas are not etched in stone, but rather are simply the basis for further discussion and progress. It is my hope that both leaders will see the ideas as such and return to the negotiating table.

The Secretary General has been working tirelessly to bring about a lasting and peaceful settlement based on the legitimate rights of both the Greek and Turkish Cypriot communities. I am encouraged that the Secretary General will meet separately with both President Vassiliou and Mr. Denktash in the next few weeks to discuss how the talks can be resumed. I urge both leaders to cooperate with the Secretary General, so that one day soon the green line in Cyprus will go the way of the Berlin Wall.

Mr. BIDEN. Mr. President, last week the world watched in astonishment as the Berlin Wall—the dividing line between East and West, freedom and oppression—was effectively torn down by the East German Government. No one ever anticipated that the recent protests of the East German people would have such an immediate and far-reaching impact. Clearly the winds of change are sweeping across Europe and there is no turning back.

These winds bring with them the hope that another dividing line—the "green line" that splits the islandnation of Cyprus in two—will join the Berlin Wall as a relic of history. After 15 years of living with the presence of Turkish occupation forces and watching their way of life slip away, it is time for Greek Cypriots to get their homeland back whole and free.

Thanks to the good offices of U.N. Secretary General Perez de Cuellar, this dream may not be too far from realization. The Secretary General has been tireless in his efforts to seek a resolution of the impasse between the two sides and end the division of Cyprus once and for all. He has sponsored an intercommunal dialog between Cypriot President George Vassiliou and the representative of the Turkish Cypriot people, Rauf Denktash. The two leaders have met on several occasions over the last year in an effort to reach a common understanding of the issues separating them and to discuss a range of possible options. Unfortunately, the talks had to be suspended in June because Mr. Denktash laid down a set of preconditions that have prevented a continuation of the dialog.

The Secretary General is attempting to put the talks back on track by meeting separately with President Vassiliou and Mr. Denktash before the end of the year. There is no better time than now for the Senate to express its full support for the outstanding efforts of the Secretary General and to encourage a resumption of the intercommunal talks.

That is why I commend Senator KENNEDY for introducing his resolution today, and I join him as a cosponsor. The resolution makes an important contribution to the process by expressing Senate support for the Secretary General's peace initiatives regarding Cyprus and encouraging both parties to resume their negotiations.

In proclaiming its endorsement of the process, the Senate can bolster the Secretary General's efforts and signal to any obstructionist elements that the United States deplores any cessation of the talks. Finally, at a time when the spirit of freedom and democracy is spreading throughout Eastern Europe, Americans can encourage the same spirit in the Eastern Mediterranean by providing impetus to the United Nations process.

## SENATE RESOLUTION 217—DEPLORING THE ESCALATING VIOLENCE IN EL SALVADOR

Mr. MITCHELL (for himself, Mr. DOLE, Mr. KENNEDY, Mr. EXON, Mr. REID, Mr. DIXON, Mr. MATSUNAGA, Mr. LEVIN, Mr. KASTEN, Mrs. KASSEBAUM, Mr. MCCAIN, Mr. SIMPSON, Mr. WILSON, Mr. DECONCINI, Ms. MIKULSKI, Mr. LIEBERMAN, Mr. NUNN, Mr. ROBB, Mr. GRAHAM, Mr. WIRTH, Mr. INOUYE, Mr. GLENN, Mr. COHEN, Mr. DURENBERGER, Mr. DOMENICI, Mr. GARN, and Mr. SYMMS) submitted the following resolution; which was considered and agreed to:

S. RES. 217

Whereas violence in El Salvador has reached unprecedented levels with the military offensive begun by the Farabundo Marti National Liberation Front (FMLN) on November 11, 1989;

Whereas hundreds of civilian casualties have resulted from fighting in densely populated areas and armed FMLN forces have surrounded a hotel in the Escalon section of San Salvador endangering the safety of the Secretary General of the OAS and several United States citizens staying in the hotel;

Whereas due to the intensity of the fighting the Red Cross and other humanitarian organizations have not been able to evacuate the wounded and provide basic medical treatment or other support;

Whereas escalating violence, bombings and assassinations preceding and following the FMLN offensive has resulted in numerous incidents of brutality and the deaths of innocent victims;

Whereas six Jesuit priests and two others in their household were brutally murdered on November 16, 1989;

Whereas President Cristiani of El Salvador has ordered that an immediate and thorough investigation be conducted of the barbaric murder of Fathers Ignacio Ellacuria, Rector of the Central American University, Ignacio Martin Baro, the Vice Rector, and educators Segundo Montes, Armando Lopez, Juan Ramon Moreno and Joaquin Lopez y Lopez, as well as their cook and her daughter, Julia Elba Ramos and Cecilia Ramos;

Whereas continued guerilla warfare in populated areas will further jeopardize innocent life;

Whereas the Government of El Salvador and the FMLN were engaged in a dialogue to seek a political settlement of the conflict in El Salvador;

Whereas the people of El Salvador have repeatedly demonstrated a clear preference for a democratic system of government based on respect for the dignity of the individual: Now, therefore, be it

*Resolved,* That the Senate—

(1) condemns the FMLN for initiating on November 11, 1989, the military offensive in El Salvador which has led to the death of hundreds of innocent civilians and deplores the armed seizure of a San Salvador hotel endangering the lives of innocent guests in the hotel;

(2) deplores and expresses its strongest revulsion at the heinous murder of six Jesuit priests and two women;

(3) reaffirms its dedication to and strong support for human rights and democratic institutions;

(4) urges the United Nations and the Organization of American States to encourage the FMLN and the Salvadoran Government to enter into an immediate cease-fire and withdrawal of FMLN forces from urban areas;

(5) deplores the continuing violent hostilities in densely populated areas and calls for a disengagement of the military forces of both sides to allow the Red Cross and other international humanitarian organizations to provide urgently needed medical attention and supplies to the hundreds of civilian casualties;

(6) urges the Government of El Salvador and the FMLN to immediately resume a peaceful dialog and commends President Cristiani for sending representatives to the meeting scheduled in Caracas, Venezuela, to seek a political settlement of the conflict;

(7) demands that those responsible for the murder of six Jesuit priests, as well as the bombing of the headquarters of a local labor union, be brought to justice and punished for the crimes;

(8) states unequivocally that if the Salvadoran Government fails to make every good faith effort to prosecute and punish those responsible for the November 16 murder of six Jesuit priests and two women, the Congress will carefully review and consider the question of aid to El Salvador;

(9) requests the administration to render a full report to the Congress by February 20, 1990, on the status of the investigation into the deaths of the six priests with the understanding that such a report is to be available to Congress prior to any further consideration of foreign aid;

(10) urges the administration to provide emergency assistance to the innocent victims of the war through the International Red Cross and other appropriate channels.

## SENATE RESOLUTION NO. 218—RELATING TO THE DRUG SUMMIT

Mr. SPECTER submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 218

Expressing the sense of the Senate regarding the President's agenda for the drug summit.

Whereas President Bush has agreed to meet with leaders of Latin American drug producing countries and leaders of European drug consuming countries in February 1990 at a drug summit;

Whereas in 1986, a provision of Public Law 99-399, the Omnibus Diplomatic Security and Antiterrorism Act, called upon the President to initiate negotiations for the establishment of an international tribunal for prosecuting terrorists;

Whereas in 1988, a provision of Public Law 100-690, the Anti-Drug Abuse Act, called upon the President to initiate negotiations for the establishment of an international tribunal for prosecuting persons accused of having engaged in international drug trafficking or having committed international crimes;

Whereas in 1989, provisions in the Defense Department appropriations bill for fiscal year 1990 and the Foreign Operations appropriations bill appropriated funds for the participation of American armed forces in a multilateral anti-narcotics strike force as called for in sections 4101 and 4102 of the Anti-Drug Abuse Act of 1988 (Public Law 100-690);

Whereas consideration should be given to increased emphasis on multilateral intelligence-sharing, multilateral training of law enforcement personnel, and multilateral support for crop substitution, drug treatment, drug research, and drug education programs;

Whereas in 1988, in section 4103 of Public Law 100-690, the Anti-Drug Abuse Act, Congress expressed its sense that the President should initiate negotiations for the establishment of an international drug force to pursue and apprehend major international drug traffickers; and

Whereas in 1988, section 4104 of Public Law 100-690, the Anti-Drug Abuse Act, Congress expressed its sense that the President should convene as soon as possible an international conference on combatting illegal drug production, trafficking, and use in the Western Hemisphere: Now, therefore, be it

*Resolved*, That the Senate hereby—

(1) offers its support to the President as he prepares for the summit; and

(2) encourages the President to—

(A) encourage the inclusion of heads of state, or other appropriate officials from every government in the Western Hemisphere that is willing to combat the drug trade, and whose cooperation the President determines is essential to that goal; and

(B) utilize the occasion of the Drug Summit to call for—

(i) negotiations to create an international strike force to pursue and apprehend international drug traffickers and terrorists;

(ii) negotiations to create an international criminal court to try drug traffickers, terrorists and other international criminals; and

(iii) greater cooperation among nations with respect to intelligence sharing, multilateral training of law enforcement personnel, multilateral support for crop substitution, drug treatment, drug research, drug education programs, and any other steps necessary to combat the drug trade.

Mr. SPECTER. Mr. President, today I introduce a resolution expressing the sense of the Senate regarding the President's agenda for the upcoming Drug Summit. This tremendously important dialog with leaders of Latin American drug producing countries and leaders of European drug consuming countries is expected to take place before the end of February 1990.

The resolution I introduce today offers the Senate's support to the President as he prepares for the summit and encourages the President to use this occasion to call for negotiations to create an international strike force and an international criminal court.

There is no single solution to the problem of illicit drug use. As our National Drug Control Strategy recognizes, both the supply and demand sides of the equation must be addressed. Among the many steps to be taken is a collective effort by the civilized international community to bring narcoterrorists to justice. A coordinated, multilateral approach to international drug control would be more effective than the existing unilateral and bilateral pressures which have not yet seriously threatened the international drug trafficking cartels. Therefore, this resolution calls for the internationalization of law enforcement efforts to combat drug trafficking.

Congress has recognized the pressing need for global cooperation of law enforcement efforts. The efforts of the world community have been overly cautious and relatively ineffective in response to the violent attacks of drug kingpins and terrorists. There are official channels through which national security forces can exchange intelligence in an effort to prevent terrorist acts. But the world is too large and the terrorist's opportunities too plentiful for law enforcement agents to stop any but a small fraction of attacks.

As I have argued on numerous occasions, until we have a multinational, coordinated response, terrorists, and major drug kingpins will continue to get away with murder by playing one nation against another, avoiding extradition, escaping prosecution, and even securing their freedom by blackmailing powerful countries. The fight against terrorism and drug trafficking would be bolstered by an international strike force to pursue these international criminals and an international criminal court to bring them to justice.

Congress has enacted several important legislative initiatives to combat international terrorism and drug trafficking. In 1984, Congress made criminal the taking of American hostages abroad; and in 1986, Congress passed legislation extending the reach of U.S. criminal jurisdiction to acts of violence perpetrated against American nationals abroad.

In 1986, my amendment to the Diplomatic Security and Anti-Terrorism Act, Public Law 99-399, called upon the President to consider pursuing international negotiations to establish an international criminal court to try terrorists. The scope of this initiative was expanded by my amendment to the Anti-Drug Abuse Act of 1988, Public Law 100-690, to include international drug traffickers and other international criminals within the court's jurisdiction.

Therefore, the resolution I introduce today expresses the sense of the Senate encouraging the President to "utilize the occasion of the Drug Summit to call for negotiations to create an international criminal court to try drug traffickers, terrorists, and other international criminals."

The Anti-Drug Abuse Act of 1988 also includes language expressing the sense of the Congress that the President should initiate negotiations for the creation of a multilateral drug force to pursue and apprehend major drug traffickers. In 1989, Senator KERRY and I successfully offered an amendment to the fiscal year 1990 State Department authorization bill expressing the sense of the Congress that the President should pursue the establishment of an international strike force and amendments to the fiscal year 1990 Defense and Foreign Operations appropriations bills to authorize the use of appropriated funds for the establishment of this force.

These proposals have international support. During his recent visit to the United States, the Prime Minister of Jamaica, Michael Manley, expressed his support for the creation of both an international strike force and an international criminal court. Additionally, I am advised that Prime Minister Robinson of Trinidad and Tobago has secured the support of all Caribbean countries for his proposal to create an international court for drug traffickers. Reports indicate that the General Assembly of the United Nations soon will debate a proposal to study the creation of an international strike force and a world court under the auspices of the United Nations or the Organization of American States.

Finally, in light of the many and various problems associated with the international war on drugs, the resolution also encourages "greater cooperation among nations with respect to * * * multilateral training of law enforcement personnel, multilateral support for crop substitution, drug treatment, drug research, drug education programs, and any other steps necessary to combat the drug trade."

The upcoming Drug Summit offers the United States a unique opportunity to provide a leadership role in es-

tablishing multilateral mechanisms, such as a strike force and a criminal court, to identify, pursue, apprehend, and try international drug kingpins and terrorists. Accordingly, I urge my colleagues to join in support of this resolution to offer our support to the President as he prepares for the Drug Summit and to encourage him to advance these key antidrug and antiterrorist initiatives previously endorsed by Congress.

## SENATE RESOLUTION—219 AMENDING SENATE RESOLUTION 66

Mr. RIEGLE (for himself, Mr. GARN, Mr. GRAHAM, and Mr. MACK) submitted the following resolution; which was considered and agreed to:

S. RES. 219

*Resolved,* That (a) section 6(b)(1) of the Senate Resolution 66 (101st Congress), agreed to February 28, 1989, is amended by striking "$1,000" and inserting "$61,000".

(b) Section 6(c)(1) of Senate Resolution 66 (101st Congress), agreed to February 28, 1989, is amended by striking "$1,000" and inserting "$81,000".

SEC. 2 HUD/MOD REHAB INVESTIGATION SUBCOMMITTEE.

Section 6 of the Senate Resolution 66 (101st Congress), agreed to February 28, 1989, is amended by adding at the end thereof the following:

"(d)(1) The HUD/MOD Rehab Investigation Subcommittee (referred to as the "subcommittee'), a duly authorized subcommittee of the Committee on Banking, Housing, and Urban Affairs, is authorized to conduct an investigation beginning on November 10, 1989, through February 28, 1991, of the management and other activities of the Department of Housing and Urban Development, which occurred before January 1, 1989, surrounding the Moderate Rehabilitation Program under section 8 of the United States Housing Act of 1937 and related programs, including the use of FHA co-insurance and low income tax credits in connection with Moderate Rehabilitation projects. Such investigation shall include past administrative or programmatic developments that contributed to fraud and abuse in the section 8 Moderate Rehabilitation Program.

"(2) For the purpose of the investigation described in paragraph (1), the Committee on Banking, Housing, and Urban Affairs is authorized (A) to require, by subpoena or order, the attendance of witnesses and the production of correspondence, books, papers, documents, and other records; (B) to notice depositions for staff members of such Committee to examine witnesses and to receive evidence at staff depositions under oath administered by an individual authorized by local law to administer oaths; and (C) to require, by subpoena or order, the attendance of witnesses and the production of such records at such staff depositions. The authority of the Committee under this paragraph shall not be delegated to the subcommittee and may be exercised only by the Committee, either by the Chairman with the agreement of the Ranking Minority Member or by a majority vote of the Committee.

"(3) The subcommittee shall report its findings, together with such recomendations for legislation as it deems advisable, to the Senate Committee on Banking, Housing, and Urban Affairs to be referred to the Subcommittee on Housing at the earliest practicable date, but not later than February 28, 1991.".

## SENATE RESOLUTION 220—RELATIVE TO U.S. OBLIGATIONS UNDER U.N. DRUG CONVENTION

Mr. THURMOND (for Mr. HELMS) submitted the following resolution: which was considered and agreed to:

S. RES. 220

*Resolved,* That it is the sense of the Senate that the United States should not be bound under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to cooperate with any State party with which the United States does not maintain diplomatic relations or with any regime not recognized by the United States.

## SENATE RESOLUTION 221—TENDERING THE THANKS OF THE SENATE TO THE VICE PRESIDENT

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 221

*Resolved,* That the thanks of the Senate are hereby tendered to the Honorable Dan Quayle, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the first session of the One Hundred First Congress.

## SENATE RESOLUTION 222—TENDERING THE THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. RES. 222

*Resolved,* That the thanks of the Senate are hereby tendered to the Honorable Robert C. Byrd, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the first session of the One Hundred First Congress.

## SENATE RESOLUTION 223—COMMENDING THE EXEMPLARY LEADERSHIP OF THE MINORITY LEADER

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. RES. 223

*Resolved,* That the thanks of the Senate are hereby tendered to the distinguished Minority Leader, the Senator from Kansas, the Honorable Robert Dole, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the first session of the 101st Congress.

## SENATE RESOLUTION 224—COMMENDING THE EXEMPLARY LEADERSHIP OF THE MAJORITY LEADER

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 224

*Resolved,* That the thanks of the Senate are hereby tendered to the distinguished Majority Leader, the Senator from Maine, the Honorable George J. Mitchell, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the first session of the 101st Congress.

## SENATE RESOLUTION 225—TENDERING THE THANKS OF THE SENATE TO THE SENATE STAFF

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. RES. 225

*Resolved,* That the thanks of the Senate are hereby tendered to the Secretary of the Senate, the Sergeant at Arms of the Senate, the Secretary for the Majority, the Secretary for the Minority, and the floor staff of the two parties for the courteous, dignified, and impartial manner in which they have assisted the deliberations of the Senate during the first session of the One Hundred First Congress.

## SENATE RESOLUTION 226—PROVIDING FOR CERTAIN APPOINTMENTS

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. RES. 226

*Resolved,* That notwithstanding the sine die adjournment of the present session of the Congress, the President of the Senate, the President of the Senate pro tempore, the Majority Leader of the Senate, and the Minority Leader of the Senate be, and they are hereby, authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

## SENATE RESOLUTION 227—APPOINTING A COMMITTEE TO NOTIFY THE PRESIDENT CONCERNING THE PROPOSED ADJOURNMENT OF THE SESSION

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. RES. 227

*Resolved,* That a committee of two Senators be appointed by the Presiding Officer to join a similar committee of the House of Representatives to notify the President of the United States that the two Houses have completed their business of the session and are ready to adjourn unless he has some further communication to make to them.

## AMENDMENTS SUBMITTED

## COAST GUARD AUTHORIZATION ACT

### KOHL AMENDMENT NO. 1195

Mr. KOHL proposed an amendment to the amendment of the House to the amendment of the Senate to the bill (H.R. 2459) to authorize appropriations for the Coast Guard for fiscal year 1990, and for other purposes, as follows:

SECTION 1. SHORT TITLE

This Act may be cited as the "Coast Guard Authorization Act of 1989".

TITLE I—AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF FUNDS FOR FISCAL YEAR 1990.

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1990, as follows:

(1) OPERATION AND MAINTENANCE.—For the operation and maintenance of the Coast Guard, $2,312,200,000.

(2) ACQUISITION AND CONSTRUCTION.—For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including related equipment, $746,300,000 of which up to $20,000,000 shall be used to rehabilitate the Coast Guard Cutter Mackinaw, and additional sums as may be necessary to carry out the Coast Guard icebreaker ship program and the Coast Guard patrol boat program, to remain available until expended.

(3) RESEARCH AND DEVELOPMENT.—For research, development, test, and evaluation, $29,000,000, to remain available until expended.

(4) RETIREMENT BENEFITS.—For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $420,800,000, to remain available until expended.

(5) ALTERATION OR REMOVAL OF BRIDGES.—For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $2,300,000.

SEC. 102. AUTHORIZATION OF FUNDS FOR FISCAL YEAR 1991.

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1991, as follows:

(1) OPERATION AND MAINTENANCE.—For the operation and maintenance of the Coast Guard, $2,381,500,000.

(2) ACQUISITION AND CONSTRUCTION.—For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including related equipment $501,800,000, to remain available until expended.

(3) RESEARCH AND DEVELOPMENT.—For research, development, test, and evaluation, $29,000,000, to remain available until expended.

(4) RETIREMENT BENEFITS.—For retired pay, including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose and payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and for payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $451,200,000, to remain available until expended.

(5) ALTERATION OR REMOVAL OF BRIDGES.—For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $7,500,000.

SEC. 103. AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1990.

(a) ACTIVE DUTY PERSONNEL.—As of September 30, 1990, the Coast Guard is authorized an end-of-year strength for active duty personnel of 37,750. This authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) STUDENT LOADS.—For fiscal year 1990, the Coast Guard is authorized average military training student loads as follows:

(1) RECRUIT AND SPECIAL TRAINING.—For recruit and special training, 2,687 student years.

(2) FLIGHT TRAINING.—For flight training, 110 student years.

(3) PROFESSIONAL TRAINING.—For professional training in military and civilian institutions, 390 student years.

(4) OFFICER ACQUISITION.—For officer acquisition, 900 student years.

SEC. 104. AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1991.

(a) ACTIVE DUTY PERSONNEL.—As of September 30, 1991, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,300. The authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) STUDENT LOADS.—For fiscal year 1991, the Coast Guard is authorized average military training student loads as follows:

(1) RECRUIT AND SPECIAL TRAINING.—For recruit and special training, 2,787 student years.

(2) FLIGHT TRAINING.—For flight training, 110 student years.

(3) PROFESSIONAL TRAINING.—For professional training in military and civilian institutions, 390 student years.

(4) OFFICER ACQUISITION.—For officer acquisition, 900 student years.

SEC. 105. MODIFICATION AND EXTENSION OF RULES OF ROAD ADVISORY COUNCIL AND EXTENSION OF TOWING SAFETY ADVISORY COMMITTEE.

(a) RULES OF THE ROAD ADVISORY COUNCIL.—

(1) MODIFICATION AND EXTENSION.—Section 5 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) is amended as follows:

(A) Subsection (a) is amended by striking "Rules of the Road Advisory Council" and inserting "Navigation Safety Advisory Council".

(B) Subsection (b) is amended to read as follows:

"(b) The Council shall advise, consult with, and make recommendations to the Secretary on matters relating to the prevention of collisions, rammings, and groundings, including the Inland Rules of the Road, the International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems. Any advice or recommendation made by the Council to the Secretary shall reflect the independent judgment of the Council on the matter concerned. The Council shall meet at the call of the Secretary, but in any event not less than twice during each calendar year. All proceedings of the Council shall be public, and a record of the proceedings shall be made available for public inspection.".

(C) Subsection (d) is amended by striking "September 30, 1990" and inserting "September 30, 1995".

(2) REFERENCES.—Each reference to the Rules of the Road Advisory Council in a law, regulation, order, document, record, or paper of the United States is deemed to be a reference to the Navigation Safety Advisory Council.

(b) TOWING SAFETY COMMITTEE.—Subsection (e) of the Act entitled "An Act to establish a Towing Safety Advisory Committee in the Department of Transportation", approved October 6, 1980 (33 U.S.C. 2131a(e)), is amended by striking "September 30, 1990" and inserting "September 30, 1995".

SEC. 106. COMMERCIAL FISHING INDUSTRY VESSEL ADVISORY COMMITTEE APPOINTMENTS.

Section 4508 of title 46, United States Code, is amended by adding at the end of subsection (b)(2) the following: "The Secretary may not seek or use information concerning the political affiliation of individuals in making appointments to the Committee."

TITLE II—PROGRAMS

SEC. 201. TECHNICAL AMENDMENTS TO ACT TO PREVENT POLLUTION FROM SHIPS.

The Act to Prevent Pollution from Ships (33 U.S.C. 1901–1912) is amended—

(2) in section 6(c)(1), by striking "Annex V" and inserting "Annex I and Annex II";

(2) in section 8(c)(1), by inserting "or of this Act" after "Convention"; and

(3) in section 8(e)(2), by inserting "or of this Act" after "MARPOL Protocol".

SEC. 202. TECHNICAL CORRECTIONS RELATING TO SAFEGUARDING MILITARY WHISTLEBLOWERS.

Section 1034 of title 10, United States Code, is amended—

(1) in subsection (c)(1), by inserting "when the Coast Guard is not operating as a service in the Navy" immediately after "in the case of a member of the Coast Guard";

(2) in subsection (c)(5), by inserting "(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)" immediately after "to the Secretary of Defense";

(3) in subsection (c)(6), by inserting "(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operatng as a service in the Navy)" immediately after "to the Secretary of Defense"; and

(4) in the first sentence of subsection (e), by inserting "(except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)" immediately after "former member of the armed Forces".

SEC. 203. MISCELLANEOUS PROVISIONS CONCERNING CONTINUITY OF GRADE, APPOINTMENT, AND RETIREMENT OF COAST GUARD PERSONNEL.

Title 14, United States Code, is amended—

(1) in section 52, by inserting "or admiral" immediately after "to another position as a vice admiral";

(2) in section 271(c), by inserting at the end of the first sentence, "except that advice and consent is not required for appointments under this section in the grade of lieutenant (junior grade) or lieutenant" immediately after "consent of the Senate";

(3) in section 289(c), by striking "no less than 75 percent" and inserting "no less than 50 percent";

(4) in section 736(c), by adding at the end the following new sentence: "However, the Secretary may adjust the date of appointment—

"(1) if a delay in the finding required under section 734(a) of this title is beyond the control of the officer and the officer is otherwise qualified for promotion; or

"(2) for any other reason that equity requires. "; and

(5) in section 741(a), by inserting "who have 18 years or more of service for retirement and are" after "in an active status" the third time it appears.

SEC. 204. AUTHORIZATION OF JUNIOR RESERVE OFFICERS TRAINING PROGRAM PILOT PROGRAM.

(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating (hereinafter in this section referred to as the "Secretary") may carry out a pilot program to establish and maintain a junior reserve officers training program in cooperation with the Dade County Public School System of Dade County, Florida, as part of the Maritime and Science Technology Academy established by that school system (hereinafter in this section referred to as the "Academy").

(b) PROGRAM REQUIREMENTS.—A pilot program carried out by the Secretary under this section—

(1) shall be known as the "Claude Pepper, Junior Reserve Officers Training Program"; and

(2) shall provide to students at the Academy—

(A) instruction in subject areas relating to operations of the Coast Guard; and

(B) training in skills which are useful and appropriate for a career in the Coast Guard.

(c) PROVISION OF ADDITIONAL SUPPORT.—To carry out a pilot program under this section, the Secretary may provide to the Academy—

(1) assistance in course development, instruction, and other support activities;

(2) commissioned, warrant, and petty officers of the Coast Guard to serve as administrators and instructors; and

(3) necessary and appropriate course materials, equipment, and uniforms.

(d) EMPLOYMENT OF RETIRED COAST GUARD PERSONNEL.—

(1) IN GENERAL.—Subject to paragraph (2) of this subsection, the Secretary may authorize the Academy to employ as administrators and instructors for the pilot program retired Coast Guard and Coast Guard Reserve commissioned, warrant, and petty officers who request that employment and who are approved by the Secretary and the Academy.

(2) AUTHORIZED PAY.—(A) Retired members employed under paragraph (1) of this subsection are entitled to receive their retired or retainer pay and an additional amount of not more than the difference between—

(i) the amount the individual would be paid as pay and allowance if they were considered to have been ordered to active duty during that period of employment; and

(ii) the amount of retired pay the individual is entitled to receive during that period.

(B) The Secretary shall pay to the Academy an amount equal to one half of the amount described in subparagraph (A) of this paragraph, from funds appropriated for that purpose.

(C) Notwithstanding any other law, while employed under this subsection, an individual is not considered to be on active duty or inactive duty training.

SEC. 205. LIMITATIONS ON CONTRACTING OF COAST GUARD SERVICES.

Notwithstanding any other provision of law, an officer or employee of the United States may not enter into a contract for procurement of performance of any function being performed by Coast Guard personnel as of January 1, 1989, before—

(1) a study has been performed by the Secretary of Transportation under the Office of Management and Budget Circular A-76 with respect to that procurement;

(2) the Secretary of Transportation has performed a study, in addition to the study required by paragraph (1) of this subsection, to determine the impact of that procurement on the multimission capabilities of the Coast Guard; and

(3) copies of the studies required by paragraphs (1) and (2) of this subsection are submitted to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 206. LOCAL HIRE.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by adding at the end the following new section:

"§ 666. Local hire

"(a) Notwithstanding any other law, each contract awarded by the Coast Guard for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment (as determined by the Secretary of Labor) shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. The Secretary of Transportation may waive the requirements of this subsection in the interest of national security or economic efficiency.

"(b) LOCAL RESIDENT DEFINED.—As used in this section, 'local resident' means a resident of, or an individual who commutes daily to, a State described in subsection (a).".

(b) CLERICAL AMENDMENT.—The analysis for chapter 17 of title 14, United States Code, is amended by adding at the end the following:

"666 Local hire.".

SEC. 207. REPORT ON CONTROL OF EXOTIC SPECIES.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall submit to the Congress a report on the options available to control the infestation of the waters of the United States, including the Great Lakes, by exotic species from the ballast water of vessels operating on the waters of the United States. In preparing this report, the Secretary shall consult with the Secretary of the Interior, the Secretary of Commerce, the Great Lakes Fishery Commission, and other appropriate parties.

(b) EXOTIC SPECIES DEFINED.—In this section "exotic species" means nonnative fish, mollusks, crustaceans, zooplankton, and other aquatic organisms, other than sea lampreys.

SEC. 208. LAW ENFORCEMENT SURVEILLANCE.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Transportation shall—

(1) submit a report to the Congress that identifies—

(A) the needs for outfitting existing Coast Guard aircraft with surveillance and reconnaissance equipment to assist in the conduct of law enforcement activities; and

(B) the cost of that equipment; and

(2) in cooperation with the Secretary of Defense, establish and submit to the Congress a plan for closing existing gaps in radar coverage along the coastline of the United States on the Gulf of Mexico and the coastline of the southeastern United States on the Atlantic Ocean.

SEC. 209. NUMBERING OF VESSELS.

Section 2101 of title 46, United States Code, is amended by inserting after paragraph (17) the following:

"(17a) 'numbered vessel' means a vessel for which a number has been issued under chapter 123 of this title.".

SEC. 210. CONSTRUCTIVE SEIZURE PROCEDURES.

Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation and the Secretary of the Treasury, in order to avoid the devastating economic effects on innocent owners of seizures of their vessels, shall develop a procedure for constructive seizure of vessels of the United States engaged in commercial service as defined in section 2101 of title 46, United States Code, that are suspected of being used for committing violations of law involving personal use quantities of controlled substances.

SEC. 211. USER FEES REPORT CLARIFICATION.

Section 664(c) of title 14, United States Code, is amended as follows:

(1) in paragraph (1) by striking "collected stating—" and substituting "collected under any law stating—"; and

(2) in paragraph (2) by inserting "under any law" after "collected" the first time it appears.

SEC. 212. BOARD FOR THE CORRECTION OF MILITARY RECORDS.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Transportation shall—

(1) amend part 52 of title 33, Code of Federal Regulations, governing the proceedings of the board established by the Secretary under section 1552 of title 10, United States Code, to ensure that a complete application for correction of military records is processed expeditiously and that final action on the application is taken within 10 months of its receipt; and

(2) appoint and maintain a permanent staff, and a panel of civilian officers or employees to serve as members of the board, which are adequate to ensure compliance with paragraph (1) of this subsection.

SEC. 213. CONSIDERATION OF MARITIME ADMINISTRATION VESSELS.

Before acquiring a vessel for use by the Coast Guard, the Secretary of Transportation or the Commandant of the Coast Guard, as appropriate, shall review the inventory of vessels acquired by the Secretary or the Secretary of Commerce as the result of a default under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271-1279c), to determine whether any of those vessels are suitable for use by the Coast Guard.

SEC. 214. REQUIREMENT TO REPORT SEXUAL OFFENSES.

(a) IN GENERAL.—Chapter 101 of title 46. United States Code is amended by:

(1) deleting section 10104; and

(2) adding the following new section:

§ 10104. Requirement to report sexual offenses

"(a) A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code.

"(b) A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of not more than $5,000.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 101 of title 46, United States Code, is amended by striking, "10104. Regulations." and inserting "10104. Requirement to report sexual offenses.".

SEC. 215. LIMITATION ON VESSEL TRANSFER FROM GULFPORT, MISSISSIPPI.

The Secretary of Transportation shall not transfer the Coast Guard cutter ACUSHNET from Gulfport, Mississippi, until at least two Coast Guard patrol boats are based permanently in Gulfport.

SEC. 216. CONSIDERATION OF DEPARTMENT OF DEFENSE HOUSING FOR COAST GUARD.

Notwithstanding any other provision of law, the Coast Guard is deemed to be an instrumentality within the Department of Defense for the purposes of section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687).

SEC. 217. PROHIBITION AGAINST REDUCTION IN SERVICES.

The Secretary of Transportation may not reduce expenditures in fiscal year 1990 or fiscal year 1991 for Coast Guard services other than drug law enforcement to increase drug law enforcement unless the Secretary first notifies the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives 30 days prior to any reduction, except that nothing in this section shall be construed to reduce the Coast Guard's ability to respond to interdiction opportunities that may arise in the course of normal activities.

SEC. 218. COST OF SECURITY AT KENNEBUNKPORT, MAINE.

Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall—

(1) submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives that identifies the costs incurred by the Coast Guard and any reallocation of assets or personnel that would have been used for search and rescue or law enforcement operations, as a result of providing security at Kennebunkport, Maine; and

(2) actively seek reimbursement of those costs from the Secretary of Treasury.

SEC. 219. VESSEL TRAFFIC SERVICE RESTORATION.

The Secretary of the department in which the Coast Guard is operating shall reestablish a vessel traffic service on the Lower Mississippi River in New Orleans, and shall continue operation of the New York Harbor area and other existing vessel traffic service systems.

SEC. 220. SEARCH AND RESCUE SATELLITE SYSTEM.

(a)(1) The Secretary of Transportation shall take such action as may be necessary to upgrade the ground segment of the Search and Rescue Satellite Aided Tracking system (hereafter in this section referred to as "SARSAT").

(2) In carrying out this section, the Secretary of Transportation shall establish not less than 5 SARSAT ground stations for the purpose of providing adequate coverage of the United States area of search and rescue for which it has responsibility under the program known as "COSPAS-SARSAT". In establishing such stations, the Secretary, after consultation with the satellite search and rescue offices of the Coast Guard, the National Oceanic and Atmospheric Administration, the Air Force, the National Aeronautics and Space Administration, and the SARSAT Program Steering Group, shall locate the stations in the most optimum sites to assure complete coverage of the search and rescue areas for which the United States is responsible.

(b) The Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration, shall administer the SARSAT ground stations. Such administration shall be carried out in consultation with the Secretary of Transportation and the Secretary of Defense.

(c) For the purpose of carrying out the provisions of subsection (a) of this section, there is authorized to be appropriated $9,300,000. Moneys appropriated pursuant to this subsection shall remain available until expended.

SEC. 221. BOSTON LIGHT STATION

(a) The Congress finds and declares the following:

(1) The Boston Light Station (hereafter in this section referred to as the "Boston Light") or Little Brewster Island, Boston Harbor, Massachusetts, is the Nation's oldest lighthouse station.

(2) The Boston Light is a National Historic Landmark and Little Brewster Island is listed in the National Register of Historic Places. As such, they should be administered and maintained in a way that preserves for public enjoyment and appreciation their special historic character.

(3) Continued manned operation of the Boston Light will preserve its special historic character. Any proposal to automate or modernize Boston Light must be consistent with the provisions of sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470f and 470h-2).

(4) Efforts should be undertaken that will facilitate public access to, and enhance the public enjoyment and appreciation of, the Boston Light and Little Brewster Island.

(b) The Boston Light shall be operated on a permanently manned basis. The amounts authorized to be appropriated under sections 101 and 102 include funds—

(1) for maintenance of the keeper's house and of the Boston Lighthouse; and

(2) to enhance public access to the Boston Light and Little Brewster Island, including making pier improvements on the island.

(c) The Secretary of Transportation shall, in consultation with the Secretary of Interior, the Massachusetts Department of Environmental Management, the Massachusetts Historical Preservation Officer, appropriate local government entities, and private preservation groups, develop a strategy to implement policies regarding the ownership, maintenance, staffing, and use of the Boston Light. The strategy shall propose ways—

(1) to provide improved public access to the Boston Light and Little Brewster Island; and

(2) to ensure that the special historic character of the Boston Light will be preserved, with the continuing presence of Coast Guard personnel, so as to provide the best possible public enjoyment and appreciation.

SEC. 222. COAST GUARD ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM.

(a) ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM.—Title 14, United States Code, is amended by adding the following new chapter 19 after chapter 17:

"CHAPTER 19—ENVIRONMENTAL COMPLIANCE AND RESTORATION PROGRAM

"Sec.

"690. Definitions.
"691. Environmental Compliance and Restoration Program.
"692. Environmental Compliance and Restoration Account.
"693. Annual Report to Congress.

"690. Definitions

"For the purposes of this chapter

"(1) 'environment', 'facility', 'person', 'release', 'removal', 'remedial', and 'response' have the same meaning they have in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601);

"(2) 'hazardous substance' has the same meaning it has in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), except that it also includes the meaning given 'oil' in section 311 of the Federal Water Pollution Control act (33 U.S.C. 1321); and

"(3) 'pollutant' has the same meaning it has in section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362).

"691. Environmental Compliance and Restoration Program

"(a) The Secretary shall carry out a program of environmental compliance and restoration at current and former Coast Guard facilities.

"(b) Program goals include:

"(1) Identifying, investigating, and cleaning up contamination from hazardous substances and pollutants.

"(2) Correcting other environmental damage that poses an imminent and substantial danger to the public health or welfare or to the environment.

"(3) Demolishing and removing unsafe buildings and structures, including buildings and structures at former Coast Guard facilities.

"(4) Preventing contamination from hazardous substances and pollutants at current Coast Guard facilities.

"(c)(1) The Secretary shall respond to releases of hazardous substances and pollutants—

"(A) at each Coast Guard facility the United States owns, leases, or otherwise possesses;

"(B) at each Coast Guard facility the United States owned, leased, or otherwise possessed when the actions leading to contamination from hazardous substances or pollutants occurred; and

"(C) on each vessel the Coast Guard owns or operates.

"(2) Paragraph (1) of this subsection does not apply to a removal or remedial action when a potentially responsible person responds under section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9622).

"(3) The Secretary shall pay a fee or charge imposed by a State authority for permit services for disposing of hazardous substances or pollutants from Coast Guard facilities to the same extent that nongovernmental entities are required to pay for permit services. This paragraph does not apply to a payment that is the responsibil-

ity of a lessee, contractor, or other private person.

"(d) The Secretary may agree with another Federal agency for that agency to assist in carrying out the Secretary's responsibilities under this chapter. The Secretary may enter into contracts, cooperative agreements, and grant agreements with State and local governments to assist in carrying out the Secretary's responsibilities under this chapter. Services that may be obtained under this subsection include identifying, investigating, and cleaning up off-site contamination that may have resulted from the release of a hazardous substance or pollutant at a Coast Guard facility.

"(e) Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9619) applies to response action contractors that carry out response actions under this chapter. The Coast Guard shall indemnify response action contractors to the extent that adequate insurance is not generally available at a fair price at the time the contractor enters into the contract to cover the contractor's reasonable, potential, long-term liability.

"692. Environmental Compliance and Restoration Account

"(a) There is established for the Coast Guard an account known as the Coast Guard Environmental Compliance and Restoration Account. All sums appropriated to carry out the Coast Guards's environmental compliance and restoration functions under this chapter or another law shall be credited or transferred to the account and remain available until expended.

"(b) Funds may be obligated or expended from the account to carry out the Coast Guard's environmental compliance and restoration functions under this chapter or another law.

"(c) In proposing the budget for any fiscal year under section 1105 of title 31, United States Code, the President shall set forth separately the amount requested for the Coast Guard's environmental compliance and restoration activities under this chapter or another law.

"(d) Amounts recovered under seciton 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607) for the Secretary"s response actions at current and former Coast Guard facilities shall be credited to the account.

"693. Annual Report to Congress

"(a) The Secretary shall submit to Congress a report each fiscal year describing the progress the Secretary has made during the preceding fiscal year in implementing this chapter.

"(b) Each report shall include:

"(1) A statement for each facility or vessel for which the Secretary is responsible under section 691(c) of this title where a release of a hazardous substance or pollutant has been identified.

"(2) The status of response actions contemplated or undertaken at each facility.

"(3) The specific cost estimates and budgetary proposals for response actions contemplated or undertaken at each facility.

"(4) The total amount required to clean up contamination at all identified facilities.".

(b) TITLE ANALYSIS.—The title analysis at the beginning of part I of title 14, United States Code, is amended by adding after item 17:

"19. Coast Guard Environmental Compliance and Restoration Program ..... 690".

"(c) PRIOR AUTHORIZATION REQUIREMENT.—Section 662 of title 14, United States Code, is amended by adding the following new paragraph:

"(5) For environmental compliance and restoration at Coast Guard facilities.".

SEC. 223 BLOCK ISLAND SOUTHEAST LIGHTHOUSE PRESERVATION.

"(a) CONVEYANCE.—(1) The Secretary of the department in which the Coast Guard is operating may convey, by any appropriate means, all right, title and interest of the United States in the Block Island Southeast Lighthouse to the Block Island Southeast Lighthouse Foundation (hereafter referred to as the "Foundation") of the town of New Shoreham, Rhode Island.

"(2) The purpose of this conveyance is to establish and maintain a nonprofit center for the public at the Block Island Southeast Lighthouse for interpretation and preservation of the culture of the United States Coast Guard and Block Island's maritime history.

"(3) The Secretary may not transfer the Block Island Southeast Lighthouse until the Foundation or the State of Rhode Island, acting on its behalf, requests from the Secretary that the transfer occur.

"(b) TERMS AND CONDITIONS.—The conveyance shall be made—

"(1) without payment of consideration;

"(2) subject to the condition that if the property, or any part of the property, ceases to be used for the purpose of this section, title to all such property shall be deemed to have immediately reverted to the United States; and

(3) subject to such other terms and conditions as the Secretary of the department in which the Coast Guard is operating may impose.

(c) REQUIREMENTS.—The conveyance shall include provisions necessary to assure that—

(1) the light, antennae, sound signal, and associated equipment which are active aids to navigation shall continue to be operated and maintained by the United States;

(2) the Foundation will not interfere or allow interference in any manner with navigational aids without written permission of the United States;

(3) there is reserved to the United States the right to relocate, replace, or add any navigational aids, or make any changes on any portion of the property as may be necessary for navigation purposes;

(4) the United States shall have the right, at any time, to enter the property without notice to maintain navigational aids; and

(5) the United States shall have an easement for access to the property to maintain navigational aids.

(d) PROPERTY DESCRIPTION.—The Secretary of the department in which the Coast Guard is operating shall identify, describe, and determine the property to be conveyed under this section.

(e) DEFINITION.—For purposes of this section, "Block Island Southeast Lighthouse" means the lighthouse and attached keeper's dwelling, several ancillary buildings, a fog signal, and land (but not less than nine acres) necessary to carry out the purposes of this section located in the town of New Shoreham, Rhode Island.

(f) STRATEGY.—The Secretary of Transportation shall within six months of the date of enactment, in consultation with the Secretary of the Interior, appropriate state, local, and other governmental entities, and private preservation groups, develop a strategy regarding the ownership, maintenance, operation, and use of the Block Island Southeast Lighthouse that will preserve the special historic character of the Lighthouse and ensure public access. Any proposal must be consistent with the provisions of the National Historic Preservation Act (16 U.S.C. 470 et seq.), other applicable law, and efforts to interpret and preserve the material culture of the United States Coast Guard and Block Island's maritime history.

SEC. 301. DOCUMENTATION OF VESSELS.

(a) TECHNICAL AMENDMENTS.—Chapter 121 of title 46, United States Code, is amended as follows:

(1) Section 12101(b) is amended—

(A) in paragraph (1), by striking "registry as" and inserting "registry endorsement as";

(B) in paragraph (2), by striking "coastwise license" and inserting "coastwise endorsement";

(C) in paragraph (3), by striking "Great Lakes license" and inserting "Great Lakes endorsement";

(D) by repealing paragraph (4); and

(E) by redesignating paragraph (5) as paragraph (4).

(2) Section 12102 is amended—

(A) in the matter preceding paragraph (1) of subsection (a)—

(i) by inserting "that is" before "not", and

(ii) by inserting "or is not titled in a State" after "foreign country";

(B) by striking "(b)(1)" and inserting "(c)(1)";

(C) in subsection (c)(1) (as redesignated by subparagraph (B)), by striking "fishery license" and inserting "fishery endorsement"; and

(D) by repealing subsection (c).

(3) Section 12103 is amended—

(A) in subsection (a), by striking "of one of the types" and inserting "endorsed with one or more of the endorsements"; and

(B) in subsection (b)—

(i) by striking "(b)" and inserting "(b)(1)"; and

"(ii) by adding at the end the following new paragraph:

"(2) The Secretary shall require each person applying to document a vessel to provide—

"(A) the person's social security number; or

"(B) for a person other than an individual—

"(i) the person's taxpayer identification number; or

"(ii) if the person does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the person and who signs the application for documentation for the vessel.".

(4) Section 12104(2) is amended by striking "vessel license," and inserting "endorsement,".

(5) Section 12105 is amended—

(A) by amending subsection (a) to read as follows:

"(a) A certificate of documentation may be endorsed with a registry endorsement.";

(B) in subsection (b), by inserting "endorsement" after "registry";

(C) by repealing subsections (c) and (d); and

(D) in the catchline, by inserting "endorsements" and "Registry".

(6) Section 12106 is amended—

(A) in subsection (a), by striking "A coastwise license or, as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued" and inserting "A certificate of documentation may be endorsed with a coastwise endorsement";

(B) in subsection (b), by striking "coastwise license or an appropriately endorsed registry" and inserting "certificate of documentation with a coastwise endorsement";

(C) in subsection (c), by striking "license" and inserting "endorsement";

(D) by repealing subsection (d); and

(E) in the catchline, by striking "licenses and registry" and inserting "endorsements".

(7) Section 12107 is amended—

(A) in subsection (a), by striking "A Great Lakes license, or as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued" and inserting "A certificate of documentation may be endorsed with a Great Lakes endorsement";

(B) by amending subsection (b) to read as follows:

"(b) Subject to the laws of the United States regulating trade with Canada, only a vessel for which a certificate of documentation with a Great Lakes endorsement is issued may be employed on the Great Lakes and their tributary and connecting waters in trade with Canada.";

(C) by repealing subsection (c); and

(D) in the catchline, by striking "licenses and registry" and inserting "endorsements".

(8) Section 12108 is amended—

(A) in subsection (a), by striking "A fishery license or, as provided in section 12105(c) of this title, an appropriately endorsed registry, may be issued" and inserting "A certificate of documentation may be endorsed with a fishery endorsement";

(B) in subsection (a)(1), by striking "and";

(C) in subsection (b), by striking "fishery license or an appropriately endorsed registry" and inserting "certificate of documentation with a fishery endorsement";

(D) in subsection (c), by striking "license" and inserting "endorsement";

(E) by repealing subsection (d); and

(F) in the catchline, by striking "licenses and registry" and inserting "endorsements".

(9) Section 12109 is amended—

(A) by striking subsection (a) and inserting the following:

"(a) A certificate of documentation with a recreational endorsement may be issued for a vessel that is eligible for documentation.";

(g) in subsection (b)—

(i) by striking "licensed recreational vessel" and inserting "documented vessel with a recreational endorsement"; and

(ii) by striking "Such" and inserting "A recreational";

(C) by adding at the end the following new subsection:

(c) A documented vessel operating under a recreational endorsement may be operated only for pleasure."; and

(D) in the catchline, by striking "vessel licenses" and inserting "endorsements".

(10) Section 12110 is amended—

(A) by amending subsection (a) to read as follows:

"(a) A vessel may not be employed in a trade except a trade covered by the endorsement issued for that vessel."; and

(B) in subsection (c)—

(i) by striking "certificate of documentation" and inserting "endorsement",

(ii) by striking "recreational vessel" and inserting "vessel with a recreational endorsement", and

(iii) by striking "except" and inserting

(11) Section 12112 is amended—

(A) in subsection (a), by striking "an appropriate document" and inserting "a certificate of documentation with an appropriate endorsement"; and

(B) in subsection (b), by striking "an appropriate" and inserting "a".

(12) The table of sections at the beginning of chapter 121 is amended by striking the entries for sections 12105 through 12109 and inserting the following:

"12105. Registry endorsements.
"12106. Coastwise endorsements.
"12107. Great Lakes endorsements.
"12108. Fishery endorsements.
"12109. Recreational endorsements.".

(b) DOCUMENTATION SURRENDER AND INVALIDATION.—Section 12111(c)(3) of title 46, United States Code, does not apply to a mortgage that—

(1) was filed or recorded before January 1, 1989; and

(2) was not a preferred mortgage (as that term is defined in section 31301 (6) of that title) on that date.

SEC. 302. VESSEL IDENTIFICATION SYSTEMS.

Chapter 125 of title 46, United States Code, is amended as follows:

(1) Section 12051(b)(2) is amended to read as follows:

"(2) identifying the owner of the vessel, including—

"(A) the owner's social security number; or

"(B) for an owner other than an individual—

"(i) the owner's taxpayer identification number, or

"(ii) if the owner does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the owner and who signed the application for documentation or numbering for the vessel;".

(2) Section 12503(a)(2) is amended to read as follows:

"(2) identifies the owner of the vessel, including by—

"(A) the owner's social security number; or

"(B) for an owner other than an individual—

"(i) the owner's taxpayer identification number; or

"(ii) if the owner does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the owner and who signed the application for documentation or numbering for the vessel;".

(3) Section 12504 is amended by striking "Secretary, the Secretary of Transportation—" and inserting "Secretary of Transportation, the Secretary—".

SEC. 303. COMMERCIAL INSTRUMENTS AND MARITIME LIENS.

Chapter 313 of title 46, United States Code, is amended as follows:

(1) Section 31306 is amended—

(A) in subsection (a), by striking "When" and inserting "Except as provided by the Secretary of Transportation, when" and by striking "of Transportation"; and

(B) in subsection (c), by striking "An" and inserting "Except as provided by the Secretary, an".

(2) Section 31321(c) is amended—

(A) by striking "that has not yet been documented," and inserting "for which an application for documentation is filed,"; and

(B) by striking "party whose name and address is stated on" and inserting "interested party to";

(3) Section 31322 is amended—

(A) by amending subsection (a)(2) to read as follows:

"(2) Paragraph (1)(D) of this subsection does not apply to—

"(A) a documented vessel that has a fisheries endorsement or a recreational endorsement, or both endorsements; or

"(B) a vessel for which an application for documentation with a fisheries endorsement or a recreational endorsement, or both endorsements, has been filed.";

(B) in subsection (d)(1), by striking "representing financing of a vessel under State law that is made under applicable State law" and inserting "granting a security interest perfected under State law"; and

(C) in subsections (e)(1) and (2) by striking "the validity of the preferred mortgage" each place that phrase appears and inserting "the status of the preferred mortgage".

(4) Section 31325 is amended by amending subsections (b) and (c) to read as follows:

"(b) On default of any term of the preferred mortgage, the mortgagee may—

"(1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, or a foreign vessel; and

"(2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—

"(A) a civil action in personam in admiralty against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

"(B) a civil action against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness of any deficiency in full payment of that indebtedness; and

"(C) The district courts have original jurisdiction of a civil action brought under subsection (b)(1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section."

(5) Section 31341(a)(3) is amended by striking "mangement" and inserting "management".

(6) Section 31342 is amended—

(A) by striking "A person providing necessaries to a vessel (except a public vessel) on the order of a person listed in section 31341 of this title" and inserting "(a) Except as provided in subsection (b) of this section, a person providing necessaries to a vessel on the order of the owner"; and

(B) by adding the following new subsection (b) at the end:

"(b) This section does not apply to a public vessel.".

SEC. 304. AMENDMENTS TO THE SHIPPING ACT, 1916.

(a) EXEMPTION FROM REQUIREMENT OF APPROVAL BY SECRETARY.—Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), is amended in subsection (c)(1) by inserting "or the last documentation of which was under the laws of the United States" before the semicolon at the end;

(2) in subsection (c)(2) by inserting ", or a vessel the last documentation of which was under the laws of the United States," after "a documented vessel";

(3) in subsection (d) (1) and (2), by striking "or contol in" and inserting "in or control of"; and

(4) adding the following new paragraph:

"(4) A person that charters, sells, transfers, or mortgages a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Govern-

ment for a civil penalty of not more than $10,000 for each violation.".

(b) REMISSION OF FORFEITURE.—Section 38 of the Shipping Act, 1916 (46 App. U.S.C. 836) is amended by striking "duties." and inserting "duties, except that forfeitures may be remitted without seizure of the vessel.".

SEC. 305. CIVIL PENALTY PROCEDURES.

Chapter 3 of title 49, United States Code, is amended—

(1) by adding at the end of subchapter II the followig new section:

"§ 336. Civil penalty procedures

"(a) After notice and an opportunity for a hearing, a person found by the Secretary of Transportation to have violated a provision of law that the Secretary carries out through the Maritime Administrator or the Commandant of the Coast Guard or a regulation prescribed under that law by the Secretary for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

"(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

"(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

"(d) The Secretary may refund or remit a civil penalty collected under this section if—

"(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

"(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed."; and

(2) in the table of sections, by adding at the end the following:

"336. Civil penalty procedures.".

SEC. 306. EXEMPTION OF CERTAIN FISHING INDUSTRY FROM INSPECTION REQUIREMENTS.

Section 403(a) of Public Law 98-364 is amended by striking "1990" in the first sentence and inserting "1991".

SEC. 307. LAWS REPEALED.

The following laws are repealed:

(1) Section 4172 of the Revised Statutes of the United States (46 App. U.S.C. 41).

(2) Section 8 of Public Law 96-376 (46 App. U.S.C. 382b-1).

(3) Section 9(a) of the Shipping Act, 1916 (46 App. U.S.C. 806(a)).

(4) Sections 15 and 34 of the Merchant Marine Act, 1920.

(5) Section 701 of the Merchant Marine Act, 1928 (46 App. U.S.C. 891s).

(6) Section 6 of the Act of June 16, 1933 (46 App. U.S.C. 891y).

(7) Sections 201(b), 201(g), 510(h), 612, 804(c)(2), 805(e), 806(a), 807, 1106, 1107, and 1109 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1111(b), 1111(g), 1160(h), 1162, 1222(c)(2), 1223(e), 1224, 1225, 1276, 1279, and 1279b).

(8) Section 402 of the Act of October 8, 1940 (46 App. U.S.C. 1155a).

(9) Section 101 of the Act of June 25, 1958 (46 App. U.S.C. 1242-1).

(10) Sections 3(b) and 9 of the Act of December 13, 1977 (46 App. U.S.C. 1502(b) and 1508).

(11) Sections 20(a), 21, and 22 of the Shipping Act of 1984 (46 App. U.S.C. 1720).

(12) Sections 3(b)-(f), 4, 5(a), (b), and (d), 6, 7, 8(a)-(c), 10, 11(b), 12(b)-(a), and 13 of the Act of March 8, 1946 (50 App. U.S.C. 1736(b)-(f), 1737, 1738(a), (b), and (d), 1739, 1740, 1741(a)-(c), 1743, 1744(b), 1745(b)-(f), and 1746).

(13) Section 2 of the Act of June 29, 1949 (50 App. U.S.C. 1738a).

(14) The Act of September 21, 1959 (50 App. U.S.C. 1745a).

(15) Sections 1-5 of the Act of March 21, 1945 (50 App. U.S.C. 1721-1725).

(16) The Act of August 20, 1954 (50 App. U.S.C. 2391-2394).

(17) Section 4377 of the Revised Statutes of the United States (46 App. U.S.C. 325).

SEC. 308. COASTWISE DOCUMENTATION AND OPERATION.

(a) DOCUMENTATION.—Notwithstanding section 12106 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation endorsed with a coastwise endorsement for each of the following vessels:

(1) Camelot (United States official number 536408)

(2) Crili (United States official number 656976)

(3) Da Warrior (Hawaiian Registration number HA 161 CP)

(4) Harbor Exec (United States official number 563895)

(5) Jamal (United States official number 611165)

(6) Karlissa (United States official number 950453)

(7) Lazy Jack (Maine Registration number ME9395G)

(8) Magnum Force (United States official number 2879768)

(9) Terangi No. 2 (United States official number 572048)

(10) 3/4 time (United States official number 907962)

(11) Winddancer (United States official number 955031)

(b) OPERATION.—Notwithstanding section 27 of the Marchant Marine Act, 1920 (46 App. U.S.C. 883), the submersible vessel PC-1501 may engage in the coastwise trade.

SEC. 309. EFFECTIVE DATES

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act take effect on the date of the enactment of this Act.

(b) EXCEPTIONS.—

(1) The amendments made by section 1(a)(2) take effect January 1, 1989, except that the amendment made by subparagraph (A) of such section does not apply to a vessel titled in a State until one year after the Secretary of Transportation prescribes guidelines for a titling systems under section 13106(b)(8) of title 46, United States Code.

(2) The amendments made by section 1(a)(3) take effect on the 180th day after the date of the enactment of this Act.

310 SUBSTITUTION OF VESSEL. Section 4(c)(2) of 101 Stat. 1780 is amended by adding after "1987" the following ", execpt that an alernative vessel of no greater tonnage than the vessel in the application may be substituted, if that substitution is made by the original applicant".

## QUARTERLY FINANCIAL REPORT PROGRAM

### GLENN (AND OTHERS) AMENDMENT NO. 1196

Mr. KOHL (for Mr. GLENN, for himself, Mr. PRYOR, and Mr. STEVENS) proposed an amendment to the bill (H.R. 3629) extending the authority of the Secretary of Commerce to conduct the quarterly financial report program under section 91 of title 13, United States Code, through September 30, 1993, as follows:

At the end of the bill insert the following new sections:

SEC. 2. PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (c), any lump-sum credit payable to an employee or Member pursuant to the election of an alternative form of annuity by such employee or Member under section 8343a or section 8420a of title 5, United States Code, shall be paid in accordance with the schedule under subsection (b) (instead of the schedule which would otherwise apply), if the commencement date of the annuity payable to such employee or Member occurs after December 2, 1989, and before October 1, 1990.

(b) SCHEDULE OF PAYMENTS.—The schedule of payment of any lump-sum credit subject to this section is as follows:

(1) 50 percent of the lump-sum credit shall be payable on the date on which, but for the enactment of this section, the full amount of the lump-sum credit would otherwise be payable.

(2) the remainder of the lump-sum credit shall be payable on the date which occurs 12 months after the date described in paragraph (1).

An amount payable in accordance with paragraph (2) shall be payable with interest, computed using the rate under section 8334(e)(3) of title 5, United States Code.

(c) EXCEPTIONS.—The Office of Personnel Management shall prescribe regulations to provide that, unless the individual involved indicates otherwise by written notice to the Office (submitted at such time and in such manner as the regulations may require), this section shall not apply—

(1) in the case of any individual who is separated from Government service involuntarily, other than for cause on charges of misconduct or delinquency; and

(2) in the case of any individual as to whom the application of this section would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

(d) ANNUITY BENEFITS NOT AFFECTED.—Nothing in this section shall affect the commencement date, the amount, or any other aspect of any annunity benefits payable under section 8343a or section 8420a of title 5, United States Code.

(e) DEFINITIONS.—For purposes of this section, the terms "lump-sum credit", "employee", and "Member" each has the meaning given such term by section 8331 or section 8401 of title 5, United States Code, as appropriate.

SEC. 3. AMENDMENTS RELATING TO LIMITATIONS ON POSTAL SERVICE'S BORROWING AUTHORITY.

(a) IN GENERAL.—Section 2005(a) of title 39, United States Code, is amended—

(1) by striking "(a)" and inserting "(a)(1)";

(2) by striking "$10,000,000,000" and inserting "the maximum amount then allowable under paragraph (2) of this subsection.";

(3) by striking "$1,500,000,000" and inserting "$2,000,000,000";

(4) by striking "$500,000,000" and inserting "$1,000,000,000"; and

(5) by adding at the end the following:

"(2) The maximum amount allowable under this paragraph is—

"(A) $10,000,000,000 for fiscal year 1990;

"(B) $12,500,000,000 for fiscal year 1991; and

"(C) $15,000,000,000 for fiscal year 1992 and each fiscal year thereafter.".

(b) EFFECTIVE DATE.—(1) Subject to the provisions of paragraph (2), the amendments made by subsection (a) shall take effect on October 1, 1990.

(2) Notwithstanding any other provision of this section, the amendments made by subsection (a) shall not take effect, if no law to provide for reconciliation pursuant to section 5 of the concurrent resolution on the budget for the fiscal year 1990 is enacted before October 1, 1990.

## CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT AMENDMENTS

### CONRAD (AND OTHERS) AMENDMENT NO. 1197

Mr. KOHL (for Mr. CONRAD, for himself, Mrs. KASSEBAUM, and Mr. WALLOP) proposed an amendment to the bill (S. 1894) to amend the Consolidated Farm and Rural Development Act to require borrowers to act in good faith with respect to restructuring loans made or guaranteed under such Act, and for other purposes, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. ELIGIBILITY CRITERIA.

Section 353(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001(b)) is amended—

(1) by inserting "(1) IN GENERAL.—" before "To be" and indenting the margin of such paragraph two ems;

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D) and indenting the margin of each such subparagraph (as so redesignated) two ems;

(3) in paragraph (1)(B) (as so redesignated) by inserting "(in accordance with paragraph (2))" after "good faith";

(4) in paragraph (1)(C) (as so redesignated) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii) and indenting the margins of such clauses (as so redesignated) two ems; and

(5) by adding at the end thereof the following new paragraph:

"(2) Failure to act in good faith.—

"(A) IN GENERAL.—For purposes of paragraph (1)(B), the Secretary shall not make a determination that a borrower has acted with a lack of good faith if such borrower has sold security mortgaged to the Secretary and used the proceeds from such sale to pay essential household and farm operating expenses, as defined by the Secretary under section 335(f), without receiving the authorization of the Secretary to sell such security in cases in which the Secretary has not released essential household and farm operating expenses.

"(B) LEGAL CLAIM.—

"(i) IN GENERAL.—In order to make a determination that a borrower has not acted in good faith as required in paragraph (1)(B), the Secretary shall obtain a written opinion from the Office of General Counsel of the Department of Agriculture stating that the borrower has not acted in good faith, as described in such paragraph.

"(ii) SUBMISSION OF LEGAL OPINION TO BORROWER.—Not later than 15 days after the date on which the Secretary obtains a written opinion under clause (i), the Secretary shall submit a copy of such opinion to the borrower.".

SEC. 2. GOOD FAITH REQUIREMENT FOR RESTRUCTURING CERTAIN LOANS.

(a) IN GENERAL.—Section 353(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001(c)) is amended—

(1) in paragraph (6)—

(A) by inserting after "recovery value" the first place such appears the following: ", if the delinquency is due to circumstances beyond the control of the borrower, if the borrower acted in good faith with the Secretary in connection with the loan, as defined in regulations and policies issued by the Secretary, and if the borrower meets the eligibility criteria established under paragraph (2) of subsection (b),"; and

(B) by striking out "45" and inserting in lieu thereof "90". and

(2) by adding at the end thereof the following new paragraph:

"(7) Application and data collection.—

"(A) APPLICATION.—The requirement that the delinquency is due to circumstances beyond the control of the borrower and that a buyer act in good faith to be eligible for the termination of loan obligations under paragraph (6) shall not apply to offers of net recovery buyout made by the Secretary under this section prior to the date of enactment of this paragraph, except that such requirement shall apply, prior to such date, to borrowers determined (prior to the date of enactment of this paragraph) by the Secretary not to have acted in good faith with respect to the loan.

"(B) DATA COLLECTION.—The Secretary shall collect and make available in a timely fashion, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, the following information—

"(i) the number of borrowers who have applied for debt restructuring who are alleged, or who have been shown, to have acted in bad faith;

"(ii) the number of applications for net recovery buyout that are being held due to bad faith allegations;

"(iii) the number of subsequent appeals or reversals by the national appeals division of bad faith determinations that have occurred because of the implementation of subsection (b)(1)(B) and (b)(2);

"(iv) the amount of time required for the processing of net recovery buyout requests;

"(v) the number of borrowers who have applied for debt restructuring after the date of issuance of the first notices of the availability of loan servicing programs that—

"(I) have not been offered restructuring options by the Secretary; and

"(II) have not received a notice of intent to accelerate or to continue acceleration, a notice of borrowers' rights, and forms for the making of responses to the notice of the intent of the Farmers Home Administration to accelerate or continue acceleration; and

"(vi) the number of bad faith allegations that have been submitted by the Secretary to the State director for agricultural loan programs.".

(b) TERMINATION.—The amendments made by this section shall terminate on August 31, 1990.

SEC. 3. REGULATIONS.

The Secretary of Agriculture shall promulgate regulations to implement the amendments made by this Act. Such regulations may be issued without prior public comment. If such regulations are issued without prior comment the Secretary must solicit public comment with such regulations and consider such comments in any related subsequent issuance of regulations.

## REPEAL OF MEDICARE CATASTROPHIC COVERAGE

### MITCHELL (AND OTHERS) AMENDMENT NO. 1198

Mr. MITCHELL (for himself, Mr. DOLE, Mr. BENTSEN, Mr. PACKWOOD, and Mr. MCCAIN) proposed an amendment to the bill (H.R. 3607) to repeal Medicare provisions in the Medicare Catastrophic Coverage Act of 1988, as follows:

H.R. 3607

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This title may be cited as the "Medicare Catastrophic Coverage Reform Amendments of 1989".

TITLE I—PROVISIONS RELATING TO PART A OF MEDICARE PROGRAM AND SUPPLEMENTAL MEDICARE PREMIUM

SEC. 101. REVISION OF EXTENDED CARE SERVICES BENEFITS.

(a) 100 DAYS DURING EACH SPELL OF SNF CARE.—Section 1812 of the Social Security Act (42 U.S.C. 1395d) is amended—

(1) by amending paragraph (2) of subsection (a) to read as follows:

"(2)(A) post-hospital extended care services for up to 100 days during any spell of snf care, and (B) to the extent provided in subsection (f), extended care services that are not post-hospital extended care services;";

(2) by amending paragraph (1) of subsection (b) to read as follows:

"(1) post-hospital extended care services furnished to the individual during a spell of snf care after such services have been furnished to the individual for 100 days during such spell, or";

(3) in subsection (e), by inserting "post-hospital" before "extended care"; and

(4) by adding at the end the following new subsection:

"(f)(1) The Secretary shall provide for coverage, under clause (B) of subsection (a)(2) of this section, of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the

inclusion of such services will not result in any increase in the total of payments made under this title and will not alter the acute care nature of the benefit described in subsection (a)(2).

"(2) The Secretary may provide—

"(A) for such limitations on the scope and extent of such services described in subsection (a)(2)(B), and on the categories of individuals who may be eligible to receive such services, and

"(B) notwithstanding sections 1814, 1861(v), and 1886 for such restrictions and alternatives on the amount and methods of payment for services described in such subsection.

as may be necessary to carry out paragraph (1).".

(b) COINSURANCE.—Paragraph (3) of section 1813(a) of such Act (42 U.S.C. 1395e(a)) is amended to read as follows:

"(3) The amount payable for post-hospital extended care services furnished an individual during any spell of snf care shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for the first period of hospitalization in a year for each day (before the 101st day) on which the individual is furnished such services after such services have been furnished to the individual for 20 days during such spell.".

(c) CONFORMING AMENDMENTS AND RESTORATION OF LAW.—

(1) SPELL OF SNF CARE DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by inserting before subsection (b) the following new subsection:

"Spell of snf Care

"(a) The term 'spell of snf care' with respect to any individual means a period of consecutive days—

"(1) beginning with the first day (not included in a previous spell of snf care) (A) on which such individual is furnished extended care services, and (B) which occurs in a month for which the individual is entitled to benefits under part A, and

"(2) ending with the close of the first period of 60 consecutive days thereafter on each of which the individual is not an inpatient of a skilled nursing facility.".

(2) CONFORMING AMENDMENTS.—(A) Except as provided in subparagraph (B)—

(i) the amendments made by subsection (d) of section 104 of the Medicare Catastrophic Coverage Act of 1988 are repealed, and

(ii) the provisions of the Social Security Act amended by such subsection shall be restored and revived as if such amendments had not been made.

(B) Subparagraph (A) shall not apply to the amendments made by paragraphs (2)(C), (2)(D), (3), (4)(A), (4)(B)(iii), (4)(B)(iv), and (7) of section 104(d) of the Medicare Catastrophic Coverage Act of 1988.

(3) ADDITIONAL CONFORMING AMENDMENT.—Title XVIII of the Social Security Act is amended by striking "spell of illness" and "spells of illness" each place either appears and inserting "spell of snf care" and "spells of snf care", respectively.

(d) EFFECTIVE DATE AND TRANSITION.—

(1) EFFECTIVE DATE.—Except as provided in this subsection, the amendments made by this section shall apply to extended care services furnished in a spell of snf care (as defined in paragraph (4)) beginning on or after January 1, 1990.

(2) TRANSITION PROVISIONS FOR POST-HOSPITAL EXTENDED CARE SERVICES.—In applying subsections (a)(2)(A) and (b)(1) of section 1812 and section 1813(a)(3) of the Social Security Act, as restored by this section, with respect to extended care services provided on or after January 1, 1990—

(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of snf care; and

(B) the limitation of coverage of extended care services to post-hospital extended care services shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30-consecutive days in which the individual is not provided inpatient hospital services or extended care services.

(3) SPELL OF SNF CARE DEFINED.—In this subsection, the term "spell of snf care" has the meaning given such term in section 1861(a) of the Social Security Act, as amended by subsection (c)(1) of this section. Days before January 1, 1990, are included in the determination of spells of snf care.

(e) STUDY.—The Comptroller General shall study the reasons for the unexpected increase in cost estimates of the extended care services benefit under title XVIII of the Social Security Act. Not later than February 1, 1990, the Comptroller General shall submit a report to Congress describing the results of the study.

SEC. 102. REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.

(a) IN GENERAL.—Section 111 of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Internal Revenue Code of 1986 and the Social Security Act amended by such section shall be restored and revived as if such section had not been enacted.

(b) EFFECTIVE DATE.—The repeal of section 111 of the Medicare Catastrophic Coverage Act of 1988 shall apply to taxable years beginning after December 31, 1988.

SEC. 103. IMPOSITION OF SECOND INPATIENT HOSPITAL DEDUCTIBLE.

(a) IN GENERAL.—Section 1813(a)(1)(A) of the Social Security Act (42 U.S.C. 1395e(a)(1)(A)) is amended—

(1) by striking "first period" and inserting "first and second periods",

(2) by striking "shall be reduced" and inserting "shall each be reduced", and

(3) by adding at the end thereof the following new sentence: "For purposes of this section, a period of hospitalization shall be considered a second period of hospitalization if such period begins more than 60 days after the end of the first period of hospitalization for the calendar year.".

(b) AMOUNT OF DEDUCTIBLES.—Section 1813(b)(1) of the Social Security Act (42 U.S.C. 1395e(b)(1)) is amended by striking the first sentence and inserting the following new sentences: "The inpatient hospital deductible for the first period of hospitalization for 1990 shall be $592. In the case of a second period of hospitalization beginning in 1990 and any subsequent year, and for no other purposes, the inpatient hospital deductible shall be 93 percent of the amount of the inpatient hospital deductible for the first period of hospitalization for that year.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to periods of hospitalization beginning after December 31, 1989.

SEC. 104. REVISION IN FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.

(a) CHANGE IN FUNDING SOURCE.—Section 1817A(a) of the Social Security Act (42 U.S.C. 1395t-1a(a)) is amended—

(1) in paragraph (1), by striking "and amounts appropriated under paragraph (2)" and inserting "and amounts transferred under section 1841(a) and section 204(e) of the Medicare Catastrophic Coverage Amendments of 1987",

(2) by striking paragraph (2), and

(3) by redesignating paragraph (3) as paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1990.

## TITLE II—PROVISIONS RELATING TO PART B OF THE MEDICARE PROGRAM

SEC. 201. REPEAL OF LIMITATION ON MEDICARE PART B COST-SHARING.

Subsections (a)(4), (b), and (c) of section 201 of the Medicare Catastrophic Coverage Act of 1988 are repealed and the provisions of the Social Security Act amended by such subsections shall be restored and revived as if such subsections had not been enacted.

SEC. 202. LIMITATION ON COVERED OUTPATIENT DRUGS AND DELAY IN DRUG-RELATED BENEFITS.

(a) LIMITATION OF DRUG BENEFITS TO IMMUNO-SUPPRESSANTS AND HOME IV DRUGS.—Section 1861(t) of the Social Security Act (42 U.S.C. 1395x(t)) is amended—

(1) in paragraph (3)(B), by striking "in 1990" and inserting "in years after 1990", and

(2) in paragraph (4)(B), by striking "1990" and inserting "1991".

(b) DELAY IN DRUG-RELATED BENEFITS.—

(1) COVERED OUTPATIENT DRUGS.—Section 202(m)(1) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(2) HOME INTRAVENOUS DRUG THERAPY SERVICES.—Section 203(g) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(c) CONFORMING AND MISCELLANEOUS AMENDMENTS TO PAYMENT PROVISIONS.—

(1) CATASTROPHIC DRUG DEDUCTIBLE AMOUNT.—Section 1834(c)(1)(C) of the Social Security Act, as added by section 202(b)(4) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(A) by amending clause (i) to read as follows:

"(i) IN GENERAL.—The catastrophic drug deductible specified in this subparagraph for—

"(I) 1990 is $550, and

"(II) any succeeding year, is the catastrophic drug deductible for the previous year increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) applicable to physicians' services furnished in that succeeding year."; and

(B) in clause (iii), by striking "1992" and inserting "1990".

(2) COINSURANCE PERCENT.—Section 1834(c)(2) of such Act is amended—

(A) in subparagraph (B), by striking "100 percent" and all that follows and inserting "80 percent", and

(B) by striking paragraphs (C) and (D).

(3) MISCELLANEOUS DELAYS.—Section 1834(c) of such Act is further amended—

(A) in paragraph (3)(A), by striking "1992" and inserting "1993", and

(B) in paragraphs (3)(C)(i) and (3)(C)(ii)(I), by striking "1990" and inserting "1991".

(4) ADMINISTRATIVE DISPENSING ALLOWANCE.—Clause (i) of section 1834(c)(4)(A) of such Act is amended to read as follows:

"(i) in 1990 or 1991, the administrative allowance under this paragraph is $4.50; or".

(5) REPEAL OF SPECIAL TREATMENT OF PREPAID ORGANIZATIONS AND PHYSICIAN GUIDE.—Section 1834(c) of such Act is further amended by striking paragraphs (6) or (7).

(6) CHANGE IN REPORTING REQUIREMENTS.—Section 1834(c)(8) of such Act is amended—

(A) in subparagraph (B), by striking "in May and November of 1989 and 1990 and in May of each succeeding year" and inserting "in May of each year (beginning with 1990)", and

(B) by striking subparagraphs (C) and (F).

(7) DELETION OF EXTRANEOUS DEFINITION.—Section 1834(c)(9) of such act is further amended by striking subparagraph (D).

(d) DELETION OF PROVISIONS RELATING TO PARTICIPATING PHARMACIES, SPECIAL ADMINISTRATIVE PROVISIONS, AND MODIFICATION OF HMO/CMP CONTRACTS.—Subsections (c), (e), and (f) of section 202 of the Medicare Catastrophic Coverage Act of 1988 is repealed and the provisions of the Social Security Act amended by such subsections shall be restored and revived as if such subsections had not been enacted.

(e) REPEAL OF REQUIREMENT FOR REESTIMATION OF COSTS, ADDITIONAL STUDIES, AND DEVELOPMENT OF STANDARD CLAIMS FORM.—Paragraph (2) of subsection (i), subsection (k), and subsection (l) of section 202 of the Medicare Catastrophic Coverage Act of 1988 are repealed.

(f) REPEAL OF PRESCRIPTION DRUG PAYMENT REVIEW COMMISSION.—

(1) IN GENERAL.—Section 1847 of the Social Security Act (42 U.S.C. 1395w-3), as added by section 202(j) of the Medicare Catastrophic Coverage Act of 1988, is repealed.

(2) TRANSITION.—The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act, but the Prescription Drug Payment review Commission is authorized to continue its activities for 30 days after such date to conclude its business.

(g) CONFORMING DELAYS TO PROVISIONS RELATING TO HOME INTRAVENOUS DRUG THERAPY SERVICES.—

(1) Section 1834(d)(2) of the Social Security Act, as added by section 203(c)(1)(F) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1990" and inserting "1991".

(2) Section 203(c)(2) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1991" and inserting "1992".

(3) Section 1835(a)(2)(G) of the Social Security Act, as inserted by section 203(d)(1)(C) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1993" and inserting "1994".

(4) Section 1154(a)(16) of the Social Security Act, as added by section 203(d)(2) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "1993" and inserting "1994".

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 203. CHANGES IN COVERAGE OF IN-HOME CARE.

(a) IN GENERAL.—Section 205(f) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "1990" and inserting "1991".

(b) CONFORMING AMENDMENTS.—Section 1861(ll) of the Social Security Act (42 U.S.C. 1395x(ll)), as added by section 205(b) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) by amending subparagraph (A) of paragraph (4) to read as follows:

"(A) has incurred out-of-pocket part B cost sharing (as defined in paragraph (5)(A)) in an amount equal to part B catastrophic limit (as determined under paragraph (5)(B)) for the year, or"; and

(2) by adding at the end the following new paragraph:

"(5) For purposes of this subsection:

"(A) The term 'out-of-pocket part B cost sharing' means, with respect to an individual covered under part B, the amounts of expenses that the individual incurs that are attributable to—

"(i) the deductions established under section 1833(b), and

"(ii) the difference between the payment amount provided under part B and the payment amount that would be provided under part B if '100 percent' and '0 percent' were substituted for '80 percent' and '20 percent', respectively, each place either appears in sections 1833(a), 1833(i)(2), 1834(e)(1)(C), 1835(b)(2), 1866(a)(2)(A), 1881(b)(2), and 1881(b)(3).

"(B)(i) The part B catastrophic limit for 1990 is $1,780. The part B catastrophic limit for any succeeding year shall be such an amount (rounded to the nearest multiple of $1) as the Secretary estimates, for that succeeding year, will reflect a level of out-of-pocket part B expenses that only 5.5 percent of the average number of individuals enrolled under part B (other than individuals enrolled with an eligible organization under section 1876 or an organization described in section 1833(a)(1)(A)) will equal or exceed in that succeeding year.

"(ii) Not later than September 1 of each year (beginning with 1990), the Secretary shall promulgate the part B catastrophic limit under this subparagraph for the succeeding year.".

(c) REPORT ON ALTERNATIVE ELIGIBILITY STANDARDS.—The Secretary of Health and Human Services shall submit to Congress by June 1, 1990, a report describing alternatives to the standards for determining the eligibility of individuals for in-home care services contained in section 1861(ll) of the Social Security Act (as amended by subsection (b)).

SEC. 204. CHANGES IN PART B MONTHLY PREMIUM FINANCING.

(a) CONSOLIDATION OF CATASTROPHIC MONTHLY PREMIUM.—

(a) IN GENERAL.—Section 1839(g)(1) of the Social Security Act (42 U.S.C. 1395r(g)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking "paragraphs (4) and (5)" and inserting "paragraphs (3) and (4)",

(ii) by striking "the sum of the catastrophic coverage monthly premium and the prescription drug monthly premium" and inserting "the catastrophic coverage monthly premium",

(iii) by striking "paragraphs (2) and (3)" and inserting "paragraph (2)",

(iv) in the column in the table relating to the catastrophic coverage monthly premium, by striking "$4.90", "$5.46", "$3.90", "$4.80", "$5.60", and "$6.00", respectively, and

(v) by striking the column in the table relating to the prescription drug monthly premium; and

(B) by striking subparagraphs (B) through (D) and inserting the following:

"(B) The Secretary shall determine during September of 1990, 1991, and 1992, the monthly actuarial rate for months in the succeeding year which, if substituted for the catastrophic coverage monthly premium specified in subparagraph (A) for such months, would assure (taking into account potential contingencies) a positive balance in the Medicare Catastrophic Coverage Account at the end of the succeeding year.

"(C) If the monthly actuarial rate determined under subparagraph (B) for months in a year is less than the catastrophic coverage monthly premium otherwise specified in the table in subparagraph (A), such monthly actuarial rate shall be substituted for the catastrophic coverage monthly premium under subparagraph (A) for months in the year.".

(2) MONTHLY PREMIUM AFTER 1993.—Paragraph (2) of section 1839(g) of such Act is amended to read as follows:

"(2)(A) The Secretary shall determine during September of each year (beginning with 1993) the monthly actuarial rate for months in the succeeding year which, if substituted for the catastrophic coverage monthly premium specified in subparagraph (A) for such months, would assure a balance in the Medicare Catastrophic Coverage Account at the end of the succeeding year equal to 20 percent of the estimated total debits to the Account during the year.

"(B) In the case of months in a year after 1993, the catastrophic coverage monthly premium is the monthly actuarial rate determined under subparagraph (A) for months in the year.".

(3) ELIMINATION OF SEPARATE PRESCRIPTION DRUG MONTHLY PREMIUM.—Section 1839(g) of such Act is further amended by striking paragraph (3).

(4) TREATMENT OF RESIDENTS OF PUERTO RICO AND TERRITORIES.—Section 1839(g)(4) of such Act is amended to read as follows:

"(3)(A) In the case of an individual who is a resident of Puerto Rico or who is a resident of another U.S. commonwealth or territory during a month, instead of the premium increase provided under paragraph (1), subject to subsection (b), the monthly premium for each individual enrolled under this part (otherwise determined without regard to this subsection) shall be increased—

"(i) for months in 1989 by $1.30 for residents of Puerto Rico and $2.30 for residents of another U.S. commonwealth or territory,

"(ii) for months in 1990 by $1.40 for residents of Puerto Rico and $2.30 for residents of another U.S. commonwealth or territory, and

"(iii) for months in a succeeding year by a fraction (determined under subparagraph (B)) of the premium increase determined under paragraph (1) for residents of Puerto Rico and for residents of the other U.S. commonwealths and territories, respectively.

"(B) The Secretary shall from time to time establish, separately for Puerto Rico and for the other U.S. commonwealths and territories, a fraction that reflects the relative per capita outlays which are accounted for under the Medicare Catastrophic Coverage Account for residents in such respective areas compared to such per capita outlays for indivuduals who are resident in the 50 States and the District of Columbia.".

(5) PART B ONLY INDIVIDUALS.—Section 1839(g)(5) of such Act is amended to read as follows:

"(4)(A) In the case of a part B only individual during a month, instead of any premium increase otherwise provided under paragraph (1), subject to subsection (b), the

monthly premium for each individual enrolled under this part (otherwise determined without regard to this subsection) shall be increased for months (beginning with January 1991) by a fraction (determined under subparagraph (B)) of the premium increase determined under paragraph (1).

"(B) The Secretary shall from time to time establish a fraction that reflect the relative per capita outlays which are accounted for under the Medicare Catastrophic Coverage Account for part B only individuals compared to such per capita outlays for individuals entitled to benefits under both part A and this part.".

(6) CONFORMING AMENDMENTS.—Section 1839 of such Act is further amended—

(A) is subsection (b), by striking "(g)(6)" and inserting "(g)(5)",

(B) is subsection (g)(6), by striking "(6)(A)" and inserting "(5)" and by striking subparagraph (B),

(C) is subsection (g)(7), by striking "(7)(A)" The Secretary and the Secretary of Treasury" and inserting "(5)(A) The Secretary", and

(D) in subsection (g)(8)—

(i) by striking subparagraphs "(A), (B), and (C), and

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (A), (B), and (C), respectively.

(b) PAYMENT OF PART OF PREMIUM TO COVER PART A OUTLAYS.—Section 1841(a) of the Social Security Act (42 U.S.C. 1395t(a)), as amended through the operation of subsection (c), is amended by adding at the end the following: "There is appropriated from the Trust Fund to the Federal Hospital Insurance Catastrophic Coverage Reserve Fund, from such amounts in the Trust Fund as are attributable to premium increases imposed under section 1839(g) for months after December 1989, amounts equal to the amount by which (1) the amount of outlays made, from the Federal Hospital Insurance Trust Fund, that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988, as amended (other than outlays for extended care services attributable to such amendments, except with respect to outlays attributable to section 101(d)(2) of the Medicare Catastrophic Reform Amendments of 1989), exceeds (2) amounts transferred under section 204(e) of the Medicare Catastrophic Coverage Reform Amendments of 1989 and the reduction in outlays from the Federal Hospital Insurance Trust Fund. The amounts appropriated by the preceeding sentence shall be transferred from time to time (not less frequently monthly), such amounts to be based on estimates by the Secretary of premiums and outlays described in such sentence, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than appropriate amounts.".

(c) REPEAL OF FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND.—Section 212 (other than paragraphs (3) and (4) of subsection (c)) of the Medicare Catastrophic Coverage act of 1988 is repealed and the provisions of the Social Security Act amended by such section (other than such paragraphs) shall be restored and revived as if such amendments had not been made.

(d) AMENDMENTS TO MEDICARE CATASTROPHIC COVERAGE ACCOUNT.—Section 1841B of the Social Security Act (42 U.S.C. 1395t-2) is amended—

(1) in subsection (a), by striking ", and section 59B of the Internal Revenue Code of 1986," and by striking "and for purposes of section 59B of the Internal Revenue Code of 1986";

(2) by amending paragraph (1) of subsection (b) to read as follows:

"(1) The account shall be—

"(A) credited for receipts of the Federal Supplementary Medical Insurance Trust Fund attributable to premiums under section 1839(g) for months beginning with January 1990,

"(B) debited for outlays under this title that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988 (as amended) and to the provisions of section 101(d)(2) of the Medicare Catastrophic Coverage Reform Amendments of 1989 with respect to services furnished on or after January 1, 1990, and;

"(C) credited for reductions in outlays under this title that are attributable to section 103 of the Medicare Catastrophic Coverage Reform Amendments of 1989.";

(3) in subsection (b)(3), by striking "and the Secretary of the Treasury"; and

(4) in subsection (c)(2), by striking "and under section 59B of the Internal Revenue Code of 1986".

(e) 1-TIME TRANSFER OF NET ADDITIONAL PREMIUMS IN 1989.—There shall be transferred, as of January 1, 1990, from the Federal Supplementary Medical Insurance Trust Fund to the Federal Hospital Insurance Catastrophic Coverage Reserve Fund an amount equal to—

(1) the amount of the premiums collected pursuant to section 1839(g) of the Social Security Act for months in 1989, minus

(2) the amount of administrative expenses incurred under part B of title XVIII of such Act before January 1, 1990, relating to implementation of the amendments made by the Medicare Catastrophic Coverage Act of 1988 and by this Act, plus

(3) the amount of interest accrued to the Federal Supplementary Medical Insurance Trust Fund attributable to balance described in paragraphs (1) and (2).

(f) CONFORMING AMENDMENTS.—

(1) section 1844(a) of the Social Security Act (42 U.S.C. 1395w(a)) is amended by striking "or section 59B of the Internal Revenue Code of 1986".

(2) Section 1876(a)(5) of such Act (42 U.S.C. 1395ff(a)(5)) is amended by striking ", the Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund" and inserting "and the Federal Supplementary Medical Insurance Trust Fund".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 205. CONTINUATION OF RISK-SHARING CONTRACTS WITH HEALTH MAINTENANCE ORGANIZATIONS.

Notwithstanding any other provision of this title, the amendments made by this title (other than repeal of Section 1833(c)(5) and 1834(c)(6) of the Social Security Act) shall not apply to risk-sharing contracts, for contract year 1990—

(1) with eligible organizations under section 1876 of the Social Security Act, or

(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967, or under section 222(a) of the Social Security Amendments of 1972.".

SEC. 206. CLARIFICATION OF TRANSITION FOR PPS-EXEMPT HOSPITALS.

Effective as if included in the Medicare Catastrophic Coverage Act of 1988, section 104(c)(2) of such Act is amended by striking the period at the end and inserting the following: ", without regard to whether any of such beneficiaries exhausted medicare inpatient hospital benefits before January, 1989.".

TITLE III—MISCELLANEOUS

SEC. 301. TRANSITION IN MEDIGAP REGULATIONS.

(a) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 221(d) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(1) in the third sentence of subsection (a) and in subsection (b)(1), by striking "subsection (k)(3)" and inserting "subsections (k)(3), (k)(4), (m), and (n)";

(2) in subsection (k)—

(A) in paragraph (1)(A), by inserting "except as provided in subsection (m)," before "subsection (g)(2)(A)", and

(B) in paragraph (3), by striking "subsection (l)" and inserting "subsections (l), (m), and (n)"; and

(3) by adding at the end the following new subsections:

"(m)(1)(A) If, within the 90-day period beginning on the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection and subsection (n) referred to as the 'Association') revises the amended NAIC Model Regulations (referred to in subsection (k)(1)(A) and adopted on September 20, 1988) to reflect the changes in law made by the Medicare Catastrophic Coverage Reform Amendments of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the amended NAIC Model Regulation (referred to in subsection (k)(1)(A)) as revised by the Association in accordance with this paragraph (in this subsection and subsection (n) referred to as the 'revised NAIC Model Regulation').

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

"(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) referred to as 'revised Federal model standards') for medicare supplemental policies to reflect the changes in law made by the Medicare Catastrophic Coverage Reform Amendments of 1989, subsection (g)(2)(A) shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

"(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised Federal model standards or 1 year after the date the Secretary first promulgates such standards.

"(3) Notwithstanding any other provision of this section (except as provided in subsection (n))—

"(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a),

"(B) no certification made pursuant to subsection (a) shall remain in effect, and

"(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A),

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (2)(B) or (2)(B) (as the case may be).

"(n)(1) Until the date specified in paragraph (4), in the case of a qualifying medicare supplemental policy described in paragraph (3) issued in a State—

"(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the transition provision described in paragraph (2), or

"(B) on or after the transition deadline, the policy is deemed to be in compliance with the standards described in subsection (b)(1)(A) only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term 'transition deadline' means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Secretary promulgates revised Federal model standards (as the case may be).

"(2) The transition provision described in this paragraph is—

"(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this title made by the Medicare Catastrophic Coverage Reform Amendments of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

"(B) if the Association does not provide for a transition provision by the date described in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

"(3) In paragraph (1), the term 'qualifying medicare supplemental policy' means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before the date of the enactment of this subsection.

"(4)(A) The date specified in this paragraph for a policy issued in a State is—

"(i) the first date a State adopts, after the date of the enactment of this subsection, standards, equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

"(ii) the date specified in subparagraph (B),

whichever is earlier.

"(B) In the case of a State which the Secretary identifies, in consultation with the Association, as—

"(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A) (i), but

"(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

"(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) unless each individual who is entitled to benefits under this title and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

"(A) the changes in benefits under this title effected by the Medicare Catastrophic Coverage Reform Amendments of 1989, and

"(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

"(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before the date of the enactment of this subsection, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) unless the insurer—

"(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

"(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstitution of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

"(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of the date of the enactment of this subsection, if (as of January 1, 1990) the policy under which the individual was provided coverage provides for no waiting period with respect to treatment of a pre-existing condition.".

(b) SENSE OF CONGRESS.—It is the sense of Congress that States should respond, at the earliest practicable date after the date of enactment of this Act, to requests by insurers for review and approval of riders and premium adjustments for medicare supplemental policies in order to comply with the amendments made by subsection (a) and that all such premium adjustments be effective January 1, 1990.

SEC. 302. NOTICE OF CHANGES.

The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act of 1990, for a description of changes in benefits under title XVIII of such Act made by the amendments made by this title.

SEC. 303. MISCELLANEOUS AMENDMENTS AND TECHNICAL CORECTIONS.

(a) CORRECTIONS RELATING TO CATASTROPHIC DRUG BENEFIT.—

(1) DEFINITION OF COVERED OUTPATIENT DRUGS.—Section 1861(t)(3)(A) of the Social Security Act, as added by section 202(a)(2)(C) of the Medicare Catastrophic Coverage Act of 1988 (in this section referred to as "MCCA"), is amended—

(A) by redesignating clauses (iv) through (xiii) as clauses (vi), (vii), (viii), (ix), (x), (xii), (xiii), (xiv), (xvi), and (xviii), respectively;

(B) by inserting after clause (iii) the following:

"(iv) Diagnostic services under subsections (s)(2)(C) and (s)(3).

"(v) X-ray, radium, and radioactive isotope therapy under subsection (s)(4).";

(C) by inserting after clause (x), as so redesignated, the following:

"(xi) Parental nutrition nutrients under subsection (s)(8).";

(D) by inserting after clause (xvi), as so redesignated, the following:

"(xv) Partial hospitalization services (as defined in subsection (ff)).''; and

(E) by inserting after clause (xvi), as so redesignated, the following:

"(xvii) Qualified psychologist services (as defined in subsection (ii)).".

(2) COVERED HOME IV DRUGS.—Section 1861(t)(4)(A) of such Act (42 U.S.C. 1395x(t)(4)(A)) is amended by striking "dispensed" and inserting "furnished by a qualified home intravenous drug therapy provider".

(3) REFERENCES TO CATASTROPHIC DRUG DEDUCTIBLE AMOUNT.—Section 1834(c) of the Social Security Act, as added by section 202(b)(4) of MCCA, is amended—

(A) in paragraph (2)(A), by striking "under paragraph (1)(A) and except as provided in subparagraph (C)" and inserting "under paragraph (1)", and

(B) in paragraph (8)(E), by striking "paragraph (1)(A)" each place it appears and inserting "paragraph (1)".

(b) SCREENING MAMMOGRAPHY.—

(1) APPLICATION OF PARTICIPATING PHYSICIAN DIFFERENTIAL.—Section 1834(e)(4) of the Social Security Act, as added by section 204(b)(2) of MCCA, is amended by adding at the end the following new subparagraph:

"(D) APPLICATION OF PARTICIPATING PHYSICIAN DIFFERENTIAL.—In applying the limit under subparagraph (A) with respect to a nonparticipating physician, the limit applied shall be the applicable percent (as defined in the second sentence of section 1842(b)(4)(A)(iv)) of the limit otherwise established in that subparagraph.".

(2) FREQUENCY OF SCREENING.—Section 1834(e)(2)(A) of the Social Security Act, as added by section 204(b)(2) of MCCA, is amended—

(A) in clause (iii)(I), by striking "the 11 months of a previous screening mammography" and inserting "11 months following the month in which a previous screening mammography was performed",

(B) in clause (iii)(II), by striking "the 23 months of a previous screening mammography" and inserting "23 months following the month in which a previous screening mammography was performed",

(C) in clause (iv), by striking "11 months of a previous screening mammography" and inserting "11 months following the month in which a previous screening mammography was performed", and

(D) in clause (v), by striking "23 months of a previous screening mammography" and inserting "23 months following the month in which a previous screening mammography was performed".

(c) ROUNDING OF PART B PREMIUM.—Section 1839 of the Social Security Act, as amended by section 211(c)(1)(E) of MCCA, is amended—

(1) in the first sentence of subsection (b), by striking "subsections (f) and (g)(5)" and inserting "subsection (f)",

(2) in subsection (b), by inserting after the first sentence the following new sentence: "If the resulting monthly premium is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.", and

(3) in subsection (c), by striking "the foregoing provisions of this section" and inserting "subsection (a)(3) or (e)".

(d) MISCELLANEOUS.—

(1) Clause (iii) of section 1814(a)(7)(A) of the Social Security Act, as added by section 104(d)(2)(C)(iii) of MCCA, is amended by moving its alignment 2 ems to the left so its alignment is the same as that of clause (ii) of such section.

(2) Section 1842(p)(3)(B) of the Social Security Act, as added by section 202(g) of MCCA, is amended by striking "section 1842(j)(2)(A)" and inserting "subsection (j)(2)(A)".

(3) Section 221(g)(3) of MCCA is amended by striking "subsection (f)" and inserting "subsection (e)".

(4) Section 1842(h)(5)(B)(iv) of the Social Security Act, as added by section 223(b)(4) of MCCA, is amended by striking "paragraph (2)(A)" and inserting "paragraph (2)".

(e) MISCELLANEOUS CORRECTIONS RELATING TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987.—

(1) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1834(b)(4)(A) of the Social Security Act, as added by section 4049(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "insurance and deductibles under section 1835(a)(1)(I)" and inserting "coinsurance and deductibles under section 1833(a)(1)(J)".

(2) Section 1842(j)(1)(C)(vii) of the Social Security Act, as added by section 4085(i)(7)(C) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "accordingly" and inserting "according".

(3) Section 1886(g)(3)(A)(iv) of the Social Security Act, as added by section 4006(a)(2) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking "may) be" and inserting "may be)".

(f) OTHER CORRECTIONS.—

(1) Section 1866(a)(1)(F)(i)(III) of the Social Security Act is amended by striking "fiscal year))" and inserting "fiscal year)".

(2) Section 1875(c)(7) of the Social Security Act, as added by section 9316(a) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of this section".

(3) Section 1842(j)(2)(B) of the Social Security Act, as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987, is amended by striking "paragraphs" and inserting "subsections".

TITLE IV—MISCELLANEOUS SOCIAL SECURITY PROVISIONS

SEC. 401. EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTHCARE BENEFITS PROVIDED BY THE EMPLOYERS.

(a) OLD-AGE SURVIVORS, AND DISABILITY, AND HOSPITAL INSURANCE PROGRAMS.—For purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(b) RAILROAD RETIREMENT PROGRAM.—For purposes of chapter 22 of the Internal Revenue Code of 1986, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(c) FEDERAL UNEMPLOYMENT PROGRAMS.—

(1) FEDERAL UNEMPLOYMENT TAX.—For purposes of chapter 23 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(2) RAILROAD UNEMPLOYMENT CONTRIBUTIONS.—For purposes of the Railroad Unemployment Insurance Act, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(3) RAILROAD UNEMPLOYMENT REPAYMENT TAX.—For purposes of chapter 23A of the Internal Revenue Code of 1986, the term "rail wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(d) EFFECTIVE DATE.—This section shall apply with respect to refunds provided on or after January 1, 1989.

## IMPLEMENTATION OF COMPACT OF FREE ASSOCIATION BETWEEN THE UNITED STATES AND THE GOVERNMENT OF PALAU

### JOHNSTON AMENDMENT NO. 1199

Mr. MITCHELL (for Mr. JOHNSTON) proposed an amendment to the joint resolution (H.J. Res. 175) to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes, as follows:

At the end of section 111 insert the following new subsection:

"(c) Funding provided in Public Law 101-121 under the 'Trust Territory of the Pacific Islands' appropriation account shall remain available until expended."

Strike section 203 and renumber the following sections accordingly.

## NATIONAL RAILROAD PASSENGER CORPORATION AUTHORIZATION ACT

### ROBB AMENDMENT NO. 1200

Mr. MITCHELL (for Mr. ROBB) proposed an amendment to the bill (S. 462) to amend the Rail Passenger Service Act to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes, as follows:

On page 3, line 20, strike out all through line 9, on page 4 and insert in lieu thereof the following:

SEC. 4. Title VIII of the Rail Passenger Service Act (45 U.S.C. 642 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 810. INCENTIVES FOR PASSENGER SERVICE AGREEMENTS.

"(a) Notwithstanding any other provision of law, in instances where a publicly funded commuter transportation authority established under Virginia law contracts to indemnify the Corporation for liability for operations conducted by or on behalf of the publicly funded commuter transportation authority or to indemnify a railroad over whose tracks such operations are conducted, liability for all claims, whether for compensatory or punitive damages, arising from any accident or incident occurring in the District of Columbia against the Corporation or the publicly funded commuter transportation authority in connection with operations conducted by or on behalf of such publicly funded commuter transportation authority, or against a railroad over whose tracks such operations were conducted at the time of the accident or incident, shall not be in an amount greater than the limits of the liability coverage maintained by the publicly funded commuter transportation authority to indemnify the Corporation or the railroad. In no event shall the publicly funded commuter transportation authority maintain an aggregate limit of liability coverage less than $200,000,000.

"(b) This provision shall not be effective unless the Corporation or a railroad seeking coverage hereunder has entered into an operating agreement with a publicly funded commuter transportation authority established under Virginia law to provide access for revenue service to its property in connection with the operations of the publicly funded commuter transportation authority.".

### ADAMS (AND GORTON) AMENDMENT NO. 1201

Mr. MITCHELL (for Mr. ADAMS, for himself and Mr. GORTON) proposed an amendment to the bill S. 462, supra, as follows:

Strike all on page 2, line 21, through page 3, line 19, and insert in lieu thereof the following:

SEC. 3. (a) Section 11504(a) of title 49, United States Code, is amended to read as follows:

"(a) No part of the compensation paid by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to an employee who performs regularly assigned duties as such an employee on a railroad in more than one State shall be

subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.".

(b) Section 11504(b) of title 49, United States Code, is amended to read as follows:

"(b)(1) No part of the compensation paid by a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title or a motor private carrier to an employee who performs regularly assigned duties in 2 or more States as such an employee with respect to a motor vehicle shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

"(2) In this subsection 'employee' has the meaning given such term in section 204 of the Motor Carrier Safety Act of 1984 (49 App. U.S.C. 2503).".

(c) Section 11504(d) of title 49, United States Code, is amended—

(1) by striking "express, sleeping car,"; and

(2) by striking "with—" and all that follows and inserting in lieu thereof the following: "with the State and subdivision of residence of the employee.".

## HARKIN AMENDMENT NO. 1202

Mr. MITCHELL (for Mr. HARKIN) proposed an amendment to the bill S. 462, supra, as follows:

On page 4, after line 9, add the following:

SEC. 5. ROUTING FEASIBILITY STUDY.

The National Railroad Passenger Corporation shall study the feasibility of routing trains on the Chicago and North Western Railroad through northern Illinois and central Iowa while preserving the existing service on the Burlington Northern Railroad route in Illinois and Iowa. In conducting the study, specific analysis shall be given to inconvenience to passengers because of delays that occur because of the periodic late arrival of trains that interconnect with the California Zephyr and the resulting short-term and long-term consequences on passenger revenues and operating costs of those delays on revenues. A detailed report on the findings of such study shall be submitted to the Congress within 6 months after the date of the enactment of this Act.

## PRESSLER (AND HARKIN) AMENDMENT NO. 1203

Mr. DOLE (for Mr. PRESSLER, for himself, and Mr. HARKIN) proposed an amendment to the bill S. 462, supra, as follows:

At the appropriate place in the bill, add the following:

SEC. . Notwithstanding any other provision of this Act, or any other law, the Secretary of Transportation, in consultation with the Federal Railroad Administration, shall, within 120 days following the date of the enactment of this Act, study and survey the potential need and demand among Class II and Class III railroads for Federal guarantees of obligations as established by section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831). Such guarantee of obligations would include funding for rehabilitation and improvement of facilities or equipment, acquisition of new railroad facilities, or refinancing of existing debt. The Secretary shall report to Congress no later than 120 days following the date of the enactment of this Act the results of such study and survey. Such report shall include an analysis of the present need and demand for Federal guarantee of railroad debt, the amount of guarantee authority required to meet that need, and a projection of demand for such Federal guarantees through fiscal year 1995.

## PROHIBITING EXPORTS OF MILITARY EQUIPMENT SUPPORTING INTERNATIONAL TERRORISM

## RIEGLE (AND GARN) AMENDMENTS NOS. 1204 AND 1205

Mr. MITCHELL (for Mr. RIEGLE, for himself, and Mr. GARN) proposed two amendments (H.R. 91) to prohibit exports of military equipment to countries supporting international terrorism, and for other purposes, as follows:

AMENDMENT NO. 1204

On page 11, line 7, strike "The" and insert "With regard to munitions items controlled pursuant to this Act, the".

AMENDMENT NO. 1205

On page 19, line 17, delete all from "shall" through the second "and" on page 19, line 18.

## EVERGLADES NATIONAL PARK PROTECTION ACT

## GRAHAM AMENDMENTS NOS. 1206 AND 1207

Mr. MITCHELL (for Mr. GRAHAM) proposed two amendments to the bill (S. 724) to modify the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes, as follows:

AMENDMENT NO. 1206

On page 9, line 23, strike "The" and insert in lieu thereof, "Upon completion of a final report by the Chief of the Army Corps of Engineers, the".

AMENDMENT NO. 1207

On page 13, beginning on line 24, strike the proviso in its entirety and insert in lieu thereof, "Provided, That the provisions of subsection (d)(2) shall be applicable only to the extent that the Secretary, in consultation with the Secretary of the Army, determines that the park will not be adversely affected.".

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION

## HOLLINGS (AND GORE) AMENDMENT NO. 1208

Mr. MITCHELL (for Mr. HOLLINGS, for himself, and Mr. GORE) proposed an amendment to the bill (H.R. 3729) to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Aeronautics and Space Administration Multiyear Authorization Act of 1989".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the United States aeronautics and space program is supported by an overwhelming majority of the American people;

(2) the United States aeronautics and space program genuinely reflects our Nation's pioneer heritage and demonstrates our quest for leadership, economic growth, and human understanding;

(3) the United States space program is based on a solid record of achievement and continues to promote the objective of international cooperation in the exploration of the universe;

(4) the United States aeronautics and space program generates critical technology breakthroughs that benefit our economy and significantly improve our standard of living;

(5) the United States aeronautics and space program excites the imagination of every generation and can stimulate the youth of our Nation toward the pursuit of excellence in the fields of science and mathematics;

(6) the United States aeronautics and space program contributes to the Nation's technological competitive advantage;

(7) the United States aeronautics and space program requires a sustained commitment of financial and human resources;

(8) the United States space transportation system will depend upon a robust fleet of Space Shuttle Orbiters and expendable launch vehicle services;

(9) the United States space program will be advanced with the deployment of a permanently manned space station with research, observation, servicing, manufacturing, and staging capabilities;

(10) the United States aeronautics program has been a key factor in maintaining preeminence in aviation over many decades;

(11) the United States needs to maintain a strong program with respect to transatmospheric research and technology; and

(12) the National Aeronautics and Space Administration is primarily responsible for formulating and implementing the civil aeronautics and space program in the United States.

SEC. 3. POLICY.

It is declared to be national policy that the United States should—

(1) rededicate itself to the goal of leadership in critical areas of space science, space exploration, and space commercialization;

(2) increase its commitment of budgetary resources for the space program to reverse the dramatic decline in real spending for such program since the achievements of the Apollo program;

(3) forge a robust national space program that maintains a healthy balance between manned and unmanned space activities and recognizes the mutually reinforcing benefits of both;

(4) maintain an active fleet of space shuttle orbiters, including an adequate provision

of structural spare parts, and evolve the Orbiter design to improve safety and performance, and reduce operational costs;

(5) sustain a mixed fleet by utilizing commercial expendable launch vehicle services;

(6) continue with the development and deployment of a permanently manned space station;

(7) establish a dual capability for logistics and resupply of the space station utilizing the space shuttle and expendable launch vehicles, including commercial services if available;

(8) continue to seek opportunities for international cooperation in space;

(9) maintain an aggressive program of aeronautical research and technology development designed to enhance the United States preeminence in civil and military aviation and improve safety and efficiency of the United States air transportation system; and

(10) conduct a program of technology maturation and flight demonstration to prove the feasibility of an air-breathing, hypersonic aero-space plane capable of single-stage-to-orbit operation and hypersonic cruise in the atmosphere.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated to the National Aeronautics and Space Administration for fiscal year 1990, except as otherwise provided:

(1) For "research and development", for the following programs:

(A) United States International Space Station Freedom, $1,800,000,000 for fiscal year 1990, $2,700,000,000 for fiscal year 1991, and $3,085,000,000 for fiscal year 1992.

(B) Space transportation capability development, $651,500,000.

(C) Physics and astronomy, $914,500,000.

(D) Life sciences, $124,200,000.

(E) Planetary exploration, $366,900,000.

(F) Space applications, $631,500,000, of which $62,000,000 shall be available only for the Advanced Communications Technology Satellite, and of which $10,000,000 shall be available only for a program of Earth Probes beginning with the Total Ozone Mapping Spectrometer. Of the funds provided for space applications, not more than $2,000,000 shall be available for experimenter ground stations for the Advanced Communications Technology Satellite, but only if the experimenter receiving funds obtains at least an equal amount of funds from sources other than the National Aeronautics and Space Administration as is received under this subparagraph.

(G) Global change, $24,200,000 for the Earth Observing System of Mission to Planet Earth in order to complete phase B activities and to initiate phase C/D of the program in fiscal year 1991.

(H) Technology utilization, $22,700,000.

(I) Commercial use of space, $38,300,000.

(J) Aeronautical research and technology, and transatmospheric research and technology, $589,800,000.

(K) Space research and technology, $338,100,000.

(L) Space exploration, $20,000,000.

(M) Safety, reliability, maintainability, and quality assurance, $23,300,000.

(N) Tracking and data advanced systems, $19,900,000.

(O) University Space, Science and Technology Academic Program, $38,000,000 for fiscal year 1990, of which $5,000,000 shall be available only for the National Space Grant College and Fellowship Program.

(P) Comet Rendezvous Asteroid Flyby/Cassini mission, not to exceed $1,600,000,000, for development, launch, and 30 days of operations thereof, to remain available until expended, of which—

(i) $490,000,000 shall be available for obligation after October 1, 1989;

(ii) an additional $370,000,000 shall be available for obligation 30 days after the submission of a report summarizing the results of a preliminary design review to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

(iii) an additional $640,000,000 shall be available for obligation 30 days after the submission of a report summarizing the results of a critical design review to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate; and

(iv) an additional $100,000,000 shall be available for obligation 30 days after the submission of a report summarizing the results of a spacecraft integration and systems tests to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

A cost containment plan shall be submitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate by January 31, 1990, and updated on July 31, and January 31 of each succeeding year until such funds are expended.

(2) For "Space flight, control and data communications", for the following programs:

(A) Shuttle production and operational capability, $1,340,300,000, of which $35,000,000 are authorized only for tooling and equipment for the advanced solid rocket motor facility and of which $75,000,000 are authorized only for safety enhancements which may include:

(i) for the space shuttle main engine—

(I) improve design and installation of High Pressure Oxygen Turbopump bearings;

(II) installation of the 2-duct hot gas manifold;

(III) development of enlarged throat diameter;

(IV) development of single-crystal turbine blades; and

(V) general redesign to reduce welds and make welds totally inspectable;

(ii) for the solid rocket booster/solid rocket motor—

(I) implementation of the recommendations contained in the report of the National Research Council entitled "Collected Reports of the Panel on Technical Evaluation of NASA's Redesign of the Space Shuttle Solid Rocket Booster", issued in 1988;

(II) development of a locking feature for the nozzle leak check port plugs;

(III) development of one-piece case stiffener rings;

(IV) development of nonasbestos motor insulation;

(V) enhancement of lightning protection for case and nozzle; and

(VI) modification of aft skirt structure;

(iii) for external tank—

(I) upgrading of liquid hydrogen and oxygen temperature, pressure, and liquid level sensors;

(II) upgrading of thermal insulation on areas where dislodged insulation can affect the orbiter; and

(III) investigation of corrosion prevention methods to preclude structural problems; and

(iv) for the orbiter—

(I) modification of structure to eliminate negative margins;

(II) upgrading of the auxiliary power units;

(III) development of a redundant nose wheel steering system (including possible extension of the nose wheel strut);

(IV) elimination of Kapton electrical wire insulation; and

(V) upgrading of valves and regulators to preclude leakage of fuels and oxidizers.

By September 30, 1990, the Administrator shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a full report on the completion of the safety enhancements specified in this subparagraph.

(B) Shuttle operations, $2,544,900,000.

(C) Expendable launch vehicles and services, $169,500,000. By March 30, 1990, the Administrator shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that outlines the anticipated schedule for block changes in the Tracking Data Relay Satellite System and the launch of these spacecraft on expendable launch vehicles.

(D) Space and ground network, communications and data systems, $1,077,100,000.

(3) For "Construction of facilities", including land acquisition, as follows:

(A) Construction of addition for Space Systems Automated Integration and Assembly Facility, Johnson Space Center, $10,500,000.

(B) Construction of addition to Mission Control Center, Johnson Space Center, $17,800,000.

(C) Construction of addition to Simulator/Training Facility, Johnson Space Center, $3,800,000.

(D) Modifications for Expanded Solar Simulation, Johnson Space Center, $2,000,000.

(E) Modifications of Process Technology Facility for Space Station, Marshall Space Flight Center, $4,000,000.

(F) Replace Cooling Towers, Launch Complex 39 Utility Annex, Kennedy Space Center, $4,600,000.

(G) Replace Pad A Chillers and Controls, Launch Complex 39, Kennedy Space Center, $1,200,000.

(H) Replace Roofs, Launch Complex 39, Kennedy Space Center, $11,000,000.

(I) Replace Vehicle Assembly Building Air Handling Units, Kennedy Space Center, $1,800,000.

(J) Upgrade Orbiter Modification and Refurbishment Facility to Orbiter Processing Facility No. 3, Kennedy Space Center, $26,000,000.

(K) Modification of High Pressure Industrial Water System, Stennis Space Center, $2,000,000.

(L) Replacement of High Pressure Gas Storage Vessels, Stennis Space Center, $3,000,000.

(M) Construction of natural resource protection at various locations, $3,800,000.

(N) Refurbish bridges, Merritt Island, Kennedy Space Center, $4,500,000.

(O) Rehabilitation of Spacecraft Assembly and Encapsulation Facility II, Kennedy Space Center, $3,500,000.

(P) Rehabilitation of Central Heating/Cooling Plant, Johnson Space Center, $2,800,000.

(Q) Construction of Data Operations Facility, Goddard Space Flight Center, $12,000,000.

(R) Construction of Quality Assurance and Detector Development Laboratory, Goddard Space Flight Center, $7,500,000.

(S) Modernization of South Utility Systems, Jet Propulsion Laboratory, $5,400,000.

(T) Construction of 40 x 80 Drive Motor Roof, Ames Research Center, $1,000,000.

(U) Modifications to Thermo-Physics Facilities, Ames Research Center, $4,600,000.

(V) Modifications to 14 x 22 Subsonic Wind Tunnel, Langley Research Center, $1,000,000.

(W) Modifications to National Transonic Facility Productivity, Langley Research Center, $7,600,000.

(X) Modifications to 20-Foot Vertical Spin Tunnel, Langley Research Center, $1,900,000.

(Y) Rehabilitation of Central Air Systems, Lewis Research Center, $2,400,000.

(Z) Rehabilitation of Central Refrigeration Equipment, Lewis Research Center, $7,200,000.

(AA) Rehabilitation of 8 x 6 Supersonic and 9 x 15 Low-Speed Wind Tunnels, Lewis Research Center, $6,800,000.

(BB) Rehabilitation of Hypersonic Tunnel, Plum Brook, $4,100,000.

(CC) Repair and Modernization of the 12-Foot Pressure Wind Tunnel, Ames Research Center, $27,600,000.

(DD) Construction of Automation Sciences Research Facility, Ames Research Center, $10,600,000.

(EE) Construction of Supersonic/Hypersonic Low Disturbance Tunnel, Langley Research Center, $6,900,000.

(FF) Modifications for Seismic Safety, Goldstone, CA, Jet Propulsion Laboratory, $2,600,000.

(GG) Repair of facilities at various locations, not in excess of $750,000 per project, $28,000,000.

(HH) Rehabilitation and modification of facilities at various locations, not in excess of $750,000 per project, $36,000,000.

(II) Minor construction of new facilities and additions to existing facilities at various locations, not in excess of $500,000 per project, $10,000,000.

(JJ) Environmental compliance and restoration, $30,000,000.

(KK) Facility planning and design not otherwise provided for, $26,300,000.

(LL) Construction of the Advanced Solid Rocket Motor Facility, Yellow Creek, Mississippi, $90,000,000.

(MM) Construction of a Space Station Orbital Debris Radar Facility, $15,000,000.

(NN) Construction of a Wake Shield Facility, $2,500,000.

(OO) Construction of Observational Instrument Laboratory, Jet Propulsion Laboratory, $14,000,000.

Notwithstanding subparagraphs (A) through (OO), the total amount appropriated under such subparagraphs shall not exceed $449,300,000.

(4) For "Research and program management", $2,049,200,000.

(5) For "Inspector General", $8,795,000.

(6) Notwithstanding paragraph (9), appropriations authorized pursuant to this Act for "Research and development" and "Space flight, control and data communications" may be used (A) for any items of a capital nature (other than acquisition of land) which may be required at locations other than installations of the National Aeronautics and Space Administration for the performance of research and development contracts, and (B) for grants to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research, for purchase or construction of additional research facilities; and title to such facilities shall be vested in the United States unless the Administrator of the National Aeronautics and Space Administration (hereafter in this Act referred to as the "Administrator") determines that the national program of aeronautical and space activities will best be served by vesting title in any such grantee institution or organization. Each such grant shall be made under such conditions as the Administrator shall determine to be required to ensure that the United States will receive therefrom benefit adequate to justify the making of that grant. None of the funds appropriated for "Research and development" and "Space flight, control and data communications" pursuant to this Act may be used in accordance with this paragraph for the construction of any major facility, the estimated cost of which, including collateral equipment, exceeds $500,000, unless the Administrator or the Administrator's designee has notified the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, of the nature, location, and estimated cost of such facility.

(7) Except as otherwise provided, and to the extent provided in an appropriation Act, (A) any amount appropriated for "Research and Development", for "Space flight, control and data communications", or for "Construction of facilities" may remain available without fiscal year limitation, and (B) contracts may be entered into under "Research and program management" for maintenance and operation of facilities, and for other services to be provided, during the next fiscal year.

(8) Appropriations made pursuant to paragraph (4) may be used, but not to exceed $35,000 per fiscal year, for scientific consultations or extraordinary expenses upon the approval or authority of the Administrator, and his determination shall be final and conclusive upon the accounting officers of the Government.

(9)(A) Funds appropriated pursuant to paragraphs (1), (2), and (4) may be used for the construction of new facilities and additions to, repair, rehabilitation, or modification of existing facilities, if the cost of each such project, including collateral equipment, does not exceed $100,000.

(B) Funds appropriated pursuant to paragraphs (1) and (2) may be used for unforeseen programmatic facility project needs, if the cost of each such project, including collateral equipment, does not exceed $500,000.

(C) Funds appropriated pursuant to paragraph (4) may be used for repair, rehabilitation, or modification of facilities controlled by the General Services Administration, if the cost of each project, including collateral equipment, does not exceed $500,000.

SEC. 5. ADMINISTRATOR'S REPROGRAMMING AUTHORITY.

Any of the amounts authorized in section 4(3)—

(1) in the discretion of the Administrator or the Administrator's designee, may be varied upward 10 percent, or

(2) following a report by the Administrator or the Administrator's designee to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the circumstances of such action, may be varied upward 25 percent, to meet unusual cost variations.

The total amount authorized under section 4(3) for fiscal year 1990 shall not be increased as a result of reprogramming carried out pursuant to this section.

SEC. 6. SPECIAL REPROGRAMMING AUTHORITY FOR CONSTRUCTION OF FACILITIES.

Where the Administrator determines that new developments or scientific or engineering changes in the national program of aeronautical and space activities have occurred; and that such changes require the use of additional funds for the purposes of construction, expansion, or modification of facilities at any location; and that deferral of such action until the enactment of the next authorization Act would be inconsistent with the interest of the Nation in aeronautical and space activities; the Administrator may transfer not to exceed ½ of 1 percent of the funds appropriated pursuant to section 4(1) and (2) to the "Construction of facilities" appropriation for such purposes. The Administration may also use up to $10,000,000 of the amounts authorized under section 4(3) for such purposes. The funds so made available pursuant to this section may be expended to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site reparation, appurtenances, utilities, and equipment. No such funds may be obligated until a period of 30 days has passed after the Administrator or the Administrator's designee has transmitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a written report describing the nature of the construction, its cost, and the reasons therefor.

SEC. 7. LIMITATIONS ON AUTHORITY.

Nowithstanding any other provision of this Act, no amount appropriated pursuant to this Act may be used for any program not authorized, or in excess of amounts authorized, by the Congress, unless a period of 30 days has passed after the receipt by the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of notice given by the Administrator or the Administrator's designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action.

SEC. 8. PROCUREMENT OF SPACE SHUTTLE STRUCTURAL SPARE PARTS.

The Administrator is authorized and encouraged to use up to $25,000,000 of the funds appropriated for orbiter production under section 101(g) of the joint resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes" (100 Stat. 3341-242) to procure shuttle structural spare parts.

SEC. 9. GEOGRAPHICAL DISTRIBUTION.

The Administrator shall distribute research and development funds geographically in order to provide the broadest practicable participation in the programs of the National Aeronautics and Space Administration.

SEC. 10. BUY AMERICAN.

(a) GENERAL RULE.—The Administrator shall award to a domestic firm a contract that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(1) the final product of the domestic firm will be completely assembled in the United States;

(2) when completely assembled, not less than 50 percent of the final product of the domestic firm will be domestically produced; and

(3) the difference between the bids submitted by the foreign and domestic firms is not more than 6 percent.

(b) EXCEPTIONS.—This section shall not apply to the extent to which—

(1) such applicability would not be in the public interest;

(2) compelling national security considerations require otherwise; or

(3) the United States Trade Representative determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States;

(2) the term "foreign firm" means a business entity not described in paragraph (1).

(d) LIMITATION.—This section shall apply only to contracts for which—

(1) amounts are made available pursuant to this Act; and

(2) solicitations for bids are issued after the date of the enactment of this Act.

SEC. 11. AMENDMENTS TO THE NATIONAL AERONAUTICS AND SPACE ACT OF 1958.

Section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473 (is amended in subsection (a), by—

(1) striking "and" at the end of paragraph (2);

(2) striking the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(3) adding at the end the following new paragraphs:

"(4) seek and encourage, to the maximum extent possible, the fullest commercial use of space; and

"(5) encourage and provide for Federal Government use of commercially provided space services and hardware, consistent with the requirements of the Federal Government."

SEC. 12. COMMERCIAL SERVICES REPORT.

In order to establish procedures for the procurement of private sector space launch services and hardware for the National Aeronautics and Space Administration or other Government agencies, the Administrator shall provide by March 15, 1990, to the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Science, Space, and Technology of the House a report on specific Federal Acquisition Regulations, policies, and other directives which inhibit the acquisition of such space launch services and hardware on a commercially reasonable basis.

SEC. 13. COMMERCIAL SPACE LAUNCH ACT AUTHORIZATION.

Section 24 of the Commercial Space Launch Act (49 U.S.C. App. 2623) is amended by adding at the end thereof the following: "There are authorized to be appropriated to the Secretary to carry out this Act $4,392,000 for fiscal year 1990.".

SEC. 14. NATIONAL SPACE COUNCIL AUTHORIZATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the activities of the National Space Council established by section 501 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2471), $1,200,000 for fiscal year 1990. The National Space Council shall reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it.

(b) STAFFING.—Not more than 6 individuals may be employed by the National Space Council without regard to any provision of law regulating the employment or compensation of persons in the Government service, at rates not to exceed the rate of pay for level VI of the Senior Executive Schedule as provided pursuant to section 5382 of title 5, United States Code.

(c) CONFORMING AMENDMENT.—Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Executive Secretary, National Space Council.".

(d) EXPERTS AND CONSULTANTS.—The National Space Council may, for purposes of carrying out its functions, employ experts and consultants in accordance with section 3109 of title 5, United States Code, and may compensate individuals so employed for each day they are involved in a business of the National Space Council (including traveltime) at rates not in excess of the daily equivalent of the maximum rate of pay for grade GS-18 as provided pursuant to section 5332 of title 5, United States Code.

(e) REVIEW OF LAUNCH INDUSTRY.—(1) The National Space Council is requested to initiate a review of United States launch policy, including the Nation's expendable launch vehicle and satellite industries, their current and projected markets, the existing and projected level of foreign competition in these industries, the extent and level of support from foreign governments in these markets and industries, the consequences of the entry of nonmarket providers of launch services and satellites into the world market, restrictions on the use of foreign launch services and the export of United States satellites, and the importance of the United States launch vehicle and satellite industry to the national and economic security.

(2) The findings of this review and any policy recommendations are to be submitted to the Committee on Science, Space, and Technology of the Hosue of Representatives and the Committee on Commerce, Science, and Transportation of the Senate by August 1, 1990.

SEC. 15. INTERNATIONAL SPACE YEAR.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that the President should—

(1) lead the formulation of an International Space Year agenda developed in consultation with foreign leaders;

(2) declare a World Space Congress, to be convened in 1992, to establish a program for cooperative space activities among cooperating nations in space science, space exploration, and the application of space technologies;

(3) invite the American public to develop International Space Year activities that foster the cooperative spirit of the International Space Year; and

(4) direct the National Aeronautics and Space Administration to continue to develop International Space Year activities with a primary emphasis on Mission to Planet Earth, but also with a strong emphasis on the other space sciences, human exploration, education, and developing nations applications.

(b) REPORT TO CONGRESS.—The President shall report to Congress at the earliest practicable date, but not later than January 1, 1990, on the steps taken pursuant to this section.

SEC. 16. ADVANCED SOLID ROCKET MOTOR REPORT.

The Administrator shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the projected cost to complete the design, development, and qualification of the Advanced Solid Rocket Motor and progress toward meeting the objective of providing additional payload capability for the space shuttle. The first report shall be submitted at the end of 6 months after the signing of the Advanced Solid Rocket Motor contract, and thereafter with the National Aeronautics and Space Administration's annual budget request.

SECTION 17. SPACE SHUTTLE USE POLICY.

(a)(1) It shall be the policy of the United States to use the Space Shuttle for purposes that (A) require the presence of man, (B) require the unique capabilities of the Space Shuttle or (C) when other compelling circumstances exist.

(2) The term "compelling circumstances" includes, but is not limited to, occasions when the Administrator determines, in consultation with the Secretary of Defense and/or the Secretary of State, that important national security or foreign policy interests would be served by a Shuttle launch.

(3) The policy stated in subsection (a)(1) shall not preclude the use of available cargo space, on a Space Shuttle mission otherwise consistent with the policy described under subsection (a)(1), for the purpose of carrying secondary payloads (as defined by the Administrator) that do not require the presence of man if such payloads are consistent with the requirements of research, development, demonstration, scientific, commercial, and educational programs authorized by the Administrator.

(b) The Administrator shall, within six months after the date of enactment of this Act, submit a report to the Congress setting forth a plan for the implementation of the policy described in subsection (a)(1).

Such plan shall include—

(1) details of the implementation plan;

(2) a list of purposes that meet such policy;

(3) a proposed schedule for the implementation of such policy;

(4) an estimate of the costs to the United States of implementing such policy; and

(5) a process for informing the Congress in a timely and regular manner of how the plan is being implemented.

(c) At least annually, the Administrator shall submit to the Congress a report certifying that the payloads scheduled to be launched on the Space Shuttle for the next four years are consistent with the policy set forth in subsection (a)(1). For each payload scheduled to be launched from the Space Shuttle, which do not require the presence of man, the Administrator shall, in the report to Congress, state the specific circumstances which justified the use of the Space Shuttle. If, during the period between scheduled reports to the Congress, any addi-

tions are made to the list of certified payloads intended to be launched from the Shuttle, the Administrator shall inform the Congress of the additions and the reasons therefor within 45 days of the change.

(d) The report described in subsection (c) shall also include those NASA payloads designed soley to fly on the Space Shuttle which have begun the phase C/D of its development cycle.

SEC. 18 LIFE SCIENCES STRATEGIC PLAN.

(a) FINDINGS.—The Congress finds that—

(1) the current knowledge base in life sciences is not compatible with the National Aeronautics Space Administration's current objectives in space, and the National Aeronautics Space Administration lacks an adequate strategic plan to acquire this knowledge base;

(2) it is critical to the success of manned missions in space, be they commercial operations of microgravity laboratories or manned missions to Mars, that a realistic appraisal of the influences of the space environment on biological systems is completed and appropriate protective countermeasures developed;

(3) the space station is rapidly approaching design maturity without a corresponding development of the physiological and other human factors knowledge base necessary for long-term manned operations in space; and

(4) space station laboratory hardware specifications are being fixed before fully establishing the objectives and requirements for life sciences research.

(b) STRATEGIC PLAN.—The Administrator shall—

(1) review currently proposed manned space flight missions in order to—

(A) identify the physiological and other human factors knowledge base necessary to determine the human capacity to adapt to and perform effectively in the space environment according to mission requirements, including identifying which life sciences parameters must be measured and which technologies, processes, and procedures must be developed; and

(B) develop a schedule indicating when specific components of information, technologies, processes, or procedures identified under subparagraph (A) will need to be acquired or developed in order to verify that human adaptability requirements of manned space flight missions can be achieved;

(2) develop a strategic plan for life sciences research and technology development sufficient to accomplish the life sciences knowledge base acquisition schedule developed under paragraph (1)(B), including—

(A) a crew certification plan setting acceptable crew deconditioning standards for Extended Duration Orbiter operations and verifying countermeasures sufficient to meet those standards before actual Extended Duration Orbiter operations; and

(B) a life sciences implementation plan for the design and development of the space station, to be provided as part of the Preliminary Design Review for the space station, and to include crew medical standards; and

(3) verify the physiological and technical feasibility of the life sciences implementation plan developed under paragraph (2)(B), as part of the Critical Design Review for the space station.

SEC. 19. OFFICE OF SPACE COMMERCE.

There is established within the Department of Commerce an Office of Space Commerce.

SEC. 20. NATIONAL AERO-SPACE PLANE PROGRAM.

(a) FINDINGS.—The Congress finds that—

(1) if the United States is to maintain preeminence in military and commercial aeronautics into the next century, research into technology development and validation of the National Aero-Space Plane (NASP) is vital;

(2) the new and advanced materials being developed for the NASP have numerous applications in the military and the civilian aviation industry, as well as in other industries utilizing high temperature technologies;

(3) the benefits to the military and civilian aviation programs from the new and innovative technologies developed in connection with the NASP program in propulsions systems, aerodynamics, and control systems could be enormous, especially for high speed aeronautical and space flight; and

(4) military and commercial spin-off applications of NASP technologies include future superior military aircraft, space transportation systems, and commercial hypersonic aircraft.

(b) CONDUCT OF THE JOINT PROGRAM.—The Secretary of Defense (hereafter in this section referred to as the "Secretary") and the Administrator shall continue to jointly conduct a National Aero-Space Plane program whose objective shall be the development and demonstration in a research flight vehicle of air breathing technologies for single-stage-to-orbit and long range hypersonic flight. The program shall be a research program, and to the extent practicable technological information developed shall be transferred to the military and to the domestic civil aviation and other private industries.

(c) RESPONSIBILITIES.—The Secretary shall have responsibility for procurement, experimental flight vehicles, and overall program administration of the program established under subsection (b). The Administrator shall have responsibility for providing technology development and flight test support and shall have an integral role in the overall program. Representatives of both the Secretary and the Administrator shall participate in all aspects of the program.

(d) MANAGEMENT PLAN.—

(1) The Secretary and the Administrator shall jointly develop a management plan for the program established under subsection (b), which shall include goals, major tasks, anticipated schedules, organizational structure, funding profiles, details of the respective responsibilities of the Secretary and the Administrator, and resource procurement strategies.

(2) The management plan developed pursuant to paragraph (1) shall be submitted to the Congress within 120 days after the date of enactment of this Act.

SEC. 21. SMALL BUSINESS INNOVATION RESEARCH PROGRAM.

Administrator may utilize up to 5 percent of the funds provided for the Small Business Innovation Research Program for program management and promotional activities. None of the National Aeronautics and Space Administration Small Business Innovation Research Program funds may be used for travel or civil service salaries.

SEC. 22. FUNDING FOR EXTENDED DURATION ORBITER DEVELOPMENT.

The Administrator is authorized to use up to $25,000,000 of the funds appropriated in section 101(g) of the Joint Resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes", approved October 30, 1986 (Public Law 99-591; 100 Stat. 3341), for continued development of an extended duration orbiter.

SEC. 23. FUNDING FOR SPACE TRANSPORTATION SYSTEM.

The Administrator is authorized to use up to $25,000,000 of the funds appropriated in section 101(g) of the Joint Resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes", approved October 30, 1986 (Public Law 99-591; 100 Stat. 3341), for space transportation system requirements.

SEC. 24. NATIONAL SPACE GRANT COLLEGE AND FELLOWSHIP PROGRAM.

(a) Section 203(1) of the National Aeronautics and Space Administration Authorization Act of 1988 (42 U.S.C. 2286a(1)) is amended by inserting "and undergraduate" after "graduate".

(b) Section 209(a) of the National Aeronautics and Space Administration Authorization Act of 1988 (42 U.S.C. 2486g(a)) is amended by inserting "and undergraduate" after "graduate".

SEC. 25. PEACEFUL USES OF SPACE STATION.

No civil Space Station authorized under this Act may be used to carry or place in orbit any nuclear weapon or any other weapon of mass destruction, to install any such weapon on any celestial body, or to station any such weapon in space in any other manner. This civil Space Station may be used only for peaceful purposes.

## CENTENNIAL COIN ACT

### BAUCUS AMENDMENT NO. 1209

Mr. MITCHELL (for Mr. BAUCUS) proposed an amendment to the bill (H.R. 1553) to require the Secretary of the Treasury to mint and issue coins in commemoration of the 100th anniversary of the statehood of Idaho, Montana, North Dakota, Washington, and Wyoming, and for other purposes, as follows:

In section 102(a) of the bill, after "and issue" insert the following: ", in quantities sufficient to meet public demand not more than 175,000 five-dollar palladium coins and".

In section 102 of the bill, strike subsection (b) and insert the following:

(b) SPECIFICATIONS.—

(1) PALLADIUM COINS.—Each five-dollar palladium coin shall—

(A) weigh 31.103 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 23.327625 grams of palladium (.75 fine troy ounce) and not less than .5 troy ounce.

Such coins shall contain an alloy of such metals and in such proportion as may be deemed necessary by the Secretary, consistent with the limits established under this section.

(2) SILVER COINS.—The silver coins shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) be composed of 90 percent silver and 10 percent alloy.

In section 103 of the bill, strike "The Secretary" and insert "(a) SILVER.—The Secretary" and at the end thereof insert the following:

(b) PALLADIUM.—The Secretary shall obtain palladium for the coins referred to in this title by purchase of palladium mined from natural deposits in the United States within one year after the month in which the ore from which it is derived was mined

and by purchase of palladium from other sources located within the United States, including palladium that is refined or recycled within the United States. The Secretary shall pay not more than the average world price for the palladium. In the absence of available supplies of such palladium at the average world price, the Secretary shall purchase supplies of palladium pursuant to the authority of the Secretary under existing law. The Secretary shall issue such regulations as may be necessary to carry out this provision.

In section 105(d) of the bill, strike "a surcharge of $7" and insert "a surcharge of $20 for the palladium coin and $7 for the silver coin".

## HOUSING, COMMUNITY, AND NEIGHBORHOOD DEVELOPMENT

### CRANSTON (AND OTHERS) AMENDMENT NO. 1210

Mr. MITCHELL (for Mr. CRANSTON, for himself, Mr. D'AMATO, Mr. RIEGLE, Mr. GARN, Mr. BRYAN, Mr. DODD, Mr. SARBANES, Mr. SASSER, Mr. SHELBY, Mr. HEINZ, Mr. BOND, Mr. MACK, Mr. ROTH, Mrs. KASSEBAUM, and Mr. PRESSLER) proposed an amendment to the bill (H.R. 1) to amend Federal laws to reform housing, community and neighborhood development, and related programs, and for other purposes, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Department of Housing and Urban Development Reform Act of 1989".

(b) TABLE OF CONTENTS.—

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### TITLE I—REFORMS TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### Subtitle A—Ethics

SEC. 101. ALLOCATION OF HOUSING ASSISTANCE.

(a) ASSISTANCE SUBJECT TO FORMULA ALLOCATION.—Section 213(d)(1) of the Housing and Community Development Act of 1974 is amended to read as follows:

"(d)(1)(A) Except as provided by subparagraph (B), the Secretary shall allocate assistance referred to in subsection (a)(1) the first time it is available for reservation on the basis of a formula that is contained in a regulation prescribed by the Secretary, and that is based on the relative needs of different States, areas, and communities, as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other objectively measurable conditions specified in the regulation. In allocating assistance under this paragraph for each program of housing assistance under subsection (a)(1), the Secretary shall apply the formula, to the extent practicable, in a manner so that the assistance under the program is allocated according to the particular relative needs under the preceding sentence that are characteristic of and related to the particular type of assistance provided under the program. Assistance under section 202 of the Housing Act of 1959 shall be allocated in a manner that ensures that awards of the assistance under such section are made for projects of sufficient size to accommodate facilities for supportive services appropriate to the needs of frail elderly residents.

"(B) The formula allocation requirements of subparagraph (A) shall not apply to—

"(i) assistance that is approved in appropriation Acts for use under sections 9 or 14, or the rental rehabilitation grant program under section 17, of the United States Housing Act of 1937, except that the Secretary shall comply with section 102 of the Department of Housing and Urban Development Reform Act of 1989 with respect to such assistance; or

"(ii) other assistance referred to in subsection (a) that is approved in appropriation Acts for uses that the Secretary determines are incapable of geographic allocation, including amendments of existing contracts, renewal of assistance contracts, assistance to families that would otherwise lose assistance due to the decision of the project owner to prepay the project mortgage or not to renew the assistance contract, assistance to prevent displacement or to provide replacement housing in connection with the demolition or disposition of public and Indian housing, and assistance in support of the property disposition and loan management functions of the Secretary.

"(C) Any allocation of assistance under subparagraph (A) shall, as determined by the Secretary, be made to the smallest practicable area, consistent with the delivery of assistance through a meaningful competi-

tive process designed to serve areas with greater needs.

"(D) Any amounts allocated to a State or areas or communities within a State that are not likely to be used within a fiscal year shall not be reallocated for use in another State, unless the Secretary determines that other areas or communities (that are eligible for assistance under the program) within the same State cannot use the amounts within that same fiscal year.".

(b) ALLOCATION TO NONMETROPOLITAN AREAS.—The second sentence of section 213(d)(2) of the Housing and Community Development Act of 1974 is amended by striking "such assistance" and inserting "the assistance that is subject to allocation under paragraph (1)(A)".

(c) COMPETITION FOR ASSISTANCE.—Section 213(d) of the Housing and Community Development Act of 1974 is amended by adding at the end the following new paragraph:

"(5)(A) The Secretary shall not reserve or obligate assistance subject to allocation under paragraph (1)(A) to specific recipients, unless the assistance is first allocated on the basis of the formula contained in that paragraph and then is reserved and obligated pursuant to a competition.

"(B) Any competition referred to in subparagraph (A) shall be conducted pursuant to specific criteria for the selection of recipients of assistance. The criteria shall be contained in—

"(i) a regulation promulgated by the Secretary after notice and public comment; or

"(ii) to the extent authorized by law, a notice published in the Federal Register.

"(C) Subject to the times at which appropriations for assistance subject to paragraph (1)(A) may become available for reservation in any fiscal year, the Secretary shall take such steps as the Secretary deems appropriate to ensure that, to the maximum extent practicable, the process referred to in subparagraph (A) is carried out with similar frequency and at similar times for each fiscal year.

"(D) This paragraph shall not apply to assistance referred to in paragraph (4).".

(d) APPLICABILITY.—In accordance with section 201(b)(2) of the United States Housing Act of 1937, the amendments made by subsections (a), (b), and (c) of this section shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.

(e) CONFORMING AMENDMENT.—Section 213(a)(1) of the Housing and Community Development Act of 1974 is amended by striking "section 235 or 236 of the National Housing Act,".

SEC. 102. HUD ACCOUNTABILITY.

(a) NOTICE REGARDING ASSISTANCE.—

(1) PUBLICATION OF NOTICE OF AVAILABILITY.—The Secretary shall publish in the Federal Register notice of the availability of any assistance under any program or discretionary fund administered by the Secretary.

(2) PUBLICATION OF APPLICATION PROCEDURES.—The Secretary shall publish in the Federal Register a description of the form and procedures by which application for the assistance may be made, and any deadlines relating to the award or allocation of the assistance. Such description shall be designed to help eligible applicants to apply for such assistance.

(3) PUBLICATION OF SELECTION CRITERIA.—Not less than 30 days before any deadline by which applications or requests for assistance under any program or discretionary fund administered by the Secretary must be submitted, the Secretary shall publish in the Federal Register the criteria by which selection for the assistance will be made. Subject to section 213 of the Housing and Community Development Act of 1974, such criteria shall include any objective measures of housing need, project merit, or efficient use of resources that the Secretary determines are appropriate and consistent with the statute under which the assistance is made available.

(4) DOCUMENTATION OF DECISIONS.—

(A) The Secretary shall award or allocate assistance only in response to a written application in a form approved in advance by the Secretary, except where other award or allocation procedures are specified in statute.

(B) The Secretary shall ensure that documentation and other information regarding each application for assistance is sufficient to indicate the basis on which any award or allocation was made or denied. The preceding sentence shall apply to—

(i) any application for an award or allocation of assistance made by the Secretary to a State, unit of general local government, or other recipient of assistance, and

(ii) any application for a subsequent award or allocation of such assistance by such State, unit of general local government or other recipient.

(C)(i) The Secretary shall notify the public of all funding decisions made by the Department. The Secretary shall require any State or unit of general local government to notify the public of the award or allocation of such funding to subsequent recipients. The notification shall include the following elements for each funding decision:

(I) the name and address of each funding recipient;

(II) the name or other means of identifying the project, activity, or undertaking for each funding recipient;

(III) the dollar amount of the funding for each project, activity, or undertaking;

(IV) the citation to the statutory, regulatory, or other criteria under which the funding decision was made; and

(V) such additional information as the Secretary deems appropriate for a clear and full understanding of the funding decision.

(ii) The notification referred to in clause (i) of this subsection shall be published as a Notice in the Federal Register at least quarterly.

(iii) For purposes of this subparagraph, the term 'funding decision' means the decision of the Secretary to make available grants, loans, or any other form of financial assistance to an individual or to an entity, including (but not limited to) a State or local government or agency thereof (including a public housing agency), an Indian tribe, or a nonprofit organization, under any program administered by the Department that provides, by statute, regulation, or otherwise, for the competitive distribution of financial assistance.

(D) The Secretary shall publish a notice in the Federal Register at least annually informing the public of the allocation of assistance under section 213(d)(1)(A) of the Housing and Community Development Act of 1974.

(E) The Secretary shall ensure that each application and all related documentation and other information referred to in subparagraph (B), including each letter of support, is readily available for public inspection for a period of not less than 5 years, beginning not less than 30 days following the date on which the award or allocation is made.

(5) EMERGENCY EXCEPTION.—The Secretary may waive the requirements of paragraphs (1), (2), and (3) if the Secretary determines that the waiver is required for appropriate response to an emergency. Not less than 30 days after providing a waiver under the preceding sentence, the Secretary shall publish in the Federal Register the Secretary's reasons for so doing.

(b) DISCLOSURES BY APPLICANTS.—The Secretary shall require the disclosure of information with respect to any application for assistance within the jurisdiction of the Department for a project application submitted to the Secretary or to any State or unit of general local government by any applicant who has received or, in the determination of the Secretary, can reasonably be expected to receive assistance within the jurisdiction of the Department in excess of $200,000 in the aggregate during any fiscal year or such lower amount as the Secretary may establish by regulation. Such information shall include the following:

(1) OTHER GOVERNMENT ASSISTANCE.—Information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project or activities for which the applicant is seeking assistance. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

(2) INTERESTED PARTIES.—The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance or the planning, development, or implementation of the project or activity. For purposes of this paragraph, residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

(3) EXPECTED SOURCES AND USES.—A report satisfactory to the Secretary of the expected sources and uses of funds that are to be made available for the project or activity.

(c) UPDATING OF DISCLOSURE.—During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required under the previous subsection within 30 days of any substantial change.

(d) LIMITATION OF ASSISTANCE.—The Secretary shall certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance described in subsection (b)(1). The Secretary shall adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as the Secretary determines to be appropriate, for any changes reported under subsection (c).

(e) ADMINISTRATIVE REMEDIES.—If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (b) or (c) has occurred, the Secretary shall—

(1) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

(2) in the case of a selection that has been made, determine whether to—

(A) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

(B) impose sanctions upon the violator, including debarment, subject to review and determination on the record after opportunity for a hearing;

(C) recapture any funds that have been disbursed;

(D) permit the violating applicant selected to continue to participate in the program; or

(E) take any other actions that the Secretary considers appropriate.

The Secretary shall publish in the Federal Register a descriptive statement of each determination made and action taken under this subsection.

(f) CIVIL MONEY PENALTIES.—

(1) IN GENERAL.—Whenever any person knowingly and materially violates any provision of subsection (b) or (c), the Secretary may impose a civil money penalty on that person in accordance with the provisions of this section. This penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed $10,000 for each violation.

(g) AGENCY PROCEDURES.—(1) The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (f). These standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity to make the determination;

(B) shall provide for the imposition of a penalty only after the person has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order, the determination or order shall be final.

(2) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (f), consideration shall be given to such factors as the gravity of the offense, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(3) REVIEWABILITY OF IMPOSITION OF A PENALTY.—The Secretary's determination or order imposing a penalty under subsection (f) shall not be subject to review, except as provided in subsection (h).

(h) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (g)(1), a person against whom the Secretary has imposed a civil money penalty under subsection (f) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (g)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part.

(2) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (g)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(i) ACTION TO COLLECT THE PENALTY.—If any person fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (f), after the determination or order is no longer subject to review as provided by subsections (g)(1) and (h), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(j) SETTLEMENT BY THE SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(k) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(l) DEPOSIT OF PENALTIES.—The Secretary shall deposit all civil money penalties collected under this section into miscellaneous receipts of the Treasury.

(m) DEFINITIONS.—For the purpose of this section—

(1) The term "Department" means the Department of Housing and Urban Development.

(2) The term "Secretary" means the Secretary of Housing and Urban Development.

(3) The term "person" means an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

(4) The term "assistance within the jurisdiction of the Department" includes any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

(5) The term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(n) EFFECTIVE DATE.—This section shall take effect on the date specified in regulations implementing this section that are issued by the Secretary after notice and public comment.

SEC. 103. PROHIBITION OF ADVANCE DISCLOSURE OF FUNDING DECISIONS.

The Department of Housing and Urban Development Act is amended by adding at the end the following new section:

"PROHIBITION OF ADVANCE DISCLOSURE OF FUNDING DECISIONS

"SEC. 12. (a) PROHIBITED ACTIONS.—During any selection process, no officer or employee of the Department of Housing and Urban Development shall knowingly disclose any covered selection information regarding such selection, directly or indirectly, to any person other than a person authorized by the Secretary to receive such information.

"(b) ADMINISTRATIVE REMEDIES.—If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (a) has occurred, the Secretary shall—

"(1) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

"(2) in the case of a selection that has been made, determine whether to—

"(A) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

"(B) impose sanctions upon the violating applicant selected, subject to review and determination on the record after opportunity for a hearing;

"(C) permit the violating applicant selected to continue to participate in the program; or

"(D) take any other actions that the Secretary considers appropriate.

"(c) CIVIL MONEY PENALTIES.—

"(1) IN GENERAL.—Whenever any employee of the Department knowingly and materially violates the prohibition in subsection (a), the Secretary may impose a civil money penalty on the employee in accordance with the provisions of this subsection. This penalty shall be in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary takes other disciplinary actions.

"(2) AMOUNT.—The amount of the penalty, as determined by the Secretary, may not exceed $10,000 for each violation.

"(3) AGENCY PROCEDURES.—

"(A) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under this subsection. The standards and procedures—

"(i) shall provide for the Secretary or other official of the Department to make the determination to impose a penalty or to use an administrative entity to make the determination;

"(ii) shall provide for the imposition of a penalty only after the employee has been given an opportunity for a hearing on the record; and

"(iii) may provide for review of any determination or order, or interlocutory ruling, arising from a hearing.

"(B) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable order. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that de-

termination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(C) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under paragraph (2), consideration shall be given to such factors as the gravity of the offense, any history of prior disclosures of information on pending funding decisions made after the date of enactment of this section, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(D) REVIEWABILITY OF IMPOSITION OF A PENALTY.—The Secretary's determination or order imposing a penalty under paragraph (1) shall not be subject to review, except as provided in paragraph (4).

"(4) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(A) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under paragraph (3)(A), an employee against whom the Secretary has imposed a civil money penalty under paragraph (1) may obtain a review of the penalty and such ancillary issues (such as any administrative sanctions under 24 C.F.R. part 25) as may be addressed in the notice of determination to impose a penalty under paragraph (3)(A)(i) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

"(B) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to paragraph (3)(A) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

"(C) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(D) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(5) ACTION TO COLLECT PENALTY.—If any employee fails to comply with the Secretary's determination or order imposing a civil money penalty under paragraph (1), after the determination or order is no longer subject to review as provided by paragraphs (3)(A) and (4), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the employee and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(6) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this subsection.

"(7) DEPOSIT OF PENALTIES.—The Secretary shall deposit all civil money penalties collected under this subsection into miscellaneous receipts of the Treasury.

"(d) CRIMINAL PENALTIES.—Whoever willfully violates subsection (a) by making a disclosure prohibited by subsection (a) to any applicant, or any officer, employee, representative, agent, or consultant of any applicant, shall be imprisoned not more than 5 years, or fined in accordance with title 18, United States Code, or both.

"(e) DEFINITIONS.—For purposes of this section:

"(1) APPLICANT.—The term 'applicant' means any applicant or candidate that is being considered for receiving assistance.

"(2) ASSISTANCE.—The term 'assistance' means any grant, loan, subsidy, guarantee, or other financial assistance under a program administered by the Secretary that provides by statute, regulation, or otherwise for the competitive distribution of such assistance. The term does not include any mortgage insurance provided under a program administered by the Secretary.

"(3) COVERED SELECTION INFORMATION.—The term 'covered selection information' means—

"(A) any information that is contained in any application or request for assistance, or any information regarding the decision of the Secretary to make available assistance or other information that is determined by the Secretary to be information that is not generally available to the public (not including program requirements and timing of the decision to make assistance available); and

"(B) any information that is required by statute, regulation, or order to be confidential.

"(4) KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(5) SELECTION.—The term 'selection' means the determination of which applicants for assistance are to receive assistance under the program.

"(6) SELECTION PROCESS.—The term 'selection process' means the period with respect to a selection for assistance that begins with the development, preparation, and issuance of a solicitation or request for applications for the assistance and concludes with the selection of recipients of assistance, and includes the evaluation of applications.

"(f) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(g) APPLICABILITY.—This section shall apply only with respect to violations that occur on or after the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989.".

SEC. 104. REFORM OF HEADQUARTERS RESERVE.

(a) FUNDING CATEGORIES.—Section 213(d)(4) of the Housing and Community Development Act of 1974 is amended to read as follows:

"(4)(A) Notwithstanding any other provision of law, with respect to fiscal years beginning after September 30, 1990, the Secretary may retain not more than 5 percent of the financial assistance that becomes available under programs described in subsection (a)(1) during any fiscal year. Any such financial assistance that is retained shall be available for subsequent allocation to specific areas and communities, and may only be used for—

"(i) unforeseen housing needs resulting from natural and other disasters;

"(ii) housing needs resulting from emergencies, as certified by the Secretary, other than such disasters;

"(iii) housing needs resulting from the settlement of litigation; and

"(iv) housing in support of desegregation efforts.

"(B) Any amounts retained in any fiscal year under subparagraph (A) that are unexpended at the end of such fiscal year shall remain available for the following fiscal year under the program under subsection (a)(1) from which the amount was retained. Such amounts shall be allocated on the basis of the formula under subsection (d)(1).".

(b) EFFECTIVE DATE.—Any assistance made available under section 213(d)(4) of the Housing and Community Development Act of 1974 before October 1, 1990, or pursuant to a commitment for such assistance entered into before such date, shall be governed by the provisions of section 213(d)(4) as such section existed before the date of the enactment of this Act.

(c) INDIAN HOUSING.—In accordance with section 201(b)(2) of the United States Housing Act of 1937, the amendment made by subsection (a) and the provisions of subsection (b) of this section shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.

SEC. 105. REFORM OF CDBG DISCRETIONARY FUND AND PROVISION OF TECHNICAL ASSISTANCE.

(a) SPECIAL PURPOSE GRANTS.—Section 107(a) of the Housing and Community Development Act of 1974 is amended—

(1) by striking "in a special discretionary fund" in the first sentence; and

(2) by striking all that follows the period at the end of the second sentence.

(b) AUTHORIZED USES.—Section 107(b) of the Housing and Community Development Act of 1974 is amended—

(1) by striking paragraphs (1) and (3);

(2) by striking the period at the end of paragraph (5) and inserting a semicolon;

(3) by redesignating paragraphs (2) and (5) (as amended) as paragraphs (1) and (2), respectively; and

(4) by inserting after paragraph (2) (as so redesignated) the following new paragraph:

"(3) to historically Black colleges; and"; and

(5) in paragraph (4)—

(A) by striking "and" after the third semicolon and all that follows through "and" after the fourth semicolon; and

(B) by striking "and" at the end and inserting the following: "for purposes of this paragraph the term 'technical assistance' means the facilitating of skills and knowledge in planning, developing, and administering activities under this title in entities that may need but do not possess such skills and knowledge, and includes assessing programs and activities under this title; except that any recipient of a grant under this paragraph that provides technical assistance pursuant to this paragraph shall provide for the notification of the availability of such assistance and shall have specific criteria for selection of recipients of such assistance that are published and publicly available.".

(c) FUNDING CRITERIA.—Section 107 of the Housing and Community Development Act of 1974 is amended by adding at the end the following new subsection:

"(f) Any grant made under this section shall be made pursuant to criteria for selection of recipients of such grants that the Secretary shall by regulation establish and which the Secretary shall publish together with any notification of availability of amounts under this section.".

(d) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in this paragraph and paragraph (2), the amendments made by this section shall apply with respect to any grants made under section 107 of the Housing and Community Development Act of 1974 on or after the date of the enactment of this Act, except a grant made under the third sentence of section 107(a) of the Housing and Community Development Act of 1974, as such sentence existed immediately before such date, and grants for specific activities (referred to in House Report Number 101-297) pursuant to the amount appropriated for use under section 107 by the enactment of the bill, H.R. 2916, of the One Hundred First Congress.

(2) PRIOR GRANTS.—Any grant made under section 107 of the Housing and Community Development Act of 1974 before the date of the enactment of this Act or pursuant to a grant award notification made before such date shall be governed by the provisions of such section as it existed immediately before the date of the enactment of this Act.

(e) CONFORMING AMENDMENT.—The section heading of section 107 of the Housing and Community Development Act of 1974 is amended to read as follows:

"SPECIAL PURPOSE GRANTS".

SEC. 106. WAIVER OF REGULATION REQUIREMENTS AND HANDBOOK PROVISIONS.

Section 7 of the Department of Housing and Urban Development Act is amended by adding at the end the following new subsection:

"(q)(1) Any waiver of regulations of the Department shall be in writing and shall specify the grounds for approving the waiver.

"(2) The Secretary may delegate authority to approve a waiver of a regulation only to an individual of Assistant Secretary rank or equivalent rank, who is authorized to issue the regulation to be waived.

"(3) The Secretary shall notify the public of all waivers of regulations approved by the Department. The notification shall be included in a notice in the Federal Register published not less than quarterly. Each notification shall cover the period beginning on the day after the last date covered by the prior notification, and shall—

"(A) identify the project, activity, or undertaking involved;

"(B) describe the nature of the requirement that has been waived and specify the provision involved;

"(C) specify the name and title of the official who granted the waiver request;

"(D) include a brief description of the grounds for approval of the waiver; and

"(E) state how more information about the waiver and a copy of the request and the approval may be obtained.

"(4) Any waiver of a provision of a handbook of the Department shall—

"(A) be in writing;

"(B) specify the grounds for approving the waiver; and

"(C) be maintained in indexed form and made available for public inspection for not less than the 3-year period beginning on the date of the waiver.".

SEC. 107. CIVIL MONEY PENALTIES AGAINST MORTGAGEES AND LENDERS.

(a) IN GENERAL.—Title V of the National Housing Act is amended by adding at the end the following new section:

"CIVIL MONEY PENALTIES AGAINST MORTGAGEES AND LENDERS

"SEC. 536. (a) IN GENERAL.—

"(1) AUTHORITY.—Whenever a mortgagee approved under this Act, or a lender holding a contract of insurance under title I of this Act, knowingly and materially violates any of the provisions of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

"(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed $5,000 for each violation, except that the maximum penalty for all violations by any particular mortgagee or lender during any 1-year period shall not exceed $1,000,000. Each violation of a provision of subsection (b)(1) shall constitute a separate violation with respect to each mortgage or loan application. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

"(b) VIOLATIONS FOR WHICH A PENALTY MAY BE IMPOSED.—

"(1) VIOLATIONS.—The Secretary may impose a civil money penalty under subsection (a) for any knowing and material violation by a mortgagee or lender, as follows:

"(A) Except where expressly permitted by statute, regulation, or contract approved by the Secretary, transfer of a mortgage insured under this Act to a mortgagee not approved by the Secretary, or transfer of a loan to a transferee that is not holding a contract of insurance under title I of this Act.

"(B) Failure of a nonsupervised mortgagee, as defined by the Secretary—

"(i) to segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments, and insurance premiums; or

"(ii) to deposit these funds in a special account with a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation through the Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations, or by the National Credit Union Administration.

"(C) Use of escrow funds for any purpose other than that for which they were received.

"(D) Submission to the Secretary of information that was false, in connection with any mortgage insured under this Act, or any loan that is covered by a contract of insurance under title I of this Act.

"(E) With respect to an officer, director, principal, or employee—

"(i) hiring such an individual whose duties will involve, directly or indirectly, programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary; or

"(ii) retaining in employment such an individual who continues to be involved, directly or indirectly, in programs administered by the Secretary, while that person was under suspension or withdrawal by the Secretary.

"(F) Falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity.

"(G) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to—

"(i) the application of a mortgagee or lender for approval by the Secretary; or

"(ii) the notification by a mortgagee or lender to the Secretary concerning establishment of a branch office.

"(H) Violation of any provisions of title I, II, or X (as such title existed immediately before the effective date of the Department of Housing and Urban Development Reform Act of 1989) of this Act or any implementing regulation or handbook that is issued under this Act.

"(2) NOTIFICATION TO ATTORNEY GENERAL.—Before taking action to impose a civil money penalty for a violation under paragraph (1)(D) or paragraph (1)(F), the Secretary shall inform the Attorney General of the United States.

"(c) AGENCY PROCEDURES.—

"(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). These standards and procedures—

"(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity (such as the Mortgagee Review Board, established pursuant to section 202(c) of the National Housing Act) to make the determination;

"(B) shall provide for the imposition of a penalty only after the mortgagee or lender has been given an opportunity for a hearing on the record; and

"(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including those before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (d).

"(d) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (c)(1), a mortgagee or lender against whom the Secretary has imposed a civil money penalty under subsection (a) may obtain a review of the penalty and such ancillary issues (such as any administrative sanctions under 24 C.F.R. part 25) as may be addressed in the notice of determination to impose a penalty under subsection (c)(1)(A) in the appropri-

ate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's determination or order be modified or be set aside in whole or in part.

"(2) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of the additional evidence.

"(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(e) ACTION TO COLLECT PENALTY.—If any mortgagee or lender fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagee or lender and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(f) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

"(g) DEFINITION OF KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(h) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(i) DEPOSIT OF PENALTIES IN INSURANCE FUNDS.—Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the appropriate insurance fund or funds established under this Act, as determined by the Secretary.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to—

(1) violations referred to in the amendments that occur on or after the effective date of this section; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.

SEC. 108. CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS.

(a) IN GENERAL.—Title V of the National Housing Act (as amended by the preceding provisions of this Act) is further amended by adding at the end the following new section:

"CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS

"SEC. 537. (a) IN GENERAL.—The penalties set forth in this section shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The Secretary may not impose penalties under this section for violations a material cause of which are the failure of the Department, an agent of the Department, or a public housing agency to comply with existing agreements.

"(b) PENALTY FOR VIOLATION OF AGREEMENT AS CONDITION OF TRANSFER OF PHYSICAL ASSETS, FLEXIBLE SUBSIDY LOAN, CAPITAL IMPROVEMENT LOAN, MODIFICATION OF MORTGAGE TERMS, OR WORKOUT AGREEMENT.—

"(1) AUTHORITY.—Whenever a mortgagor of property that includes 5 or more living units and that has a mortgage insured, coinsured, or held pursuant to this Act, who has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, knowingly and materially fails to comply with any of these commitments, the Secretary may impose a civil money penalty on that mortgagor in accordance with the provisions of this section.

"(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, for a violation of this subsection may not exceed the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

"(c) VIOLATIONS OF REGULATORY AGREEMENT FOR WHICH PENALTY MAY BE IMPOSED.—

"(1) VIOLATIONS.—The Secretary may also impose a civil money penalty under this section on any mortgagor of property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to this Act for any knowing and material violation of the regulatory agreement executed by the mortgagor, as follows:

"(A) Conveyance, transfer, or encumbrance of any of the mortgaged property, or permitting the conveyance, transfer, or encumbrance of such property, without the prior written approval of the Secretary.

"(B) Assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

"(C) Conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

"(D) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

"(E) Requiring, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent, plus a security deposit in an amount not in excess of 1 month's rent, to guarantee the performance of the covenants of the lease.

"(F) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account.

"(G) Payment for services, supplies, or materials which exceeds $500 and substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

"(H) Failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary.

"(I) Failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

"(J) Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing. The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor.

"(K) At the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, failure to furnish monthly occupancy reports or failure to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage.

"(L) Failure to make promptly all payments due under the note and mortgage, including mortgage insurance premiums, tax and insurance escrow payments, and payments to the reserve for replacements when there is adequate project income available to make such payments.

The pay out of surplus cash, as defined by and provided for in the regulatory agreement, shall not constitute a violation of such agreement.

"(2) AMOUNT OF PENALTY.—A penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed $25,000.

"(d) AGENCY PROCEDURES.—

"(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsections (b) and (c). These standards and procedures—

"(A) shall provide for the Secretary or other department official (such as the As-

sistant Secretary for Housing) to make the determination to impose a penalty;

"(B) shall provide for the imposition of a penalty only after the mortgagor has been given an opportunity for a hearing on the record; and

"(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (b) or (c), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the tenants, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (b) or (c) shall not be subject to review, except as provided in subsection (e).

"(e) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (d)(1), a mortgagor against whom the Secretary has imposed a civil money penalty under subsection (b) or (c) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (d)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

"(2) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (d)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

"(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(f) ACTION TO COLLECT PENALTY.—If a mortgagor fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (b) or (c), after the determination or order is no longer subject to review as provided by subsections (d)(1) and (e), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagor and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(g) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

"(h) DEFINITION OF KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(i) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(j) DEPOSIT OF PENALTIES IN INSURANCE FUNDS.—Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the fund established under section 201(j) of the Housing and Community Development Amendments of 1978.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to violations referred to in the amendment that occur on or after the effective date of this section.

SEC. 109. CIVIL MONEY PENALTIES AGAINST SECTION 202 MORTGAGORS.

(a) IN GENERAL.—Title II of the Housing Act of 1959 is amended by inserting after section 202 the following new section:

"CIVIL MONEY PENALTIES AGAINST SECTION 202 MORTGAGORS

"SEC. 202a. (a) IN GENERAL.—The penalties set forth in this section shall be in addition to any other available civil remedy or criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions. The Secretary may not impose penalties under this section for violations a material cause of which are the failure of the Department, an agent of the Department, or a public housing agency to comply with existing agreements.

"(b) PENALTY FOR VIOLATION OF AGREEMENT AS CONDITION OF TRANSFER OF PHYSICAL ASSETS, FLEXIBLE SUBSIDY LOAN, CAPITAL IMPROVEMENT LOAN, MODIFICATION OF MORTGAGE TERMS, OR WORKOUT AGREEMENT.—

"(1) IN GENERAL.—Whenever a mortgagor of property that includes 5 or more living units and that has a mortgage held pursuant to section 202, who has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities, knowingly and materially fails to comply with any of these commitments, the Secretary may impose a civil money penalty on the mortgagor in accordance with the provisions of this section.

"(2) AMOUNT.—The amount of the penalty, as determined by the Secretary, for a violation of this subsection may not exceed the amount of the loss the Secretary would incur at a foreclosure sale, or sale after foreclosure, with respect to the property involved.

"(c) VIOLATIONS OF REGULATORY AGREEMENT.—

"(1) IN GENERAL.—The Secretary may also impose a civil money penalty on a mortgagor or property that includes 5 or more living units and that has a mortgage held pursuant to section 202 for any knowing and material violation of the regulatory agreement executed by the mortgagor, as follows:

"(A) Conveyance, transfer, or encumbrance of any of the mortgaged property, or permitting the conveyance, transfer, or encumbrance of such property, without the prior written approval of the Secretary.

"(B) Assignment, transfer, disposition, or encumbrance of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary.

"(C) Conveyance, assignment, or transfer of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary.

"(D) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary.

"(E) Requiring, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent, plus a security deposit in an amount not in excess of 1 month's rent, to guarantee the performance of the covenants of the lease.

"(F) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account.

"(G) Payment for services, supplies, or materials which exceeds $500 and substantially exceeds the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

"(H) Failure to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary.

"(I) Failure to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary.

"(J) Failure to furnish the Secretary, by the expiration of the 60-day period beginning on the 1st day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with requirements prescribed by the Secretary, and prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing.

The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this subparagraph is due to events beyond the control of the mortgagor.

"(K) At the request of the Secretary, the agents of the Secretary, the employees of the Secretary, or the attorneys of the Secretary, failure to furnish monthly occupancy reports or failure to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage.

"(L) Failure to make promptly all payments due under the note and mortgage, including tax and insurance escrow payments, and payments to the reserve for replacements when there is adequate project income available to make such payments.

"(M) Amending the articles of incorporation or bylaws, other than as permitted under the terms of the articles of incorporation as approved by the Secretary, without the prior written approval of the Secretary.

"(2) AMOUNT OF PENALTY.—A penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed $25,000 for a violation of any of the subparagraphs of paragraph (1).

"(d) AGENCY PROCEDURES.—

"(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsections (b) and (c). These standards and procedures—

"(A) shall provide for the Secretary or other department official (such as the Assistant Secretary for Housing) to make the determination to impose a penalty;

"(B) shall provide for the imposition of a penalty only after the mortgagor has been given an opportunity for a hearing on the record; and

"(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (b) or (c), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the tenants, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (b) or (c) shall not be subject to review, except as provided in subsection (e).

"(e) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (d)(1), a mortgagor against whom the Secretary has imposed a civil money penalty under subsection (b) or (c) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (d)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

"(2) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (d)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

"(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(f) ACTION TO COLLECT PENALTY.—If a mortgagor fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (b) or (c), after the determination or order is no longer subject to review as provided by subsections (d)(1) and (e), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the mortgagor and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(g) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

"(h) DEFINITION OF KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(i) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(j) DEPOSIT OF PENALTIES IN INSURANCE FUNDS.—Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the fund established under section 201(j) of the Housing and Community Development Amendments of 1978.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to violations referred to in the amendment that occur on or after the effective date of this section.

(c) CONFORMING AMENDMENT.—Section 201(j)(2) of the Housing and Community Development Amendments of 1978 is amended—

(1) by striking "and" before "(D)"; and

(2) by inserting before the period at the end the following: ", and (E) any amount received by the Secretary pursuant to section 537 of the National Housing Act and section 202a of the Housing Act of 1959".

SEC. 110. CIVIL MONEY PENALTIES AGAINST GNMA ISSUERS.

(a) IN GENERAL.—Title III of the National Housing Act is amended by adding at the end the following new section:

"CIVIL MONEY PENALTIES AGAINST ISSUERS

"SEC. 317. (a) IN GENERAL.—

"(1) AUTHORITY.—Whenever an issuer or custodian approved under section 306(g) knowingly and materially violates any provisions of subsection (b), the Secretary of Housing and Urban Development may impose a civil money penalty on the issuer or the custodian in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary imposes other administrative sanctions.

"(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed $5,000 for each violation, except that the maximum penalty for all violations by a particular issuer or custodian during any one-year period shall not exceed $1,000,000. Each violation of a provision of subsection (b)(1) shall constitute a separate violation with respect to each pool of mortgages. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

"(b) VIOLATIONS FOR WHICH A PENALTY MAY BE IMPOSED.—

"(1) VIOLATIONS.—The violations by an issuer or a custodian for which the Secretary may impose a civil money penalty under subsection (a) are the following:

"(A) Failure to make timely payments of principal and interest to holders of securities guaranteed under section 306(g).

"(B) Failure to segregate cash flow from pooled mortgages or to deposit either principal and interest funds or escrow funds into special accounts with a depository institution whose accounts are insured by the National Credit Union Administration or by the Federal Deposit Insurance Corporation through the Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations.

"(C) Use of escrow funds for any purpose other than that for which they were received.

"(D) Transfer of servicing for a pool of mortgages to an issuer not approved under this title, unless expressly permitted by statute, regulation, or contract approved by the Secretary.

"(E) Failure to maintain a minimum net worth in accordance with requirements prescribed by the Association;

"(F) Failure to promptly notify the Association in writing of any changes that materially affect the business status of an issuer.

"(G) Submission to the Association of false information in connection with any securities guaranteed, or mortgages pooled, under section 306(g).

"(H) Hiring, or retaining in employment, an officer, director, principal, or employee whose duties involve, directly or indirectly, programs administered by the Association while such person was under suspension or debarment by the Secretary.

"(I) Submission to the Association of a false certification either on its own behalf or on behalf of another person or entity.

"(J) Failure to comply with an agreement, certification, or condition of approval set

forth on, or applicable to, the application for approval as an issuer of securities under section 306(g).

"(K) Violation of any provisions of this title or any implementing regulation, handbook, or participant letter issued under authority of this title.

"(2) NOTIFICATION TO ATTORNEY GENERAL.—Before taking action to impose a civil money penalty for a violation under paragraph (1)(G) or paragraph (1)(I), the Secretary shall inform the Attorney General of the United States.

"(c) AGENCY PROCEDURES.—

"(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

"(A) shall provide for the Secretary to make the determination to impose the penalty;

"(B) shall provide for the imposition of a penalty only after an issuer or a custodian has been given notice of, and opportunity for, a hearing on the record; and

"(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of a notice of opportunity for hearing, the imposition of a penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine by regulations.

"(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (d).

"(d) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (c)(1), an issuer or a custodian against which the Secretary has imposed a civil money penalty under subsection (a) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice provided under subsection (c)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

"(2) OBJECTIONS NOT RAISED IN HEARING.—A court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence, which was not presented at such hearing, is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

"(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, the court shall have the power in any such review to order payment of the penalty imposed by the Secretary.

"(e) ACTION TO COLLECT PENALTY.—If any issuer or custodian fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the issuer or custodian and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(f) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

"(g) DEFINITION OF KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(h) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(i) DEPOSIT OF PENALTIES.—The Secretary shall deposit all civil money penalties collected under this section into moneys of the Association pursuant to section 307.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to—

(1) violations referred to in the amendment that occur on or after the effective date of this section; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.

SEC. 111. CIVIL MONEY PENALTIES FOR VIOLATIONS OF INTERSTATE LAND SALES FULL DISCLOSURE ACT.

(a) IN GENERAL.—The Interstate Land Sales Full Disclosure Act is amended by inserting after section 1418 the following new section:

"CIVIL MONEY PENALTIES

"SEC. 1418a. (a) IN GENERAL.—

"(1) AUTHORITY.—Whenever any person knowingly and materially violates any of the provisions of this title or any rule, regulation, or order issued under this title, the Secretary may impose a civil money penalty on such person in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

"(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed $1,000 for each violation, except that the maximum penalty for all violations by a particular person during any 1-year period shall not exceed $1,000,000. Each violation of this title, or any rule, regulation, or order issued under this title, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

"(b) AGENCY PROCEDURES.—

"(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

"(A) shall provide for the imposition of a penalty only after a person has been given an opportunity for a hearing on the record; and

"(B) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

"(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (c).

"(c) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (b)(1), a person aggrieved by a final order of the Secretary assessing a penalty under this section may seek judicial review pursuant to section 1411.

"(2) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(d) ACTION TO COLLECT PENALTY.—If any person fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (b) and (c), the Secretary may request the Attorney General of the United States to bring an action in any appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determina-

tion or order imposing the penalty shall not be subject to review.

"(e) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

"(f) DEFINITION OF KNOWINGLY.—The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(g) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

"(h) USE OF PENALTIES FOR ADMINISTRATION.—Civil money penalties collected under this section shall be paid to the Secretary and, upon approval in an appropriation Act, may be used by the Secretary to cover all or part of the cost of rendering services under this title.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to—

(1) violations referred to in the amendment that occur on or after the effective date of this section; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of violation referred to in the amendment that occurs on or after such date.

SEC. 112. REGISTRATION OF CONSULTANTS.

The Department of Housing and Urban Development Act, as amended by the preceding provisions of this Act, is further amended by adding at the end the following new section:

"REGISTRATION OF CONSULTANTS

"SEC. 13. (a) RECORD OF EXPENDITURES.—

"(1) REQUIREMENT TO MAINTAIN.—Each person who makes an expenditure to influence the decision of any officer or employee of the Department, through communication with such officer or employee, with respect to—

"(A) the award of any financial assistance within the jurisdiction of the Department, or

"(B) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person,

shall keep records, as required by this section. The preceding sentence shall not apply to expenditures incurred in complying with conditions, requirements, or procedures imposed by the Secretary in connection with any financial assistance.

"(2) COVERED INFORMATION.—Each person referred to in paragraph (1) shall keep a detailed and exact account of—

"(A) all such expenditures made by or on behalf of such person; and

"(B) the name and address of every person to whom any such expenditure is made and the date of the expenditure.

"(3) MAINTENANCE OF RECORDS.—Each person making such an expenditure shall obtain a bill, stating the particulars, for every such expenditure, and shall retain all records required by this section for not less than the 2-year period beginning on the date of the filing of the report required by subsection (b), which shall include the information under paragraph (2).

"(4) LIMITATION OF FEES.—Any person engaged for pay or other consideration for the purpose of attempting to influence any award or allocation of financial assistance within the jurisdiction of the Department shall not seek or receive any fee that is—

"(A) based on the amount of assistance or number of units that may be provided by the Secretary, or

"(B) contingent on an award of assistance by the Secretary, except where—

"(i) services are provided to a nonprofit entity applying for such award or allocation of assistance; and

"(ii) professional services related to a project are donated in whole or in part to a nonprofit entity in the event assistance for a project is not awarded.

"(b) REPORTS OF EXPENDITURES FILED WITH THE SECRETARY.—

"(1) REPORT.—Each person making an expenditure for the purposes designated in subsection (a)(1) shall file with the Secretary, between the 1st and 10th day of each calendar year, a report specifying the total expenditures made by or on behalf of such person during the year and the information required by subsection (a)(2)(B).

"(2) REGULAR EMPLOYEES.—The requirements of this subsection shall not apply in the case of a payment of reasonable compensation made to any regularly employed officer or employee of the person who requests or receives assistance within the jurisdiction of the Department, or who is involved in any management action with respect to such assistance.

"(3) MINIMUM DOLLAR REQUIREMENTS.—The requirements of this subsection shall not apply to any person whose total expenditures for purposes described in subparagraphs (A) and (B) of subsection (a)(1) are less than $10,000 in any calendar year.

"(4) FILING AND RETENTION.—A report required by this subsection—

"(A) shall be considered properly filed when deposited in a post office within the prescribed time, stamped, registered, and addressed to the Secretary, but if the Secretary does not receive the report, the person shall promptly file a duplicate report when the Secretary notifies the person that the original report has not been received; and

"(B) shall be retained by the Secretary for the 2-year period beginning on the date of filing, shall constitute part of the public records of the Department, and shall be open to public inspection.

"(5) PUBLICATION OF INFORMATION.—The Secretary shall compile all expenditure information as soon as practicable after the close of the calendar year with respect to which the information is filed and shall publish it as a notice in the Federal Register.

"(c) REGISTRATION BY PERSONS ATTEMPTING TO INFLUENCE DEPARTMENT DECISIONS.—

"(1) REQUIREMENT AND INFORMATION.—Each person receiving payment or any consideration for the purpose described in subsection (a)(1), shall, not later than 14 days after being retained for such purpose, register with the Secretary. The registration shall be in writing and shall include the name and business address of the registrant, the name and address of the registrant's employer and of any person or entity in whose interest the registrant appears or works, and a statement of whether the registrant has been employed by the Federal Government during the 2-year period ending on the date of the registration and in what capacity. Each registrant shall, between the 1st and 10th day of each calendar year, file with the Secretary a detailed report of all money received and expended by the registrant during the preceding year in carrying out the work, including information as to whom money was paid, and for what purposes.

"(2) MINIMUM DOLLAR REQUIREMENT.—The requirements of the last sentence of paragraph (1) shall not apply with respect to any calendar year to any person whose total compensation for attempting to influence a decision with respect to assistance within the jurisdiction of the Department or a management action with respect to such assistance is less than $10,000 in such year.

"(3) PUBLICATION OF INFORMATION.—The Secretary shall compile all registration information as soon as practicable after the close of the calendar year with respect to which the information is filed and shall publish it annually as a notice in the Federal Register.

"(d) CIVIL MONEY PENALTIES.—

"(1) AUTHORITY.—Whenever any person knowingly fails to file a report required under subsection (b), or any person knowingly fails to register and file a report required under subsection (c), the Secretary may impose a civil money penalty on that person in accordance with the provisions of this subsection. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

"(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, shall not exceed the greater of—

"(A) $10,000 for each violation; or

"(B) the total amount received for any services performed for any applicant to which the violation under paragraph (1) relates.

"(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under this subsection, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

"(4) AGENCY PROCEDURES.—

"(A) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under paragraph (1). These standards and procedures shall—

"(i) provide for the Secretary or other department official to make the determination to impose the penalty or for use of an administrative entity to make the determination;

"(ii) provide for the imposition of a penalty only after the person has been given an opportunity for a hearing on the record; and

"(iii) provide for review of any determination or order, or interlocutory ruling, arising from a hearing.

"(B) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

"(C) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under paragraph (1) shall not be subject to review, except as provided in paragraph (5).

"(5) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

"(A) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under paragraph (4)(A), a person against whom the Secretary has imposed a civil money penalty under paragraph (1) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under paragraph (4)(A)(i) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

"(B) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to paragraph (4)(A) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there are reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

"(C) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

"(D) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

"(6) ACTION TO COLLECT PENALTY.—If any person fails to comply with the Secretary's determination or order imposing a civil money penalty under paragraph (1), after the determination or order is no longer subject to review as provided by paragraphs (4)(A) and (5), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this paragraph, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

"(7) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this subsection.

"(8) DEPOSIT OF PENALTIES.—The Secretary shall deposit all civil money penalties collected under this subsection into miscellaneous receipts of the Treasury.

"(e) PROHIBITION ON CONSULTING ACTIVITIES.—

"(1) IN GENERAL.—Whoever is fined under subsection (d) may be prohibited, for the 3-year period beginning on the date of the imposition of the fine, from receiving any payment or thing of value for performing any services (with respect to any application for financial assistance within the jurisdiction of the Department) for any applicant.

"(2) CRIMINAL PENALTY.—Whoever violates the prohibition under paragraph (1) shall, upon conviction, be guilty of a felony and shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

"(f) DEFINITIONS.—For purposes of this section:

"(1) The term 'person' means an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

"(2) The term 'expenditure' includes a payment, distribution, loan, advance, deposit, gift of money, or anything else of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

"(3) The term 'financial assistance within the jurisdiction of the Department' includes any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

"(4) The term 'knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

"(5) The term 'reasonable compensation' means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to or not furnished in cooperation with the Department.

"(6) The term 'regularly employed' means, with respect to an officer or employee of a person requesting or receiving assistance within the jurisdiction of the Department or who is involved in a management action with respect to such assistance, an officer or employee who is employed by such person for at least 130 working days within one year immediately before the date of the submission that initiates departmental consideration of such person for receipt of such assistance, or the date of initiation of any management action.

"(g) REGULATIONS.—The Secretary shall issue any regulations necessary to implement this section.

"(h) EFFECTIVE DATE.—This section shall take effect on the date specified in regulations implementing this section that are issued by the Secretary after notice and public comment. The regulations shall establish standards that include determinations of what types of activities constitute influence with respect to the decisions of the Department described in subsection (a)(1)(A) and (B).".

*Subtitle B—Management Reform*

*SEC. 121. ESTABLISHMENT OF HUD CHIEF FINANCIAL OFFICER.*

*Section 4 of the Department of Housing and Urban Development Act is amended by adding at the end the following new subsection:*

*"(e) There shall be in the Department a Chief Financial Officer, designated by the Secretary, who shall—*

*"(1) serve as the principal advisor to the Secretary on financial management;*

*"(2) develop and maintain a financial management system for the Department (including accounting and related transaction systems, internal control systems, financial reporting systems, credit, and cash and debt management);*

*"(3) supervise and coordinate all financial management activities and operations of the Department;*

*"(4) assist in the financial execution of the Department's budget in relation to actual expenditures and prepare timely performance reports for senior managers; and*

*"(5) issue such policies and directives as may be necessary to carry out this section.".*

*SEC. 122. ESTABLISHMENT OF FHA COMPTROLLER.*

*Section 4 of the Department of Housing and Urban Development Act, as amended by section 121, is further amended by adding at the end the following new subsection:*

*"(f) There shall be in the Department a Federal Housing Administration Comptroller, designated by the Secretary, who shall be responsible for overseeing the financial operations of the Federal Housing Administration.".*

*SEC. 123. EXPEDITING RULEMAKING.*

*Section 7(o) of the Department of Housing and Urban Development Act is amended—*

*(1) in paragraph (2)(A)—*

*(A) by striking "first period of 15 calendar days of continuous session of Congress which occurs" in the first sentence and inserting "15-calendar day period beginning on the day"; and*

*(B) by striking "of continuous session" in the second sentence;*

*(2) in paragraph (2)(B), by striking "of continuous session of Congress";*

*(3) in paragraph (3)—*

*(A) by striking "first period of 30 calendar days of continuous session of Congress which occurs" in the first sentence and inserting "expiration of the 30-calendar day period beginning on the day"; and*

*(B) by striking all that follows the period at the end of the first sentence and inserting the following: "Any regulation implementing any provision of the Department of Housing and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of not less than 60 days."; and*

*(4) by striking paragraphs (5) and (6).*

*SEC. 124. FUNDING FOR PROGRAM EVALUATION AND MONITORING.*

*Section 7 of the Department of Housing and Urban Development Act, as amended by section 106 of this Act, is further amended by adding at the end the following new subsection:*

*"(r)(1) For the programs listed in paragraph (2), amounts appropriated under this subsection shall be available to the Secretary for evaluating and monitoring of all such programs (including all aspects of the public housing and section 202 programs). The Secretary shall expend amounts made available under this subsection in accordance with the need and complexity of evaluating and monitoring each such program.*

*"(2) The programs subject to this subsection shall be the programs authorized under—*

*"(A) titles I and II of the United States Housing Act of 1937;*

*"(B) section 202 of the Housing Act of 1959;*

*"(C) section 106 of the Housing and Urban Development Act of 1968;*

*"(D) the Fair Housing Act;*

*"(E) title I and section 810 of the Housing and Community Development Act of 1974;*

*"(F) section 201 of the Housing and Community Development Amendments of 1978;*

*"(G) the Congregate Housing Services Act of 1978;*

*"(H) section 222 of the Housing and Urban-Rural Recovery Act of 1983;*

*"(I) section 561 of the Housing and Community Development Act of 1987; and*

*"(J) title IV of the Stewart B. McKinney Homeless Assistance Act.*

*"(3) In conducting evaluations and monitoring pursuant to the authority under this subsection, the Secretary shall determine*

*any need for additional staff and funding relating to evaluating and monitoring the programs under paragraph (2).*

*"(4)(A) The Secretary may provide for evaluation and monitoring under this subsection directly or by grants, contracts, or interagency agreements. Not more than 50 percent of the amounts made available under paragraph (1) may be used for grants, contracts, or interagency agreements.*

*"(B) Any amounts not used for grants, contracts, or interagency agreements under subparagraph (A) shall be used in a manner that increases and strengthens the ability of the Department to monitor and evaluate the programs under paragraph (2) through officers and employees of the Department.*

*"(5) Not later than December 31 of each year, the Secretary shall submit to the Congress a report regarding the use of amounts made available under this subsection during the fiscal year ending on September 30 of that year, including an analysis of the ability of the Department to monitor and evaluate the programs under paragraph (2) and a statement of any needs determined under paragraph (3).*

*"(6) There is authorized to be appropriated to carry out this subsection $25,000,000 for fiscal year 1991. Such amounts shall remain available until expended.".*

SEC. 125. REFINANCING OF SECTION 235 MORTGAGES.

(a) IN GENERAL.—Section 235(r) of the National Housing Act is amended to read as follows:

"(r)(1) The Secretary is authorized, upon application of a mortgagee, to insure under this subsection a mortgage the proceeds of which are used to refinance a mortgage insured under this section.

"(2) To be eligible for insurance under this subsection, a mortgage must be executed by a mortgagor meeting the requirements of paragraph (3) and shall—

"(A) be a first lien on real estate held in fee simple, or on a leasehold under a lease—

"(i) for not less than 99 years which is renewable; or

"(ii) having a period of not less than 10 years to run beyond the maturity date of the mortgage;

"(B) have been made to, and held by, a mortgagee approved by the Secretary;

"(C) be in an amount not exceeding the outstanding principal balance, including any unpaid interest, due on the mortgage being refinanced;

"(D) have a maturity not exceeding the unexpired term of the mortgage being refinanced;

"(E) bear an interest rate not exceeding such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets; to the extent that the amounts described in paragraphs (4) (A) and (B) are not otherwise paid by the Secretary, the foregoing interest rate may be increased, in the discretion of the Secretary, to compensate the mortgagee for its payment to, or on behalf of, the mortgagor of such amounts; and

"(F) meet the criteria for refinancing as determined by the Secretary.

"(3) Notwithstanding the provisions of subsection (h)(2), assistance payments in connection with mortgages insured under paragraph (2) shall be made only with respect to a family who is eligible for, and receiving assistance payments with respect to, the insured mortgage being refinanced.

"(4) The Secretary is authorized and, to the extent provided in appropriation Acts, may pay to the mortgagor (directly, through the mortgagee, or otherwise)—

"(A) an amount, as approved by the Secretary, as an incentive to the mortgagor to refinance a mortgage insured under this section; and

"(B) an amount as approved by the Secretary for costs incurred in connection with the refinancing, including but not limited to discounts, loan origination fees, and closing costs.

"(5) Amounts of budget authority required for assistance payments contracts with respect to mortgages insured under this subsection shall be derived from amounts recaptured from assistance payments contracts relating to mortgages that are being refinanced. For purposes of subsection (c)(3)(A), the amount of recaptured budget authority that the Secretary commits for assistance payments contracts relating to mortgages insured under this subsection shall not be construed as 'unused'.

"(6) The Secretary is authorized to take any actions to identify and communicate with any mortgagor of a mortgage insured under this section to implement the refinancing of such mortgages with insurance under this subsection. The Secretary may take such actions directly, or under contract. Notwithstanding the restriction of section 552a(b) of title 5 of the United States Code, upon the request of an approved mortgagee, the Secretary may disclose to such mortgagee the name and address of any mortgagor of a mortgage insured under this section that meets the criteria for refinancing, pursuant to paragraph (2)(F), and the unpaid principal balance and interest rate on such mortgage.

"(7) The Secretary shall implement the provisions of this subsection by a notice published in the Federal Register.".

(b) EXCESS RECAPTURED AMOUNTS.—Section 235(c)(3)(C) of the National Housing Act is amended by inserting after the period at the end the following new sentence: "Notwithstanding the preceding sentence, any amounts of budget authority or contract authority recaptured from assistance payments contracts relating to mortgages that are being refinanced that are not required for assistance payments contracts relating to mortgages insured under this subsection, shall be rescinded.".

(c) CONFORMING AMENDMENTS.—Section 235 of the National Housing Act is amended—

(1) in subsection (c)(1), by inserting ", other than a contract in connection with a refinancing under subsection (r)," in the second sentence after "any new contract";

(2) in subsection (c)(3)(A), by inserting "(except to the extent provided in subsection (r) for mortgages insured under such subsection)" in the second sentence after "refinanced,";

(3) in subsection (e), by striking "or (j)(7)," and inserting "(j)(7), or (r),";

(4) in subsection (h)(1)—

(A) by inserting "(other than obligations in connection with mortgages insured under subsection (r))" in the third sentence after "October 1, 1983";

(B) by inserting "(except under subsection (r))" in the sixth sentence after "under this section" the first place it appears; and

(C) by inserting "(other than a contract in connection with a mortgage insured under subsection (r))" in the seventh sentence after "under this section";

(5) in subsection (h)(3), by inserting after the period at the end the following: "The preceding sentence shall not apply to contracts in connection with mortgages insured under subsection (r).";

(6) in subsection (m), by inserting "(except a mortgage insured under subsection (r))" after "No mortgage"; and

(7) in subsection (n), by inserting "or to a mortgage insured under subsection (r)" before the period at the end.

(d) SAVINGS PROVISION.—Notwithstanding the termination of the program under section 235 pursuant to section 401(d) of the Housing and Community Development Act of 1987, the Secretary of Housing and Urban Development shall have authority to insure mortgages under section 235(r), to make assistance payments with respect to such insured mortgages, and to make any other payment or take any other action related to the refinancing of mortgages insured under section 235.

SEC. 126. SANCTIONS FOR IMPROPER CONVEYANCES UNDER URBAN HOMESTEAD PROGRAMS.

(a) IN GENERAL.—Section 810 of the Housing and Community Development Act of 1974 is amended by adding at the end the following new subsection:

"(m) If the Secretary determines that any property transferred for use under an urban homestead program under this section has been conveyed or used under the program in a manner contrary to the provisions of this section, the Secretary may take action as the Secretary considers appropriate, including taking any of the following actions:

"(1) The Secretary may impose a civil penalty on the unit of general local government or the State or the qualified community organization or public agency designated by a unit of general local government, or the transferee of such entity, as appropriate, in an amount not less than any profit realized with respect to the conveyance or use of the property contrary to the provisions of this section.

"(2) The Secretary may revoke the conveyance of the property pursuant to subsection (b)(4) and revoke the transfer of the property to the unit of general local government or State or the qualified community organization or public agency designated by a unit of general local government, except that the Secretary may not revoke the conveyance of any property under this paragraph if the Secretary determines that the conveyance was made to an individual or family who has substantially complied with the requirements of this section for participation in an urban homestead program and who has no knowledge of the conveyance or use of the property contrary to the provisions of this section. If any tenants of any property for which a conveyance is revoked under this paragraph would be displaced by such revocation and the Secretary determines that the tenants are not responsible for or involved in the actions for which the revocation has been imposed, the Secretary shall, if practicable, take actions that would allow the tenants to remain on the property and maintain the property under an urban homestead program.".

(b) CONFORMING AMENDMENT.—Section 810(b)(4) of the Housing and Community Development Act of 1974 is amended by inserting before the semicolon at the end the following: "or by the Secretary under subsection (m)(2)".

(c) APPLICABILITY.—The amendments made by this section shall apply to any property transferred for use in an urban homestead program under section 810 of

the Housing and Community Development Act of 1974 after January 1, 1981.

SEC. 127. REFORM OF MODERATE REHABILITATION PROGRAM.

Section 8(e)(2) of the United States Housing Act of 1937 is amended—

(1) by striking the period at the end of the first sentence and inserting the following: ", and which shall involve a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems.";

(2) by inserting after the period at the end the following new sentence: "In order to maximize the availability of low-income housing, in providing assistance under this paragraph, the Secretary shall include in any calculation or determination regarding the amount of the assistance to be made available the extent to which any proceeds are available from any tax credits provided under section 42 of the Internal Revenue Code of 1986 (or from any syndication of such credits) with respect to the housing."; and

(3) by inserting after the period at the end (as inserted by paragraph (2)) the following: "For each fiscal year, the Secretary may not provide assistance pursuant to this paragraph to any project for rehabilitation of more than 100 units. Assistance pursuant to this paragraph shall be allocated according to the formula established pursuant to section 213(d) of the Housing and Community Development Act of 1974, and awarded pursuant to a competition under such section. The Secretary shall maintain a single listing of any assistance provided pursuant to this paragraph, which shall include a statement identifying the owner and location of the project to which assistance was made, the amount of the assistance, and the number of units assisted.".

**Subtitle C—Federal Housing Administration Reforms**

SEC. 131. ANNUAL AUDITED FINANCIAL STATEMENTS.

Title V of the National Housing Act (as amended by the preceding provisions of this Act) is further amended by adding at the end the following new section:

"ANNUAL AUDITED FINANCIAL STATEMENTS

"SEC. 538. With respect to fiscal year 1989 and for every fiscal year thereafter, the Secretary shall make available to the public a financial statement of the insurance funds established under this Act that will present their financial condition on a cash and accrual basis, consistent with generally accepted accounting principles. Each financial statement shall be audited by an independent accounting firm selected by the Secretary and the results of such audit shall be made available to the public.".

SEC. 132. CREDIT REVIEWS OF PERSONS ACQUIRING MORTGAGED PROPERTIES UNDER SINGLE FAMILY PROGRAM FOR LIFE OF MORTGAGE.

(a) IN GENERAL.—Section 203(r) of the National Housing Act is amended—

(1) by amending the first sentence to read as follows: "The Secretary shall take appropriate actions to reduce losses under the single-family mortgage insurance programs carried out under this title."; and

(2) by amending paragraphs (2) and (3) to read as follows:

"(2) requiring that at least one person acquiring ownership of a one- to four-family residential property encumbered by a mortgage insured under this title be determined to be creditworthy under standards prescribed by the Secretary, whether or not such person assumes personal liability under the mortgage (except that acquisitions by devise or descent shall not be subject to this requirement); and

"(3) in any case where personal liability under a mortgage is assumed, requiring that the original mortgagor be advised of the procedures by which he or she may be released from liability.".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply only with respect to—

(1) mortgages insured—

(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act; or

(B) in accordance with the direct endorsement program (24 C.F.R. 200.163), if the approved underwriter of the mortgage signs the appraisal report for the property on or after the date of the enactment of this Act; and

(2) the approval of substitute mortgagors, if the original mortgagor was subject to such amendments.

(c) TRANSITION PROVISIONS.—Any mortgage insurance provided under title II of the National Housing Act as it existed immediately before the date of the enactment of this Act, shall continue to be governed (to the extent applicable) by the provisions of section 203(r) of the National Housing Act, as such section existed immediately before such date.

SEC. 133. REPEAL OF TITLE X LAND DEVELOPMENT PROGRAM.

(a) REPEAL.—Title X of the National Housing Act is hereby repealed.

(b) APPLICABILITY.—On or after the date of enactment of this Act, no mortgage may be insured under title X, as such title existed immediately before such date, except pursuant to a commitment to insure made before such date.

(c) SAVINGS PROVISION.—Any contract of insurance entered into under title X before the date of enactment of this Act shall be governed by the provisions of such title as such title existed immediately before such date.

(d) CONFORMING AMENDMENTS.—The National Housing Act is amended—

(1) in section 1, by striking "X," each place it appears;

(2) in section 212(a), by striking the seventh sentence;

(3) in section 512, by striking "X," in the first sentence;

(4) in section 522, by inserting ", as such title existed immediately before the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989," after "title X of this Act"; and

(5) in section 530, by striking "X,".

SEC. 134. CIVIL MONEY PENALTIES FOR IMPROPER DEALER AND LOAN BROKER PARTICIPATION IN ORIGINATION OF PROPERTY IMPROVEMENT LOANS.

(a) IN GENERAL.—Section 2(b) of the National Housing Act is amended by adding at the end the following new paragraph:

"(7) With respect to the financing of alterations, repairs, and improvements to existing structures or the building of new structures as authorized under clause (i) of the first sentence of section 2(a), any loan broker (as defined by the Secretary) or any other party having a financial interest in the making of such a loan or advance of credit or in providing assistance to the borrower in preparing the loan application or otherwise assisting the borrower in obtaining the loan or advance of credit who knowingly (as defined in section 536(g) of this Act) submits to any such financial institution or to the Secretary false information shall be subject to a civil money penalty in the amount and manner provided under section 536 with respect to mortgagees and lenders under this Act.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only with respect to—

(1) violations referred to in the amendment that occur on or after the date of the enactment of this Act; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation referred to in the amendment that occurs on or after such date.

SEC. 135. NOTIFICATION REGARDING SUSPENDED MORTGAGEES.

Section 203 of the National Housing Act is amended by adding at the end the following new subsection:

"(s) Whenever the Secretary has taken any discretionary action to suspend or revoke the approval of any mortgagee to participate in any mortgage insurance program under this title, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to—

"(1) the Secretary of Veterans Affairs;

"(2) the chief executive officer of the Federal National Mortgage Association;

"(3) the chief executive officer of the Federal Home Loan Mortgage Corporation;

"(4) the Administrator of the Farmers Home Administration;

"(5) if the mortgagee is a national bank or District bank, or a subsidiary or affiliate of such a bank, the Comptroller of the Currency;

"(6) if the mortgagee is a State bank that is a member of the Federal Reserve System or a subsidiary or affiliate of such a bank, or a bank holding company or a subsidiary or affiliate of such a company, the Board of Governors of the Federal Reserve System;

"(7) if the mortgagee is a State bank that is not a member of the Federal Reserve System or is a subsidiary or affiliate of such a bank, the Board of Directors of the Federal Deposit Insurance Corporation; and

"(8) if the mortgagee is a Federal or State savings association or a subsidiary or affiliate of a savings association, the Director of the Office of Thrift Supervision.".

SEC. 136. FHA FORECLOSED PROPERTIES.

(a) MAINTENANCE.—Section 204(a) of the National Housing Act is amended by inserting after the period at the end of the third sentence the following new sentence: "As a condition of the receipt of such benefits, the mortgagee shall maintain or assure the maintenance of the mortgaged property (in such manner as the Secretary shall by regulation provide) during the period beginning on the taking of the possession or other acquisition of the mortgaged property by the mortgagee and ending on conveyance to the Secretary or other disposition of the mortgaged property in accordance with this section, and funds expended by the mortgagee in meeting such obligation shall be included, to the extent provided in this subsection or in subsection (k), in debentures or other insurance payment pursuant to this section.".

(b) DISPOSITION OF PROPERTIES ON CREDIT TERMS.—Section 204(g) of the National Housing Act is amended by inserting after the period at the end of the first sentence the following new sentence: "The Secretary shall, by regulation, carry out a program of sales of such properties and shall develop and implement appropriate credit terms and

standards to be used in carrying out the program.".

SEC. 137. REPORT REGARDING PROVIDING FORECLOSED PROPERTIES TO 1989 DISASTER VICTIMS.

(a) HUD.—

(1) STUDY.—The Secretary of Housing and Urban Development shall conduct a study regarding the feasibility of making available, to low-income persons whose homes in areas declared by the President as disaster areas as a result of hurricane Hugo or the Loma Prieta earthquake during 1989 were destroyed by such disasters, any available properties (including multifamily properties) owned by the Secretary.

(2) REPORT.—The Secretary of Housing and Urban Development shall submit to the Congress, not later than the expiration of the 90-day period beginning on the date of the enactment of this Act, a report regarding the results and conclusions of the study under paragraph (1), together with any recommendations for legislation regarding providing such property.

(b) FARMERS HOME ADMINISTRATION.—The Secretary of Agriculture shall conduct a study regarding the feasibility of making available, as provided in subsection (a)(1), any available properties (including multifamily properties) owned by the Secretary through the Farmers Home Administration and shall submit a report regarding such study as provided in subsection (a)(2).

(c) CONSULTATION.—The Secretary of Housing and Urban Development and the Secretary of Agriculture shall consult in conducting the studies under subsections (a) and (b) and may submit a single report meeting the requirements of subsections (a)(2) and (b).

SEC. 138. REPORT REGARDING ACTIONS TO IMPROVE DIRECT ENDORSEMENT PROGRAM.

(a) IN GENERAL.—With respect to the direct endorsement program in connection with single-family mortgage insurance under title II of the National Housing Act, the Secretary shall submit to the Congress a report describing any actions the Secretary determines are necessary to take, to—

(1) improve monitoring and supervision under the program;

(2) reduce defaults under the program; and

(3) decrease the potential for fraud under the program.

(b) TIME OF SUBMISSION.—The Secretary shall submit the report under subsection (a) to the Congress not later than the expiration of the 6-month period beginning on the date of the enactment of this Act.

SEC. 139. CO-INSURANCE AMENDMENTS.

(a) IN GENERAL.—Section 244 of the National Housing Act is amended by adding at the end thereof the following new subsection:

"(i) The Secretary shall, by January 15 and July 15 of each year (1) review the adequacy of capital and other requirements for mortgagees under this section, (2) assess the compliance by mortgagees with such requirements, and (3) make such adjustment to such requirements as the Secretary, after providing opportunity for hearing, determines to be appropriate to improve the long-term financial soundness of the Federal Housing Administration funds. Such requirements shall include the minimum capital or net worth of mortgagees; the ratio that mortgagees shall maintain between the mortgagee's capital and the volume of mortgages co-insured by such mortgagee; and such other requirements as the Secretary determines to be appropriate to ensure the long-term financial soundness of the Federal Housing Administration funds. The Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report on the review and assessment under the previous sentence, and an explanation of the Secretary's reasons for making any adjustment in requirements authorized under this section.".

(b) REPORT.—The Secretary of Housing and Urban Development shall submit to the Congress not later than April 1, 1990, a report on the disposition of coinsured multifamily housing projects held by the Government National Mortgage Association. The report shall include a description of the guidelines governing the disposition of such properties, particularly as such guidelines relate to the objectives of—

(1) minimizing losses to the Federal Government;

(2) preserving the projects in decent, safe, and sanitary condition; and

(3) protecting lower-income tenants residing in such projects.

The report shall also describe the status of such multifamily housing projects, including the name, address, and size of each project, and the date and conditions of any foreclosure sale.

SEC. 140. FHA MANAGEMENT.

Section 4 of the Department of Housing and Urban Development Act is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively; and

(2) by redesignating the second sentence in subsection (a) as subsection (b) and adding at the end thereof the following: "The Secretary shall ensure, to the extent practicable, that managers of Federal Housing Administration programs, at each level of the Department, shall be accountable for program operation, risk management, management of cash and other Federal assets, and program financing related to activities over which such managers have responsibility.".

SEC. 141. CONTRACTING FOR FINANCIAL MANAGEMENT SUPPORT.

Section 7(e) of the Department of Housing and Urban Development Act is amended by adding at the end thereof the following: "The Secretary is authorized to enter into contracts with private companies for the provision of such managerial support to the Federal Housing Administration as the Secretary determines to be appropriate, including but not limited to the management of insurance risk and the improvement of the delivery of mortgage insurance.".

SEC. 142. FHA OPERATIONS.

Section 202 of the National Housing Act is amended by—

(1) striking the heading "MUTUAL MORTGAGE INSURANCE FUND" and inserting "FEDERAL HOUSING ADMINISTRATION OPERATIONS";

(2) striking "SEC. 202." and inserting: "SEC. 202. (a) MUTUAL MORTGAGE INSURANCE FUND.—"; and

(3) adding at the end thereof the following new subsections:

"(b) ADVISORY BOARD.—There is created a Federal Housing Administration Advisory Board ("Board") that shall review operation of the Federal Housing Administration, including the activities of the Mortgagee Review Board, and shall provide advice to the Federal Housing Commissioner with respect to the formulation of general policies of the Federal Housing Administration and such other matters as the Federal Housing Commissioner may deem appropriate. The Advisory Board shall, in all other respects, be subject to the provisions of the Federal Advisory Committee Act.

"(1) The Advisory Board shall be composed of 15 members to be appointed from among individuals who have substantial expertise and broad experience in housing and mortgage lending of whom—

"(A) 9 shall be appointed by the Secretary;

"(B) 3 shall be appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate; and

"(C) 3 shall be appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(2) Membership on the Advisory Board shall include—

"(A) not less than 4 persons with distinguished private sector careers in housing finance, lending, management, development or insurance;

"(B) not less than 4 persons with outstanding reputations as licensed actuaries, experts in actuarial science, or economics related to housing;

"(C) not less than 4 persons with backgrounds of leadership in representing the interests of housing consumers;

"(D) not less than 1 person with significant experience and a distinguished reputation for work in the enforcement, advocacy, or development of fair housing or civil rights legislation; and

"(E) not less than 1 person with a background of leadership representing rural housing interests.

"(3) Members of the Advisory Board shall be selected to ensure, to the greatest extent practicable, geographical representation or every region of the country.

"(4) Not more than 8 members of the Advisory Board may be from any one political party.

"(5) Membership of the Advisory Board shall not include any person who, during the previous 24-month period, was required to register with the Secretary under section 112(c) of the Department of Housing and Urban Development Reform Act of 1989 or employed a person for purposes that required such person to so register.

"(6) Of the members of the Advisory Board first appointed, 5 shall have terms of 1 year, and 5 shall have terms of 2 years. Their successors and all other appointees shall have terms of 3 years.

"(7) The Advisory Board is empowered to confer with, request information of, and make recommendations to the Federal Housing Commissioner. The Commissioner shall promptly provide the Advisory Board with such information as the Board determines to be necessary to carry out its review of the activities and policies of the Federal Housing Administration.

"(8) The Board shall, not later than December 31 of each year, submit to the Secretary and the Congress a report of its assessment of the activities of the Federal Housing Administration, including the soundness of underwriting procedures, the adequacy of information systems, the appropriateness of staffing patterns, the effectiveness of the Mortgagee Review Board, and other matters related to the Federal Housing Administration's ability to serve the nation's homebuy-

ers and renters. Such report shall contain the Board's recommendations for improvement and include any minority views.

"(9) The Board shall meet in Washington, D.C., not less than twice annually, or more frequently if requested by the Federal Housing Commissioner or a majority of the members. The Board shall elect a chair, vice-chair and secretary and adopt methods of procedure. The Board may establish committees and subcommittees as needed.

"(10) Subject to the provisions of Section 7 of the Federal Advisory Committee Act, all members of the Board may be compensated and shall be entitled to reimbursement from the Department for traveling expenses incurred in attendance at meetings of the Board.

"(c) MORTGAGEE REVIEW BOARD.—

"(1) ESTABLISHMENT.—There is established within the Federal Housing Administration the Mortgagee Review Board ("Board"). The Board is empowered to initiate the issuance of a letter of reprimand, the probation, suspension or withdrawal of any mortgagee found to be engaging in activities in violation of Federal Housing Administration requirements or the nondiscrimination requirements of the Equal Credit Opportunity Act, the Fair Housing Act, or Executive Order 11063.

"(2) COMPOSITION.—The Board shall consist of—

"(A) the Assistant Secretary of Housing/Federal Housing Commissioner;

"(B) the General Counsel of the Department;

"(C) the President of the Government National Mortgage Association;

"(D) the Assistant Secretary for Administration;

"(E) the Assistant Secretary for Fair Housing Enforcement (in cases involving violations of nondiscrimination requirements); and

"(F) the Chief Financial Officer of the Department;

or their designees.

"(3) ACTIONS AUTHORIZED.—When any report, audit, investigation, or other information before the Board discloses that a basis for an administrative action against a mortgagee exists, the Board shall take one of the following administrative actions:

"(A) LETTER OF REPRIMAND.—The Board may issue a letter of reprimand only once to a mortgagee without taking action under subparagraphs (B), (C), or (D) of this section. A letter of reprimand shall explain the violation and describe actions the mortgagee should take to correct the violation.

"(B) PROBATION.—The Board may place a mortgagee on probation for a specified period of time not to exceed 6 months for the purpose of evaluating the mortgagee's compliance with Federal Housing Administration requirements, the Equal Credit Opportunity Act, the Fair Housing Act, Executive Order 11063, or orders of the Board. During the probation period, the Board may impose reasonable additional requirements on a mortgagee including supervision of the mortgagee's activities by the Federal Housing Administration, periodic reporting to the Federal Housing Commissioner, or submission to Federal Housing Administration audits of internal financial statements, audits by an independent certified public accountant or other audits.

"(C) SUSPENSION.—The Board may issue an order suspending a mortgagee's approval for doing business with the Federal Housing Administration if there exists adequate evidence of a violation or violations and continuation of the mortgagee's approval, pending or at the completion of any audit, investigation, or other review, or such administrative or other legal proceedings as may ensue, would not be in the public interest or in the best interests of the Department. A suspension shall last for not less than 6 months. During the period of suspension, the Federal Housing Administration shall not commit to insure any mortgage originated by the suspended mortgagee.

"(D) WITHDRAWAL.—The Board may issue an order withdrawing a mortgagee if the Board has made a determination of a serious violation or repeated violations by the mortgagee. The Board shall determine the terms of such withdrawal, but the term shall be not less than 1 year. Where the Board has determined that the violation is egregious or willful, the withdrawal shall be permanent.

"(E) SETTLEMENTS.—The Board may at any time enter into a settlement agreement with a mortgagee to resolve any outstanding grounds for an action. Agreements may include provisions such as—

"(i) cessation of any violation;

"(ii) correction or mitigation of the effects of any violation;

"(iii) repayment of any sums of money wrongfully or incorrectly paid to the mortgagee by a mortgagor, by a seller or by the Federal Housing Administration;

"(iv) actions to collect sums of money wrongfully or incorrectly paid by the mortgagee to a third party;

"(v) indemnification of the Federal Housing Administration for mortgage insurance claims on mortgages originated in violation of Federal Housing Administration requirements;

"(vi) modification of the length of the penalty imposed; or

"(vii) implementation of other corrective measures acceptable to the Secretary.

Material failure to comply with the provisions of a settlement agreement shall be sufficient cause for suspension or withdrawal.

"(4) NOTICE AND HEARING.—

"(A) The Board shall issue a written notice to the mortgagee at least 30 days prior to taking any action against the mortgagee under subparagraph (B), (C), or (D) of paragraph (3). The notice shall state the specific violations which have been alleged, and shall direct the mortgagee to reply in writing to the Board within 30 days. If the mortgagee fails to reply during such period, the Board may make a determination without considering any comments of the mortgagee.

"(B) If the Board takes action against a mortgagee under subparagraph (B), (C), or (D) of paragraph (3), the Board shall promptly notify the mortgagee in writing of the nature, duration, and specific reasons for the action. If, within 30 days of receiving the notice, the mortgagee requests a hearing, the Board shall hold a hearing on the record regarding the violations within 30 days of receiving the request. If a mortgagee fails to request a hearing within such 30-day period, the right of the mortgagee to a hearing shall be considered waived.

"(C) In any case in which the notification of the Board does not result in a hearing (including any settlement by the Board and a mortgagee), any information regarding the nature of the violation and the resolution of the action shall be available to the public.

"(5) PUBLICATION.—The Secretary shall establish and publish in the Federal Register a description of and the cause for administrative action against a mortgagee.

"(6) CEASE-AND-DESIST ORDERS.—

"(A) Whenever the Secretary, upon request of the Mortgagee Review Board, determines that there is reasonable cause to believe that a mortgagee is violating, has violated, or is about to violate, a law, rule or regulation or any condition imposed in writing by the Secretary or the Board, and that such violation could result in significant cost to the Federal Government or the public, the Secretary may issue a temporary order requiring the mortgagee to cease and desist from any such violation and to take affirmative action to prevent such violation or a continuation of such violation pending completion of proceedings of the Board with respect to such violation. Such order shall include a notice of charges in respect thereof and shall become effective upon service to the mortgagee. Such order shall remain effective and enforceable for a period not to exceed 30 days pending the completion of proceedings of the Board with respect to such violation, unless such order is set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B) of this paragraph. The Board shall provide the mortgagee an opportunity for a hearing on the record, as soon as practicable but not later than 20 days after the temporary cease-and-desist order has been served.

"(B) Within 10 days after the mortgagee has been served with a temporary cease-and-desist order, the mortgagee may apply to the United States district court for the judicial district in which the home office of the mortgagee is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting of suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the mortgagee, and such court shall have jurisdiction to issue such injunction.

"(C) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to this paragraph, the Secretary may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the mortgagee is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

"(D) For purposes of this paragraph, the term 'mortgagee' means a mortgagee, a branch office or subsidiary of a mortgagee, or a director, officer, employee, agent, or other person participating in the conduct of the affairs of such mortgagee.

"(7) REPORT REQUIRED.—The Board, in consultation with the Federal Housing Administration Advisory Board, shall annually recommend to the Secretary such amendments to statute or regulation as the Board determines to be appropriate to ensure the long term financial strength of the Federal Housing Administration fund and the adequate support for home mortgage credit.

"(d) COORDINATION OF GNMA AND FHA WITHDRAWAL ACTION.—

"(1) Whenever the Federal Housing Administration or Government National Mortgage Association initiates proceedings that could lead to withdrawing the mortgagee from participating in the program, the initiating agency shall—

"(A) within 24 hours notify the other agency in writing of the action taken;

"(B) provide to the other agency the factual basis for the action taken; and

"(C) if a mortgagee is withdrawn, publish its decision in the Federal Register.

"(2) Within 60 days of receipt of a notification of action that could lead to withdrawal under subsection (1), the Federal Housing Administration or the Government National Mortgage Association shall—

"(A) conduct and complete its own investigation;

"(B) provide written notification to the other agency of its decision, including the factual basis for its decision; and

"(C) if a mortgagee is withdrawn, publish its decision in the Federal Register.

"(e) APPRAISAL STANDARDS.—(1) The Secretary shall prescribe standards for the appraisal of all property to be insured by the Federal Housing Administration. Such appraisals shall be performed in accordance with uniform standards, by individuals who have demonstrated competence and whose professional conduct is subject to effective supervision. These standards shall require at a minimum—

"(A) that the appraisals of properties to be insured by the Federal Housing Administration shall be performed in accordance with generally accepted appraisal standards, such as the appraisal standards promulgated by the Appraisal Foundation a not-for-profit corporation established on November 30, 1987 under the laws of Illinois; and

"(B) that each appraisal be a written statement used in connection with a real estate transaction that is independently and impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

"(2) The Appraisal Subcommittee of the Federal Financial Institutions Examination Council shall include the Secretary or his designee.".

SEC. 143. ELIMINATION OF PRIVATE INVESTOR-OWNERS FROM SINGLE FAMILY MORTGAGE INSURANCE PROGRAM.

(a) RETENTION OF PUBLIC AND NONPROFIT INVESTOR OWNERS.—Section 203(g)(3) of the National Housing Act is amended—

(1) in subparagraph (A), by striking the semicolon at the end and inserting the following: ", or any other State or local government or an agency thereof;"; and

(2) in subparagraph (B), by striking the semicolon at the end and inserting the following: ", or other private nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 and intends to sell or lease the mortgaged property to low or moderate-income persons, as determined by the Secretary;".

(b) ELIMINATION OF PRIVATE INVESTOR-OWNERS.—Section 203(g) of the National Housing Act, as amended by subsection (a), is further amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(c) APPLICABILITY.—The amendments made by this section shall apply only with respect to—

(1) mortgages insured—

(A) pursuant to a conditional commitment issued on or after the date of the enactment of this Act; or

(B) in accordance with the direct endorsement program, if the approved underwriter of the mortgagee signs the appraisal report for the property on or after the date of the enactment of this Act; and

(2) the approval of substitute mortgagors, if the original mortgagor was subject to such amendments.

(d) TRANSITION PROVISIONS.—Any mortgage insurance provided under title II of the National Housing Act, as it existed immediately before the date of the enactment of this Act, shall continue to be governed (to the extent applicable) by the provisions amended by subsections (a) and (b) as such provisions existed immediately before such date.

## TITLE II—HOUSING PRESERVATION

SEC. 201. LIMITATIONS ON PREPAYMENT.

Section 203(a) of the Emergency Low Income Housing Preservation Act of 1987 is amended by striking "upon the expiration of the 2-year period beginning on the date of the enactment of this Act" and inserting in lieu thereof "on September 30, 1990".

SEC. 202. CLARIFICATION OF APPLICABILITY TO VOLUNTARY TERMINATION OF INSURANCE.

(a) GENERAL PREPAYMENT LIMITATION.—Section 221(a) of the Emergency Low Income Housing Preservation Act of 1987 is amended by adding at the end the following new sentence: "An insurance contract with respect to eligible low-income housing may be terminated pursuant to section 229 of the National Housing Act only in accordance with a plan of action approved by the Secretary under this subtitle.

(b) ALTERNATIVE PREPAYMENT LIMITATION.—Section 221(b) of the Emergency Low Income Housing Preservation Act of 1987 is amended—

(1) by striking the first comma and inserting "(1)"; and

(2) by inserting before the period at the end of the sentence the following: ", and (2) an insurance contract with respect to eligible low-income housing located in the geographic area subject to the jurisdiction of such court may not be terminated pursuant to section 229 of the National Housing Act during the 2-year period following the date of such invalidation".

(c) NOTICE OF INTENT.—Section 222 of the Emergency Low Income Housing Preservation Act of 1987 is amended by inserting after "agreement" the following: "(including a request to terminate the insurance contract pursuant to section 229 of the National Housing Act)".

(d) CONFORMING AMENDMENTS.—

(1) Section 250(a) of the National Housing Act is amended by inserting after "project" the second place it appears the following: "or permit a termination of an insurance contract pursuant to section 229 of this Act".

(2) Section 229 of the National Housing Act is amended by inserting after "section 2" the following: "and except as specified under section 250 of this Act and subtitle B of the Emergency Low Income Housing Preservation Act of 1987,".

SEC. 203. INCENTIVES TO EXTEND LOW-INCOME USE.

(a) LOANS.—

(1) ACQUISITIONS BY PUBLIC ENTITIES.—Section 236(b) of the National Housing Act is amended by inserting "public entity," before "or a cooperative housing corporation".

(2) CAPITAL IMPROVEMENT LOANS.—(A) Section 201(m)(2)(B) of the Housing and Community Development Amendments of 1978 is amended by striking "Reduce" and inserting "Notwithstanding subsection (l)(2)(B), reduce".

(B) Section 201(m)(2) of the Housing and Community Development Amendments of 1978 is amended—

(i) by striking "not subject to paragraph (1)";

(ii) by inserting after "residents" the second place it appears the following: ", or where appropriate to implement a plan of action under subtitle B of the Emergency Low Income Housing Preservation Act of 1987";

(iii) adding a new subparagraph after subparagraph (D):

"(E) Permit repayment of the debt service to be deferred as long as the low and moderate income character of the project is maintained in accordance with subsection (d).".

(b) APPROVAL OF PLAN OF ACTION.—

(1) TENANT PROFILE.—Section 225(b)(3)(F)(i) of the Emergency Low Income Housing Preservation Act of 1987 is amended by inserting before the semicolon the following: "(based on the area median income limits established by the Secretary in February, 1987), or the date the plan of action is approved, whichever date results in the highest proportion of very low-income families, except that this limitation shall not prohibit a higher proportion of very low-income families from occupying the housing".

(2) SECTION 8 RENTAL ASSISTANCE.—Section 225 of the Emergency Low Income Housing Preservation Act of 1987 is amended by adding at the end the following new subsections:

"(c) SECTION 8 RENTAL ASSISTANCE.—When providing rental assistance under section 8, the Secretary may enter into a contract with an owner, contingent upon the future availability of appropriations for the purpose of renewing expiring contracts for rental assistance as provided in appropriations Acts, to extend the term of such rental assistance for such additional period or periods as is necessary to carry out an approved plan of action. The contract and the approved plan of action shall provide that, if the Secretary is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Secretary, upon the request of the owner, shall take the following actions (subject to the limitations under the following paragraphs):

"(1) Modification of the binding commitments made pursuant to subsection (b) that are dependent on such rental assistance.

"(2) If action under paragraph (1) is not feasible, release of an owner from the binding commitments made pursuant to subsection (b) that are dependent on such rental assistance.

"(3) If action under paragraphs (1) and (2) would, in the determination of the Secretary, result in the default of the insured loan, approval of the revised plan of action, notwithstanding subsection (a), that involves the termination of low-income affordability restrictions.

At least 30 days prior to making a request under the preceding sentence, an owner shall notify the Secretary of the owner's intention to submit the request. The Secretary shall have a period of 90 days following receipt of such notice to take action to extend the rental assistance contract and to continue the binding commitments under subsection (b).

"(d) RELOCATION OF DISPLACED TENANTS.—Any plan of action shall specify actions that the Secretary and the owner shall take to ensure that any tenants, displaced as a result of a plan of action approved under subsection (a) or as a result of modifications taken pursuant to subsection (c), are relocated to affordable housing.".

(c) INSURANCE FOR SECOND MORTGAGE FINANCING.—

(1) UNDERWRITING.—Section 241(f)(2) of the National Housing Act is amended by adding at the end the following sentence:

"When underwriting an equity loan under this subsection, the Secretary may assume that the rental assistance provided in accordance with an approved plan of action under section 225(b) of the Emergency Low Income Housing Preservation Act of 1987 will be extended for the full term of the contract entered into under section 225(c) of that Act. The Secretary may accelerate repayment of a loan under this section in the event rental assistance is not extended under section 225(c) of that Act or the Secretary is unable to develop a revised package of incentives to the owner comparable to those received under the original approved plan of action.".

(2) ACQUISITIONS BY PUBLIC ENTITIES.—Section 241(f)(3) of the National Housing Act is amended by inserting "public entity," after "A".

(d) LIMITATIONS ON FORECLOSURE.—Section 241(f) of the National Housing Act is amended by adding at the end the following new paragraph:

"(6) If the Secretary is unable to extend the term of rental assistance for the full term of the contract entered into under section 225(c) of the Emergency Low Income Housing Preservation Act of 1987, the Secretary is authorized to take such actions as the Secretary deems to be appropriate to avoid default, avoid disruption of the sound ownership and management of the property or otherwise minimize the cost to the Federal Government.".

SEC. 204. PRESERVATION.

(a) MANAGEMENT AND PRESERVATION OF HUD-OWNED AND HUD-HELD MULTIFAMILY HOUSING PROJECTS.—Section 203(k) of the Housing and Community Development Amendments of 1978 is amended to read as follows: "The Secretary shall annually submit to the Congress on June 1 of each year a report describing the status of multifamily housing projects that are subject to subsection (a), which report shall include—

"(1) the name, address, and size of each project;

"(2) the nature and date of assignment;

"(3) the status of the mortgage;

"(4) the physical condition of the project;

"(5) the proportion of units in a project that are vacant;

"(6) the date on which the Secretary became mortgagee in possession or the date of imposition of any receivership;

"(7) the date and conditions of any foreclosure sale;

"(8) the date of acquisition by the Secretary; and

"(9) the date and conditions of any property disposition sale.

The report shall describe the activities carried out under subsection (e) during the preceding year, and shall contain a description and assessment of the rules, guidelines and practices governing the Department's assumption of management responsibilities in multifamily housing projects subject to subsection (a) that are owned by the Secretary (or for which the Secretary is mortgagee in possession) as well as the steps that the Secretary has taken or plans to take to expedite the assumption of management responsibilities of the Department and improve the management performance of the Department, including the expedited repair and turnover of vacant units.".

(b) REHABILITATION LOANS.—Section 241 of the National Housing Act is amended by inserting the following after subsection (f):

"(g)(1) When underwriting a rehabilitation loan under this section in connection with eligible multifamily housing, the Secretary may assume that any rental assistance provided for purposes of servicing the additional debt will be extended for the term of the rehabilitation loan. The Secretary shall exercise prudent underwriting practices in insuring rehabilitation loans under this section. For purposes of this subsection, the term 'eligible multifamily housing' means any housing financed by a loan or mortgage that is—

"(A) insured or held by the Secretary under section 221(d)(3) of the National Housing Act and assisted under section 101 of the Housing and Urban Development Act of 1965 or section 8 of the United States Housing Act of 1937;

"(B) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act; or

"(C) insured, assisted or held by the Secretary under section 236 of the National Housing Act.

"(2) A mortgagee approved by the Secretary may not withhold consent to a rehabilitation loan insured in connection with eligible multifamily housing on which that mortgagee holds a mortgage.".

(c) CAPITAL ASSESSMENT STUDY.—(1) The Secretary of Housing and Urban Development shall conduct a study to determine the physical renovation needs of the Nation's federally-assisted multifamily housing inventory that is distressed and to estimate the cost of correcting deficiencies and subsequently maintaining that inventory in adequate physical condition. The Secretary shall establish criteria to determine what housing qualifies as distressed and such criteria shall include factors such as serious deficiencies in the original design, deferred maintenance, physical deterioration or obsolescence of major systems and other serious deficiencies in the physical plant of a project. The study shall examine and assess the adequacy of existing tools that are available to the Secretary for modernization efforts including—

(A) mortgage insurance for rehabilitation loans under section 241 of the National Housing Act;

(B) operating assistance and capital improvement loans under section 201 of the Housing and Community Development Amendments of 1978 (the "Flexible Subsidy Program"); and

(C) rental assistance under section 8.

The study shall also examine and assess the effectiveness of sanctions that are now available to the Secretary. Not later than one year after the date of enactment of this Act, the Secretary shall submit to the Congress a detailed report setting forth the findings of the Secretary as a result of the study. The Secretary shall submit to the Congress an interim report containing the information required under paragraph (2) not later than April 1, 1990.

(2) The examination and assessment of the Flexible Subsidy Program required by paragraph (1) shall include—

(A) an accounting of all applications that have been approved or rejected since 1980;

(B) an analysis of all applications that have not been acted upon since 1980 including the length of time such applications have been pending, the amount of assistance requested, and the number of units affected;

(C) an estimate of the funding that will be made available to the Flexible Subsidy Fund under section 201(j) of the Housing and Community Development Amendments of 1978 in the next three fiscal years; and

(D) an assessment of what additional resources will be needed for the Fund in the next three fiscal years.

(3) The term "federally-assisted multifamily housing" means housing financed by a loan or mortgage that is—

(A) insured or held by the Secretary under section 221(d)(3) of the National Housing Act and assisted under section 101 of the Housing and Urban Development Act of 1965 or section 8 of the United States Housing Act of 1937;

(B) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act; or

(C) insured, assisted or held by the Secretary under section 236 of the National Housing Act.

SEC. 205. REPORT ON PROPERTY DISPOSITION DEMONSTRATION.

The Secretary of Housing and Urban Development shall submit to the Congress, not later than 30 days after the date of enactment of this Act, a report describing the steps that have been and will be taken to implement section 184 of the Housing and Community Development Act of 1987 including a detailed description of—

(1) the efforts taken by the Secretary to solicit participants in the demonstration;

(2) any applications, responses or other expressions of interest submitted by State housing finance agencies;

(3) the reasons for the Secretary's refusal, as of the date of enactment of this Act, to approve such applications; and

(4) the steps that the Secretary has taken and plans to take to ensure that the demonstration is implemented in at least one State within 90 days after the date of enactment of this Act.

SEC. 206. PROHIBITION ON PREPAYMENT OF NEW RURAL HOUSING LOANS.

(a) IN GENERAL.—Section 502(c)(1) of the Housing Act of 1949 is amended—

(1) by inserting "(A)" after "(c)(1)";

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(3) by adding at the end the following new subparagraph:

"(B) The Secretary may not accept an offer to prepay, or request refinancing in accordance with subsection (b)(3) of, any loan made or insured under section 515 pursuant to a contract entered into on or after the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989.".

(b) CONFORMING AMENDMENT.—Section 502(c)(1) of the Housing Act of 1949 is amended—

(1) by striking "after the date of enactment of this subsection," and inserting the following: "after December 21, 1979, but before the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989,"; and

(2) by striking "after the date of enactment of this subsection and" and inserting the following: "after December 21, 1979, but before the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989, and".

SEC. 207. EQUITY TAKEOUT INCENTIVE FOR NEW RURAL HOUSING LOANS.

Section 515 of the Housing Act of 1949 is amended by adding at the end the following new subsection:

"(t) EQUITY TAKEOUT LOANS.—

"(1) AUTHORITY.—The Secretary is authorized to guarantee an equity loan (in the form of a supplemental loan) to an owner of housing financed with a loan made or insured under subsection (b), only if the Secretary determines, after taking into account local market conditions, that there is reasonable likelihood that the housing will continue as decent, safe, and sanitary housing for the remaining life of the original loan on the project made or insured under subsection (b) and that such an equity loan is—

"(A) necessary to provide a fair return on the owner's investment in the housing;

"(B) the least costly alternative for the Federal Government that is consistent with carrying out the purposes of this subsection; and

"(C) would not impose an undue hardship on tenants or an unreasonable cost to the Federal Government.

The amount of loans guaranteed under this subsection shall be subject to limits provided in appropriations Acts.

"(2) TIMING.—The Secretary is authorized to guarantee an equity loan under this subsection after the expiration of the 20-year period beginning on the date that an existing loan under subsection (b) of this section was made or insured. Not more than one equity loan under this subsection may be provided for any project.

"(3) AMOUNT OF THE TAKEOUT.—The amount of an equity loan under this subsection shall not exceed the difference between the outstanding principal on debt secured by the project and 90 percent of the appraised value of the project. The appraised value of the project shall be determined by 2 independent appraisers, 1 of whom shall be selected by the Secretary and 1 of whom shall be selected by the owner. If the 2 appraisers fail to agree on the value of the project, the Secretary and the owner shall jointly select a third appraiser whose appraisal shall be binding on the Secretary and the owner. The amount of the equity loan shall not exceed 30 percent of the amount of the original loan on the project made or insured under subsection (b).

"(4) RESERVE ACCOUNT PAYMENTS.—For each loan made or insured under subsection (b) pursuant to a contract entered into after the date this subsection takes effect, the owner shall make monthly payments from project income to the Secretary for deposit in a reserve account for the project. Such monthly payments shall, in the first year after the loan is made or insured, equal $2 for each unit in the project, and shall increase by $2 annually until the expiration of the 20-year period beginning on the date that the loan was made or insured, except that such annual increases shall not be required for a unit occupied by a low-income family or individual who is paying more than 30 percent of the family's or individual's adjusted income in rent. The rent on a unit for which payment is made under this paragraph shall be increased by the amount of such payment.

"(5) RESERVE ACCOUNT.—

"(A) Payments under paragraph (4) shall be deposited in an interest bearing account that the Secretary shall establish for the project.

"(B) The Secretary shall make available amounts in the reserve account only for payments of principal and interest on an equity loan under this subsection. Such payments shall be in amounts necessary to ensure that rent payments made by low-income families residing in the housing do not exceed the maximum rent under section 521(a)(2)(A);

"(C) Any payments to the account, and interest on such payments, not expended in the project from which such payments were made, shall be used in other projects to make payments of principal and interest on an equity loan under this subsection. Such payments shall be in amounts necessary to ensure that rent payments made by low-income families residing in the housing do not exceed the maximum rent under section 521(a)(2)(A).

"(D) The Secretary shall make payments from accounts under this paragraph only to the extent provided in appropriations Acts.

"(6) SUBMISSION OF PLAN.—An owner requesting an equity loan under this subsection shall submit a plan acceptable to the Secretary to ensure that the cost of amortizing an equity loan under paragraph (1) does not result in the displacement of very-low-income tenants or substantially alter the income mix of the tenants in the project.

"(7) REGULATIONS.—The Secretary shall issue final regulations within 180 days from the date of enactment of this subsection.

"(8) EFFECTIVE DATE.—The requirements of this subsection shall apply to any applications for assistance under this section on or after the expiration of 180 days from the date of enactment of this subsection.".

## TITLE III—HOUSING PROGRAM EXTENSIONS AND CHANGES

SEC. 301. FLEXIBLE SUBSIDY PROGRAM.

Section 236(f)(3) of the National Housing Act is amended by striking "September 30, 1989" and inserting "September 30, 1991".

SEC. 302. CONTINUATION OF PUBLIC HOUSING ECONOMIC RENT.

Section 3(a)(2) of the United States Housing Act of 1937 is amended—

(1) in subparagraph (A), by striking "3-year" and inserting "5-year"; and

(2) in subparagraph (B)—

(A) by striking "3-year" and inserting "5-year"; and

(B) by adding at the end the following: "The terms of all ceiling rents established prior to the date of enactment of the Department of Housing and Urban Development Reform Act of 1989 shall be extended for the 5-year period beginning on such date of enactment.".

SEC. 303. EXTENSION OF RECIPROCITY IN APPROVAL OF HOUSING SUBDIVISIONS AMONG FEDERAL AGENCIES.

Section 535(b) of the Housing Act of 1949 is amended by striking "1-year period beginning on the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988" and inserting the following: "6-month period beginning on the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989".

SEC. 304. HODAG AMENDMENT.

Section 17(d) of the United States Housing Act of 1987 is amended as follows:

"(11) SALE OF UNITS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a project assisted by a development grant awarded pursuant to this section where (i) the grant was originally approved for a nonprofit cooperative, and (ii) a majority of the units in the approved project have 3 or more bedrooms, the nonprofit owner of such project may sell such units for fee simple or condominium ownership if the requirements of subparagraph (B) are met.

"(B) REQUIREMENTS.—The requirements of this subparagraph are that—

"(i) at least 80 percent of the units in the project are initially sold to households with incomes that do not exceed 80 percent of the median income of the area;

"(ii) housing cost to such households shall be initially calculated at not to exceed 30 percent of actual household income;

"(iii) each purchaser agrees that, during the 20-year period following the initial sale, any subsequent resale of the unit shall be to a purchaser whose income does not exceed 80 percent of the median income for the area; and

"(iv) after the 20-year period described in clause (iii), the pro rata grant attributable to a unit, which shall be secured by a deed of trust on the unit, shall be repaid upon any sale, lease, or transfer of any interest in the unit except for a sale of the unit to a purchaser whose income does not exceed 80 percent of the median income of the area.

"(C) REFINANCING.—A refinancing of the unit involving an equity withdrawal shall require a repayment to the extent of the withdrawal not to exceed the pro rata amount of the grant attributable to the unit. A refinancing unrelated to a sale, equity withdrawal, lease, or transfer of interest shall not require repayment.

"(D) ADMINISTRATION.—A homeowner may request grantee approval of a sale, equity withdrawal, or other transfer with postponement of the repayment or without full or partial repayment and grantee may approve if the grantee determines that—

"(i) an undue hardship will result from the application of the repayment requirement, such as where the proceeds are insufficient to repay the loan in full; or

"(ii) postponing repayment is in the interest of neighborhood growth and stability.

"(E) EFFECT OF REPAYMENT.—Upon repayment of the grant, any program requirements affecting the unit shall terminate. The grantee shall use repayments of the grant for low and moderate income housing as prescribed by the Secretary. Notwithstanding any existing project covenants or inconsistencies with this section, the Secretary shall take all action necessary to implement this paragraph.".

## TITLE IV—RURAL HOUSING

SEC. 401. ACCOUNTABILITY IN AWARDS OF ASSISTANCE; REMEDIES AND PENALTIES.

(a) IN GENERAL.—Title V of the Housing Act of 1949 is amended by adding at the end the following:

"ACCOUNTABILITY

"SEC. 536. (a) NOTICE REGARDING ASSISTANCE.—

"(1) PUBLICATION OF NOTICE OF AVAILABILITY.—The Secretary shall publish in the Federal Register notice of the availability of any assistance under any program or discretionary fund administered by the Secretary under this title.

"(2) PUBLICATION OF APPLICATION PROCEDURES.—The Secretary shall publish in the Federal Register a description of the form and procedures by which application for the assistance may be made, and any deadlines relating to the award or allocation of the as-

sistance. Such description shall be sufficient to enable any eligible applicant to apply for such assistance.

"(3) PUBLICATION OF SELECTION CRITERIA.—Not less than 30 days before any deadline by which applications or requests for assistance under any program or discretionary fund administered by the Secretary must be submitted, the Secretary shall publish in the Federal Register the criteria by which selection for the assistance will be made. Such criteria shall include any objective measures of housing need, project merit, or efficient use of resources that the Secretary determines are appropriate and consistent with the statute under which the assistance is made available.

"(4) DOCUMENTATION OF DECISIONS.—

"(A) The Secretary shall award or allocate assistance only in response to a written application in a form approved in advance by the Secretary, except where other award or allocation procedures are specified in statute.

"(B) The Secretary shall ensure that documentation and other information regarding each application for assistance is sufficient to indicate the basis on which any award or allocation was made or denied. The preceding sentence shall apply to—

"(i) any application for an award or allocation of assistance made by the Secretary to a State, unit of general local government, or other recipient of assistance, and

"(ii) any application for a subsequent award or allocation of such assistance by such State, unit of general local government or other recipient.

"(C) The Secretary shall ensure that each application and all related documentation and other information referred to in subparagraph (B) is readily available for public inspection for a period of not less than 10 years, beginning not less than 30 days following the date on which the award or allocation is made.

"(5) EMERGENCY EXCEPTION.—The Secretary may waive the requirements of paragraphs (1), (2), and (3) if the Secretary determines that the waiver is required for adequate response to an emergency. Not less than 30 days after providing a waiver under the preceding sentence, the Secretary shall publish in the Federal Register the Secretary's reasons for so doing.

"(b) DISCLOSURES BY APPLICANTS.—The Secretary shall require the disclosure of information with respect to any application for assistance under this title submitted by any applicant who has received or, in the determination of the Secretary, can reasonably be expected to receive assistance under this title in excess of $200,000 in the aggregate during any fiscal year. Such information shall include the following:

"(1) OTHER GOVERNMENT ASSISTANCE.—Information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project or activities for which the applicant is seeking assistance under this title. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

"(2) INTERESTED PARTIES.—The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance under this title or the planning, development, or implementation of the project or activity. For purposes of this paragraph, residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

"(3) EXPECTED SOURCES AND USES.—A report satisfactory to the Secretary of the expected sources and uses of funds that are to be made available for the project or activity.

"(c) UPDATING OF DISCLOSURE.—During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required under the previous subsection within 30 days of any substantial change.

"(d) REGULATION OF LOBBYISTS AND CONSULTANTS.—

"(1) LIMITATION OF FEES.—Any person who is engaged for pay or for any consideration for the purpose of attempting to influence any award or allocation of assistance by the Secretary shall not seek or receive any fee that is—

"(A) based on the amount of assistance or number of units that may be provided by the Secretary, or

"(B) contingent on an award of assistance by the Secretary, except that professional services related to a project may be donated in whole or in part to a community housing development organization in the event assistance for a project is not awarded.

"(2) REGISTRATION.—Any person who will be engaged for pay or for any consideration for the purpose of attempting to influence any award or allocation of assistance by the Secretary shall, before doing anything in furtherance of such object, register by submitting to the Secretary a sworn statement containing—

"(A) such person's name and business address,

"(B) the nature and duration of any previous Federal employment,

"(C) the name and address of the person by whom such person is employed, and in whose interest such person appears or works,

"(D) the duration of such employment,

"(E) how much such person is paid and is to receive,

"(F) by whom such person is paid or is to be paid,

"(G) how much such person is to be paid for expenses, and

"(H) what expenses are to be included.

For purposes of this paragraph, ownership by an individual of a single family home financed under section 502 does constitute pay or consideration.

"(3) REPORTING.—Each person registering under paragraph (2) shall, between the first and tenth day of each calendar quarter, so long as such person's activity continues, file with the Secretary a detailed report under oath setting forth—

"(A) all money received and expended by such person during the preceding calendar quarter in carrying on such person's work;

"(B) an identification of the person or persons to whom funds were paid and the purposes of such payments;

"(C) all awards or allocations of assistance under this title that the person attempted to influence; and

"(D) any contacts with any employee of the Department for the purpose of attempting to influence any award or allocation of assistance by the Secretary.

"(e) REMEDIES AND PENALTIES.—

"(1) ADMINISTRATIVE REMEDIES.—If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (b), (c), or (d) this section has occurred, the Secretary shall—

"(A) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

"(B) in the case of a selection that has been made, determine whether to—

"(i) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

"(ii) impose sanctions upon the violator, including debarment, subject to review and determination on the record after opportunity for a hearing;

"(iii) recapture any funds that have been disbursed;

"(iv) permit the violating applicant selected to continue to participate in the program; or

"(v) take any other actions that the Secretary considers appropriate.

The Secretary shall publish in the Federal Register a descriptive statement of each determination made and action taken under this paragraph.

"(2) CIVIL PENALTIES.—Whoever violates any section of this section shall be subject to the imposition of a civil penalty in a civil action brought by the United States in an appropriate district court of the United States. A civil penalty under this paragraph may not exceed—

"(A) $100,000 in the case of an individual; or

"(B) $1,000,000 in the case of an applicant other than an individual.

"(3) DEPOSIT OF PENALTIES IN INSURANCE FUNDS.—Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the Rural Housing Insurance Fund.

"(4) NONEXCLUSIVENESS OF REMEDIES.—This subsection may not be construed to limit the applicability of any requirements, sanctions, penalties, or remedies established under any other law. The Secretary shall not be relieved of any obligation to carry out the requirements of this section because such other requirements, sanctions, penalties, or remedies apply.

"(f) LIMITATION OF ASSISTANCE.—The Secretary shall certify that assistance provided by the Secretary to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance from all Federal, State, and local sources. The Secretary shall adjust the amount of assistance provided to an applicant to compensate for any changes reported under subsection (c).

"(g) REGULATIONS.—Not less than 180 days following enactment of this Act, the Secretary shall promulgate regulations to implement this section.

"(h) DEFINITION.—For purposes of this section, the term 'assistance' means any housing grant, loan, guarantee, insurance, rebate, subsidy, tax credit benefit, or other form of direct or indirect assistance.

"(i) REPORT BY THE SECRETARY.—The Secretary shall submit to the Congress, not later than 180 days following the date of enactment of this section, a report describing actions taken to carry out this section, including actions to inform and educate officers and employees of the Department of Agriculture regarding the provisions of this section.".

(b) EFFECTIVE DATE.—Section 536 of the Housing Act of 1949, as added by subsection

(a), shall take effect on the effective date of regulations implementing such section.

SEC. 402. REUSE OF SECTION 515 LOAN AUTHORITY.

Section 515 of the Housing Act of 1949, as amended by section 207, is amended by adding at the end the following:

"(u) REUSE OF LOAN AUTHORITY.—Loan authority that is obligated under this section but that is not expended due to any action that removes the original borrower, may be reallocated to a different borrower during the same fiscal year in which the loan authority was obligated.".

## TITLE V—NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

SEC. 501. PURPOSE.

The purpose of this title is to establish a National Commission on Severely Distressed Public Housing—

(1) to identify those public housing projects in the Nation that are in a severe state of distress;

(2) to assess the most promising strategies to improve the condition of severely distressed public housing projects that have been implemented by public housing authorities, other Government agencies at the Federal, State, and local level, public housing tenants, and the private sector;

(3) to develop a national action plan to eliminate by the year 2000 unfit living conditions in public housing projects determined by the Commission to be the most severely distressed.

SEC. 502. ESTABLISHMENT OF COMMISSION.

There is established a commission to be known as the National Commission on Severely Distressed Public Housing (hereinafter in this title referred to as the "Commission").

SEC. 503. MEMBERSHIP OF COMMISSION.

(a) APPOINTMENT.—(1) The Commission shall be composed of 18 members, appointed not later than 60 days after amounts are appropriated pursuant to section 506 or made available from non-Federal sources. The members shall be as follows:

(A) 6 members to be appointed by the Secretary of Housing and Urban Development;

(B) 6 members appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and Ranking Minority Member of the Subcommittee on VA, HUD, and Independent Agencies of the Committee on Appropriations of the Senate; and

(C) 6 members appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Chairman and Ranking Minority Member of the Subcommittee on VA, HUD, and Independent Agencies of the Committee on Appropriations of the House of Representatives.

(2) The Secretary and the congressional leaders referred to in paragraph (1) shall each appoint as member of the Commission—

(A) 2 individuals who are elected public officials at the Federal, State, or local level;

(B) 2 individuals who are local public housing officials or representatives of public housing authorities with experience in eliminating unfit living conditions in severely distressed public housing projects;

(C) 1 individual who is a tenant or a representative of tenants or a tenant organization; and

(D) 1 individual who is a leader of business or labor or is a distinguished academic in the field of housing and urban development.

(b) CHAIRPERSON.—The Commission shall elect a chairperson from among members of the Commission.

(c) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(d) VOTING.—Each member of the Commission shall be entitled to 1 vote, which shall be equal to the vote of every other member of the Commission.

(e) VACANCIES.—Any vacancy on the Commission shall not affect its powers, but shall be filled in the manner in which the original appointment was made.

(f) PROHIBITION ON ADDITIONAL PAY.—Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

SEC. 504. FUNCTIONS OF THE COMMISSION.

(a) IDENTIFICATION OF SEVERELY DISTRESSED PUBLIC HOUSING PROJECTS.—The Commission shall identify those public housing projects that are in a severe state of distress, giving special attention to projects that—

(1) require major redesign to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems and other deficiencies in the physical plant of the project;

(2) are occupied predominantly by families with children who are in a severe state of distress, characterized by such factors as high rates of unemployment, teenage pregnancy, single-parent households, long-term dependency on public assistance and minimal educational achievement;

(3) are locations for recurrent vandalism and criminal activity (including drug-related criminal activity);

(4) suffer from management deficiencies, including absence of effective management systems to (A) repair and re-rent vacant units expeditiously; (B) maintain units and common areas; (C) terminate the tenancy of tenants engaged in activity that adversely affects the health, safety, and right to quiet enjoyment of their neighbors; (D) collect rents; (E) encourage tenant participation and cooperation in management and maintenance; and (F) maintain adequate security; and

(5) meet such other criteria that the Commission determines to be evidence of unfit living conditions.

(b) EVALUATION OF ALTERNATIVE STRATEGIES.—The Commission shall assess the most promising strategies to eliminate unfit living conditions in severely distressed public housing projects that have been implemented by public housing authorities, other Government agencies at the Federal, State, and local level, public housing tenants, and the private sector. Such strategies may include but shall not be limited to—

(1) measures to correct management deficiencies;

(2) the provision of supportive services to project residents, and, if necessary, the redesign of projects to accommodate such services;

(3) the redesign of projects to reduce density and otherwise eliminate harmful design elements;

(4) the conversion of projects to mixed-income housing developments; and

(5) the total or partial demolition or disposition of projects. Evaluation of such strategies shall consider efforts to provide for replacement of public housing dwelling units that were demolished, disposed of or otherwise removed from use by low-income persons.

(c) DEVELOPMENT OF NATIONAL ACTION PLAN.—The Commission shall establish a national action plan to eliminate by the year 2000 unfit living conditions in public housing projects identified in subsection (a). The action plan shall—

(1) specify objectives that the Department of Housing and Urban Development could achieve in cooperation with public housing authorities, public housing tenants, and other interested parties;

(2) provide a schedule by which such objectives could be achieved;

(3) recommend any legislative or administrative action that is necessary to achieve such objectives;

(4) make recommendations regarding any necessary replacement of public housing; and

(5) calculate, in accordance with the schedule established above, any impact on Federal expenditures necessary to achieve such objectives.

(d) FINAL REPORT.—Not later than 12 months after the Commission is established pursuant to section 503(a), the Commission shall submit to the Secretary and to the Congress a final report which shall contain the information, evaluations, and recommendations specified above.

SEC. 505. POWERS OF COMMISSION.

(a) HEARINGS.—The Commission may, for the purpose of carrying out this subtitle, hold such hearings and sit and act at such times and places as the Commission may find advisable.

(b) RULES AND REGULATIONS.—The Commission may adopt such rules and regulations as may be necessary to establish its procedures and to govern the manner of its operations, organization and personnel.

(c) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) The Commission may secure directly from any department or agency of the United States such data and information as the Commission may require for the purpose of this subtitle, including but not limited to comprehensive plans submitted by public housing authorities in accordance with section 14 of the United States Housing Act of 1937, and applications submitted by public housing authorities requesting funds for the major reconstruction of public housing projects in accordance with section 5 of such Act. Upon request of the Commission, any such department or agency shall furnish such data or information. The Commission may acquire data or information directly from public housing authorities to the same extent the Secretary could acquire such data or information.

(2) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(3) Upon the request of the chairperson of the Commission, the Secretary of Housing and Urban Development shall, to the extent possible and subject to the discretion of the Secretary, detail any of the personnel of the Department of Housing and Urban Development, on a nonreimbursable basis, to assist the Commission in carrying out its duties under this subtitle.

(d) MAILS.—The Commission may use the United States mails in the same manner and

under the same conditions as other Federal agencies.

(e) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriations Acts, enter into contracts with private firms, institutions, and individuals for the purpose of conducting research or surveys necessary to enable the Commission to discharge its duties under this subtitle.

(f) STAFF.—(1) The Commission shall appoint an executive director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5, United States Code.

(2) In addition to the executive director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(g) ADVISORY COMMITTEE.—The Commission shall be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title not to exceed $2,000,000 for fiscal year 1990 and $1,000,000 for fiscal year 1991. Funds appropriated under this section shall remain available until expended.

SEC. 507. SUNSET.

The Commission shall terminate upon the expiration of 18 months following the appointment of all the members under section 503(a).

TITLE VI—NATIONAL COMMISSION ON NATIVE AMERICAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

SEC. 601. ESTABLISHMENT.

There is established a Commission to be known as the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing (hereinafter in this section referred to as the "Commission").

SEC. 602. MEMBERSHIP.

(a) APPOINTMENT.—(1) The Commission shall be composed of 12 members, appointed not later than 60 days after amounts are appropriated pursuant to section 605 of this Act or made available from non-Federal sources. The members shall be appointed as follows:

(A) 2 members to be appointed by the Secretary of Housing and Urban Development;

(B) 2 members appointed by the Chairman and the Ranking Minority Member of the Select Committee on Indian Affairs of the Senate;

(C) 3 members appointed by the Chairman and the Ranking Minority Member of the Subcommittee on Housing and Community Development of the Committee on Banking, Finance, and Urban Affairs of the House of Representatives;

(D) 3 members appointed by the Chairman and Ranking Minority Member of the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate;

(E) 1 Native Hawaiian appointed by the Secretary of Housing and Urban Development; and

(F) 1 Native Hawaiian appointed by the Chairman and Ranking Minority Member of the Select Committee on Indian Affairs of the Senate.

(2) Except as provided in paragraph (3), the Secretary and the congressional leaders referred to in subparagraphs (A) through (D) of paragraph (1) shall appoint as members of the Commission individuals who are elected officials of Indian tribes, who are officials of Indian housing authorities, or who have experience in Federal Indian housing programs.

(3) The congressional leaders referred to in subparagraphs (C) and (D) of paragraph (1) shall appoint 1 individual under each such clause with experience in housing development and finance.

(4) The members appointed under subparagraphs (E) and (F) of paragraph (1) shall be individuals with experience in the Native Hawaiian community in housing programs available to beneficiaries of the Hawaiian Homes Commission Act of 1920.

(b) CHAIRPERSON.—The Commission shall elect a chairperson from among the members of the Commission.

(c) QUORUM.—A majority of the members shall constitute a quorum for the transaction of business.

(d) VOTING.—Each member of the Commission shall be entitled to one vote, which shall be equal to the vote of every other member of the Commission.

(e) VACANCIES.—Any vacancy on the Commission shall not affect its powers, but shall be filled in the original manner in which the appointment was made.

(f) PROHIBITION ON ADDITIONAL PAY.—Members on the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(g) TERMINATION.—The Commission shall terminate upon the expiration of 18 months after all members of the Commission are appointed under paragraph (1).

SEC. 603. FUNCTIONS OF THE COMMISSION.

(a) EVALUATION OF CURRENT PROBLEMS.—The Commission shall evaluate the factors currently impeding the development of safe and affordable housing for American Indians, Alaska Natives, and Native Hawaiians, including factors related to tribal administrative capacity, property management, access to financial markets, infrastructure development, and the adequacy of existing housing programs for Indians, Alaska Natives, and Native Hawaiians.

(b) EVALUATION OF ALTERNATIVE STRATEGIES.—The Commission shall assess the most promising strategies for the development, management, and modernization of housing for Indians, Alaska Natives, and Native Hawaiians. The Commission shall, in particular, evaluate housing strategies that have been or could be carried out by Indian housing authorities, public housing authorities, other government agencies at the Federal, State and local level, and the private sector.

(c) DEVELOPMENT OF AN ACTION PLAN.—The Commission shall establish an action plan for American Indian and Alaska Native housing based upon the assessment in subsections (a) and (b). The action plan shall—

(1) specify objectives that the Department of Housing and Urban Development could achieve in cooperation with Indian housing authorities, Indian tribes, Native Hawaiian organizations, and other interested parties;

(2) provide a schedule by which such objectives could be achieved; and

(3) recommend legislative, regulatory, or administrative action necessary to achieve such objectives.

(d) FINAL REPORT.—Not later than 12 months after the appointment of members of the Commission under section 602(a), the Commission shall submit to the Secretary and to the Congress a final report which shall contain the information, evaluations, and recommendations specified above.

(e) DEFINITION.—As used in this section, the term "Native Hawaiian organization" means any organization which is established and controlled by beneficiaries or eligible beneficiaries under the provisions established by the Hawaiian Homes Commission Act of 1920.

SEC. 604. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may for the purpose of carrying out this title, hold such hearings and sit and act at such times and places as the Commission may find advisable.

(b) RULES AND REGULATIONS.—The Commission may adopt such rules and regulations as may be necessary to establish its procedures and to govern the manner of its operations, organization, and personnel.

(c) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) The Commission may secure directly from any department or agency of the United States such data and information as the Commission may require for the purpose of this title. Upon request of the Commission, any such department or agency shall furnish such data or information. The Commission may require data or information directly from Indian housing authorities to the same extent the Secretary could acquire such data or information.

(2) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(3) Upon the request of the chairperson of the Commission, the Secretary of Housing and Urban Development shall, to the extent possible and subject to the discretion of the Secretary, detail any of the personnel of the Department of Housing and Urban Development, on a nonreimbursable basis, to assist the Commission in carrying out its duties under this title.

(d) MAILS. —The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(e) CONTRACTING. —The Commission may, to such extent and in such amounts as are provided in appropriations Acts, enter into contracts with private firms, institutions, and individuals for the purpose of conducting research or surveys necessary to enable the Commission to discharge its duties under this title.

(f) STAFF.—(1) The Commission shall appoint an executive director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5, United States Code.

(2) In addition to the executive director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(3) ADVISORY COMMITTEE.—The Commission shall be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 605. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not to exceed $500,000 for each of the fiscal years 1990 and 1991. Any sums so appropriated shall remain available until expended.

## TITLE VII—MISCELLANEOUS

SEC. 701. NULLIFICATION OF RIGHT OF REDEMPTION OF SINGLE FAMILY MORTGAGORS UNDER SECTION 312 REHABILITATION LOAN PROGRAM.

(a) IN GENERAL.—Whenever with respect to a single family mortgage securing a loan under section 312 of the Housing Act of 1964, the Secretary of Housing and Urban Development or its foreclosure agent forecloses in any Federal or State court or pursuant to a power of sale in a mortgage, the purchaser at the foreclosure sale shall be entitled to receive a conveyance of title to, and possession of, the property, subject to any interests senior to the interests of the Secretary. With respect to properties that are vacant and abandoned, notwithstanding any State law to the contrary, there shall be no right of redemption (including all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale in connection with such single family mortgage. The appropriate State official or the trustee, as the case may be, shall execute and deliver a deed or other appropriate instrument conveying title to the purchaser at the foreclosure sale, consistent with applicable procedures in the jurisdiction and without regard to any such right of redemption.

(b) FORECLOSURE BY OTHERS.—Whenever with respect to a single family mortgage on a property that also has a single family mortgage securing a loan under section 312 of the Housing Act of 1964, a mortgagee forecloses in any Federal or State court or pursuant to a power of sale in a mortgage, the Secretary of Housing and Urban Development, if the Secretary is purchaser at the foreclosure sale, shall be entitled to receive a conveyance of title to, and possession of, the property, subject to the interests senior to the interests of the mortgagee. Notwithstanding any State law to the contrary, there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) if the mortgagor or any other person subsequent to the foreclosure sale to the Secretary in connection with a property that secured a single family mortgage for a loan under section 312 of the Housing Act of 1964. The appropriate State official or the trustee, as the case may be, shall execute and deliver a deed or other appropriate instrument conveying title to the Secretary, who is the purchaser at the foreclosure sale, consistent with applicable procedures in the jurisdiction and without regard to any such right of redemption.

(c) VERIFICATION OF TITLE.—The following actions shall be taken in order to verify title in the purchaser at the foreclosure sale:

(1) In the case of a judicial foreclosure in any Federal or State court, there shall be included in the petition and in the judgment of foreclosure a statement that the foreclosure is in accordance with this subsection and that there is no right of redemption in the mortgagor or any other person.

(2) In the case of a foreclosure pursuant to a power of sale provision in the mortgage, the statement required in paragraph (1) shall be included in the advertisement of the sale and either in the recitals of the deed or other appropriate instrument conveying title to the purchaser at the foreclosure sale or in an affidavit or addendum to the deed.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "mortgage" means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any interest in property, real, personal, or mixed, or any interest in property, including leaseholds, life estates, reversionary interests, and any other estates under applicable State law, is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien, for the purpose of securing the payment of money or the performance of an obligation.

(2) The term "single family mortgage" means a mortgage that covers property that includes a 1- to 4-family residence.

SEC. 702. CDBG GRANTS TO INDIAN TRIBES.

(a) ELIMINATION FROM DEFINITION OF NONENTITLEMENT AREAS.—Section 102(a)(7) of the Housing and Community Development Act of 1974 is amended by striking the period at the end and inserting the following: "and does not include Indian tribes.".

(b) ALLOCATION.—Section 106 of the Housing and Community Development Act of 1974 is amended—

(1) in subsection (a)—

(A) by inserting "and Indian tribes" before the period at the end of the first sentence; and

(B) by striking the period at the end and inserting the following: "Indian tribes shall receive grants from such allocation pursuant to subsection (b)(7).";

(2) in subsection (b)(1), by striking "The" and inserting "After taking into account the set-aside for Indian tribes under paragraph (7), the";

(3) in subsection (b)(2), by striking "The" and inserting "After taking into account the set-aside for Indian tribes under paragraph (7), the";

(4) in subsection (b), by adding at the end the following new paragraphs:

"(7)(A) For each fiscal year, the Secretary shall reserve for grants to Indian tribes, from amounts approved in appropriation Acts under section 103 for grants for the year under subsection (a), not more than 1 percent of the amounts appropriated under such section.

"(B) The Secretary shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment."; and

(5) in subsection (d), by striking paragraph (4).

(c) OFFICE OF INDIAN AND ALASKA NATIVE PROGRAMS.—The Secretary of Housing and Urban Development shall administer grants to Indian tribes under title I of the Housing and Community Development Act of 1974 through the Office of Indian and Alaska Native Programs of the Department of Housing and Urban Development.

(d) REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section and the amendments made by this section in a manner and by such time to provide for the effectiveness of such regulations with respect to amounts appropriated for fiscal year 1991 under section 103 of the Housing and Community Development Act of 1974.

(e) APPLICABILITY.—The amendments made by this section shall apply to amounts approved in any appropriation Act under section 103 of the Housing and Community Development Act of 1974 for fiscal year 1991 and each fiscal year thereafter.

## TITLE VIII—SECTION 8 RENT ADJUSTMENTS

SEC. 801. ANNUAL ADJUSTMENT FACTORS FOR SECTION 8 RENTS.

(a) EFFECT OF PRIOR COMPARABILITY STUDIES.—

(1) IN GENERAL.—In any case in which, in implementing section 8(c)(2) of the United States Housing Act of 1937—

(A) the use of comparability studies by the Secretary of Housing and Urban Development or the appropriate State agency as an independent limitation on the amount of rental adjustments resulting from the application of an annual adjustment factor under such section has resulted in the reduction of the maximum monthly rent for units covered by the contract or the failure to increase such contract rent to the full amount otherwise permitted under the annual adjustment factor, or

(B) an assistance contract requires a project owner to make a request before becoming eligible for a rent adjustment under the annual adjustment factor and the project owner certifies that such a request was not made because of anticipated negative adjustment to the project rents,

for fiscal year 1980, and annually thereafter until regulations implementing this section take effect, rental adjustments shall be calculated as an amount equal to the annual adjustment factor multiplied by a figure equal to the contract rent minus the amount of contract rent attributable to debt service. Upon the request of the project owner, the Secretary shall pay to the project owner the amount, if any, by which the total rental adjustment calculated under the preceding sentence exceeds the total adjustments the Secretary or appropriate State agency actually approved, except that solely for purposes of calculating retroactive payments under this subsection, in no event shall any project owner be paid an amount less than 30 percent of a figure equal to the aggregate of the annual adjustment factor multiplied by the full contract rent for each year on or after fiscal year 1980, minus the sum of the rental payments the Secretary or appropriate State agency actually approved for those years. The method provided by this subsection shall be the exclusive method by which retroactive payments, whether or not requested, may be made for projects subject to this subsection for the period from fiscal year 1980 until the regulations issued under subsection (e) take effect. For purposes of this paragraph, "debt service" shall include interest, principal, and mortgage insurance premium if any.

(2) APPLICABILITY.—

(A) IN GENERAL.—Subsection (a) shall apply with respect to any use of comparability studies referred to in such subsection occurring before the effective date of the regulations issued under subsection (e).

(B) FINAL LITIGATION.—Subsection (a) shall not apply to any project with respect to which litigation regarding the authority of the Secretary to use comparability studies to limit rental adjustments under section 8(c)(2) of the United States Housing Act of 1937 has resulted in a judgment before the effective date of this Act that is final and

not appealable (including any settlement agreement).

(b) 3-YEAR PAYMENTS.—The Secretary shall provide the amounts under subsection (a) over the 3-year period beginning on the effective date of the regulations issued under subsection (e). The Secretary shall provide the payments authorized under subsection (a) only to the extent approved in subsequent appropriations Acts. There are authorized to be appropriated such sums as may be necessary for this purpose.

(c) COMPARABILITY STUDIES.—Section 8(c)(2)(C) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(C) is amended by inserting after the period at the end of the first sentence the following: "In implementing the limitation established under the preceding sentence, the Secretary shall establish regulations for conducting comparability studies for projects where the Secretary has reason to believe that the application of the formula adjustments under subparagraph (A) would result in such material differences. The Secretary shall conduct such studies upon the request of any owner of any project, or as the Secretary determines to be appropriate by establishing, to the extent practicable, a modified annual adjustment factor for such market area, as the Secretary shall designate, that is geographically smaller than the applicable housing area used for the establishment of the annual adjustment factor under subparagraph (A). The Secretary shall establish such modified annual adjustment factor on the basis of the results of a study conducted by the Secretary of the rents charged, and any change in such rents over the previous year, for assisted units and unassisted units of similar quality, type, and age in the smaller market area. Where the Secretary determines that such modified annual adjustment factor cannot be established or that such factor when applied to a particular project would result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, the Secretary may apply an alternative methodology for conducting comparability studies in order to establish rents that are not materially different from rents charged for comparable unassisted units.

(d) DETERMINATION OF CONTRACT RENT.—(1) The Secretary shall upon the request of the project owner, make a one-time determination of the contract rent for each project owner referred to in subsection (a). The contract rent shall be the greater of the contract rent—

(A) currently approved by the Secretary under section 8(c)(2) of the United States Housing Act of 1937, or

(B) calculated in accordance with the first sentence of subsection (a)(1).

(2) All adjustments in contract rents under section 8(c)(2) of the United States Housing Act of 1937, including adjustments involving projects referred to in subsection (a), that occur beginning with the first anniversary date of the contract after the regulations issued under subsection (e) take effect shall be made in accordance with the annual adjustment and comparability provisions of sections 8(c)(2)(A) and 8(c)(2)(C) of such Act, respectively, using the one-time contract rent determination under paragraph (1).

(e) REGULATIONS.—The Secretary shall issue regulations to carry out this section and the amendments made by this section, including the amendments made by subsection (c) with regard to annual adjustment factors and comparability studies. The Secretary shall issue such regulations not later than the expiration of the 180-day period beginning on the date of the enactment of this Act.

(f) REPORT.—Not later than March 1, 1990, the Secretary shall report to the Congress on the feasibility and desirability, and the budgetary, legal, and administrative aspects, of adjusting contract rents under section 8(c)(2)(C) of the United States Housing Act of 1937 on the basis of any alternative methodologies that are simpler in application than individual project comparability studies.

(g) TECHNICAL AMENDMENT.—The first sentence of section 8(c)(2)(C) of the United States Housing Act of 1937 is amended by inserting ", type," after "quality".

## EXTENSION OF CIVIL PENALTY ASSESSMENT DEMONSTRATION PROGRAM

### FORD AMENDMENT NO. 1211

Mr. MITCHELL (for Mr. FORD) proposed an amendment to the bill (H.R. 3671) to amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program; as follows:

At the end of the bill, add the following new sections:

SEC. 2. INSTALLATION AND EVALUATION OF COLLISION AVOIDANCE SYSTEMS.

Section 601(f) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421(f)) is amended—

(1) by redesignating paragraph (3) as paragraph (6); and

(2) by inserting immediately after paragraph (2) the following new paragraphs:

"(3) OPERATIONAL EVALUATION.—Administrator shall institute, for a 1-year period beginning not later than December 30, 1990, a program for the operational evaluation of the collision avoidance system known as TCAS-II, in order to collect and assess safety and operational data from the civil aircraft equipped with such system. In conducting the program, the Administrator shall encourage the participation of foreign air carriers which operate civil aircraft equipped with such system.

"(4) EXTENSION OF TIME.—If the Administrator determines that extending the deadline contained in paragraph (2) is necessary—

"(A) to promote a safe and orderly transition to operation of a fleet of civil aircraft described in paragraph (2) which is equipped with the collision avoidance system known as TCAS-II, or

"(B) to promote other safety objectives,

the Administrator may extend such deadline for a period not to exceed 2 years.

"(5) COMPATIBILITY OF WINDSHEAR EQUIPMENT INSTALLATION SCHEDULE.—The Administrator shall consider the feasibility and desirability of amending the schedule for the installation of airborne low-altitude windshear equipment in order to make such schedule compatible with the schedule for the installation of the collision avoidance system known as TCAS-II.".

SEC. 3. PENINSULA AIRPORT CONVEYANCE.

Subsection (b) of the first section of the Act entitled "An Act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes", approved November 6, 1986 (Public Law 99-618; 100 Stat. 3490), is amended—

(1) by paragraph (3) by striking "7.5 acres" and inserting in lieu thereof "20.5 acreas"; and

(2) by striking paragraph (4).

SEC. 4. USE OF AIRPORT GENERATED REVENUES IN HAWAII.

Section 511 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2210) is amended by adding at the end thereof the following new subsection:

"(g) USE OF AIRPORT GENERATED REVENUES IN HAWAII.—

"(1) GENERAL RULE.—Notwithstanding the limitation on the use of revenues generated by airports contained in subsection (a)(12) of this section, the State of Hawaii may use for (1) highway construction projects, and (2) transportation facilities which may include access to airports, revenues generated on the sale at off-airport locations in the State of Hawaii duty-free merchandise under a contract between the State and a duty-free sales enterprise.

"(2) LIMITATIONS.—

"(A) APPLICABILITY PERIOD.—This subsection only applies to revenues generated on sales referred to in paragraph (1) in the period beginning on the date of the enactment of this subsection and ending December 31, 1995.

"(B) COVERAGE OF AIRPORT CAPITAL AND OPERATING COSTS.—The State of Hawaii may use under paragraph (1) revenues generated on sales referred to in paragraph (1) in a calendar year only if the amount of such revenues, when added to the amount of funds received in such year by the State for airport capital and operating costs from all other sources (including revenues generated by such airports from other sources and unrestricted cash on hand and including Federal funds made available under this Act for expenditure at such airports), exceeds 150 percent of the projected airport capital and operating costs for such year. Airport capital and operating costs shall be submitted to the Secretary by the State of Hawaii, and shall be deemed to be approved by the Secretary unless disapproved within 30 days of such submission. The amount of revenues generated on sales referred to in paragraph (1) in such year which the State may use under paragraph (1) may not exceed the amount of the excess determined under the preceding sentence.

"(C) AGGREGATE CAP.—Subject to subparagraph (D), the maximum amount of revenues which the State of Hawaii may use under paragraph (1) may not exceed $320,000,000 in the aggregate.

'(D) AVAILABILITY OF GRANTS UNDER SECTION 505.—To the extent the State of Hawaii foregoes all or a portion of grants available under section 505 during the applicable period referred to in subparagraph (A), the aggregate cap referred to in subparagraph (C) shall be increased by an amount equal to section 505 grants, or portions thereof, forgone, except that such 505 grants may be utilized for purposes of calculating costs under subparagraph (B).

"(3 PERIOD OF USE.—Revenues generated on sales referred to in paragraph (1) in the period of applicability set forth in paragraph (2)(A) may be used under paragraph (1) in any calendar year, including a calendar year beginning after December 31, 1995.

"(4) DEFINITIONS.—As used in this subsection—

"(A) AIRPORT CAPITAL AND OPERATING COSTS.—The term 'airport capital and operating costs' means operating expenditures, including debt service on capital projects of all airports operated by the State of Hawaii.

"(B) ADDITIONAL TERMS.—The term 'customs territory', 'duty-free sales enterprise', 'duty-free merchandise', 'exit point', and 'personal use quantities' shall have the meaning provided in section 1555(b)(8) (C), (D), (E), (F) and (G) ot Title 15 of the United States Code."

SEC. 5. EXCESS LAND DISPOSAL.

Paragraph 14 of section 511(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2210(a)) is amended to read as follows:

"(14) if the airport operator or owner receives a grant before, on, or after December 31, 1987, for the purchase of land for airport development purposes (other than noise compatibility purposes)—

"(A) the owner or operator will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States proportionate share of the fair market value of the land;

"(B) such disposition will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport;

"(C) that portion of the proceeds of such disposition which is proportionate to the United States share of the cost of acquisition of such land will—

"(i) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system; or

"(ii) be paid to the Secretary for deposit in the Trust Fund if no such eligible project exists;

subject to the requirement that land shall be considered to be needed for airport purposes under this paragraph if (I) it may be needed for aeronautical purposes (including runway protection zone) or serves as noise buffer land and (II) the revenue from interim uses of such land contribute to the financial self-sufficiency of the airport, and subject to the further requirement that land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or the Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the use of such land, did not object to such use, and the land continues to be used for that purpose;".

## CHANGES IN AGRICULTURAL PROGRAMS

### LEAHY AMENDMENT NO. 1212

Mr. MITCHELL (for Mr. LEAHY) proposed an amendment to the bill (S. 1793) to make technical and correcting changes in agricultural programs, as follows:

SECTION 1. PEANUTS.

(a) On page 8, line 7, insert after "for quota peanuts" the following: "multiplied by the quantity of peanuts sold or disposed of in violation of subsection (b)(1)(B)".

(b) On page 8, beginning on line 11, strike "subsection (a) shall become effective 30 days after the date of enactment of this Act" and insert in lieu thereof "this section shall be effective with respect to the 1990 and subsequent crops of peanuts".

SEC. 2. TECHNICAL CHANGES IN SECTION 7 OF THE BILL THAT DEALS WITH PURCHASES OF FINANCIAL ASSISTANCE CORPORATION STOCK BY FARM CREDIT SYSTEM INSTITUTIONS.

(a) On page 14—

(1) line 19, strike "Trust Fund" and insert in lieu thereof "Financial Assistance Corporation Trust Fund (hereinafter in this section referred to as the 'Trust')";

(2) line 20, strike "section 6.25" and insert in lieu thereof "section 6.25(b)"; and

(3) line 21, strike "U.S.C. 2278b-5" and insert in lieu thereof "U.S.C. 2278b-5(b)".

(b) On page 15—

(1) line 10, after "Corporation", insert "on assets of the Trust Fund";

(2) line 13, strike "of the amount";

(3) line 15, strike "by" and insert in lieu thereof "through";

(4) line 17, strike "annual" after "and fourth";

(5) line 21, after "poration", insert "on assets of the Trust Fund"; and

(6) line 24, strike "of the amount".

(c) On page 16, after "issued by", insert "the Financial Assistance Corporation through".

SEC. 3. PROHIBITION ON DUTY DRAWBACK CLAIMS BY EXPORTERS WHO USE CERTAIN EXPORT PROMOTION PROGRAMS.

(a) IN GENERAL.—The Secretary of Agriculture may provide that a person shall be ineligible for participation in an export program established under title I or title III of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.), or in any other export credit, credit guarantee, bonus, or other export program carried out through, or administered by, the Commodity Credit Corporation or carried out with funds made available pursuant to section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935 (7 U.S.C. 612c) with respect to the export of any agricultural commodity or product that has been or will be used as the basis for a claim of a refund, as drawback, pursuant to section 313(j)(2) of the Tariff Act of 1930 (19 U.S.C. 1313(j)(2)), of any duty, tax, or fee imposed under Federal law on an imported commodity or product.

(b) VEGETABLE OIL.—A person shall be ineligible for participation in any of the export programs referred to in subsection (a) with respect to the export of vegetable oil or a vegetable oil product that has been or will be used as the basis for a claim of a refund, as a drawback, pursuant to section 313 of the Tariff Act of 1930, of any duty, tax, or fee imposed under Federal law on an imported commodity or product.

(c) CERTIFICATION.—A person applying to export any agricultural commodity or product under the export programs referred to in subsection (a) shall certify, in accordance with regulations issued under subsection (d), that none of the commodity or product has been or will be used as the basis of a claim for any refund specified in subsection (a), except that a person applying to export any vegetable oil or vegetable oil product under such programs shall certify that none of the vegetable oil or vegetable oil product has been or will be used as the basis of a claim for any refund specified in subsection (b).

(d) REGULATIONS.—The Secretary of Agriculture shall issue regulations to carry out this section.

(e) APPLICABILITY.—This section shall not apply to quantities of agricultural commodities and products with respect to which an exporter has entered into a contract, prior to the effective date of this section, for an export sale.

### CONRAD (AND OTHERS) AMENDMENT NO. 1213

Mr. MITCHELL (for Mr. CONRAD) (for himself, Mr. BOSCHWITZ, Mr. HARKINS, Mr. BURNS, and Mr. BAUCUS) proposed an amendment to amendment No. 1212 proposed by Mr. MITCHELL (for Mr. LEAHY) to the bill S. 1793, supra; as follows:

At the end of the amendment add the following:

SECTION 1. REPAYMENT OF ADVANCE DEFICIENCY PAYMENTS.

Effective only for the 1988 crops of wheat, feed grains, upland cotton, and rice, produced by producers that qualified for assistance under section 201(a) of the Disaster Assistance Act of 1988 (7 U.S.C. 1421 note) or section 101(a) of the Disaster Assistance Act of 1989 (7 U.S.C. 1421 note), if the Secretary of Agriculture determines that any portion of the advance deficiency payment made to producers for such crop under section 107C of the Agricultural Act of 1949 (7 U.S.C. 1445b-2) must be refunded, such refund shall not be required to be made prior to July 31, 1990.

## RIGHT OF FIRST REFUSAL IN SALE OF CERTAIN PROPERTY BY THE FARMERS HOME ADMINISTRATION AND THE FARM CREDIT SYSTEM

### LEAHY AMENDMENT NO. 1214

Mr. MITCHELL (for Mr. LEAHY) proposed an amendment to the bill (H.R. 2469) to limit a previous owner's right of first refusal in the case of fraud or resale for sales of farm property by the Farmers Home Administration and the Farm Credit System, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. AMENDMENTS TO THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.

Section 335(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985(e)(1)) is amended by—

(1) in paragraph (1)(C) striking "The Secretary" and inserting "Except as provided in subparagraph (D), the Secretary";

(2) in paragraph (1) redesignating subparagraphs (D) and (E) as (F) and (G) and adding the following new subparagraphs:

"(D) The Secretary shall not give preference in the sale of property to—

"(i) any person described in subparagraph (C) who, within the preceding five years, has been finally convicted under the laws of the United States of criminally defrauding the United States Government (including any agency or authority of the Government of the United States, whether or not it is subject to review by another agency);

"(ii) the spouse or child of a previous borrower-owner, if within the preceding five years the previous borrower-owner has been finally convicted under the laws of the United States of criminally defrauding the United States Government (including any agency or authority of the Government of the United States, whether or not it is subject to review by another agency) unless the Secretary determines that such spouse or child is able to demonstrate that such convicted person will not live on, participate in the operation of, or profit from such property; or

"(iii) a stockholder in a corporation, held exclusively by members of the same family, if within the preceding five years such corporation or any stockholder therein has been finally convicted under the laws of the United States of criminally defrauding the United States Government (including any agency or authority of the Government of the United States, whether or not it is subject to review by another agency).

"(E)(i) Any person who purchases property from the Secretary pursuant to the preference set forth in subparagraph (c), or anyone who subsequently acquires title to such property from such person, shall not transfer title to the property, or any portion thereof, for a period of two years following such purchase from the Secretary. This prohibition against transfer of title shall not apply to a transfer—

"(I) to a member of such person's family if the value of any consideration received by such person for the transfer does not exceed the price paid for such purchase;

"(II) to a financial institution in connection with a mortgage to obtain financing for such real property;

"(III) by the institution specified in subclause (II) or by anyone who subsequently acquires title therefrom;

"(IV) after the then current owner dies or is declared incompetent by a court of competent jurisdiction;

"(V) by any person, if such person or a member of such person's family is stricken by a debilitating injury or debilitating illness and intends to use proceeds from the sale of such title to cover, in part, medical expenses caused by such debilitating injury or debilitating illness; or

"(VI) which the Farmers Home Administration has exempted from the two-year limitation set forth in this paragraph.

The Secretary is authorized to enforce the prohibition on the transfer of title to such real property with liens, deed restriction, or other encumbrances as determined necessary by the Secretary.

"(ii) For purposes of this subparagraph, the term 'family' consists of parents, grandparents, children, grandchildren, siblings, and spouse."; and

(3) in paragraph (10), striking "In the event" and inserting "Except as provided in subparagraphs (D) and (E), in the event".

SEC. 2. AMENDMENT TO THE FARM CREDIT ACT OF 1971.

Section 4.36 of the Farm Credit Act of 1971 (12 U.S.C. 2219a) is amended by—

(1) in subsection (h) striking "The rights" and inserting "Except as provided in subsections (j) and (k), the rights"; and

(2) adding at the end the following new subsections:

"(j) FORFEITURE OF RIGHT.—A previous owner who has been finally convicted under the laws of the United States within the preceding five years of criminally defrauding either—

"(1) an institution chartered under this Act, or

"(2) the United States Government (including any agency or authority of the Government of the United States, whether or not it is subject to review by another agency),

shall not have a right of first refusal under this section.

"(k) TRANSFER OF REAL ESTATE.—

"(1) LIMITATION ON TRANSFER.—Any previous owner who purchases acquired real estate from an institution of the system by the exercise of a right of first refusal under this section, or anyone who subsequently acquires title to such real estate from such owner, shall not transfer title in the real estate, or any portion thereof, for a period of two years following such purchase from the institution. This prohibition against transfer of title shall not apply to a transfer—

"(A) to a member of the previous owner's family if the value of any consideration received by such previous owner for the transfer does not exceed the price paid for such purchase;

"(B) to a financial institution in connection with a mortgage to obtain financing for such real estate;

"(C) by the institution specified in subparagraph (B) or by anyone who subsequently acquires title therefrom;

"(D) after the then current owner dies or is declared incompetent by a court of competent jurisdiction.

"(E) by any person, if such person or a member of such person's family is stricken by a debilitating injury or illness and intends to use proceeds from the sale of such title to cover, in part, medical expenses caused by such debilitating injury or debilitating illness; or

"(F) under circumstances as set forth by regulations of the Farm Credit Administration.

An institution of the System is authorized, pursuant to regulations issued by the Farm Credit Administration, to enforce the prohibition on the transfer of title to such real estate with liens, deed restrictions, or other encumbrances.

"(2) DEFINITION OF FAMILY MEMBERS.—For purposes of this subsection the term 'family' consists of parents, grandparents, children, grandchildren, siblings, and spouse.".

SEC. 3. IMPLEMENTATION REGULATIONS.

The Farm Credit Administration shall issue regulations to implement section 2 of this Act not later than one hundred twenty days after the date of enactment of this Act.

SEC. 4. EFFECTIVE DATE.

The amendments made by sections 1 and 2 of this Act shall be effective only for sales of property by the Secretary or by an institution of the Farm Credit System made after the date of enactment of this Act.

## VACCINE INJURY COMPENSATION

### KENNEDY (AND HATCH) AMENDMENT NO. 1215

(Ordered to lie on the table)

Mr. KENNEDY (for himself and Mr. HATCH) submitted an amendment intended to be proposed by them to the bill (S. 1922) to amend title XXI of the Public Health Service Act relating to vaccine injury compensation, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Vaccine Compensation Technical Amendments Act of 1989".

SEC. 2. VACCINE INJURY COMPENSATION TECHNICAL AMENDMENTS.

(a) REFERENCE.—Whenever in this section an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

(b) PUBLICATION OF PROGRAM.—Section 2110 (42 U.S.C. 300aa-10) is amended by adding at the end thereof the following:

"(c) PUBLICITY.—The Secretary shall undertake reasonable efforts to inform the public of the availability of the Program.".

(c) PETITIONS.—

(1) Section 2111(a)(1) (42 U.S.C. 300aa-11(a)(1)) is amended—

(A) by striking out "filing of a petition" and inserting in lieu thereof "filing of a petition containing the matter prescribed by subsection (c)", and

(B) by adding at the end thereof the following new sentence: "The clerk of the United States Claims Court shall immediately forward the filed petition to the chief special master for assignment to a special master under section 2112(d)(1).".

(2) Section 2111(a)(2)(A)(i) (42 U.S.C. 300aa-11(a)(2)(A)(i)) is amended by striking out "under subsection (b)".

(3) Section 2111(a)(5) (42 U.S.C. 300aa-11(a)(5)) is amended—

(A) in subparagraph (A), by striking out "elect to withdraw such action" and inserting in lieu thereof "petition to have such action dismissed without prejudice or costs", and

(B) in subparagraph (B), by striking out "on the effective date of this part had pending" and inserting in lieu thereof "has pending" and by striking out "does not withdraw the action under subparagraph (A)".

(4) Section 2111(a)(6) (42 U.S.C. 300aa-11(a)(6)) is amended by striking out "the effective date of this part" each place it occurs and inserting in lieu thereof "November 15, 1988".

(5) Section 2111(a) (42 U.S.C. 300aa-11(a)) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following:

"(8) If on the effective date of this part there was pending an appeal or rehearing with respect to a civil action brought against a vaccine administrator or manufacturer and if the outcome of the last appellate review of such action or the last rehearing of such action is the denial of damages for a vaccine-related injury or death, the person who brought such action may file a petition under subsection (b) for such injury or death.".

(6) Section 2111(c) (42 U.S.C. 300aa-11(c)) is amended—

(A) in paragraph (1), by inserting "except as provided in paragraph (3)," after "(1)", and in paragraph (2), by inserting "except as provided in paragraph (3)," after "(2)",

(B) in paragraph (2)—

(i) by redesignating such paragraph (2) as subsection (d),

(ii) by expanding the margin of such paragraph (2) to full measure,

(iii) by striking out "all available" and inserting in lieu thereof "(d) ADDITIONAL INFORMATION.—A petition may also include other available",

(iv) by striking out "(including autopsy reports, if any)", and

(v) by striking out "and an identification" and all that follows and inserting in lieu thereof a period,

(C) by adding after paragraph (1) the following new paragraphs:

"(2) except as provided in paragraph (3), maternal prenatal and delivery records, newborn hospital records (including all physicians' and nurses' notes and test results), vaccination records associated with the vaccine allegedly causing the injury, pre-and post-injury physician or clinic records (including all relevant growth charts and test results), all post-injury inpatient and outpatient records (including all provider notes, test results, and medication records), if applicable, a death certificate, and if applicable, autopsy results, and

"(3) an identification of any records of the type described in paragraph (1) or (2) which are unavailable to the petitioner and the reasons for their unavailability.", and

(D) in paragraph (3)—

(i) by redesignating such paragraph (3), as in effect on the date of the enactment, as subsection (e),

(ii) by expanding the margin of such paragraph (3) to full measure, and

(iii) by striking out "appropriate" and inserting in lieu thereof "(e) SCHEDULE.—The petitioner shall submit in accordance with a schedule set by the special master assigned to the petition".

(7) The margin on paragraph (9) of section 2111(a) (as redesignated by paragraph (5)) is indented two ems.

(8) Section 2115(e)(2) (42 U.S.C. 300aa-15(e)(2)) is amended—

(A) by striking out "and elected under section 2111(a)(4) to withdraw such action" and inserting in lieu thereof "and petitioned under section 2111(a)(5) to have such action dismissed", and

(B) by striking out "the judgment of the court on such petition may include" and inserting in lieu thereof "in awarding compensation on such petition the special master or court may include".

(d) JURISDICTION.—Section 2112(a) (42 U.S.C. 300aa-12(a)) is amended—

(1) by striking out "shall have jurisdiction (1)" and inserting in lieu thereof "and the United States Claims Court special masters shall, in accordance with this section, have jurisdiction",

(2) by striking out ", and (2) to issue" and inserting in lieu thereof a period and the following: "The United States Claims Court may issue", and

(3) by striking out "deem" and inserting in lieu thereof "deems".

(e) SPECIAL MASTERS ESTABLISHED.—Section 2112 (42 U.S.C. 300aa-12) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and

(2) by inserting after subsection (b) the following new subsection:

"(c) UNITED STATES CLAIMS COURT SPECIAL MASTERS.—

"(1) There is established within the United States Claims Court an office of special masters which shall consist of not more than 8 special masters. The judges of the United States Claims Court shall appoint the special masters, 1 of whom, by designation of the judges of the United States Claims Court, shall serve as chief special master. The appointment and reappointment of the special masters shall be by the concurrence of a majority of the judges of the court.

"(2) The chief special master and other special masters shall be subject to removal by the judges of the United States Claims Court for incompetency, misconduct, or neglect of duty or for physical or mental disability or for other good cause shown.

"(3) A special master's office shall be terminated if the judges of the United States Claims Court determine, upon advice of the chief special master, that the services performed by that office are no longer needed.

"(4) The appointment of any individual as a special master shall be for a term of 4 years, subject to termination under paragraphs (2) and (3). Individuals serving as special masters upon the date of the enactment of this subsection shall serve for 4 years from the date of their original appointment, subject to termination under paragraphs (2) and (3). The chief special master in office on the date of the enactment of this subsection shall continue to serve as chief special master for the balance of the master's term, subject to termination under paragraphs (2) and (3).

"(5) The compensation of the special masters shall be determined by the judges of the United States Claims Court, upon advice of the chief special master. The salary of the chief special master shall be the annual rate of basic pay for level IV of the Executive Schedule, as prescribed by section 5315, title 5, United States Code. The salaries of the other special masters shall not exceed the annual rate of basic pay of level V of the Executive Schedule, as prescribed by section 5316, title 5, United States Code.

"(6) The chief special master shall be responsible for the following:

"(A) Administering the office of special masters and their staff, providing for the efficient, expeditious, and effective handling of petitions, and performing such other duties related to the Program as may be assigned to the chief special master by a concurrence of a majority of the United States Claims Courts judges.

"(B) Appointing and fixing the salary and duties of such administrative staff as are necessary. Such staff shall be subject to removal for good cause by the chief special master.

"(C) Managing and executing all aspects of budgetary and administrative affairs affecting the special masters and their staff, subject to the rules and regulations of the Judicial Conference of the United States. The Conference rules and regulations pertaining to United States magistrates shall be applied to the special masters.

"(D) Coordinating with the United States Claims Court the use of services, equipment, personnel, information, and facilities of the United States Claims Court without reimbursement.

"(E) Reporting annually to the Congress and the judges of the United States Claims Court on the number of petitions filed under section 2111 and their disposition, the dates on which the vaccine-related injuries and deaths for which the petitions were filed occurred, the types and amounts of awards, the length of time for the disposition of petitions, the cost of administering the Program, and recommendations for changes in the Program.".

(f) PARTIES.—Section 2112(b) (42 U.S.C. 300aa-12(b)) is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following new sentence: "In all proceedings brought by the filing of a petition under section 2111(b), the Secretary shall be named as the respondent, shall participate, and shall be represented in accordance with section 518(a) of title 28, United States Code.", and

(2) by striking out the second sentence.

(g) SPECIAL MASTER FUNCTIONS.—Section 2112(d) (42 U.S.C. 300aa-12(d)) (as so redesignated by subsection (e)) is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) Following the receipt and filing of a petition under section 2111, the clerk of the United States Claims Court shall forward the petition to the chief special master who shall designate a special master to carry out the functions authorized by paragraph (3).", and

(2) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) The special masters shall recommend rules to the Claims Court and, taking into account such recommended rules, the Claims Court shall promulgate rules pursuant to section 2071 of title 28, United States Code. Such rules shall—

"(A) provide for a less-adversarial, expeditious, and informal proceeding for the resolution of petitions,

"(B) include flexible and informal standards of admissibility of evidence,

"(C) include the opportunity for summary judgment,

"(D) include the opportunity for parties to submit arguments and evidence on the record without requiring routine use of oral presentations, cross examinations, or hearings, and

"(E) provide for limitations on discovery and allow the special masters to replace the usual rules of discovery in civil actions in the United States Claims Court.

"(3)(A) A special master to whom a petition has been assigned shall issue a decision on such petition with respect to whether compensation is to be provided under the Program and the amount of such compensation. The decision of the special master shall—

"(i) include findings of fact and conclusions of law, and

"(ii) be issued as expeditiously as practicable but not later than 240 days, exclusive of suspended time under subparagraph (C), after the date the petition was filed.

The decision of the special master may be reviewed by the United States Claims Court in accordance with subsection (e).

"(B) In conducting a proceeding on a petition a special master—

"(i) may require such evidence as may be reasonable and necessary,

"(ii) may require the submission of such information as may be reasonable and necessary,

"(iii) may require the testimony of any person and the production of any documents as may be reasonable and necessary,

"(iv) shall afford all interested persons an opportunity to submit relevant written information—

"(I) relating to the existence of the evidence described in section 2113(a)(1)(B), or

"(II) relating to any allegation in a petition with respect to the matters described in section 2111(c)(1)(C)(ii), and

"(v) may conduct such hearings as may be reasonable and necessary.

There may be no discovery in a proceeding on a petition other than the discovery required by the special master.

"(C) In conducting a proceeding on a petition a special master shall suspend the proceedings one time for 30 days on the motion of either party. After a motion for suspension is granted, further motions for suspension by either party may be granted by the special master, if the special master determines the suspension is reasonable and necessary, for an aggregate period not to exceed 150 days.

"(4)(A) Except as provided in subparagraph (B), information submitted to a special master or the court in a proceeding on a petition may not be disclosed to a person who is not a party to the proceeding without the express written consent of the person who submitted the information.

"(B) A decision of a special master or the court in a proceeding shall be disclosed, except that if the decision is to include information—

"(i) which is trade secret or commercial or financial information which is privileged and confidential, or

"(ii) which are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy,

and if the person who submitted such information objects to the inclusion of such information in the decision, the decision shall be disclosed without such information.".

(h) ACTION BY THE UNITED STATES CLAIMS COURT.—Section 2112(e) (42 U.S.C. 300aa-12(e)) (as so redesignated by subsection (e)) is amended to read as follows:

"(e) ACTION BY THE UNITED STATES CLAIMS COURT.—

"(1) Upon issuance of the special master's decision, the parties shall have 30 days to file with the clerk of the United States Claims Court a motion to have the court review the decision. If such a motion is filed, the other party shall file a response with the clerk of the United States Claims Court no later than 30 days after the filing of such motion.

"(2) Upon the filing of a motion under paragraph (1) with respect to a petition, the United States Claims Court shall have jurisdiction to undertake a review of the record of the proceedings and may thereafter—

"(A) uphold the findings of fact and conclusions of law of the special master and sustain the special master's decision,

"(B) set aside any findings of fact or conclusion of law of the special master found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and issue its own findings of fact and conclusions of law, or

"(C) remand the petition to the special master for further action in accordance with the court's direction.

The court shall complete its action on a petition within 120 days of the filing of a response under paragraph (1) excluding any days the petition is before a special master as a result of a remand under subparagraph (C). The court may allow not more than 90 days for remands under subparagraph (C).

"(3) In the absence of a motion under paragraph (1) respecting the special master's decision or if the United States Claims Court takes the action described in paragraph (2)(A) with respect to the special master's decision, the clerk of the United States Claims Court shall immediately enter judgment in accordance with the special master's decision.".

(i) APPEALS.—Section 2112(f) (42 U.S.C. 300aa-12(f)) (as so redesignated by subsection (e)) is amended by inserting before the period the following: "within 60 days of the date of entry of the United States Claims Court's judgment with such court of appeals".

(j) DETERMINATION OF ELIGIBILITY AND COMPENSATION.—Section 2113 (42 U.S.C. 300aa-13) is amended—

(1) by striking out "court" each place it appears and inserting in lieu thereof "special master or court", and

(2) by inserting before "United States Claims Court" in subsection (c) "special masters of".

(k) TABLE.—

(1) The table contained in section 2114(a) (42 U.S.C. 300aa-14(a)) is amended by striking out "(c)(2)" each place it appears and inserting in lieu thereof "(b)(2)".

(2) Section 2114(b)(3)(B) (42 U.S.C. 300aa-14(b)(3)(B)) is amended by striking out "2111(b)" and inserting in lieu thereof "2111".

(l) COMPENSATION.—

(1) Section 2115(b) (42 U.S.C. 300aa-15(b)) is amended by striking out "may not include" and all that follows and inserting in lieu thereof "may include the compensation described in paragraphs (1)(A) and (2) of subsection (a) and may also include an amount, not to exceed a combined total of $30,000, for—

"(1) lost earnings (as provided in paragraph (3) of subsection (a)),

"(2) pain and suffering (as provided in paragraph (4) of subsection (a)), and

"(3) reasonable attorneys' fees and costs (as provided in subsection (e)).".

(2) Section 2115(e) (42 U.S.C. 300aa-15(b)) is amended—

(A) in the first sentence of paragraph (1), by striking out "The judgment of the United States Claims Court on a petition filed under section 2111 awarding compensation shall include an amount to cover" and inserting in lieu thereof "In awarding compensation on a petition filed under section 2111 the special master or court shall also award as part of such compensation an amount to cover",

(B) in the second sentence of paragraph (1), by striking out "civil action" each place it appears and inserting in lieu thereof "petition",

(C) in the second sentence of paragraph (1)—

(i) by striking out "may include in the judgment an amount to cover" and inserting in lieu thereof "may award an amount of compensation to cover", and

(ii) by striking out "court" each place it appears and inserting in lieu thereof "special master or court",

(D) in paragraph (2), by striking out "the judgment of the court on such petition may include an amount" and inserting in lieu thereof "the special master or court may also award an amount of compensation", and

(E) in paragraph (3), by striking out "included under paragraph (1) in a judgment on such petition" and inserting in lieu thereof "awarded as compensation by the special master or court under paragraph (1)".

(3) Section 2115(f) (42 U.S.C. 300aa-15(f)) is amended—

(A) in paragraph (3), by inserting after "Payments of compensation" the following: "under the Program and the costs of carrying out the Program".

(B) in paragraph (4)(A)—

(i) by striking out "made in a lump sum", and

(ii) by adding after "compensation" the second time it appears the following: "and shall be paid from the trust fund in a lump sum of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner", and

(C) in paragraph (4)(B), by striking out "paid in 4 equal annual installments." and inserting in lieu thereof "determined on the basis of the net present value of the elements of compensation and paid in 4 equal annual installments of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner. Any reasonable attorneys' fees and costs shall be paid in a lump sum.".

(4) Section 2115 (42 U.S.C. 300aa-15) is amended—

(A) in subsection (g), by inserting "(other than under title XIX of the Social Security Act)" after "State health benefits program", and

(B) in subsection (h), by inserting before the period at the end the following: ", except that this subsection shall not apply to the provision of services or benefits under title XIX of the Social Security Act".

(5) Section 2115(i)(1) (42 U.S.C. 300aa-15(i)(1)) is amended by striking out "(i)" and inserting in lieu thereof "(j)".

(6) The first sentence of section 2115(j) (42 U.S.C. 300aa-15(j)) is amended by striking out "and" after "1991," and by inserting before the period a comma and "$80,000,000 for fiscal year 1993".

(m) TECHNICALS.—

(1) Section 2116(c) (42 U.S.C. 300aa-16(c)) is amended by striking out "2111(b)" and inserting in lieu thereof "2111".

(2) Section 2117(b) (42 U.S.C. 300aa-17(b)) is amended by striking out "the trust fund which has been established to provide compensation under the Program" and inserting in lieu thereof "the Vaccine Injury Compensation Trust Fund established under section 9510 of the Internal Revenue Code of 1986".

(n) ELECTION.—

(1) Section 2121(a) (42 U.S.C. 300aa-21(a)) is amended—

(A) in the first sentence, by striking out "After the judgment of the United States Claims Court under section 2111 on a petition filed for compensation under the Program for a vaccine-related injury or death has become final, the person who filed the petition shall file with the court" and inserting in lieu thereof: "After judgment has been entered by the United States Claims Court or, if an appeal is taken under section 2112(f), after the appellate court's mandate is issued, the petitioner who filed the petition under section 2111 shall file with the clerk of the United States Claims Court", and

(B) by striking out the last sentence and inserting in lieu thereof the following new section: "For limitations on the bringing of civil actions, see section 2111(a)(2).".

(2) Section 2121(b) (42 U.S.C. 300aa-21(b)) is amended—

(A) in the first sentence, by striking out "within 365 days" and inserting in lieu thereof "within 420 days (excluding any period of suspension under section 2112(d) and excluding any days the petition is before a special master as a result of a remand under section 2112(e)(2)(C))", and

(B) by amending the second sentence to read as follows: "An election shall be filed

under this subsection not later than 90 days after the date of the entry of the Claims Court's judgment or the appellate court's mandate with respect to which the election is to be made.".

(o) TRIAL.—Section 2123(e) (42 U.S.C. 300aa-23(e)) is amended—

(1) by striking out "finding" and inserting in lieu thereof "finding of fact or conclusion of law",

(2) by striking out "master appointed by such court" and inserting in lieu thereof "special master", and

(3) by striking out "a district court of the United States" and inserting in lieu thereof "the United States Claims Court and subsequent appellate review".

(p) VACCINE INFORMATION.—Section 2126(c)(9) (42 U.S.C. 300aa-26(c)(9)) is amended to read as follows:

"(9) a summary of—

"(A) relevant Federal recommendations concerning a complete schedule of childhood immunizations, and

"(B) the availability of the Program, and".

(q) SAFER VACCINES.—Section 2127 (42 U.S.C. 300aa-27) is amended by redesignating subsection (b) as subsection (c) and by adding after subsection (a) the following:

"(b) TASK FORCE.—

"(1) The Secretary shall establish a task force on safer childhood vaccines which shall consist of the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, and the Director of the Centers for Disease Control.

"(2) The Director of the National Institutes of Health shall serve as chairman of the task force.

"(3) In consultation with the Advisory Commission on Childhood Vaccines, the task force shall prepare recommendations to the Secretary concerning implementation of the requirements of subsection (a).".

(r) AUTHORIZATIONS.—

(1) For administering part A of subtitle 2 of title XXI of the Public Health Service Act there is authorized to be appropriated from the Vaccine Injury Compensation Trust Fund established under section 9510(c) of the Internal Revenue Code of 1986 to the Secretary of Health and Human Services $1,500,000 for each of the fiscal years 1990 and 1991.

(2) For administering part A of subtitle 2 of title XXI of the Public Health Service Act there is authorized to be appropriated from the Vaccine Injury Compensation Trust Fund to the Attorney General $1,500,000 for each of the fiscal years 1990 and 1991.

(3) For administering part A of subtitle 2 of title XXI of the Public Health Service Act there is authorized to be appropriated from the Vaccine Injury Compensation Trust Fund to the United States Claims Court $1,500,000 for each of the fiscal years 1990 and 1991.

(s) APPLICABILITY AND EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply as follows:

(A) Petitions filed after the date of enactment of this section shall proceed under the National Vaccine Injury Compensation Program under title XXI of the Public Health Service Act as amended by this section.

(B) Petitions currently pending in which the evidentiary record is closed shall continue to proceed under the Program in accordance with the law in effect before the date of the enactment of this section, except that if the United States Claims Court is to review the findings of fact and conclusions of law of a special master on such a petition, the court may receive further evidence in conducting such review.

(C) Petitions currently pending in which the evidentiary record is not closed shall proceed under the Program in accordance with the law as amended by this section.

All pending cases which will proceed under the Program as amended by this section shall be immediately suspended for 30 days to enable the special masters and parties to prepare for proceeding under the Program as amended by this section. In determining the 240-day period prescribed by section 2112(d) of the Public Health Service Act, as amended by this section, or the 420-day period prescribed by section 2121(b) of such Act, as so amended, any period of suspension under the preceding sentence shall be excluded.

(2) The amendments to section 2115 of the Public Health Service Act shall apply to all pending and subsequently filed petitions.

(t) STUDY.—The Secretary of Health and Human Services shall evaluate the National Vaccine Injury Compensation Program under title XXI of the Public Health Service Act and shall report the results of such study to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than January 1, 1992.

SEC. 3. SEVERABILITY.

Section 322 of the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa-1 note) is amended to read as follows:

"SEC. 322. SEVERABILITY.

"(a) IN GENERAL.—Except as provided in subsection (b), if any provision of title XXI of the Public Health Service Act, as added by section 311(a), or the application of such a provision to any person or circumstance is held invalid by reason of a violation of the Constitution, such title XXI shall be considered invalid.

"(b) SPECIAL RULE.—If any amendment made by section 2 of the Vaccine Compensation Technical Amendments Act of 1987 to title XXI of the Public Health Service Act or the application of such a provision to any person or circumstance is held invalid by reason of the Constitution, subsection (a) shall not apply and such title XXI of the Public Health Service Act without such amendment shall continue in effect.".

## TIED AID CREDIT

### PELL AMENDMENT NO. 1216

Mr. MITCHELL (for Mr. PELL, for himself, Mr. HELMS, Mr. RIEGLE, and Mr. GARN) proposed an amendment to the bill (H.R. 2494) to reauthorize the Export-Import Bank tied aid credit fund and pilot interest subsidy program, to provide for the participation of the United States in a replenishment of the Inter-American Development Bank and in the Enhanced Structural Adjustment Facility of the International Monetary Fund, to improve the safety and soundness of the United States banking system and encourage the reduction of the debt burdens of the highly indebted countries, to encourage the multilateral development banks to engage in environmentally sustainable lending practices and give greater priority of poverty alleviation, and for other purposes, as follows:

In the table of contents, after the item relating to section 102 insert the following new item:

Sec. 103. Export-import programs to the People's Republic of China prohibited unless certain conditions are met.

In the table of contents, strike the item relating to section 402 and redesignate the items relating to sections 403, 404, 405, 406, 407, and 408, and relating to sections 402, 403, 404, 405, 406, and 407, respectively.

In the table of contents, strike the item relating to subtitle B of title V, and the items relating to sections 511, 512, and 513, and insert the following:

Subtitle B—International Debt Exchanges and the Environment:

Sec. 511. Sense of the Congress regarding environmental policy and international debt exchanges.

Sec. 512. Multilateral development banks and debt-for-nature exchanges.

In the table of contents, strike the item relating to section 605.

Page 4, line 11, strike "$50,000,000" and insert "$35,000,000".

Page 4, strike line 17 and all that follows through page 5, line 2, and insert the following:

(1) PURPOSE.—Section 15(a)(5) of such Act (12 U.S.C. 635i-3(a)(5)) is amended by striking all that follows "commercial advantage" and inserting "for the purposes of—

"(A) enforcing compliance with the existing arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes; and

"(B) facilitating efforts to negotiate, establish, and enforce new or revised comprehensive international arrangements effectively restricting the use of tied aid and partially untied aid credits for commercial purposes;

and such program should be used aggressively for such purposes.".

(2) ESTABLISHMENT OF PROGRAM.—The first sentence of section 15(b)(1) of such Act (12 U.S.C. 635i-3(b)(1)) is amended by striking the matter preceding subparagraph (A) and inserting "To carry out the purposes of subsection (a)(5), the Bank shall establish a tied aid credit program under which grants shall be made from funds available in the Tied Aid Credit Fund established under subsection (c)—".

(3) ADMINISTRATION OF PROGRAM.—Section 15(b)(2)(A) of such Act (12 U.S.C. 635i-3(b)(2)(A)) is amended by striking all that follows "to" and inserting "carry out the purposes described in subsection (a)(5);".

(4) AVAILABILITY OF FUNDS.—Section 15(c)(2) of such Act (12 U.S.C. 635i-3(c)(2)) is amended—

(A) by striking "cost" and inserting "amount equal to the concessionality level"; and

(B) by striking all that follows "authorized by the Bank" and inserting "through fiscal year 1991.".

(5) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1990 AND 1991.—Section 15(e)(1) of such Act (12 U.S.C. 635i-3(e)(1)) is amended by inserting ", and for fiscal years 1990 and 1991, $300,000,000" after "$300,000,000".

(6) REPORTS.—Section 15(g)(2)(E) of such Act (12 U.S.C. 635i-3(g)(2)(E)) is amended to read as follows:

"(E) the progress achieved by negotiations conducted to carry out the purposes described in subsection (a)(5).".

Page 8, after line 20, insert the following:

SEC. 103. EXPORT-IMPORT PROGRAMS TO THE PEOPLE'S REPUBLIC OF CHINA PROHIBITED UNLESS CERTAIN CONDITIONS ARE MET.

(a) Notwithstanding any other provision of law and subject to the provisions of subsections (b) and (c), the Export-Import Bank of the United States shall not finance any trade with, nor extend any loan, credit, credit guarantee, insurance or reinsurance to the People's Republic of China.

(b) The prohibitions described in subsection (a) of this section shall not apply to food or agricultural commodities.

(c) The President may waive the prohibitions in subsection (a) if he makes a report to Congress either—

(1) that the Government of the People's Republic of China has made progress on a program of political reform throughout the country, as well as in Tibet, which includes—

(A) lifting of martial law;

(B) halting of executions and other reprisals against individuals for the nonviolent expression of their political beliefs;

(C) release of political prisoners;

(D) increased respect for internationally recognized human rights, including freedom of expression, the press, assembly, and association; and

(E) permitting a freer flow of information, including an end to the jamming of Voice of America and greater access for foreign journalists; or

(2) it is in the national interest of the United States to terminate a suspension under subsection (a).

Page 11, line 22, strike the close quotation marks and the period that follows.

Page 11, after line 22, insert the following:

"(d) CERTIFICATION OF ACCESS TO BANK RECORDS REQUIRED BEFORE PAYMENT FOR SUBSCRIPTION TO CAPITAL STOCK AND CONTRIBUTION TO FUND FOR SPECIAL OPERATIONS.—The Secretary of the Treasury shall not make any payment for the subscription and contribution authorized under subsection (a) until the Secretary, after consultation with the United States Executive Director of the Bank, certifies to the Congress that—

"(1) the Bank has given the Comptroller General of the United States access to the audit memorandum issued by the Auditor General of the Bank with respect to the November 1987 disbursement of funds to the Government of Nicaragua;

"(2) the Bank has implemented and is continuing to implement revised procedures issued in 1988 for collecting loan services payments in arrears;

"(3) the revised procedures referred to in paragraph (2) satisfy the recommendations of the Auditor General of the Bank; and

"(4) the Comptroller General of the United States has access to all documents of the Bank on the same terms and under the same conditions as such documents are made available to the United States Executive Director of the Bank.".

Page 13, strike lines 12 and 13 and insert the following:

"The Secretary of the Treasury shall—

Page 13, line 14, insert "take all necessary steps to encourage the Bank to limit" before "the aggregate".

Page 13, line 24, insert "take all necessary steps to encourage the Bank to limit" before "the aggregate".

Page 14, line 6, insert "a portion of" before "the resources".

Page 18, line 20, strike "and staffing".

Page 19, strike line 14 and all that follows through page 22, line 16, and insert the following:

SEC. 402. ADDITIONAL RESERVE REQUIREMENTS.

(a) FINDINGS.—The Congress finds that—

"(1) since the adoption of the International Lending Supervision Act of 1983, the credit quality of loans by United States banking institutions to highly indebted countries has deteriorated and the prospects for full repayment of such loans have diminished;

"(2) in general during this period, the level of country exposure and transfer risk associated with loans by United States banking institutions to highly indebted countries has not been adequately reflected in the reserve levels established by many individual United States banking institutions or the reserve requirements imposed by Federal banking agencies pursuant to such Act;

"(3) during the last 3 years and particularly in recent months, United States banking institutions have increased their reserves for possible losses from loans to highly indebted countries but such reserves remain, in some cases, significantly lower than reserves established by banking institutions in a number of foreign countries and may not be adequate to deal with potential risks; and

(4) in order to fulfill the purpose of such Act, the Federal banking agencies should take a more active role in reviewing reserve levels established by United States banking institutions for potential losses from loans to highly indebted countries and in requiring appropriate levels of both special and general reserves to reflect the increased risk of such loans.

(b) IN GENERAL.—The International Lending Supervision Act of 1983 (12 U.S.C. 3901 et seq.) is amended by inserting after section 905 the following new section:

"SEC. 905A. ADDITIONAL RESERVE REQUIREMENTS.

"(a) IN GENERAL.—Each appropriate Federal banking agency shall review the exposure to risk of United States banking institutions arising from the medium- and long-term loans made by such institutions that are outstanding to any highly indebted country. Each agency shall provide direction to such institutions regarding additions to general reserves maintained by each banking institution for potential loan losses and special reserves required by such agency arising from such review.

"(b) DETERMINATION OF INSTITUTIONAL EXPOSURE TO RISK.—In determining the exposure of an institution to risk for purposes of subsection (a), the appropriate Federal banking agency—

"(1) shall determine whether any country exposure that is, and has been for at least 2 years, rated in the category 'Other Transfer Risk Problems' or the category 'Substandard' by the Interagency Country Exposure Review Committee should be reevaluated;

"(2) may exempt, in full or in part, from reserve requirements established pursuant to subsection (a), any loan—

"(A) to a country that enters into a debt reduction, debt service reduction, or financing program with its bank creditors that is supported by the International Bank for Reconstruction and Development or the International Monetary Fund; or

"(B) secured, in whole or in part, by appropriate collateral for payment of interest or principal;

"(3) take into account any other factors which bear on such exposure and the particular circumstances of the institution; and

"(4) shall consider as indicators of risk, where appropriate, the average reserve levels maintained by or required of banking institutions in foreign countries and secondary market prices for such loans.

"(c) TIMING AND REPORT.—

"(1) DETERMINED BY AGENCY.—Except as provided in paragraph (3), each appropriate Federal banking agency shall determine the timing of any addition to reserves required by subsection (a)

"(2) REPORT.—Each appropriate Federal banking agency shall include in each report required to be made under section 913(d) after 1989 a report on the actions taken pursuant to this section.

"(3) DEADLINE.—Each Federal agency required to undertake a review described in subsection (a) shall complete the review not later than December 31, 1990.

"(d) HIGHLY INDEBTED COUNTRY DEFINED.—As used in this section, the term 'highly indebted country' means any country designated as a 'Highly Indebted Country' in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before the date of the enactment of this section.".

Page 22, line 17, strike "404" and insert "403".

Page 23, line 6, strike "why" and insert "the merits of".

Page 23, line 7, strike "should not be required".

Page 23, line 10, insert "and" after the semicolon.

Page 23, strike lines 11 through 13.

Page 23, line 14, strike "(3)" and insert "(2)".

Page 23, line 20, strike "405" and insert "404".

Page 25, strike line 20 and all that follows through page 27, line 9, and insert the following:

SEC. 405. FACTORS TO BE TAKEN INTO ACCOUNT IN DEVELOPING UNITED STATES POLICY TOWARD DEBT REDUCTION FOR CERTAIN HIGHLY INDEBTED COUNTRIES; REPORT TO THE CONGRESS.

(a) FACTORS TO BE TAKEN INTO ACCOUNT.—In developing the policy of the United States Government with respect to debt reduction for each highly indebted country which has a substantial share of the export market for 1 or more agricultural commodities the export market for which the United States also has a substantial share, the Secretary of the Treasury shall consider among other factors the effects of such policy on:

(1) United States exports of such commodities.

(2) The world price of such commodities.

(3) Domestic agricultural production and land distribution patterns in such country.

(4) The volume of exports from such country of agricultural commodities the export market for which such country has a substantial share of.

(5) Basic nutrition levels in such country.

(b) REPORT TO THE CONGRESS.—Before the end of the 12-month period beginning on the date of the enactment of this section, the Secretary of The Treasury shall submit a report to the Congress on the potential impact of such policy on such factors in the highly indebted countries.

(c) HIGHLY INDEBTED COUNTRY DEFINED.—As used in this section, the term "highly indebted country" means any country designated as a "Highly Indebted Country" in the annual World Debt Tables most recently published by the International Bank for

Reconstruction and Development before the date of the enactment of this section.

Page 27, line 10, strike "407" and insert "406".

Page 28, line 3, strike "408" and insert "407".

Page 28, line 17, strike the semicolon and insert a comma.

Page 28, line 24, insert "which are major producers, processors traffickers, or exporters of illegal drugs to the United States" before the comma.

Page 34, strike line 18 and all that follows through page 39, line 23, and insert the following:

Subtitle B—International Debt Exchanges and the Environment

SEC. 511. SENSE OF THE CONGRESS RESOLUTION REGARDING ENVIRONMENTAL POLICY AND INTERNATIONAL DEBT EXCHANGES.

It is the sense of the Congress that—

(1) the Secretary of the Treasury should include support for sustainable development and conservation projects when providing a framework for negotiating or facilitating exchanges or reductions of commercial debt of foreign countries; and

(2) that in assisting or facilitating the reduction of debt of heavily indebted foreign countries, through multilateral institutions such as the International Monetary Fund or the International Bank for Reconstruction and Development, the Secretary of State and the Secretary of the Treasury should—

(A) support efforts to provide adequate resources for sustainable development and conservation projects as a component of the restructured commercial bank debt of that country; and

(B) in providing such support, seek to assure that—

(i) the host government, or a local nongovernmental organization acting with the support of the host government, has identified conservation or sustainable development projects it will target for assistance;

(ii) there will be in place an organization, either governmental or nongovernmental, that will have the commitment to assure the long-term viability of the project; and

(iii) the allocation of the resources provided for conservation and sustainable development projects through tthe debt restructuring agreement is done in a manner that will not overwhelm or distort economic conditions in the host country.

SEC. 512. MULTILATERAL DEVELOPMENT BANKS AND DEBT-FOR-NATURE EXCHANGES.

The International Financial Institutions Act (22 U.S.C. 262c et seq.) is amended by redesignating section 1614 (as so redesignated by section 501 of this Act) as section 1617, and by inserting after section 1613 (as added by such section 501) the following:

"SEC. 1614. MULTILATERAL DEVELOPMENT BANKS AND DEBT-FOR-NATURE EXCHANGES.

"(a) DIRECTIONS TO THE UNITED STATES EXECUTIVE DIRECTORS.—The Secretary of the Treasury shall direct the United States Executive Directors of the multilateral development banks to—

"(1) negotiate for the creation in each respective multilateral development bank, except where the Secretary of the Treasury determines that the provisions of this subsection have previously been met, of a department that will—

"(A) be responsible for environmental protection and resource conservation, including support for restoration, protection, and sustainable use policies;

"(B) develop and monitor strict environmental guidelines and policies to govern lending activities; and

"(C) actively promote, coordinate and facilitate debt-for-nature exchanges and the restoration, protection, and sustainable use of tropical forests, renewable natural resources, endangered ecosystems and species in debtor countries;

"(2) support and encourage the approval of multilateral development bank loans which include provisions that foster and facilitate the implementation of a sound and effective environmental policy in the borrowing country;

"(3) encourage the banks to assist such countries in reducing and restructuring private debt through the use of a portion of a project or policy based environmental loan in ways which enable such countries to buy back private debt at a rate of discount available for such debt, at auction in the secondary market or through negotiations with creditors holding such debt;

"(4) seek to ensure that staff of each bank facilitate debtor countries' collaboration with local and international non-governmental or private organizations in implementing debt-for-nature exchanges; and

"(5) seek to ensure that each bank adopts policy guidelines which to the maximum extent possible provide for—

"(A) the inclusion of sustainable use policies in loan agreements negotiated with borrower members;

"(B) the adoption of economic programs to foster sound environmental policies; and

"(C) the provision of debtor countries' policy changes or significant increases in financial resources for use in at least 1 of the following—

"(i) restoration, protection, or sustainable use of the world's oceans and atmosphere;

"(ii) restoration, protection, or sustainable use of diverse animal and plant species;

"(iii) establishment, restoration, protection, and maintenance of parks and reserves;

"(iv) development and implementation of sound systems of natural resource management;

"(v) development and support of local conservation programs;

"(vi) training programs to strengthen conservation institutions and increase scientific, technical, and managerial capabilities of individuals and organizations involved in conservation efforts;

"(vii) efforts to generate knowledge, increase understanding, and enhance public commitment to conservation;

"(viii) design and implementation of sound programs of land and ecosystem management; and

"(ix) promotion of regenerative approaches in farming, forestry, and watershed management.

"(b) NEGOTIATION OF GUIDELINES FOR RESTORATION, PROTECTION, OR SUSTAINABLE USE POLICIES.—The United States Executive Directors of the multilateral development banks shall seek to negotiate with the other executive directors to provide guidelines for restoration, protection, or sustainable use policies. Pending the outcome of such negotiations, the United States Executive Directors shall consider restoration, protection, or sustainable use policies to be those which—

"(1) support development that maintains and restores the renewable natural resource base so that present and future needs of debtor countries' populations can be met, while not impairing critical ecosystems and not exacerbating global environmental problems;

"(2) are environmentally sustainable in that resources are conserved and managed in an effort to remove pressure on the natural resource base and to make judicious use of the land so as to sustain growth and the availability of all natural resources;

"(3) support development that does not exceed the limits imposed by local hydrological cycles, soil, climate, vegetation, and human cultural practices;

"(4) promote the maintenance and restoration of soils, vegetation, hydrological cycles, wildlife, critical ecosystems (tropical forests, wetlands, and coastal marine resources), biological diversity and other natural resources essential to economic growth and human well-being and shall, when using natural resources, be implemented to minimize the depletion of such natural resources; and

"(5) take steps, wherever feasible, to prevent pollution that threatens human health and important biotic systems and to achieve patterns of energy consumption that meet human needs and relies on renewable resources.

"(c) INCLUSION OF CERTAIN ITEMS IN GUIDELINES.—The United States Executive Directors shall endeavor to include the provisions of paragraphs (1) through (5) of subsection (b) in the guidelines developed through the negotiations specified in this section.

"SEC. 1615. PROMOTION OF LENDING FOR THE ENVIRONMENT.

"The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to initiate discussions with the other executive directors of such bank and management of such bank and propose that, in order to reduce the future need for bank lending for reforestation and restoration of environmentally degraded areas, the bank establish a project and policy based environmental lending program (including a loan a portion of which could be used to reduce and restructure private debt), to be made available to interested countries with a demonstrated commitment to natural resource conservation, which would be based on—

"(1) the estimated long-term economic return which could be expected from the sustainable use and protection of tropical forests, including the value of tropical forests, including the value of tropical forests for indigenous people and for science;

"(2) the value derived from such services as—

"(A) watershed management;

"(B) soil erosion control;

"(C) the maintenance and improvement of—

"(i) fisheries;

"(ii) water supply regulation for industrial development;

"(iii) food;

"(iv) fuel;

"(v) fodder; and

"(vi) building materials for local communities;

"(D) the extraction of naturally occurring products from locally controlled protected areas; and

"(E) indigenous knowledge of the management and use of natural resources; and

"(3) the long-term benefits expected to be derived from maintaining biological diversity and climate stabilization.

"SEC. 1616. PROMOTION OF INSTITUTION-BUILDING FOR NON-GOVERNMENTAL ORGANIZATIONS CONCERNED WITH THE ENVIRONMENT.

"The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to vigorously promote the adoption of policies and procedures which seek to—

"(1) increase collaboration with, and where necessary, strengthen, nongovernmental organizations in such countries which are concerned with environmental protection by providing appropriate assistance and support for programs and activities on environmental protection; and

"(2) encourage international collaboration for information exchange and project enhancement with nongovernmental organizations in developing countries which are concerned with environmental protection and government agencies and private voluntary organizations in developed countries which are concerned with environmental protection.".

Page 40, beginning on line 24, strike "available to the Executive Director" and insert "completed by the borrowing country or the institution, and has been made available to the board of directors of the institution".

Page 41, beginning on line 2, strike "and" and all that follows through "public" and insert "or a comprehensive summary of such assessment has been made available to the multilateral development bank, affected groups, and local nongovernmental organizations".

Page 41, strike line 6 through 21 and insert the following:

"(2) EXCEPTIONS AND REPORTS.—

"(A) EXCEPTIONS.—The requirement of paragraph (1)(B) shall not apply where the Secretary finds compelling reasons to believe that disclosure in any case described in paragraph (1) would jeopardize the confidential relationship between the borrower country and the respective bank.

"(B) REPORTS BY SECRETARY.—The Secretary shall submit a quarterly report in writing to the Committees specified in subsection (f)(1) of the findings described in subparagraph (A).

Page 46, strike line 3 and all that follows through page 47, line 23, and insert the following:

Subtitle D—Debt-for-Development Swaps

SEC. 531. ENCOURAGEMENT OF DEBT-FOR-DEVELOPMENT SWAPS THROUGH LOCAL CURRENCY REPAYMENT.

(a) STATEMENT OF POLICY.—It is the sense of the Congress that—

(1) debt-for-development swaps, where payment is made in local currency at the free market rate, serve a useful purpose by providing banking institutions with constructive opportunities for the reduction of the external debt of highly indebted developing countries in a process that involves the participation of private, nonprofit groups in providing a stimulus to the economic and social development of such developing countries;

(2) debt-for-development swaps provide highly indebted developing countries with a creative method of reducing external debt burdens, while promoting their economic growth and restructing objectives;

(3) banking institutions should give careful consideration to engaging in such swaps as one means of strenthening overall loan portfolios through the reduction of high external debt burdens while expanding economic opportunities through private sector initiatives; and

(4) in order to avoid any bias against such swaps in the regulatory framework applicable to the financial reporting of banking institutions, where payment is made in local currency at the free market rate, appropriate recognition of the fair market exchange value of the currency so received should be made.

(b) NOTIFICATION RELATING TO LOCAL CURRENCY REPAYMENT THROUGH DEBT-FOR-DEVELOPMENT SWAPS.—Before the end of the 6-months period beginning on the date of the enactment of this section, each appropriate Federal banking agency shall adopt uniform guidelines that will effectuate the policy set forth in subsection (a) concerning the regulatory framework and accounting treatment of debt-for-development swaps involving repayment in local currency at the free market rate. For the purpose of such guidelines, the impact of such swaps on reported loan loss reserves shall be determined by valuing currency received in such swaps at fair market exchange value.

(c) DEFINITIONS.—As used in this section:

Page 49, line 13, insert ", except that the report for fiscal year 1989 shall be submitted not later than June 1, 1990" before the period.

Page 50, line 11, strike "international financial institutions" and insert "multilateral development banks".

Page 51, line 16, insert ", and, for the fiscal year 1990, the report described in section 1613" before the semicolon.

Page 66, strikelines 3 through 16.

Page 45, line 5, strike the word "Committee" and insert in lieu thereof "Committees"

Page 45, line 6, insert "and Environment and Public Works" before the word "of".

On page 66, between lines 16 and 17, insert the following:

"TITLE VII—MISCELLANEOUS

SEC. 701. SHORT TITLE.

This title may be cited as the "Global Environmental Protection Assistance Act of 1989".

PART A—COMMERCIAL DEBT-FOR-NATURE EXCHANGES

SEC. 711. AMENDMENT TO THE FOREIGN ASSISTANCE ACT.

The Foreign Assistance Act of 1961 is amended by inserting after chapter 6 of part I the following new chapter:

"CHAPTER 7—DEBT-FOR-NATURE EXCHANGES

SEC. 461. DEFINITION.—For purpose of this chapter, the term 'debt-for-nature exchange' means the cancellation or redemption of the foreign debt of the government of a country in exchange for—

"(1) that government's making available local currencies (including through the issuance of bonds) which are used only for eligible projects involving the conservation or protection of the environment in that country (as described in section 463); or

"(2) that government's financial resource or policy commitment to take certain specified actions to ensure the restoration, protection, or sustainable use of natural resources within that country; or

"(3) a combination of assets and actions under both paragraphs (1) and (2).

"SEC. 462. ASSISTANCE FOR COMMERCIAL DEBT EXCHANGES.—(a) The Administrator of the Agency for International Development is authorized to furnish assistance, in the form of grants on such terms and conditions as may be necessary, to nongovernmental organizations for the purchase on the open market of discounted commercial debt of a foreign government of an eligible country which will be canceled or redeemed under the terms of an agreement with that government as part of a debt-for-nature exchanges.

"(b) Notwithstanding any other provision of law, a grantee (or any subgrantee) of the grants referred to in subsection (a) may retain, without deposit in the Treasury of the United States and without further appropriation by Congress, interest earned on the proceeds of any resulting debt-for-nature exchange pending the disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

"SEC. 463. ELIGIBLE PROJECTS.—(a) The Administrator of the Agency for International Development shall seek to ensure that debt-for-nature exchanges under this chapter support one or more of the following activities by either the host government, a local private conservation group, or a combination thereof:

"(1) restoration, protection, or sustainable use of the world's oceans and atmosphere;

"(2) restoration, protection, or sustainable use of the diverse animal and plant species;

"(3) establishment, restoration, protection, and maintenance of parks and reserves;

"(4) development and implementation of sound systems of natural resource management;

"(5) development and support of local conservation programs;

"(6) training programs to strengthen conservation institutions and increase scientific, technical, and managerial capabilities of individuals and organizations involved in conservation efforts;

"(7) efforts to generate knowledge, increase understanding, and enhance public commitment to conservation;

"(6) design and implementation of sound programs of land and ecosystem management; and

"(9) promotion of regeneration approaches in farming, forestry, fishing, and watershed management.

"(b)(1) In cooperation with nongovernmental organizations, the Administrator of the Agency for International Development shall seek to identify those areas, which because of an imminent threat, are in particular need of immediate attention to prevent the loss of unique biological life or valuable ecosystem.

"(2) The Administrator of the Agency for International Development shall encourage as many eligible countries as possible to propose such exchanges with the purpose of demonstrating to a large number of governments the feasibility and benefits of sustainable development.

"SEC. 464. ELIGIBLE COUNTRIES.—In order for a foreign country to be eligible to participate in a debt-for-nature exchange under this chapter, the Administrator of the Agency for International Development shall determine that—

"(1) the host country is fully committed to the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange;

"(2) a long-term plan has been prepared by the host country, or private conservation group, which adequately provides for the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange or that such a plan will be prepared in a timely manner; and

"(3) there is a government agency or a local nongovernmental organization, or

combination thereof, in the host country with the capability, commitment, and record of environmental concern to oversee the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange.

"SEC. 465. TERMS AND CONDITIONS.—(a) The terms and conditions for making grants under this chapter shall be deemed to be fulfilled upon final approval by the Administrator of the Agency for International Development of the debt-for-nature exchange, a certification by the nongovernmental organization that the host government has accepted the terms of the exchange, and that an agreement has been reached to cancel the commercial debt in an agreed upon fashion.

"(b) Grants made under this section are intended to complement, and not substitute for, assistance otherwise available to a foreign country under this Act or any other provision of law.

"(c) The United States Government is prohibited from accepting title or interest in any land in a foreign country as a condition on the debt exchange.

"SEC. 466. PILOT PROGRAM FOR SUB-SAHARAN AFRICA.—(a) The Administrator of the Agency for International Development, in cooperation with nongovernmental conservation organizations, shall invite the government of each country in sub-Saharan Africa to submit a list of those areas of severely degraded national resources which threaten human survival and well-being and the opportunity for future economic growth or those areas of biological or ecological importance within the territory of that country.

"(b) The Administrator of the Agency for International Development shall assess the list submitted by each country under subsection (a) and shall seek to reach agreement with the host country for the restoration and future sustainable use of those areas.

"(c)(1) The Administrator of the Agency for International Development is authorized to make grants, on such terms and conditions as may be necessary, to nongovernmental organizations for the purchase on the open market of discounted commercial debt of a foreign government of an eligible sub-Saharan country in exchange for commitments by that government to restore natural resources identified by the host country under subsection (a) or for commitments to development plans for sustainable use of such resources.

"(2) Notwithstanding any other provision of law, a grantee (or any subgrantee) of the grants referred to in section (a) may retain, without deposit in the Treasury of the United States and without further appropriation by Congress, interest earned on the proceeds of any resulting debt-for-nature exchange pending the disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.".

PART B—MULTILATERAL FOREIGN ASSISTANCE COORDINATION

SEC. 721. GENERAL POLICY

It is the sense of the Congress that the Secretary of State should seek to develop an increased consideration of global warming, tropical deforestation, sustainable development, and biological diversity among the highest goals of bilateral foreign assistance programs of all countries.

SEC. 722. POLICY ON NEGOTIATIONS.

(a) IN GENERAL.—The Secretary of State, acting through the United States representative to the Development Assistance Committee of the Organization for Economic Coordination and Development (OECD), should initiate, at the earliest practicable date, negotiations among member countries on a coordinated approach to global warming, tropical deforestation, sustainable development, and biological diversity through bilateral assistance programs that would include—

(1) increased consideration of the impact of developmental projects on global warming, tropical deforestation, and biological diversity;

(2) reduction or elimination of funding for those projects that exacerbate those problems;

(3) coordinated research and development of projects that emphasize sustainable use or protection of tropical forests and support for local conservation efforts;

(4) expanded use of forgiveness of foreign assistance debt in exchange for policy changes or programs that address problems associated with global warming, tropical deforestation, sustainable development, and biological diversity;

(5) increased use of foreign assistance funds and technical assistance in support of local conservation, restoration, or sustainable development efforts and debt-for-nature exchanges;

(6) improved exchange of information on energy efficiency and solar and renewable energy sources, and a greater emphasis on the use of those sources of energy in developmental projects; and

(7) increased use of environmental experts in the field to assess development projects for their impact on global warming, tropical deforestation, and biological diversity.

(b) IMPLEMENTATION OF AGREEMENT.—Negotiations described in subsection (a) shall seek to ensure that the recommended changes are implemented as quickly as possible by member countries of the Development Assistance Committee.

Page 66, line 17, strike "VII" and insert "VIII".

Page 66, line 18, strike "701" and insert "801".

## LABOR RELATIONS MANAGEMENT ACT AMENDMENTS

### KENNEDY (AND HATCH) AMENDMENT NO. 1217

Mr. MITCHELL (for Mr. KENNEDY, for himself and Mr. HATCH) proposed an amendment to the bill (S. 1949) to amend the Labor Management Relations Act of 1947 to permit parties engaged in collective bargaining to bargain over the establishment and administration of trust funds to provide financial assistance for employee housing, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. EMPLOYEE HOUSING TRUST FUNDS.

Section 302(c)(7) of the Labor Management Relations Act of 1947 (29 U.S.C. 186(c)(7)) is amended—

(1) by striking out "or" at the end of subparagraph (A); and

(2) by inserting ", or (C) financial assistance for employee housing" after "dependents of employees" in subparagraph (B).

## IMPLEMENTATION OF STEEL TRADE LIBERALIZATION PROGRAM

### BENTSEN AMENDMENT NO. 1218

Mr. BENTSEN proposed an amendment to the bill (H.R. 3275) to implement the steel trade liberalization program, as follows:

On line 22 of page 25 of the bill, strike "beginning after December 31, 1989." and insert in lieu thereof "1990 and 1991."

## NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

CANCELLATION OF HEARING

Mr. JOHNSTON. Mr. President, I would like to announce for the Senate and the public that the hearing scheduled before the Committee on Energy and Natural Resources on December 5, 1989, has been postponed.

Testimony was to be heard at this hearing on the Department of Energy's implementation of the civilian nuclear waste program.

The hearing was originally scheduled to take place on the above mentioned date in the Dirksen Senate Office Building in Washington, DC.

The hearing will be rescheduled at a later date. For further information, please contact Mary Louise Wagner or Teri Curtin at (202) 224-7569.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for the Senate and the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources.

The hearing will take place on Thursday, February 1, 1990, at 9:30 a.m. in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

The purpose of the hearing is to receive testimony from the Department of Energy on its decision plan related to the opening of the Waste Isolation Pilot Plant in Carlsbad, NM. Testimony will also be received on any proposed legislation to withdraw the public lands surrounding the WIPP site.

Those wishing to submit testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510, Attention: M.L. Wagner.

For further information, please contact Mary Louise Wagner or Teri Curtin at (202) 224-7569.

## ADDITIONAL STATEMENTS

### RECOGNITION OF CHIP DAVIS AND LARRY KING

● Mr. KERREY. Mr. President, I rise today to commend a fellow Nebraskan, Chip Davis of Omaha, on his efforts to help those less fortunate than he.

Chip Davis, the founder of a record studio in Omaha, American Gramaphone, has joined with national talk show host Larry King in a fundraiser for the Larry King Cardiac Foundation, a not-for-profit organization that benefits those people requiring heart bypass surgery that do not have health insurance or cannot afford the surgery for other reasons. For their holiday event, King and Davis have produced a special tape combining an exceptional essay on the tradition of Christmas and the spirit of giving written by King accompanied by beautiful Christmas music composed by Davis. The tape will also feature other holiday music from Davis' recordings from the two most people Christmas albums of the past holiday season, "A Fresh Aire Christmas" and "Mannheim Steamroller Christmas."

Chip Davis and his group Mannheim Steamroller have been credited with sparking renewed interest within the record industry for Christmas music. His 1988 album, "A Fresh Aire Christmas," prompted Larry King to call Chip "the man who brings Christmas music to America."

The efforts of Chip Davis and Larry King are to be commended. Their assistance to Americans unable to assist themselves is an example of giving that provides an impetus to others to remember what the holidays are meant to represent—a time of sharing the joy and pleasure of life with those who are not as fortunate.●

### JUDGE WALTER NIXON IMPEACHMENT

● Mr. MURKOWSKI. Mr. President, I think most of my colleagues will agree that our impeachment committee report, and the persuasive presentation by Judge Nixon and his counsel, show that this case is much more difficult than it might have first appeared.

We also have the sobering reality of the actions and decisions of others before us who have viewed much of the same evidence we have gone through. Other people have:

Convicted Judge Nixon of lying to the Government and to the grand jury;

Denied Judge Nixon relief in two rounds of appeals, including one to the U.S. Supreme Court;

And we also know that the House voted unanimously to impeach the judge.

But, I think we have to begin our deliberation without regard for the jury and appeal verdicts against Judge Nixon. The Senate is not a rubber stamp in cases of impeachment. In fact of the 14 impeachment trials in the Senate, the Senate has refused to convict 8 times. We look at the evidence freshly and each of us must determine if Judge Nixon is fit to continue serving on the bench.

Despite years of litigation, key facts are still in dispute. For example, was the important phone call made from Budd Holmes' farm in May 1982—as the House contends—or was it in March 1983—as Judge Nixon asserts?

The cast of characters in this case also poses serious problems of credibility:

Wiley Fairchild—the 77-year-old Hattiesburg businessman at the heart of this controversy—has failing memory and has given various versions of the facts since 1984.

Bud Holmes, the former State district attorney who also testified against Judge Nixon, has given so many versions of certain facts that he suggested the Senate panel could choose whichever ones we felt comfortable with.

Judge Walter Nixon also presents a dilemma to this Senator. Witnesses testified uniformly that Judge Nixon has been an outstanding Federal judge, who presided over one of the busiest dockets in the country. He has made difficult, often unpopular decisions in Mississippi, including the desegregation of the Mississippi State Police. In the early 1980's, he was considered for elevation to the Federal circuit court of appeals.

Moreover, I had the chance to observe Judge Nixon as he testified. He seemed to be a decent, civil man, perhaps more so than those who testified against him.

Another concern with this case is the obvious aggressiveness of the Department of Justice. There is indication that the Washington, DC, prosecutor sought to convict Judge Nixon at all costs. He lost on the main charge that Nixon accepted an unlawful gratuity, but he convinced the jury that Judge Nixon failed to tell the grand jury the full truth.

However, by raising this point, I do not suggest that Judge Nixon has proven a case of prosecutorial misconduct. I'm not sure I appreciate the aggressiveness of the prosecutor in this case, nor do I appreciate certain tactics employed in the investigation, such as surprising witnesses before the grand jury with documents that were requested but not provided before their appearance. But proof is lacking that the prosecutor manufactured evidence against Judge Nixon, or encouraged witnesses to testify falsely against him at trial.

As a member of the impeachment panel, I will highlight two areas that have made an impact on me:

The financial relationship between Wiley Fairchild and Judge Nixon.

Judge Nixon's failure to correct the grand jury record once he realized the truth about—or remembered—the Holmes' farm telephone call.

Regarding the first matter, it is absolutely clear that Judge Nixon's investment in an oil and gas deal with Wiley Fairchild was designed to benefit both men.

Judge Nixon needed money to support his family—and to pay for the education of his learning disabled son. He wanted to invest with Wiley Fairchild, the wealthiest person in Hattiesburg, MS. Fairchild had extensive oil and gas investments. Judge Nixon had no particular relationship with Fairchild at the time, and called on Caroll Ingram to help him make contact. Ingram was a distant relative of Fairchild, and represented him as a lawyer off and on. Judge Nixon pursued the matter until Ingram finally arranged a meeting with Fairchild in 1979, at which Fairchild agreed to find some oil properties for the judge.

Months passed, and eventually Fairchild selected three wells for which Judge Nixon was to invest $9,500.

The judge signed three promissory notes to Fairchild Industries, at 10 percent interest, for the $9,500. The evidence also shows that Judge Nixon did not actually pay the notes or the interest until substantial royalties began flowing from the wells.

In short, the judge had no actual cash outlay in making the investment with Wiley Fairchild.

The investment has yielded over $73,000 to date for Judge Nixon.

Why would Wiley Fairchild offer such an investment to Judge Nixon, who, in 1979, was a stranger? How did he benefit?

Wiley liked to be close to high public officials in Mississippi. Walter Nixon was a prominent judge, and Wiley wanted the judge to be in his orbit of influential and important, official friends. Because of this, Wiley would make sure that Judge Nixon's investment was not all that risky. He personally selected the three wells, and also testified that he could have gotten between $16,500 and $18,500 more for these investments than the $9,500 that the judge was asked to pay.

Judge Nixon's investment with Fairchild was so lucrative—and the financing arrangements were so beneficial to the judge—that it formed the basis of the Government's initial investigation into Judge Nixon's activities.

By outlining the investment between Fairchild and Judge Nixon, I do not suggest that it was illegal. The House did not impeach the judge for the financial transaction. And, as noted earlier, the jury acquitted him of taking an illegal gratuity.

But, the investment was unusual, and it left the judge open to exploitation to say the least.

After April 1984—the time of the first interview with the Government prosecutor and the FBI—Judge Nixon had to know that there were a lot of unanswered questions about the specifics of the investment and his relationship with Wiley Fairchild.

Therefore, after his initial contact with the Department of Justice, Judge Nixon would want his relationship with Fairchild to have all the appearances of an arm's length transaction.

For 3 months—from April to July 1984—Judge Nixon must have reviewed all possible facts surrounding his investment with Fairchild, and any contacts he might have had relating to Drew Fairchild's case.

In fact, the testimony before our impeachment panel shows that at the conclusion of the April 1984 interview with the Department of Justice, the judge told the Government that he was going to call Caroll Ingram and others to discuss the investment. He did so, and indicated concern that the Government was even asking questions about the investment.

Relating this information to the articles of impeachment, article I states that during the grand jury session in July 1984, Judge Nixon said that he and Bud Holmes never discussed the Drew Fairchild case.

Keep in mind that by the time the judge asked to appear before the grand jury in July 1984, he had months to think about the investment and facts surrounding his relationship with Wiley Fairchild. Between April and July 1984, it must have become clear to Judge Nixon that he had to convince the Government that the investment was proper, and that he never did anything by way of a favor for Wiley Fairchild.

To maintain this appearance, Judge Nixon would not have wanted the grand jury to learn that he had discussed Drew Fairchild's case with Bud Holmes at any time or for any reason. If the judge gave the grand jury any information that Wiley had asked Judge Nixon to help Drew, or that he had talked to Holmes, then the grand jury would have had even greater reason to suspect that the oil and gas deal was merely a bribe, or that Judge Nixon was indeed on Fairchild's payroll.

So, with regard to article I, Judge Nixon had the motive to say that he had never discussed Drew's case with Bud Holmes.

The key element of Judge Nixon's defense is that when he testified before the grand jury he simply did not bring to mind the three conversations that took place on one day with Wiley Fairchild and Bud Holmes. He says that those conversations were so unimportant and remote that they simply did not come into his mind.

Even though it's hard to imagine that between April and July 1984 Judge Nixon did not remember the farm phone call, or the "blackmail" discussion with Wiley Fairchild, in looking at article I, I will give Judge Nixon the benefit of the doubt.

However, eventually the judge's memory was refreshed by Bud Holmes.

Judge Nixon appeared before the grand jury in July 1984. Months later, in February 1985, Judge Nixon had a meeting with Bud Holmes in the parking lot of the Hattiesburg Federal court building. Holmes told Judge Nixon that he had testified before the grand jury and had denied having made a telephone call to Wiley Fairchild about Drew's drug case. Holmes suggested to the judge that there had never been such a call, but Judge Nixon told Holmes there had been a call, and that there had been nothing improper about the call.

Because of this February 1985 meeting with Holmes, Judge Nixon's memory of the farm phone call was jogged for the first time, according to the judge.

Yet, when Judge Nixon recalled the conversations, he made no attempt to contact the Government, or to return to the grand jury to correct his earlier statements that he had absolutely no discussion with Bud Holmes about Drew's case.

Why didn't the judge take action to correct the record?

Judge Nixon testified that he and his lawyer thought about this, but by that time there was a "Gestapo" type atmosphere surrounding the grand jury proceeding, there was adverse publicity in Hattiesburg, and Judge Nixon felt he would not get a fair hearing. He and his lawyer decided not to pursue the matter before the grand jury since by then Judge Nixon was a target of the prosecution.

Hindsight is not only cheap, but it is always 20/20. None of us can fully understand the atmosphere that surrounded Judge Nixon at the time. However, it is hard to ignore the following:

The conversation from the farm, or in Wiley Fairchild's office earlier that day, were not in themselves illegal acts. Yet Judge Nixon knew that he had made a categorical assertion under oath before the grand jury that he had nothing whatsoever to do with Drew Fairchild's case, and had never discussed it with Bud Holmes.

When the judge learned that this wasn't entirely true, he had to know, as a long-time lawyer and judge, that the categorical assertion exposed him to the charge of misleading the grand jury, or even perjury.

By his failure to try to correct the record, it is difficult to escape the conclusion that Judge Nixon intentionally concealed the facts from the grand jury. He had the opportunity to let the Government know about the farm conversation, and he made the choice—with his lawyer—not to do so.

I understand fully his defense attorney's argument that no lawyer would advise the target of a criminal investigation to return voluntarily to a hostile grand jury.

However, a U.S. district judge is not an ordinary grand jury target. He had voluntarily asked to testify the first time—in July 1984—and I am convinced that he had a high duty to correct any factual errors that might have arisen from his first appearance.

I have also considered Judge Nixon's alternative defense: that even if he did have conversations with Bud Holmes, they had no impact on Drew's case, and they did not influence the handling of the case by Bud Holmes. He also disputes whether casual conversations rise to the level of "discussion" about Drew's case. But these defenses appear to be illogical, for the following reasons:

In the tense atmosphere of his grand jury appearance, did the judge seriously and consciously choose not to mention the farm conversation and phone call because he paused and drew a careful, lawyerly distinction in his own mind between a mere "conversation" and a "discussion"?

And did he fail to mention the farm conversation because he knew that it did not actually influence the outcome of Drew Fairchild's drug case? Again, it's hard to imagine that the judge, in the heated environment of the grand jury room, carefully contemplated the distinction between a conversation that influenced the outcome of a case, and a conversation that merely related to a case.

These alternative defenses now seem like convenient distinctions to draw in 1989, but they don't square with Judge Nixon's testimony before our impeachment panel that the farm telephone call simply didn't come into his memory when he testified before the grand jury. I don't believe the judge can have it both ways. The alternatives defenses have not been persuasive.

Of greater weight to this Senator is the fact that the judge made a conscious decision not to correct his grand jury testimony when he learned the truth. By not doing so, he knew he had misled the grand jury and had concealed the conversations with Bud Holmes.

Article 2 states that Judge Nixon misled the grand jury when he said he never did anything or talked to anyone that influenced the handling of the Drew Fairchild case.

I am troubled by article 2 because it has been modified recently by the

House only after the judge's actual statement before the grand jury was clarified during our deliberations.

I am not confident that the House of Representatives really focused on the difference in language when it readopted this article a week or so ago.

If the essence of the article is that the judge influenced the handling of the Drew Fairchild case, then the matter of passing Drew's case to the file becomes important.

We know that the case was passed to the file in December 1982. Yet, the evidence is entirely unclear as to when the farm conversations really took place. If, as Holmes says, they happened before December 1982, then the judge might have influenced Drew's case. But, if the conversations took place in March 1983, after the case was passed to the file, then the conversations had no influence on anything.

I frankly don't know when the conversations took place.

Given this doubt in my mind about the date of the farm conversations, and given the change in language in the article by the House, I am not persuaded that the House has proven its case in article 2.

Article 3 states or restates 14 instances when the judge allegedly didn't tell the full truth, 7 instances when the Justice Department interviewed him in April 1984, and 7 when he voluntarily appeared before the grand jury in July 1984.

I am inclined to reject article 3.

First, I am not persuaded that the judge consciously chose to conceal facts when the Government first interviewed him in April 1984. The interview was unannounced, the judge didn't have time to investigate facts or to fully understand the line of questioning. I just don't believe it is proper to hold the judge to a standard of perfection of memory when he was first interviewed.

Second, I don't appreciate the omnibus nature of article 3, and I agree with the argument that the article could easily be used to convict Judge Nixon by less than the super majority vote required by the Constitution.

In concluding my remarks, I note again that this is not an easy case. In many ways the witnesses have been contradictory, important facts are not resolved, and there are weaknesses to the House's case.

Regardless of the disputes, a few things are clear:

Judge Nixon did talk about Drew Fairchild's case with Bud Holmes.

While he may have had no recollection of the conversations when he was interviewed by the prosecutor, or when he voluntarily went before the grand jury, there is no dispute that Judge Nixon's recollection was refreshed by Bud Holmes after the grand jury appearance. Nevertheless, he didn't correct the record and he concealed the facts from the grand jury.

Judge Nixon's investment with Wiley Fairchild, the real subject of the Government's inquiry, was lucrative, and was hardly arm's length.

Taking these facts into consideration, and even giving Judge Nixon the benefit of the doubt on many disputed issues, I am persuaded that he misled the grand jury and concealed conversations he had with Bud Holmes. He did so, I believe, because he needed to persuade the Government that his investment with Fairchild was arm's length and had no improper taint.

This is a close question, but I believe that Judge Nixon's omissions and conduct warrant his removal from the bench.

As one of the most important decision makers in our Federal system, a Federal district court judge simply must meet the highest possible ethical and legal standards in our system of justice. If he conceals facts during the course of a formal investigation, he has not met this high burden.

I have not looked forward to voting to convict Judge Walter Nixon on article 1. I am not unaware that he still enjoys strong support from members of the bar in Mississippi. I have read the letters of support he has received, including those from his family members.

None of us should relish this task. But I am convinced that Judge Nixon no longer possesses those high qualities of integrity that we must demand in our Federal judges.●

## NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Dr. David Podoff, an economist with the Joint Economic Committee, to participate in a program in Germany, sponsored by the Konrad-Adenauer-Stiftung Foundation, from November 12–18, 1989.

The committee has determined that participation by Dr. Podoff in the program in Germany, at the expense of the Konrad-Adenauer-Stiftung Foundation, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Ms. Gina Despres, a member of the staff of Senator BRADLEY, to participate in a program in Australia, sponsored by the Australian Government's "Special Visits Program," from December 1–23, 1989.

The committee has determined that participation by Ms. Despres in the program in Australia, at the expense of the Australian Government's "Special Visits Program," is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Mr. Vettel, a member of the staff of Senator BAUCUS, to participate in a program in the People's Republic of China, sponsored by the Chinese People's Institute of Foreign Affairs in conjunction with the United States Asia Institute, from December 7–21, 1989.

The committee has determined that participation by Mr. Vettel in the program in the People's Republic of China, at the expense of the Chinese People's Institute of Foreign Affairs in conjunction with the United States Asia Institute, is in the interest of the Senate and the United States.●

## CITIZENS' COUNCIL PROVISION IN OILSPILL BILL

● Mr. MURKOWSKI. Mr. President, I wonder if my friends from Montana and Rhode Island would engage in a brief colloquy with the Senator from Alaska regarding a provision in the oilspill liability bill that the Senate passed concerning the establishment of citizens' councils for Alaska's two major crude oil terminals.

Mr. President, for the background of some of my colleagues, when the Senate considered the oilspill liability bill this Senator offered an amendment that the Senate adopted which would provide direct local citizen involvement in the environmental monitoring of Alaska oil terminal operations and oilspill contingency planning. These "citizens' councils" would be established as demonstration programs, and would sunset in 3 years unless Congress decided to continue their operation. The legislation provides that one council would be established in Prince William Sound and the other would be established in Cook Inlet, and that minimal Federal funding of $3 million would be provided for startup costs and operations.

Mr. President, since passage of this amendment I have worked closely with local community leaders, fishermen, native leaders, environmentalists, and industry representatives in Alaska to further refine the concept of local

citizen involvement contained in the Senate bill.

In this regard, the House considered the modified version of the Senate-passed language and passed it as an amendment to the Coast Guard reauthorization bill. I was hopeful that the Senate would recede to the House on this provision, but it is my understanding that the Environment and Public Works Committee had reservations about dealing with this provision on any vehicle other than the oilspill liability bill. Would my friend from Montana care to elaborate?

Mr. BAUCUS. Mr. President, let me first say to my colleague from Alaska that I congratulate him for the innovative method he developed to get local citizens involved in protecting their local environment. This is an interesting concept that appears worthy of being tested on a demonstration basis to see if it can work in decreasing the likelihood that this Nation is confronted with another oilspill like the *Exxon Valdez.*

Having said that, Mr. President, the majority and minority of the Environment and Public Works Committee did have to object to placing this provision on the Coast Guard reauthorization bill. Our concern in raising this objection, while in no way intended as an objection on the merits of the citizens' council provision, was based on the belief that it is important that we deal with oilspill legislation in a comprehensive fashion that results in one coherent Federal policy and not through piecemeal legislation.

I would like to assure the Senator from Alaska that I will work closely with him to ensure that this provision is given every consideration in the conference with the House.

Mr. CHAFEE. Mr. President, I would like to echo the comments of my friend from Montana. The Senator from Alaska has developed an innovative approach that is deserving of testing on a demonstration basis. The central focus of the oilspill legislation that the Senate adopted was oilspill prevention, and this Senator is hopeful that the establishment of citizens' councils will further this goal.

Mr. President, I will work closely with the Senator from Alaska to protect this provision in the conference on the oilspill legislation.

Mr. MURKOWSKI. Mr. President, I would like to thank my colleagues for their willingness to work with this Senator to protect this provision when the House and the Senate conference the oilspill legislation. This Senator understands why they felt compelled to object to including this provision on any vehicle other than the oilspill legislation, and this Senator is glad to hear that their objection was not based on the merits of this provision.●

## A MODERN TELEPHONE SYSTEM FOR POLAND

● Mr. SIMON. Mr. President, one of the provisions of the Support for East European Democracy Act encourages the Polish-American Enterprise Fund to use up to $25 million for telephone grants to establish a modern telecommunications system.

In the original version of my bill, S. 1582, and in the committee modification, there was a stipulation that the contracts should be let to an American company or companies. This stipulation was dropped form the House bill and the conference report, but I would hope that the Board of Directors of the Polish-American Enterprise Fund, whoever they might be, follow the guidance in the Senate package and grant those contracts to American telecommunications firms.

And let me add here that we should move quickly on this, because getting a modern and efficient telephone system into Poland is crucial in attracting Western investment. Businesses in Poland need to be able to communicate quickly with the rest of the world. All technologies ought to be explored, including service and equipment related to privately operated cellular telephone facilities. I hope the telephone grant proposals are given thorough but timely consideration. It will really help Poland.●

## ON THE PRESIDENT'S VETO OF THE FISCAL YEAR 1990 FOREIGN OPERATIONS BILL

● Mr. KERREY. Mr. President, I rise to discuss President Bush's veto of the foreign operations appropriations bill.

The President objects to the inclusion in the bill of funding for the United Fund for Population Activities. This decision is most regrettable because the United States should be doing all it can to encourage international efforts to control a world population which continues to grow beyond the capacity of our environment or economy. It is regrettable because congressional Republicans and Democrats worked hard on language in this bill to ensure that the coercive abortion practices of the People's Republic of China would not receive United States money.

President Bush will no doubt attempt to explain his veto so it will appear moderate, reasonable, and necessary. I believe it is none of these things.

Rather, I believe the decision is a response to excessive concern for a small number of well meaning Americans whose strong opposition to abortion drives our policies in other areas, including international family planning. Quite simply, this decision by President Bush has been made out of concern that he may lose some of his domestic political base.

Americans who are concerned about population control efforts on this planet should not be fooled into thinking this is a prudent decision. They should be outraged by a President who is more concerned about his polling numbers that the rising numbers of people attempting to find food, shelter, and clothing on this planet, avoiding lives of absolute deprivation that are all too common in many areas of the world.

Americans who are concerned about aid to Hungary and Poland—which was jeopardized by this veto—should also be outraged by this veto. Those who feel an urgency to make abortion illegal have carried the day over those of us who feel an urgency to act to give the revolution of freedom in Hungary and Poland a fighting chance.

Americans who are concerned about winning the war against international drug trafficking—another casualty of this veto—should be terrified by this veto. Again, the concerns of a small number of citizens have taken priority over the greatest concern of all Americans.

Mr. President, this action is taken while the chairman of the Republican Party is trying to encourage Americans who believe that abortion should be a woman's decision and not her government's to remain in the Republican Party. Last weekend in Omaha, NE, he said:

> Abortion is an issue of the heart. We must have a big enough tent and a big enough umbrella to have a diversity of opinion * * * and abortion is no exception. We should tolerate any individual's position on abortion inside this party.

Unfortunately, tolerance does not extend to the execution of sound Federal policy. When policy is at stake, all that counts are polling numbers. And make no mistake those numbers still say this to Republican Presidential candidates: If you do not toe the line in wishing to outlaw abortion, you are at risk in the primary election and you may not pull enough Democrats to win the general election.

Anyone who understands the politics of Presidential elections knows this is true. Anyone who knows this is true, understands that President Bush's veto is certain to have been made because of this fact.

The consequences of this litmus test do not stop here, Mr. President. In the November 18 New York Times there appeared an essay by Patricia M. Ravalgi, which opens for our view the impact it has had on American lives. In this essay we can see how abortion litmus tests which prevent fetal tissue research in America have increased individual pain and suffering.

Domestic political considerations have limited the exploration of cures to human diseases. Polling data is pro-

ducing more than just bad policy; it is producing real tragedy.

Mr. President, the greater good in America and the world require that we look beyond the feelings of a few, understanding that they are strongly held—in order to free us all.●

## HONORING FLIGHT ATTENDANTS ON UNITED FLIGHT 232

● Mr. DIXON. Mr. President, I would like to take this opportunity to honor flight attendants who served so bravely and honorably in their duties aboard United Flight 232 which crashed in Sioux City, IA. In particular I would like to remember an Illinoisan, flight attendant Rene LeBeau of Schaumburg, who was among the 111 people killed aboard the aircraft and the only flight attendant killed.

Miss LeBeau, 32 years old, made the supreme sacrifice when she died while in the service of others. Rene LeBeau was a bright young woman, and her death was a great loss to all who knew her. I wish to offer my heartfelt sympathy to Miss LeBeau's family. Rene was a fine person, and her parents can be proud of her.

With the many problems associated with air travel today, the coolheaded actions of Janice Brown, Donna McGrady, Timothy Owens, Susan White, Virginia Murray, Barbara Gillespie, Georgeann DelCastillo, Kathy Shen and Rene LeBeau aboard flight 232 represent the ultimate in professional service to others. During the flight, the attendants acted to reassure passengers as they themselves were living with the terrible knowledge that the damaged airliner could suffer a disastrous crash killing everyone aboard. After the plane did land in a firey crash in Sioux City the attendants did everything possible to assist the injured aboard, many of them returning to the broken fuselage to assist others in exiting the plane.

The cockpit flight crew deserves great praise. We all heard the heroic tale of how United Airlines Capt. Al Haynes together with copilot, First Officer William R. Records, Flight Engineer Dudley Dvorak and off-duty pilot Denny Fitch regained control of the plane after losing all hydraulic power, by manipulating the speed of the different engines. Many of us heard the replay of the flight recorder, in which these men facing possible death, calmly plotted their best course of action. Their heroism and skill go without saying.

Today I recognize the flight attendants. They are the unsung heroes in the airline industry. Their dedication may go unnoticed, but their service in times of crisis is invaluable.

I would like to thank Janice Brown, Donna McGrady, Timothy Owens, Susan White, Virginia Murray, Barbara Gillespie, Georgeann DelCastillo and Kathy Shen for their dedication to service that they so valiantly displayed. I further wish to honor the memory of Rene LeBeau whose service will be sorely missed by her colleagues.●

## BRIGGS AND EMILY SALLEY OF SOUTH CAROLINA

● Mr. HOLLINGS. Mr. President, I would like to congratulate Emily and H. Briggs Salley, Jr., of Salley, SC, who have been selected as national finalists in the Outstanding Conservation Farmer/Rancher Program, which is sponsored by the National Endowment for Soil and Water Conservation. The Salleys are among 9 families who were chosen as finalists from 50 State winners in this awards program.

This honor results from the Salleys' innovative and effective efforts in controlling soil erosion, preventing and reducing pollution, and improving water quality on their 3,000 acre crop and livestock farm in Orangeburg County.

The Salleys produce cotton and soybeans—crops that are often accompanied by severe soil erosion. To decrease erosion, the Salleys have developed a system of contour farming, terraces, and grassed waterways. Mr. Briggs was one of the first to try no-till methods on cotton in the county, and he also double crops to preserve the soil.

As participants in the Conservation Reserve Program, the Salleys have set aside 1,524 acres for trees, hay, and wildlife areas. They also have several ponds which are used as livestock watering holes, recreation areas, and wildlife habitats.

"This land has been in my family for seven generations now," Mr. Salley has said. "My appreciation for the land and the conservation of our natural resources probably stem from my father and grandfather. They instilled in me a sense of responsibility for conserving and preserving the land at a very young age. My father placed land in the Soil Bank."

The Salleys' sensitivity toward their natural resources shows an appreciation of South Carolina's agricultural past. In South Carolina, King Cotton came to reign arm in arm with an increasing rate of soil erosion. Production of this soil-depleting crop increased steadily in South Carolina until 1920, when statewide production peaked at 1.6 million bales.

During the cotton era, country stores—often the social centers of a State that was overwhelmingly agricultural—played an interesting role in the history of soil erosion in South Carolina. The country stores allowed farmers to buy goods on credit until the end of the growing season, but with an interest rate that is said to have "varied from 25 percent to grand larceny." In exchange for supplies, sharecroppers and farm owners promised a lien on unplanted crops. The storeowners preferred a nonperishable, highly marketable crop—namely cotton. The country store credit system thereby encouraged South Carolina to remain a one-crop economy, with farmers exhausting the topsoil to get the maximum yield of cotton.

Despite the damage done by King Cotton, South Carolina has rebounded with a diversified agricultural system marked by a statewide effort to control erosion. In 1888, Thomas G. Clemson, the son-in-law of John C. Calhoun, passed away, leaving Calhoun's plantation and $80,000 to establish a State agricultural college. Clemson University has been a backbone for agriculture in the State of South Carolina, and the research conducted at Clemson has helped farmers establish agricultural practices that incorporate soil and water conservation. The 1914 Smith-Lever Act, Federal legislation that was cosponsored by Congressman A. Frank Lever of South Carolina, established the Cooperative State Extension Service, whose outreach programs enable farmers across South Carolina to receive the benefits of Clemson's research.

Through their exemplary farming techniques, the Salleys are continuing our State's successful conservation efforts. Like so many of America's farmers, the Salleys want their farm to remain in their family, and they know that future generations will benefit from the land only if it is passed on in fertile condition.

The Salleys are model farmers in the Orangeburg area. The Soil Conservation Service has brought officials from the State office to look at the different practices on their farm. Mr. Salley has also been named the Orangeburg County Farmer of the Year and has received the Aiken County Jaycee Young Farmer Award.

However, I think that the most persuasive testimony of the Salleys' dedication to farming and to their community is their behavior following Hurricane Hugo, which raged through South Carolina on September 21 and 22, causing billions of dollars worth of damage. Exhibiting the spirit of generosity that characterizes rural communities, the Salleys passed up the chance to attend the awards ceremony of the National Soil and Water Conservation Competition so that they could help their community recover from the vicious storm that ravished our State.

I congratulate the Salleys on their successful conservation practices, and I wish them luck in the final round of the national competition.●

## TEN YEARS OF IMPACT II

● Mr. KERRY. Mr. President, I rise today to congratulate IMPACT II on 10 years of outstanding achievement in Massachusetts and throughout the Nation through their work in the area of education. This organization has done much to improve the educational environment so that our teachers might have available to them all the tools necessary to give our children the best education possible.

Mr. President, we are all aware of the dire need in this country to attract qualified teachers to our schools. Teacher salaries have increased in some areas but they still aren't keeping pace with the rising cost of living. And while those who choose teaching don't do it for the money, other aspects of the profession need improving as well. Teachers work long hours and usually operate without an office, telephone, typewriter, or secretarial help. And in many areas, schools are lacking in teaching materials, books, and lab supplies.

IMPACT II exists as a unique, nationwide, educational nonprofit organization that addresses these issues which are critical to teacher recruitment and retention.

IMPACT II provides teachers with grant money to create innovative programs for their classes and then networks the programs to others through workbooks and teaching conferences. IMPACT II also provides teachers with the opportunity to meet with, and learn from, their peers.

IMPACT II began in 1979 as an experimental pilot program codeveloped by the Exxon Educational Foundation and the New York City Board of Education. Today, IMPACT II is a national program with 30 sites ranging in size from a single school district to an entire State with 15,000 participating teachers.

IMPACT II receives funding primarily through foundations and corporations and also receives Government grants such as the U.S. Department of Education/National Diffusion Network.

But IMPACT II couldn't work without the dedication and the creativity of the teachers who participate. Some of those who are working with IMPACT II in Boston include: Mary Molloy, Kenny Elementary School; Mary Ellen Bower, West Roxbury High School; Anne Marie Wolan, P.A. Shaw Elementary School; Lambros Alex Pappas, Eliot Elementary School; Carol Geyer, Myrna Rodgriguez, and Yvonne Watson, Timilty Middle School; Rosalie Carter-Dixon, Dickerman Elementary School; Pam Hilton, Boston Prep High School; Marilyn Hyder, M. Curley Middle School; and Elaine Capobianco, Endicott Elementary School.

Mr. President, these individiuals are working hard to improve their educational environments, and the teaching profession as a whole. I salute them, and IMPACT II, for their years of hard and valuable work.●

## RAPE, INCEST, AND ABORTION

● Mr. HUMPHREY. Mr. President, I would like to bring to the attention of every Senator an excellent article by Cal Thomas that appeared in yesterday's Washington Times. Cal's article, entitled "Rape, Incest and Abortion," cuts through all the hype and gets to the truth: Abortion does not diminish the trauma of rape or incest, it only compounds it.

I ask that Cal's article be printed in the RECORD.

The article follows:

[From the Washington Times, Nov. 20, 1989]

RAPE, INCEST AND ABORTION

(By Cal Thomas)

The pro-choicers who marched again in Washington and elsewhere around the country last Sunday are successfully using the tiny number of rape and incest cases that result in pregnancy as a wedge to keep open the door to abortion on demand.

They tell us that it compounds the psychological and physical trauma of rape and incest to force a woman who becomes pregnant under such circumstances to carry the child to term.

We have heard the claims, but we have seen scant evidence to support them.

Last week, I saw some evidence to support pro-lifers' contention that abortion is not the only option for victims of rape and incest.

Julie Makimaa is a 25-year-old woman who is the product of rape. Julie and her mother, Lee Ezell, approached me at a meeting in Indianapolis to tell me their story.

Lee was 18 years old when she says she was raped by an office co-worker. She became pregnant and decided to leave home and live with friends when she learned that her mother was not supportive. She had a daughter and placed her for adoption. When Julie grew up, she conducted a successful search for her natural mother and the two were reunited. The story is told in Lee's book, "The Missing Piece."

Julie, who lives with her husband in Springfield, Ill., does not wish she had never been born. Her mother has no regrets about giving birth to the child of a rapist. Both women testify to being psychologically well-adjusted and normal in every way.

Of the pro-choicers' argument that abortion should be legal so that women won't be further "traumatized" by carrying the products of rape and incest to term, Julie says, "They have been successful in selling the propaganda to the public that if you were conceived as a result of rape or incest, you will be deformed or evil or have major psychological problems. Yet, my conception was no different from anyone else's. There was no 'evil gene' passed from my biological father to me."

Julie adds that abortion does not take away the trauma of rape and incest. "There is no correlation between abortion and the relief of trauma. By having an abortion, women only compound their problem. They then have two problems instead of one."

Since going public with her story, Julie says she has met at least 100 people who are the products of rape or incest and is thinking about starting an organization that would serve as a network for people like her so that they can counter the stereotype associated with these violent acts against women.

"None of those I have met seem to have terrible problems as a result of the circumstances of their conception," she says.

"People are blown away when they meet me and learn of my background because what they see is the opposite of what they have been told. They expect a monster and, well, I'm just a normal human being like they are."

What the pro-life movement needs to do is to get people like Julie and her mother, Lee, out in front to counter the "propaganda" of the other side.

Lee Ezell does not regret giving life to her daughter, though she obviously regrets the circumstances of her daughter's conception, which were beyond her control. Julie Makimaa's husband and children are glad that she is around to complete their lives.

Are there more than the 100 people Julie has met who have stories to tell that would further shatter the stereotype surrounding those who become pregnant as a result of rape and incest?

Perhaps the example of Lee and Julie will encourage them to speak up and contribute to rolling back the abortion tide.●

## HONORING WILLIAM "RAY" GRAVES OF WASHOUGAL, WA

● Mr. GORTON. Mr. President, Webster's defines a hero a man noted for courageous acts or nobility of purpose, especially one who has risked or sacrificed his life. When we as a nation are privileged to witness selfless acts of heroism, it reaffirms that the American spirit is alive and well.

Mr. President, I am here today to honor William "Ray" Graves, who in his own words simply "did what he had to do." Mr. Graves is credited for singlehandedly capturing a man, who is charged with the attempted kidnaping of a young boy, and suspected in killing three boys in the last 10 weeks.

On November 13 of this year, in Camas, WA, Mr. Graves, and his girlfriend Janet Blakely, were at the New Liberty Theater, with their eight children. Ms. Blakely's 6-year-old son, James Kirk II, left to use the restroom, and while there, he was assaulted by Westley Allan Dodd.

Dodd punched James in the stomach and carried him through the lobby and outside the building. To his credit, James was kicking, screaming, and yelling for help. Fortunately, theater coowners Cathy Asher and Toni Ness, and manager Paul Hern, had the presence of mind to call the police, as well as give chase.

Ms. Asher and Ms. Ness followed the suspect and saw him round a corner still holding the struggling boy. Seconds later James was able to escape and came running back to Ms. Ness who was able to return him to his

mother. Meanwhile, Mr. Graves and Ms. Blakely heard her son's cries and came to investigate.

Mr. Graves ran from the theater and was able to get a description of Dodd, his vehicle, and the direction he was driven from a passerby, Mr. William Hoxsley. Dodd, however, was unsuccessful in his attempt to get away because he was having car trouble.

Pretending to offer assistance, Mr. Graves caught up to Dodd and suggested he pull into a nearby parking lot to fix the car. The suspect followed his advice, and when he got out of the car to look under the hood, Graves put a choke hold on Dodd and marched him three blocks back to the theater where the police were summoned to take him into custody.

Mr. President, almost overnight, Ray Graves has learned how grateful his community is for his heroism. This unemployed father with five children has received several job offers, shoes for his children, and cash awards ranging from $500 to $2,000. The Vancouver Columbian presented an award to him for "becoming involved in a situation that was potentially life-threatening. . . . His action reflected the best in all of us."

Therefore, Mr. President, please join me in commending the heroic action of William "Ray" Graves. We will not only honor a caring, courageous individual, but send a signal to all citizens that placing the lives of others ahead of our own is uncommon valor, and a trait to which we all aspire.●

## THE AMERICAN FOOTWEAR INDUSTRY

● Mr. ROCKEFELLER. Mr. President, earlier this year, I visited the Kinney Shoe Corp. factory in Romney, WV. This factory opened in 1967 and employed almost 400 West Virginians. On April 24, the factory closed down. I find this outrageous, and I lay the blame for it on the disastrous trade and economic policies of the Reagan administration.

Over the past decade, the United States has been inundated by a flood of footwear imports. In 1968, import penetration of the nonrubber footwear market was 21.5 percent. As recently as 1980, imports represented 49.5 percent. By the end of 1988, import penetration had reached 81.8 percent, which means that fewer than one out of every five pairs of shoes sold in this country was actually made here.

As a result, over 600 footwear plants throughout the Nation closed between 1968 and 1987. Another 16 closed in 1988, and more have already shut their doors this year.

In West Virginia, in 1980, there were 2,100 people working in the footwear industry. One factory after another closed, and, by 1986, these 2,100 jobs had turned into 1,250—a 40-percent decline in only a few years. Factories in Kingwood, Huntington, and Sutton have closed down. Last year, the Kinney plant in Glenville shut down, and 250 more people were put out of work. This year, we lost these 400 jobs in Romney, WV.

What has this country done to deal with the problem? The American footwear industry has repeatedly asked for help. That word is "help," not "handout." Let me go over the history of their efforts to receive relief.

In 1970, a section 201 case was initiated by President Nixon. The International Trade Commission, the ITC, was divided on the case, and President Nixon took no action.

In 1975, the industry filed a section 201 petition. The ITC was unanimous that there was injury to the industry, yet President Ford refused to take action.

In 1976, the Senate Finance Committee initiated a section 201 case. The ITC again was unanimous in finding injury to the industry. President Carter negotiated orderly marketing arrangements with Taiwan and Korea for the period June 1977 through June 1981.

In 1980, the footwear industry requested that this import relief program be continued. Although the ITC was unanimous in recommending that the quota for Taiwan be extended and voted 3 to 2 that the quotas not be extended for Korea, President Reagan terminated all import relief in June 1981, leaving the American footwear industry and its workers completely exposed.

In 1984, the footwear industry again filed for relief under section 201. The ITC concluded that there was no injury, and no relief was provided.

The following year, 1985, the Senate Finance Committee initiated another section 201 case, and the ITC reversed itself, voting unanimously that there was injury to the industry. A majority of Commissioners on the ITC recommended 5 years of global quotas as the best form of relief. Nevertheless, President Reagan rejected this recommendation and refused to take any action. All the industry and its workers got from the Reagan Administration was another slap in the face.

Recognizing that the Reagan administration would do nothing to help, an effort began in the Congress to change the import relief provisions in the law so that an industry that was injured by imports would have a greater chance to obtain relief. The 1988 Trade Act incorporated these changes. In addition, both in 1985 and in 1988, footwear provisions were incorporated into legislation on the textile and apparel industries. Although the Congress passed these two bills, the President vetoed them both.

Let me return for a moment to the human aspect of the closure of the Kinney shoe factory in Romney, WV. Of the 400 employees there, over 100 were between the ages of 46 and 65. One-half of the employees at the plant had been there since it opened 22 years ago. Romney is a small town with a population of only 2,000 people. It is located in Hampshire County, a very rural part of West Virginia, with a sparse population of not quite 15,000.

The Kinney plant was for many years the largest employer in Hampshire County. The only other plant in the community is a small sewing factory that doesn't even provide the same type of wages and benefits as does Kinney. With the Kinney plant closed, many residents have been forced to drive an hour or more for job opportunities in Virginia, because they simply don't exist in my State.

I hope President Bush will look at the problems facing the American footwear industry differently than did his predcessor, but I am afraid I can't be very optimistic. However, I will not give up. The question is what priority we give to assuring jobs and a good standard of living for our people. There is nothing more important than our economic future. I will continue to work hard to help save what is left of the footwear industry in West Virginia and in the United States.●

## THE U.N. CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

● Mr. KERRY. Mr. President, I rise to express my complete support for the important treaty before us today: The United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances.

The U.N. Treaty is a broad-based document covering a multitude of narcotics-related issues ranging from crop eradication to demand reduction to law enforcement programs. It represents a global commitment to combat illegal narcotics trafficking and drug use.

This treaty attempts to achieve on a multilateral basis what our country has been trying so hard to achieve with other nations on a bilateral basis—especially in the realms of mutual assistance, extradition, and money laundering.

Mr. President, I believe that mutual legal assistance is an extremely important tool in the war on drugs. The Convention before us today includes an article—article 7—establishing a multilateral obligation to provide the widest measure of mutual legal assistance to other states party to the Convention. The Senate recently ratified six bilateral treaties and ratification of the U.N. Convention will make the job

of negotiating additional bilateral treaties in the future much easier.

The same is true in the area of extradition. I know we are pursuing negotiations with a number of countries around the world on a bilateral basis and Senate ratification of the U.N. Convention can only assist us in our efforts. I might add that I think we are witnessing in Colombia just how effective extradition can be—that country has already extradited a number of important cartel members and, though they face a protracted and bloody struggle, they have the cartel on the run.

Finally, just a word on money laundering.

President Barco of Colombia appeared before the United Nations last month and in his speech on the international drug war he said that more emphasis must be placed on anti-money laundering initiatives. I couldn't agree more and I am pleased that one of the goals of the Convention is to "deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive."

Under the Convention, nations will be required to permit confiscation of narcotics proceeds and to allow authorities to trace and seize them. In other words bank secrecy rules—the traditional shield of some nations—would be eliminated as grounds for failing to act in seizing bank records.

In addition, the Convention would also permit a nation to take the following antimoney laundering step:

The confiscation of income derived from drug proceeds and the property converted from, or intermingled with the proceeds.

The contribution of confiscated proceeds to multilateral drug-fighting agencies.

The equitable sharing of confiscated proceeds or property by nations.

While the U.N. Convention is an important international statement of money laundering, I want to make it clear that it in no way excuses the Treasury Department from pursuing bilateral negotiations under section 4702 of the 1988 omnibus and frankly I am concerned that the Treasury Department is dragging its heals in those negotiations.

Mr. President, the plague of drugs is spreading. The United States remains the No. 1 country in terms of demand, but many countries in South America, the Far East, and in Europe are, for the first time, beginning to experience domestic drug problems.

If we are going to win the war on drugs we will need global cooperation. The U.N. Convention is an important international statement and it is an important step toward fighting the drug war on a multilateral basis. I hope that the Senate will move quickly to ratify the Convention.●

## THE ABORTION FIGHT: IT'S NOT JUST A MATTER OF RELIGION

● Mr. HUMPHREY. Mr. President, I would like to bring to the attention of each Senator Michael Novak's article entitled "The Abortion Fight: It's Not Just a Matter of Religion" which appeared in yesterday's Washington Post. Mr. Novak gives a good rebuttal to those who would say that "abortion is only a religious issue" or "don't impose your religious beliefs on me." Abortion, as Michael explains, is not a matter of religion, but of biology.

I ask that Mr. Novak's article be printed in the RECORD.

The article follows:

[From the Washington Post, Nov. 20, 1989]

THE ABORTION FIGHT: IT'S NOT JUST A MATTER OF RELIGION

(By Michael Novak)

In retrospect, it now appears that the Supreme Court pulled a fast one with the Webster decision. By suggesting that the right to decide about abortion belongs to the people, through their legislatures, and not to the courts, the Supreme Court has forced the entire citizenry to think again about the meaning of the American experiment. Early results have been surprising.

For one thing, the balance of fear has shifted. Earlier, the Supreme court, in *Roe* v. *Wade,* had taken (improperly, most jurists think) an absolutist position. It permitted constitutional protections for the life of the unborn to be abridged, seemingly at will. Against this, all those numerous citizens who had qualms at one point or another were united in a common protest. Among them were not many journalistic literati or Hollywood glitterati; they were mostly common people, and they won some great workers.

After Webster, however, many diverse groups on the other side, no longer able to hide behind the absolutist *Roe* v. *Wade,* began to have the larger fear: that too many restrictions on abortion would be voted in. So they, in turn, have united politically. With a quite brilliant tactical sense, moreover, this alliance began to display the conservative, anti-big-government rhetoric of Ronald Reagan and Thomas Jefferson. "Get the government off our backs," they began to shout. "Women, not big government, should decide."

Why should all citizens be concerned about the substance—and rhetorical conduct—of this debate? Because what is at stake is an understanding of the American experiment itself. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." When the fundamentals of what we stand for as a people are in question, all are threatened, but few more so than those concerned with public policy, whose entire way of life depends upon the peaceableness of this regime.

Within "the truths" we hold, moreover, there are certain in-built tensions: in this case, the direct collision of the right to liberty with the right to life. For those who hold that "the right to life" is not endowed in infants in the womb, that conflict dissolves; liberty takes over. For others, the "right to liberty" is halted at "the right to life," and the latter takes over.

It is a great mistake to hold that this difference is solely "theological," a matter of "faith" (you have yours, I have mine). It involves, rather, a fundamental difference over the American experiment. Does that experiment entail an ever more inclusive advance in who may be entitled to rights; blacks, Indians, women, immigrants, the unborn? The "pro-life" forces at first had great strategic success in taking over the historically liberal (more inclusive) vision of rights.

The advance of scientific evidence in recent years has also favored the right to life. There is now no scientific doubt that what is aborted is not "part of a woman's body." It has, rather, an autonomous genetic code of its own; it is an unmatchable individual; and it is human both in form and in its natural—unless aborted—development. None of this is a matter of faith or theology.

Nonetheless, thanks to the Supreme Court, our whole people must now decide whether or not to grant the new individual human inclusive standing among Americans entitled to the constitutional protection of its government. Our people must declare who exactly we will count as "one among us," or expel from our protection.

For all, this decision is agonizing. The court will no longer permit us to escape this agony. The people must decide. In deciding this question, we decide what sort of people we intend to be. Beneath the passions all feel, beneath the slogans, beneath the turnoil, we the people must now stand before "the law of nature and nature's God," and say what we think we are. We will be passing judgment less on the unborn than on ourselves.

No sort of issue is more difficult for majorities to decide. To respect the rights of minorites whose profoundest judgment is different from our own cannot be easy. Perhaps for this reason the Supreme Court's decision in *Webster* to trust the fundamental principles of federalism—allowing different jurisdictions to decide differently—is safest for the republic. Probably no one will be fully satisfied. Still, a tolerable peace for the consciences of all may be wrested from our national variety.

If we set to one side the two most absolutist positions—the approximatley 10 percent who believe that abortion should be legal and under all circumstances and the approximately same number who believe it should be legal under none—polls show that the vast majority of Americans want liberty for abortion in some cases but respect for the life of the unborn in others. Slowly, by trial and error, and perhaps in a wide variety of local solutions, we should be able as a nation to find a way to a not completely satisfying but tolerable peace.

This peace, however, would also entail not asking citizens whose consciences would thereby be violated to pay taxes to fund at public expense a practice they abominate. Those who believe in the morality of abortion should be willing to raise funds for it voluntarily, without coercing the consciences of their fellow citizens. I recognize that from a moral point of view this solution will seem to some like an argument to allow freedom to some slaveholders to treat human beings as property, at the choice of their "owners." My defense is that not everything moral needs to be commanded by law, especially when many consciences would find such a law intolerable, and the law would fall into disrespect.

Furthermore, it cannot be a bad thing for a republic of "liberty and justice for all" to

spend many years to come—and they will be many—locked in public argument over what we will count as human life, and what value to attach to each human life. Such a debate may deepen us as a people, may ennoble us and justify our experiment before history and God.

What matters most of all is how much sympathy each of us extends to those who most disagree with us. What matters is our charity and civility to one another, even as we argue. A free nation's business, more than that of any other, depends upon broad sympathy, a sense of cooperation and even public friendship among our people. This is the time to insist on that.

A way (even many varied ways) will be found to place some restrictions upon abortion, while maintaining ample liberty—thus protecting, within limit, the principles of all. Legislation is necessarily a rough instrument, never adequate for the full claims of moral duty. No one ever promised us a paradise on Earth, only the nearest approximation that a reasonable, mutually respectful people can attain. If we can negotiate a difficult issue like this, we can face anything.●

## NEW MEXICO TAKES ADVANTAGE OF FEDERAL EXPANSION OF ON-THE-JOB TRAINING PROGRAMS

● Mr. DOMENICI. Mr. President, I would like to take a moment to recognize a great step the State of New Mexico has taken that will greatly benefit disabled veterans in my home State. And the good news for my colleagues is that this is something that can be initiated in each of our 50 States.

In 1980, the Veterans' Administration Vocational Rehabilitation On-the-Job [OJT] Training Program was established by an act of Congress. This innovative approach has allowed Federal agencies to train disabled veterans in important skills. Rather than paying the veteran a salary, the VA provides a subsistence allowance, which helps pay the day-to-day living expenses during the veteran's training period.

Once participating veterans are trained, the Office of Personnel and Management gives the individual noncompetitive hiring authority. This makes it easy for the Federal agency that has trained the veteran, or any other Federal agency in need of extra personnel, to hire the veteran right away.

This arrangement has been a successful program for both the Federal Government and many disabled veterans—the Government has found a valuable hiring tool that satisfies both budgetary constraints and the need for qualified personnel; our disabled veterans are given the opportunity to learn a number of skills that they can use to become integral components in our labor force.

Last November, the Congress passed legislation that expanded the On-the-Job Training Program. This was done in a provision of the Veterans' Benefits and Programs Improvement Act of 1988.

Because of this expansion, State, local, and county government agencies can now participate in the VA's On-the-Job Training Program. Previously, this program for disabled veterans was offered solely to Federal agencies.

This is good news for our Nation's disabled veterans.

I'm even more pleased to tell you that New Mexico is the first State government to participate in the expanded program. Working with the VA's vocational rehabilitation and counseling officer in our State, the New Mexico State Veterans Commission, under the direction of Mike D'Arco, developed and implemented an OJT Program for a severely disabled veteran who lives in our State.

And all reports indicate success.

But this success story really belongs to the veteran who has committed himself to participating in the program. His name is John Heiss, and I've had the great pleasure of meeting him.

John strikes me as being a serious, dedicated individual—he's a fighter. A father of two, young children, John's disabilities are considered 100 percent service connected. He fought for our country in Vietnam, where he received a gun shot to the head. As a result of his war injuries, John is partially paralyzed. He has no use of his right arm and must wear a leg brace. And although he has a bachelor's degree in business, he has been unable to find a job.

John's OJT Program is with the New Mexico State Veterans Service Commission. The commission is training him to be a contact representative for the State's 15 veterans field offices.

When his training is completed, John will go to work for the commission. What a sense of accomplishment this must be for John. Through his hard work, commitment, and a little help from the State of New Mexico, John will be able to get into the work force. He should be congratulated for his determination.

I bring this program to the attention of my colleagues because this is a program that each of our States can implement. Already, local governments throughout the country have expressed enthusiastic interest in the OJT Program. I hope all of my colleagues will encourage State participation.●

## JUDGESHIPS BILL

● Mr. BIDEN. Mr. President, I rise today to announce my intentions regarding legislation to address the need for more Federal judges across the country.

I have been carefully studying this issue for several months. I have had ongoing communications with the Judicial Conference, which develops recommendations for additional judges; with the statisticians who assess the impact of criminal and civil cases on our courts; and with the Chief Justice of the United States—who, as the Chairman of the Judicial Conference, has a very keen interest in this matter.

As I said on this floor a number of weeks ago during our deliberations on the drug bill, there is no doubt in this Senator's mind that we do in fact need additional judges for our Federal district courts and our Federal courts of appeals.

My concern, Mr. President, has not been with whether we need more judges but, instead, with the process of identifying where those additional judges are most needed.

As a start, an amendment I offered to the drug bill authorized 20 new judges to be distributed across the country to those districts with the highest drug caseload. Under my amendment, those high intensity drug areas would get at least one new judgeship, so that more drug cases could be processed—and processed more quickly.

As I discussed on the floor then with my distinguished colleague from Utah, Senator HATCH, my amendment to create 20 new judgeships in high intensity drug areas was not intended to be a substitute for a comprehensive judgeships bill. Rather, it was my view then—just as it is my view today—that a comprehensive judgeships bill must be developed through hearings—so that the bill reflects an orderly, deliberate and thoughtful process.

I believe, Mr. President, that the time has come to begin that process. When the Senate returns in January, I intend to introduce a judgeships bill and hold a comprehensive hearing on that bill in the Judiciary Committee. I know that my very good friend and ranking Republican on the Judiciary Committee, Senator THURMOND, shares my interest in this bill, and I look forward to working with him.

We will take a careful look—as the Judiciary Committee has always done—at the recommendations made by the Judicial Conference. But we also will make sure that high-intensity drug areas receive the judges that are necessary to hear the increasing volume of drug cases. With more and more drug cases entering our courts every day, we simply must make sure that there are enough judges to hear the cases, preside over the trials and sentence those who are convicted.

I have heard from a number of my colleagues and from a number of judges about the caseload problems in certain districts—primariliy due to the number of drug cases—and their views will be taken into account as well as

we identify the districts that need additional judges.

I am committed, Mr. President, to ensuring that our courts have adequate resources—and I believe that a judgeships bill will go a long way in fulfilling that commitment.●

## CITIZENS IMPROVE THE ENVIRONMENT

● Mr. BAUCUS. Mr. President, as a member of the Environment and Public Works Committee, I have noticed that more and more citizens are becoming interested in the environment and what we can do to improve it.

Montanans have a long history of caring about the environment. In addition, we have a strong tradition of volunteerism. And when these two traditions are combined, a great deal of work is accomplished.

In 1985, Boy Scouts and other volunteers started Project 93, an effort to remove trash from along the 500 miles of Highway 93. Project 93 was such a success, it grew in scope and accomplishment. It evolved into Project Good Turn, an event which has been held each April for the past 5 years.

In 1988, 15,000 citizens—a group consisting of Boy Scouts, their leaders, and volunteers from several civic organizations—picked up 2,000 tons of litter in a period of only 3 hours. They combed Montana's highways, parks, campgrounds, and public areas in order to improve their environment.

Project Good Turn has raised public interest in the condition of our land, promoted recycling, helped to increase Montana's natural beauty, and has given everyone involved more pride in their State and environment.

Many organizations have supported Project Good Turn to help it succeed. Because of these efforts, the project was declared the winner of the "Take Pride in America" campaign for 3 years in a row. Project Good Turn is one of only four groups in the Nation to have received this award three consecutive times.

The Boy Scouts and everyone else involved deserve our thanks and admiration. They are role models for groups across the country and I wish them success in their next venture.●

## APPREHENDING TERRORISTS ABROAD

● Mr. MACK. Mr. President, I want to take this opportunity to alert my colleagues that I plan to introduce a major bill dealing with terrorism as soon as we return next year.

This country and this Congress have come to a critical juncture, Mr. President, in determining how we will respond to continuing acts of terrorism perpetrated on innocent Americans around the world. We have come to the point where we, as legislators, must lay aside partisan politics and join together to make the tough decisions which are necessary if we are to protect American lives.

Terrorism is not only a crime against humanity, it is an act of war. It is an act of armed aggression and a serious threat to this country's national security. Mr. President, it is time we begin to treat terrorism as we would any other act of war directed against the United States.

Unfortunately, even after some of the most horrifying acts of terrorism imaginable against innocent Americans abroad, the United States has repeatedly found itself without any means of recourse or action. Such is the terrain of this new battlefield, Mr. President, that terrorists have been able to effectively use and hide behind international law to carry out these reprehensible acts and still have the relative sanctuary offered by a handful of rogue countries more than willing to allow their territory to be used as a base of aggression against the United States.

President Reagan once warned terrorists that "they could run, but they could not hide." Sadly, however, events have proven that after committing acts of terror, the perpetrators have repeatedly disappeared only to reemerge later in a country willing to provide safe haven to the terrorists. These countries, which often go beyond offering sanctuary and provide logistical support or even coconspire in the acts of terror, shelter these killers by hiding behind international laws that guarantee that country's right of sovereignty.

Requests to these countries to extradite these terrorists are usually ignored. Obligations to arrest and prosecute these terrorists under international law agreements are not carried out. Some of these countries not only shelter these criminals of humanity, they welcome them as heroes. Mr. President, many of us remember the Black September terrorists after murdering the Israeli athletes in Munich being welcomed triumphantly in Libya by Colonel Qadhafi.

In fact, Mr. President, terrorism has provided radical organizations and countries a popular means to carry out acts of aggression against the United States with almost near impunity. I would quote the legal advisor to the Secretary of State who said in a speech to the Army Judge Advocate School in May 1989 that "international law is too often used to serve terrorists and their objectives."

Mr. President, my bill addresses this problem. It takes this country to the next logical, and I would argue inevitable, step in the war on terrorists. It addresses the issue of the President's constitutional right to exercise U.S. criminal jurisdiction to track down and apprehend terrorists. And, Mr. President, it addresses his authority to apprehend those terrorists, if necessary, in countries that are deliberately sheltering these killers or violating international law by ignoring its obligations under international law to apprehend and prosecute them.

Mr. President, let me state categorically that the President presently has the authority under the Constitution and under international law to enforce extraterritorial criminal jurisdiction. Article II, section 3, of the Constitution provides that the President "take care that the laws be faithfully executed", which includes international laws, and is augmented with enabling statutes for the FBI, 28 U.S.C. 533(1) and 18 U.S.C. 3052, providing authority "to detect and prosecute crimes" and "make arrests" without any express geographic limitation. This brings us to perhaps the real issue of my bill; the President's ability to exercise that constitutional and statutory authority.

This bill is not intended to give the President authority he already has. It is intended instead to free him of years of congressional restrictions and interpretations which have interfered with and inhibited his capability to respond to acts of terrorism.

I also do not think many of these restrictions were originally intended to apply to the President's ability to deal with terrorism or conduct counterterrorist operations. In any case, Mr. President, Congress has a nonnegotiable commitment to the citizens of this country who demand to be defended, and who demand that we bring these killers to justice. Congress has done a lot to weaken the Office of President through years of interference and micromanagement, therefore it follows that Congress has an obligation to clean its own house and eliminate these restrictions that inhibit our President's capability to act.

Mr. President, the United States must continue to preserve our high standards of behavior and abide by our international obligations. We must adhere to our international agreements to the absolute limits of their statutory requirements. We have, and we must continue to work in cooperation with other nations to apprehend international criminals and bring them to justice. In the case of most countries of the world, the responsible nations, our existing international agreements provide the framework to do this successfully.

My bill has no effect on, nor poses any threat to, the responsible nations of the world, Mr. President. It addresses those few nations of the world which repeatedly flaunt international law, repeatedly dishonor treaties or protocols they have agreed to, repeatedly commit repulsive crimes against

humanity and repeatedly sponsor acts of terror on the civilized nations of the world. It addresses those outlaw nations and the terrorists they harbor whose international behavior would clearly be defined as violating all norms of proper international behavior.

Importantly, Mr. President, my bill addresses countries that by aiding, supporting, or directing terrorist groups are by definition engaged in aggression against other nations. Victims of aggression, Mr. President, are entitled under international law to exercise the right of self defense and therefore entitled to take measures, under certain circumstances, to enforce criminal jurisdiction in another country. Few experts in law would argue against this basic principle of international law, which is codified under article 51 of the United Nations Charter.

Of course, Mr. President, these same countries sheltering terrorists or drug traffickers are the first to scream for the protection of their sovereignty under the same international laws they are repeatedly violating. And what of the issue of sovereignty? Is the United States obligated to remain frozen and victimized by terrorists and their sponsor-states because they involve the right of "sovereignty?" I think not.

Mr. President, by U.N. definition, a violation of another country's sovereignty requires a threat to a country's territorial integrity, political independence, human rights, peace, or self-determination—none of which would be threatened by the arrest of a terrorist of drug trafficker. A growing number of international lawyers are arguing that a nation has the right to apprehend a criminal in another country, without the consent of that country, if it is an act of self defense in response to aggression and that country refuses to adhere to its international obligations or is incapable to do so. Such action, if necessary and proportionate, is permissible under international law.

Mr. President, my bill would create no new Presidential authority. It simply codifies that authority, free of congressional restrictions and interference. It returns to the President the flexibility he was intended to have by our country's Founding Fathers. Our President must be able to make the tough decisions necessary to defend American lives and deter acts of agression, free of ambiguities and unclouded by congressional interpretations of legality.

Mr. President, if this bill is passed it will make a powerful statement that will be a milestone in the war against terrorism. It will declare an end to a dark era, when international terrorists were able to use international law as a sanctuary. In essence it will strip away one of the most effective mechanisms available to terrorists and their state-sponsors. Importantly, Mr. President, it will announce an unequivocal partnership between the Congress and the U.S. President, strongly linked by a common determination, to eradicate terrorists and their sponsors.

Mr. President, thank you for the opportunity to speak out on this issue.●

## THE IMPORTANCE OF SEMATECH

● Mr. DOMENICI. Mr. President, I wish to take a few moments to speak about our national security and a vital element to that security, Sematech.

As a consortium, Sematech was established to develop and advance America's semiconductor industry so that it would be second to no one in the world. In the 1970's the United States held close to 100 percent of the world market in semiconductors. That is not the case as we approach the end of this decade, but because of the efforts of Sematech, this trend is being reversed.

In the past several days, we have seen historic events in Europe and have heard from one of its emerging leaders. The criteria used to define a secure nation and a well defended nation in this changing world, are themselves changing. A country that is not at-the-top in science, in education, and in technological competitiveness is not well defended and is not secure.

U.S. military forces rely as much today on semiconductors as they do on rifles and ammunition. In an information age, the semiconductor is the fundamental building block upon which all other technology is built. We cannot be held hostage to foreign suppliers of semiconductors. It's my hope that our Government continues to support Sematech and its efforts to be the best in the world.●

## THE IOWA DAY CARE PROVIDER OF THE YEAR

● Mr. GRASSLEY. Mr. President, I rise today to pay tribute to a very special woman who has given her life, love, and time to care for the children of people whose jobs require them to be away during the day. Mrs. Kathy Schwitzer has been a day care provider for 11 years. During that time, she has cared for numerous children. She came to realize this was the career for her when her own experiences revealed a shortage of loving and qualified providers for young children.

Kathy continually strives to become better in her profession. As a member of the local, State, and national associations of child care professionals, she is actively involved in discussions with other providers as to problems, concerns, and solutions in child care issues. In order to "do the best job she can," Mrs. Schwitzer is currently undergoing the process of earning the National Accreditation for Family Child Care.

Kathy Schwitzer pursues "her best" in a number of other ways, too. This includes reading the latest publications of her profession and membership in local organizations. Further, Kathy takes advantage of formal and informal networks in which members borrow large and small equipment and toys in order to provide more diversity in providers' homes or centers.

In her home, Mrs. Schwitzer works to make sure that all children are lovingly cared for. She works to maintain a stable and consistent atmosphere for the children and takes an enormous amount of time to plan activities, both in and outside of her home. She realizes that working with other providers allows her to pick up helpful information and advice to enhance the overall experience for the children.

In October, to acknowledge this spirit and determination, Mrs. Schwitzer was honored to be named as Iowa's first "Day Care Provider of the Year." I am proud to take this opportunity to congratulate her on this accomplishment. I bring this information to my Senate colleagues, Mr. President, not only to acknowledge Mrs. Schwitzer's loving excellence, but also to let her example be a model for other providers across the country.●

## COMMENDING U.S. ATTORNEY PETE DUNBAR

● Mr. BAUCUS. Mr. President, at the end of this year, Montanans will lose the service of one of our most respected public officials. On December 30, Byron H. "Pete" Dunbar will retire from his position as U.S. attorney for the District of Montana.

Pete's long career in public service began with his entry into the U.S. merchant marines in World War II. In 1952, he began a 27-year career with the FBI.

During his years with the FBI, he was assigned to several cities, including Dallas, St. Louis, New York, Oklahoma City, Washington, DC, and Butte, MT. He spent 5 years working on Soviet espionage cases and also worked on cases involving organized crime, bank robbery, kidnapping, and extortion. He was the principal legal advisor to the FBI for 10 years, and taught criminal law and enforcement within the criminal justice system.

After leaving the FBI in 1979, Pete was a prosecuting attorney for Gallatin County and in 1980 was a candidate for the Montana Supreme Court.

In 1982, he was appointed to be the U.S. attorney for Montana. During his tenure, he has faced an unprecedented increase in drug-related crime. In addi-

tion, the large expanse of Federal land within the State and the international border have all contributed to his workload.

Despite these challenges, Pete has done an exceptional job. I've received letters from law enforcement officials across the State in support of his work. His reputation for excellence is national in scope and completely deserved.

Montana is losing one of the most effective U.S. attorneys we've had. I know I share the feelings of Montana's law enforcement community and all Montanans when I wish him well in the next stage of his career.●

## THOMAS VICTOR JONES

● Mr. WILSON. Mr. President, I rise today to salute a fellow Californian, Thomas Victor Jones, who is retiring as chief executive officer of Northrop Corp. at the close of this year.

Well recognized as one of the foremost leaders in the aerospace industry, Tom Jones' experience, wisdom, and breadth of knowledge will certainly be missed. He retires with the respect and gratitude of his industry and his many friends and admirers across our Nation who know of his valuable contributions to America's security and technological well-being.

By devoting his career to the development and application of technologies which have contributed immensely to the defense structure of this Nation, Tom has ensured that our national security forces have been sustained with the necessary quality, performance and capability to defend and protect the interests of the United States at home and abroad.

I am delighted to salute one of our Nation's premier aerospace industrialists as he completes a most distinguished career of 45 years and would ask my colleagues to join with me in congratulating Tom and in wishing him every happiness and challenging new vistas in his retirement.●

## RETIREMENT OF JOHN BONASSI, MAYOR OF GREENTREE, PA

● Mr. HEINZ. Mr. President, at the end of this year, after 14 years in local elected office, Mayor John Bonassi of Greentree, PA, will be retiring from public service. I rise today to recognize his accomplishments and dedicated service to Greentree and neighboring communities.

John's government service spans two decades, as an appointed official in county government, as Greentree councilman, as council president, and most recently as mayor. I might add, as well, that this Senator has an especially keen appreciation for John's talents, as he also served for a number of years as director of my Senate office operations in western Pennsylania.

As a lifelong resident of Greentree, John exhibited an early interest in his community's affairs. At the age of 31, he was elected to the council for the first of three consecutive terms, and during his last 6 years he was elected president of the council. In 1986 his constituents demonstrated their confidence in him by electing him their mayor.

John has worked tirelessly on behalf of his fellow citizens in the community—to secure both public and private investment in jobs and economic growth, to improve the quality of roads and streets, to make the borough a safe and good place to live, and to educate parents and children alike about the dangers of drugs and alcohol. Indeed, in all of these endeavors and more he always sought to raise the standard of living for Greentree residents.

John brought a well-developed professionalism to his responsibilities, in budgeting, personnel, and providing local services. But John's constituents count on him not just to make sure the streets are plowed free of snow and safe to walk at night. They know, too, that they can find him ready with a listening ear, or a fresh note pad to take down their ideas and concerns, or perhaps just to talk across the fence about the weather. His personal concern for people recalls all that is uniquely special to America's small towns. Indeed, John's ideals have played a significant role in making Greentree a great community, large or small.

Mr. President, from thousands of neighborhoods and communities like Greentree our Nation draws its values and innate strength. On behalf of all of my Pennsylvania constituents, I salute my good friend, John Bonassi, for doing so much for his community, and in a larger context, for supporting the small town foundation of our democracy.●

## CLEAN AIR LEGISLATION

● Mr. WARNER. Mr. President, last Thursday, November 16, 1989, the Senate Environment and Public Works Committee reported out comprehensive clean air legislation by a vote of 15 to 1, with my support. As the majority leader has indicated, this historic legislation will be considered by the full Senate on the first day of the 101st Congress' second session in January.

Mr. President, there is much in the committee bill for all of us to support. As reported by the Environment Committee, the bill provides for a renewed attack on ozone and carbon monoxide pollution in our cities, as well as much-needed new regulation of acid rain and toxic air pollutants. Additional controls in these areas are vital to the health and welfare of this Nation's citizens.

The committee has worked long and hard during this year to report legislation that will produce true progress toward clean air. Like any such herculean effort, however, not every provision is perfect.

Some of the new provisions that the committee has approved still raise concerns of cost effectiveness and feasibility. Some other provisions place disproportionate hardship on certain regions of the country.

Mr. President, I intend to work actively to further improve the clean air legislation that the Senate will consider and approve early next year. During the weeks before this legislation comes to the floor, I will continue my efforts by working with the Environment Committee to craft a committee amendment to be introduced on the floor. I also plan to introduce some amendments of my own and to support similar efforts of others.

I urge all of my colleagues, especially those of the Environment Committee who are considering some of these issues for the first time, to join this effort. Only with the participation of everyone will we produce serious, but fair clean air legislation.●

## DOD POLICY ON MISSILE PROLIFERATION

● Mr. BINGAMAN. Mr. President, I rise today to congratulate the Department of Defense on today's announcement that the Department will require domestic and foreign contractors to comply with laws and regulations in regard to missile-related export controls, and the DOD will establish procedures to assure that its cooperative defense programs are in compliance with missile technology control regime guidelines.

Mr. President, these two initiatives represent a solid step forward toward controlling the global spread of ballistic and cruise missiles and missile technology. In particular, DOD's announcement that it will pursue a policy of debarment and suspension penalties against DOD contractors, foreign or domestic, that fail to comply with laws or regulations designed to halt missile proliferation is a welcome change.

On October 31, I testified before the Senate Foreign Relations Committee in support of S. 1227, a bill I introduced earlier this year to control the proliferation of missiles and missile technology. The Senate panel also heard from representatives from the Department of Defense, the Department of Commerce, and the Department of State. Mr. Henry Sokolski, in his position as Acting Deputy for Non-Proliferation Policy, testified for the Department of Defense.

In his testimony, Mr. Sokolski indicated that the Department of Defense was considering, among other options in controlling missile proliferation, tying the implementation of the Defense Federal Acquisition Regulations [DFAR] to the behavior of foreign firms. Mr. Sokolski raised the possibility that contractors doing business with DOD might be subject to debarment or suspension for periods of up to 3 years if they failed to comply with the laws or regulations of their own Government implementing missile-related export controls. Today, the Department of Defense announced regulations that would do just that. This policy is similar to a provision included in S. 1227, which would suspend contracting with the U.S. Government in missile-related technologies in response to MTCR violations.

Mr. President, I would like to commend Under Secretary Paul Wolfowitz, as well as Assistant Secretary Harry Rowan, for their work in this area. The interest Mr. Wolfowitz has shown in the matter of missile proliferation is central to these new DOD initiatives, and I commend his leadership in seeing these initiatives through.

Mr. President, this is a step forward, and one I strongly support. There is much that the administration can do and must do to deal with missile proliferation. However, I continue to believe that legislation in this area is necessary. While DOD now has a debarment and suspension policy and the regulations necessary to do the job, there is no guarantee that these will be used. I feel that automatic sanction, such as those contained in S. 1227, are necessary if the threat of debarment and suspension is to be believed, and to be effective.

While DOD's regulations will begin to deal with this problem, differences between the U.S. interpretation of the MTCR, the guiding document behind laws and regulations on missile-related export controls among the MTCR adherents, and the interpretations of our allies and cosignees, including France, Italy, and Germany, will continue to cause problems. The Department of Defense has shown a willingness to address missile proliferation in a serious manner. I would hope that other Departments would begin to show a similar willingness. A first, necessary step to further slow missile proliferation is a common, strict interpretation of the MTCR.

I, as well as other of my colleagues, are concerned in particular about the possible spread of space launch vehicles and U.S. policy to combat this trend. I hope that the various Departments with an interest in this matter will work with the Department of Defense to develop an adequate policy in this area.

Mr. President, I hope that the administration will continue to focus on this issue. Again, I commend Secretary Cheney for his actions, and Under Secretary Wolfowitz and Under Secretary Betti for bringing the policy and acquisition sides of DOD together in support of needed action. I hope that the Departments of State and Commerce will soon follow DOD's lead and begin to seriously address the problem of missile proliferation.●

## THE BILL OF RIGHTS

● Mr. WILSON. Mr. President, today I rise in order to pay tribute to our Founding Fathers who 200 years ago insisted with great clarity and force that certain rights be explicitly guaranteed by our Constitution. These rights, which too often are only vaguely remembered or forgotten here at home, are still the envy of the world as recent events in the Eastern bloc have shown.

Two hundred years ago the First Congress proposed 12 amendments to the Constitution. Ten of these were approved by the States and are known as the Bill of Rights. In order to help commemorate the anniversary of this indispensible addition to our Constitution, I ask that an article by Richard Burress that originally appeared in the September 24 edition of the San Diego Union be reprinted in the RECORD at this point.

The article follows:

[From the San Diego Union, Sept. 24, 1989]

MADISON KEPT HIS PROMISE ON THE BILL OF RIGHTS

(By Richard T. Burress)

From the Baltic to Beijing, men and women, young and old, are demanding at great risk and personal sacrifice the same rights and freedoms that are guaranteed by the American Bill of Rights. The liberty that we take for granted and seldom appreciate is a matter of life and death in such faraway places as Tiananmen Square, Latvia, Estonia, and even Moscow.

On this 200th anniversary of the Bill of Rights, it is particularly appropriate that we stop and consider how it came to be that the first amendments to the U.S. Constitution were formulated, debated and enacted during the first session of the First Congress.

At the close of the Constitutional Convention, an attempt had been made to get a Bill of Rights included in the Constitution. Unfortunately, the delegates were too anxious to complete their work and in no mood for delay. So, despite George Mason's threat that "he would sooner chop off his right hand than put it to the Constitution as it now stands," a motion to prepare a Bill of Rights was defeated.

It soon became apparent, however, that the Bill of Rights issue would not go away. From his diplomatic post in France, Thomas Jefferson sent a letter to James Madison in which he first expressed his approval of the Constitution with its organization of the government into three branches, legislative, judicial, and executive but then added what he did not like:

"First, the omission of a bill of rights providing clearly and without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal and unremitting force of the *habeas corpus* laws and trials. . . . To say, as Mr. Wilson does that a bill of rights was not necessary because all is reserved in the case of the general government which is not given . . . is surely a *gratis dictum*, opposed by strong inferences from the body of the instrument. . . ."

And, sure enough, the failure to include a bill of rights was picked up by those who opposed the Constitution. First in Massachusetts and then in Virginia and New York, the opponents used this omission as their principal argument against ratification. Finally, in order to gain ratification, the supporters of the Constitution had to promise that appropriate amendments would be proposed at a later date.

When the First Congress convened in New York City on March 4, 1789, only 11 States had ratified the Constitution. North Carolina and Rhode Island did not ratify and join the Union until Nov. 21, 1789, and May 29, 1790. A further embarrassment was caused by the fact that it was not until April 1 that a quorum was finally present in the House of Representatives, and a Senate quorum was reached on April 6.

At the outset, the United States government was little more than a constitutional outline held together by George Washington's immense popularity and prestige and the desperateness of the situation. The Article of Confederation had proven totally inadequate, and the states were wracked with debt, divisions, and the threat of foreign intervention. Thus, the members of the House of Representatives were thunderstruck when Madison offered his amendments to the Constitution. They were quick to point out that there was far too much to do for them to be concerned with "trifles." They had a government to form, departments to establish, and revenue laws that had to be passed. Even those who were the most supportive of the new Constitution argued that the ship of state should have a trial period before major changes were entertained.

However, Madison was adamant. Although he had opposed the adoption of a bill of rights during the closing days of the Constitutional Convention and during the bruising battle to obtain ratification, he had promised in seeking election to the House of Representatives that one of the first things he would do as a member of the new Congress would be to introduce appropriate amendments to the Constitution.

Madison did not view this commitment as merely a campaign pledge and he would not permit his colleagues in the House to do so, either. He knew that while a solid majority of the citizens supported the Constitution, the same majority was deeply concerned over the failure to include in it specific and well-defined guarantees of individual rights and personal liberties.

In order to lay the groundwork for the introduction of his amendments to the Constitution, Madison made certain that in Washington's inaugural address a cautious endorsement was included:

"Besides the ordinary objects submitted to your care, it will remain with your judgment to decide how far an exercise of the occasional power delegated by the fifth article of the Constitution, is rendered expedient at the present juncture, by the nature of ob-

jections which have been argued against the system, or by the degree of inequitude which has given birth to them."

As presented on the floor of the House on June 8, 1789, Madison's 19 amendments to the Constitution guaranteed freedom of speech, press, religion and the right to assemble and petition the government. Such judicial safeguards as the right to a speedy and fair jury trial, protection from self-incrimination, and the right to call witnesses were included, as were the right to bear arms and protection from unreasonable searches and seizures.

Also included was a provision that extended these protections to actions by the states, as well as a specific prohibition against the legislative, executive or judicial departments exercising the powers of another department.

Freedom of speech and the press received very little attention in the congressional debates. To be sure, there was some complaining that Congress needed protection from the press, rather than the other way around, but generally speaking, the members of the First Congress were agreed that freedom of speech and press were uncontestable.

The basic freedom of religion clause, although changed in wording, sparked little controversy once Madison's proposal to include rights of conscience was dropped. The importance of judicial safeguards and the right to assemble were reaffirmed after the House was reminded of William Penn's famous trial in Old Bailey where he was prosecuted for preaching to a small group of Quakers in London and, following a trial devoid of all fairness and judicial safeguards, was fined and sentenced to prison for refusing to remove his hat after it had been forcibly placed upon his head by the bailiff.

Interestingly enough, the First Congress had long and acrimonious debates over the people's right to instruct their representatives. Some members believed this was the only way the will of the people could be projected, while others were adamantly opposed. Finally, it was decided that binding instructions would be far too inhibiting and would turn the representatives into automations and messengers.

Similarly, the prohibition against cruel and unusual punishment was accepted even though Samuel Livermore of New Hampshire was concerned that such a clause would prevent "hanging, whipping or cutting off of ears if such was needed to correct vice."

In the end, applying the Bill of Rights to the states proved to be much more than the Southern states and the states' rights advocates could accept. As a result, even though it was Madison's "favorite" amendment, this guarantee would have to wait for another time, another Congress and a devastating Civil War before it could be incorporated in Section 1 of the 14th Amendment.

Similarly, Madison's separation-of-powers amendement was deleted by the Senate. This, some believe, may have contributed to the expansion of the Supreme Court's power and authority and the growing congressional challenge to the president's leadership in the field of foreign affairs—an area that has witnessed increasing tension and controversy. The passage of the War Powers Resolution with its challenge to the president's authority as commander-in-chief is only the latest manifestation of this basic conflict.

On Sept. 18, 1789, due to the diligence and unswerving commitment of James Madison, the House and Senate approved and sent to the states for ratification 12 amendments to the Constitution. With Virginia's vote on Dec. 15, 1791, amendments III through XII were ratified. Renumbered I through X, they became known as the Bill of Rights.

Three-fourths of the states refused to ratify the first two amendments, which dealt with the size of the House of Representatives and congressional pay. This "accident" of history made the celebrated freedom of religion, speech, press, assembly and petition the First Amendment of the Bill of Rights.

For 200 years, the Bill of Rights has withstood the test of time. In the United States today the rights that they guarantee are seldom questioned. In fact, they are so accepted and so much a part of our lives that it has taken a worldwide reach for freedom to remind us that what we have, while not perfect, is a unique and special gift from our forefathers.

(Burress, a senior fellow at the Hoover Institution, served as deputy counsel to President Nixon, assistant to President Ford, and counsel to the House Republican leadership. During consideration of the 25th Amendment to the Constitution, he was House Judiciary Committee minority counsel.)●

## NOMINATION OF JAMES E. CASON

● Mr. BOND. Mr. President, in March of this year, almost 8 months ago, President Bush submitted the name of James E. Cason to be Assistant Department of Agriculture [USDA].

The Senate Agriculture Committee thoroughly reviewed the qualifications of this nominee and voted favorably to recommend him for confirmation. He was obviously qualified and should have been confirmed by the U.S. Senate.

Earlier this week, we all received a letter from 10 of the major farm organizations regarding the nominee. They agreed that confirmation of Mr. Cason was long overdue. With oversight of the Soil Conservation Service [SCS], Mr. Cason's leadership was urgently needed at USDA. Farm families across the country depend on programs administered by SCS.

These organizations: the Americans Farm Bureau Federation, the American Sheep Industry Association, the American Soybean Association, the Association of American Grasslands, the National Cattlemen's Association, the National Corn Growers Association, the National Cotton Council, the National Council Farmer Cooperatives, the National Grange, the National Pork Producers Council, and the Public Lands Council strongly urged the Senate to support Mr. Cason's nomination.

Clearly, James E. Cason has overwhelming support among agriculture and other groups closely tied to this Nation's soil, water, and natural resources interests. Unfortunately, as sometimes happens in Washington, we engage in political games at the expense of good people. Such as the case with Jim Cason. Some groups decided that he would be their target and orchestrated several misleading charges involving very complex issues. In the end, with the help of some key Democratic Senators, this became a partisan issue. At that point, it would have been impossible for Mr. Cason to be confirmed by this body.

Mr. President, those who took up this crusade have succeeded in transforming the nomination of a good and honorable man into a political charade. This is unfortunate as I have no doubt that James E. Cason would have made an excellent Assistant Secretary at USDA.

I hope the Agriculture Committee and the Senate can make filling this position a priority so that farmers and ranchers can once again focus on the challenges ahead for soil conservation in the 1990's.

Finally, Mr. President, I ask that a statement by Secretary Yeutter, which speaks highly of Jim Cason, be printed in the RECORD. I regret this series of events and with Mr. Cason well as he looks to the future.

The statement follows:

STATEMENT BY SECRETARY OF AGRICULTURE CLAYTON YEUTTER

Jim Cason today asked the President to withdraw his nomination for the post of assistant secretary of agriculture for natural resources and environment. Withdrawal of this nomination is a great disappointment. He is an outstanding individual, and would have made an equally outstanding assistant secretary. The lobbying effort against him was both misguided and unfair. Mr. Cason has a brilliant career ahead of him; regrettably, it will not include the position for which he was nominated. That is a significant loss to the nation.●

## FORBES ARTICLE: "THE BEST PAID LAWYERS IN AMERICA"

● Mr. KASTEN. Mr. President, I have introduced S. 1400, the Product Liability Reform Act, together with 24 of my colleagues as cosponsors. As we have stated so many times before, our product liability system is in dire need of repair.

The legislation we have introduced would end the rip-off of American consumers by a crazy product liability system that keeps new products off of the market, stifles innovation, and hurts our country's ability to compete in the global economy.

Those Senators now supporting S. 1400 appreciate that the current system of 51 different, everchanging laws is distinctly against consumer interests in several respects. First, the current system artifically raises prices. There is a hidden 20 percent product liability tax on step ladders, a 50-percent tax on general aviation products and an 18 percent tax on sporting equipment. Second, as mentioned above, the current system impedes the introduction of new and useful products such as an asbestos substitute de-

veloped by Monsanto, and a variety of medical products.

Third, no other country in the world has anything like our product liability mess. The European nations are seeing the advantages of a uniform system and will most likely have adopted one by the end of 1990. Fourth, the present, confusing system does not enhance, but rather compromises safety by advancing varying rules on product safety. Finally, the current system has tremendous legal costs that must ultimately be borne by the consumers of this Nation.

With all of the rhetoric about the harm that the present system brings to both consumers and businesses in America, there has never been any question about the fact that the current product liability system does benefit one group—America's lawyers, particularly the plaintiff bar. A series of articles in the October 16, 1989, issue of Forbes under the general heading of "The Best Paid Lawyers in America" should be particularly interesting to my colleagues in documenting the benefits the lawyers do realize under our present system.

In the article entitled "The plaintiff attorneys' great honey rush", the authors list 63 plaintiff attorneys who made in excess of $2 million in both 1987 and 1988. The authors believe that the interaction of the unique contingent fee system in this country together with the liability crisis has given us a system that benefits only the lawyers.

The authors also cite interesting connections between the trial lawyers and other interest groups. I recommend these articles to my colleagues and ask that they be printed in the RECORD immediately following my remarks.

The articles follow:

[From Forbes, Oct. 16, 1989]

THE PLAINTIFF ATTORNEYS' GREAT HONEY RUSH

"We are freedom fighters. We all consider ourselves social engineers. . . . We are crusaders of good. None of us do it for the money; what we are paid is coincidental."—That's Ned Good speaking, Pasadena plaintiff attorney, member of the Inner Circle and on Forbes' list of the highest-earning attorneys in the nation. Good was reluctant to discuss how much money he coincidentally makes in the course of his crusade, but Forbes estimates it's almost certainly more than $3.5 million a year.

Roll over, Wall Street. Meet the real champions of the great American greed game: the plaintiff attorneys—lawyers who specialize in suing.

Top moneymaker in 1988, according to Forbes' count (p. 204), was Houston's Joe Jamail. He made most of his $450 million—our conservative estimate, it could be as high as $600 million—by inducing Texas courts to accept the questionable theory that Pennzoil had a binding contract to buy Getty Oil even though there was nothing on paper. His victim, Texaco, the country's third-largest oil company, was forced into bankruptcy. But Jamail received only a fraction of the publicity Mike Milken got for the $550 million he made with Drexel Burnham back in 1987.

Jamail is merely the most spectacular example to date of a powerful emerging trend. The 62 other plaintiff attorneys on Forbes' list all made above $2 million in both 1987 and 1988. And Forbes has identified at least 15 more $2-million-a-year-plus suspects, with another 50 in the $1-million-to-$2-million range. Then there are the other 53,000 plaintiff attorney members of the Washington, D.C.-based Association of Trial Lawyers of America (despite its name a plaintiff attorneys' lobby: Defense lawyers are eligible only for nonvoting membership). Given the windfall nature of the attack-lawyer business, any of them might strike it rich with a single case.

One measure of the money flowing a plaintiff attorneys: Yeshiva University's Cardozo School of Law Professor Lester Brickman estimates that their total income from contingent fees—their share of the settlement, apart from their expenses—"exceeds $10 billion."

And their boodle is growing rapidly. The top moneymakers on Forbes' list typically said that they've been hitting the big numbers only for the last decade.

Unlike Wall Streeters, plaintiff attorneys don't have to worry about the stock market's swings. They mostly didn't bother with high-priced Ivy League law schools—in fact, they often say they "didn't learn a thing about practicing law in law school." Walter Umphrey (see list) even told Forbes that he had trouble graduating from Southern Methodist University, which he attended on a football scholarship, because of "a deficiency in English." But he has no deficiency in income: $14.5 million in 1988.

Why has a single, relatively obscure corner of U.S. legal practice created so many million-dollar incomes?

It's a "fearful concatenation of circumstances," to quote a famous early American trial lawyer, Daniel Webster. In one of those institutional accidents that occasionally happen in a structured but dynamic society, the checks and balances that normally restrain an organized interest group have failed, creating an opportunity to hold the rest of the economy to ransom. Other recent examples: stockbrokers in the 1960s, who were able to make institutional investors pay full commission rates because stock exchange rules forbade volume discounts; airline pilots in the 1970s, whose powerful unions extorted stratospheric salaries out of an industry straitjacketed by regulation.

How has this happened?

The essential mechanism is simple. Two distinctively American phenomena have interacted: the contingent fee system and the "liability crisis," the explosion of litigation and awards that has occurred during the last 30 years in the previously sleepy area of tort law—the law of accidents and personal injury. Both have been historically unknown in other common-law jurisdictions, such as Britain. And plaintiff attorneys there are a lot poorer.

A startlingly large part of the recent massive damage awards goes to the lawyers. Plaintiff attorneys commonly insist on a contingency fee of 33% to 40%. Plus they get expenses—whatever has been spent to litigate the case. The actual outcome varies among the different classes of tort. But, for example, the Rand Corp.'s Institute for Civil Justice has estimated that in the asbestos claims settled in the early 1980s, plaintiff attorneys' fees and expenses amounted to some 70 cents for every dollar that the injured parties received.

And by one estimate the asbestos industry's liability may be anywhere from $7.6 billion to $87 billion.

Why has this happened?

The lid was knocked off the honey pot in the last 30 years by judges arbitrarily deciding to rewrite the law (Forbes, *June 1, 1987*). The plaintiff attorneys are swarming to the sweet stuff like flies. But for the plaintiff attorneys, their new wealth has meant power. Those swarming flies are now rocking the pot to spill more honey out—and buzzing angrily at anyone who interferes.

Plaintiff attorneys buzz particularly angrily at talk of the litigation explosion.

"We have been told that Americans are the most litigious people in the world," writes the celebrated Wyoming-based plaintiff attorney Gerry Spence in his 1989 book *With Justice for None: Destroying an American Myth* (Times Books). "Yet, per capita, there are no more suits today than there were in 1959, and the amount of the mean verdict, $8,000, has remained nearly constant since that year after adjustments for inflation have been calculated."

This is the sort of argument that makes the innocent observer suspect trial lawyers. On investigation, the Rand study that Spence cites turns out to be based on the single experience of Cook County, Ill., between 1960 and 1979 only. Although the overall number of civil jury trials was only slightly higher at the beginning and the end of the period, within that number there was rapid growth of nonautomobile torts. And Spence has confused the *mean* (arithmetical average) financial award with the *median* (half higher, half lower) award. The mean rose sharply—because the largest awards were increasing dramatically.

Subsequent studies show these trends have continued. The bulk of tort filings and awards, routine personal injuries such as automobile cases, are growing at a stable rate. But malpractice and product liability filings and awards are sharply higher than three decades ago *(see charts)*. Inflation-adjusted average awards in Rand's sample of business/contract tort litigation were up 9,100% between 1960 and 1984. (Awards can be reduced on appeal, but they have a pervasive effect because they serve as a benchmark for all settlements.) Overall, plaintiffs are winning more frequently and getting more.

And this may not be the whole story. "The real amounts being transferred in the channels of commerce are much greater than any statistics will show," says James Sales of Houston's Fulbright & Jaworski, who was local lead counsel on Texaco's unsuccessful appeal against Pennzoil. Sales says that many cases are now settled before being formally filed—and that recent settlements have actually exceeded comparable jury awards because defendants "are scared to bet the company anymore."

Forbes' conclusion about the litigation explosion: All that plaintiff attorney honey is coming from somewhere.

Forbes' conclusion about Gerry Spence: difficult, because he refused to talk to us on the grounds that we work for "the new oligarchy—namely corporate America." ("The last guerrilla fighters in the country are the trial lawyers.") But he's probably stuffing some $1.5 million a year into his bandolier.

A man is injured after he deliberately throws himself in front of a New York subway train. He sues the city, alleging the

driver should have stopped faster, and wins $650,000.

Another example: Spanish-speaking farmhands in Texas accidentally kill a prize bull with pesticide because they couldn't read the warning label. Their employer sues the manufacturer and is awarded $8.5 million, including $7 million of punitive damages. Later, the case settles out of court.

But these judicial atrocities are just the culmination of a step-by-step process that began in theoretical arguments among legal intellectuals in law schools and on the bench some 30 years ago—a classic demonstration that ideas do have consequences. Forbes columnist Peter W. Huber, author of *Liability: The Legal Revolution and its Consequences* (Basic Books) and himself a lawyer and engineer, calls the men who started the process—including William Prosser of Hastings College, John Wade of Vanderbilt University Law School, Roger Traynor of the California Supreme Court—"the Founders." Judges under their influence overthrew the common law of tort as it had developed over six centuries. The chaos that has replaced it has been highly profitable to the plaintiff bar.

For example, before the 1960s, damages could generally be collected only under a number of fixed conditions—if the defendant was actually at fault, if the plaintiff had not contributed to the accident, if the plaintiff had not voluntarily assumed obvious risks and so on. Private contracts, which covered most transactions, were considered inviolate. But gradually, judges undermined these conditions. Defendants, particularly if they are perceived to have "deep pockets," have begun to find they run the risk of losing lawsuits even if their involvement is minimal. Even the most specific contracts to the contrary are ignored.

"In a nutshell, the law now says 'Be careless, get paid,'" summarizes Victor E. Schwartz, a partner with Washington, D.C.'s Crowell & Moring and a tort reform lobbyist.

Similarly, judges have allowed a proliferation of ever-more-ingenious damage claims. Formerly, damages were primarily a question of compensating the plaintiff for out-of-pocket costs, like medical expenses. Now nonmeasurable damage claims like "pain and suffering," "loss of consortium" (a spouse's company) and "mental anguish", have burgeoned. And "punitive" damages in product liability cases, upheld only three times in the first 200 years of U.S. history, have become an epidemic. Even compliance with federal regulatory standards does not protect defendants against them.

"Since the 1960s, courts have become more political," says Schwartz. "Also, there is a feeling on the part of judges that the U.S. is behind in not having a comprehensive social welfare system. Tort law has become a system of social insurance."

Judges opened the honey pot because they wanted to redistribute the wealth. Plaintiff attorneys want to help.

Partly, plaintiff attorneys help to keep the honey flowing by sheer relentless pressure. They are intensely motivated to come up with new moneymaking gambits.

Would you believe "hedonic damages"—the value an accident victim would have placed on his future happiness in addition to his loss of earnings, pain and suffering, his spouse's loss of consortium, etc., etc.? How about "posthumous pain and suffering"? New York's Robert Sullivan (Forbes' income estimate: $1.4 million) once won $1.5 million in extra damages for the four seconds in which a truck accident victim burned to death ("We got doctors to testify his brain exploded"). Or the Big Apple Pothole Corp.—a private pothole census founded by Manhattan plaintiff attorney Fred Queller (Forbes' income estimate: $1.25 million) to counter New York's attempt to restrict its liability only to accidents involving potholes of which it had been informed.

Quantity counts as well as quality. A plaintiff attorney firm often has few principals and many support staff because much of its litigation can be mass-produced boilerplate, sometimes designed simply to overwhelm the defense. (These can be class actions, another feature of the "legal revolution," but plaintiff lawyers prefer filing individual suits en masse: Class action fees can be limited by the judge.) This mass production, presumably, is how Melvin Belli ($2.5 million) came to file a claim in the Dupont Plaza Hotel fire case on behalf of an injured woman's husband, who had been dead for years.

And the flies' campaign to rock the honey pot is helped by its accumulating financial momentum. For example, monies won by plaintiff attorneys against the Dalkon Shield contraceptive case went directly to finance further lawsuits against other (and safer) contraceptives and morning-sickness drugs.

A more complex factor: the disintegration of the traditional code of legal ethics. In his book on the litigation explosion due next year from E.P. Dutton, Manhattan Institute Senior Fellow Walter Olson argues that the "legal revolution" has also seen the effective erosion of long-standing rules against barratry (inciting clients to litigate). "The old rules told lawyers to sit around passively and wait for business," says Olson. "The new rules encourage them to recruit clients, stoke their grievances and run the suit for maximum dollar output."

The traditional code was enforced partly by statute and judicial rulings, but also by consensus within the profession. Now, however, many plaintiff attorneys are openly hostile to its restraints. This year John O'Quinn (number 8, $8 million) justified his hiring nonlawyers to solicit clients on the grounds that this "case running" should be legalized in Texas. An attempt to disbar him failed.

But the plaintiff attorneys' most important leverage on the honey pot is provided by their interlocking relationship with two key groups: judges and politicians.

The fellow-feeling between lawyers and judges is one of the more obvious facts of life. So obvious that some years ago a judge admitted frankly in an opinion that invalidating contingent fees was "an unpleasant task for courts, especially this one, for it has practiced law for so long in the vineyard before coming to the bench and recognizes the difficulties of maintaining a law office. . . ." Symbolically, New York's Jacob Fuchsberg, ex-president of ATLA and founder of its magazine *Trial*, spent some years as a judge on New York's Court of Appeals before returning to his vineyard (no Forbes vineyard estimate, but he says it's a "multimillion-dollar" one).

In some states, and at the federal level, judges are appointed. But the American Bar Association rating system, which has become a crucial test for judicial nominees, is weighted toward trial experience—even for appelate courts, athough they focus exclusively on point of law. This obviously favors both the plaintiff and defense bars over corporate lawyers and legal academics.

Where judges are elected, the role of the plaintiff attorneys has become notorious: campaign contributions. In Texas, the fundraising drive supported by Joe Jamail and Pat Maloney ($6 million) was so successful that, according to one Texas attorney, "until last year the plaintiff bar owned and controlled the Texas Supreme Court." And Maloney is confident that 1988's election reversal will be corrected in 1990: "We are resilient, and we will bounce back."

It is another obvious fact of life that many politicians are lawyers. Sixty out of 100 U.S. senators and 186 out of 435 House members have law degrees. At least 48 senators and 161 House members have been practicing lawyers, including majorities on both Senate and House Judiciary Committees. Perhaps the most significant: Senator Ernest Hollings (D-S.C.), a trial attorney and a founder of ATLA's predecessor, now chairman of the Senate Commerce Committee, where he is ideally placed to stop tort reform legislation.

ATLA has given money to 1,485 Congressional Democrats and 656 Republicans since 1977. In 1987-88, it disbursed $3.9 million. And this doesn't include plaintiff attorneys' individual contributions.

"They're a highly focused lobby," says tort reform lobbyist Victor Schwartz ruefully. "They've never lost on an issue before Congress."

Plaintiff attorneys are also intimately involved with state politics. "I am on a first-name basis with all the legislators from Dade County," boasts Miami's J.B. Spence ($2.5 million). Corpus Christi's William Edwards says that he and partner David Perry (each $2 million) have spent a total of seven months in the past two years with the state senate in Austin drafting legislation during tort reform battles.

The legislative influence of trial lawyers may extend far beyond such obvious causes as blocking tort reform and attempts to cap damages and restrict contingent fees. Some observers suspect it in the chronic vagueness of many recent statutes, whose meaning must be fought out in litigation. Two other legislative habits that make life nicer for plaintiff attorneys, particularly in the environmental, civil rights and regulatory areas: provision for paying fees of attorneys suing the government—not merely if they win but sometimes even if they just raise a "novel legal argument"—and the provision for private causes of action, so that private individuals can sue to ensure compliance with the law.

This species of forensic vigilantism has attracted Herb ("I'm the best damn lawyer in America—I take —— cases and turn them into gold") Hafif. Hafif (number 2, $40 million) says he has invested around $4 million to $5 million from his practice, primarily personal injury, in prosecuting whistleblower cases against defense companies as permitted by recent legislation. His aim: "to clean up the defense industry."

Plaintiff attorneys take lobbying seriously. ATLA has equipped itself with top professionals: Washington lawyer Tom Boggs ($1.6 million on Forbes' corporate lawyer list), son of former Democratic Majority Leader Hale Boggs and Representative Lindy Boggs (D-La.); and Republican-linked consultants Timmons & Co.

Lobbying in a broader sense, the plaintiff attorneys also have a self-described "public interest arm": the three-lawyer, $650,000-a-year Trial Lawyers for Public Justice. TLPJ's mandate is apparently to boldly go where no plaintiff attorney has gone before.

It pursues both quixotic liberal causes, such as the Christic Institute's RICO suit alleging that a "secret team" of conservatives and ex-intelligence officials mixed drug-running with aid to the Nicaraguan contras; and also ingenious but marginal litigation theories, such as the claim that automakers are liable for crash injuries since the invention of airbags because they have not made them standard.

One student of plaintiff attorneys believes their most effective lobbying is done for them. "They're no-see-ums," complains Victor Schwartz, comparing plaintiff attorneys with the microscopic but painful Vermont bug. "What you see is Ralph Nader."

Nader, after eight years, is back on the inside," headlined the New York Times this spring after Nader attended a White House signing ceremony for a bill that "tightened protections for federal whistle-blowers." By a remarkable coincidence, similar articles appeared around the same time in major business magazines.

Actually, Nader never went away. He is widely credited with inspiring many of Washington's alphabet-soup regulatory agencies. But perhaps more significant has been his role in encouraging the extension of liability and in suppressing the screams of insurance companies, who get the blame when rates go up but are, in effect, just collection agencies for the plaintiff attorneys. "The (insurance) industry is intimidated by him," says George K. Bernstein, a Washington insurance lawyer.

Nader and the plaintiff attorneys are clearly good friends who go back a long time. Even before he became famous with his 1965 book attacking the Corvair, Unsafe at Any Speed, he published an article on the theme in ATLA's Trial magazine. An ex-Nader-raider is now in Forbes' list—Richard Warren Mithoff (number 10, $7.4 million). Trial Lawyers for Public Justice was founded at Nader's suggestion. Recently Nader was the speaker at the Texas Trial Lawyers Association's annual banquet. "We had most of the Texas Supreme Court there, they were actually sitting up on the stage while Nader was at the podium," says Bob Gibbins ($3.7 million). "Nader supports all of our issues and we support all of his."

How? Do plaintiff attorneys contribute to Nader's organization? (one estimate of its budget: $5 million—raised 55% from individuals, 15% from foundations).

In the past Nader has violently resisted this suggestion, not surprisingly since he has regularly argued that contributions can mean conflict of interest. Former New Republic managing editor David Sanford, in his book Me & Ralph: Is Nader Unsafe for America? described Nader's "hysterical, personally abusive reaction" to a 1972 article in the magazine linking the fact that a Nader organization had accepted a $10,000 check from ATLA to Nader's opposition to no-fault insurance (which he still maintains, unlike other consumer organizations.) The check was later returned in what Sanford called a "cover-up." Sanford, today an editor with the Wall Street Journal, stands by his account. "Ralph believes in an aristocracy of trial lawyers," he says.

Some of the aristocrats are less shy. "We are what supports Nader. We all belong to his group. We contribute to him, and he fundraises through us," says Fred Levin ($7.5 million). "I can get on the phone and raise $100,000 for Nader in one day," says Herb Hafif. "We support him overtly, covertly, in every way possible," says Pat Maloney. "He is our hero. We have supported him for decades. I don't know what the dollar amounts would be, but I would think it would be very large, because we have the money and he has our unabridged affection. I would think we give him a huge percentage of what he raises. What monied groups could he turn to other than trial lawyers?"

But Joan Claybrook, president of Public Citizen, Nader's core organization, says Public Citizen receives no money from ATLA. And she adds: "We have 50,000 members [contributors of $20 or more]. I would be surprised if there were 20 members of the plaintiff bar among them."

There are plenty of pointed questions that an alert consumer organization could ask the plaintiff attorneys.

Such as: Is there enough competition between them—research suggests their contingent fees tend to "clump" at one-third and 40% of the award—just the sort of suspicious "parallel behavior" that has caused plaintiff attorneys to sue other industries, alleging antitrust violations. Do plaintiff attorneys disclose enough to prospective clients—should they offer a choice of contingent fees or hourly billing? Indeed, why are plaintiff attorneys allowed to demand contingent fees at all in cases where there is plainly no contingency—such as aircrash cases, in which liability is not in doubt as a practical matter, with the result that some plaintiff attorneys have received fees equivalent to $10,000 an hour? Or with successful plaintiff attorneys regularly choosing their cases so carefully that 95% settle out of court? Or in commercial cases, when the client is not indigent? Do clients have enough control over the expenses that plaintiff attorneys deduct from a settlement? What about practices like requiring all personal injury clients to reconfirm their hurts with particular doctors, at a high price that can be passed to the defendant? (Doctor allies are often defended by the plaintiff attorney in any malpractice suits.) What about allegations that plaintiff attorneys representing union clients sometimes pay kickbacks to the union business manager?

Public Citizen's Claybrook says she "doesn't know the answer" to fee-clumping and disclosure. "I am not a trial lawyer, and I've never gone into the issue." Public Citizen has said that contingency fees should not exceed one-third, and where the award is large "we would hope the lawyer would take less." Otherwise Claybrook defends contingency fees on the standard grounds that some clients can't afford hourly rates and "a plaintiff lawyer gets paid only when he wins."

Claybrook will have an opportunity to "go into" these issues the next time Trial Lawyers for Public Justice and ATLA's Civil Justice Foundation have board meetings. She's on both.

I saw you earlier today, like sneak thieves in the night, slipping in here without nametags to snoop on our proceedings. A message to you, you medicine men of the oil slick, you fork-tongued serpents of the dollar. You have no need to sneak in here, 'cuz right after this meeting, we are coming after *you*. I'm *tired* of playing defense. . . . All the plaintiff lawyers of America are coming after you, you insurance demagogues, because we owe you one!"

Southern oratory is not dead. New Orleans' Russell Herman (Forbes income estimate: $1.3 million) took time during his presidential address to July's ATLA Annual Convention to direct these fraternal words at another lobby, the National Conference of Insurance Legislators, convening by unhappy coincidence in the same Boston hotel.

About 3,000 plaintiff attorneys came buzzing from all over the country to the week-long convention. They attended a vast selection of lectures on technical subjects. They honored friendly journalists and judges—Chief Justice Paul Liacos of Massachusetts, and Justice Pascal Calagero of Louisiana, who thanked ATLA President Herman for "helping me continue to win elections." They attended 35 separate "litigation groups" with names like "Silastic Gel Breast Implants" and "Bic Lighters," where they swapped information and strategies. Herman announced that a larger clearinghouse, the ATLA Exchange, is to accumulate "a cavalcade of horrors" for use by ATLA members in personal injury and other cases.

Notwithstanding a luncheon address by cool conservative columnist George Will, the convention's atmosphere was rather like a liberal version of a fundamentalist revival meeting: emotional, evangelical, moralistic. Bob Gibbins described his accepting ATLA's vice presidency as "taking on the cause for the injured and suffering, victimized, minorities and women."

Plaintiff attorneys are an anomaly, like journalists and academics: a professional group whose politics on average are decisively to the left of others of comparable income. "There are a few Republican trial lawyers, but few in number," says Pat Maloney. "You can pick them out, because they wear peculiar clothes."

"Most of us are liberal Democrats," says Mike Gallagher ($2.5 million), recommended to Forbes as a token Republican. (But he says he supported Edward Kennedy and Lloyd Bentsen—and contributes to Ralph Nader.) Does he know any other Republican plaintiff lawyers? Gallagher chuckles: "I saw one other one, one time."

Among some plaintiff attorneys, political alienation runs very deep indeed. "I think it's a bitter shame about this society, the Russians have got a more responsive political system than we do," says Herb Hafif, would-be cleanser of America's defense industry.

This hostility toward American institutions sometimes even includes Forbes. "Why would Forbes magazine want to be here?" asked ATLA Secretary Roxanne Conlin (estimated income: $750,000). "I mean, we sue your readership regularly, and we enjoy doing it very much."

Plaintiff attorneys unquestionably believe their own rhetoric. At least ATLA's Civil Justice Foundation thinks so. Its fundraising leaflet at the convention began: "As a trial lawyer, you profit from your work in many ways—the sweet success of righting an egregious wrong, the triumph of empowering the powerless, the certain knowledge of your role in penalizing wrongdoers."

All this and $10 billion, too.

A specter is haunting the plaintiff attorneys—the specter of tort reform. After 30 years, the flies rocking the honey pot may finally have provoked America to replace the lid.

In 1985-86 insurance rates, forced ever upward and in good part because of raids by the plaintiff lawyers, threatened to close popular public services for want of insurance. The media is publishing useful products allegedly kept off the market for fear of litigation, notably an asbestos substitute developed by Monsanto. Peter Huber's book Liability has focused attention on the total

"tort tax" on the economy. Huber estimates that individuals, businesses and governments pay at least $80 billion a year directly, in such ways as litigation costs and higher insurance premiums, and a total of $300 billion indirectly, counting the cost of efforts to avoid liability.

Ultimately, this "tort tax" is paid by the consumer. For example, an estimated 55% of the average football helmet's $110 cost is now due to liability insurance costs. Helmetmakers on the margin have been squeezed out of business. In 1970 there were about 18, now there are 2. And sports on the margin are being squeezed out, too: A recent survey found that several hundred colleges and universities have eliminated sports such as flag football, noncompetitive diving, canoeing and hiking because of liability costs.

Partly as a result sophisticated new tort reform lobbies are emerging—such as North Palm Beach, Fla's Coalition of Americans to Protect Sports and the defense bar's Washington, DC-based Lawyers for Civil Justice.

But the plaintiffs attorneys are fighting back fiercely. They blame the insurance industry, sometimes striking a public chord, as when California passed Proposition 103, rolling back auto rates. Their argument is made superficially appealing as the rates crunch eases, although this is probably a cyclical phenomenon.

The battle for tort reform is now raging across the states. But it's entirely possible that it could be lost, much as nofault automobile insurance was effectively blocked during the 1970s.

Still, some states have begun to allow courts to assess costs against frivolous actions. Perhaps this is the first step to some sort of "English rule" whereby either side must be prepared to pay the other's costs if their action is unsuccessful. Decisively altering the plaintiff's incentives to litigation, the "English rule" may be the ultimate tort reform.

Without it, the warming plaintiff attorneys may do to the American economy what labor unions did to the British.

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### Brothers in Bucks

You might as well put together a list of prostitutes and how much money they make," snarled tort lawyer and Inner Circle founder Richard Grand, when Forbes asked to interview him. "How would you like it if I wrote an article telling the world where you jog in Central Park?"

Grand's surliness was in sharp contrast to the clear skies over Sun Valley, Idaho, this year's venue for the annual summer meeting of the Inner Circle of Advocates—the highly exclusive fraternity of personal injury lawyers founded in 1972 to celebrate the tort industry's cherished trophy: the million-dollar verdict.

Thanks to inflation [both the monetary and legal kind], a million-dollar verdict isn't what it used to be. But the Inner Circle is more than keeping pace. To qualify today, a lawyer needs four verdicts of over a million dollars upheld on appeal. Punitive damages don't count. And membership is limited to 100 attorneys—of "high moral character."

Forbes' listing of the nation's highest-paid lawyers includes 26 Inner Circle members. Some openly boasted of their big verdicts and settlements, while others like Richard Grand wished we would go away. As Sheldon Schlesinger [who earned $4.5 million last year] put it: "Forbes showing up here makes all these guys very nervous."

Inner Circle sessions at the annual meeting are closed-door; not even wives of this so-far all male group are allowed to attend. But between golf and mountain biking, the "brothers," as some like to call themselves, convene to swap strategies and stories about their latest victories.

In one session, Florida's Frederic Levin, who last May won a $5 million wrongful death case in a one day trial, noted that his celebrity status as a local TV host is a big asset. "Every juror in Pensacola knows me," he said. Veteran Inner Circler and Californian Dave Harney recounts his winning a total lifetime payout of around $54 million for a brain damaged child. In addition to compensating the child for a lifetime of medical care as well as for pain and suffering, says Harney, "they [the jury] have her going to college and earning $30,000 a year by age 22. We had a neonatologist give her a normal life expectancy"—all with 5.5% to 6% interest annually.

Now you know why your doctor has to raise his fees to pay the high cost of malpractice insurance.

One contribution to the Inner Circle is Joseph Jamail's kiss (Keep it Simple Stupid) Principle. Juries, according to Jamail, don't understand much and don't like being bombarded with facts.

A roundtable discussion focused on the plan to introduce satellite TV into the courtroom, beaming in clients and expert testimony from other cities, and even countries. TV testimony would cost as high as $12,000 an hour. But Inner Circle members can easily spend $200,000 on one multimillion-dollar case.

One big benefit of Inner Circle membership: the group's expert witness database, not meant to be shared with nonmembers. These doctors, engineers and economists can demand up to $2,000 for one day's consultation, and as much as $10,000 for two days in trial.

Guy Allison, on Forbes' list at $4 million but not a member of the Inner Circle, is unimpressed. Says he: "All the Inner Circle does is sit around and boast about their big deals. It's like boys in the locker room talking about how many girls they've. . . ." They've got a lot to brag about.—Leslie Spencer

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### The Top Ten Best Paid Trial Lawyers

On the basis of our estimates of their 1987 and 1988 earnings, these are the country's ten highest paid trial lawyers. Other well paid trial lawyers follow.

#### 1. JOSEPH DAHR JAMAIL

Jamail & Kolilus, Houston, Tex. 1988 income: $450 million; 1987 income: $25 million.

Jamail, 63, graduated from the University of Texas law school and is best known for the victory in the 1987 Texaco-Pennzoil case that brought him an estimated $420 million in fees. Jamail spent around $5 million on a 19-passenger Gulfstream jet. His personal injury practice won over $100 million in judgments and settlements in 1988, and $75 million in 1987, of which the firm reaped about a third. "I never wash windows," he says, "nor do I work by the hour." Recent cases include winning a $52 million verdict in a Texas wrongful death suit that settled in 1988 for $22 million. Jamail's seven associates are on salary and are guaranteed a percentage of profits; they also get a percentage of the cases they win. (As with all salaries in this survey, the income figures are for Jamail alone, not for his firm.)

#### 2. HERBERT HAFIF

Law Offices of Herbert Hafif, Claremont, Calif. 1988 income: $40 million; 1987 income: $15 million.

Hafif, 59 and a graduate of the University of Southern California law school, has brought three "whistleblower" cases against defense contractor Northrop Corp. on behalf of former and present Northrop employees and the government. His firm's tactics in these cases have already brought a $5,000 sanction and an order to pay $58,000 to cover Northrop's legal bills. (The order has been reduced to $5,000.) He made national headlines with the $540 million he won against ComputerLand in a 1988 tort case he brought on behalf of MicroVest. That judgment gave Hafif 5% of the company's stock, worth $25 million; he now represents ComputerLand. Big cases include a 1986 settlement with BKK Corp. for over $43 million made on behalf of some 500 plaintiffs who charged BKK with operating an unsafe landfill. His take: $13 million. Ran unsuccessfully as a Democrat for governor of California in 1974.

#### 3. GERALD MICHAUD

Michaud, Hutton & Bradshaw, Wichita, Kans. 1988 income: $18 million; 1987 income: $9 million.

Age 60. Graduate of Washburn University law school. A leading player in DTP, toxic shock and live polio vaccine cases. Michaud has handled over 500 birth control pill cases since the late 1960s. Recent cases include a $16 million verdict in 1988 in a toxic shock syndrome case brought against Playtex International. Michaud's take: $4 million. In 1988 alone he closed some 20 cases, each of which was worth over $1 million. Has taken home over $5 million annually for the last ten years. Owns an 80-acre ranch and 30 quarter horses.

#### 4. WALTER UMPHREY

Umphrey Swearingen Eddins & Carver, Beaumont, Tex. 1988 income: $14.5 million; 1987 income: $12.5 million.

Umphrey is 53. Started out as insurance adjustor. Graduated from Baylor University law school; was a pioneer in asbestos litigation. In 1985 he was the leading lawyer in a $138 million settlement in a class action products liability suit against 16 asbestos firms. Earnings: $18.2 million. Umphrey's Beaumont firm made over $23 million in 1988. His Houston firm recently merged with Houston labor law firm Watson, Flynn & Bensik, and counts among its clients the Oil, Chemical & Atomic Workers Union. Has two planes, a helicopter.

#### 5. MAX TOBEROFF

Toberoff, Tessler & Schochet, New York, N.Y. 1988 income: $12 million; 1987 income: $6 million.

Toberoff, 67, is known as the medical malpractice king of New York, with a specialty in running down podiatrists. Claims to have lost only 6 of the 600 cases he has tried. A ten-week medical malpractice trial in 1988 brought an $11.5 million verdict. He boasts that he settled 5 cases over the phone during that trial, for an extra $15 million. Owns an apartment in Paris worth over $2 million, and a villa near Cannes. He graduated from Brooklyn Law School.

#### 6. ERNEST CANNON

Ernest Cannon & Associates, Houston, Tex. 1988 income: $7 million; 1987 income: $11 million.

A University of Texas law school grad, Cannon, 45, operates mainly out of Texas'

Matagorda County, famous for its multimillion-dollar judgments (Forbes, Apr. 7, 1986). In 1988 Cannon won about $40 million in gross recoveries, and some $70 million in 1987. His targets include Ford Motor Co. Also in 1988 he won $23 million for a 5-year-old client who was severely injured while riding a lawnmower. Cannon convinced the jury that the manufacturer, Ariens Co., was grossly negligent. Punitive damages in the case were $13 millon. (Ariens subsequently settled.) Known for his close ties to local judges: In one of Cannon's cases a 6-year-old plaintiff sat on the judge's lap to deliver her closing testimony.

7. RONALD D. KRIST

Krist, Gunn, Weller, Neumann & Morris, Houston, Tex. 1988 income: $9 million; 1987 income: $7.5 million.

Best friends with Joe Jamail, Krist won headlines for representing some of the families of the *Challenger* space shuttle astronauts. The amount of the settlement is under seal, but it's in the many millions of dollars. Krist won the first "crashworthiness" case in Texas against General Motors in 1976. His seven associates pay their own overheads and make whatever they can on their cases. A graduate of the University of Texas law school, Krist is 52.

8. JOHN O'QUINN

O'Quinn, Kerensky & McAninch, Houston, Tex. 1988 income: $8 million; 1987 income: $6 million

Age 48. Graduated from the University of Houston law school. The State Bar of Texas has just completed an investigation into whether O'Quinn paid people to solicit clients for him. The bar found him guilty, but rather than disbar him, it merely charged O'Quinn a nominal fine for his crime and ordered him to perform 100 hours of public service. O'Quinn recently won a breach of contract verdict for over $600 million against Tenneco, which later settled for an undisclosed sum. His fees from this settlement alone will raise O'Quinn's gross income for 1989 to about $50 million.

9. STANLEY S. SCHWARTZ

Sommers, Schwartz, Silver & Schwartz, Detroit, Mich. 1988 income: $7 million: 1987 income: $6.2 million

Schwartz, 57, specializes in birth trauma cases. His firm employs 66 lawyers and 100 support staff, and processes over 100 infant brain damage cases a year. These cases yield annual settlements of over $100 million, of which the firm takes a third. The firm employs ten nurses full time to evaluate the 60 cases a month that come into his office. A University of Michigan law school graduate, he has written a two-volume, 1,500-page treatiese on birth trauma.

10. RICHARD WARREN MITHOFF

Mithoff & Jacks, Houston, Tex. 1988 income: $7.4 million; 1987 income: $5.4 million

Mithoff is 43, graduated from the University of Texas law school and specializes in product liability and medical malpractice. After working for Ralph Nader as a law student, he spent nine years as a lawyer with Joe Jamail. In 1986 he won a $50 million settlement from North Texas Hospital for an infant brain damage case. Soon after, Mithoff set up a $100,000 endowment for the University of Texas medical school to improve training in delivery room techniques. Last year gross recoveries from verdicts and settlements were $21 million, and the year before, $16 million. Out of this Mithoff takes 40%. Represented his friend Jamail pro bono in a 1986 contract-fee dispute Jamail had with a referring lawyer.

THE BEST PAID TRIAL LAWYER

[In millions of dollars]

| Lawyer/firm | Location | Estimated 1988 income | Estimated 1987 income | Law school | Age |
|---|---|---|---|---|---|
| Gilbert (Buddy) Low/Orgain, Bell & Tucker.[1] | Beaumont, TX. | $8.5 | $3.0 | Univ of Texas. | 56 |
| Frederic Levin/Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell.[2] | Pensacola, FL. | 7.5 | 5.0 | Univ of Florida. | 52 |
| Philip Corboy/Corboy & Demetrio.[3] | Chicago, IL..... | 7.0 | 5.7 | Loyola Univ .... | 65 |
| F. Scott Baldwin/ Baldwin & Baldwin.[4] | Marshall, TX... | 6.0 | 4.0 | Univ of Texas. | 60 |
| Harry Lipsig/Lipsig & Zelman.[5] | New York, NY. | 6.0 | 6.0 | Brooklyn Law. | 87 |
| Pat Maloney/Law Offices of Pat Maloney & Associates.[6] | San Antonio, TX. | 6.0 | 6.0 | Univ of Texas. | 65 |
| Jack Olender/Law Offices of Jack Olender & Associates.[7] | Washington, DC. | 6.0 | 6.0 | Univ of Pittsburgh. | 54 |
| Thomas Demetrio/ Corboy & Demetrio.[8] | Chicago, IL..... | 5.0 | 3.8 | ITT-Chicago Kent College of Law. | 42 |
| Don Riddle/Riddle & Williams.[9] | Houston, TX... | 5.0 | 5.0 | Univ of Houston. | 51 |
| Leonard Ring/ Leonard Ring & Associates.[10] | Chicago, IL..... | 4.8 | 4.8 | De Paul Univ.. | 66 |
| Eugene Pavalon/ Pavalon & Gifford.[11] | Chicago, IL..... | 4.5 | 2.0 | Northwestern.. | 56 |
| Sheldon Schlesinger/ Sheldon J. Schlesinger.[12] | Ft. Lauderdale, FL. | 4.5 | 4.5 | Univ of Miami. | 59 |
| Guy Allison/Allison & Huerta.[13] | Corpus Christi, TX. | 4.0 | 4.0 | Washington Univ. | 57 |
| A. Robert Zeff/Zeff & Zeff & Materna.[14] | Detroit, MI..... | 4.0 | 2.1 | Univ of Detroit. | 55 |
| Bob Gibbins/Gibbins & Winckler.[15] | Austin, TX..... | 3.7 | 3.7 | Univ of Texas. | 53 |
| Robert Montgomery Jr./Montgomery & Larmoyeux.[16] | W Palm Beach, FL. | 3.7 | 3.0 | Univ of Florida. | 59 |
| Ned Good/Law Offices of Ned Good.[17] | Pasadena, CA. | 3.5 | 3.5 | Univ of S Calif. | 61 |
| Tom Anderson/ Thomas T. Anderson & Associates.[18] | Indio, CA..... | 3.2 | 2.5 | Univ of San Francisco. | 61 |
| Robert Consson/Gair, Gair & Conason.[19] | New York, NY. | 3.2 | 2.8 | New York Univ. | 57 |
| Robert Clifford/ Robert A. Clifford & Associates.[20] | Chicago, IL..... | 3.0 | 2.3 | De Paul Univ.. | 38 |
| Tom Moore/Kramer, Dilliof, Tessel, Duffy & Moore.[21] | New York, NY. | 3.0 | 3.0 | Fordham..... | 47 |
| Nat Ozmon/Anesi, Ozmon, Lewin & Associates, Ltd.[22] | Chicago, IL..... | 3.0 | 2.8 | Northwestern Univ. | 64 |
| William Shernoff/ Shernoff, Scott & Bidart.[23] | Claremont, CA. | 3.0 | 3.0 | Univ of Wisconsin. | 51 |
| Don Bowen/Helm, Pletcher, Hogan, Bowen & Saunders.[24] | Houston, TX... | 2.8 | 2.5 | Univ of Texas. | 45 |

[1] Low is the only plaintiff attorney in an old-line defense firm. Served as local counsel for Vinson & Elkins in ETSI antitrust case against 5 railroads, which resulted in a verdict of $1.3 billion. A 1988 settlement with 4 of the railroads yielded $285 million. His take: $12.5 million. He splits his contingency fees with his firm. Represented T. Boone Pickens in 1979 Cities Service hostile takeover.

[2] Levin earned $500,000 a year as Gulf Power Co.'s general litigation counsel, 1983–89. Won a $5 million verdict in one day this May for the death of a young man. His TV show, "Law Line," has made him a local celebrity. Counsel for boxer Roy Jones Jr. Member of Inner Circle of Advocates.

[3] Corboy is one of the best known big-money negligence lawyers in the country. He boasts having lost only one case in 17 years (it was overturned on appeal). Turns down 19 out of 20 requests for representation in medical malpractice. Member of Inner Circle of Advocates.

[4] Baldwin started asbestos litigation in U.S. with 1978 case against Pittsburgh Corning, which settled for $20 million. One of lead counsel in 1987 asbestos case against a dozen companies, which settled for $125 million. Firm's staff of 15 includes two pilots for his private plane. Member of Inner Circle of Advocates.

[5] Lipsig is considered the "king of torts" in New York. Started new firm earlier this year after bitter rift with his two former partners, who claim the firm will now enjoy a more "equitable distribution" of the profits. Currently suing Mike Tyson on behalf of Mitch Greene for $25 million for assault and battery. Greene is also suing Tyson for "failure to fight." Reflects on his long career: "I've wrecked enough lives to feel wrecked myself."

[6] Maloney processes over 1,000 cases a year. Partners are his wife and kids. Active in organizing Texas Supreme Court election campaigns on behalf of the plaintiff bar. Was embroiled in recent scandal involving Texas Supreme Court justice C.I. Ray, in which he donated money to the judge's campaign and received preferential treatment in return. Member of Inner Circle of Advocates.

[7] Olender is the "king" of medical malpractice in D.C. Mayor Marion Barry declared Feb. 18, 1987 to be "Jack Olender Day" in recognition of his "philantrophic support" for D.C. city counsel officials. He gave the "Jack Olender Peacemaker Award" in 1988 to Gorbachev and Reagan. A recent "60 Minutes" special focused on the damage his large verdicts have done to the medical community in D.C. Member of Inner Circle of Advocates.

[8] Demetrio is Philip Corboy's partner and heir apparent. 1989 president of Illinois Trial Lawyers Association. Active in ATLA. He and Corboy have together made at least $8 million a year in each of the last 8 years.

[9] Riddle has handled over 150 railroad crossing cases, and has lost only one. Won $8.5 million in 1987 in a medical product liability case, after which plaintiff died. In a separate case he expects to win $10 million to $15 million for the family of the deceased client, bringing their total award to about $20 million. If the second case succeeds his total take will be at least $6.5 million.

[10] Ring was responsible for setting up the ATLA political action committee in 1973–74. Specializes in precedent-setting cases that expand defendants' liability. Until summer 1989 was chairman of the ATLA committee that proposes and fights legislation in Congress. Chairman of Tort and Insurance Practice Section of ABA. Member of Inner Circle of Advocates.

[11] Pavalon was 1987–88 ATLA president, is current president of the Roscoe Pound Foundation, ATLA's "think tank." Settled a wrongful death auto case against General Telephone for $20.3 million in 1988. His take from the case: $6.7 million.

[12] Schlesinger is one of the biggest medical malpractice specialists in Florida. Won a $5 million product liability verdict in 1982 against Toyota, arguing that a fuel tank design killed three people in a rear-end collision. It was the only judgment ever won against Toyota. Refers to himself as "Jack the Giant Killer" and "the Equalizer." Member of Inner Circle of Advocates.

[13] Allison made more money in a 1988 case against General Motors than GM had paid him in the 25 years he represented it, between 1962 and 1987. Defends medical insurers. Brought case in 1988 against Circle K stores charging them with illegally selling liquor to a drunk "customer." The transactions were staged. Settled case for an undisclosed amount in February. Owns a 4,500-acre cattle ranch near Portland, Tex.

[14] Zeff specializes in divorce cases, for which his fees are determined in part by the result obtained. Contingency fees in divorce cases are in violation of ABA rules. Represented Cristina Ford, wife of Henry Ford II, in 1980 divorce. Member of Inner Circle of Advocates.

[15] Gibbins is current vice president of ATLA. Settled 1988 legal malpractice case against Vinson & Elkins for "failure to advise" businessmen in antitrust law. Amount of suit $31.2 million in damages. Settlement is under gag order. Should make $5 million in 1989.

[16] Montgomery specializes in medical malpractice. Got the first $10 million verdict in Florida in a single injury case. Lawyer for Kathleen DuRoss Ford, widow of Henry Ford II. Split with his former partner Christian Searcy (on list) over financial disagreements. Member of Inner Circle of Advocates.

[17] Good's boutique firm specializes in aviation and major accidents. Settles 50 cases a year, half of which come in at over $500,000. Owns and pilots a 7-seat turboprop airplane. Member of Inner Circle of Advocates.

[18] Anderson won a punitive damage verdict of $147 million in the 1988 Technical Equities fraud case. Some defendants settled previously for $60 million. The verdict is still pending. His take so far: $1 million. Represents 160,000 claimants in a class action fraud suit against evangelist Jim Bakker and associated accounting firm. If successful, he hopes to win $1,000 for each claimant, or $160 million. Member of Inner Circle of Advocates.

[19] Conason is lead counsel in the oldest plaintiff firm in New York, founded by Harry Gair in 1915. Specializes in medical malpractice. Won $6.5 million in March of 1989 for family of a client killed by a narcotics undercover agent. Member of Inner Circle of Advocates.

[20] Clifford started his career with a 10-year apprenticeship at the Chicago firm of Philip Corboy (also on list). Represents three passengers in the DC–10 Sioux City airplane crash of July 1989.

[21] Moore has taken on the mantle of recently deceased firm founder, Charles Kramer, one of founders of medical malpractice in New York. Recently won a $2.5 million legal malpractice judgment against another medical malpractice lawyer. Member of Inner Circle of Advocates.

[22] Ozmon is a major architect of the Structural Work Act of Illinois, an act that expands liability claim rights for construction workers.

[23] Shernoff specializes in "insurance bad faith law." Won $4.5 million verdict over a $48 disputed medical claim. Helped found with Ralph Nader the National Insurance Consumer Organization. Obtained a $56 million refund for doctors who claimed they were overcharged on malpractice premiums. Author of "Payment Refused," a handbook on insurance "bad faith."

[24] Designated counsel for United Transportation Union, Bowen handles over 400 Federal Employers' Liability Act cases for railroad employees, about 300 of which are in hearing loss litigation. FELA cases produce 45 percent to 50 percent of firm's income. Partners on list: George Pletcher and Michael Saunders.

THE BEST PAID TRIAL LAWYERS

[In millions of dollars]

| Lawyer/firm | Location | Estimated 1988 income | Estimated 1987 income | Law school | Age |
|---|---|---|---|---|---|
| Edward Swartz/ Swartz & Swartz.[1] | Boston, MA.... | $2.8 | $2.8 | Boston Univ ... | 55 |
| Paul Dué/Dué, Smith & Caballero.[2] | Baton Rouge, LA. | 2.7 | 2.5 | Louisiana State Univ. | 46 |
| Wayne Fisher/Fisher, Gallagher, Perrin & Lewis.[3] | Houston, TX... | 2.7 | 2.5 | Baylor..... | 52 |
| Melvin Belli/Belli, Belli, Brown, Monzione, Fabbro & Zacharia.[4] | San Francisco, CA. | 2.5 | 2.5 | Berkeley..... | 82 |

THE BEST PAID TRIAL LAWYERS—Continued

[In millions of dollars]

| Lawyer/firm | Location | Estimated 1988 income | Estimated 1987 income | Law school | Age |
|---|---|---|---|---|---|
| Frank Branson/Law Offices of Frank L. Branson.[5] | Dallas, TX | 2.5 | 2.5 | SMU | 44 |
| Bill Colson/Colson, Hicks, Eidson, Colson & Matthews.[6] | Miami, FL | 2.5 | 2.5 | Univ of Miami | 64 |
| Leonard Decof/Decof & Grimm.[7] | Providence, RI | 2.5 | 2.5 | Harvard | 60 |
| Mike Gallagher/Fisher, Gallagher, Perrin & Lewis.[8] | Houston, TX | 2.5 | 2.3 | Univ of Texas | 50 |
| John Hayes/Hayes & Powers.[9] | Chicago, IL | 2.5 | 2.5 | De Paul Univ | 58 |
| Joseph Power, Jr./Hayes & Power.[10] | Chicago, IL | 2.5 | 2.5 | Loyola Univ | 36 |
| Michael Saunders/Helm, Pletcher, Hogan, Bowen & Saunders.[11] | Houston, TX | 2.5 | 2.3 | Harvard | 44 |
| Christian Searcy/Searcy, Denney, Scarola, Barnhart & Shipley.[12] | W.Palm Beach, FL | 2.5 | 2.5 | Stetson Univ | 41 |
| J.B. Spence/Spence Payne Massington & Needle.[13] | Miami, FL | 2.5 | 2.0 | Univ of Miami | 66 |
| W. James Kronzer/W. James Kronzer, Attorney at Law.[14] | Houston, TX | 2.4 | 2.0 | Univ of Texas | 69 |
| James Thomas Demos/Demos & Burke.[15] | Chicago, IL | 2.3 | 2.3 | De Paul Univ | 54 |
| James Duffy/Kramer, Dillof, Tessel, Duffy & Moore.[16] | New York, NY | 2.3 | 2.3 | Brooklyn Law | 53 |
| Jim Perdue/Perdue, Turner & Berry.[17] | Houston, TX | 2.3 | 2.3 | Univ of Houston | 50 |
| Bruce Walkup/Walkup, Shelby, Bastian, Melodia, Kelly, Echeverria & Link.[18] | San Francisco, CA | 2.3 | 2.3 | Berkeley | 75 |
| Albert Huerta/Allison, Huerta, Hastings & Allison.[19] | Corpus Christi, TX | 2.2 | 2.2 | St. Mary's | 45 |
| Windle Turley/Law Offices of Windle Turley.[20] | Dallas, TX | 2.2 | 2.2 | SMU | 50 |
| Robert Begam/Langerman, Begam, Lewis & Marks.[21] | Phoenix, AZ | 2.0 | 2.0 | Yale | 61 |
| Jim Boccardo/Boccardo Law Firm.[22] | San Jose, CA | 2.0 | 2.0 | Sanford Univ | 78 |
| James Bostwick/Bostwick & Tehin.[23] | San Francisco, CA | 2.0 | 2.0 | UC Hastings | 46 |
| William Edwards/Edwards & Perry.[24] | Corpus Christi, TX | 2.0 | 2.0 | Univ of Virginia | 58 |
| Ted Friedman/Law Offices of Theodore H. Friedman.[25] | New York, NY | 2.0 | 2.0 | Harvard | 58 |
| David Perry/Edwards & Perry.[26] | Corpus Christi, TX | 2.0 | 2.0 | Univ of Texas | 46 |
| Ivan Schneider/Schneider, Kleinick & Weitz.[27] | New York, NY | 2.0 | 2.0 | Brooklyn Law | 57 |
| Harvey Weitz/Schneider, Kleinick & Weitz.[28] | New York, NY | 2.0 | 2.0 | Brooklyn Law | 57 |
| George Pletcher/Helm, Pletcher, Hogan, Bowen & Saunders.[29] | Houston, TX | 1.8 | 2.0 | Notre Dame | 61 |

[1] Swartz has crusaded against "killer toys" since the mid-1960s. Author of "Toys That Don't Care," "Toys That Kill," "Slaughter By Product." Takes on a few business litigation cases, for which he charges a contingency fee/hourly fee hybrid. Member of Inner Circle of Advocates.

[2] Dué specializes in maritime disasters. Won a $4.5 million settlement in a "wrongful death" case against Dixie Electric Membership Corp.

[3] Fisher traditionally specializes in product design and manufacturing liability cases as well as medical malpractice. He has recently gotten into the lucrative areas of antitrust and asbestos litigation. Former president of the State Bar of Texas. Member of Inner Circle of Advocates.

[4] Belli is the original "king of torts." One of the first lawyers in Valdez after the oil spill, he gathered 400 clients there. He and partner Richard Brown were fined $5,000 in 1988 for filing on behalf of a plaintiff in the Dupont Plaza Hotel fire case who had died several years before the fire.

[5] Branson was one of the pioneers of the Video Settlement Brochure, a videotape designed to eliminate negotiation with the defense in settlements. In 1985 won a $15 million settlement for a brain-damaged lawyer. Member of the Texas Supreme Court rules advisory committee.

[6] Colson was the first to win a verdict against Ford in a Pinto gas tank case in 1975. Won the first million-dollar medical malpractice verdict in the U.S. in 1967. The firm has recently gone into asbestos litigation. Member of Inner Circle of Advocates.

[7] Decof has won or settled over 25 sports helmet cases, including one for $4.2 million in 1983. In 1986 he won a $20 million "wrongful death" verdict against Goodyear for the family of racecar driver Mark Donohue, who was killed in an accident while going 175mph. Has handled many "women-related "cases: DES, IUD and the Pill. Currently suing the U.S. Golf Association and Scotland's Royal & Ancient Golf Club for over $100 million in an antitrust and "slander of products" case on behalf of Ping golf clubs maker Karsten Manufacturing. Member of Inner Circle of Advocates.

[8] Gallagher is partner of Wayne Fisher. Very active in politics, serves as special counsel to the Texas Senate on product liability. One of the few Republicans in the plaintiff bar. Specializes in chemical plant and oil refinery explosion cases.

[9] Hayes won a $27 million verdict against Syntex in 1985 for a brain damage case. Member of Inner Circle of Advocates.

[10] Power won $6.5 million verdict in 1986 case for brain damage to child struck by a car. Claims he has never lost a case. Largest settlement: $8 million in medical malpractice case in 1984. His take: $2 million.

[11] Saunders specializes in medical malpractice. In 1988 won a $16.2 million verdict against two doctors for brain damaged child. Two other doctors, the hospital and the anesthesia machine manufacturer settled for undisclosed amounts. Partners on list: George Pletcher and Don Bowen.

[12] Searcy specializes in multimillion-dollar baby brain damage cases. Largest verdict: $10.5 million in 1984.

[13] Spence pioneered million-dollar medical malpractice in Florida. Settled 12 "wrongful death" cases against Arrow Air for a total of $15 million in 1988. His take: $6 million. Took 6 months off in 1988 and spent over $300,000 to fight constitutional amendment that would have put caps on damages. Member of Inner Circle of Advocates.

[14] Kronzer worked with Joe Jamail in Texaco-Pennzoil litigation as legal and appellate adviser. One of the most prominent high-stakes appellate lawyers, he represents both plaintiffs and defendants in multimillion-dollar personal injury and commercial litigation. Charges on average $450 to $500 an hour for defense work, and usually gets 5% to 8% of the final award for plaintiff work.

[15] Demos specializes in medical malpractice and product liability cases. Won a $2.7 million award against Navistar International Transportation Corp. (formerly International Harvester) for "defectively designed" farm equipment. Member of Inner Circle of Advocates.

[16] Duffy is partner of Tom Moore (on list) and is the other "big winner" in the firm. Specializes in medical malpractice, especially brain damaged baby cases. Firm closed 69 cases representing $80 in 1988 and has as much as $7 million invested in cases at any one time.

[17] Perdue, the king of medical malpractice in Houston, won a $16.5 million verdict in a brain damage case in 1989; brings in several settlements per year in the $1 million to $3 million range.

[18] Former president and founding member of Inner Circle of Advocates. Walkup is one of the grandfathers of personal injury litigation in California. Member of Inner Circle of Advocates.

[19] Partner to Guy Allison. Huerta specializes in workers' compensation.

[20] Turley is founder and sole owner of one of the largest personal injury firms in the country, with 25 lawyers and a staff of 125. Usually works on cases worth more than $2 million. High overhead costs keep his personal take down. Lead counsel for plaintiff steering committee of the Delta 191 crash suit, worth more than $150 million. Major player in the attempt to make airbags in cars mandatory.

[21] Begam started with Cravath, Swaine & Moore. Specializes in product liability. His 1987 novel "Fireball" was inspired by the 1973 Kingman, Ariz. railroad tank car explosion. As lead counsel in that case, he ultimately settled it for over $20 million in 1979.

[22] Boccardo won one of the first multimillion-dollar awards for quadriplegia: $3.6 million in 1970. Successful in real estate, owns ranches and airplanes. Member of Inner Circle of Advocates.

[23] Bostwick started as a clerk for Bruce Walkup (also on list) in 1967. In 1988 won "the highest federal judgment ever" for a baby brain damage case at a U.S. Army hospital: $8.9 million. Also boasts "the biggest brain damage settlement ever": $8.7 million in 1986. His take: $2 million.

[24] Edwards was special counsel to the Texas Senate in 1987. Won a $64.5 million verdict in 1985 in paraplegia case; settled for $5 million.

[25] Friedman is the husband of New York State Supreme Court Justice Eve Preminger. Was tried for, and later, in 1988, acquitted of bribing witnesses to lie in a wrongful death suit against New York City. Member of Inner Circle of Advocates.

[26] Former president of Texas Trial Lawyers Association. Perry specializes in auto design product liability cases. In 1983 won $107 million verdict against Ford for death of one person ($100 million was for punitive damages, which were later reduced to $12.5 million and ultimately settled).

[27] One of the most successful personal injury litigators in New York. Partner of Harvey Weitz. In 1988 Schneider won a $40 million verdict for a construction worker who was rendered paraplegic from a fall. Has 6 verdicts in excess of $10 million.

[28] Partner of Ivan Schneider. Weitz won a $33.3 million verdict from the City of New York for a child who was rendered quadriplegic on a city playground.

[29] Pletcher is senior partner at the first plaintiff law firm in Houston, started in 1944. Between January 1987 and present the firm closed roughly 700 cases, representing recoveries of approximately $120 million. Partners on list: Don Bowen and Mike Saunders.

## How Lawyers Get Rich

(By Deirdre Fanning)

Attorney Fred Goldberg recently left the Washington, D.C. office of Skadden, Arps, Slate, Meagher & Flow to become the new head of the Internal Revenue Service. As a partner at Skadden, Arps, Goldberg stood to make up to $1 million a year. In Washington, he'll be making $82,500 a year—almost exactly what his old firm pays its first-year associates, most of whom are products of the country's fanciest law schools.

You think Fred Goldberg was well paid? Compared with the country's top trial lawyers, he's a piker. Herbert Hafif, a tort lawyer who runs a 13-lawyer shop in Claremont, Calif., raked in, we estimate some $40 million last year.

Walter Umphrey, a Texas plaintiff lawyer who started his professional career as an insurance adjuster, earned $14.5 million last year bringing asbestos cases on behalf of his clients.

Are Hafif and Umphrey proud products of the Ivy League law schools? Far from it. Umphrey, 53, went to Baylor University law school in Waco, Tex. Hafif? The University of Southeren California law school.

Meanwhile back in the exalted realms of Wall Street, the highest-paid lawyer was Joseph Flom, the Harvard law school-educated mergers and acquisitions lawyer and head of a 1,000-lawyer firm. Flom's collars aren't frayed, but at an estimated $5 million last year he was second string compared with Hafif and Umphrey.

By now you will be getting the picture: Prestige practice and pestige law schools aren't where the biggest action is. Some aggregate numbers: The 71 lawyers on the list of corporate rate lawyers earned an estimated combined $110 million; 38 of them went to ivy league law schools. The 63 attorneys on the list of trial lawyers earned a total of $750 millllion; 4 of them went to Ivy schools.

There's an important distinction here. While all law firms are run like businesses these days, the big prestige firms are rather like Forbes 500 companies. But the top personal injury lawyers are entrepreneurs who are likely to have $20 million lines of bank credit, crack support staffs that can handle hundreds of document requests and loosely knit national networks of "partners" helping them coordinate multimillion-dollar lawsuits brought against some of the nation's top corporations.

The major law firms—on Wall Street and elsewhere—are far less entrepreneurial, but they, too, have exploded in size; with annual billings regularly exceeding $200 million and offices all around the world employing staffs of thousands.

In a world where a top lawyer no longer depends chiefly on his or her individual efforts for success but works as part of a team, the head of the team can often reap far richer rewards than he or she could possibly make as an individual practitioner. The combined earnings of the 134 lawyers on our lists were an imposing $860 million last year. Of that about $160 million went to the the top ten trial lawyers (not counting the exceptional $420 million we think went to Pennzoil lawyer Joseph Jamail for his Texaco litigation). By contrast, the top ten corporate lawyers took home only about $31 million.

Not surprisingly, at least two bar associations, those of the District of Columbia and of North Dakota, have toyed with the idea of allowing lawyers to take their law firms public. Neither bar group ultimately decided to do so, but legal experts say it's only a matter of time before such a move. The temptation is overwhelming: It would permit highly successful attorneys to get rich twice: Once for what the firm pays, a second time from what the public would pay for a piece of their firm.

How did we come by our estimates? The way any good reporter gets information: We made calls. Hundreds of calls. Because law firms are, in effect, private corporations, there were no proxy statements we could read, no financials we could break down for clues on earnings. Thus, most of the compensation numbers are our estimates, but they are very educated estimates [Our lists

are not all-inclusive. For example, we do not include all the partners of big firms making $1 million or more. To have done so would have filled several more pages.]

With trial lawyers, our research was helped by databases from litigation research firms. Note that compensation figures include only earnings from legal work. Many lawyers have substantial outside investments.

It appears that the only people consistently making as much money as trial lawyers in America are Wall Street money men and entertainers. Doctors? Relatively small stuff. Only a handful of doctors make over $1 million from their craft. Even nontrial lawyers—those involved in securities, divorce and lobbying—regularly earn million-dollar-plus salaries.

The parallels with entertainers are not insignificant. These lawyers own no automobile factories or steel mills, no office towers or investment partnerships. Rather, they earn their bread by providing their intellectual services to the public. And just as movies are made and records pressed in both good economic times and bad, so can lawyers always find work. They profit when a client is doing well, and they prosper when a client filed for Chapter 11 protection from creditors. Heads lawyers win, tails lawyers win.

As entrepreneurs, the plaintiff trial lawyers generally work on a risk-reward basis. They may take on—and personally fund—big cases for several years before they win a verdict. Their income fluctuates from year to year. Thus we have included income estimates for both 1987 and 1988. But there is one important difference between the plaintiff lawyers and other entrepreneurs: By shrewdly influencing politics and public opinion, the plaintiff attorneys, in effect, provide for their own growing prosperity.

The corporate lawyers generally charge an hourly rate. Yet even within this group there are entrepreneurs.

Take the Hollywood law firm of Ziffren, Brittenham & Branca. The partners represent mostly movie and television studios and actors. Because much of their clientele consist of individual personalities requiring fairly straightforward legal work, Kenneth Ziffren and his partners saw little reward in fees charged as hourly rates. They, the lawyers, were cutting most of the stars' deals. So they decided to follow the example of Hollywood talent agents and demanded a piece of their clients' action. Almost all top entertainment lawyers now charge their clients a flat 5% of the deals they negotiate for them.

It's worth remembering that, more than ever, successful people in fields other than law have earned law degrees. This is, in part, because legal issues are so important in all businesses today and, in part, because of the value of the training. Says Revlon Vice Chairman Donald Drapkin, a Columbia law school grad and former partner at Skadden, Arps, "In law school you are graded as much on how you identify the critical issues as on how you answer them." Merger king Bruce Wasserstein, Norfolk Southern Chief Executive Arnold McKinnon, Revlon President Bruce Slovin and Vice Chairman Howard Gittis, MCA Motion Picture Group Chairman Thomas Pollock, *Wall Street Journal* Managing Editor Norman Pearlstine—these and many other influential people all attacked their chosen fields armed with law degrees.

As long as tort reform continues to move at a glacial pace, members of the plaintiffs bar will continue to rack up multi-million-dollar annual earnings. But even if laws were passed limiting trial verdicts and legal fees, lawyers would probably make a good living for the simple reason that we live in an increasingly legalistic society. Yes, there are poor lawyers, but there is a growing number of rich ones and of very rich ones.

THE TOP TEN BEST PAID CORPORATE LAWYERS

Below, the 10 corporate lawyers with the highest estimated 1988 incomes. On the following pages are 61 more very well paid attorneys.

1. JOSEPH FLOM

Skadden, Arps, Slate, Meagher & Blum, 1988 income: around $6 million.

Flom, 66, graduated from Harvard University law school and is senior partner at New York's Skadden, Arps, Slate, Meagher & Blum. He and his rival Martin Lipton (see below) are the two preeminent mergers and acquisitions lawyers in the country. He began his career at Skadden in 1948. As senior partner he has built Skadden into a firm with over 1,000 lawyers and offices in four countries. Skadden is now the third-biggest law firm in the world (after Baker & McKenzie and Jones, Day, Reavis & Pogue); its clients include much of the Forbes 500. Flom and Skadden have appeared in virtually every major merger transaction in the last ten years, yet M&A accounts for less than 25% of the firm's profits. The firm is also big in securities underwriting, litigation and international law. Flom in recent years has increasingly turned his attention to pro bono work. Skadden last year launched a program to fund 25 fellowships annually for recent law school graduates who wish to work in public interest law.

2. RAOUL LIONEL FELDER

Law firm of Raoul Lionel Felder, 1988 income: $3.8 million.

A graduate of New York University law school, Felder runs his own nine-lawyer firm in New York. He specializes in celebrity divorces, for which he charges $450 an hour, with a minimum retainer of $20,000. His biggest cases last year included representing actress Robin Givens in her divorce from boxer Mike Tyson and Nancy Capasso in the Bess Myerson-Carl (Andy) Capasso scandal. Eccentric and theatrical, Felder, 55, dresses conspicuously. He keeps 30 pairs of velvet evening slippers in his office. His lawyer wife, Myrna, handles the appellate work. Not everybody is impressed by his act: A Manhattan supreme court judge recently criticized Felder's fees in a divorce case as "unconscionably high."

3. HARRY (SKIP) BRITTENHAM

Ziffren, Brittenham & Branca, 1988 income: at least $3 million.

At 48, Brittenham and his partners, Ziffren and Branca, run what is arguably Los Angeles' most powerful entertainment law firm. It has only 13 lawyers and has exploited the practice of charging movie and television clients a percentage (5%) of their gross revenues, rather than billing them according to hourly fees. Brittenham's clients include Harrison Ford, Don Johnson, Melanie Griffith, John Candy, Tom Selleck, Michael J. Fox, Richard Pryor and Norman Lear. Brittenham is a graduate of UCLA law school.

4. ALLEN GRUBMAN

Grubman, Indursky & Schindler, 1988 income: at least $3 million.

A graduate of Brooklyn Law School, Grubman is an entertainment lawyer who represents musicians and music companies. Clients include Bruce Springsteen, Madonna, Robert De Niro, George Michael, Carly Simon, MTV, Chrysalis Records and Island Records. He charges clients either through a monthly retainer or with a premium based on results. Minimum retainer is $5,000 a month. New York-based Grubman has been particularly active in negotiating mergers and acquisitions among record companies. Age: 46.

5. MARTIN LIPTON

Wachtell, Lipton, Rosen & Katz, 1988 income: at least $3 million.

New York's Marty Lipton, one of the founders of Wachtell, Lipton, has made a specialty out of successfully defending companies under takeover attack. He is credited with having invented the so-called poison-pill defense, and is a vocal opponent of highly leveraged takeovers. Bills both on time spent and results achieved. The firm is reported to have charged Kraft Inc. $20 million in fees for three weeks of work done on the company's 1988 takeover by Philip Morris. Lipton, 58, graduated from New York University law school.

6. KENNETH ZIFFREN

Brittenham & Branca, 1988 income: at least $3 million.

Age 49 and a graduate of UCLA law school, Ziffren was law clerk for U.S. Supreme Court Chief Justice Earl Warren, 1965-66. Ziffren and his partners are particularly active in representing television stars and executives. Ziffren himself forged his reputation representing Hollywood's television "hyphenates"—i.e., director-writer-producers. Clients include Stephen J. Cannell, Marvin Davis, James Brooks, Witt/Thomas/Harris Productions, Fred Silverman and Miller/Boyett Productions. Ziffren and his firm were among the first to recognize—and capture—the potential profits for their writer-producer clients in television syndication rights. His father, Paul Ziffren, was also a respected entertainment lawyer in Los Angeles. Kenneth Ziffren is credited with settling last year's writers' strike.

7. JOHN EASTMAN

Eastman & Eastman, 1988 income: around $3 million.

Another entertainment lawyer, New York's Eastman represents mostly music clients. He's best known for his role in negotiating the breakup of the Beatles; his sister Linda Eastman is married to ex-Beatle and client Paul McCartney. Other clients include David Bowie, Billy Joel and Willem De Kooning; Eastman is also a trustee of the Tennessee Williams estate. He was one of the first to gain rights to master recordings for clients. His billing, Eastman says, is "unstructured. I have no contracts with my clients. We work it out, discuss what the fee should be." He is 50 and a graduate of New York University law school.

8. JOHN BRANCA

Ziffren, Brittenham & Branca, 1988 income: around $2.5 million.

The youngest of his Los Angeles entertainment law firm's senior partners, Branca, 38, also graduated from UCLA law school, and played keyboards as a professional musician. His clients are to die for: Michael Jackson, the Rolling Stones, the Beach Boys, the estate of Elvis Presley, David Lee Roth, the Doors, George Harrison and Fleetwood Mac. Branca runs virtually all of Michael Jackson's business affairs. Represented such corporate clients as SBK/EMI in its $125 million acquisition of CBS song rights.

9. ARTHUR FLEISCHER

Fried, Frank, Harris, Shriver & Jacobson, 1988 income: around $2.5 million.

Fleischer, 56 and a graduate of Yale University law school, is a mergers and acquisitions lawyer. Deals include representing Hospital Corp. of America in its $3.6 billion management buyout this year. Also led Philip Morris' $13 billion acquisition of Kraft Inc. last year. He is coauthor of *Board Games*, a nonfiction book on corporate directors.

10. SAMUEL BUTLER

Cravath, Swaine & Moore, 1988 income: around $2.4 million.

Butler, 59, is presiding partner of New York's 295-lawyer Cravath, Swaine & Moore. A Harvard law graduate, Butler represented Time in the recent merger with Warner Communications. Clients include Squibb, Ashland Oil and Paine Webber.

## THE BEST PAID CORPORATE LAWYERS

[In million of dollars]

| Lawyer/firm | Location | 1988 income | Law school | Age |
|---|---|---|---|---|
| David Boies/Cravath, Swaine & Moore.[1] | New York, NY | around $2.3 | Yale | 48 |
| George Kern/Sullivan & Cromwell.[2] | New York, NY | over 2 | Yale | 63 |
| James Fogelson/ Wachtell, Lipton, Rosen & Katz.[3] | New York, NY | at least 2 | New York Univ. | 47 |
| William Willis/Sullivan & Cromwell.[4] | New York, NY | at least 2 | Harvard | 63 |
| Floyd Abrams/Cahill Gordon & Reindel.[5] | New York, NY | around 2 | Yale | 53 |
| Allen Finkelson/ Cravath, Swaine & Moore.[6] | New York, NY | around 2 | Columbia | 43 |
| Jiro Murase/Marks, Murase & White.[7] | New York, NY | around 2 | Georgetown | 61 |
| Rodgin Cohen/Sullivan & Cromwell.[8] | New York, NY | around 1.7 | Harvard | 45 |
| Neil Anderson/Sullivan & Cromwell.[9] | New York, NY | around 1.6 | Columbia | 43 |
| Thomas Boggs/Patton, Boggs & Blow.[10] | Washington, DC | 1.6 | Georgetown | 49 |
| Richard Sprague, Higgins, Creamer & Sprague.[11] | Philadelphia, PA | 1.6 | Univ of Pennsylvania | 64 |
| Perry Sayderman/ Rudnick & Wolfe.[12] | Chicago, IL | at least 1.5 | De Paul Univ | 56 |
| Fred Bartlit/Kirkland & Ellis.[13] | Chicago, IL | around 1.5 | Univ of Illinois | 57 |
| Robert Carswell/ Shearman & Sterling.[14] | New York, NY | around 1.5 | Harvard | 60 |
| Peter Fishbein/Kaye, Scholer, Fierman, Hays & Handler.[15] | New York, NY | around 1.5 | Harvard | 55 |
| Robert Fiske, Jr./Davis Polk & Wardwell.[16] | New York, NY | around 1.5 | Univ of Michigan | 58 |
| Jack Levin/Kirkland & Ellis.[17] | Chicago, IL | around 1.5 | Harvard | 53 |
| John McLoughlin/ Latham & Watkins.[18] | Los Angeles, CA | around 1.5 | Harvard | 53 |
| Gerald Schrager/Dreyer & Traub.[19] | New York, NY | around 1.5 | New York Univ. | 48 |
| Barry Slotnick/Slotnick & Baker.[20] | New York, NY | around 1.5 | New York Univ | 50 |
| Robert Strauss/Akin, Gump, Strauss, Hauer & Feld.[21] | Washington, DC | around 1.5 | Univ of Texas | 70 |
| Clark Clifford/Clifford & Warnke.[22] | Washington, DC | 1.5 | Washington Univ. | 82 |
| Henry King/Davis Polk & Wardwell.[23] | New York, NY | 1.5 | Yale | 61 |
| Stephen Fraidin/Fried, Frank, Harris, Shriver & Jacobson.[24] | New York, NY | around 1.4 | Yale | 50 |
| Joseph Califano/ Dewey, Ballantine, Bushby, Palmer & Wood.[25] | Washington, DC | 1.4 | Harvard | 58 |
| Robert Altman/Clifford & Warnke.[26] | Washington, DC | around 1.3 | George Washington Univ. | 42 |
| Bud Holman/Kelley Drye & Warren.[27] | New York, NY | around 1.3 | Yale | 60 |
| Larry Sonsini/Wilson, Sonsini, Goodrich & Rosati.[28] | Palo Alto, CA | around 1.2 | Berkeley | 48 |
| Julius Berman/Kaye, Scholer, Fierman, Hays & Handler.[29] | New York, NY | 1.2 | New York Univ. | 54 |

## THE BEST PAID CORPORATE LAWYERS—Continued

[In million of dollars]

| Lawyer/firm | Location | 1988 income | Law school | Age |
|---|---|---|---|---|
| Fred Fishman/Kaye, Scholer, Fierman, Hays & Handler.[30] | New York, NY | 1.2 | Harvard | 64 |
| Joel Hirschhorn/Broad & Cassel.[31] | Miami, FL | 1.15 | Univ of Wisconsin | 46 |

[1] Boies, a litigator, defended CBS in libel case brought by General William Westmoreland; represented Texaco in litigation with Pennzoil.

[2] M&A lawyer; the SEC has brought an action against Kern for violating disclosure rules while representing Allied Stores against Campeau Corp.

[3] M&A lawyer; Fogelson's clients include Wasserstein Perella, Beecham, Goldman Sachs.

[4] Litigator; Willis' clients include Exxon and NV Philips.

[5] Abrams is a constitutional lawyer; clients include all three networks and the New York Times.

[6] M&A lawyer; Finkelson's deals include Campeau takeover of Federated, Grand Met acquisition of Pillsbury.

[7] International corporate lawyer; Murase represents many Japanese clients, including Nippon Life Insurance, Mitsui and Sumitomo; also represents U.S. companies in Japan.

[8] Banking lawyer; Cohen did Bank of New York takeover of Irving Trust; other banking clients include Mellon and Continental Illinois.

[9] M&A lawyer; Anderson represents Morgan Stanley, Grand Met; successfully defended Union Carbide against attempted hostile bid from GAF Corp.

[10] Boggs is one of the most prominent lobbyists in Washington; represented Chrysler in its 1979 loan bailout.

[11] Sprague has represented famed trail lawyer F. Lee Bailey in two libel suits, one in 1979 and the other in 1988.

[12] Snyderman, a real estate lawyer, invests in most of his clients' deals.

[13] Litigator, Bartlit recently successfully defended Katy Industries management against a $70 million securities class action.

[14] Corporate lawyer; Carswell is senior partner of the firm; former deputy Treasury secretary under Jimmy Carter; biggest client is Citibank.

[15] Litigator; managing partner of Kaye Scholer; Fishbein's clients include Chris-Craft, Drexel trader James Dahl and Carl Lindner.

[16] Litigator; specializes in civil litigation and white-collar criminal defense work; a former U.S. Attorney, Fiske was asked by Attorney General Thornburgh to take the deputy attorney general position; he withdrew after opposition from conservatives.

[17] Corporate and tax lawyer; Levin's principal clients include First Chicago Venture, Golder, Thoma Cressey Fund and Gaylord Container.

[18] McLoughlin, a corporate lawyer, is principal attorney for KKR.

[19] Real estate lawyer; Schrager's clients include Donald Trump; Peter Kalikow, Samuel LeFrak.

[20] Criminal defense lawyer; Slotnick represented subway gunman Bernhard Goetz; clients have included Mafia biggies.

[21] Strauss was special aide to President Carter on the Mideast peace negotiations; former chairman of Democratic National Committee.

[22] Former counsel to President Truman; former chairman of the Foreign Intelligence Advisory Board in the Kennedy Administration; Clifford's clients include Knight-Ridder and Du Pont.

[23] Litigator; managing partner of Davis Polk; King represented Sullivan & Cromwell lawyer George Kern in his SEC investigation; clients include Imperial Chemical Industries Plc and UAL Corp. and its board of directors.

[24] Corporate securities lawyer; Fraidin recently represented the board of directors of NWA Inc. in connection with sale of company; visiting lecturer at Yale Law School.

[25] Former Secretary of Health, Education & Welfare, Califano successfully defended journalists Bob Woodward and Carl Bernstein in a suit that sought to expose the famed Watergate source "Deep Throat."

[26] Altman's clients include former House Speaker Jim Wright, first American Bank, Phillips Petroleum and Bert Lance.

[27] Litigator; Holman represented Union Carbide in its battle with government of India in Bhopal litigation; represented Hercules Inc. in the Agent Orange $180 million class action settlement.

[28] Corporate lawyer; Sonsini specializes in high-tech companies in Silicon Valley; also teaches securities law at Stanford and Berkeley; major clients include Apple Computer, Sun Microsystems, Businessland.

[29] Litigator; Berman represents Olympia & York; active in philanthropic organizations.

[30] Corporate lawyer; Fishman represents Equitable Life Assurance in its financing and real estate work; represented GTE in its acquisition work.

[31] Hirschhorn made his name representing drug dealers; has recently switched to white-collar criminal defense work.

## THE BEST PAID CORPORATE LAWYERS

[In millions of dollars]

| Lawyer/firm | Location | 1988 income | Law school | Age |
|---|---|---|---|---|
| Richard Testa/Testa, Hurwitz & Thibeault.[1] | Boston, MA | $1.1 | Harvard | 50 |
| Richard Beattie/ Simpson Thacher & Bartlett.[2] | New York, NY | at least 1 | Univ of Pennsylvania | 50 |
| Milton Gould/Shea & Gould.[3] | New York, NY | at least 1 | Cornell | 80 |
| Barry Hirsch/ Armstrong, Hirsch & Levine.[4] | Los Angeles, CA | at least 1 | Univ of S Calif | 55 |
| Peter Malkin/Wien Malkin & Bettex.G55 | New York, NY | at least 1 | Harvard | 55 |
| Harvey Miller/Weil, Gotshal & Manges.[6] | New York, NY | at least 1 | Columbia | 56 |
| Ira Millstein/Weil, Gotshal & Manges.[7] | New York, NY | at least 1 | Columbia | 62 |

## THE BEST PAID CORPORATE LAWYERS—Continued

[In millions of dollars]

| Lawyer/firm | Location | 1988 income | Law school | Age |
|---|---|---|---|---|
| Peter Mullen/Skadden, Arps, Slate, Meagher & Flom.[8] | New York, NY | at least 1 | Columbia | 61 |
| Jack Nusbaum/Willkie Farr & Gallaher.[9] | New York, NY | at least 1 | Columbia | 49 |
| Harvey Pitt/Fried, Frank, Harris, Shriver & Jacobson.[10] | Washington, DC | at least 1 | St John's Univ | 42 |
| Bruce Ramer/Gang, Tyre, Ramer & Brown.[11] | Los Angeles, CA | at least 1 | Harvard | 56 |
| Thomas Reynolds Jr/ Winston & Strawn.[12] | Chicago, IL | at least 1 | Univ of Michigan | 61 |
| John Schmidt/Skadden, Arps, Slate, Meagher & Flom.[13] | Chicago, IL | at least 1 | Harvard | 45 |
| William Shea/Shea & Gould.[14] | New York, NY | at least 1 | Georgetown | 82 |
| Henry Steinman/ Latham & Watkins.[15] | New York, NY | at least 1 | UCLA | 57 |
| Brendan Sullivan/ Williams & Connolly.[16] | Washington, DC | at least 1 | Georgetown | 47 |
| Peter Tufo/Brown & Wood.[17] | New York, NY | at least 1 | Yale | 51 |
| George Vandeman/ Latham & Watkins.[18] | Los Angeles, CA | at least 1 | Univ of S Calif | 49 |
| Stephen Volk/ Shearman & Sterling.[19] | New York, NY | at least 1 | Harvard | 53 |
| John Zuccotti/Brown & Wood.[20] | New York, NY | at least 1 | Yale | 52 |
| Evans Attwell/Vinson & Elkins.[21] | Houston TX | around 1 | Univ of Texas | 58 |
| Jake Bloom/Bloom, Dekom & Hergott.[22] | Los Angeles, CA | around 1 | Cornell | 47 |
| Peter Dekom, Bloom, Dekom & Hergott.[23] | Los Angeles, CA | around 1 | UCLA | 42 |
| Charles Goldstein/Shea & Gould.[24] | New York, NY | around 1 | Harvard | 52 |
| Arthur Liman/Paul, Weiss, Rifkind, Wharton & Garrison.[25] | New York, NY | around 1 | Harvard | 56 |
| James McCartney/ Vinson & Elkins.[26] | Houston TX | around 1 | Univ of Texas | 59 |
| Harry Reasoner/Vinson & Elkins.[27] | Houston, TX | around 1 | Univ of Texas | 50 |
| Stephen Hammerman/ Merrill Lynch & Co.[28] | New York, NY | 1 | New York Univ. | 51 |
| Bruce Kauffman/ Dilworth, Paxson, Kalish & Kauffman.[29] | Philadelphia, PA | 1 | Yale | 54 |
| Paul Warnke/Clifford & Warnke.[30] | Washington, DC | 1 | Columbia | 69 |

[1] High-tech/venture capital lawyer; Testa's clients include Digital Equipment and Teradyne.

[2] M&A Lawyer; Beattie specializes in LBO work; represents KKR, Salomon Brothers and Shearson Lehman Hutton; avid motorcyclist.

[3] Litigator; Gould represented Israeli Defense Minister Ariel Sharon in his libel suit against Time magazine; represented Jack Kent Cooke in his recent divorce; active in philanthropies.

[4] Entertainment lawyer; Hirsh's clients include Tom Cruise, Robert Redford, Bill Murray.

[5] Real estate lawyer; son-in-law and former law partner of late philanthropist Lawrence Wien; Malkin's clients include New York real estate developer William Zeckendorf.

[6] Bankruptcy lawyer; Miller worked on the Texaco, Eastern Air Lines, W.T. Grant, Continental Airlines bankruptcies.

[7] Antitrust litigator; Millstein is counsel to board of directors of General Motors, Bethlehem Steel and R.H. Macy.

[8] Executive partner at Skadden; Mullen rarely practices law any more; focuses on running the 1,000-lawyer firm.

[9] M&A lawyer; Nusbaum represented Shearson in the E.F. Hutton acquisition and Donald Trump in Resorts International deal.

[10] Litigator, former general counsel of the SEC; Pitt is best known for representing arbitrager Ivan Boesky in his $100 million plea agreement with the government on insider trading charges.

[11] Entertainment lawyer; Ramer's clients include Steven Spielberg and Clint Eastwood.

[12] Chairman of Winston & Strawn; Reynolds sits on the boards of Gannett, Union Pacific and Frank B. Hall & Co.

[13] Corporate securities lawyer; Schmidt has been a key adviser to Chicago Mayor Richard Daley.

[14] Famous sports lawyer and fan; New York's Shea Stadium is named after him; represents Yankees and Mets, Archdiocese of New York, Lilco; still wields considerable political influence in New York affairs.

[15] Corporate lawyer; Steinman's clients include Peter Ueberroth, Drexel Burnham Lambert, KKR.

[16] Litigator; Sullivan represented Oliver North in Iran-Contra scandal; also represented former president of Beechnut in fake apple juice case.

[17] Real estate lawyer/litigator; Tufo represents Columbia University and Sotheby's; current chairman of the New York State Thruway Authority.

[18] M&A lawyer; Vandeman's past deals include Ted Turner's unsuccessful bid for CBS, Turner's acquisition of MGM film library, and Marvin Davis' unsuccessful bid for NWA Inc.

[19] M&A lawyer; Volk represents many investment banks; structured recent First Boston-Credit Suisse buyout, in which First Boston was taken private.

[20] Real estate lawyer; Zuccotti represents large number of New York developers, including Milstein family and Leonard Stern; active in public interest work; former first deputy mayor of New York, current cochairman of the Citizens Commission on AIDS.

[21] Attwell is managing partner of firm; clients include Bunker and Herbert Hunt.

[22] Entertainment lawyer; Bloom's clients include Sylvester Stallone, Arnold Schwarzenegger, Bruce Willis.

[23] Entertainment lawyer; Dekom specializes in motion picture and television financing and representing production companies; most recently engineered JVC Victor's movie production deal with producer Larry Gordon.

[24] Goldstein, one of the most prominent New York real estate lawyers, represents at least half of The Forbes Four Hundred real estate moguls.

[25] Litigator; Liman was chief counsel to the Senate subcommittee in Iran-Contra scandal; former president of the Legal Aid Society in New York; currently represents Michael Milken.

[26] Litigator; McCartney's clients include Amoco Production, Mobil Oil and Fina Oil & Gas.

[27] Corporate lawyer; Reasoner recently won $750 million settlement for client Energy Transportation System in antitrust suit brought against Santa Fe Railroad and other railroads.

[28] Hammerman is general counsel of Merrill Lynch.

[29] Litigator; Kauffman's clients include Armand Hammer, Frank Sinatra; member of MOVE Commission panel investigating allegations of wrongdoing by Philadelphia Mayor Goode and police.

[30] Chief negotiator on the SALT II arms agreement; Warnke defended Procter & Gamble in a case charging the company with fixing price of vegetable oils.●

## DEPARTMENT OF DEFENSE ANTINARCOTICS EFFORTS

● Mr. D'AMATO. Mr. President, on August 4, 1989, I spoke on the floor to call attention to the poor performance of the Defense Department in spending the $300 million we appropriated to fund the Department's role in the war on drugs. On that day, I stated, "I have two questions: Where is the money? and, Who is in charge?"

On September 5, 1989, I wrote to the Secretary of Defense, Dick Cheney, in reference to my concerns about the Defense Department's counternarcotics efforts, particularly about how the Department was allocating fiscal year 1989 and fiscal year 1990 funds appropriated and the organization of the Defense Department's efforts.

On November 13, 1989, I received Secretary Cheney's response to my letter. I know that many of my colleagues have also had questions on this issue and I believe that they would find the Secretary's answers enlightening.

I commend Secretary Cheney for beginning to turn around the old attitude in the Defense Department, which was not fully supportive of fighting the drug war. In his letter, the Secretary stated, "The detection and countering of the production and trafficking of illegal drugs is a high priority national security mission of the Department of Defense. Pursuant to my direction, the commanders-in-chief of the key unified and specified commands have now submitted their plans for carrying out this mission in their respective areas of responsibility. I am currently reviewing those plans."

He further stated, "I am confident now that we have the management and organizational structure that will maximize our contribution to the administration's goal of a drug-free America."

A few of the major areas of progress Secretary Cheney mentions in his letter are:

First, the Chariman of the Joint Chiefs of Staff now has, within his staff, a Counternarcotics Division which coordinates operational issues with the unified and specified commands.

Second, the full defense planning process for fiscal years 1992 through 1997 is now underway, and it will give special attention to narcotics production and trafficking in Latin America.

Third, a Defense Planning Resource Board has been established to review and provide recommendations on all defense and counternarcotics issues.

Fourth, two joint task forces, JTF-4 in Florida and JTF-5 in California, are now operational 24 hours a day, 7 days a week. A new joint task force, JTF-6, has been established along the southwest border to coordinate DOD support to Drug Law Enforcement Agency operations.

Fifth, a unique circuit of the Defense Data Net, "NARC Net," is expanding.

Sixth, specific Defense Department goals for fiscal year 1990 are as follows: First, support the President's national drug strategy; second, develop an effective counternarcotics surveillance capability along the southern border; third, enhance intelligence systems to provide timely, relevant intelligence support to the operating forces and law enforcement agencies; fourth, develop an effective integrated communications network to support drug interdiction command, control, communications, and intelligence capabilities; and fifth, support energetic National Guard counternarcotics operations under the command of the State Governors.

I look forward to working with Secretary Cheney to help him meet all of these goals. I ask that my letter of September 5, 1989, and the Secretary's response of November 13, 1989, be printed in their entirety at the conclusion of my remarks.

U.S. SENATE,
*Washington, DC, September 5, 1989.*

Hon. RICHARD CHENEY,
*The Secretary of Defense,*
*The Pentagon, Washington, DC.*

DEAR MR. SECRETARY: I am writing to express my concern about a number of unresolved issues regarding the role of the Department of Defense in combatting the narcotics threat. I spoke on this matter on the floor of the U.S. Senate on August 4, 1989. I have enclosed a copy of my remarks for your information.

My August 4 remarks show a high level of exasperation with the Department's progress. The basis for my exasperation is the slowness and obvious reluctance the Department has shown in the past in becoming engaged in this great national struggle against drugs. As one of those responsible for the authorization and appropriation of $300 million in FY89 for the Department's counternarcotics efforts, I was sharply disappointed by the way these funds were utilized and, in fact, attempted to transfer the unused balance to agencies that could and would use them effectively.

I note that since that effort the Department has moved out quickly to use those funds. I look forward to receiving the answers to the specific questions I ask below, in the hope that these funds are being obligated according to a well thought-through plan.

In contrast with the Department's past record, I want to commend you for the efforts you have made and are continuing to make in support of our national counternarcotics efforts. As the May 1989 Report to Congress entitled, "Integration of Command Control, Communications and Technical Intelligence into an Effective Communications Network for Drug Interdiction" makes clear, much good work is being done. However, a number of key questions remain. As recent events in Colombia demonstrate, it is time they were answered.

The Chairman of the Senate Defense Appropriations Subcommittee, in response to my request, promised a special hearing after the August recess on the Department's counternarcotics efforts. To help me prepare for this hearing, I would very much appreciate a description of how the Defense Department plans to manage its role in the war on drugs.

This description should explain how the Department's counternarcotics policy, planning, programming, and budgeting functions and responsibilities will be coordinated and exercised, with particular attention to the following points:

—The key organizational lines of authority (in particular, both operational command and control and policy, administrative and budget supervisory responsiblities) for each of the offices and agencies invovled in your counternarcotics efforts;

—Identify with specificity which office below the Secretary's level has executive authority over budget and policy decisions for each of the Department's drug war roles;

—What kind and level of decisions are made by the ASD(RA), ASD(C3I), Defense Communications Agency, and operating agencies such as SOUTHCOM, CINCPAC, NORAD, CINCLANT, and the Joint Chiefs of Staff;

—Please explain the Department's relationship with Ambassador David Miller's office on the NSC staff, the Communications Interoperability Working Group (CIWG), and the Director of National Drug Control Policy.

In addition, I would appreciate responses to the following questions (the responses may be in both classified and unclassified versions, as necessary):

1. Is there a clear statement of the goals the Department seeks to accomplish with the FY 1989 appropriation of $300 million for DoD's counternarcotics efforts and a plan for achieving its objectives? Is there a clear statement of the goals the Department seeks to accomplish with the $450 million authorized for counternarcotics efforts in the FY 1990 Senate Defense Authorization Bill and a plan for achieving those objectives?

2. How much of the $300 million appropriated in FY 1989 will be carried over to FY 1990 and what are current plans for those funds?

3. Will all remaining funds that have not been reprogrammed as of September 1 be obligated within FY 1989? Will any part of

the $300 million appropriated in FY 1989 lapse?

4. Will any procurement actions be completed (in the sense that equipment or materials are actually delivered to a procuring authority) using reprogrammed FY 1989 funds before the end of FY 1989?

5. Why did the FY 1989 reprogramming request come to Congress without full programmatic documentation to support the request, including a plan explaining what the Defense Department expects these expenditures to accomplish and how programmatic documentation and budget justification documents are now available to support the Department's reprogramming request?

6. Has a Concept of Operation been completed for each Joint Task Force (JTF) site?

7. Have all intelligence and radar assets been identified and designated for communications integration into the JTF's?

8. Is the Department developing a plan to phase out use of operational military sensor platforms in favor of dedicated drug enforcement sensor platforms, e.g. Aerostats, off shore oil rigs, etc.?

9. Have communications plans been established between JTF-4 and JTF-5, Customs C3I and other federal, state and local drug interdiction agencies? Please also explain the organizational lines of authority between the JTF's and higher DoD authorities, from both policy and budget perspectives.

10. What are your plans to ensure the integrity and protection of classified information within and between facilities?

11. What is the planned Defense Department interface with the Customs C3I Centers with respect to type and quality of interdiction data provided?

12. Has the Defense Department requested and received industry support to validate operational concepts and system availability?

13. What is the status of the JTF-4 and JTF-5 facilities regarding construction, operating equipments, staffing, etc.?

14. Will the JTF sites be used for functions other than drug interdiction?

15. Will Southern Command move from Panama City? If so, has a location for its new headquarters been selected? Will the new location incorporate communication coordination for the Defense Department's drug interdiction activities?

16. On July 19, you sent a memorandum to your subordinates on the subject of the Defense Planning Guidance for FY 1992-1997. In that memorandum, you indicate that you have asked the Under Secretary of Defense for Policy to prepare Proposed Defense Planning Guidance for FY 1992-1997 program and budget planning on the issue of: U.S. interests in Latin America of countering the production and trafficking of illegal drugs and of assisting countries in providing for their own security.

(A) Are there any plans for similar direction regarding development of Defense Planning Guidance for the FY 1992-1997 program for accomplishing the Department's counternarcotics detection and monitoring mission, and for support for drug enforcement generally, as provided for in 10 U.S.C. 371, et seq.?

(B) For which part of the counternarcotics expenditures presented for the Senate Appropriations Committee's approval has five year planning, programming, and budget documentation been prepared?

17. When did the Department send Congress the May 1989 Report on the "Integration of Command, Control, Communications and Technical Intelligence into an Effective Communications Network for Drug Interdiction"? When will Congress receive the June 1989 Implementation Plan described on page 20 of the May 1989 Report? Does the June 1989 report exist?

18. Please explain how the Department's plans for its internal organization fulfill its responsibilities under the President's and the Director of National Drug Control Policy's National Drug Strategy?

19. How will the officer in charge of the counternarcotics element in the Office of the Joint Chiefs of Staff (J-3) coordinate with and exercise staff supervision over other offices and agencies?

20. How will the Military Departments (as distinguished from the unified and specified commands) participate in your conternarcotics strategy and activities, and who will be in charge of the effort in each Department?

I look forward to working with you to ensure that your nation's counternarcotics efforts are as sound and effective as possible. Thank you for your prompt attention to my request.

Sincerely,

ALFONSE M. D'AMATO,
*U.S. Senator.*

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[From the Congressional Record, Aug. 4, 1989]

## DEPARTMENT OF DEFENSE COUNTERNARCOTICS EFFORTS

Mr. D'AMATO. Mr. President, I rise today to call the attention of my colleagues to the abysmal performance—and nonperformance—of the Defense Department in spending the $300 million we provided to fund their part in the war on drugs.

Last year, we authorized and appropriated $300 million for DOD to take charge of detection and monitoring of air- and sea-borne smugglers. We put them in charge of integrating the counternarcotics communication system.

Mr. President, I have two questions: Where is the money? and, Who is in charge?

On May 17, I received a letter from Mr. L. Paul Dube "accounting" for the $300 million. According to that letter, $30.2 million had been made available to the services for the National Guard program on April 19, and a total of $200,000 had actually been expended.

That's right, only $200,000 of the $300,000 million had been spent by May 17, 7½ months into fiscal year 1989!

During the markup of the dire emergency supplemental, I, along with the distinguished senior Senator from Arizonz, Senator DECONCINI, offered an amendment to take $227.8 million of the $300 million away from DOD and give it to other agencies that are actually fighting the war on drugs.

That amendment lost, because OMB argued that it violated the budget summit agreement. As part of the debate on that amendment, DOD promised to spend the money we had provided.

On July 7, the Department sent over two reprogramming requests to move approximately $193 million from the "Drug Interdiction, Defense, 1989" account into a variety of procurement and research and development accounts. I cannot be more specific because the actual requests are classified.

I wrote to the distinguished chairman and the distinguished ranking member of the Defense Appropriations Subcommittee, requesting an immediate hearing on these reprogramming requests. Because time was so short my request could not be accommodated. However, the chairman responded that there would be a special hearing on DOD counternarcotics efforts after we return from the August recess.

Mr. President, we need to know what is going on with DOD's drug war effort. I understand that there is at least one classified section of the national drug strategy due to be issued on September 5 that will discuss the military's role in the drug war. We need to know more.

We need a plan—not just any plan, but one that meets Defense Department planning, programming, and budget standards for tackling the drug war. We do not have such a plan.

We need to have someone in charge over there. We do not have anyone in charge now. What we have is a recipe for disaster.

We have the Assistant Secretary of Defense for Reserve Affairs, Mr. Stephen Duncan, serving as the Secretary's principal adviser on narcotics matters. We are told that the Office of the Deputy Assistant Secretary of Defense for Drug Policy and Enforcement, is being moved into Mr. Duncan's organization.

But most of the budget authority will continue to rest in agencies and offices under the supervision of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

The Pacific Command, Atlantic Command, Southern Command, and the North American Air Defense Command are the operating agencies in the war on drugs, but DOD-level supervision of their drug war budget activities will be split, as will counternarcotics policy development and planning.

I repeat—Who is in charge here? The answer cannot be Dick Cheney, because, like President Bush, he has a few other high priority items competing for his time and attention.

DOD needs a single manager for the war on drugs, in whom policy, planning, programming, and budgeting functions are focused. Right now, we cannot hold any one person accountable if the Department's efforts are disorganized and late. A basic principle is that when many people are responsible, no one is responsible.

Last night, we authorized another $450 million for DOD's role in the war on drugs. Will it again take them most of fiscal year 1990 to make the money available? Will part of it expire at the end of the year because they have not used it?

This is a scandal and an outrage. At a time when we say we are nationalizing and mobilizing our efforts on the war on drugs, to have almost all of the $300 million unspent, poorly allocated, with a rush to beat the spending deadline.

The time has come for the Defense Department to put its first team to work on this problem, to sort out the organizational lines of authority, to make budget and policy decisionmaking functional and effective, and to actually start fighting the war on drugs!

They have sat on their hands long enough. I plan to ask them very tough questions at the forthcoming hearing. I am giving them fair notice, so that they will have time to develop good answers.

Alone among Federal agencies, DOD has the resources, the experience, and the ability to make a serious dent in drug smuggling and to discourage other aspects of the international drug trade.

Mr. President, I serve public notice that it is time for DOD to join the team. If they do not, they will bear the blame for it, and will

lose the resources we have authorized. I am dead serious about this and I hope they receive this message loud and clear.

Mr. President, to date their handling of these resources, these precious resources, is nothing short of shocking and scandalous. We must do better, otherwise we make a sham of the so-called war on drugs.

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THE SECRETARY OF DEFENSE,
*Washington, DC, November 13, 1989.*

Hon. ALFONSE M. D'AMATO,
*U.S. Senate,*
*Washington, DC.*

DEAR AL: Thank you for your letter of September 5 concerning the Department of Defense role in combatting the threat to our society of illegal narcotics. Answers to the questions you posed in your letter are enclosed.

In April, I asked Steve Duncan, the Assistant Secretary of Defense for Reserve Affairs, to assume a new responsibility as the DOD Coordinator for Drug Enforcement Policy and Support. On September 18, I issued guidance, a copy of which is attached, designed to assist in the swift and effective implementation of the President's National Drug Control Strategy within the Department. In that guidance, I made clear that the detection and countering of the production and trafficking of illegal drugs is a high priority national security mission of the Department of Defense. Pursuant to my direction, the Commanders-in-Chief of the key Unified and Specified Commands have now submitted their plans for carrying out this mission in their respective areas of responsibility. I am currently reviewing those plans.

I am confident now that we have the management and organizational structure that will maximize our contribution to the Administration's goal of a drug-free America. Your continuing commitment to the fight against illegal drugs is appreciated.

Sincerely,

DICK CHENEY.

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ANSWER TO SENATOR D'AMATO'S QUESTIONS

The following answers respond to the four unnumbered questions on page two of Senator D'Amato's September 5, 1989, letter, as well as Questions 18 and 20.

Answer: Anti-drug missions have a high priority within the Department of Defense. Executive decision making authority for issues concerning the Department's anti-drug activities is exercised by myself or, in my absence, by the Deputy Secretary. I have designated Mr. Stephen Duncan, the Assistant Secretary for Reserve Affairs, as the DOD Coordinator for Drug Enforcement Policy and Support. As such, he is responsible for the coordination and staffing of all drug policy issues relevant to the Department. I have assigned the responsibility to conduct operations to detect and monitor aircraft and maritime vessels suspected of smuggling drugs into the United States to the Combatant Commands through the Chairman, JCS. The Chairman also has the responsibility for overseeing the activities of the Combatant Commands in the performance of this mission as well as their other missions. He has, within his staff, a counternarcotics division which coordinates operational issues with the Unified and Specified Commanders. All policy and operational issues are fully staffed and recommendations are provided by the appropriate DOD agencies, the Joint Staff and my own staff. Decision making authority for these important issues has not been delegated. In addition to staffing within the Department of Defense, I participate in NSC deliberations and decisions which affect the Department's counternarcotics work. Our relationship with the Director, Office of National Drug Control Policy (ONDCP), has been, and continues to be, one of mutual respect, cooperation, and close coordination. We provide personnel and logistical support to ONDCP as well as staff input and suggestions as requested.

The defense planning process for FYs 1992 through 1997 is underway. As you correctly noted, I have directed that special attention be given to U.S. interests in Latin American concerning illegal drug production and trafficking. Since detection and monitoring is a formal mission of the Department, the issues are automatically included in our planning process. In order to prepare the Defense Planning Guidance, I have established the Defense Planning Resources Board (DPRB) to review and provide recommendations on all issues. The Secretaries of the Military Departments sit on the DPRB and, for selected issues, the Chiefs of the Military Services also participate in Board deliberations. I expect that, when completed, the Defense Planning Guidance will fully address DOD anti-drug issues.

We look forward to continued cooperation with the Director, ONDCP in combatting our Nation's drug problem. The Department of Defense is enthusiastically participating in the fight against the epidemic of illegal drugs while maintaining our defense readiness posture. My DOD Coordinator for Drug Enforcement Policy and Support has an excellent relationship with the Secretaries of the Military Departments and the senior leadership of the Defense Agencies who have the appropriate personnel within their staffs to coordinate their activities in support of the DOD's role in the National Drug Strategy.

The following are responses to your numbered questions:

1. Is there a clear statement of the goals the Department seeks to accomplish with the FY 89 appropriation of $300 million for DOD's counternarcotics efforts and a plan for achieving its objective? Is there a clear statement of the goals the Department seeks to accomplish with the $450 million authorized for counternarcotics efforts in the FY 1990 Senate Defense Authorization Bill and a plan for achieving those objectives?

Answer: The following goals of the FY 1989 program are carried forward for the FY 1990 program: (1) Support the President's National Drug Strategy; (2) Develop an effective counternarcotics surveillance capability along the southern border; (3) Enhance intelligence systems to provide timely, relevant intelligence support to the operating forces and law enforcement agencies; (4) Develop an effective integrated communications network to support drug interdiction command, control, communications, and intelligence capabilities; and (5) Support energetic National Guard counternarcotics operations under command of the State Governors. In addition, the FY 1990 program has the additional goals set forth in the Secretary's September 18 DOD Counternarcotics Guidance.

2. How much of the $300 million appropriated in FY 1989 will be carried over to FY 1990 and what are current plans for those funds?

Answer: The FY 1989 National Defense Appropriations Act appropriated $300 million to DOD for counternarcotics. Initially, the funding was appropriated for operations and maintenance (O&M), and military personnel. DOD submitted for congressional approval requests to reprogram the $300 million appropriation as follows:

Procurement (3 year funds), $192.077 million.

RDT&E (2 years funds), $1.5 million.

The remaining balance of $106.423 O&M was internally reprogrammed to the appropriate Services and Defense Agencies. Approval from the final congressional committee for the procurement reprogramming was signed on August 8, 1989. The $1.5 million RDT&E reprogramming request was not approved by the requisite Congressional committees.

Procurement funds were needed to acquire land and sea-based aerostats, communications equipment and other necessary items. Upon receipt of Congressional approval, the procurement reprogramming funds were released to the Services and Defense Agencies for obligation to the various projects which were approved as part of the FY 1989 DOD Counterdrug Program. The funds will carry forward into FY 1990 for execution.

All of the $300 million was identified to fund specific programs and projects that were contained in the approved FY 1989 DOD Counterdrug Program.

3. Will all remaining funds that have not been reprogrammed as of September 1 be obligated within FY 1989? Will any part of the $300 million appropriated in FY 1989 lapse?

Answer: It appears that some of the funds provided for O&M and MILPERS in support of the National Guard were not obligated. With heavy seasonally driven program execution now taking place and the normal lag in receiving accounting data, we do not yet know the amount of funds that have lapsed.

4. Will any procurement actions be completed (in the sense that equipment or materials are actually delivered to a procuring authority) using reprogrammed FY 1989 funds before the end of FY 1989?

Answer: Yes. Subsequent to receipt of congressional procurement reprogramming approval and release of funds to the respective Services and Defense Agencies, procurement actions have proceeded rapidly toward fruition. The contracting and delivery process will be completed as rapidly as possible. However, in view of the relatively compressed time frame between reprogramming approval and the end of FY 1989, most deliveries will occur in FY 1990.

5. Why did the FY 1989 reprogramming request come to Congress without full programmatic documentation to support the request, including a plan explaining what the Defense Department expects these expenditures to accomplish and how the Department intends to manage these programs? What programmatic documentation and budget justification documents are now available to support the Department's reprogramming request?

Answer: The February 1989 DOD Report to Congress outlined DOD's intentions and plans for execution of the $300 million appropriation, and provided much of the underpinning for the development of the FY 1989 Counterdrug Program which was approved on May 23, 1989. Both formed the basis for justification of the reprogramming requests. Although the actual transmittal on which the reprogramming requests are conveyed to Congress (Department of Defense Form 1415) does not normally include

substantial programmatic documentation, DOD staff members have responded to requests for elaboration and clarification and will continue to do so.

6. Has a Concept of Operation been completed for each Joint Task Force (JTF) site?

Answer: Yes. Two Joint Task Forces, JTF-4 in Key West, Florida, reporting to Commander-in-Chief Atlantic and JTF-5 in Alameda, California, reporting to Commander-in-Chief Pacific were created to conduct surveillance missions, fuse technical intelligence, and coordinate detection and monitoring missions with law enforcement agencies. JTF-4 has been operational 24-hours a day, 7 days a week since April 1989. JTF-5 became operational 24-hours a day, 7 days a week in October 1989. They are currently conducting operations against both airborne and seagoing targets employing a variety of DOD assets. The JTF commanders hold quarterly planning conferences with the law enforcement agencies to schedule joint counterdrug surveillance and interdiction missions. These conferences reduce duplication of effort and ensure detection and interdiction assets are available to respond to emergent intelligence. The JTFs have been successful in joint "hand off" operations, and have provided valuable fused intelligence to the law enforcement agencies. The Secretary of Defense has approved in principle a Commander, U.S. Forces Command recommendation that a new JTF-6 be established to coordinate DOD support to drug law enforcement agency operations along the southwest border. Detailed planning and interagency coordination have been initiated.

7. Have all intelligence and radar assets been identified and designated for communications integration into the JTF's?

Answer: Yes. In early FY 1990 both JTFs 4 and 5 will have complete intelligence centers capable of fully fusing intelligence products from all DOD sources. The JTFs will have access to the target data from all operational land-based and sea-based aerostats, deployed mobile radars and the radars in the Caribbean Basin Radar Network.

8. Is the Department developing a plan to phase out use of operational military sensor platforms in favor of dedicated drug enforcement sensor platforms, e.g. aerostats, off shore oil rigs, etc?

Answer: No. The drug smugglers mainly use altered civilian aircraft and boats to transport drugs. Radar detection capabilities vary by platform, and small targets often fall below detection parameters. A short warning time, the potential of "low flyers," and exceptionally small, surface targets dictate continued support and employment of operational military sensors. DOD has selected a mix of land and sea-based aerostats to provide the needed continous coverage along the approaches to our borders. The JTFs will use military aircraft, ships, and mobile radars to fill in the gaps in land and sea-based aerostate coverage. In addition, a number of military platforms will be on standby to respond to intelligence cueing. Together, the dedicated sensor platforms and military platforms will provide a cost-effective and flexible radar barrier.

9. Have communications plans been established between JTF-4 and JTF-5, Customs C3I and other Federal, state and local drug interdiction agencies? Please also explain the organizational lines of authority between the JTFs and higher DOD authorities, from both policy and budget perspectives.

Answer: DOD and Law Enforcement Agency communications plans were reviewed in the DOD's January and May 1989 reports to Congress. Additionally, the National Telecommunications Master Plan for Drug Enforcement provides the required guidance, recommendations, standards, and strategy for effecting a secure and interoperable communications capability. The Drug Enforcement Telecommunications Implementation Plan (DETIP), developed to implement the Master Plan, is now prepared for intra-agency coordination and will provide DOD with a detailed plan for fielding the required communications equipment and security plans. All communication plans will be updated as the strategy and participants evolve.

Regarding the organizational lines of authority, the JTFs respond directly to the respective CINC tasking and the CINCs receive their policy guidance from the Secretary of Defense. The JTFs receive their budget authority through the same budgetary channels as their respective CINCs.

10. What are your plans to ensure the integrity and protection of classified information within and between facilities?

Answer: The integrity and protection of classified information is the responsibility of every agency. A communications infrastructure, when fully implemented (as described in the Master and Implementation Plans), will provide the required protection and security to pass sensitive intelligence relating to narcotics activities. Information referred to a DOD agency by a law enforcement agency (LEA) will maintain the classification applied to it by the LEA. The current and planned mode of transmission of classified information to the various facilities is through the rapidly expanding "NARC NET" which is a unique circuit of the Defense Data Net. Information transmitted is encrypted and may be classified up to Top Secret. Additionally, STU III telephones are employed for the rapid transmission of classified information, with units available at all sites.

11. What is the planned Defense Department interface with the Customs C3I Centers with respect to type and quality of interdiction data provided?

Answer. By capitalizing on various sophisticated technologies currently available, DOD will provide fused intelligence to the C3I centers utilizing JTF-4 and JTF-5 as the conduits for the flow of that information. The types of intelligence passed will be both tactical and strategic in nature, derived from human and electronic detection resources. The information will be evaluated for effectiveness and serviceability and immediately relayed to the civilian law enforcement agencies.

12. Has the Defense Department requested and received industry support to validate operational concepts and system availability?

Answer: DOD's interface with representatives of industry is extensive and continuing. Active solicitation for presentations on technology which may be applied to the counterdrug effort have been forwarded to all major corporations, and a number of innovative concepts have been added to procurement plans. Additionally, consulting firms with longstanding DOD contracts have been asked to review several issues related to communications connectivity and tactics development.

13. What is the status of the JTF-4 and JTF-5 facilities regarding construction, operating equipment, staffing, etc?

Answer: JTF-4 is an operational Headquarters. Facility enhancement and equipment integration is nearly 80 percent complete; funding has been provided to permit the achievment of full capability by summer 1990. Manning has been provided by TDY up until August 1989; however, PCS personnel replacements are arriving at this time. Full permanent manning will occur by January 1990.

JTF-5 is currently operating at approximately 75 percent of planned capacity. Full manning will occur in the spring of 1990 and all construction will be complete in FY 1991. JTF-4 was given priority in funding and personnel because threats in that region are higher at the present time.

14. Will the JTF sites be used for functions other than drug interdiction?

Answer: No. Both JTFs are conducting counternarcotic operations only.

15. Will Southern Command move from Panama City? If so, has a location for its new headquarters been selected? Will the new location incorporate communication coordination for the Defense Department's drug interdiction activities?

Answer: Southern Command must move no later than December 31, 1999 in accordance with the Panama Canal Treaty. The decision on its new headquarters location has not been made. The new location will be tied into the Defense Data Network and fully linked into counternarcotic operations.

16. On July 19, you sent a memorandum to your subordinates on the subject of the Defense Planning Guidance for FY 1992-1997. In that memorandum, you indicate that you have asked the Under Secretary of Defense for Policy to prepare Proposed Defense Planning Guidance for FY 1992-1997 program and budget planning on the issue of: U.S. interests in Latin America of countering the production and trafficking of illegal drugs and of assisting countries in providing for their own security.

a. Are there any plans for similar direction regarding development of Defense Planning Guidance for the FY 1992-1997 program for accomplishing the Department's counternarcotics detection and monitoring mission, and for support for drug enforcement generally, as provided for in 10 U.S.C. 371, et seq.?

Answer: The Secretary's Counternarcotics Guidance of September 18, 1989 provides the basis guidance for the DOD counternarcotics program, covering all facets of the program. Further internal planning guidance in the form of the Defense Planning Guidance is in process.

b. For which part of the counternarcotics expenditures presented for the Senate Appropriations Committee's approval has five year planning, programming, and budget documentation been prepared?

Answer: DOD is finalizing the program and budget to support the three mission areas outlined in the FY 1989 Defense Authorization Act (National Guard, C3I, Detection and Monitoring). The process to determine the employment of funds earmarked for support of the international initiative has been initiated.

17. When did the Department send Congress the May 1989 Report on the "Integration of Command, Control, Communications and Technical Intelligence into an Effective Communications Network for Drug Interdiction?" When will Congress receive the June 1989 Implementation Plan described on page 20 of the May 1989 Report? Does the June 1989 report exist?

Answer. The May 1989 Report on the "Integration of Command, Control, Communications and Technical Intelligence into an

Effective Communications Network for Drug Interdiction" was forwarded by the President to the HAC, SAC, HASC, and SASC on July 20, 1989. The Drug Enforcement Telecommunications Implementation Plan (DETIP), described on page 20 of the May 1989 report, does exist and is currently undergoing agency review. The DETIP was developed by the Interagency Communications Interoperability Working Group, under the auspices of the Science and Technology Committee, with DOD as the major contributor. The DETIP will be forwarded to the Director, ONDCP for approval upon completion of interagency review.

18. Please explain how the Department's plans for its internal organization fulfill its responsibilities under the President's and the Director of National Drug Control Policy's National Drug Strategy?

Answer. See page one.

19. How will the officer in charge of the counternarcotics element in the Office of the Joint Chiefs of Staff (J-3) coordinate with, and exercise staff supervision over other offices and agencies?

Answer. The officer in charge of counternarcotics operations on the Joint Staff coordinates operations between all law enforcement agencies and the DOD. Members of the Joint Staff attend all interagency meetings to ensure connectivity between all agencies involved. Additionally there are U.S. Customs and U.S. Coast Guard representatives on the Joint Staff attached to the counternarcotics branch. These representatives ensure the smooth flow of information between the DOD and law enforcement agencies.

20. How will the Military Departments (as distinguished from the unified and specified commands) participate in your counternarcotics strategy and activities, and who will be in charge of the effort in each Department?

Answer. See page one.

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THE SECRETARY OF DEFENSE,
*Washington, DC, September 18, 1989.*

DEPARTMENT OF DEFENSE GUIDANCE FOR IMPLEMENTATION OF THE PRESIDENT'S NATIONAL DRUG CONTROL STRATEGY

On September 5, 1989, the President issued the National Drug Control Strategy pursuant to the Anti-Drug Abuse Act of 1988. The President's strategy provides for an integrated program of counternarcotics actions designed to move the country substantially closer to the goal of a drug-free America. This guidance is designed to assist in the swift and effective implementation of the President's strategy within the Department of Defense.

The supply of illict drugs to the United States from abroad, the associated violence and international instability, and the use of illegal drugs within the country pose a direct threat to the sovereignty and security of the country. The threat of illicit drugs strikes at the heart of the Nation's values. It inflicts increased crime and violence on our society and attacks the well-being and productivity of our citizenry. One of the principal foreign policy objectives of this Administration is to reduce, and if possible to eliminate, the flow of illegal narcotic substances to the United States. Also, the Congress has by statute assigned to the Department the duty to serve as the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs to the United States. For these reasons, the detection and countering of the production, trafficking and use of illegal drugs is a high priority national security mission of the Department of Defense.

The Nation ultimately will be rid of the scourge of illegal drugs only through the sustained application of the energy, courage and determination of the American people. As the President's strategy reflects, the Nation must seek to eliminate both the demand and the supply for illegal drugs, for the Nation will conquer neither if the other is left unchecked.

The Department of Defense, with the Department of State and U.S. law enforcement agencies, will help lead the attack on the supply of illegal drugs from abroad under the President's strategy. The efforts of the Department of Defense will complement those of other U.S. agencies and cooperating foreign countries. The Department of Defense will work to advance substantially the national objective of reducing the flow of illegal drugs into the United States through the effective application of available resources consistent with our national values and legal framework.

An effective attack on the flow of illegal drugs depends upon action at every phase of the flow: (1) in the countries that are the sources of the drugs, (2) in transit from the source countries to the United States, and (3) in distribution in the United States. The United States Armed Forces can assist in the attack on the supply of drugs in each of these phases.

I. THE ATTACK ON DRUGS AT THE SOURCE

The Department of Defense will assist in the attack on production of illegal drugs at the source. The production of illegal drugs is a complex criminal enterprise. The criminal enterprise requires illicit labor, capital, entrepreneurship and a substantial infrastructure to grow the plants that are the raw materials for illegal drugs and to refine and manufacture the illegal drugs. Reducing the availability of these elements of illegal drug production in the countries from which illegal drugs originate would reduce the flow of illegal drugs to the United States.

The Department of Defense can assist in the three elements of an effective attack on the supply of drugs in source countries: (1) assistance for nation-building, (2) operational support to host-country forces, and (3) cooperation with host-country forces to prevent drug exports. Pursuant to the National Drug Control Strategy near-term efforts will focus on the Andean nations from which most cocaine entering the United States originates. A key requirement for the success of U.S. efforts directed at the supply of illegal drugs, and in particular U.S. counternarcotics operations, will be the cooperation of the foreign countries involved.

As the National Drug Control Strategy indicates with respect to the Andean countries, a sustained, multi-year effort to provide economic, security, and law enforcement assistance is an essential element for a successful fight against illegal drugs abroad. Drug-producing criminal organizations control what amounts to private armies that challenge the law enforcement and military forces of their countries. Often such organizations are intertwined with insurgent forces that challenge directly the governments of their countries. The National Drug Control Strategy calls for the United States to reinforce the abilities of the governments of the countries cooperating in the fight against illegal drugs to combat drug-producing organizations. Security assistance will help enable such a government to protect itself from criminal drug enterprises and drug-related insurgencies, and to enforce its laws against drug producers and traffickers. Future economic assistance will help to strengthen the national economy and keep the labor, capital and entrepreneurship available in the country channeled toward useful production and away from drug production. Success in other efforts to attack the supply of illegal drugs depends in the long-run upon the establishment of healthy economies in drug-producing countries and the restoration of government authority in those countries. To assist in the implementation of this element of the National Drug Control Strategy, the Department of Defense will execute security assistance programs in accordance with Presidential instructions and applicable law, and in coordination with the Department of State.

Effective implementation of the National Drug Control Strategy requires that the Department of Defense be prepared to provide counternarcotics operational support to the forces of cooperating countries. The U.S. Armed Forces can provide foreign forces substantial assistance in training, reconnaissance, command and control, planning, logistics, medical support and civic action in connection with foreign forces' operations against the infrastructure of drug-producing criminal enterprises. Such U.S. military support would be designed to increase the effectiveness of foreign forces' efforts to destroy drug processing laboratories, disrupt drug-producing enterprises, and control the land, river and air routes by which the enterprises exfiltrate illegal drugs from the country.

In addition to assistance for nation-building and support for foreign forces' strikes on drug-producing enterprises, the U.S. can assist law enforcement agencies of cooperating foreign countries in combatting the export of drugs from those countries. The Department of Defense can assist with an improved intelligence collection effort, which will be essential not only to assist the governments of the source countries, but also for U.S. actions in the second line of defense—the attack on drugs in transit to the United States.

II. THE ATTACK ON DRUGS IN TRANSIT

The substantially increased effort to attack drugs at their source in the drug-producing countries as a first line of defense should help reduce over time the export of illegal drugs to the U.S. Nevertheless, drug-producing criminal enterprises in those countries currently are so vast in scope that, even if U.S. efforts to attack drugs at the source are highly successful, the flow of drugs by sea, air, and land will continue. As the second line of defense against the flow of illegal drugs, the U.S. armed forces will implement the National Drug Control Strategy through substantial efforts to counter the flow of illegal drugs in transit to the United States, both outside the United States and at the Nation's borders and ports of entry. The Department's service pursuant to statutory direction as the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs to the United States will prove particularly important to the success of this effort.

Deployment of appropriate elements of the U.S. armed forces with the primary mission to interdict and deter the flow of drugs should over time help reduce the flow of illegal drugs into the U.S. At a minimum, deploying the armed forces with this mission

should have the immediate effect of substantially complicating the logistical difficulties of criminal drug traffickers and increasing the costs and risks of their drug smuggling activities.

As a high priority, United States military counternarcotics deployments will emphasize combatting the flow of drugs across the Caribbean Sea and across the southern border of the United States. The Department of Defense will proceed with planning to deploy a substantial Caribbean Counternarcotics Task Force, with appropriate air and maritime drug interdiction assets and aerial and maritime detection and monitoring assets, to combat the flow of illegal drugs from Latin America through the Caribbean Sea. The Department also will proceed with planning for other deployments of U.S. forces to complement the counternarcotics actions of U.S. law enforcement agencies and cooperating foreign governments.

Success of the attack on drugs in transit will require sustained deployment of appropriately trained and equipped members of the U.S. armed forces and substantially improved cooperation between the armed forces and U.S. law enforcement agencies. The substantial increase in military participation in the attack on drugs in transit is intended to be in addition to, rather than in place of, Federal law enforcement agencies' efforts.

The success of interdiction and deterrence efforts will depend greatly upon the ability of the Department of Defense and law enforcement agencies to marshal effectively the myriad command, control, communications and intelligence resources they possess into an integrated counternarcotics network. The Department of Defense will serve as the single lead Federal agency for the detection and monitoring of aerial and maritime transit of illegal drugs and will be prepared, with the cooperation of U.S. enforcement agencies, to integrate expeditiously into an effective network the Federal command, control, communications, and technical intelligence assets that are dedicated to the mission of interdicting illegal drugs from abroad. The Department of Defense will seek to develop and employ when appropriate the capability to exercise tactical control of Federal detection and monitoring assets actively dedicated to counternarcotics operations outside the United States and in border areas.

To ensure that action to implement the President's National Drug Control Strategy begins immediately, the Commanders-in-Chief of all unified and specified combatant commands will be directed to elevate substantially the mission priority within their commands of actions to fight illegal drugs.

III. THE ATTACK ON DRUGS IN THE UNITED STATES

After the first and second lines of defense—actions directed at illegal drugs in source countries and in transit—the third line of defense against drugs will be in the United States itself. The role of the armed forces in the third line of defense includes both actions to reduce the supply of illegal drugs and actions to reduce the demand for those drugs.

Within the United States, to assist in reducing the supply of illegal drugs, the counternarcotics actions of the Department of Defense will emphasize support to Federal, State and local law enforcement agencies, and the National Guard in State status. The Department of Defense will assist requesting law enforcement agencies and the National Guard with training, reconnaissance, command and control planning, and logistics for counternarcotics operations. In appropriate cases, armed forces personnel and equipment will be detailed directly to law enforcement agencies to assist in the fight. The Department of Defense will ensure that its administrative and command structures permit rapid and effective response to appropriate requests for counternarcotics assistance from law enforcement agencies and the National Guard. The Department will continue to assist the Governors of the several States in employing the National Guard in the fight against illegal drugs.

With respect to reduction of demand for drugs within the United States, the Department of Defense bears an important responsibility to reduce the use of illegal drugs within the armed forces and among its civilian personnel. The Department of Defense has met with substantial success in its demand reduction efforts with armed forces personnel through aggressive drug abuse education and drug-testing programs—an 82% reduction in drug abuse since 1980. The Department will step up its efforts to combat illegal drug use by departmental personnel and will make available to other large organizations its experience in reducing the demand for illegal drugs. The Department also will emphasize drug abuse awareness and prevention programs in the Department's school system, which educates over 190,000 of America's children.

The Department of Defense will be prepared to assist the Department of Justice with its responsibilities for incarceration and rehabilition of drug criminals, through means such as training Federal, State and local personnel in the conduct of rehabilitation-oriented training camps for first-offense drug abusers and providing overflow facilities for incarceration of those convicted of drug crimes.

The President's National Drug Control Strategy emphasizes a multi-national and multi-agency approach to reduction of the drug supply. The Department of Defense has a crucial role in defending the United States from the scourge of illegal drugs. The Department will employ the resources at its command to accomplish that mission effectively. Should it prove necessary in implementing the President's strategy effectively, any needed additional statutory authority will be sought. The men and women of America's armed forces will fight the production, trafficking and use of illegal drugs, as an important part of the national effort to secure for all Americans a drug-free America.

RICHARD B. CHENEY,
*Secretary of Defense.*●

## DOLPHIN PROTECTION BILL

● Mr. BIDEN. Mr. President, on the first day the Senate returns to business in 1990, I will be joined by Senators LIEBERMAN, JEFFORDS, WIRTH, MOYNIHAN, PELL, and SIMON in introducing legislation to require the labeling of tuna cans with information on the method used to catch the tuna. Tuna can labels would be required to clearly state whether the tuna was caught in ways that do not endanger dolphins, or whether it was caught using technologies known to kill dolphins.

Seventeen years ago, the Marine Mammal Protection Act was signed into law. It was landmark legislation, commiting our Nation to the conservation of threatened marine mammals. The MMPA established a goal of eliminating dolphin mortality from tuna fishing operations.

It was a noble goal that has proven to be elusive. The tools that have been used to date—permits, observers, requirements for comparable programs in foreign countries—have worked to a certain extent, but progress of late has been stalled. After reducing the number of dolphin deaths from 200,000 to 20,000 annually, the domestic fleet has failed to make continued headway. Undermining the effect of this reduction, the foreign fleet now accounts for an estimated 80,000 dolphins deaths in their tuna fishing operations.

Do we have to accept a continuation of the existing program as the only means to reach our goal? Or are there alternatives or additions that should be considered? Many of us believe consumer information is an option that needs to be added to this effort. That is what the bill we will introduce in January provides.

Mr. President, we have witnessed a change of public interest in doing something about the world's environment. For some of these problems, it is clear the consumer demand for certain products is the source of the threats posed to them. Demand for ivory is why the survival of African elephants is threatened. Demand for tropical hardwoods is one reason why vast rain forests are under increasing pressure.

But in the case of dolphins, it is not the demand for tuna per se that is driving the problem. It is the practices of the tuna industry that are leading to thousands of deaths each year. Alternatives are available to the industry, but they have little reason to pursue them under existing conditions.

There is increasing evidence that the public is willing to put their pocketbook behind environmental products. The labeling requirement of the bill to be introduced in January will give consumers an environmental option for tuna, one that is consistent with our longstanding conservation efforts for dolphins.

After 17 years of effort, experience shows that the existing program can only be expected to take us so far. The time is right to allow consumers a voice in this effort. I hope my colleagues will review this legislation during the recess, and join us in introducing this proposal on our first day back in January.●

## WOMEN IN MILITARY SERVICE FOUNDATION MEMORIAL DESIGN COMPETITION

● Mr. WARNER. Mr. President, I rise this evening to praise efforts by a dedicated group of women and men to design and then erect a memorial to the women who have served, serve today, and will serve in the future in the Armed Forces of the United States of America.

Legislation now provides for a most prestigious site, in the vicinity of the entrance to Arlington National Cemetery. Congresswoman OAKAR was in the forefront of this effort.

This group, entitled the "Women in Military Service Memorial Foundation," faces a formidable challenge. But having had the privilege of working with them, I can assure all, they are up to the challenge.

Their goal is to raise funds to build the memorial, without significant financial assistance from Federal revenues.

Furthermore, this foundation is working against a difficult deadline. They have to raise a very significant sum of money before November 6, 1991.

That deadline was imposed by Congress in 1986, when it gave its support with an authorization for this project if a fundraising goal and the timetable could be met.

Mr. President, I stand this evening to be counted, once again, as a staunch supporter of the goal to erect a monument to the women in the military.

I, like other Members of Congress, are working to further the foundation's aims and add momentum to its efforts.

I was privileged to assist the Vietnam veterans who, 10 years ago, launched their effort to create the Vietnam Veterans Memorial on the Mall. It was a long, hard fought task to complete that incredibly successful memorial.

Because I experienced firsthand the controversy surrounding the evolution of the Vietnam Veterans Memorial, I have felt some obligation to draw this foundation's attention to the tough road ahead.

When it comes to artistic designs, especially one to be located on such hallowed ground, men and women of good faith may honestly disagree.

I do not rank myself as an expert to any degree in the field of design, so I leave that task to others.

I dare say that we may see some give and take before this memorial is finished, but I have no doubt that a proper design will finally evolve, as it did with the Vietnam Veterans Memorial.

I feel deeply that the memorial, in some form, deserves to be built.

Contrary to the stereotypes, war is not solely the province of men. Throughout our Nation's history, thousands of women have served in uniform—half a million in World War II; 50,000 in Korea; 10,000 in Vietnam. Some died in action. Others become prisoners of war.

Someday, I am confident, a memorial to these women will stand, blending with the serenity, simplicity, and dignity that is the character of Arlington National Cemetery.●

## NOMINATION OF JAMES CASON

● Mr. DASCHLE. Mr. President, I rise today to comment on the nomination of Mr. James Cason to be Assistant Secretary of Agriculture for Natural Resources.

This particular nomination has engendered considerable controversy in the Senate, and it is cited by some Senators as an example of what they see as unreasonable delays in Senate consideration of certain Presidential nominees. It has also been charged that Mr. Cason's nomination has been a target of an unfair lobbying effort by particular interest groups.

While I share my colleagues' view that the Senate should give broad latitude to the President in building his management team and that Presidential nominations should be reviewed as expeditiously as possible, I do not think that the Cason case is an example of unnecessary or unreasonable delay. Rather, in my judgment, it stands as an example of the advisory role the Senate should play in the confirmation process. Legitimate questions have been raised about Mr. Cason's suitability for the Assistant Secretary position, and both the Agriculture Committee and the Senate had a responsibility to seriously review them. That has been done, and the Senate is now ready to vote on the Cason nomination.

As a member of the Senate Agriculture Committee, I came to the hearings on the Cason nomination interested in Mr. Cason's testimony on a number of controversial issues. It was Mr. Cason's answers to these questions that enabled me to weigh the conflicting reports we all have heard about his qualifications and motivations.

As this nomination has been discussed, Mr. Cason's appropriateness for the important job of Assistant Secretary of Agriculture has been questioned on two separate axes. The first axis is whether philosophically Mr. Cason is an appropriate individual to have immediate responsibility for the Forest Service and the Soil Conservation Service. While important, I found this to be the less critical concern, since in any political system there will be different points of view. Generally, the Senate should presume the acceptability of the President's nominees in this regard. However, if there are questions elsewhere, or the philosophical differences are so extreme, this factor should play a role in the Senate's decision on whether to confirm a nominee.

The second axis is the nominee's competence and judgment and those factors' influence on his ability to discharge the functions of Assistant Secretary of Agriculture for Natural Resources. My sense is that this aspect of Mr. Cason's nomination has influenced many Senators' consideration of Mr. Cason as much or more than concerns over philosophical bias. Senators who have philosophical differences with Mr. Cason have pointed out concerns about his management ability and judgment as evidenced by his track record in previous executive branch jobs. The challenge for the Members of this body was to decide whether these perceived problems are real and would affect his performance as Assistant Secretary.

At the time of the Agriculture Committee hearings on this nomination, I focused much of my own attention on Mr. Cason's management record and judgment as an Interior Department official. The information raised at the hearing, including Mr. Cason's testimony, lead me to the conclusion that Mr. Cason should not be confirmed as Assistant Secretary of Agriculture for Natural Resources.

Mr. Cason's tenure at Interior left questions about his managerial ability. For example, the hearing confirmed that the one project he had listed as a major accomplishment of his service at the Department of the Interior was an unmitigated disaster. Mr. Cason became responsible in 1985 for the development and implementation of a computerized surface mining block permit system, known as the applicant/violator system. An independent report of the system in 1987 indicated that the data in the system could not be relied on for making permit decisions. A GAO report in January of this year indicated that, if anything, the situation had become worse. Mr. Cason's testimony in the hearing on this issue did little to alleviate concerns about his management skills.

I was also dissatisfied at the hearing with Mr. Cason's responses to my question concerning his attempts to have documents relating to coal mining in the national parks eliminated from Government records. This kind of behavior leads me to the conclusion that Mr. Cason does not possess the level of judgment necessary for the Assistant Secretary of Agriculture for Natural Resources.

Listening to the rest of the testimony at these hearings, I become increasingly concerned about Mr. Cason's philosophical biases. As the chairman of the committee, my distinguished colleague, Senator LEAHY, so aptly said, Mr. Cason has a consistent history of favoring private interests over

the public interest. My impression of his apparent contrition before the committee is that this is no more than convenient conversion. I have to conclude that Mr. Cason's biases are at least as strong a reason for his unsuitability for the position for which he has been nominated as any of his management shortcomings.

I do not need to go into detail here about all the other disturbing cases from Mr. Cason's record. There has been adequate discussion at the hearing and elsewhere of his involvement in bargain basement sales of oil shale patents, suppression of a Bureau of Land Management report on the spotted owl, and numerous other decisions that Mr. Cason made that have since been overturned by the new Secretary of the Interior. It is sufficient to say that these cases, together with the other issues referred to in my statement, confirm in my mind that Mr. Cason's nomination for the position of Assistant Secretary of Agriculture for Natural Resources should be rejected by the Senate.

Mr. President, now that it is clear the Senate will not take a vote on the nomination, I would just reiterate the concern that has already been expressed by several of my colleagues—that the President not place Mr. Cason or anyone else into this important policy and management position by way of a recess appointment. I encourage President Bush to immediately withdraw Mr. Cason's nomination and work with the Congress and all interested parties to put forward a suitable candidate for Assistant Secretary of Agriculture for Natural Resources. That person should have the ability to balance interests: between private gain and public development and conservation, and between competing multiple-use objectives. The Senate Agriculture Committee stands ready to move with all deliberate speed to confirm a suitable candidate for this important position as soon as one is put forward.●

## PROJECT HOPE IN MILWAUKEE, WI

● Mr. KASTEN. Mr. President, I rise today to call to the attention of the Senate an innovative low-income housing program in Milwaukee, WI, called Project HOPE sponsored by Wheaton Franciscan Services, Inc.

Project HOPE—Housing of People Empowered—is an example of the kind of private-public partnership that we must encourage if we want to wage a successful war against poverty and homelessness. Project HOPE focuses on empowering the poor and unleashing the power of private sector entrepreneurship to help make the dream of homeownership a reality for low- and moderate-income Milwaukians.

Project HOPE is designed to help poor people become self-supporting, contributing and dignified individuals. Through Project HOPE, Franciscan Ministries purchase rehabilitated housing in Milwaukee's inner city and provides the housing to low-income families at affordable rents. Project HOPE seeks to empower tenants by giving them the opportunity to purchase these houses. It also creates the Home Ownership Program for Employees in which Milwaukee businessmen and women help make homeownership a reality for their employees. Project HOPE proposes to take the boards off HUD-foreclosed homes—and turn them into decent affordable housing for Milwaukee's poor. All of this is financed by a private-public partnership of local government, community lending institutions, Milwaukee businesses, foundations, and community-based organizations.

Mr. President, the principles behind Project HOPE are identical with those of President Bush's and HUD Secretary Kemp's HOPE initiative: empowered, self-help, private enterprise, and opportunity. It rejects the idea that the only answer to homelessness and poverty is the expansion of public housing construction, entitlement programs, and government interference in poor people's lives. Poor people want a hand up—not a handout.

The President's HOPE initiative would create millions of new private sector jobs through the enactment of 50 pro-growth enterprise zones, expanded homeownership for young families by allowing penalty-free withdrawal from individual retirement accounts, and increase the availability of rental housing by extending the low-income housing tax credit.

HOPE also would provide $2.15 billion in HOPE grants, partially matched by localities and nonprofit organizations, to increase homeownership opportunities for low-income families. These HOPE grants will be used for rehabilitation, acquisition, technical assistance, capital reserves, and mortgage assistance, but not for new construction.

In my view, Project HOPE in Milwaukee meets the basic criteria for these proposed HOPE grants. Wheaton Franciscan Services estimates that a 2-year $30 million grant to Project HOPE would provide 300 families with decent housing, allow 700 families to become homeowners, and provide 1,000 families with support-services to encourage self-help. This seed money will allow Project HOPE to expand its private-public partnership efforts to achieve a more secure funding base.

Mr. President, swift, enactment of the President's HOPE program will strengthen the ability of nonprofit organizations like Project HOPE to provide innercity families with decent housing and expand opportunities for homeownership. The enactment of enterprise zones and a capital gains tax cut will create the kind of job-creating economic environment that is essential to a successful struggle against despair, homelessness, and poverty.

Given the recent HUD scandal and the lingering homelessness problem, it is clear that the Nation's current housing policies and programs are not working well. Expanding these inefficient Government programs would do nothing to break the cycle of dependency among poor people. The President's HOPE initiative represents a progressive conservative alternative to the liberal tax and spend approach of the past. HOPE will set a bold new course for America's housing policy—and private sector, nonprofit and community-based efforts in cities across the country like Project HOPE in Milwaukee will light the path.●

## CONFERENCE REPORT TO ACCOMPANY H.R. 3299

● Mr. D'AMATO. Mr. President, as a conferee on the House reconciliation bill provisions for self-funding of the Securities Exchange Commission, I voted against concurrence with the House's self-funding proposal. My vote not to concur with the House Energy and Commerce Committee's initiative does not reflect any disagreement on my part with the main purpose of that committee's proposal. I remain, as I have always been, a staunch supporter of full funding for the SEC's efforts toward better enforcement of the securities laws and better regulation of the securities markets.

Because I support the general purpose of the self-funding proposal contained in the House reconciliation bill I carefully weighed both the policy and the procedural aspects of the House proposal. Four considerations weighed heavily in my decision to oppose the House provision. First, the self-funding proposal was complicated. It substantially changed the relationship between the Commission and its authorizing and appropriating committees by fixing its fee levels as a function of its authorization and appropriation.

Second, self-funding of the SEC raises similar issues for other regulatory agencies within the jurisdiction of the Banking Committee—for which I was a conferee—and in the larger context of all regulatory agencies. The precedent of taking an agency that makes money off budget without thorough review of its precedent would be hasty, particularly in the cloudy environment of reconciliation legislation.

Third, the long-term effect of this action on the Federal budget would probably be negative. Under the House proposal, the surplus fees which have in the past provided funds to the Treasury which can be spent on enforcement of the securities laws

through other agencies would be lost in years beyond 1992.

Fourth, self-funding presents a new regime for SEC funding in which the relationship between the Commission's funding level and the level of activity in the industry it regulates is changed. Mr. President, I realize this is a sensitive issue, but the integrity of the SEC is absolutely paramount to this Senator. Therefore, without making any judgment as to whether such a change in regime is advisable, I believe additional review by the Banking Committee in the normal course of legislation is warranted.

Therefore, I have voted not to accept the House reconciliation plan on self-funding of the SEC.●

## SITUATION IN EL SALVADOR AND LEAHY AMENDMENT

● Mr. BINGAMAN. Mr. President, last night, Senator LEAHY offered an amendment to the Foreign Operations Appropriations Act which would have conditioned 30 percent of the military assistance for El Salvador on the successful conclusion of an investigation into the murders of six Jesuit priests, their cook, and her daughter, on November 16. I strongly support conditioning military assistance to El Salvador on improvements in that country's human rights record and reform of its judicial system. Unfortunately, the amendment was tabled on a vote of 58-39, and no conditions were placed on aid to El Salvador.

Overall, United States policy in Central America has for too long been based on military aid and military solutions, while opportunities to promote a peaceful resolution of conflicts in the region have not been adequately supported. The situation in El Salvador today is a reflection of our priorities.

I strongly condemn both the rebel FMLN army, which launched this latest offensive and chose to pursue its war in the most populated urban sections of San Salvador, and the right, if they are, as many believe, responsible for the tragic murders that took place on November 16. The United States should not support extremism of this sort in any country or from any part of the political spectrum. I only hope that a center remains in El Salvador upon which peace can be built.

I believe that we should finally begin to place our emphasis on a peaceful resolution of this conflict, rather than on fueling this war any further. I hope that this is the last offensive of the war, and that President Cristiani will move forward in pursuit of peace and a greater respect for human rights in El Salvador. And if pressure from the United States will help achieve that end, then we should assuredly bring that pressure to bear.●

## THE LESSONS OF KRASNOYARSK

● Mr. BIDEN. Mr. President, Soviet Foreign Minister Shevardnadze's admission that the Krasnoyarsk radar violates the ABM Treaty—and will therefore be dismantled—was a victory for arms control and American diplomacy. Moscow's proclamation showed that when the United States reaches bipartisan consensus that a Soviet action violates an agreement, and then presses the issue with Moscow, the Soviets will respond. This bodes well for future treaties.

Militarily, economically and politically, both sides have strong interests in maintaining hard-negotiated arms control agreements. Yet instead of applauding this issue's resolution and seeing it as an affirmation of the arms control process, some commentators wring their hands. They argue that the Krasnoyarsk admission should increase our skepticism of arms control. Some now even suggest that the ABM violation should lead us to condemn the Soviets for violating terms of the unratified SALT II Treaty, and by implication, to abandon SALT limits ourselves. In truth, the United States repudiated SALT II in 1986 and has exceeded the agreement's key numerical limit ever since.

It is always jarring when the Soviets accept our terms, but we must try to keep our wits about us and learn the salient lessons. The first lesson is that Soviet interest in arms control is strong, and the new Soviet leadership will undo past military policies in order to satisfy American reservations about the arms control process.

The United States has believed since the mid-1980's that Krasnoyarsk violates the ABM Treaty's prohibition on deployment of early warning radars in non-border areas. The Reagan administration pressed the matter publicly and privately with the Soviets. Along with 88 Senate colleagues, I voted in 1987 to declare the radar a violation, demonstrating to the Soviets that the American Government was united on the question.

The existence of such a radar per se was never illegal nor a military threat to the United States. Rather, it was a violation because it was illegally located. Its importance was precisely that it undermined arms control. This is why the Soviets wanted to rectify the problem. Had the President heeded the right wing's call to repudiate the ABM Treaty because of Krasnoyarsk, the Soviets would have had no incentive to dismantle the system.

More ambiguous compliance issues have attended the SALT II agreement. The root difficulty is that the treaty was never ratified by the United States, and is therefore not binding. The second difficulty is that the main provisions of Soviets are said to violate—limits on the coding of data radioed from test missiles back to Earth, and the definition of what constitutes a "new type" ICBM, as opposed to a modernized version of an existing one—are subject to varied interpretation (a problem that must be avoided in future agreements). The Reagan administration argued that the Soviets were in clear violation. The chairman of the House Intelligence Committee said the evidence was not clear. The issue became moot in late 1986 when President Reagan decided the United States would no longer be bound by SALT II's provisions.

What must not be lost in this debate is that both countries have seen it in their separate and mutual interests to stay at least within the shadow of the SALT II framework. Regardless of disagreements over Soviet missile modernization and related verification questions, both countries have kept the numbers of their nuclear delivery systems at levels near the agreement's provisions.

It would be perverse and self-defeating to conclude from the Soviet decision to adhere to the ABM Treaty that the United States should somehow burst out of the informal agreement to keep close to the SALT II limits, or, worse still, to breach the ABM Treaty ourselves through an unconstitutional reinterpretation of its terms. Yet this is a conclusion some extremists seem to urge on us.

In the hard line reaction to the Krasnoyarsk admission, one sees the outline of a full scale on an eventual START Treaty. The attack follows this logic: The Soviets admit to violating the ABM Treaty; therefore they must also be guilty of violating SALT II's terms as charged; this means that the Soviets will inevitably violate a START Treaty. Thus, the argument might run, the United States should not sign and/or ratify a START Treaty no matter how exacting its verification provisions.

Absent in this attack is any sense of proportion. It would be absurd to tear down the entire arms control structure we have carefully built, in order simply to fix cracks and leaks or to remedy defects that might crop up unexpectedly in the future.

Arms control works because both countries have decided it is in their interests to seek security through mutual limits on forces and their operations. Both countries have established mechanisms for resolving ambiguities and difference over treaty compliance. The process will not always be smooth, but if we are determined to approach it seriously and steadfastly, the results will be positive. This is the ultimate lesson of Krasnoyarsk, and one that should intensify our interest in START.●

## MILES FOR MEALS CAMPAIGN

● Mr. PRYOR. Mr. President, I rise today to praise the fine volunteer efforts of thousands of Americans who are participating this week in the National Meals on Wheels Foundation's Miles for Meals campaign. In more than 300 communities across our country, Americans are sponsoring walks to raise funds for local home-delivered and congregate meals programs for the elderly. The culmination of this week's activities will be a "spotlight walk" on Saturday in Key West, FL, featuring actress Ann Jillian. I urge all Americans to contact their local Meals-on-Wheels Program to either participate in a local walk or make a pledge of support.

In this era of reduced Federal funds for social services, there is an ever-widening gap between the elderly's demand for meals and the availability of traditional resources for meeting this critical need. The principal source of support for funding of nutrition services for the elderly has been from the Older Americans Act [OAA] which, while enjoying consistent political and popular support, has not received adequate funds to meet the demand for providing nutritional support for the elderly. Simple demographics suggest that the need will continue to grow dramatically.

I hope we will enact budget reconciliation legislation today and, as a result, will put an end to the Gramm-Rudman-Hollings sequester. This is good news for all of our Nation's discretionary programs, and the Older Americans Act's nutrition services are no exception. Make no mistake about it, these programs and the vulnerable seniors that they serve, will be hurt by a sequester—no matter how temporary it may turn out to be. Even a 2-month sequester equals 17 percent of a nutrition program's annual budget—that translates into fewer meals served. This fundraising effort is necessary to hold things where they are now, much less enable the serving of nutritious meals to greater numbers of those who need them.

I applaud the National Meals on Wheels Foundation for recognizing this need and organizing such an ambitious fundraising campaign to bring wholesome meals to our most vulnerable senior citizens. I would also like to take this opportunity to acknowledge the commitment and energy of the National Association of Nutrition and Aging Services and Programs [NANASP], who have been the driving force behind the creation of the National Meals on Wheels Foundation, and this week's effort. NANASP's membership consists of most of the Nation's OAA/funded nutrition programs for the elderly.

As Thanksgiving approaches, it is appropriate for those of us who have been blessed with so much to share our plenty with those in need. In this holiday spirit, I appeal to all Americans, including my colleagues here in the Senate, to support the Miles for Meals campaign.●

## URGING PRESIDENT BUSH TO APPOINT THE ASSISTANT SECRETARY FOR FAMILY SUPPORT

● Mr. BENTSEN. Mr. President, last year the Congress enacted legislation overhauling the Nation's welfare system, and in so doing, we confounded the skeptics who thought it couldn't be done. Working hand-in-hand with the Governors, we developed a blueprint for a program of education, training, and jobs to help America's poorest families out of poverty and into the economic mainstream.

The Family Support Act of 1988 passed the Congress by overwhelming votes. The Senate supported the conference report by a vote of 91 to 1, and the House by a vote of 347 to 53. There is no question that overhaul of the welfare system had broad, bipartisan support.

My concern today, Mr. President, is that the high level of enthusiasm shared by the Congress, the administration, and the Governors just 1 year ago may be irretrievably slipping away from us.

A year ago I believed our effort to change the fundamental nature of the Aid to Families with Dependent Children Program would succeed, and I still hold to that belief. But I also know that success depends on whether the Nation's Governors, the welfare administrators, and the American public are all enlisted in the cause of change.

Mr. President, the Family Support Act was the product of many minds, and it has many important components. But one of the most significant features of the bill as it was reported by the Finance Committee was a provision to create a new office of Assistant Secretary for Family Support within the Department of Health and Human Services.

The committee created this new high level office to administer the welfare program because we were convinced that without strong leadership, the new Education and Training Program might never get off the ground. We believed it was crucial that the individual named to this position have the benefit of congressional backing, expressed through the confirmation process.

We recognized that forging a meaningful partnership with the States and building a climate for fundamental change are challenging, even formidable, tasks. They call for an individual with experience, stature, and exceptional ability, who will have the support of the Governors and the Congress, as well as the confidence of the President of the United States.

So I am deeply concerned that the position of Assistant Secretary for Family Support is still unfilled, and the program lacks the kind of high level hands-on leadership that is essential if it is to succeed.

Let me emphasize that Secretary Sullivan is to be commended for the work that his Department has done to implement the new law. Final regulations for the JOBS Program were issued in a timely way, on October 13 of this year, as the law required. I note, however, that these regulations were developed without the participation of the Assistant Secretary who will be responsible for carrying them out.

Secretary Sullivan has immense responsibilities, and he cannot be expected to involve himself in the day-to-day decisions of implementing and overseeing the operations of the JOBS Program. Nor is this the proper role for career staff, who need policy direction from the President's nominee in carrying out the tasks they are assigned.

Mr. President, the Committee on Finance has been diligent in holding hearings and voting to approve all of the Presidential appointments that have come before us in a thoroughly expeditious manner. As chairman of the Committee on Finance, I want to assure the President that when he sends us his nomination for Assistant Secretary for Family Support, it will receive prompt consideration by the committee.

This is a critical time for the new welfare program. Over the coming months Governors and State legislatures will be making basic decisions about the direction of their programs, decisions that will determine whether we succeed or fail in our goal of economic independence and opportunity for poor families with children.

Mr. President, I hope the White House will take this matter seriously, and will choose to expedite this nomination. Opportunities for real change in social programs come rarely. I urge the President to name to the position of Assistant Secretary for Family Support an individual who can provide the guidance and the leadership that this important job demands.

Mr. MOYNIHAN. Mr. President, I would like to thank the chairman of the Committee on Finance, Senator BENTSEN, for his remarks. I much agree.

On September 29, 1988, the Senate passed the Family Support Act of 1988. We had not set out to reform the Nation's welfare system. The meaning of reform, according to Webster's, is "to restore to a former good state." The Aid to Families with Dependent

Children Program had no "former good state." Instead, we redefined AFDC. We turned what was primarily an income maintenance program with a minor work component into a Job Training and Education Program with an income maintenance component.

There are few programs of more importance to the future of our Nation than AFDC. In 1981, in an article entitled "Children and Welfare Reform" which I wrote for "The Journal of the Institute for Socioeconomic Studies," I estimated that 32 percent of children born in 1980—one in three—would receive AFDC benefits before reaching age 18. This projection appears to be holding up.

In April of this year, the Bureau of the Census published a report titled "Characteristics of Persons Receiving Benefits From Major Assistance Programs." That report used data from the survey of income and program participation, a special survey in which persons were interviewed over a 32-month period on their use of welfare system. The finding; 30 percent of children under 6 were on some form of welfare at some point during the survey period. These are the ratios over just 32 months for a still young cohort. The report thereby suggests just how likely AFDC dependence is for a child over the course of 18 years.

To say again, one in three children is likely to receive AFDC benefits before reaching age 18. This fact illustrates the elemental importance of the Family Support Act. Yet the success of the law is far from certain. On June 13, 1988, when the Senate debate commenced, I stated:

> It is tempting to say that this is a historic moment in our long effort to deal with the growing problem of dependency—and yet events will decide whether that was in fact the case.

The results are still in doubt. The Department of Health and Human Services has published the final regulations for the JOBS Program in a timely manner, one year to the day after enactment of the law. Twenty-five States have now implemented the JOBS Program. These States account for well over one-half of the AFDC caseload nationwide. However, the President has yet to fulfill a hugely important mandate in the Family Support Act—he has yet to nominate an Assistant Secretary for Family Support.

Section 603 of the Family Support Act establishes an Assistant Secretary for Family Support responsible for the AFDC Program, the new JOBS Program, and the Child Support Enforcement Program. Without an Assistant Secretary responsible for it, we were of the view that the Family Support Act was unlikely to succeed. That is why the law created an Assistant Secretary. We also knew that the AFDC Program has never been given the attention it deserves. It has very nearly been buried in bureaucracy since its inception.

Let us review the history. In 1935, when the Social Security Act was enacted and the Mother's Pension Program was created, it was administered by the Social Security Board, an independent agency. In 1939, when there were 350,000 families receiving welfare benefits, the Federal Security Agency was created, and the Social Security Board lost its independence and was made a part of the new agency. Things soon changed again. In 1946, the Social Security Board was replaced by the Social Security Administration.

Seven years later, in 1953, by which time the number of recipient families had grown to over 600,000, the Department of Health, Education, and Welfare was created, and it absorbed the Federal Security Agency. Once the Social Security Administration lost its independence, the AFDC Program became nearly invisible. Nobody ever heard about it.

In 1963, when the average monthly number of AFDC families reached nearly a million, President Kennedy, who recognized that the AFDC Program needed more prominence, created the Welfare Administration. In 1969—by then we had 1.7 million AFDC families— the bureaucracy was overhauled once again. President Nixon replaced the Welfare Administration with the Social and Rehabilitation Service.

Between 1969 and 1977, the AFDC caseload more than doubled. Nevertheless, in 1977, President Carter abolished the SRS and submerged the AFDC and child support enforcement programs once more in the Social Security Administration. Such has been the lack of visibility of the AFDC Program that in 1980, when the Department of Education was created, the word "welfare" was entirely dropped from the name of the Cabinet agency which is responsible for it. As if to say the problem had disappeared. Of course, it had not.

But the welfare agency has. If we look for the AFDC Program today in the 1989 Congressional Directory under the Department of Health and Human Services, we find the Family Support Administration, which has jurisdiction over AFDC, is listed last. I do not doubt the importance of such agencies as the center for Veterinary Medicine and the Center for Devices and Radiological Health. I do doubt, however, the importance we place on the Family Support Administration if we list it last.

Furthermore, the AFDC Program has been a stigmatized program. One need only look at the Survivors Insurance Program and compare it to the AFDC Program to find evidence of stigmatization.

The Survivors Insurance Program was enacted in 1939 and is part of title II of the Social Security Act—section 202d to be exact. Survivors insurance provides benefits for children under age 18 whose parents have paid Social Security taxes and then become disabled, die, or retire. Since 1970, the provision for children under survivors insurance has, in constant dollars, increased 52 percent. We do care for children whose parents are no longer able to support them.

But what of the child of the teenage mother or the drug-addicted mother who was never able to do so, and whose father, more often than not, will not do so? We have cut that child's support. Since 1970, the average monthly AFDC benefit, in constant dollars, has decreased 9 percent. Since 1970, AFDC payments for a family of three have declined by 37 percent.

Mr. President, I ask unanimous consent that a table be placed in the RECORD at this point in my remarks that shows these trends.

AVERAGE MONTHLY AFDC AND SURVIVORS INSURANCE BENEFIT PAYMENTS

[Per recipient payment, in constant 1988 dollars]

| | SI | AFDC |
|---|---|---|
| 1970 | $242 | $140 |
| 1988 | $368 | $127 |
| Percent change | +52 | −9 |

Source: The Social Security Administration and the Family Support Administration, Department of Health and Human Services.

One group of children is seen as having been provided for by prudent parents—parents who worked and paid taxes. The other group is seen as the consequence of antisocial behavior—single-parents who have little, if any, work experience or education. They must be provided for after a fashion and up to a point, but that is all. We have treated these childen as of little importance and have treated the AFDC Program likewise. We have given the program no primacy. It has been buried within huge bureaucracies, and repeatedly shuttled from one agency to another and back again.

That is why Congress, when we redefined the AFDC Program and endowed it with a new meaning and purpose, also created a new Assistant Secretary for Family Support.

On January 23, 1989, I wrote a letter to the new President on just this subject. I said:

> For reasons not wholly clear to me, the Department of Health and Human Services has almost altogether withdrawn from the field of welfare. Even the word was dropped from its title in 1980. This is odd when you consider that perhaps one child in three is supported by this Federal program at some point in their youth. But there you are. There is nobody in H.H.S. who knows anything about the subject or about the new legislation. If you are to succeed here, you

will have to create a new institution, much as when past Presidents created the Bureau of Reclamation, the F.B.I., the National Institutes of Health, and such like.

I have received no answer from the President on this matter. The final regulations on the JOBS Program have been promulgated, with no input from an Assistant Secretary. Twenty-five States are running JOBS programs with no oversight by an Assistant Secretary. The AFDC Program, despite our efforts, has no administrator, and thus, no direction.

Again, one-third of all children born last year will receive AFDC payments before reaching age 18. Many of these children will be born to children themselves. Rebecca Stone of the Center for Population Options, in a recent report entitled "Teenage Pregnancy and Too-Early Childbearing: Public Costs, Personal Consequences," estimates that half of all AFDC payments are made to families begun by teenages. It is very important that we have an Assistant Secretary, expert in the subject of welfare and dependency, to administer this program.

Before I close, I would like to bring a regrettable situation to the attention of the Senate. New York State does not yet have a JOBS Program. California, New Jersey, Pennsylania, Ohio, Michigan—all States with large AFDC propulations—do have JOBS programs. New York State has over 1 million welfare recipients. Yet, no JOBS Program, and, therefore, no real effort to address the dependency problem. The loss to New York State is more than just $72 million in JOBS money, it includes prolonged distress for those recipients that might be given the opportunity to end their dependency. It is my great hope that the Governor and the New York State Legislature will follow the lead of 25 other States and enact legislation to implement JOBS without further delay.●

## WIRETAP PROVISIONS IN CRIME PACKAGE

● Mr. PRYOR. Mr. President, I rise to applaud Senator BIDEN, the distinguished chairman of the Senate Judiciary Committee, for including in his crime package a provision that will close several loopholes in the Federal wiretap statute. I take pride that this wiretap provision was based upon a proposal that I submitted to him in September.

During the course of former Judge Alcee Hastings' impeachment trial, it came to my attention that gaps exist in the Federal wiretap statute. Specifically, the statute fails to prohibit unauthorized disclosure of lawfully obtained wiretap information made: First, by Government officials who work for nonlaw-enforcement agencies, that is, judges; or second, for reasons other than obstructing interception of a particular conversation; that is, exposing an undercover investigation. My proposal will close these gaps by expressly prohibiting disclosure of lawfully obtained wiretap information made by nonlaw-enforcement personnel or for the general purpose of impeding criminal investigations.

As you know, undercover investigations employing wiretaps are often sensitive operations that place at risk the lives of law enforcement officers. Those officers have the right to know that prosecutors will have at their disposal a clear and unambiguous statute under which to bring charges against any individual who intentionally discloses confidential wiretap information and thereby jeopardizes the officers' safety. I believe my wiretap proposal gives those officers the assurance they deserve.

Again, I praise Senator BIDEN for including the wiretap provision in his crime package and pledge to help assist him in securing passage of this provision in the next session.●

## THE CONVENTION ON THE RIGHTS OF THE CHILD

● Mr. BRADLEY. Mr. President, the United Nations General Assembly has just unanimously adopted the Convention on the Rights of the Child. This convention will help protect the special needs and rights of the world's children. It is incumbent upon the United States to lead the way in implementing the convention. I call on the President to submit the convention to Congress as soon as we reconvene so that we can ratify it as expeditiously as possible.

This convention builds significantly upon the U.N. Declaration on the Rights of the Child, passed 30 years ago to the day. Most important, the convention is legally binding upon signatory States. The principles enshrined in the Declaration will continue to apply to all members of the United Nation's.

Children are of course entitled to all the protections implied by the term "human rights." But the need for special protections for children has long been recognized in U.S. laws. This convention which was refined by 10 years of discussion among nearly 50 actively interested countries and a large number of nongovernmental organizations, provides for those special rights. It ensures the right of a child to a name and nationality at birth. It stresses the importance of child survival and the need for primary healthcare. It pledges the signatories to work to abolish traditional practices harmful to the health of children. It recognizes the importance of education. It protects against child labor, sexual exploitation, and drug abuse. It recognizes the central role of the family in raising children, but directs the State to protect against abuse and neglect. It provides for special protections in adoption, especially interstate adoption. It requires the State to care for orphaned children, and to monitor the placement of foster kids. It mandates minimum standards of juvenile justice. And it prohibits States from using children as cannon fodder in war.

Mr. President, these are only some of the key issues addressed by the convention. For most Americans, many of these rights will seem self-evident. But even this country knows all too well the problems of infant mortality, child abuse, child pornography, child addicts, and illiteracy. The situation is far worse in the rest of the world.

The Convention on the Rights of the Child is no panacea. It will not solve these problems. But it is an important step to "address the needs of the world's most vulnerable," as U.N. General Secretary de Cuellar said.

Mr. President, the United States has always stressed the importance of children. This Congress has focused particularly on the subject. But we can only make this a better world for our children if we make it a better world for all children.

This convention is an essential step in this direction. But the convention will only go into force after 20 States have ratified it. It is incumbent upon us to lead the way. I therefore call upon the President to ensure that the convention is reviewed as expeditiously as possible, and sent to the Senate for ratification soon after we reconvene in January.●

## LEGISLATIVE FELLOWS MS. LAURA ABPLANALP AND RANDY FERRYMAN

● Mr. DIXON. Mr. President, as we near the end of the first half of the 101st Congress, I would like to take just a few minutes to salute two congressional fellows who have assisted me since January 1989.

Mr. President, Laura Abplanalp joined my staff through the Fellowship Program sponsored by the Congressional Assistants Program. Laura's company, Eastman Kodak, should be congratulated for sending a bright, hard working professional to take part in this important program.

Laura began the year working as a legislative assistant representing me with the Senate Small Business Committee and also had the responsibility for all telecommunications issues. Later she began working on the Defense preparedness amendments which I introduced last July. Just recently, Laura worked very hard on the Federal prison amendment to the Defense authorization bill which this body passed a few months ago.

Ms. Abplanalp's important contributions to my legislative efforts are a

credit not only to her, but also to the Congressional Assistants Program and to her company, Eastman Kodak.

Mr. President, Randy Ferryman joined my staff as a fellow late last December through the American Political Science Association Fellowship Program. Randy works for the Federal Government. During his time on my staff, he never allowed his executive branch loyalties or personal bias to interfere with his work. Randy sought and was given a wide range of responsibilities, including working with Illinois constituents, and helping me prepare for several Armed Services Committee hearings. Randy worked especially hard on two very important projects for me: the base closure hearings and the FSX floor debate.

I believe that having people of Laura's and Randy's expertise helps develop better cooperation and understanding among Congress, the executive branch and business.●

## INDEPENDENCE OF ADMINISTRATIVE LAW JUDGES AT SOCIAL SECURITY

● Mr. PRYOR. Mr. President, earlier this year the Senate Committee on Finance and the other body approved legislation as part of their respective budget reconciliation bills that would protect the independence of administrative law judges at the Social Security Administration [SSA]. The Senate provision was based on S. 1571, which I introduced with a number of my colleagues on August 4, 1989. Although this initiative is not included in the final bill before us today, I urge my colleagues to work with myself and others toward its enactment in the next session of the 101st Congress.

I became keenly aware of the need for such legislation as a result of testimony at a 1982 field hearing in Fort Smith, AR, of the Special Committee on Aging and the Government Affairs Committee. I will never forget the severely disabled beneficiaries who testified about their unjust treatment at the hands of heartless bureaucrats who terminated their Social Security disability benefits without good cause. Some of these individuals appealed to administrative law judges [ALJ's], who in many cases restored benefits which should never have been taken away in the first place.

As if to pour salt in the wounds, high-level officials from SSA attempted to intimidate ALJs across this nation into lowering the number of disability cases for which they approved benefits. I learned at the 1982 hearing that the ALJs from the Fort Smith Office of Hearings and Appeals were bearing the brunt of such extraordinary attacks on their independence.

These three ALJ's, Francis Mayhue, David T. Hubbard, and Jerry Thomasson, stand out as true heros in the battle to preserve the independence of the administrative law system in the United States. Under vicious and unprecedented threats, they did not back down. They courageously fought back. They testified in public at the hearing, and maintained a dignified resistance to completely inappropriate pressures from headquarters. Their efforts culminated in a successful legal challenge in which a Federal district court held that SSA had an ulterior motive to reduce the payment of claims by ALJ's.

Mr. President, ALJ's should never again have to undergo such an assault on their independence. Nor should the unfortunate history of their ordeal be forgotten. S. 1571 is designed to prevent abuses in the future by safeguarding the independence of the ALJ corps at SSA.

The Special Committee on Aging scheduled a hearing for October 3, 1989, on "Strategies to Achieve Independence and a New Direction for the Social Security Administation." Urgent business concerning the budget reconciliation bill forced cancellation of that hearing. Yet there is a particularly important piece of testimony that was prepared for that hearing which I would like to share with my colleagues.

David T. Hubbard of the Fort Smith Office of Hearings and Appeals was invited to testify at the October 3 hearing on behalf of the Association of Administrative Law Judges, Inc. His prepared testimony is an insightful and useful discussion of the history of the ALJ corps at SSA, and the situation currently facing the ALJ's. I urge my colleagues to review and consider these thoughts, which underline the importance of enacting legislation along the lines of S. 1571.

Mr. President, I ask that the testimony of David T. Hubbard be printed in the RECORD at this point.

The testimony follows:

STATEMENT OF DAVID T. HUBBARD

My name is David Hubbard. I have been a United States Administrative Law Judge for the past 15 years. I have my office in Fort Smith, Arkansas, and hear cases in Fort Smith, Fayetteville, Harrison, and Russellville, Arkansas. It is a pleasure and privilege to appear before you on behalf of the Association of Administrative Law Judges, Inc. This organization is composed of United States Administrative Law Judges in the Office of Hearings and Appeals, Social Security Administration. The stated purpose of this organization is to promote due process hearings to those individuals seeking adjudication of controversies with the Social Security Administration and the Department of Health and Human Services.

It is the position of the Association that S. 1571 should be enacted by the Congress. The fundamental, overriding problem in the Office of Hearings and Appeals is the responsibility and accountability for the entire hearing and decisional process which is placed upon the individual ALJ to whom a particular case is assigned. However, authority for case control, hiring of personnel (including staff attorneys and paralegals who assist the ALJs in preparing draft decisions), etc. has been removed from the ALJs and has been given to an ever-enlarging group of non-legally trained bureaucrats who have no understanding of the concepts embodied in the Administrative Procedures Act or the concept of administrative due process in general. The longstanding conflict and controversy within the Office of Hearings and Appeals caused by the housing of the ALJs within the Social Security Administration itself is well documented. Congressional hearings in 1975, 1979, 1981, 1983, 1988 and in March 1989 clearly have established that the problems are systemic to the present organizational arrangement that demands that ALJs are to be "employees" of the Social Security Administration subject to its management direction and control. On a personal note, I have only one person assigned to me. This lady serves as a paralegal and drafts decisions for my signature. However, I have no one to whom I can turn to prepare cases for hearing, type official letters, prepare memoranda, and other work products. If a given case file is not on my desk or is not the one in front of me for the claimant who is sitting before me at a hearing which I am conducting, I have no idea where that case file is or what is being done with it. These are functions which were normally carried out by my hearing clerk and my hearing assistant when I had my own staff. However, under the current management arrangement, these persons are now part of a "pool" and no longer report to me for their work or their job evaluations.

The power and the authority of the individual ALJ to control the manner and methods by which he holds hearings and renders decisions, and the usurpation of that power by the Social Security Administration and its managers have failed to provide adequate support staff, equipment, and other essential legal tools to the judges and has prevented us from carrying out our jobs properly. In spite of the fact that the Administration has repeatedly paid lip service to the concept of "quality" in the decisional process, the constant assurances made by the Administration have never come to fruition. On the contrary, there has been a consistent trend to establish and superimpose layer upon layer of managerial personnel upon the ALJs, and a concurrent reduction in the number of employees who are actually charged with doing the work. To further aggravate the matter, the agency has asserted the need to "pool staff" in order to reduce the number of employees required to do the work, cut budgets, etc., to such a manner and extent that the ALJs have absolutely no effective control over the manner and method the work is performed. At the same time the number of non-productive "managers" increases. This policy, rather than insuring that the judges can effectively carry out their mission, unfairly restricts the ALJs in the performance of their statutory duties and has subjected them to criticism, and or possible disciplinary action.

In times past the Association has fought to maintain the independence of the ALJ within the system of administrative law. You will recall the horror of the Bellmon Review Process whereby the politically appointed Associate Commissioner of the Office of Hearings and Appeals sought to discipline ALJs who allowed a larger per-

centage of their cases in comparison to some magical allowable percentage devised by this politically appointed Associate Commissioner of the Office of Hearings and Appeals. Senator Pryor, I am sure you remember the Ft. Smith Hearing you conducted in 1982, where you heard first hand how the decision to trim the rolls of the disabled lead to horror stories too numerous to mention. I am sure you remember that although you invited a representative of the Social Security Administration to appear, they refused to send someone to respond to the many questions about the cessation of disability that hurt thousands of people both in Arkansas and in the nation as a whole. What you did not know at the time was that the Associate Commissioner for Hearings and Appeals, Louis Hays, had a Performance Plan approved by the then Deputy Commissioner, Paul Simmons, and ultimately approved by the Commissioner of the Social Security Administration, John Svahn, for a six month period beginning April 1, 1982, which stated:

"One result of these steps will be *some reduction in the ALJ allowance rate."* (emphasis mine)

On October 1, 1983, his new Performance Plan for the next six month period (also approved by his politically appointed superiors in the Social Security Administration) stated:

"One result will be *some further reduction in the ALJ allowance rate."* (emphasis mine)

S. 1571, Senator Pryor, provides that there will no longer be an Associate Commissioner of the Office of Hearings and Appeals who is a political appointee and is only accountable to another political appointee in the Social Security Administration. No longer will there be any performance plans to reduce allowance rates or increase the number of cases required to meet a "goal" because the Chief Administrative Law Judge under your legislation will be in charge of the agency and he is prohibited by Title 5 of the U.S. Code from having a performance plan or rating system of any type. This insulation of the Chief Judge as provided in your bill prevents the politically appointed managers in the Social Security Administration from requiring the Chief Judge to implement policies which, indeed, might help destroy the hearing process because under your legislation, he is reportable only to the Secretary of Health and Human Services. By preventing his whimsical firing for political purposes and allowing such only when a finding has been made by the Secretary that he has been guilty of neglect of duty or malfeasance in office, and requiring that this finding be reported by the Secretary to the Speaker of the House and to the President pro tempore of the Senate, you have said, in effect, that the Chief Judge shall run the Office of Hearings and Appeals without political influence and cannot be fired except under very unusual circumstances.

You will recall that one of the events which occurred following the Ft. Smith hearing was the filing of a lawsuit by the Association of Administrative Law Judges, Inc. This was after two of the ALJs (Judges Mayhue and Thomasson) in the Ft. Smith hearing office had been called to Washington to the headquarters of the Office of Hearings and Appeals and told that "no peace would occur in Ft. Smith until the ALJs reduced substantially their reversal (allowance) rates." Also, two of the ALJs (myself and Judge Thomasson) had been notified that we would have to report for "peer counseling" by the Regional Chief Administrative Law Judge and the Deputy Chief Administrative Law Judge. Both of these acts were clear violations of Title 5 of the U.S. Code, but in those days (and even today) management paid no attention to the Administrative Procedures Act. During the course of the trial, testimony was adduced that a plan had been established by the politically appointed Associate Commissioner of OHA to begin a "behavior modification" project for those ALJs who allowed a greater percentage of their cases than some magical average percentage allowance fixed by the politically appointed Associate Commissioner and approved by his politically appointed superiors at the Social Security Administration. This was the mechanism he had chosen along with the peer review conferences to fire a significant number of the high allowance judges. I was in that group he would have attempted to fire. Although this project never came to fruition, it would have been conducted had the lawsuit not been filed. In her decision, Judge Joyce Hens Green stated:

". . . the evidence, as a whole, persuasively demonstrated that the defendants retained an *unjustifiable preoccupation with allowance rates,* (emphasis mine) to the extent that the ALJs could reasonably feel pressure to issue fewer allowance decisions in the name of accuracy. While there was no evidence that an ALJ consciously succumbed to such pressure, in close cases, and, in particular, where the determination of disability may have been largely on subjective factors, as a matter of common sense, that pressure may have influenced some outcomes." *Association of Administrative Law Judges, Inc.* v. *Heckler,* 620 F. Supp. 1132 (District Court, District of Columbia, 1984).

One other issue which I feel needs to be addressed is the matter of production quotas. The management of OHA will never admit that these exist for they are always careful to use the term "goal" rather than "quota." Such a distinction is ludicrous. The record is so voluminous on this issue that to discuss it in detail would take several hours. However, listen to an excerpt of a letter received by one of the ALJs in the Ft. Smith Hearing Office in March, 1988. In the letter written by the Regional Chief Administrative Law Judge the following language was used:

"I have reviewed your performance over the past six months and am somewhat of a loss to understand the vast disparity between the level of your performance and other judges similarly situated thoughout the region. As you know, the Associate Commissioner has set a *goal* for this year of an average monthly *performance level of 37 dispositions per judge."* (emphasis mine)

Needless to say, this letter violates the Administrative Procedures Act found in Title 5 of U.S. Code because it specifically states that ALJs shall receive *no performance rating by anyone.*

Attempts by the agency to fire judges solely on the basis of their failing to meet Agency quotas, while unsuccessful, ruined the careers of the judges charged. See: *SSA* v. *Goodman,* No. HQ75218210015, MSPB April 6, 1983, remanded Fed. Cir. 33 MSPR 325 (1985) $185,000 attorney fees awarded against SSA; *SSA* v. *Balaban,* No. HQ75218210014, MSPB February 9, 1983, remanded Fed. Cir. 33 MSPR 309 (1987) $51,000 attorney fees awarded against SSA. As you can see, the track record of the management of OHA has not been good in this area, but they still continue to force their "goals" upon the ALJ corps.

I believe that the way the Associate Commissioner determines her goal each year is to divide the expected case receipts by the number of ALJs in the country. In 1983 OHA had 797 ALJs. This number has dwindled to about 600. There have been a few new ALJs appointed in the last couple of years, but our corps in no way approaches the 1983 number. It has been estimated that 40-50% of the current corps is eligible for retirement. If all those ALJs took retirement, the Associate Commissioner's goal would probably be 75-100 cases per ALJ per month.

At one time I was one of the youngest ALJs in the country. When I began my service with OHA in 1974, I was in a training class with Judge Charles Collins who was assigned to the New Orleans hearing office. He has been one of my best friends among the ALJs in OHA. When Judge Collins retired early this year, he was asked by officials in OHA the reason he had chosen to retire at that time. On the retirement questionnaire he stated:

"My principal reason for retiring is that the Social Security Administration has always opposed the APA hearing process which is mandated by law. SSA has since at least 1974 carried on a systematic campaign of harrassment, insult, and intimidation against the Administrative Law Judges. This campaign is well documented by court and congressional records. As a result of this effort by SSA the morale of my office is so depressed that to continue my employment would be detrimental to my physical and mental health."

Each month there is a conference call in our region between the Regional Chief Law Judge and the Hearing Office Chief ALJ in each of the offices in the region. I am told that the first item on the agenda each month is whether the Associate Commissioner's productivity goal has been met for the previous month. As I told you earlier, I have one person assigned to me whose job function is to prepare draft decisions for my signature. She is under a job evaluation plan which requires her to draft at least 40 decisions per month in order to maintain her outstanding rating. This is the way OHA forces their goals onto the ALJ by putting production quotas on the staff. The 40 decision month has lead to a reduction in the quality of my decision because all OHA thinks about these days is numbers, numbers, numbers.

In 1975, Judge Troutman, a United States District Judge for the Eastern District of Pennsylvania, confronted the issue of production goals thrust upon ALJs at that time. His language is as timely today as it was in 1975 (almost 15 years ago and before modern day management got their foot in the door):

"That the law judge has 'other cases' and that 'we have to dispose of these cases,' does not justify encroachment upon the plaintiff's statutory and constitutional rights of a full, fair, complete and impartial hearing. This Court is also subjected to the constant and burdensome administrative and statistical pressures to 'dispose of these cases and we too have 'other cases.' While the computer can add and subtract numbers faster and more accurately than the human mind and thus keep the 'pressures' applied, it cannot weigh the quality of justice dispensed under the 'pressures' it creates. The measure of quality goes unstatisticized and unrecorded. But when all cases are up to

date and all calendars current, we will have gained nothing if justice has not been dispensed and public confidence in our system destroyed. It will then be too late to revise the process from within the system because those who reacted to and satisfied the demands of the computer are collectively 'the system' and will ill-explain the sacrifice of quality. They will find no refuge in the computer and receive no defense from the administrators dispensing the statistics. This record aptly demonstrates what happens when a judicial officer understandably and conscientiously reacts to unrelenting statistical pressures. * * * To suggest that justice delayed is justice denied is not the answer. Justice delayed is not always justice denied, and speedy justice is not always justice obtained. Increased pressures on the judiciary resulting from increased litigation because of increased use of the courts by our society is an increased burden which must be met by the judiciary alone, without sacrificing the quality of justice dispensed. The resulting pressures should and must be assumed by the judiciary without complaint. However, the additional and sometimes unwarranted pressures emanating from the legislative and administrative forces in the form of faceless statistics spewed out by soulless computers may constitute an unjustifiable burden which the judiciary is not warranted in assuming, tending as it sometimes must to adversely affect the quality of justice. If justice delayed is justice denied, then justice without quality is also justice denied, a result for which the judiciary alone will be held accountable without reference to collateral pressures from whatever source." *Graver* v. *Secretary,* 405 F. Supp. 631 (1975).

In conclusion, I believe as do a vast majority of my colleagues, that S. 1571, if enacted, will go a long way toward a more independent administrative judiciary in the Office of Hearings and Appeals because the Chief Administrative Law Judge is reportable only to the Secretary of Health and Human Services and can buttress any action by management within the Social Security Administration which might tend to subvert the hearing process as it now exists because he cannot be required to meet any performance plan or goal established by management in the Social Security Administration.●

## REPORT OF ACTIVITIES

● Mr. BOREN. Mr. President, I ask that a report on the activities of the Select Committee on Intelligence for 1985 and 1986 be printed in the RECORD.

The report follows:

REPORT OF THE SELECT COMMITTEE ON INTELLIGENCE, U.S. SENATE, JANUARY 1, 1985 TO DECEMBER 31, 1986

PREFACE

The Senate Select Committee on Intelligence submits to the Senate a report of its activities from January 1, 1985, to December 31, 1986. The Committee has been charged by the Senate with the responsibility of carrying out oversight over the intelligence activities of the United States. Most of the work of the Committee is of necessity conducted in secrecy, yet the Committee believes that intelligence activities should be as accountable to the public as possible. This public report to the Senate is intended to contribute to that requirement.

DAVID L. BOREN,
*Chairman.*

WILLIAM S. COHEN,
*Vice Chairman.*

I. INTRODUCTION

By a vote of 72 to 22, the Senate established the Select Committee on Intelligence on May 19, 1976. Section 1 of that Resolution states that the Committee would "report to the Senate concerning . . . intelligence activities and programs" of the United States Government. In accordance with this provision, the Committee has prepared an unclassified report at the conclusion of each Congress summarizing the oversight activities during that Congress.

The Committee believes it is important to enhance the public's confidence in U.S. intelligence oversight through a comprehensive process of Congressional oversight of the Intelligence Community's activities. Since so much of our work is conducted in secret, the job of reporting to the Senate and the nation is far more difficult than is the task of other oversight committees of the Congress.

The Committee continued to increase its oversight activities during the 99th Congress, ending the year with the preliminary investigation into the Iran-Contra affair. These 47 hearings consumed 103 hours. The Committee then issued its unclassified report entitled Preliminary Investigation into the Sale of Arms to Iran and Possible Diversion of Funds to the Nicaraguan Resistance during the 100th Congress. Two unclassified reports were also published during the 99th Congress. The first, dealing with counterintelligence, was entitled Meeting the Espionage Challenge; the second covered the special events in the Philippines and was called Crisis in the Philippines. The following pages go into some detail on the primary issues that came before the Committee during the two years of the 99th Congress.

*II A. National intelligence strategy*

As part of its review of current Intelligence Community programs and the long-range planning by the Director of Central Intelligence, the Committee worked with the Intelligence Community (IC) in 1985 and 1986 to develop a National Intelligence Strategy.

The Committee intended the Intelligence Strategy to be a statement by the DCI outlining his vision for U.S. intelligence. This statement was to include a listing of the missions the IC had assumed, the priority the DCI assigned to each mission, and the DCI's plans for meeting these missions.

The National Intelligence Strategy was intended to improve congressional oversight of intelligence. Although the IC has provided Congress with extensive documentation on the operation of many individual programs, no previously existing document explained to the Members of the Committee how these individual programs fit together to serve the total national intelligence requirements. Committee Members have recognized the need for a comprehensive statement by the DCI explaining his objectives and goals along with the individual programs proposed to Congress.

The National Intelligence Strategy also strengthens planning within the Intelligence Community by making clear to program managers within the community the priority of their missions in an increasingly tight fiscal environment. The long-range perspective of the Strategy encourages planning that places intelligence investments on a prudent, efficient course for the years ahead.

Beginning in May, 1985, the Committee held hearings at which major intelligence consumers testified on the pluses and minuses of the current product of the IC, with an emphasis on how their needs could be better served in the future. The witnesses ranged from principals representing the Departments of State and Defense to commanders of the unified and specified commands, designers and operators of intelligence systems, and members of the IC management team.

As a result of these hearings and many staff discussions with the Intelligence Community, the Committee's requirement for a National Intelligence Strategy was included in the Fiscal Year 1986 Intelligence Authorization Conference Report. Although the draft of the first Strategy was circulated among leading officials within the IC, the final version, presented to the Committee in February, 1986, can be considered the DCI's personal statement of what the aims and goals of the U.S. Intelligence Community should be.

Since the Strategy was included with the FY 1987 budget request, the Committee was able to use it as part of the annual budget review. Matching the National Foreign Intelligence Program to the missions defined in the National Intelligence Strategy, the Committee examined the effect of a number of budget scenarios, each with a different level of fiscal constraints, on the ability of the IC to carry out each mission. The Committee Members were thus able to make their decisions on individual programs based on both the available resources and the priorities of the Intelligence Community.

As a result of this review, Members were able to identify how specific shortfalls caused by the fiscal crisis would be felt in such areas as monitoring various kinds of arms control agreements, developing and maintaining a data base on the weapons and military forces of foreign powers, intelligence on international economic and political conditions, indications and warning, and U.S. counterintelligence programs.

The Committee is pleased with the response of the DCI to the request for a National Intelligence Strategy. But the process of developing a Strategy will require several years to mature and become fully integrated into the planning of U.S. intelligence. The Committee therefore included a request in the Classified Annex of the fiscal year 1987 Intelligence Authorization bill that the DCI continue to include his National Intelligence Strategy as part of his annual budget request.

The DCI indicated that he believes the details of the National Intelligence Strategy must be fleshed out over time and has outlined to the Committee his plans to develop the Strategy. These plans include preparing a series of Intelligence Strategic studies which will show how each mission will be carried out and the contribution specific programs make to it. These studies will address some of the concerns raised by the Committee in its review of the first Strategy.

In addition, the Committee has requested that in preparing the fiscal year 1988 National Intelligence Strategy, the DCI includes sections explaining the demands that will be imposed on national intelligence by weapons programs currently under development by the Department of Defense and certain operations currently included within U.S. defense planning.

The Members of the Committee believe that the National Intelligence Strategy

complements other initiatives underway within the Senate to improve congressional oversight in general. For example, this year Congress enacted a two-year budget cycle for defense programs, beginning with the 100th Congress. This effort reflects the belief of many Members that Congress works best when it addresses broad issues of a strategic nature, rather than trying to "micromanage" individual programs piecemeal. The aims of the National Intelligence Strategy are similar and will reinforce the development of this type of oversight.

*II. B. Counterintelligence and security*

During 1985 and 1986, the Committee conducted a comprehensive review of U.S. counterintelligence and security countermeasures against hostile intelligence activities, including in-depth examination of the most serious espionage cases and security compromises. This review began before the Walker case and other espionage prosecutions focused public attention on the Soviet intelligence threat. The Committee issued a public report entitled Meeting the Espionage Challenge. This provided an unclassified analysis of the hostile intelligence threat and the Committee's unclassified findings and recommendations regarding U.S. counterintelligence capabilities and security programs. A more detailed, classified report was submitted to the Senate and made available to the Executive branch. In addition, the Committee proposed a series of legislative and budgetary initiatives on counterintelligence and security.

To inform the Senate and the public about a significant counterintelligence problem, the Committee issued a report, Soviet Presence in the U.N. Secretariat, prepared by elements of the U.S. intelligence community.

Counterintelligence and security issues also remained an important part of the Committee's ongoing oversight of the Intelligence Community generally, including review of compliance with the Foreign Intelligence Surveillance Act and other laws and guidelines designed to ensure proper respect for the rights of the American people by agencies entrusted with sensitive national security responsibilities.

1. Meeting the Espionage Challenge

In June, 1985, shortly after the initiation of the Committee's review of counterintelligence and security programs, the Walker arrest and attendant disclosures engendered a proposal for a National Commission on Espionage and Security. In response, the Committee pledged to prepare a report to the Senate on the results of its study, and the Administration agreed to cooperate with the Committee's inquiry. The outcome was a unique collaborative effort in which the relevant agencies made information and expertise available to the Committee, while the administration structured a decision process to address issues identified by the Committee.

The Committee's report revealed that the hostile intelligence threat is more serious than anyone in the Government has yet acknowledged publicly. In making this assessment, the Committee benefited from recent studies conducted by the Executive branch, including DOD's Security Review Commission, chaired by General Richard G. Stilwell, USA (retired), and the State Department's Advisory Panel on Overseas Security, chaired by Admiral Bobby R. Inman (retired). Executive branch experts and policymakers testified in sixteen closed hearings on specific counterintelligence cases and the current state of U.S. programs to counter hostile intelligence activities. Committee recommendations were drawn primarily from internal Executive branch studies and other ideas developed at the working level in the various agencies.

The Intelligence Authorization Act of FY 1986 required the President to submit to the House and Senate Intelligence Committees a report on U.S. capabilities to counter the foreign intelligence threat, including plans for improvements in such. To assist the Commttee's work, the conferees on the Act requestd an interim report which paralleled an interim report prepared by the Committee. The exchange of these reports in early 1986 greatly facilitated the process of reaching agreement on policy issues. The President's final report, which was received after completion of the Committees' report, is serving as an important benchmark of the progress achieved thus far and the goals that have been set by the Executive branch.

In brief, the Committee found that as a result of significant improvements in recent years, the nation's counterintelligence structure is fundamentally sound, although particular elements need to be strengthened. The Executive branch and the Committee agreed on the importance of developing and implementing a coherent national counterintelligence strategy that integrates the work of the FBI, the CIA and the Departments of State, Defense and Justice. The Committee expects this strategy to play a major role in its oversight of U.S. counterintelligence efforts in the future.

By way of contrast, the Committee concluded that defensive security programs lack the resources and national policy direction needed to cope with expanding hostile intelligence operations. Personnel security policies are fragmented, information security reforms are overdue, and communications and computer security vulnerabilities are growing. Consequently, the Committee recommended creation of a new, more permanent national policy mechanism to coordinate and foster the protection of information and activities having the greatest strategic importance. The Committee called on the Administration to establish by Executive Order a National Strategic Security Program to bridge the gaps between the various security disciplines.

Additional specific Committee recommendations addressed the lessons of recent espionage cases, improvements in security countermeasures, and legislative and budgetary actions needed to implement national counterintelligence and security objectives. The report provides a set of standards for ongoing assessment of Executive branch performance and for initiatives by the Legislative branch in the 100th Congress.

2. Hostile Intelligence Presence

A series of legislative recommendations by the Committee in 1985-86 addressed problems resulting from the large number of Soviet bloc officials and representatives in the United States, including embassy and consular personnel, employees of United Nations missions and the U.N. Secretariat, and officials of bloc-controlled commercial enterprises.

In 1985, the Committee recommended, and the Congress enacted, a proposal by Senators Leahy and Cohen to require substantial equivalence between the number of Soviets at their embassy and consulate in the United States and the number of Americans at our embassy and consulate in the Soviet Union, unless the President makes an exception. The objective of the Leahy-Cohen Amendment was adopted by the President as a national policy in mid-1985. The Committee also reported a proposal by Senator Roth which, as enacted and implemented, restricts unofficial travel by Soviet nationals employed at the U.N. Secretariat.

In 1986, the Committee recommended three additional legislative initiatives in this field. A proposal by Senator Durenberger and Leahy amended the Foreign Missions Act to enable the Office of Foreign Missions in the State Department to regulate any entity which is substantially owned or effectively controlled by a foreign government, such as Soviet bloc-owned commercial enterprises. A proposal by Senator Roth requires registration with the Justice Department by Soviet bloc-owned firms and others convicted of illegal technology export. And, a proposal by Senators Leahy and Cohen established a policy of substantial equivalence for the size of the Soviet and U.S. missions to the United Nations, thereby giving a Congressional sanction to the Administration's plan for reducing the size of the Soviet mission from 275 to 170 over a three-year period.

Committee consideration of these issues was assisted by two reports submitted by the Executive branch: the first was the report from the President pursuant to the Leahy-Huddleston amendment of 1984 on the respective numbers and treatment of officials from countries that conduct intelligence activities in the United States contrary to our interests and numbers and treatment of U.S. officials in those countries; and the second was a report from the Secretary of State and the Attorney General pursuant to the Leahy-Cohen amendment of 1985 on the plan to achieve equivalence between the number of U.S. and Soviet embassy and consular personnel.

The plan required by the Leahy-Cohen Amendment included phased replacement of the majority of Soviet nationals employed by the US embassy in Moscow with cleared American personnel. The State Department plan was superseded in October 1986, when the United States expelled more than eighty Soviet intelligence officers assigned to the United States and the President directed immediate implementation of the Leahy-Cohen equivalence policy. The Soviets subsequently withdrew all their nationals employed at the US embassy in Moscow. The result was not only to reduce the Soviet intelligence presence in the United States, but also to eliminate a serious security threat to the US embassy in Moscow.

3. Other Legislative Initiatives

The Intelligence Authorization Acts for FY 1986 and FY 1987 contained other statutory provisions to enhance U.S. counterintelligence and security efforts. In response to Members' question during the Committee's review of FBI counterintelligence capabilities, FBI Director William Webster described the problems the FBI has in certain areas of the country in obtaining access to financial records and telephone toll records in counterintelligence investigations. To remedy these problems, the Committee reported legislation in 1986 giving the FBI the authority to require financial institutions and communications to provide access to such records. The legislation also established privacy safeguards limiting the exercise of this authority to cases where specific and articulable facts give reason to believe that the subject of the investigation is an "agent of a foreign power," as defined in the

Foreign Intelligence Surveillance Act of 1978. This standard is substantially less stringent than the probable cause requirement for more instrusive electronic surveillance techniques, but there must be an objective, factual basis for the determination.

In 1985, the Committee cooperated with the Senate Armed Services Committee on legislation giving the Department of Defense, the Office of Personnel Management, and the CIA the authority to require state and local criminal justice agencies to provide criminal history record information about individuals who consent to undergo security background investigations. Difficulties in obtaining such records for security clearance purposes had surfaced earlier in hearings before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs. The Chairman and Ranking Minority Member of that Subcommittee, Senators Roth and Nunn, brought this problem to the attention of the Intelligence Committee on which they also serve. In 1986, legislation was reported by the Committee to give the FBI the same authority for its security background investigations.

Another Committee initiative gave the counterintelligence components of the military departments the authority to use the proceeds from counterintelligence operations to offset necessary and reasonable expenses incurred in such operations, if such use was not otherwise prohibited by law. This authority was granted on a one-year trial basis in 1985 and in permanent form with requirements for internal accounting and administrative controls in 1986.

4. Budget Initiatives

The budgets for most of the counterintelligence and security programs under Committee jurisdiction are classified. The Committee's general approach to these budgets in 1985-86 was to support Administration requests and to find specific activities that had been underfunded and provide increases above the Administration request to remedy these deficiencies. The Committee's comprehensive hearings on counterintelligence and security requirements supplied a basis for significant resource enhancement proposals.

Two of these initiatives were unclassified and dealt with communications security and Defense Department personnel security programs that are outside the DCI's National Foreign Intelligence Program budget. The Committee decided to review the budgets for these programs because they are an integral part of U.S. countermeasures against hostile intelligence activities and because they supply the security protection for Defense Department intelligence components funded in the National Foreign Intelligence Program.

For FY 1987 the Committee recommended $129 million above the Administration request for communications security. The majority of the funds were for the first year of a five-year plan, developed by the National Security Agency in response to Congressional concerns, to encrypt sensitive domestic communications satellite channels. The aim of this initiative was to neutralize the Soviet ability to intercept, monitor and exploit domestic communications carried over satellite channels. These operations are being conducted from bases in Lourdes, Cuba and elsewhere. While funds for this initiative were not ultimately appropriated, the Committee continued to encourage measures to improve communications security.

The Committee also recommended $22 million above the FY 1987 request for Defense Department personnel and industrial security programs. These funds were to implement the recommendations of the Stilwell Commission for broadening the scope of background investigations for secret clearances, improving processing of criminal history data for security clearances, safeguarding interim Top Secret clearances, expanding training and research by the DOD Security Institute, and increasing staff for OSD policy direction and oversight. Although funds were appropriated for some of these initiatives, implementation of other Stilwell Commission proposals was not fully funded.

In 1985, Senator Bentsen proposed, and the Senate accepted, an increase in the FBI budget for domestic terrorism to remedy persistent shortfalls.

*II C. Oversight of intelligence operations*

1. Covert Action Oversight

In the area of covert action, as provided under Executive Order 12333, Senate Resolution 400 (94th Congress), Title V of the National Security Act of 1947, and Section 662 of the Foreign Assistance Act of 1961 (the Hughes-Ryan amendment, as revised in 1980), the Committee received detailed reports and heard testimony on covert action programs before implementation—with one important exception, the Iran arms sales program—and actively monitored the progress of those programs about which it was informed. Under the provisions of Senate Resolution 400, the Committee also provided briefings on some programs to members of other committees. Given the sensitivity of information regarding specific covert action programs and capabilities and the Presidential findings submitted to the committee, this report does not discuss the substance of these matters.

Covert action oversight was a major activity of the Committee during the 99th Congress, and certain programs were modified by the Executive branch to take into account the Committee's views. The Committee also reviewed covert action programs during the annual budget authorization process, and continued its practice of annually reviewing each covert action line-item in the budget process.

2. Covert Action and the National Intelligence Strategy

When the Director of Central Intelligence submitted the first National Intelligence Strategy to the Committee in 1986, he also submitted a separate annex covering covert action capabilities. This document first outlines the increasing challenges that the DCI felt would require a U.S. Government response over the coming years and then indicated what types of covert action capabilities were warranted in light of the DCI's estimate that policy makers would call increasingly upon the CIA to mount covert efforts to meet those challenges.

The covert action annex was important because it was the first effort to present a systematic rationale to the Committee for future covert action capabilities. The Committee used this as a basis for its consideration of CIA budget proposals relating to the funding of those capabilities. The Committee was also able to consider the credibility of the DCI's more general discussion of challenges to the United States, and how closely that discussion coincided with actual (current or planned) covert action programs.

The covert action annex to the National Intelligence Strategy was but a first attempt, and more refined analysis was clearly called for. But the annex marked a significant step forward from purely event-driven analyses of the need for individual covert action programs or purely theoretical discussions of covert action capability requirements.

3. The Evaluation of Covert Action Programs

While the covert action annex to the National Intelligence Strategy could help structure the Committee's consideration of long-term covert action needs and capabilities, the Committee also recognized shortcomings in its consideration of new covert action programs. Members of the Committee therefore discussed this problem and developed a set of criteria by which to judge these programs. These criteria were as follows:

Foreign Policy Context

1. What is the purpose of the program, and how will it support U.S. policy?

2. How will the covert program work in concert with other arms of U.S. policy?

Regional and Geopolitical Context

3. What is the role of other nations in the region and of major U.S. allies? Are they aware of the program? Will they support it? If they are not to be aware of the program, would they support it if they were?

4. What other outside influences are at work in the country or the region, particularly from the Soviet bloc or Cuba?

Nature of Those We Support

5. What are the strengths and weaknesses of groups or individuals whom we support? How viable are they politically and/or militarily? What is the quality of their leadership, organization, equipment, training, or discipline?

6. What is the character of those whom we support? Do they support democratic processes and human rights? Do they refrain from criminal activity? Have they traditional or historical sources of appeal—or baggage to carry?

7. What are the goals of those whom we support? How consistent are they with U.S. goals? How attainable are they?

Nature of the Program

8. What level of activity will be supported, and what level of covert U.S. involvement will be required? Will those whom we support be engaged in political activity? counterterrorist operations? counterinsurgency? guerrilla warfare? Will the program provide funds? advice? training? non-military goods? military materiel? Will U.S. personnel participate in military or paramilitary operations?

9. How attainable is ultimate success, and what fall-back positions will be available? How long is the program expected to last, and what milestones have been established for it?

10. What risks does this program entail, and what actions will be open to the United States in that event?

11. How important is it that this program be covert, and how likely is it to remain secret? If it were to become known, could it be justified under international law?

This set of criteria was communicated to the Executive branch so that presentations of individual new programs to the Committee could be structured to answer the Committee's expected questions. The Committee also instructed its staff to ensure that these

questions were raised in staff briefings and presented to Members in the briefing materials for hearings on new covert action programs.

4. Issues in Covert Action Oversight

Two issues releated to covert action oversight became topics of public discussion during the 99th Congress. The first was the problem of how to oversee covert action programs that had become public knowledge. The CIA's role in assisting the Nicaraguan resistance had been reported in the press, to a greater or lesser degree, since the early 1980s. Beginning in 1984, however, it became the subject of substantial open debate and votes in Congress.

U.S. assistance to the Nicaraguan resistance continued to be a major issue in the 99th Congress. The Committee continued to oversee much of this assistance, as is discussed elsewhere in this report, but did not support the proposition that one could return the program to its former relative secrecy.

The Committee also pressed the Executive branch to stem the flow of leaks alleging covert action programs. In November of 1985, a letter from the Director of Central Intelligence accusing the Intelligence Committees of being the source of one press story was itself leaked to the press. Although it was quickly determined that the press story had been based upon material that the committees did not possess, the accusation continued to be used in political debate. The Committee responded by calling attention to subsequent press stories on secret intelligence matters that were clearly sourced to the Executive branch.

The second issue related to covert action was the question of whether paramilitary operations—especially counterterrorist operations—would always be subject to timely congressional oversight. The Chairman and Vice Chairman raised this issue in speeches that noted a possible gap in coverage between the Intelligence Oversight Act of 1980 and the War Powers Resolution of 1973. The Committee also invited legal experts from the Executive branch to discuss this question on an informal basis. This exercise helped both the Committee counsels and their counterparts in various agencies clarify the issues involved.

5. Procedures for Executive Branch Reporting on Covert Action Programs

On June 6, 1984, the Committee and the DCI signed an agreement regarding the timing and content of Executive branch reporting of covert action information to the Committee. That agreement included a joint commitment to review those procedures a year later "to assess their effectiveness and their impact on the ability of the DCI and the Committee to fulfill their respective responsibilities." Such a review began in the summer of 1985 and lasted nearly a year.

On June 17, 1986, the Committee and the DCI reached agreement on an addendum to the reporting procedures of 1984. This addendum made clear that the DCI's reporting responsibilities extended not only to new covert action programs, but also to significant activities or developments in ongoing programs. It went on to state that for covert paramilitary programs, such devlopments would include, inter alia: the first decision to supply significant military equipment; any significant change in the quantity or quality of equipment provided; and any significant change in the level of participation of U.S. Government, contractor or agent involvement.

The addendum also provided that the Committee would be told if a covert action program were to involve non-routine foreign participation or participation by agencies other than the one designated by the President to direct the program (which is usually the CIA). Another provision specified that "the Committee wishes to be informed if the President ever decides to waive, change, or rescind any Executive Order provision applicable to the conduct of covert action operations."

Further provisions of the addendum covered any case in which the President determined to notify only the Chairman and Vice Chairman of the Senate Intelligence Committee and the Majority and Minority Leaders of the Senate, pursuant to section 501(a)(1)(B) of the National Security Act of 1947, rather than providing prior notice to the full Committee. These provisions made it clear that the reason for using this section must be indicated and that while the Chairman and Vice Chairman would help the DCI locate the Majority and Minority Leaders, the DCI would retain the obligation to find and inform them of the program.

At the DCI's request, the addendum also included the following provision: "The Committee and the DCI recognize that the understandings and undertakings set forth in this document are subject to the possible exceptional circumstances contemplated in section 501 of the National Security Act."

Section 501 of the National Security Act is also known as the Intelligence Oversight Act of 1980. It includes a preambular clause that conditions the DCI's reporting obligations: "Sec. 501. (a) To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods. . . ."

When the Committee and the DCI signed the 1986 addendum to the 1984 procedures for covert action reporting, the Members of the Committee were unaware that the DCI had been withholding notice of a Presidential covert action finding—on the Iran arms sales—for five full months. Another five months would pass and a scandal would begin to unfold before the DCI would come before the Committee and testify on this matter.

6. The Iran/Contra Affair

The Committee first learned of the Iran-Contra affair the same way that the rest of America learned of it: through press stories and Presidential statements in early November, 1986, and the Attorney General's press conference of November 25, 1986. On November 21, 1986, the Director of Central Intelligence testified to the Committee in closed session on the Iran arms sales covert action program, knowledge of which had been withheld from the Committee for ten months since the signing of the Presidential finding that authorized it.

The Committee moved on December 1 to take testimony from as many relevant witnesses as could be located and to secure and collect documentation that would later be made available to the Senate Select Committee on Secret Military Assistance to Iran and the Nicaragun Opposition. Fifteen subpoenas were issued, and a total of 36 witnesses gave testimony in closed session. The testimony of some witnesses was eventually found to have been incorrect in important respects. The Committee later presented the details of these matters to the Independent Counsel and, as appropriate, to other Committees of the Senate.

Thousands of pages of documents were gradually provided to the Committee, which undertook the first congressional effort to compile, collate and analyze that massive record. The Committee attempted to complete this analysis and write a report to the Senate before the end of the 99th Congress—a mere five weeks after it began its inquiry. On the last day of the 99th Congress, the Committee voted not to release its draft report. Work continued for another four weeks, and the report as transmitted to the Senate Iran/Contra Committee on January 27, 1987. The President's Special Review Board, popularly know as the Tower Commission, was appointed the same day that the Committee began its inquiry. Its report was issued some four weeks after the Committee's report.

In the wake of the Iran/Contra affair, many questions were raised regarding the clarity of the Intelligence Oversight Act of 1980 and the role of congressional oversight of covert actions. Certainly Congress had not anticipated that the President could assert that a 10-month delay was notice "in a timely fashion" to the Committee.

But it is important to distinguish the debate over the legal niceties of notice to Congress from the more general question of whether congressional oversight is warranted or effective. Had the Select Committee on Intelligence been briefed on the Iran arms sales covert action program, it would have learned that the Secretaries of State and Defense opposed that program. Significant debate would probably have ensued, and the Committee might well have convinced the President to cancel or to modify the program in some significant way.

7. Oversight of Sensitive Intelligence Collection Operations

Although the Committee's efforts to oversee covert actions are sometimes its most visible activities, much of its work concerns intelligence collection. Particularly through the budget authorization process, the Committee continued in the 99th Congress its efforts to promote efficient and effective intelligence collection. One major goal of the National Intelligence Strategy was to assist the Director of Central Intelligence make the difficult trade-offs between competing intelligence collection programs necessitated by the high cost of advanced technical systems.

The Committee also continued to oversee certain sensitive intelligence collection operations. On one occasion during the 99th Congress, the Committee felt that Executive branch officials had undertaken a sensitive operation without properly informing the Committee, despite their awareness that the particular operation was a matter of Committee interest. This instance was an aberration in a history of close but supportive oversight; the Committee and the Executive branch readily agreed on steps to avoid such occurrences in the future.

8. Combatting International Terrorism

In addition to raising the issues of congressional oversight discussed above, the Committee was an active participant in the work of the Vice President's Task Force on Combatting Terrorism. Two Members of the Committee were among the nine Senators and Representatives who met with the Vice President on September 17, 1985, to initiate

discussions with the Task Force, and they gave the Task Force a message from the Committee that set forth several areas in which it might contribute ideas and share information. Several sessions were held between Committee staff and the staff of the Task Force, led by Admiral James Holloway, III, and the Committee submitted an extensive set of classified issue papers. These covered such areas as problems in intelligence coordination, the needs of counterterrorist elements of the U.S. armed forces for tactical intelligence on a timely basis, and the need to protect sensitive intelligence sources and methods when making a case against particular terrorist groups or states supporting such groups. The Committee considered its fruitful collaborative efforts with the Task Force a good example of how the two branches of government can focus on shared areas of common concern.

*II D. Intelligence personnel policies*

In the National Foreign Intelligence Strategy, DCI William Casey noted that "our people are our greatest asset"; however, in a hearing on long-range personnel needs, Director Casey and other Intelligence Community (IC) witnesses outlined challenges of attracting and retaining quality people.

Against a backdrop of an increasing number of intelligence customers in government and growing demands for more specific military, political and economic information, the IC is facing a smaller qualified labor pool, intense competition from industry, and a negative perception of the attractiveness of federal service. In July, 1986, the Committee initiated a first-ever staff review of the IC's ability to recruit and retain quality personnel for the remainder of this decade and through the 1990's.

The Committee strongly believes that capable intelligence personnel are integral to national security and the linchpin to accomplishing the plan in the National Foreign Intelligence Strategy. The Committee staff has been directed to focus its review on each agency's current and planned personnel goals, policies and programs which support the key intelligence functions of human intelligence collection, counterintelligence, development and operation of technical intelligence collection systems and analysis. The ultimate aim of the Committee is to assess whether the Intelligence Community will possess the personnel capabilities required to perform these functional missions in the years ahead. A second aim is to determine what personnel policies, programs and legislative initiatives are required to ensure the U.S. Intelligence agencies are fully prepared to serve U.S. national security needs.

The following personnel policies and practices of the CIA, DIA, NSA, State's INR and FBI's Counterintelligence Division for each mission function are included in the review: planning, recruitment and selection, training, pay and benefits, retention, human resource management, and contracting out.

The Committee is expected to continue this analysis and work toward possible solutions in the 100th Congress.

*II E. Intelligence, events and issues of concern*

1. The Philippines

Members of the Committee shared with other Senators a growing concern about events in the Philippines. The sense of urgency was heightened by access to a succession of intelligence reports that painted an increasingly pessimistic picture of the Philippine situation—a venal and inept government confronted with a rapidly growing Communist-led insurgency.

Responding to these concerns, the Committee sent a staff delegation to obtain firsthand impressions of the situation in August-September, 1985. The delegation met with a variety of people—both American and Filipino—and traveled to Cebu and Mindanao in addition to Manila.

Drawing upon information and impressions gathered on the trip as well as on finished intelligence, the delegation produced a classified report for the Committee analyzing Philippine conditions and reviewing the activities and output of appropriate U.S. intelligence agencies. In addition, the Committee took the somewhat unusual step of directing the staff to produce an unclassified version for the public.

The Committee's decision was based on a judgment that the Philippine problem had become a major issue for U.S. policymakers, including the Congress, and that the Committee had unique information and insights which should be shared with other Members of Congress and the general public.

Among the conclusions of the unclassified report, issued on October 21, 1985, were the following:

The U.S. has major political and strategic interests in the Philippines that are imperiled by a rapidly growing Communist insurgency.

The Communist-led New People's Army (NPA) has grown from a minor presence in the 1970s to an estimated 30,000 armed regular and irregular guerrillas.

The NPA holds the military initiative and with the Communist Party of the Philippines (CPP) controls or is contesting control of settlements inhabited by at least 10 million people.

The rapid expansion of the CPP/NPA is largely attributable to its skillful exploitation of popular grievances against a political and economic system characterized by extreme corruption and the concentration of power and wealth in the hands of a narrow oligarchy.

The Philippine economy is in desperate straits with a declining GNP, widespread unemployment, and a huge burden of debt to foreign creditors.

Manila's response to the NPA has been inept; the Philippine Armed Forces suffer from an inadequate budget, shortages of supplies and equipment, poor logistics and medical care, and a corrupt and politicized senior officer corps.

Popular political support for the Marcos regime fell sharply following the assassination of Marcos' principal political opponent, Benigno Aquino.

Hopeful elements in the situation include an increasingly active political opposition led by Aquino's widow, Cory; a nationwide grassroots organization dedicated to insuring honest elections; a cadre of reformist officers in the middle ranks of the Armed Forces; and a well organized and well led Catholic Church.

Subsequent events, notably the failure of the Marcos regime to command majority support at the polls, the effort to rig the vote, and the popular uprising, triggered by reform elements in the Armed Forces and supported by the Church, demonstrated the validity of these conclusions.

*II D. 2. Arms Control*

The Committee receives from the Intelligence Community and various arms control agencies periodic reports on Soviet military activities relevant to a range of arms limitation agreements and ongoing arms control talks. Pursuant to its obligations under Senate Resolution 400 (94th Congress), the Committee has continued to report such developments to other relevant committees, and to indivudual Senators. During the past two years the staff has actively monitored Soviet activities of concern to: SALT I; the unratified but observed SALT II; the ABM Treaty; the Nuclear Threshold Test Ban Treaty; the Geneva Protocol on Chemical Weapons and the Biological Weapons Convention; the ongoing Mutual and Balanced Force Reduction Talks (Vienna); the ongoing Conference on Disarmament in Europe (Stockholm); and the U.S. Committee on Disarmament (Geneva).

The resumption of U.S.-U.S.S.R. negotiations last year in Geneva posed new challenges for the Committee because of the broad range of the Nuclear and Space Talks (NST). These include strategic offensive forces, intermediate-range forces, space and defense forces. As the talks got underway the Committee received testimony from Secretary of State Shultz, Ambassador Nitze, Ambassador Kampelman, and the Intelligence Community. Initial testimony pointed to a range of concerns about verification, and the Committee subsequently examined these in detail. The Committee's focus was on determining the readiness of the IC to meet the challenge of monitoring potential agreements in the new era of smaller, more mobile, high technology weapons, as well as weapons in space. A series of hearings were held in support of the budget process, and recommendations for improving intelligence capability in the outyears were developed in concert with the DCI's National Intelligence Strategy.

Along with continued monitoring of the NST talks in Geneva, challenges during the 100th Congress will include Nuclear Test Ban negotiations, potential talks on conventional force limitations "from the Atlantic to the Urals," and the fate of the stalled MBFR talks. The Committee staff has already heard from the private Natural Resources Defense Council, which is implementing an agreement with the Soviet Academy of Sciences for on-site monitoring of U.S. and Soviet nuclear tests.

*II D.3. Nicaragua and Central America*

Until the last days of the 99th Congress, the question of U.S. support for the armed democratic resistance in Nicaragua, the "contras," remained unsettled. While U.S. support of the Contras had previously been the subject of committee oversight, the funds appropriated for this aid were totally expended before the end of the 98th Congress. At the beginning of the 99th Congress, it was unclear whether there would be any assistance voted for the Contras or whether the CIA would be responsible for providing such assistance if it were approved. Eventually, however, the Congress appropriated $27 million in "humanitarian funds" for the Contras, excluding the CIA as executive agent for delivery. In the conference report accompanying this legislation, however, is the statement that "none of the prohibitions on the provision of military or paramilitary assistance to the democratic resistance prohibits the sharing of intelligence information with the democratic resistance." Such intelligence sharing continued direct CIA involvement in this area and necessitated Committee oversight of these activities.

Although the Committee did not have the primary oversight responsibility for the Nicaraguan humanitarian assistance program

as it existed during FY 1986, Members and staff look the lead in assuring proper Intelligence Community assistance in accounting for the expenditure of funds appropriated for contra aid. Meeting on a regular basis with representatives of the IC, and with State's Bureau of Inter-American Affairs and Office of Nicaraguan Humanitarian Assistance, Committee Members and staff conducted both on- and off-the-record hearings, briefings, and discussions on the subject of IC support for program accountability. Additionally, both Members and staff made numerous trips to the region during the 99th Congress gathering information which was useful in the oversight process.

During the Second Sessions of the 99th Congress, legislation was enacted granting $100 million in assistance to the contras, and no restriction was placed upon intelligence agency participation in the distribution of such aid. Insofar as the various intelligence agencies of the U.S. government should become active participants in this program, it was the committee's intent to exercise lead oversight responsibility.

*II D. 5. Allied intelligence relations*

An issue which the Committee began to examine is how our intelligence relations with our allies are managed and how effective they are. This is a very important issue because, just as our armed forces must cooperate effectively with our NATO partners' forces, so must intelligence support for our allied armed forces be effectively organized. Several Members of the Committee were briefed on this issue while in Europe, and a number of staff visits were tailored to this purpose as well. This is an area the Committee will continue to pursue.

*II D. 6. Strategic forces and defense acquisition*

The issue of supporting U.S. defense programs and policies was examined at length by the Committee as a direct result of the DCI's National Intelligence Strategy and the Committee's concern for long-range planning in the Intelligence Community. Two topics under this heading were considered by the Committee in a series of hearings: the support of U.S. policy for nuclear deterrence and the role of intelligence in U.S. weapons procurement.

The Committee's examination of intelligence support to U.S. deterrence policies focused on two problems in particular. The first topic was survivability. Current U.S. policy for strategic deterrence assumes that U.S. forces must be capable of carrying out protracted operations in order to deter the Soviet Union from initiating nuclear war. To achieve this goal, the U.S. has invested heavily in strategic systems that can survive a Soviet strike and provide the National Command Authority with the targeting flexibility required to develop a range of retaliatory options.

Survivability and flexibility for weapons, however, is of little use unless U.S. leaders have the intelligence necessary to decide how to use these weapons. As the Committee observed, building survivability into intelligence systems is a demanding, expensive task. To succeed, intelligence survivability measures must be planned several years before they are to be deployed and must be given the same priority as that assigned to the survivability of weapons.

The second topic of intelligence support to U.S. policy for strategic deterrence focused on the problem of tracking and targeting Soviet nuclear forces. Current U.S. doctrine assumes that to deter Soviet leaders, the U.S. must have the capability of destroying Soviet strategic forces following the outbreak of nuclear war. The problem from an intelligence perspective is that an increasing number of Soviet forces previously deployed on fixed launchers are now being deployed in a mobile mode. According to figures publicly released by the CIA, approximately one-fourth of the Soviet ICBM force will be based on mobile launchers, in particular, the road-mobile SS-25 and the rail-mobile SS-X-24.

Tracking such mobile forces requires not only adequate collection systems, but also the automated data processing necessary to detect mobile weapons in a vast stream of data. Like survivability, these capabilities must be programmed along with the weapons they are supposed to support if these forces are to meet their stated requirements.

The other set of hearings dealing with intelligence support of U.S. defense policies addressed the issue of intelligence used in the planning, design, and development of U.S. weapon systems. Much of the work the Committee carried out on this subject was conducted in close cooperation with the Committee on Armed Services.

As this Committee discovered, almost all of the intelligence used in the weapons acquisition process is produced by agencies funded under the National Foreign Intelligence Program. Although the Committee was impressed by the overall quality of the intelligence supplied by the IC to the military services to support weapons acquisition, it was determined that the linkage between this intelligence and the acquisition cycle could be improved. For example, under existing DOD regulations, the first official requirement for an intelligence assessment in the life of a weapons program does not occur until about 70 percent of the decisions affecting the lifetime costs of the weapon have already been made.

As the Armed Services Committee, in conjunction with the Department of Defense and the Packard Commission, developed its proposals for reforming the defense acquisition process, the Intelligence Committee consulted with Armed Services to insure that the newly-created Under Secretary of Defense for Acquisition would have the ability to make the best use of intelligence in weapons planning. The general guidelines for this area have been sketched out and will be put into more detail when the new Under Secretary enters office in the next budget cycle.

*II D. 6. Technology Transfer to China*

Future historians may well identify China's current modernization effort as the most far reaching development of the late 20th century. China is engaged in a vast experiment designed to alter fundamentally the standard pattern of a Marxist-Leninist command economy. The imperative which drives this effort is the perception of the senior Chinese leadership, led by Deng Xiaoping, that continued reliance on either the Soviet model of a command economy or on Maoist visions of perpetual revolution, would condemn China to a state of perpetual backwardness and weakness.

The drive toward rapid modernization has paralleled a dramatic change in U.S.-PRC relations. Following the 1972 Shanghai Communique, the two countries normalized relations in 1979, and President Reagan visited China in 1984. The warming of political relations has been accompanied by a rapid growth in U.S.-China trade (including a relaxation of controls on U.S. technology exports to China), a large influx of Chinese students at American universities, and steps toward some defense cooperation.

Science and technology are key to both Chinese modernization plans and U.S.-China relations. Economic modernization will depend on the success with which modern technology can be applied and absorbed in China. Consequently, Beijing's principal objective in its opening to the West is to gain access to science and technology.

This situation contains both opportunities and risks for the U.S. and raises important questions concerning the transfer of U.S. technology. The judgment of U.S. policymakers has been that the opportunities outweigh the risks and that the flow of technology strengthens China's economy and defense capabilities. A more modernized China will be more open to Western ideas and influence, will develop a larger stake in global stability, will be less prone to act on a destabilizing manner, and will be better able to withstand pressures from the USSR.

Nevertheless, there are risks in both the defense and intelligence areas. Some transfers have involved military equipment, and the vast bulk of them involve "dual-use" technologies with potential military applications. Other transfers, while non-military, will affect the ability of U.S. intelligence agencies to gather information on China including the degree to which U.S. technology exports are being diverted from civilian to military applications. At the same time, China's push to acquire technology poses some unique and difficult challenges to U.S. domestic counterintelligence programs.

With these considerations in mind, the Committee directed the staff to produce a report on the objectives and methods of Chinese acquisition of U.S. technology, the nature and extent of actual technology transfers to China, the contribution to China's military modernization, China's capacity to absorb advanced technology, and the implications for U.S. policy, Intelligence and counterintelligence.

APPENDIX I—SUMMARY OF COMMITTEE ACTIVITIES—JANUARY 1, 1985 TO DECEMBER 31, 1986

*A. Number of meetings/hearings: Total 212*

The total of on-the-record meetings and hearings of the 99th Congress was 212. Of these, 102 were conducted for oversight, 19 were business sessions, and 16 were hearings on the budget. The largest number of hearings on one issue was 47 on the initial Iran/Contra investigation in late 1986. There was 1 nominaton hearing, 5 arms control meetings, and 22 staff meetings. Many other types of interviews were conducted by the committee staff throughout the 99th Congress.

*B. Bills and resolutions originated by the committee: Total 9*

S. Res. 55. To authorize expenditures by the Select Committee to carry out its prescribed duties. Action: Referred to Committee on Rules and Administration on January 31, 1985. Ordered favorable reported on April 25, 1985. Passed by the Senate on May 5, 1985.

S. Res. 56. To commend Senator Barry Goldwater for exceptionally distinguished service to the Select Committee on Intelligence. Passed the Senate on January 31, 1985.

S. Res. 57. To commend Robert Ruhl Simmons for distinguished service to the United

States of America. Passed the Senate on January 31, 1985.

S. Res. 58. To commend Senator Daniel Patrick Moynihan for exceptionally distinguished service on the Select Committee on Intelligence. Passed the Senate January 31, 1985.

S. Res. 59. To commend Peter M. Sullivan for his able and dedicated service on the Select Committee on Intelligence. Passed the Senate on January 31, 1985.

S. Res. 322. To authorize expenditures by the Select Committee on Intelligence. Actions: Referred to the Committee on Rules on January 31, 1986 and passed the Senate on March 13, 1986.

S. Res. 429. To increase the limitation on expenditures by the Select Committee on Intelligence for the procurement of consultants. Actions: Referred to the Committee on Rules on June 17, 1986 and passed the Senate on July 23, 1986.

S. Res. 1271. Intelligence Authorization Act, Fiscal Year 1986. Actions: Referred to Committees on Armed Services, Judiciary Governmental Affairs and Foreign Relations. Reported with Report No. 99-136. Incorporated in H.R. 2419 and passed by the Senate on September 26, 1985. Conference Report 99-373. Became Public Law 99-169 on December 4, 1985.

S. 2477. Intelligence Authorization Act, Fiscal Year 1987. Actions: Reported by Intelligence Committee with Report No. 99-307. Incorporated in H.R. 4759 and passed by the Senate on September 24, 1986. Conference Report 99-952. Became Public Law 99-569 on October 27, 1986.

*C. Publications from January 1, 1985 to December 31, 1986*

S. Prt. 99-27. Rules of Procedure for the Select Committee on Intelligence (Committee Print) Amended February 28, 1985.

S. Prt. 99-52. Soviet Presence in the U.N. Secretariat (Committee Print).

Senate Report 99-79 on S. 1271, Authorizing Appropriations for FY 1986 for Intelligence Activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System (CIARDS) and for other purposes.

S. Prt. 99-96. The Philippines: A Situation Report (Committee Print).

Senate Report 99-307 on S. 2477. Authorizing Appropriations for FY 1987 for Intelligence Activities.

Senate Report 99-620 on the Nomination of Robert M. Gates.

Senate Report 99-323. Increasing the Limitation of Expenditures by the Select Committee on Intelligence for the Procurement of Consultants.

Senate Report 99-522. Meeting the Espionage Challenge: A Review of United States Counterintelligence and Security Programs.●

## HONORING SID LUCKMAN ON HIS 73D BIRTHDAY

● Mr. DIXON. Mr. President, I rise today to honor my good friend and great Illinoisan, Sid Luckman, on the occasion of his 73d birthday.

When football fans talk about the game's greats, Sid's name invariably comes to the forefront. At Columbia University, Sid starred as one of college football's most versatile athletes. A classic triple threat, Sid's ability to pass, run, and kick the ball made him one of 1938's greatest players. In one incredible streak, Sid returned a kick 82 yards against Army, punted 72 yards versus Syracuse and completed a 60-yard pass against Ivy League rival Pennsylvania.

Sid's incredible college career brought him to the attention of the legendary George Halas. Sid initially had no plans for pro ball, preferring to go into the trucking business with his brothers, but the persistent Halas finally convinced him to give pro ball a shot and signed him on July 24, 1939. Thus began a stellar pro career with the Bears that became synonymous with the proud legacy of the Monsters of the Midway.

As quarterback for the Bears, Sid piloted them to four championships as he and Halas pioneered the innovative T-formation. While the new formation was initially ridiculed by critics, Sid's direction of the famed 1940 squad removed any doubts with a magical season that culminated in the historic 73 to 0 drubbing of the heavily favored Washington Redskins.

Sid's career was not devoid of huge personal accomplishments. He still holds the record for touchdown passes in a game, set when he threw for an incredible eight touchdowns against the Giants on November 14, 1943. He also holds the record for most touchdown passes in a championship game by hurling for five scores in the 1943 title game against the Redskins. By the time he had retired in 1948, Sid's skills as a passer and a field general ranked him as one of the game's all time greats, which was confirmed with his election to the Pro Football Hall of Fame in 1965.

After his retirement, Sid served as an assistant coach for the Bears for a number of years while dually serving as vice president of the team. He also is a successful businessman and is currently president of Cellu-Craft Midwest, Inc.

However, to a new generation of Illinoisans who don't remember his gridiron feats, Sid has built another reputation as one of Chicago's most generous men. He serves tirelessly on a slew of charitable activities including the Special Olympics, the Better Boys Foundations, and the Anti-Defamation League of B'nai B'rith donating his time and other resources. He truly is dedicated to helping the less fortunate and has left his mark with a multitude of achievements.

Mr. President, I am sure my colleagues join me in wishing Sid Luckman a happy 73d birthday. It is an honor and a privilege to have him as a friend; a great athlete, a great humanitarian and, most importantly, a great American.●

## MICROENTERPRISE LOAN PROGRAM

● Mr. DECONCINI. Mr. President, I rise to speak today about the Microenterprise Loan Program which is funded by the U.S. Agency for International Development [AID]. I am speaking about this particular issue because of the report, "Where Credit is Due," released on Sunday by the Results Educational Fund. This report investigated 10 of the countries in which the Microenterprise Loan Program operates and which comprise 50 percent of the program. The Results report found that the AID has, to date, not fulfilled the guidelines set out in the 1988 bill.

The Microenterprise Loan Program was established to make credit available to the poorest people in developing countries. We earmarked $50 million in fiscal year 1988 for small loans to the poor in AID-assisted Third World countries. The foreign operations appropriations bill specified that up to 80 percent of the loans should be targeted to individuals in the poorest 50 percent of the population, with special emphasis on businesses owned by women and the poorest 20 percent of the population. The bill also recommended that loans not exceed $300 unless absolutely necessary. The Results report finds that of the $31.8 million reported expended by AID in the 10 investigated countries, only $5.2 million was spent in ways applicable to the intent of this bill.

In other instances, this program has proven to be effective. For example, the Grameen Bank in Bangladesh has made loans averaging $60 with a repayment rate of close to 99 percent. They have loaned to over 500,000 destitute women in Bangladesh. Bangladesh is proof that microenterprise loans work if directed to the poorest people. Unfortunately, AID is apparently not doing this.

In their investigation, Results found several faults with the way AID was dispensing of the money. Let me highlight some examples:

In Jordan the project was described in an AID cable as "(expecting) that the average loan will be in the neighborhood of $15,000 to $20,000." The bill states that there should be a $300 limit on the loans, unless it is absolutely necessary. It seems clear that at a minimum, there is some confusion with AID on the purpose and specific objectives of this congressionally mandated program.

In Honduras, $970,000 counted as technical assistance against the earmark was spent to send 100 microenterprisers to a 3-week business administration course in the United States. That averages about $10,000 per microentrepreneur. This, once again, is a blatant abuse of the money.

And in El Salvador, $2.2 million was reported being loaned by AID in a March 30, 1989, letter to Congress. Also, $3.2 million was reported by AID being expended in El Salvador in the 1991 annual budget submission. In September 1989, AID's El Salvador office acknowledged an error in the previous figures and reported a revised figure of $230,000. Clearly, some type of accurate accounting must be instituted.

Beginning March 6, 1989, I, along with my fellow sponsors from the House, Congressmen FEIGHAN and GILMAN, initiated a series of letters to AID requesting documentation that it was complying with the requirements set out by the bill. In response to a letter from Representatives FEIGHAN and GILMAN, on July 21, 1989, Acting Administrator Mark Edelman said that the statistical data requested did not exist and that it would be very difficult and burdensome for AID's Washington office to implement. The Results report based its findings on "an oversight analysis using data available from AID documents, phone conversations and field interviews." They conclude that "AID has not complied with the earmark, despite Agency assertions to the contrary, and that AID remains committed to assisting people 'a few rungs up' from the very poor in the hopes of creating wage employment."

Results conclusions are that:

First. AID has insufficient data and reporting systems to assert compliance with the microenterprise earmark.

Second. AID's lack of compliance demonstrates its lack of determination to fulfill the earmark.

Third. AID's broad definition of microenterprise—firms with less than 10 employees—fails to ensure compliance with the intent to direct a majority of the money to the poorest people.

Fourth. AID does not have a sufficient relationship with the poor that they are supposed to be helping. Nor are they giving sufficient priority to finding channels representative of them.

The report submitted by Results stating that AID has failed to comply with the benchmarks set up by the Congress for this program is disturbing. To be fair, this program is still relatively new and establishing community-based organizations capable of identifying individuals that can make use of such small scale loans can take time and effort. In addition, this program requires a basic rethinking of the premises of an AID bureaucracy which is oriented toward large scale government development projects and plans and accounting procedures that can identify and quantify the results of each individual loan and project.

Still, AID's own stated philosophy in implementing this program calls into question whether the Agency understands the mandate it has been given by the Congress and whether it is truly committed to making this program work. According to the Results report, AID views this program as one devoted to employment generation and increased production and then assumes that the poorest microentrepreneurs are not capable of creating new jobs. AID is also skeptical that there are viable channels to make and recover loans of less than $300 to the poorest sector of the population.

Yet we know that there are organizations around the world that have carried out microenterprise programs that are outstanding successes. I have already mentioned the Grameen Bank in Bangladesh. There are a number of other success stories. What we need is a strong commitment from AID to carry out this vital program. In order to establish the facts on AID's implementation of this program I asked, on October 27 of this year, the General Accounting Office to conduct an independent review of the microenterprise program. I ask unanimous consent that a copy of my letter to the GAO be printed in the RECORD at the conclusion of my statement.

Finally, Mr. President, the Results report lists four recommendations:

First. Congress should hold hearings after the GAO investigation is completed.

Second. AID should develop the capacity to reach the poorest of the poor by convening regional workshops led by experts in this field and by sending AID personnel and grassroots community leaders to learn from successful institutions such as the Grameen Bank in Bangladesh.

Third. Congressional hearings should be held after the submission of the April 1, 1990, AID plan for implementing the microenterprise program.

Fourth. Congress should consider the creation of a Credit for the Poor Foundation to guarantee credit assistance to the poorest people in the Third World.

I feel that we must actively pursue these recommendations. There appears to be far too much waste and far too little accountability in this vital program aimed at helping the poorest of the world's poor. We must ensure that this program—one that has demonstrated it can work if carried out properly—fulfills the humanitarian goals for which it was intended.

CONGRESS OF THE UNITED STATES,
*Washington, DC, October 27, 1989.*

Hon. CHARLES A. BOWSHER,
*Comptroller General, General Accounting Office, Washington, DC.*

DEAR MR. BOWSHER: We are writing to request an independent review of the microenterprise loans for the poor program, a program of the Agency for International Development (AID).

A great deal of interest has been generated in Congress for projects which provide small amounts of credit for the poor in the Third World. In FY '88 Congress earmarked $50 million for microenterprise lending for the poor. In report language accompanying the earmark, Congress directed that 80% of the loans should be targeted to individuals in the poorest 50% of the population with special emphasis on businesses owned by women and the poorest 20% of the population. It was recommended that loans should not exceed $300 unless it was necessary to fulfill the objectives of the program.

Over the past year, a number of Members of Congress wrote AID several times requesting data which would verify compliance. In one reply the Agency said, ". . . (we have) complied with, and indeed, exceeded both the letter and the spirit of the microenterprise legislation." Despite this claim the data that would back it up has never arrived.

In another response from AID, acting Administrator Mark Edelman wrote Members of Congress and admitted, ". . . I regret that such information is not currently available. Collection of the data requested for FY 1988 and FY 1989 would be difficult to obtain. . . . Nevertheless, given your interest in keeping detailed records on the size of loans and gender of the recipients, I have asked that we investigate the development of a reporting system for future years. I think you should know, however, that I am concerned that such a reporting system would place an extremely heavy burden on AID/Washington and mission staff as well as intermediary organizations upon which we rely."

We were concerned with the fact that the Agency had spent $400,000 a year earlier to undertake a lengthy survey of AID's microenterprise projects and yet the resulting report, Statistical Look at AID's Microenterprise Portfolio, failed to generate data on loan size and gender for each project. This failure brought into question A.I.D.'s commitment to collecting this information and to reaching the target groups.

We are concerned with AID's assertion of compliance, its lack of data to back that assertion, and the appearance that the Agency is committed to a "business-as-usual" approach. More detailed data is needed because the data made available has shown contradictory and inappropriate figures provided for FY '88. Examples include:

Jordan—The project was described in one AID cable as "(expecting) that the average loan will be in the neighborhood of $15,000 to $20,000."

Honduras—$970,000 counted as technical assistance toward the earmark was spent to send 100 microentrepreneurs to a three-week business administration course in the United States. That averages about $10,000 spent on each microentrepreneur.

Indonesia—$8.3 million reported by USAID in March 30, 1989 letter to Congress, but only two projects totaling $230,000 reported in cable from mission, and $2.3 million reported in 1991 Annual Budget Submission for FY '88.

Bolivia—$2.47 million reported by USAID in March 30, 1989 letter to Congress but $0 reported in 1992 Annual Budget Submission for FY '88.

We are requesting an independent review by the GAO to assist us in determining:

1. On what grounds AID can claim compliance if, as the Agency asserts, ". . . collection of the data requested for FY '88 and FY '89 (size of loans and gender of recipients) would be difficult to obtain."

2. Given that the FY '88 earmark was initiated three months into the fiscal year, we

would be more interested in your assessment of compliance of the $75 million earmark in FY '89 especially as it relates to use of funds for businesses owned and operated by the poorest 20 percent of the population, and for loans of less than $300.

3. We are concerned that the Agency has not involved grassroots self-help organizations in the design and implementation of this program. Therefore, we would like your assessment as to whether AID has the institutional commitment and management skills to administer a program that works with institutions that represent the poor directly.

We thank you for your attention to this matter.

Sincerely,

DENNIS DECONCINI,
*U.S. Senator.*
EDWARD F. FEIGHAN,
*Representative.*
BENJAMIN A. GILMAN,
*Representative.*●

## RURAL REFERRAL CENTERS

● Mr. ADAMS. Mr. President, I rise today in support of the provision included in the Labor, HHS, Education and Related Agencies Appropriations bill that retains the rural referral center classification under Medicare. Rural Referral Centers provide crucial care to our rural citizens and we must compensate these centers fairly for the services they provide. Given the current state of rural health care in our country, it is absolutely essential that rural referral centers maintain this special Medicare reimbursement status. Olympic Memorial Hospital, Saint Mary's Hospital, Skagit Valley Hospital, Central Hospital and Saint John's Hospital are all rural referral centers in my home State of Washington which depend on this designation and I am grateful that this body has seen fit to preserve it.

Earlier this year, I cosponsored legislation to extend the rural referral center designation. Following negotiations with the Department of Health and Human Services, it appeared as though this issue would be settled through the fiscal year 1990 budget reconciliation legislation. However, HHS saw fit to cross these negotiations and took steps to implement regulations to eliminate this important status for rural referral centers. In reaction to this, I sent a letter to HHS Secretary Sullivan urging that these regulations be halted.

However, we all owe a special debt to our colleague from Iowa, Senator HARKIN, for his hard work in this area. Senator HARKIN's dedication was critical to the extension of this designation that so many of our country's rural hospitals desperately need. As chairman of the Senate Conferees on the Labor, HHS, Education and Related Agencies Appropriations bill, Senator HARKIN refused to back down in the face of extraordinary pressure from the House not to include this provision in the final bill. It is no overstatement to say that Senator HARKIN saved the day for rural referral centers in my home State and across the Nation.

Indeed, there is no question that our country is experiencing a rural health care crisis. In Washington State alone we have had two rural hospitals close in the last month. Maintaining Rural Referral Center status is one small step toward ensuring that this crisis does not worsen. Much more must be done however, if we are going to fulfill the long-term objective of improving the current situation.

As a member of the Appropriations Subcommittee on Labor, HHS, Education and Related Agencies, and again under the leadership of Senator HARKIN, I am pleased that we were able develop a multifaceted plan which begins to further address the problems of rural health care in America. This initiative strengthens our existing resources to combat the rural health crisis. Still, more must be done. It is for this reason that I support the proposal to eliminate the rural/urban Medicare reimbursement differential and I intend actively follow other developments in this area and support those proposals which effectively address the current gaps in our Nation's rural health care delivery system.●

## A SAVING OPPORTUNITY

● Mr. BIDEN. Mr. President, saving for the future has been a time-honored tradition in this country. Cultural icons of this saving spirit—savings bonds, passbooks, Christmas clubs, and cookie jars—abound in our history. Yet, this essential ingredient of a sound and robust economy has been evaporating. There is, quite naturally, wide agreement on the need to reverse this trend and reinvigorate our inclination to save. Not surprising, however, there is wide disagreement over the best method for encouraging more saving.

Some have suggested new special interest tax loopholes or a cut in the capital gains tax. I have opposed these proposals when the lion's share of their benefits have gone to a tiny percentage of already advantaged high income earners. All too often, these poorly targeted initiatives have brought only the most meager increase in savings and investment at vast cost to the Treasury, and again without spreading the benefits among all Americans.

Others have advocated an expansion of individual retirement accounts, or IRA's. Currently, only those who earn less than $35,000 per year can make annual tax deductible contributions to an IRA. These funds cannot be withdrawn without penalty until retirement.

Since IRA's were first introduced, they have proved to be increasingly popular and increasingly effective as a savings incentive. These accounts could boost savings even further if they were made available to more Americans, and were more flexible in their application. This is why I did not support the Packwood-Roth IRA-plus proposal, but instead cosponsored the Mitchell-Bentsen IRA expansion plan.

The IRA-plus would have allowed more Americans to participate in an IRA savings plan, but here again the majority of benefits would have gone to top income earners. Under this plan contributions to an IRA would not be tax deductible, but the lump sum could be withdrawn tax free at age 59. Unfortunately, few average working Americans would be able to afford to put aside extra savings in response to a tax benefit that would not be realized until many years later. In addition, the IRA-plus would be extremely costly to the Federal Treasury over the long term, and it was linked to an expensive capital gains tax break which would have also primarily benefited top income earners.

The Mitchell-Bentsen IRA plan, which I support, provides a savings opportunity with financial flexibility for all Americans. Our plan would be available to all income earners. IRA contributions made by those earning less than $35,000 annually would continue to be tax deductible, as they are now. People earning over $35,000 would receive a 50-percent tax deduction on IRA contributions of up to $2,000 per year. And all Americans who invest in IRA's would be able to use their individual retirement savings, without any penalties, to help purchase a first home or pay for higher education.

This IRA plan is a realistic mechanism for increasing our national capacity to save. The benefits are within the reach of all, with special attention given to average Americans struggling to save. I support IRA's because they can help realize a goal we all agree on—a higher national savings rate. I support the Mitchell-Bentsen plan because it engenders greater financial security for those struggling to make ends meet while trying to prepare for the future. In short, it is a superior saving opportunity for all Americans.●

## TRIBUTE TO CUBAN RADIO JOURNALISTS

● Mr. GRAHAM. Today, I rise to commend Cuban radio journalists in exile, who are champions of the free flow of ideas and information.

Mr. President, December 1 is a special day for Cuban radio broadcasters. In pre-Communist Cuba, radio journalists would mark this day by celebrating the future and by honoring the memory of broadcasters who had died.

This tradition lives on, with the many Cuban-exile radio journalists in Florida. On this December 1, they will commemorate another year of broadcasting freedom in the United States, where radio stations play a key role in the Cuban-American community.

Florida has a well-deserved reputation for excellence in broadcast journalism, and Cuban journalists are a part of that proud tradition. We share the belief that an informed electorate provides the foundation for a free society.

This year—with freedom and democracy on the rise—we salute the vigor and the industriousness of Cuban radio journalists who exemplify freedom of expression every day. These broadcasters personify the free expression guaranteed in our first amendment. Their task is vital, their audience is vast and their dedication to the free flow of information is unshakeable.

I join with the south Florida community in the hope that upcoming celebrations of the December 1 commemoration by Cuban radio journalists will occur with new freedom and democracy in Cuba.●

## DEFINING A NEW AGENDA AT MALTA

● Mr. WIRTH. Mr. President, the meeting between Presidents Bush and Gorbachev in 2 weeks time represents an historical watershed in East-West relations in which the quality and vision of American leadership will be crucial. The Malta summit will occur almost 1 year to the day after President Gorbachev delivered a landmark address at the United Nations in which he outlined his country's intent to reduce forward-deployed Soviet troops and tanks. The period from the December 1988 U.N. address to the December 1989 Malta summit has been an extraordinary period of change. The most poignant image of this change could be seen in the faces of East and West Germans celebrating the effective fall of the Berlin Wall, the defining symbol of post-war East-West conflict.

Beyond the drama in Berlin, in the last year we have seen Hungary reject the nomenclature of communism, and Poland democratically elect a multiparty government; a leadership change in Bulgaria and the beginning of reform in Czechoslovakia. Members of the newly elected Supreme Soviet visited Kansas, and the Chairman of the Joint Chiefs of Staff met with his counterpart in the Soviet Union. Modern nuclear weapons are being burned and crushed under the terms of the INF Treaty and Soviet tank regiments are unilaterally being withdrawn from Eastern Europe. History is being made at an exhilirating pace.

As political revolution sweeps Eastern Europe and as the cold war levels of confrontation are drawn down, a new European system will inevitably evolve to replace the old security order. The shape of that order, be it defined by the "common European house", a "Europe whole and free", or another metaphor, has been moved to centerstage as a result of the recent dramatic events in Germany.

As these remarkable changes in global politics take place, we in America are facing a very serious budget crisis which will continue to impact defense planning. The recent Gramm-Rudman-Hollings budget sequester would slash the fiscal year 1990 defense budget baseline by approximately $8 billion. According to the Pentagon, this would result in a manpower cut of 170,000; the Army slice of that cut would be three division equivalents. This sequester comes several months after the Comptroller General of the United States, Mr. Bowsher, told the Senate Armed Services Committee that the Cheney 5-year defense plan will likely have to be cut by $150 billion. If the East-West political climate continues to improve, these dire budget predictions may well prove to be benign.

These realities are reflected in Secretary Cheney's recent decision to reduce by $180 billion the the remaining 3 years in the current 5-year defense plan. These cuts would keep defense spending constant in nominal dollars at about $295 billion for fiscal years 1992-94, thereby resulting in annual real decreases equivalent to the rate of inflation, now at 4.6 percent.

Barring an unforeseen turnaround in global politics, the American defense budget will, therefore, continue to decline. The issue is whether we can responsibly manage that decline through a negotiated multilateral framework—or whether defense cuts will come willy-nilly through incremental, unilateral competitive actions by ourselves and our NATO Allies. Perhaps arms control cannot step up to this challenge, perhaps we will experience apes on the treadmill running in reverse.

A more rational course, however, would be to seek mutual and controlled reduction of defense efforts on both sides. A CFE treaty would be the best means to ensure against a reversal of policy in the East. By locking in major force reduction commitments, a treaty regime with its accompanying verification measures, would provide built-in warning of a reversal on force structure and deployments. A conventional arms treaty would also provide a valuable means of managing politco-military changes in Central Europe, thereby contributing to stability during a transitional period.

Mr. President, a clear objective of the Soviet Union in Vienna is to reduce the burden of defense expenditures on the Soviet economy. We should view Vienna similarly. The CFE negotiations can play a significant role in reducing defense expenditures, but cost savings as an arms control objective have been derided by the defense community traditionally. I do not think that will continue to be the case as we make further real cuts in the defense budget. We are now in the fifth consecutive year of real annual decreases in defense spending. It is virtually inevitable that that trend will continue. It is time that the strategic community join the dismal world of budgeters.

It is certainly true that East-West arms control historically has not yielded cost savings. But since the dawn of the cold war, the strategic community has not sought a reduction of the defense burden as an explicit goal of arms control, focusing instead on the goal of military stability—reducing the risk of war. The barren MBFR talks consumed 15 years without agreement. SALT placed ceilings on strategic launchers in the context of ABM Treaty constraints on strategic defenses.

Today, for the first time since demobilization after the Second World War, we have an opportunity to achieve sharp force reductions. The START talks seek cuts of 30-50 percent of strategic nuclear weapons, depending on whether you use truth in accounting for the bomber-delivered weapons. The CFE negotiations will reduce Soviet forces well below the deep cuts outlined by Mr. Gorbachev at the United Nations last year and now being implemented, while NATO forces will be cut to 10-15 percent below current levels in the agreed categories.

Will the relatively modest Western cuts foreseen in the NATO proposal yield savings? A recent editorial in the Economist suggested that "though the Soviet Union will save a lot from an arms-cutting deal, the West will get virtually no 'peace dividend' at all." This would certainly have been true before President Bush last May successfully proposed that the Western position at Vienna include a cap of 275,000 for United States and Soviet air and ground forces deployed in Central Europe.

Under this proposal, the United States would withdraw and presumably disband approximately 30,000 troops from Western Europe. A recent Congressional Budget Office study found that this proposal, if implemented, would save about $2.1 billion annually in manpower and training costs and several hundred million dollars per year in acquisition savings. Even after discounting the additional

costs for monitoring compliance with a CFE accord—INF costs about $150 million annually—the current Western draft treaty would save the United States about $2 billion annually—real money even by Senator Dirksen's standards, but still only a fraction of the reductions in annual defense expenditures we are likely to experience in the years ahead.

President Bush was right to urge manpower cuts in the Vienna talks. But we need to go further. Defense budgets consist of three major categories: Manpower; equipment; and training. The largest single account is manpower, and it is here that significant savings can most effectively be realized. By cutting military manpower, pay is immediately scored as a saving, and associated training and equipment costs are also reduced.

President Gorbachev has proposed even deeper cuts in stationed forces in Central Europe to 300,000. The Soviet proposal, however, includes allied—not just United States and Soviet—stationed forces. To accommodate the roughly 160,000 West European troops stationed in West Germany, the Gorbachev formula would require the United States to scale back an additional 135,000 troops beyond the cuts envisioned in the Bush proposal, fewer if allied nations shared in the reductions. We should be moving in that direction—not only to reduce defense expenditures, but because it makes good political-military sense.

The Western military objective at Vienna is to reduce the capability for surprise attack and sustained offensive operations. Certainly, the lack of trained military personnel assigned to operational units will severely constrain the ability of the Warsaw Pact to mount a blitzkrieg in Central Europe or to achieve the traditional military objective of seizing and holding territory.

Vienna, however, is also very much a political exercise in which manpower reductions can play a central role. Our clear goal here has been to reduce the number of Soviet troops deployed in Eastern Europe—now in excess of 500,000, of which 380,000 are stationed in East Germany. With the demise of the Brezhnev doctrine and the associated policy requirement for Soviet forces—the goal of deep reductions in forward-deployed troops appears to be shared by Moscow. We should seize the opportunity to dismantle Soviet military domination in Eastern Europe through deep manpower cuts in CFE.

It is questionable whether our European Allies would be pleased with an arms control outcome in which the United States takes all the reductions. Demographics and politics will force cuts in NATO European forces. The coming debate on burden shedding has the potential to be as divisive as the burden sharing debate. One solution would be to accommodate national needs within much lower overall ceilings in the current and future negotiations.

Many skeptics question the advisability of pursuing a CFE follow-on negotiation. In my view, we have no choice but to press on in CFE for further and deeper reductions. To suggest that we should be content with the gains of CFE phase 1 is to suggest that we should be complacent about the burden huge defense expenditures place on our societies—in human and financial capital. We must, of course, spend what is necessary for the national defense—but our publics quite rightly will not allow us to expend scarce resources to sustain a military posture out of proportion to political realities and purpose.

I authored a provision in the 1990 Defense authorization bill requiring the President to submit a report to Congress on the military, political, and cost implications of further reductions in equipment and manpower to 25 percent and 50 percent below current lower levels. Such deep cuts—which have been embraced by former SACEUR Andrew Goodpaster and former MBFR Ambassador Jonathan Dean—will enable us to save a significant portion of the $170 billion we spend annually on our NATO commitment.

Deep cuts also will require a radical revision of Western military doctrine, force structure, and acquisition strategy. Many NATO analysts shudder at the idea of revisiting flexible response and forward defense, at the challenge of recasting military force structure, of developing new approaches to conventional deterrence and stability. We should be welcoming that opportunity with enthusiasm and creativity, for events certainly will force us to undertake a radical revision of our political and military thinking.

Mr. President, we are living through an extraordinary period of history. We have it within our grasp to build down the military confrontation which has divided Europe for four decades at great cost. As we seek to reduce the heavy hand of military expenditure, we also recognize the emergence of a new and different agenda, defined not by cold war but by population explosion and the global environmental crisis. This agenda, common efforts to protect the environmental systems we both depend on, will both define and strengthen the mutual aims of East-West cooperation in the future.

New thinking about East-West security should help us reshape our priorities in the 1990's away from a military focus and toward cooperation on environmental matters. The developed countries of East and West have a special responsibility to lead on the issue: Over two-thirds of $CO_2$ emissions come from NATO and Warsaw Pact countries and almost all CFC emissions. Yet as we look into the next century, the developing world—with understandable concerns about the impact of environmentalism on development—will explode in terms of population and contribution to global environmental problems. This only underscores the importance of East-West environmental leadership on the world stage.

There is a nexus here between the agenda that was necessary for the past and that which is urgently needed to prepare for the future. Strapped by enormous deficits, the United States and Soviet Union are going to have to free up defense resources in order to finance investments that address the common threat of global environmental decline.

In the United States, we are spending $300 billion annually on defense, and only $5 billion on the environment. Is the threat of superpower conflict 60 times as great as the certainty of global warming? Is it prudent to continue paying a $300 billion premium to insure ourselves against an increasingly remote risk—while skimping on insurance against what could well turn out to be an environmental catastrophe on an unthinkable scale.

Adapting our thinking and reshaping our priorities to reflect the emerging global environmental challenge will not suffice unless we dedicate adequate resources to meet the needs of transition, in our own countries and in the Third World. How then, do we initiate this transition?

At the upcoming summit meeting, I would hope that President Bush and President Gorbachev will focus, in part, on the need to restructure our priorities away from military expenditures and toward far-reaching and urgently needed environmental action.

The realization of savings from defense expenditures needs to be plowed into investments in environmentally sound economic development. These include: Investments in new technologies and process engineering that allow us to use energy more efficiently; investments in the international institutions we need to develop a global will to prevent environmental systems from collapsing—the United Nations Environment Program is one such example; investments in new, clean sources of energy; and investments in the scientific research which must be the basis for improved responses.

The world is awaiting environmental leadership. The Soviets, despite well-intentioned rhetoric, cannot even begin to take the lead with the economic difficulties they face. The United States could lead, but the administration seems to be bogged down in stale questions of whether or not there is an environmental problem. Global warming, ozone depletion, and

other global environmental concerns are rapidly emerging as the greatest challenge facing the world.

As we begin the last decade of this century, of this millennium, we have an incredible opportunity to reshape the global political system, to replace confrontation with cooperation. The Malta meeting can and should serve to begin refining this new common agenda.●

## RENEWABLE ENERGY TECHNOLOGIES

● Mr. McCAIN. Mr. President, as a U.S. Senator, I receive a great deal of correspondence from children concerned about our future. Do you know what concerns the youth of America most? The environment. The children of this Nation wonder whether they will have clean air to breathe, safe water to drink, and unspoiled land on which to live, grow, and prosper.

Their letters call to mind the wise words of President Theodore Roosevelt who said:

To waste, to destroy our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them amplified and developed.

Truly, we have great responsibilities as the privileged stewards of our natural resources. It is the inviolable duty of this generation to bequeathe to our children a healthy and bountiful natural heritage.

One of the greatest challenges to meet that responsibility is the problem of air pollution. Acid rain caused by sulfur and nitrogen oxides from coal-fired powerplants is taking a toll on the health of our forests, and on our rivers, lakes, and streams and the fish that inhabit them. One hundred million Americans live in areas that do not meet EPA's health-based air quality standards. And, scientists indicate that man is emitting excessive amounts of carbon dioxide to the atmosphere contributing to the "greenhouse effect."

As my colleagues know, Congress has been working diligently over the past several months on legislation to update the Clean Air Act. Hopefully, soon we will be able to pass a bill that will help us ensure clean air for all Americans.

One of the major components of that effort, Mr. President, will be to cut sulfur and nitrogen oxide emissions from coal-fired utilities in half by the year 2000. After achieving those reductions, which will be tough enough, the most difficult part of the task will lay ahead—limiting the growth of emissions to prevent backsliding while still meeting the ever increasing power demands of a growing economy—a tall order, indeed.

To pull this policy rabbit out of the hat, this Nation has invested vast resources for research and development of clean coal technologies. This program seeks pretreatment methods and combustion processes that will enable us to generate more coal-powered electricity without increasing pollution. This is certainly a worthy and important goal and one I wholeheartedly support. We must recognize, however, that despite the bright future of clean coal technologies, there will be no technological panacea. Burning fossil fuels will always produce greenhouse gases and, quite likely, the combustion of coal will forever have environmental consequences either by polluting the air or by creating emission control byproducts which must be disposed of.

Clearly, Mr. President, to achieve a secure and environmentally sound energy future, power sources that harness rather than consume natural resources must play a significant role in our energy mix—including photovoltaics, solar thermal, geothermal, wind, and biomass energies. Mr. President, these power sources offer the two critical characteristics that are indispensable to our environmental and energy future—they are clean and limitless.

Like clean coal technologies, the Federal Government has provided resources through the Department of Energy for research and development of renewable energy technologies. Our investment is beginning to bear fruit. Some of the technology developers in the field have been able to lower costs and offer electricity at competitive market rates. In Boron, CA, for example, a solar energy facility is producing electricity at a cost of 7 cents per kilowatt hour [kWh]—an extremely competitive price. Photovoltaics, solar thermal, wind, and other renewable energies linger at the edge of large scale commercial viability. We must do what we can to help put them over the top. The air will be cleaner, our Nation will be more energy independent and the future will be brighter if we succeed.

Mr. President, President Bush has shown outstanding leadership on the issue of clean air. I doubt that without his support and guidance, we would be at a point where congressional action appears imminent. In his proposal to update the Clean Air Act, the President suggested a number of incentives for utilities to commercialize viable clean coal technologies. His purpose obviously is to promote clean air and help us realize a return on our research and development investment.

Among the incentives he would offer is an allowance for a higher rate of return for those utilities that take the risk of employing clean coal technologies. In addition, the President would enable the Federal Energy Regulatory Commission to permit 10- to 20-year amortization periods for clean coal equipment to make them more economically feasible. A third carrot would allow FERC to establish preapproval of the prudency of expenses and negotiated cost caps on clean coal projects. This would give electricity producers greater certainty when planning to recapture capital investments. The measure would also require the Department of Energy to encourage States and local public utility commissions to adopt similar incentive packages.

Certainly, these measures will successfully bolster the commercialization of clean coal technologies, and I appreciate the intent and goals of the President's initiative. I believe, however, it falls a little short. If we are to provide utilities with such incentives, renewable energies, which also need a boost into the market place should receive the same consideration. Renewable energies hold greater environmental benefits than clean coal technologies. Therefore including them in the incentive package to encourage commercialization advances the President's underlying goals but in a more powerful, meaningful, and consistent fashion.

I will be examining the finer points of this initiative during the recess. When Congress reconvenes in January, I intend to offer legislation to include renewable energies in the President's incentive package. I believe it is the right thing to do for the environment, for the economy of tomorrow and for the benefit of future generations.

I ask that letters from renewable energy industries in support of this initiative be printed in the RECORD.

The letters follow:

SOLAR ENERGY INDUSTRIES ASSOCIATION,
*Arlington, VA, November 20, 1989.*

Senator JOHN MCCAIN,
*U.S. Senate, Washington, DC.*

DEAR SENATOR MCCAIN: I am aware of your efforts to support renewable energy on the basis of commercialization efforts for clean coal technology. On behalf of the Solar Energy Industries Association (SEIA), the national trade organization for the photovoltaic and solar thermal manufacturers and component suppliers, I strongly support your efforts as the basis of sound national policy.

While renewable energy technologies today are cost-effective in many applications, because these technologies have higher front-end costs, we have experienced difficulty entering the market. Policies which provide lower-cost capital over longer periods will have a very positive effect by making it easier for utilities and other endorsers to amoritize these higher up-front costs which will be more acceptable to our potential customers.

Solar thermal power has over 200 megawatts of electricity interconnected to the utility grid which has all been privately financed. While only 20 megawatts of photovoltaic power is now on the utility grid, with proposals such as yours to promote solar and renewable energy, our industries

could expect over 4,500 megawatts of solar thermal and 1,000 megawatts of photovoltaics by the year 2000.

Thank you for pursuing these efforts and please feel free to contact me if we can be of any assistance.

Sincerely,

SCOTT SKLAR,
*Executive Director.*

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AMERICAN WIND ENERGY ASSOCIATION,
*November 21, 1989.*

Senator JOHN MCCAIN,
*111 Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR MCCAIN: I am writing to let you know of my appreciation for your efforts to speed commercialization of renewable energy technologies. Your proposal to apply certain clean coal technology incentives to renewable energy makes sound policy sense. On behalf of the American Wind Energy Association (AWEA), the national trade association representing windpower manufacturers and suppliers, I strongly salute your effort as one that should help renewable energy realize its market potential more quickly.

Wind energy now has over 1,200 megawatts of installed capacity in this country, providing 1 percent of the electricity to the states of California and Hawaii. That power is sufficient to meet the residential needs of a city the size of San Francisco and is being provided at costs that average 7-9 cents per kilowatt-hour. Although renewable "fuel" like windpower is free, the upfront capital costs are more expensive today than for conventional technology. Your proposal could help wind energy realize some of its immense potential, which the National Academy of Sciences and other experts have conservatively estimated to be over a trillion kilowatt-hours annually, or about 40 percent of this country's annual electric demand.

We appreciate this initiative on behalf of a sound national energy strategy. Please let me know if AWEA can be of assistance on this or any other matter in the future.

Sincerely,

RANDALL SWISHER,
*Executive Director.*

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NATIONAL WOOD ENERGY ASSOCIATION,
ARLINGTON, VA, NOVEMBER 21, 1989.

Hon. JOHN MCCAIN,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR MCCAIN: The National Wood Energy Association (NWEA), is the national trade organization of the commercial wood energy equipment manufacturers, project developers, and woodlot owners. We applaud and support your efforts to make provisions for commercialization programs for biomass and other renewable energy technologies based on the clean coal commercialization programs.

Wood-fired power plants currently provide almost 4,000 MW of electricity to our nation's utilities and have the potential to provide at least ten times that much by the year 2000 with the proper incentives. The co-combustion of wood and coal is one way this increase could occur, offering an environmentally sensible way to utilize our coal resources.

Initiatives such as yours which would provide low-cost, long-term financing for renewable energy applications will greatly enhance the progress of our technologies into the marketplace.

NWEA firmly believes that initiatives such as yours are an important step in developing a level playing field for all energy generation technologies. Please contact me if I can be of further assistance.

Sincerely,

DAVID C. RINEBOLT,
*Director of Research.*●

## EMERGENCY CHINESE IMMIGRATION RELIEF ACT

● Mr. MCCONNELL. Mr. President, last summer the world was captivated by the extraordinary courage of Chinese students as they risked their lives in a quest for democratic reforms in their homeland. The image of a single protester stopping a column of military tanks is ingrained in the minds of millions of Americans. Our Nation cheered as a China hungry for freedom rose up. We mourned as a brutal suppression acted to wear it down and douse this flicker of hope for freedom.

Chinese students in the United States have watched in horror as their fellow freedom fighters in China are persecuted for their involvement in the uprising. They live in terror that they will be forced to return to their homeland where an uncertain fate awaits them. A fate imposed by a regime eager to punish for alleged treasonous acts committed while abroad.

I have written President Bush, to urge his support of H.R. 2712, the Emergency Chinese Immigration Relief Act, despite opposition from the Chinese Government. This bill would ease the understandable fears of these brave students who have been so vital to the prodemocracy movement in China by allowing them to remain in the United States. In recent weeks, we have witnessed a most extraordinary series of democratic revolutions in Eastern Europe. Enactment of this bill will reaffirm our commitment to the world's courageous peoples who strive for freedom.●

## LEGISLATION NEEDED FOR WAR ON DRUGS

● Mr. BIDEN. Mr. President, This evening I had hoped to pass two critically needed antidrug bills. The first is H.R. 3007, the contract services for Federal Drug Offenders Act. The Second is H.R. 3550, The Forfeiture Amendments Act of 1989, which includes my forfeiture-for-guns provision that has already passed the Senate.

By calling up H.R. 3007 and adding to it the provisions requested by the administration, we would have sent to the House a package of provisions requested by the administration office of the U.S. courts, the national drug director, and Federal law enforcement officers.

However, this effort was blocked by a Republican Senator acting at the request of the administration. They objected to a provision that would allow Federal law enforcement agencies to use forfeited assets to buy new weapons and body armor for their agents.

I simply can't understand the administration's position. On the one hand, Director Bennett has said—in no uncertain terms—that several of the forfeiture provisions in H.R. 3550 are necessary to implement the national drug strategy.

On the other hand, the Justice Department has blocked action on this package even though every provision in it has previously passed the Senate without dissent. I cannot understand the administration's objection to permit passage of this legislation that Director Bennett has said is needed.

Despite the administration's objections, I fully intend to move this legislation, which I am confident will have the overwhelming support of my colleagues.●

## CONGRESSMAN WILLIAM V. CHAPPELL OUTPATIENT CLINIC

● Mr. GRAHAM. Mr. President, the late William Chappell, Congressman from Florida, dedicated his life to public service. He served his country as a naval aviator in the Second World War and he served the Fourth Congressional District of Florida as a Member of the House of Representatives for 20 years.

In recognition of his leadership in the House and his strong advocacy for veterans, the House of Representatives voted unanimously October 2 to name the Veterans' Administration Outpatient Clinic in Daytona Beach, FL, in his honor.

Mr. President, I feel this action is very appropriate and I am pleased to report that today, Secretary of Veterans Affairs Edward Derwinski has taken action to officially designate this clinic as the William V. Chappell Veterans Outpatient Clinic.

Mr. President, I ask that a copy of Secretary Derwinski's letter be inserted in the RECORD at this time.

The letter follows:

THE SECRETARY OF VETERANS AFFAIRS,
*Washington, November 21, 1989.*

Hon. BOB GRAHAM,
*U.S. Senate,*
*Washington, DC.*

DEAR BOB: Thank you for the letter in which you and Senator Mack urge the Department to name the VA outpatient clinic in Daytona Beach, Florida after the late Representative William V. Chappell. I knew Bill Chappell well; he was a good friend and a respected colleague during my years in the Congress.

The Department customarily defers to the wisdom of Congress when it comes to naming VA facilities. However, based on my own knowledge of Bill Chappell's efforts on behalf of American veterans, and prompted by your strong support and that of others, I am pleased to announce my decision that

the outpatient clinic at Daytona Beach will be named the William V. Chappell Veterans Outpatient Clinic. I shall take steps to effectuate the naming of the clinic immediately.

I am proud to be able to honor the late Bill Chappell in this special way, and I thank you for sharing your views with me.

Sincerely yours,

EDWARD J. DERWINSKI.●

## TRIBUTE TO CHERYL EICHLER

● Mr. RIEGLE. Mr. President, I rise today to pay tribute to one of the bravest women I have had the honor to meet. Ms. Cheryl Eichler, a 28-year-old Michigan resident, underwent tremendous pain and suffering for over 12 years of her life. Her battle, however, did not embitter or depress her; rather, she used her experiences to grow and to benefit many others like her.

Ms. Eichler was a victim of Crohn's disease. I recently met Cheryl when she came to testify at a hearing of the Finance Subcommittee on Health for Families and the Uninsured that I chaired in Southfield, MI. In an effort to help others, Cheryl had the strength and courage to leave the hospital in order to come and testify about her most unfortunate plight.

Although Cheryl maintained a full-time position, her employer offered her no health care benefits. Each and every time Cheryl needed medical assistance, she had to undergo the draining and arduous process of seeking public assistance or finding a private facility willing to treat people without health insurance.

During her June 1989 hospital stay, Cheryl had accumulated a bill of over $34,000. She was forced to resign her position and was also denied Medicaid. Cheryl's moving testimony demonstrated the overwhelming need for change in our health care system to assure that no individual in need of health care is denied needed services or driven into poverty in order to receive care.

Cheryl Eichler passed away on Tuesday, October 10, 1989, due to complications from her illness. The courage and selflessness she exhibited make her a true heroine, and her contribution to the cause of the uninsured will long be remembered.●

## STATEMENT BY SIR JAMES GOLDSMITH ON MERGERS

Mr. DOLE. Mr. President, Sir James Goldsmith is an intelligent, successful, if sometime controversial, international financier. He has engaged in a number of mergers and acquisitions over the last two decades. Some may debate the economic results but no one questions his knowledge and skill in this area.

Last Thursday, Sir James gave a speech in London at a conference sponsored by Skadden, Arps, Slate, Meagher & Flom and the International Herald Tribune. The speech analyzes the development of mergers over the last several years. It points out a number of excesses. Finally, it makes several specific recommendations.

I do not, of course, endorse all of Sir James' conclusions but I do commend this speech to all my colleagues who are interested in this important area.

I ask unanimous consent that Sir James' speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

SPEECH BY SIR JAMES GOLDSMITH

Not all mergers and takeovers are good, nor are they all bad. Not all leverage is imprudent, nor is it all prudent. Only the foolish or the intellectually dishonest will fail to distinguish between one category and the other.

The trouble is that excesses lead to reactions and reactions can overshoot. This can result in bringing about fundamental change which is neither intended nor desirable.

My purpose, this morning, is to try to distinguish between good and bad takeovers, and between different categories of leverage; also I will suggest some lessons to be learned from recent developments in the U.S.A. where the takeover cycle is more mature; finally, I will attempt to propose a solution to some of the problems as I see them.

Mergers and takeovers occur for a number of reasons. Here are four typical examples:

In some industries, it is necessary to sell products internationally. So there are transnational mergers to supply the infrastructure.

Or large research budgets are needed. So there are mergers for size within the same industry.

Or there can be an advantage in extending a company's product range into a closely allied or genuinely complementary activity. So another company is acquired to provide special skills and market position.

Or, finally, a large company might wish to acquire a particularly innovative smaller company within its own industry. The desired objective is for the larger company to benefit from an injection of creative vigour and for the small company to benefit from an injection of capital.

Those are all good reasons for a merger and few, today, would disagree. Yet, in the 1950s and 1960s, many were prohibited on the grounds that they were considered anti-competitive. This was to have considerable impact on the future.

The mistake was to treat all industries as though they were identical. Standards for competition should be quite different for an industry which competes worldwide as opposed to one whose marketplace is local. In the retail trade, concentration of ownership in any one place will be anti-competitive and will lead to high prices, poor service and general decadence. But, in many manufacturing industries, the marketplace is global and competition should be judged accordingly.

A good example of an ill judged intervention was the complaint by the anti-trust division of the U.S. Department of Justice in 1968 prohibiting Gillette from acquiring the German electric razor company, Braun. That merger seemed to satisfy most of the criteria that I described earlier and yet was prohibited on the grounds that it was anti-competitive.

This policy was a significant contributing factor to the emergence of another category of acquisition—the conglomerate merger. Nature's empire builders, finding themselves prohibited from expanding by acquisition within their own industries, embraced diversification and created conglomerates. The stockmarkets were enthusiastic and placed high ratings on their shares. This accelerated the movement because conglomerates could issue their shares as currency for acquiring other companies and as their shares were valued at higher price/earnings ratios, each acquisition furthered the impression of rapid growth of earnings per share. So the conglomerates were able to enter into a buying frenzy.

Twenty years later, it was possible to assess objectively the performance of these multi-industry groupings. Taken as a whole, with some notable exceptions, the conglomerates had failed. When comparing divisions within a conglomerate to stand-alone and focused companies in similar industries, the conclusions were clear. The conglomerates, in general, had underperformed in growth, profitability, worthwhile capital investment, creation of employment and innovation.

During this period, many of the original conglomerators had retired or died and had been replaced by professional management. The term "professional management" usually means management that did not found and does not own a significant share of the company. Some such management was very good. They understood the need to deconglomerate and to concentrate their efforts on their core business, that is to say the business which they know best and believe in most. Gulf and Western, now Paramount, is an example. Others were not so good. Their arrival merely replaced the flame of the founder by the complacency of the bureaucrat. That did little for the business except to make it more respectable. As they became large, passive and ceased to pose a threat, conglomerates joined the establishment.

This attracted a new and wholly different group of conglomerators. They were the corporate management of major companies which produced very large cashflow from cash rich, low growth or slowing declining industries. They faced the choice of disbursing this cashflow to their shareholders who could invest it as they thought fit or, alternatively, retaining it and investing in new businesses. It is a temptation to choose the latter because there is a structural conflict of interest between shareholders and professional management. Shareholders want value. They want to see the fundamental value of their shares rise and, ultimately, be reflected in the market price. Management, without a stake in the business, have a natural tendency to prefer size. The bigger the business they run, the greater their prestige, rewards and power of patronage. Nonetheless, some who chose the second course, acted wisely and invested in businesses which were allied to their core business and which could benefit from existing infrastructure and skills. Philip Morris is the outstanding example. Others joined the rush to conglomerate and did so long after most thinking people could see quite clearly that the conglomerate structure had failed. Paying large premiums over market, they acquired companies with no connection whatsoever with their traditional businesses, about which they had no knowledge and

for which they had neither the management skills nor the corporate culture. They also failed.

A fundamental question is how to cope with a large company that is failing. Of course, I do not mean just conglomerates, but any large company. It is not easy to identify such companies before it is too late. Large companies do not suddenly go bankrupt. They are rich and by selling off residual assets, can finance their decline for long periods of time. Or they might have one division that produces substantial cashflow which can be diverted to irrigate the failing diversifications.

Usually, the management is serious and honourable, so they administer decline seriously and honourably. Often they give up just before ultimate failure and if there is still some flesh on the carcass, they disappear into a friendly company. Nonetheless, the damage will have been done.

In the U.K., over the past decades, we have witnessed the demise, in this way, of large parts of entire industries such as motorcars, motorcycles, electrical products, machine tools, shipbuilding, etc.

A good example in the U.S. is Panam. Once a great company, it lost its way. Its steep decline was financed by the sale of such valuable assets as Intercontinental Hotels and the Panam Building. The proceeds of these disposals allowed management to continue without tackling the underlying problems. The independent directors failed to provoke remedial action. Shareholders voted with their feet—they sold and moved along. When things became desperate, the unions attempted to find a buyer for the company who would be willing to make the necessary changes. Some changes have now taken place and hopefully these will have come in time.

Many different solutions are canvassed. In centralised systems of government, it is thought that the State should intervene. Experience in Eastern Europe, Latin America and elsewhere has now turned this into a minority view.

Some wonder whether the Japanese model might be applicable to us. It certainly seems to work for them. But it is a wholly different system based on a particular form of collective capitalism. It did not spring up overnight as a result of a management decision or a piece of government legislation. It has emerged from a culture which for the past four hundred years has taught its people to consider socio-political loyalty as the supreme virtue. In any case, the Japanese see their situation as being very different to ours. In their eyes, we suffer from what they call "advanced nation disease".

In Britain, some suggest that the large commercial banks, the clearers, should, as in Germany, assume a dominant role. But in the U.K., the commercial banks have, at best, an uneven record in running their own businesses.

Obviously, institutional shareholders have an important role to play and should be active investors. But, perhaps, they are right to play that role as a substantial factor in the marketplace rather than attempt to assume direct responsibility for British industry.

The marketplace is relatively efficient but it, also, can get overexcited. However, it does have the great advantage of being able to correct its mistakes, that is if it is left free to do so. The market is often accused of short termism. But, in fact, companies with convincing long term plans for investment and research, benefit from far higher price earnings multiples than do those whose longer term future seems dull. The market is willing and able to value innovation and long term prospects. And, in any case, there seems to be some confusion in the minds of critics between long termism on the one hand and on the other, perhaps unconsciously, remaining long term investors in a stagnating company. Also let me make it clear that the role of takeovers through the marketplace should not be to change satisfactory companies. It is to improve unsatisfactory companies and to allow healthy companies to grow strategically by acquisitions.

This leads me to the great takeover wave of the 1980s in the U.S. It was triggered by a number of factors.

By 1982, investors were despondent, the market was very low and in the eyes of those who could believe in economic revival, the market price of shares in no way reflected the values of underlying businesses. Then there were the great opportunities offered by the failed conglomerates—the debris of the 1960s. They were performing badly and were wholly out of favour.

So a few individuals who believed in economic recovery put up equity capital, borrowed from the banks, and acquired companies either on an agreed basis or through hostile takeovers.

As this is the first time I have used the term "hostile", perhaps I should attempt to define it within the context of such takeovers. Hostile to whom? Not to shareholders. They were offered a large premium for shares in a declining business and they could reinvest their cash elsewhere. Not to the employees of the underlying businesses. They were suffering from the conglomerate structure. Deconglomeration would lead their business to renewed independence or alternatively to joining a group which could help their future development. Not to suppliers, customers or local communities, and not to the economy as a whole, because the dismantling of a faulty structure leads to positive improvement and a more productive deployment of resources. So, in reality, hostile in this context means hostile to head office staff. As Professor Robert Clark, Dean of Harvard Law School, says, and I quote, "takeovers via stock ownership are the most effective form of corporate accountability."

The normal pattern following acquisitions was to sell off the diversified assets, substantially repay the bank debt and retain the core business. The ongoing business would remain with debt at a reasonable level relative to equity. As management concentrated on the core business, and as the economy did, in fact, recover, the result was success. There was also an indirect benefit. Some other conglomerates, with lively management, noted the results and decided, on their own, to repair their faulty architecture.

But then a terrible thing happened. It all became fashionable. There was a rush to follow. Special takeovers funds were created by managers who received large upfront fees plus overrides typically of 20%. Investors, mainly institutional, flocked to put up their money.

The typical structure adopted by these funds was to maximise leverage and minimise equity. In this way, profits which might be quite modest relative to the overall transaction, became immense when compared to the minor element of equity. If you acquire a company for one million dollars and make it worth 1.1 million dollars, the profit is 100,000 dollars or 10% of the equity invested. But, if you finance the acquisition with 100,000 dollars of equity and 900,000 dollars of non recourse debt, the same profit becomes 100% on the equity invested. The same is of course true of losses. The early performance of the funds was spectacular and this attracted more capital.

But all this changed the nature of acquisitions. The sheer weight of money was one change. Huge amounts of equity deployed within a policy of maximum leverage, created a pool of resources that swamped the available opportunities. For evey one billion dollars of equity invested in the funds there were a further nine billion available in the form of various kinds of debt. Another change was that the transactions became fee driven. Of course, some of the fund managers acted responsibly and did very well for the companies that they acquired and for their investors. But others were too keen to do deals at any price. In a normal acquisition, if the buyer pays too much he suffers. In these transactions, the higher the price, the higher the upfront fees. So prices of businesses soared.

Another change was the nature of leverage. In the early acquisitions, high leverage was a transitory phenonenon. Debt was paid down rapidly from the proceeds of the disposals of the diversified assets. The onging core businesses were well capitalised and assumed traditional levels of debt. But in the new transations which sought maximum leverage, the policy was that even the ongoing core businesses remained thinly capitalised and heavily leveraged. Debt repayment was to be made out of operating cashflow expected over quite a long number of years.

This was leverage of a different kind.

And there was another less noticeable change. Institutions who participated in these acquisition funds, did not wish to become involved in the controversy of hostile bids. So a precondition was that the acquisitions would be friendly. But sometimes this presented a structural problem. As we have seen, the best candidates for such acquisitions are failing companies and the most usual cause of failure is inadequate management. Following a hostile takeover, management is changed. In friendly deals, the old management is consolidated. In the worst, somewhat caricatural cases, the results is a company bought at too high a price, overleveraged and undercapitalised and managed by a team with a proven record of failure.

So there were excesses not just by the funds but by everybody caught up in the mood. The immediate macroeconomic effects of the mistakes should not be too great, that is unless companies in trouble are destroyed by extended and abusive litigation. Generally speaking, there are three constituencies which can be affected. The lending banks, the holders of mezzanine finance or junk bonds as they are called, and the equity investors. It should be remembered that most of the LBO's will be all right. Of course, there will be some very high profile accidents which will create the impression of generalised disaster. But, in fact, we are looking at a minority of LBO's which will become deeply troubled. In most of these, the banks are the senior lenders and are reasonably well secured. The mezzanine debt was always a hybrid between debt and capital. If things go well, it is confirmed as being debt and is repaid. If things go badly, effectively it is converted into capital. That is no tragedy because if you look at the problem in macroeconomic terms, the

institutional shareholders, as a whole, sold their shares at a good premium and it is the institutions, as a whole, who reinvested part of the proceeds in mezzanine finance. So, they will get back some of their original equity investment in the form of mezzanine finance converted into equity. As for those who invested in the equity capital of LBO's which get into trouble they will lose their investment but that is a normal risk for equity capital.

As I said at Merril Lynch's Institutional Investors Conference in New York in 1987, failed LBO's will offer great new opportunities for entrepreneurs who will provide new capital and management to reestablish the troubled companies.

Anyhow, the reaction following the excesses led to new attitudes in the law courts, the state legislature and Congress. First, the tax laws were changed and a buyer could no longer step up the tax basis of the assets being acquired to his cost price. So the buyer's cost was deemed for tax purposes to be the historic cost originally paid for the underlying assets by the previous parent company. This legislation was introduced specifically to inhibit takeovers and like all tactical legislation had unexpected ripple effects. Let us take as an example a rich, old conglomerate which has just been acquired. It has become highly leveraged. The debt was to have been repaid by the disposal of diversified assets. But because these assets have been owned for a long time, they are in the books at a very low historic figure and their diposal would result in a high tax charge.

So instead of disposing of the diversified subsidiaries, those subsidiaries are retained and are leveraged at the maximum level, and without recourse to the parent. The cash is extracted in a tax effective way. The result is appalling. Instead of having a rich, tired old conglomerate, you have the same conglomerate, as diversified as before, but instead of being rich, each of its subsidiaries is leveraged to the maximum. So you end up with a conglomerate with a lot of hollow legs.

Then the Courts approved a panoply of poison pills. These transformed the relationship between shareholders and management. Let me give you two examples. The first concerns Polaroid. In September 1988, Shamrock, a company controlled by Roy Disney, made an all cash offer for all the shares of Polaroid. The following was Polaroid management's defense:

1) Without consulting its shareholders, Polaroid issued new shares representing nearly 14% of its capital to its Employee Stock Ownership Plan, known as an ESOP. To provide the ESOP with funds to pay for these new shares, Polaroid contributed 15 million dollars and made a loan of 285 million dollars, thereby using 300 million dollars of shareholders funds.

2) Again without consulting its shareholders, Polaroid issued a further 300 million dollars of voting, convertible, preferred stock and warrants, principally to a friendly investment fund. Polaroid committed to redeem the preferred stock at a premium.

3) Without consulting its shareholders, Polaroid management used the funds received from the ESOP and from the friendly fund to shrink its capital by way of a self tender and open market repurchases.

As a result of these three transactions, designees of Polaroid's management obtained the right to over one third of the total votes, without ever consulting the shareholders. The U.S. Courts approved the transactions.

The other case concerns the acquisition by Time Inc. of Warner Communications.

Time and Warner were to merge their businesses in a share for share exchange. Then, a third party, Paramount, intervened with a cash bid for all the shares of Time at a price very substantially above the market price. Time management, which already had a poison pill in place, responded by bidding in cash for control of Warner, thereby frustrating Paramount's bid. Time shareholders were not consulted. Paramount and other Time shareholders sued on the basis that Time shareholders were being denied the right to consider the Paramount offer.

The Court found, and I quote: "The Corporation Law does not operate on the theory that directors, in exercising their powers to manage their firm, are obligated to follow the wishes of a majority of shares. In fact, directors, not shareholders are charged with the duty to manage their firm". End of quote.

I do not wish to express any view on the fundamental merits, or otherwise, of the proposed transactions between Shamrock and Polaroid or Time, Warner and Paramount. I do not know the facts. What I believe to be deeply significant is a legal evolution which quite clearly, quite specifically, transfers the right to corporate governance from shareholders to management. Whether desirable or not, this constitutes a fundamental change with pervasive social, political and economic impact. It deserves a full debate and should not come about just as part of ad hoc defense tactics invented to fight contested takeover bids.

As I have referred to the U.S. experience and as today's event is organised by an American newpaper and the leading U.S. lawyers, I will venture some specific ideas which might be applicable to the U.S. and which could also have some relevance to the European business arena.

1. Tax: The tax structure should allow corporate restructuring to take place in a tax neutral way. Obviously, it is to everybody's benefit that assets be deployed as productively as possible and this should be encouraged not taxed. Higher tax will flow through as a result of improved activity and profitability. Also there should be an even playing field. Corporate restructuring should be as straighforward and tax effective for the company itself to carry out as for a new owner.

2. Leverage: Probably there should be a concept of thin capitalization. By this, I mean that when debt relative to capital rises beyond the point of being reasonable, such point should be clearly defined, then for tax purposes, the excessive debt should be treated like capital and taxation should be assessed accordingly. This would eliminate the tax advantages of excessive leverage. But as positive asset redeployment is favourable, it should not be penalised. So there should probably be a period of grace, of say one or two years, during which high leverage would be acceptable pending, the disposal of surplus assets and the consequent reduction of the debt. This would not penalise the bridging debt incurred for a short period during which the company is restructured and refocused. But it would discourage chronic hyperleverage.

3. Poison Pills: Poison pills should be legal for so long as they are still specifically approved by shareholders. Voting should be by secret ballot. This is important because professional investment managers are a large and growing part of the market. They manage, inter alia, corporate pension funds. Over the past few years, despite their fiduciary responsibilities, management of the large companies have threatened to boycott investment managers who have not voted in favour of management entrenchment. Furthermore, a single vote on a single occasion should not be eternally binding. Management should not be entrenched forever. In business, life tenure is seldom healthy. There should be regular voting on entrenchment issues, at least every three years. This would force management, who want special protection from free market forces to explain and convince their shareholders that their purpose is worthwhile.

4. Relationship between shareholders and management: It should be clearly reaffirmed that corporations are owned by shareholders and that management is employed by shareholders to manage the business on their behalf. But shareholders would be wise to eliminate the conflict of interest that separates them from management. Management should be seeking value not size, excellence not empire. The best way to achieve this is to convert professional management into owners, to make them partners and to do so by programmes which allow them to acquire shares or options as they reach certain targets and prove their true worth.

5. Federal versus State legislation: Federal legislation is needed to define the rights and duties of shareholders and management, and this cannot reasonably be left to the State legislators. They are in the business of competing for the favours of corporations. The location of head offices, new factories and other investments is decided by corporate management and not by shareholders. So when corporate management asks for protection from their shareholders or threatens to leave a particular State if that protection is not delivered, the State legislators naturally listen. That is why 29 States already have adopted antitakeover laws to help entrench management. These new State laws seem to be obtaining approval from the Courts. On the other hand the recently retired Chairman of the SEC, David S. Ruder, said in a speech last year referring to one of the State laws, I quote, "The Indiana statute is misguided. By failing to consider the shareholder as paramount, the statute removes accountability for corporate management . . . ."

In due course, rules will have to be added to the Williams Act. Unfortunately, at the moment, in the present atmosphere in Washington, it is unlikely that any changes would be constructive.

The restructuring and revitalisation of traditional industry about which I have spoken today is important. But, in a rapidly changing world, experiencing the greatest ever industrial revolution, sometimes known as the Quantum revolution, it is even more vital to recognise, pursue and capitalise on new opportunities. That is another subject for another day but it also requires economic freedom.

## UNITED STATES SHOULD REASSESS UNESCO POLICY

Mr. PELL. Mr. President, the United Nations Educational, Scientific, and Cultural Organization [UNESCO] has recently concluded its general conference in Paris. At this conference, UNESCO members adopted a policy statement that satisfies, in almost

every respect, the concerns about communication and information policy that led to the U.S. withdrawal from UNESCO in 1984.

The conference strongly endorsed the concept of a free flow of information and the free expression of ideas—principles that the United States has rightfully urged be incorporated into UNESCO reform. Accordingly, it is time for the United States to reassess its stance on UNESCO, with a view toward rejoining the organization and working for further reform from within the agency.

Arthur Ross and Edward C. Luck recently made an excellent case for a U.S. reassessment of its UNESCO policy. I ask unanimous consent that their article, which appeared in the Christian Science Monitor on October 27, 1989, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Christian Science Monitor, Oct. 27, 1989]

THE MAN STRUGGLING TO REFORM UNESCO

(By Arthur Ross and Edward C. Luck)

Scarcely two years after being elected, the new director general of Unesco, Dr. Federico Mayor Zaragosa of Spain, finds himself far out on a limb. Critics from left and right who feel that his reforms of the troubled agency have gone too far or not far enough are busy chipping away at his support. With a critical month-long general conference to decide UNESCO's course now under way, the United States has a much deeper stake than is commonly realized in giving a boost to Dr. Mayor and his reform program.

Five years ago, the U.S. marched out of Unesco (United Nations Educational, Scientific, and Cultural Organization), followed by Great Britan and Singapore, citing poor management, budgetary excess, and political controversy under former director general Amadou Mahtar M'Bow of Senegal.

Despite substantial opposition from some nonaligned and developing countries, Dr. Mayor was chosen over Mr. M'Bow to chart a new path for Unesco. From the sidelines, Americans were buoyed by the prospect that Unesco might regain its long-lost stature as a leading forum for the sharing and dissemination of knowledge in the fields of science, education, culture, and communications.

Though Mayor has not produced any overnight miracles, he has begun to put Unesco on the right track. He has replaced M'Bow's feudal, highly-centralized management style with a more open, professional system that properly delegates authority to his program managers. Following deep cuts forced by the loss of US and British support and four years of zero budget growth, Mayor is not requesting a modest 2.5 percent real growth in spending. So he has hardly been a spendthrift.

The tide of political controversy has also ebbed markedly in Unesco, as it has throughout the United Nation system. In an effort to avoid further politicization of the agency, Mayor recently gained the unanimous decision of his governing body to defer until 1991 the Palestine Liberation Organization's application for full membership status in Unesco.

The issue at the center of the UNESCO debate today, as it was five years ago, improves media and communications. In the third-world and socialist states advocated in UNESCO a New World Information and Communication Order (NWICO).

UNESCO has quite properly, and initially with US encouragement, endeavored to help develop a more adequate communications network in the third world. But some states had urged UNESCO to go further—to "balance" the news, suggesting licensing and codes of conduct for journalists. No press restrictions were never endorsed or acted upon by UNESCO, but the debate itself provoked a great outcry.

The ominous notion of a new information order has died, a relic of an earlier era of North-South acrimony. In his statements and program, Mayor has laid to rest any idea of a new information order; even while seeking to meet the legitimate communications needs of the developing countries. The only thing in dispute is the wording of the eulogy. For with the coming of *glasnost* in the east and pragmatism in the south, the concept of a "new order" has taken on a different meaning.

So what should the US do? First, the president should act quickly to send a balanced monitoring group drawn from leading professionals in science, education, culture, and communications to Paris to report on the UNESCO general conference, which runs from mid-October to mid-November. This step would give Mayor added leveraged by demonstrating the seriousness of American interest in UNESCO reform, while permitting a fuller and higher-level review process.

Second, if Mayor's five-year reform package is substantially adopted by the general conference and if the US monitoring group submits a favorable report, then the US should announce its intention to reenter UNESCO. This would give the US a voice in the implementation of the reforms while protecting its many interests in the agency. Similar recommendations have been made by a bipartisan panel headed by retired Sen. Robert Stafford (R) to Vermont and organized by the United Nations Association of the USA.

By walking out of UNESCO, the US helped spark a far-reaching reform process and a much-needed leadership change. But by remaining outside, we may doom both the prospects for further reform and the man entrusted with the delicate task of transforming the agency without destroying it. To turn our backs on the progress made would be to undermine our interests, our credibility, and our stature as a world leader in science, education, culture, and communications.

(Arthur Ross, of the United Nations Association of the USA (UNA-USA), has served as a US delegate to UNESCO and on former Secretary of State George Shultz's fact-finding commission on UNESCO. Edward C. Luck is president of UNA-USA, an organization devoted to strengthening the UN and the US role in it.)

## A FAREWELL TO MARY E. COLE, A VALUED FRIEND TO EDUCATION IN RHODE ISLAND

Mr. PELL. Mr. President, I rise to pay tribute to Mrs. Mary E. Cole, a very dear and true friend to education in Rhode Island, who has devoted nearly 40 years of her life to the improvement of education in our State. All of us in Rhode Island owe Mary Cole a great debt of gratitude for her many years of service dedicated to excellence in education.

Mrs. Cole assumed the duties of her first educational post in 1950, when she served as the secretary of the East Providence PTA. Two years later, she was elected president of the PTA. In 1954, Mrs. Cole was elected to the East Providence School Board and served for 20 years, 10 of which as the chairman. Her remarkable tenure on the school board witnessed the construction of 12 new schools.

Over the years, Mrs. Cole has also actively served on numerous State committees involving elementary and secondary education, including the Rhode Island Permanent Task Force for area Vocational and Technical Centers and the Rhode Island Teachers Professional Development Program board of directors.

Mrs. Cole has, indeed, held many prestigious positions in the educational arena, and her present list of duties is nearly as astounding as that of previous years. In 1971, Mrs. Cole was named the executive director of the Rhode Island Association of School Committees, a position she continues to hold. Mrs. Cole is also a member of the National School Boards Association, and has served on its Federal Relations Network since 1973. In this capacity, she has met yearly with Members of Congress to lobby for additional funding for education in general, but particularly for special education and vocational education interests.

In addition, Mrs. Cole is an active member of the Rhode Island Education Coalition, whose membership consists of the Rhode Island League of Cities and Towns, the Rhode Island Public Expenditure Council, the Rhode Island School Superintendents Association and the Rhode Island Association of School Committees where she has served as the executive director. She is also a member of the American Society of Association Executives, and is presently involved in a campaign promoting smoke-free schools in Rhode Island.

In May 1989, Mrs. Cole was elected by the East Providence High School Board of Governors to the East Providence High School Hall of Fame in recognition of her accomplishments in the field of education.

Unfortunately, Mary has decided to retire at the end of this year. We in Rhode Island will miss her voice in the banks of educational leadership. But there is no doubt that her many years of service to our State and citizens will continue to benefit all of us for many, many years to come.

## THE PROSPECT FOR FREE AND FAIR ELECTIONS IN TAIWAN

Mr. PELL. Mr. President, I wish to call attention to an excellent project report prepared by the National Democratic Institute for International Affairs [NDI] entitled "A Moment in Political Transition: The December 1989 Elections in Taiwan."

In the tradition of its excellent past work in nearly 30 nations, from Argentina to Uruguay, Pakistan to Poland, South Korea to the Philippines, the NDI's five-member survey team, led by Kenneth Melley, a member of the NDI's Board of Directors, and assisted by NDI Deputy Program Director Karen Clark and NDI staff member Jeff Ganz, conducted a thorough assessment of the electoral process now underway in Taiwan.

The importance of their work cannot be underestimated. National elections on December 2 will be the first in 40 years of Kuomintang [KMT] rule in which martial law will not be in force and the opposition can legally participate. On that date more than 100 members to the legislative Yuan, the principal legislative body, all members of the Taiwan Provincial Assembly, the Taipei City Council and the Kaohsiung City Council, and new county magistrates and city mayors will be elected.

These positions are being contested by many parties: the KMT, the Democratic Progressive Party [DPP], the Young China Party [YCP], the China Democratic Socialist Party [CDSP], the Labor Party, and close to 40 smaller parties. The DPP and the Labor Party are the major opposition parties with the YCP and the CDSP closely associated with the KMT.

As the NDI reports, there are three major issues in this campaign: Taiwan independence, reform of political institutions, and local issues; that is, crime, pollution, and traffic. I have long been interested in the issue of Taiwan independence even though the KMT has opposed a declaration of independence. Indeed, article 2 of the National Security Law, passed in 1987, prohibits the advocacy of the "division of the national territory," precluding in effect the advocacy of Taiwan independence. Some opposition figures have been arrested in the past for making such statements.

But I would note with satisfaction that the Taiwan Government appears to be moderating its hardline position on this issue. President Lee told the NDI delegation that candidates who advocate independence will be permitted to assume office if elected. If this holds true, it will be a major step forward to permitting a pluralistic political debate to develop.

Nevertheless NDI found a number of problems that suggest cause for concern. As their report notes, the "KMT retains near total control of almost all political, social, economic and media institutions in Taiwan," assuring "the KMT numerous institutional advantages in the current campaign, including: control of the television and radio, vast financial resources, a cooperative police and judiciary, as well as considerable informal influence over the most influential economic, social, and cultural organizations."

In closing, let me enumerate the delegation's recommendations that, if followed, would provide some needed reassurance to the outside world that Taiwan is well on its way toward democratization:

The authorities in Taiwan should continue their tolerant approach to the political activities that are underway before the legally prescribed campaign period and avoid at all costs any preelection restrictions.

The authorities should vigorously investigate any charges of harassment that are brought to their attention by candidates and political parties.

The authorities, even at this late date, should strive to break the political deadlock on opposition representation on the Central Election Commission.

The authorities and the Commission should publicly condemn any attempts at vote-buying and make clear that any instances of vote-buying brought to their attention will be vigorously investigated and prosecuted.

The Central Election Commission should ensure that all polling sites, including those located in the residential areas of retired servicemen, are open to journalists, pollwatchers and are generally subject to public scrutiny.

The Commission should seek to ensure that a genuinely multipartisan mix of pollwatchers is present at each voting station.

The Commission should take every step possible to guarantee that the results from each polling site are posted immediately outside the site at the conclusion of the counting process and that the results stay posted for a reasonable period of time.

The authorities and the Commission should permit all interested groups, domestic and international, to observe the elections and to facilitate their access to election administrators, polling places and counting stations.

These are reasonable recommendations. The world will be watching December 2, including another NDI observer group. I hope that what they see will be more encouraging signs of democratization in Taiwan. To this effect, Senator MURKOWSKI and I recently introduced Senate Resolution 210, expressing the support of the Senate regarding democratic reforms and human rights on Taiwan.

Another action that I hope the Taiwan authorities will consider is to open further borders to those Taiwanese-Americans or Taiwanese citizens residing abroad who wish to return to Taiwan. I receive many requests from individuals who wish to return but are frustrated because the Taiwan authorities refuse to grant them visas, fearing I gather to hear their statements in favor of democratic change in Taiwan. Indeed, most recently these restrictions were applied to former Attorney General Ramsay Clark whose visa was retracted while in midpassage to Taiwan to observe the trial of an individual charged with sedition. This type of action does not encourage Taiwan's friends. I hope that December's elections will be followed by additional liberalizing measures, indicating to all that the winds of democracy are truly blowing throughout Taiwan.

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## RECOGNIZING JEAN-PIERRE HOCKE FOR DISTINGUISHED SERVICE AS U.N. HIGH COMMISSIONER FOR REFUGEES

Mr. PELL. Mr. President, it is an honor to join in recognizing Jean-Pierre Hocke for his extraordinary career of humanitarian service with the International Committee for the Red Cross, and during the past 4 years, as U.N. High Commissioner for Refugees.

There are few people who have been as professionally devoted to the great task of helping the world's needy as Jean-Pierre Hocke, and none who have exceeded him in the full measure of accomplishments in this cause.

As delegete, general delegate, and director of operations of the International Committee of the Red Cross, Jean-Pierre Hocke played a key part in bringing humanitarian aid to those in the greatest need in Africa, in Southeast Asia, in Latin America, in the Middle East—in all the regions of the world where the Red Cross took the lead in bringing crucial assistance to the victims of armed conflict.

Recognized as the key leader in the field of International Red Cross humanitarian relief, Mr. Hocke was the logical choice for election as U.N. High Commissioner for Refugees at the end of 1985. The UNHCR has long served as the leader in refugee protection and assistance. Under Jean-Pierre Hocke it greatly improved its capacity for field operations, making it a direct participant in essential programs of material aid to refugees throughout the world.

The challenges facing UNHCR during Jean-Pierre Hocke's tenure came one on top of the other. There were major food and shelter needs in the Horn of Africa caused by the natural effects of draught and the manmade consequences of armed conflict. There were continuing refugee challenges in southern and eastern Africa, stretching the High Commissioner's program and budget to the limit.

In Southeast Asia the High Commissioner helped the world community come to grips with the new challenges stemming from the changing character of the situation in the Indochina countries. He was a leader in the second international conference on Indochinese refugees that took place in Geneva, in June 1989, and was in-

strumental in the followup actions to assure continued first asylum for the boat refugees who continue to arrive.

Mr. President, it has been an honor and a pleasure to know and to work with Jean-Pierre Hocke during his career with the ICRC and as High Commissioner for Refugees. All of us who care about the plight of the world's refugees and displaced persons, the distressed and homeless wherever they are, will long remember our sense of appreciation for the magnificent work done in this cause by Jean-Pierre Hocke.

## U.S. SUPPORT FOR THE KHMER ROUGE

Mr. KENNEDY. Mr. President, as a peaceful revolution is sweeping through the Communist world of Eastern Europe, a land half a world away stands on the brink of renewed civil war—Cambodia.

The people of that nation have borne a heavy burden over the last two decades. During the Vietnam war, they withstood our bombings, our efforts to undermine their government and our obsession with achieving a military victory. Later, Cambodia became a nortorious killing field at the hands of the ruthless Khmer Rouge. Over a million people died—and the world has a moral responsibility to do all in its power to ensure that the Khmer Rouge never has the opportunity to repeat this barbarous genocide.

Yet, incredibly, U.S. policy is helping the Khmer Rouge—both politically and militarily—in its bid to return to power. Unless we shift our policies dramatically, we will bear a responsibility if they achieve their goal of a return to power.

Current United States policy is to insist on a role for the Khmer Rouge in any transitional government in Cambodia. Militarily we support two factions of the Cambodian resistance allied with the Khmer Rouge in opposing the Hun Sen regime, which was installed in power by Vietnam and continues to govern the country. Incredibly, U.S. officials maintain that by bringing the Khmer Rouge "into the tent" we will be able to turn them into democrats.

I want to bring to the attention of my colleagues an impressive recent article by Jeremy Stone, president of the Federation of American Scientists. Mr. Stone is one of the most knowledgeable individuals on Indochina and has long been a voice for reason and peace in that troubled region.

In his article, Mr. Stone describes how the United States and other outside powers supply the non-Communist resistance forces fighting to overthrow the government of Hun Sen. The lethal material and financial aid is channeled through the Cambodian Working Group, a secret group in Thailand that coordinates the strategy of the non-Communist resistance.

The United States provides $24 million annually to the resistance and there are reports that the CIA is providing it intelligence information from reconnaissance satellites. As Mr. Stone notes, "there can be no denying that U.S. support for them [the non-Communist resistance] is helping the Khmer Rouge, albeit indirectly."

There is little question that the non-Communist resistance will join forces with the Khmer Rouge in its bid to overthrow the Hun Sen regime. And our current policy is helping to pay for the return to power of the Khmer Rouge.

I urge my colleagues to read Mr. Stone's insightful article and to rethink our current policy toward Cambodia.

I ask unanimous consent that Mr. Stone's article may be printed in the RECORD as well as an article from the New York Times on the issue.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

### SECRET U.S. WAR IN CAMBODIA

(By Jeremy J. Stone)

WASHINGTON.—The U.S. is waging a secret war in Cambodia against the Hun Sen Government—knowing full well that none other than the genocidal Khmer Rouge are likely to be the ultimate beneficiaries.

Even as White House officials shed crocodile tears over signs of the growing military strength of the Khmer Rouge, they are continuing to use U.S. financial and intelligence resources to weaken the Vietnamese-installed Hun Sen Government, the only faction capable of preventing a military takeover by the Khmer Rouge.

And the Administration is pressuring Thailand to refrain from pulling the rug out from under the war itself, something that Thailand—as the main conduit of arms to all the resistance forces—is uniquely able to do.

According to well-informed sources, the non-Communist resistance—composed of forces loyal to Prince Norodom Sihanouk and to a former Prime Minister, Son Sann—has a joint military command that makes requests for weapons, materiel and aid through Thai operatives and agents of the Central Intelligence Agency on the Thai border.

These requests are taken to the Cambodian Working Group, a highly secret unit in Bangkok that coordinates every move of the non-Communist resistance. Working with the group are C.I.A. operatives from the U.S. Embassy in Bangkok and officials from the highest levels of the Thai, Malaysian and Singaporean governments.

The Working Group is the conduit for all lethal, materiel and financial aid to the non-Communist resistance, except for that coming from China. It reviews battle plans, approves specific weapons, disburses direct cash payments and reimburses resistance leaders. While Thailand and Malaysia train the resistance and Thailand provides logistical support, Singapore provides the weapons through a quasi-private weapons company in Singapore. And the U.S. pays for virtually everything.

For example, a "general offensive" launched last month by the non-Communist resistance was carefully planned and organized by the Working Group with highly secret "need to know" rules giving everyone plausible deniability. The U.S. pays $24 million annually to support the resistance, and the Son Sann group is getting $150,000 a month for operating expenses alone.

Newspaper reports even suggest that C.I.A. operatives are providing intelligence information from U.S. reconnaissance satellites to the non-Communist resistance.

Now that these non-Communist resistance forces are beginning to fight, there can be no denying that U.S. support for them is helping the Khmer Rouge, albeit indirectly, by forcing the Hun Sen Government to cope with three battle fronts rather than one.

Meanwhile, the U.S Government is intervening in Thai politics by backing its hardline Foreign Minister, Siddhi Savetsila, against its Prime Minister, Chatchai Choonhavan, to keep the war going. Secret details on Thai involvement in the war shed new light on the importance of supporting the peaceful initiatives of the Thai Prime Minister, whose visit to the U.S., originally planned for this week, has been deferred.

Through a large Thai intelligence entity called 838, the Cambodian guerrillas receive weapons, food and other support. These officers are integrated into the daily life of the resistance bases. They provide weapons and materiel that are stored in secret warehouses well inside Thailand, and monitor everything.

Weapons for the Khmer Rouge are sent to Thailand by China, and Khmer Rouge leaders are given full freedom to travel from their jungle bases in Thailand to offices in Bangkok to deal with securing them.

Thus, Thailand has the ability to stop the war and, indeed, to determine the winner. Under these circumstances, Thailand could, by gradually reducing support, weaken the Khmer Rouge enough to prevent them from taking over Cambodia once again. This is exactly what the Thai Prime Minister wants to do.

And why doesn't he? One major reason is that Washington currently finds his initiatives unacceptable. He is, after all, arguing for a step-by-step settlement that would relieve pressure on the Hun Sen Government.

The Administration, which says it opposes Khmer Rouge involvement in a future Cambodian government, also says—startlingly—that it will go along with such involvement so long as Prince Sihanouk insists on it. The Prince, in turn, had already said he would insist on including the Khmer Rouge as long as the Chinese insist on it—leaving the U.S., in effect, following the Chinese line.

In accordance with this convoluted policy, the U.S. Embassy in Bangkok is happy about the recent success of the non-Communist resistance, which puts further pressure on Hun Sen to accept the unacceptable—a coalition with the Khmer Rouge. And it reguarly protests any peace initiatives by the Thai Prime Minister.

So the irony is exquisite. We are redoubling our efforts to overthrow Hun Sen even while we announce that such a result would produce a Khmer Rouge takeover. Hun Sen is supposed to save us from this contradiction by organizing a wholly implausible, four-party coalition goverment with the Khmer Rouge.

From every objective point of view, we are allied with the genocidal Khmer Rouge.

[From the New York Times, Nov. 16, 1989]

AID TO CAMBODIA NON-COMMUNISTS IS DETAILED

(By Steve Erlanger)

BANGKOK, THAILAND, November 15.—With growing concern in Congress that any American military aid to non-Communist forces in Cambodia could work to the ultimate benefit of the Khmer Rouge guerrillas, officials have described the way the current system functions.

The United States, like Britain and the countries of the Association of Southeast Asian Nations, insists that it has no ties to Cambodia's Khmer Rouge guerrillas and provides them no aid of any kind, China is the Khmer Rouge's sole supplier, officials say, with the help of the Thai Government, which provides transit facilities for Chinese aid and protection for Khmer Rouge notables on Thai soil.

Aid to the non-Communist Cambodian factions is channeled through an Asean-sponsored organization called the Working Group, which formally consists of Thailand, Malaysia and Singapore, but in which American military and intelligence officers participate, as do representatives of the non-Communist Cambodian factions. The Working Group, based in Bangkok, funds the non-Communists and buys them arms.

The Thais and Malaysians do much of the training. The Singaporeans pay for most of the arms, including American weapons made under license in other countries, like South Korea or Taiwan. Those weapons include M-16 assault rifles and anti-tank missiles.

The Americans provide both overt and covert financial aid, but only to purchase nonweapons supplies or fund training in subjects like logistics, map reading and military organization.

Overt aid of $5 million in the fiscal year just ended goes for supplies like medicine and tents. The request for the fiscal year just begun is $7 million.

The covert American aid of some $20 million to $24 million a year, spent by the C.I.A., goes to buy uniforms, some vehicles, rice and canned fish and to reimburse the Thais and Malaysians for the costs of training in "nonlethal" skills. The covert funds also pay for some political offices in Bangkok, Tokyo, Bonn and Paris and for two radio stations reaching Cambodia.

The Americans do not provide detailed satellite reconnaissance information to the Cambodians to aid battlefield strategy, though C.I.A. satellite experts sometimes come to brief the Thais or the Working Group.

CONGRESSIONAL MONITORS

The House and Senate Intelligence committees are heavily involved in monitoring the spending, in part because of widespread abuses in the past, especially by the Thais. Cash no longer goes directly to the Cambodians or the Thais to buy goods, but supplies are purchased by the Americans and then handed over. But cash for the political offices and radio stations is provided by direct payment to the Cambodians.

The Congressional oversight is so thorough, some Asean officials complain, that planning is difficult. But the oversight is also said to insure that no American or Asean aid goes knowingly to the Khmer Rouge. That is not true of United Nations aid, however, which goes to support the 350,000 or so camps just inside Thailand along the Cambodian border.

These camps exist as bases and captive constituencies for all three resistance factions, including the Khmer Rouge, and food and rations, despite efforts by United Nations officials, are siphoned off to aid the guerrillas.

## BILLI GOSH: ACTIVIST FOR WOMEN AND FOR VERMONT

Mr. LEAHY. Mr. President, I have had the good fortune over the years to work with Billi Gosh on a variety of issues. Billi has been a good friend and supporter and has always been a dedicated and tireless worker to her causes. Marcelle and I consider ourselves fortunate to know Billi, and I have enjoyed working with her. The following article from the World is a testimonial to her good works, and I ask unanimous consent that the entire article be entered into the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the World, Sept. 27, 1989]

BILLI GOSH: ACTIVIST FOR WOMEN AND FOR VERMONT

(By Sue Clayton)

She has quite a resume.

Chair of the Governor's Commission on Women

Director of Development for the Vermont Institute of Natural Science

Past Chair of the Vermont Women's Political Caucus

Past Vice-Chair of the National Women's Political Caucus

Past President of the Randolph Union High School PTA

Married for 30 years to songwriter Bobby Gosh

Mother of Erik and Krissy

Billi Gosh has accomplished all this with a combination of ease and effort that inspires others to get involved. Irene Natividad, the past chair of the National Women's Political Caucus said: "During my tenure at NWPC, I've come to appreciate people who deliver. Billi Gosh Delivers—over and over again. On top of that, she does all her political advocacy work with a certain element of grace and style that most of us wish we could emulate."

HOW SHE GOT HERE FROM THERE

Gosh maintains that her accomplishments are a natural result of her experiences and opportunities—like her name. "Billi" is a nickname she picked up as a child at summer camp, from her last name, Williams. She adopted the name when she left her home in Upper Montclair, N.J. to attend Albright College in Reading, Penn.

At college, she met a fellow student from Reading, musician Bobby Gosh.

"He was the star of Reading, he was absolutely the star," Gosh states. "And I was not the least bit in the public eye. I was not the least bit a feminist."

Gosh married, and taught school for 10 years—beginning in a two-room school house in Pennsylvania-Dutch country.

"I had to lime the outhouse, I had to ring the bell, set the mouse traps every Friday afternoon," Gosh says. "It was a true country school. Some of my kids were Mennonites. It was really a neat beginning.

From there, Gosh moved to the Reading school district, and then to New York City, where she taught for six years at Freshmeadows, Queens, PS 26. She taught first, second, third, and fifth grades in her career.

Gosh moved to Vermont in 1979. She had been going to Planned Parenthood for gynecological services, when the organization received one of its "annual assaults" to stop funding. This was even when the clinic was not performing abortions, only referring women to clinics in New Hampshire, Gosh says.

"I realized that Planned Parenthood could be destroyed by this lack of funding, and they were a wonderful provider of health care fo rural women," Gosh says of her feminist awakening.

Planned Parenthood started a "friends network", and invited Gosh to attend a training session, led by Steve Kimball, on what the issue was, and how to lobby your legislator. That was her first political activity, and her realization that, particularly in Vermont, an individual can make a difference.

VWPC AND NWPC

Shortly after this training session, Gosh was contacted by Daphne Gratiot of Woodstock, who was organizing a Vermont chapter of the Women's Political Caucus, a bipartisan organization dedicated to helping feminist women get elected and appointed to public office. To say she became involved is an understatement.

"Daphne Gratiot was a wonderful mentor," Gosh says. "I learned a lot from her. Little did I know at that time that she was grooming me for the position!"

Gosh took over as chair of the VWPC in 1982, and led the organization for three years. In 1985, Gosh won the position of vice-chair of the National Women's Political Caucus, and held that office until last August.

"I think the Women's Political Caucus is becoming more and more important," Gosh states. "We've been around 18 years now, and we've learned a lot about the political process, how to get women involved. We've got all the technical materials available on how to run for office, how to raise money for women candidates. We've become very sophisticated over the last 18 years. I think we are in a good position to really have an effect, particularly now as our rights—especially our reproductive rights—are being eroded by the Supreme Court.

At the NWPC convention in Minneapolis last August, new officers were elected, including new chair, Sharon Rodine of Virginia. The theme of the convention was. "Empower America," which, Gosh explains, is a practical political plan. Because the Supreme Court has weakened the Roe v. Wade decision, which legalized abortion in 1973, the NWPC plans to focus over the next 18 months on 10 states, where issues of choice will be decided by a small number of votes. Gosh says that public opinion favors the pro-choice position and the caucus needs to mobilize that opinion as a political force.

GOVERNOR'S COMMISSION ON WOMEN

In 1981, Gosh began attending meetings of the advisory council of the Governor's Commission on Women. This council is made up of representatives of women's organizations, and its purpose is to keep the flow of information going to and from the commission. Gosh represented the VWPC, and soon understood the value and importance of the work the commission was doing. In 1985, Gov. Madeleine Kunin appointed Gosh a commissioner, and two years later,

she became chair of the commission, a position she still holds.

"It's something I wanted very much, because the commission does so much," Gosh says. "It can make such a difference. I was willing to commit a considerable amount of time for it, and be an active chair."

Gosh says a big priority of the commission is education, and sex equity—to determine if girls and boys are receiving the same educational services, the same quality education, and have the same access to resources. Gosh says at this point, no one knows if there is equity or not. The commission, in cooperation with the Department of Education, has conducted a study of this issue. The results should be available soon.

"Rick Mills is quite an enlightened commissioner of education," Gosh states. "He realizes that if this isn't the case, what a terrible waste of human resources it is to have half the population not receiving as good an education as they could."

Other programs the commission is involved with include funding programs to aid victims of domestic violence and sexual assault. The commission also does research, disseminates information, and makes recommendations for legislation. It has a number of publications touching on Vermont women, including topics on job hunting, child care, divorce, and women in leadership positions.

"Vermont is a wonderful state," Gosh says. "I think there is more of an egalitarian attitude in Vermont. Gov. Kunin has made a major impact. She worked her way up through the ranks, becoming the first woman to head the appropriations committee of the House; being a real leader in the legislature; being the first woman ever to be elected Governor in Vermont. And that really has had an effect on young girls who are growing up and see her on TV every night. It is now no longer an issue. Of course a woman can be Governor, I think she is very well aware that she is a role model.

"To have the Chief Executive Officer of the state be a woman means that there are certain things that don't have to be said; there are certain sensibilities that exist between the Governor and the Governor's Commission," Gosh continues. "She knows what it's like to be a woman in a 'man's world;' that there is discrimination out there even though it may not be on purpose, and it may be societal and very subtle. We can recognize it and change it for the betterment of all of us—men and women."

VERMONT INSTITUTE OF NATURAL SCIENCE

At the same time that she was becoming politicized, Gosh became an ELF volunteer for her children's classes in the Brookfield Elementary School. ELF is an acronym for Environmental Learning for the Future. It trains parent volunteers in natural study workshops, who then go into the classrooms, and teach the students. As a former teacher, Gosh relished the opportunity to be in the classroom. VINS is a statewide environmental education and natural science research organization, well-known for its ELF program. Soon she was coordinator of the Brookfield program, and was invited to be a member of the VINS Board of Trustees, a position she held for seven years.

When she resigned her position as a trustee, Gosh was invited to work for VINS as a fund-raiser.

"Here was a director who realized that what I had learned to do as a volunteer and never been paid for was just as valid as if I had been paid for it," Gosh recalls. "This has been true of women through the ages—we would do things, get excellent at doing them, and never get paid for them. What is really neat is when someone turns around and says, 'Hey, I'll pay you to do that.' "

Gosh points to *Hands On Nature*, an activities manual for ELF, which has recently been published, as one of VINS' major accomplishments. This has served as a model for many other programs all across the country, she says. Another project, called *Waste Away*, will be in many schools this year. Its theme—recycle, reduce, reuse—will concentrate on the solid waste problem, and ways of changing habits to reduce the waste stream. VINS is currently raising money to publish *Waste Away* as a manual for distribution. Gosh says the impact it has had, just in the one year of its testing, has been amazing.

VINS also operates a raptor center where 26 species of birds of prey are kept. Gosh says these birds have been brought to the center injured in some way. They have been rehabilitated, but are still too severely limited to be returned to the wild.

To help fund VINS, a sale of wildlife art—the tenth annual sale—will be held at the Woodstock headquarters on Church Hill Road from September 23 to October 9. Gosh says over 350 works of art, by more than 90 artists will be on sale.

"There are paintings, sculptures, carvings, limited edition prints, and antique prints," Gosh says. "The prices vary from $5 up to $6,000. There's something for everyone, and it's fun to go through. It's open everyday from 10 to 5, and admission is free."

MEANWHILE, ON THE HOMEFRONT

Changing from a homebody to a national activist means some accommodating by family members. That kind of accommodation does not always come easily, but the Gosh marriage has stretched and grown for 30 years.

"His favorite expression is "You've changed the rules!" Gosh says of her husband Bob. "I said I didn't realize there were rules when you got married. I said wouldn't it be boring to be married to the same woman that you married at 22, when she's now 30 years older? It came as quite a shock to him."

Gosh admits that her husband wasn't always too happy with her frequent evening meetings, which became week-end meetings, which became week-long conventions. Although he has "adjusted significantly," Gosh says her husband "still likes to have his family at home."

That family includes 20-year-old Erik, a recent graduate of Champlain College. Erik is the sound engineer in his father's recording studio—a state-of-the-art facility in the Gosh's home, where Bob writes and records songs, commercials and custom songs for clients. Daughter Krissy is a senior at Randolph Union High School. She spent last summer in St. Tropez, France, babysitting for a family vacationing there. She is "interested in all things foreign," her mother says, and is president of the local AFS chapter, a cheerleader, and varsity soccer player.

Being an activist takes time, energy, and commitment. Why does she do it?

"We have to remain ever vigilant," Gosh states. "We're constantly taking three steps forward, and two or one back. I'm in for the long haul. I think any committed feminist is in for the long haul."

## HUMAN RIGHTS VIOLATIONS BY TOTALITARIAN COMMUNIST REGIMES

Mr. SYMMS. Mr. President, last week, Dr. Claudio Benedi, author of the Benedi Doctrine on the institutional violation of human rights by totalitarian Communist regimes, together with Dr. Varona, from the Junta Patriotica Cubana, presented to the Organization of the American States [OAS] gathering in the Nineteenth Period of Sessions of the General Assembly a very important document. This document attacks the Communist regimes in this hemisphere and supports the security and freedom of the Americas.

The document states, in part:

The Cuban communist regime not only represents the Soviet neo-colonialism in our Hemisphere, but also has given a location to a Soviet ideological, political * * * and military base and has allowed an extra-continental power, the Soviet Union, to intervene in the internal affairs of the Americas, thus violating the principle of non-intervention in the internal affairs of the American states.

The document further states:

The Soviet Union has on its Cuban base 27,000 troops and a combat brigade, as well as a base for nuclear submarines at Cienfuegos, and an electronic surveillance station at Villa Lourdes, on the outskirts of La Habana, which is the largest outside the Soviet Union. . . .

The Soviet Union has continued shipping huge amounts of armaments of all kinds, from the smallest ones to the most sophisticated. . . . What hope can there be while the Muscovite Bear has its bloody paws on the lands of the Americas?

Mr. President, I ask unanimous consent that this document be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUNTA PATRIOTICA CUBANA,
AREA METROPOLITANA DE WASHINGTON,
*Washington, DC, November 13, 1989.*

Dr. CARLOS LOPEZ CONTRERAS, Honorable President of the Nineteenth Period of Sessions of the General Assembly, Organization of American States (OAS):

Honorable Ministers of Foreign Relations:

Honorable Ambassadors and Representatives of the American States:

Distinguished Representatives of the Americas:

We, citizens of the Americas, born in the Cuban State, which is a member of this Honorable General Assembly and directly interested and affected by which in it may be dealt with and agreed upon, have the right, at the same time as the moral duty, of submitting to your learned consideration our position and denouncements, in order for the same to be taken into account by you.

The first item that we would like to clarify, so that nobody will be able to ignore it is that, as you know, Cuba, as a State, is a member of the Inter-American System and of the OAS; what is excluded is the present government, because it has been declared as incompatible with the inter-American system, due to its Marxist-Leninist nature.

The Soviet Union and its satellites have been pressuring for many years in order to try to eliminate, to make the incompatibility inoperant; in our opinion, that is the most important statement that the nations of this Hemisphere have made in this century. Who is going to bear the historical responsibility of making the Marxist-Leninist compatible with the Inter-American System?

The Cuban communist regime not only represents the Soviet neo-colonialism in our Hemisphere, but besides it has given a location to a Soviet ideological, political, subversive and military base and has allowed an extra-continental power, the Soviet Union, to intervene in the internal affairs of the Americas, thus violating the principle of non-intervention in the internal affairs of the American States.

In the almost one hundred years that the inter-American system has been established, a basic and fundamental principle has been that of protecting the nations of this Hemisphere against the intervention by a foreign power in their internal affairs. This principle, this foundation of our regional organization and of our policy and philosophy about the defense of sovereignty and freedom, self-determination and the dignity of the human person, have been violated by the Soviet Union through their satellite Castro and now also through Nicaragua.

For several years it has been undoubtedly proven that the Cuban communist regime intervenes in the illegal narcotics trafficking, allowing its ports and air space, its intelligence services and its diplomatic missions to be used by those who devote themselves to such an infamous trafficking, with detriment of the health, tranquility, peace and inter-American relations. That regime utilizes those funds, tainted by narcotics, to supply the communist guerrillas in several of the American countries; to acquire products manufactured in the United States; to poison the youth of the United States; to strengthen its ruined economy; to obtain hard currency in order to trade in areas from which it is banished.

It is in the public domain and notorious that the Cuban communist regime, since it seized power, has been involved in subversive activities in all of the American continent, and it continues to be. Just to mention one case in which all of your nations had to intervene: Venezuela. Its President, the Honorable Romulo Betancourt, accused before the Ninth Consultation Meeting of Foreign Relatios Ministers the Castro regime, for having intervened and attacked the Venezuelan people and having infringed upon its sovereignty. It was thus declared by the Ninth Meeting, which condemned the Castro Regime as an aggressor and because of having intervened in the internal affairs of Venezuela, on July 26, 1964. The sanctions established were carried out by all the American States minus one: Mexico. The violator of the sovereignty of our American peoples, the aggressor, continues to do so with an unusual impunity.

The Soviet Union has on its Cuban base 27,000 troops and a combat brigade, duly organized, as well as a base for nuclear submarines at Cienfuegos, besides an electronic surveillance station at Villa Lourdes, on the outskirts of La Habana, the largest outside of the Soviet Union. It applies over there, in fact, the Brezhnev Doctrine of the limited sovereignty. That is, among others, the function of those troops, whose presence contributes to have the Cuban people imprisoned and enslaved. The presence of Soviet troops in Cuba is an affront for the Americas, to our Hemisphere. Should the Liberator Simon Bolivar be alive, he would reconvene another Amphictyonic Congress, such as that of Panama, to expel them from the Americas. Why do not the successors of the American statesmen join us to expel them?

Since World War II ended, the Inter-American System has been preparing itself to confront the communist imperialism. For that end, it approved the Inter-American Treaty for Reciprocal Assistance (the Treaty of Rio) in 1947, the Organization of American States (OAS) and other covenants, agreements and resolutions still in force. All of that juridical, political, ideological, strategical, economical and military structure has not functioned adequately, in accordance with its purposes, because of the lack of political will on the part of the leaders of the Americas. Cuba and Nicaragua are blatant violations of that structure, without the same having responded to the challenge as circumstances demanded and still do. We are still on time.

The Soviet Union has continued shipping huge amounts of armaments of all kinds, since the smallest ones to the most sophisticated. Hundreds of military and guerrilleros have armed themselves with those weapons in Cuba, Nicaragua, El Salvador, Columbia, Peru, Guatemala, Honduras, etc., to support the extra-continental intervention by the Soviet Union, to perpetuate the neo-colonialism and to subvert the democratic nations of the Americas. How are we going to react to that challenge? We do not believe that the Americas would fall on their knees to beg of them, with unusual innocence, that they behave and cooperate to the peace and democratization of the Americas. That, besides naive, would be irresponsible, and would not be an action becoming that which is expected of those who should represent the continent of hope. What hope can there be while the Muscovite Bear has its bloody paws on the lands of the Americas?

The Cuban People, who signed in trust with the representatives of your respective countries those treaties, covenants, agreements and resolutions that are still in force, is the one who is suffering in its own flesh the slavery of a despotic regime that has subjected it to a feudal and tributary system, and to the modern slavery of communist totalitarianism, which operates in accordance with the rules drawn by tyrant Stalin, whose advance imitator Castro is.

The Inter-American Commission on Human Rights (CIDH) has stated that "there are maintained in Cuba the two basic characteristics, that have originated the lack of enforcement of civil and political rights: The non-existence of a state of law, since individuals are deprived of those recourses that would protect them from the actions of the state, and the lack of political alternatives for the population." Where there does not exist a State of Law, there cannot be any protection for human rights.

Likewise, the Inter-American Commission on Human Rights has stated in numerous opportunities that "Cuban male and female political prisoners are given a cruel, inhuman and degrading treatment."

There exist in Cuba, Honorable President and Representatives of the Americas, the institutional and human violation of human rights. The former is intrinsic to the so-called Socialist Constitution of 1976, in the Penal Code of 1987 and in the whole of the legislation in force in the so-called "Socialist Legality."

In the Annual Report for 1988-1989 of the Inter-American Commission on Human Rights, that has been brought to the study and consideration of this Nineteenth General Assembly of the OAS, said Commission reiterates what it has done since its inception to this date, when it underlines that: "The following statement summarizes the most important deeds recorded during this period and has as its purpose to supplement the information provided by the Commission in its seven special reports about that country (Cuba) and in the corresponding annual reports". Upon following the historical sequence of those violations, the Commission reiterates that there has been "a serious setback" in the field of human rights in Cuba. We would say that what there has been of late is constant with the reiterated violations of human rights, and we would add, reiterating it, that the institutional violation and the human violation of human rights is intrinsical and consubstantial to the Marxist-Leninist system, without which violations its existence becomes impossible, since such a doctrine proclaims the supremacy of the state over the individual. The latter is helpless vis-a-vis the totalitarian state.

Article 61 of the so-called Socialist Constitution "subordinates the exercise of all constitutionally recognized rights to the existence and purposes of the Socialist State and to the decision of the Cuban people to build socialism and communism." As the Inter-American Commission on Human Rights has reiterated, with this generic statement all human rights are totally violated. That generic statement, besides, is formalized in the Penal Code and in the legislation in force within the "Socialist Legality".

The Inter-American Commission on Human Rights, upon referring to the much-publicized "trial" of General Arnaldo Ochoa and other Cuban military officers, convicted and executed without due procedural guarantees, in violation of their human rights, states that it has been proven that they were unsatisfied with the Castro regime, and they were charged with being involved in the illegal narcotics trafficking. Let us see what the Inter-American Commission on Human Rights says on this "trial" in its Annual Report, submitted to this Nineteenth General Assembly:

"Various and serious objections have been raised with regard to such executions. It has been pointed out, in the first place, that the alleged felonies that served as a basis for the conviction are not punishable by death in the Cuban Penal Code. In the second place, it has been indicated that the characteristics of the trials, their rapidity, the publicity and the lack of external control upon the processes performed in them, shed reasonable doubts upon the compliance with elementary standards of due process. The manner of execution of a death sentence such as this is compounded, in the case of Cuba, by the fact that the bodies were not delivered to the victims' relatives".

And the Commission continues: "The Inter-American Commission on Human Rights, besides reiterating its opinion against the application of the death penalty, must point out that, in this case, furthermore, such a serious sentence was preceded by judicial procedures that do not guarantee due process, plus the form of the execution and the following processes are offensive to the basic humanitarian feelings". And, is there anybody who will dare to propose that the government that has committed all those atrocities and violations point-

ed out by the Inter-American Commission on Human Rights, be allowed to return to the entity of the nations that call themselves civilized in the Americas? We refuse to believe that such affront to the Americas and to the free people of Cuba may be possible.

The present government of Cuba was separated from the Inter-American System and from the Organization of the American States in accordance with the stipulations in the Treaty of Reciprocal Assistance (Treaty of Rio), of which not all member states of the OAS are participants, and which is a separate protocol. Because of that, in order to deal with this case, the Foreign Relations Ministers' Consultation Meeting would have to be convened in accordance with the Treaty of Rio, since the OAS, in accordance with the American International Law, would be incompetent to do it, as we have reiterated in more than one opportunity, and our arguments have been received by previous General Assemblies, among them that of Cartagena de Indias.

Therefore, the presumed entrance of the present Government of Cuba in the OAS would be a violation of the American International Law, and affront to the principles and values that make up the Inter-American System, a blatant mockery of the standards that rule in the Judeo-Christian civilization established in the Americas, and a treachery against the free people of Cuba.

The political system of imprisonment of Cuba is the most cruel, inhuman and degrading, as well as the longest in the Americas and perhaps in the world. The Inter-American Commission on Human Rights has documented that in seven Special Reports and the successive Annual Reports. Over 40,000 Cubans have been executed in the execution wall, and their bodies, for a greater measure of cruelty, have not been delivered to their relatives. Over 250,000 political prisoners, male and female, have been through the communist dungeons of Cuba. One million Cubans in exile, the most extensive and lengthy exile in the history of the Americas, testify to the monstrosities that have taken place during the last 30 years of Stalinist-Communist totalitarian dictatorship in Cuba. And nobody who would call himself/herself a true leader of the American peoples could try to reward that government with impunity, that government that has done that and much more, by returning it to the entity from which it was expelled precisely because of having started to do all that we have related in these denouncements. That political error would negate the history of the Americas if it became a reality, because, we underline, the language that would have to be used to relate it would be very severe for those who would attempt it.

To fail to recognize the nature of a communist regime, to ignore what is the meaning of a Soviet base in the heart of the Americas, with satellite regimes that serve as "fifth columns" to infiltrate the continent of hope, to get it to become a string of enslaved countries, such as it has happened with the Eastern European nations during the last decades, would be "more than a crime; it would be a stupidity".

There cannot be a movement such as "Solidarity" in Cuba, nor a leader such as Lech Walesa. The Stalinist circumstances prevailing in Cuba have not permitted that. When several workers wished to organize a free labor union, they were imprisoned in the amount of over 500, and they are still in prison. Three labor leaders, of the sugar industry, have been executed by a firing squad recently, because they tried to organize a meeting in the Province of Las Villas. They were tried without any procedural guarantees, executed in a secret location, and their bodies have not been delivered to their relatives. Their names? Isidro Padrón Armenteros and Miguel Suárez Garcia, executed on July 11, 1989. The third one, also sentenced to be executed, was Ricardo Figueras Castro.

Several leaders of the human rights movements in Cuba have been imprisoned and remain in prison. Elizardo Sanchez Santa Cruz, Hiram Abi Cobas and Huber Jerez shall be summarily tried and without any procedural guarantees, and convicted again. The same is happening with many others, whose enumeration would be too lengthy.

There are presently thousands of male and female Cuban political prisoners, many of them registered as common criminals, in order to cover their true nature of political prisoners.

The institutional violation of human rights, the "benedi-doctrine", that we have documented for over two decades, and which has been thus recognized in the Americas and Europe, is the total destruction of the values and principles enshrined in the Western Judeo-Christian civilization, and the violation of those other values and principles established in the American Declaration of the Rights and Duties of Man, in the American Convention on Human Rights, in the Universal Declaration of Human Rights of the United Nations, in the American Convention on Human Rights, in the European Convention on Human Rights, in the Helsinki Accords, and in the juridical and political structure that protects and guarantees those rights. The inalienable and imprescriptible rights consecrated by God on behalf of the human person and that conform his/her dignity are being violated. That is, Honorable Chairman and Representatives of the Americas, the basic issue of our time: respect for the full dignity of men and women.

This institutional violation is intrinsical to the Socialist-Marxist-Leninist regime, which could not survive without it. That is why those human rights are violated in Cuba in its Constitution and laws. That amounts to a regressive transculturation, with false values that deprive man and woman of their sacred juridical, political and social attributes.

The International Commission of Jurists, an organism adscribed to the United Nations, after investigating the Cuban situation, officially stated: "the rule of law does not exist in Cuba". That is what is occurring in Cuba at the present time.

There are presently functioning in Cuba over 48 schools for Marxist-Leninist indoctrination, for foreign students and guerrilla members. Those schools are specialized, besides, in terrorist training and subversive tactics. They do not hide to say that, and it would be very easy to find out through your respective diplomatic representatives.

In the Inter-American Conference held at Caracas in 1954 to study "the activities of the international communist movement, because of considering that it constitutes an intervention in the internal affairs of the Americas," the following statement was formulated among others:

"That the dominion or control of the political institutions of any American State by the international communist movement, having as a result the extension to the American continent of the political system of an extra continental power, would constitute a threat against the political sovereignty and independence of the American States, and would endanger the peace in the Americas, demanding a consultation meeting to consider the adoption of pertinents measures in accordance with the treaties in force".

There, in Cuba, is the international communist movement, and there is the juridical, political and moral mandate to act "in accordance with the treaties in force". There is the Treaty of Rio, available to be applied in Cuba and Nicaragua. The only necessary requisite is that you will fulfill the obligations that your respective states freely contracted with the Cuban State and with the history of the Americas. The declaration, precisely adopted in the birthplace of Simon Bolivar, the Liberator, could not be any clearer. Let us see how those who call themselves the descendants of Bolivar will behave.

"Pacta sunt servanda": One agrees freely, but is obligated by the convenant. The Cuban State has agreed freely with your states the treaties covenants, accords and resolutions in force in the inter-American system, and that is why we request of you now to fulfill what you contracted.

In the Seventh Consultation Meeting of Foreign Relations Ministers, convened in accordance with the Treaty of Rio, that is equivalent to the NATO in the Americas, in San José, Costa Rica, in August 1980, it was agreed that:

"I. The intervention, or threat of intervention, including conditional, by an extracontinental power, in the internal affairs of any American republic, is hereby condemned, and we underline that the acceptance of the threat of intervention by an extra-continental power on the part of any American State, endangers the solidarity and security of the Americas, which forces the Organization of American States [OAS] to condemn and reject it with the same energy".

That is typical in the case of satellite Castro and the intervention of an extra-continental power (the Soviet Union) in the internal affairs of the Americas, with a military and subversive base, which is political and ideological, terrorist and economic. With what "energy" is it going to be condemned and rejected by the present leaders of the Americas?

Two nuclear plants are being built in Cuba, one precisely close to the submarine base that the Soviets have in Cienfuegos, on the southern coast of Cuba.

These bases are being built with the same Soviet technology that noisily failed at Chernobyl (Soviet Union). These plants not only endanger the lives of Cubans, but also imperil those of the inhabitants in the other American States.

The satellite Castro, following orders from the Soviet Union, has refused to sign and ratify the Treaty of Tlatelolco on Proscription of Nuclear Weapons in Latin-America. With what purpose? The comments are obvious.

The KGB (Soviet Secret State Police) has taken over the intelligence and espionage services of Cuba, of the DGI (Spanish acronym for the Directorate General of Intelligence). It has been verified that the same is being done by the Soviet Union in Nicaragua.

Communism is not negotiable in this hemisphere. It has thus been declared by democratic presidents and leaders of the Americas, and we reiterate it. Neither in the

Americas as a whole, nor in any of its member states, especially Cuba and Nicaragua.

The "Group of the Eight", that has now been reduced to seven, has agreed to suspend the participation of Panama, ruled by General Manuel Antonio Noriega. Why has the Group suspended and alienated Noriega & Panama from the Group? Could it be due to the fact that Noriega is a dictator, or because he has been charged with illegal trafficking of narcotics? Could it be due to both reasons? How is it possible that the Group of the Eight has suspended Noriega & Panama, while it now attempts to promote the entrance of the Castro government into the Organization of American States? Noriega has not done in Panama what Castro has done in Cuba. The present government of Cuba, headed by Castro, has been in power for 30 (thirty) years, without having held any free and open elections, nor does it attempt to do that; it has even refused to hold a plebiscite; it has sent to the execution wall thousands of Cubans, male and female, who were its political adversaries; over 250,000 political prisoners, male and female, have gone through the communist dungeons; its government has been charged with participating in the illegal trafficking of narcotics for several years; of allowing its shores, intelligence services, air space and front organizations to facilitate that illegal trafficking of narcotics; it has attacked several member nations of the OAS; it has intervened in the internal affairs, as Venezuela proved in the Ninth Consultation Meeting of Foreign Relations Ministers; it has promoted and still promotes guerrilla wars in several countries of the Americas, such as Peru, Colombia, El Salvador, Guatemala and Bolivia. The Cuban government has allowed an extra-continental power (the Soviet Union) to intervene in the internal affairs of the Americas. Castro's Cuba has become a subversive Soviet base, ideologically, politically and militarily, that threatens the neighbor countries of this Hemisphere.

It is totally absurd and inconsistent that, while Noriega & Panama are alienated from the Group of the Eight, the same group would promote the entrance of the government of Castro into the OAS. What moral foundations, what principles of political honesty, what defense of democracy and freedom could have in mind the members of the Group of the Eight-Seven, in order to commit that affront against the Americas and the free people of Cuba? The free peoples of the Americas shall not permit that great perfidy to be committed.

We likewise reiterate that the freedom of Cuba is not negotiable. Independence and freedom for almost all the peoples of the Americas were achieved through the collective intervention of American patriots and nations in the internal affairs of other States. The Liberator, Simon Bolivar, Sucre, Paez, Miranda, San Martin, O'Higgins, are examples of it. Chile, Peru, Bolivia, Ecuador, only to mention a few, would not have been able to attain their independence at that time, had not the American States and their leaders intervened on their behalf. That collective intervention is what the free people of Cuba is claiming, in accordance with the treaties and covenants in force.

We respectfully request that this document be circulated among all Member States present in this Nineteenth General Assembly of the OAS, because the Cuban State continues to be a member of the Organization of the American States, of the Inter-American System, of the Treaty of Rio and of this General Assembly.

Honorable Chairman, Chancellors, Ambassadors, Representatives of the Americas: we have fulfilled our duty in reiterating our denouncements before you, underlining, with all due respect, the moral & legal obligations that your respective States have contracted with the Free Cuban State. It is incumbent upon yourselves, with honesty and responsibility, before the Americas and before Cuba, to fulfill your international obligations.

With our highest esteem, we remain attentively yours,

Dr. JOSE IGNACIO RASCO,
*Secretary for Foreign Relations.*
Dr. CLAUDIO F. BENEDI-BERUFF,
*Representative in Washington.*
Dr. MANUEL ANTONIO DE VARONA,
*President—Former Prime Minister and President of the Senate of the Democratic & Free Republic of Cuba.*

## DRUG EDUCATION PACKAGE

Mr. COATS. Mr. President, it has been an honor to participate as a representative of the Senate in the conference on the drug bill. We had some sincere differences over the direction of policy. And I want to commend my fellow conferees, on both sides, for their principled and articulate involvement.

I want to note that this legislation includes a measure, which I proposed, that I believe is of great importance. My amendment, given unanimous approval by both Houses of the Congress, would allow schools to use drug-free school funding for nondiscriminatory drug testing of athletic activities.

Drug testing, when employed with proper safeguards, is not a means of punishment, but a tool of compassion. It directs help toward those who need it most desperately. And it is a practice that most successful prevention and treatment programs have in common.

My amendment is specifically designed to meet a need without placing unbearable burdens on school officials. It is strictly voluntary on the part of schools. It applies only to athetic activities. And it allows them to craft their own approaches, appropriate to their own needs.

I have seen the proof that programs like this work. In my home State of Indiana, a high school tested its baseball team for drugs. It found that over a third had marijuana in their systems. But rather than just wringing their hands, they did something about it. At McCutcheon High School in Tippecanoe County, IN, athletes are now regularly tested. At McCutcheon they know their athletes are less likely to be risking injury because of drug abuse. At McCutcheon they know that athletes are less likely to use drugs to relieve pain, contributing to major injuries. When athletes from McCutcheon High School say they are drug-free, other students, as well as the community, know precisely what that means.

Permitting the use of drug-free school funds to duplicate this type of program in demonstration projects would allow schools to stand up and say, "We not only claim we are drug-free, but we proved it." And that could ignite a trend that past rhetoric has been powerless to start.

While I have some concerns about this bill, I am pleased that schools across America may now implement the Indiana model of drug-testing.

## RURAL HEALTH PACKAGE

Mr. SYMMS. Mr. President, I am very pleased that the rural health package, passed by the Senate Finance Committee, has been included in budget reconciliation. I was prepared to fight for this package; it is especially important to my State of Idaho.

Our rural health care providers are in desperate need of help; the issue could not wait for Congress to reconvene next January. The Finance Committee worked very hard to put this package together and I believe it will prevent thousands of rural Americans from being denied quality health care.

This amendment will extend the rural referral center classification for an additional 3 years, until the reimbursement differential is eliminated, allowing those hospitals who are currently classified as such to maintain their current level of funding under the Medicare Program.

There is also an interim protection for smaller hospitals during the elimination of the differential—those which are Medicare dependent.

It also establishes the Geographical Classification Review Board which would allow hospitals to appeal what area wage base is used to calculate their reimbursement level. This is an area where there are frequent inequities in the system. The board will have the authority to review these situations and correct them.

The package authorizes the Secretary of HHS to provide grants to certain rural hospitals for the transition to an essential care facility. These facilities would provide emergency care, stabilization care, and basic inpatient care.

There is a provision to allow the services of nurse practitioners to be covered under Medicare part B; this is vital in our rural areas.

It also broadens the requirements for sole community hospitals to include any hospital located more than 35 miles from another and which serves 50 percent of Medicare beneficiaries.

There are more provisions, however I will not waste the Senate's time to go over them one by one. I do want to emphasize the importance of this package and its benefits to rural America. I am extremely pleased that Congress has recognized this need.

## MEASURE PLACED ON THE CALENDAR

Mr. HEINZ. Mr. President, I send a bill to the desk on behalf of Senator THURMOND and ask unanimous consent that it be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

## DISASTER RELIEF LEGISLATION

Mr. DOLE. Mr. President, for the past 2 days, intensive negotiations have been ongoing on legislation which would provide severely needed assistance to several areas of the country that have recently suffered from natural disasters.

Hurricane Hugo was responsible for widespread damage throughout South Carolina and North Carolina, the Loma Prieta earthquake, which struck northern California, and the devastating tornado, which wrecked havoc on areas in and around Huntsville, AL, focused national attention on the damages that can result from events beyond our control—acts of God, as they are called.

Mr. President, most, if not all, of the concerns that Senators and the administration had with the legislation appeared to have been resolved by this afternoon. I can state that I know of no hold on the legislation at this time by any Senator on this side of the aisle. Unfortunately, it now appears that concerns raised by the other side will prevent us from considering this much needed assistance package before we adjourn this morning.

I would like to commend my colleagues from South Carolina—Senator STROM THURMOND and Senator FRITZ HOLLINGS, from California—Senator PETE WILSON and Senator ALAN CRANSTON, and Alabama—Senator HOWELL HEFLIN and Senator RICHARD SHELBY for all of their hard work and willingness to negotiate what we thought would be an acceptable package. In addition, I want to thank the majority leader for his efforts and for the great deal of time he spent trying to get an agreement so the bill could be cleared before sine die adjournment. I know that with the pending adjournment, the majority leader had a great number of other matters that were occupying his time, but he selflessly committed himself to attempting to pass this legislation, even though no provision would have benefited his State.

Finally, Mr. President, I would like to thank the administration, particularly the Office of Management and Budget for working with us to help create the package. It is my hope that the bill will be considered early next year, when the Congress returns for the second session of the 101st Congress.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THANKS TO STAFF

Mr. DOLE. Mr. President, the first session of the 101st Congress is drawing to a close.

I know the hour is late, and we are all anxious to get out of here, but I think it is appropriate to point out, recognize, and thank the staff of the U.S. Senate, and especially those who toil with us here night after night, late into the night and early morning.

There are too many to name, and I will probably leave some names out that I should mention, but I want to sincerely thank those of you who make our work go easier, although it may not be easy every time.

Here in the Chamber, I want to specifically mention our secretary for the minority, Howard Greene and Elizabeth Greene in legislative scheduling.

The Senate Parliamentarian Alan Frumin and his staff.

The fine staff in the Republican cloakroom, the Doorkeepers, the Capitol Police, the Senate Recording Studio, the staff on the Senate restaurants, they all do their jobs and do them well day after day and night after night.

### SENATOR MITCHELL'S STAFF

Mr. President, I want to emphasize what a pleasure it has been for me to work with the majority leader, Senator MITCHELL, and his chief of staff, Martha Pope.

### SENATORS PACKWOOD, DOMENICI AND SIMPSON

I also want to mention Senators PACKWOOD and DOMENICI and their staffs—along with the staffs of the Senate Budget and Finance Committees—who put in countless hours and meetings, late at night and on weekends, to work out the difficult problems we face, particularly in the last couple of weeks in reconciliations and generally in the budget over the year.

At the Budget Committee, I want to thank staff director John Hilley and minority staff director Bill Hoagland.

Of course, there is our assistant Republican leader, ALAN SIMPSON, and his staff, especially Mike Tongour, who deserve a great deal of recognition.

### WHITE HOUSE STAFF

In the Republican leader's office, we spend a lot of time working with the White House, so I want to mention White House congressional liaison Fred McClure, and the White House Senate liaison, Boyd Hollingsworth.

### DOLE STAFF

And finally I want to thank my staff, especially my chief of staff Sheila Burke, deputy chief of staff Jim Whittinghill and Bob Dove and the others in my office who are willing to put up with me and all the work that goes with it day after day, Saturday and sometimes, at least one time this year, even on Sunday.

Elected officials in this town have said for years that "great staffs should have a passion for anonymity." That may be true most of the time but tonight all of these people, and a whole lot more, deserve mention and our appreciation.

## THE 101ST CONGRESS: 1989

Mr. DOLE. Mr. President, as we finally wrap up our work for the year, I want to take a few moments to reflect on the first half of the 101st Congress. I know reporters and pundits are already pounding out their year-in-review pieces, so before all the spin makes its way into print, let me say that we have had a solid, productive session. It may have looked like a roller coaster at times—with our bipartisan war on drugs at the top, and the partisan war on John Tower at the bottom—but in the end we have done our best for America.

I realize the cynics are never satisfied. They always find some way to knock Congress, to say we were unproductive, or lackluster. In fact, one leading newspaper recently printed a list entitled "What Congress Has Done." Under that dubious headline were six items—six!

I do not share that limited and shallow assessment. Of course, criticism is cheap. Congress is far from perfect, but looking at our hard work during the past 11 months, the Senate has indeed accomplished much.

### PRESIDENT EXTENDS HAND OF BIPARTISANSHIP

President Bush sounded the right tone for the year in his inaugural address on January 20. On the steps of this historic building, our new President extended his hand in friendship to our colleagues on the other side of the aisle, saying: "The American people want action. They did not send us here to bicker. They ask us to rise above the merely partisan."

### WAR ON DRUGS

Working together, Republicans and Democrats joined the President to battle America's greatest challenge—the drug crisis. President Bush provided the leadership by presenting the

first ever coordinated national strategy for the war on drugs.

Coupled with a tough anticrime package, the President called for a massive new prison construction program to help put the thugs and the pushers where they belong—behind bars. He also requested new funding to help law enforcement officials on every level in their deadly battle with the drug menace.

Congress fully funded the President's package, and then some. The good news is, we did it without raising taxes, as some insisted we do.

Congress still needs to do more on the crime front, especially through inportant reforms in the justice system. We need to toughen up the system so that the pushers fear the law as much as we fear them. It is the kind of justice America is demanding, and I can guarantee Republicans will be back next year pushing a tough anticrime agenda.

MINIMUM WAGE

President Bush recently signed into law the first increase in the Nation's minimum wage in 8 years. It was a fulfillment of a Bush campaign pledge, something some of his critics conveniently forget. The issue had full debate in the Senate and we were able to work out a good compromise with our Democratic colleagues that not only raised the minimum wage but also instituted an important training wage for first-time workers, which will help boost beginners onto the first rung of the labor ladder.

DROUGHT RELIEF

American farmers got another jolt this year thanks to a new drought, this one beginning in the winter of 1988 and carrying through the spring and summer of 1989. The result was massive crop devastation, especially in the winter Wheat Belt. Along with the drought, severe weather also took its toll on cotton, soybeans, and many other crops. Congress responded with almost a billion dollars in disaster assistance, but only after some of us insisted that program crops be at the front of the line when it came time to receive Federal relief. We were able to target the assistance, thus holding the line on massive, unchecked taxpayer bailouts for nonprogram crops. This bottomline approach paid off for the American farmer when the President agreed with our responsible approach and signed the bill into law.

It is my hope that this relief package represents the final ad hoc congressional disaster bill. The Federal Crop Insurance Program should be doing the job, and it might be able to if we can clean up the waste and fraud that has plagued the program.

RURAL HOSPITALS

On another critical rural issue, I am pleased the Senate approved my rural health care package. For too many years, rural America has gotten the short end of the health care stick. We have watched hospital after hospital close down in our rural communities, leaving vast areas of America without adequate or accessible medical assistance.

We need to properly fund our urban hospitals, but there is no reason rural hospitals should get second-class treatment.

POLAND/HUNGARY AID

The dramatic changes unfolding in Eastern Europe were spearheaded by unimagined democratic breakthroughs in Poland and Hungary. George Bush's first overseas visit as President brought him to Poland where he underscored America's commitment to freedom by pledging a quarter of a billion dollars in United States aid. Working with the White House and our Democratic colleagues, we were able to fashion a fiscally responsible aid package for Poland and Hungary.

LEBANON

Let me briefly add that the distinguished majority leader and I have worked together on a foreign policy issue that is a priority concern for us, and that is the ongoing tragedy in Lebanon. There have been some signs lately—most notably the Arab league's peace initiative—that tell both of us things are moving in the right direction. There is still a long, long way to go, and we will be watching for real progress in that Middle East nightmare.

AID TO DEMOCRATIC OPPOSITION IN NICARAGUA

Congress also made another commitment to freedom by endorsing the administration's aid plan for the democratic opposition in Nicaragua. Congressional efforts to weaken or water it down failed, which is good news for Violetta Chamorro, our best hope for ousting Communist Dictator Daniel Ortega who is doing all he can to steal next year's election.

ARMENIAN EARTHQUAKE RELIEF

The Senate also did the right thing this year by voting $5 million in new assistance to earthquake-ravaged Armenia. I was there this summer and I can attest to the tremendous needs of the courageous Armenian people: 500,000 have been left homeless by the killer quake, while medical aid, reconstruction, and rehabilitation efforts have been overwhelmed by the scope of the tragedy.

JOHN TOWER

The Senate made history this year with the rejection of John Tower's nomination to head the Defense Department. But it was the kind of history we shouldn't be proud of—what we witnessed, and what John Tower and his family endured, was regrettable.

I do not revisit this issue simply to pick at old wounds, but to remind this body that the Tower nomination is one precedent the Senate should ignore.

CHILD CARE AND OTHER MANDATES

We addressed a number of social issues, including child care, but in my view this body went the wrong way on that one. It is an issue we will revisit next year and I will do all I can to make certain that any kind of child care will be free of big Federal mandates and Government interference in family and church decisions. A good year was 1989, if only for the fact that we held the line on the "mandate agenda." So far, Congress has been able to limit liberal attempts to mandate child care; to mandate Government intervention in labor disputes; and to mandate all other kinds of big Government mischief.

DISABILITY

America's disabled will look at the 101st Congress and see a landmark victory with Senate passage of the so-called bill of rights for the disabled. The Americans With Disabilities Act is a sweeping reform measure that guarantees long overdue rights of the disabled in the workplace, and in access to transportation and communications.

DISAPPOINTMENTS

No session will ever go the way you want it—the leaders know this for a fact. This year has had some real disappointments, with the Tower nomination topping the list. But the Senate also misfired in its procedural roadblock to enacting a cut in the capital gains tax. Let the record show that a majority of Senators—51 Senators—voted for the tax cut. The cut was blocked this year, a mistake that has put off for another year a real opportunity to revitalize the economy.

The Senate also sent the wrong signal to America with its defeat of a constitutional amendment to protect the flag. Americans were outraged by the Supreme Court's red, white and blue blunder on flag burning, but the Senate responded with a misguided Federal statute that flunks the constitutional test. I'll predict again that we haven't seen the last of the constitutional fix for old glory.

In any event, bank on this—capital gains will be back next year.

SENATE MAJORITY LEADER MITCHELL

Mr. President, no recap of this year's session would be complete without acknowledging the good work of the distinguished majority leader. I want to thank Senator MITCHELL for all of his courtesies, cooperation and, above all, his friendship. We have worked well together even as we carried out to the best of our abilities our party leadership roles.

The distinguished majority leader and I may disagree on issues—and we have on many—but we always agree that the Senate has to work. Without

that kind of understanding, without that kind of commitment to the institution, and without each other's trust, the U.S. Senate would come to a crashing halt. And that would be bad news for America.

The good news is, the distinguished majority leader is a man of his word; his word is gold. There have been no surprises. And despite the high hurdles of day-to-day politics, today we have reached the finish line together.

It is a tribute to his leadership and I thank him for it.

KANSAS CONCLUSION

Although it may not warrant national headlines, there was good news for Kansas—on drought relief, rural development, rural hospital care, water projects, important additions to our State educational system, defense projects and major improvements at McConnell Air Force Base, Fort Riley and Fort Leavenworth and much-needed highway improvements.

All of that may not rate with the "inside the beltway crowd," but the last time I checked that is why I was sent here—to make a difference for Kansas.

Let me just say that I know the press and pundits are already saying we did not do enough, we did not do this. I think we have had a fairly productive session. There are a lot of things just on the brink of being done next year, whether it is in child care, clean air, whatever it may be.

I wish to congratulate again all of my colleagues, because I think we have had a pretty good year. We did not complete everything, but you cannot judge a Congress until the Congress ends. This is only the first session. We will complete the next session next year.

## HOUSE CONCURRENT RESOLUTION 239—ADJOURNMENT OF THE TWO HOUSES OF CONGRESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Concurrent Resolution 239.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 239) providing for the sine die adjournment for the first session of the 101st Congress.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The quesion is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 239) was agreed to as follows:

H. CON. RES. 239

*Resolved by the House of Representatives (the Senate concurring),* That when the House and Senate adjourn on Wednesday, November 22, 1989, they stand adjourned sine die, or unitl 12 o'clock meridian on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution.

SEC. 2. The Speaker of the House and the majority leader of the Senate, acting jointly after consultation with the minority leader of the House and the minority leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

SEC. 3. The Congress declares—

(1) that clause 5 of rule III of the Rules of the House of Representatives, adopted for the One Hundred First Congress in House Resolution 5 on January 3, 1989, authorizes the Clerk of the House of Representatives to receive messages from the President during periods when the House of Representatives is not in session;

(2) that the House of Represenatatives intends by such rule to preserve until its adjournment sine die from the final session of the One Hundred First Congress the constitutional prerogative of the House to reconsider vetoed measures in light of the objectiions of the President;

(3) that the order of the Senate of January 3, 1989, effective for the duration of the One Hundred First Congress, authorizes the Secretary of the Senate to receive messages from the President during periods when the Senate is not in session; and

(4) that the Senate intends by such order to preserve until its adjournment sine die from the final session of the One Hundred First Congress the constitutional prerogative of the Senate to reconsider vetoed measures in light of the objections of the President.

SEC. 4. The Congess reaffirms its intent that the availability of the Clerk of the House of Representatives to receive message from the President during periods when the House is not in session and the availability of the Secretary of the Senate to receive messages from the President during periods when the Senate is not in session ensure that the adjournment of either House pursuant to this concurrent resolution shall not prevent the return by the President of any bill presented to him for approval.

SEC. 5. The Clerk of the House of Representatives shall inform the President of the United States of the adoption of this resolution.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

## UNANIMOUS-CONSENT AGREEMENT—H.R. 3671

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate receives from the House a message on H.R. 3671, that when the Senate be deemed to have concurred in the House amendment to the Senate amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

## TO THE SENATE STAFF OF THE 101ST CONGRESS—THANK YOU

Mr. MITCHELL. Mr. President, as the first session of the 101st Congress comes to a close, I want to express my deep appreciation to those staff members who perform the many tasks, great and small, that are essential to the smooth and productive functioning of the Senate. While they may be little known outside this body, they are dedicated and professional group of public servants and I wish to commend them for their many contributions to their country and to the 100 men and women elected to serve in the U.S. Senate. They have also made my first year as majority leader easier and more productive.

Let me first thank the young men and women who serve us as Senate pages. These young Americans are among the hardest working staffers in the Federal Government. They assist each Member of this body with enthusiasm and perserverance. Accomplishing the work of the Senate would be much more difficult without them.

I and the other 99 Members of the Senate are indebted to the invaluable services performed by the Secretary of the Senate, Walter (Joe) Stewart. Joe has been Secretary since 1987 and his loyalty to the institution and his efforts on behalf of the Senate are well known to all Members. In overseeing a large staff with wide-ranging responsibilities, he is ably assisted by Jeri Thomson, assistant secretary; and by Michelle Haynes, Dot Svendson, Muriel Anderson, and Kathy Dignan.

The secretary for the majority, Abby Saffold, has my sincere appreciation. She brings to her demanding job a high degree of competence and dedication, as well as a most pleasant demeanor. I and all my Democratic colleagues are indeed fortunate to have her wise counsel. She is ably assisted in her duties by Jerri Davis and Sue Spatz.

The assistant secretary for the majority, Robert Bean, performs his important duties with diligence and enthusiasm. Likewise, the secretary for the minority Howard O. Greene and his assistant, John L. Doney, and the staff of the Republican Cloakroom also perform valuable services for Senators on the other side of the aisle.

Every Member of this body is aware of the vital work of the Democratic floor staff, Charles Kinney, Marty Paone, and Lula Davis. They are invaluable and their dedication throughout long hours is greatly appreciated. And their Republican floor staff counterpart, Elizabeth Green, is always courteous and cooperative.

The staff of the Democratic Cloakroom, Joe Hart, Lenny Oursler, Patrick Hynes, and Art Cameron, responds to numerous requests for assistance from Democratic Senators.

During day or night sessions, short or long hours, they perform their tasks with effectiveness and humor.

Mr. President, the Parliamentarian has one of the more difficult tasks in this body, interpreting the Senate's complex rules and precedents. All Senators are fortunate to have available to them the knowledge and experience of Alan Frumin, Senate Parliamentarian, and his assistants, Kevin Kayes, Jim Weber, and Jennifer Smith. They all have our deep gratitude.

I also extend my appreciation to the Official Reporters of Debates. The work of the chief reporter, Chick Reynolds; his assistant, Scott Sanborn; morning business editor, Mark Lacovara; and their staffs is essential to the operation of the U.S. Senate.

Other staff who put in long hours at often tedious, but essential, tasks include legislative clerk William Farmer and his assistant Scott Bates; Bill Clerk Vincent Del Balzo and his assistants Kathie Alvarez and Coleen Kuehn; journal clerks William Lackey, Dave Tinsley, and Pat Makanui; and enrolling clerk Brian Hallen and his assistant, Tom Lundregan. They have my thanks for their dedication and attention to detail.

Also deserving of our thanks is Barry Wolk and his printing services staff; the superintendent of the document room, Jeanie Bowles, and her staff; executive clerk, Gerry Hackett; Daily Digest editor, Tom Pellikaan; and the Director of the Office of Senate Security Michael DiSilvestro. From all of them we receive the best of service.

The Sergeant at Arms Henry Giugni, his deputy Jeanine Drysdale Lowe, and assistants Brian Nakamura and Loretta Fuller have tremendous responsibilities for our facilities as well as our security. We are all appreciative of the skill and dedication they bring to their important jobs.

The great responsibility for protecting the Capitol Building, and the people within, belongs to Chief Kerrigan and the U.S. Capitol Police. I thank him and all his officers for the professional way in which they provide protection while, at the same time, ensuring the right of the people to observe their Government in action and to petition it.

The director of the Computer Center, Mary Ruth Alter, and her staff; Postmaster Gayle Cory and her staff; and the director of telecommunications, Robert McCormick, and his staff do an outstanding job in providing their valuable services. The service department, headed by Russell Jackson and Ron Ledlow, likewise, does commendable work, often with short deadlines.

Access to reliable information—and the ability to get it quickly—is critical to the effective functioning of the Senate. I am grateful to the Congressional Research Service and the Senate Library for their professional and timely responses to the many request for information they receive from Senators and their staffs.

I also thank the Reverend Dr. Richard Halverson, the Senate Chaplain, for his inspirational thoughts and for his support and comfort of those in need within the Senate family.

The Senate historian, Dr. Richard Baker, is a noted scholar who directs a talented professional staff in the difficult task of documenting this great institution. I commend them for their efforts.

I thank the Senate restaurant staffs for their efforts to ensure that Members of this Chamber are well fed and the attending physician, Dr. William Narva and his staff, for insuring that we are well cared for. Alan Porter and Steve Benza of the photographic studio and their staff also deserve thanks for their skillful efforts on behalf of all of us.

Those who work in the Senate Press Galleries perform a valuable service in assisting the media in following the activities in this Chamber—no easy task in itself—and I thank them for it.

As long as the Senate is in session, the dedicated staff of the TV control offices enables the American people to follow the deliberations of the Chamber. I thank this staff for its diligence as well as its outstanding work.

A special thank you also goes to the people who manage the reception room, Christine Catucci, "Irish" McLain, and Ruby Paone, and to all the doorkeepers and their supervisors, who are with us each hour we are in session.

Mr. President, there are many other people that contribute to the workings of the Senate. While time does not permit me to thank everyone by name, each has my most profound and sincere appreciation for the work they do for this body.

## THE 1ST SESSION OF THE 101ST CONGRESS

Mr. MITCHELL. Mr. President, this has been an historic year. More change has occurred more swiftly than in any year in recent memory.

Last week, virtually every Member of the U.S. Congress sat spellbound in the House Chamber as an electrician from Gdansk spoke the words, "We, the people" and asserted his right to invoke those words.

This year, millions of people, with their deeds and their words, demanded to be included in those words.

A year that began with the withdrawal of Soviet troops from Afghanistan is ending with East Germans pouring into West Berlin.

No one who saw the crowds of German men, women, and children streaming over the Hungarian border this summer, or swarming over the Berlin wall this fall, can ever again doubt the strength of an idea—the idea of freedom.

Freedom will not be denied. Freedom can not be denied. The human spirit demands it.

As an American, I am proud of the response of the Senate to the people of Poland and Hungary, the pioneers of the experiment with democracy in Eastern Euorpe.

That action was in the spirit and tradition of our Nation. It is also in the best interest of our Nation. The wealth we have invested for four decades to preserve freedom is now on the verge of yielding a huge dividend for democracy.

Our aid proposal for Poland and Hungary reflects our firm belief that risks for peace are well worth taking, even when the stakes are great. Forty years ago, the United States had the vision to launch the Marshall plan. That risk paid off. Today, our vision should be equally broad; our courage to take risks equally firm. Senate Democrats were pleased that we eventually persuaded the administration to join us in a meaningful program of assistance to Poland and Hungary.

We were also pleased that, earlier this year, we developed a bipartisan policy, with President Bush, to end 8 years of policy stalemate in our own hemisphere.

The unified support of our Government for free and fair elections as the first step toward democracy in Nicaragua is the best basis for regional peace in Central America.

Peace in Central America is elusive. The use of force is common in the region. The massacre of six Jesuit priests in El Salvador is an outrage. But it makes our goal of seeking to end the violence even more urgent.

The hopes of the people of Central America for a better life stems from the same human spirit that spurs the people of Eastern Europe, and which inspired the students of China.

All the free world has mourned the demonstrators in Beijing, whose hopes were crushed by tanks. I am proud that the Senate responded promptly and generously in this crisis to give asylum to the Chinese students in our Nation.

Unfortunately, the administration's response to the tanks in Tiananmen Square was not prompt or direct.

We cannot and should not go back to business as usual with a regime which relies on tanks and bullets to control its own people.

The appearance of Lech Walesa before the joint session of Congress was inspiring. But his message was a reminder that no government will earn the support of its people if it does not respond to their needs. That is as

true here in America as it is in China or Poland.

We must meet the expectations of Americans for affordable housing, for protection against accident or illness that can wreck a household budget, for a clean and healthy environment, for a decent future for their children.

As we work to make available to others the benefits of a free economic system, we cannot allow one of the most important of those benefits to become the preserve of only the wealthy in our own Nation.

For the vast majority of Americans, the most important piece of property they will ever own is their own home. It is hard to overstate how significant home ownership is for our economy, for the individual home owner, for our entire society.

An affordable housing policy is no longer a question of providing only for the lowest income Americans or the homeless. Average-income families are being priced out of the housing market.

The unprincipled looting of the Nation's housing programs over the past 8 years—a scandal that has outraged taxpayers all over the country—has disrupted our response to the housing needs of Americans.

We are ready to act directly on the cause of the scandals by passing the internal reforms proposed by the Secretary of Housing and Urban Development. He deserves credit for acting to prevent the recurrence of such an outrage. But housing policy must be addressed.

The goals of the Senate Democratic majority are clear: We seek to halve the homeless population by the end of 1992 and to ensure access to shelter for all the needy by the end of 1995. But first, we want to get every child out of shelters and welfare hotels by the end of 1991.

This we must do. It is an outrage that American children have to play in filthy hotel corridors because they have no other safe place. Regardless how we judge the actions of adults that lead to poverty or to wealth, children deserve no such judgment. But in practice, we are condemning thousands of our children to a life of squalor because their parents cannot pay for housing. This must end.

The larger goal is to reverse the nationwide decline in home ownership. Too many young couples cannot find housing that they can afford to buy, even with two paychecks.

The growth of home ownership in this century was no accident. It was the result of deliberate Government action in the housing and credit markets. Our economy has changed. But the need for a housing policy remains.

Americans have a right to expect that changes in our economy will be reflected in policies that respond to those changes.

American families today come in many forms: Single-parent families are as common as intact families; two-earner families are as common as one-earner families. Many families need two incomes to achieve a decent living standard and provide for their children. Yet much of the workplace continues as though the intact, single-earner family is all there is.

The Senate thoroughly debated and passed a bill to provide reliable, safe, and affordable child care. We could not complete final action on it this year, but it is a high priority for next year.

In other ways, too, the workplace must adapt to the needs of today's workers. When neither private companies nor private families can afford health insurance premiums, Government has a responsibility.

Of course, Government cannot do it alone. But we can and have made a beginning: Physician payment reform, rural health care, coverage of women and children in poverty are all important first steps.

We spend more for health care than any other advanced country. Yet we do not even provide basic health care coverage for our people. That must change. The fact that 37 million Americans do not have basic insurance protection against the budgetary disaster of accident or illness cannot be ignored.

Our economic need for an educated, skilled work force is becoming more insistent. Skilled workers will be at a premium in the coming decade. But more and more of our workers will come from schools which today are among the most disadvantaged in terms of equipment and achievement.

So as a practical matter, the education goals the Democratic majority set forth earlier this year are vital.

Early childhood education for all at-risk children by 1995 is an achievable and important goal. It will require an investment of resources from year to year. But it is an investment in something that we know works.

The goal of reducing discrepancies in achievement and skill levels by 1993 is equally important. This can be done. It will require focus and effort. But if we intend the American goal of equal opportunity to be a reality, not just a hope, it is something we have to do.

The goal of access to postsecondary education for every high school graduate by the year 2000 is ambitious. But it is realistic. American families are stretching their resources to meet the spiraling costs of college tuition. But the education those resources buy returns as much to the Nation as it does to their children directly.

We already know from the postwar experience with the GI bill that providing educational opportunity to every motivated high school graduate means a quantum leap in the ability of our economy to produce more wealth, more jobs, and a higher living standard for all.

Our future as a nation depends on the health and skills of the people who comprise the Nation. It also depends on our ability to integrate a highly technological economy with the needs of our natural environment.

We can no longer afford to treat the ground, the oceans, or the air as convenient dumping grounds.

The failure to meet clean air goals today results in an estimated 50,000 premature deaths each year. We have been warned that acid-rain related emissions could triple that toll. Breathing unhealthy air already costs the Nation as much as $40 billion each a year. Neither our people nor our economy can afford to carry this enormous cost forever.

That is why I am particularly pleased that the Senate Environment and Public Works Committee has reported out a Clean Air Act for consideration. It will be the first order of business next year.

In this effort, we worked with President Bush who I commend for reversing the do-nothing policy of the previous 8 years.

I am also pleased that we finally achieved an oilspill bill to overcome the kinds of problems that became evident after the *Exxon Valdez* disaster this year.

The bill will require a cleanup and it will provide the resources to help pay for that cleanup. Most important the bill does not reward unsafe oil transportation practices.

We also face serious threats to the global environment. In that respect, I regret that President Bush has not provided the leadership we need.

We are one of the world's largest economies. Our contribution to the pollutants that threaten the ozone layer must be curbed. Yet, when the nations of the world recently sought to reach agreement on controlling these emissions, ours was one of the nations to reject that international effort.

This was a misguided decision by the administration. We cannot ask the other nations of the world to accept costs to their economies for the benefit of the whole world if we are unwilling to do so as well.

At home we have learned that air pollution does not respect State borders. We have acknowledged that it is a national problem that demands a national response.

What is true of State borders is also true of national borders. Air pollution, including the pollution that threatens our world with global warming, does not stop at national boundaries. Climate changes will not affect one country and leave another untouched.

Like the worldwide demand for human freedom, the worldwide threat of global warming demands vision and leadership from the United States. Faced with new circumstances, we must adopt new policies.

The chairman of the Senate Armed Services Committee has observed that we have contingency plans for war, but none for peace. Yet peace seems more imminent today than war.

The challenges of a changing world, a world politically and physically different, demand vision and imagination. It is no longer enough to reiterate timeworn views or rely on conventional wisdom.

The challenges facing our own society demand more than rhetoric as well. Yet, there has been a disturbing and reptitive pattern by the administration in response to those needs.

It is a response of words unmatched by deeds; a response of rhetoric divorced from reality.

Our society has real needs. They are serious needs affecting our future prosperity and our current living standards. They will not be solved with speeches.

When President Bush talked to the Nation about the drug war, he mentioned Dooney Waters, a child growing up in a crack house.

But the child welfare agencies which failed Dooney Waters did not fail him because they are uncaring agencies staffed by coldhearted people. They failed him because they don't have the resources to provide for all the at-risk children they are supposed to serve.

When we debated the minimum wage bill, I spoke of a working family in Pennsylvania which has to choose between buying food or medicine for their son.

Their problems stem from the structural shortcomings in our system that make health insurance unaffordable for lower income Americans.

These are not problems that can be solved without resources.

Whether it is inner-city schools whose teachers spend their own money to buy basic supplies, or soup kitchens that try to take the place of community mental health services, there are needs affecting our people. They are national needs. They demand a national response.

I do not criticize the President for making the observation that his critics want to devote more resources to these problems.

Indeed we do. These are serious, heartbreaking problems, problems that shame us as a nation. They have a just claim on us.

But while I give the President the right to be critical of our response, that does not absolve him of the responsibility of coming up with a better one.

If he thinks that spending more to solve homelessness is wrong, what is he proposing? If he thinks we can't afford to finance the war against drugs, how does he plan to win it? If he wants Americans to go to Mars, how does he propose to pay for the trip?

It is not enough to oppose poor schools, insufficient housing, or the devastation caused by the crack plague. Every single American is opposed to poor schools. Every single American deplores homelessness. All of us are horrified by addicted parents who abuse and neglect their children.

But governing demands more than repeating campaign slogans. Not every human tragedy should be a prop in a public relations campaign. Not every national need should be dismissed with a clever quip.

Americans look to the President, the only elected official elected by all the people, for a sense of national purpose and direction.

At his inaugural, President Bush called for a shift in the national mood, a change in the way we view our lives as Americans and the values that define us as human beings. He reminded us all, in his own eloquent way, that we are more than the sum of our material possessions.

At that time, as the newly elected leader of the Senate, I pledged to the President that he would have my support whenever we shared common policies. I pledged to him that we would not oppose him for the sake of scoring political points.

I have tried to keep that pledge. I have worked with the President to bring about successful compromises, even where we disagreed, as on the minimum wage legislation. I also told him that when we disagreed. I would oppose him directly, within the rules of the Senate. I have done so.

The challenges facing the President and the Congress next year are many. We must complete work on the Clean Air Act. That will be a priority for the Senate next year.

We must finish the child care legislation and turn our attention to the health care coverage problem.

We must turn seriously to the problems of global warming because the environment will not await our convenience.

We will turn to an affordable housing initiative to reverse the trend in national home ownership patterns.

We will turn, as well, to a program of national service for all, to use the idealism and energy of our young people for the needs of our communities. If we want to fire the idealism of our youth, community service must come to mean more to Americans than the alternative to a prison sentence. The Senate will take up national service legislation next year.

Again, as we close out this year, I pledge that the President will always have my support and my help when we share his goals. He will have my honest cooperation to reach compromsie where we can reach compromise. And when we must compete, we will do so fairly and vigorously.

The challenges facing the Nation are substantial. But the opportunities our changing world presents are great. I join all Americans in wishing the President a successful and productive meeting with President Gorbachev next month.

The search for a secure world and mutual, fair reductions in nuclear and conventional weapons remains an important goal. He will always have the full support of every American in seeking that goal.

This year we have seen Soviet tanks rolling out of the mountains of Afghanistan; we have seen Hungarian border guards rolling up barbed wire; we have seen trains full of free people rolling across once-closed borders; we have seen an image of Lady Liberty herself rise in the heart of China.

These images are indelible. Their meaning is seared in our minds. The demand for dignity, for freedom, for personal security is a demand that transcends politics, race, religion and national boundaries. It is a demand by human beings to be treated as human beings. It is the most enduring demand of humanity everywhere.

Year 1989 marks the two-hundredth anniversary of the bill of rights which secures for Americans the rights that people everywhere are seeking for themselves. We can take just pride in that heritage. But we should not forget to give thanks, as well, for our good fortune in having that heritage.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THANKS OF THE SENATE TO THE VICE PRESIDENT

Mr. DOLE. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 221) tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 221) was agreed to, as follows:

S. RES. 221

*Resolved,* That the thanks of the Senate are hereby tendered to the Honorable Dan Quayle, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the first session of the One Hundred First Congress.

Mr. DOLE. I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE

Mr. MITCHELL. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 222) tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he presided over the deliberations of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 222) was agreed to, as follows:

S. RES. 222

*Resolved,* That the thanks of the Senate are hereby tendered to the Honorable Robert C. Byrd, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the first session of the One Hundred First Congress.

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## THANKS OF THE SENATE TO THE MINORITY LEADER

Mr. MITCHELL. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 223) to commend the exemplary leadership of the minority leader.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 223) was agreed to, as follows:

S. RES. 223

*Resolved,* That the thanks of the Senate are hereby tendered to the distinguished minority leader, the Senator from Kansas, the Honorable Robert Dole, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the first session of the One Hundred First Congress.

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## THANKS OF THE SENATE TO THE MAJORITY LEADER

Mr. DOLE. I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 224) tendering the thanks of the Senate for the exemplary leadership of the majority leader.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 224) was agreed to, as follows:

S. RES. 224

*Resolved,* That the thanks of the Senate are hereby tendered to the distinguished majority leader, the Senator from Maine, the Honorable George J. Mitchell, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the first session of the One Hundred First Congress.

Mr. DOLE. I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## THANKS OF THE SENATE TO ITS STAFF

Mr. MITCHELL. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 225) tendering the thanks of the Senate to the Senate staff for the courteous, dignified, and impartial manner in which they have assisted the deliberations of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 225) was agreed to, as follows:

S. RES. 225

*Resolved,* That the thanks of the Senate are hereby tendered to the Secretary of the Senate, the Sergeant at Arms of the Senate, the secretary for the majority, the secretary for the minority, and the floor staff of the two parties for the courteous, dignified, and impartial manner in which they have assisted the deliberations of the Senate during the first session of the One Hundred First Congress.

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AUTHORITY TO MAKE CERTAIN APPOINTMENTS

Mr. MITCHELL. Mr. President, I send another resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 226) authorizing the President of the Senate, the President of the Senate pro tempore, and the majority and minority leaders to make certain appointments after the sine die adjournment of the present session.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 226) was agreed to, as follows:

S. RES. 226

*Resolved,* That notwithstanding the sine die adjournment of the present session of the Congress, the President of the Senate, the President of the Senate pro tempore, the majority leader of the Senate, and the minority leader of the Senate be, and they are hereby, authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## NOTIFICATION TO THE PRESIDENT CONCERNING THE PROPOSED ADJOURNMENT OF THE SESSION

Mr. MITCHELL. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 227) appointing a committee to notify the President concerning the proposed adjournment of the session.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 227) was agreed to, as follows:

S. RES. 227

*Resolved,* That a committee of two Senators be appointed by the Presiding Officer to join a similar committee of the House of Representatives to notify the President of the United States that the two Houses have completed their business of the session and are ready to adjourn unless he has some further communication to make to them.

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Pursuant to the resolution just adopted, the Chair appoints the majority and minority leaders as members of the committee to inform the President of the United States that the two Houses have completed their business of the session and are ready to adjourn unless he has some further communication to make to them.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## IMPLEMENTATION OF STEEL TRADE LIBERALIZATION PROGRAM

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 381, H.R. 3275, an act to implement the Steel Trade Liberalization Program.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3275) to implement the steel trade liberalization program.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill to implement the Steel Trade Liberalization Program, which had been reported from the Committee on Finance, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

*SECTION 1. SHORT TITLE.*

*This Act may be cited as the "Steel Trade Liberalization Program Implementation Act".*

*SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES; SENSE OF CONGRESS REGARDING THE STEEL TRADE LIBERALIZATION PROGRAM.*

*(a) FINDINGS AND PURPOSES.—Section 802 of the Steel Import Stabilization Act (19 U.S.C. 2253 note) is amended to read as follows:*

*"SEC. 802. FINDINGS AND PURPOSES.*

*"(a) The Congress finds that—*

*"(1) since 1984, the United States steel industry has made significant progress toward adjustment, through modernization of production facilities, elimination of excess capacity, reduction of production costs, and improvement of productivity;*

*"(2) an extension of import relief, through transitional bilateral arrangements, for a period of two and one-half years will facilitate the steel industry's continued modernization and worker retraining;*

*"(3) liberalization of market access during the period of transitional bilateral arrangements, with preferential treatment for countries who support fair and open trade, will help ensure an orderly return to an open market;*

*"(4) the negotiation of an international consensus through the Uruguay Round of trade negotiations and through bilateral agreements to address subsidies and tariff and nontariff barriers will strengthen the international trading system and conditions of global steel trade; and*

*"(5) the termination of transitional bilateral arrangements by March 31, 1992, and the full and forceful application of the United States unfair trade laws, will protect the United States national interest in preserving conditions of fair and open trade in the United States market.*

*"(b) The purposes of this title are—*

*"(1) to endorse the principles and goals of the steel trade liberalization program as announced by the President on July 25, 1989, and provide for its implementation;*

*"(2) to grant specific enforcement powers to the President to carry out the terms and conditions of bilateral arrangements entered into for purposes of implementing that program; and*

*"(3) to make the continuation of those powers subject to the condition that the steel industry continue to modernize its plant and equipment and provide for appropriate worker retraining.".*

*(b) SENSE OF CONGRESS.—Section 803 of the Steel Import Stabilization Act is amended to read as follows:*

*"SEC. 803. SENSE OF CONGRESS REGARDING THE STEEL TRADE LIBERALIZATION PROGRAM.*

*"(a) The Congress supports the full and effective implementation of the steel trade liberalization program.*

*"(b) It is the sense of the Congress that the steel trade liberalization program should be implemented in a manner which provides for liberalized market access for steel products during the period in which bilateral arrangements remain authorized in order to prepare for the eventual termination of such arrangements in 1992 and reliance thereafter on market forces and the full enforcement of United States trade laws. In particular, liberalized market access should be provided to those foreign countries that work with the United States to achieve the goals referred to in subsection (c).*

*"(c) It is further the sense of the Congress that the United States Trade Representative should promptly conduct negotiations, through the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade and through complementary bilateral arrangements, to seek an international consensus regarding steel trade that provides for—*

*"(1) strong disciplines over trade-distorting government subsidies;*

*"(2) the lowering of trade barriers so as to ensure market access; and*

*"(3) enforcement measures to deal with violations of consensus obligations.*

*"(d) The President shall provide to the Congress an annual assessment of the progress of the negotiations referred to in subsection (c). The President may include the assessment in the annual report required under section 163(a) of the Trade Act of 1974 (19 U.S.C. 2213(a)) regarding the trade agreements program.".*

*SEC. 3. EXTENSION OF ACT.*

*(a) EXTENSION UNTIL APRIL 1, 1992.—Section 806(a) of the Steel Import Stabilization Act is amended—*

*(1) by striking out "the fifth anniversary of the effective date of this title" in paragraph (1) and inserting "March 31, 1992"; and*

*(2) by striking out "or fourth" in paragraph (2) and inserting "fourth, fifth, sixth, or seventh".*

*(b) SPECIAL PROVISION.—If the Steel Trade Liberalization Program Implementation Act is not enacted on or before October 1, 1989, then section 806(a)(2) of the Steel Import Stabilization Act (as amended by subsection (a)) shall be applied by treating the reference therein to the close of the fifth anniversary of the effective date of the Steel Import Stabilization Act as a reference to the close of the 30th day after the date of the enactment of the Steel Trade Liberalization Program Implementation Act.*

*SEC. 4. ENFORCEMENT AUTHORITY.*

*(a) INTERIM AUTHORITY.—Section 805(a) of the Steel Import Stabilization Act is amended by adding at the end thereof the following new sentence: "The President is further authorized to carry out, between October 1, 1989, and the date of the concluding of any bilateral arrangement, such actions as may be necessary or appropriate to ensure an orderly transition to that arrangement.".*

*(b) SHORT SUPPLY SITUATIONS.—Section 805(b) of the Steel Import Stabilization Act is amended to read as follows:*

*"(b)(1) If—*

*"(A) a bilateral arrangement includes a provision relating to short supply situations; and*

*"(B) the Secretary of Commerce (hereinafter in this subsection referred to as the 'Secretary') determines, in accordance with this subsection, that a short supply situation exists in the United States with respect to a steel product that is subject to a quantitative limitation under such arrangement;*

*the Secretary shall authorize the importation of additional quantities of that product without regard to any aggregate quantitative import limitation in effect under such arrangement.*

*"(2) In determining under this subsection whether a short supply situation exists in the United States with respect to a steel product, the Secretary shall take into account all relevant factors, including—*

*"(A) (to the extent information is available) the recent levels of capacity utilization for domestic facilities producing the product;*

*"(B) the quantity of the steel product requested in a short supply petition and the ability of domestic producers to supply the product in such quantity;*

*"(C) the willingness of a domestic producer to supply the steel product at a price which is not an aberration from prevailing domestic market prices;*

*"(D) reasonable specifications requested by the purchaser or any end user; and*

*"(E) delivery times to the purchaser and any end user of the steel product.*

*"(3)(A) A petition requesting a determination under this subsection may be filed with the Secretary. The petition must be in such form and contain such relevant information as the Secretary requires.*

*"(B) If the Secretary considers that a petition filed under subparagraph (A) is adequate, the Secretary shall promptly cause to be published in the Federal Register a notice that a determination under this subsection*

*with respect to the steel product concerned is under consideration.*

*"(C) The Secretary shall provide opportunity for comment by interested persons regarding the issues raised in a petition.*

*"(D)(i) The petitioner shall certify that the factual information contained in the petition and any additional submission is accurate and complete to the best of the petitioner's knowledge.*

*"(ii) An interested person shall certify that the factual information submitted by that person to the Secretary is accurate and complete to the best of the person's knowledge.*

*"(4)(A) If an adequate petition is filed under paragraph (3)(A), the Secretary shall determine, not later than the day specified in subparagraph (B)—*

*"(i) whether a short supply situation exists in the United States with respect to the steel product; and*

*"(ii) if the determination under clause (i) is affirmative, the quantity of the steel product that the Secretary will authorize for importation.*

*"(B) The Secretary must make a determination with respect to a petition not later than—*

*"(i) the 15th day after the day on which the petition is filed if—*

*"(I) the raw steel making capacity utilization in the United States equals or exceeds 90 percent,*

*"(II) the importation of additional quantities of the steel product was authorized by the Secretary during each of the 2 immediately preceding years, or*

*"(III) the Secretary finds, on the basis of available information (and whether or not in the context of a determination under this subsection), that the steel product is not produced in the United States; or*

*"(ii) the 30th day after the day on which the petition was filed if neither subclause (I), (II), or (III) of clause (i) applies.*

*"(C) In making a determination with respect to which subparagraph (B)(i) applies, the Secretary shall apply a rebuttable presumption that the short supply situation alleged in the petition exists.*

*"(D) The Secretary shall cause to be published in the Federal Register notice of each determination made under this subsection setting forth the reasons for the determination.*

*"(5) If under this subsection the Secretary authorizes the importation of a specified quantity of a steel product, the Secretary shall notify a representative of the appropriate foreign government and issue to the petitioner the necessary documentation to permit the importation of that quantity.*

*"(6) The Secretary shall prescribe regulations to carry out this subsection. The interim text of such regulations shall be issued on or before the 30th day after the date of the enactment of the Steel Trade Liberalization Program Implementation Act. The regulations shall provide for transparency and fairness in the process of making short supply determinations, and shall be consistent with the President's announcement on July 25, 1989, establishing the steel trade liberalization program.".*

*(c) CONFORMING AMENDMENTS.—Section 805 is further amended—*

*(1) by amending subsection (c) by striking out "may provide" and inserting ", in consultation with the Secretary of Commerce, shall provide"; and*

*(2) by striking out "President's Steel Policy," in subsection (d)(3) and inserting "steel trade liberalization program".*

*SEC. 5. DEFINITIONS.*

*Section 804 of the Steel Import Stabilization Act is amended—*

*(1) by inserting "or the steel trade liberalization program" before the period at the end of paragraph (1); and*

*(2) by adding at the end thereof the following:*

*"(4) The term 'steel trade liberalization program' means the program, announced by the President on July 25, 1989, designed to achieve an orderly transition to open markets, the continued modernization and adjustment of the steel industry, and the negotiation of an international consensus to restore fair and open steel trade.".*

*SEC. 6. DOMESTIC INDUSTRY EFFORTS TO IMPROVE QUALITY AND SERVICE AND TO PROVIDE WORKER TRAINING.*

*(a) IN GENERAL.—Section 806(b) of the Steel Import Stabilization Act is amended—*

*(1) by amending paragraph (2)(A) to read as follows:*

*"(A) The term 'major company' means an enterprise that produces iron and steel and whose raw steel production in the United States during 1988 exceeded 2,000,000 net tons."; and*

*(2) by adding at the end of paragraph (3) the following: "For purposes of this paragraph, the United States International Trade Commission shall seek to—*

*"(A) obtain information from purchasers of domestic steel products, as well as from domestic producers of steel products, regarding recent improvements in domestic quality and service, including those that result from industry modernization; and*

*"(B) obtain information on—*

*"(i) the general nature of the worker retraining efforts undertaken by the steel industry, and*

*"(ii) with respect to the moneys referred to in paragraph (1)(B), the amounts used to retrain displaced former employees as compared with the amounts used for on-the-job retraining within the industry.".*

*(b) SPECIAL RULE.—The amendment made by subsection (a)(1) shall not affect the definition of "qualified corporation" contained in section 212(g)(1)(A) of the Tax Reform Act of 1986.*

*SEC. 7. ETHYL ALCOHOL AND MIXTURES THEREOF FOR FUEL USE.*

*(a) DETERMINATION OF INDIGENOUS PRODUCTS.—Section 423(c) of the Tax Reform Act of 1986 (19 U.S.C. 2703 note) is amended—*

*(1) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and*

*(2) by striking out paragraph (2) and inserting the following:*

*"(2) Ethyl alcohol or a mixture thereof that is produced by a process of full fermentation in an insular possession or beneficiary country shall be treated as being an indigenous product of that possession or country.*

*"(3)(A) Ethyl alcohol and mixtures thereof that are only dehydrated within an insular possession or beneficiary country (hereinafter in this paragraph referred to as 'dehydrated alcohol and mixtures') shall be treated as being indigenous products of that possession or country only if the alcohol or mixture, when entered, meets the applicable local feedstock requirement.*

*"(B) The local feedstock requirement with respect to any calendar year is—*

*"(i) 0 percent with respect to the base quantity of dehydrated alcohol and mixtures that is entered;*

*"(ii) 30 percent with respect to the 35,000,000 gallons of dehydrated alcohol and mixtures next entered after the base quantity; and*

*"(iii) 50 percent with respect to all dehydrated alcohol and mixtures entered after the amount specified in clause (ii) is entered.*

*"(C) For purposes of this paragraph:*

*"(i) The term 'base quantity' means, with respect to dehydrated alcohol and mixtures entered during any calendar year, the greater of—*

*"(I) 60,000,000 gallons; or*

*"(II) an amount (expressed in gallons) equal to 7 percent of the United States domestic market for ethyl alcohol, as determined by the United States International Trade Commission, during the 12-month period ending on the preceding September 30;*

*that is first entered during that calendar year.*

*"(ii) The term 'local feedstock' means hydrous ethyl alcohol which is wholly produced or manufactured in any insular possession or beneficiary country.*

*"(iii) The term 'local feedstock requirement' means the minimum percent, by volume, of local feedstock that must be included in dehydrated alcohol and mixtures.".*

*(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to calendar years beginning after December 31, 1989.*

*SEC. 8. CONSISTENCY OF THE SUPERFUND PETROLEUM TAX WITH THE GENERAL AGREEMENT ON TARIFFS AND TRADE.*

*(a) UNIFORM RATE.—Section 4611(c)(2)(A) of the Internal Revenue Code of 1986 (26 U.S.C. 4611(c)(2)(A)) is amended to read as follows:*

*"(A) the Hazardous Substance Superfund financing rate is 9.7 cents a barrel, and".*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.*

*SEC. 9. EFFECTIVE DATE.*

*The amendments made by this Act (other than the amendments made by sections 7 and 8) shall take effect on October 1, 1989.*

AMENDMENT NO. 1218

(Purpose: To provide for duty-free importation of certain types of ethanol from beneficiary countries of the Caribbean Basin Economic Recovery Act, and for other purposes)

Mr. BENTSEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. BENTSEN] proposes an amendment numbered 1218.

Mr. BENTSEN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On line 22 of page 25 of the bill, strike "beginning after December 31, 1989." and insert in lieu thereof "1990 and 1991."

Mr. BENTSEN. Mr. President, I rise today to urge my colleagues to support H.R. 3275, a bill to implement the Steel Trade Liberalization Program. The Finance Committee unanimously

approved H.R. 3275 by voice vote on November 15, with two amendments.

Since 1984, the United States has restricted imports of steel products through voluntary restraint agreements [VRA's] negotiated with steel exporting countries. These VRA's were negotiated after President Reagan decided it was not in the national interest to provide import relief to the carbon and alloy steel industry under section 203 of the Trade Act of 1974, even though the International Trade Commission [ITC] recommended doing so. Under title VIII of the Trade and Tariff Act of 1984, Congress granted the President specific authority to enforce the VRA's for 5 years.

With the enforcement authority and the VRA's themselves due to expire on September 30, 1989, President Bush announced on July 25, 1989, that he intended to extend the VRA's for a transitional 2½-year period. At the same time, he announced that he would seek an international consensus to remove unfair trade practices in steel, thereby setting the stage for a return to a free and fair U.S. market for steel at the end of the transition period.

The bill before the Senate today implements the steel program announced by President Bush. Most importantly, it extends the President's authority to enforce steel VRA's until March 31, 1992. As under the 1984 act, continuation of the enforcement authority depends upon the efforts of major U.S. steel companies to adjust to import competition. The bill requires the President to determine each year that U.S. steel companies have committed substantially all of their net cash-flow to reinvestment in, and modernization of, their steel operations. In addition, companies must devote 1 percent of their net cash-flow to retraining workers, barring unusual circumstances. Finally, the President must also find that the industry is taking sufficient action to maintain its international competitiveness, for example through improvements in productivity and quality.

This link between the continuation of enforcement authority and industry efforts is a key element of our steel policy. Import protection alone will not accomplish our objective, a viable and internationally competitive domestic steel industry. It must be matched by affirmative industry efforts to modernize and become more productive.

These provisions are even more important now than they were when the program was first established. In the early years of the Steel Program, the net cash-flow of the steel companies was negative. But conditions in the steel industry have turned around. For the last 3 years, the major companies have recorded a positive, and increasing, net cash-flow. In 1988, the U.S. steel industry returned to profitability for the first time since 1981.

Undoubtedly, the Steel Import Program played a role in this recovery. As the industry recovers, it should continue to reinvest to make itself more competitive. It seems to me that these conditions are a fair payback for the Government providing special protection for the steel industry.

Another important element of this bill rests in its short supply provisions. While the 1984 act and the VRA's themselves allowed for additional steel imports in emergency or short supply situations, there have been many complaints by steel users about the administration of the short supply program. This bill tries to address those complaints by setting forth rules and procedures for dealing with short supply requests. When a company petitions under the new short supply procedures, they will get an answer promptly and they will know why they got the answer given. We don't want a Steel Import Program that unfairly penalizes the U.S. industries that depend on a reliable steel supply for their own operations.

Frankly, Mr. President, the lateness of the President's decision on a Steel Program has not given the Congress much time to act on this bill. And congressional action is necessary to assure the effectiveness of the VRA's. While Presidents Reagan and Bush have sought the agreements under asserted constitutional authority to negotiate with foreign countries, the power to enforce the VRA's rests with the Congress until specifically delegated to the President.

In spite of the administration's delay, they have urged quick congressional action because of the need for enforcement authority. And Congress has responded. The House passed H.R. 3275 on October 2 and it was received in the Senate on October 3. On October 27, the International Trade Subcommittee of the Finance Committee held a hearing on the bill and the Finance Committee ordered the bill reported on November 15. Today the full Senate considers the bill.

The timeliness of congressional action on this bill has been possible because it enjoys broad support. In drafting the bill, the House worked with the administration and the private sector to develop legislation that would not be controversial. In fact, the bill passed the Ways and Means Trade Subcommittee, the full Ways and Means Committee, and the House floor without amendment, because of a commitment from the steel producers, the steel users, and the administration to support the bill without any amendments throughout the legislative process. All witnesses at that Finance Subcommittee hearing testified in support of the bill, including the administration, the domestic steel industry and its workers, and a coalition of steel consuming industries.

During Finance Committee consideration of H.R. 3275, no amendments were offered with respect to the steel provisions. However, the committee did accept two trade amendments unrelated to steel. Both were part of the House reconciliation bill, both were strongly urged on the committee by the administration, and both have an element of time sensitivity to them. For these reasons, we agreed to make our best efforts to move these two provisions on the steel bill. This was part of our agreement with the House on the trade provisions in the reconciliation bill. In exchange, the House agreed to drop all trade provisions from the reconciliation bill.

The first amendment has to do with fuel ethanol imports from the Caribbean. Under the Caribbean basin initiative, or CBI, most imported goods from eligible Caribbean countries are entitled to enter the United States duty free. Under the 1986 Tax Reform Act, however, ethanol from the Caribbean and U.S. insular possessions is duty free only if it contains at least 75 percent indigenous Caribbean feedstock. This 75 percent requirement effectively bans duty-free importation of ethanol.

In last year's Trade Act, we allowed certain existing ethanol facilities in the CBI region to continue to supply imports to the United States without duties up to a cap of 20 million gallons annually per facility. This provision was intended to allow duty-free importation of only 100 million gallons per year, because there are only five ethanol facilities in the CBI region.

The provision expires at the end of 1989. If that happens, then the prohibitive 75 percent indigenous feedstock requirement goes back into effect at the beginning of next year. Studies by the General Accounting Office and the International Trade Commission indicate that none of the existing facilities can meet this requirement. Effectively, current law will deny the zero-duty CBI benefit to all ethanol originating in the region and put these producers out of business.

The Finance Committee's amendment is identical to a provision worked out in the House and contained in the reconciliation bill this year as the so-called CBI II legislation. It replaces current law and creates new statutory criteria for determining which Caribbean ethanol gets duty-free treatment. Ethanol that is produced in a full fermentation facility will be eligible for duty-free treatment without restriction as long as the domestic excise tax program for ethanol is in effect, currently until December 31, 1992.

Ethanol that is merely dehydrated in the Caribbean region from alcohol

produced elsewhere must meet certain requirements to quality for zero duties. No indigenous feedstock requirement is imposed on the first 60 million gallons or 7 percent of the U.S. market, whichever is greater. On the next 35 million gallons of imports, a 30-percent feedstock requirement will apply. Any imports over that level must have at least 50 percent indigenous feedstock.

This provision assures the domestic industry of what it has wanted most: A very low quota on CBI ethanol for as long as this product receives favorable tax treatment. In practical effect, I would guess this provision would actually result in lower imports than the quota that applies until the end of the year, because no imports will be economic at a 50-percent feedstock requirement.

Subsequently we learned that certain Senators had concerns about the House ethanol provision. Therefore, I have offered an amendment which limits it to a 2-year, rather than 3-year, period; that is, through December 31, 1991.

The second committee amendment revises the Superfund excise tax to equalize the tax rate between imported and domestic petroleum products at 9.7 percent ad valorem. An international dispute resolution panel has ruled that the 3.5 cent difference in the tax rate violates U.S. obligations under the GATT. Some of our trading partners are pressuring the GATT for permission to retaliate against the United States in January for not eliminating the differential. The U.S. Trade Representative, Ambassador Hills, has urged me as strongly as possible to move on this problem in this session. This amendment complies with the GATT decision in a revenue-neutral manner, raising the tax on domestic petroleum by 1.5 cents and lowering the tax on imported petroleum products by 2 cents.

Mr. President, if the Senate approves this bill without change, I expect the House will act on it before the Congress adjourns and send it to the President for his signature. Given the time sensitivity of the provisions in the bill and the administration's appeal for its passage this year, I urge all Senators to vote in favor of the bill.

Mr. President, at the time that the Finance Committee filed its report on H.R. 3275, a bill to implement the Steel Trade Liberalization Program, the committee had not yet received a report of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974 regarding the bill. The committee has now received that report and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, November 17, 1989.*

Hon. LLOYD BENTSEN,
*Chairman, Committee on Finance, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3275, the Steel Trade Liberalization Program Implementation Act, as reported by the Committee on Finance on November 15, 1989. Enactment of this bill would 1) extend the President's authority to negotiate bilateral voluntary restraint agreements on the importation of steel, 2) amend the tariff treatment of ethanol distilled in the Caribbean, and 3) change the Superfund petroleum taxes on domestic crude oil and imported petroleum products.

H.R. 3275 expresses the sense of the Congress that liberalized market access for steel products should be provided and that the United States Trade Representative should negotiate bilateral arrangements regarding international trade of steel and some steel products. This bill gives the President the authority to negotiate bilateral voluntary restraint agreements provided under the Steel Import Stabilization Act and to enforce these bilateral arrangements until March 31, 1992. Previously arranged restraint agreements expired September 30, 1989 and must be renegotiated. Additionally, the President is required to report annually on the progress of these negotiations.

Because "sense of the Congress" language is merely advisory and not mandatory, it has no direct budget effects. The extension of the President's negotiating authority also has no estimate budget effects, since the President must renegotiate many bilateral agreements with foreign nations, the details of which cannot be known at this time.

Section 7 of the bill would amend the tariff treatment of ethanol distilled in the Caribbean. Beginning January 1, 1990, current law requires that ethanol imported from CBI countries or insular possessions meet a Caribbean-raw-materials requirement in order to receive duty-free treatment. Seventy-five percent or more of the value of such imported ethanol must result from processing or manufacturing hydrous ethyl alcohol, some of which is wholly the product or manufacture of any of these beneficiary countries. Under H.R. 3275, 7 percent of U.S. consumption of ethanol, or 60 million gallons, whichever is greater, could be imported into the United States duty free without containing raw materials grown in the Caribbean. An additional 35 million gallons of ethanol could be imported duty free if it contains 30 percent Caribbean raw materials. Any ethanol containing at least 50 percent Caribbean raw materials would be exempt from U.S. tariffs. Because imports of ethanol from the Caribbean are expected to be much lower than the duty-free limit, CBO estimates that this provision would have no revenue effect.

Section 8 of the bill would change the Superfund petroleum tax rate to 9.7 cents per barrel of domestic crude oil and imported petroleum products. The current Superfund tax rate on domestic crude oil is 8.2 cents per barrel and the tax on imported petroleum products is 11.7 cents per barrel. Different tax treatment of domestic crude oil and imported petroleum products could subject the United States to retaliation or possible compensatory damage payments under the General Agreement on Tariffs and Trade. According to the Joint Committee on Taxation, Section 8 would have no effect on revenues collected from the Superfund petroleum tax.

Other provisions of the bill are not expected to result in significant additional costs to the federal government. In addition, CBO expects enactment of this bill to result in no additional cost to state and local governments.

If you wish further details, feel free to contact me or your staff may wish to contact Caroline Ratcliffe of the Tax Analysis Division at 226-2720.

Sincerely,

ROBERT D. REISCHAUER,
*Director.*

Mr. ROCKEFELLER. Mr. President, I am relieved and grateful that the Senate is finally acting on this legislation, H.R. 3275, which provides the necessary authority to ensure and enforce a 2½-year extension of voluntary restraints on steel imports into the United States. The U.S. steel trade program i important to all Americans, not just American steel companies and steelworkers. Indeed, I regard the President's July 25 decision to extend the Voluntary Restraint Agreement Program until March 31, 1992, as one of the most significant decisions related to trade policy that he has made this year.

When I was named chairman of the Senate's Steel Caucus this past January, I moved quickly with the distinguished cochair of the caucus, Senator HEINZ, and introduced legislation to extend the Voluntary Restraint Agreement Program for another 5 years. We are proud of the fact that our bill had 57 cosponsors, demonstrating strong, bipartisan support in the Senate for a continued, meaningful trade policy on steel.

Since introducing that bill, Senator HEINZ and I have used every possible opportunity to present the compelling case we believe exists for the VRA's. When talking to Cabinet officials and even to President Bush directly, we have laid out the facts, which to me make an airtight case.

To put it bluntly, since the end of World War II, governments throughout the world have been getting into the steel business. Outside of the United States and Japan, most foreign steel companies are state owned or state subsidized. Every developing country has essentially decided to have an indigenous steel industry. I have no quarrel with that. But where I ardently believe we must draw the line is at the place that determines the level of subsidized, imported steel entering our own country.

Fortunately, the President listened to our arguments, and in July, announced his plan to both extend the current Voluntary Restraint Agreement Program for another 2½ years, and to begin a process aimed at negotiating an end to unfair trade practices in steel. Though I still believe the better decision would have been to extend the VRA's for the full 5 years,

I am relieved that the administration rejected various proposals to drop certain countries and products from these agreements. For example, exempting a product like semifinished steel, which was suggested by some, would have been disastrous. Our Nation's steel industry is doing everything possible to finish major, capital intensive renovations of its facilities, with the full intent of achieving 100 percent continuous casting. If we allow our country to be flooded by cheap semifinished steel, American steel companies would be weakened and their modernization plans would be gravely undermined.

The one specific concern I have had with the Voluntary Restraint Agreement Program of the past was the way in which short supply requests were treated. Secretary Mosbacher responded with solid proposals to improve this process that deserve congressional support. Because I am a realist and want to see the Voluntary Restraint Agreement Program fully renewed and activated again, I asked to be an original cosponsor of Senator PACKWOOD's bill, S. 1701, a bill identical to H.R. 3275, the bill under consideration today. This legislation will provide the necessary enforcement authority for the VRA's until March 31, 1992—time that the President and Ambassador Hills believe is sufficient to negotiate a comprehensive agreement to end unfair trade practices in steel.

It is good and hopeful news that this administration has taken on the challenge of pursuing such a comprehensive solution. But let's be honest. They have set an extremely ambitious, perhaps impossible goal. Just look at what is taking place right now in the Uruguay round; some U.S. importers and multinational companies are beginning a push to weaken U.S. dumping and countervailing duty laws. Those are two crucial mechanisms that have been used successfully in the past by the steel industry to redress unfair trade practices by other countries.

My point is that I believe while we pursue the difficult work of trying to eliminate unfair practices like the steel subsidies that abound in other countries, we should not falter or retreat one step from our own national steel policy that rests on the Voluntary Restraint Agreement Program. It is a policy that is working, but it is also a program that has not been completed. The Voluntary Restraint Agreement Program is enabling and even driving our steel industry to reinvest, to modernize, to retrain its workers, and to become truly competitive. For example, in my State, West Virginia, Weirton Steel has embarked on a 5 year, $650 million modernization program designed to achieve 100 percent continuous casting by 1993; and Wheeling-Pittsburgh appears to be on the brink of leaving bankruptcy and in a position to start a major modernization effort. We should not allow grander plans for trade negotiations—again, a goal which I support—to undermine the program, VRA's, that has done so much to enable America's entire steel industry to improve their productivity, profits, and performance.

Finally, even though our steel industry has rebounded to some extent, in large part thanks to the Voluntary Restraint Agreement Program, we must recognize that U.S. steel is not out of the woods. Numerous signals are now appearing that indicate the industry may be entering a slump, that prices are falling, profits are evaporating, and inventories are piling up. Of course, steel imports and unfair trade practices accelerate in any downturn. In my view, this underscores the need to continue standing up for America's steel industry and workers.

Mr. President, I believe this body should work with the administration to bring about real solutions and effective changes to assure that steel is traded and treated fairly across the globe. While we all work toward that goal, we should insist on the continuation and the full implementation and enforcement of the Voluntary Restraint Agreement Program. This program is producing tangible benefits and making a vital contribution to the entire U.S. economy and work force that should not be allowed to diminish.

Finally, I would like to take a few minutes to talk more specifically about the bill we are considering on the floor today. H.R. 3275 amends the 1984 act—the Steel Import Stabilization Act—to extend the termination date for enforcement of steel voluntary restraint agreements until March 31, 1992. Of course, the bill continues the critical requirement that the President determine each year that the major U.S. steel companies are reinvesting their net cash flow into modernizing their steel operations. The President has certified that the industry has met this requirement each and every year of the program. Further, the legislation contains sense of the Congress provisions expressing support for the President's objective to obtain an international consensus to "remove unfair trade practices" in steel. The report filed by the Finance Committee elaborates on this by setting out some objectives for an international consensus, including immediate prohibitions on the broadest range of export and domestic subsidies, reducing steel tariffs and eliminating nontariff barriers. The committee report also stresses the importance of measures to verify adherence to commitments and effective enforcement measures for handling commitments which are broken. In addition, the supremacy of U.S. trade law remedies is reaffirmed in the report, as well as the committee's support for the administration's position that it will neither propose nor support any proposals in the Uruguay round that would weaken U.S. trade laws.

Lastly, H.R. 3275 provides authority for the Secretary of Commerce to allow imports above Voluntary Restraint Agreement levels in situations of short supply. The provisions on short supply answer the concerns that were raised by steel users who complained about the length of time it took to get a short supply request approved in the early years of the program and the lack of transparency in the short supply decisionmaking process. The bill also codifies the Department's current practice when making decisions on short supply. That practice is to consider all relevant factors, including domestic capacity utilization, the ability of U.S. producers to supply the quantities required, the U.S. industry's willingness to supply at a price that is not an aberration from prevailing market prices, any reasonable specifications requested and delivery times.

Mr. President, when you bring to the floor a bill of this nature—the end product of a contentious debate, both in the Cabinet and elsewhere, you know that many people have put in extra effort to see that it has reached this point. In that regard, I want to thank the chairman of the Finance Committee, Senator BENTSEN, the ranking member, Senator PACKWOOD and the chairman of the Trade Subcommittee, Senator BAUCUS, for their expeditious treatment of this legislation.

I also want to thank the Senator from Utah, Senator HATCH, who has been my staunch ally in fighting for a sensible trade policy on steel. Last, but certainly not least, I must thank my distinguished cochair, Senator HEINZ for his dedication, hard work, his perseverance, on this bill. His encyclopedic knowledge of the steel industry still amazes me.

I would also like to thank the staff—Jeff Lang, Marsha Miller, and Brad Figel of the Finance Committee and Bill Reinsch of Senator HEINZ' staff for their work on this issue over the last 10 months.

I urge the passage of this critical legislation.

Mr. HEINZ. Mr. President, I support this legislation and urge its adoption. Although the President has made the decision to extend the voluntary restraint program for another 2½ years, and virtually all the VRA's have been renegotiated, the authority to enforce those agreements that is contained in this bill will be an important element in making the program continue to work as effectively as it has for the past 5 years.

Senator ROCKEFELLER is making a number of detailed comments about the provisions of this legislation, and I will not take the Senate's time simply to repeat those same observations. I do, however, want to make a brief comment about the dangerous implications for the Uruguay round of the negotiations on subsidies consensus agreements that have been proceeding simultaneously with the VRA talks.

First, the definition of subsidy we are accepting may effectively permit the continuation of certain kinds of subsidies. While the definition's coverage may be an expansion of the Subsidies Code, the proper comparison, in my judgment, is with U.S. countervailing duty law. If the agreements do not provide better protection than U.S. law can provide, then we have gained nothing, and the industry will ultimately be forced back to the situation that existed prior to 1984.

In addition, allowing the continuation of certain subsidies risks prejudicing our Uruguay round negotiating position. I have no doubt whatsoever, that when those talks intensify we will frequently hear the argument that we accepted certain subsidies in the steel negotiations and therefore should accept them in the general negotiation as well. That could lead to a significant rollback in our countervailing duty law in the future, despite the administration's claims it remains intact at this point.

Second, the administration's apparent acceptance of an international arbitration scheme in the steel negotiations will almost certainly lead to demands next year that we accept it for all subsidies cases, which would mean yet another nail in the coffin of our trade laws. And that does not even address the question of where you can find an objective third-party arbiter today on the question of subsidies.

I confess I am baffled as to why, after 40 years of unpleasant experience with GATT dispute settlement procedures, the administration wants to rely on it in the most intractable area of trade policy that we have.

Our dumping and subsidy laws are the only tools our industries have to defend free market principles internationally. Thus it is no surprise that they are under attack in the GATT by the very countries that subvert those principles every day. The consequences of surrendering to such an attack—even inadvertently or unintentionally—will be devastating to our manufacturing sector.

That is why the report accompanying H.R. 3275 contains the following language:

> The Committee received unequivocal testimony from the Administration that the bilateral arrangements already negotiated or being negotiated in no way will affect (1) the right of U.S. petitioners to pursue antidumping or countervailing duty cases and (2) the willingness of the U.S. Government to take up any such cases either before or after March 1992. Additionally, the Administration testified that, after March 1992, the domestic steel industry would depend exclusively upon U.S. trade laws, particularly the antidumping and countervailing duty laws, rather than VRA's to remedy foreign unfair trade practices affecting steel imports. They further testified that the Administration would neither offer nor support any proposals in the Uruguay Round that would make U.S. antidumping or countervailing duty laws less effective tools for combating unfair trade practices. The Committee supports that position.

This is a clear statement. Neither the committee nor the administration intends to support any weakening of our trade laws. That is important for the steel industry, but it is also important for countless other American industries that rely on the operation of the market system for their survival and are not willing to see it subverted by foreign competitors determined to drive them out of business and capture market share in this country at literally any price. Although the results of the negotiations in steel give me some cause for concern about the future in the Uruguay round, I take heart from the administration's testimony at the committee's hearing and from the committee's own statement that we will work together to resist the pressures that are mounting. Mr. President, you can be sure that many of us in the Senate will be watching those negotiations closely as next year wears on.

On the issue of the VRA's themselves, let me also commend the administration on the speed of its negotiations and what I hope is its success in staying within the President's guidelines. I want to make clear, however, that I continue to object strongly to the practice of giving away the so-called bonus share of the U.S. market to countries that have made appropriate subsidies commitments, instead of waiting, as the President said, to see if they abide by those commitments. The U.S. Trade Representative's office has played fast and loose with the President's own words. If they play equally fast and loose with the details of the agreements they have reached, we are going to have an enforcement problem beyond anything we experienced in the past 5 years.

And let me say in that regard, Mr. President, that I expect some enforcement problems. We have had the good fortune of a strong steel market over the past 2 years—a fact that may have been a misfortune for the domestic industry when it came time for the President to make his decision on VRA extension. However, there are already clear signs that the strong market is tapering off. Capacity utilization in the domestic industry has been declining steadily over the past 4 months and is now down to 77 percent. While analysts are not predicting a recession, a significant flattening of the market is already clear, and that will probably occur worldwide as well.

Thus far imports have not rushed into the U.S. market. They continue to be below permitted levels. But pressures from imports will inevitably increase because so little has been done about global excess capacity. When that happens, the continuing weaknesses in our industry—the excess and outmoded capacity, and the pension overhang, to name the most obvious, that we have allowed ourselves to forget about over the past 2 years—will return. And at that point the adequacy of the President's policy for this most basic of all industries is going to be tested. I hope it is not found wanting, and I hope further congressional action will not be necessary. But I know that both Senator ROCKEFELLER and I will be ready to go forward with legislation if that is the only course of action available.

Let me conclude, Mr. President, by expressing appreciation to Senator ROCKEFELLER, the chairman of the Senate steel caucus, and Loretta Dunn, who handles caucus' work for him, for all their efforts on behalf of this legislation. Senator ROCKEFELLER has been a tireless and effective advocate for the industry, and Loretta has provided outstanding staff support.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Texas.

The amendment (No. 1218) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment, as amended, in the nature of a substitute.

The committee amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question is on engrossment of the committee amendment, as amended, and third reading of the bill.

The amendment, as amended, was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 3275) as amended, was passed.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, I want to express my appreciation to the chairman of the Finance Committee, Senator BENTSEN, and to the distinguished Senator from Pennsylvania, Senator HEINZ, who have been waiting all day to make certain we pass the VRA legislation. It is important.

I know Ambassador Hills has been very concerned about it. I wanted to try to assure her that we would do something. I did not know it would take quite this long. But, in any event, I guess the House will await reception of this legislation. I do want to indicate that we believe the extension for the CBO plan is more than we wanted.

It, I assume, is a fair compromise. We had offered 1 year, the bill said 3 years, and we settled for 2 years. That happens more often than not around here. There is a great deal of interest, I think, including the Presiding Officer, in ethanol production.

I indicated earlier to the distinguished chairman of the Ways and Means Committee, Chairman ROSTENKOWSKI, that we need to extend the exemption to the year 2000, if some small ethanol producers are going to be able to borrow money from the bank to get into this business. The large companies do not need to borrow money. They have a line of credit. Chairman ROSTENKOWSKI indicated to me a few moments ago that he would try to accommodate those of us who support that—he does, too, by the way—and will perhaps have hearings next year on this whole range of issues, including Caribbean basin, bringing in cheap wine, for example, as they are doing, what it means to American farmers, and I would hope we could have some early disposition of the extension. I know the administration has reservations. We hope we can persuade the administration to support the extension in the year 1990, through to the year 2000.

In any event, I am pleased that we have been able to accommodate the administration on the GATT provision and the voluntary restraint agreements.

I thank the distinguished chairman of the Finance Commitee, the majority leader, Speaker, and others who have tried to help accommodate me, and they were helpful, and I appreciate it. Certainly, I appreciate the help of Congressman MICHEL and Congressman ROSTENKOWSKI.

I would say that my colleague from Iowa, Senator GRASSLEY, was not available when we made this agreement. I know he will be disappointed, but I hope he will understand it is the best I could do.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## CORRECTION OF TECHNICAL ERRORS

Mr. MITCHELL. Mr. President, I ask unanimous consent to proceed to the immediate consideration of House Concurrent Resolution 241.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 241) to correct technical errors in the enrollment of the bill H.R. 3607.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 241) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

## CONVENING OF THE 2D SESSION OF THE 101ST CONGRESS

Mr. MITCHELL. I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 449.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 449) providing for the convening of the 2d session of the 101st Congress.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 449) was ordered to a third reading, was read the third time, and passed.

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## ORDERS FOR TUESDAY, JANUARY 23, 1990

Mr. MITCHELL. I ask unanimous consent that when the Senate reconvenes on Tuesday, January 23, 1990, there be a period for morning business not to extend beyond 30 minutes with Senators permitted to speak therein for up to 5 minutes each; that no resolutions come over under the rule; that the call of the calendar be waived, and that the morning hour be deemed to have expired.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, if the Republican leader has no further business and if no other Senator is seeking recognition——

Mr. DOLE. Mr. President, I will just indicate that we have been able to contact the President. The majority leader apologized for waking him at this time of the morning. He did indicate he thought we had had a good session. I think he was correct.

When you add up what has been accomplished in the first session and consider what is pending, what is ready to go in the second session, I think this Congress will be an outstanding Congress. I think we have had a good year this year.

So we apologize for waking the President, but it is a custom, I guess, that will continue. It seems that we always adjourn early morning.

So again, I thank the majority leader for his cooperation and his thoughtfulness over the several months that we have worked together, I do not believe we have had any differences. That is the way leaders have to operate. We may not agree on the issue, but we have to keep the place running. It has been very easy working with the distinguished majority leader. I appreciate his many acts of kindness and thoughtfulness.

Mr. MITCHELL addressed the Chair.

## MESSAGES FROM THE HOUSE RECEIVED SUBSEQUENT TO SINE DIE ADJOURNMENT

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on November 27, 1989, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the House agrees to the amendment of the Senate to the amendment of the House to the bill (S. 1793) to make technical and correcting changes in agriculture programs.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 1) to amend Federal laws to reform housing, community and neighborhood development, and related programs, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 3275) to implement the steel trade liberalization program.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on November 28, 1989, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolutions:

S. 974. An act to designate certain lands in the State of Nevada as wilderness, and for other purposes;

H.R. 3402. An act to promote political democracy and economic pluralism in Poland and Hungary by assisting those nations during a critical period of transition and abetting the development in those nations of private business sectors, labor market reforms, and democratic institutions; to establish through these steps, the framework from a composite program of Support for East European Democracy [SEED];

H.R. 3660. An act to amend the Rules of the House of Representatives and the Ethics in Government Act of 1978 to provide for government-wide reform, and for other purposes;

S.J. Res. 16. Joint resolution designating November 1989 and November 1990 as "National Alzheimer's Disease Month"; and

H.J. Res. 448. Joint resolution making supplemental appropriations for the fiscal year 1990, and for other purposes.

Under the authority of the order of the Senate of January 3, 1989, the enrolled bills and joint resolutions were signed on November 28, 1989, by the Vice President.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on November 28, 1989, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolutions:

S. 488. An act to provide Federal assistance and leadership to a program of research, development, and demonstration of renewable energy and energy-efficiency technologies, and for other purposes;

S. 892. An act to exclude agent orange settlement payments from countable income and resources under Federal means-tested programs;

S. 1164. An act to authorize appropriations for fiscal year 1990 for the Office of the U.S. Trade Representative, the U.S. International Trade Commission, and the U.S. Customs Service;

S. 1960. An act to authorize the food stamp portion of the Minnesota Family Investment Plan;

S.J. Res. 164. Joint resolution designating 1990 as the "International Year of Bible Reading";

S.J. Res. 203. Joint resolution providing for the appointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution; and

S.J. Res. 205. Joint resolution designating December 3, through 9, 1989, as "National Cities Fight Back Against Drugs Week."

Under the authority of the order of the Senate of January 3, 1989, the enrolled bills and joint resolutions were signed on November 29, 1989, by the President pro tempore [Mr. BYRD].

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on December 1, 1989, subsequent to the sine die adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolutions:

S. 804. An act to conserve North American wetland ecosystems and waterfowl and the other migratory birds and fish and wildlife that depend upon such habitats;

S. 1793. An act to make technical and correcting changes in agriculture programs;

S. 1877. An act to improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes;

H.R. 91. An act to prohibit exports of military equipment to countries supporting international terrorism, and for other purposes;

H.R. 422. An act to amend the Department of Transportation Act to reauthorize local rail service assistance;

H.R. 481. An act to designate the building located at 2662 Hylan Boulevard, Staten Island, New York, as the "Walter Edward Grady United States Post Office Building";

H.R. 875. An act to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park near Fredericksburg, VA;

H.R. 972. An act to amend section 3724 of title 31, United States Code, to increase the authority of the Attorney General to settle claims for damages resulting from law enforcement activities of the Department of Justice;

H.R. 1312. An act to revise and extend the programs of the Domestic Volunteer Service Act of 1973;

H.R. 1495. An act to amend the Arms Control and Disarmament Act to authorize appropriations for the Arms Control and Disarmament Agency, and for other purposes;

H.R. 1502. An act to authorize the appropriation of funds to the District of Columbia for additional officers and members of the Metropolitan Police Department of the District of Columbia, to provide for the implementation in the District of Columbia of a community-oriented policing system, and for other purposes;

H.R. 1668. An act to authorize appropriations for certain ocean and coastal programs of the National Oceanic and Atmospheric Administration;

H.R. 1727. An act to modify the boundaries of the Everglades National Park and to provide for the protection of lands, water, and natural resources within the park, and for other purposes;

H.R. 2134. An act to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to authorize the distribution of wholesome meat and poultry products for human consumption that are not in compliance with the acts to charity and public agencies;

H.R. 2459. An act to authorize appropriations for the Coast Guard for fiscal year 1990, and for other purposes;

H.R. 3275. An act to implement the steel trade liberalization program;

H.R. 3294. An act to authorize distribution within the United States of the U.S. Information Agency film entitled "A Tribute to Mickey Leland";

H.R. 3611. An act to combat international narcotics production and trafficking;

H.R. 3614. An act to amend the Drug-Free Schools and Communities Act of 1986 to revise certain requirements relating to the provision of drug abuse education and prevention programs in elementary and secondary schools, and for other purposes;

H.R. 3620. An act to clarify the Food Security Act of 1965;

H.R. 3629. An act extending the authority of the Secretary of Commerce to conduct the quarterly financial report program under section 91 of title 13, United States Code, through September 30, 1993;

H.R. 3670. An act to authorize the expansion of the membership of the Superior Court of the District of Columbia from 50 associate judges to 58 associate judges;

H.R. 3696. An act to provide survival assistance to victims of civil strife in Central America;

H.R. 3720. An act to amend provisions of the National Consumer Cooperative Bank Act relating to the payment of interest on and the redemption of class A notes issued by the National Consumer Cooperative Bank;

S.J. Res. 202. Joint resolution providing for the appointment of Robert James Woolsey, Jr., as a citizen regent of the Board of Regents of the Smithsonian Institution;

H.J. Res. 175. Joint resolution to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes;

H.J. Res. 429. Joint resolution to designate the week of December 10, 1989, through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week"; and

H.J. Res. 449. Joint resolution providing for the convening of the second session of the One Hundred First Congress.

Under the authority of the order of the Senate of January 3, 1989, the enrolled bills and joint resolutions were signed on December 1, 1989, by the President pro tempore [Mr. BYRD].

## ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that he had presented to the President of the United States the following enrolled bills and joint resolutions:

On November 28, 1989:

S. 974. An act to designate certain lands in the State of Nevada as wilderness, and for other purposes; and

S.J. Res. 16. Joint resolution designating November 1989 and November 1990 as "National Alzheimer's Disease Month".

On November 30, 1989:

S. 488. An act to provide Federal assistance and leadership to a program of research, development, and demonstration of renewable energy and energy efficiency technologies, and for other purposes;

S. 892. An act to exclude Agent Orange settlement payments from countable income and resources under Federal means-tested programs;

S. 1164. An act to authorize appropriations for fiscal year 1990 for the Office of the U.S. Trade Representative, the U.S.

International Trade Commission, and the U.S. Customs Service;

S. 1960. An act to authorize the food stamp portion of the Minnesota Family Investment Plan;

S.J. Res. 164. Joint resolution designating 1990 as the "International Year of Bible Reading";

S.J. Res. 203. Joint resolution providing for the appointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution; and

S.J. Res. 205. Joint resolution designating December 3 through 9, 1989, as "National Cities Fight Back Against Drugs Week."

On December 1, 1989:

S. 804. An act to conserve North American wetland ecosystems and waterfowl and the other migratory birds and fish and wildlife that depend upon such habitats;

S. 1793. An act to make technical and correcting changes in agriculture programs;

S. 1877. An act to improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes; and

S.J. Res. 202. Joint resolution providing for the appointment of Robert James Woolsey, Jr., as a citizen regent of the Board of Regents of the Smithsonian Institution.

## ADDITIONAL STATEMENTS

### MAYOR ARTHUR HOLLAND

● Mr. LAUTENBERG. Mr. President, I rise to pay tribute to a dedicated public servant. With the recent passing of Arthur Holland, mayor of the city of Trenton, NJ, has lost one of its political leaders. With the exception of the 4-year hiatus, Mayor Holland served Trenton since 1959 with dedication and distinction. He practiced an open-door policy which allowed any citizen or member of the press to meet with him at any time.

A graduate of Immaculate Conception Grammar and High Schools in Trenton and St. Francis College in Staten Island, Mayor Holland held B.A. and M.A. degrees from Rutgers University.

Mayor Holland's pride in his city of Trenton was exemplified by his diligence and commitment to his constituency. Under the mayor's leadership, the State's capital city has experienced an ongoing renewal.

The immediate past president of the U.S. Conference of Mayors, Holland was considered one of its most devoted members. He was the recipient of its highest honor this summer, the Distinguished Public Service Award. The award recognized Mayor Holland's leadership in building conference relationships with other nations.

Mayor Holland's year as the president of the Conference of Mayors, was one of his most challenging. The illegal drug problem became the cities' and the organization's highest priority. He, therefore, spent much of his time as chief spokesman of the Nation's mayors and was devoted to antidrug activities. He was responsible for the creation of the Mayors' Capital Cities Task Force and was an active member of the Task Force on Hunger and Homelessness.

In addition to his years of service on the executive committee of the Conference of Mayors, he served as secretary of the National Conference of Democratic Mayors, an advisory council member for the National League of Cities, chairman of the State's Urban Aid Mayors organizations, and as commissioner of the Delaware-Raritan Canal Commission.

Throughout his illustrious career, Mayor Holland was recognized for his achievements in both government and private organizations. He was a member of the board of directors of the Delaware Valley United Way, the advisory committee of the New Jersey State Board of Public Utilities, and numerous other leadership groups.

He was the recipient of many awards; by the President of the Republic of Italy, the President's People to People Program, the Catholic Interracial Council, the New Jersey Americanization Conference, the Junior Chamber of Commerce, the American Cancer Society, Boys' Town of Italy, the Trenton Police Athletic League, and numerous others.

On October 20 of this year, Rutgers University announced it will create the Arthur Holland Program on Ethics in Government as a tribute to his honest leadership of Trenton government. This will be a fitting memorial to a man who dedicated his life to the city of Trenton, and who served his city and the State of New Jersey with distinction.

Admired and loved by family, friends, and colleagues, Mayor Arthur Holland leaves a rich legacy of contributions to the State of New Jersey.

I extend my deepest sympathies to his wife, Betty, and to his five children: daughters Cynthia and Elise, and his sons, Christopher, Timothy, and Matthew. He was a friend, as well as a colleague. All of us will miss him.●

## NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

● Mr. JOHNSTON. Mr. President, I would like to announce for the public that hearings have been scheduled before the Committee on Energy and Natural Resources. The purpose of the hearings is to receive testimony on the energy policy implications of S. 1630, legislation amending the Clean Air Act, as ordered reported by the Senate Committee on Environment and Public Works.

The hearings will take place on Wednesday, January 24, and Thursday, January 25, 1990, beginning at 9:30 a.m. in room SH-216 of the Senate Hart Office Building in Washington, DC. Witnesses will testify by invitation only.

Those wishing to submit written testimony should address it to the Committee on Energy and Natural Resources, room 364, Dirksen Senate Office Building, Washington, DC 20510.

For further information, please contact Patricia Beneke of the committee staff at (202) 224-2383.●

### JAMES E. CASON

● Mr. SIMPSON. Mr. President, for the last 6 months, this Senate has had the opportunity to review President Bush's nomination of Mr. James E. Cason for Assistant Secretary of Agriculture for Natural Resources and the Environment. I supported that nomination and was very disappointed when partisan party politics entered the fray and led to this nomination being returned to the White House.

I came to know Jim while he worked as Deputy Assistant Secretary of Interior for Land and Minerals Management at the Department of the Interior. He worked for Don Hodel—a fine and steady man who surrounded himself with people of equal quality and capability. Jim had the full confidence of Secretary Hodel and Secretary Yeutter and he repeatedly proved himself to be worthy of that confidence. Jim is a very knowledgeable, thoughtful, deliberate, and prudent man. We did not always see eye to eye on every issue that affected Wyoming and our Western States, but Jim would always listen. And I found his countering arguments and opinions to be well thought out. He can make a decision, and he can stick to it—but he will weigh all the factors of a matter and listen to all parties before reaching a conclusion. I personally know that to be the case. For these reasons, I supported Jim in his efforts to serve this Government and this country in this new capacity.

This was a most fascinating confirmation process. Jim was first nominated by our fine President in March. For 6 months the Senate Agriculture Committee collected and gathered reams of information about Jim—particularly focusing on the actions and decisions that he was a party to while serving President Reagan at the Department of Interior. Throughout this process there were discovered no smoking guns. This guy was whistle clean but he had made a number of very difficult decisions on some very difficult land management issues that have plagued this country for years—oil shale, mineral royalty, and timber policy issues. But nothing was discovered to indicate that Jim had ever acted in an unethical or questionable manner. During that 6 months, Jim had an open door to any concerned

parties. He met with the environmental groups, the resource development groups, wildlife managers, and ecosystem experts. He listened to people and attempted to explain his philosophies, as well as to explain the certain controversial policies and decisions that he was a party to during the Reagan administration. Throughout this process, Jim demonstrated strength, patience, tolerance, and perseverance. Assuredly, it was not always a pleasant experience for him. In this confirmation process, even Jim's character was questioned. I can state to you today that Jim's character is exemplary and above reproach. He has illustrated that to us all during these past months and I believe it should be clearly acknowledged and noted. The Senate Agriculture Committee did vote on Jim Cason—and by a vote of 12 to 7 they reported his nomination to the full Senate.

My colleagues, you should be aware that at that point, this advise and consent system took on an unprecedented meaning. The majority party of this Senate—under an incredible amount of pressure from special interest groups—turned this nomination into a nasty partisan issue. The true facts about the controversial matters that had been raised, and about Jim's land management philosophies, were no longer a part of the debate. This is the first time, ladies and gentlemen, that we did not confirm a Presidential nominee for an Assistant Secretary level position. And it was certainly not because he was not qualified or because he would not have been a fine Assistant Secretary. It was just dirty special interest politics.

My home State of Wyoming and all the other Western States face many critical issues relating to the use of our forests and wilderness lands. Many decisions regarding water, agriculture, public land use, mineral development, grazing rights, recreation, timbering, and preservation of unique and sensitive areas will be made by this administration. It is so very important that we all know that the individual charged with the management of the natural resources on our forest lands is a man of integrity ability. I continue to believe that we lost a great individual who would have met these tests when we lost Jim Cason.

I do wish him well in his future career and in his life. He is most capable and young and I am sure that he will continue to serve this country well in whatever capacity. I, as one Senator, thank him for his past service for this country at the Department of Interior and for his long and demonstrated commitment to the Reagan and Bush administrations and to the Republican Party.●

## REMARKS OF FRANCIS I. DU PONT AT DELAWARE PARK

● Mr. ROTH. Mr. President, I am pleased to submit for inclusion in the CONGRESSIONAL RECORD the following remarks made by Francis I. du Pont on June 11, 1989, at Fort Delaware in commemoration of the 250th birthday of Pierre S. du Pont de Nemours and the Polish connection of Prince Czartoryski in 1774:

REMARKS BY FRANCIS I. DU PONT

Warm greetings to the members of the Polish societies, in particular, the Captain Stanislaus Mlotkowski Memorial Brigade Society, and those persons of Polish descent, all Delawareans salute you, to those who have dedicated time and effort to plan and to participate in the events our gratitude and thanks. And most importantly, we appreciate the fine work of the Delaware Division of Parks and Recreations.

I am pleased to be talking with you for several reasons. First, I am delighted that my ancestor, Pierre Samuel du Pont and his son Eleuthere Irenee came to Wilmington and had the vision and good judgment to settle and set up shop here. Subsequently, this little shop has done rather well and we are proud of this accomplishment.

I am quick to tell my Polish friends that our family owes a great debt of gratitude to the Poles for as you see in your program, in 1774 long before coming to America, the Polish Prince Czartoryski made an offer to Du Pont to come to Poland to tutor his son. The terms were 10,000 francs per year and 100,000 francs capital for a 10 year period. As an additional persuader, the prince agreed to advance one third of the capital to Du Pont. After consulting with his contemporaries in the "Society of Economics," Du Pont agreed to the job and terms and that summer left Paris with his wife and two sons for Warsaw. No sooner had he settled in than the French King Louis XVI sent him an order of recall to Paris where he was to become "Inspector General of Commerce." Also the order to return was accompanied by 30,000 francs to reimburse Prince Czartaryski. With a good portion of this money Du Pont proceeded to purchase a country house near Nemours which he called "Bois Des Fosses," or woods of the trenches which reputedly were ruins of earlier Roman fortifications. Thus our debt to the Poles, i.e., we owe gratitude for enabling our ancestor whom we honor today to purchase, for the first time, some real estate, where the family lived until coming to America 25 years later.

Secondly, I am honored to be speaking to you here at Ft. Delaware as I had a distinguished relative who spent several months in this place, Confederate Colonel Alfred Moore Rhett. I read from the obituary in the Charleston, South Carolina newspaper "News and Courrier of November 13, 1889. "Col. Rhett retained command of the regular brigade of South Carolina until the afternoon before the battle of Averysboro where he was captured while on a visit to the Sherimish line. He was transferred by General Sherman to Fort Delaware where he remained until the end of the war."

This same Col. Rhett was the officer in charge of the defense of Ft. Sumpter wherein he was successful in preventing the Union forces under Admiral Samuel Francis du Pont from taking this fort.

When the war ended, Col. Rhett was given a horse to make his way back to Charleston, South Carolina and while he was successful in repulsing Admiral du Pont, my grandfather for whom I am named, was successful in going to Charleston and taking his daughter, Marianna Rhett as his wife back up north, where she spent the last 25 years of her life residing in the admiral's home which I also considered home for many years during my upbringing.

So this year 1989 is the 100th since Col. Rhetts passing.

But back to the person and occasion we honor today, Pierre Samuel du Pont. He was both a dreamer and most practical. He believed in control and understood that the secretary of any organization had quite a bit to do with the control of that organization. Thus he was the perrenial secretary or recorder of many organizations. As a matter of fact, he was secretary general of the provisional government of France in 1814 and in that secretarial job negotiated the terms of Napoleon's abdication.

Du Pont was energetic—"To take one's ease, how shameful, there is the future"! And intensely loyal. A saying of his has great influence on many members of our family, "There is no privilege that is not inseparably bound to a duty".

But above all, he believed with a passion in the future of America and his family's opportunity in the new world.

In addition to the powder mills, the family set up a cotton mill and a tannery.

His feelings about the future of America are summed up by the following quote from his voluminous writings: "It is sweet to think that this country, for which we ask today that it be willing to give itself the manufacture that it lacks—will, in 20 years time and for the several centuries, be the one where they will multiply the most, because it is one of those which has, and will have, an almost unlimited capacity, in a territory almost without bounds, to maintain its workmen in abundance, and to offer those willing to invest the most useful and the most varied employment of their fortunes.

The encouragement to be given to the American manufactures will, eventually, benefit agriculture. Thus it will be until America is everywhere, completely and in every respect, perfectly cultivated. There is enough for at least six hundred years; and most probably the reign of prosperity and of increasing population in the United States will be the reign of a thousand years".

Then again in a letter to Thomas Jefferson of 18 August, 1816, one year before he died at 78 at Eleutherian Mills, his son, E.I. du Pont's home—"as yet, we can but sow acorns on rather ill prepared ground. They will grow to be oak trees under which, several centuries after us, men and animals will walk, will multiply with assurance, with abundance, with delight."

So thus the history of Delaware and our family roots has lead me to our current project, that of creating a replica of a fascinating ship, and a study of the much neglected past of our earliest Colonial beginnings. When I first heard about these early times in 1638 our Delaware Valley's colonization and the lead ship "Kalmar Nyckel" that made 4 trans ocean trips to Wilmington, I must confess to real ignorance. But, in the last four years, I have become increasingly convinced with each passing day of the importance of the Kalmar Nyckel, (Key of Calmar) Peter Minuit and those all but forgotten times.

We have before us a great opportunity to educate, regenerate, stimulate tourism, create economic opportunity for Wilmington, Delaware, The Delaware Valley region, and to provide a lifting of our spirits by this project. Let me read you our "statement of purpose:" The Kalmar Nyckel is to be built, christened, and operated to the glory of God. It is to be a continuing witness to the courage and spirit of the men who undertook the mid winter North Atlantic crossing in 1637-38. The ship and Holy Trinity Old Swedes Church both attest to these early colonists humble and thankful spirit. Giving the glory to their creator for grace in leading them safely to the new world.

It is a fond hope that these living, working testaments will afford inspiration to future generations.

So our earliest beginnings were new Sweden. These earliest colonists came to (1) establish trade, (2) set up a colony and (3) spread Christianity, and they accomplished all three objectives.

And so back to our celebration, Pierre du Pont was French, no doubt of that. Peter Minuit, was born in Wessel, Germany, yet I do believe the family was of French descent because of the name spelling Minuit (pronounced in French Minwee).

My interest in Delaware history, therefore, comes from the very beginning in 1638, to 1801, when our family settled here, to 1865 when my great grandfather resided (against his will), here at Ft. Delaware, to the present 250th occasion of Pierre du Pont's birth. And, so finally to the Polish connection to which Bill Frank called our attention in his column on April 15, 1988 which bore the headlines "Polish Connection". The contribution the Polish people have made to Delaware is something they can be truly proud of and pleased with. This fort and the Polish room, the herculean amount of brickwork Charles Kilczewski has put forth here is a real testament by a dedicated citizen and his followers to keeping alive our history. I call Charlie the head Pole! I've never seen a person into so many organizations, and with such enthusiasm. I'm delighted to count you as a new found friend—here's to you! Charlie you are a brick in the most wonderful sense of the word. And to all of you here, I extend an invitation. Come to Polish Shipyard Workers Day October 1, 1989 in the Kalmar Nyckel Shipyard. I understand Charlie has invited Lech Walesa.

Thank you for inviting me. It has been a privilege to share these few thoughts and remembrances with you all. And let us all continue to work to preserve and enhance this lovely place and these historic buildings.

May the Lord bless the continuity of this work. Sto-lat!●

## AMENDING THE CLEAN AIR ACT

● Mr. JOHNSTON. Mr. President, prior to the Senate's adjournment in November, I announced that the Committee on Energy and Natural Resources will conduct hearings on the energy policy implications of legislation amending the Clean Air Act. These hearings will be held on January 24 and 25, 1990, commencing at 9:30 a.m. in room SH-216 of the Senate Hart Office Building. While I anticipate a high degree of interest in these hearings, due to time constraints, witnesses will testify by invitation only. Interested parties who are unable to testify are invited to submit written statements for inclusion in the hearing record.

The purpose of these hearings will be to receive testimony on the energy policy implications of S. 1630, as ordered reported by the Committee on Environment and Public Works on November 16, 1989. Specifically, with respect to the acid rain provisions of the bill, the committee will hear testimony on energy policy considerations relating to the emissions cap, the allowance trading system, cost sharing, and other related energy policy issues. The committee will also receive testimony on the impacts on the oil and gas industry and the electric utility industry resulting from the nonattainment and air toxics provisions of S. 1630. Because the committee conducted hearings on October 17 and November 14, 1989, relating to alternative fuels, we do not expect to receive additional testimony on that subject at this time.

Mr. President, I fully support the prompt passage of clean air legislation this Congress. The legislation reported by the Environment and Public Works Committee contains many meritorious provisions. These hearings are in no way intended to impede the progress of this legislation, which the majority leader has announced will be the first order of business when the Senate reconvenes in January. The hearings are simply intended to ensure that the energy policy implications of the proposed legislation are fully considered.

Mr. President, I firmly believe that clean air and sound energy policy are not mutually exclusive. Both are crucial to the well-being of our Nation. I believe that both objectives can and should be achieved by the clean air legislation that the full Senate will soon consider.●

## POLICE CHIEF JAMES J. VENEZIA, SR.

● Mr. LAUTENBERG. Mr. President, I rise to pay tribute to Police Chief James J. Venezia, Sr., who is retiring on December 31, 1989, after 39 years of service to the Borough of New Providence, NJ.

Raised in Bernardsville and New Providence, NJ, he graduated from Our Lady of the Valley High School and attended Holy Cross College and Seton Hall University.

In December 1942 Chief Venezia entered the U.S. Navy and served in the Pacific during World War II. For brave service to his country, he was the recipient of many military honors; including the Asiatic Pacific Theatre Medal, the Philippine Liberation Medal, the American Theatre Medal and the Victory Medal.

He began his career in law enforcement May 1950 and rose steadily through the ranks. He was promoted to chief of police on April 15, 1975. During his 39 years in the field, Jim attended many major police schools to specialize in various areas of law enforcement including the FBI Firearms Instructor Course, the Advanced School for Detectives, and the Federal Bureau of Narcotics Training School.

During his long career, he has received many honors and commendations. They include the Honorable Service Award, the Exceptional Duty Award, and the Gallantry Star Award. In addition, the Mayor and Council of the Borough of New Providence awarded him a Resolution of Appreciation for his long career. Chief Venezia is a member of the Union County Police Chiefs Association, the New Jersey State Chiefs of Police Association, the International Association of Chiefs of Police, and the New Jersey Identification Officers Association.

Mr. President, more than half a million men and women devote their lives to law enforcement. They are the people at the front lines in the war on crime. They protect our families, our homes and businesses. Chief Venezia is an example of an extraordinary law enforcement officer who has devoted almost four decades of dedicated service to his community.

Admired by family, friends and colleagues, I join them in congratulating Jim on his retirement. I extend to him my very best wishes for continued success and happiness in the future.●

## A COMMON MAN WITH AN UNCOMMON TOUCH

● Mr. PELL. Mr. President, Rhode Island is a State blessed by a wonderful collection of higher education institutions. It is a blessing made possible through the efforts of generations of bright and committed Rhode Island educators. This past summer one of the finest of these educators, Bill Rizzini, president of Roger Williams College, retired.

Bill Rizzini symbolizes what is best about our New England tradition of education. He is, by all accounts, a common man with an uncommon touch. When he arrived as an English teacher at Roger Williams College in 1961, there were only 300 students. At the time of his departure this number had increased to 2,000 full-time students and 110 faculty members. The financial gains made during his 11-year tenure as president are equally impressive. In 1977, the college had an endowment of $45,000. By 1988, it had grown to $13 million. These successes are also reflected in the school's many physical changes. The beautiful campus overlooking Narragansett Bay boasts a new athletic center, architectural building, theater, and dormitory.

But these accomplishments do not tell the real story about Bill Rizzini.

For all his achievements, it is his unassuming personality and his generous spirit that most mark his career and explain his success. Despite his busy schedule, he always found time to serve his community in a number of civic roles. He was born and raised in Rhode Island and he never forgot his roots. A visit to his office was more like visiting a good neighbor's kitchen than the workplace of such an accomplished college president. For his warmth and sincerity permeates all that he does.

We are fortunate in Rhode Island, for Bill Rizzini still serves the educational needs of students through his new role as a consultant for development and a classroom teacher at the New England Institute of Technology. I can think of no one more qualified to serve as a role model to the youth of our State than this remarkable man.●

## LEGISLATIVE FELLOWS LAURA ABPLANALP AND RANDY FERRYMAN

● Mr. DIXON. Mr. President, as we near the end of the first half of the 101st Congress, I would like to take just a few minutes to salute two congressional fellows who have assisted me since January 1989.

Mr. President, Laura Abplanalp joined my staff through the Congressional Assistant Fellowship Program sponsored by the Conference Board. Laura's company, Eastman Kodak, should be congratulated for sending a bright, hard-working professional to take part in this important program.

Laura began the year working as a legislative assistant representing me with the Senate Small Business Committee and also had the responsibility for all telecommunications issues. Later she began working on the Defense Production Act Amendments of 1989, which I introduced last July. Just recently, Laura worked very hard on the Federal prison industries amendment to the Defense authorization bill, which this body passed a few months ago.

Ms. Abplanalp's important contributions to my legislative efforts are a credit not only to her, but also to the Congressional Assistant Program and to her company, Eastman Kodak.

Mr. President, Randy Ferryman joined my staff as a fellow late last December through the American Political Science Association Fellowship Program. Randy works for the Federal Government. During his time on my staff, he never allowed his executive branch loyalties or personal bias to interfere with his work. Randy sought and was given a wide range of responsibilities, including working with Illinois constituents, and helping me prepare for several Armed Services Committee hearings. Randy worked especially hard on two very important projects for me: The base closure hearings and the FSX floor debate.

I believe that having people of Laura's and Randy's expertise helps develop better cooperation and understanding among Congress, the executive branch, and the business sector.●

## AGRICULTURE RECONCILIATION CONFERENCE AGREEMENT

● Mr. LUGAR. Mr. President, the subconference on agriculture has arrived at an agreement which incorporates the best elements of the House and Senate's reconciliation bills. The changes in law made by the subconference agreement not only will reduce outlays but also are sound and progressive public policy.

First, the agreement will mandate for 1990 a program that allows farmers to plant soybeans and other oilseeds on ground they would normally plant corn, wheat, and other crops that receive Federal deficiency payments. By thus reducing the number of acres on which subsidy payments are made, the program will save $116 million at the same time that it enhances our competitiveness in world oilseed markets.

The agreement also applies an equitable cut in deficiency payments for feed grains, wheat, cotton, and rice. These modest cuts—just over 2.3 cents for corn, for instance—will reduce spending by $235 million.

The agreement produces additional savings by delaying for 3 years a provision of law that would have required repayment to Farm Credit System institutions of certain assessments; by capping export promotion programs at levels that should still allow effective use of these important programs; by requiring reductions in the price paid by the Government for surplus butter; and by a few other miscellaneous provisions.

Altogether, the conference agreement reduces 1990 budget authority by $1.1 billion, and outlays by $1.02 billion, the amounts assigned to the Senate Agriculture Committee by the 1990 budget resolution. Although the outlay reductions calculated by OMB are only $928 million, this is a difference of only about 9 percent, well within the margin of error for farm program cost estimates, which are notoriously hard to forecast because they often depend on whether market prices are above or below expectations.

Though imperfect, the agriculture agreement is sound public policy and achieves our savings goals. I am pleased to support its inclusion in the 1990 budget reconciliation package.●

## ELIZABETH MURPHY BURNS

● Mr. MOYNIHAN. Mr. President, I rise to pay tribute to Elizabeth Murphy Burns, who stepped down last month as chairwoman of the Northeast-Midwest Institute's board of directors. I know I speak on behalf of every member of the Northeast-Midwest Senate Coalition when I observe that Ms. Burns' tenure has been singularly successful.

Ms. Burns took over the board 4 years ago. At that time, the institute had fallen on hard times; its finances were uncertain. Now, the institute has an annual budget exceeding $1 million, it has retained quality staff, and it is widely recognized as a leading public policy research center.

As the institute has prospered so, too, have the Northeast-Midwest Senate and House Coalitions. As cochairman of the Senate coalition I can attest to the timeliness and quality of the services provided to coalition members by the institute.

And now the institute has established a leadership council to draw upon the expertise of private sector leaders from the region. All of this on Elizabeth Murphy Burns' watch.

Ms. Burns has proven her mettle ever since acquiring a radio station, KKAR-AM, in Pomona, CA, at the advanced age of 25. Today she presides over several media properties and has done pioneering work to make education more accessible for rural students through satellite technology. And she is the first woman ever to serve on CBS' affiliates board.

Mr. President, Ms. Burns has brought indefatigable energy, good cheer, sound business principles, and an innovative mind to the board of the Northeast-Midwest Institute. Those of us associated with the institute will miss her contributions and talents as its chair.●

## TENTH ANNIVERSARY OF VET CENTERS

● Mr. CRANSTON. Mr. President, it is with great pleasure and no small amount of pride that I rise today to call to my colleagues' attention the 10th anniversary of the Department of Veterans' Affairs Vietnam Veterans Outreach Centers and pay tribute to the men and women who have been involved in the program. This program and these extraordinarily dedicated individuals have provided a necessary service to veterans of that war and that era in helping them understand and cope with the problems of readjusting after the war.

Of all the efforts relating to veteran's matters that I have been involved with during my almost 21 years in the Senate, the enactment of the legislation that established the VA Readjustment Counseling Program is the one of which I am most proud. Many Vietnam veterans have told me that vet centers are the best thing that the

Government has done for Vietnam veterans.

When the chips are down, the strength of our Nation depends on the American men and women who answer the call to duty in military service to our country. How we treat these very special Americans and their families is an integral part of our national security. That is why I've devoted so much of my time and attention in the Senate to veterans' issues.

When I first came to the Senate in 1969, the Congress was deeply divided about the war in Vietnam, reflecting the very deep divisions throughout the Nation. Because of the terrible rancor over the war, little or no attention was being paid to the service men and women who were serving in Vietnam. My first committee assignment was as chairman of the Veterans' Affairs Subcommittee of the Labor and Public Welfare Committee. The full Veterans' Affairs Committee in the Senate was not to be established until 1971.

In my first year as subcommittee chairman, I held a series of hearings on the difficulties VA medical facilities were having in meeting the needs of Vietnam veterans. I remember in particular the testimony of one witness, a former member of the First Air Calvary. He had been severely wounded in Vietnam, and he made this statement to the subcommittee:

> The inevitable psychological depression after injury, coupled with doubts that it may not have been worth it, comes months later like a series of secondary explosions long after the excitement of the battlefield is far behind, the reinforcement of your comrades-in-arms a thing of the past, and the individual is left alone with his injury and his self-doubts. Anyone who deals with a Vietnam returnee, wounded or not, must understand this delayed severe psychological symptom.

Although that witness was primarily addressing the situation facing Vietnam veterans who had suffered serious physical wounds during their service, the theme that he struck as to all Vietnam combat veterans was repeated by others who were working with Vietnam veterans—both those who had been physically wounded as well as those whose wounds were psychological in nature. It soon became clear that a very significant number of Vietnam veterans had psychological problems readjusting after their service in Vietnam. It was also clear that the VA in general did not have the capacity to help these veterans.

To address this need, I introduced legislation in 1971 to require the VA to provide readjustment counseling. I succeeded in having that legislation passed by the Senate, not once, but four times. It was not until June 1979, however, that the House of Representatives finally went along and the law requiring that this special new service be furnished to Vietnam-era veterans was finally enacted.

The fact that this idea succeeded after 8 years was due in no small part to the efforts of that veteran whose testimony before the subcommittee I just quoted. That veteran's name was Max Cleland and, by 1979, he had become, of course, the Administrator of Veterans' Affairs, the first, and to date the only, Vietnam veteran to serve in that position. With Max pushing within the executive branch as we continued our efforts in the Congress, our dream finally became a reality.

I was thrilled when the first vet center officially opened—in Tacoma, WA—in late 1979 and when I participated in the inauguration of the program in California in January 1980 at Van Nuys. I've watched the program carefully ever since.

I have been particularly pleased with the success of the storefront model which helps get away from the institutional atmosphere that turns a lot of Vietnam veterans and others off.

Over the past 10 years, there have been efforts to cut back this program and terminate its funding.

In 1981, the Reagan administration proposed to cut out all funding for the program and opposed any extension of when a Vietnam veteran could first request readjustment counseling. The stated justification for this was that the program had already met the need and hence there was no further basis for continuing it. I led the fight in the Senate against those proposals that year, and we were successful.

In 1983, I introduced a bill to extend the program, and again we were successful. As of today, eligibility to request readjustment counseling is permanent, and as a result of a law I authored in 1988, the continuation of vet centers as the method for providing that counseling is protected in law.

In 1984 and 1987, I worked with many of my colleagues in Congress to secure additional funding and personnel to support an expansion of the program. The 10th anniversary of the vet centers, with 196 centers and 827 employees, is testimony to our success and the program's success.

THE VET CENTERS PROGRAM

Mr. President, the Vietnam Veterans Outreach Centers, commonly known as vet centers, provide a broad range of services to Vietnam-era veterans. With the addition this year of sites in West Virginia and Hawaii, 196 vet centers now provide readjustment counseling in all 50 States, Puerto Rico, and the Virgin Islands.

In fiscal year 1989, vet centers saw an average of 9,720 veterans each month—an increased of 6 percent over the previous fiscal years, and over the past 10 years more than 600,000 veterans have been seen by vet center staff and over 700,000 in all, including family members and closely-related individuals—for a total of more than 4,000,000 visits by veterans and others since the program began.

Vet center staff provide the following services: psychological counseling—individual, group, and family, psychotherapy—individual, group, and family, outreach, networking with and referral to VA and other medical and assistive programs, employment counseling, education and career counseling, crisis counseling, community education to both professionals and nonprofessionals, substance abuse after care and referral, joint services at VA medical centers and clinics, and consultation to professionals whose work involves treating veterans.

A typical vet center has a staff of four—one team leader, who is usually a mental health professional such as a psychologist or an advanced-degree social worker, two counselors, and one office manager. Team leaders, by plan, spend 30 percent of their time in direct service to veterans and 70 percent of their time in administration and supervision.

Perhaps the greatest strength of the Vet Center Program is that the people who work in them are, more often than not, veterans, and a large number are Vietnam combat veterans. They bring to their work a firsthand understanding of the concerns and needs of those who will seek their help. Having made it through two tough experiences—Vietnam and readjustment to civilian life—these Vietnam veterans are in the best position to help other Vietnam veterans.

In order for even the best conceived governmental program to succeed—after the problems are identified, the program mission defined, the office space located, the funding secured, the name decided upon, and the director named—men and women must be found who will do the job, in the central office and in the field, and do it well. The success of the Readjustment Counseling Service is attributable to such individuals, whom I salute and thank for their outstanding efforts.

Mr. President, there have been many staff members involved with the program over the past 10 years and there are quite a few—over 50—still involved who have been with the program since the beginning. I would like to provide a special recognition for the staff of the Readjustment Counseling Service who have been at work in this important program for 10 years.

Mr. President, I ask that the list of Readjustment Counseling Service staff with 10 years of service be printed in the RECORD at the conclusion of my remarks.

Mr. President, this program has worked very well for the people it was designed to serve. I think that in many ways the successes of the program can serve as a fine example of what is possible when Government acknowledges

a problem and sets aside the political debate on the causes of the problem long enough to develop an innovative strategy to deal with those who are most strongly feeling its effects. The focus of this program was on the warrior and not the war. Regardless of the underlying issues of the causes of the Vietnam conflict and our involvement in it, one of the consequences of the endeavor was large numbers of those who served experiencing difficulties upon resuming their lives. Addressing these difficulties is the mission of the Readjustment Counseling Program, and it continues to do it most effectively.

In carrying out the mission of providing readjustment counseling to Vietnam veterans, the staff of the vet centers have gained a great deal of knowledge and insight into the long-term effects of war on the combatants. That insight will be of great use for generations to come.

For many, the emotional and psychological wounds of war are slow in healing and difficult to understand. In the case of Vietnam veterans, recent studies indicate that there remains a great deal of work to be done to help them with their mental-health problems. According to a comprehensive study on the readjustment problems of Vietnam veterans carried out by the Research Triangle Institute, approximately 480,000 Vietnam theater veterans are suffering from post-traumatic stress disorder [PTSD] and approximately 350,000 are still experiencing some PTSD symptoms. The expertise of vet center staff will be vital in the treatment of these veterans.

Today, to mark its 10th birthday, I challenge the Readjustment Counseling Program to redouble its efforts to find those veterans who, to this day, carry the pain from their service with them. Once these veterans are found, I am confident the program can help them come all the way home.

The particular value of the Readjustment Counseling Program was recently most dramatically illustrated in northern California. There, in the aftermath of the October 17 earthquake, RCS personnel put aside their own concerns and apprehensions and volunteered to provide help to veterans and nonveterans alike who were experiencing emotional and psychological difficulties. These immediate actions in response to that traumatic event and the dangers it unleashed, included community outreach, crisis counseling, and language translation services for people dealing with Federal and local government assistance agencies. I am sure that their knowledge, experience, and compassionate assistance were much appreciated by those people who were traumatized by the earthquake.

Accordingly to VA figures, more than 1,300 veterans and nearly 8,000 nonveterans have already been assisted by RCS personnel in dealing with the aftermath of the earthquake. The comfort that was provided to both veterans and members of the communities that were hard hit by the earthquake was yet another indication of the value of this program and its dedicated and uniquely experienced staff. I am tremendously proud of their efforts and contributions, and congratulate each and every one of them for reaching out to the community in this way.

Mr. President, before closing I would like to note the dedicated efforts of a few individuals whose work has been much appreciated by me and, I am sure, Vietnam-era veterans throughout the country: Dr. Don Crawford, who headed up the program during its critical, formative first 2 years, and Dr. Arthur Blank, his successor who has done such an exceptional job in professionalizing, expanding, and solidifying the program during the last 8 years.

It is a pleasure to call attention to the outstanding work of these program leaders and the program's over 800 employees on the 10th anniversary of the establishment of the vet centers. I will continue my strong support for this program and the veterans who are served by it.

A closing word: I am convinced that there remains a major, otherwise unfilled, need for this program and that this need will continue for the foreseeable future. I pledge to the veterans served by and still needing to be served by this program and to the highly dedicated vet center staffs that I will tolerate no weakening, no downgrading, no reorganizing, and no erosion in this program. We have beaten back efforts before and we'll do so again if necessary.

Mr. President, I look forward to continuing to hear good words about the good works of the Vet Center Program in the months and years ahead.

The list is as follows:

Following is a list of Readjustment Counseling Service staff who have been at work for ten years—that is, since prior to December 31, 1979.

Name—city:
Penacho, Frank—Providence, RI.[1]
Johnson, Mervia—Brockton Vet Center.
Bownman, Jerry—Buffalo Vet Center.
Giglia, Paul—Buffalo Vet Center.
Kowalewski, David—Buffalo Vet Center.
Comeau, Robert—Portland Vet Center.
Lembo, Ronald—New Bedford Vet Center.
Gelsomino, Joe—Bay Pines, FL.[1]
Patricia Neal—St. Petersburg Vet Center.
Don Parker—Birmingham Vet Center.
Willie Chappell—Atlanta Vet Center.
Gale Chisholm—Jacksonville Vet Center.
Ollie McClendon—Jackson Vet Center.
Varnadore, George—Chicago VVRC.
O'Neal, Donald—Chicago VVRC.
Miller, Lois—Cleveland Vet Center.
Maclean, Thomas—Milwaukee Vet Center.
Jones, Mary—Oak Park Vet Center.
Sorenson, Gary—Fargo Vet Center.
Covington, William—Kansas City Vet Center.
Mulvihill, Mark—St. Paul Vet Center.
Dafoe, Michael—Sioux Falls Vet Center.
Burr, Clarence—S. Central Los Angeles Vet Center.
Melnyk, Jerry—West Los Angeles Vet Center.
Molnar, Stephen—Honolulu Vet Center.
Merback, Kerry—Las Vegas Vet Center.
Barker, James—San Jose Vet Center.
Hill, William D.—San Diego Vet Center.
Clark, Carrie—Austin Vet Center.
Aleman, Jumberto—El Paso Vet Center.
Hightower, Vastine—Houston Vet Center.
Doughty, Harry—New Orleans Vet Center.
Woodside, Herman—New Orelans Vet Center.
Solomon, Doretha—New Orleans Vet Center.
Sharp, Peter—Oklahoma City Vet Center.
Wilson, Waymon—Oklahoma City Vet Center.
McCrary, Willie—Trenton Vet Center.
Lydon, Mike—Fayetteville Vet Center.
Connors, Ernest—Fayetteville Vet Center.
Patterson, Dennis—Norfolk Vet Center.
Newton, Paul—Norfolk Vet Center.
Carr, Connie—Huntington Vet Center.
Campbell, Lon—Elkton Vet Center.
Muhs, Jerry—Sioux Falls Vet Center.
McPeak, Dave—Pittsburgh Vet Center.
Quailey, Georgia—Pittsburgh Vet Center.
Crawley, Priscilla—Silver Spring Vet Center.
Hundley, Walter—Washington, DC Vet Center.
Kaufki, Mark—Wilmington Vet Center.
Bennett, Lewis—Wilmington Vet Center.
Rascon, Tom—Charleston Vet Center.
Martinez, Gustavo—Washington, DC (DVACO-10B/RC).●

[1] RCS Regional Manager's Office.

## A SALUTE TO RHODE ISLAND SCOUTS

● Mr. CHAFEE. Mr. President, what do these 12 words bring to mind: Trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent?

Boy Scouts of America.

Since 1910, Scouting has helped build the character and spirit of our youth. Through various activities, boys and girls have been encouraged to learn and do things for themselves and others. Their actions and deeds are guided by handbooks prepared many years ago. If you take a look at the Scouting manual that was originally published in 1911, you may be charmed by the simplicity of the text.

To be a scout means to be prepared to do the right thing at the right moment, no matter what the consequences may be.

It is the scout's duty to be a sunshine-maker in the world.

Scouts know neither a lower nor a higher class, for a scout is one who is a comrade to all and who is ready to share that which he has with others.

It may be difficult for some to believe that there are youngsters in the United States who still believe in these ideals and live their lives accordingly. Yet every year thousands of young

boys and girls participate in Scouting activities. Scouting in America is stronger than ever.

There has been much discussion this year in Congress about national youth service. Several proposals have been introduced to encourage youngsters to volunteer their time for community service. A common goal of these proposals is to instill in today's youth one of the values which Scouting has always sought to impart: Doing a good turn for somebody every day, quietly and without boasting. As the Handbook says, "This is the proof of the scout."

Today I would like to salute over 100 Scouts in Rhode Island and nearby Massachusetts who have distinguished themselves by achieving the highest ranks and awards in Scouting. For a Boy Scout, the highest honor is Eagle Scout. A Scout who has earned 21 merit badges is entitled to wear the highest Scout merit badge, an eagle's head in silver. It represents the all-around perfect Scout.

The Silver Award is earned by a Cadette Girl Scout during her years in junior high school. The cadette explores the world of careers, develops leadership skills, and upon completion of a service project is presented with the Silver Award. Senior Girl Scouts continue their exploration of careers and community service and work with younger girls. At the culmination of a major service project, a Gold Award is presented, which is the highest achievement by a senior Girl Scout.

The following is the list of Scouts who have achieved the rank of Eagle Scout and received the Silver and Gold Awards this year in Rhode Island. As a fellow Eagle Scout, I salute them all.

The list is as follows:

GIRL SCOUT SILVER AWARD RECIPIENTS

BELLINGHAM, MA

Kristina Hanrahan,
Heather Mullin.

COVENTRY, RI

Lori A. Doucette,
Sheri L. Mello,
Elizabeth St. Pierre.

GREENE, RI

Jessica Dalton.

EAST GREENWICH, RI

Rachel Amelott,
Michelle Reardon.

HARRISVILLE, RI

Jodie Cooke.

MIDDLETOWN, RI

Jodi MacCormick.

PASCOAQ, RI

Jennifer Charron.

PORTSMOUTH, RI

Kristin Burgess,
Darcy Devin,
Maryanne Perry.

PROVIDENCE, RI

Judith Tejada.

GIRL SCOUT GOLD AWARD RECIPIENTS

ALTON, MA

Becky Dubeau.

ASHAWAY, RI

Theresa DelBene.

BOY SCOUT EAGLE AWARD RECIPIENTS

NARRAGANSETT COUNCIL

ARROWHEAD VALLEY DISTRICT

Matthew B. Roboin, Troop 1 Convertry.
Phillip R. Carr, Troop 2 Conventry.
Christopher E. Schultz, Troop 17 Crompton.
Jason Becker, Troop 71, Washington.
Christopher H. Butt, Troop 144 Chepachet.
James J. Harvey, Troop 144 Chepachet
Derek T. Chadwick, Troop 1 North Scituate
David M. D'Agostino, Troop 1 North Scituate
Edward A. Lanoue, Troop 1 North Scituate.
Jonathan Turenne, Troop 2 Arctic.
Joseph Laurent, Jr., Troop 2 Arctic.
Thomas M. Morin, Troop 13 Centreville.
Steven Beauchaime, Troop 13 Centreville.
Donald Robertson, Troop 13 Centreville.
Andrew C. Raymond, Troop 13 Centreville.
Gregory H. Armstrong, Troop 17 Crompton.
Morgan G. Wotherspoon, Troop 17 Crompton.
John T. Bahl, Troop 17 Crompton.
Jacob Hackett, Troop 9 Harmony.

BLACKSTONE VALLEY DISTRICT

Todd E. Cowger, Troop 1 Cumberland Hill.
Matthew J. Nasif, Troop 1 Cumberland Hill.
Kurt A. Denholm, Troop 50 Cumberland.
Joseph R. Peluson, Jr., Troop 50 Cumberland.
George G. Nasif, Troop 1 Diamond Hill.
Ronald J. Roselli, Troop 12 Berkeley/Ashton.
Roderick A. McGarry, IV, Troop 1 Diamond Hill.
Stephen P. Kelley, Jr., Troop 2 Lonsdale.
John M. Gorbett, Troop 2 Lonsdale.
Francis S. Kumiega, Troop 2 Central Falls.
Gregory G. Scown, II, Troop 15 Pawtucket.
James Greene, Troop 1 Pawtucket.

POKANOKET DISTRICT

Paul B. Taubman, Troop 8 Barrington.
Matthew P. Bartel, Troop 4 Barrington.
Jordan S. Herdrich, Troop 2 Barrington.
Jonathan B. Hague, Troop 2 Barrington.
Christopher N. Roberts, Troop 2 Barrington.
Shawn O'Donnell, Troop 2 Barrington.
Andrew Bainer, Troop 2 Barrington.
Andrew V. Fitzgerald, Troop 6 Barrington.
Arieh D. Lowenstein, Troop 6 Barrington.
Jeremy S. Dwiggins, Troop 8 Barrington.
Heath L. Ver Burg, Troop 6 Bristol.
Keith A. Mattingly, Troop 3 Newport.
Bryan C. Carlson, Troop 1 Middletown.
Joshua B. Wood, Troop 22 Newport.
Thomas C. Gust, Troop 22 Newport.
Seth G. Garthee, Troop 1 Portsmouth.
Matthew E. Kieron, Troop 82 Portsmouth.
Jason R. Brewer, Troop 82 Portsmouth.
Ethan C. Holda, Troop 82 Portsmouth.
Brian M. Erwin, Troop 1 Portsmouth.
Brian J. Lasiewski, Troop 1 Seekonk.
Charles E. Mottinger, Troop 1 Portsmouth.

PROVIDENCE DISTRICT

Bradley J. Vaugh, Troop 28 Providence.
Steven T. Palumbo, Troop 76 Providence.
Joseph Pitassi, III, Troop 76 Providence.
Stephen B. Rianna, Jr., Troop 76 Providence.
Luke J. Ackroyd, Troop 82 Providence.
Victor F. Capellan, Troop 14 Providence.

QUEQUATUCK DISTRICT

Ronald Stevens, Jr., Troop 152 N. Kingstown.
Alexander M. Whitten, Troop 22 Davisville.
John J. Socha, Troop 22 Davisville.
Daniel M. Rzewuski, Troop 15 Charlestown.
Edward J. Lemieux, Troop 1 Hope Valley.
Brook W. Ross, Troop 1 Kingston.
Gregory J. Kenyon, Troop 1 Narragansett.
Christopher A. Viveiros, Troop 1 Richmond.
Robert F. Constantino, Troop 1 Richmond.
Thomas H. Brown, II, Troop 43 Wickford
Robert Bitgood, Troop 1 Wakefield.
Ronald E. Mayhew, Troop 21 Ashaway
Richard E. Furgal, II, Troop 22 Davisville.

SACHEM DISTRICT

Richard J.Alviti, Troop 22 Cranston.
Robert A.J. Manni, Troop 22 Cranston.
Rock J. Dellasandro, Troop 22 Cranston.
Jean Paul Toussaint, Troop 66 Garden City.
Mark A. Haigh, Troop 66 Garden City.
Jim Ladoucheur, Troop 66 Garden City.
Steven W. Whitman Troop 1 Greenville.
Paul E. Michel, Troop 1 Greenville.
William R. Brown, Troop 1 Greenville.
Jeffrey D. Ainley, Troop 20 Johnston.
Paul Ruggieri, Jr., Troop 22 Johnston.
Brian A. McKenzie, Troop 22 Johnston.
Jonathan Pistacchio, Troop 22 Johnston.
Joseph C. Voccio, Troop 22 Johnston.
Peter J. Cioce, Troop 22 Johnston.
Stephen H. Aceto, Troop 5 N. Providence.

THUNDERMIST DISTRICT

David W. Dunne, Jr., Troop 1 Blackstone.
Gary S. Faford, Troop 1 Blackstone.
Darren McKinely, Troop 59 Blackstone.
Matthew J. Cipriano, III, Troop 1 Manville.
Thomas N. Doherty, Troop 28 Primrose.
Patrick C. Faricy, Troop 1139 Slatersville.
R. Michael Meo, Jr., Troop 1139 Slatersville.
Kenneth W. Graves, Troop 18 S. Bellingham.
Eric V. Darcy, Troop 22 Uxbridge.
Jonathan D. Demboski, Troop 25 Uxbridge.
Roger E. Carpentier, Troop 2 Woonsocket.
Erik Wilkinson, Troop 6 Woonsocket.
Marc J. Brousseau, Troop 57 Woonsocket.

WEST SHORE DISTRICT

Michael G. Peterson, Troop 1 E. Greenwich.
Robert J. Tingle, Jr., Troop 2 E. Greenwich.
Todd J. LaLonde, Troop 2 E. Greenwich.
Christopher C. Capotosto, Troop 2 E. Greenwich.
Richard A. Marcinko, Troop 1 E. Greenwich.
Wesley S. Armstrong, Troop 18 Frenchtown.
John F. Sharkey, Troop 18 Frenchtown.
Michael J. Rosenstein, Troop 18 Frenchtown.
Gerald J. Walsh, Troop 18 Frenchtown.
David R. Carrr, Troop 4 Gaspee Plateau.
Phillip G. Rice, Troop 4 Gaspee Plateau.
Daniel S. Tweddle, Troop 2 Hillsgrove.
Jeremy M. Boisvert, Troop 49 Lakewood.
Gerald T. Flynn, Troop 2 Warwick.

Howard R. Brewster, Troop 7 Warwick.
David H. Ouilette, Troop 7 Warwick.
John Loring, Troop 7 Warwick.
David R. Boyd, Troop 7 Warwick.
Steven E. Parenteau, Troop 15 Warwick.
Jeffrey P. Parenteau, Troop 15 Warwick.
James P. Shunney, Troop 117 Warwick.
Darrell J. Smith, Troop 117 Warwick.●

## THE PROBLEMS WITH S. 1703

● Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans Affairs, I want to explain to my colleagues the reasons why I do not support S. 1703, a bill introduced by Senator BOSCHWITZ which would allow the Department of Veterans Affairs to retain one-third of the money it collects from third parties, such as health-insurance companies, for care provided to certain veterans.

During consideration of the legislation enacted in the Consolidated Omnibus Budget Reconciliation Act of 1986, Public Law 99-272, I strongly opposed—and successfully so—allowing VA to retain third-party payments. I continue to believe that legislation to allow VA to retain third-party payments is very ill-advised. Let me explain why.

If there were VA retention of third-party reimbursements, the administration's request for VA appropriations for a coming fiscal year would be reduced by the amount estimated to be collected. This is not speculation; it is exactly what the Office of Management and Budget has made clear to VA that it would do; it was most recently stated by VA in testimony at an April 12, 1989, House Veterans' Affairs Committee Hospitals and Health Care Subcommittee hearing. This would almost certainly result in VA's being put in the position of trying to provide health-care services at the program level contemplated in its budget request, as possibly amended by the Congress, but having to do so with a reduced appropriations level. VA would thus be forced to depend on its ability to make the collections at the OMB-projected rate in order to make up the difference.

In addition, because OMB consistently overestimates the amount of third-party reimbursements to be collected, legislation such as S. 1703 would enable OMB to bring about a decrease in VA's overall medical care budget by projecting greater amounts of third-party collections than VA would actually receive. For example, the OMB estimate of third-party payments for fiscal year 1990 is $304 million while VA's own estimate of these payments is only $136 million. If VA were authorized to keep a third of the money it collects, rather than depositing it in the Treasury, and it eventually collected only the amount it estimated it would, total VA funds available for health care for fiscal year 1990 would be decreased by $56 million. Such a result would aggravate an already very unfortunate VA health-care budget situation—a situation with which I know all of my colleagues are familiar.

Thus, although I have strongly advocated increased funding for VA health care, I continue to reject the desirability of VA's retaining third-party reimbursements. Ironically, this seemingly free money could, and I believe almost certainly would, hurt VA more than it would help. All the major veterans' organizations support my position on this issue.

In addition, VA has reconsidered its initial positive response to VA's retention of a portion of third-party collections. At the committee's May 18 hearing on health-care legislation, VA proposed that 50 percent of receipts collected through third-party reimbursement be legitimately retained by VA. In its November 24 comments on S. 1703, however, VA states that it "would be opposed to retaining amounts in excess of costs [of collection] as it would unnecessarily complicate the budget process."

At our committee's May 18 hearing and its July 27 markup, there was much discussion of various methods of increasing VA's third-party collection rate. Thereafter, during Senate debate on S. 13, I proposed an amendment, together with Senators MURKOWSKI and GRAHAM, to: First, require VA to contract to the maximum feasible extent with private firms, on a commission basis, for the recovery from health insurers of the cost of VA-furnished care for non-service-connected conditions for which reimbursement is authorized, and second, expand VA's authority to recover from health insurers for the cost of care for non-service-connected disabilities to include the cost of such non-service-connected care in the cases of those who have service-connected disabilities rated at 20 percent or less. A complete description of this amendment can be found on pages S12561-2 of the October 3, 1989, CONGRESSIONAL RECORD. This provision was included when the provisions of S. 13 were passed by the Senate on October 3, 1989, in H.R. 901. This provision is still pending in House-Senate negotiations.

I know my colleagues are committed to serving this Nation's veterans, and I urge them to consider seriously my objections to S. 1703.●

## BUSH ADMINISTRATION HOUSING PROPOSALS

● Mr. BOSCHWITZ. Mr. President, I rise today to commend President Bush and Housing Secretary Jack Kemp on the package of housing initiatives the President unveiled last week. The administration clearly understands the urgent need to attack the problem of affordable housing, while simultaneously using home ownership as a means of empowering the disadvantaged.

The President's package is aptly titled "HOPE" or "Homeownership and Opportunity for People Everywhere." Included in the President's proposal are measures that would provide grants for housing rehabilitation, social and health care services for homeless people, unpenalized IRA withdrawals for first-time home buyers, extension of the low-income housing tax credit, the creation of 50 enterprise zones in distressed urban and rural areas, and the creation of 50 housing opportunity zones to encourage the construction of affordable housing.

Mr. President, as one who has long been an advocate for the creation of enterprise zones to spawn the economic revival or our Nation's urban areas, and as one who supports capital gains tax reductions, I am very encouraged to see that the administration's proposal has woven both elements into its plan. President Bush's plan illustrates the role tax relief can play in economic development.

As I mentioned earlier, the President's plan includes the creation of housing opportunity zones patterned after enterprise zones, which would provide tax breaks to businesses operating or creating housing in depressed areas. We must see to it that affordable housing be made available on as large a scale as possible, and that it be made available in as constructive a manner as possible. The creation of these zones will do just that by encouraging further investment in low-income housing by the private sector.

Consider, also, low-income housing tax credits—another aspect of the Bush plan. I am a proud cosponsor of the legislation introduced by my colleagues, Senators GEORGE MITCHELL and JOHN DANFORTH, that permanently extends these vital tax credits. The affordable housing shortage was recently brought to our attention when hundreds of homeless individuals and homeless advocates staged a march here in Washington in October. It is clearly an issue that deserves our time and attention. In the meantime, extending low-income housing tax credits is a step in the right direction. It is another example how tax relief can promote the development of affordable housing for all citizens.

Let me turn for a moment to some of the other proposals contained in the President's housing plan. President Bush and Secretary Kemp obviously recognize that the problems of the majority of the homeless go far beyond merely the question of affordable housing—many of these people suffer mental problems, drug and alcohol addiction, limited education and training, and the inability to hold or even

get a job. Enterprise zones, capital gains reduction, and low-income housing tax credits—all these encourage investment. The "HOPE" plan's housing opportunity zones go even further to easing the short- and long-term burden of homelessness.

Simply spending more money on bricks and mortar, or rent subsidies is obviously not the ultimate solution. The blank check mentality that prevailed several years ago has never been successful—just throwing money at every problem our Nation endures won't work. In fact, it seems to perpetuate the problem. We need to find ways of helping people overcome the significant barriers to permanent housing they suffer. One such program that has caught my attention is transitional housing. Like enterprise zones, or low-income housing tax credits which are investments that lead to economic development and housing, transitional housing is an investment in the people and self-sufficiency.

I am hopeful that any housing legislation we consider will include the expansion of transitional housing programs, not that we can find a way to build on the programs in existence. It is very important that we assist the nonprofits who work so hard with transitional programs to help their clients get to the next step which is permanent housing, preferably home ownership.

Opportunity is the call of the day. Certainly we must find ways to shelter those in need, but if we only provide rent subsidies, we are shortchanging the very people we are trying to help. Hope is what we want to deliver in the short term, but not false hope. Let us be sure to build on the programs that give the people fishing poles and not just fish. That is truly opportunity and hope.

Mr. President, I proudly applaud the administration's proposal, and I look forward to working with my colleagues here in the Senate to bring about substantive, constructive, permanent solutions to the housing and economic needs our Nation faces.●

## IN RECOGNITION OF MR. HAMMOND'S SIXTH GRADE CLASS AT ACADEMY SCHOOL IN GUYMON, OK

● Mr. BOREN. Mr. President, I would like to take this opportunity to recognize the students in Mr. Hammond's sixth grade class at Academy School in Guymon, OK. In the past month I have received letters from all of Mr. Hammond's students expressing their concerns about our environment. I share these concerns and applaud these students for recognizing the many issues that must be addressed by Congress to better protect the precious environment in which we live.

I have included for the RECORD two outstanding letters from the sixth grade class to illustrate for my colleagues the increased knowledge that students today now possess in dealing with global concerns. The students write:

DEAR MR. BOREN: I understand you are the senator of the United States. I am in sixth grade and I am writing this letter about pollution. This country needs to get rid of the pollution. I have a few suggestions. One being that we need to recycle more paper products so that we can save more trees, which are essential to our ecology. All cars should have standard emission control systems and use unleaded gasoline to cut down on air pollution. Government standard should be set so that all factories and industries have to meet certain criteria on pollution control. This way we can save our waterways and our environment by cutting back on pollutants. (Please respond)

Sincerely,

MENDI WINCHESTER.

P.S. Please recycle this paper.

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DEAR MR. BOREN: I feel that pollution is becoming a bad habit for us people. Not as much paper should be used, or more paper should be recycled. The land fills are good but sooner or later we are going to run out of places to put all of our trash. Then what are we going to do.

There is a lot of animals dieing, because of water pollution. Everything reproduces during its lifetime, but we should have more. We need a movable filtering system that can clean up the water. We have to stop pouring waste into oceans, seas, lakes and so on. It is really getting out of hand and something needs to be done!

Sincerely yours,

AMY BREUER.

These two letters are good examples of the real effort being made by students in Oklahoma to find solutions and put them into effect. Other Guymon students who wrote excellent letters on the environmental crisis are:

Mandy Martire, Chad Lemburg, Diana Lear, Arthur Chavez, Matt Backus, Ginni Rodriguez, Stefanie Winterrowd, Brad Gillespie, Jace Larsen, Brandy Thompson, Mitch Merwin, Fara Anderson, Ty Wills, Kathy Tuttle, Jennie Christie, Sydni Hill, David Kyle Johnson, Lynette Kraber, Ben Latham, and Geoffrey Underwood.

Terrah Johnson, Amanda Quesenbury, Kristina Light, Paul Gilman, Clay Reed, Meg January, Jackie Boyd, Devra Brooks, Landry Hayden, Nicholas Mueller, Jamie Sandoval, Michael Moschak, Brian Masse, Chad Kelley, Niki Bailey, Misty Lakely, Alisa Wester, Cory Hohweiler, Josh Worley, and Travis Aldurf

The students at Guymon Academy School are very knowledgeable about these issues and realize that there are no simple solutions. Solving the many problems that now jeopardize our environment requires both sacrifice and commitment. Most importantly, solutions also require a greater public understanding of the many different ways in which our world is being threatened. I am very impressed by the Guymon students' awareness of this important issue, and I congratulate their effort to raise community awareness of the environmental problems that we face in the coming years.●

## MONTANA'S FUTURE

● Mr. BAUCUS. Mr. President, November 8 was Montana's birthday. We're 100 years old. I've talked about the history of the Big Sky State and about some of its contributions to this great Nation. Now I want to talk about our future.

Montanans are looking forward to the next century with a combination of optimism and concern.

We are optimistic that our future will bring a more stable economy and that it will present more opportunities for our children to find jobs and stay at home in Montana.

But we are concerned about the economic hardships of the past decade. We are losing people. Laissez faire policies bred in Washington have hurt our ability to recover.

Montana has seen good times. During the seventies, we enjoyed an almost unprecedented prosperity. Rising agricultural exports and energy prices created an economic boom. The State's population, employment and income grew dramatically.

But the growth of the seventies gave way to the economic decline of the eighties.

During the eighties, virtually all of Montana's basic industries fell on hard times. Agriculture, timber and mining were forced to undergo significant change. Quite often that change cost Montanans their jobs. Since 1979, about 12,000 jobs have been lost in our basic industries. Total worker earnings dropped about 25 percent.

There are many reasons this has happened. Some of cyclical. Some are structural.

But I believe that we Montanans are coming to the end of a difficult era. We are on the verge of a new era and a new decade—with a renewed sense of hope.

We Montanans believe we can make things happen in our State. And we are excited about it.

Our attitude contrasts dramatically with that of several of the prominent news magazines—Newsweek, Time, and U.S. News—over the past couple of months.

For some reason, these magazines have decided that Montana, and the rest of the Great Plains States, don't matter any more.

They have decided that the most productive use of this region is to turn it into what they call a "Great Buffalo Commons."

They would have the Federal Government buy all the land in the plains region. Turn it into a national park. And release buffalo and other game

animals to roam and attract international tourists.

Well, Mr. President, the tenor of these articles is disturbing, to say the least.

Author's of these articles have concluded that, there is no hope for the future.

They recommend that Montanans run away from their problems instead of confronting them head on.

Well, I'll tell you what. I've never met a Montanan who would rather quit than fight. Quitting isn't even in our vocabulary.

There's no doubt that this past decade has hammered Montanans and that we are in the midst of a wrenching transition. But we have always believed that tomorrow will be a better day.

We have never lost our can-do optimism.

I wish the authors of the articles in these news magazines would spend their time trying to find real solutions to our problems instead of just throwing up their hands.

Throwing up your hands is easy.

Solving problems presents exiting challenges and new opportunities.

It's time for us Montanans to take a hard new look at our economic development strategies.

The international economy and advances in technology have touched nearly every enterprise and community in Montana.

The challenge is to understand these fundamental forces and to channel them into long-term economic vitality for Montana.

Some of our strategies are working. Others need to be refined to be effective.

We've had some success in breaking down barriers to Montana's export growth. Japan is now buying more beef, and this year the tools of the new trade bill will be employed against countries that persist in maintaining trade barriers.

Opening the Japanese beef market alone raised the price of Montana beef by $56 for each fed steer. That price is still going up.

We are also making significant progress in European, Japanese, and Korean markets. More exports means more jobs for Montana.

Last month, Carla Hills, the United States Trade Representative, used a law I wrote to force Korea to open its markets to United States beef. She told the Korean's that if they didn't open their markets, they would violate section 301 of our trade laws and force us to retaliate. I am optimistic that Korea will heed her warning and buy more United States beef.

Other global changes present challenges and opportunities to Montanans.

The United States is entering into the information age. By the year 2000, two out of every three working Americans will be employed in information and services industries.

We need to attract those jobs to Montana. They're clean industries, and perfectly geared for a hard working, well-educated work force.

They will permit greater workplace flexibility and will enable residents from all over the country to live and work where they choose, instead of being forced to live in overcrowded and polluted urban areas.

But in order to attract those jobs, we have to change a few minds about our State.

We have to educate people about Montana. We have to tell them of our independence, our neighborliness, our clean air and flowing streams, our abundance of natural resources, our safe streets, and our strong commitment to education.

When we bring these values together we are unbeatable. Montana must use these strengths to its advantage.

There are no quick and easy answers. The answers must be based on long term, strategic planning—and a commitment by everyone—business men and women, State and local leaders, and the Federal Government.

For instance, we must make better use of our vast natural resources. We must seek every opportunity to find new uses for our resources and bring more value added processing into the State.

We ship raw lumber to Japan—where it is processed into high priced plywoods and fiberboard. This makes no economic sense. Montanans should be processing the raw lumber and selling the high priced finished product to the Japanese.

Second, we should take better advantage of the awesome beauty of Montana. Promoting tourism is critical. Glacier Park is second to none in beauty. And we have some of the best skiing in the world. We need to let people know this.

That means even better promotion, better development of our support services, and shrewd marketing.

Third, we must diversify our economic base and begin a serious effort to attract more information, high technology and manufacturing firms into the State. In order to do that, we must actively advertise and let businesses know that we're interested in them, and that we want their investment.

The Federal Government can do a great deal to foster growth.

Indeed, I believe that it is in the Federal Government's best interests to do just that.

By helping to foster growth in states like Montana, the Federal Government will help increase the quality of life in the more urban areas of the country.

Rural prosperity would allow people currently living in urban areas to move to States like Montana and find decent employment.

Imagine what a population shift like that would mean to urban congestion, pollution and the cost of doing business in our overburdened cities.

As chairman of the Rural Economy Subcommittee of the Small Business Committee, I held hearings last Congress on problems facing States like Montana and on solutions to those problems.

As a result of the hearings, I wrote legislation to address what I saw to be the major barriers to rural America's future.

The first barrier is lack of an adequate transportation network. Since Congress deregulated the airlines and the railroads, Montana has been forced to endure unstable and inconvenient service. At the same time, ticket prices have skyrocketed.

Over the past several years, the Reagan and Bush administrations and the urban minded House of Representatives have tried to gut the Essential Air Service Program by underfunding it. It has been an almost constant battle for me to preserve air service to seven of Montana's rural communities.

As we all know, the prospect for a community to survive and prosper without air service is next to nothing.

In an effort to ensure that Montana's rural communities, and others throughout the country, will continue to receive air service, I introduced a bill to make EAS an entitlement to be funded from the airport and airway trust fund. That way, the program will be removed from yearly appropriations process.

If my bill passes, Montana's rural communities will be able to plan for the future and attract business investment without fear that air service may one day be eliminated.

A second barrier is lack of an adequate telecommunications infrastructure. Today, telecommunications is as critical to Montana's future as rural electricity, railway and highway systems have been in the past.

A third barrier is lack of access to capital. Banks view businesses in more remote areas as more risky than others and therefore are reluctant to make loans.

I introduced bills to address each of these problems. My telecommunications bill will bring state-of-the-art telecommunications services to Montana's rural businesses, hospitals, and schools. My capital formation bill will establish a revolving loan fund to make capital more readily available to our businesses.

Each of these bills was rolled into the Rural Partnerships Act of 1989 which passed the Senate on August 2

and is now awaiting action in the House.

Pulling all these things together—government, local communities, and businesses—to work for Montana. That's what will help turn Montana's economy around.

A prosperous economic future for Montana is a realistic goal which can and will be pursued.

With Montanans working side by side, contributing to our economic growth, we can't help but prosper.

Our future is bright because Montanans are eager, ambitious and committed to making it bright.●

## EASTERN EUROPEAN TRANSFORMATION

● Mr. PRESSLER. Mr. President, the Berlin Wall is crumbling before our eyes, and the Iron Curtain is being lifted. The goals of NATO and U.S. foreign policy may be realized sooner than anyone had expected. These are remarkable, unexpected and welcomed events. But let's not count the chickens before they are hatched.

Hungary has declared itself to be non-Communist and has taken the red star off its flag. Poland has elected a government that overwhelmingly excludes members of the Communist Socialist Workers Party. East Germany has declared a policy of free travel for its citizens, and seems prepared to carry out extensive political and economic reforms, including free elections. The Soviet Union continues struggling to find a formula for internal reform that will satisfy democratic values, while respecting human rights and the disparate interests of the many nationalities that comprise that country.

The massive change that has been set in motion in Eastern Europe offers the promise of a more peaceful world. The cold war as we have known it may be fading away. The enormous defense expenditures associated with the cold war may fade away, too, perhaps eventually allowing for a more productive, peaceful utilization of those funds, such as protecting our planet's environment. It is important to remember, however, that it is too early to declare the cold war dead. It is too early to throw away the sword and the shield as the guarantors of peace and freedom.

Reform behind the once Iron Curtain will take more time. The declarations of glasnost and perestroika and the renunciations of imperialistic communism emanating from the Soviet bloc are wonderful to behold. Yet, one cannot defend a democratic way of life based solely on the declared intentions of recently aggressive nations ruled by one-party dictatorships. Major reforms in the social, economic, and political institutions of the Soviet Union and its Eastern European allies must validate the transformation of those nations from their previously hostile, aggressive policies to policies that are compatible with freedom and democracy. The nations of the West must, in the meantime, maintain strong defense policies.

The non-Communist NATO allies particularly must remain vigilant. I often have criticized the imbalance between United States and Western European contributions to our mutual defense. One-half of United States defense spending now goes to the defense of Europe. If the Berlin Wall finally disappears and the Iron Curtain continues to part, who would bear most of the burden for Western Europe's defense? Should it be European NATO allies or the United States? What is the current situation? Why does the United States now spend 50 percent of its defense budget on European defense, especially at a time when so many NATO allies seem eager to expand economic relations with Eastern European countries and reduce their own defense expenditures?

I propose that the United States reduce its costly forces in Western Europe in stages. As West Germany expands its economic aid to Eastern Europe by many billions of dollars each year, it makes no sense for United States taxpayers to continue providing so much of West Germany's defense. This is a losing game for U.S. taxpayers. While West Germany spends billions to expand its economic ties with East Germany, Poland, Hungary, the Soviet Union and other Eastern Europeans countries, it makes no sense for us to continue spending $150 billion to defend free Germany and other areas of Western Europe with our current, massive forward defense system. While German businesses make money dealing with Eastern Europeans, the United States should not continue picking up a large share of the German defense tab.

Staged or phased reductions of United States forces for Western Europe offer many bonuses for American taxpayers, who now spend $150 billion each year for that purpose and $254 billion for interest on the public debt. If we could cut U.S. NATO spending by $75 billion, we might actually save as much as $84 billion when related debt interest costs are included in the calculations.

I do not propose slashing defense spending by that much in 1 year. But phased reduction of these expenditures may be logical, practical, safe and achievable if Western Europe has reached the point of trusting the intentions of Eastern Europeans to the extent of helping to bail out their economies.

Secretary of Defense Richard Cheney has announced plans to cut the defense budget by 3 percent in fiscal year 1991 and by up to $180 billion over the next few years. I agree that reductions would be in order, so long as events in Eastern Europe continue along the same path they are now taking.

Of course, the details of such significant cuts in defense spending must be worked out carefully to avoid damaging our defensive posture or disrupting the economy. Some pain will be associated with reductions in personnel, closing of bases, and procurement terminations. Those actions, although necessary, must be planned to minimize their potentially disruptive effects on communities and families.

The majority of our savings should be made through a reduction in our contributions to Western European defense. Since the impetus for defense spending cuts is the improving situation in Eastern Europe, it is only logical that Europe is where a major portion of the cuts should be made. If we need 15 fewer bases to meet the Soviet threat in Europe, as Secretary Cheney suggests, most of those bases closed should be in Europe.

I have long supported reducing our commitment to Europe's defense. The recognition by the administration that the threat in Europe has diminished is even more reason to let the Europeans shoulder a greater share of their own defense. The administration has the right idea. Now let's implement it correctly.●

## DAVID BLUNDY

● Mr. ADAMS. Mr. President, in recent days I have spoken on this floor regarding the tragic civil war in tiny El Salvador, and particularly how that war has claimed the lives of thousands of innocent victims, including the lives of citizens from the State of Washington. On November 17, 1989, a British journalist named David Blundy lost his life while covering the recent hostilities in San Salvador. His many friends in the press corps here in Washington, DC, and in London, Beirut, Belfast, and the other cities in which he worked mourn his passing, and remember David as a loyal friend with boundless energy and an insatiable desire to see and report the truth. His prowess as a storyteller made David a welcome dinner companion during his brief tenure in this city. David came to Washington in 1986 working for the London Sunday Telegraph, and earlier this year joined the Sunday Correspondent. He was remembered as "one of the best reporters to work for British newspapers in the past two decades" by a colleague who wrote the following obituary that appeared in the London Independent on November 20, 1989:

DAVID BLUNDY

Incurable restlessness and uncertainty made David Blundy one of the best reporters to work for British newspapers in the past two decades, though the same qualities did not serve his personal life so well, or those who shared it. He was a great and often entertaining agoniser. He would worry endlessly about the facts, the fairness and the clarity of his stories, and sometimes, if pressed on some point by an editorial executive, would utter the words "I don't know," which is a rarer sentiment in a newspaper office than it might be. He did not invent or overdecorate. His work could be believed.

This central seriousness was belied by his appearance and manner, which caused comment wherever Blundy went. He was a tall, gaunt, handsome man—well over six feet—who usually dressed in a leather jacket, teeshirt and jeans. Shabbiness is not unusual in newspaper offices, but Blundy made a personal aesthetic of it and refused to modify his dress even for the formalities of Washington. He looked more like a Channel 4 cameraman than a foreign correspondent. His looks appealed to women; his manner, equally informal and chaotic, captivated everyone.

He was almost dangerously likeable. There must be many people scattered across four continents who wish they had been slightly more guarded in their conversations with this careless-looking figure and his scruffy notebook. There may be almost as many who believe that they are a unique repository of his anxieties and depressions. In fact, his openness was indiscriminate and, though never false, rarely explored the panic which drove his life. He was, in that sense, a born journalist, focusing all his immense curiosity on the external world.

He grew up in south London, at the Elephant & Castle, in a house largely given over to his father's second-hand furniture business. Many ornate pieces found a temporary home in the family living room, and the temporariness often had an echo in Blundy's adult life (that and his father's constant instruction; "Boy, tuck your shirt in"). He went to the City of London School and then to Bristol University, where he read English and philosophy. Thomson Newspapers offered him a place on their graduate training scheme and dispatched him to Burnley, where he was unhappy, and then to Hemel Hempstead. He reached Fleet Street in 1970 when Michael Bateman, then writing the Sunday Times Atticus column, offered him a job as his assistant.

He quickly made a mark as a sharp and funny writer and it became apparent that his energy and resourcefulness deserved a wider and more serious canvas than a diary column. The Penrith police arrested him for resourcefully snooping around Willie Whitelaw's home (the place was simply a sketch of Whitelaw's constituency) and soon after he began to cover Northern Ireland for the news desk.

Blundy had no ideological axes to grind. As someone who knew him for nearly 20 years, I would be pushed to guess at, never mind define, his political instincts. His loyalty was commanded by truth in its least grand sense—the idea that if you got close enough, discover enough, worried and evaluated enough, you would at last emerge with a story which was as accurate as any narrative could possibly be within journalism's boundaries of time and space.

These skills and convictions went with him to New York, as staff correspondent based there, and then to the Middle East. He was brave in wars, but never bored his readers or his friends by recounting his bravery. He rarely wrote in the first person—even when the story demanded it—and always indicated that local freelances shared his byline when they had helped.

He left *The Sunday Times* to become *The Sunday Telegraph's* Washington correspondent in 1986 and earlier this year took on the same role for *The Sunday Correspondent.* Many friends felt that Washington was a mistake. It was neither Blundy's kind of city nor did it produce the kind of story which he enjoyed. He was keen to leave its politics, its lobbies and its dinner parties, and often did. It was on such an excursion, to the war in El Salvador, that he was killed by a random bullet on Friday.

He co-wrote two books, on Colonel Gaddafi and on Bob Geidof in Africa, but neither of them deserve to be remembered as his best journalism. He was a generous friend and the most amusing colleague any of us could hope to have.—IAN JACK.

David Blundy was a journalist always happy to work in the front line and in hazardous conditions and will therefore always be remembered by the photographers he worked with and also by more than one Lebanese taxi driver, writes Duscas Baxter.

In June 1983 Blundy persuaded a Lebanese taxi driver to drive down a dirt road to visit Yasser Arafat who was pinned by artillery fire in Tripoli, North Lebanon. Halfway there a shell burst near the Mercedes car which slowed to a halt in the mud and the engine stalled. Blundy climbed out and with his usual contempt for incoming fire strolled off a few paces, unzipped his jeans and relieved himself facing the guns on the hill. When the next shell exploded beside the car he slowly turned back and suggested to the frantic driver that perhaps he might see Arafat later. David reached the PLO that night in the back of an ambulance.

(David Michael Blundy, journalist, born Slinfold Sussex 21 March 1945, married 1970 Ruth Mansley (marriage dissolved; one daughter, and one daughter by Samira Osman), died San Salvador 17 November 1989.)

Mr. President, journalists like David Blundy are a breed apart, often risking and sometimes losing their lives while covering those frequently dangerous events that shape history. Too often we take their courage and dedication for granted, and only stop to think about the hazards associated with their profession when one of them is lost while on assignment. I want to add my expression of sympathy, to David Blundy's friends here in the press corps, to his family, and most particularly to his two daughters. I hope that their sense of loss is tempered by the knowledge that David Blundy died while doing what he did best: covering a major news event, searching for the truth.●

## MONTANA CATTLE DRIVES

● Mr. BAUCUS. Mr. President, in 1889, the United States was fortunate to gain a State which would turn out to be the fourth largest, the most beautiful and have the friendliest people. That State, of course, was Montana.

Montana's history has been rich and varied. It was part of the Wild West and has a frontier heritage. One of the most romantic aspects of the West has been the history of cattle drives. And Montana played a large role in this.

One of the earliest recorded cattle drives into Montana was extremely small. In July 1833, an employee of the Rocky Mountain Fur Co., Charles Larpenteur, drove four cows and two bulls from Pierre's Hole to the mouth of the Yellowstone River.

Along the way, Larpenteur's herd encountered several problems. One bull was bitten by a rabid wolf on the Bighorn River and had to be killed. And the word "tenderfoot" could very well be used to describe the remaining herd.

Larpenteur recorded that his party made "slow progress on account of the cattle, whose feet became very tender and finally got so bad that we were obliged to make shoes of raw buffalo hide."

The drive wasn't entirely successful—by the time they reached the Yellowstone at the site of Fort Williams it is believed the herd may have consisted solely of two cows and a bull.

Subsequent drives were more successful, starting with those of the Catholic missionaries in the Bitterroot Valley and continuing through the Montana gold rush days.

As more people moved to Montana from both the East and the West, the need for cattle as food increased.

In addition, land in California, Oregon, and Washington State—which had earlier been rangeland for cattle—was being claimed by homesteaders who had traveled to the West in search of California gold. Cattlemen needed the wide open rangeland of Montana for their business.

The most famous route into the State, and chronicled by Larry McMurty's book "Lonesome Dove," was the Texas Trail. One of the earliest trips up the trail was by Nelson Story in the late 1860's.

Story herded 600 head of Texas longhorns from Fort Worth to the Gallatin Valley. He faced many obstacles along the way including flooded rivers, thieves, and hostile Indians. Once he reached the Powder River, the threat of Indian attacks forced him to keep the herd together by corralling the cattle by day and driving them at night.

Despite the inherent dangers, the Texas to Montana trail became very popular. In the 1940's, historian Paul I. Wellman described a 19th-century cattle drive on this famous trail:

On the march the herd proceeded in the following order: The Trail Boss set the direction and pace. He had to be a man with great cattle sense, a nose for water, knowledge of the country, ability to handle men, and a strong instinct for direction. * * *

Two experienced men, called "point riders," formed a point of the leading cattle and kept them headed in the right direction. The herd trailed behind this point, widening out toward the rear. At regular intervals on the flanks came cowboys called "swing" or "sideline" or sometimes "line" riders. At the rear of the herd rode one or more men sometimes called "trailers" but more commonly known as "drag riders." Their duty was to keep the laggard cattle within some reasonable distance of the leaders. Position on the order of march indicated a man's rank. The point riders were the top hands. Theirs was a heavy responsibility, particularly at river crossings and in trail emergencies. * * * Riding the drag was the most unpleasant work because there a man had to eat the dust from the herd.* * *

At a distance to one side of the cattle herd, or sometimes in front or even in the rear, came the horses * * * usually herded by a boy * * * known as the horse wrangler. The chuck wagon was put in motion after the herd was started on its day's march, passed around the cattle and preceded them so that the cook might have camp set up and supper ready when the men arrived at the selected stopping place.* * *

The cowboy's day on the trail started at dawn and lasted through the daylight hours, including a part of the night, and occasionally, in emergencies, the entire night.* * *

Long before dawn the voice of the cook could be heard with his cry, "Chuckaway," or "Come an' git it," or "Arise an' shine." Out of their blankets rolled the cowboys and went to the chuckwagon for breakfast, a simple meal usually, of sour-dough biscuits baked in a Dutch oven, with meat, gravy, and black coffee.* * *

The days of the great cattle drives finally peaked in the mid-1880's. Several factors contributed to the eventual decline of the drives, most notably the severe winter of 1886 which killed thousands of cattle. In addition, the loss of rangeland due to homesteading also contributed to a curtailment of the drives.

Although drives continued into the 20th century, the magnitude of the drives between the Civil War and the mid-1880's was never matched again.

However, the romantic spirit of cattle drives was recently recaptured over 6 glorious days in Montana.

I had the honor of participating in the Great Montana Centennial Cattle Drive. The drive started on September 4, in Roundup, MT, and ended on September 9, in Billings.

The drive consisted of more than 100 drovers, 200 wagons, 2,700 cattle and thousands of riders.

These modern cowboys and cowgirls slept out under the stars, rode herd and ate dust just like their forefathers.

To be sure, there were a few modern amenities—portable showers and toilets, and a giant Anheuser-Busch tent which served as a saloon—but the spirit was the same as the old days. We enjoyed the same camaraderie, sang the same songs, and probably looked forward to hot coffee in the morning as much as the drovers of 100 years ago.

I was one of the drovers, whose job it was to help keep the herd in line. And when I was out there trying to keep an eye on cattle who didn't always want to tow the line, I realized what a difficult job my friend from Maine, the majority leader, must have every day keeping the Senate in line.

I was in a group where everything was supposed to be authentic to the 1880's. That meant button-fly jeans, canvas tents, and no plaid shirts, because plaid wasn't used back then.

We were up at dawn and worked hard all day. I've always thought it was healthy for a man to get out from behind a desk and do physical labor. Believe me, I got quite a workout.

The cattle drive was an indisputable success and a once-in-a-lifetime event. I want to thank Latigo Corp. for coming up with the idea and executing it so well. Thousands of hours of work went into this event and it is all appreciated. I'm sure this event will go down in Montana history as a time of great cooperation, great fun, and a great indicator of the spirit of the people in my home State. We pulled together when we had to, and it was well worth the effort.●

## SWEDISH FOREIGN MINISTER COMMENTS ON EAST-WEST RELATIONS, FOREIGN POLICY, AND SWEDISH NEUTRALITY

● Mr. PELL. Mr. President, on May 17 the Foreign Relations Committee had the pleasure of meeting informally with the Foreign Minister of Sweden, Mr. Sten Andersson. There was a useful and interesting discussion of Sweden's view of East-West relations, the problems of environmental protection in relation to Third World development, and the singular role of Sweden's neutrality in its international relations.

I am glad to report, on the basis of this meeting, that relations between our country and Sweden are friendly and constructive. We have mutual concerns about environment issues and about East-West relations. There is a good dialog between our countries and a refreshing absence of difficult bilateral issues.

I ask unanimous consent to place in the CONGRESSIONAL RECORD following these remarks the introductory remarks prepared by Minister Andersson for his meeting with the Foreign Relations Committee on May 17, 1989.

The remarks follow:

### PEACEKEEPING IN THE WORLD: THE SWEDISH EXPERIENCE

(Speech by Mr. Sten Andersson, Swedish Minister for Foreign Affairs, at the International Diplomat of the Year Luncheon Given by the World Pax Foundation in Washington, Sept. 29, 1989)

Dear Friends, I am greatly honoured and deeply touched with the Pax World Foundation which has named me "Diplomat of the Year".

This honour is being bestowed upon me in recognition of the part I and my collaborators played last year in establishing a dialogue between the United States and the PLO.

This is very kind and generous of you.

It is both agreeable and satisfying to have hard work rewarded by such recognition, and I can assure you that I will not allow the pleasure I take in this honour to turn into passive complacency. There is little risk of this.

The success was first and foremost the result of a professional interaction between diplomatic competence and political experience. And this success would not have been possible without co-operation between several actors. We were not alone in bringing about this achievement.

First of all there were the parties themselves, the U.S. Government and the PLO. It is obvious that without their active endeavour, nothing could have been achieved.

The daring and far-sighted actions of George Shultz and the United States were of decisive importance. What I admired most was the courage of the American Jewish personalities who took the step to come to Stockholm and meet Yassir Arafat. They were the catalyst in the process—a process whose foundation was the new policy of the PLO.

Moreover, there were a number of other actors on the international scene involved. Countries such as Egypt and Saudi-Arabia played a crucial role. Also other countries played important parts.

I am proud that Sweden had the privilege to be among the parties contributing to this process. What made this possible was above all the confidence that all parties concerned have shown Sweden.

One of the reasons for this confidence in Sweden is to be found in our history:

For centuries, Sweden was one of the most belligerent countries in Europe. In the seventeenth century, Sweden was a major power and conquered countries all around the Baltic Sea. The Swedes fought their way far into Russia and Germany. This violent period ended in 1814.

Sweden has now lived in peace for 175 years. We have been able to develop our society and our democracy freely, without foreign interference. We therefore have obligations to other less fortunate peoples. All those who lack freedom and suffer under oppression, in war and misery—or in a poverty that is beyond our comprehension—have the right to count on the solidarity of a people blessed by fortune.

This solidarity is based not only on humanitarian feelings, but also on our own self-interest.

Two threats of annihilation are hanging over mankind; nuclear war and environmental destruction. They cannot be eliminated unless the rich peoples of the world help the poor, in a spirit of solidarity.

In the gap between the rich and poor countries continues to grow, the risks of

trouble, antagonism, conflicts and war will continue to increase.

But if the poor countries raise their standard of living, using similar means and methods of production that we have employed, environmental catastrophe will be inevitable.

Therefore, the rich countries must develop new production methods which economize on resources and are environmentally sound, and—in a spirit of solidarity—place them at the disposal of the poor countries. For the sake of the poorer nations but also for our own sake.

Sweden is a small neutral country outside military alliances. It is essential for us to safeguard international law, including our own and other peoples right to self-determination and human rights. We must condemn violations of international law wherever they take place, and whoever commits them.

I am a warm friend of Israel. I was strongly moved by the sufferings of the Jewish people in the Second World War. And the entire Swedish people felt the same way.

Many Swedes have close personal ties with Israel. And I am certainly one of them. I have several dear friends in Israel and memories which will remain close to my heart forever.

Outside one small village in Israel there are some trees growing. They were planted there to honour the memory of my dead son.

I feel a close affinity with many of Israel's outstanding leaders. I have always believed in Israel as a democratic State.

In 1963, I met Ben Gurion. His dreams about the Israel of the future were, and I quote: "to in the Land of the Bible create a new model society, founded on liberty, equality, co-operation and mutual aid—without exploiters and exploited."

I can also remember Ben Gurion's words a few weeks after the Six Day War in 1967, when he warned Israel not to hold on to the occupied areas. A long-drawn-out occupation might threaten Israel's entire existence, he said.

Ben Gurion was right. It is now obvious to an increasing number of Israel's friends—and of Israelis—that Israel cannot survive as a democratic and Jewish state, unless it ceases to occupy the territories it took by force in 1967—and makes peace with the Palestinian people and its Arab neighbours.

I am also a warm friend of the Palestinian people—and have been so for a good many years. I understand and share their passion for freedom and their demands for the right to self-determination.

In the spring of 1988 I visited the Middle East. I met many political leaders, but I also visited refugee camps and hospitals.

A turning-point for my commitment was my visit to the Makassed hospital in Jerusalem.

I will never forget the look in the eyes of the injured boys, many of whom will never be able to live a normal life again. There was bitterness and despair, but also a tremendous fighting spirit.

I also remember the children in the refugee camps. They showed me the stones which they used against the soldiers. And they gave me bullets, rubber bullets with a steel core, which had been aimed at them, but missed their target.

These were rubber bullets which kill—and which have killed many of the more than 600 Palestinian victims during the Intifada—and injured many, many more—in thousands of cases leading to permanent disablement.

A conflict in the Middle East can easily escalate and spread into a wider conflagration, involving also our part of the world. The crisis in the Middle East is a threat to our own security.

It is true that the history of the last decades show that the conflicts in the Middle East have largely been contained to the region itself. But development of ever more sophisticated and efficient weapons-systems demonstrate the increasing risks also for others of having unresolved conflicts in sensitive areas.

And I hardly need to mention the plague of international terrorism to further emphasize this point.

In the fall last year, Sweden was able to assist in opening the dialogue between the United States and the PLO.

This dialogue was, and is, a condition for a dialogue between Israel and the Palestinians—a dialogue which we all hope will commence this fall and which is an absolute condition for a peaceful solution of the conflict in the Middle East.

Why were we able to play an intermediary role?

Perhaps because both sides, the United States and the PLO, had confidence in Sweden—but not unqualified confidence in each other. They needed a third party as an intermediary and as a mailman.

Sweden's relations with the United States are excellent. We have differing views on some questions, but we both recognize this frankly.

As diplomats would put it—we have agreed to disagree. And that is a good basis for confidence.

The confidence that the PLO has in us is based on our views, which have been public knowledge for many years, about the principles for a solution of the conflict in the Middle East and about the position of the PLO and its role in a political solution.

The confidence shown in Sweden as an intermediary and mediator is, or course, largely based on our policy of neutrality and our previous history of participation in international mediation and peace efforts.

Our non-participation in military alliances and our consistent policy of neutrality mean that Sweden cannot be suspected to act on behalf of anybody else.

Several Swedes have been involved in U.N. efforts to create and keep peace in the Middle East. Emil Sandstrom was Chairman of the United Nations Special Committee on Palestine which proposed the plan to divide Palestine, adopted by the General Assembly in 1947.

Folke Bernadotte, who was murdered in 1948, was the U.N. mediator in the Arab-Israeli conflict. And Gunnar Jarring became the Secretary-General's Representative in the Middle East in 1967.

Olof Palme, the late Prime Minister of Sweden, was deeply committed to the problems of the Middle East.

Thousands of Swedes have served in the U.N. peace-keeping operations in this area.

I cannot describe the whole trail of events leading to the opening of the dialogue between the United States and the PLO.

Much of the story has been related in the media. The rest—and perhaps the most important part—must be well guarded secrets for years to come.

Some of those involved, who know what happened, and who were of crucial importance for the successful outcome are here today. Their contribution was courageous and decisive.

It is not for me to try to prescribe a general recipe for a successful intermediary effort. That is an impossible task. Every situation is unique.

In the hope that some of our experiences may be of some relevance in some other situation, I would like to share a few thoughts with you.

First and foremost for any intermediary to succeed there must be two parties ready to take steps towards each other. An intermediary can never take these steps for them—only try to direct them where to put their feet. And maybe push a little . . .

For this the intermediary ought to have an idea about the desired direction.

But the parties must not only be ready, they must be willing to move. The task for the intermediary is to try to put himself in their position, in their shoes if you like, and try to understand how they think.

The intermediary must not be afraid of taking initiatives. He must try to see what opportunities the various situations offer and what the snags are.

He must be able to intervene if he notices that the parties, through their actions, risk endangering positive developments.

This is something more than just transmitting meassages. But it is still not the same thing as mediation—that is to say, aligning the positions of the parties involved.

The intermediary must be both postman and adviser. Sometimes he can even make himself useful as a sub-editor.

An intermediary assignment of the type Swedish diplomats were involved in last year is largely based on confidence between people. Teamwork and a considerable degree of professional know-how are also required.

I was assisted by a number of highly competent collaborators who diligently devoted themselves to the job which we had taken on.

Dear Friends, What does the future have in store?

The peace process in the Middle East is still going on. There is a new phase in progress once again. The situation is better than it was a month ago and I have some hope that current efforts will lead to direct talks between the Israelis and the Palestinians.

The United States is now, these very days, playing a crucial role. I am confident that Secretary James Baker, in his talks with the parties, will suceed in bringing their positions closer.

I am well aware of the difficulties—but also of the possibilities. Today, after more than 40 years of fighting, there is a wide gap of suspicion and fear between the Israeli and the Palestinian peoples.

My ambition is to help bridging that gap.

My dream is to see the two peoples living side by side, in peace and co-operation.

My actions are going to be guided and inspired by this positive vision.

Once again, thank you for the award that you have given me. I regard it as a mark of honour for myself, for my collaborators and for my country.●

## DR. KATHLEEN ROSS OF HERITAGE COLLEGE

● Mr. ADAMS. Mr. President, with increasing attention being devoted to the quality of education in this country, I note with pride the recent announcement that Dr. Kathleen A. Ross, the president of Heritage Col-

lege in Toppenish, WA, has been chosen as one of three winners of the 1989 Harold W. McGraw, Jr., Prize in Education. This prestigious award was established in 1988 in celebration of the 100th anniversary of the McGraw-Hill Co., and is given to individuals who have made a distinguished contribution to the advancement of education.

In making the announcement, the board of judges stated:

In 1982, Dr. Ross founded Heritage College in an old elementary school on the Yakima Indian Reservation in Toppenish, WA. Armed only with a vision, she brought higher education to a population living largely below the poverty level in an educationally isolated area. Heritage's programs are designed to meet the special needs of a multicultural student body that is more than half Native American and Hispanic with an average age of 35. Many students are the first in their families ever to attend college. About 95 percent of the some 400 Heritage graduates have stayed in rural central Washington as teachers and other professionals, offering the area new hope for the future.

I must say that the success of Heritage College can certainly be traced, in large part, to the vision of Dr. Kathleen Ross. Additionally the desire to succeed in academics, and in life that has brought so many students to Heritage College since its founding in 1982 is testament to the unmet need for a college curriculum serving the largely Native American and Hispanic populations of the Yakima Valley of Washington State. In recent months, I had the pleasure of meeting with Dr. Ross in my office as we discussed our mutual interest in the future of small, liberal arts colleges in this country. Dr. Ross told me how vital Pell Grants, the Supplemental Educational Opportunity [SEOG] Program, the Supplemental Student Incentive Grant [SSIG] and other forms of financial assistance are to those students who attend Heritage College. For example, in 1989, with an average SEOG award of $950, Heritage College provided funds for 74 students pursuing higher education. An additional 66 students were eligible for those funds, had money been available. I asked Dr. Ross to provide me with information, in the form of anonymous profiles of the kind of students receiving Federal assistance under the SEOG program at Heritage College. If ever there were a case of the wise and prudent use of Federal educational funds, it can certainly be demonstrated at Heritage College. Among those recipients were:

A 55-year-old Yakima Indian woman majoring in social science, who supports herself and a 14-year-old grandson on AFDC and through her work-study job at the school's Academic Skills Center;

A 31-year-old single mother, majoring in education, with a nearly 4.00 grade point average while raising two elementary-school age children;

A 24-year-old father of two children, majoring in prenursing who has achieved a 3.5-grade point average in his first year at Heritage College while working as a nurses aide to support his wife and children;

A husband and wife, ages 33 and 34, both in their second year of college, both of whom made the dean's list while holding down outside jobs, he as an orchard worker and she in a college work-study position on campus;

A 32-year-old Mexican-American woman with two elementary school age children, employed in a State work study position;

A 35-year-old man in his first year of college, employed as a glazier earning about $15,000 per year. He and his wife have four children, ages 9 to 16, and he is a business management major;

A 48-year-old Yakima Indian woman, a single parent with two elementary school age children, who is a sophomore at the college and is employed in the registrar's office on a college work-study job to support her family.

These are but a few of the long list of success stories that are in the making at Heritage College, under the leadership of Dr. Kathleen Ross and the dedicated faculty of the school. In reviewing that list, what struck me most was the spirit of mutual respect and dedication to a common goal that motivates students and faculty alike.

One particularly innovative use of higher education funds, is the Heritage College "College Opportunities Mentorship Program." Under this program, called COMP for short, the college utilizes its State SSIG funds for community service in an unusually effective manner. The college recruits particularly promising Hispanic and Native American students to undertake a special work-study effort, as a pilot program for the Washington State Higher Education Board. The COMP students are paid to become mentors in their local ethnic communities to encourage greater attendance at the college and university level.

After receiving a course of training in the requirements of various colleges in the area, including knowledge of those institutions catalogs, the COMP mentors developed strategies for contacting key individuals in their communities who could encourage college attendance. The wide variety of settings where individuals were contacted provide evidence of the innovative nature of the effort: civic and church gatherings, pow-wows, alternative schools, job training programs, and even local fairs, festivals and community events became forums for college recruitment.

Dr. Ross advised me that students in the Heritage College COMP program reported numerous instances in which the persons they talked with were substantially misinformed or uninformed about the possibility of college attendance for their children, grandchildren, or themselves. By talking with a person from their own local community who was attending college and who could describe the hows and whys of college attendance, dozens of individuals have begun to give real consideration to attending college.

Heritage College now anticipates that a significant number of individuals will be enrolling in local colleges over the next several years because of contact made by the COMP mentors. In light of the historically low percentage of Native American and Hispanic students in Washington State who achieve college degrees, the Heritage College COMP students are meeting a critically important social goal. In addition, the Heritage College staff have noted a significant improvement in the professionalism and public relations skills of the students serving as mentors in the COMP program. According to Dr. Ross:

No other student aid funds have met so many worthy goals simultaneously as the SSIG funds applied to Heritage's COMP program. Students get needed financial assistance as well as professional growth; the college and the State increase success at recruiting minority students to college attendance; and local residents who never before thought that college was possible are having their dreams become reality.

Mr. President, this past summer a young member of the Yakima Indian Nation became the first woman in the history of her tribe to graduate from law school and become a member of the Washington State Bar Association. She was able to complete a rigorous course of study at the Gonzaga University School of Law, in large part because of the excellent undergraduate program she undertook as a student at Heritage College. The Yakima Indian Nation needs to have more success stories like hers. The growing Hispanic population of the Yakima Valley needs to have similar success stories of its own.

The early chapters of those future success stories are being written every day at Heritage College, and I know the students, faculty, and friends of Heritage College share my belief that Dr. Kathleen Ross is a most worthy and deserving recipient of the 1989 McGraw Prize in Education. Her vision and dedication are a source of inspiration to all of us who know her. Under the leadership of Dr. Ross, Heritage College of Toppenish, WA, has quickly developed into a place where dreams become reality.●

## ADJOURNMENT SINE DIE

Mr. MITCHELL. Mr. President, if the Republican leader has no further business, and if no other Senator is

seeking recognition, I now move that the Senate adjourn sine die, in accordance with the provisions of House Concurrent Resolution 239.

The motion was agreed to, and at 4:06 a.m., the Senate adjourned sine die.

## NOMINATIONS

Executive nominations received by the Senate November 21, 1989:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TONY E. GALLEGOS, OF CALIFORNIA, TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR THE TERM EXPIRING JULY 1, 1994.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ARTHUR J. HILL, OF FLORIDA, TO BE PRESIDENT, GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, VICE MARK E. BUCHMAN, RESIGNED.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

DONALD G. WISEMAN, OF NORTH CAROLINA, TO BE A MEMBER OF THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING APRIL 27, 1993, VICE LINDA LUGENIA AREY.

DEPARTMENT OF DEFENSE

WILLIAM JAMES HAYNES II, OF NORTH CAROLINA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF THE ARMY. (NEW POSITION—PUBLIC LAW 100-456.)

STEPHEN KAY CONVER, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF THE ARMY, VICE JAY RAYMOND SCULLEY, RESIGNED.

## CONFIRMATIONS

Executive nominations confirmed by the Senate November 21, 1989:

DEPARTMENT OF DEFENSE

JEROME G. COOPER, OF ALABAMA, TO BE AN ASSISTANT SECRETARY OF THE AIR FORCE.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

PHILIP LAWRENCE CHRISTENSON, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

GORDON H. MANSFIELD, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

DEPARTMENT OF AGRICULTURE

ADIS MARIA VILA, OF FLORIDA, TO BE AN ASSISTANT SECRETARY OF AGRICULTURE.

NATIONAL LABOR RELATIONS BOARD

JERRY M. HUNTER, OF MISSOURI, TO BE GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD FOR A TERM OF 4 YEARS.

DENNIS M. DEVANEY, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 16, 1989.

DEPARTMENT OF DEFENSE

SUSAN J. CRAWFORD, OF MARYLAND, TO BE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

JOHN M. WALKER, JR., OF NEW YORK, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT.

VAUGHN R. WALKER, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA.

G. THOMAS VAN BEBBER, OF KANSAS, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF KANSAS.

EDWARD W. NOTTINGHAM, OF COLORADO, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLORADO.

ARTHUR D. SPATT, OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK.

EDWARD J. LODGE, OF IDAHO, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF IDAHO.

DEPARTMENT OF JUSTICE

JEAN PAUL BRADSHAW, OF MISSOURI, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF MISSOURI FOR THE TERM OF 4 YEARS.

TIMOTHY D. LEONARD, OF OKLAHOMA, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF OKLAHOMA FOR THE TERM OF 4 YEARS.

GENE W. SHEPARD, OF IOWA, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF IOWA FOR THE TERM OF 4 YEARS.

## WITHDRAWAL

Executive message received November 21, 1989, withdrawing from further Senate consideration the following nomination:

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Linda Lugenia Arey, of Virginia, to be a Member of the Occupational Safety and Health Review Commission for the term expiring April 27, 1993, vice John [illegible]. Wa[illegible] term expired, which was sent to the Senate on January 3, 1989.

# EXTENSIONS OF REMARKS

## SOVIET RESPONSE TO WESTERN ECONOMIC PRESSURE

**HON. BOB McEWEN**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McEWEN. Mr. Speaker, I would like to call to the attention of my colleagues a very insightful speech delivered by Mr. Kempton B. Jenkins, regarding Soviet participation in the international economy.

SOVIET RESPONSE TO WESTERN ECONOMIC PRESSURE

(By Kempton B. Jenkins)

Central to any discussion of the recent U.S. attempts to pressure the U.S.S.R. by trade controls is an evaluation of the effectiveness of U.S. policy decisions. Let me state at the outset, that in my judgment the United States has often pursued ineffective, shortsighted trade policies toward the Soviet Union, based on a serious misreading of the Soviet system.

That tendency is accentuated today and, with the present so-called foreign policy controls directed against Soviet energy development, has reached a particularly counter-productive level. It is especially discouraging because as this Administration came to office, intent on rebuilding America's military capabilities, it also announced that it would pursue a tough but pragmatic, predictable trade policy toward the Soviet Union. Specifically, senior officials of this Administration emphasized their opposition to foreign policy controls, as opposed to national security controls. The former they criticized as costly to the national interests of the United States.

In this article I would like to cover five points:

First, the Soviet economic personality; what is unique about the Soviet economic process and what it offers us in terms of points of influence.

Second, how to measure the effectiveness of an economic initiative or policy directed against the Soviet Union; how best to achieve a cost/benefit analysis.

Third, once launched, how does the Soviet Union and its economy react to a U.S. initiative. What actually happens within the system.

Fourth, what is our overall goal in facing Moscow today and how we can pursue it most effectively.

Fifth, three short recommendations.

THE SOVIET ECONOMIC PERSONALITY

Any assessment or consideration of Soviet performance past and future must consider the personality of the Soviet economy. There are many ways in which Moscow's unique economic profile determines its capacity and instincts in responding to external economic pressures.

The Soviet economic management structure is ponderous, cumbersome, and slow to deal with new economic challenges. In the long run it is clearly more vulnerable to sudden change than more resilient, flexible free economies. Central direction by definition limits the capacity of any economy to adjust at the lower end of the economic process. It locks in inefficiencies.

The Soviet economy today is in serious difficulty. But the Soviet economy has always been in trouble. The infamous five-year plans have never been met or fulfilled, shortages are a way of life. In fact, specialists on the Soviet economy agree that without the leavening effect of economic corruption and a tradition of extra-legal supply systems, the system might grind eventually to a standstill.

There are many crisis areas in the Soviet economy today. Any one should be enough to lead a Soviet Murray Weidenbaum to resign. Let me arbitrarily focus on four of these problems.

First, the demographic impact of World War II has come home to roost. Surplus labor, long the key fuel in Soviet economic growth, has disappeared. Instead there is a severe labor shortage, not only in numbers, but perhaps more importantly, in the mix which makes up that labor force. The overall shortage is extreme in terms of technically qualified labor. The geographic immobility of labor (a problem in any society) is immense in the Soviet Union. It reflects the geographic dimension of the U.S.S.R. and the historic ethnic differences in its population. The Soviet Union is not a melting pot and truly does consist of several nations, distinct in culture, religion, and language.

It is virtually impossible e.g., to shift any significant number of Uzbek laborers to the Ukraine, or Ukrainians to Kazakhistan. Russian foremen are hampered in their ability to lead and direct the work of Tadjik tribesmen transplanted into a Soviet factory from their 17th century pastoral existence. The labor shortage in the Soviet Union will not go away. The only significant pool of trained labor available to the Soviet Union today is in the Soviet armed forces. A reduction in the size of their standing armies could provide relief. In the absence of the political decision necessary to accomplish this, no relief is in sight.

Even technology is not a full substitute for labor in the Soviet system. It can and does help, but only marginally, because of the limited Soviet capability to introduce technological change into the production line quickly.

In real economic terms, it is essential to look at productivity when considering labor problems. This constitutes a second crisis point in the Soviet economy. For more than half a century Soviet leaders have attempted to substitute political slogans and ideological fervor for material rewards. In the absence of incentives, inhibited and discouraged by the oppressive weight of Marxist-Leninist ideology, Soviet productivity remains among the lowest of any of the developed economies. It's difficult to see how Soviet economic managers can overcome this fundamental flaw, short of abandoning the ideological underpinning of the present regime. In Eastern European countries such as Hungary where tentative steps have been taken in this direction, the economic results have been predictable: Enhanced growth and increased productivity. But in Moscow brief flirtations with incentive oriented reforms have been consistently crushed by the regime's ideological watch-dogs.

Agriculture is a third fundamental crisis point in the Soviet economy. Much has been written on this subject. It is important, however, whenever we attempt to evaluate Soviet responses to past and future external economic pressure, that we take into account the failed Soviet agricultural experiment and its cost to their overall economic performance. Suffice it to say that today per capital agricultural production in the Soviet Union still remains below the level achieved shortly prior to World War I! Massive amounts of foreign currency are consumed every year to import the basic agricultural needs of the Soviet population. Political careers are broken as promising young Soviet managers attempt to reform Soviet agricultural production. It is true that climate and rainfall conditions in the USSR are difficult, but it's more relevant that the failure to develop incentives, a personal work ethic based on rewards, and a transportation infrastructure dedicated to the consumer have made Soviet agricultural performance inevitable.

A critical lack of hard currency provides the fourth basic crisis in the Soviet economy. This is mirrored in thousands of ways throughout Soviet society. The incredible determination of Intourist to charge New York prices for the most backward facilities, the unbending Soviet negotiating posture in business deals when they discuss the expenditure of foreign currency, the frantic efforts of Soviet economic planners to develop any products which can be sold in hard currency markets, the continuing effort to substitute counter-trade or barter for hard currency payment, the awkward CEMA structure and refusal to join the INF and World Bank are all manifestations of this basic problem.

Recognition of the key role of foreign curency goes back to the very beginning of Soviet power in Russia. Soviet trading missions have consistently placed the development of hard currency at the top of their priority lists. An old colleague of mine in government, General Alexander Barmine, who was one of the Soviet Union's early trade representatives abroad discussed at length with me a decade ago how even in the 1930's the pursuit of foreign currency dominated Soviet trade activities. He was constantly directed to ignore pricing as long as he could sell for Western currencies.

Shouldn't these weaknesses, these economic flaws lead to enhanced responsiveness by the Soviet Union to external pressures?

In a society where economic needs have the priority they enjoy in a free society, the answer would probably be yes. But it's essential to recognize that in the Soviet Union, political control has been, is and likely will continue to be the controlling factor. Therefore, the answer is maybe, sometimes.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

THE COST/BENEFIT PROCESS FOR US

Any consideration of utilizing the economic instrument to influence Soviet policy must:

1. Determine what we intend to achieve.

2. Assess whether economic pressure can be effective. Above all take account of alternative availability and understand the relative value of political, national security, and economic objectives.

3. Insure that all preliminary steps have been taken to insure the effectiveness of any economic initiative including full consultation with our allies.

4. Weigh the costs to the United States and insure that achievement will outweigh the cost.

We rarely have fulfilled the requirement of doing a complete cost/benefit analysis when turning to the economic option during a crisis. The incredible example of President Carter's response to Afghanistan (grain embargo) will stand in history as an example of how not to proceed. The sudden ill-considered arbitrary disruption of the delicate international grain market mechanism and our position in that market triggered a series of interrelated changes from which our agricultural sector has still not recovered. There are many who attribute the sudden reversal of the fortunes of International Harvester, John Deere, Allis-Chalmers and other agricultural implement producers, savings and loans in the agricultural belt, and hundreds of other agro-businesses to the sudden catalytic effect of the Carter grain embargo on the Soviet Union. The net result of that initiative, was to transfer a key traditional marketplace to new competitors. Not only did we lose business to Argentina and other grain producers, we in fact provided the economic incentives for the Argentines to develop the capacity and infrastructure to export grain on a long term basis and compete effectively with the U.S. farmer indefinitely. Today Argentina's grain sales to Moscow are equal to ours (30 percent of Soviet imports) whereas in 1979 we were the principal supplier, providing 90 percent of Soviet grain imports.

The grain embargo was hardly enhanced by the addition of pin-prick harassment of other economic processes such as the reduction of Aeroflot flights from three to two per week, while no significant military responses were taken such as a defense budget increase or first steps toward universal service.

It is worth noting that the process by which the grain embargo decision was reached was less than scientific. After a heated debate in the National Security Council, the final decision to apply the embargo to the Soviet Union was taken when the Secretary of Agriculture was out of town. His deputy was not allowed to attend on the grounds that the meeting was for "principals only"; a device all too often relied upon to shut out dissenting opinions; hardly a method of a strong, self-assured administration designed to produce a carefully considered balanced judgment as to our national interest.

Any review of the effect of recent ill-starred efforts to apply economic pressures on the Soviet Union must take into account the effect it has on the cohesion of our own alliance. One of the historic foreign policy objectives of the Soviet Union, to erode and splinter the Western alliance, has been advanced by our own arbitrary action. The effect of our economic initiatives on other Western economies, and the costs in terms of our own economic interdependence on our allies are all essential elements in determining the validity of our policy.

We find ourselves today in the most confrontational economic posture with Europe since World War II. Disagreements, some inevitable, and some results of a worldwide recession, are compounded by our insistence on proceeding with unilateral policies which we now try to impose on our European allies by a questionable legal extra-territorial lunge. Meanwhile, we are negotiating on a continuing basis to resolve the life and death problems of Western steel industries; U.S. agricultural sales in Europe, already inhibited by European protectionism, are threatened by retaliation; expenditures by NATO allies for military investment, so critical to rebuilding the relative military strength of the West after years of neglect, are also threatened by the deterioration of our economic cooperation. In short, we are close to blowing the circuits with our closest allies, not because of the endemic economic problems we face, but because of the arbitrary unilateral introduction of a political effort to use economic pressures on Moscow.

THE SOVIET SYSTEM REACTS

Let's look at the workings of the Soviet economy when faced with external economic pressures. What happens when a unilateral U.S. embargo or theoretically even a multilateral embargo is applied. Interruption and complications crowd the relatively rigid five-year plan process. Carefully husbanded short supply hard currency allocations are upset and Soviet central planners are required to go back to the drawing board. GOSPLAN, the central Soviet economic planning agency, is forced to revamp the intricately interdependent project plan. Allocations of labor, capital, transportation and deliveries all have to be readjusted. Each of the dozens of functional ministries must in turn revise its plans. The Foreign Trade Organizations or "import companies" must revamp their plans and scurry to fill the newly created gaps.

The effect is not unlike a major train wreck on the Amtrak system. The entire system is immediately affected, if no easily available alternative sources exist. The only problem with this impressive scenario is that almost invariably there is an alternative source.

There are other long-range internal impacts. The continuing philosophical efforts by Soviet champions of autarky, those who foster traditional Russian hostility to foreign influences and Stalinists who favor control for control's sake, are reinforced. The modernists, the pragmatic managers in the economic system who seek to make things work, to produce, to deliver, are set back. Careers are affected. Political loyalists, the cautious ones, advance while those who favor greater integration with the rest of the world's economy suffer. At a time of political transition in the U.S.S.R., unilateral economic embargo actions will certainly not enhance the fate of those who promote modernation and economic cooperation.

It is worth reflecting on the decision by the Carter Administration, now reinforced by the Reagan Administration, to move against Soviet energy development as a likely point for political economic pressure. CIA assessments of Soviet energy development have been much debated. The debate has come down to a matter of a few years one way or another, not a question of whether the Soviet Union is encountering a leveling off and an inevitable diminution of their capacity to produce petroleum. Virtually unlimited natural gas supplies can compensate for some of this, but gas and oil are not totally interchangeable. What can we expect if we were to significantly reduce Soviet energy production—a more compliant Soviet policy toward Poland or a more aggressive effort for contol over adjacent energy resources. To discourage, inhibit, threaten the development of Soviet petroleum must at best lead to their entrance into the commercial marketplace for Middle East oil and at worse, and not unlikely by any means, to more irrational, dangerous Soviet efforts to expand their influence and control over international petroleum sources.

WHERE ARE WE GOING?

Discussions of this subject must be brought back again and again to the basic question of effectiveness. Only after a searching assessment covering the entire range of the results of political intervention on international trade can an adminsitration make a genuinely toughminded decision in the national interest. It should be recognized, that an arbitrary, ill-considered, hip-shooting reach for the economic instrument is not tough. It is short-sighted with long-range costs which far outweigh any short-term political benefit. It is not the brave, but the cowardly action.

Linkage is not the point of the debate today. All respected specialists in Soviet affairs agree that linkage is a fact of life. Secretary Kissinger understood this point well. Interrelationships between trade and politics are real and permanent. It is in the question of evaluating the relative weight of each and how they interact where we have failed. Kissinger writes in his latest volume, "We did not believe that trade itself could moderate Soviet conduct. Our basic reliance was on resisting Soviet adventures and maintaining the global balance of power; economic incentives could not substitute for equilibrium. We believed however that Soviet restraint would be more solidly based if reinforced by positive inducements including East-West trade." Soviet leaders themselves have never minimized the linkage between political and economic goals.

It is very difficult to review this highly charged question in today's atmosphere in an objective manner. However, it is essential that we not be too intellectually proud to return to the basics and recognize that we are dealing with a question of what our policy toward the Soviets is to be. Do we: seek to destroy the Soviet system, to bring the Soviet Union to its knees; or do we pursue a policy of carrot and stick designed to encourage and moderate Soviet policy gradually but steadily. Under the Carter Administration tragically, we practiced the worst of all options, a policy of a diminishing stick and a limp carrot. Now we are taking the essential and urgent steps to revive the stick, but have abandoned the carrot virtually all together.

For the two years I was stationed in our embassy in Moscow I had the honor to serve under one of our greatest career diplomats and, with all due respect to George Kennan and Chip Bowlen, probably the most knowledgeable analyst of the workings of the Soviet system, Ambassador Llewellyn Thompson. It was my good fortune to participate with "Tommy" in our negotiations with the Soviet Union over Berlin at a particularly tense moment in history. One fundamental negotiating principle which I learned is particularly relevant today. Never, never put your adversary in a corner where

there is no way out for him. Incentives are critical to balance pressure.

The Soviet system does not pose an ideological threat to the United States It is rather a pure power system. It is not the ideas of Marx and Lenin which confront the U.S. national interest, it is Soviet power. It is important to accept that the Soviet Union is powerful, that their people are proud and patriotic, accustomed to sacrifice, longing for creature comforts and freedom in their own terms.

Given these facts we come back to the basic question of effectiveness. How do we influence the Soviet Union effectively. Incentives are central to success. Kissinger recalled the loss of our carrot in 1974. "Our policy toward the Soviets was based on a balance between the carrot and the stick. But we failed to produce MFN; we seemed to be unable to organize the financial mechanism for even such trade as there was—and all this despite Soviet concessions on Jewish emigration that would have been considered inconceivable for a few years earlier. By the summer of 1974 the carrot for all practical purposes had ceased to exist. (The Trade Bill passed with the Jackson amendment at the end of 1974. Emigration from the Soviet Union fell to 13,200 in 1975, down more than 20,000 from the peak of 1973.)"

Trade is an important instrument. It is a long-range fundamental weapon of significant potential if used prudently and understood.

Business with the USSR is only good business if it supports U.S. national interests—let there be no doubt about that. Most major U.S. corporations and all U.S. Administrations dating back to President Eisenhower have recognized that while we must contain or neutralize Soviet military power, we must at the same time seek to draw Moscow into closer contact and achieve increasing confidence and cooperation or we are doomed to inevitable nuclear conflict. Students of the Soviet Union have long emphasized the vulnerability of Moscow's relatively closed society to the pull of Western influence; culture, travel, consumerism, and above all, freedom. You cannot live in Moscow and fail to recognize the appeal of these elements. In short the more contact, over the long run, the less danger of conflict through misjudgment and the better the prospects for genuine change in our relations. In my judgment we have seen progress over the past 30 years. I am convinced that growing trade in non-strategic goods is a prime instrument to continue and accelerate this change.

A FEW RECOMMENDATIONS

First, consultation. Consultation means sharing the development of a policy with our allies and creating a strong vested interest in its success. As congressional leaders were fond of telling me when I represented Secretary Kissinger on the Hill, they want to be in on the take-off, not just notified when the aircraft is about to crash.

As we look back on our economic initiatives directed at the Soviet Union beginning with the Afghan invasion and subsequently in response to the repressive measures of the Polish military regime, we find very little consultation. Instead we have shown a determined go-it-alone, let's-teach-them, attitude which as predictably dissarray and weakened our Western alliance.

The importance of this mistake is not fully appreciated. Our alliance is voluntary. Our allies include modern nuclear weapons in their arsenals and their populations are more or less united in opposition to Moscow. The so-called Warsaw Pact allies on the other hand cannot be trusted with modern weapons and their populations are fundamentally hostile to Moscow's enforced hegemony. Any action which diminishes the efficacy of our alliance and thereby the value of this strategic advantage must be viewed with skepticism.

Second, I have touched on the criticality of hard currency in the Soviet economic system. Moscow's hard currency shortage does constitute vulnerability. While small in volume, foreign equipment does provide the critical extra element which frequently saves individual Soviet economic projects from failure. It is essential in considering Western credit financing policies to work until we succeed in developing an allied consensus. A common Western credit policy designed to cut back and eventually abolish subsidized financing would force the Soviet Union to pay the true economic price of trade. In fact a good argument can be made and has been attempted by past Administrations to apply that principle to all trade with all nations.

Finally, I strongly recommend that we eschew, once and for all, actions which amount to no more than a sunni rain dance; and event which has no effect on the weather, but brings a certain sense of comfort to the members of the tribe. Empty gestures, unilateral actions which ignore the economic and political realities of the Soviet Union are not the way to influence Soviet policy. In fact they undercut our credibility with Soviet policymakers, with our allies and contribute to the danger of Soviet miscalculation as to our will-power and national determination.

## RETIREMENT OF TOM NATCHURAS

### HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LaFALCE. Mr. Speaker, I recently had the great honor of attending the retirement dinner of Tom Natchuras, a long-time friend and the regional director of the UAW's region 9, which includes New Jersey and most of New York and Pennsylvania.

Tom, who began as a union welder more than 33 years ago, has a long and distinguished record of service to the labor movement. For many years he worked in the Chevrolet forge plant in Tonawanda, NY, and served there as the president of UAW Local No. 846 from 1959 to 1963.

Having watched Tom's career and having known him as a friend, I can strongly attest to his great record of public service, but I do not have to—Owen Bieber, the president of the UAW, did just that at Tom's retirement dinner. At this point, I would like to share with my colleagues his remarks.

REMARKS OF UAW PRESIDENT OWEN BIEBER AT TOM NATCHURAS' RETIREMENT

I'm very happy that the many friends of Tom Natchuras, both in and out of the UAW, took the time and made the effort to honor him in this fashion.

And I'm even happier that I am able to take part this evening.

I don't have a big speech to make, but I do have some feelings to share about Tom.

Our world needs more people like Tom Natchuras, and let me tell you why.

We have too many people in high-profile positions in our culture—both in public life and in private endeavor—who seem to think that leadership consists of making lots of noise.

Tom's career shows how a leadership style that is quiet but persistent is more effective over the long haul.

We also have too many so-called leaders whose mouths start running before their brains kick in.

But Tom has taught all of us who care to learn from him that the important thing is thinking clearly about an issue or a project before we start to speak.

Finally, we have too many people whose convictions seem to change as fashions change through the years.

They found it easy, for example, to rethink and re-evaluate their former liberal values when the 1980s came along.

But Tom's example shows us that true convictions run much deeper than the fashions of the moment—that if convictions mean anything at all, they shape and inspire an entire lifetime of service and action.

We in the UAW have always liked to claim that there's something special about our organization, but we can't quite define what that special quality is.

Well, let me tell you, I can't either.

But I think if you look at someone like Tom Natchuras, you get a pretty good idea of what's best about the UAW.

As I said, the man's got brains and he's got convictions, but he wears them lightly. He doesn't bear down on you with them; he simply lives them.

Perhaps more to the point, his approach helps us understand what we mean by the UAW's tradition of social unionism.

No one has understood and promoted the workplace agenda of the union more than Tom.

Starting 33 years ago when he hired into Chevrolet Forge in Tonawanda, he has fought and fought hard for what workers need as workers: decent pay and benefits, fair treatment, and a voice in the workplace.

But Tom's union activism and his understanding of what a union exists to do didn't stop here.

He knew perfectly well that a worker's needs and a worker's interests aren't defined by eight hours on the job—that the union must therefore address every area of our life.

And that means taking an active role in the community: in education and housing and health care issues, in improving recreational opportunities and winning a better deal for consumers in the marketplace.

But even beyond seeing this broader role for the union, Tom has profoundly realized and acted upon the realization that real community change only occurs when labor reaches out to its natural allies—that the labor movement is at its best as part of a total movement for far-reaching change in society.

If there's a single insight, a single gift, that the UAW has brought to the modern American labor movement, it's this appreciation of what we must be about.

That's why we marched with Martin Luther King and with the Farmworkers and with the fledgling Hospital Workers before anyone else did.

That's why we entered into dialogue with the early environmental activists and those who were telling us about the perils of the nuclear arms race and the misconceived

nature of our nation's approach to providing health care.

That's why we were among the first to support the movement of public employees—teachers and municipal workers—to demand collective bargaining rights and a greater say over their working conditions.

That's why we have never felt threatened by intellectuals and university people but have treated them as potential allies in the fight for social change.

And it's this sense of where we stand and where we ought to stand in relation to other progressive forces in society that has earned the UAW the abiding respect it continues to enjoy today among many who might otherwise dismiss the union movement as irrelevant.

Twenty-five years ago, there were many inside labor, frankly, who rejected and even ridiculed the UAW philosophy as bleeding-heart do-goodism.

But now it seems we've come full circle. Our movement as a whole obviously needs allies in many quarters.

We're reaching out to find them and to make sure that the cause of labor is identified wherever possible with broad social progress.

I mentioned a moment ago that in pursuing our brand of social unionism, the UAW has given a kind of gift to the entire labor movement.

In that same sense, Tom Natchuras has given a gift to the UAW.

As our decade and our century come to a close, we're finally beginning to learn about the relative value of what is freely given versus what is paid for in cash.

For a while, it seemed like people were finding their role models by watching Lifestyles of the Rich and Famous.

It seemed like the good life was defined by lots of getting and spending.

Now the intoxication is wearing off.

We're hearing about a return to volunteerism, to living more simplified lives, to a new-found respect for persons and for the natural environment, and to careers guided to religious and community principles rather than naked individualism.

I hope this is all true, because we desperately need to come to a better appreciation of what it means to be a human being.

It's not about buying and selling. It's about giving.

And so, to one who has given us all so much, I say thank you, Tom.

You have enriched our union family and the entire human family.

We wish you and Evelyn all the peace and satisfaction you can possibly enjoy in a well-deserved retirement.

You will always be an inspiration and a friend.

Thank you very much.

## GOVERNMENT ETHICS REFORM ACT

### HON. BEN JONES

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. JONES of Georgia. Mr. Speaker, I rise in support of the Government Ethics Reform Act passed by Congress, but if this bill is signed into law, I will not accept the 1990 COLA adjustments it provides this Congress.

The Government Ethics Reform Act is supported by the President, the House Democratic Speaker TOM FOLEY, the House Republican Leader BOB MICHEL, and the House Republican Whip NEWT GINGRICH. It is also supported by the citizens watchdog group, Common Cause, and Republican National Committee Chairman Lee Atwater and Democratic Party Chairman Ron Brown. I voted for this package because it will strengthen and clarify existing House rules while imposing new restrictions on outside income and on acceptance of gifts and free travel.

The statutory changes include many of the reforms in conflict of interest laws proposed by the President, and would apply to all officers and employees paid at the GS–16 salary rate or above in all three branches. It would abolish honoraria for House Members in 1991. House Members should not receive large speaking fees from interest groups who have a direct interest in the legislation that we vote on. This practice has contributed to the public perception that this institution is controlled by special interest groups. Although the prohibition would not go into effect until 1991, I will donate all future honoraria I receive to charity.

In addition to the honoraria ban, the package would also prohibit House Members from practicing law or receiving fees for other professional services, ban House Members from receiving compensation for serving on corporate or other boards, impose a limit on all outside earned income equal to 15 percent of Members' salaries, repeal the grandfather clause that has allowed senior Members to convert campaign contributions to personal use after leaving Congress, establish a $200 limit on gifts other than from family members, and tighten the rules on travel reimbursements from private interest groups.

The reform package includes a 7.7 percent COLA increase in 1990 and a 25 percent pay raise in 1991 for House Members, judges and high-ranking Government officials. It also establishes in permanent law the principle that any salary increase must be voted on and will not take effect until after an intervening election. I am especially pleased with this change because I do not think Members should receive a raise the same Congress we vote on it. However, a COLA increase is still a salary increase, and I will not accept it this Congress. I will donate any salary increase above $89,500 to charitable causes in 1990.

## PERCY H. STEELE, JR.: OVER 26 YEARS OF DEDICATED SERVICE

### HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. STARK. Mr. Speaker, I rise today to pay tribute to Percy H. Steele, Jr., who has been president of the Bay Area Urban League since January 1, 1964. Mr. Steele will be honored this December for 26 years of dedicated service.

Percy Steele was born in Hopkington, MA on February 4, 1920. He received his A.B. from North Carolina Central University in Durham in 1944, and his M.S.W. from the Atlanta University School of Social Work in 1946.

From September 1945, to June 1946, he was a staff member and organization secretary for the Washington Urban League. In December 1947, he became the program director of the Neighborhood Housing Association and the Urban League Service Council director in Morristown, NJ. From January 1948, to October 1953, he served as the executive director of the Morris County, NJ, Urban League. He also taught sociology part-time at the College of St. Elizabeth Covent Station in New Jersey. In October 1953, he became the executive director of the San Diego Urban League until December 1963, when he took his present job as the president of the Bay Area Urban League.

Mr. Steele has received a number of awards and honors including the Omega Psi Phi fraternity "Citizen of the Year" award for 1972 and 1984, the National Association of Social Workers "Social Workers of the Year" award in 1976, the "Outstanding Community Services" award from the Bay Area Urban League Guild in 1981, the "Distinguished Services Award" from the National Association of Black Social Workers in 1987, and the "Distinguished Services Award" from the Council of Executives of the National Urban League in August 1989.

He is also a member of numerous service organizations including the Bay Area Urban League Guild, the San Francisco Association of United Way Affiliated Agency Executives, the board of directors of the San Francisco Black Cultural Center, the National Association of Social Workers, the Bay Area chapter, of the Association of Black Social Workers, the National Association for the Advancement of Colored People, the Oakland and San Francisco Chambers of Commerce, Treasurer of the Alameda County Association of Volunteer Agencies, the board of directors of the Merritt-Peralta Medical Center in Oakland, and, board of directors of the Alameda County Industry and Education Council.

Mr. Steele has been a former member of these organizations over the years: the California Association of Health and Welfare, the National Committee on Human Rights, the board of governors of the National Conference of Christians and Jews, the board of directors and trustees of the United Bay Area Crusade, the Mental Health Advisory Board for the City and County of San Francisco, board of directors of the Bay Area Chapter of the Association of Black Social Workers, and the executive committee of the United Way of the bay area.

Percy Steele resides in San Francisco and has a daughter, Loretta Steele Chatmon, and four grandchildren; Larry, Kevin, Renee, and Darryl.

Mr. Speaker, I rise today to thank Percy Steele for his outstanding service. He has served the community with dedication and distinction for 26 years. I would like to wish him and his family a happy and healthy retirement.

## A BILL TO ESTABLISH A COMMONWEALTH OF GUAM

### HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MILLER of California. Mr. Speaker, today I am joining my colleague BEN BLAZ, the Delegate from Guam, and other members of the Interior and Insular Affairs Committee, in sponsoring a bill to establish a Commonwealth relationship with the Territory of Guam.

This legislation was drafted by a commission and it reflects the aspirations of the people of Guam as reflected in a 1987 referendum.

I have sponsored this bill at the request of Congressman BLAZ because it reflects the political status objectives of the people of Guam.

I have strong concerns about several provisions in this bill. My concerns are shared by other sponsors, including Congressmen UDALL and DE LUGO. They have articulated these concerns to Guam's leaders on several occasions and I don't need to repeat them here. I do not want those advocating this bill to be misled by my cosponsorship and to think that I have changed my mind with respect to these concerns.

It is my hope that these reservations can be corrected as the bill is considered by the Congress and that legislation acceptable to all parties can be enacted quickly.

## TRIBUTE TO JOSEPH AND THERESA MATULA

### HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LIPINSKI. Mr. Speaker, as the Thanksgiving holiday draws near, I would like to direct the attention of the Members of the House to two people who may truly be thankful. For, this weeks marks the 50th Thanksgiving holiday which Joseph and Theresa Matula will spend together as husband and wife, an accomplishment to which we must all pay respect.

Mr. and Mrs. Matula were married at St. Richard's Church on August 27, 1939, and they have lived together in the same house in Chicago's 23d ward for the past 39 years. Mr. Matula has worked for 35 years as a harvester, and both have been active in their community as members of the American Association of Retired Persons. They are also the proud parents of 6 children and the grandparents of 12 grandchildren.

The commitment the Matulas have made to one another is a testament to the strength of the American family. They may serve as an example to all of us the important role the family plays in promoting the values we all hold dear.

Mr. Speaker, I ask my colleagues to take this moment to wish the Matulas well on their 50th Thanksgiving together and to wish them well for all the days to come.

## ISRAEL AND THE ARAB STATES

### HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LEVINE of California. Mr. Speaker, Mike Royko of the Chicago Tribune is one of this country's most well-known and respected newspaper columnists. Writing with wit and style, no subject is beyond the reach of Mr. Royko's pointed pen. You certainly don't have to be from Chicago to enjoy his thoughts on a wide variety of issues.

In recent months, Mr. Royko has written two superb pieces on the Arab-Israeli conflict. The first, entitled "Come on, Arabs, Israel's a Runt," reminds us of some fundamental facts about that conflict which too many commentators choose to ignore; in short, that Israel—in spite of its portrayal by the media—remains a small state surrounded by countries which vowed to destroy her at her birth and which have reiterated that view in word and deed for over 40 years.

The second piece is a response to a reader of Mr. Royko's who criticized one of his columns on terrorism and Israel. It provides an excellent juxtaposition of Israel—a democratic ally of the United States which daily must face terrorist threats—and certain Arab countries, who continue their campaign of delegitimization of the Jewish state and who actively oppose U.S. interests in the Mideast and elsewhere.

Mr. Speaker, both articles are well worth reading and I commend them to the attention of my colleagues.

COME ON, ARABS, ISRAEL'S A RUNT

(By Mike Royko)

When I look at a world map, I sometimes wonder what the insane fuss in the Middle East is all about.

Sure, I listen to the experts the pundits and even Henry Kissinger. But then I look at the map and it still makes no sense.

If I look closely and squint my eyes, I can find a country that has about 8000 square miles. That's Israel.

To give you an idea how small that is, you could take about 40 Israels and put them together and the whole thing would still be smaller than Texas. There may be counties, even ranches, in Texas that are bigger.

Little New Hampshire, where just about everybody gets a handshake from a politician during presidential primaries, is bigger than Israel. So is Vermont. In fact, we have only four states that are smaller.

Then consider the population: about 4.4 million. There are many cities that have more people. New York is much bigger. So are London, Istanbul, Bombay and Tokyo. You could put three times the population of Israel in Mexico City. And Chicago, if you include the suburbs, is almost twice as populous.

So we're talking about a mere speck on the map.

In acreage, Israel isn't as big as Belize, Burundi, Djibouti, and is only slightly larger than Fiji, but a little smaller than Haiti.

People sometimes refer to Japan as being small. But it's almost 20 times as big as Israel, with 30 times as many people.

So when it comes to land size and population, we're really talking dinky. Why, during any really cold winter you can find more Jews in southern Florida (Seven times as big).

But if you want to talk big, just unsquint your eyes and look at some of the countries near Israel—those that have been trying to squash their tiny neighbor for the last 41 years.

Syria, nine times as big with three times as many people; Iraq, 20 times as big with 17 million people; Iran, 80 times bigger, with almost 50 million people.

Put that part of the world together and there are millions of square miles with a population bigger than that of the United States.

And most of them, at one time or another, in one way or another, with guns, tanks, terrorists or oil money, have tried to squash a country that isn't as big as Vermont.

You would think that with more than 3 million square miles of land—probably more, but I'm not that good at math—and 200 million-plus people, they wouldn't make such a fuss about what amounts to a tiny sliver of real estate and fewer people than live in many of their cities.

But instead, they've spent the last 40 years making themselves look like idiots by unsuccessfully trying to wage war on this itsy-bitsy country.

They didn't wait long. The day after Israel was first established as a state, the Arabs invaded. They expected little trouble overruning so few victims, only 800,000 at the time.

Instead Israel beat them back, making the Arabs look like some of the most incompetent warriors in history.

But they kept trying. Again in 1956, 1967, and 1973. And as Winston Churchill might have said, never have so many had their butts kicked by so few.

Looking back, the Arabs would have been wise to let Israel alone—to let them irrigate, turn arid land into something green, make greasy chicken soup and start some small industries. Who know, if the Arabs hadn't been so warlike, Isreal could have turned its energies to peaceful pursuits. And today, instead of watching a Sony, we might be looking at a 36-inch Goldberg.

Now the Arabs are irate because Israel has expanded its borders. Of course it has. It wised up. When the Arabs kept attacking and Israel chased them away, the Israelis decided that if they have to keep going through all that trouble, they might as well keep a few acres. Besides, if somebody is using nearby hills to lob shells at you, you'd be silly not to kick them off the hills.

The way the Arabs act, you would think Israel treated them the way our ancestors treated the Indians. (Actually, my ancestors can't take much credit, not being WASPs). We came here, stomped every which way, conned, cheated and slaughtered, until the whole thing was ours, from sea to oil-slicked sea.

In contrast, the land Israel has seized doesn't amount to much more than Coney Island.

But we keep hearing that the Palestinians must have their homeland. You'd think that with millions of square miles of vacant land, the Arabs could find them a homeland, the cheapskates. Jordan is right next door to Israel. It would make a fine homeland. That was the idea of creating Jordan in the first place. Lots of vacant land. Same climate. If they'd stop spending their oil money on bumbling wars, they could probably turn Jordan into something that looks like Palm Springs.

Instead, we have these vast, and in some cases, wealthy countries now entering their fifth decade of trying to take over a place you can barely find on the map.

It makes no sense. I mean, Israel doesn't even have one really good golf course.

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A man named Samir Khalil is unhappy with columns I've written about terrorism and Israel. Mr. Khalil dropped me a line that said: "Your column is a pile of (obscenity). Your true color has shown, racism, close-mindedness and dumbness."

He's not alone in feeling that way. A staggering number of people have written or phoned to call me names, especially because of a column I wrote that, in effect, supports Israel's right not to be destroyed by its large, oil-rich, heavily armed neighbors.

In a way, I enjoy hearing from them because its educational. It tells me how many people in this country have deep streaks of anti-Semitism and how many would enjoy seeing Israel obliterated. Quite a few, quite a few.

But I've also heard from others, including a man named Matthew S. Coyle, who lives in Wallingford, Conn. He said, "My daughter, Tricia, was a victim of the terrorist attack against Pan Am 103. Now, and for the rest of our lives, my wife Janice, and Tricia's sisters, Brenda and Kris (Tricia's twin) and I are victims—victims of inaction by our government, no action by Pan Am security and little action by our allies in dealing with public murderers."

I mention Mr. Khalil's letter, and that of Mr. Coyle, because I'd like to extend an invitation to Mr. Khalil and others who share his views.

If Mr. Khalil can overcome his need to pepper a letter with obscenities, I would like him to explain why it was necessary for Patricia Coyle to be murdered. And the other 258 passengers on that jet.

Miss Coyle was not involved in the conflict between Israel, Palestinians and much of the Arab world. She never wrote books offensive to any ayatollahs. Why, she wasn't even a U.S. Marine taking a snooze in a barracks when a load of explosives went off. She was just a young tourist on an airplane.

So I'd like Mr. Khalil to tell, if he can, by what twist of logic his goals are served by Miss Coyle's being blown out of the air? What has been accomplished by subjecting Miss Coyle's family to the lifelong agony of their loss?

It apparently bothered Mr. Khalil that I advocated this country's taking tough military action against Iran, Syria or any other country that supports terrorism . . . I do realize that innocent people can be killed. I realize that just as fully as those who blew up that plane realized that innocent people would be killed.

To which some people will answer: But two wrongs don't make a right.

No, two wrongs don't make a right. But that's something the person who commits the first wrong should think about. If those who hate Israel are going to wage war on innocents like Miss Coyle, they shouldn't whine about two wrongs not making a right.

Israel is not a perfect ally. At times her leaders can be infuriating in their stubbornness. And there is no way anyone can apologize for or justify Israel's use of brutality.

But if any country has a lot to be paranoid about, it's Israel. And after more than 40 years of being threatened with extermination—and fending off attacks—I find her lapses in judgement more understandable than, say, a decision to murder Miss Coyle.

Israel doesn't kill American travelers. It doesn't videotape Marines dangling from a noose or force American hostages to read pathetic farewells to their wives.

And if we do spend billions on aid to Israel, at least we have a little to show for our money.

At the United Nations last year, the top 50 recipients of foreign aid from this country voted with us 14 percent of the time. The rest of their votes on various issues went with the Soviets.

Israel voted with us 90 percent of the time. Considering that the United Nations is a useless gathering of babblers, that might not be much, but it's more than we're getting from anyone else.

So, Mr. Khalil, and others like you, take up your pen again. But this time tell the Coyle family why Patricia Mary Coyle had to die in her 21st year. Explain, if you can, this form of heroic warfare. Tell me, is it done with chin up and shoulders back?

Somehow, I doubt it.—MIKE ROYKO

## TEXAS FUND A MODEL FOR REBUILDING

### HON. GREG LAUGHLIN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LAUGHLIN. Mr. Speaker, as a member of the Democratic infrastructure caucus, it is a pleasure to bring to the attention of Congress an innovative revolving loan fund established in my home State of Texas, that is helping to tackle our growing infrastructure crisis.

In whatever category of infrastructure we examine, the facts are clear and straightforward. America has fallen dangerously behind in highway and bridge safety, in airport modernization, in water treatment capacity, and in the maintenance of our ports, canals, and rivers.

That is why it is especially gratifying to submit for the CONGRESSIONAL RECORD, the following "success story" printed in the November issue of Constructor Magazine, the Publication of the Associated General Contractors of America.

FINANCING THE REBUILDING—STATE REVOLVING LOAN FUND IS A TEXAS SUCCESS STORY

The first step in solving any problem is recognizing that there is in fact a problem. In solving America's infrastructure crisis, that first step has taken most of the nation more than a decade to make. But even as municipalities, states, and the federal government seem to have at last come to realize the need to rebuild the nation's infrastructure, policy makers from city hall to the halls of Congress must grapple with the next step in the process: how to pay for the rebuilding.

Though the need to improve the nation's wastewater treatment facility was recognized some time ago, the means by which the necessary construction projects should be funded is even now being determined. In 1972, the Federal Construction Grants Program was established under the administration of the Environmental Protection Agency (EPA). In the past 17 years the program has provided more than $60 billion in direct federal grants to municipalities to build wastewater treatment facilities.

The program had made great progress by the mid 1980s, but the nation soon realized that the federal government could no longer afford to fund all of these construction projects. To preserve the progress that had been made and to continue the building effort into the next century, the federal government and the states as well determined that the states would have to become involved in the financing of construction, and state revolving loan funds (SRF) were established.

To get these SRFs off to a good start, federal capitalization grants were to be provided, and the states were given a great deal of latitude in establishing their funds. The establishment and administration of the SRF in Texas offers a good example of how a successful SRF works and how such funds might serve as models for plans to fund other necessary infrastructure improvements.

ADMINISTRATION OF THE FUND

Texas' State Water Pollution Control Revolving Fund came into existence June 17, 1987 by an act of the state legislature. Though the program is new, it has worked well in part because of the long experience of those in its administering body, the Texas Water Development Board (TWDB). The TWDB has been providing loans for the construction of water facilities since 1959, and, in 1971, it began issuing loans for construction of wastewater facilities.

The TWDB is also responsible for the administration of federal EPA Construction Grants Program in Texas. The administration by this single agency of both the Construction Grants Program and state loan programs has been a major factor in the efficient operation of the SRF in Texas—specifically in the centralization of management decisions.

WHAT THE SRF IS

The SRF is a perpetual fund through which the TWDB provide low interest loans to Texas communities for the construction of wastewater treatment facilities. The fund is managed by the state with minimal federal oversight. The initial money for the SRF comes from federal capitalization grants, but 20 percent comes from a state match, as authorized by the 1987 Water Quality Act and state legislation.

A city, town, district, river authority, or other public body that has the authority to treat sewage and has been designated a waste treatment management agency can apply for SRF assistance. Projects eligible for SRF loans include the planning, design, and construction of secondary and advanced treatment plants and alternatives to such facilities, the construction of new interceptor sewers, and repairs necessary to reduce inflow-filtration into existing collection systems.

Also eligible are major projects to rehabilitate or replace collection systems where correction is necessary and new collection systems for substantially developed areas where adequate treatment capacity exists or is planned. The construction of reserve capacity, which was not eligible for funding in the old Construction Grants program, is eligible for SRF assistance.

HOW THE FUND WORKS

In essence, the state of Texas has borrowed funds on the bond market to finance water projects. At the same time, money is loaned to municipalities through the SRF. When the payments on the loan come back from the municipalities, the SFR uses the interest portion of the payment to pay on the bond.

These tax-exempt Water Development bonds were issued out of the state treasury to enhance water quality. They are general obligations of the state of Texas.

The state bond proceeds must remain in the Water Development Fund until they are needed for matching federal grant funds to pay a construction loan draw request. This requirement is a result of the necessity to loan state and federal funds at the same time the state bond proceeds are transferred to the SRF to provide sufficient cash flow from interest to repay the interest on the state bonds.

The 1987 legislation creating the SRF provides that the fund consist of ". . . money derived from federal grants, direct appropriations, investment earnings credited to the revolving fund, and, at the board's discretion, from any and all sources available to provide the required state match . . ."

While no "direct appropriations" have come from the Texas legislature, the legislation does:

Permit the use of funds in an existing water quality enhancement financial assistance program and a new revenue bond financial assistance program for state funding of the SRF.

Establish the SRF and its accounts outside the state treasury to allow for the administration of the SRF in accordance with federal law, as certain state laws governing state treasury funds conflicted with federal requirements for the SRF.

The state legislation permits the use of the SRF as a source of revenue for the payment of principal and interest on bonds issued by the state and deposited to the SRF. EPA policy provides that only certain interest may be used to repay state bonds used to provide the required state match. The SRF cash flows have been structured to comply with both the EPA policy and the state law.

To provide evidence to the EPA that the state could match funds for the capitalization grant, the Texas Water Development Board adopts a resolution each year committing to transfer bond funds to the SRF in amounts at least equal to the required match. This is Texas' way of providing its match in a form similar to the Federal Letter of Credit.

The TWDB establishes lending rate scales based on market conditions. The maximum term of SRF loans is 20 years after completion of the project.

WHAT THE SRF MEANS TO TEXAS

Municipalities recognize SRF loans as a solid solution to their infrastructure funding problems. This is evidenced by the increasing number of applications for loans and the desire of some local officials to take out additional loans.

In fiscal year 1989, 24 Texas water projects will receive grants totalling as much as $65 million. For fiscal year 1990, at least 86 political subdivisions in the state with approximately 120 projects have expressed interest in receiving SRF loans.

Together, the 120 projects will require more than $643 million. Five of them have either received or will receive SRF loans from prior years, and one city is seeking its third SRF loan.

## JOAQUIN G. AVILA, MALDEF AWARDS

### HON. C. CHRISTOPHER COX

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. COX. Mr. Speaker, I would like to pay tribute to Joaquin Avila, a man who has dedicated his entire professional life to the cause of civil rights. Following his graduation from Harvard Law School, Joaquin Avila joined the staff of the Mexican American Legal Defense and Educational Fund, an organization founded to promote the civil rights of Hispanic Americans. During his 11-year tenure with MALDEF, first as a staff attorney, then as associate counsel and ultimately as president and general counsel, Joaquin Avila has served as the embodiment of the MALDEF mission.

Joaquin Avila's legislative advocacy, management and public relations skills have solidified MALDEF's position as one of the Nation's preeminent civil rights organizations. His powerful advocacy has advanced the civil rights of Hispanics throughout this country, particularly in the area of voting rights. Under Mr. Avila's direction, MALDEF prevailed in a series of voting rights cases, giant steps on the road to opening the electoral process to Mexican-Americans. Since returning to private practice in 1985, Mr. Avila has continued his work on behalf of the civil rights of Hispanics.

Mr. Speaker, I join the Mexican American Legal Defense and Educational Fund in honoring Joaquin Avila and ask my colleagues in the U.S. Congress to recognize the outstanding leadership and dedication he has exhibited.

## NEBRASKA NEWSPAPER COMMENTS ON CONDITIONS IN CZECHOSLOVAKIA AND EL SALVADOR

### HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BEREUTER. Mr. Speaker, the November 21, 1989 edition of the Omaha World Herald contains two particularly interesting editorials on the situations that now exist in Czechoslovakia and El Salvador.

Because of the excellence and timeliness of these editorial comments, I request permission to share both editorials with my colleagues.

CZECH LEADERS OUT OF STEP

The brutal repression of demonstrators in Czechoslovakia was all the more shocking when contrasted with the toleration of demonstrations and public protests in neighboring Hungary and East Germany.

Czechoslovakia, which led the East bloc in the reform of communism in the late 1960s, is now, ironically, one of the most backward in moving toward change.

Czechoslovakia's government may pay a price for its truncheon-wielding violence. The Czech public responded Monday with a huge demonstration of 100,000 people—the largest public protest in the nation in 20 years. East German leader Egon Krenz canceled a state visit. The British government summoned the Czech ambassador to officially protest police beatings of British journalists. In a gesture of solidarity, Swedish Foreign Minister Sten Anderson will travel to Prague to present the Olaf Palme award to Czech human rights activist Vaclav Havel.

The police attacked Friday's demonstrators with luncheons and set police dog on them. The march was originally meant to commemorate the killing of a Czech student, Jan Opletal, by the Nazis 50 years ago.

How unnecessary the repression, was. Twenty-one years ago, Czech Communist Alexander Dubcek began a movement for transforming Poland, Hungary and East Germany. His government took tentative steps toward a free press, accountability by the Communist Party, multiparty elections and an end to Stalinist thuggery on the part of the secret police.

In 1968, the Soviets invaded. Dubcek was jailed. Now the non-violent reforms he championed are sweeping Eastern Europe. Czechoslovakia's leaders, considering Dubcek's legacy, should be leading the reform movement, not resisting it.

The brutal response of Czech leaders Gustav Husak and Milos Jakes to sensible demands for reform has backfired. A general strike has been called, larger protests planned and students inspired to organize dissent. Soon the Czech hardliners, too, may be swept aside by the remarkable tide of freedom surging through Eastern Europe.

If they had followed Dubcek's example rather than Stalin's, they could be heroes of the moment. Instead, they seem likely to go down in history as symbols of an outmoded and immoral system.

AN OUTRAGE IN EL SALVADOR

Americans should be pleased that the U.S. government was among the first to demand an investigation of the slaying of six Jesuit priests and two of their household workers in El Salvador. Americans should also be pleased that U.S. leaders haven't let the killings become an excuse to weaken the American commitment to Salvadoran democracy and human rights.

The assassination of non-combatants under cover of battle is never justifiable. But the proper reaction is to support bringing the killers to justice, not to cut off U.S. aid. As President Bush said: "This is not the time to undermine a fragile democracy that is under attack."

Fortunately, a House motion to cut U.S. aid was defeated 215-194 Monday.

Once again a torn and bleeding nation is the scene of a crime that was nearly bestial in its savagery. The priests, who had been considered sympathetic to anti-government forces, were tortured and their brains were cut away.

President Alfredo Cristiani, who attended funeral services for the victims, said those responsible will be punished. U.S. Ambassador William Walker said he was pressuring Cristiani's government to get to the bottom of reports that 30 uniformed government troops took part in the killings.

Bravo, Mr. Ambassador. And bravo to the House members who refused to let this shameful atrocity be converted into another weapon for a Marxist insurgency to use against an elected government.

## CONTINUING HUMAN RIGHTS VIOLATIONS IN YUGOSLAVIA—PRAISE FOR CONGRESSMAN WILLIAM BROOMFIELD'S EFFORTS TO REDRESS THESE PROBLEMS

### HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LANTOS. Mr. Speaker, in recent weeks we have seen how countries throughout Eastern Europe have initiated unprecedented reforms to safeguard freedoms and protect human rights. There have been only a few exceptions. The Yugoslavian Government has resisted the present wave of change and ensured that human rights violations continue to be perpetrated against its citizens.

Mr. Speaker, in the past I have spoken before the Congress to denounce the human rights abuses inflicted against ethnic Albanians. Today, I speak to you regarding the violations committed against human rights monitors of many different ethnic groups. Specifically, I cite the case of Dobroslav Paraga, an ethnic Croation, a former Amnesty International prisoner of conscience who has been incarcerated 4 years in five Yugoslav prisons for his activities as a human rights advocate.

Mr. Speaker, I commend my distinguished colleague, Congressman WILLIAM BROOMFIELD, who has championed the case of Dobroslav Paraga, and bring to the attention of my colleagues a recent Washington Post article by Jack Anderson and Dale Van Atta that echoes the outrage over the treatment of Paraga and other human rights monitors in Yugoslavia. I urge my colleagues in the Congress to give careful attention to this article, and I ask that it be inserted into the CONGRESSIONAL RECORD.

STATE PLACATES YUGOSLAVIA IN HUMAN RIGHTS DISPUTE

(By Jack Anderson and Dale Van Atta)

Where is Jimmy Carter when you need him?

He was a novice at managing a nation and put the Democratic Party into a hole that is still digging out of. But at least Carter knew a human rights violation when he saw it.

Dobroslav Paraga, a persecuted Yugoslavian dissident, thought that the U.S. Congress would recognize one too, but times, and presidents, have changed.

Paraga came to the United States last summer to plead the case of Yugoslavians like himself who are persecuted, imprisoned, tortured and some even killed for speaking out against their Communist government.

At 28, Paraga has already been in five Yugoslavian prisons for a total of four years—the first time when he was only 19. In 1980, he and his friend, Ernest Brajder, were thrown in jail for circulating a petition opposing torture in Yugoslavia. Paraga came out alive, but Brajder did not. After three days in jail, he was dead in what the State Department admits were "mysterious circumstances."

Paraga made the rounds on Capitol Hill this fall explaining the plight of those who stand up to the Yugoslavian government—a government that poses as a benign Eastern Bloc power in Western clothing. The Senate believed Paraga and passed a resolution with plenty of "whereas" and "therefore" language that didn't make the Yugoslavian government look very nice. The Senate asked Yugoslavia to investigate Brajder's death, grant amnesty to political prisoners and stop harassing Paraga.

Congressional resolutions have no binding effect on anyone, but that doesn't mean they are harmless. The repercussions of this one were felt immediately in Yugoslavia where the headlines in the state-controlled press pronounced the resolution to be "monstrous," and "direct damage to Yugoslavian and American relations."

The next thing Paraga knew, he had the U.S. State Department in a lather. In State Department parlance, the Yugoslavian leadership may be brutes, but they're our brutes. Why upset friendly relations over a little human rights issue?

By the time Paraga's resolution passed the Senate and a duplicate had been introduced in the House, the State Department was looking for ways to water it down. Rep. William Broomfield (R-Mich.) introduced the resolution in the House and still hopes that it will pass in the original version. But it is mired in the Europe and Middle East subcommittee, whose leadership got a strong talking to from the State Department and the U.S. Ambassador to Yugoslavia Warren Zimmerman.

The United States and Yugoslavia have peculiar relations—we send ambassadors to the country and they come back converts to the cause. Look at Lawrence Eagleburger, now deputy secretary of state. He was ambassador to Yugoslavia 10 years ago and used his position to sweet-talk American banks into loaning money to Yugoslavia, even though loans to East European countries were not administration policy. When he left the foreign service, Eagleburger became the American representative for Yugo, the mini-cars produced by the Yugoslavian government. And he became a director of the New York branch of a bank owned by the Yugoslavian government.

One congressional aide told our associate Daryl Gibson that when it comes to Yugoslavia, the State Department has a strong case of "clientitis"—a mother-hen attitude toward the country. An ambassador who lets a resolution like this one pass gets blamed for it in the country where he is posted, and an ambassador on the outs doesn't accomplish much. Congress couldn't care less if an ambassador is a pariah aboard, but the State Department does care.

Paraga has spent most of 1989 rabble-rousing around Western Europe and the United States about human rights abuses in his country, and he is not eager to go home without the protecting arm of the U.S. Congress around him.

Part of Paraga's problem is timing. He was pressing the House to pass his resolution when the State Department was preparing for the friendly visit last month of Yugoslavian Prime Minister Ante Markovic.

Markovic came to ask for money, but he spent much of his time defending his country against the human rights charges stirred up by Paraga. In a private meeting, Broomfield told Markovic in so many words, "If you want money, you will have to cooperate."

It isn't the first time Broomfield has bumped heads with Yugoslavia. A Yugoslavian immigrant living in his district went back to Yugoslavia for a visit and was jailed, tried and sentenced to 15 years at hard labor. His crime was that he had demonstrated in front of the Yugoslavian Embassy in Washington, D.C. Broomfield proposed a bill to deny most favored nation trading status to Yugoslavia, and the man was immediately freed.

## THE NATIONAL LAW ENFORCEMENT OFFICERS MEMORIAL HONORS FALLEN HEROES

### HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. PORTER. Mr. Speaker, I recently had the opportunity to attend the groundbreaking ceremony for the National Law Enforcement Officers Memorial and I want to share this moving experience with Members of the House. Law enforcement officers in the United States risk their lives every day to protect the rest of us. Since the founding of our Nation, as many as 30,000 of these officers have made the supreme sacrifice and given their lives in the line of duty. Today, one law officer is killed in the United States every 57 hours. A memorial in honor of the brave men and women who have served so selflessly is a mere token of our appreciation to all law enforcement personnel.

In 1984, the House and Senate unanimously passed legislation (P.L. 98-534) authorizing the construction of the memorial in Washington, DC, and giving project coordinators 5 years to choose a site, develop a design, and raise the money needed to build the memorial. More than 400,000 individuals rose to the call and donated more than $4 million to make the memorial a reality.

On October 30, 1989, in Judiciary Square—the seat of our Nation's criminal justice system for more than 200 years—construction of the memorial began. The memorial will sit amid the tranquillity of a 3-acre park and will feature the names of the fallen officers engraved in a stone wall along a tree-lined "pathway of remembrance." The highlight of the ceremony was a stirring speech delivered by President Bush and a beautiful rendition of "God Bless America" sung by Lee Greenwood.

Many individuals deserve thanks for the work they have done to make the memorial a reality, including the designer, Davis Buckley, Representative Biaggi and Senator PELL, who sponsored the authorizing legislation, and the memorial fund staff: Kelly Lang, Lynn Lyons-Wynne, Paul Marcone, Jim Peters, Robyn Porter, Don Schaet, and Becky Venaglia. Law enforcement organizations, including the Fraternal Order of Police, the New York City PBA, the National Association of Police Organizations, the Maryland Cop-to-Cop Committee, and the National Troopers Coalition, each of which contributed at least $100,000 to the memorial fund.

Most of all, however, eternal thanks and respect go to the brave men and women who have given their lives in the line of duty so that the world would be a safer place, the fallen law officers of the United States.

## BATTLE OF THE BULGE

### HON. C. THOMAS McMILLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McMILLEN of Maryland. Mr. Speaker, I rise today to honor the Battle of the Bulge Historical Foundation, and to commemorate the 45th anniversary of the battle on December 16 of this year.

Each year the Battle of the Bulge Historical Foundation holds a commemorative ceremony at the Tomb of the Unknown Soldier, Arlington National Cemetery. At this time veterans of the battle, their families, and friends pay tribute to the soldiers who never returned home.

In additon to reminiscing about this historical battle, this year the foundation will be celebrating the progress that has been made in the growth of the Battle of the Bulge gallery. Through the generosity of its members, the foundation has been able to watch the development of this gallery which will become a part of the Fort George G. Meade Museum in Anne Arundel County, MD. The gallery will house various artifacts, documents, and maps that have been preserved from the battle. The foundation will also have the honor of unveiling the patron's fund plaque which lists the names of the Battle of the Bulge veterans.

The contributions that the Battle of the Bulge Historical Foundation has given to the public, so that the memory of the battle may live on as an important part of our Nation's history, are immeasurable. I know that my colleagues join with me in extending congratulations to the foundation for its many accomplishments, and to honor the veterans of the Battle of the Bulge.

## TOASTING A SONG-AND-DANCE MAN

### HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DYMALLY. Mr. Speaker, I wish to bring attention of the Members to an article which appeared in the November 16, 1989, Los Angeles Times, Calendar Section, about Sammy Davis, Jr.

[From the Los Angeles Times, Nov. 16, 1989]

TOASTING A SONG-AND-DANCE MAN

(By Paul Grein)

Mention the name Sammy Davis Jr., to someone under 30, and the first image will probably be of a slick Las Vegas type loaded down with gold chains and oozing show-biz platitudes. Picture: Billy Crystal's wickedly funny impersonation.

That's why the all-star salute to Davis at the Shrine Auditorium on Monday was so valuable. It put the spotlight back on Davis' exceptional talents as an all-around entertainer—dancer, singer, actor and mime—and on his historical importance as one of the first black performers to achieve mainstream popular acceptance. The show was a benefit for the United Negro College Fund.

The best thing about the salute, which was taped for broadcast early next year on ABC-TV, was its integrity and sense of purpose. The event didn't come across as just another collection of big names brought together to garner a TV rating, but as a group of friends and admirers who wanted to express their affection and gratitude.

Gregory Hines, who starred with Davis this year in the film "Tap," spoke of his longtime admiration for the veteran performer. "When I was a young boy and I'd hear your name or see your name, I would just get so excited," he told Davis, who had front-row seats with his wife, Altovise. "I just idolized you."

Hines then performed a tap routine, and finally coaxed his mentor on stage for a brief tandem routine. Davis didn't speak, however, he is undergoing treatment for throat cancer.

Michael Jackson expressed his gratitude eloquently in a striking performance of the ballad "You Were There" a piece of special material that he wrote with Buz Kohan, the writer of the show.

In a dramatic, semi-spoken style, Jackson sang, "Thanks to you there's now a door we all walk through/I am here 'cause you were there."

Eddie Murphy, Whitney Houston and Anita Baker were among other stars who turned out to thank Davis for blazing a trail for black performers. The Rev. Jesse Jackson, too, spoke of Davis' role in "chipping away at walls" that have held back blacks.

Davis, who has been in show business for 60 of his nearly 64 years, has appeared in 23 films and in numerous Broadway productions, including "Mr. Wonderful" and "Golden Boy." But it was Davis' charter membership in the so-called Rat Pack of the late '50s and early '60s that most vividly symbolized his quest for equality and mainstream acceptance.

Davis' involvement in the Rat Pack (which also included Frank Sinatra, Dean Martin, Shirley MacLaine, Joey Bishop and Peter Lawford) was recalled Monday through a film clip of the Pack in concert at the Sands Hotel in Las Vegas—with Sen. John F. Kennedy at a ringside table.

There were also live appearances by three Pack alumni.

Sinatra, leader of the Pack, opened the show with a nostalgic "Where or When" and told Davis, "You're my brother." A frail-looking Martin, who bowed out of a high-profile 1988 reunion tour with Sinatra and Davis because of ill health, read some mock telegrams. And MacLaine sang a tender, intimate version—with specially adapted lyrics—of "If They Could See Me Now," a song from the 1969 film, "Sweet Charity," in which MacLaine and Davis starred. MacLaine also recalled her thoughts the first time she saw Davis perform: "Never had so much come out of something so small for so long."

The show's producer, George Schlatter, made excellent use of video clips highlighting Davis' career. There was the classic 1972 "Sammy's Visit" episode of "All in the Family," with Milton Berle and Jack Benny, and a 1968 appearance with Goldie Hawn on "Laugh-In."

Hawn was also there in person, recalling Davis' kindness on the "Laugh-In" set—and in an earlier meeting when she was a struggling go-go dancer. She also sang a lovely version of the ballad "True Colors."

Eddie Murphy was a gracious and effective host, peppering the proceedings with low-key humor and doing spot-on impressions of guests Bill Cosby and Stevie Wonder. Wonder performed Davis' 1969 hit "I've Gotta Be Me," and added that the song's message of personal growth through risk meant a lot to him when he was coming of age musically two decades ago.

The show's generous and respectful tone was dramatized when Murphy and Michael Jackson teamed to escort Ella Fitzgerald to the stage. Physically frail but vocally strong, Fitzgerald sang "Too Close for Comfort," a song from Davis' 1956 Broadway hit "Mr. Wonderful."

Other performance highlights: Anita Baker sang a sultry version of "Summertime" from "Porgy and Bess" (Davis appeared in the 1959 film version). Whitney Houston and Dionne Warwick also sang, while Gregory Peck and Clint Eastwood gave personal appreciations. Tony Danza tap-danced amiably to an instrumental version of Davis' 1972 smash "Candy Man." Bob Hope misfired on an ill-advised one-liner about the Ku Klux Klan. Sports stars Mike Tyson and Magic Johnson added their perspectives on Davis.

And, toward the end of the three-hour show, Richard Pryor commented on the "billion dollars' worth of talent" that was gathered backstage. (On this night, that was probably an understatement.)

The most revealing clip was one of Davis on a talk show in the mid-70s talking about "Mr. Bojangles," Jerry Jeff Walker's ballad about a once-great song and dance man who has fallen on hard times. A 1971 hit for the Nitty Gritty Dirt Band, the ballad has since become Davis' signature song.

"That's my fear, that I'll wind up like Bojangles," Davis said in the clip. "One night in Vegas I said, 'Oh my God, that's how I'll be when I'm 70 years old. I'll be working little joints and I'll talk about what I used to be and that'll be the end of it.' "

Which goes to show that, although Davis is a great dancer, singer, actor and mime, he's a lousy prophet.

## A TRIBUTE TO DEPUTY FIRE CHIEF DONALD T. DREISBACH

### HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. STARK. Mr. Speaker, I rise today to pay tribute to Deputy Fire Chief Donald T. Dreisbach. Chief Dreisbach is retiring from the Hayward Fire Department in California's Ninth Congressional District after 28 years of dedicated service.

Chief Dreisbach began as a firefighter, then rose through the ranks of the department serving as fire captain, battalion chief, before finally holding his present position of deputy fire chief. Chief Dreisbach also served as fire chief in an acting capacity for 6 months.

Chief Dreisbach's leadership and dedication to the Hayward Fire department and the community of Hayward have been instrumental in the development of the department into the fine organization that it is today.

Mr. Speaker, I would like to congratulate and to commend Deputy Chief Donald T. Dreisbach for his outstanding service to the city of Hayward. I would also like to wish Chief Dreisbach and his family a happy and healthy retirement. He certainly deserves it.

## SALUTE TO WALLY RALSTON

### HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SMITH of Florida. Mr. Speaker, I know there are often complaints about mail service, but I feel compelled to call your attention to a unique act of bravery that occurred in my district. It is the story of Wally Ralston of Cooper City, FL, who while serving as letter carrier in my district, saved the life of Arthur Rogge.

With so much hostility in the world, it is refreshing and reassuring that people will go above and beyond what is expected of them to help others. Those who risk so much should be an inspiration to us all.

At the end of my remarks I am enclosing an article from the November issue of the Postal Record which describes the events surrounding Mr. Ralston's achievement. I ask you to join me in a salute to Wally Ralston, a man whose courage deserves this country's admiration.

[From the Postal Record, November 1989]

DISABLED MAN SAVED FROM SWIMMING POOL

Aware that a patron on his Miramar, Florida route uses a wheelchair and walker due to crippling rheumatoid arthritis, Wally Ralston makes it a point to check on Arthur Rogge while making his daily rounds. One day recently, Ralston heard cries for help from Rogge's house.

"Where are you?" he called.

"In the pool," replied Rogge. Hurrying to the back yard, the South Florida Branch 1071 member found his patron clinging to the side of the pool, struggling to keep his head above water. He had lost his balance and fallen from his walker into six feet of water.

Ralston managed to maneuver the man to the shallow end and hoisted him to safety. "He had been going up and down—down for the third time," the carrier recalled. "He was very pale. If no one had found him, he would have eventually drowned."

Paramedics responded to the crisis and praised the letter carrier for his quick thinking and prompt actions.

## REVEREND CRUTCHER WILL BE MISSED IN KNOXVILLE

### HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DUNCAN. Mr. Speaker, Rev. William T. Crutcher, of Knoxville, TN, passed away on November 5, 1989. Reverend Crutcher served as the pastor of Mount Olive Baptist Church since 1935.

Reverend Crutcher was a close friend of both mine and my father. He was at one time a legal client of mine. My family will dearly miss Reverend Crutcher.

Reverend Crutcher played a key role in the civil rights movement in Knoxville. Largely due to the efforts of Reverend Crutcher, the integration of Knoxville came about peaceably.

I am saddened by the death of Reverend Crutcher, as are many people whose lives he has touched. He already is greatly missed in east Tennessee. The Knoxville area has suffered a great loss with the passing of Reverend Crutcher.

Reverend Crutcher was one of the finest men I have ever known. I know that his family and many friends will miss him very much.

I ask that the editorials about Reverend Crutcher which appeared in the Knoxville News-Sentinel and the Knoxville Journal newspapers be reprinted in the RECORD.

[From the Knoxville News-Sentinel, Nov. 7, 1989]

REV. DR. W.T. CRUTCHER

Knoxville lost one of its strongest religious and civic voices with the death Sunday of the Rev. Dr. W.T. Crutcher, longtime pastor of Mount Olive Baptist Church and chairman of the Knoxville Transportation Authority.

Crutcher, who was 82, was a native of Stevenson, Ala. He graduated from A&M College in Normal, Ala., and received an honorary doctorate of divinity from Simmons University of Louisville, Ky. He had been pastor of Mount Olive since 1935 and was widely known nationally and internationally for his denominational and civic work.

He was chairman of the National Baptist Sunday School, Publishing Board and a trustee of American Baptist College in Nashville. He was a board member of the National Baptist Convention U.S.A., Knoxville Inner-City Churches United for People and the National Conference of Christians and Jews. He also had served as president of the Knoxville Ministerial Association and the Knoxville Round Table of Christians and Jews; he was chairman of the religious task force of the 1982 World's Fair, instructor of the first bus-ministry seminar at the National Baptist Congress, president of the Baptist Pastors Conference of Knoxville and president of the Tennessee Baptist Missionary and Education Commission, which he implemented in the Knoxville area. He also was chosen as speaker of the National Baptist Convention in 1954 and again in 1971.

In addition to his work with KTA, Crutcher's civic role included membership on the Mayor's Committee on Human Relations, the Governor's Civil Rights Commission, the Knoxville Salvation Army board and the Knox County Personnel Commission.

Among his many contributions to the Knoxville area was his involvement in the civil rights activities of the 1960s, especially through his work with the local unit of the National Conference of Christians and Jews. He was honored with the Brotherhood Award from that group in 1968, and he was remembered years later for his work toward good race relations during that era.

Knoxville businessman James Haslam II, speaking in 1986, pointed to the efforts of Crutcher and Dr. James A. Colston, former president of Knoxville College who died in 1982, and their work with the NCCJ. "This organization was at the forefront of harmonious relations," Haslam said. "It helped solve our problems in Knoxville. In the tough times, Drs. Colston and Crutcher were there, and we tend to forget that."

Crutcher will be missed by many, but his impact on the religious and civic life of Knoxville will be lasting.

[From the Knoxville Journal]

REV. WILLIAM CRUTCHER: RIGHTS CHAMPION FOR ALL

The Rev. William T. Crutcher—pastor, promoter of human rights for all people and lifelong campaigner for the cause of racial equality—has died at age 82.

As perhaps the most effective single leader in the civil rights movement in Knoxville, Crutcher was in on the soup course before the salad days of the 1960's. In many ways, he helped set the menu for the introduction of the changes in federal law that brought racial desegregation to public institutions here.

Crutcher's service to the Knoxville community and its people, both black and white, took many forms. He turned down few challenges and created some for himself as opportunities arose for appointments on agencies, boards and commissions involved in a wide variety of religious, civic and business affairs.

When he became the first black to be elected president of the Knoxville Ministerial Association in 1955, it was also a first for any Southern city. He took good advantage of his broad contacts across what were then distinct racial lines to become one of the chief negotiators of racial issues as they came to the fore.

A staunch advocate of non-violence in the civil rights movement, he often stood in the middle. The firmness of his demands made him the target of abuse from resistant whites. And the growing "black power" factions within his own race accused him of being not radical enough, or worse. It was a tough spot to be in, and he did not shrink from it.

Crutcher always gave white leaders credit for any efforts toward integration or concessions beyond the legal requirements that they helped engineer. He was laudatory of the mayors of the period, Leonard Rogers and, particularly, John J. Duncan Sr., for their important gestures in behalf of civil rights. In return, he helped maintain racial calm when sentiments were high. But he never turned from the struggle.

A native of Alabama, Crutcher came to Knoxville in 1935. He was pastor of the 133-year-old Mount Olive Baptist Church for 54 years until his death. He was a powerful member of the National Baptist Convention USA, serving on its board of directors.

The list of other director- and trustee- and adviserships Crutcher held is a lengthy one. It included schools, church seminaries and hospitals. He was chairman of the Knoxville Transit Authority, a member of the Knoxville Human Relations Commission and the Knoxville-Knox County Community Action Committee.

He was a recipient of the Brotherhood Award of the National Conference of Christians and Jews, the Mayor's Minister of the Year and Knoxville Man of the Year awards.

And he gave personal attention and counsel to thousands of people, young and old, black and white, in a lifetime of caring about their spiritual needs and their inviolable rights as individuals. Crutcher's death is an occasion for all Knoxville to mourn.

"We are a poorer city because of his passing, but we are richer and stronger because of the man he was and the many things he accomplished," said Mayor Ashe. Amen.

## SALUTE TO CARL H. LINDNER

### HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McEWEN. Mr. Speaker, I rise to note and share with you and our colleagues the news of the inauguration of a most noteworthy award. It is an award that, in time, will be all the more exalted and coveted by virtue of the example set by the person who has been selected to be its first recipient.

The Hebrew Union College-Jewish Institute of Religion [HUC-JIR] in Cincinnati, OH, in celebration of the four-decade mission of its Interfaith Graduate School, has established an award which recognizes the contributions of an individual whose work and motivation mirrors that of the school itself. This fine academic organization is ever intent on expanding its role as a cornerstone in interfaith study, training and research. More fundamentally, the fulfillment of that role equates to a broader understanding and cooperation among people of all faiths, for the sake of serving their community and the world, and making them better for all.

The HUC-JIR and Cincinnati Associates have established the Interfaith Award to take special note of an individual whose achievements have touched many sectors of his community in a positive way. The selection process attempted to identify a person who would personify the themes of decency and service to all, and I think that process was rewarded with success.

Mr. Speaker, we would all do well to recognize and become familiar with the First HUC-JIR Interfaith Award winner, Carl H. Lindner, who sets an example worth emulating by all. Carl Lindner is chairman, chief executive officer, and founder of American Financial Corp. He is an active participant and contributor on behalf of many community causes and ecumenical endeavors. His prominence and active participation in the Cincinnati business community is exceeded by his many philanthropic and civic interests.

Carl Lindner's devoted and dependable service on a number of charitable, political, and cultural boards, to which he brings endless energy and enthusiasm, tends to confirm the adage: "If you want something done, assign it to a busy person."

Carl certainly does keep busy, as his previous awards—the Golden Plate Award, the Van Rensselaer Medal, United Jewish Appeal's Man of the Year for 1978, and National Jewish Hospital Honoree—clearly attest. In addition to those notable accolades, I am proud to note his selection as the First Hebrew Union College—Jewish Institute of Religion Interfaith Award.

Wherever this caring citizen goes, he brings a concerned interest in his fellow man, and in those pursuits which enrich our earthly existence: culture, education, employment, and the like. By his example, he has demonstrated how religious faith—far from being an agent for dividing or categorizing the human family—can unite mankind in collective pursuit of goodness and justice.

The city of Cincinnati has already celebrated Carl Lindner's selection for this richly deserved award, and I invite you and our colleagues to join me in following suit. I also wish to append to my remarks the thoughts expressed by those who were most responsible for selecting Carl Lindner for this most distinguished honor:

HEBREW UNION COLLEGE—JEWISH INSTITUTE OF RELIGION, FIRST INTERFAITH TRIBUTE AWARD, PRESENTED TO CARL H. LINDNER

Carl H. Lindner, a native Cincinnatian, has devoted himself to enriching the quality of life of all sectors of his community. His exemplary sense of community has precipitated a continued commitment to civic, philanthropic, humanitarian and ecumenical interests.

His dedication to the ideals of equality, justice and the perfection of the world has promoted opportunities for education, cultural experience and employment, regardless of race or creed. He has fostered cooperation among religious denominations through his active participation in, and philanthropic contributions to, a wide spectrum of community causes and ecumenical endeavors.

Hebrew Union College—Jewish Institute of Religion pays tribute to Carl H. Lindner in recognition of these notable achievements and his exceptional leadership with the presentation of the first Interfaith Tribute Award.

October 29, 1989.

RICHARD J. SCHEUER, *Chairman.*

Tishri 30, 5749.

ALFRED GOTTSCHALK, *President.*

## FIRREA

### HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LAFALCE. Mr. Speaker, at the time that the House acted on the conference report on the thrift legislation in August, I strongly opposed the conference agreement and urged my colleagues to do the same. In my view, there were a number of substantive problems with the proposal. But my most fundamental objection was a procedural one.

We were forced by circumstance to proceed rapidly. However, I argued at the time that a procedure which often required the conferees to deliberate and make decisions in terms of general concepts, without benefit of statutory language, on such a complex and highly technical matter as the restructuring of the thrift industry was an unduly risky approach to take.

I believe events have borne me out: The legislation has some serious flaws, major changes in policy slipped by unnoticed, and confusion has been rampant regarding basic issues. Let me give you some examples.

FUNDING

It is already clear that the $50 billion provided is not sufficient—certainly not in the short term because of the RTC's working capital needs, and possibly not even in the long term, if the administration's projections about the ultimate return on assets proves yet another overly optimistic assumption.

It was clear from the beginning that the proceeds from asset liquidation were intended to provide one source of income with which the RTC could conduct its operations. However, the RTC faces an impossible dilemma. If it sells assets too quickly to procure necessary funds, it risks destabilizing local real estate markets that are already depressed. If it holds the assets, it is faced with the costs of holding and is denied funds it needs to proceed. If it slows the pace of case resolution to match the pace of asset disposition, it incurs additional costs by keeping insolvent institutions in operation longer than is necessary.

Clearly, at least in the short term, more funds are required than the administration has requested and the Congress has authorized. Ignoring that fact in our deliberations has only served to delay badly needed action by the RTC. There are still fundamental issues which remain unresolved regarding how those funds are to be procured.

RTC BORROWING

Predictably enough, the RTC attempted to devise schemes under which it could borrow to meet its working capital needs. One proposal under consideration would have involved the creation of a bridge bank through which the RTC could issue securities to the public, backed by the assets it held, up to 85 percent of the fair market value of those assets. The obligations of that bridge bank were to be guaranteed by the RTC, whose obligations are in turn backed by the full faith and credit of the U.S. Government.

This proposal, which appeared yet another administration off-budget financing scheme, generated a heated reaction from many of us in Congress. As a result, the RTC has backed away from this approach, and how the RTC will now meet its working capital needs remains unclear. But the debate over this issue points out yet another problem with the legislation. Once again, the Administration was attempting to devise off-budget financing mechanisms to hide real costs, and it was the lack of clarity in the legislation that provided them with the opportunity to do so.

The discussion of the working capital issue is all the more ironic because the provision which the RTC argues gives it the authority to borrow up to 85 percent of the fair market value of assets held through the issuance of securities to the public—a quite expansive authority—results from a provision that the conferees originally conceived as a tight limitation on RTC borrowing authority.

Arguably, there is a limitation, but it is hardly a tight one. In the absence of market transactions, estimating the fair market value of assets held is at best a "guesstimate", at worst, a circumstance fraught with peril for the taxpayer. If the assets are ultimately worth less than the RTC estimates, the taxpayer would be at risk for the difference because of the government guarantee backstopping the RTC's obligations. It is a very real, and a very serious, risk that must not be underestimated.

FULL FAITH AND CREDIT

Which brings me to yet another issue. Where did this guarantee of the Government's full faith and credit come from?

When FSLIC was under severe financial pressure, it issued notes far in excess of its ability to pay. The value of those notes came increasingly into question, and whether or not

those notes had the backing of the U.S. Government became a matter of serious controversy. As a matter of Congressional decision, that issue was never resolved. As a practical matter, the bailout legislation forced the American taxpayer to backstop those notes.

Given that background, surely any decision to extend the full faith and credit of the U.S. Government to RTC obligations would have been expected to be a matter of extensive debate and significant controversy. In fact, it was not. Neither the House nor the Senate bill originally placed the full faith and credit of the U.S. Government behind all RTC obligations. That determination was made at some late point in the conference, with no debate. I suspect the reason for no debate was the lack of knowledge that such a provision, contained in neither the House nor Senate final versions, somehow was placed in the conference report. As was the case with the FSLIC notes, the potential is now there yet again to obligate the taxpayer beyond the $50 billion authorized by the Congress.

Congress must ensure that any plan the RTC develops for procuring working capital does not create financial obligations for the Government or the taxpayer beyond those contemplated by the Congress and that any additional money beyond the $50 billion authorized to "fill the hole" must receive congressional authorization and proper budgetary treatment. The situation in which massive taxpayer obligations were incurred in FSLIC's desperate search for liquidity must not be repeated.

Certainly, we want the least cost solution. And that may necessitate the placement of a Government guarantee behind RTC borrowing so the agency does not pay an unnecessary premium. But, if that is the case, we must clearly acknowledge what we are doing—committing government funds and potentially burdening the taxpayer with additional obligations beyond the $50 billion.

It is not a sufficient safeguard for the American taxpayer to tell him that his obligation is not increased because someday the money his Government has expended in his name will flow back into Government coffers through asset sales. If we are lucky and the administration's current estimates are accurate, yes; if not, the taxpayer may have to ante up even more money. That risk is real and must be treated as such. Every dime for which the taxpayer could be held accountable, however, unlikely that liability may seem now, must be authorized by Congress in advance and must be counted on-budget.

CONCLUSION

I believe there is a good chance that we might have to revisit the thrift issue again next year, and the next bill could well be driven by the need for even larger amounts of money.

Certainly, in the short term, more funds will be required. The question is whether we will address that issue head on or devise off-budget financing gimmicks to hide the real size of the problem. In my view, the choice is clear. One route that should be explored to recognize and fund this obligation is an increase in RTC's authority to borrow from the Treasury. That is the clearest way of minimizing the cost and clearly recognizing the obligation. Optimally, I believe we should not be relying on borrowing at all, but should fund this bail-out program through new taxes or cost savings realized elsewhere.

Most importantly, whatever the approach, there must be no more surprises for the American taxpayer.

## VETERANS BENEFITS AMENDMENTS OF 1989

### HON. BEN JONES

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. JONES of Georgia. Mr. Speaker, I rise in strong support of H.R. 901, the Veterans Benefits Amendments of 1989.

H.R. 901 provides a 4.7-percent cost-of-living adjustment [COLA] in rates of disability compensation for veterans with service-connected disabilities, and in rates of dependency and indemnity compensation. As a member of the Compensation, Pension, and Insurance Subcommittee, I appreciate the efforts of my colleagues to ensure that this COLA is effective December 1, 1989.

H.R. 901 also establishes a new revolving fund, the Guaranty and Indemnity Fund. I have the privilege of serving on the Housing and Memorial Affairs Subcommittee. The subcommittee received extensive testimony and held field hearings on the establishment of a new fund. The positive result contained in H.R. 901 will give the Home Loan Guaranty Program a more stable funding mechanism, and will ensure that veterans continue to receive the assistance which they have earned.

Mr. Speaker, I can not emphasize enough the importance of the Veterans Home Loan Program to the State of Georgia. Since the program began in 1944, there have been over 325,000 guaranteed home loans in Georgia, worth over $9 billion.

In the Fourth Congressional District, which I represent, there have been over 96,000 Department of Veterans Affairs [DVA] home loans over the past 45 years, with a total property value approaching $2.5 billion. So far this year, there have been close to 500 DVA home loans worth $37 million made to veterans in the Fourth District.

This important program makes home ownership possible for the thousands of veterans in the Fourth District, as well as the millions of veterans across this country.

The Guaranty and Indemnity Fund makes good sense in this period of tight budgetary constraints. The Congressional Budget Office estimates that $195 million in interest would be generated in the first 5 years following enactment. It is also estimated that the new funding mechanism could save the DVA $2 billion over a 10-year period.

I am disappointed that more of the original health care provisions of H.R. 901 and H.R. 1199 are not contained in this measure. The DVA is currently experiencing a nursing deficiency greater than 10 percent. While the assistance contained in H.R. 901 is helpful, more must be done to alleviate the nursing shortage.

This legislation increases by 7.5 percent the rates of subsistence allowance for service-connected disabled veterans participating in rehabilitation programs, as well as a 7.5 percent increase in the rates of educational assistance for survivors and dependents of service-connected disabled veterans.

Mr. Speaker, I commend the members of the Veterans Affairs Committee, and especially Chairman MONTGOMERY, for all of their hard work and dedication of behalf of this important legislation. H.R. 901 will truly benefit the 28 million American veterans, and I urge its favorable passage.

## PUBLIC SERVICE FOR EDUCATION: LINDA TANGREN

### HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. STARK. Mr. Speaker, today, I rise to pay tribute to Mrs. Linda M. Tangren who is resigning today after 7 years of service on the Castro Valley Unified School District Board of Education in California's Ninth Congressional District. She is leaving the board in order to serve on the South County Community College District Board.

Mrs. Tangren was a member of the board from 1982 to 1989 and served as president in both 1985 and 1988. At the present time, Mrs. Tangren is the board's representative to the Alameda County School Boards' Association as well as the board liaison with the Hayward Area Recreation and Park District.

At the elementary level, Mrs. Tangren served as the president of Parents Club in Castro Valley and chaired the School Site Councils at both the elementary and high school levels.

Mrs. Tangren has also been involved in a number of other organizations including the League of Women Voters, the chamber of commerce, the Castro Valley Breakfast Club, the Castro Valley Lioness Club, and, the Castro Valley Rotary Club. She has also served as the State chair of the National Women's Political Caucus and was a founding member of the Castro Valley Educational Foundation.

Mr. Speaker, I would like to congratulate and to commend Mrs. Tangren for her continuing dedication to education in Castro Valley and throughout the East Bay communities.

## TRIBUTE TO MILTON AND MYRNA JACOBS

### HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LANTOS. Mr. Speaker, I rise today to pay tribute to Milton and Myrna Jacobs, who will be honored as recipients of the Jerusalem Award by the American Committee for Shaare Zedek Medical Center in Jerusalem. Founded in 1873, Shaare Zedek is one of the oldest and finest medical facilities providing care in keeping with Jewish traditions. Milton and

Myrna Jacobs are being rightfully honored with this recognition of their outstanding commitment and contribution to the work of Shaare Zedek.

Milton and Myrna Jacobs are both San Francisco natives. They work together in Milt's busy law practice, and also involve themselves in a number of civic activities and community organizations. Among other endeavors, Myrna participates in the drama service of National Council of Jewish Women, presenting productions for handicapped children and adults.

Milt has devoted much of his life to the B'nai B'rith organization. He has served as president of several lodges and as a member of the International Board of Governors for 10 years. He currently serves as Anti-Defamation League National Commissioner and as president of the Regional Advisory Board of ADL, as well as president of Sinai Memorial Chapel in San Francisco. Milt also served as the first president of the Northwest Region of Shaare Zedek.

Mr. Speaker, the Jacobs' dedication to philanthropy, both for causes in the bay area and in Israel, make them most noteworthy recipients of the Jerusalem Award. I invite my colleagues in the Congress to join me in paying tribute to them on this occasion when they will be honored for their outstanding efforts.

## RHETORIC WON'T WIN DRUG WAR

### HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SMITH of Florida. Mr. Speaker, Richard W. Fisher, chairman of the Institute of the Americas, wrote one of the most insightful articles about the current drug war in the Dallas Morning News on October 15, 1989. Mr. Fisher's article skillfully analyzes both the problems with and the solutions to America's war with drugs. Finally, someone else is touching upon the issues that I have been emphasizing for years. I urge all of my colleagues to read the attached article carefully.

[From the Dallas Morning News, Oct. 15, 1989]

RHETORIC WON'T WIN DRUG WAR

(By Richard Fisher)

In the past few weeks, we have been bombarded with some remarkable assertions regarding the Latin American drug cartels. Testimony before the Senate has revealed that the narco barons have considered using submarines to smuggle cocaine into the United States. Jack Anderson has reported that narco terrorists are plotting attacks against U.S. nuclear power plants in retaliation for Washington's anti-drug campaign. The president's children have been placed under Secret Service protection. The governor of Florida is rumored to be on the Medellin Cartel's hit list.

Many of these allegations have a chilling ring of plausibility, however lunatic. Others are no doubt evidence of nothing more than panic and fear of the unknown. Yet all are manifestations of a sudden recognition that the Latin narco powers pose a real and dreadful threat to our collective well-being.

There is a pathetic irony in all this. After 40 years and countless billions spent fighting the Soviet threat, we find our national security under frontal attack from an entirely different quarter. On the eve of our victory in the Cold War, we have suddenly realized that we are at risk of losing the Drug War.

To be sure, our newfound enemy does not possess the capacity for nuclear attack. It does not have troops massed along our frontier. Yet it is nonetheless threatening. Indeed, it already has accomplished what the Soviets and the Nazis before them never accomplished. It has invaded our territory, placed armed agents on our soil, taken hundreds of thousands of Americans prisoner and set in motion a frightful challenge to the American way of life.

The president and Congress are close to agreement on a program to combat the narco threat. Much is being made of its domestic components. Little has been focused on its foreign policy content. We cannot expect to overcome this threat by depending alone on "kinder and gentler" approaches to education and treatment and a "tough love" approach to law enforcement and interdiction. Severe measures must be taken on the supply side. We must isolate the enemy, attack with every means at our disposal its production, distribution and financial supply lines, and destroy it outright.

We might start by tightening up some diplomatic initiatives. The United Nations adopted the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in December of last year. The convention calls for "criminalization of the production, cultivation, transport and trafficking of cocaine, heroin, marijuana and other dangerous drugs." It also lays the groundwork for criminalization of money laundering and trafficking in chemicals used to refine drugs, and provides for seizure of assets, extradition of traffickers and transnational transfer of criminal proceedings.

The Senate has yet to ratify the convention. Nor has it ratified the mutual legal assistance treaties that would enable U.S. law enforcement authorities to obtain evidence abroad for admission in U.S. courts and facilitate extradition agreements and strong asset seizure measures. Both should be ratified immediately, as is being urged by the president.

On the trade front, an export control mechanism must be developed by Washington along the lines of that which we have used to control potential strategically harmful exports to the Warsaw Pact. The Chemical Diversion and Trafficking Act of 1988 establishes a system for controlling chemical shipments which might be diverted to the illegal drug trade. But it needs to be strenghthened and expanded. Most of the cocaine smuggled into the U.S. continues to be processed with chemicals exported by U.S. companies. Most of the automatic weapons used by the narco thugs to wage war against their governments are of U.S. manufacture. Their export must be stopped. An international agreement must then be forged to prevent others from filing the gap.

The U.S. intelligence agencies must become fully engaged in this war. At home, drug traffickers must be sought out with the same intensity as foreign spies. And, as with foreign agents caught in acts of espionage, drug traffickers, once caught, must be tried with dispatch and subjected to swift and certain punishment. Abroad, the intelligence mechanisms of the U.S. government and international agencies such as Interpol must be enhanced.

Bilateral diplomatic initiatives to enhance military cooperation in Latin America also must be pursued, in order to contain the geographic reach of the narco producers. Already, a narcopact exists between the illegitimate forces of four countries. The Colombia drug lords, who control 80 percent of the refined cocaine business, draw their raw materials from their Peruvian and Bolivian colleagues. Gen. Manuel Noriega, in turn, provides transhipment facilities in Panama for exports of refined dope and imports of chemicals for Colombian refineries, and also provides money and arms laundering facilities for his Peruvian, Bolivian and Colombian partners.

Inevitably, the narcopact will seek to expand its territorial reach into Brazil, Argentina, Venezuela, Paraguay and other neighboring countries where, for various reasons, the United States does not currently enjoy extensive military and diplomatic solidarity. These relationships must be repaired. In Brazil, for example, the U.S. military has been restricted in information sharing and joint training by strictures imposed by the U.S. Senate due to Brazil's refusal to sign the Nuclear Non-proliferation Treaty. In Argentina, our military liaison efforts were cut back by President Reagan in an effort to appease Mrs. Thatcher after the Falklands War.

It is time to rebuild military cooperation in Latin American nations within the context of the narco threat. We must move quickly, both bilaterally and multilaterally, to form a united containment force employing the miltiary and national police forces of the neighboring Latin nations. Doing so will likely require a change in U.S. foreign aid conventions which generally prohibit foreign governments from spending U.S. aid on police and internal security forces.

Like any Latin Americanist, I would prefer that legitimate governments corral the traffickers on their own. The delicate sensitivity about American intervention which pervades interhemispheric relations must always be borne in mind by U.S. policy-makers. But we must acknowledge reality. One-half of Bolivia's gross national product is under the influence of the coca producers. The power of the drug lords in Peru threatens to suspersede that of the government. The Medellin and Cali cartels exert de facto civil control of Columbia. We must spare no effort in assisting the legitimate governments of these countries to destroy the drug producers. For should they fail, we may have no choice but to take matters into our own powerful hands.

The United States does not want to use its armed forces overseas, except by invitation. But there may be circumstances which warrant unilateral action. Such a grave step should be taken only in very restricted circumstances, such as when governments lose control of areas where major drug processing takes place, or refuse, as in Gen. Noriega's Panama, to take action.

For example, according to Deputy Secretary of State Lawrence Eagleburger's testimony before the Organization of American States, the Colombian cartels have begun to erect alternative refinery facilities in the Darien province of Panama. We should request that the Panamanian government destroy those facilities. If it does not, we should consider doing it ourselves.

Adopting new foreign policy measures to complement demand management in fighting an effective war against the gangster powers of the narcopact will seriously complicate the U.S. relationship with the re-

gion's legitimate governments. It will require a dramatic change in our diplomatic effort in all of Latin America.

The region always has been the neglected stepchild of the U.S. foreign policy community, which focuses almost myopically on Europe as the front line of our defense against external threat. If the president and the State Department has spent one one-hundredth of the time, effort and money developing with Latin governments the kind of relationship we enjoy with our North Atlantic Treaty Organization partners, we might not today be fighting the Drug War. If Washington does not reorient itself now, we will seriously jeopardize our ability to defeat the narcopowers. We will be condemned to fighting a war without allies, a war we cannot win.

## WHILE THE WORLD CELEBRATES FREEDOM, TIBET REMAINS IN BONDAGE

### HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. PORTER. Mr. Speaker, human rights is taking center stage in the world today.

History was made this month when the East Germans finally realized that they could not keep their citizens trapped inside an oppressive system.

Now, thousands of Eastern Europeans will be able to experience the freedom that for so many years they could only dream of.

As Lech Walesa so aptly put it when he addressed the House last week, people jump fences and tear down walls because freedom is a human right.

However, Tibetans know no such right.

They continue to live under the strict authority of Chinese occupiers who suppress every right they have to freely express themselves.

Martial law remains in effect in Lhasa and justice is carried out according to rule of the gun, not the rule of law.

In fact, Chinese hard-line premier Li Peng is scheduled to visit Tibet today and I am certain that there will be no welcoming ceremony by the Tibetan people.

Tibetans, like others who live under repressive governments, desire a society without guards, borders, and guns ruling their daily lives.

The victory the world witnessed in Berlin must be repeated in Lhasa.

## THE HOUSE PAY RAISE PLAN

### HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BEREUTER. Mr. Speaker, this Member commends to the attention of his colleagues the following editorial that appeared in the Omaha World Herald.

[From the Omaha World-Herald, Nov. 21, 1989]

HOUSE'S PAY RAISE PLAN IS BETTER THAN SENATE'S

The House of Representatives did the correct, straightforward thing by raising its salary and strictly limiting outside income. It's a shame that a majority of the Senate's members decided to write a separate plan for themselves.

Among the most commendable features of the pay-increase legislation, which both houses approved, is the provision for a 35 percent pay increase for top executive branch employees and federal judges, whose pay had fallen behind what comparable people could earn in the private sector. That should help the federal government attract and keep top people in those important and sometimes demanding jobs.

* * * * *

The search for people to fill top executive positions in the Bush administration was being hampered by a pay scale that some prospects considered inadequate. The old rules governing outside income left Congress open to deserved criticism.

Those rules allowed senators about $35,000 a year in honorariums such as speaking fees and House members just under $27,000. Fee payments sometimes came from lobbyists and special interest groups, raising the question of where a legitimate fee stops and the appearance of an improper gratuity starts.

Under the new legislation, which President Bush indicated he would sign, House members would receive the second installment of a 35 percent pay increase in 1991 and would no longer be permitted to accept honorariums and similar compensation.

The Senate, on the other hand, decided to accept only the first installment—a 9.9 percent increase starting in 1990. In exchange for giving up the second installment, the Senate held onto the right to collect honorariums, agreeing to reduce the maximum by one dollar for each dollar the Senate pay goes up in 1990 and thereafter.

With the impact of the 1990 increase, the Senate's new limit on honorarium income would be about where the old House limit was.

The Senate practiced ethical hair-splitting. Merely lowering the limit on the payments does nothing to dispel the appearance of impropriety that has hung over the honorarium system. Government officials should receive their income primarily from the taxpayers, not in the form of honorariums, free vacations and other gifts from people who might have business before the Senate.

The House pay raise plan, with its strict limits on outside income, was a more responsible approach. The Senate brought no honor on itself when it "gave up" most of the increase and kept its hand out, in effect, for honorariums.

## OLD MILL MARCHING BAND

### HON. C. THOMAS McMILLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McMILLEN of Maryland. Mr. Speaker, I rise today to salute a group of students who have come to excel in their musical abilities. This group, the Old Mill High School Patriot Marching Band, under the direction of Bill Selway, has received top honors this year for their performance throughout the State of Maryland.

The Patriot Marching Band's rise to victory began in late September at the Severna Park Marching Band Tournament when the group captured top honors. From there, the group received an award for "Best Music," arranged by Director Selway, for their performance at Colonel Richardson High School. In mid-October at a tournament in St. Marys County the band was honored with awards for "Best Percussion," "Best Band Front," "Best Music," and Tammy Kerns was cited as "Best Drum Major."

This path to triumph culminated for the Old Mill Marching Band at the fourth annual Maryland State Champion Tournament of Bands. The band's dedication and commitment led them to claim first place for the division II schools, and also to win overall awards for "Best Band Front" and "Best Music."

I know that my colleagues will rise to commend the originality and creativity of the Old Mill High School Patriot Marching Band that led them to capture top honors in the musical arena.

## MEETING THE CHALLENGE: WILL GORBACHEV LEGALIZE THE UKRAINIAN CATHOLIC CHURCH

### HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LIPINSKI. Mr. Speaker, Pope John Paul II has made it clear that the restoration of rights to the Ukrainian Catholic Church will dominate his agenda when he meets with Soviet President Mikhail Gorbachev on December 1. The U.S. Congress has followed suit, as over 210 Members of Congress have sent letters to Gorbachev urging him to use the occasion of his visit to the Vatican to legalize the Ukrainian Catholic Church.

The Ukrainian Catholic Church remains one of only two outlawed religious denominations in the Soviet Union. Many human rights activists consider it the largest banned religious institution in the world.

Immediately following President Gorbachev's visit to the Vatican, he will meet with President Bush on the Mediterranean. The meeting will provide Mr. Bush as well with a unique opportunity to promote the American commitment to religious freedom by pressuring his Soviet counterpart to legalize the church.

I hope the President seizes this opportunity and joins the U.S. Congress in the call for a free Ukrainian Catholic Church.

The Ukrainian Catholic Church, also referred to as the Greek or Uniate Catholic Church, was brutally suppressed by Stalin after the Second World War. In 1946, the Soviet secret police staged an illegal and uncanonical synod of the Ukrainian Catholic Church, which then "voted" to dissolve and merge itself with the Russian Orthodox Church. The hierarchy of the Ukrainian Catho-

lic Church was murdered by the government or deported to Siberia. Church property was confiscated by the state and given to the Russian Orthodox Church or used as factories or warehouses. Despite 40 years of systematic repression, the Ukrainian Catholic Church has survived, and now finds itself on the threshold of freedom.

It is widely expected that Mr. Gorbachev is willing to afford the church a degree of legal recognition. However, he faces relentless opposition from the hierarchy of the Russian Orthodox Church in the Soviet Union. The Russian Orthodox Church stands to be the greatest loser if the Ukrainian Catholic Church is legalized. With this type of instituted opposition to the Ukrainian Catholic Church, any positive developments from the meeting in Rome will be meaningless unless it is reinforced back home in the Soviet Union.

Legalization and freedom for the Ukrainian Catholic Church will not be complete until the Soviet Government recognizes the 1946 synod, which was a politically motivated act engineered to destroy the church, as illegal. The Ukrainian Catholic Church must be granted unabridged legal status in the Soviet Union and enjoy open and unencumbered relations with the Catholic hierarchy in Rome. Lastly, Gorbachev must return the church's former rights, properties, and jurisdictions. The Soviet Government, which has routinely manipulated and co-opted the Russian Orthodox Church in its attempts to repress the Ukrainian Catholic Church, can no longer claim this issue is an internal church matter. It would be unconscionable for Mr. Gorbachev, in these times of stressful changes in the Soviet Union, to pit one church against the other. What Stalin did, Gorbachev must undo. He must meet this historical challenge.

Early December also offers President Bush a unique opportunity to take a strong stand for human rights and religious freedom. The President will meet with Mr. Gorbachev in the Mediterranean immediately following the Soviet leader's visit to the Vatican. The President must stress to Gorbachev that the legalization of the Ukrainian Catholic Church will be a symbolic act unless his words are backed with concrete action and new freedom for Ukrainian Catholics.

Beginning in September, I joined America's Ukrainian Catholic bishops in urging the House of Representatives to write President Gorbachev to urge the legalization of the Ukrainian Catholic Church. Following a letter to all Members from Bishop Basil Losten, my colleague CHRISTOPHER COX and I urged Members to seize the important opportunity to highlight the plight of Ukrainian Catholics.

The response was overwhelming. More than 210 Members of Congress, including the Democratic and Republican leadership of the House and Senate, accepted that challenge and addressed Mr. Gorbachev on the occasion of his visit to the Vatican. Over 130 Members of the House have written letters, including a letter from the bipartisan House leadership: Speaker TOM FOLEY, Majority Leader RICHARD GEPHARDT, Minority Leader ROBERT H. MICHEL, and Minority Whip NEWT GINGRICH. Congressmen TOM LANTOS and JOHN PORTER, cochairmen of the Congressional Human Rights Caucus wrote a letter, as did Congressmen DENNIS HERTEL and DON RITTER, cochairmen of the Ad-Hoc Committee on the Baltic States and Ukraine.

Our esteemed colleagues in the Senate have expressed equally enthusiastic support. On the eve of this historic trip, 47 Senators, including the majority and minority leaders, have written Mr. Gorbachev.

I recently hope Mikhail Gorbachev heeds these numerous recommendations, not only to help Ukrainian Catholics, but to help the success of his ongoing political and social reforms in the Soviet Union. As Pope John Paul II stated, "The campaign of hostility and accusations against this (Ukrainian Catholic) Church and her priests does not help reforms, but hinders them. Without the legalization of the Ukrainian community, the process of democratization will never be complete."

In the United States, in the Soviet Union and throughout the world, supporters of religious freedom and advocates of a legal Ukrainian Catholic Church are hopeful that Mr. Gorbachev will have the wisdom and courage to offer a meaningful and constructive resolution to this tragic example of religious persecution.

I would like to thank very much all those who joined me in this call for justice and the legalization of the Ukrainian Catholic Church.

## TEXAS LUTHERAN COLLEGE AMONG THE BEST

### HON. GREG LAUGHLIN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LAUGHLIN. Mr. Speaker, I would like to bring your attention today to Texas Lutheran College in the 14th Congressional District of Texas. Texas Lutheran is a college that offers students small classes, dedicated professors, and reasonable tuition bill when American colleges and universities are about to enter an era of limits in higher education, and when the cost of a college education for the ninth consecutive year has outrun inflation. That is why I was not surprised when Texas Lutheran was named one of the best colleges in America, according to U.S. News & World Report.

Texas Lutheran College truly represents the best of a liberal arts education in this country, and is an institution committed to excellence. This is best illustrated in the ratings Texas Lutheran College received in various academic categories. For example, the average ACT score at Texas Lutheran is 21.5 compared to the national average of 18.8. In addition, Texas Lutheran's academic reputation is ranked 7th out of 65 colleges ranked in the Southwest Region. Furthermore, of the 65 regional colleges studied Texas Lutheran College ranked 21st in student selectivity, 11th in retention patterns, 12th in faculty quality, and 27th in financial resources.

Mr. Speaker, it is not just the objective criteria from the statistics that makes Texas Lutheran College one of the best colleges in America, it's the people of its hometown, Seguin, TX. They share a commitment to excellence in higher education. For over 98 years Texas Lutheran College as provided this excellence and will continue to do so well after 1991, when Texas Lutheran College will celebrate its centennial. That is why it is my privilege to recognize this institution before this Chamber.

## EUGENE R. WILSON, MALDEF AWARDS

### HON. C. CHRISTOPHER COX

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. COX. Mr. Speaker, the effort to match private and corporate commitment with public, community need promises a better future for our community. Eugene R. Wilson is a leader in the effort to organize this "thousand points of light" and deserves our thanks.

Many southern California corporations have generously supplemented their contribution to the American economy with contributions of time, talent, and individual personal commitment to the community-at-large. Perhaps no enterprise can boast of a better record in this regard than ARCO. ARCO has taken the lead on a vast number of projects designed to enhance community life in Los Angeles and the Southwest.

Eugene R. Wilson, president of the ARCO Foundation and vice president of ARCO's Neighborhood Support Corp., is a leader in formulating and implementing ARCO's community relations activities.

A national figure in development activities in higher education for more than 20 years, most recently as vice president of Cal Tech, Eugene Wilson has chaired the contributions council of the conference board and currently serves as vice chair and a member of the board of directors of independent sector.

Leading by example, Eugene Wilson and his wife, Mary Ann, are active in their church and local schools, receiving the California PTA's Honorary Service Award for their efforts. Not only has Eugene Wilson helped countless individuals fight for a better today—through his commitment to education, he has helped to lay the foundation for a better tomorrow.

It is my privilege to applaud his many accomplishments and to call upon my colleagues in the U.S. Congress to join with the Mexican-American Legal Defense and Educational Fund in recognizing his efforts.

## IRAN STILL ABUSES HUMAN RIGHTS

### HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DYMALLY. Mr. Speaker, attached is a recent news article which appeared in the New York Times concerning human rights violations in Iran for inclusion in the RECORD. I thought of sharing this article with you and the rest of the Members of the House, as 186 Members of the House of Representatives signed a letter expressing concern for the

continuing human rights violations of the Iranian regime.

[From the New York Times, Nov. 19, 1989]

U.N. INQUIRY SAYS IRAN STILL ABUSES HUMAN RIGHTS

(By Paul Lewis)

UNITED NATIONS., Nov. 17.—A United Nations investigator says the Iranian Government of Hojatolislam Hashemi Rafsanjani is continuing to violate its citizens' basic human rights on the same large scale as Ayatollah Ruhollah Khomeini's Government, torturing and executing political enemies.

The independent investigator, Prof. Reynaldo Galindo Pohl of El Salvador, concludes in a report issued this week that the change of government in Iran after Ayatollah Khomeini's death in June has not led to greater respect for individual human rights.

Referring to the critical report on Iran's human rights performance he issued last year, Professor Pohl said nothing, he had learned since would "allow modification of the conclusions" reached in it. He says he maintains his conviction "that acts are being committed in Iran that are incompatible with international human rights instruments that are binding on the Iranian Government."

As a result, he concludes that Iran's human rights record continues to merit "both international concern and study and constant vigilance by the United Nations General Assembly and the Commission on Human Rights."

This year's report, diplomats say, is particularly significant because it casts doubt on widespread expectation that President Rafsanjani will prove a more moderate leader, favoring pragmatic policies including closer cooperation with the rest of the world.

In September, 185 members of the United States Congress expressed similar skepticism in a letter to Secretary of State James A. Baker 3d, urging him to treat the new Iranian leadership with firmness "rather than speculate and hope for the miraculous emergence of moderates from within the present ruling clique."

"Those who have been identified as moderates, including Hashemi Rafsanjani, the newly elected President, have continued the repressive policies of Khomeini," the letter said.

Amnesty International, the human rights organization, reported in the same month that Iran accounted for 1,200 of the 1,600 executions it recorded in the first eight months of this year.

Professor Pohl will present his report to a General Assembly committee on Monday, when it starts its annual review of human rights abuses around the world.

For the first time the 12 European Community nations will jointly sponsor a resolution criticizing Iran's record and calling for another investigation next year, diplomats say.

Last March, at the United Nations Human Rights Commission meeting, they sponsored a resolution protesting Ayatollah Khomeini's death sentence against the British author Salman Rushdie for his novel "The Satanic Verses." President Rafsanjani has refused to lift that sentence.

SENTENCES CHANGED TO DEATH

Professor Pohl reports a "wave of executions" in Iran during the second half of 1988 when, he says, "many prisoners had their sentences changed to capital punishment, a great number of them having been tried for a second time after serving a previous sentence."

On one occasion, he says, 200 to 300 relatives of prisoners were invited to Evin Prison in Teheran, where they were "had to witness the execution of their relatives."

Although the Iranian press has reported few political executions this year, the report says the large number of drug-trafficking executions appear to mask some carried out for political motives.

The report also says at least 26 people have been executed by stoning over the last year, including 14 women convicted of adultery and prostitution.

Professor Pohl reports widespread torture in Iranian prisons, including flogging, suspension from the ceiling, mock hangings, crowding prisoners into small rooms with insufficent air and withholding medical treatment.

But he reports some improvement in the previous systematic persecution of members of the minority Bahai faith. He says that most of those imprisoned have been released, that some have had their property restored, and that children are generally allowed to enter primary and secondary schools.

## CHANGING MILITARY BALANCE IN THE MIDDLE EAST

### HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LEVINE of California. Mr. Speaker, between 1974 and 1987, Arab states in the Middle East who remain at war with Israel have imported over $150 billion worth of weaponry. This includes not just bullets and bombs but, rather, some of the West's most sophisticated military hardware.

This development has had a profound impact on the Mideast military balance. In particular, Israel—which relies for its security on maintaining a qualitative edge between its forces and those of its Arab neighbors—has seen that edge diminish in recent years. Sadly, it has been our European allies as well as this country which have been responsible for this troubling situation.

Mr. Charles Perkins, the military analyst of the American Israel Public Affairs Committee, recently published a monograph entitled, "The Arab Military Buildup Since 1973." This monograph not only traces the Arab buildup since 1973 but also provides an excellent overview of the present military balance and the potential consequences for Israel. Excerpts of that monograph recently appeared in Near East Report: On September 25, 1989, the title was "Arab Arms Imports Skyrocket"; on October 9, it was "A Shifting Military Balance."

Mr. Speaker, I commend both articles to my colleagues and ask unanimous consent to place them in the RECORD at this point.

[From the Near East Report, Sept. 25, 1989]

ARAB ARMS IMPORTS SKYROCKET

(By Charles Perkins)

The major Arab states are now the world's leading importers of modern weaponry. Five states in particular—Iraq, Saudi Arabia, Libya, Syria, and Egypt—routinely rank among the world's ten largest importers of arms. On the whole, this level of arms procurement has been far in excess of legitimate defense requirements.

This "stockpile mentality" is apparent in the huge sums these states have invested in arms, the sheer volume of materiel acquired, as well as the growing sophistication of the weaponry. Many of these states initially lacked adequately trained manpower or necessary infrastructure to support their newly-acquired arsenals, and are now engaged in crash programs to assimilate this hardware into their force structures.

EXPENDITURES GROW

Between 1974 and 1987, the last year for which accurate and comprehensive figures are currently available, the seven Arab countries most directly involved in the Arab-Israeli conflict—Syria, Iraq, Jordan, Kuwait, Libya, Saudi Arabia and Egypt—have spent over $150 billion on arms imports. By comparison, spending during the decade prior to the 1973 war amounted to only $7 billion. Thus, since the 1973 war the Arab armies have spent roughly 21 times as much on military imports as during the 10 years before the 1973 war. During the same period, Israeli imports totalled only $12.4 billion, less than 10% of the Arab level.

The Arab countries continue to place large orders for weaponry. For example, new sales agreements between the United States and Saudi Arabia from fiscal years 1984 to 1987 amounted to over $7 billion. Saudi purchases in 1988 alone grew to $1.7 billion, up from previous years. Further, although the United States is only one supplier to the region, the available evidence suggests the U.S. experience is typical, and that many countries in the region are purchasing additional arms from multiple sources, despite decling oil revenues. One example is the multi-billion dollar arms agreement reached between the United Kingdom and Saudi Arabia in 1988.

Another indication of the extent of arms purchases is the large accumulation of undelivered weapons purchased by the Arab states. Virtually every country in the region has a large backlog of arms on order to be delivered over the next few years. Figures from the U.S. Defense Security Assistance Agency (DSAA) indicate that the undelivered portion of American foreign military sales agreements in the "pipeline" to the Arab world amounted to almost $16 billion at the end of fiscal year 1987, out of total U.S. sales in the range of $62 billion since 1950. Thus, future deliveries on past contracts alone will increase Arab inventories of U.S. weapons by about 25%.

SIGNIFICANCE OF ARMS PURCHASES

Arab arms imports comprise a significant portion of the world arms trade. According to U.S. Government statistics, the seven major Arab recipients now account for over 40% of all arms imports in the world.

Not unexpectedly, arms supplier states are eager for a piece of the Middle East market. For example, four of the Arab countries—Egypt, Jordan, Kuwait, and Saudi Arabia—absorbed over 20% of American arms exports from 1982 to 1986. Other countries have become even more dependent on the Arabs as arms customers: 71% of French exports from 1982 to 1986 went to the seven Arab states, as did 67% of Chinese exports, while Soviet military deliveries to the region have averaged about 38% of total exports.

During the 1970's, Arab countries began to diversify their sources of arms. In the decade prior to the Yom Kippur War, the top five arms exporting countries (Soviet

Union, United States, France, Britain, and Czechoslovakia) accounted for over 96% of Arab arms imports. More recently, however, these states have been responsible for a decreasing proportion of total sales.

The decision to acquire weapons from a wider variety of sources has been a conscious one on the part of the countries involved. It appears that the Arab states have sought to obtain their arms from divergent sources for a variety of reasons, not all military in character. First, not even the superpowers can supply all the types of weapons that Arab countries wish to have. Second, no one country uniformly provides the world's best weapons, and by shopping around it is possible to acquire the highest quality or most cost-effective weapon of a particular type. Third, it makes the Arab countries less dependent on a single supplier who might later embargo arms deliveries. Fourth, it has become an important tool of diplomacy for the Arabs, affording them influence in the would-be supplier countries. Virtually every country in the world that manufacturers and exports weapons has been involved in providing some armaments to Arab countries.

A related trend has been the establishment by selected Arab states of a domestic arms production capability, usually through the assistance of outside sources. A prerequisite for many arms sales today is an agreement by the supplier to enter into a co-production arrangement with the purchasing state, so that the recipient's industry can be developed. Such a procedure normally begins with local assembly of system components, and may evolve into licensed production of the entire weapon. Egypt has built the largest arms industry in the Arab world, co-founding the Arab Organization for Industralization (AOI), a consortium set up by Egypt and several Gulf states to build a regional arms manufacturing infrastructure. However, many other states are also acquiring the means for producing their own weapons, both conventional and unconventional.

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[From the Near East Report, Oct. 9, 1989]

A SHIFTING MILITARY BALANCE?

(By Charles Perkins)

Since the Yom Kippur war, Syria, Jordan and Egypt have doubled the size of their tank and aircraft inventories. From a combined force of 4,500 tanks in 1973, Israel's three Arab neighbors built up their armored forces to 7,300 tanks, an increase of 62%. Fighter aircraft in the three countries almost doubled from 750 in 1973 to the current level of approximately 1,400, while the level of assault helicopters increased by 150% from 200 to 500. Growth levels in the peripheral states of Libya, Iraq and Saudi Arabia have been even more striking.

A number of factors account for this dramatic level of military expansion and modernization. First and foremost, the Arab states increased the size and sophistication of their arsenals to regain superiority over Israel, following the setbacks they suffered during the fighting in October 1973. This rationale primarily affected Egypt and Syria immediately after the war as they replaced war losses with increasingly modern equipment, and continues in Syria to this day.

It also extended, however, to states which played only a secondary role in 1973, such as Libya, Iraq and Saudi Arabia. The monarchy in Saudi Arabia began its buildup with the purchase of American F-15 fighters in 1978. During the last 10 years, the Saudis acquired arms and other military services from the United States worth $30 billion. Just two months ago, the Administration sold them another package worth $850 million.

One factor driving the influx of arms into the region during the last 15 years has been the economic power brought about by petroleum exports, allowing the Arab oil states to spend vast sums of their armed forces. The leverage provided by petroleum allowed these states to have significant influence over the arms supplier nations, particularly in Western Europe. A number of arms purchases were paid for by oil barter.

The oil boom also indirectly assisted non-petroleum producers in the region, as states such as Saudi Arabia financed military acquisitions by Jordon and Syria, among others. By contrast, Israel, with its limited economic resources, has had to be more selective in choosing which weapons systems to import, and more conservative in determining what quantity of each weapon to procure.

Petroleum income for the oil-producing states is still relatively high. Where shortfalls have occurred it has been possible to continue purchasing weapons by reducing civilian imports. When faced with a choice between curtailing weapons purchases or reducing investments in economic infrastructure, the common result has been a decision to acquire more military hardware.

In addition, large-scale Arab arms imports have often been prompted by domestic political considerations, such as the prestige created by the possession of modern technology and the assurance of continued loyalty by the nation's armed forces. For example, Egyptian President Hosni Mubarak substantially increased arms imports and total military expenditures after Anwar Sadat's assassination to win the allegiance of the Egyptian military.

FUTURE PROSPECTS

It is likely that arms imports in the Middle East will continue at a high pace for the next few years as more weapons are purchased and delivery is made of previously ordered equipment. Although annual imports probably will not exceed the record $18.5 billion in deliveries recorded in 1982, it is doubtful that they will drop below the $10 billion-plus level maintained since the late 1970's. Further, while the total volume of arms sales may level off slightly as Arab countries reach the limit of their ability to deploy the quantity of arms delivered, major arms sales of increasing technical sophistication will continue as forces are modernized to replace obsolete equipment.

The latest example of this trend is the expected proposal to sell Saudi Arabia America's top-of-the-line M-1A1 tanks. Though there is no apparent military threat for which weapons of this sophistication are needed, the Saudis are insisting on the need to replace older tanks.

As Arab forces grow, Jerusalem will be forced to devote more resources to defense at a time when economic realities, including a reduction in the real value of U.S. foreign aid, are pushing the Israeli budget in the reverse direction. The Jewish State is still capable of meeting this growing external threat, but unless multilateral efforts are made to restrain the regional arms race, Israel will find its deterrent capability increasingly diminished.

## FOREIGN AID: WE CAN'T AFFORD IT

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### HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DUNCAN. Mr. Speaker, I recently voted against a foreign aid package which contained assistance to Poland and Hungary.

I did so in spite of having great sympathy toward those countries. I am pleased to see them move toward freedom and democracy and away from communism.

However, our country is so deeply in debt, I felt that we could not afford to send hundreds of millions of dollars to those countries.

A column in the November 20 Washington Times by Paul Greenberg emphasizes my point. As Mr. Greenberg states:

Now the United States is urged to pour money into this non-system. One would think Americans had learned better from our own War on Poverty, a war which Poverty won without even exerting itself. It always does when there is more money around than institutions or individuals able to absorb it usefully.

Mr. Speaker, I urge my colleagues to read this column, which I ask be reprinted in the RECORD.

[From the Washington Times, Nov. 20, 1989]

INVASION: HERE COME THE DEBTORS

(By Paul Greenberg)

The Russians are coming. Also the East Germans. And the Poles. No, it's not the invading hordes the Free World feared in the 1950s. It's a legion with its hands out. Poland's Lech Walesa already has set out on the pilgrimage/appeal to the West. As usual, he was eloquent, stirring, visionary: "We are building an America of the East . . . we need Columbuses from the states . . . to discover Poland, to clear the trail."

Lech Walesa is a hero and was hailed as one in Washington. He isn't an economist and shouldn't be confused with one. Just now Polish politics is heavy on charisma, mainly Lech Walesa's, but short on reform, on change, on hope. And without reform, change and hope, all the American dollars Washington can print—which is a frightening amount—won't help. The answer to the Poles economic crisis is not to drown them in debt. But that is just what the enthusiasts of the moment could wind up doing.

"A country that can put a man on the moon," the standard phrase used to go, "can . . ." The speaker then filled in the blank with whatever object he had in mind at the time: educate the masses, solve the parking problem, make a good five-cent cigar, you name it.

You don't hear that phrase very much any more, thankfully. The essential fraudulence of the reasoning was soon exposed; it was half-exposed to begin with. A successful moon landing requires quite a different set of skills and capacities from, say, making the American public literate, rendering television tasteful, or kicking the country's drug habit. A country that can put a man on the moon can put a man on the moon. Beyond that, we're talking different subjects.

No catch phrase is ever sacrificed in this culture; it is merely replaced. "A country that can put a man on the moon can . . ." is

now succeeded by the metaphor of the Marshall Plan. Whenever a challenge appears, the standard suggestion is a new Marshall Plan to meet it. The country has been told it needs a Marshall Plan for the cities, for education, and, yes, for Poland and the rest of Eastern Europe. The hundreds of millions that America is preparing to advance the new Poland is considered niggardly, an opportunity wasted, an insult to the spirit of freedom-loving men everywhere. Nothing less than a Marshall Plan will do.

The metaphor has its limits, which tend to be overlooked at moments of rhetorical flight. The original Marshall Plan was successful in rejuvenating Western countries with Western economies and Western institutions—such as money and credit. The Marshall Plan was intended to overcome the effects of a mere world war, not 40 years of a Communist thievocracy that has obliterated not only economic progress but also the idea of a modern economy.

Listen to Jeffrey Sachs, a Harvard professor who has been trying to advise the Poles on how to reform their non-existent economy: "Poland has no banking system, no credit system. Almost everything that's done requires bureaucratic allocation. I mean, I talk to government people here, and even ones who are sympathetic to the idea of a free market don't understand even the fundamentals of finance.

"We were talking with one person we admire over at the central bank—the state bank, the only bank—who's a very smart fellow, and I was making some point about the money supply and he was looking bewildered, and then he said, 'Look, Professor Sachs, please understand one thing: I went through eight years of economic training. I never heard the word 'money' once.'"

Poland's system, like the Soviet Union's, is a system that would make honest barter look advanced and medieval economies efficient. It was, and largely still is, a "command" economy that depends on vast bureaucracies swapping quasi-mythical quantities of goods.

The system the Sandinistas have only recently brought to Nicaragua, the Poles have been strangling on for four decades.

Of course they've lost hope. They've lost more; they've lost their grasp on economic reality. Artificially induced poverty will do that to a society. In Poland's case that hasn't been easy, considering the natural resources and skilled labor Marxism has had to overcome to achieve its usual result.

Now the United States is urged to pour money into this non-system. One would think Americans had learned better from our own War on Poverty, a war which Poverty won without even exerting itself. It always does when there is more money around than institutions or individuals able to absorb it usefully.

The Marshall Plan had to supply only goods and maybe some services to Western Europe. There was an economic structure waiting to absorb them, even if it had been hollowed out by the war. Certain habits of mind were still in place, needing only material sustenance to work with. Poland, on the other hand, needs a whole new concept of what an economy is. Such is the result of four decades of Marxist "progress."

To overcome its effects, a solid foundation will have to be laid first—a substructure of basic ideas like money, credit, corporate finance, entrepreneurship. . . . Then it'll be time for the walls and roof and finials. But without basic economic concepts, and basic economic institutions, a flood of American aid just now might only complete the ruination of Poland's non-economy.

## SOUTHERN CALIFORNIANS CELEBRATE OKTOBERFEST

### HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DYMALLY. Mr. Speaker, I rise today to pay tribute to my good friends Hans and Theresa Rotter, owners of Alpine Village in Torrance, CA. Hans and Theresa Rotter are the hosts of the fourth annual Oktoberfest fundraiser which took place on September 9, 1989. This fundraiser, has become a community affair, where the whole family can share the fun and contribute to worthy causes. Over the past 4 years, money raised during this event benefited 12 charities, including scholarships to several schools in Carson, Gardena, and American Samoa.

The annual Oktoberfest fundraiser marks the official kickoff heralding the start of Oktoberfest, the famous German annual celebration of the Harvest.

By developing Alpine Village as an authentic German establishment, bringing further cultural diversity to this part of southern California, and by establishing an annual festival to celebrate Oktoberfest, increasing cultural understanding between the American and German people, Hans and Theresa Rotter have contributed significantly to cultural life in Southern California. Their contributions are not limited to improving the cultural or leisurely lives of the people of the 31st District, rather they were able to intermix this achievement with significant contributions to charities.

Festivities this year included a Stein holding contest; a patriotic concert by the San Diego U.S. Marine Corps Band; a special drawing for trips and cars, and dancing to the authentic brass Oom Pa Pah band, direct from Germany.

Torrance Mayor Katy Gissert officially opened this 2-month long Oktoberfest season by leading a parade and by tapping the first keg of beer.

The development of Alpine Village and the success of Hans and Theresa Rotter is a classic example of an Horatio Alger story. Hans and Theresa established Alpine Village in 1970, beginning with a small bratwurst sausage stand at the sidelines of a soccer field that lay on an isolated landfill. Since then, a free way has been built next to Alpine Village, a 14-acre property comprising an authentic German village, with a large bavarian inn, club haus, 20 specialty stores, a small wedding chapel, a beer garden (the home of Oktoberfest), an intercontinental market, bakery, and butchery.

Over the years, Alpine Village proved to be a viable establishment, attracting many ethnic groups to this European style setting. Its numerous festivals, live entertainment, quality foods, quaint ambiance, and wonderful service continue to be enjoyed by the numerous visitors of the village.

Hans and Theresa have been able to turn Alpine Village into this wonderful cultural experience where an individual can actually feel that he or she is in a small town in Europe, if only for a while. Through hard work, perseverance, and commitment by Hans and Theresa, Alpine Village's Oktoberfest, is truly an experience one remembers forever. I thank my friends for their outstanding dedication and contributions to the people of the 31st Congressional District. Their behavior is an example of what has made this Nation a great one.

## COMMENDATIONS OF MARTHA HESSE AND CHARLES STALON

### HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LENT. Mr. Speaker, Martha Hesse, Chairman of the Federal Energy Regulatory Commission for the past 3 years, will be departing Federal service today to return to the private sector. I wish to share with my colleagues a recent editorial on her tenure from The Oil Daily, an energy trade publication, dated October 23, 1989. I share that publication's praise of Martha Hesse's commitment to competition and wish her well in her new job.

HESSE'S LEGACY A POSITIVE ONE

Some will look with favor on the departure of Martha Hesse as chairman of the U.S. Federal Energy Regulatory Commission. We are not among them.

Hesse announced last week that she will be leaving her post as perhaps the most highly visible chairman in the history of FERC, the commission that regulates the U.S. natural gas industry somewhat less today than it did when Hesse was selected by President Ronald Reagan. She took over a difficult job at a difficult time—and did it well. She'll be missed for her drive and ability to get things done.

Like most who make difficult decisions and leave their mark in history, she has not been universally popular with either her fellow commissioners or with the natural gas industry. She was clear in her goal, however, to move the gas industry toward deregulation. In that process she overcame opposition of some consumer groups and some elements of the gas industry.

When she leaves FERC early next year, Martha Hesse's legacy will be that full deregulation of natural gas has been approved by Congress, in part because the lawmakers recognized Hesse's commission and the industry had moved toward de facto decontrol without a price explosion. Those who savor competition—as we do—commend her for her contribution.

Mr. Speaker, I also wish to recognize the service of Charles Stalon, who recently retired after 5 years' service as a member of the Federal Energy Regulatory Commission. During his term, Commissioner Stalon led the Commission through the difficult, often tortuous, and still incomplete, transition from monopoly to competition in the natural gas industry. He also laid the foundation for formulation of policies by Federal and State regulators which will permit the development of a more competitive and efficient electric utility industry. Utility consumers throughout the Nation

have benefited greatly from Commissioner Stalon's stalwart defense of their long term interest. He deserves our thanks for a difficult job done well and I wish him well in his new job at Resources for the Future.

## MS. MARTHA O. HESSE AND MR. CHARLES G. STALON LEAVE THE FEDERAL ENERGY REGULATORY COMMISSION

### HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DINGELL. Mr. Speaker, I want to second Mr. LENT'S comments with respect to Martha O. Hesse, the outgoing chairman of the Federal Energy Regulatory Commission. While we have not always agreed, I have appreciated Martha Hesse's willingness to discuss the issues and work with the Congress on resolving those issues. Ms. Hesse's efforts in pursuing a competitive energy market have been commendable.

Charles Stalon has also recently left the Commission. Dr. Stalon's record as a Commissioner has been exemplary. As I stated in a letter supporting his renomination, Dr. Stalon has acquired a reputation as fair, objective, hard working, and possessing a remarkable intellect. Dr. Stalon is highly regarded by many state regulators producers, pipelines, distributors, electric utilities, and consumers.

Dr. Stalon has been widely recognized as the intellectual force behind the Commission efforts to increase the role of competition in the natural gas and electric utility markets. This policy in the natural gas market has resulted in lower cost natural gas for consumers, while providing new and competitive markets for producers.

The role of competition in the electric utility market is yet to be decided. I expect that Dr. Stalon will continue to provide us with his insightful analysis on this and other issues from his new position as a visiting scholar at Resources for the Future.

Dr. Stalon has served the Commission and the Nation with integrity and skill. I wish him well in his future endeavors.

## ENHANCING MEDICAL REHABILITATION RESEARCH

### HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. WALGREN. Mr. Speaker, I am introducing legislation to help strengthen our research effort to improve the lives of disabled Americans. This legislation would create a new National Center for Rehabilitation Research and require the National Institutes of Health to undertake a focused program of medical rehabilitation research. By accelerating research in this field, we should be able to have more effective medical rehabilitation care and lesson the burdens of disability.

The new center would be located within the National Institute For Child Health and Human Development and would conduct and coordinate research on the rehabilitation of individuals with physical disabilities or loss of function from neurological musculoskeletal, cardiovascular, pulmonary, or other physiologic problems. This research would focus on the diagnosis and treatment of disabilities resulting from conditions like arthritis, hip fractures, head and spinal cord injury, stroke, multiple sclerosis, burns, and muscular dystrophy.

Medical rehabilitation covers all the care we can provide to a patient who has suffered a loss of physical function. Most commonly, this loss is due to illness, injury, or a congenital defect.

The problem that all these patients share are their loss of motor function and the resulting inability to function. Associated problems with activities of daily living, like dressing and feeding, loss of sensation, intellectual impairment, and speech disorders are all the concerns of rehabilitation medical treatment. Our goal is to both treat the medical condition and restore physical and other functions for the disabled person.

The number of disabled people and their cost to all of us if we fail in rehabilitation are striking. About 500,000 Americans suffer strokes each year. While 155,000 stroke victims die. At least 250,000 are alive 7 years later, often severely impaired in movement, strength, and communication ability. The cost to society of stroke is estimated to be about $13 billion per year.

About 37 million people suffer from disabling arthritis at a cost to society of $9 billion. About a quarter of a million Americans have multiple sclerosis and the cost to society is great, estimated at $2 billion a year. Trauma injuries are suffered by 60 million Americans a year with 9 million being temporarily disabled and 340,000 permanently disabled.

The Institute of Medicine Report, "Injury in America," indicates that trauma injuries are the leading cause of disability. Motor vehicle injuries alone result in a cost to society of $436 billion in 1980, second only to cancer. The report indicates that 75,000 Americans a year sustain brain injuries resulting in long-term disability and 6,000 each year suffer spinal injury, making them either paraplegic or quadriplegic. Another recent Institute of Medicine study indicated that the total costs from disability for the under 64 population alone is now approaching $150 billion.

Several authorities have recognized the need to enhance rehabilitation research. The 1989 report to Congress, "Cost of Injury," by the Department of Transportation recommends that we "Greatly expand research for the development and evaluation of model systems of rehabilitation and for the design and production of affordable and reliable assistive devices." In the 1987 Institute of Medicine Report on Pain and Disability calls for broad research initiative on pain and disability."

Specialists in the field of physical medicine and rehabilitation and their professional societies have identified a number of specific needs:

First, the development of a major, national research training program to develop more research personnel in rehabilitation.

Second, research to test the reliability and effectiveness of many therapies currently being used in rehabilitation, such as biofeedback, therapeutic electricity, therapeutic exercise, heat, cold, splinting, and casting.

Third, research on preventing complications following spinal cord injury which can be applied to many other conditions where there are central nervous system or neuromusculoskeletal impairments.

Fourth, research on the management of traumatic brain injury to reduce long-term physical impairments and disability.

Fifth, research of methods to improve the long-term function of persons receiving artificial joints and/or organ transplants.

Sixth, research on methods to prevent skin complications, especially ulcers.

In view of the great cost we are now paying for disability, this bill tries to assure that there is one accountable, agency in the NIH responsible for developing a concrete plan for research on rehabilitation, a focal point for planning, coordinating and funding more rehab research. The center would create more interaction between basic research and clinical treatment in medical rehabilitation. The bill includes a requirement for a rehabilitation research plan to identify priorities. A council would assure ccordination with Federal agencies outside the NIH to bring important findings together and to prevent duplication.

The bill is not intended to address rehabilitation research on vision or hearing disabilities, mental retardation or mental illness. The focus is intended to be on physical disability, not sensory.

The need for this center was stated most eloquently in testimony before the House Health Subcommittee, on which I serve, by Dr. Joachim Opitz, a rehabilitation physician at the Mayo Clinic in Rochester, MN:

> Medicine is doing great things in preserving life, but we must do much more to preserve life in which disabled people can function independently, live outside of institutions and enjoy a full life. Rehabilitation medicine is dedicated to those goals. But the effectiveness of every medical care system or specialty depends upon a rich scientific foundation. We in rehabilitation medicine must know more about the basic reasons for the damage and degenerative effects on the elements of central and peripheral nervous system related to disability from spinal injury, multiple sclerosis or other diseases. We must increase our knowledge about the pathology of soft tissue, muscle and bone to effectively deal with disabling conditions. We need clinical and applied research on various treatment methods from electrical stimulation to exercise and medication. In summary, we must have a well-organized and funded research program in rehabilitation medicine and a stimulating research environment.

Last year, a bill creating a Center for Medical Rehabilitation Research was approved by the Senate and it has Resources Committee in the Senate.

This bill is endorsed by the American Academy of Physical Medicine and Rehabilitation, the American Congress of Rehabilitation Medicine, the Association of Academic Physical Medicine, and the National Multiple Sclerosis Society.

We should remember that each of us are only temporarily able bodied. Physical impair-

ment can happen at any age and any moment. We constantly are at risk for injury and disability.

With the growing aging population, better rehabilitation becomes even more important. The Director of the National Institute on Aging recently put it this way:

The aim of rehabilitation to restore an individual to their former ability to function or to maintain or maximize remaining function should be at the heart of all care for aging persons.

I hope this bill can lead us to better understand rehabilitation so that everyone who needs it can lead a rewarding productive life.

## REAR ADM. WAYNE E. MEYER, U.S. NAVY, RETIRED

### HON. FRANK McCLOSKEY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McCLOSKEY. Mr. Speaker, it is with great appreciation that I insert the recent remarks of Capt. C.E. Johnson, commanding officer of the Naval Weapons Support Center [NWSC] Crane honoring Rear Admiral Meyer. Captain Johnson's remarks were given at the dedication of the Fleet Microwave Support Center where the committed employees of NWSC Crane test components for the AEGIS air and missile defense system. Without Admiral Meyer's relentless devotion, the AEGIS program would not have become a reality.

REMARKS FOR REAR ADMIRAL MEYER CEREMONY, OCTOBER 31, 1989

We know how successful the AEGIS shipbuilding program has been. There are 13 *Ticonderoga*-class cruisers at sea with 14 more to follow. The 1st AEGIS destroyer, the *Arleigh Burke* will soon be operational and keels will be laid for as many as 28 sister ships. These are the most capable ships ever to sail the world's oceans. They will be providing the offensive and defensive backbone to the fleet's battle groups well into the next century. As a result, hundreds of ships and thousands of sailors will be protected by the AEGIS shield.

The building we are in today is evidence of that continuing success. But, the success of the AEGIS program was not inevitable. There were many obstacles to overcome; key people in the Navy, Congress and industry who thought it was an impossible dream. Today the realization of that dream is due, in large part, to a man who could appropriately be called, "The father of AEGIS", RADM Wayne E. Meyer, US Navy, Retired.

When Admiral Meyer first became involved with the surface Missile program, ship's air defense was provided by the three T's—Tartar, Talos and Terrier. There were serious problems with these programs, and Admiral Meyer was instrumental in resolving many of them. However, the more he worked on the air defense problem, the more he realized that even if the current state of the art were perfected, it would not be good enough. The Tartar, Talos and Terrier were developed from lessons learned battling kamikaze aircraft in World War II. Admiral Meyer saw that the advent of the anti-ship missile had drastically changed the game. Ships were built and radars, guns, and missiles were procured as separate pieces of equipment. He envisioned a complete new way of building fighting ships. Admiral Meyer's way was to build the ship from the keel up as a totally integrated combat system; the ship and combat system would be one from the beginning. Believing that the technology needed to build a totally integrated system could be developed, he dedicated himself to convincing "The opposition" that his way was sensible. As a result, he began building on his dream, an organization we know today as the AEGIS shipbuilding program.

Anyone who became involved with the AEGIS program soon learned the "cornerstones of AEGIS". These were: "Reaction time, Firepower, Countermeasures, Continuous Availability, and Coverage". These were the primary attributes of the system envisioned by Admiral Meyer to provide a shield of protection around the fleet.

Those working in the AEGIS program also learned that the system would be installed "in ships"; not "on platforms"; that computers run "programs" not "software"; and that viewgraphs come only one way, "horizontal". They also found that they were working for a man who sought perfection in himself and had the ability to motivate others to seek it in themselves and their work. He felt an unrelenting determination to squeeze the random failure out of the system. He saw to it that multiple redundancies were built into the system to provide, what he called, "graceful degradation" so that the system would be able to complete its mission even when portions of it were disabled.

Under Admiral Meyer's guidance, the AEGIS program made progress in small steps, one minor goal at a time. His philosophy was "build a little, test a little, learn a lot". As much as he held a picture of the eventual overall system in his mind, he never allowed himself or his subordinates to overlook the little things. "The devil is in the details", he often said. One of his primary goals was to ensure that as much of the system as possible would be easily repairable by the sailors in the ships. To this end, he directed that all least replacement units in the system weigh no more than 40 pounds, meaning one sailor could lift them. Admiral Meyer truly believed that AEGIS was a better way to protect the fleet and set out to prove it. It was not an easy task, but, through his forceful personality and dynamic leadership he persuaded the Navy, and then the Congress, that AEGIS was the right way.

One of Admiral Meyer's major contributions was inventing a new way for the Navy to do business with industry. The Navy would procure major items of the AEGIS weapon system and deliver them to the system integrator for assembly into the overall system. The first application of this "breakout philosophy" was the procurement of the large number of microwave tubes used in AEGIS. He decided to place the responsibility for the procurement of all microwave tubes for the AN/Spy-1 radar and the MK-99 fire control system with Naval Weapons Support Center Crane. He made Crane a guinea pig for this effort, but was positive the people at Crane could do the job. And he was right. Implementing Admiral Meyer's philosophy of shared procurement greatly reduced the overhead on these items, while the Center's engineering efforts dramatically increased tube life. The cost savings resulting from these initiatives have been so impressive that the breakout philosophy is now being applied throughout the system.

Perhaps the primary reason for the success of the AEGIS shipbuilding program was Admiral Meyer's ability to create a spirit of cooperation and teamwork among all the elements of the AEGIS team—government employees, Navy personnel, contractors, manufacturers, subcontractors, consultants, everyone. His early vision of AEGIS established new frontiers and new goals to be achieved. His vision and legacy remain with us today, and will be with us in the future. Today we dedicate this plaque, and this building to that vision and that future, and to Rear Admiral Wayne E. Meyer—the "father of AEGIS".

## NEW CAMERA TECHNOLOGY COULD IMPROVE SDI SURVEILLANCE

### HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McEWEN. Mr. Speaker, I would like to call to the attention of my fellow Members of Congress and to the American people the rapid advances in technology that are being developed in Livermore, CA. The new technologies involve increased photographic ability enabling space based cameras to accurately detect ballistic missiles from space. I urge my fellow Members to read the following passage; its message is very clear. While there may be disagreement about the desirability of SDI, Congress cannot enact laws to stampede the ongoing progress in space defense technology.

NEW CAMERA TECHNOLOGY COULD IMPROVE SDI SURVEILLANCE

(Updating *Backgrounder* No. 557, "Technology Speeds the Strategic Defense Initiative Timetable," January 13, 1987.)

The Lawrence Livermore National Laboratory in Livermore, California, in cooperation with the Strategic Defense Initiative Organization (SDIO), is developing new technologies for "wide-field-of-view" cameras that could help detect and track enemy ballistic missiles from space.[1] This could make significant contributions to SDI by improving the United States' ability to track Soviet ballistic missiles in flight. SDI must detect and accurately track Soviet ballistic missiles and their subsequent stages, numbering perhaps in the thousands, in order to intercept and destroy them before their warheads hit their targets in the U.S. These new cameras could allow the SDI system to identify and track Soviet missiles more accurately and quickly.

These space-based cameras could improve the ability of the U.S. to guide weapons to intercept missiles in flight. This could be done by relaying the highly accurate images produced by the cameras to SDI battle managers and guidance systems that control the firing of interceptors at enemy missiles.

Unlike the images created by conventional wide-angle lens cameras, images produced by this new camera would be relatively free of distortions. This is because the lens

[1] This *Backgrounder Update* is based on a description of this new camera technology that appeared in the December 1988 issue of Lawrence Livermore National Laboratory's publication *Energy and Technology Review*, pp. 1-12.

design and the image processing system of the camera are specifically designed to eliminate such distortions. In addition to sensing visible light, these cameras will be receptive to radiation in the short- to mid-wave infrared wavelengths. The detection of infrared radiation could enable these cameras to produce images of the heat-emitting plumes of launched Soviet missiles.

RAPID REPRODUCTION

This sophisticated camera system could produce video images of Soviet ballistic missiles almost immediately. The experimental camera's wide-angle lens could scan large areas of space, while sophisticated image processors, backed up by powerful computers, could reproduce the images of flying enemy missiles or their components very quickly. This technology could be used in such SDI sensor systems as the Boost Surveillance and Tracking System (BSTS), which is a sensor satellite that detects enemy missiles shortly after they have been launched. It also could be used in the Space Surveillance and Tracking System (SSTS), which is a sensor satellite in near-earth orbit that tracks missiles during their mid-course flight in space. These satellites are to be capable of tracking missiles and their subsequent stages in flight by picking up the heat and light emissions given off by the missiles or their stages.

Adaptations of these technologies could also be used on a "Brilliant Pebble" interceptor, which is a light, very small orbiting satellite that could destroy enemy missiles by crashing into them. "Brilliant Pebbles" need little guidance from a centralized battle management system. A "Brilliant Pebbles" interceptor could have its own on-board camera system. Such an on-board camera system is one of the components that may allow the individual interceptor to be largely autonomous.

SHARPER IMAGES

A new lens design allows these experimental cameras to take pictures over a wide field and yet does not compromise the quality of the image. For example, a picture taken of a city from the sky with a traditional wide-angle lens creates curved images on the edges of the photograph. This new lens helps eliminate the curves in the images. The result of this design is a camera that can view images within a 60-degree angle from the front of the lens with little distortion. When deployed in an orbit of 600 miles from the earth, this lens would be able to view a land area of 280,000 square miles. Such coverage could improve the ability of SDI sensor satellites to detect a launched missile and track it.

In addition to the new lens design, these wide-field-of-view cameras use a modified focal surface designed to further eliminate distortions. The focal surface is the light sensitive surface at the back of the camera that receives light rays from the lens. In these cameras the focal surface is curved, which means that all points on the focal surface are at the same distance from the center of the lens. This design eliminates the distortions associated with projecting an image on a flat surface. This approach will provide sharper images of the objects at which the camera is pointed, including missiles or missile stages. The sharper the image, the better a defense system can identify, track, and destroy enemy missiles.

THREE DIMENSIONAL TRACKING

The system for reproducing images recorded by these cameras relies on small sensors, called charged-coupled-devices, which are similar to light sensors used in modern commercial television cameras. These sensors pick up the light rays from the lens. To reproduce an image immediately, parallel processing computers reproduce the image on television screens. The imaging system is to be improved and made more sophisticated by upgrading its electronic circuitry and improving the design of the charged-coupled-devices. This fall, the Livermore Laboratory will have a system with 23 camera modules that will be able to cover a viewing field larger than what could be covered by 10,000 standard 10-centimeter telescopes. This will enable the camera to observe thousands of moving objects. This capability could help to meet SDI requirements for tracking Soviet ballistic missiles in flight.

Eventually this technology may allow the tracking of missiles in three dimensions. Lawrence Livermore also is considering linking a large number of these wide-field-of-view cameras into an integrated system. The aim is to train more than one of these cameras simultaneously on the same object. The resulting image produced from the cameras viewing the object from two or more angles would be three dimensional. This could further enhance the video image of Soviet ballistic missiles while they are in flight and help SDI weapons to intercept and destroy Soviet ballistic missiles.

SDI faces a demanding requirement in detecting and tracking Soviet ballistic missiles with sufficient accuracy and speed. This new camera system may prove to be an important breakthrough in meeting this task.

## ABORTION: A THOUGHTFUL COMMENTARY BY MICHAEL NOVAK

### HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LAFALCE. Mr. Speaker, I am pleased to insert in the RECORD a thoughtful and insightful article, "The Abortion Fight: It's Not Just a Matter of Religion," by Michael Novak, a resident scholar at the American Enterprise Institute. Mr. Novak argues that the essence of the abortion controversy involves, not merely a difference of religious beliefs, but rather two competing rights at the core of the "American experiment" of self-government: the rights of life and liberty. He also suggests how our system of government can and should treat the abortion issue to achieve a "tolerable," if not completely satisfying," resolution of this contentious issue.

I believe many of Mr. Novak's suggestions will prove helpful as our democracy addresses this divisive issue. I commend the following article to my colleagues as a balanced and constructive view of the continuing debate over abortion.

[From the Washington Post, Nov. 20, 1989]

THE ABORTION FIGHT: IT'S NOT JUST A MATTER OF RELIGION

(By Michael Novak)

In retrospect, it now appears that the Supreme Court pulled a fast one with the *Webster* decision. By suggesting that the right to decide about abortion belongs to the people, through their legislatures, and not to the courts, the Supreme Court has forced the entire citizenry to think again about the meaning of the American experiment. Early results have been surprising.

For one thing, the balance of fear has shifted. Earlier, the Supreme court, in *Roe v. Wade,* had taken (improperly, most jurists think) an absolutist position. It permitted constitutional protections for the life of the unborn to be abridged, seemingly at will. Against this, all those numerous citizens who had qualms at one point or another were united in a common protest. Among them were not many journalistic literati or Hollywood glitterati; they were mostly common people, and they won some great victories.

After *Webster,* however, many diverse groups on the other side, no longer able to hide behind the absolutist *Roe v. Wade,* began to have the larger fear: that too many restrictions on abortion would be voted in. So they, in turn, have united politically. With a quite brilliant tactical sense, moreover, this alliance began to display the conservative, anti-big-government rhetoric of Ronald Reagan and Thomas Jefferson. "Get the government off our backs," they began to shout. "Women, not big government, should decide."

Why should all citizens be concerned about the substance—and rhetorical conduct—of this debate? Because what is at stake is an understanding of the American experiment itself. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." When the fundamentals of what we stand for as a people are in question, all are threatened, but few more so than those concerned with public policy, whose entire way of life depends upon the peaceableness of this regime.

Within "the truths" we hold, moreover, there are certain in-built tensions: in this case, the direct collision of the right to liberty with the right to life. For those who hold that "the right to life" is not endowed in infants in the womb, that conflict dissolves; liberty takes over. For others, the "right to liberty" is halted at "the right to life," and the latter takes over.

It is a great mistake to hold that this difference is solely "theological," a matter of "faith" (you have yours, I have mine). It involves, rather, a fundamental difference over the American experiment. Does that experiment entail an ever more inclusive advance in who may be entitled to rights: blacks, Indians, women, immigrants, the unborn? The "pro-life" forces at first had great strategic success in taking over the historically liberal (more inclusive) vision of rights.

The advance of scientific evidence in recent years has also favored the right to life. There is now no scientific doubt that what is aborted is not "part of a woman's body." It has, rather, an autonomous genetic code of its own; it is an unmatchable individual; and it is human both in form and in its natural—unless aborted—development. None of this is a matter of faith or theology.

Nonetheless, thanks to the Supreme Court, our whole people must now decide whether or not to grant this new individual human inclusive standing among Americans entitled to the constitutional protection of its government. Our people must declare who exactly we will count as "one among us," or expel from our protection.

For all, this decision is agonizing. The court will no longer permit us to escape this agony. The people must decide. In deciding

this question, we decide what sort of people we intend to be. Beneath the passions all feel, beneath the slogans, beneath the turmoil, we the people must now stand before "the law of nature and nature's God," and say what we think we are. We will be passing judgment less on the unborn than on ourselves.

No sort of issue is more difficult for majorities to decide. To respect the rights of minorities whose profoundest judgment is different from our own cannot be easy. Perhaps for this reason the Supreme Court's decision in *Webster* to trust the fundamental principles of federalism—allowing different jurisdictions to decide differently—is safest for the republic. Probably no one will be fully satisfied. Still, a tolerable peace for the consciences of all may be wrested from our national variety.

If we set to one side the two most absolutist positions—the approximately 10 percent who believe that abortion should be legal and under all circumstances and the approximately same number who believe it should be legal under none—polls show that the vast majority of Americans want liberty for abortion in some cases but respect for the life of the unborn in others. Slowly, by trial and error, and perhaps in a wide variety of local solutions, we should be able as a nation to find a way to a not completely satisfying but tolerable peace.

This peace, however, would also entail not asking citizens whose consciences would thereby be violated to pay taxes to fund at public expense a practice they abominate. Those who believe in the morality of abortion should be willing to raise funds for it voluntarily, without coercing the consciences of their fellow citizens. I recognize that from a moral point of view this solution will seem to some like an argument to allow freedom to some slaveholders to treat human beings as property, at the choice of their "owners," My defense is that not everything moral needs to be commanded by law, especially when many consciences would find such a law intolerable, and the law would fall into disrespect.

Furthermore, it cannot be a bad thing for a republic of "liberty and justice of all" to spend many years to come—and they will be many—locked in public argument over what we will count as human life, and what value to attach to each human life. Such a debate may deepen us as a people, may ennoble us and justify our experiment before history and God.

What matters most of all is how much sympathy each of us extends to those who most disagree with us. What matters is our charity and civility to one another, even as we argue. A free nation's business, more than that of any other, depends upon broad sympathy, a sense of cooperation and even public friendship among our people. This is the time to insist on that.

A way (even many varied ways) will be found to place some restrictions upon abortion, while maintaining ample liberty—thus protecting, within limits, the principles of all. Legislation is necessarily a rough instrument, never adequate for the full claims of moral duty. No one ever promised us a paradise on Earth, only the nearest approximation that a reasonable, mutually respectful people can attain. If we can negotiate a difficult issue like this, we can face anything.

## POLITICS MUDDLE WEAPONS SALES

### HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LEVINE of California. Mr. Speaker, U.S. arms transfer policy has at times been a contentious issue between the legislative and executive branches. Too often, administrations—whether Democrat or Republican—have tended to use arms sales as a substitute for foreign policy, which has helped foster arms races in such volatile regions as the Middle East.

Furthermore, these same administrations have often neglected the consultative process in favor of what can best be called the "fait accompli;" in other words, a decision is made on a particular sale for which ratification—not consultation—is sought from Congress.

The issues relating to arms transfers are discussed in an excellent article which appeared in the Defense News of November 6, 1989. The piece is written by Douglas Bloomfield, a good friend who is the former legislative director for the American Israel Public Affairs Committee and who now works as a Washington-based lobbyist. Doug has an extensive background in dealing with these issues, both from his work on the Hill and from his tenure at AIPAC.

Mr. Speaker, I ask unanimous consent to place this article in the RECORD. I commend the article to the attention of my colleagues and urge that they take a few moments to review it.

[From the Defense News, Nov. 6, 1989]

POLITICS MUDDLE WEAPON SALES—ARMS SALES SHOULD ASSIST, NOT REPLACE, FOREIGN POLICY

(By Douglas Bloomfield)

Foreign military sales have become an adversarial process between the executive and legislative branches—often unnecessarily—over the past two decades. The sale of U.S. weapons abroad is not an isolated commercial venture, not even simply a question of mutual security interests. It is, instead, woven into the broad fabric of foreign and domestic policy. To ignore the many threads is to court continuing confrontation.

The process got off to a bad start in the early 1970s when the executive branch in effect told Congress that arms sales were none of its business. Congress made it its business with the Nelson-Bingham Act. Ever since Congress has become increasingly involved in deciding who can buy what.

Congress is not particularly fond of being in that business, but it understands it must be. First, it instinctively distrusts the executive branch, particularly when it's an opposing party. Second, Congress is taking an increasingly assertive role in foreign policy. It is no longer confined to members of the Senate Foreign Relations and House Foreign Affairs Committees. Finally, domestic pressures on Congress are stimulating its interest.

The Reagan administration ran into trouble because it failed to convince Congress and the public that foreign weapon sales were an integral element of a well-constructed foreign policy. It also did not work effectively with Congress by taking legislators sufficiently into its confidence. Even when it succeeded in ramming controversial arms transfers through Congress, it remained unable or unwilling to demonstrate that arms transfers produced tangible policy results for the United States. The predominant impression, rightly or wrongly, was that the Reagan administration used arms sales as a substitute for foreign policy.

Warning signals were often ignored by an administration that never really learned to master Congress. It was so used to relying on the commanding personality of Ronald Reagan to accomplish its goals that it too often ignored its own homework.

The smartest thing the Reagan administration did in this area, albeit late in the second term, was to start taking the Congress and others into its confidence. This went a long way to assuage concerns and suspicions and to neutralize potential opponents.

Not leveling with Congress can be costly. One congressman became a permanent critic of foreign military sales when he caught a top Pentagon witness attempting to deceive him during a hearing. In the privacy of his office, the congressman was more blunt, accusing the general of lying. "I didn't lie," the general said. "You just asked the wrong questions." Sorry, general, wrong answer.

Trying to sneak changes in a weapon package past Congress after it went through the review process can backfire. When avionics in F-16s for Pakistan were upgraded in 1982 without notifying Congress, the Senate responded with the restrictive Glenn amendment requiring renotification of any substantial changes.

Most of the time, arms sales go through Congress without raising any objections. In fact, only a small percentage are controversial. The recent sale of M1A1 tanks and the tank assembly plant to Egypt could have created problems, but they were avoided. Credit goes both to the administration and to General Dynamics. There was major concern in the Congress about the loss of jobs in Ohio and Michigan along with concern that Egypt would sell tanks to Iraq. Consultations and industry briefings answered most concerns about jobs. And, most important, strengthening the third-party arms transfer law solved the problem of Egyptian tank sales to Iraq.

Changes in the congressional process over the past two decades have altered the way foreign military sales are handled.

Democratization of the Congress means more power sharing. No longer is it easy to identify leaders. That makes it tough for industry and the administration.

Administration and industry must be more sensitive to concerns being expressed in Congress and elsewhere.

The Senate Foreign Relations Committee is considerably weaker than ever before. A strong chairman might try to protect his turf better, objecting to others taking the initiative to block an arms transfer. But I'm not sure even J. William Fulbright, the powerful former chairman of the committee, could handle it today.

Any senator or representative can begin the process with a dear colleague letter, a news conference and a little hard work. Members of Congress rarely need outside stimulation to start the process.

INS versus Chadha changed everything when the Supreme Court in 1983 declared the legislative veto unconstitutional. Instead of congressional review being confined to up or down votes on a specific resolution

of disapproval, members of Congress let their creative juices percolate and come up with a variety of new approaches.

The same political reforms that gave industry added clout, the political action committees, have also been used effectively by others to get the attention and support of politicians.

Industry harms itself by not being well known where arms sales are the big issue. The armed services committees and defense appropriations subcommittees of both houses know the industry well and it knows them. But the same cannot be said of the Senate Foreign Relations and the House Foreign Affairs committees and the foreign operations appropriations subcommittees. No country gets as much money out of the foreign aid bill as the defense industry does—more than $5.5 billion next year—but it does virtually nothing to help pass these bills.

· Foreign aid bills are also multi-billion dollar military spending bills. (A strong case can also be made why economic and developmental assistance in those bills is also in the interest of the defense industry to support). The defense industry should be working to persuade its friends in Congress to vote for foreign aid. Until it does, it will continue to have few friends and little influence on the committees that have the most say over foreign military sales and spending.

When industry works to help pass foreign aid, it works to help itself. When it seeks congressional support for foreign military sales, it must be able to demonstrate more than a profit motive. It must convince a skeptical Congress and public of the tangible benefits of the sale and how previous sales to that country have specifically benefited the United States. Some arms sales are simply bad policy and never should be proposed in the first place.

The United States urgently needs a conventional arms transfer policy and to get together with other arms exporting nations to develop a rational policy that can win public and congressional support. America must not put itself in the business of fueling an arms race in the name of competition, free enterprise and a shout of "if we don't sell, someone else will." Arms sales cannot be a substitute for policy, but they certainly are an important element in a comprehensive, well-constructed foreign policy.

## A TRIBUTE TO THE FIRST STATE BANK OF COLUMBUS, TX

### HON. GREG LAUGHLIN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LAUGHLIN. Mr. Speaker, there is a bank 75 miles west of Houston, TX, in Colorado County, that deserves special recognition. The First State Bank of Columbus has the strongest financial statements of any bank in Texas and is probably the strongest small bank in the Nation.

First State Bank of Columbus was ranked by the American Banker as the Nation's strongest community bank. Last year, First State Bank recorded a $2.1 million-profit and provided a return on assets of 3.4 percent as compared to Texas' statewide banking industry which lost $2.24 billion and had a negative return on assets of 1.36 percent.

Most impressive of all, the First State Bank of Columbus has an incredible 22.06 percent ratio of tangilbe equity to assets. This equates to the owners contributing 22 cents of their own money for each dollar they have loaned out. This is three times the required standard of 6 percent.

Again, Mr. Speaker I applaud the First State Bank of Columbus for remaining profitable throughout some of the most devastating periods of economic distress in Texas history.

## RICARDO MONTALBAN, MALDEF AWARDS

### HON. C. CHRISTOPHER COX

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. COX. Mr. Speaker, southern California is home to entertainers of international acclaim. Though we often celebrate their artistic achievements, we should also acknowledge the contributions that these fine citizens often make to improving the fabric of our community.

I would like to pay special tribute to Ricardo Montalban, a man who has given delight to millions in movies, on stage, and on television and who has demonstrated his commitment to the community—manifesting the best of the American spirit.

During a career spanning five decades, Ricardo Montalban has appeared in more than 45 films, enchanted audiences with his stage performances—including his celebrated role as Don Juan in "Don Juan in Hell"—and starred in a number of television shows, including the long-running series "Fantasy Island."

While the quality of his art has justifiably earned him millions of loyal fans, his commitment to bettering the lives of thousands of Mexican and Latino children speaks even more of the quality of the man. Mr. Montalban helped establish a number of local adoption centers in Mexico and, when the terrible earthquake shook Mexico City in 1985, he was one of the first to organize aid to disaster victims. His generosity continues to this day: during the last year, he sponsored two fundraisers in Mexico to raise money for children who were victims of AIDS. His generous heart and compassionate spirit are something from which we can all learn.

Mr. Speaker, I join the Mexican American Legal Defense and Educational Fund in honoring Ricardo Montalban and call upon the U.S. Congress to recognize the outstanding leadership and dedication he has exhibited for the benefit of our world community.

## WHY JESUITS DIE

### HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. EDWARDS of California. Mr. Speaker, last week, another horrifying chapter was written in the history of El Salvador's civil war as six Jesuit priests were brutally tortured and killed. One of the victims was Father Ignacio Ellacuria, president of the Jose Simeon Canas University in San Salvador.

Father Ellacuria had strong ties to the San Francisco Bay Area through his association with Santa Clara University. Father Tennant C. Wright, a religious studies professor at Santa Clara, wrote a moving article for today's San Jose Mercury News reflecting on his friendship with Father Ellacuria, and the role the Jesuits play in the Salvadoran struggle for peace.

I would like to enter Father Wright's piece into the RECORD, and I urge my colleagues to reflect on our Government's continued support for a conflict which daily threatens the lives of individuals whose only crime is a commitment to peace and justice.

[From the San Jose Mercury News, Nov. 21, 1989]

WHY JESUITS DIE—SALVADORAN WAS HIGH ON HIT LIST OF DEATH SQUADS

(By Tennant C. Wright)

Last week Fathers Ignacio Ellacuria and Amando Lopez were murdered. "Unidentified" gunmen assassinated them along with four of their Jesuit companions and others who had taken refuge in their residence in San Salvador.

Eight years ago I met Ellacuria and Lopez, both priests devoted to the people of Central America and at that time both university presidents. I lived for several months in Managua with them at the Jesuit Central American University. Early each morning Lopez walked to the president's office across the campus; Ellacuria talked for an hour by phone with his staff at the Jesuit University Jose Simeon Canas in San Salvador. The Salvadoran powers had put Ellacuria high on the death squad hit list. He returned to El Salvador at risk, infrequently, secretly and only when the telephone would not do.

Both took their important positions humbly and seriously, with that combination of intelligence, humor and determination typical of their Basque ancestry. Both shared a vision of the university excellence needed to solve the complex social issues of our time, a vision to implement justice and to ground faith.

As Ellacuria said when he accepted an honorary degree from Santa Clara University in 1982: "The University should be present intellectually where it is needed, to provide science for those without science, to provide skills for those without skills, to be a voice for those without voice, to give intellectual support for those who do not possess the academic qualifications to turn their rights into law." For both of these Jesuits the university was not a refuge for the elite, but a reservoir of service for all the people.

They lived and prayed and worked and died together these two brothers deeper than blood. Early in the morning of November 16 the assassins pulled them from their sleep, dragged them outside, threw them on the ground and blasted open their skulls with M-16s. They died outside their house where each day Lopez greeted students and faculty, often asking, as one said, "How I was and how my work was going." Their bodies lay on the earth where Ellacuria often paced back and forth meditating on the work to be done, the words to be written or spoken.

Someone asked, "Did they need to die? Did they need to be so involved?"

Twenty years ago Ellacuria wrote, "Today's Christian and today's church must not be scared away from their mission because they are going to be turned into victims by a world that cannot tolerate them. They will be made victims if they carry out their mission."

Someone said, "But their mission was subversive."

The day of their murder, Pierre Dumaine, the Bishop of San Jose, answered that accusation: "According to evidence in the public record, the academic and priestly leadership of these men was neither more nor less subversive than the Gospel."

Ellacuria once wrote his own nuanced explanation of Gospel subversion: "Liberation is not prompted primarily by a negative thrust aimed at destroying something; it is prompted mainly by a positive thrust toward creating something. It is not animated by feelings of hatred and resentment, nor is it in its nature to use tools that are based on resentment and hatred. Its primary task is not to subvert and destroy, except when the forces that rule in fact are positively unjust rather than merely inadequate."

On Monday, the House of Representatives refused to impose restrictions on U.S. aid to El Salvador. The majority feared such a move would overreact to last week's killing. Congress has deplored the violence in El Salvador and insisted something be done when it returns from its 2-month holiday. So the United States continues to arm the Salvadoran army with M-16s and rockets. The thousands of poor looking daily into those muzzles of death in El Salvador must be consoled by congressional hand-wringing. I believe my dead Jesuit companions smile ironically.

These were not perfect men. Like us all their blessings were mixed: yet they were graced with more altruism than egoism. They died as we all will. They, however, died with the 70,000 already slaughtered in El Salvador. They died, as one Jesuit who continues to live in that terror said, "Along with Archbishop Oscar Romero and thousands and thousands of Salvadorans who have died in order that some measure of justice be found in El Salvador. Along with the death, that struggle for life with justice, goes on."

## TRIBUTE TO MAYOR GESHWILER

### HON. ANDREW JACOBS, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. JACOBS. Mr. Speaker, as the Indianapolis News editorial indicates, Mayor Elton Geshwiler is a rare gift to public office.

All other public officials could well take a lesson from him.

[From the Indianapolis News, Nov. 14, 1989]

MAYOR GESHWILER

Beech Grove Mayor Elton Geshwiler is receiving well-deserved honors these days for 50 years of public service.

He has served on the Beech Grove School Board, the City Council and as mayor—a post he plans to retire from at the end of his term in 1991.

Plenty of people in Beech Grove and Indianapolis will have a hard time with his retirement. Many cannot remember a time when he was not mayor of Beech Grove.

He was honored last week for those years of service. He also has been honored with a 36 percent pay increase, bringing his annual salary for a wide range of duties to $33,000.

Geshwiler's public service came with an increasingly rare frugality. He always has kept in mind the fact that his salary was being paid by the taxpayers. He never indulged in empire-building or the accumulation of bureaucracy. "People ask me who does your clerical work," he told News reporter Welton W. Harris II. "See that typewriter there?"

He has maintained a close relationship with his community, and that has led to political success as well as effective public service for Beech Grove.

## REAGAN'S FORECAST

### HON. DONALD E. "BUZ" LUKENS

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DONALD E. "BUZ" LUKENS. Mr. Speaker, in the past months we are experiencing what can only be described as cataclysmic changes in Eastern Europe. Few predicted that these changes could have occurred with such rapidity.

However, 18 months ago former President Reagan, in one of his most shining moments, delivered a speech that was so prophetic, that few have grasped the accuracy of his words. The speech, delivered at Moscow University, revealed Reagan's global vision that inspired not only in this country but throughout Europe as well.

Reagan encompassed the heroic resolve of the reform minded Eastern bloc when he said: "we're breaking through the material conditions of existence to a world where man creates his own destiny."

Reagan's intuitiveness regarding Eastern Europe is now coming to fruition. The hypnotic notions of democracy and the irresistible power of unarmed truth are sweeping throughout the Warsaw Pact. In Poland, Hungary, Czechoslovakia, East Germany, and the Soviet Union the people are rising up, nonviolently, to assert their right to self-determination.

The scope of the revolution varies from massive demonstrations numbering in the hundreds of thousands, to the most omnious symbol of communist domination, the Berlin Wall, being literally shipped away by hand.

President Reagan had a global vision, that few could have comprehended at the time. His policies and actions reflected his belief that the oppressive barriers within the Iron Curtain will be torn down by the indomitable spirit of the masses.

[From the Washington Times, November 16, 1989]

REAGAN'S FORECAST

*What President Ronald Reagan told students at the University of Moscow in May 1988 has proved remarkably prophetic in light of events now taking place. Excerpts are reprinted here:*

Standing here before a mural of your revolution, I want to talk about a very different revolution that is taking place right now, quietly sweeping the globe, without bloodshed or conflict. Its effects are peaceful, but they will fundamentally alter our world, shatter old assumptions and reshape our lives.

It's easy to underestimate, because it's not accompanied by banners or fanfare. It has been called the technological or information revolution, and as its emblem, one might take the tiny silicon chip—no bigger than a fingerprint. One of these chips has more computing power than a roomful of old-style computers.

Like a chrysalis, we're emerging from the economy of the Industrial Revolution—an economy confined to and limited by the Earth's physical resources—into, as one economist titled his book, "The Economy in Mind," [Warren Brookes, published by the Manhattan Institute, 1982] an era in which there are no bounds on human imagination and the freedom to create is the most precious natural resource.

In the new economy, human invention increasingly makes physical resources obsolete. We're breaking through the material conditions of existence to a world where man creates his own destiny. Even as we explore the most advanced reaches of science, we're returning to the age-old wisdom of our culture, a wisdom contained in the book of Genesis in the Bible: In the beginning was the spirit, and it was from this spirit that the material abundance of creation issued forth.

But progress is not foreordained. The key is freedom—freedom of thought, freedom of information, freedom of communication. The renowned scientist, scholar and founding father of this university, Mikhail Lomonosov, knew that. "It is common knowledge," he said, "that the achievements of science are considerable and rapid, particularly once the yoke of slavery is cast off and replaced by the freedom of philosophy."

We are seeing the power of economic freedom spreading around the world—places such as the Republic of Korea, Singapore and Taiwan have vaulted into the technological era, barely pausing in the industrial age along the way. Low-tax agricultural policies in the subcontinent mean that in some years India is now a net exporter of food.

Freedom is the right to question, and change the established way of doing things. It is the continuing revolution of the marketplace. It is the understanding that allows us to recognize shortcomings and seek solutions. It is the right to put forth an idea, scoffed at by experts, and watch it catch fire among the people. It is the right to follow your dream, or stick to your conscience, even if you're the only one in a sea of doubters.

Freedom is the recognition that no single person, no single authority or government has a monopoloy on the truth, but that every individual life is infinitely precious, that every one of us put on this earth has been put here for a reason and has something to offer.

Democracy is less a system of government than it is a system to keep government limited, unintrusive: A system of constraints on power to keep politics and government secondary to the important things in life, the true sources of value found only in family and faith.

But I hope you know I go on about these things not simply to extol the virtues of my own country, but to speak to the true greatness of the heart and soul of your land. Who, after all, needs to tell the land of Dostoevsky about the quest for truth, the home of Kandinsky and Scriabin about imagina-

tion, the rich and noble culture of the Uzbek man of letters, Alisher Navoi, about beauty and heart.

The great culture of your diverse land speaks with a glowing passion to all humanity. Let me cite one of the most eloquent contemporary passages on human freedom. It comes, not from the literature of America, but from this country, from one of the greatest writers of the 20th century, Boris Pasternak, in the novel "Dr. Zhivago." He writes, "I think that if the beast who sleeps in man could be held down by threats—any kind of threat, whether of jail or of retribution after death—then the highest emblem of humanity would be the lion tamer in the circus with his whip, not the prophet who sacrificed himself. But this is just the point—what has for centuries raised man above the beast is not the cudgel, but an inward music—the irresistible power of unarmed truth."

The irresistible power of unarmed truth. Today the world looks expectantly to signs of change, steps toward greater freedom in the Soviet Union. . . . That is the future beckoning to your generation. At the same time, we should remember that reform that is not institutionalized will always be insecure. Such freedom will always be looking over its shoulder. A bird on a tether, no matter how long the rope, can always be pulled back. And that is why, in my conversation with General Secretary [Mikhail] Gorbachev, I have spoken of how important it is to institutionalize change—to put guarantees on reform. And we have been talking together about one sad reminder of a divided world, the Berlin Wall. It's time to remove the barriers that keep people apart.

I have often said, nations do not distrust each other because they are armed; they are armed because they distrust each other. If this globe is to live in peace and prosper, if it is to embrace all the possibilities of the technological revolution, then nations must renounce, once and for all, the right to an expansionist foreign policy. Peace between nations must be an enduring goal—not a tactical stage in a continuing conflict.

Your generation is living in one of the most exciting, hopeful times in Soviet history. It is a time when the first breath of freedom stirs the air and the heart beats to the accelerated rhythm of hope, when the accumulated spiritual energies of a long silence yearn to break free.

## IN TRIBUTE TO ITALIAN AMERICANS AND THE 500TH ANNIVERSARY OF COLUMBUS' DISCOVERY OF AMERICA

### HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LENT. Mr. Speaker, in 1992, Americans will celebrate the 500th anniversary of our country's founding by the Italian navigator Christopher Columbus in 1492. Commissioned by Spain's King Ferdinand and Queen Isabella, Columbus opened up the New World to exploration. In the process, he proved his hypothesis that the Earth was round and not flat, which was the conventional wisdom of his time.

In honor of this landmark in the history of the Americas, Congress created the Christopher Columbus Quincentenary Commission in 1984 to coordinate events celebrating Columbus' discovery. There are 37 commissions around the world, including those established by the Governments of Italy, Spain, and Latin America. In addition, 32 individual U.S. State commissions are currently working on local festivities.

The U.S. Commission is in the process of creating a scholarship endowment program for worthy students. Nationwide educational programs, seminars, and conferences are planned as are exciting festivities to be enjoyed by young and old. These include a regatta of tall ships and replicas of Columbus' ships, the *Nina, Pinta,* and *Santa Maria.*

All Italian Americans should be proud of their fine heritage. They have made significant contributions to the founding of our great country and the preservation of liberty and democracy. On behalf of my colleagues and the American people, I extend them my sincere appreciation for all their loyal efforts in the service of their country and offer my warmest congratulations on this momentous occasion.

## WORLD WAR II VETERAN PROUD TO DEFEND OUR FREEDOM

### HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McEWEN. Mr. Speaker, our Nation officially celebrated Veteran's Day on November 11. This article is so moving, I request that it be entered into the RECORD. The November 10 article in the Greenfield Daily Times by Cindi Pearce details the World War II experience of PFC. John R. "Jack" Collins. His experience serves as an example for all of us.

[From the Greenfield Daily Times, Nov. 10, 1989]

WORLD WAR II VETERAN PROUD TO DEFEND OUR FREEDOM

(By Cindi Pearce)

1943—John R. "Jack" Collins has attempted to enlist in the Air Corps but is turned down due to a bad heart.

He turns 18 on a Sunday, registers for the draft on Monday and gets his papers on Friday.

The U.S. Army Infantry will take him even if the Air Corps won't.

He and Harold "Mousey" Blake board a bus for Ft. Thomas, Ky. where they're inducted.

Collins is then sent to infantry school at Ft. Benning.

Did he want to be in the infantry?

"You didn't give a damn," Collins laughed. "You went wherever they sent you. Patriotism was high. The worst thing that could happen was not being able to go to the war."

Collins eventually shipped out of the country as a division. "We were part of a 92 boat convoy. We went through the Mediterranean to Marseille, France."

It took 14 days to get to Europe. "There were 5,000 of us on a troop ship. I was nervous as hell. I can't swim."

Collins said they arrived in France then "We went to the sh——.

"We fought up the Rhone River. We were committed to action outside Marseille. The first night, we hit a road block. I was a gunner on a machine gun. I'd just set up the gun and put in a full load and somebody tapped me on the shoulder. If it wasn't a 20-foot tall German then I've never seen one! My sergeant Dutch shot him off my back. That was my indoctrination into action. It was awfully yellow around the ground." He laughed.

The soldiers fought for 102 straight days. "When we were attacked we sustained heavy injuries," Collins remarked.

Most of the time Collins and his fellow soldiers walked but when they traveled a long distance they rode in a half track or on the backs of tanks. "We made good targets."

At one time, Collins' company was the only armored division in the 7th Army "which made us have to move a lot because they needed tank support."

The soldiers traveled through the Vosges Mountains which are part of the Maritime Alps. "It was the first time an army had ever moved through mountains that big. It was very cold and there was no place to get warm," Collins remembers.

Collins' company fought in the battle of Hatten and Rittenhoffen. "It's been called the Stalinberg of the west. It lasted 14 days. We slept very little. At the end of 14 days we didn't have enough men to keep fighting. We withdrew. The same night the German division withdrew. There were 35 miles between the lines. We were both exhausted. It was one of the hardest fought battles of World War II," Collins said.

"We fought through the Seigfried Line—barbed wire, pill boxes (which are big cement bunkers), tank traps (which raised up the tanks and chewed into the belly). We had to go after with flame throwers. We had to burn them out."

He continued, "We always carried our own shroud, which they told us was a mattress cover. It was to put our body in. I fooled them." Collins smiled. "I threw mine away."

Collins said, "We lost a lot of people, but we always tried to get them back to the roadside where their bodies would be picked up."

Collins said he and the others were in constant fear and danger. "You dug a hole at night and slept in it. A lot of them had shell shock and had to be evacuated. You get in what we called a sh—— storm and they couldn't cope. They'd get a blank look and just walk away or get in the hole and not come out."

Collins continued, "It's a strain. We'd go days at a time not knowing if we were going to get blown away any minute—I don't mean to sound sadistic—but it was that way, especially in the infantry."

How did he stay sane?

"I was just lucky or too dumb to know better. There were thousands of people who went through the same thing. I thought I could do it, too."

Collins said the way soldiers are depicted on TV as screaming and shouting when they're hit isn't accurate. "I never saw any one scream. They were always quiet."

Collins' company liberated a prison camp in Moosburg, Germany that had 150,000 prisoners including some of his own division plus Jews and Russians. "They had an incinerator there. It was awful. Ashes. Deep."

"We took Nuremberg, Germany which Hitler said would never fall. It was the heart of Nazism. We burnt the town. We'd go and throw incendiary grenades. (The Germans) would go around behind us and try to shoot us in the back."

Collins said before he and his company left the U.S. they were told not to wear any identification that would identify which outfit they were with.

However, when they landed in France, Axis Sally, a German broadcaster, welcomed them to Europe over the air.

He laughed. "After all that secrecy! She told us our wives and girlfriends were having a wonderful time back in the states. She would play music and try to make us homesick. She was a real sexy broad."

After the Battle of the Bulge, Collins' company was in General George Patton's 3rd Army.

"At the time the Germans knew they were whipped and were running. We were moving so fast they had to airdrop maps and gasoline to us."

Collins saw General Patton twice. "It was something being under Patton. He came up in a tank. He told us we weren't fighting hard enough. He said we'd lost too many tanks. He said he could get all the men he wanted but couldn't get tanks. He told us to go out and protect those tanks." Collins smiled. "But he made sure you were fed well."

After the Battle of the Bulge, Collins received a letter from his older brother Bill Collins who was in the Air Corps.

"They were asking for volunteers for the infantry. Billy was thinking about volunteering. I wrote back and told him I had enough to worry about and I didn't want him there."

In December of 1944, Collins earned his Purple Heart. He was wounded by the German 88.

"There were three of us in a ditch and they killed the other two. I told them to get in the water. They didn't. I did. It's a funny thing, but I knew I was going to get wounded the day I got wounded. It was a feeling. I left all my things with the half track driver.

"The company I went in, we had 250 of us trained in the states. We had 500 replacements go through because of the killed, wounded and so forth. Of the original 250, 19 came back (home) and of the 19, five had not been wounded. Each one of us was replaced twice. People didn't realize this because the government didn't release this. (But) we won more than we lost, I guess."

After he was wounded, he was taken to the hospital in an ambulance. Kenneth Crago of the Austin area was the ambulance driver.

"I've still got the shrapnel in my leg. I got lead poisoning from it. They told me I had 40 cents worth of lead in me—a quarter, a dime and a nickel."

Collins was promoted to a staff sergeant—"I guess I just lived long enough"—and headed up a 13-man rifle squad.

Collins' mother didn't know he was in combat until Stars and Stripes sent an article to the Greenfield Daily times stating that Collins had been wounded.

"I'd told my mother I was in training." Collins laughed. "Mother always wondered why my letters had dirt and mud on them. I told her it rained a lot."

"The two things my mother sent me that I'll never forget were a Coca Cola packed in popcorn and cold packed tenderloin. I got one swallow of the Coke. I hid the tenderloin and Dutch and I ate it."

Collins said the Greenfield Daily Times sent newspapers to all the Greenfield GIs.

"Everyone kidded me about it but everyone want to read it. So they knew who all had babies."

The infantry was a tough bunch and had to be. Collins recalls being kept awake for seven days straight. "Then they got another company to guard us while we slept."

One Thanksgiving the entire company got dysentery from spoiled turkey. They were all deathly sick. That night they got in the thick of things and had to fight. Collins said it was awful.

"The worst thing was the artillery. You couldn't fight back. You'd just get in your hole and pray. You did a lot of that. I had a good friend who was an atheist. We were in an artillery barrage. We dug a deep hole. I said to him, 'What are you doing?' He said, 'I'm praying'. I never thought I'd hear him say that."

On one particular occasion Collins was in the midst of another sh—storm and was trying to dig a foxhole.

"I didn't have anything to dig with. I was digging with a mess kit spoon. You've seen the roadrunner on TV—with all the dirt flying behind him? Dutch yelled at me, 'John R. where are you?' He had a foxhole no bigger than a picture frame and we both got in it."

The soldiers would be told each evening—go in and take that village and you'll have somewhere to sleep tonight.

So, Collins said, they'd fight like hell to take the village then be told to set up an outpost outside the town.

But other times they would sleep in homes in the village.

"In France we pulled our half track right up to the front door of this house. We were cleaning our guns. The first thing you did when you got out of action was clean your gun. This guy was cleaning a 50 calibre machine gun. He didn't know it was loaded and four or five rounds went off real fast and went in through the house. We heard all this crying and screaming and we thought we'd killed someone. Well, we'd shot papa's shoes!" Collins laughed. "So we gave him a pair of GI boots. I laugh every time I think about that man and his shoes. I thought for sure we'd killed him."

Shoes were a very valuable commodity during the war, Collins said. No one had any.

Collins said the GIs would always give their fruit and gum to the children who "had nothing."

"We treated the civilians well. We weren't allowed to fraternize with them in Germany but we did. The German civilians treated us very well. You very seldom would see a dead civilian. We'd blow a town apart but seldom see a dead civilian. I guess because they lived in their cellars."

He continued, "The German soldiers and the German people were a proud people but we just kicked the sh— out of them. The French were always happy to see us and would go out of their way for us and give us wine and Schnapps."

At one point Collins was sitting and eating his breakfast somewhere in France when someone came up behind him and knocked him off his seat.

"I looked up and it was Billy. How he found me, I don't know. We had one hell of a reunion."

Just as Collins was getting ready to come home, the A bomb was dropped, ending the war in Japan.

"We were going to go to Japan after 30 days at home. We were going to the invasion of Japan."

His plans changed.

"The day it happened we'd just received a whiskey ration. There were eight of us in a tent and you know what happened. It was a party to end all."

Collins came home on the same ship that brought his father back from World War I.

"We were treated like a king when we returned. Far different than the boys who came back from Vietnam. I was in the first full division to return to New York after the surrender of Japan. We came into the harbor and all the fireboats were out with bands on board. You could look down Manhattan and see them throwing ticker tape. They had to stop our ship in the harbor because everybody went to the side that the Statue of Liberty was on. This was an enormous ship but it tilted and they couldn't get the tug hooked up to it."

Collins said he never hated being in Europe and fighting the war "because I knew it had to be done. It was entirely different from Vietnam because we were jumped on and we never had any doubt in our mind why we were fighting."

Although Collins received the Purple Heart he said his most treasured award is the Combat Infantry Badge.

"This is the only one that really matters to me because you had to be shot at to ever get one—and you also got a $10 month raise." He grinned. "(The badge) was something nobody else had."

"I just did what I had to do. I was scared. Everybody was scared. We were all miserable," Collins said.

Noting that he had a lot of close encounters with the enemy, Collins said he was, and is proud, of being in the infantry. "If I had to go back, I would want to go in the infantry because of the camaraderie you get with trusting your life to other people. We always felt proud because we were the toughest. We always wore our overseas cap on the other side from the rest of the army. The infantry is really a proud unit. They called us dough feet and dog face but they called us that out of respect. Anybody who was in action respected the infantry for what they did or what they had to do."

Collins said many Vietnam vets are uncomfortable talking about their experience. "But they will be able to later. I know for years I didn't want to talk about it."

He added, "I felt like Vietnam was a thing that had to be and I always felt proud of the boys who went and still do."

He continued, "I don't think Veterans' Day gets enough publicity. They don't close school for it. Veterans' Day means from 1776 on."

On Veterans' Day, Collins "thinks about friends I've lost. You never forget this. And I'm like everybody else, I remember Pearl Harbor Day—better than the President. I remember what day it was on," he laughed.

The World War II veteran said the sign out front of the Chillicothe V.A. sums it up for him. It says "The Signs of Freedom are Visible Here."

"I think that's as appropriate as anything."

## THE PRODUCTS OF ABORTION

### HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LaFALCE. Mr. Speaker, I am pleased to share with my colleagues an article in the November 3 edition of USA Today, "Using Fetal Tissue Will Cost Unborn Lives," by Dr. Bernard N. Nathanson, head of Bernadell Inc., a

firm providing educational works on bioethics. Dr. Nathanson's article addresses a disturbing byproduct of America's abortion epidemic—the use of fetal tissue and organs obtained from elective abortions for medical research and therapy.

Some have alleged that the use of these fetal body parts for needy medical purposes can make the best of a bad situation, that is elective abortion. And the potential therapeutic benefits certainly seem tempting. But despite the potential benefits, the use of fetal parts for these purposes will lead, at best, to a succession of compromising ethical dilemmas and, at worst, exploitation in its cruelest, most degrading form.

Dr. Nathanson's article raises a number of the dilemmas in which we will inevitably find ourselves should we continue on the current path. Underscoring the weakness of the ethical foundation upon which the abortions rights argument has been constructed, this article reveals the frightening potential for human exploitation involved in this latest extension of the abortion controversy.

[From USA Today, Nov. 3, 1989]

USING FETAL TISSUE WILL COST UNBORN LIVES

(By Bernard N. Nathanson)

NEW YORK.—Next year about this time, you may receive a pre-Christmas catalog listing a menu of fetal tissue for medical use. Science fiction? No way. Private companies are now attempting to commercialize use of fetal tissue. I have seen reports to their stockholders.

Spontaneous abortions (miscarriages) end about 10% of all pregnancies. This would provide about 400,000 bodies a year for the tissue and organ merchants, except for the fact the fetus dies two to three weeks before expulsion so the tissues are not acceptably "fresh."

First-trimester abortions are also unacceptable—the fetal organs and tissues at this stage are too immature.

Therefore, the supply of fresh and acceptable fetal tissue must come from the 120,000 abortions a year performed in midpregnancy. With 8 million to 10 million sufferers of chronic or degenerative diseases, demand will quickly outstrip supply.

This can only lead to massive abuses, skyrocketing prices, black marketeering, exploitation of poor and Third World women as fetal-organ farms, and women encouraged to wait until later in pregnancy to abort (which involves rising complications and death rates).

Other abuses would include withholding treatment for extremely premature babies in order to assure death and the subsequent harvesting of their tissues and organs. Kickbacks and finders' fees to doctors and hospital personnel would become routine.

In addition, the vast expenditures for this research have so far not produced results which warrant them. Yet through a chain of bureaucratic misdirection and deceit, we taxpayers have been supporting this ethically unacceptable research. Other more ethical research holds hope for sufferers of chronic disease—neuroelectric stimulators, generic probes and sophisticated chemotherapeutics, for example.

Where will it end? Today, these tissues and organs are proposed to cure disease, but tomorrow? Shall we endorse fetal testicular tissue for failing sexual function and fetal skin for cosmetic purposes?

For those of us who've long held that abortion itself is morally unacceptable, it comes as no surprise that this obscene spinoff of the abortion industry is already upon us. After all, why should those who execute the defenseless unborn draw the line at selling the parts—or eating them, for that matter?

## SOUTHWESTERN UNIVERSITY RANKS FIRST

### HON. GREG LAUGHLIN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LAUGHLIN. Mr. Speaker, tomorrow's top leaders, businessmen, teachers and scientists are being educated at Southwestern University in Georgetown, TX, which is located just north of Austin, in the 14th Congressional District.

In addition to celebrating its 150th birthday this year, Southwestern University was ranked No. 1 among 65 regional colleges in the Southwest by a recent survey in U.S. News & World Report.

In publishing its report, U.S. News stated that, "by a wide margin, Southwestern University in Georgetown, TX, was rated tops among the 65 liberal arts colleges."

Southwestern's academic reputation was ranked first in the survey, as were its rankings in student selectivity, faculty quality, and financial resources.

Mr. Speaker, in an age when over 50 percent of America's college graduates earn degrees in institutions other than the one they originally enrolled in, Southwestern ranked third in it's retention patterns. This is an outstanding tribute to Southwestern's commitment to excellence and to the great quality of life students enjoy in Georgetown.

Founded by Methodists in 1840, Southwestern is the oldest university in Texas. Today, its 1,139 students carry on this proud tradition of commitment to excellence in education on a beautiful 75-acre campus. Southwestern University remains on the cutting edge of the latest technology. For example, the college's seven dorms are equipped with personal computers and students have ready access to the latest in sophisticated scientific and computer labs on the campus.

Mr. Speaker, all of the above demonstrates why Southwestern University enters its next 150 years as an undisputed leader in America's higher education landscape.

## HON. SHIRLEY HUFSTEDLER, MALDEF AWARDS

### HON. C. CHRISTOPHER COX

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. COX. Mr. Speaker, I would like to pay tribute to Shirley Hufstedler, a woman who has dedicated her life to the cause of justice.

A graduate of Stanford Law School, Shirley Hufstedler served with distinction on the Los Angeles County Superior Court, as an associate justice of the California Court of Appeals, and on the U.S. Court of Appeals for the Ninth Circuit. In 1979 she was appointed secretary of education. She has returned to a position of prominence and leadership in the Los Angeles Bar.

A distinguished member of the Los Angeles Bar and a highly respected jurist, Shirley Hufstedler has promoted the interests of fair play in our courtrooms. As secretary of education, Shirley Hufstedler championed the cause of fair play in our classrooms.

Whether addressing issues of courtroom or of classroom, Shirley Hufstedler brings a keen intellect to the service of compassion and refuses to accept the idea that we cannot do more—and do it right away.

As we come to appreciate the sacrifices that a career of public service can mean, we are fortunate to have the gracious example of Shirley Hufstedler to remind us of the good that integrity and quality in public service can bring.

For her contributions to the advocacy of justice in our culturally diverse State and to building the America we seek, I ask you to join me in paying tribute to Judge Shirley Hufstedler as she is honored by the Mexican American Legal Defense and Education Fund.

## INFRASTRUCTURE AFFECTS ALL OF US

### HON. J. DENNIS HASTERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. HASTERT. Mr. Speaker, our Nation's infrastructure is literally crumbling before our eyes, but yet we continue to allow billions of dollars in our highway and airway trust funds, designated for this purpose, to be held captive by Federal bureaucrats attempting to hide the true size of our Federal deficit. It's time to end the charade. We are losing the trust of the taxpayer, and we are losing our ability to stay competitive as a nation.

On September 9, 1989, Governor Thompson of Illinois delivered a speech before the Associated General Contractors meeting in Chicago. His remarks call for action by the Federal Government to address this travesty now. I strongly share his sentiment, and I include an excerpt from his speech for inclusion in the CONGRESSIONAL RECORD.

INFRASTRUCTURE ON THE FRONT BURNER—ILLINOIS GOVERNOR JAMES R. THOMPSON ON WHY REBUILDING CAN'T WAIT

Excerpts from a speech by Gov. Thompson before the AGC Board of Directors in Chicago, September 9, 1989.

Thank you very much.

This nation's infrastructure, horizontal and vertical, transportation and stationary, needs building and rebuilding. And all of us, you and I, governors, mayors, legislatures, contractors, and users have to keep that issue on the front burner—not only in Washington but in the state capitals across this nation, in city halls and county chambers.

Too many states, and the nation itself, in my view, are waiting far too long, both to build those units of infrastructure which are necessary to keep us competitive as a

nation, and to rebuild those which served us in prior times but are now disintegrating or won't serve what will soon become 21st century needs.

Earlier this year, I was privileged to serve as the chairman of a task force on transportation infrastructure of the National Governors Association. And I've sat on a lot of task forces before, even created a few in my time as governor. Here are some of the things we found out in those hearings. For every dollar's worth of value in export goods—and our ability to export is the key to our economy—25 cents is spent transporting raw materials or some unfinished goods or components between domestic manufacturers.

The dilemma is that at the same time that demands for modern transportation systems have increased in these United States, new capital investment by public entities—federal, state, and local—has declined. So demand is going up and response is going down, and that leaves a transportation gap in America.

We could draw the same graph for water and sewer systems in America—demand going up, investment going down. We could draw the same graph for facilities relating to health care, recreation, and other things that contribute to quality of life.

In testimony before the task force, economists from the Federal Reserve made a fundamental and striking point: There is a correlation between public investment in infrastructure of all kinds and private investment in new business facilities and jobs.

In those areas where the public is investing in itself—whether it's highways or schools, hospitals or libraries, forest preserves, or baseball diamonds—private investment and the number of jobs goes up. Where public investment declines, private investment declines.

And there's another correlation we have to keep in mind. The higher the degree of public investment in a community, the greater efficiencies we find in productivity and competition, even competition on a global basis.

And the converse, of course is true. Here's an example: because our general aviation system in America does not keep pace with our current economy, the economy we want to reach in the next century, the FAA estimated last year that flight delays cost airlines $1.5 billion in lost time. All of you have sat in that plane on the taxiway.

Without the necessary improvements, cars and trucks on America's freeways will burn up nearly 4 billion hours in traffic jams as we reach the next century.

These are but two of hundreds of examples how we remain uncompetitive and unproductive.

And what do we do about this? The first thing we have to do is help to build the national consensus for renewed investment by American infrastructure, horizontal and vertical. And we have to be able to make the case to our people that if it's necessary to pay more in taxes to do it, we need to do it now because the only alternative will be to pay more taxes later. It's as simple as that.

We need more political leaders who aren't afraid to say that, and to fight for it. We need to end this quarrel between mayors and governors and the federal government, on the other hand, over the proper disposition of the billions of dollars in the highway trust funds, the airport trust funds, and the mass transit trust funds of this nation.

We have always contended that the money was extracted from taxpayers for a transportation purpose and it is to be spent, but it's sitting there.

The federal government has always contended that it's obligated some zillions of years out into the future, therefore it can't be touched. But the real answer is that as long as it remains unspent in the trust funds, the federal deficit looks smaller on paper. And we all know that.

At the recent meeting of the National Governors Association in Chicago, Transportation Secretary Sam Skinner promised that he would go back to Washington, untangle that bureaucratic answer, and cut through that congressional and OMB defense that said "It's more important to have the American people believe that the deficit is a few billion smaller than it is to get that money out there on the highways or in the air or in our mass transit systems."

And the governors have promised to keep Sam's feet to the fire.

We need to look at new methods of financing infrastructure improvements in this nation and, if necessary, change the tax laws to achieve them.

This is a message that we governors intend to take to Chairman Rostenkowski and to Senator Bentsen and to members of the Congress.

I believe we need to look at a more radical notion. And that is experiments in the privatization of infrastructure, particularly on the transportation side. And there are some experiments going forward.

Just as Minnesota is experimenting with choice in public schools, California and Florida are experimenting with privatization in transportation improvements.

Have we thought enough about public-private partnerships in financing infrastructure? Have we really put our minds to this, or do we just sit and grumble too much when the cars are jammed up on the freeway, or we hit a pothole, or a bridge is closed, or a school is inefficient, or a library can't keep our children competitive for jobs in the next century?

Maybe more of us can put some enthusiasm and steam behind the proposition that now is the time to build and rebuild America.

Please carry that message back to your home communities, to your legislatures, to your governors, and to your congressmen and senators, and I think we'll get some results.

Welcome to Chicago, Welcome to Illinois. And have a good meeting.

## WESM PROVIDES LISTENERS WITH VALUED SERVICE

### HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DYSON. Mr. Speaker, I rise in recognition of Mr. Robert Franklin, general manager of WESM-FM (91.3), and the station's dedicated staff and volunteers who have proven their dedication to excellence in broadcasting.

WESM is responsive to the issues and concerns of the people of the Eastern Shore. Each week WESM provides over 40 hours of news and public affairs programming, receiving material from such valuable sources as Sheridan Broadcasting Network, Associated Press, National Black Network, New Dimensions Radio, and National Humanities Center.

WESM is committed to community service. Listeners are encouraged to express their opinions during WESM's community forums, in which citizens are challenged to become involved in such worthwhile community projects as National Nursing Home Week.

WESM boasts a diverse musical format. A blend of jazz, reggae and gospel provides a unique listening alternative to Maryland's Eastern Shore.

WESM has built a solid reputation for caring about the interests and concerns of all Marylanders. The station's staff and volunteers have proven their dedication to improving the cultural, artistic, and social awareness of the Eastern Shore. To WESM, thank you.

## COACH DEAN McGEE, BETTER FOR HAVING KNOWN HIM

### HON. BUD SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SHUSTER. Mr. Speaker, I rise today to give a special commendation to Dean McGee, who has dedicated over 36 years of his life to helping central Pennsylvania's boys become young men.

In reaching his 200th victory as a head coach, Dean McGee joins the elite ranks of coaching. In his 36 years as a gridiron captain, he has taught countless players the x's and o's of football, and obviously he has performed this task with exceptional skill. But, more importantly, he has sought to instill values that will resound long after the roar from the crowd has faded. The memories of games may wither, but the lessons and values learned on the field of play, from a man named Dean McGee, will stay with these athletes until they are young no more.

My neighbors in Bedford County are appreciative of the excitement and thrills that the many Friday night victories have given. But, they are indeed most grateful for their many sons who are now better men for having associated with Coach Dean McGee.

McGee Reflects on 200 Wins, 32 Years of Coaching

It was windy and rainy and the Bisons didn't play their best, especially in the first half, but Friday night's victory against Central High School will be one Bedford football coach Dean McGee remembers.

The Bisons' 28-13 win became the 200th victory of McGee's 32-year coaching career. It was McGee's 150th win at Bedford in 24 seasons. He compiled an even 50 victories in eight years at Northern Bedford prior to taking over the Bisons in 1966.

McGee joins an elite group. Mickey Minnich, executive Director of the Pennsylvania Football Coaches Association, says he's unsure how many active coaches in the state have accumulated 200 wins, but he's certain that it is no more than a handful.

"There is no doubt that (McGee) is very high on the list of our active coaches," Minnich said.

Counting four years he was an assistant coach, McGee has spent August to November on the practice field for 36 years.

"I've got a lot of enjoyment from working with kids and watching them improve over the years," McGee said Sunday. "The success we've had has a lot to do with it. With-

out the success we wouldn't have lasted this long."

McGee has "lasted" long enough to coach the sons of his former players.

THE ROAD TO 200

| Year | School | Record | Cumulative |
|---|---|---|---|
| 1958 | Northern Bedford | 8-1-0 | 8-1-0 |
| 1959 | Northern Bedford | 7-2-0 | 15-3-0 |
| 1960 | Northern Bedford | 5-4-0 | 20-7-0 |
| 1961 | Northern Bedford | 8-1-1 | 28-8-1 |
| 1962 | Northern Bedford | 5-5-0 | 33-13-1 |
| 1963 | Northern Bedford | 7-1-2 | 40-14-3 |
| 1964 | Northern Bedford | 5-5-0 | 45-19-3 |
| 1965 | Northern Bedford | 5-4-1 | 50-23-4 |
| 1966 | Bedford | 1-7-2 | 51-30-6 |
| 1967 | Bedford | 7-3-0 | 58-33-6 |
| 1968 | Bedford | 6-1-2 | 64-34-8 |
| 1969 | Bedford | 5-5-0 | 69-39-8 |
| 1970 | Bedford | 8-1-0 | 77-40-8 |
| 1971 | Bedford | 3-4-2 | 80-44-10 |
| 1972 | Bedford | 5-5-0 | 85-49-10 |
| 1973 | Bedford | 8-1-0 | 93-50-10 |
| 1974 | Bedford | 5-4-0 | 98-54-10 |
| 1975 | Bedford | 7-2-0 | 105-56-10 |
| 1976 | Bedford | 5-4-0 | 110-60-10 |
| 1977 | Bedford | 7-2-0 | 117-62-10 |
| 1978 | Bedford | 7-1-1 | 124-63-11 |
| 1979 | Bedford | 9-0-0 | 133-63-11 |
| 1980 | Bedford | 3-5-1 | 136-68-12 |
| 1981 | Bedford | 4-5-0 | 140-73-12 |
| 1982 | Bedford | 5-4-0 | 145-77-12 |
| 1983 | Bedford | 9-1-0 | 154-78-12 |
| 1984 | Bedford | 7-2-0 | 161-80-12 |
| 1985 | Bedford | 10-0-0 | 171-80-12 |
| 1986 | Bedford | 9-3-0 | 180-83-12 |
| 1987 | Bedford | 5-5-1 | 185-88-13 |
| 1988 | Bedford | 11-1-0 | 196-89-13 |
| 1989 [1] | Bedford | 4-0-0 | 200-89-13 |

[1] Through September 22.

"Having good kids who follow what we believe," is one ingredient in McGee's recipe for success. "And another has been the assistant coaches we've had involved. The parents over the years, allowing their kids to be abused—putting up with long nights of practice and that sort of thing.

"My wife has put up with this nonsense all these years," he said, glancing across the room to the woman with the loudest cowbell in Pennsylvania.

McGee's biggest satisfaction in coaching is taking a rather average bunch of athletes and turning them into something much more.

"We've had a few teams over the years that have produced over their potential. They worked hard and came up with the intangibles that made them winners," McGee said.

"We've enjoyed working with most of the teams, but there have been a few disappointments.

"The disappointments come from when you have a good bunch of kids and they don't want to put into the program what you think they should, what they can."

THe satisfactions of coaching, however, have outweighted the roug times. And memory focuses on the good times.

"For example, the 1979 team was the most unselfish team we've had. They went 9-0 because everyone pulled together and did what they had to. I wouldn't say they were the most talented, but they got the job done anyway they could," McGee recalled.

Unselfishness is one of the traits McGee treasures in a player.

"We've always tried to be team oriented. Every once in a while you have someone who thinks they're above the team and gets concerned about how many points they have or how many carries they get and so on.

"Some are willing to change positions because we've needed them somewhere else and they've become good. Others haven't been so cooperative."

McGee's ideal player has to posses the desire to win.

"Sure, it's not the only thing, but it is important," he said. "Having someone put in the long hours is part of it. If they give 110 percent—that's an old cliche—if the give the best they can, that makes them a winner, in our book."

McGee played football and basketball at Roaring Spring High. There were no baseball or track teams due to World War II. He played tackle under Bob Lightner for several years, and for Bernie Reese as a senior.

With only two returning servicemen and the rest of the squad freshmen, McGee moved to quarterback his first year at Lock Haven State.

"That's how hard up we were," he said with a grin. Lock Haven won four of six games that year and McGee switched to center and linebacker the next season. He won all-conference honors before graduating.

He spent two years in the army before beginning his teaching career. After a year at Brady Township near Dubois, McGee returned to his homnetown to teach in the Spring Cove school district. Three years later he moved to rival Northern Bedford.

McGee spent one season as an assistant before assuming the head coaching position for the 1958 season. The young coach led the Black Panthers to an 8-1 record. McGee didn't have a losing season in eight years.

"That was a long time ago. One of the biggest series was with Roaring Spring (Central). We lost a couple of times or tied them when we should have won. Finally we beat them 19-0 in 1964," McGee said, checking himself by leafing through one of three notebooks that contain the results of the 32 years he has paced the sidelines.

When the opportunity arose in 1966 to move to Bedford, McGee took the job. And under the intense scrutiny win-hungry fans bestow on any first-year coach, McGee's Bisons struggled to a 1-7-2 record.

"The first year John Topper came in as assistant. The biggest problem we had was overcoming the bad habits we couldn't abide by. We spent half the season correcting things," McGee recalls.

"I didn't let parents bother me. We made it clear we were in charge of the program. We saw the kids five nights a week. They came Fridays and saw things they didn't like. We saw things we didn't like either.

"We followed the philosophy we've always followed, that is to find the best kids and play them. Jim Krivoski was only a sophomore, but he became our quarterback and we built from there."

The critics were quieted as the Bisons went 7-3, and 6-1-2 over the next two years. Since that first season, Bedford has had only three other losing records in 23 seasons.

McGee credits his assistants over the years. Among them Topper, Bob Baker, Paul Kolander, John Wagoner, Gary Waugerman, Dave Wertz, Bob Shank, and current assistants Bill Creps, Max Shoemaker, Gary Washington and Dan Smith.

"In recent years, I've turned more responsibility over to the assistants as far as the offense and defense and I'm more or less supervisory," McGee explained. "Max handles the backfield and Bill Creps the line, Dan takes care of the ends. And we coordinate things together."

McGee likes to win against anyone, but he has his favorites, too.

"One team I've liked to play and beat is Westmont," he said. "I guess it's because when I first came here everyone built it up as a jinx game. The Gazette even called it the Westmont Jinx. The kids got scared.

"A couple years before I came Bedford had some good teams. (John) DiFabio was playing then. They got blown away due to the fact that the kids didn't think they could win.

"I think we're as close to them as we've ever been. I think we're about one game behind in the series. I get more enjoyment beating them than anyone else."

McGee's biggest win, however, came against another school.

"The one that sticks out was the championship game with Bishop Guilfoyle, at least in recent years. That was 1985 and we won 30-0. We had so much trouble with them in previous years but we shut them down.

"That's just one of many. I talk about that one because of the people we had that year. There have been a lot of them, I'm sure there are some we've forgotten.

Bedford's 1985 team went undefeated, 10-0, McGee's 1979 squad went 9-0, the first undefeated team at Bedford since the days when McGee was a high school player.

"That 1985 bunch was the strangest bunch. They were hard workers, but they were a hard group to figure out. The following year, 1986, was the most unpredictable. You couldn't tell form practice what their frame of mind would be going into a game and how they would react," he recalled, flipping through the notebook pages. The '86 team ended up 9-3.

An official in three sports for more than 30 years, McGee claims, he has had "very few disputes with officials."

"I think the angriest I've got was at Westmont. They had a rule that your pants had to cover your kneepads. We had Mark Dorner and Mike Cottle at the ends that year and they were tall. Their kneepads were sticking out and the officials gave me some static at halftime.

"I gave them my views on the situation and we ended up with a 15-yard penalty to open the third quarter. The penalty didn't hurt us and we ended up winning 16-12."

"That wasn't the end of the short pants story.

"I got even angrier the next week at Forest Hills when the officials came in the locker room and checked us out before the game."

Last year was a particularly gratifying one for McGee and his staff. The Bisons went 11-1 and just missed making the first-ever PIAA football playoffs.

"They just gave us a season that was above our expectations because of the number of under-classmen we were using," McGee said. "They came along and really produced for us by the end of the season."

With many of those starters back this season, the Bisons have jumped out to a 4-0 start. They have been ranked highly in two state polls of Class AA football squads.

"We're still trying to figure this one out. The problem to this point is that we've been relying on the big play. We've won a couple of games that weren't pretty, but we've won decisively.

"Potentially this is a fine group, but they can be better. The coaching staff won't quit hollering and screaming at them until they are giving more than they think they're capable of giving."

McGee sees athletics as a playing a integral role in the educational process.

"It's always our goal to get the most out of kids, for their own benefit, for the benefit of the school. I still think athletics has a lot to do with the success of schools. At times I think there is too much emphasis that athletes shouldn't make mistakes.

"People pound on athletes as role models, and they should be, but they lose sight of

things. For one, if these kids couldn't compete, there would be some that would drop-out. There would be more trouble in the classroom."

McGee won't put any timetable on when he'll step down, but he knows when he'll hang up the spikes.

"I'm still enjoying it, but one of these days I'll sit down in the locker room to put on my shoes and go to practice and wonder if it's all worth it.

"That," McGee said, "Is when it will be over."

## FOREIGN ASSISTANCE APPROPRIATIONS FOR FISCAL YEAR 1990

### HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mrs. COLLINS. Mr. Speaker, I regret having had to vote against the foreign assistance appropriations bill because, although the bill as a whole was a good one, it had a fatal flaw: $85 million in military aid to the brutal, reckless Government of El Salvador.

Democracy is to be encouraged worldwide and the United States must, by principle, support democratic processes wherever present. However, it is also the obligation of our Nation not to support any government that gives only lipservice to democracy while imposing authoritarian laws and violating human rights without regard for the people whom they are elected to serve.

The Government in El Salvador no longer deserves American support. There are many signs that the 1989 election, through which the present Government came to power, was won through fraud and abuse. If these appearances are true, then we, and all democratic peoples, have no business bolstering that Government.

Even more importantly, the Salvadoran Government has adopted methods of terror and abuse of power as its standard operating procedure. President Alfredo Cristiani had stated his intent to disassociate himself from Roberto D'Aubuisson, the ARENA leader who is widely recognized as the chief of the right-wing death squads which ravage and intimidate the Salvadoran people. But D'Aubuission's influence in the Government is growing and his carnage is continuing. The fighting and human rights abuses of recent weeks has made that point all too clear.

We cannot settle for bold rhetoric—we must act on it. This vote offered an opportunity to stand up for democracy and the Salvadoran people. I strongly oppose military aid to the Government forces in El Salvador. Yet, the foreign assistance appropriations bill provided $85 million in military aid to El Salvador. Hence, I was forced to vote against the bill.

I did, however, cast this vote with great reluctance. Aside from this provision, I supported the bill. It provided well for our friends in other countries while promoting America's national security and foreign relations interests.

Mr. Speaker, given a chance to vote on this bill again—minus the provision of military aid for El Salvador—I would enthusiastically support it.

## REMARKS BY DEPUTY SECRETARY OF ENERGY, HENSON MOORE

### HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. RITTER. Mr. Speaker, the passage of the rule, House Resolution 198 by a vote of 405 to 10, on November 16, 1989, allows for the consideration of the reauthorization of the NRC early next year.

I submit the following remarks by Deputy Secretary of Energy, Henson Moore, which are an abridged version of his testimony before the House Interior and Insular Affairs Committee on November 9, 1989, in support of the Ritter amendment to H.R. 1549, the reauthorization for the Nuclear Regulatory Commission [NRC]. The Ritter amendment would not allow the NRC to use its funding for any purpose that would lead to the dismantling of the Shoreham powerplant on Long Island unless the plant was deemed to be unsafe.

REMARKS BY DEPUTY SECRETARY OF ENERGY, HENSON MOORE

Mr. Chairman, Long Island needs additional generating capacity. The Shoreham plant has been completed at a total cost of about 5.5 billion dollars, and the Nuclear Regulatory Commission says it is safe and ready to run. However, under the plan advocated by the State of New York, the plant would be sold for one dollar to a newly-created State agency that has no nuclear power or other utility experience, and destroyed. Under this plan, this fully-licensed plant would be decommissioned at the expense of electricity customers on Long Island, over 4 billion dollars would be added to the rate base of the Long Island Lighting Company ("LILCO") and then recoverd from customers over many years, and the customers would have to pay still more money for the construction and operation of alternative generating capacity—which will produce power at a higher cost than it would cost to operate Shoreham.

The Department strongly opposes this plan. After considering the options from the perspectives of electricity reliability, economics, environmental impacts, and energy security, we have concluded that the destruction of Shoreham makes no sense, whether for the residents of Long Island, for the Northeast as a region, or for the Nation as a whole.

1. FEDERALISM AND THE STATUTORY RESPONSIBILITIES OF THE DEPARTMENT OF ENERGY

The Department of Energy believes that its obligation to promote national energy policies and carry out its statutory responsibilities includes an obligation to speak out against actions which are completely inconsistent with sensible national energy and environmental policies. The destruction of Shoreham will adversely affect a number of national interests: adequate and reliable energy supply, energy security, the Nation's trade balance, and the environment. The destruction of Shoreham has the potential of adversely affecting not only Americans living in a particular State, but also those living in neighboring States.

The Department of Energy recognizes clearly that State and local authorities have a major role to play in decisions regarding nuclear power plants and in decisions regarding local energy matters in general. However, in light of the major Federal policy and program interests outlined above, the actions of the Department of Energy in opposition to the State plan to dismantle Shoreham are fully consistent with principles of Federalism and the Department's statutory responsibilities.

2. THE NEED FOR ELECTRICITY

Maintaining the availability of adequate electricity is one of the key energy challenges of the 1990's. To ensure reliable and efficient service, some areas of the Nation, such as New England, Long Island, and the mid-Atlantic states need to take prompt action to add substantial amounts of new generation capacity to the system, or impose demand restraints, or both. Moreover, electricity supply shortages, when they occur, are of more than local significance, except in those few cases where the affected utility is so isolated that it is unconnected to other utilities via a transmission grid.

For the past two years, electricity supplies on Long Island have been extremely tight. Sustained strong demand growth and comparatively small additions to generating capacity have reduced LILCO's reserve margin to dangerously low levels. In addition, the average age of LILCO's baseload plants is 29 years, and aging plants are increasingly subject to unanticipated breakdowns.

This past summer, the combination of a softening Long Island economy and moderate weather resulted in lower levels of peak electricity demand than LILCO has projected. Nevertheless, on three separate occasions LILCO's demand ran so close to the limits of its available operating capacity that the firm had to implement Stage II of its emergency procedures, which include direct load controls and public appeals to customers for voluntary conservation.

The circumstances of these three incidents reveals LILCO's vulnerability very clearly. For July as a whole, the weather on Long Island was about 5% cooler than normal (in terms of "cooling degree days"), and during part of this month LILCO was actually able to export power to utilities in the mid-Atlantic area, which were then straining under locally severe weather. Late in July, however, the weather became much warmer on Long Island, and LILCO experienced the first of its three Stage II incidents. In August, the weather was only 3% warmer than normal, but LILCO was forced to declare its second Stage II alert on August 4.

September's weather was unseasonably warm on Long Island, with 30% more cooling degree days than normal. On September 11, LILCO was forced to initiate first a Stage II alert, and then shift to a Stage III alert, which adds system voltage reduction, or "brownout" to the Stage II measures. This incident occurred after LILCO had added 238 megawatts of peaking capacity and about 140 megawatts of peak loand management.

Electricity service reductions or outages are inconenient to all, and they are very costly to many industrial and commercial electricity customers due to reduced sales, lost business records, productivity, damage to equipment, and damage to materials and products. The very prospect of electricity supply shortages constrains regional economic growth.

LILCO has taken a number of actions to reduce the risk of electricity supply disruptions without Shoreham, such as aggressive

demand-side management programs and extraordinary maintenace procedures which have enabled it to sustain exceptionally high plant availability levels. LILCO should be commended for these efforts. But, these are all stopgap measures and do not replace the need for Shoreham. Even assuming LILCO's very moderate demand growht projections of 1.5% per year, the people of Long Island needlessly face an extremely tight electricity supply situation for the next two years without Shoreham.

Long-range demand growth projections are based on assumptions of normal weather, both summer and winter. LILCO's peak demand has grown at an average of 3% per year fo the past six years. The Energy Information Administration has projected future demand growth of 2.6% per year for the Northeast region (which includes LILCO) through 2000, assuming normal weather. If demand grows at a modest 2.6% rate but Shoreham does not become operational, LILCO's reserve margins would stay below the New York Power Pool's 18% minimum through 1996. The supply situation is subject to possible further deterioration through a variety of causes: unexpectedly rapid economic growth, extreme weather conditions, failure of major utility or nonutility generation units to come on line as expected, unanticipated outages of existing generation or transmission equipment, or some combination of these.

### 3. COMPARISON OF THE OPTIONS

From the perspective of national enery policy, electricity supply options may be assessed in terms of three basic criteria:

Will an option conribute to an economically efficient electricity supply system?

Will it increase or help minimize the adverse environmental impacts associated with electricity production and use?

Will the option increase or help minimize the Nation's reliance upon imported oil?

The following review of options is not intended to disparage any of the alternatives discussed—each option will make a useful contribution to meeting the Nation's future energy needs. This review is intended solely to compare the various options to operating an existing, fully-built and fully-licensed nuclear plant.

(1) Operate Shoreham: Perhaps the most important facts related to the controversy over Shoreham are that the plant is large (809 megawatts), completed, and that the $5.5 billion spent on it to date is a sunk cost and must be paid by some combination of ratepayers, taxpayers and LILCO shareholders. Under the New York State plan, over $4 billion of it would be paid by LILCO ratepayers, even through Shoreham would never produce another kilowatt hour. Since the construction costs have already been incurred, one should compare Shoreham's operating cost with the construction and operating cost for any new replacement capacity. Because nuclear plants typically have low operating costs (we estimate less than 3 cents per kilowatt hour for Shoreham), the option of operating the plant is inherently advantageous in comparison to most other options.

Moreover, it would cost substantially less to operate Shoreham than it would to operate LILCO's existing oil-fired plants. Operation of Shoreham would reduce oil consumption for generation purposes by about 8 million barrels per year. In comparison, the amount of oil that was spilled into Prince William Sound as a result of the tragic Valdez tanker accident was less than the amount of oil that could be displaced by operating Shoreham for two weeks.

(2) Canadian Power: Hydro-Quebec recently announced that it has reached the limits of its capacity to enter into long-term commitments for the export of power from its existing generation sources and has been forced to curtail its sale of "surplus" power to the United States. Although some surpluses of Canadian power may be available in the 1990s on a short-term basis, Canadian power is essentially not available in the near- or mid-term as a reliable alternative to Shoreham. Under an existing contract between the State of New York and Hydro-Quebec, Long Island is scheduled to begin receiving Canadian electricity in 1995, which will reach 218 megawatts in 1996.

(3) Oil-Fired Power: Use of oil would exacerbate our increasing dependence on insecure sources of foreign oil, and we are already importing a larger fraction of the oil we use than at any time since 1979. Data from the Energy Information Administration (EIA) show that LILCO's oil consumption in 1988 was almost 20 million barrels. LILCO needs to burn less oil, not more. Operation of Shoreham would reduce oil imports by about 8 million barrels per year, reduce the balance of payments deficit by about $140 million per year, and eliminate the need for delivery of about 24 tankerloads of fuel per year to Long Island.

Furthermore, oil-fired generation is expensive, with levelized costs of about 11 cents per kilowatt hour for combustion turbines and 8 cents per kilowatt hour for combined cycle designs. Construction lead times run from two to five years.

The annual emissions of combined-cycle oil units as replacements for Shoreham would include 3,000 tons of sulfur dioxide and 6,000 tons of nitrogen oxides, both of which are precursors of acid rain. In addition, such units would also produce about 3 million tons of carbon dioxide, which some scientists regard as a primary contributor to potential global climate change.

(4) Gas-Fired Power: While natural gas is emerging as an important fuel source for new generation capacity, the limited availability of natural gas in the Long Island area is a major constraint upon increased gas-fired generation for the near term. Existing gas pipeline capacity is often fully utilized. Although new pipeline projects, such as the Iroquois line, are planned for the region, very little of the capacity which has been officially proposed to date appears intended for electricity generation to serve Long Island. Moreover, the in-service dates of such projects are uncertain. The Champlain project, for example, was scheduled for completion in November 1991, but the company responsible for it recently announced that it was suspending activities on the project until further notice.

(5) Conversion of Shoreham to Natural Gas: It might be possible to recapture some of the sunk investment in Shoreham by converting the plant to gas-fired combined-cycle units. Assume, however, that a new, efficient gas-fired plant could be obtained for free, and compare its operating cost with the cost to operate Shoreham: Shoreham would produce at about 2.8 cents per kilowatt hour, and the gas-fired plant at about 4.0 cents per kilowatt hour.

(6) Coal-fired Power: Coal-fired generation currently supplies about 18 percent of the power used in the Northeast. However, there has been no significant construction of coal-fired plants in the region for the past decade. It is unrealistic to expect that a new coal-fired power plant could be operating in the Northeast before the mid-1990s, even under very optimistic assumptions, and its output would cost an estimated 6.3 cents per kilowatt hour.

If Shoreham were replaced by new coal-fired capacity, the annual additional emissions would be 6,000 to 14,000 tons of sulfur dioxide, 9,000 to 14,000 tons of nitrogen oxides, and 5 million tons of carbon dioxide.

(7) Power From Other Regions: The ability to import power from other regions is limited by transmission capacity and by diminishing surpluses of generating capacity. A new transmission link under Long Island Sound is scheduled to be completed in 1991, and will enable LILCO to import up to 600 megawatts of additional power if needed (and available) from outside its service area. The link will enhance LILCO's reliability significantly in the mid-1990s. However, LILCO's demand will continue to grow, and current surpluses in the New York Power Pool are diminishing. Without Shoreham, even with the new 600 megawatt link, LILCO will need to add new capacity sometime in the 1990s. If Shoreham were in operation, the new link would still be very useful, both as a means of obtaining backup capacity if Shoreham were unexpectedly out of service, and as a means of enabling LILCO to use Shoreham or other units to support its neighbors in the event of outages on their systems.

(8) Conservation and Load Management: Conservation and demand management programs, which the Department strongly supports, should not be considered as alternatives to Shoreham. Conservation and the operation of Shoreham are both desirable because they are substantially cheaper than generation from LILCO's existing oil-fired units. Since LILCO is presently almost wholly dependent upon oil-fired generation, there is ample opportunity to operate Shoreham and pursue conservation, to the economic benefit of LILCO customers.

Somewhat similarly, programs to reduce peak load may be economically preferable to new generation capacity, but they should not be regarded as alternatives to Shoreham. Shoreham is a baseload unit, designed to run more or less continuously, and it should be compared to LILCO's other baseload units—which are oil-fired and much more expensive to operate.

(9) Summary of Comparison: The table below shows the combined levelized fixed and operating costs of various supply options ($1,988). The levelized costs for the cheapest supply alternatives are almost twice the cost of power from Shoreham:

| Alternative: | *Cents/Kwh* |
|---|---|
| Shoreham operating cost | 2.8 |
| Conversion to gas combined-cycle | 4.6–4.8 |
| Bulk power imports | 4.0–4.8 |
| Natural gas combined-cycle | 5.1 |
| Coal steam | 6.3 |
| Non-utility baseload sources | 5.1–6.3 |
| Natural gas combustion turbine | 6.7 |
| Distillate oil combined-cycle | 7.8 |
| Distillate oil combustion turbine | 1.8 |

Our estimate of the net present value of the savings to be gained by operating the plant for 40 years (as compared to decommissioning and turning to the alternatives described in New York's plan) is more than $1.1 billion. This is equivalent to a saving of $1,100 today for each of LILCO's customers.

In 1988, LILCO was already the Nation's second highest cost major investor-owned electric utility. LILCO customers paid an average of 13.2 cents per kilowatt-hour in July, as compared to a national average of 6.8 cents per kilowatt-hour. Under the New York plan, LILCO's rates are expected to increase between 65 percent and 72 percent over the next 9 years, and the company has indicated that additional rate increases may be needed. As a result, Long Island customers may end up paying the highest electric rates in the country. Moreover, the once-vibrant Long Island economy is faltering. Property taxes have risen sharply in recent years, and according to recent Federal Department of Labor statistics, 5,000 jobs were eliminatedd on the Island in the first half of 1989 alone. Electric rate increases on Long Island in the 1990s are probably unavoidable, but destruction of Shoreham is not the way to minimize them, nor is it the way to revive Long Island's economy.

New York's plan also fails environmental impacts tests in both the near term and the long term, a virtually any combination of the alternatives to Shoreham would entail substantially higher emissions. There are no comparable emissions associated with the operation of a nuclear plant.

Finally, New York's plan fails the energy security test, because it ignores an obvious and major opportunity to reduce immediately the use of oil as a generation fuel. In almost all cases, a reduction in oil use in one sector translates into an equivalent reduction in oil imports, and thus reduces our dependence upon insecure sources of oil. Reductions in oil imports also help reduce our trade deficit.

Electric utilities in the Northeast already account for 55% of all oil burned in the U.S. for electricity generation. From a fuel-availability point of view, this makes the northeast the least secure region in the country. Operating Shoreham can help reduce that dependence.

One might ask, then, does dismantling Shoreham have other merits, such as a significant contribution to enhanced public safety? The answer is no. The Nuclear Regulatory Commission (NRC), the agency charged by the Congress with exclusive responsibility for decisions concerning the radiological safety of nuclear facilities, and the agency with the most expertise in radiological health and safety matters, has affirmed the adequacy of emergency preparedness at Shoreham, and the overall safety of the plant. These decisions were reached only after years of technical review, public proceedings, and extensive litigation. State and local officials have had ample opportunity to participate in these proceedings, and the NRC has exercised its authority and declared the plant safe and ready to run. Furthermore, State and local officials may once again elect to participate in emergency preparedness planning at Shoreham, as they do at other nuclear power plants in New York State, thereby enhancing the emergency planning process.

4. THE RITTER AMENDMENT

Where, then, do we go from here? We are in a unique situation not anticipated by previous practice or existing statutes. This is why the Department strongly supports H.R. 1549, as amended. We consider Congressman Ritter's amendment to H.R. 1549 to be a major step in the right direction, even if it does not resolve all of the important questions related to the future of the plant.

The logic of the amendment is that it makes no sense to permit the use of Federal funds for a purpose which is antithetical to national policy (as determined by the agency responsible for the development and articulation of that policy), and antithetical to Congress' intent in assigning exclusive responsibility to the NRC for decisions related to readiological safety.

5. CONCLUSION

The Secretary of Energy is charged by law with responsibility for formulating and implementing national energy policy, assuring the incorporation of national environmental goals in the formulation and implementation of energy programs, and promoting the availability of adequate and reliable supplies of economical energy. The action advocated by the State of New York is wholly inconsistent with these goals. Therefore, I urge Members of Congress to support the Ritter amendment as it makes its way through the legislative process. The dismembering of Shoreham would be a national energy mistake. Congress should treat it as such.

## JOE CASEY, A GREAT AMERICAN AND A GOOD FRIEND

### HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SOLOMON. Mr. Speaker, on Sunday, December 10, a very special man will be honored in his hometown of Saratoga Springs, NY, in my district. It is my privilege to pay tribute to him today on the floor of Congress.

Mr. Speaker, his full name is D. Joseph Casey, but his friends, and there are many of them, call him Joe.

For many years, Joe Casey served as chairman of my Service Academy Selection Board. I'm proud of that board for many reasons. Not only is it scrupulously nonpartisan, but its efforts have made the 24th Congressional District the best in the Nation year after year in appointments to our service academies. Our district is synonymous, in fact, for the high quality of our candidates. A great deal of the credit for that goes to the leadership of Joe Casey.

At a special breakfast December 10 prior to a meeting of the selection board, I will personally bestow the title of "Chairman Emeritus" on Joe Casey as a token of his accomplishments.

But no tribute to Joe Casey will be enough if it just mentions his leadership of the selection board. So let me tell you a little about him.

As a teacher and guidance counselor, the very nature of Joe Casey's career has been oriented toward serving young people. But his dedication was never a 9 to 5, Monday to Friday affair.

After graduating from St. Mary's Academy in Glen Falls, NY, and earning a bachelor of arts degree at Hartwick College, he worked for a time with Pratt-Whitney Aircraft before serving with the 8th Air Force in England and Germany. A former professional football player himself with the Hartford Blues, he coached that sport both at Hartwick College and at Geneseo Central School, where he also taught English. While on the faculties of Cazenovia High School and finally Saratoga Springs Central School, he acquired a master's degree in couseling and a doctorate in education.

Mr. Speaker, I have just described a very full life, but even that does not do justice to the man. To know Joe Casey, you must know of the countless hours he has volunteered to his community. That is the way I measure a great man, and Joe Casey is the greatest. As long as I have known him he has been active in Elks, The Knights of Columbus, the American Legion, and Veterans of Foreign Wars.

He still found time to serve on the Saratoga Springs Zoning Board of Appeals and was a respected real estate broker. Joe Casey, in short, is one of those uncommon common men. His name may not appear in any history book, but his name is enscribed in the heart of everyone who knows him, including mine. Every year, many graduates of our service academies, as fine a group of young people as anyone could imagine, visit or write to me. When they do, I always think of Joe Casey.

Mr. Speaker, I invite you and everyone in this House of Representatives to join me in saluting Joe Casey, a great American and a good friend.

## SALUTE TO MRS. MARGARET STUCKEY

### HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McEWEN. Mr. Speaker, I rise today to recognize the efforts of Mrs. Margaret Stuckey, a long-time resident of Clinton County, OH, who is retiring from the board of the Clinton County Rural Water Co. Her efforts, and her ensuing achievements, to bring water service to rural Clinton County will have a lasting effect upon the everyday lives of her fellow citizens, and I feel that it is only fitting to bring those achievements to the attention of my colleagues in this body.

Abundant and clear water is important to us all. Twenty years ago, some residents of rural Clinton County considered it almost a luxury. Then a few very concerned citizens, namely Mr. Joe Stuckey and Mr. Dana Williams, decided to make a personal challenge of bringing reliable water service into their area and beyond to all parts of the county. However, the road to success was not to be an easy one. Just as the project was about to be adopted by the Farm Bureau, Mrs. Stuckey faced her own challenge of stepping into the project's leadership role following the sudden death of her husband.

Today's successful Clinton County Rural Water Co. was formed as a cooperative in 1973 under the nonprofit section of chapter 1702 of the Ohio Revised Code. Margaret Stuckey was appointed secretary of the company, a post she has held since the co-op's founding, and one from which she is now set to retire.

Mr. Speaker, bringing a successful water company to reality involves patience and dealing with a variety of frustrations and delays. Among the obstacles facing Mrs. Stuckey and her supporters were finding a guaranteed source of water, waiting an entire year for

FmHA to secure funds for a 40-year reduced interest rate loan, changing rates of inflation, and a steady increase in material and labor costs. Rather than bowing to economic forces, Mrs. Stuckey stayed the course. She energized the community, spurring local involvement alongside help from the Farm Bureau. Ultimately Mrs. Stuckey was able to obtain the necessary funding, including a $500 donation from the county realtors and over $100,000 from the Clinton County commissioners.

Mr. Speaker, the Clinton County Rural Water Co. is not an isolated success. It is part of 701 such systems in Ohio serving more than 500,000 people. What sets Clinton County's water cooperative apart from the other systems in Ohio is the nature of the driving forces behind their successful development. I wish to recognize this day the driving force that is Mrs. Margaret Stuckey, who has shown that with perseverance, imagination, and a dedication to serving the public interest, abundant and clear water can flow through Clinton County, OH. It has been a privilege to work with Margaret for the common good of our county and I am honored to be her friend.

## FRANK S. SWAIN, A TRUE ADVOCATE FOR SMALL BUSINESS

### HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LAFALCE. Mr. Speaker, as the first session of the 101st Congress draws to a close, I would like to take this opportunity to express my appreciation, as chairman of the House Small Business Committee, to an individual who has performed an outstanding job for the past 8 years on behalf of the entire small business community.

Frank S. Swain was appointed by the President and confirmed by the U.S. Senate in 1981 as Chief Counsel for Advocacy for the U.S. Small Business Administration, one of three Presidential appointees in SBA and the second chief counsel to be so named. During his tenure, important legislative and regulatory reforms have been realized on behalf of some 19 million small business people in this country. Frank and his advocacy staff have played a vital role in legislative areas such as the Prompt Payment Act, Equal Access to Justice Act, Paperwork Reduction Act, Small Business Innovation Research Act, and others. He has appeared before us many times testifying on complex issues affecting small business and has proven to be an extremely articulate and knowledgeable spokesman for his constituency.

Under his direction, the advocacy staff also contributed valuable support to the 1986 White House Conference on Small Business, initiated an annual legislative conference on small business issues to bring State and local lawmakers and officials together with Federal officials, and have produced numerous publications designed to assist small businesses.

Frank is leaving Government service to accept new professional challenges. I am confident that I speak for other members of the Small Business Committee in wishing him every success in his new venture. I know he will continue to offer high intelligence, integrity, and energy to whatever task he undertakes, and I would like to wish him and his family all the success he deserves.

## ASIAN-PACIFIC AMERICAN HERITAGE MONTH

### HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. HORTON. Mr. Speaker, on June 30, 1977, I had the unique honor of introducing House Joint Resolution 540, which later became House Joint Resolution 1007, legislation that for the first time in this Nation's history asked the Congress and the people of the United States to set aside a period in May as Asian-Pacific American Heritage Week. This measure went on to become Public Law 95-419.

Today, I have the privilege of introducing an act that would amend Public Law 95-419 to extend the period honoring Asian-Pacific Americans from 1 week to 1 month annually.

I am joined in this motion by my distinguished colleague from California, Mr. NORMAN MINETA, who was also the original sponsor with me in 1977. Joining with us in support of this measure are Mr. FALEOMAVAEGA of Samoa, Mrs. SAIKI and Mr. AKAKA of Hawaii, Mr. MATSUI and Mr. HUNTER of California, and Mr. DE LUGO of the Virgin Islands.

I would like to take this opportunity to extend my thanks to Jeanie Jew, who created the idea for a heritage week, and to Ruby Moy, my administrative assistant, who was the driving force behind this legislation. Both are to be commended for their continued concern for the Asian-Pacific American community.

In addition to this resolution, I will be taking action to bring about the creation of a postage stamp or series of stamps commemorating America's Asian-Pacific heritage. As a senior member of the House Post Office and Civil Service Committee, I plan to urge the Citizen Stamp Advisory Committee to consider issuing this stamp as soon as possible.

I hope my colleagues will join me in supporting both the commemorative stamp and the resolution to amend Public Law 95-419 to annually commemorate Asian-Pacific American Heritage Month. These measures will reaffirm our recognition and appreciation for the contributions that Asian-Pacific Americans have made to this country.

## A TRIBUTE TO LARRY P. POLANSKY

### HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

### HON. RONALD V. DELLUMS

OF CALIFORNIA

### HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. FAUNTROY. Mr. Speaker, we rise in tribute to attorney Larry P. Polansky, who has served as administrator of the District of Columbia courts for the past 10 years.

On Monday, December 5, the Larry Polansky Retirement Committee will host a retirement celebration for attorney Polansky, honoring his decade of exemplary service to the people of the District of Columbia. The celebration will be held in the Officers' Club at Andrews Air Force Base, between the hours of 6 and 10 p.m.

During his tenure, Larry has been responsible for insuring the smooth and efficient functioning of a 51-member trial court, a 9-member court of appeals and a nonjudicial staff of 1,300.

Over the years, we have been impressed by Larry's ability to handle delicate matters. He is truly a diplomat's diplomat. With quiet strength, he not only manages the resources of the court, but he effectively interfaces with the local and Federal Government, patiently steering court budgets and legislation through a unique and sometimes murky process. He commands the respect of members and staff who have had the pleasure of working with him. Larry's successful tenure can be attributed to the fact that he brought to the D.C. court system a rich background and a wealth of experience. From 1976 through 1978, he served as the deputy State court administrator for the State of Pennsylvania. Before that, he served as chief deputy court administrator for operations and services with the Philadelphia Court of Common Pleas.

Larry is more than an administrator. He has taught, lectured, consulted, published and involved himself in a range of other activities which distinguish him among other court professionals. Among those activities are his service as president of the Conference of State Court Administrators and as a member of its board of directors. In addition, he was appointed by the President of the United States to serve as a member of the board of the State Justice Institute, and in turn was elected treasurer of that body.

Mr. Speaker, attorney Larry Polansky's retirement, while framed as a celebration, will really be an occasion of mixed emotions. All of us are pleased that he has served and served well and fully deserves recognition in light of his imminent departure. On the other hand, he will be difficult to replace.

The District of Columbia system is far better because attorney Larry Polansky gave his best for that system and for the people of the District of Columbia.

## THE BICENTENNIAL OF THE BILL OF RIGHTS

### HON. CHARLES W. STENHOLM

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. STENHOLM. Mr. Speaker, as we approach the end 1st session of the 101st Congress, it is appropriate to reflect upon the bicentennial of the American Bill of Rights. As my colleagues are aware, it was in the year 1789 that, under the guidance of James Madison, the first Congress submitted 12 proposed amendments to the U.S. Constitution to the State legislatures for their consideration. Of the 12 proposals, 10 were ratified by the year 1791. Of those two which were not ratified by the States by 1791, and for which no deadline was imposed, the proposal providing that "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened" has been resurrected from history and just since 1982, has been ratified by the legislatures of 24 States for an overall total thus far of 32 ratifications. The Legislature of my State of Texas is the most recent one to have ratified this constitutional amendment. In 1939, the U.S. Supreme Court ruled in the case of Coleman versus Miller, that if a constitutional amendment is submitted by Congress to the States without a deadline, then the States may continue to consider it. As we pause and take note of the Bill of Rights' history let us give due thanks to James Madison for his wisdom and his foresight. To properly mark the bicentennial, I would like to share with my colleagues a story which appeared in the May 25, 1989, issue of the Monitor, a newspaper in McAllen, TX. Additionally, I would like to share with my colleagues two commemorative resolutions adopted this year by the Texas Legislature with respect to the 200th anniversary of the transmittal of the Bill of Rights and with respect to the landmark case of Coleman versus Miller. I request that the materials be printed following my remarks.

[From the McAllen (TX) Monitor, May 25, 1989]

TEXAS PASSES AMENDMENT PROPOSED BY JAMES MADISON

AUSTIN.—Gregory Watson's dream of making Congress more accountable when voting itself a pay raise moved a step closer to reality.

On Wednesday, Texas became the 32nd state to ratify a proposed 200-year-old amendment to the U.S. Constitution that would delay approved congressional pay raises until after the general election.

The effect of the amendment would throw the pay raise issue into the congressional campaign.

Watson, 27, an administrative aide to state Rep. Ric Williamson, D-Weatherford, has embarked on a national crusade for the amendment, which was originally drafted by a Virginia congressman in 1789.

That congressman was James Madison.

Madison later achieved greater political status—becoming the fourth president of the U.S.—but his proposed amendment was lost among the weightier issues of the day, such as freedom of speech and religion.

But in 1982, Watson, then a student at the University of Texas-Austin, stumbled across the amendment while researching a paper on the equal rights amendment.

In the seven years since, Watson said he has spent about $5,000 in postage and literature in his quest to get the amendment ratified by the necessary three-fourths, or 38, of the state legislatures.

"In today's modern politics, $5,000 is just chicken-feed, but it's not chicken feed to me," Watson said.

Congressmen make $89,500 annually and earlier this year turned down a proposed 50 percent pay increase.

The proposed constitutional amendment was passed by the Texas Senate 30–0. It was earlier passed by the House, 131–2.

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TEXAS HOUSE CONCURRENT RESOLUTION 295

Whereas, For the past 200 years, the Bill of Rights has served to guarantee the basic human freedoms that form the cornerstone of our democracy; and

Whereas, Drafted in 1789, the document provides many of the fundamental rights that we, as citizens, have come to take for granted: freedom of worship, freedom of speech, the right to peaceable assembly, the right to bear arms, protection against unreasonable search and seizure, the rights to trial by jury, and protection from cruel and unusual punishment; and

Whereas, The 10 amendments comprising the Bill of Rights were ratified by the States in 1791; however, few Americans are aware that the original document submitted to the states for ratification actually contained 12 articles, two of which were never adopted; and

Whereas, The first of these unsuccessful amendments dealt with apportionment of the House of Representatives and has generated little interest since its initial submission; but suprisingly, the second article has continued to gain support over the years, most recently receiving ratification from its 31st state on May 22, 1989; in order to become law, the article must be ratified by a total of 38 states; and

Whereas, That proposed article of the Bill of Rights is particularly timely in view of the recent controversy regarding congressional pay raises; in essence, it provides that no law changing the compensation for representatives or senators may take effect until after the next election of representatives; thus, congressional members who voted for a pay raise would have to face an intervening election before they could receive any benefit from their actions; and

Whereas, No doubt the drafters of the Bill of Rights would be amazed to learn that this provision is still gaining support, nearly 200 years after its submission; however, it is a tribute to the foresight of these founders that an issue considered fundamental two centuries ago is still held relevant today; and

Whereas, Since its ratification, the Bill of Rights has assured that the freedoms enjoyed by all Americans may not be arbitrarily of maliciously revoked by a few; as we celebrate the bicentennial of its drafting, let us trust that the principles set forth in this remarkable document will continue to serve as as model of strength and hope for many generations yet to come; now, therefore, be it

*Resolved,* That the 71st Legislature of the State of Texas hereby commemorate the 200th anniversary of the drafting of the Bill of Rights.

TEXAS HOUSE CONCURRENT RESOLUTION 294

Whereas, This year marks the 50th anniversary of the U.S. Supreme Court's landmark decision of *Coleman v. Miller* [307 U.S. 433 (1939)], a decision that holds continuing relevance to the constitutional amendment process; and

Whereas, The case involved a challenge to the 1937 ratification by the Kansas Senate of a proposed constitutional amendment to prohibit child labor; the amendment had originally been submitted to the states for ratification in 1924, and the question was raised as to whether the amendment could still be validly ratified after a lapse of 13 years; and

Whereas, By a vote of seven to two, the court found that, unless a specific deadline has been established at the time an amendment is initially proposed, congress is the final arbiter on the question of whether too much time has elapsed between the original submission of a proposed amendment and the most recent ratification of that amendment by a state legislature; and

Whereas, The *Coleman* decision remains relevant today, particularly as it bears on a still-active proposed constitutional amendment first submitted to the states for ratification 200 years ago; and

Whereas, Although many Americans are unaware of this fact, the original bill of rights contained 12 articles, two of which were never ratified; the first of these unratified amendments dealt with apportionment of the house of representatives and has generated little interest since its initial submission; however, the second proposed article stipulates that a congressional pay raise may not take effect without one intervening election, an issue that is as timely today as when the article was first drafted; and

Whereas, Originally submitted in 1789, this article has continued to gain support over the years, most recently receiving ratification from its 31st state on May 22, 1989; although 200 years have elapsed since the article's initial submission, congress could still find it valid if it eventually receives the necessary number of ratifications, according to the finding in *Coleman;* and

Whereas, Since it was handed down 50 years ago, the *Coleman v. Miller* verdict has remained the court's last word regarding the resolution of an amendment ratification dispute; without reconsideration by the court, congress will continue to hold the ultimate authority regarding the validity of a constitutional amendment that is ratified long after its original submission to the states; now, therefore, be it

*Resolved,* That the 71st Legislature of the State of Texas, Regular Session, hereby commemorate the 50th anniversary of the U.S. Supreme Court's 1939 decision in the case of *Coleman v. Miller.*

## THE POSTAL SERVICE VOTER REGISTRATION FACILITATION ACTS OF 1989

### HON. CHARLES A. HAYES

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. HAYES of Illinois. Mr. Speaker, I am introducing two bills which shall comprise the Postal Service Voter Registration Facilitation Acts of 1989 to expand the role of the Federal Government in efforts to increase voter reg-

istration, and therefore, voter turnout. The first bill provides that the U.S. Postal Service shall make available space at post offices for the State voter registration authorities to place voter registration forms for the public. The second bill provides that a voter registration form be given to each postal patron to whom a change-of-address form is given.

The United States chronically experiences one of the lowest records of voter participation among the industrialized countries. The national voter turnout has been steadily declining since 1964 in both Presidential and non-Presidential election years. In 1986, a non-Presidential election year, 36.41 percent of the national voting age population voted. In 1988, a Presidential election year, 50.15 percent of the Nation voting age population voted. These figures are distressing. If half, and sometimes more than half of the people do not vote, then the meaning of our mandate is called into question.

A valid argument, frequently used, is that some people, by not voting, exercise their right to free choice. In order for this argument to be meaningful, every individual, who does not vote, must at least be registered. This would clarify whether these people are in fact choosing not to vote, or whether they are simply unable to register. The fact is that voter registration has remained steady at about 70 percent of the voting age population. This percentage is unsatisfactory. The Federal Government must pursue this problem and implement measures which strive to achieve voter registration to as close to 100 percent as possible.

Voter registration should be facilitated in order to ensure that each and every individual of voting age has a reasonable opportunity to register. This can be accomplished effectively by making voter registration forms available at U.S. post offices, which can be found in every town and corner of our great Nation. There are between 30,000 and 40,000 post offices in the United States. Individuals can easily locate the post office which is in his or her area.

A second reason for establishing the post office as a location for voter registration forms is consistency. Much of the confusion and frustration, which some people experience in connection with registering can be resolved by informing everyone that the forms may be obtained at the post office.

The Federal Government must undertake a more active role in facilitating voter registration. It is our responsibility to protect and uphold the democracy. Significant voter turnout is a fundamental aspect of an effective, and legitimate democracy. The desire for high voter participation should be a long-term bipartisan priority.

## AN INSIGHT ON THE CYPRUS PROBLEM

### HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McEWEN. Mr. Speaker, earlier this month I had the pleasure to meet Rauf Denktas, elected President of the Turkish Cypriot people living in North Cyprus which has been plagued with a history of deeply rooted problems and intercommunal strife between the two peoples of Cyprus.

My interest in meeting President Denktas stems from my firm conviction that we must examine disputes throughout the world, such as the Cyprus conflict, from an objective, balanced perspective. A genuine comprehension of the Cyprus problem can only be achieved by taking a look at both sides of the equation. Without this balance, an inaccurate picture of this complex issue will pervade the U.S. Congress.

President Denktas has dedicated his life to the cause of Turkish Cypriots and in promoting peace for all Cypriots. Even before Cyprus gained its independence from Great Britain in 1960, Mr. Denktas was involved in representing Turkish Cypriot concerns in the establishment of the 1960 Treaty of Guarantee which recognized the two peoples of Cyprus—Greek Cypriots and Turkish Cypriots—as cofounders of the republic.

Our belief in the concept of democracy, self-determination, and equal opportunity for all people has provided a successful framework whereby a diverse American population has prospered. Although the Cyprus problem is complex, President Denktas is committed to these basic ideals for both peoples of Cyprus.

In his address before the National Press Club on October 16, President Denktas explained that the British provided that the power of the Republic of Cyprus would emminate from both peoples of Cyprus. In his words, "* * * the reason for establishing a republic was in order not to allow one community to override the political will of the other one * * * [political domination] was not given to the Greek Cypriots. It was not given to the Turkish Cypriots. They had to work together."

Since the tragic breakdown of the republic in the early 1960's, Mr. Denktas has served as the counterpart to Greek Cypriot leaders Makarios, Kyprianou, and now Vassiliou. His goal again is to achieve a bicommunal, bizonal Federal Republic of Cyprus in which will ensure the Turkish Cypriot people of security and political equality so that intercommunal strife will never again plague the island.

On two occasions President Denktas accepted U.N. peace plans for Cyprus [1985 and 1986]. These plans for establishing a bicommunal, bizonal Federal Republic of Cyprus were not accepted by the Greek Cypriots. Today, President Denktas is back at the negotiating table with the Greek Cypriots.

In the same address before the National Press Club he said, "We must settle the Cyprus dispute in the light of [historical and current] realities. I saw the [U.N.] Secretary General on October 11. I gave him a comprehensive paper on how to settle this problem, and I expressed to him that I am willing to talk with Mr. Vassiliou * * * to head for a federal solution and see if we can achieve it. We are ready to continue this exercise; we have never run away from it * * *."

I urge my colleagues to join me in learning more about the Cyprus problem from the Turkish Cypriot perspective which, historically, has not been heard until just recently. Their side of the Cyprus issue must be understood before a just and lasting resolution to dispute can be achieved.

## LECH WALESA—CHANGING THE COURSE OF HISTORY

### HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. RITTER. Mr. Speaker, Lech Walesa's speech to a Joint Session of Congress on November 15, 1989 was a brilliant expression of love of freedom—and an understanding of history.

In a remarkable editorial in the Wall Street Journal, November 17, 1989, Paul Gigot described that event with clarity and emotion. He was able to put the contribution of Walesa in a post World War II context—where the strength and resolve of the United States held the fort and the perimeter while communism imploded on itself and the irrepressible courage of an individual human being like Lech Walesa changed the course of history.

Mr. Speaker, I would like to have Mr. Gigot's editorial printed in the RECORD.

[From the Wall Street Journal, Nov. 17, 1989]

WALESA'S MESSAGE: IN LONG STRUGGLE, WEST PREVAILED

(By Paul Gigot)

Historians will debate when the Cold War ended, but the day it began to end was the day in August 1980 that a Polish electrician jumped the shipyard wall to join his fellow workers and became their leader. This week Lech Walesa came to help Washington celebrate victory.

In this freedom season, the West has been denied its VE-Day. The visit by the merry Pole with the walrus smile provided one, a victory party for 40 years of containment. He might as well have been Ike back from Europe. The only thing missing was ticker-tape. In a city not even given to sentiment, the conquering Pole brought tears to many eyes, carrying the message of triumph after decades of effort.

The high point was a speech before a joint session of Congress, a kind of Cold War catharsis. The mechanics of democracy can be dreary—the deals and back-stabbing—but for an hour Lech Walesa lifted the members back to democracy's meaning. They broke up his speech with applause 25 times. They hooted and stomped when he raised his hands into "V"s for victory. Afterwards, they crowded around and patted him like school kids around Michael Jordan.

He spoke for 50 minutes, through awkward translation, but the audience was rapt. Asking afterward, in his impishly self-depre-

ciating way, if he had spoken too long. Mr. Walesa was assured by senators that he hadn't—for the Senate. Bob Dole, as usual most acute when he's most acerbic, quipped, "In addition, he had something to say."

Mr. Walesa, like Ronald Reagan but unlike any leader in Washington just now, has an ear for the simple music of liberty. "We the people," he began his speech to Congress echoing a favorite Reagan line from the Constitution. "When I recall the road we have traveled I often think of that jump over the fence," he said. "Now others jump fences and tear down walls. They do it because freedom is a human right."

He asked of course, politely but firmly, for U.S. aid to avert an "economic catastrophe," and he will go home with an honorarium of $657 million. He had once asked for $10 billion, so private capital will have to provide the rest. It won't help that yesterday the House-Senate compromise on the aid bill threw out most of the provisions insuring support for private enterprises. The Marshall Plan is a powerful metaphor in American minds, but it was Ludwig Erhard's economic reforms that rebuilt postwar West Germany. Perhaps Solidarity has an Erhard to go with its Walesa.

His task will be gigantic. "The economic system around them is absurd," Mr. Walesa said of his countrymen. "We need telephones, faxes." The Ministry of Privatization, charged with selling off the 90% of the Polish economy that is state-owned, has: four full-time workers, one phone line, one typewriter and two computers. After a piece on this page urging Poland to make free-market reforms, the minister sent us an almost plaintive letter requesting not another lecture but tangible aid.

With wry self-knowledge, Mr. Walesa explained the paradox of his task. "Such is the fate of a Polish trade unionist—he has to launch a publicity campaign for private entrepreneurship," he told a chuckling convention of the AFL-CIO. Marx said "contradictions" would destroy capitalism, but the contradiction that killed communism was that workers hated the workers' state. Mr. Walesa knows his Marx. Asked if Solidarity had taken up the cause of striking Soviet miners, the Pole quipped that it's a matter of "the proletarians of the world" uniting. They're uniting, all right—to junk Marx.

It was appropriate to that paradox that America's premier trade union should be the Pole's sponsor here. It had done so much to help him succeed. In the dark moments after the 1981 crackdown, the AFL-CIO sent Poland the tools of modern subversion—laptop computers, offset presses, copy machines. It sent cash to sustain the families of jailed Solidarity leaders. George Meany, the crotchety anti-communist who led the AFL-CIO for so many years, deserves to smile from wherever he sits today. Conservatives, some insist, like unions only when they're abroad. But the conservatives I know want workers to be free, at home and abroad—to be free, among other things, to join unions.

Mr. Walesa's victory—and the West's—is a product of a special consensus forged and adhered to over 40 years. Today there's much carping about the need for a new "vision," but it might help if the critics understood the truth about the old vision. Majority Leader George Mitchell, giving his daily Senate oration, said this week that, "we must not forget that these changes have occurred in large part because of the reforms initiated by President Gorbachev."

Lech Walesa knows better. "Everything was achieved thanks to the unflinching faith of our nation in human dignity and in what is described as the values of Western culture and civilization," he told Congress. Mr. Gorbachev's contribution has been to acknowledge and adapt to his system's failure; Poles and Balts and a stiff-backed, heavily armed West are the heroes promoting liberty. It's no accident that while Mr. Gorbachev was in Moscow this week defending the revolution of 1917 and grousing that no one should export capitalism, Lech Walesa was promoting Polish capitalism and cheering Western values. He knows whose victory this is.

## THE SOCIETY OF ST. VINCENT DE PAUL TRANSITIONAL HOUSING PROGRAM

### HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. STARK. Mr. Speaker, the Society of St. Vincent de Paul is a nonprofit organization that operates in Alameda County in the Ninth Congressional District of California. They have recently established a new transitional housing program to assist families in becoming independent of outside assistance.

St. Vincent de Paul was incorporated in 1944 for the purpose of assisting disadvantaged persons of all ages and all races, and supplying the needy with food, clothing, shelter, and other necessities. The society does not receive financial support from any city, county, State, Federal agencies, or the United Way.

The store operation provides jobs to those in need, free clothing and furniture for the poor, and sells used articles to those who are not so destitute. Member volunteers, numbering more than 450, call upon the needy in their homes, throughout Alameda County, in order to identify, and to issue free food, clothing, and furniture. The society also operates a free dining facility in Oakland, CA. The facility is open 7 days a week, every week of the year and serves on the average, about 1,200 meals per day.

The transitional housing program will be operated 24 hours a day, 365 days a year. The goals of the program are as follows:

To provide transitional housing for Alameda County homeless families;

To provide a comprehensive treatment program which addresses the participating causes of homelessness and explores alternatives which will prevent future homelessness;

To assist residents through a casework plan to secure adequate income, employment, and quality permanent housing by utilizing an established network of community and social services;

To empower Alameda County homeless families to become self-sufficient, to regain a sense of dignity and resourcefulness, and to enable them to become productive citizens of our community.

The objectives of the program are:

To provide housing to approximately 8 Alameda County families, roughly 32 individuals; 16 adults and 16 children in single family dwellings;

To provide training sessions and auxiliary support services;

To place families into permanent housing; and

To provide followup service to families.

The Building and Construction Trades Council of Alameda County has notified the Society of St. Vincent de Paul that they are donating union manpower to renovate four older homes in Hayward, CA, as part of the new program. The unions participating are the Painter's Local No. 3, the Roofer's Union No. 81, the Electrical Worker's Local 595, the Carpet Linoleum & Tile Worker's Local No. 1290, the Construction & General Laborer's, and the Plumber's Union.

Mr. Speaker, I would like to commend most highly the Society of St. Vincent de Paul for their transitional housing program as well as for their dedicated service to the needy of Alameda County over the past 45 years. I would also like to commend the local unions who have generously offered their help to complete this worthwhile project.

## EXPLANATION OF VOTE

### HON. BILL NELSON

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. NELSON of Florida. Mr. Speaker, had I been present on November 20, 1989, I would have voted "nay" on rollcall No. 373, "yea" on rollcall No. 374 and No. 375.

## CONSUMER SAFEGUARDS AND BENEFITS NEEDED IN LEGISLATION TO LIFT MFJ RESTRICTIONS

### HON. RON WYDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. WYDEN. Mr. Speaker, the debate over proposed legislation to lift the line of business restrictions on the Bell Operating Co. has touched off a heated debate between industry groups. What's been lacking so far, however, is adequate discussion of whether and how this proposal will benefit the general public.

The House Telecommunications and Finance Subcommittee, on which I sit, will soon be considering legislation on this issue. It's my goal to work with consumer groups to build a united consumer movement to ensure that any bill reported by the subcommittee contains strong safeguards and provides clear consumer benefits.

I believe the Telecommunications Subcommittee will—and should—report legislation to restore Congress' role in making telecommunications policy. Not only is the current regulatory system under Judge Greene undemocratic, it is also too rigid to deal with this rapidly evolving industry.

Today, consumers have only one avenue to influence what services are available through the telecommunications network: hire a high-

priced telecommunications attorney and file a motion with Judge Greene.

There are clear problems with this process, however. For example, Judge Greene's rulings have been widely interpreted as prohibiting Bell Operating Co. operators from reading yellow pages to consumers who can't use print yellow pages—for instance, people with visual impairments, or those who have physical difficulties that prevent them from lifting phone books or turning pages.

When disability organizations not familiar with the intricacies of the Federal judicial system wrote of their concerns to Judge Greene, he reportedly threatened to sanction them.

While some lifting of the MFJ restrictions will benefit consumers, it must be done with adequate safeguards to protect ratepayers. In 1986, I proposed legislation to impose tough protections against cross-subsidies and anticompetitive practices as a condition for lifting the information services restrictions on the Bell Operating Co. My proposal received support from several large consumer organizations.

This year there is even greater momentum behind MFJ legislation. Over the next month, I plan to reach out to a variety of consumer groups to make sure consumer interests are represented once the legislative process moves forward.

Mr. Speaker, recently a coalition of consumer and public interest organizations released a statement of principles regarding the safeguards and guarantees they would like to see in any legislation on this issue. I believe the involvement of these groups contributes to the debate and I include the statement and the list of cosigners in the RECORD:

STATEMENT—CONSUMER SUPPORT FOR LEGISLATION

As the 1934 Communications Act assured universal access to telephone service, we support legislation to amend the 1934 Act to assure that the American public will now have the benefits of new vital technologies.

Any such legislation must address the following points and concerns:

1. The new informaton services must be made accessible to all segments of the public. (E.g., geographic dispersed areas, people with disabilities, non-English speaking populations, and easy use services.)

2. While we believe that the ratebase should not be used to cross-subsidize nonregulated enhanced services, we believe that regulated telecommunication services, as they evolve, must continue to be affordable by all consumers.

3. There must be adequate opportunity for the delivery of essential public interest and governmental services.

4. Legislation shall insure that a diversity of information providers and services will be able to utilize gateway facilities to meet the needs of the general public.

5. There must be a continuation of the public commitment to universal service as we move to new Information Age technologies.

If current information service restrictions are to be lifted, Congress should not pass on any new powers without insuring that the public goals reflected in this statement and concrete safeguards for the public are built into the legislation.

LIST OF ENDORSERS OF STATEMENT ON LEGISLATION

ORGANIZATIONAL SIGNERS

American Council of the Blind, Oral Miller.

Black Citizens for a Fair Media, Emma Bowen.

Chinese for Affirmative Action, Henry Der.

Consumer Affairs Office, City of Detroit, Esther Shapiro.

Consumer Affairs Office, State of Connecticut, Mary Heslin.

Consumer Interest Research Institute, Mary Jones.

Consumer Research Foundation, Helen Nelson.

HandsNet, Sam Karp.

Insurance Consumer Action Network, Steven Miller.

Native American Broadcasting Consortium, Frank Blythe.

National Indian Youth Council, Joe Cordova.

National Network of Learning Disabled Adults, Jay Brill.

National Special Education Alliance, Jacquelyn Brand.

Public Service Satellite Consortium, Suzanne Douglas.

Telecommunications for the Deaf, Inc., Al Sonnenstrahl.

United Church of Christ, Office of Communications, Tony Pharr.

World Institute on Disability, Deborah Kaplan.

INDIVIDUAL SIGNERS

Thomas Arciniega, affiliation: President, California State University, Bakersfield.

Jody Becker, individual: Program Coordinator, Marin County Mediation Services.

Frank Bowe, affiliation: FBA, Inc.

Monica Bradsher, affiliation: Managing Editor, Software, for Kids Network (National Geographic Magazine), Major Publisher.

George Brunn, individual.

Catherine Camp, individual: Mental Health/Poverty Advocate.

Barbara O'Connor, affiliation: Center for the Study of Politics and Media, California State Univ.

Sam Farr, individual: California Assemblyman.

Francie Gilman, affiliation: Public Technology, Inc.

Dr. Feelie Lee, individual: Director, UCLA Pacific Rim Project.

Everett Parker, individual: Former Director, Office of Communications, United Church of Christ.

Ed Parker, individual: Parker Telecommunications, Expert on Rural Telecommunications.

Barry Reid, affiliation: Administrator, Georgia Governor's Office of Consumer Affairs.

Dolres Sancez, individual: Publisher and hispanic issues activist.

Robert Tinker, affiliation: Technical Education Research Centers.

Don Vial, individual: Retired, former Chairman, California Public Service Commission.

Laura Woodward, individual: Education Technology Consultant, Woodward & Associates.

Walter Zelman, individual: California consumer activist.

Ed Zemechman, individual: Retired School Administrator.

## EDUCATIONAL EXCELLENCE AT MARTINEZ JUNIOR HIGH SCHOOL

### HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MILLER of California. Mr. Speaker, for the second consecutive year, Martinez Junior High School in Martinez, CA, has received recognition for its educational achievements by becoming the 1989 recipient of the "Sustained Achievement Award" from the California Department of Education.

Through the efforts of its dedicated teaching staff and the hard work of the student body, the junior high was able to continue to achieve high testing scores on the California Assessment Program, to maintain an impressive school attendance, to improve the number of students enrolled in science and advanced mathematics, and to increase the amount of time the students receive instruction.

As a result of their successes, Martinez Junior High School, and a number of other schools in the county, are eligible to participate in the 1991 National School Recognition Program.

Mr. Speaker, I am sure that my colleagues in the House of Representatives join me in saluting the achievements of the staff and students of Martinez Junior High School and to encourage all schools to continue their efforts in seeking educational excellence.

## IN RECOGNITION OF NOVA UNIVERSITY

### HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SHAW. Mr. Speaker, December 4, 1989, marks the 25th anniversary of Nova University of Fort Lauderdale, FL.

I take great pride in the achievements of this innovative institution that began a quarter century ago with 17 students. Today, Nova University is the second largest private institution of higher learning in the State of Florida, and boasts more than 10,000 students and 25,000 alumni. The university also operates teaching clusters in 26 States and 2 foreign countries.

Nova University has distinguished itself by its inventive outlook and its unique educational and community service programs, which provide both traditional and nontraditional choices in education, and its research in many fields aimed at solving the problems of immediate and long-term concern to mankind.

Nova University is now beginning to receive the recognition it deserves as a leader in education, both nationally and internationally. I would again like to congratulate Nova on its remarkable accomplishments over the past 25 years and I look forward to its continued success.

## INTRODUCTION OF THE PROFESSIONALS' LIABILITY REFORM ACT OF 1989

### HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. RITTER. Mr. Speaker, the litigation explosion has had a staggering negative impact on practically every sector of our society. Liability insurance premiums are expensive for all Americans. Courts are flooded with frivolous lawsuits. Small businesses are closing their doors because they cannot afford insurance protection. Doctors willing to deliver babies cannot be found in some parts of the Nation. Innovation is being stifled for fear of being sued. Insurance is unavailable to engineers who work in cleaning up the Nation's hazardous waste sites or who work to remove asbestos from schools and other public facilities. Everyone pays for the exorbitant costs paid by America's large corporations to defend themselves against liability suits.

Peter Huber, author of "Liability: The Legal Revolution and its Consequences," has estimated the total cost of America's preoccupation with suing at $300 billion dollars!

America's litigation climate is a boon to our foreign competitors.

In the last Congress, the Energy and Commerce Committee passed a product liability bill out of committee aimed at helping manufacturers, distributors, and sellers of products. Similar legislation has been introduced again this year and awaits consideration in the Senate and in the House. But that help extends to only one sector of our economy. Professionals who provide necessary services to consumers, government and business need the same fair treatment that Congress has been considering for manufacturers.

Professionals in all fields—doctors, dentists, nurses, midwives, accountants, engineers, architects, surveyors, and even lawyers—are being subjected to "litigation pollution" and its concomitant outrageous costs. For example, consulting engineers—who apply their talents to design the Nation's needed infrastructure, our roads, bridges, and buildings—are paying two to three times more for professional liability insurance coverage than they were just 3 years ago, according to the American Consulting Engineers Council. Some firms pay over 10 percent of their gross revenue for liability protection. That's the margin at which a business lives or dies. Every time a lawsuit is brought against a consulting engineering firm it costs the firm an average of $8,000 of its own money to defend itself, whether or not the plaintiff prevails. In other words, once sued, an engineer loses, even if the case is resolved in his favor. And in 40 percent of the suits brought against engineers, there is no payment whatsoever to the plaintiff—indicating that those suits should never have been brought in the first place. Consulting engineering firms are typically small businesses, and the cost of insurance and legal defense is practically wiping them out. That has got to change.

This is the kind of scenario that makes the Professional Liability Reform Act of 1989 necessary. The legislation sets a negligence standard for lawsuits against professionals, which simply means that a professional should not be found liable unless his/her services were in some way or another negligently rendered. Today, a professional runs the risk of being included in a lawsuit just by being involved in a project which results in harm.

This issue demands Federal attention because of implications for interstate commerce. Whether it's increased medical expenses paid through reimbursements that M.D.'s receive from Medicare and Medicaid, or the vulnerability of CPA's, engineers, or brokers who work for companies active in interstate commerce, the situation is getting worse. The need to be covered for worst-case scenarios, which translates into peak premiums. Through this legislation, uniform Federal standards would be established to reduce the uncertainties and heightened costs of liability exposure caused by different standards in the 51 separate court jurisdictions.

This bill bases awards on fault or wrongdoing, not on who has the deepest pockets—abolishing joint and several liability. Defendants would be required to pay only the amount of any judgment for which they are responsible.

It encourages alternative procedures to resolve disputes, expedite adjudication, and compensation for harm. Rather than bringing every case to the courts, both money and time may be saved by alternative mechanisms.

It provides periodic payments for damages. Structured settlements would provide for payment of awards in a timely manner to avoid the burden of a lump sum payment.

It limits plaintiff's attorneys' fees based on a sliding scale with the ability to petition the court in extreme cases. Currently, twice as much money goes to attorneys' fees and litigation expenses as to compensate victims.

It prohibits multiple payments for damages. Awards would be reduced by insurance, wage continuation programs, workers' compensation, and other payments and benefits intended to compensate the plaintiff for the same injury.

It set limits on punitive damage awards to plaintiff. Amounts of awards over three times the compensatory damages will be given to the State to offset court and other expenses.

And, it also holds claimant's attorney liable for frivolous suits. Attorneys would be liable for costs when they bring suits without reasonable basis strictly to achieve a monetary settlement as determined by the court.

The legislation introduced today will not let any professional off the hook if there was negligence that caused injury or damages to an innocent party. No one, including professionals themselves, would want a system that does not require persons who make mistakes to pay for them. The provisions of the Professionals' Liability Reform Act simply puts professionals on an equal footing when they are sued—it requires that they are liable if negligent, but does not allow them to be the targets of people who are trying to make a fast million from companies who have deep pockets. The bill also sets standards for timely payment of awards, attorney compensation, double recovery, and defendants paying only their fair share of an award—all of which creates an equitable system and will lower society's cost of the current litigation explosion.

I urge my colleagues to join me in supporting this legislation. Until this problem is addressed, our competitiveness and our productivity as a nation will suffer. Our standard of living will suffer. Our jobs will suffer. American enterprise and labor deserve relief from this crisis. The Professionals' Liability Reform Act will go a long way to provide that relief.

If you would like more information or would like to cosponsor this bill, please contact Jean Perih in my office.

## NICARAGUANS REGISTER IN HUGE NUMBERS

### HON. GEO. W. CROCKETT, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. CROCKETT. Mr. Speaker, this is another in a series of statements about the Nicaraguan elections.

Despite the determination of some among us to believe that the registration process would be a failure, it has in fact been a huge success. More than 90 percent of Nicaragua's eligible voters are now registered. This is yet another indication that the elections will indeed be free and fair.

I wish to share with my colleagues a New York Times article of October 22, which describes the success of the registration effort:

[From the New York Times, Oct. 22, 1989]

NICARAGUANS REGISTER IN HUGE NUMBERS

(By Mark A. Uhlig)

Managua, Nicaragua, Oct. 22.—Nicaraguans jammed voter registration stations here today for the fourth consecutive Sunday in what diplomats described as "overwhelming" response to preparations for national elections in February.

With three of the four registration days counted, Government officials said last week that 1,336,342 Nicaraguans, of a voting population of 1,970,486, had already registered for the Feb. 25 vote. Further registrations today, the last and traditionally most important of the four Sundays of the registration period, were expected to bring the total to more than 90 percent of all eligible voters.

Tens of thousands of Nicaraguans lined up today at registration booths at schools, Government offices and other buildings across the country. Diplomats and local politicians marveled at the seemingly deep desire of Nicaraguans to stand up and be counted after years of turmoil and conflict.

ABSOLUTELY MARVELOUS

"This is absolutely marvelous, overwhelming," said a foreign diplomat whose country has remained neutral in the long years of civil strife here. "It is already an extraordinary figure, and if the final count reaches 1.6 million or higher, this will really become an election to watch."

Would-be voters came to neighborhood registration stations to put their signatures and thumbprints in each of three thick ledger books, which will remain available for public inspection. Under election rules, the enrollment process has taken place in

the presence of poll watchers from the governing Sandinistas National Liberation Front, the main opposition coalition, the National Opposition Union, and other political parties.

Opposition parties filed some complaints about the registration process, particularly on the first day of the procedure. But they have generally expressed satisfaction with the election preparations, which are being supervised by a large, coordinated network of observers from the United Nations, the Organizations of American States, and several other international groups.

Among the foreign monitors overseeing today's registration efforts was Elliot L. Richardson, the former United States Attorney General, who was named last month as the personal representative of the United Nations Secretary General, Javier Pérez de Cuéllar, in supervising the hundreds of United Nations personnel who will monitor the election.

MEASURE OF PUBLIC'S IMPATIENCE

Both the Government and its opponents have asserted that a strong voter turnout would benefit them in the elections. But foreign experts and international officials say the strength of the registration figures is, above all, a measure of the public's growing impatience after years of turmoil and war, and the desire of average Nicaraguans to make their views known after years in a political crossfire between the Sandinistas and their opponents.

Just what those views are remains a matter of great dispute. Recent polls generally give an advantage to the incumbent President, Daniel Ortega Saavedra. But almost all of the opinion polls conducted recently reflect a high number of undecided voters, sometimes reaching as much as 50 percent of the overall poll sample.

According to official statistics, the total population of Nicaragua is roughly 3.5 million. Much of the population is quite young, but the voting population is made larger due to the lowering of the voting age, which was set at 16 years after the Government came to power.

EXILES CAN VOTE

The many Nicaraguans who have left the country under the Sandinistas are eligible to vote and have been able to register at Nicaraguan consulates abroad. But they must return to the country to cast their ballots.

Nicaraguan exile organizations in Costa Rica, Honduras and the United States have recently tried to organize themselves to encourage a large exile vote at polling stations just inside the Nicaraguan frontier. But opposition leaders have tended to discount the importance of that effort in the final vote, saying that cost and logistical problems make it unfeasible.

## U.S. DEFENSE DOLLARS

### HON. PETE GEREN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. GEREN. Mr. Speaker, in debate we must hear different viewpoints and ideas as we search for the basis of forming our own opinions. It is with this thought in mind that I submit for the CONGRESSIONAL RECORD, this thoughtful piece on defense spending written by one of my constituents, Don Erler. Don Erler is a former political science professor and president of General Building Maintenance Co. of Fort Worth, TX. He has written a well-thought-out piece on military spending that I believe will serve to advance the debate on some of the critical issues facing Congress.

SPEND U.S. DEFENSE DOLLARS WISELY, ECONOMICALLY ON "BRILLIANT PEBBLES"

(By Don Erler)

Despite Congress' evident desire to repeal it, the "law of scarcity" remains an economic fact of life. Nowhere is this more apparent than in the current budget battles being waged within the Pentagon, administration and Congress about strategic military appropriations.

U.S. defense planners, understandably concerned about the 14 percent increase in Soviet land-based ICBMs and the 7 percent net gain in total strategic weapons during the past year, propose several expensive improvements in U.S. strategic deterrence. The Stealth bomber, at about $500 million per copy, is said to be needed to keep our penetrating bomber threat credible. Putting our MX missiles on rails, in order to improve their survivability, would cost $6 billion. The single warhead and highly mobile Midgetman missile, deployable for almost $60 billion, would join the MX to bolster our land-based component of the strategic triad. More and modified Trident submarines and their new and improved missile guidance systems will match the Soviet threat to our sea-based strategic deterrent. And of course, our 200 or so Command-Control-Communications facilities, without which no U.S. military response could ever occur, will require extensive "hardening" against nuclear attack. Total cost to upgrade the U.S. strategic arsenal; between $125,000,000,000 and a half a trillion dollars.

There is a substantially less expensive way to redress the current Soviet advantage in strategic firepower. The Pentagon's Strategic Defense Initiative Organization (SDIO) has proposed a layered defense of ground and space-based intercepter rockets capable of destroying ballistic missiles through force of impact. Called "brilliant pebbles," these highly accurate and difficult-to-thwart defense missiles are under 4 feet long and weigh less than 100 pounds when fully fueled. Including cost of development, deployment and control systems, thousands of the kinetic-kill interceptors could provide a credible missile defense within five years for a total cost of under $50 billion. They would enable U.S. defense planners to protect a sufficiently high percentage of our retaliatory forces and to revitalize our nuclear deterrent without resort to much more costly enhancements to our offensive strategic forces.

Many Americans are unaware that the United States, unlike the Soviet Union, has no operational defense against ballistic missiles. Not only are we vulnerable to a Soviet attack, but we have no way to prevent catastrophic if an accidental launch or a limited missile assault by a Third World country should occur.

With Soviet President Mikhail Gorbachev openly discussing (on Soviet national television, no less) the possibility of a military coup or civil war in his country, and with our CIA estimating that 19 countries will have the ability by century's end to attack the United States with ballistic missiles, is it not prudent to deploy a defensive system as quickly as possible? The "law of scarcity," at long last, now favors economical defensive over luxurious offensive strategic weaponry. Therefore, both fiscal constraints and strategic necessity have joined forces to recommend the most thoroughly tested and cost-efficient path to ballistic missile defense and revitalized U.S. strategic security.

Don Erler of Hurst is a former political science professor and president of General Building Maintenance Co. of Fort Worth.

## FINAL COMMUNIQUE OF THE AMERICAN HUNGARIAN FEDERATION

### HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. FEIGHAN. Mr. Speaker, the American Hungarian Federation is an organization that is well-known to many of my colleagues for its good works. The federation was founded in my home city—Cleveland, OH—in 1906 and has been defending freedom in the United States and Hungary since that time.

The federation has just held its biennial national convention in Ohio this past week. The convention adopted a final communique which I would like to share with my colleagues for its analysis of events in Eastern Europe, as well as its recommendations for U.S. policy.

FINAL COMMUNIQUE OF THE NATIONAL CONVENTION OF THE AMERICAN HUNGARIAN FEDERATION

The American Hungarian Federation, an 82-year-old umbrella organization of American Hungarian churches and cultural and fraternal associations, held its National Convention on November 18, 1989, in Akron, Ohio. Attended by delegates from eleven states, the Convention passed the following final communique:

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The American Hungarian Federation welcomes the reforms and the process of democratization in Hungary. It notes with satisfaction that the Republic was restored, the Red Star is being removed from the Parliament and other official buildings, that the Workers' Militia is being dissolved and free elections are supposed to be held in June 1990. It is of the opinion that only a government which is freely elected by the Hungarian people may decide, with moral and political right, questions concerning the Hungarian people. The American Federation hopes that yet-unfulfilled national aspirations, such as the proclamation of neutrality, the withdrawal of Soviet military forces, and the renegotiation of Soviet-Hungarian and Hungarian-CMEA relations, will be accomplished during the next few years.

The American Hungarian Federation greets the new political parties and groups who are the bulwark of the new Hungarian democracy. We greet in the first place the Hungarian Democratic Forum which was created and is being led by the best of the Hungarian intellectuals. We hope that the coalition of the HDF and other political parties will be able to implement successful economic reforms and the stabilization of the social and political order.

However, we note with regret that despite many well-meaning initiatives, the oppression and situation of the more than four million Hungarians living apart from Hungary in the Carpathian Basin has not

become the key problem as far as the parties and the government are concerned. Even the resolution of the HDF at its national meeting contains only an enumeration of individual and cultural rights violations at a time when Hungarians living in the historically Hungarian territory of Transylvania are facing ethnic genocide. The long-term solution of the Transylvanian question may only be solved by the implementation of the national self-determination right of the Hungarians in Transylvania. We would like to see the theoretical view the temporary President of Hungary, Matyas Szuros, expounded on January 28, 1988, i.e., that all Hungarians living outside the borders of Hungary are members of the Hungarian body politic and that Hungarian government is responsible for their fate, become the principal tenet and motive of Hungarian foreign policy.

Hungarian foreign policy has a vital role in the survival and development of all Hungarians. The American Hungarian Federation is aware that Hungary must orient itself primarily toward the European Community because this will determine its political and economic future. For after a hiatus of 45 years, the Hungarian people must solve the problem of rejoining Europe as a part of the West.

However, it would be a shortsighted policy not to seek closer relations with the United States, for Washington will play an important role in the development of private enterprises in Hungary, in the success or failure of the Hungarian-IMF talks, and in the development of a democratic order in Hungary. Finally, it will play an even more decisive role in preventing a potential attempt to eradicate Hungarian democracy either by internal or external forces.

The changes in Hungary are not regarded as an isolated event either by us or the American government. The events of the last few weeks in East Germany and Bulgaria serve as evidence that East Central Europe is on the threshold of fateful changes which are being encouraged, or at least tolerated, by the Soviet leadership which is hoping for substantial Western economic aid. The next years will see a European reorganization and during this period, Hungary should not forget the fate of more than four million Hungarians living under foreign rule in the Carpathian Basin, especially of the Transylvanian Hungarians whose national existence is being threatened.

The American Hungarian Federation is hopeful that in the near future, the Stalinist dictatorship of Ceausescu will end and will be replaced by a new Romanian government which can become a meaningful negotiating partner. But come what may, the American Hungarian Federation, just as in the past 25 years, will fight without compromise for the human, cultural, and national self-determination rights of the Transylvanian Hungarians. In this matter, it calls upon all political parties and groupings to focus their activities in accordance with this goal to achieve the rights of the Transylvanian Hungarians.

We, like the leaders of Hungary, have been given a great responsibility. The moment seems to have arrived about which the poet, Endre Ady, wrote. The banquet of the transitory men has ended and the poet talks about us when he says:

Only we will come to create great things,
Things which are greater, human and Hungarian.

II

It has been the primary task of the American Hungarian Federation to inform our Administration and Congress about American-Hungarian relations and to propose solutions to them.

In this regard, we consider extremely important the widening of economic relations between Hungary and the United States. We would like to thank Congress for the recently voted private enterprise funds and other technical and environmental assistance and for the inclusion of Hungary among the states receiving OPIC investment guarantees. We also thank our Administration for the permanent extension of MFN and the granting of GSP status to Hungary.

At the same time, we cannot leave without commenting that American assistance is of symbolic importance only, given the economic crisis in Hungary. If, however, the voting of larger amounts of assistance to Hungary is now impossible (though it would be of paramount importance), we ask the Administration and Congress to take the following direct and indirect measures:

(1) Our Administration should exert its influence to make sure that the present negotiations between the IMF and Hungary will come to fruition and the conditions attached by the IMF should be bearable for the Hungarian people. We know that after 40 years of Communist mismanagement, the Hungarian people will have to swallow bitter medicine in order to attain a free economic system and restore economic self-sufficiency. Yet the austerity program and the price increases cannot be of such magnitude as to threaten substantially the Hungarian social and political order.

(2) At the present, the introduction of American capital into Hungary constitutes the best assistance and hope for economic well-being. In this regard, we welcome the several attempts of President Bush in Budapest and before the Governors' Conference to encourage American investment in Hungary and hope that he will repeat such efforts in the future.

(3) The most important element remains psychological motivation. Last year Hungary and Poland played the leading role in reforms in East Central Europe. Now East Germany is taking over this role. It cannot be permitted that American interest should turn from Hungary in the midst of accelerating events in the region, for in the medium run, we are talking about a European reorganization which will bring to the surface many regional problems as well.

(4) For us the most important problem remains the oppression of the Transylvanian Hungarians, which approximates ethnic genocide. We know that as long as President Ceausescu remains in power, American influence can at best lessen the catastrophe, but in view of the events in East Germany and Bulgaria, we do not believe that the conductor will last long. We appeal to our Administration not to forget, in case of regional changes, that the long-range peaceful solution of the Transylvanian question is possible only by implementing the human, cultural, and national self-determination rights of the Hungarians of Transylvania.

(5) As this Final Communique is being released before the summit meeting of President Bush and President Gorbachev, we appeal to our President to remember the interests of Hungary and the aspirations of the Hungarian people to neutrality.

## BOB AND VIRGINIA B. "DUTCH" SECREST CELEBRATE 60 YEARS TOGETHER

### HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. APPLEGATE. Mr. Speaker, in a busy world fixated on the quick and fast, where 60-second commercials and 60-minute programs dictate our reference to time, I find it an immense pleasure to share with my colleagues in the House of Representatives a celebration of 60 years of love and devotion that have been known by Robert T. and Virginia B. "Dutch" Secrest of Cambridge, OH. A few now serving will remember Bob as a former Member of Congress.

Married in 1929, Bob and "Dutch" Secrest have experienced and enjoyed six decades of a wonderful marriage and are parents to three outstanding children: Bob Jr., Nancy, and Jane.

Bob and "Dutch" Secrest came to Washington along with Franklin Delano Roosevelt in 1932, where Bob began serving as a U.S. Representative from Ohio during the New Deal era. When the shadows of war began to overwhelm the world, Bob was the first Member of Congress to leave public service and enter the military. After an illustrious service in the U.S. Navy during World War II, Bob returned home and served a second stint in the U.S. House of Representatives until 1954, when he was appointed as a Commissioner to the Federal Trade Commission.

Bob later served a third time in the U.S. House of Representatives, eventually leaving in 1967 and returning to Ohio, where he finished his public career by serving 4 years in the Ohio State Senate. In all of these years of outstanding public service, "Dutch" was always there as the most important and influential supporter of Bob's career. Through the good times and the rough times, through the ups and downs, Bob and "Dutch" Secrest's devotion and love for each other has grown and strengthened. There is no couple I admire more.

Mr. Speaker, I wish to convey to Bob and "Dutch" my very best wishes and hopes for many more years of happiness and for many warm memories of their 60 years together.

## TRADE RELATIONS WITH SOVIETS

### HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. CRANE. Mr. Speaker, last week, on the PBS "Nightly Business Report," I had an opportunity to express my deep concern over the recent trade talks which took place in Washington between Secretary Mosbacher and Soviet Minister of Foreign Relations, Konstantin Katuschev. Today, after seeing a copy of an October Heritage Foundation "Backgrounder" on the current state of the Soviet

military, I am more convinced than ever of the current state of the Soviet military, I am more convinced than ever that efforts to improve our trade relations are entirely premature.

Although the Soviet Union has taken some steps to allow greater freedom at home, the rate at which they continue to build, modernize, and reshuffle their military forces certainly make me question their sincerity in wanting to reform. Because we are receiving mixed messages from the Soviet Union, the United States must be careful not to act hastily in rewarding the Government for their small improvements.

I commend the following "Backgrounder" to the attention of my colleagues.

[From Backgrounder, Oct. 26, 1989]

MOSCOW ARMS FOR ARMS CONTROL

(By Jay Kosminsky, policy analyst)

(Updating Backgrounder No. 725, "A U.S. Agenda for the Conventional Forces Reduction Talks," September 1, 1989, and Backgrounder No. 684, "In Nuclear Arms Talks, Go Slow on START," January 11, 1989.)

East-West arms control momentum seems to be building inexorably. Yet this is not stopping Moscow from modernizing, building, and reshuffling its military forces in a way that, even with coming agreements, will leave the Kremlin in an even more advantageous position than today. Highlights:

Private industry sources say that a large number of Soviet tanks removed from Eastern Europe under Soviet leader Mikhail Gorbachev's unilateral withdrawals have not been destroyed or converted to civilian use as he promised, but relocated behind the Ural Mountains, 1,500 miles deep into Soviet territory. There they will be exempt from the provisions of the coming East-West Conventional Armed Forces in Europe (CFE) agreement.

Moscow is replacing its SS-18 Satan, already the world's most powerful intercontinental missile, with a new, more accurate and more powerful missile, officially identified by the Pentagon as a "modification" of the SS-18. Regardless of how it is defined, this development means that Moscow's missile force will pose an even more deadly threat to America's own strategic nuclear forces after a Strategic Arms Reduction (START) Treaty than it poses today.

The message is clear. While Moscow arms to parlay, NATO military budgets and force plans already are being scaled back in anticipation of a CFE agreement and, as START approaches, every single American strategic modernization plan is under attack in Congress. Unless George Bush convinces allies and Congress to reverse these trends, coming arms control agreements will leave the West more vulnerable to Soviet military power than it has been.

PROTECTING SOVIET TANKS

This conventional arms control accord, likely to be concluded within the next year, will put strict limits on the military forces deployed by NATO and the Warsaw Pact in Europe, including tanks, armored troop carriers, and aircraft. The restrictions will apply to all forces stationed between Europe's Atlantic shores and the Ural Mountains. Tanks and other equipment deployed in this area in excess of limits established by a CFE treaty would have to be destroyed.

It seems, however, that Moscow already may have moved large numbers of tanks out of this Atlantic to the Urals region to bases and into storage behind the Ural Mountains. This effectively would exempt these tanks from the destruction that would be mandated by the CFE accord. The tanks being moved behind the Urals were pulled back as part of a unilateral withdrawal of 5,000 tanks from Eastern Europe announced by Gorbachev last December 7 at the United Nations. Then in a January 18 speech, he said that these tanks would be destroyed or converted to civilian use. It has not happened. Instead, the effect of the withdrawals will be to protect many of these tanks from destruction under a CFE accord.

GREATER THREAT TO U.S.

Moscow also is adding military muscle to its strategic arsenal. According to Pentagon sources, Moscow has increased the power and accuracy of the ten warheads on its SS-18 Satan intercontinental missile and improved the booster to increase its lift ability, or "throwweight," by as much as half. Though this is called a "modification" of the SS-18, it more precisely is a new missile. These developments will make the SS-18 even more of a threat to its main targets: U.S. missiles buried in their underground silos.

According to Heritage Foundation calculations, based on unclassified estimates of the new missile's characteristics, each one of the new SS-18 warheads has roughly the same chance of destroying a U.S. missile in its silo as two of the older SS-18 warheads.[1]

Half the number of SS-18 warheads, therefore, still will be able to destroy the same number of American targets. This is important because START likely will require Moscow to cut its SS-18 force in half, from 308 missiles to 154. Moscow now will be able to do so without sacrificing any capability to destroy U.S. military targets, including missiles and command posts. Further, these new SS-18s will be deployed against fewer targets, since the U.S. land-based missile force also will be cut by half or more to comply with START requirements. As a result, Moscow will have an even greater capability after START than it does today to destroy U.S. land-based missiles, unless the U.S. deploys a new mobile missile or, better yet, strategic defenses, to defend its own missiles from attack.

In response to these Soviet developments George Bush should:

Publicly warn Moscow that such actions as moving large numbers of tanks behind the Ural Mountains and deployment of a new heavy missile violate the spirit of ongoing arms negotiations and jeopardize chances for reaching new accords.

Veto a 1990 Defense Budget that does not include the funding needed for timely deployment of American strategic defenses (as part of the Strategic Defense Initiative) and the mobile MX missile, both of which will be crucial to fielding a survivable U.S. land-based missile force, particularly in light of recent lethal improvements to the Soviet SS-18.

Publicly alert NATO allies and the Congress of the need to maintain modern and effective conventional and nuclear forces before and after the expected arms control agreements are signed. Moscow is structuring its military forces to increase their threat to the U.S. and its allies after arms control. If the U.S. and its allies do not respond by maintaining their own modernized forces, the West will find itself more vulnerable to Soviet military power after arms control than it is today.

[1] Based on standard calculations for determining missile lethality available in open literature. Estimates of old and new SS-18 missile characteristics based on International Institute for Strategic Studies, The Military Balance 1988-89, adjusted on the basis of recent Pentagon statements.

## MIKE OVERBEY, NEW PRESIDENT OF AMERICAN DENTAL ASSOCIATION

### HON. DON SUNDQUIST

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SUNDQUIST. Mr. Speaker, it gives me great pleasure, and a tremendous sense of pride, to rise today and offer my congratulations to Dr. Malcolm "Mike" Overbey of Memphis, TN, who just recently assumed the presidency of the American Dental Association.

Mike Overbey's life has been a model for commitment and dedication to service—to his community, to his profession, and to his country. Since he started his practice in Memphis in 1958, after graduating as president of the class of 1955 at the University of Tennessee's College of Dentistry, Mike has maintained a strong desire to serve. For over 30 years Mike has been an associate professor of the University of Tennessee's College of Dentistry, thereby giving back his time, knowledge, and experience to the institution that served him so well.

Mike Overbey's commitment to the profession of dentistry did not end with his involvement in teaching new generations of dental professionals. He was also instrumental in advancing the goals and objectives of dentistry by serving as president of the Memphis Dental Society, president of the Tennessee Dental Association, president of the Tennessee Academy of General Dentistry, member of the American Dental Association's House of Delegates, a trustee of the sixth district of the American Dental Association, a member of the Federation Dentaire Internationale, and a fellow to the American College of Dentists, the International College of Dentists, and the Academy of General Dentistry. In recognition of his contributions to the dental profession, Mike Overbey was named "Outstanding Alumnus" by the University of Tennessee College of Dentistry, and "Dentist of the Year" by the Pierre Fauchard Academy.

Mike's commitment, leadership, and dedication extended to his country as well. In 1987 Mike Overbey retired as a brigadier general in the U.S. Army Reserve Dental Corps. Upon retirement, he was presented with the Distinguished Service Medal—the highest honor presented in peacetime.

Dr. Mike Overbey is a man who is well respected within his community and within his profession. The American Dental Association will clearly be well-served by a man of such talent, commitment and integrity. So it is with these thoughts in mind that I offer to Mike and his wife, Mary Anne, congratulations and best wishes. The people of Memphis, TN, are proud to honor you today.

## CHARLES E. DREW ELEMENTARY SCHOOL

### HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Ms. ROS-LEHTINEN. Mr. Speaker, I rise today to commemorate the 25th anniversary of the founding of Charles R. Drew Elementary School right in the heart of Liberty City in Miami, FL. At a time when some inner-city schools have been heavily criticized for poor administration, unsafe conditions, and a lack of resources, the Charles Drew School has given its students the tools to do their best. Vice President DAN QUAYLE recently visited the school because it exemplified one of the "thousand points of light," the theme promoted by President George Bush.

Since 1964, Charles Drew has taken dramatic steps to invest in its community's future generation despite difficult circumstances in their environment. Outside Drew, things are different. Crime and violence are sometimes a part of everyday life.

Inside Drew, the staff, administrators, and parents reshape the experience of growing up in Liberty City. Their approach is to try to give the students everything they'll need to succeed in school and beyond. That's one of the reasons, when you walk around the school, you see pictures of outstanding black leaders. At Drew, they want the children to know that they can be successful, that they too can have a significant goal.

Perhaps even more encouraging is that during the day the students study in air-conditioned classrooms that almost are invariably neat, sparkling clean, and brightly decorated. If on the way to school a student is exposed to a drug pusher, at school they are surrounded by pictures of successful black lawyers, judges, doctors, and writers.

With this continuous commitment, Charles R. Drew Elementary School has above average test scores. As well, the school has a large and well-established career lab and a wealth of extras ranging from a nationally known reading program to a new string ensemble to its center for expressive arts, the first one established for artistically talented students in Dade County. They even have optional Saturday classes where more than one-third of their students volunteer to attend.

The formula behind the schools prosperity is motivated by the principal of Drew, Fred Morley. He became principal in 1973 after 7 years as a math specialist in charge of various Dade schools and 10 years as a math teacher. A countrywide committee recently named Mr. Morley Dade's distinguished principal of the year. He will compete in a national competition sponsored by the Department of Education and the National Association of Elementary School Principals.

Fred Morley has set a foundation in various areas of education. Drew Elementary is the school cited by the Dade grand jury report on dropout prevention as proof that inner-city children can succeed. It is his school that uses CATCH, a computerized system to diagnose students' weaknesses in math that has attracted attention of educators from as far away as Oregon.

In Miami, Fred Morley sees future leaders in his students. According to Mr. Morley, "when I look at them I see doctors, I see lawyers, I see writers of newspapers." He feels that he has a lot to offer and he can not just run away from something that has so much potential. He feels that people need to stay in the community and make it better.

Since becoming principal, test scores are up, school uniforms are popular, students voluntarily show up on Saturday morning, and vice presidents visit. According to Principal Fred Morley, the most rewarding experience is seeing students who leave the school and become successful come back to say thank you for what you've done for them.

Today, I wish to thank the Charles E. Drew Elementary and Mr. Fred Morley for what they have done for all of Dade County and for the future of our great country.

## TRIBUTE TO GEORGE NELSON

### HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. YOUNG of Alaska. Mr. Speaker, I rise to recognize the contributions made to the State of Alaska by a special Alaskan friend. George N. Nelson, president, Alaska, BP Exploration, will retire on December 31, 1989, after a 35 year oil industry career that has spanned the globe. He has spent the last 14 years in various positions with British Petroleum Co., nearly 13 of them in Alaska. He became president of Alaska Petroleum Co. in 1982.

Since transferring to Alaska in 1977 to serve as Prudhoe Bay field manager for BP, Nelson has contributed tremendously to the vitality of Alaska's economic, social, and educational climate through his leadership and commitment to Alaska's people. At the same time, he has been instrumental in building BP to become the largest producer of American crude oil, providing 1 of every 10 barrels of crude oil produced in the United States.

Under his guidance, BP has pioneered new techniques and technology to both promote energy independence for America and operate in an environmentally responsible manner. His dedication to preserving the Alaskan environment while developing the State's oil and gas resources earned him the Nature Conservancy's Oak Leaf Award, and in 1988, it helped BP to earn the World Environment Center's prestigious International Corporate Enviromental Achievement Award for the company's achievements at Prudhoe Bay.

Nelson has demonstrated a deep commitment to developing oil field employment opportunities for Alaskans—natives and nonnative alike. He introduced the concept of joint ventures with native corporations to the Alaskan oil patch, and he has been at the forefront of industry efforts to hire Alaskans, contract with Alaskan companies and purchase Alaskan goods. He also has been at the forefront of maintaining a dialog with organized labor to assure oil patch jobs for union workers.

His commitment to the needs of minority students has made BP exploration's internship in Alaska a model. His efforts in recruiting minority interns earned him the Alaska Black Caucus' Community Service Award.

Nelson's contributions to Alaskan society and the Alaskan oil industry earned him the Alaska State Chamber of Commerce's 1989 William A. Egan Alaskan of the Year designation. He also is listed in Who's Who in America, 1988 and 1989. In addition to his countless contributions and achievements, Nelson serves as director of many community, industry, and policymaking boards. As chairman of the Anchorage Chamber of Commerce's Crime Commission, his tireless efforts led to municipal and State legislation that enhanced crime control in Anchorage and throughout Alaska.

For more than a decade—a term unrivaled in the Alaskan oil industry—George N. Nelson has been the heart and soul, the brain and brawn, the very conscience and persona of Alaska's largest corporation. His pragmatic approach to the challenges facing his company and his community; his unimpeachable integrity, and his commitment to Alaska and Alaskans have placed Nelson and his company at the forefront of Alaska's growth and America's quest for energy independence during his presidency.

## FEDERAL FIRE SERVICE PAY SCHEDULE ACT OF 1989

### HON. CHARLES A. HAYES

OF ILLINOIS

### HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. HAYES of Illinois. Mr. Speaker, Mrs. MORELLA and I introduce today a bill to establish a pay schedule for Federal firefighters which would be separate from the General Schedule and to revise the rates of pay for Federal firefighters.

The General Schedule was designed to cover a wide range of employees and occupations and assumes that all such employees work a standard 40-hour, 5-day work week. As it is designed, the General Schedule cannot fairly and adequately compensate Federal firefighters who work, on the average, a 72-hour work week and perform highly skilled and, sometimes, hazardous functions which are unique within the Federal workforce.

Because of the inequities in pay and overtime computation which Federal firefighters experience under the General Schedule, it has become increasingly difficult to recruit and keep trained firefighters. The compensation and opportunities for career advancement offered by State and municipal fire departments is generally more attractive than the compensation currently offered by the Federal Government.

The pay schedule and overtime provisions in the bill accurately reflect the nature of the duties and responsibilities of Federal firefighters at every level of the Federal fire service.

Also, careers in the Federal fire service will be more attractive to competent and well-trained firefighters.

## OPPORTUNITIES FOR SMALL BUSINESSES IN THE EUROPEAN COMMUNITY

### HON. NORMAN SISISKY

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SISISKY. Mr. Speaker, in the European Community just as in the United States, one of the biggest problems facing small and medium size businesses is lack of information. This is especially true when it comes to receiving information that will assist small businesses who are seeking to export. In anticipation of EC–1992, my Small Business Subcommittee on Exports and Tax Policy is exploring ways to improve access to exporting information for small businesses.

Today, I would like to tell my colleagues about the support network that the European Community has set up for their small and medium sized enterprises. They are far ahead of us on this, and we have the opportunity to learn from their experience and benefit from it.

I am referring to the European Community's European Information Centers and their Business Cooperation Network. The European Information Centers were set up "to provide a useful and reliable service to the European entrepreneurs in order to help them make the most of all the advantages of a Europeanwide market." The centers assist, inform and counsel enterprises on the European Community, and answer all questions concerning the market, especially those with regard to regulations as well as standards, tax matters, and legislative matters. These centers operate independently integrated within host organizations that are well established in their local environment, such as chambers of commerce, local development organizations, professional federations or business consultants. The pilot phase of the project contained 39 centers. After 1 year an assessment was made and the centers were found to be so successful that the decision was made to increase the number of centers to 187. The Business Cooperation Network is a computerized network which matches the searches for business partners between companies in different European Community Member countries. Business Cooperative Network currently has 366 locations working in the 12 European countries.

The interesting thing about these centers is the way they are funded. To help the new centers make initial investments to purchase equipment and hire personnel, the community subsidizes them in decreasing amounts for the first 3 years. From the fourth year on, the center is supposed to be financially self-supporting. The Commission is currently examining possible fee and charging methods. The agreement with the directorate and the organization or enterprise that runs the centers requires that the centers not be considered as profit centers. The idea is to cover the costs. The centers are also given direct aid by the Commission through training of European Information Center officials and free use of EC databases and EC documentation. All of these activities are organized under the authority of the newly created Directorate-General XXIII of the Commission, responsible for small- and medium-sized enterprises.

Mr. Speaker, the value of the system to American small businesses who want to compete in EC–1992 is obvious. To this end, and in a spirit of cooperation, M. Cardoso e Cunha, Commissioner for Enterprise Policy, proposed in his speech at the recent Export 1989 Conference in Frankfurt, that his staff in DG XXIII draft a proposal for negotiations with the United States and European Free Trade Association [EFTA] countries to provide Business Cooperation Network access to users in those countries. In addition, I am happy to say that as a result of a visit to the European Information Center in Antwerp by United States European Community Embassy officials, United States businesses, locally established in the region or through a local agent, are allowed to use the services provided by the Antwerp European Information Center on a nondiscriminatory basis. American small businesses also have access to the Business Cooperation Network via any of the nearly 400 on-line users of the software system, including business consultants and local chambers of commerce.

According to our EC mission in Brussels, an American small business firm is encouraged to visit a local European Information Center to gain valuable information on the EC market. Our mission has begun inquiries with the EC Commission about the possibility of establishing cooperative agreements to help bring the European Information Centers and Business Cooperation Network to the United States, so that an American exporter can access the information directly from the United States.

Mr. Speaker, this is exactly the kind of activity our Department of Commerce, the Small Business Administration, our mission in Brussels and the private sector should support. I hope that the recent reports by GAO and the Inspector General at the State Department that were so critical of our new U.S & FCS Service will be the catalyst for change and we can begin to play the aggressive and innovative role so needed in today's global economy. I know there are several exciting initiatives being considered at our agencies. I want to urge my colleagues to join with me in doing all we can to encourage a close working relationship with Government and businesses so that we can begin to do something about the enormous trade imbalance that continues to plague us.

## A TRIBUTE TO CLAUDINE WILLIAMS

### HON. JAMES H. BILBRAY

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BILBRAY. Mr. Speaker, it is with great pleasure that I rise today to pay tribute to a preeminent civic and community leader of Nevada, Ms. Claudine Williams. On December 8, 1989, the St. Judes Ranch for Children will be dedicating its Night of Stars Annual Dinner to Ms. Williams. She is truly deserving of this honor.

Born in Mansfield, LA, Claudine Williams came to Las Vegas from Houston, TX, with her husband, the late Shelby G. Williams, in 1965. Together, they operated the Silver Slipper Casino on the Las Vegas strip, and opened the Holiday Casino on the famed boulevard in 1973.

Claudine Williams was one of the few women in Nevada to work as a top executive in a casino; she served as past-president and general manager of the Holiday Casino. She presently serves as the chairman of the board of the Holiday Casino-Holiday Inn. Her appointment as chairman of the board of the American Bank of Commerce established another first as a woman in Nevada.

Claudine's energy and commitment to the community and State led her to serve and give resources to many varied endeavors.

On the State level, she was appointed a member of the State board of equalization by Gov. Robert List, where she served for 5 years. Gov. Richard Bryan appointed Ms. Williams as a member of the commission on tourism in 1984, where she presently serves.

In 1985, she was elected to serve on the Board of Directors of the Las Vegas Convention and Visitors Authority, and is presently serving as secretary/treasurer. Earlier this month she was elected the 1990 chairman of the board of the Las Vegas Chamber of Commerce.

She also serves as a board member for the Valley Hospital Medical Center's Board of Governors, the Nevada Gaming Foundation for Educational Excellence, IGT [international gaming technology], and Boy Scouts of America, Boulder Dam area.

Claudine has been a long-time supporter of the University of Nevada, Las Vegas. She is past-chairman of the UNLV Foundation, where she presently serves on the board of trustees. She established an endowment fund in her husband's memory for scholarships to UNLV's College of Hotel Administration and has donated to UNLV for its dormitory construction project. In addition, Ms. Williams established a junior executive training program for UNLV students at the Holiday Casino. Her most recent honor was UNLV naming a distinguished academic chair after Ms. Williams.

Her support has reached numerous charities, including serving as chairman of the Board of Trustees for St. Jude's Ranch for Children, Home of the Good Shepherd, and Multiple Sclerosis, and vice chairperson on the United Way Campaign Cabinet.

Claudine has received numerous honors and awards for her commitment and dedication to the community. In 1986, she was honored by the chamber of commerce as one of the Las Vegas Women of Achievement. In 1981, she was the recipient of the Easter Seals Silver Lily Award, and in 1979, Good Gal Award from UNLV. She was also honored at the Las Vegas Catholic Community Services Third Annual Basque Festival, and was the first woman to be named "Woman of the Year" by the National Conference of Christians and Jews.

Mr. Speaker, by any standard—be it community service, civic leadership, or professional contributions—Claudine Williams represents the finest in southern Nevada's commitment to excellence. I ask my colleagues to join me today in commending Ms. Williams in her well-deserved recognition for outstanding contributions and loyalty to the community.

## CELEBRATING THE OPENING OF INTERSTATE ROUTE 78

### HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. RITTER. Mr. Speaker, I rise today to celebrate the completion of Interstate Route 78 in eastern Pennsylvania. This morning, the ribbon will be cut and the highway will be officially opened. This 32-mile stretch of highway will complete a badly needed section of the Interstate Highway System and provide a vital link from eastern Pennsylvania to New York City.

This long-awaited ribbon cutting comes after much discussion over many years between many voices in our communities. Both my predecessor, The Honorable Fred B. Rooney and I helped maintain Federal funding for I-78 while the issues surrounding its completion were addressed.

During the past 7 years, the Lehigh Valley has witnessed unprecedented economic change and growth and the completion of I-78 means better access for commerce and travel to and from our communities. It is thought that traffic congestion will be lessened on Route 22 and on overtaxed secondary roads, and surely tourism will increase. However substantially increased congestion will put pressure on other secondary roads, particularly at the new I-78 exits. As access to and from the East is improved, people currently commuting to New York City from New Jersey or Westchester County will look to the Lehigh Valley as a place to raise their families. So my fellow Lehigh Valley citizens, let us rise to the challenge posed by I-78, with the wind at our backs, looking to the past in respect for tradition, and forward in confidence that we can define our own destiny.

But as people take up residence here, they will also seek to work, create businesses and invest here. Along with the benefits of a new highway, responsibilities also accrue. The completion of a major thoroughfare affects our region profoundly. And regional planning issues must be addressed.

Many communities around the I-78 corridor in Pennsylvania are already looking to the future to revise their land use and density guidelines, to ensure that the secondary roads in our communities are capable of handling the increased load generated by new commercial and residential development. The cities, townships, and boroughs in the Allentown-Bethlehem-Easton area must ensure that trash removal, sewers, water, and power can accommodate the additional growth. And our school systems must be prepared to handle increasing enrollments. Our need to consciously plan for open space increases markedly. Changes in the way we look at economic development must be also made if we are to maintain the high quality of life Lehigh Valley residents have come to expect and indeed those coming to live in the valley themselves seek.

There are several individuals and groups I would like to thank for their involvement and support for this project over the years: Tom Larsen, Federal Highway Administrator, who 10 years ago was PennDOT secretary and Walt Dealtry, president of the I-78 coalition. These men were two key driving forces behind the completion of I-78. In addition I'd like to pay my respects to the Allentown-Lehigh County, Bethlehem, and Two Rivers Chambers of Commerce for rallying the business community behind the project. I would hope that the enthusiasm they showed for completion could now be translated to applying principles of regionalism to keep our communities healthy. There are signs that this is taking place. Finally, I'd like to thank Lehigh Valley Pride for organizing the I-78 celebration on the highway last month. Whatever one thinks of this new artery, its coming is certainly a major occasion in the history of the Lehigh Valley and Lehigh Valley Pride understood that well. The cooperation between these individuals and groups was critical and they are to be congratulated for working well together.

Mr. Speaker, my colleagues, please join me in celebrating the opening of I-78, a vital commercial, commuter, and development link in the Lehigh Valley.

## TRADE AND TECHNOLOGY PROMOTION ACT OF 1989

### HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LEVINE of California. Mr. Speaker, today I am pleased to introduce, along with Mr. GEPHARDT, Mr. LEVIN, and Mr. MINETA, the Trade and Technology Promotion Act of 1989. This is a far-reaching bill designed to both strengthen and streamline the Government agencies responsible for overseeing the U.S. industrial and technology base.

A critical element of America's economic future will be an integrated, coherent trade and technology policy that can ensure this country's competitiveness in the commercialization of new products and technologies. At present, the United States lacks the necessary policy-coordinating mechanism to enable us to move advanced technologies from the laboratory to the global marketplace as efficiently as some of our competitors.

We are in danger of forfeiting our position of economic and technological leadership to those nations who are better able to commercialize new technologies, and whose governments work closely with the private sector to efficiently target technological leadership in key industries.

The legislation I am introducing today will create a Department of Industry and Technology to replace the Department of Commerce, will create a new advanced civilian technology agency, and will restructure and expand the membership of the National Security Council. It will also bolster the United States and Foreign Commercial Service.

The key components of this legislation are as follows:

First. It establishes a Department of Industry and Technology, whose primary mission is the marriage of industrial and technological concerns, both domestic and international, to enhance American competitiveness. The Department of Industry and Technology would replace and assume most of the functions of the current Department of Commerce.

Second. It creates an Advanced Civilian Technology Agency [ACTA] within the Department of Industry and Technology. ACTA will support research and development projects by businesses, academic institutions, and private laboratories that are intended to advance civilian technological developments and facilitate the more rapid commercialization of new products, processes, and services. ACTA will promote promising civilian technologies in much the same way that the Defense Advanced Research Projects Agency currently advances defense-related research, and will enter into contracts and cooperative agreements to speed the development of advanced technologies.

Third. It expands the National Security Council by adding the Secretary of Industry and Technology, the Secretary of the Treasury, and the U.S. Trade Representative as permanent members of the NSC. This will ensure that our long-term industrial competitiveness and trade concerns are factored into national security decisionmaking.

Fourth. It sets a floor on the staffing level within the United States and Foreign Commercial Service to ensure that sufficient personnel are employed to fill all authorized positions in domestic and foreign offices of the United States and Foreign Commercial Service.

Americans must recognize that the future of our Nation will rise and fall with the productivity and prosperity of our technological and industrial base. Everything we want to do, from cleaning up the environment to finding a cure for AIDS to ending poverty and homelessness on our streets and throughout the world, ultimately depends on the health of our economy and our ability to compete in leading technologies in the global marketplace.

The Trade and Technology Promotion Act of 1989 will develop the mechanism to make the Government a more effective participant in setting long-range goals for U.S. technology policy. It will give a greater priority to the development and commercialization potential of key industries and technologies, and serve to focus Federal efforts on the revitalization of our industrial base. The increasingly competitive international economy of the 21st century demands that we reform and strengthen both the public and private institutions to meet the challenge.

I urge my colleagues to lend their strong support to the Trade and Technology Promotion Act of 1989.

## INTRODUCTION OF TRADE AND TECHNOLOGY PROMOTION ACT OF 1989


### HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES


*Tuesday, November 21, 1989*

Mr. GEPHARDT. Mr. Speaker, today I am pleased to join with Senator GLENN and Representatives MEL LEVINE, SANDER LEVIN, and NORM MINETA in introducing the Trade and Technology Promotion Act of 1989. Our proposal takes a vital step forward in reclaiming America's economic strength and enhancing our Nation's ability to compete in the global marketplace of the 1990's and beyond.

The initiative addresses several key aspects of the way our Nation and our Federal Government deal with trade and competitiveness issues. Specifically, the bill:

Raises the profile of international economic issues in our national security agenda by placing our top economic Cabinet officers on the National Security Council;

Lays the basis for a private-led, public-supported partnership to research, develop, and exploit the latest commercial technologies;

Restructures our trade-related Federal agencies to enhance Federal support for U.S. exports, with a renewed commitment to the Foreign Commercial Service and creation of an "Export Strike Force"; and

Acknowledges the importance of science and technology in our commercial future by elevating the post of science adviser to the President and giving it statutory basis.

In the past, much of the debate on trade has focused on ways to break down foreign barriers to our exports, including the Gephardt amendment to the Omnibus Trade Act of 1988, "Super 301," and the Structural Impediments Initiative with Japan. This effort forms a vital part of our trade agenda, assuring our workers, farmers, and businesses that if they take the tough steps needed to restore their economic vitality, their Government will ensure that foreign markets are open to their products. But even as we look forward to the aggressive use of these and other tools at the disposal of the administration, we know that this is only part of the story. Once foreign barriers are removed, American exporters must be prepared to take full advantage of new opportunities. This is the focus of the Trade and Technology Promotion Act.

#### RAISING THE PROFILE OF ECONOMIC ISSUES

Our proposal places the Secretaries of Commerce and Treasury and the U.S. Trade Representative on the National Security Council, and beefs up the NSC's capacity to address economic and trade issues by providing additional staff and resources specifically for this purpose.

Today, economics, foreign policy, and national security are equal partners, inextricably linked. Our ability to influence world events is anchored in the strength of our economy.

Throughout the post-World War II period, we have relegated economic security to a secondary role in our national security agenda, sacrificing the long-term health of our economy in pursuit of foreign policy and defense concerns. We kept our markets open to promote economic growth abroad, without insisting on equal access to foreign markets. We supplied massive capital flows to rebuild Europe and help developing nations, transferred technology freely abroad, and used our wealth and research capacity to ensure Western security, while nations under our defense umbrella invested in commercial expansion. Such measures helped bring much of the world to a new level of peace and prosperity, but the world has changed, and America must adapt to a new global economy.

We cannot abandon our world leadership role, but neither can we afford to ignore the inpact of foreign policy decisions on the state of our economy. And yet we continue to exclude our top economic decision-makers from strategic discussions of national security. Negotiations with Japan on the FSX coproduction deal, for example, went on for 3 years without significant input from the Commerce Secretary or the U.S. Trade Representative. Yet the results of this flawed deal will have a potential disastrous impact on the health of America's aerospace industry. Our bill ensures that commercial and economic factors will be fully considered in the establishment of U.S. strategic and foreign policy.

#### FORGING A PUBLIC-PRIVATE PARTNERSHIP FOR PROGRESS

Our bill puts forth a more rational and longer term view on issues related to advanced technology. It creates the Advanced Civilian Technology Agency [ACTA] to work together with the private sector and the academic community to identify and foster research and commercial application of progress in the emerging technologies.

Instead of fostering and facilitating vital research and development in civilian areas, our Government tends to adopt an arm's length approach toward private efforts to perform R&D in emerging technologies; in some cases, in fact, antitrust regulations and other Federal laws may actually discourage such efforts.

We must recognize that the nature of commercial product development has changed. Today, the huge capital requirements and large externalities required for major civilian R&D projects often make it difficult for even the largest private firms to go it alone.

In the defense arena, we have recognized this situation and created the Defense Advanced Research Projects Agency [DARPA]. DARPA links private and public capabilities to develop key emerging technologies with an impact on our national defense.

In the civilian sector, the creation of Sematech and moves to promote research and development in high-definition television and superconductivity are worthy efforts. But we must also get ahead of the curve in new areas, such as biogenetics, fusion, and advanced robotics. This will be ACTA's principal responsibility.

#### RESTRUCTURING THE FEDERAL APPROACH TO TRADE

Our bill makes several key changes in our Federal structure to give American exporters better support. Among other changes, the bill establishes new, well-defined trade duties for an enhanced Department of Commerce—to be called the Department of Industry and Technology—and gives this Department a greater statutory requirement to support exports and technology development. It beefs up the Foreign Commercial Service and creates an Export Enhancement Committee—which might be characterized as an export strike force—to work with U.S. business to identify and exploit foreign export opportunities. The bill also streamlines the process of approval for export of high-technology goods that do not threaten our national security.

These changes are needed if we are to give American exporters a fighting chance. Right now, our Federal Government's level of support for exports, as represented by the resources made available to the Foreign Commercial Service, ranks at the bottom of all major industrialized countries. U.S. exporters, especially small businesses, have to work their way through a maze of 25 Federal agencies which have a role in establishing U.S. trade policy. Compared to Japan's MITI and similarly focused authorities in other nations, we seem like an affable sandlot football team going off to play the San Francisco 49ers.

Further, our various agencies work in isolation and often at cross-purposes. One agency encourages U.S. firms to move into high technology exports; another stops them cold if they try to sell even outdated technology abroad. Independent trade and investment agencies like the Overseas Private Investment Corporation, Eximbank, and the Trade and Development Program are left without an overall strategy to coordinate their efforts. The restructuring in our bill will address these problems.

#### PRESIDENTIAL ASSISTANT FOR SCIENCE AND TECHNOLOGY

An important measure in our bill is the establishment of a permanent statutory position of Assistant to the President for Science and Technology. It is no coincidence that the rising economic fortunes of countries like Japan, West Germany, and the Far Eastern NIC's correspond to a growing emphasis in these countries on science and technology. With half our population, Japan produces twice as many engineers and scientists as we do. The number of patents issued to American inventors has dropped by nearly 10 percent in years, while patents issued to Japanese inventors have increased fourfold. Other countries have now supplanted the U.S. dominance in world markets for advanced machine tools, lasers, robotics, and telecommunications. Institutes such as the U.S. Defense Science Board now warn that leadership in engineering, production, and commercial technology has already passed from the United States to other nations.

In addition to advising the President on issues in the field of science, this position will be charged with developing and implementing a national strategy to reassert America's scientific and technological excellence.

#### CONCLUSION

We need to make these innovations and others. We need to boost our savings rate, expand investment in R&D, improve education, return a long-term perspective and a sense of responsibility to corporate America, and much more. And we need to do all of these things now. That's not simple—but it's not impossible either.

Our parents were able to defeat depression at home and dictatorships abroad at the same time. And while the fight is less dramatic today, the stakes are just as high. We must rise to meet the challenges of a changing world in order to give our children and their children the jobs, hope, and opportunity they deserve.

I hope that our colleagues in the Congress, as well as the President, also see the nature of the challenges we face, and join us as we rise to meet them. For a great nation that is not the agent of change is sure to be its victim.

## TRADE AND TECHNOLOGY PROMOTION ACT

### HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LEVIN of Michigan. Mr. Speaker, I join today with my colleagues Congressman LEVINE, GEPHARDT, and MINETA in introducing a measure critical to the welfare, security, and future of our country.

The aims of the Trade and Technology Promotion Act are to expand U.S. participation in international trade by enhancing the competitiveness of American business and to accelerate the development and application of our technology.

In August I joined a congressional study mission to the booming capital cities of Southeast Asia. There I found stark and disturbing evidence of how underprepared, understaffed, and undertrained we are to compete in a burgeoning market of countless millions.

In the streets and stores of Bangkok, Jakarta, and Manila, American businesses are conspicuously scare. American-labeled consumer goods are almost invisible, both in the traditional shops operated by small entrepreneurs and in the American-style malls that typically are anchored by a branch of a Tokyo department store. And it is virtually impossible to spot an American vehicle admist the traffic-choked roadways, unless you count the cars of the U.S. Ambassadors.

A few famous American brand names do dot the landscape: There is one Ford billboard near the Bangkok airport and a Motorola sign here and there. But the only widely visible hallmarks of American business enterprise are a bottle of Coke or Pepsi, the golden arches of McDonald's and the benign visage of Colonel Sanders.

At a briefing of our delegation by the American Chamber of Commerce in Bangkok, I suggested that if present trends continue, the contest for goods and services in Southeast Asia could be all over in a decade.

"Wrong," shot back one of the business representatives there. "Not maybe, for sure, and not in 10 years, 5."

We cannot merely wait for other nations to ease our trade problems by lowering their trade barriers. We should keep the pressure on them, certainly, but we must seize the initiative to save ourselves.

The common refrain from the American business people I talked to abroad was that the U.S. Government must become a more active player in export promotion, not by overriding and displacing efforts in the private sector, but by cooperating with and lending support to business.

This requires a recognition of the fact that current structures of our Government are not only ill-equipped for this task, but often are impediments. Many of my colleagues and I believe that a restructuring of our trade policy apparatus is necessary.

This legislation is a first and important step. It will consolidate our currently fragmented export efforts under one official; it will elevate the importance of our economic security by expanding the National Security Council to include economic officials; it will create a technology agency to spend promising innovations into commercial production, and it will beef up the number of U.S. commercial service officers abroad, among other things.

I do not underestimate the challenges ahead. What is required is no less than a fundamental shift in thinking. We in the United States must revise our reflexive assumption that the relationship between business and government is only an adversarial one. And we must appreciate more viscerally the inextricable link between economic strength and national security.

The alternative, the status quo, is simply untenable; our persistent trade imbalance is a clarion reminder of this.

The American people are more and more aware that their Nation's economic strength must be nurtured and defended. They know it is the foundation of our national security and our national standard of living.

This legislation tells them their leaders are no longer taking American economic strength for granted. It tells them we know it is time for all our policymakers, from the White House right down to the embassies and consulates, to apply this thinking systematically.

The stakes could not be higher.

## TRIBAL COLLEGES: SHAPING THE FUTURE OF NATIVE AMERICANS

### HON. TIM JOHNSON

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. JOHNSON of South Dakota. Mr. Speaker, I want to call to the attention of this body and the American public, and extremely important special report by the Carnegie Foundation for the Advancement of Teaching entitled "Tribal Colleges: Shaping the Future of Native America."

Tribal colleges are relatively new institutions which are playing an increasingly vital role in assisting Native Americans and their respective tribes in escaping what has been a tragic cycle of poverty, unemployment, and despair. Despite chronic underfunding from the Federal Government, tribal colleges have become one of the few truly positive new developments in Indian country. Increasingly, Native Americans are using these new institutions of higher learning to develop their individual skills and open up new horizons of opportunity for themselves.

While the tribal colleges have already established a remarkable track-record of success, Mr. Speaker, it is absolutely essential that the White House and Congress work together to provide financial resources necessary for these proven institutions to continue expanding the scope and quality of the programs they offer.

Mr. Speaker, I request that the foreword to the special report written by Ernest Boyer, be reprinted with my remarks in the CONGRESSIONAL RECORD. There are four tribal colleges in my State of South Dakota, and I have first hand familiarity with the positive impact they have had on the hopes and aspirations of the Indian community. I recommend the special report to all Americans who are interested in gaining a greater insight into the achievements of these colleges as well as the great challenges they face.

FOREWORD—TRIBAL COLLEGES: SHAPING THE FUTURE OF NATIVE AMERICANS

(By Ernest Boyer)

Twenty years ago in Arizona, Native Americans created a new institution—the first tribally controlled college. Today twenty-four higher learning institutions, founded and controlled by Indians, are serving Native communities from Michigan to Washington State. While most of these colleges are no more than a decade old—a blink in time for higher education—they have undergone dramatic growth, expanding and gaining recognition in spite of conditions others would regard as impossible.

Researchers from the Carnegie Foundation for the Advancement of Teaching spent two years studying these remarkable institutions. We reviewed the federal government's past attempts to "educate" the Indians and discovered how, in the desert left by a long history of failed policies, the Navajors in 1968 created Navajo Community College, inspiring a movement that now offers to Native Americans a door of hope.

Viewed by the numbers alone, tribal colleges add up to only a small fraction of the total higher education picture—the equivalent perhaps of a small branch of a single state university. But using conventional yardsticks to measure these colleges misses the significance of their work. Tribally controlled colleges can be understood only in the historical context of Indian education and in the spiritual role they play in bringing renewal to their people. When viewed from these perspectives, tribal colleges assume a mission of great consequence to Native Americans and to the nation.

During the conduct of this study, we were struck by the capacity of tribal colleges to cope with resources that are painfully restricted. At almost all of the institutions, salaries are far too low, libraries are shockingly underfunded, and administrators struggle to operate with day-to-day budget constraints that other higher learning institutions would totally reject. Although a few of the colleges have accommodating campuses, many are getting by with mismatched trailers or unsuitable buildings converted from other uses. Still, faced with difficult conditions, tribal colleges have managed not only to stay alive, but also to expand their services and creatively serve their students and their communities.

These young, vital colleges, primarily two-year institutions, offer first a conventional collegiate curriculum for students who can not only complete formal degrees but also

prepare themselves for transfer to four-year institutions. They enroll, as well, older students who cannot leave their home, and serve as re-entering institutions for those who may have dropped out. Tribal colleges also provide enrichment for the secondary schools that surround them.

Tribal colleges are truly community institutions. After years of brutal physical hardship and disorienting cultural loss, Native Americans—through the tribal college movement—are building new communities based on shared traditions. They are challenging the conditions that plague their societies and continue to threaten their survival.

For many decades American Indian reservations have been demoralized by the seemingly permanent condition of extreme poverty. In some tribal communities, unemployment reaches 80 percent. The disease of alcoholism has taken a severe toll on Indians since its introduction into their culture, and today requires the most serious immediate attention. Health care is of the most critical concern. Infant mortality rates on some of the reservations are at shocking levels—as high as double the national average. The tragedy of early death from illness or suicide has touched all members of these family-oriented communities. These crises require urgent attention, and tribal colleges are working to provide the leadership, programs, and resources to meet the challenge.

At the heart of the tribal college movement is a commitment by Native Americans to reclaim their cultural heritage. The commitment to reaffirm traditions is a driving force fed by a spirit based on shared history passed down through generations, and on common goals. Some tribes have lost much of their tradition, and feel, with a sense of urgency, that they must reclaim all they can from the past even as they confront problems of the present. The obstacles in this endeavor are enormous but, again, Indians are determined to reaffirm their heritage, and tribal colleges, through their curriculum and campus climate, are places of great promise.

As we completed our study we were forced to reflect on how the tribal college movement relates to our hsitory, to the rest of higher education—and to the future of our country.

Well-intentioned people from the earliest white "settlers" have sought to share white civilization, through education, with the natives of this land and attempts have repeatedly been made to separate young Indian students from their culture "for their own good." The boarding school approach described in this report continues, in some places, to this very day. Throughout the years Indians have been blamed for their resistance to these efforts at assimilation, which many whites believed was essential if Native Americans were to make "progress."

But if we have learned anything from our relationship with the American Indian, it is that people cannot be torn from their cultural roots without harm. To the extent that we fail to assist Native Americans, through their own institutions, to reclaim their past and secure their future, we are compounding the costly errors of the past.

No one can reasonably deny that the United States has accumulated over the years large moral and legal obligations to the Indians. But past policy disasters have occurred, and continue to occur, largely because the prevailing white population for the most part can only see the relationship as a one-way street. If we would like the American Indian to benefit from what we have to give, we might begin by learning to appreciate and benefit from what the Indian has to give us.

We believe that a good place to start learning from American Indians is the tribal college, where we can learn about survival, about hope and determination in the face of extreme adversity, about renewal of community, about reclaiming the individual and the society from dependencies of all sorts, and about creatively connecting education to the larger world. Clearly American society as a whole has a great deal to gain by supporting the tribal college movement—and learning from the first Americans.

It is in this spirit that we make our recommendations. The need of the colleges for more financial support is a vital part of what we found, but it is only a part. Equally important is the need for more connections between the larger American society and the Native American communities through support of the tribal colleges. Native Americans have laid the groundwork by dint of sheer determination and conviction. They are on the threshold of a new era. Building on this remarkable beginning will serve us all.

## UNITED STATES ECONOMIC ASSISTANCE PROGRAM FOR THE WEST BANK AND GAZA

### HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. HAMILTON. Mr. Speaker, the American-Arab Affairs Journal in its summer 1989 issue published an article by Joe Lockard "USAID: Subsidizing Collective Punishment."

This article was highly critical of American assistance programs for Palestinians in the West Bank and Gaza who live under Israeli military occupation. The article criticizes the way U.S.-funded projects are designed and implemented and the way they subsidize occupation. The article questions how useful the projects were in helping Palestinians. Because this article raised serious questions about an assistance program which was considered successful and helpful in a unique environment, I wrote the State Department on September 15, 1989, and asked for comments on the article.

Attached is a reply received from the State Department, dated November 7, 1989, as well as letters written by two of the five American private voluntary organizations operating in the West Bank and Gaza, ANERA, and Save the Children.

The letters follow:

COMMITTEE ON FOREIGN AFFAIRS,
HOUSE OF REPRESENTATIVES,
*Washington, DC, September 15, 1989.*

Hon. JAMES A. BAKER III,
*Secretary of State, U.S. Department of State, Washington, DC.*

DEAR MR. SECRETARY: Attached is an article which appeared in the American-Arab Affairs Summer 1989 issue which is highly critical of the United States assistance program for the West Bank and Gaza administered by American private voluntary organizations.

I have consistently supported this program and am disturbed by this article. I would appreciate a review of the article by the Department of State and by the Agency for International Development and would like your critique of it and its conclusions.

Thank you for your consideration of this matter.

With best regards,

Sincerely yours,

LEE H. HAMILTON,
*Chairman, Subcommittee on Europe and the Middle East.*

U.S. DEPARTMENT OF STATE,
*Washington, DC, November 7, 1989.*

Hon. LEE H. HAMILTON,
*Chairman, Subcommittee on Europe and the Middle East, Committee on Foreign Affairs, House of Representatives.*

DEAR MR. CHAIRMAN: Secretary Baker has asked me to respond to your letter of September 15, 1989 concerning the American-Arab Affairs Summer 1989 journal article by Joe Lockard, entitled, "USAID: Subsidizing Collective Punishment."

The author's principal theme is that either through default or lack of concern in the State Department, our funds are being used as a weapon in the Israeli Defense Force's confrontation with Palestinians and the uprising ("Intifada"). We do not share this view which offers a distorted picture of the A.I.D. program in the West Bank and Gaza.

Clearance of PVO (private voluntary organization) projects with the Government of Israel (GOI) is sometimes problematic. U.S. PVOs must register with the GOI; the GOI expects them to seek its concurrence prior to proceeding with project activities. Because we fund PVOs primarily as grantees, it has been our longstanding practice since 1975 to have PVOs take the responsibility for seeking GOI concurrence on their projects, with the understanding that we would be willing to intervene on their behalf with the GOI, if requested by the PVOs.

In the past year, the PVOs have sought our help on only a limited number of occasions. We raise disapprovals with the GOI on behalf of the PVOs when the PVOs so request. In three projects mentioned in the article (the SCF revolving loan fund, the purchase of agricultural machinery for a cooperative in Gaza, and a SCF project with the Society of Engineers in Gaza), the Embassy discussed the disapprovals with the GOI and the projects are proceeding. Although GOI disapproval of selected projects was previously a concern, it is now infrequent and not a serious problem.

As examples of problematic undertakings, the article cites a large number of UNDP projects. These fall outside our A.I.D.-funded portfolio. In many cases, the author does not clearly label these examples, leaving the implication that we share in the responsibility for them. On the contrary, we have no oversight or control over UNDP projects.

Our program is guided by the needs and preferences of Palestinians living and working at all levels in the West Bank and Gaza; most of the proposals that we fund are based upon Palestinian requests. A.I.D.-funded PVOs work with over 600 local counterpart groups, rather than individuals, in an effort to maximize the sustainability and impact of our development efforts. The U.S. Government (through the Consulate General and Embassy) is itself in frequent contact with Palestinians who operate a wide variety of development projects throughout the West Bank and Gaza. Indeed, Palestinians

run one A.I.D.-funded PVO entirely, and make up most of the staff of the others.

The only Israeli role in the program is through the project clearance process. They do not choose which projects receive funds from A.I.D.; the GOI has unsuccessfully asked us on numerous occasions to fund their own preferred projects. While projects in certain troubled communities are occasionally blocked by the GOI, we know of no instance in which implementation of all projects for a particular community has been disallowed. The vast majority of projects proposed by the PVOs are implemented.

The article's contentions regarding: a) certain PVOs' orientation toward "pro-Jordanian traditionalists"; b) program-wide 50 percent project approval rates; c) blacklisting of villages; and d) A.I.D.-sponsored projects' "severe bias" against economic development are unsupported. They certainly do not match the perceptions of the Consulate General, the Embassy, A.I.D./Washington staff, PVO employees, or beneficiaries of A.I.D.-funded projects.

Contrary to the title of Mr. Lockard's article, the humanitarian and economic development activities that A.I.D. is contributing to—such as food supplements to orphans and indigent adults, roads, sewers, drinking water, schools, agricultural technology, marketing assistance, scholarships, and medical services—do not constitute "subsidizing collective punishment".

For your additional information, we are enclosing copies of responses by two PVOs to Mr. Lockard's article.

We welcome any further comments you may have on this matter. Of course, we look forward to your and the Subcommittee's continued support for this important program.

Sincerely,

JANET G. MULLINS,
*Assistant Secretary,*
*Legislative Affairs.*

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AMERICAN NEAR EAST REFUGEE AID,
*September 19, 1989.*

Re letter to the editor for the next edition of Arab-American Affairs.

MS. ANNE JOYCE,
*Editor, Director of Publications, American-Arab Affairs, Washington, DC.*

DEAR ANNE: I write with reference to Mr. Lockard's article "U.S. AID: Subsidizing Collective Punishment of Palestinians."

Initially let me say that ANERA has a social and economic development program in the West Bank and Gaza Strip partially funded by U.S. AID. In our projects, we strongly emphasize, on the one hand, job creation and income growth and, on the other, institution building. More specifically, we work with broad based, grass roots Palestinian institutions such as agriculture cooperatives, local municipalities, and health care institutions. We provide funding and technical assistance so that these institutions can improve their capabilities, *viz.*, the services they provide their members or citizens—and help the Palestinians gain more control over their own lives. As noted, part of our funding does come from U.S. AID. We are proud to be associated with this Congressionally funded program of assistance to the Palestinians. It has made a positive difference in the West Bank and Gaza Strip since its inception in 1975.

Let me now turn to Mr. Lockard's article. I would like to address four aspects of it that directly relate to ANERA's activities: the assertion that USAID is subsidizing collective punishment against Palestinians; the assertion that the American private voluntary organizations' (PVO's) projects in certain communities are totally blocked, and thus the Palestinians in these communities are being punished; the asertion that American PVOs are subsidizing the occupation, i.e., undertaking municipal improvements (that are the responsibility of the occupation authorities) rather than economic infrastructure; and the assertion that the Palestinians' view of the projects is mixed, from ready acceptance to rejection.

In any article of this type, there are always elements of truth, some correct interpretations and assertations. This article is not an exception. Indeed there are problems associated with the development program in the West Bank and Gaza. It would be abnormal if there were not, given that the program is being conducted while the territories are under military occupation. And during the last two years, some problems have become more acute due to the intifada and the authorities reaction to it.

This being said, there are many inaccuracies in Mr. Lockard's article. First, with respect to the assertion that PVO projects are blocked in certain "troublesome" communities, ANERA is active in most of those villages or towns the author cites by name. Specifically, we have ongoing, functioning projects with Palestinian institutions in Kufr Malek, Kalkilya, Kufr Numeh, Sair, and soon will have one in Beit Sahour. Mr. Lockard states that there are problems with a number of mini dairy and land reclamation projects. Indeed, problems do arise, but the fact is that these again are ongoing, functioning Palestinian projects assisted by ANERA with U.S. AID funds. By stating the above, I am not trying to assert that there are no unsettled questions with the authorities. Neverthless, the bulk of what ANERA wishes to implement with the Palestinians is eventually implemented.

With respect to the assertion that the projects are subsidizing the occupation, i.e., by emphasizing municipal improvements rather than economic infrastructure, let me state that 56% of ANERA's projects are in the area of rural agricultural development. Among the PVOs, ANERA has the most municipal projects, however, they constitute only 15% of our total activities. The balance deal with health and education. Let me add that, by policy we limit the municipal projects to those that promote job creation and income growth.

With respect to the Palestinians' attitudes towards the program, Mr. Lockard is correct when he states that it varies from ready acceptance to rejection. He goes on to quote, though, only those individuals who are either mildly or strongly critical of the program. We would suggest though that the fact that ANERA has at least 75 projects with broad based, grass roots, Palestinian institutions, the members of which are aware of the funding sources, shows that there are a great many Palestinians who vote with their actions for the projects.

With respect to the major assertion or thesis of the article, i.e., the program subsidizes collective punishment of the Palestinians, we would contend that the above information and corrections of the author's misstatements strongly indicate otherwise.

Lastly, let us hope that our attention would not be diverted by unfounded assertions such as those appearing in this article. Rather we should use our energies to move forward the peace process so that the Palestinians can realize their own destiny and the Arabs, Israelis, and Palestinians can live in peace in the Middle East.

Sincerely yours,

PETER GUBSER,
*President.*

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SAVE THE CHILDREN,
*Westport, CT, September 25, 1989.*

MS. ANNE JOYCE,
*Editor, American-Arab Affairs Council, Washington, DC.*

DEAR MS. JOYCE: I am writing to comment on the article "U.S. AID: Subsidizing Collective Punishment" which appeared in the summer 1989 edition of American-Arab Affairs. While this article raises important issues and questions, it suffers from several factual inaccuracies and an overly simplistic depiction of US economic assistance in the West Bank and Gaza.

The inaccuracies to which I will confine myself are those that involve Save the Children (SCF). On page 67 the article states that AID did not intervene on behalf of the agency's position, that SCF "had had enough" and therefore "returned . . . AID money in protest," and that "the project now continues under new sponsors." USAID did in fact intervene quite actively in support of SCF's position, both in the field and in Washington, at quite senior levels, and in close coordination with SCF senior management. Save the Children never returned AID funds in protest. In fact, today the loan program continues quite successfully with AID as the primary funder and as testimony of how AID funds support legitimate economic development activities.

On page 70 the author wrongly suggests that Save the Children "has cut its AID funding request by three quarters" in order to avoid the purported problems associated with AID funding. The fact of the matter is that our current funding request to USAID is based on our annual program strategy, the cost of which varies from year to year. This year's request is less than previous requests only because our annual program plans require less financial support.

As a matter of principle, SCF programs around the world always seek multiple funding sources, and we only implement projects that are consistent with SCF goals and priorities and those over which we have control. These policies do not vary whether our donar is USAID, United Nations agencies, or any other donor.

Finally, I would like to express the view that the article portrays an overly simplistic and distorted perception of USAID assistance. USAID assistance as implemented through the PVOs has provided concrete assistance and help to thousands of Palestinians. By and large, the programs have operated independent from political pressure or influence. In the case of Save the Children, our international and Palestinian national staff are completely responsible for the design and implementation of all USAID-funded projects. To suggest that the projects implemented by Save the Children or any other AID funded PVO "subsidize collective punishment" is a preposterous and naive perception.

This is not to suggest that the questions and issues raised in the article do not comprise legitimate concerns. My hope is that these issues can be further explored in a more informed and more in depth manner.

Sincerely,

NEAL KENY,
*Regional Director,*
*Middle East/Europe/North Africa.*

## IN RECOGNITION OF BESS WHITEHEAD SCOTT—A TEXAS ORIGINAL

HON. J.J. PICKLE
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. PICKLE. Mr. Speaker, the history of the great State of Texas is filled with the stories of individuals who have overcome great obstacles to carve themselves a special place in our heritage. Of all these rare individuals, few stand out as distinctively as Bess Whitehead Scott.

In her 98 years, Beth Scott has known many of the century's luminaries, including Clark Gable, Eleanor Roosevelt, and Lyndon Johnson. Now retired and living in Austin, TX, she has written a delightful remembrance of her extraordinary experiences appropriately entitled "You Meet Such Interesting People." Her life and times were recently the subject of an article by Debi Martin in the Austin American-Statesman, and I ask unanimous consent that that article be reprinted following my remarks.

I know my colleagues will join me in paying tribute to Bess Whitehead Scott for a life filled with unique and memorable experiences and wishing her well.

[From the Austin American-Statesman, Sept. 22, 1989]

SUCH AN INTERESTING LIFE—A 98-YEAR-OLD LOOKS AHEAD

(By Debi Martin)

The scene plays like an old Katherine Hepburn movie on the late-late show.

The year is 1915.

The picture is in black and white.

A spunky young woman is telling a gruff old editor that she wants to be a reporter. This is news to him. A female reporter. No such thing, he says. He looks up at her through his glasses, which seem to be forever perched on the edge of his nose, and leans back in his large swivel chair. He tells her that women at his newspaper, like they do at most papers, only write about women's social clubs.

Although she is feeling desperate, she doesn't let it show.

She gathers her wits and tells him that the war is coming soon. The men will be leaving. Women will have to be trained to take their jobs.

The editor is impressed that she not only knows what is going on in the world, but also will not give up.

"I all but hit him over the head," said Bess Whitehead Scott, a 98-year-old freelance writer living in Austin. "He said that I had a two-week trial run and that he'd pay me $6 a week, not bad money in those days."

That's how Scott became the first female reporter on a newspaper in Houston and one of the first women in the print media in Texas.

Although she had no experience in journalism—she did not even know how to type—and had a hearing disability in one ear, her confidence and wit won over Houston Post managing editor Harry Warner.

Scott tells of the prominent people she met, good times she had and the hardships she faced as a career woman before, between and after two world wars in You Meet Such Interesting People, her autobiography published last month by Texas A&M University Press.

Long before women entered the work force in large numbers, Scott was a career woman in a field dominated by men. After working for the Post, Scott was employed by The Houston Press as a news reporter, features writer, columnist and department editor. In 1929, she returned to the Post, where she worked until 1956. Clark Gable, Eleanor Roosevelt and Lyndon Johnson are just a few of the interesting people she met and interviewed along the way.

She has run an advertising agency and written two high-school journalisn textbooks. She has worked as a publicist in Dallas and a scriptwriter in Hollywood. For four years, she was the editor of Texas Woman, a state publication for members of Texas Business and Professional Women. Her articles have also been published in The Dallas Times Herald and Kansas City Star.

Scott worked as a journalist before television news teams could beat a paper to a story, before the advent of radio, before the wide-spread use of telephones, useful when contacting sources. When she needed a quote, she had to hit the pavement and go find the source.

Her desire, always, was to be a writer. Not one of those who sits alone and authors works from their imagination. She wanted to be a witness to history in the making, to be near to and to write about, the real people and happenings of her times. Writing was to be her meal ticket to a more exciting life than that which could be experienced on the rural farm she came from in Blanket, Texas.

Houston in 1915 was not the sprawling metropolis it is today, but it was, with a population of 78,000, already one of the largest cities in the nation.

For her first assignment, Scott was to write a caption that would run under a photograph in The Houston Post. She thought she knew what Warner wanted, but she wasn't sure. He told her, "Remember, you are on your own. I'm a busy man; don't ask me any fool questions."

She didn't.

Her first big break as a newswoman came three months later, when a tidal wave engulfed Galveston.

"I got my first byline on this one," Scott said, still proud of the story. "It was a story that any reporter would love to have. A tidal wave had hit Galveston in 1900 and 6,000 had died and they made this sea wall, and here it was 15 years later and another tidal wave hit," and about 300 died.

"My story was on a 16-year-old girl who was the only person to survive in her family of a mother and father and two sisters and a brother. She had grabbed a piece of furniture and floated on it out in the gulf for 30 hours. For hours and hours, she didn't know if she was going out to sea or headed toward the shore. When she finally hit shore, it was night. She just sat there and cried for a long time. Then she told herself to stop. She told herself to just 'Hush.'"

Scott interviewed the young girl while she lay bundled in blankets.

Another break for Scott came when the Southern Baptist Convention chose to meet for the first time in Houston. The reporter usually covering the beat said he could use some help. Scott said she could do it.

"Mr. Warner looked at me through those glasses of his—he was as baldheaded as an egg and he had a big mustache. He turned to me and said, 'What do you know about the Baptists?' I told him that I was born and bred a Baptist. I got the assignment and wrote everything in long hand until I learned to type."

Her hearing problem did not interfere with her work. It served to make her more determined and inventive. At press conferences, if she could not hear the speaker, afterwards, she would go up to the podium and conduct one-on-one, on-the-spot interviews to get her story.

Gradually, the men in the newsroom most of whom smoked cigars and wore trench coats and brim hats—just like they did in the movies, Scott said—began to notice the female cub reporter.

"For a good while they were stand-offish and I just ignored them like they ignored me. When, finally, the city editor gave me a desk and a typewriter and a beat, the boys began to decide that I was all right. I never felt discriminated against in any way except in terms of pay. As long as I worked, I never got what the men got for doing the same kind of work, and sometimes I did it better."

Her salary at the Post was never more than $37.50 a week. During the Depression, it was cut to $27.50. Back then, women were more interested in marriage and children, not careers, said Scott, who once turned down a marriage proposal from a man because he expected her to quit working once they married. He was shocked. Women, back then, did not act so spunky.

She was born before the turn of the century, on Dec. 13, 1890. Her parents were Southerners. Her mother had been born on a cotton plantation near Rome, Ga., in 1855. Her father had been born on a tobacco plantation. He fought in the Civil War in battles at Bull Run and Gettsyburg.

Scott was her mother's ninth child. At age 12, she nearly died when she caught the measles. The disease permanently damaged her hearing.

She attended public school in Blanket, where she was admonished by an English teacher for turning in a love story when an essay was required. The teacher accused Scott of stealing the story from a dime-store magazine. It was an original; by Scott.

In 1911, she graduated from Baylor Female College, where she excelled in Latin and Greek, and enjoyed playing basketball and tennis. She put herself through college by working two hours each day for room and board. Her brother Jess had sold two mules to pay her tuition, which was $108.

At Baylor, Scott met her life-long friend Lila Danforth, who would later help Scott when she had to rear her children without a husband.

In 1918, Scott married a man that she now figures must have been an alcoholic. They had two children. In 1926, he disappeared, and Scott never saw him again.

"I would never have left my husband because he was an alcoholic. He was not abusive. He loved all of us very much, but he just did not have the will to conquer his problem and we did not have in those days the opportunities that we have now. I'm sure there was Alcoholics Anonymous but even then, there was a stigma. If you joined A.A., it was almost as shameful as being a drunk."

She never married again. She considers her wayward ex-husband to be the love of her life.

"I had a few proposals and a lot of propositions," said Scott, with a laugh as she flashed her big, sweet grin. "I just didn't think anybody would think as much of my

children as I did. I devoted myself to them. I didn't trust any man to do that with me."

Rearing two children on a reporter's salary was difficult, Scott said. But she had help. When her husband left her, Scott moved in with Danforth for a while. Later, Scott's mother lived with her and helped rear the grandchildren while Scott worked late at night, covering school-board meetings and interviewing celebrities.

These days, Scott lives in a retirement center that overlooks Town Lake. She doesn't look too long at the view; she suffers from vertigo and worries that she will someday fall down and break a hip.

She has outlived her children but has five grandchildren and one great-grand-child.

She is in good health. She has lived this long, she said, because of her good upbringing.

"We were raised in a fine family where people did square dancing and the church was the center of everybody's life. I never smoked or drank, and I eat right."

Besides "Such Interesting People," she has written "The Way It Was," an informal history of her family. She teaches a writing class to senior citizens, free lances articles and is considering writing another book, tentatively titled, "If Life is So Good and Pleasant at 98, Why Not Try for 100?"

"I am very proud of the fact that, even through the Depression, I always worked," she said. "I can't just lie on a couch. it's just not my nature. I got to be busy with something. I'm just an average, ambitious girl who still has some life in her."

## A CONGRESSIONAL TRIBUTE TO ULYSSES "PETE" BROWN

### HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DIXON. Mr. Speaker, I rise today to recognize the lifetime achievements and community service activities of Ulysses "Pete" Brown. Pete will be honored on December 2, 1989, at the annual awards banquet of the Harvard Tennis Club, one of southern California's oldest and most prestigious black tennis clubs, located in my district.

For the past 30 years, Mr. Brown has devoted his energies to spreading his love of the sport of tennis among black and underprivileged youth in south-central Los Angeles. A California native, Pete served in the Army as an artillery officer from 1951 to 1956. Following his release from active duty in Europe, he completed his course of study at Los Angeles State College in 1959 and began a lengthy career teaching physical education.

For 11 years, Ulysses "Pete" Brown coached basketball, cross country, and tennis at Fremont High School. In 1971, Pete came to Los Angeles Trade Technical College where he has maintained a men's tennis program for 18 years, despite an initial dearth of interest among a student body whose collective exposure to tennis was limited.

Pete Brown's commitment to teaching tennis among the youth of south-central Los Angeles has been perhaps most apparent in his enthusiastic involvement with the USTA/National Junior Tennis League, a program specifically designed to introduce tennis to youngsters who might not otherwise be exposed to the game.

Pete has taught tennis not merely as an alternative athletic activity, but as a motivating force and a means of cultivating the spirit of competition and self-discipline. Through the vehicle of tennis, he has successfully sought to broaden the all-too-often narrow horizons of black youth from all over the Los Angeles area.

Moreover, as the driving force behind the junior tennis program in south-central Los Angeles, Ulysses "Pete" Brown has become an inspiration to countless children, adolescents, and adults. Through his own sterling example, Pete has instilled the virtues of good citizenship, integrity, community leadership, and sound values in a great many grateful black youth in south-central Los Angeles.

In recent years, Pete Brown has received numerous awards, including the Martin Luther King Community Service Award, the USTA-USTPA Community Service Award, and the California Community Colleges Tennis Coach-of-the-Year Award.

As the Harvard Tennis Club prepares to express its praise and appreciation to Ulysses "Pete" Brown for his dedicated service to the youth of south-central Los Angeles, I ask my colleagues in the House of Representatives to please join me in congratulating Pete on his achievements, and in wishing Pete, his wife, Theresa, and his daughters, Terry Lynn and Vanessa Ann, much happiness and continued success in the future.

## CONGRESSMAN EDWARD F. FEIGHAN ADDRESSES HUNGARIAN-AMERICANS

### HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LANTOS. Mr. Speaker, just a few days ago, my good friend from Ohio, a distinguished colleague of mine on the Foreign Affairs Committee, ED FEIGHAN, gave an outstanding address to the national convention of the American-Hungarian Federation.

In view of the historic changes that have taken place in Hungary in recent weeks and the impact those changes have had upon the rest of Eastern Europe, his remarks are particularly significant. I ask, Mr. Speaker, that my colleague Mr. FEIGHAN's remarks be placed in the RECORD, and I urge my colleagues in the Congress to give them serious and thoughtful attention.

ADDRESS TO HUNGARIAN-AMERICANS

I'm very happy to be here with you this evening for the American Hungarian Federation's national convention—in its 82nd year. And it's especially nice to be here with my good friend from Washington, Dr. Michael Szaz, and with your national president, Bishop Tibor Domotor. It's truly an honor.

In fact, I'd like to take this opportunity to publicly congratulate Bishop Domotor for commissioning a statue of President Louis Kossuth who brought democracy and freedom to the Hungarian people in 1848. Thanks to Bishop Domotor and the hard work of Dr. Szaz, this statue of President Kossuth, the father of Hungarian democracy, will be placed in the United States Capitol. I hope to see many of you next March in Washington when the statue is unveiled.

When President Kossuth travelled to the United States in 1851 and addressed both Houses of the United States Congress, the great orator Daniel Webster declared that America's hope for Hungary was "Hungarian independence, Hungarian self-determination, and Hungarian control of Hungarian destinies." Today, we're moving closer to those goals than ever before.

Events are happening throughout Central and Eastern Europe that we never would have thought possible—not ten years ago—not five years ago—not even last year. The Berlin Wall is crumbling. And the entire Iron Curtain may, at last, be opening up.

East Germany has opened its borders—allowing its people to come and go. Unthinkable even a few weeks ago. Poland with its democratic elections has put its first non-communist government in place. Even Bulgaria's Todor Zhivkov, the longest-serving Communist party leader in the Soviet bloc, has suddenly resigned.

And, always leading the way, have been the Hungarian people. Throughout centuries of domination, the Hungarian people have not given up. Brave Hungarians living in Hungary, in Slovakia, in Transylvania, and in the Soviet Union have not given up.

This past October, on the anniversary of the Hungarian Revolution of 1956, Hungary renounced its former name, "the People's Republic," which had been forced on it by Stalin and his henchmen, and proclaimed itself a republic.

With church bells tolling throughout the city, over 100,000 Hungarians took to the streets of Budapest last month. They unveiled memorial plaques at key battle sites. They laid wreaths on the tombs of their fallen heroes. They read patriotic poems. They wore their national colors of red, white, and green. They carried flags with the communist hammer and sickle torn out of the center, just as brave Hungarians had done in 1956. And they gathered that night with lighted candles and banners and flags outside Parliament to cheer speakers extolling the ideals of 1956—and to chant "Russians go home!"

Thanks to their great courage, the executed heroes of the Revolution of 1956 have been reburied with honor. Thanks to their great courage, travel and residence abroad will be a constitutional right of every Hungarian citizen. Thanks to their great courage, free multi-party elections will be held next June, and there's little question in anyone's mind but that democracy will win a decisive victory at that time.

We in the United States are faced with a great challenge. We have an historic opportunity—perhaps the greatest opportunity since the end of the Second World War—to change the map of Europe. And I say that we must seize this moment now, or it may never come again.

If economic and political reforms can succeed in Hungary, then pressure for even more reforms throughout the rest of Central and Eastern Europe will be generated.

But the free market system in Hungary is still in its early, fragile stages. It desperately needs the change to prove itself. It desperately needs our help.

If we are to remove the Iron Curtain completely, we must help the Hungarian people, and quickly. We must give them the advice that they need. The technical help that they need. And the dollars that they need.

We must make a great partnership with the people of Hungary. We dare not fail to do this, if we want Eastern Europe to move from the darkness of oppression into the light of freedom and democracy.

We in the United States House of Representatives have already begun our work. Last month, we passed legislation that will send $40 million dollars to help develop private enterprise in Hungary. To send badly needed technical aid to Hungarian farmers and small businessmen. To send scholarships to Hungarian students to study at American universities.

I had the honor of hearing Lech Walesa, the living symbol of Poland's Solidarity, speak earlier this week in the halls of Congress. And I can tell you that it's imperative that President Bush support this legislation, and support it quickly, lest we let down the Hungarian people and the Polish people and oppressed peoples throughout Eastern Europe.

It's in this spirit that I also want to call upon the leaders of the American Hungarian community assembled tonight here in Akron to work especially hard now for the economic prosperity and moral renewal of your homeland.

The American Hungarian Federation has a rich history of experience with this work. The Federation was founded in my home city—Cleveland, Ohio—in 1906 to defend Hungarian freedom when the Emperor-King Francis Joseph removed Hungary's constitutionally-elected government. After that crisis was resolved, the Federation continued to work for the causes of freedom and democracy in both the United States and Hungary.

Through its good will and its good works, the Federation proved that the Hungarian people will always be the good friends of the United States. The Federation sponsored war bond drives in both World War One and World War Two, and it remained loyal throughout these wars to America. It helped Hungarians escaping from Hungary before the Communist takeover. It helped the freedom fighters and refugees who fled Hungary in 1957 and came to the United States. Since the 1960's, the Federation has been in the forefront of the struggle for human rights in Hungary and Transylvania, where more than 2.5 million Hungarians are living under terrible repression.

I'd like to commend the American Hungarian Federation tonight for all of its fine efforts to bring democracy and freedom to Hungary. And I'd like to encourage you to join those of us in the United States Congress who are working to remove the Iron Curtain forever. The knowledge and insight that you, the leaders of the American-Hungarian community in this room, possess regarding Hungary is a thousand-times more than most Americans have. With your knowledge, with your continued dedication, and with your hard work, democracy and the free-market system cannot help but grow and flourish in Hungary today.

But I must tell you—even though I have great hope for your people in Hungary, I remain very worried about the Hungarians of Transylvania. Even though communist dictators are falling from power throughout Eastern Europe, Nicolae Ceausescu is the last hold out. Even though the communist bloc is crumbling into pieces, Ceausescu—the most despicable of all—shows no signs of leaving.

Romania has one of the worst human rights records in the entire world, yet Ceausescu still manages to hold onto this power. The people of Romania are freezing because of coal shortages and going hungry because there is no meat in the stores, yet Ceausescu holds on. A living monument to Stalinism.

Life for the Hungarian minority in Transylvania is growing more and more desperate. The Romanian government has been on a rampage, destroying more than 40,000 homes, churches, and monuments in order to build a palace and civic center for this communist dictator. The government has even bulldozed entire villages.

This desecration is a disgrace—and a crime. Hungarians living in Romania have been forced to respond in the only way that they can—escape. Over 20,000 of your brothers and sisters have fled Romania to find refuge in Hungary.

You all know why they are leaving. Ceausescu is leading a campaign to destroy the remnants of Hungarian culture in Transylvania. Those who have escaped to Hungary speak of his attempts to ban all Hungarian books. Of beatings if they spoke Hungarian. Of requiring all newborn Hungarian children to receive Romanian names.

We in the United States are doing all that we can to help these brave and battered people.

Last year, Congress unanimously passed House Resolution 505 which protested in the strongest terms possible the Romanian government's deplorable record on human rights and its treatment of national minorities.

And I, personally, worked with your able representative, Dr. Szaz, to send a letter protesting these abuses to Secretary of State George Shultz. More than 200 of my colleagues in the House joined in this attempt to speed emergency relief funds to help the thousands and thousands of refugees from Romania camped in Hungary.

Now we must redouble our efforts and work even harder to secure freedom and full human rights for all Hungarians everywhere. I am confident that these efforts will succeed. Even the largest armies, and the most ruthless dictators, cannot kill the spirit of liberty.

Whenever people refuse to give up their language, refuse to give up their nation, and refuse to give up their faith, the spirit of liberty lives on.

It lives when people are willing to step forward, whatever the risk, rather than submit to injustice.

Freedom lives today in Hungary!

I pledge tonight that I will never back down on human rights. And I urge you with all my heart to continue the tireless efforts that you have made for so many years to win the basic freedoms that the Hungarian people so dearly deserve.

Victory is at hand.

Victory is at hand for this most worthy cause: democracy and self-determination for Hungary.

This is a cause that I know you will never abandon. And let me assure you. I will not abandon it either.

Isten ald meg a magyart.

## TRIBUTE TO BARBARA HESTER OF LOUISVILLE: KENTUCKY'S TEACHER OF THE YEAR

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### HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MAZZOLI. Mr. Speaker, I rise to salute Barbara Hines Hester of Louisville Ballard High School, who was recently named Kentucky's "Teacher of the Year."

After reading the compliments paid Ms. Hester by her colleagues and the many contributions she has made to our community through her artistic talents, it is clear that a most worthy and deserving individual has been selected for this recognition.

Teaching is an honorable profession. All too often these days it is undervalued as a career. Certainly, the financial return for those who seek to become teachers is left wanting. But, good teachers who are able to impart their wisdom and stir in our youth the desire to think, learn, and achieve their fullest potential are indeed a precious commodity. We are fortunate to have someone like Barbara Hester in our midst as an example for all others to aspire.

Over the years Ms. Hester has built up quite an extended family through her students. And, I would say that beyond her obvious talents as an artist, her qualities of caring, being genuinely interested, and simple love, are what inspire her students to go the extra mile.

It is a pleasure for me to pay tribute and recognize the achievements of this outstanding Louisvillian and Kentucky's "Teacher of the Year." I commend to all my colleagues' attention the following article from the Louisville Courier-Journal which speaks to the accomplishments of this dedicated woman.

STATE'S TEACHER OF THE YEAR FINDS JOY IN NURTURING YOUNG ARTISTS AT BALLARD

(By Robin Garr)

Paintings, drawings and a deer head, of all things, decorate the pale-yellow walls of the art room at Ballard High School.

Paint brushes jut from a cup on a wood-topped table, and the room is filled with the unforgettable scent of poster paints, acrylics and oils.

In a corner, art teacher Barbara Hines Hester is talking quietly with a student.

They walk to one side of the room, whispering, and Hester pats the girl's shoulder. "If you have trouble now, if you need help today, you come and see me," she says. The girl smiles, finally, and runs off.

On the back wall of the room a bold mural depicts a tree with a huge notch on its side and the legend, Little Strokes Fell Great Oaks.

The little things count for Hester, Kentucky's Teacher of the Year.

First honored as Ballard's and Jefferson County's Teacher of the Year and then named Kentucky High School Teacher of the Year, Hester received the state's top award yesterday at a luncheon with Gov. Wallace Wilkinson, Jr., in the Governor's Mansion.

Hester 50, loved art when she was growing up in Louisville's West End, but she didn't think she was good enough to pursue it as a career until the late Anita Harbsmeier, a

teacher at Western Junior High School, encouraged her.

Hester stuck with it. With Harbsmeier cheering her on, she studies art and psychology at the University of Louisville, worked as an art therapist at the old Louisville General Hospital, then became a teacher at Western High School. (Her husband, Rod, taught industrial arts in Jefferson County schools until he retired from Eastern High School last year.)

She took time out when daughter Terra, now 23, was born, but returned to teaching in 1972.

"I thought I had quit for good, but I couldn't leave it," she said.

"I wasn't able to have another child.* * * We tried to adopt, but then I decided, 'Why not be thankful I have one child and then go be a mother to all the kids?' I'm sure that has a lot to do with the joy I find in the field."

She taught at Seneca High School, then moved to Ballard, where she has left her special stamp on the art room and the students who have passed through it for 13 years.

But just what makes Barbara Hester special?

Her friends, family, colleagues and supervisors say it in different ways, but it comes down to this: She goes beyond what duty demands.

"Her enthusiasm for the job is not restricted to the classroom," Ballard Principal Sandy Allen said. "Her day is a long one. Her weekend is filled with activities with children."

Norma Brown, who retired this year as the county schools' visual-arts specialist, added: "What sets her aside is her commitment beyond instruction to making certain that young people are nurtured. It's her willingness to give time far beyond the teaching day to help."

Friends tell of the "little things" that Hester considers too unimportant to mention:

She spends extra time teaching art to mentally handicapped students, teaming with special-education teachers to work with the youths one-on-one.

She pushes her students to stretch their skills through competition.

At a high school art contest in this year's St. James Art Fair, Ballard students won three of the four top prizes, and two of them won scholarships, Allen said.

Hester's students have won almost $200,000 in art scholarships over the past two years.

She persuaded Allen to convert an unused study hall into a student-art gallery—then spearheaded a fund drive to furnish it.

Fellow Ballard art teacher Jane Litchfield recalled another story:

Two Ballard students were about to lose their chance to attend a course at the Savannah (Ga.) School of Art last summer because they couldn't meet expenses beyond their partial scholarships. When Hester found out, she spent two weeks of her vacation going door-to-door among neighborhood businesses to raise the money.

She makes special efforts to "mainstream" Kentucky School for the Blind students in Ballard's art classes; her first blind student, Rick Massle, 21, of Garrett in Floyd County, now lives with the Hesters at their home in Jeffersontown and attends U of L.

She coordinates Ballard's annual art fair, served as chairman of Kentucky all-state regional art competition last year and organized a major art show to celebrate the 200th anniversary of Christ Lutheran Church in Jeffersontown.

"We call on her whenever we need somebody in the way of art," said the Rev. Thomas BeMiller, the church's senior pastor.

"Not only in the church, but in our conversations over the years, she works far beyond the normal workday.

W.D. Bruce, deputy superintendent of county schools, called Hester "an outstanding individual * * * creative and, down deep, she has that desire for her students to be successful."

Her husband thinks so too.

"She loves these children she teaches," Rod Hester said. "Her ex-students come back from college, they write her, they visit her. She deserves this award, and we're all mighty proud of her around here."

Barbara Hester shrugs off the praise, saying she is merely repaying the debt she owes to the teachers who kept her on track.

"I think I have a little button inside me that makes me work hard," she said.

"I'm not Johnny Carson," Hester said. "I'm not a special kind of teacher. But I love the kids. I genuinely like every student, and I want to see them be the best they can be. If I have magic, that's it."

Runners-up for the award were Debbie Hofmeister, reading and speech teacher at Shelby County West Middle School; and Susy Philhours, a fourth-grade teacher at Jones-Jaggers Elementary School in Warren County.

Hester will now compete for 1990 National Teacher of the Year.

## THE INTRODUCTION OF THE PUBLIC HOUSING REHABILITATION EQUITY ACT

### HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mrs. COLLINS. Mr. Speaker, one of the great failures of the Reagan Presidency was the total absence of a national housing policy. As the administration consistently opposed concrete action for the benefit of low-income and public housing, Congress had to act alone. The result of those efforts was the low-income housing tax credit. Although it did not substitute for a wide-ranging housing initiative, it did take a significant step in the right direction.

The low-income housing tax credit has been successful in increasing the availability of low-income housing in many cities. However, because of the program's slow start, limited life, and limited credit dollars, its success has been sporadic, at best. In many urban centers nationwide, the annual credit allocation has run out long before the demand for the credit has been satisfied.

Because of its consistent positive results, the continued demand for the credit allocation, and the absence of other effective Federal programs for the benefit of low-income housing, the tax credit must be made permanent. In my district, as in many others, there is a long line of investors and developers ready to increase the number of low-income rental units—if only they could access the credit.

Another closely related problem continues to plague America's cities. The condition of public housing facilities in Chicago and other areas is, in a word, miserable. They are not only aesthetically displeasing, but structurally unsound and unsafe, as well. Essentially systems such as plumbing and heating are often unusable. Windows are smashed, walls have holes, and security is a myth. To ask our citizens to continue to tolerate these conditions approaches immorality.

Perhaps the most frustrating aspect of these problems is that there is little or no hope in sight. The big question is, simply: From what source is the rehabilitation money expected to come? Low-income residents obviously cannot afford to pay big expenses. States and municipalities can do only so much with their very limited resources. The Federal Government, under the Reagan administration, altogether ignored this problem. The package of housing initiatives that President Bush unveiled a week ago has both strengths and weaknesses. Unfortunately, it does not adequately provide for the rehabilitation of public housing units. Thus, the need remains.

Private-sector funding is, therefore, an important part of the solution. However, it is a supplement—not a substitute—to Federal participation in the rehabilitation of public housing facilities. The idea of a greater role for private industry in solving problems of this type has already received much support, including vocal support from Housing and Urban Development's Secretary, Jack Kemp. What is needed for such a private-public partnership to take place is a reasonable incentive. Since the low income housing tax credit is already in place, it offers both an appropriate and convenient mechanism for promoting partnerships of this type.

That is why I am introducing a bill today that would enable public housing rehab efforts to receive tax credit benefits. The Public Housing Rehabilitation Equity Act would, first, make permanent the low income housing tax credit. Second, the bill would specify that private industry involved in rehab, under certain lease arrangements with public housing authorities, are eligible to receive an allocation from the tax credit. The original occupancy rates would have to be maintained and none of the property could be sold as private housing units. Finally, my bill would designate a separate pool of credit dollars that can be accessed only by these private-sector efforts to rehab public housing properties. The amount of this separate pool would correspond to the portion of the low income housing tax credit that was not used during 1987, 1988, and 1989. Thus, the pool would be based on an amount already approved by Congress.

Mr. Speaker, the low-ncome housing tax credit is an important piece of the puzzle for upgrading public housing facilities to a livable standard. It must be offered as an incentive to private industry to join in a partnership with government toward this important objective. Although it cannot possibly be asked to accomplish all that the Federal Government can—and must—do, accessing the credit is an essential component which demands incorporation in a comprehensive Federal housing policy.

## TRIBUTE TO MICKEY LELAND

### HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. PAYNE of New Jersey. Mr. Speaker, as the first session of the 101st Congress comes to a close, I have begun to take a retrospective look at the past year. During this period, my first term as a Representative from the State of New Jersey, the efficacy of my new responsibility was reinforced by working closely with many of my more senior colleagues. But as I soon discovered, there was to be no experience as fulfilling as my work with Mickey Leland. Now as I search back for an example of what a good representative should be, Mickey stands prominent in my memory.

Mickey Leland was the manifestation of humanity. His unbounded sense of duty and responsibility, not only to his constituents in Houston, TX, but to his fellow humans the world over, will forever be ingrained in our souls. For me, though, he will always stand among the many great African-Americans who gave their lives for the just cause of peace.

I miss Mickey, but I am assured that even though his death, life flourishes. He leaves many healthy men, women and children, who would have otherwise died of starvation in the deserts and inner cities of the world, if it were not for the persistent and conscientious efforts of my colleague from Texas.

The German philosopher Geothe once wrote that "there is strong shadow where there is much light." The quote best describes Mickey's influence—indeed, we will all live under the shadow of his brilliant light. I only hope that we are able to take up his torch and continue his work of alleviating the suffering of our fellow men.

As a final note, I would like to enter into the RECORD a resolution from the Essex County Board of Chosen Freeholders commemorating the life works of George Thomas "Mickey" Leland. I am proud to represent a district where the people care enough for the brotherhood of mankind to produce such a document.

Mickey, the people of the 10th District of New Jersey deeply grieve your absence. Thank you.

REPRESENTATIVE GEORGE THOMAS LELAND

Whereas public service is one of the most noble and important acts that a citizen can perform to further his community and the community abroad; and

Whereas many of those drawn to public service fulfill their benevolent cravings for helping others by serving in elected office; and

Whereas Representative George Thomas Leland answered the public call to office. After serving in the Texas State Legislature for many years, he moved to the U.S. House of Representatives in 1979 and subsequently became the motivating force in the creation of the House Select Committee on Hunger, which he came to Chair; and

Whereas Representative George Thomas Leland, a six-term Houston Democrat, dedicated his life to public service and consistently worked to faithfully represent and serve the people of our great nation; and

Whereas Representative George Thomas Leland, was a tireless worker who gained inspiration from a quote in the Talmud that stated "If you save one life, you save the whole world"; and

Whereas his belief in this quote led to his fine work in Africa, South Africa, Chile, Cuba, Vietnam and throughout the world; now, therefore, be it

Resolved that the Essex County Board of Chosen Freeholders in the State of New Jersey hereby recognizes and applauds the efforts of Representative George Thomas Leland and that the sum of his work was not for naught and that his fine work and fervor will serve as an inspiration for all elected officials throughout our beloved County.

## IN SUPPORT OF S. 1390

### HON. PHILIP R. SHARP

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SHARP. Mr. Speaker, I am pleased the House on Monday, November 13 passed S. 1390, a bill to authorize the National Institutes of Health to award a contract for the reconstruction of the Jackson Laboratory in Bar Harbor, ME.

The May 10, 1989 fire which destroyed the laboratory and its breeding facilities for exotic, mutant mice for medical research was devastating to the medical research community and I wholeheartedly concur in the need to replace the facility. I compliment Chairman WAXMAN, Representative MADIGAN, and the Maine congressional delegation in bringing the seriousness of the situation to our attention and developing the bill I hope will be signed into law shortly.

I would like to take a moment to address one point raised by Chairman WAXMAN in explaining the provisions of the bill relative to the new facility not expanding its market share of commercial mice. It is unfortunate that it took a calamity at Jackson Laboratory to bring the institution's outstanding work to our attention. In doing so, some of us learned a great deal about the nature of research mice production, including the presence of a commercial marketplace and the competition that exists in some strains of research mice.

Concern has been expressed that we do not harm the private sector competitors of Jackson Laboratory when their new facility is constructed. As has not been explained, Jackson sells mice in certain strains in competition with private sector breeders which offsets the cost of its operating and supplying exotic, mutant strains. It is only fair that Jackson not be allowed to expand its market share where it competes if taxpayers provide funding to rebuild the facility. Indeed, among the recommendations of an outside evaluation panel appointed to advise N.I.H. on whether Federal funding should be provided to rebuild the facility concluded that any support from the Federal Government should be used solely to restore prior capacity and not result in any further commercial advantage to Jackson.

In that regard, I strongly urge N.I.H. to appoint representatives of commercial research mice breeders to its panel which will review and approve contract proposals. Such representation will help assure that the recommendation is followed.

Although this recommendation and the language of the legislation should provide protection to private sector breeders, there is concern that conceivably Jackson Laboratory could expand its production of certain competitive strains to the disadvantage of its competition and stay within an overall ceiling, in compliance with the law. I think many would have been uncomfortable with legislative language mandating Jackson not to produce more mice with each strain or other very narrow restrictions, but the intent of the provision is clear: Commercial breeders should not be harmed or disadvantaged by the Federal Government paying to rebuild the Jackson facility. The N.I.H. contract review panel may want to take necessary steps to the extent practicable to assure that the intent of this production is carried out.

Again, I commend my colleagues who have worked hard for months to resolve the problem and help get Jackson Laboratory back into production. As has been said many times, it provides an extraordinary national resource. The organization is indispensable to medical research and advancements. I hope the new facility will contribute to fulfilling its mission.

## "THE GHOSTS OF 1987" WILL EDUCATE OUR YOUTH

### HON. RON WYDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. WYDEN. Mr. Speaker, I am very pleased to announce the creation and implementation of a program designed to teach our young people about the U.S. Constitution.

The introduction of this program, titled "The Ghosts of 1987" coincides with the bicentennial of this document. This document is so great, it created our Federal Government, defining its powers and giving us the opportunity to stand in this Chamber today.

Yet, many people do not know what the Constitution represents nor the principles upon which it was founded.

This innovative educational program was developed by the Constitution Project, a nonprofit organization based in Portland, OR. Comprised of seven hour-long videotapes, this series explains the development of the Constitution, breaking it down into episodes. Each episode addresses an element that led to the creation of the Constitution.

I would like to insert in the RECORD an excerpt from remarks at the National Archives delivered by Matthew E. Simek, the president and executive director of the Constitution Project, on September 13, 1989, at the special showing of "Ghosts of 1987."

I am proud to represent an organization that seeks to educate our youth with innovative new methods. I urge my colleagues to join in congratulating and supporting the Constitution Project.

The statement of Mr. Simek follows:

THE GHOSTS OF 1987

(By Mr. Matthew E. Simek)

When a nation goes down and never comes back,
When a society or civilization perishes,
One condition may always be found:
They forgot where they came from.

Carl Sandburg said that. And Carl Sandburg, the historian, knew what he was talking about.

What most Americans DON'T know is that, of the many threats which face our nation today, none is more insidious, more potentially devastating, more virulent than our own ignorance about our past—about how and why we came to adopt the principles of self-governance which unify this great nation.

We live in a society exquisitely dependent on understanding our past, and the written statements of those principles of freedom, and justice, and human rights, and power of, by, and for the people. And yet, ours is a society in which its citizens are remarkably ignorant about those principles as set forth in the Constitution and Bill of Rights.

In a 1986 study by the Hearst Corporation, nearly half of all respondents were unaware that the Constitution created the federal government and defined its powers. One fourth confused the Constitution with the Declaration of Independence. Only 40% could identify the Bill of Rights. And half of those polled thought that the president could suspend the Constitution and adjourn Congress during a national emergency.

This ignorance is a clear prescription for disaster.

The Constitution and Bill of Rights are only scraps of paper without the willingness of the citizens to ensure that the principles they contain are upheld. Without our willingness to learn about our freedoms, to understand what the framers were saying, and to keep watch over our sacred trust, those principles will wither and vanish, just as if they had never existed at all.

We are the keepers of our Constitution. We are the keepers of our future.

Let me read a constitutional passage:

"The citizens are guaranteed by law: Freedom of speech; Freedom of the press; Freedom of assembly, including the holding of mass meetings; Freedom of street processions and demonstrations. These civil rights are ensured by placing at the disposal of the working people and their organizations printing presses, stocks of paper, public buildings, the streets, communications facilities, and other material requisites for the exercise of these rights."

Elegant and powerful words from the Constitution of the USSR. Try this one . . .

"The life, property, domicile, and honor of every individual is secured and guaranteed from every kind of injury."

A basic guarantee of rights we hold dear! However, this one is from the constitution of Iran. And how about this one?

"All inhabitants enjoy full freedom of belief and conscience. The undisturbed practice of religion is guaranteed by the Constitution and remains under public protection."

Total freedom of religion, guaranteed by the Third Reich.

The point is that a constitution, no matter how noble or poetically written, is only empty words without a belief in its principles—held in the hearts of each of its citizens. And to uphold those principles, the citizens must have both the knowledge of those principles and a conviction in the worth of their effort.

And yet, today, most high school history students simply memorize facts. But, by and large, the fundamental meaning behind those facts, has gone. There are few threads left which relate the facts to each other, and more important, to the people from whom the facts had a human value. And what is the history of the Constitution if it isn't people?

Sure, it includes the facts and dates and places, but what is really important is what those events meant to and for the people caught up in their drama. That is what history ought to mean and that is what we are trying to do.

Six years ago, we formed The Constitution Project in Portland, Oregon, because of our belief in the Constitution's ideals, our belief in the citizens' need to support it and our belief in the television medium as the way for us to help our fellow citizens meet their urgent responsibility.

We have no political ideological bias, no cause or position to espouse, except one: The unassailable truth that if we are to continue to survive and prosper as a nation of free people, we must—we must—ensure that our children, our youngest citizens, our leaders of tomorrow, know and uphold those principles which have kept America the longest surviving democracy in history.

You in the audience today are about to see "The Ghosts of '87," starring Cliff Robertson. This program is about the Philadelphia Federal Convention of 1787 and the framing of our Constitution. A date, a place, an event. But this story is so much more than that, for it is a story of people—human beings who were trying to frame some principles that people of future generations would want to live by. It is important, then that we get to know the framers as people, and in doing so, we will better understand what they were trying to tell us in that room in Philadelphia two hundred and two years ago this week.

## JAPANESE LEGAL AND NONLEGAL BARRIERS DISCRIMINATE AGAINST UNITED STATES BANKS

### HON. FRANK ANNUNZIO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ANNUNZIO. Mr. Speaker, because the United States maintains the principle of "national treatment" or equality of treatment and opportunity for foreign banks, foreign investment in U.S. banking is increasing. Conversely, U.S. bank investment abroad has declined since 1980. Many United States banking firms have charged that they are unfairly treated in entering and operating in foreign markets, especially in Japan. Consequently, American banks are retreating from foreign countries. While the situation may be improving, many United States banks are asserting that Japan is not maintaining a policy of strict "national treatment."

By any measure, penetrating Japan's financial services marketplace poses tremendously painful and formidable obstacles to foreign entry and participation. Although Japan is liberalizing its financial markets, cultural, financial and even legislative barriers remain astonishingly high and limit the ability of foreigners to participate and compete in Japan.

While Japan has become the richest country in the world, its financial markets remain comparatively unscathed by foreign capital. Japan's financial institutions do not view Western competition as a threat, but as financial product innovators to be watched and imitated.

Japanese bankers have become extremely efficient at stalking these incremental innovations usually introduced by Western bankers. Novel financial ideas are increasingly being streamlined and fine-tuned by the well-capitalized and far-reaching Japanese banks. While Westerners are counting on their tendency toward introducing financial innovations to give them a competitive edge, it seems that the bargaining position of the Japanese financial community is "what's mine is mine, and what's yours is negotiable."

Japanese securities companies, for example, are extraordinarily powerful, and it is generally believed that the Japanese financial markets are rigged for the right players. Japanese securities companies benefit from extremely high fixed commissions. They also benefit from casinolike winnings because the domestic equity markets are speculative by nature, and not markets for corporate control like in the United States.

The "Big Four" securities companies in Japan—Nomura, Daiwa, Nikko, and Yamaichi—account for over 60 percent of all stock trades in Japan and have monopolistic-like dominance. This monopolistic-like presence serves to further hinder the ability of United States securities firms from entering and competing in the Japanese market.

Japanese banks have more information on their Japanese corporate clients than their American counterparts. it is difficult for an American financial institution to get a listing of a Japanese institution's portfolio. While American firms generally want to tell their financial advisers what business they are doing so that the adviser can better understand their needs, the Japanese are generally very reluctant to divulge this information for fear of foreign firms getting a better grasp of their priorities and concerns.

Unwritten cultural barriers also hinder American banking opportunities in Japan. The style of service, for instance, is much different in Japan than it is in the United States. According to a Japanese banker, "you don't make cold calls. In Japan, you don't sell a new product by stressing attributes, but by stressing the relationships. Only at the end of the conversation do you even hint at the product's benefits—I don't mean discuss, I mean hint at." American bankers typically stress product quality without initially building the long-term, stable relationships based on trust with their Japanese clients.

Corporate links in Japan run deep and wide. American banks have the knowledge to compete in Japan, but they do not have the lengthy and extensive corporate ties. Nomura, for instance, has been serving its clients well for decades and its client base is difficult to penetrate because of these deep roots.

This traditional style of Japanese banking with deep customer ties is also feeding the Japanese banking strategies in the United States. Japanese financial institutions typically

prioritize the expansion of market shares over medium-term profits. The Japanese financial institutions in the United States have been undercutting American bank prices and acquiring market share. Japanese bankers have a much longer term outlook than their United States counterparts.

The linguistic and social barriers in Japan deter the creation of informal relationships that are so important to the development of formal relationships. There is not nearly as much socializing between the financial players in Tokyo as compared to those in New York, London, or Hong Kong.

Because of the Japanese' overwhelming sense of their own uniqueness and their resulting self-protective instincts, foreign financial institutions account for a tiny share of financial activity in Japan. The number of Japanese corporations acquired by foreign interests can be counted on one hand. Japanese monetary authorities have been discouraging the development of free markets in short-term monetary instruments. Additionally, the yen plays a curiously small role as a settlement or reserve currency, given Japan's economic power.

Japanese financial institutions enjoy high earnings in domestic market that is effectively protected not only from foreigners but also from "excessive" competition. Given Japan's concentration of wealth and its emerging role as a world leader, Japan must strive to open its markets.

Cultural barriers to the Japanese banking market may be unwritten and often misunderstood. I do not claim to understand all of these unwritten difficulties, but I know they are obstacles which are not legislatively implemented by the Japanese. Cultural barriers will demand time and patience, but they can be overcome.

Legal barriers to the Japanese banking market, however, are a different matter. I support the United States' "national treatment" policy, but I cannot accept discrimination from the Japanese toward our banks. I am concerned that the charges made by American banks may be true and that the Japanese may not necessarily accord our banks this same policy of "national treatment."

I want to make it clear that the subcommittee on Financial Institutions Supervision, Regulation and Insurance will investigate these matters. The Task Force on Competitiveness in International Banking, chaired by Congressman LAFALCE, will examine these issues and related matters. If the Japanese are not giving "national treatment" to United States banks, I will work to see that the proper steps will be taken to correct this injustice.

## CUOMO'S SHOREHAM SETTLEMENT HURTS THE PEOPLE OF UPSTATE NEW YORK

### HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SOLOMON. Mr. Speaker, I would like to comment on a recent memorandum I received from Governor Cuomo's Washington office regarding the Shoreham settlement. In the memorandum the Governor's staff attempted to dispute the fact that the Governor's decision to decommission and dismantle Shoreham has negative environmental and tax consequences on the people of upstate New York.

First, the Governor's claim:

The Shoreham settlement will cause no environmental damage to Upstate New York. No new generating capacity in Upstate New York will be built for the purpose of serving Long Island. The sources of Shoreham replacement power at this point are on Long Island and provided over 500 megawatts this past summer.

The memorandum cites the new 240-megawatt gas turbine and the 600-megawatt cable under Long Island Sound.

The facts: The charges in the memorandum are incorrect in many important respects. First, the Governor is completely wrong to assert that there is no environmental impact on upstate New York from building gas and coal power plants on Long Island. Environmentalists agree that emission from New York City and Long Island can affect upstate New York. The Shoreham settlement, which envisions replacing Shoreham with two gas-fired facilities with a combined capacity of 500 megawatts in 3 years and up to 800 to 1,000 megawatts of gas or coal facilities in 10 years, will directly increase acid rain emissions. That is indisputable.

Clearly, the Governor is wrong when he charges that the Shoreham settlement will cause no environmental damage to upstate New York since it is the position of the State that sulfate and nitrate emission cause environmental damage.

Additionally, it is wrong to assert that the increased transmission capacity under Long Island Sound is a source of replacement power since it was planned at a time when Shoreham operation was assumed. This transmission capacity was intended to supplement, not supplant Shoreham, and the Governor either knows it, or should know it.

Second, the Governor's claim:

Because no new power plants will be built Upstate to serve the Long Island market, there can be no possible harmful effect from the Shoreham settlement on Upstate power rates.

The facts: It is not clear what impact the settlement will have on electric rates outside Long Island. On Long Island, the rate impact is clear, namely a 65- to 72-percent rate increase over 10 years.

Yet, there could be a rate impact in the rest of the State, depending on whether the gamble on independent power producers succeeds or fails.

The essence of the Shoreham settlement is that the State abandons a large, baseload electric generation plant and take a huge gamble that future electric needs of New York can be met by nonutilities.

Moreover, the Shoreham settlement will cause New Yorkers to pay higher State taxes. Last spring, the Governor pushed legislation into law reducing the gross receipts tax that would have been paid by Lilco on income directly tied to the Shoreham settlement. This will reduce anticipated Lilco tax payments to the State by about $100 million at a time when the State is grappling with a huge budget deficit. If Lilco does not pay, other New Yorkers will.

Third, the Governor's claim:

Even Deputy Energy Secretary Henson Moore, who supports the Ritter amendment, has admitted several times that it is no difference to the federal treasury and the federal taxpayer whether Shoreham closes or operates, that no one has come forth with any evidence to suggest otherwise.

The facts: The Governor is being deliberately misleading. The State has focused solely on the difference between normal business depreciation and the declaration of extraordinary loss. This ignores that foregone Federal tax revenue from Shoreham, as the plant is a business asset that would generate substantial revenues if it were to operate. The Governor knows there is a Federal and State tax loss and I would ask him to come forth with any evidence to suggest otherwise.

Mr. Speaker, the Governor should know that Shoreham is a national issue and therefore will be reviewed and reconsidered by the House and the other body of the U.S. Congress during the second session of the 101st Congress.

## SAVINGS ACCOUNT FOR A VALUED EDUCATION [SAVE]

### HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SMITH of New Jersey. Mr. Speaker, our younger generations are pursuing bright futures with opportunities for personal advancement and achievement. One of the most important ways we can help our youth reach their potential is to provide greater opportunities to acquire a higher education. For many, a college education has become unattainable not because of their learning capabilities but because of the skyrocketing costs of postsecondary education. Many middle-income families who may not qualify for Federal and State money will not have expendable income to cover the costs of college.

The young student is the true loser at this time but our society, Mr. Speaker, will feel the detrimental effects of these lost opportunities—the prospective nurses, engineers, researchers, writers, teachers, and artisans who were not able to fulfill their dream.

Today, Mr. Speaker, I have introduced a bill which will help families with limited incomes save up to $1,500 per year per child in a tax-deferred savings account—a SAVE account—and contribute the savings toward a college education. Even families who do not otherwise itemize their deductions on their tax return would be permitted to create a SAVE account and take this deduction. Contributions to the SAVE may be made every year until the child is 19 years old. The college student will then be able to use the contributions plus the interest to help cover the costs of tuition and fees, books, supplies, and equipment required by courses at a university or vocational education institution.

In order to ensure that the money from the SAVE is used directly for educational expenses, the bill establishes a 10-percent penalty for misused funds. Mr. Speaker, this is similar to the penalty for misused funds. Mr. Speaker, this is similar to the penalty imposed on individual retirement accounts when money is used for purposes other than retirement. Furthermore, to ensure that the tax-advantage SAVE's are beneficial to middle-income families, the deductions will be limited to those with incomes below $55,000 for a head of household and single taxpayers, and $90,000 for joint returns.

Mr. Speaker, the bill instructs the Department of the Treasury to outline strategies to encourage the use of SAVE's through payroll deduction plans, contributions by businesses, nonprofit organizations, charitable groups, and educational organizations and individuals. Contributions made by nonprofits and charitable groups would be ideal projects which would help the truly needy. Contributions could be made directly to the SAVE and the giver can be assured that the money will be used for educational endeavors.

Mr. Speaker, I believe the time has come for Congress to consider creative ideas for financing higher education, such as this SAVE proposal. Two Congresses ago I introduced a bill similar to this one offered today, several proposals have been put forward and openly debated over the years and now it is time to take action. I encourage my colleagues and the Ways and Means Committee members to give this proposal its due consideration in the coming 2d session of this 101st Congress.

## BICENTENNIAL OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA

### HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. COBLE. Mr. Speaker, I rise today to recognize the bicentennial celebration of the Presbyterian Church in the United States of America. In this regard, I would like to make the following points:

The first General Assembly of the Presbyterian Church in the United States of America was called to order in 1789 in Philadelphia, PA, marking the attainment of a nationwide Presbyterian Church organization.

The Presbyterian Church in the United States of America fosters and mirrows the diversity of our national society of membership, opinion, and attitudes.

The representative church government of the Presbyterian Church in the United States of America served as a model for the Constitution of the United States and written constitutions of other democratic governments.

As many as a dozen signers of the Declaration of Independence were Presbyterians, including John Witherspoon, the only active clergyman to so sign.

The values of diversity and representative government of the Presbyterian Church in the United States of America reflect and enhance the same values inherent in the United States of America and all free societies.

For these reasons, it is important to recognize the Presbyterian Church in the United States of America on the celebration of the bicentennial of their first general assembly meeting and for the history and values of diversity and representative government that the Presbyterian Church has contributed to our national society as it begins its third century in America.

Several individuals have written numerous articles about this bicentennial celebration which have appeared in various periodicals. I have selected three of those articles which follow my remarks. The first is a prizewinning essay by Ben Emmons, a high school student from Harrisburg, IL. The second is by Hugh McHenry Miller, pastor emeritus of First Memorial Presbyterian Church in Dover, NJ, who lives in Milford, DE. Both of these articles appear in the June 1988 issue of Presbyterian Survey. The last is by Ervin Roorda and John McCollister from the July/August 1988 issue of the Saturday Evening Post. These articles embellish and illustrate the points I have already enumerated above.

Mr. Speaker, I would like to congratulate the Presbyterian Church in the United States of America at this milestone in its history.

THE PRESBYTERIAN BICENTENNIAL: WHAT DOES OUR PAST SAY TO OUR FUTURE?

(By Ben Emmons)

Throughout the last 200 years, the Presbyterian Church has had a great influence on civilization. Presbyterian-sponsored programs and the basic tenets of the church government have had a tremendous impact on the world and particularly on the United States. The Constitution of the United States, now a model for other written constitutions, was modeled after the Presbyterian form of government. Presbyterian funds have been used to establish colleges and other institutions devoted to helping man. Over the last two centuries, people all over the world have received the Word of God from Presbyterian missionaries. This emphasis on education, democracy, and the dissemination of the Good News to others is an integral part of Presbyterianism.

In the future, Presbyterians must maintain this emphasis on the betterment of the condition of mankind. Our past shows that we are not content to leave the world as we find it. The Presbyterian Church is at its best when it is diligently doing God's work and improving the world. Presbyterian missionaries will reach many more with the Word of God and members everywhere will strive to do God's will. This is the Presbyterian way.

The past accomplishments of the church are impressive, but it is important that in the future we do more. The recently reunited church is capable of so much more than the split churches were. Even though the church's past is admirable, it is only the beginning of what the Presbyterian Church will do.

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BELIEFS AND BEHAVIOR—THE MEN WHO LAID THIS COUNTRY'S FOUNDATION WERE CLEARLY INFLUENCED BY THEIR FAITH

(By Hugh McHenry Miller)

John Witherspoon, Presbyterian signer of the Declaration of Independence, wrote that "beliefs should influence behavior."

What were the religious beliefs of the 56 men who laid the foundation of the United States by signing the Declaration of Independence? The record of their participation in the Christian faith and their connection with religious institutions provides a clear link between American Independence and religion.

Ten of the signers were sons of clergy; they were nurtured in Christian homes:

From Connecticut, William Williams, son of a Congregational pastor.

From Georgia, Button Gwinnett, son of an Anglican vicar.

From Maryland, Samuel Chase, son of an Anglican clergyman in Baltimore.

From Massachusetts, John Hancock, son of a Congregational pastor, and Robert Treat Paine, son of a Calvinist clergyman.

From New Jersey, John Witherspoon, son of a Calvinist minister in Scotland.

From New York, Francis Lewis, son of a Welsh Episcopal minister.

From North Carolina, William Hooper, son of a Congregational minister and later Anglican pastor in Boston.

From Pennsylvania, George Ross, son of an Anglican clergyman, and George Taylor, son of a clergyman in Ireland.

Eight of the signers themselves studied for the ministry. Three of them were ordained to the ministry, including two from clergy homes:

Lyman Hall, from Georgia, a Congregational minister in Connecticut. He left the active ministry when divisions developed in his New England parishes, studied medicine, and after moving to Georgia was governor of that state and a founder of the University of Georgia.

Paine, probably Congregationalist, a chaplain during the French and Indian War. He later went into law and broke away from Calvinism and embraced Unitarianism.

Witherspoon, the only active clergyman at the signing of the Declaration, who served Presbysterian churches in Scotland before accepting the invitation to become president of the College of New Jersey (later Princeton University) and pastor of the Presbyterian Church in Princeton (see "John Witherspoon," November 1987 issue). He served as temporary moderator of the first General Assembly of the Presbyterian Church in 1789.

Others who studied for the ministry include:

John Adams, from Massachusetts. After graduating from Harvard he decided to follow a law career instead. But throughout his life Adams set aside regular periods for Bible study four days a week.

Samuel Adams, from Massachusetts. He also graduated from Harvard with the intention of going into the ministry, but soon "demonstrated his lifelong aversion to normal employment." After failing in several business enterprises he eventually emerged as a political leader and relentless writer for freedom.

William Williams, from Connecticut. After graduating from Harvard he studied for the ministry under his Congregationalist father. But, influenced by a radical lawyer, he too turned to law.

Benjamin Franklin, from Pennsylvania. His father first thought to have him, the youngest of 17 children, educated for the church. Noting how poorly paid ministers were, however, he took Benjamin out of grammar school and sent him to a writing school.

In most colleges and universities in the colonies, as well as abroad, the study of theology was required. Thirty-one of the signers received such training. These include nine at Harvard; four each at Princeton, Yale, and William and Mary; two at the

University of Pennsylvania; three each at Cambridge and Edinburgh; one at Westminster in London; and Charles Carroll, from Maryland, the lone Roman Catholic signer, at Jesuit schools in England and France.

The burial places of many of the signers of the Declaration of Independence witness to religious influences in their lives. While wealthy and prominent people were often buried in family grounds, it is significant that at least 25 were buried in church yards. A number of the men played important roles in these churches.

In the Journal of the Presbyterian Historical Society (September 1955), William B. Miller writes that 11 of the signers of the Declaration were Presbyterians, and there may have been a 12th. At least six are identified as officers of their congregations.

One signer, Philip Livingston from New York, established the Chair of Divinity at Yale.

The daughter of William Floyd, another signer from New York, turned down James Madison's proposal of marriage in order to marry a clergyman.

William Miller concluded his article: "The Presbyterian signers, because of either their family background, their early training under Presybterian ministers of the gospel, their attendance in a Presbyterian congregation, or their direct affiliation as an elder, pewholder, or member of a Presbyterian church, were better prepared for the risk ahead of making a democratic type of government. . . . By virtue of an investigation of the sources it is obvious that the influence and contributions of the Presbyterian signers in colonial America were extensive."

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THE NEW PRESBYTERIAN

(By Ervin Roorda and John McCollister)

At least two traits deserve note on the Presbyterian Church (U.S.A.)'s 200th birthday—diversity and representative government. Both took root, along with the whole of Presbyterianism, four centuries ago in the Europe of a dedicated, brilliant theologian, John Calvin. Calvin's Institutes of the Christian Religion, a definitive Protestant treatise, spelled out Calvin's notion of the ideal church government.

In the Swiss town of Geneva he put that model into practice. Calvin's Geneva was a place of strict moral standards, where a man could be whipped for disrespect to his elders and where leaders' interpretation of God's word was irrefutable law. But it was also a place where each citizen had a vote in the city government and where Calvin encouraged public spiritedness and participation. And Calvin's church was also organized to give the common man a say. It was run not only by clergy, but also by certain laymen elected by the whole congregation and known as "elders," or in Greek, "presbyteros"—hence, the latter-day term "Presbyterian."

Geneva attracted converts from all over Europe. It left an indelible impression on many, including a feisty Scot named John Knox. A Roman Catholic priest who converted to Protestantism, Knox studied with Calvin at Geneva, then went home to bring the faith and the Presbyterian-style church government to his native country. Knox wholeheartedly embraced the idea that all men are equal under God, and his Presbyterian Church reflected that conviction.

Presbyterian churches had traditionally been set up along national lines, and now those various groups each brought their own style of Presbyterianism to the New World. The diversity didn't daunt a young Irish-educated Scot named Francis Makemie: Makemie worked tirelessly to bring the varied groups together, and in 1706 he called the first meeting of the colonies' first Presbytery, or association of Presbyterian ministers and their congregations. They were joined in short order by Presbyterians of Welsh, Dutch, German, and French origins.

Already steeped in the philosophy of cooperation and a voice for the common man, Presbyterianism was tailor-made for the budding spirit of independence in the New World. In 1775 the church's governing body in the colonies issued a pastoral letter urging unity among the colonists and a willingness to fight for freedom if necessary.

One of the letter's architects, the Rev. John Witherspoon, taught many of the Constitution's framers at the College of New Jersey (later Princeton University), represented New Jersey in the Continental Congress, and was the only clergyman to sign the American Declaration of Independence.

Once the colonies became a nation, the way was clear for a national Presbyterian Church. In 1789 Witherspoon convened the first General Assembly of the Presbyterian Church of the United States of America, in Philadelphia. But diversity can be difficult for mortal men, and the church suffered a number of painful schisms, both before and after that first Assembly. One had occurred in the mid-1700s between revivalists and anti-revivalists, and a more significant one came in 1837 over the role of volunteer groups in church missions. This time both factions went to court for custody of the title "Presbyterian Church of the United States of America" and both got it—one through a court in New York and one through a court in Philadelphia.

The most important split took place in 1861 at the outset of the Civil War. Among the divisive issues were slavery and nationalism. At the 73rd General Assembly that year delegates passed the "Gardiner Spring Resolutions," demanding that every clergyman swear allegiance to the United States of America. The Southern clergy did more than refuse; most of them boycotted the Assembly altogether. The church was wrenched in two. The Northerners kept the name Presbyterian Church (U.S.A.) and the Southerners who broke away banded together as, eventually, the Presbyterian Church of the United States (Presbyterian Church [U.S.]).

It would be late in the next century before the two major branches reunited. In the interim, each remained active in evangelical work and in expanding the mission work the early church had started with American Indian tribes. And in 1983, at long last, the north and south branches reunited.

It's a new version of the old church, just over 3 million members strong, dealing with 20th-century issues and, leaders say, going at them head-on. Diversity and fair representation are two. At the General Assembly, special committees report on the status and needs of the church's minority-group members, including a fast-growing population of Korean-American Presbyterians. (The largest Presbyterian congregation in the world is located in Seoul.) A Presbyterian seminary in Iowa is specializing in training Native American and Eskimo ministers, and the Hispanic-American Presbyterian population celebrated its 100th anniversary last year.

The church is fostering another kind of diversity—that of opinion, says the Rev. Albert Winn, a retired Presbyterian minister and moderator of the Presbyterian Church (U.S.)'s 1979 General Assembly. "We're looking for ways to give representation of different opinions and attitudes as well as racial groups," he says.

The church's mission work has extended into 88 countries, including Central America and the Middle East.

Like other mainline Protestant denominations, Presbyterians are fighting a slight membership decline—about 10 percent in the past decade. In response, the church is emphasizing evangelism. The national headquarters has increased its evangelical staff, and at regional conferences, local church leaders are being trained to evangelize in their own communities.

And the church is dealing with social issues. Some of the papers scheduled at this writing for the 200th Assembly will deal with AIDS; human rights in Chile; the split between North and South Korea; resurgent racism in America; and "Christian Obedience in a Nuclear Age." Even the expression of church doctrine has progressed. The post-war Presbyterian book of confessions contained nothing written since the 1640s. Now it includes the old standards, along with some 20th-century statements. "We're still a mainline Reformation theology," Winn says. "But there is more latitude, more social conscience."

Some of these matters will likely spur debate. But discussion and debate, leaders say, give the church its energy and vitality. In the words of this year's Assembly moderator, Dr. Isabel Rogers: "Presbyterians never agree on anything. We admit our diversity. But from this diversity bubbles up debate, which brings about some of our most thoughtful and forceful statements."

PRESBYTERIAN PRESIDENTS

Eight U.S. presidents have belonged to or been identified with the Presbyterian Church, a religious denomination closely identified with represenative government: Andrew Jackson, James Buchanan, Abraham Lincoln,[1] Grover Cleveland, Benjamin Harrison, Woodrow Wilson, Dwight Eisenhower, Ronald Reagan.[2]

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## SAMMY DAVIS, JR.

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## HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DYMALLY. Mr. Speaker, on Monday, November 20, 1989, a star-studded cast of movie, television, and entertainment celebrities assembled with supporters of Sammy Davis, Jr., to celebrate his 60th year in the entertainment industry, at the Shrine Auditorium, in Los Angeles, and which will be shown on TV early next year.

The occasion was another effort to raise funds for the United Negro College Fund [UNCF].

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[1] Abraham Lincoln never joined a Christian congregation; however, he regularly attended New York Avenue Presbyterian Church in Washington, D.C., during his years as president.

[2] Although President Reagan was brought up in the Disciples of Christ denomination, his "adopted" church is Bel-Air Presbyterian Church in Los Angeles, pastored by his friend, the Rev. Donn Moomaw.

In celebrating his great achievements, the supporters of Mr. Davis noted that, first, he played a historical role in the entertainment industry by opening the doors of mainstream entertainment for African-Americans; and second, in so doing broke down many barriers which prevented African-American entertainers from appearing at major shows in this country.

Across the country, Sammy Davis, Jr., is known for his willingness and generosity in supporting charitable causes. So it was no surprise that he lent his popular name and talents to support the efforts of the United Negro College Fund to raise funds for the historically black colleges in the United States.

Mr. Speaker, 60 years in any industry is a long time. But to be consistently good in such endeavor is in itself a remarkable achievement.

Sammy Davis, Jr. has had a most interesting career.

After 26 years in vaudeville, burlesque, and nightclubs, Sammy Davis, Jr., made his debut in musical comedy at the Broadway Theatre in New York on March 22, 1956, as the star of "Mr. Wonderful," a Jule Styne-George Gilbert production. Most of the critics called Sammy's performance "dynamic" but said that the show was "not for Broadway." A few weeks later, Barry Gray (New York Post, April 15, 1956) declared that it was an "audience show," credited the public with doing a "great public relations job," and criticized the critics. A number of radio disk jockeys interviewed Sammy on the air and started to "plug" records from the show and earlier Davis recordings by Decca Records. He was featured on the "Steve Allen Show" on NBC-TV on June 24, 1956.

Sammy became part of a family vaudeville act at the age of 4, but it was not until 1946 that the Will Mastin Trio headed by Will Mastin, an adopted uncle, Sammy Davis, Sr., and starring Sammy, Jr., began to attract the top night clubs of the country. Commenting on the trio's appearance at New York's Copacabana, Robert W. Dana (New York World Telegram and Sun, April 17, 1954) called Sammy "an actor, a singer, a pantomimist, an impressionist, a dancer, and a drummer," and said that he was often better than the originals he imitated.

The turning point in his career, according to Time (April 18, 1955) came after an automobile accident in November 1954, in which Sammy lost his left eye. The following January, he filled an engagement at Ciro's in Hollywood, joked about his eye-patch, and his "comfortable popularity suddenly changed into a major fad." His night club earnings skyrocketed and his records sold in the millions.

Sammy Davis, Jr., was born in New York City on December 8, 1925, the son of Sam and Elvira (Sanchez) Davis. Sam and Elvira were dancers, members of the Will Mastin vaudeville act called Holiday and Dixieland which was popular during the Texas Tomming dance craze that swept the country in the early 1920's. The act had seven men and five women and offered songs, dances, skits, and comedy. They broke records on the Keith, Pantages, and Loew's circuits. According to the New York World Telegram & Sun, July 25, 1953, Sammy spent his first birthday in a crib in the dressing room of the Hippodrome in New York City.

A year later, when Mastin had formed another unit called Creole, Sammy kept busy imitating the various members of the act while the piano player tossed off cues. Mastin cut the act to a total of five which included Sammy Davis, Sr., and his 4-year-old son. His mother had left the cast when his sister Ramona was born. Hollywood offered an opportunity in 1931 and Sammy appeared with Ethel Waters in "Rufus Jones for President" and with Lita Grey Chaplin in "Season's Greetings," both produced by Warner Brothers.

Sometimes the boy went to school, but much of his education was through correspondence courses. During the height of the depression years, Mastin made the act a trio. They played in cities and small towns wherever they could get an engagement in vaudeville, burlesque, or cabarets. They were often stranded and broke, but they managed in one way or another to get to the next date. The experience sharpened Sammy's talents.

At a theater in Michigan, the late "Bojangles" Robinson saw the act and was impressed with Sammy's ability and asked Mastin to bring the boy to him. For countless hours, thereafter, Sammy absorbed the skill and showmanship which made Robinson a success. Within a year Sammy became a perfectionist, in Robinson's opinion.

In 1943 Sammy was called into the U.S. Army and assigned to Special Services, where he wrote, directed, and produced several camp shows. He was discharged late in 1945 and rejoined his father and Mastin in the trio. Early in 1946, Mastin decided to challenge the big-time night clubs and the trio was booked into Slapsie Maxie's in Hollywood as "unknowns" and appeared as the opening act. Mastin and Sammy, Sr. were content to remain in the background with brief solo soft-shoe and tap specialties, while Sammy, Jr. imitated popular screen stars, sang, and danced. His reception was so deafening that the trio was signed for a return engagement as headliners.

They were engaged for a 2-week run on the same bill with Mickey Rooney in September 1947 at a Los Angeles theater and remained for 6 months. Later, they played the Palace in Columbus, OH, where they were headlined with Jimmy Dorsey; the Capitol in New York on the same bill with Frank Sinatra; and the big police show in Los Angeles, featuring Bob Hope. In 1950, they were on the same bill with Jack Benny, Dennis Day, and other top names in the entertainment world. When the act was booked into Ciro's in Hollywood, Sammy was earning $300 a week, which after the lean years, seemed like a fortune.

In the fall of 1953, ABC-TV spent $20,000 on a pilot film called "Three's Company" for a comedy situation series, with an inter-racial setting, Sammy's "first" on the TV format. But the project was abandoned after a year because of failure to get a sponsor. However, his debut in New York's Copacabana in April 1954 had such enthusiastic press notices that Decca Records put him under contract. He made two albums, each with 11 titles.

Sammy Davis, Jr., featured his impersonations of Dean Martin and Jerry Lewis, Jimmy Durante, Johnny Ray, Frank Sinatra, Arthur Godfrey, Bing Crosby, and others. "Just For Lovers" was a collection of his own songs. Disk jockeys liked him and he was soon popular with radio audiences.

While playing at Las Vegas' Last Frontier, Sammy was called to recording session in Hollywood, and while driving there on November 19, 1954, he collided with another car and was taken to a hospital in San Bernardino. Three days later, his left eye was removed. When he filled an engagement at Ciro's in Hollywood a few weeks later with a battered face and an eye-patch, and the crowd gave him a 10-minute standing ovation.

On his next date at Copa City in Miami Beach, Variety (February 16, 1955) reported that Sammy came on to a several minute ovation that went into a series of "salvos" as he unwound his "considerable repertoire." Later at the Copacabana in New York, Frank Quinn (New York Mirror, March 17, 1955) commented on Sammy's "remarkable showmanship" and said that the act was "polished to perfection" as he recreated Frankie Laine, Tony Bennett, Vaughn Monroe, and Billy Daniels among others.

Television appearances on "Ed Sullivan's Toast of the Town," the "Milton Berle Show," and the "Colgate Hour" added to Sammy's popularity. He was signed up by Frank Sinatra to costar in the musical comedy movie "The Jazz Train" by Mervyn Nelson for Sinatra's Oxford Productions—United Artists release—scheduled for production in March 1957. The delay was made necessary because of the many commitments of the two actors. (New York Times Tribune, December 2, 1955.)

A movie contract with MGM for "St. Louis Woman" was relinquished by Sammy in order to star in the Broadway musical "Mr. Wonderful" by Josephy Stein and Will Glickman, and featuring the Will Mastin Trio. In a review of the opening, Brooks Atkinson (New York Times, March 23, 1956) wrote that it was "a spectacular noisy endorsement of mediocrity" that came alive only when Sammy "rocks and rolls, tap-dances, or does imitations." Walter F. Kerr (New York Herald Tribune) called it "an impersonation of a musical comedy." All of the critics made caustic remarks about the title and Wolcott Gibbs (New Yorker, March 31, 1956) titled his review "Mr. Who?" and said that Sammy was "one of the foremost exponents of a kind of vocal delivery that takes a new step toward Pandemonium in popular music; a tapdancer of formidable agility; and a pleasantly accomplished mimic."

Variety (March 28, 1956) reported that Sammy was interviewed on March 24 on the radio program (WMCA) of Barry Gray who was "beating the drums strenuously" for Mr. Wonderful, in his column in the New York Evening Post. Earl Wilson in the same newspaper was also boosting the show. Radio disk-jockeys took up the cause by putting Sammy on the air and playing songs for the show, which included "Mr. Wonderful," "Too Close for Comfort," "Without You," "I've Been Too Busy," and "Ethel Baby."

Sammy is a wiry 5 feet 6 inches tall and weighs 124 pounds; he has a broken nose, but no longer wears an eye-patch. He makes his home in Hollywood. His mother is Catholic

and his father is Baptist, but Sammy told Sidney Fields (New York Mirror, April 2, 1956) that he had only learned to pray after his accident.

As Sammy begins to think about slowing down we wish him good health and best wishes in his future endeavors.

## AN ADVENTURE IN FREE ENTERPRISE

### HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BILIRAKIS. Mr. Speaker, I rise today to bring to the attention of the Congress a very important and laudable educational program in Pinellas County, FL.

This program, known as Enterprise Village, is an outstanding example of the private and public sectors—of the business and education communities—joining hands in a unique and fabulous learning opportunity for young people.

The idea for Enterprise Village came from the associate superintendent of Pinellas County public schools, Dr. J. Howard Hinesley, and with this inspiration, local businessman Gus Stavros set about raising the funds necessary to accomplish the task.

Mr. Speaker, today Enterprise Village—in the form of an 18,000-square-foot building—stands ready to be dedicated in the near future. Thus, a private-public sector partnership, one of the most promising ideas of which I know to enrich our children's education, has made of a promising idea a constructive reality.

Enterprise Village is an economic minicity that will be visited during the school year by every fifth-grade student in the Pinellas County School System. This experience is part of the county's comprehensive kindergarten-through-12th grade economics education program. Fifth graders will undergo 6 weeks of classroom instruction and then will have the opportunity to own and operate a business at Enterprise Village.

A typical day at Enterprise Village might go something like this * * * The students arrive and gather in the village square for a final briefing before they begin their adventure in free enterprise. As groups of students move toward their place of business, they are already discussing the question every business person must answer: What will we produce? How much? At what cost? For whom?

The basic economic questions resolved, at least temporarily, the business manager hurries to the branch bank with loan application in hand while another business member rushes to the warehouse where materials are purchased. Amid a flurry of activity, production begins throughout the village.

Three times during the day the very busy employees are paid for their labor with Enterprise Village money. Then it is off to the village bank where deposits are made before the students become consumers, using the rest of their breaktime to shop. As consumers, the students deal with choices about their time and money.

As the day winds down, production and sales cease, rent and utilities have been paid, loans have been repaid with interest, and students reconvene in the village square to evaluate their day and hear a state-of-the-economy address from their mayor. Successful businesses are recognized and commendable business practices complimented.

The day at Enterprise Village ends, but learning does not. The experiences at the village become foundations for further study about the free enterprise system as students return to the classroom.

Mr. Speaker, the payoffs from such a creative learning experience as this are obvious. Enterprise Village and other school-business partnerships offers valuable hands-on work experience, provides area schools with the expertise and insights of business leaders in the community and help to build a good, solid relationship between that community and local business.

Indeed, Enterprise Village—through its parent organization the Enterprise Institute—offers crucial support to the Pinellas County school system by monitoring and administering all economic education in the county.

I hope that Enterprise Village will be an example and guide that can be followed by other school systems and other communities in forging this invaluable bond between education and business.

## RSC ISSUES SPECIAL REPORT ON SANDINISTA NONCOMPLIANCE

### HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DORNAN of California. Mr. Speaker, since 1979, the Sandinistas have made literally hundreds of commitments to the Nicaraguan people and the world community. At every turn, they have violated their word to the point that any element of trust or goodwill has long since vanished. During the period of 1979–80, the United States was the largest foreign aid donor to the Sandinista regime. At the same time, the Sandinistas were moving quickly to consolidate their power and institute a Cuban-style totalitarian regime. So, it is abundantly clear that the Sandinistas never intended to live up to their promises.

As a matter of public record, the issue of freedom in Nicaragua has always been a contentious one in the Congress. However, much of the debate has focused on whether or not to aid the democratic resistance. Most of my colleagues are unaware of the sheer scope of Sandinista noncompliance with the agreements and promises they have made over the past 10 years. It is my pleasure to bring to the attention of my colleagues the following report issued by the House Republican Study Committee. This "RSC Special Report: Sandinista Non-Compliance 1979–89" written by Senior Policy Analyst James P. Gallagher presents a summary of the most important and noteworthy promises made by the Sandinista in the past decade.

JULY 1979 PLEDGES TO THE OAS

(By James P. Gallagher, Senior Policy Analyst)

On July 12, 1979, the newly formed Provisional Government of National Reconstruction (GRN) pledged to the Organization of American States (OAS) that they would fulfill a comprehensive program of democractic guarantees which had been largely denied during the Somoza regime. They included human rights observance, freedom of press, religion and unions, free elections within one year, a non-aligned foreign policy, a national army and a guarantee of the lives of former Somoza National Guardsmen.

*Their Promise:* To preserve the lives of former members of dictator Anastasio Somoza's National Guard.

*Their Compliance:* One only needs to read the following quote from Humberto Belli's *Breaking Faith* saying: "After the 1979 revolutionary victory hundreds of prisoners, mostly members of the National Guard or supporters of the former regime, disappeared after capture and were later found dead. Of the dead, many were found in mass graves, as in the case of the prisoners in La Polvora, the former headquarters of the National Guard in the town of Granada."

"Similar reports led to the discovery of another site in La Arrocera, near Lake Nicaragua, where several more bodies were found. At the bottom of the crater of the Santiago volcano, near Managua, ten to fifteen bodies were sighted. Thirteen more were discovered in a mass grave in Catarine, a small town near Masaya. Approximately two hundred were found in a deep well near Leon."

"How many people were killed in this manner? Estimates based on names of prisoners who were captured and then declared missing or dead vary. The independent Permanent Commission for Human Rights has documented the disappearance and most likely death of 785 persons who were captured by Sandinista authorities from July 1979 through September 1980 . . ." [Nicaragua and the U.S. Congress: Nine Years of Promises, Peace Plans and Self-Delusion; Senate GOP Policy Committee; August 8, 1988].

*Their Promise.* That following their assumption of power, the Sandinista rebels and the remnants of the National Guard would be formed into a new, apolitical national army. This army would be accountable to the state and a new constitution.

*Their Compliance.* A new national army was never formed by the GRN or the successive Sandinista junta. The victorious rebel army quickly became officially known as the Popular Sandinista Army (EPS), the only army in Nicaragua.

In an interview in October 1979, Interior Minister Tomas Borge said that the Sandinistas intended to form an armed militia of more than 300,000 men. Prior to their July 1979 victory, the Sandinistas had a force of no more than 7,500 men and women. This compares with Somoza's National Guard which only had 14,000 trained and untrained men under arms in pre-July 1979. It was during this period that the Carter Administration was providing the new regime with the bulk of its foreign assistance and the democratic resistance was nonexistent.

In 1988, during an appearance before the RSC, Sandinista defector Major Roger Miranda made public Sandinista plans to build a total military force of 600,000 over the next ten years. This was later confirmed by Defense Minister Humberto Ortega, brother

of Sandinista leader Daniel Ortega, who said that the regime did indeed intend to build such a force by 1955 [Washington, Post, December 13, 1987]. Plans are apparently well underway since the Sandinistas have received almost $1 billion worth of military equipment from the Soviet Union and its allies in 1988 and 1989.

*Their Promise:* An independent, nonaligned foreign policy.

*Their Compliance:* Cuban military advisors arrived in Managua the same week as the Sandinistas seized power in mid-July 1979. Within three months, the State Department reported there were more than two hundred such advisors fanning out across Nicaragua. Authoritative estimates place the number of Cubans in Nicaragua today between 2,500 to 3,000.

In September 1979, Sandinista leader Daniel Ortega delivered a speech before the Sixth Summit Conference of Nonaligned Countries in Havana condemning U.S. imperialism and pledging uncritical support to the Soviet Union. He even made statements in support of the terrorist Palestine Liberation Organization [A Grim Reality Behind Sandinista Promises; The Heritage Foundation; 1988].

Less than one year after assuming power in June 1980, Interior Minister Tomas Borge said during a visit to communist North Korea that "the Nicaraguan revolutionaries will not be content until the imperialists have been overthrown in all parts of the world . . . we stand with the . . . socialist countries" (FBIS, Asia, June 12, 1980]. On August 25, 1981, Defense Minister Humberto Ortega claimed that "Marxism-Leninism is the scientific doctrine that guides our revolution" [FBIS], Latin America, August 27, 1981].

The lack of non-alignment in Sandinista foreign policy can be most clearly seen in their voting at the United Nations. For example, at the 38th General Assembly meeting, the Sandinistas voted with the Soviet Union 96 percent of the time. At the 39th General Assembly, they abstained rather than vote to condemn the Soviet Union for its invasion of Afghanistan. (Ironically, the Soviet Union has recently admitted that the invasion was a "mistake", and illegal under international law.) The Sandinistas went further in 1983 by abstaining from the UN vote condemning the Soviet shoot-down of KAL 007 in which a U.S. Congressman was killed. It might be noted that if the Sandinista regime were to be judged by its UN voting record, it would rank with only Stalinist Albania in its anti-U.S. fervor.

*Their Promise:* Guarantees of a mixed economy, free labor unions, free press, freedom of religion, and private enterprise.

*Their Compliance:* Within one week of taking power, the interim GRN nationalized all banking institutions and foreign trade companies. This meant that independent (i.e. private) producers of exports such as coffee, sugar, cotton, and fish would have to sell to the government, giving the Sandinistas a virtual monopoly over all export markets. In addition, more than 130 industries and businesses were confiscated. As one study put it, the result was a drop in exports from $646 million in 1978, to only $210 million in 1986 [A Grim Reality Behind Sandinista Promises; The Heritage Foundation; September 1988].

In labor relations, the GRN and the Sandinista Front for the Liberation of Nicaragua (FSLN) created their own party-controlled unions to undermine and discredit the anti-Somoza, independent unions. The two government-created unions were the Sandinista Confederation of Labor and the Association of Agricultural Workers. The new unions branded the previously anti-Somoza, independent unions as "instruments of U.S. imperialism" and resorted to violence to crush union spirit. As a further hindrance to union activities, strikes were banned throughout the country on September 6, 1981.

To control the information flow to the citizenry, the Sandinistas moved quickly to gain authority over all information outlets. They confiscated one of the country's two daily newspapers, all television stations and the majority of radio outlets. The only independent newspaper allowed to remain open was La Prensa, which has been closed numerous times, and is repeatedly censored. Even then, it was only allowed to reopen under severe restrictions. In addition, it has had their equipment tampered with and destroyed, and its newsprint and ink withheld.

Examples of press restrictions abound in Sandinista Nicaragua. In April 1980, a radio newsman was sentenced to six months imprisonment for broadcasts "detrimental to the revolution", though no law making this a crime yet existed. After an anti-Cuban and anti-Sandinista demonstration in the Atlantic Coast region in September 1980, La Prensa was ordered not to print any news from the region without government approval [Sandinista Promises; Senate GOP Policy Committee; February 1, 1988].

The curtailment of religious freedom began almost immediately after the July 1979 revolution. This surprised many observers since the Catholic Church had been on the cutting edge of the opposition to the Somoza dictatorship. Indeed, many of the Sandinista leaders were Catholic priests. However, these priests were not traditional Catholics. They were adherents to so-called "liberation theology" which identifies Marxism and Christianity as co-existent equals. The regime then allowed these priests to form what have become known as "popular churches". They served as a radical alternative to the main-line church allied with the Vatican. They were also financially supported by the regime and the FSLN party apparatus.

Religious oppression has also reached into the pulpit and onto the airwaves. In July 1981, the Sandinistas banned broadcasts of the mass of Cardinal Miguel Obando y Bravo. The Church's Radio Catolica has been closed several times and its director was even forced into exile at one point. In August 1982, Father Bismarck Carballo, the spokesman for the Church and the director of Radio Catolica, was beaten and forced to walk naked before Sandinista Television System cameras and Interior Minister Tomas Borge.

*Their Promise:* Free and fair democratic elections.

*Their Compliance:* Compliance with this promise has been the most difficult for the Sandinistas. In the early years, they repeatedly claimed that elections could not be held because the country had more urgent needs. In August 1980, Defense Minister Humberto Ortega confirmed what many in the United States believed would ultimately happen. He announced that elections would be delayed until 1985, a full six years after Sandinista assumption of power. As Sandinista Comandante Bayardo Arce succinctly put it: "We see the elections as one more weapon of the revolution to bring its historical objectives gradually into reality. Therefore we intend to take advantage of them" [Comandante Bayardo Arce's Secret Speech before the Nicaraguan Socialist Party (PSN); Department of State; March 1985].

The Sandinistas finally held elections on November 5, 1984, under intense international pressure. As expected, the elections were a sham and even the Sandinistas supporters in Western Europe condemned them. The leftist newspaper Le Monde editorialized that they "do not deserve to be dignified by the name" elections [A Grim Reality Behind Sandinista Promises; The Heritage Foundation; 1988]. The only true opposition party participating in the process led by Arturo Cruz, attempted to pull out, but was barred from doing so by Sandinista election officials. In reality, the Sandinistas had no opposition to contend with once election day arrived, since their government-controlled mobs harassed the opposition and ended any semblance of a free electoral process. To further emphasize the lack of a free election, only one head of state attended Daniel Ortega's inauguration. He was Cuba's dictator Fidel Castro, who had not held an election since he seized power in 1969.

CONTADORA PEACE PROCESS

In January 1983, the foreign ministers of Colombia, Mexico, Venezuela, and Panama met on Contadors Island in the Gulf of Panama. The four foreign ministers issued a declaration calling for dialogue and negotiation to settle the ongoing conflict in Nicaragua. These nations, which became known as the Contadora Group, joined with a number of other interested countries in attempting to resolve the conflict through multilateral effort. The countries met dozens of times, and eventually agreed to a twenty one point Contadora Document of Objectives in September 1983. Many of the points were the same as the FSLN promises made in July 1979 to the OAS.

*Their Promise:* Free elections in all Central American countries.

*Their Compliance:* Now almost seven years later, the Sandinistas have yet to hold free elections in their totalitarian state. As was mentioned earlier in this report, elections in November 1984 were not free and fair and were condemned worldwide. Plans for elections in February 1990 are well underway, but the opposition led by Violeta Chamorro faces an uphill battle. Complete state support for the FSLN gives them a strong advantage, but they still must win the ballots of the people.

All other Central American nations have held free and fair elections since the Contadora process began in 1983.

*Their Promise:* Non-intervention in the affairs of neighbors.

*Their Compliance:* It was reported by the House Permanent Select Committee on Intelligence that: "A major portion of the arms and other material sent by Cuba and other Communist countries to the Salvadoran insurgents transits Nicaragua with the permission of the Sandinistas."

"The Salvadoran insurgents use sites in Nicaragua, some of which are located in Managua itself, for communications, command-and-control, and for the logistics to conduct their financial, material and propaganda activities [U.S. Congress, Permanent Select Committee on Intelligence, Report to Accompany H.R. 2760, May 13, 1983].

Since that time, evidence abounds of Sandinista involvement in fomenting discontent and revolution in El Salvador. In July 1985, a car captured in Honduras on its way to El Salvador was found to contain explosives,

ammunition, and other military gear. The hardware was later found to have come from Nicaragua, and was intended for delivery to the Salvadoran guerrillas of the FMLN. In May 1989, it was shown that the Sandinistas continue their violation of Contadora when a large arms cache was discovered in El Salvador. Salvadoran officials discovered hundreds of new Cuban-made AK-47 assault rifles, rocket propelled grenade launchers, and over a quarter of a million rounds of new ammunition. Sandinista involvement in the destabilization of its neighbors is clear and without argument.

ESQUIPULAS II/ARIAS PEACE PLAN

On August 7, 1987, the leaders of all five Central American nations signed the Central American Plan. Popularly known as either Esquipulas II, or the Arias Peace Plan, it was a regional agreement mainly designed to force the Sandinistas to democratize without completely isolating them. It encompassed five major areas including democratization, cessation of internal hostilities, amnesty, ending assistance to external subversion movements, and national reconciliation.

*Their Promise:* Promotion of an authentic democratic process . . . [and] respect for human rights.

*Their Compliance:* The Sandinistas lifted the state of emergency, ended all extra-judicial tribunals, and allowed opposition rallies following the signing of the agreement. However, there have been serious exceptions to this apparent Sandinista liberalization.

On August 15, 1987, Sandinista authorities broke up a rally of opposition groups with extraordinary violence. They used attack dogs, night sticks, electric cattle prods, and government sponsored mobs known as "Turbas Divinas" to break up the rally. Following the rally, Lino Hernandez, director of the Permanent Commission on Human Rights, and Alberto Saborio, president of the Nicaraguan Bar Association were arrested and sentenced to thirty days in jail.

Just two months later, a group of the Sandinista Turbas Divinas attacked a rally of the opposition Mother's of Political Prisoners Movement. Sandinista authorities stood by and did nothing during the attack. This was followed up by another attack by the same Sandinista mobs on the Mother's Movement during a demonstration in Masaya in March 1988. In July 1988, Sandinista internal police broke up a peaceful demonstration in the town of Nandaime with the result of many injuries and numerous arrests. The regime then expelled the U.S. ambassador and seven other embassy personnel the following week. This resulted in a swift condemnation by the U.S. Congress, but nothing further.

*Their Promise:* Cease-fire within Nicaragua.

*Their Compliance:* On February 20, 1988, Sandinista leader Daniel Ortega announced that he would "crush the contras" if they refused to continue regional peace talks as called for under the Arias Peace Plan [*Washington Post;* February 21, 1988]. On March 15, 1988, the Sandinistas launched a massive offensive to defeat the democratic resistance on the battlefield prior to the beginning of regional talks. Over six thousand troops took part in this offensive, which was called the "Triumph or Death" campaign. The Sandinistas followed this offensive with a threat to annihilate the democratic resistance if they failed to agree to a cease-fire on his regime's terms.

*Their Promise:* Amnesty for political prisoners.

*Their Compliance:* Following the signing of the Plan on August 7, 1987, the Sandinistas moved slowly to implement their pledge to release political prisoners. On November 22, the regime released 985 political prisoners to great fanfare of the government and international press. The regime followed that up with the release of another 100 political prisoners in accordance with the agreement reached at Sapoa, Nicaragua in March 1988. However, it should not be forgotten that an estimated 5,000–6,000 political prisoners remain in Sandinista prisons [Nicaraguan Compliance with the Central American Peace Plan; U.S. Department of State; 1988]

*Their Promise:* National reconciliation.

*Their Compliance:* The National Reconciliation Commission, established on August 25, 1987, under the leadership of Cardinal Obando y Bravo, had limited success and lots of problems. Talks began in October of that year, but were suspended on November 26 following the opposition proposal calling for minimal, but important reforms to the Sandinista regime. The talks resumed in March 1988, but collapsed only one month later when the Sandinistas broke its pledge to begin talks with independent labor unions.

THE SAPOA ACCORDS

Signed between the Sandinistas and the Democratic Resistance in the small Nicaraguan border town of Sapoa on March 23, 1988, the Sapoa Cease-fire Agreement was initially seen as a way to resolve Nicaragua's long running civil war. The agreement incorporated a cease-fire and separation of forces, amnesty, no U.S. military aid to the democratic resistance, democratization, and international verification. Since the signing, the results have been mixed at best, and the civil war continues to this day.

*Their Promise:* Cease-fire and separation of forces.

*Their Compliance:* On April 4, 1988, the Sandinistas violated the truce by launching artillery attacks on democratic resistance positions. This was followed up by attacks by Sandinista troops on the small Honduran town of Suji. Numerous attacks of this type occurred throughout the cease-fire until it was unilaterally cancelled by the Sandinistas in October 1989.

*Their Promise:* Gradual amnesty for political prisoners and former members of the Somoza National Guard.

*Their Compliance:* To implement this provision, an agreement between the Resistance and the Sandinistas regarding the movement of the Resistance into cease-fire zones was necessary. However, after four unsuccessful rounds of talks meant to bring about an agreement on such enclaves, the Sandinistas refused to sign any such accord. Without an agreement, the democratic resistance continued to adhere to the unofficial cease-fire, and the Sandinistas did not release any of the estimated 5,000–6,000 political prisoners remaining in jail.

*Their Promise:* Democratization and national reconciliation.

*Their Compliance:* On March 28, 1988, the independent newspaper *La Prensa* was forced to close when its government allocation of newsprint ran out. When U.S. charity organizations attempted to donate newsprint, they were initially denied permission until strong international pressure was brought.

The following month, Sandinista riot police used rubber truncheons to disperse striking workers and their families. In addition, a number of persons distributing pamphlets from the opposition were arrested.

As was mentioned earlier, Sandinista security forces attacked an opposition rally in the town of Nandaime on July 10, 1988. A number of foreign observers were present at that rally; including RSC Executive Committee member Tom DeLay (TX). Afterwards, he was quoted as saying: "The Sandinistas intended all the time to go in and beat up the crowd, throw tear gas at them, and arrest their leaders. The crowd had done nothing—no rocks, no punches. Somebody may have yelled something, we couldn't hear. But the police grabbed two people, threw them into covered jeeps, and took off with them. They knocked one guy out. Knocked him cold out." [Washington Times, 7/12/88.]

TESORO BEACH AGREEMENT

On February 14, 1989, the leaders of the Central American nations met at Tesoro Beach in El Salvador. Once again, the Sandinistas agreed to a series of standards which sounded very familiar. They included democratization and national reconciliation, electoral reforms, free and fair elections in February 1990, UN and OAS supervision of process, release of political prisoners, and cessation of military aid to guerrilla movements.

*Their Promise:* Democratization and national reconciliation.

*Their Compliance:* Since February 1989, the Sandinistas have made what many would term "cosmetic attempts" to democratize and bring about national reconciliation. On one hand, most internal security measures have been lifted, but the dreaded Law for the Maintenance of Public Security remains on the books and enforced by Tomas Borge's Interior Ministry. Press censorship has been lessened, but conditions still fall far short of complete freedom of the press.

As for other efforts at increasing national reconciliation, Church harassment by the regime is ongoing, and it continues to support the alternative "popular church." In addition, the Sandinistas routinely conduct sweeps through the poor areas of the cities and rural areas sympathetic to the resistance to gather up young men of draft age.

*Their Promise:* Electoral reforms.

*Their Compliance:* In late April 1989, the Sandinista-controlled Assembly passed a set of election laws which were a far cry from what was originally expected. The new laws, which did not evolve from direct, good faith talks with the opposition, left the Sandinistas with a distinct, almost insurmountable, advantage in preparation for the February 1990 balloting. The Supreme Electoral Council, which was tasked to run the election, will have four of its five members sympathetic to the Sandinistas.

The Opposition will be limited to thirty minutes a week of television time, while the Sandinista Party actually retains exclusive control of the network. The Opposition are only allotted forty-five minutes per day of radio time on the government stations, and they must share it among the many disparate parties. The new laws also provide that One-half of any foreign funds going to the Opposition, will be given to the Electoral Council, for distribution to the other parties running in the election.

*Their Promise:* Free and fair elections.

*Their Compliance:* At the present time, the electoral process is progressing on schedule. However, the limitations placed

on the registration process raised danger signals in Washington. The Sandinistas limited the vote registration process to only four Sundays in the month of October. So far, they have refused to extend the registration process for those Nicaraguans living in exile, in refugee camps, and the ten percent of the population which was not able to register during the four Sundays in October. Although most observers have said that overall registration stands at close to 90 percent, an extension of the process would allow the Nicaraguan people to fully participate in the democratic process.

*Their Promise:* UN and OAS supervision of the electoral process.

*Their Compliance:* Both the United Nations and the Organization of American States have agreed to participate in the process by the serving as observers. The U.N. force, known as ONUCA, will serve along the border in order to assure that there are no cross border raids by either the Resistance or the Sandinista army.

*Their Promise:* Release of all political prisoners.

*Their Compliance:* The Sandinistas have repeatedly agreed to fulfill this promise since the early 1980s. However, the releases agreed to under Esquipulas II, Sapoa, and Tesoro Beach have never been fully complied with. The Sandinista regime released approximately 1894 former National Guardsmen in late 1988, but still hold many estimated 5,000–6,000 Nicaraguans still in prison for "political" offenses. There has been no general amnesty, but rather pardons for specific individuals. The Sandinistas claim that they only hold 1,600 prisoners, and the International Committee of the Red Cross (ICRC) agrees with this figure. However, the ICRC was only allowed to visit nine of the Sandinista's sixteen prisons. The Sandinistas continue to refuse an open inspection of state security prisons or detention centers by impartial international observers.

*Their Promise:* Cessation of aid to regional guerrilla movements.

*Their Compliance:* Since February 1989, media reports quoting intelligence sources have stated that Soviet-bloc military aid to Nicaragua has kept up with last year's record $515 million. It is believed, based on previous experience, that the majority of assistance to the communist FMLN in El Salvador either originates or passes through Nicaragua. On October 18, 1989, Honduran authorities seized a truck in the town El Espino, along the Honduran-Nicaraguan border. This was their third seizure of the year, and was the largest ever made by Honduran authorities of weapons and equipment. Among the weapons seized were 20 AK-47 assault rifles, 9 Galil rifles, 4 M-16 rifles, 17 M-3 machine guns, 30 RPG rounds, hundreds of mortar rounds, Claymore land mines, and 100 hand grenades. This is only a partial list of the weapons seized, but does show the sheer amount of the seizure and the type of weapons which were being shipped to the FMLN guerrillas in El Salvador. The driver of the truck, who was arrested, stated that he had been making this type of delivery through El Espino into Honduras once a month since August 1988.

THE AGREEMENT AT TELA

On August 7, 1989, another turning point was reached in the campaign to bring freedom and democracy to Nicaragua. It was there that the five Central American leaders agreed upon a timetable for the complete demobilization of the Nicaraguan Democratic Resistance. In essence, the Tela Accord meant that the Resistance must now demobilize, and decide whether or not they want to return to Nicaragua prior to February 1990.

*Their Promise:* Pledge to maintain direct liaison and contact with the democratic resistance.

*Their Compliance:* No such meeting was held until November 9, 1989 at the United Nations. Interestingly, this meeting was not expressly meant to discuss Resistance demobilization, but also the Sandinista cancellation of the 19-month long cease-fire.

In late October 1989, Sandinista leader Daniel Ortega, while attending a summit commemorating Costa Rica's democratic tradition, announced that he was planning on cancelling the 19-month long cease-fire in effect since Sapoa. In the face of international indignation, Ortega said that he might reconsider if the Resistance demobilized and disbanded immediately. On November 1, 1989, the Sandinistas ended the on-going cease-fire and began a full-scale offensive against the Resistance to crush it as a military and political force prior to February's election.

Talks between the Sandinistas and the Resistance resumed on November 10, 1989, but they appeared to be deadlocked since the Sandinistas were making only one demand, that the Resistance disband, and then there would be a resumption of the cease-fire. This new development casts a shadow over the electoral process and may bring into doubt whether or not the elections can actually be held in a free and fair manner.

## THE UNITED STATES RESPONDS TO DEVELOPMENTS IN EASTERN EUROPE

### HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. FEIGHAN. Mr. Speaker, I want to draw my colleagues attention to Mary McGrory's November 14 Washington Post column. This respected journalist takes President Bush to task for failing to respond adequately to the developments in Berlin and Eastern Europe. While the rest of the world is urging Eastern Europeans to press ahead with their process of democratization, the President struggles to identify America's sentiments about the revolutionary changes occurring in the Eastern bloc. She characterizes the perception of some to these developments as "those people who see a newborn baby and think of all the trouble it will cause, disrupting its parents' lives, maybe breaking their hearts. Others cheer the simple fact of birth: It means life goes on and represents limitless possibilities."

There is concern that the Bush administration has been caught off guard. President Kennedy responded when he went to Berlin and proclaimed proudly "Ich bin ein Berliner." Even President Reagan, who referred to the Soviet Union and its satellites as the "evil empire," would have extolled the virtues of Eastern European developments and he would have proclaimed a victory for freedom and democracy.

Mr. Speaker, Mary McGrory's column is an accurate portrayal of the malaise affecting the Bush administration in its effort to be prudent and cautionary in dealing with Eastern Europe's democratic, revolutionary changes. Ms. McGrory is right when she states that it is one of the President's duties to reflect the national emotion at an event as staggering in its magnitude as the erosion of communism in Eastern Europe.

We should not gloat or take credit for the changes taking place in Eastern Europe, but the United States should let the world know that it unequivocally supports the opening of the East to the West. I ask that a copy of the article be placed in the CONGRESSIONAL RECORD following my statement:

BERLIN AND BUSH'S EMOTIONAL WALL

(By Mary McGrory)

Why did the leader of the western world look as though he had lost his last friend the day they brought him the news of the fall of the Berlin Wall?

George Bush's stricken expression and lame words about an event that had the rest of mankind quickly singing hosannas were an awful letdown at a high moment in history. He later, laboriously, escalated his enthusiasm.

All he needed to have said was a simple, fervent, "Let freedom ring."

His first reaction could perhaps be explained by an observation from a man who served a president who went to the wall and proclaimed "Ich bin ein Berliner." On the "Today" show, Ted Sorensen, speech writer for John F. Kennedy, said, "We have contingency plans for war, but none for peace."

Rep. Gary Ackerman (D-N.Y.) put it another way. "We have generals working on worst-case scenarios; we need statesmen on best cases."

Still, there are those people who see a newborn baby and think of all the trouble it will cause, disrupting its parents' lives, maybe breaking their hearts. Others cheer the simple fact of birth: It means life goes on and represents limitless possibilities.

Maybe Bush looked at the jubilant throngs at the wall, some with champagne, some with pickaxes, all joyful, and thought, "And what happens to NATO?" Or, "The military budget will be slashed, and people will start saying Northrop should build subways cars instead of B-2s, and 'Star Wars' is down the drain."

To be fair, Bush could hardly have seen the tumultuous events coming. Who did? This was a wall that came tumbling down without the help of a Joshua. It was not like Poland, which had Lech Walesa, the daring labor leader who has come to Washington this week to address Congress and to accept the Robert Kennedy Human Rights Award for China's Joshua, dissident astrophysicist Fang Lizhi, who is holed up in the U.S. Embassy in Beijing.

The great catalyst, Mikhail Gorbachev, helped as much as anyone by what he did not do. No tanks, he told the frightened East German apparatchiks, who were huddled under their desks as the country quietly emptied itself of young professionals. We had nothing to do with it, except to provide the informing ideas—several centuries ago—in the Declaration of Independence and other such incendiary documents.

And Bush, to be fair, had no reason to expect East Germans, of all people, to break out and give the world a demonstration of democracy at its purest and most potent.

Fifty-one years ago, on Nov. 9, 1938, the Nazis staged one of their most hideous premonitory atrocities, the night they burned synagogues, chased Jews and smashed Jewish shops and businesses. Now Nov. 9 goes into the history books on a golden page.

But people who remember the old days are dubious about reunification, which is now talked of openly and at the highest levels. If their booming economy fails, would the Germans turn again to totalitarianism? We must hope that the extremism that made them so susceptible to Nazism will be channeled full force toward freedom.

The East Germans seem to have caught a bad case of what Thomas Jefferson called "the virus of democracy." And being among the world's most thorough and efficient peoples, they have outdone all expectations in bringing it about. After the visit of Gorbachev to East Germany, they rose up and poured out of their houses, demanding liberty. Some of them kept going until they got to the West via Hungary and Czechoslovakia. Others put candles in their windows to express opposition to their communist overlords. The opposition parties were nowhere near the levers of power. Events were moving too fast for them, too. Spontaneity, never considered a strong element in the German character, broke out all over.

West Germany has risen to the occasion. It met the people streaming through the wall with open arms. The government gave them $50 to spend in the Babylon of West Berlin. In the countryside, we were given a preview of the swords-into-plowshares theme that could prove contagious. U.S. Army hospitals, which had been built to treat the casualities of an armed invasion from the east, were converted into shelters for the voluntarily homeless East Germans who chucked it all to live free.

In preparation for the next time something as glorious occurs, Bush may be studying how to be giddy, as the fall of the wall warranted. One of his duties is to reflect the national emotion at an event of staggering significance. Also, he might reflect that the end of the Cold War, which the wall symbolized, can help solve real problems, like the deficit, the homeless, the afflicted and the addicted. He should enjoy.

## STATEMENT UPON INTRODUCTION OF THE CABLE TELEVISION CONSUMER PROTECTION ACT OF 1989

### HON. JIM COOPER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. COOPER. Mr. Speaker, there is a growing consensus in the Congress that Federal policy needs serious reform in order to protect consumers from the many problems and abuses of the cable television industry.

When the Cable Act of 1984 was passed, Congress approved deregulation of local cable rates believing that competition would adequately govern cable prices. Since then, unregulated cable monopolies have engendered problem after problem. Members of Congress hear regularly from dissatisfied cable customers, who complain of high rates and poor service, and angry satellite dish owners, who are denied equal access to cable programming. Local governments, broadcasters, small cable operators, microwave distributors of video programming and others have urged Congress to revise our national cable television policy.

The reason for the outcry is that deregulation has produced all of the tell-tale signs of monopoly abuse:

Cable television rates are unchecked and soaring;

Local cable distribution networks are being acquired by the same conglomerates that are seizing control of the major monopoly problems of horizontal concentration and vertical integration; and

Companies attempting to deliver television programs in real competition with existing cable television are being snuffed out by those same large cable conglomerates;

Last week, there were major developments in the U.S. Senate on these issues. Senator JACK DANFORTH and 14 other Senators introduced legislation to correct the shortcomings of the Cable Act. Senator DANIEL INOUYE, chairman of the Senate Commerce Subcommittee on Communications, announced his intention to press for cable reform legislation next year.

Mr. Speaker, today I join them by introducing with Representative CHRIS SHAYS companion legislation to the Danforth bill. We believe it is the starting point for serious legislation in 1990. We believe this bill will restore to this market the competition Congress had in mind in 1984. Absent this sort of real, vigorous competition, we intend to see local rate regulation restored.

The major provisions of this bill would:

First. Redefine the term "effective competition" to mean the existence of one other mutichannel video provider in a cable franchise area; the competing video provider might be a "wireless cable" operator. The purpose is to protect consumers from monopoly pricing and to provide the cable industry with an incentive to allow competition. Under the legislation if there is "effective competition," rates would be deregulated.

Second. Limit cable operators' discretion regarding the carriage and channel placement of local broadcast stations on their systems. The purpose is to ensure that cable subscribers have access to local broadcasting stations.

Third. Make it easier for a city to revoke or deny renewal of a cable franchise to an operator who is not serving its community well. Franchising authorities currently have little leverage over cable operators who raise rates, give poor service or fail to carry programming that consumers want.

Fourth. Not allow a cable programmer that is affiliated with a cable operator to discriminate against nonaffiliates in the price, terms, conditions or availability of their programs. Small cable operators, home satellite dish owners, "wireless cable" operators, and other potential distributors of video programming are often denied or charged more for programs than the companies who are affiliated with programmers.

Fifth. Limit the size of "multiple system operators"—which own systems in several jurisdictions—to 15 percent of the Nation's cable subscribers. The purpose is to encourage diversity by increasing the number of voices available to consumers and to make it easier for new programmers to enter the marketplace. Concentration in the cable industry has given large operators power to decide what cable programs can make it.

We realize that there are other important ideas to be considered regarding proper national policy on cable television, and this legislation may well be improved over the coming months. For now, it represents an sensible balance of the best policies from a number of other bills previously introduced. We pledge our support for passage of cable reforms this Congress.

## LOCAL BUILDING MANDATES UNDERMINE FEDERAL HOUSING PROGRAMS

### HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DREIER of California. Mr. Speaker, government should be taking steps to promote the development of affordable housing, not discourage it. Yet that is precisely the effect that certain government policies, particularly at the local level, have on housing production today.

Barriers like exclusive zoning, regressive property tax burdens, complex building codes, rent controls, and excessive fees add unnecessarily to the already high cost of housing; in some cases they provide perverse incentives to allow existing housing to deteriorate. Local government regulation can add 25 percent or more to the cost of housing. In Orange County, CA, for example, it adds about $50,000 to the cost of a house before the first spadeful of dirt is turned over.

President Bush, in announcing his set of housing initiatives, recognized the critical need to eliminate the mountains of redtape which impede the development of affordable housing. He has asked HUD Secretary Jack Kemp to convene a blue ribbon commission to identify barriers to affordable housing and to make recommendations as to how those barriers can be removed.

The most burdensome local mandates come in the form of development exactions. These have been used by local governments throughout history as a means to extract from developers a number of public services and benefits. Traditionally, exactions have been limited to infrastructure and utilities.

However, as a result of the nationwide tax revolt led by Proposition 13 in California, the use of exactions has increased with impunity. Rather than serving as a legitimate land-use policy, exactions have become a major alternative to conventional taxing schemes. Today, local governments require, as a condition for obtaining building permits, that developers provide, either in-kind or in-money, benefits and services such as fire stations, day care centers, schools, and job training.

This is not to suggest that land-use regulations do not provide important public benefits. New roads, sewer and utility lines are necessary to keep up with population growth. How-

ever, communities demanding increased Federal housing assistance need to recognize that there is a tradeoff between real estate exactions, rent controls, and growth restrictions, and the cost of housing.

The Federal Government can no longer be asked to shoulder the burden of new Federal housing programs while State and local governments implement zoning restrictions and impact fees which act as barriers to the development of affordable housing.

With the cost of housing now beyond the reach of many low- and moderate-income families, Congress is under pressure to increase home ownership opportunities, particularly for first-time homebuyers. This provides a unique opportunity for Congress to implement proposals to encourage State and local governments to reduce home building regulations.

I have developed a comprehensive proposal that I intend to offer when Congress considers a new housing bill early next year. The purpose is to create meaningful incentives for State and local governments to examine those laws and regulations which are questionable in terms of the public benefits derived from them, yet contribute in a significant way to the problem of housing affordability.

The proposal does two things. First, it requires CDBG recipients to submit, as part of their applications, a comprehensive housing affordability strategy. The strategy includes an explanation of the effects of land and property taxes, land use controls, building and construction standards, rent limitations, growth limits, and impact fees on the cost of housing. It also includes a plan to address the negative impact of these regulations on the cost of housing or the development, maintenance and improvement of affordable housing.

The second provision creates, in statute, the joint venture for affordable housing. This is a highly successful public-private venture that brings together builders and local officials to identify and implement cost savings by modifying or interpreting local building codes and site development regulations. Unfortunately, the joint venture, which was established by directive in 1982 by former Secretary Samuel Pierce, was recently eliminated by HUD.

This is a worthwhile program that needs to be retained and expanded. In fiscal year 1989 alone, the joint venture program is projected to save $479 million from 80,977 housing units. The average savings amounts to 15 percent for single family units, and 22.8 percent for multifamily units.

The California Association of Realtors once observed that "the key to solving housing affordability problems in California rests, to a significant extent, with the 500-plus units of local government that wield tremendous control over the regulatory process governing housing development."

So long as this regulatory process continues to threaten housing affordability, proposals to expand Federal housing programs will be ineffective. Congress can do little to solve the affordability problem for middle-income families unless steps are taken to mitigate restrictive or exclusionary housing policies by State and local governments.

## INFRASTRUCTURE: THE KEY TO OUR QUALITY OF LIFE

### HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ANDERSON. Mr. Speaker, I am submitting today some very important information from Constructor magazine, November 1989, concerning the state of our Nation's infrastructure.

There has been serious neglect of the Nation's transportation and environmental infrastructure in recent years and it is imperative that we reverse that trend. The Nation's economy cannot continue to prosper with a deteriorating infrastructure.

Constructor magazine makes the important point that the quality of life in 20th century America depends on an adequate infrastructure. By neglecting our infrastructure, we are actually allowing our quality of life to deteriorate. Constructor magazine presents an excellent summary of our Nation's infrastructure needs.

AMERICAS INFRASTRUCTURE: THE KEY TO OUR QUALITY OF LIFE

American history has shown that the very essence of the American experience is striving to make a better life, to build, and to leave behind more than we found when we arrived. In recent years not only have Americans sought an ever higher standard of living, making their children's lives better than their own, they have also become intensely concerned over the quality of that life.

Only through investing in our nation's infrastructure—the roads, bridges, airports, educational and public buildings, water supply and wastewater treatment facilities, and solid waste disposal facilities that form the backbone of our communities—can we as a nation make sure that the quality of life so valued by this generation will be in place for future generations.

Yet, for the past two decades America has been neglecting these same public works. Capital spending on public works investment dropped from 2.3 percent of the gross national product in 1960 to less than 1.1 percent in 1985. The United States now ranks 55th in the world in capital investment in infrastructure.

It is now, widely recognized that the condition of America's infrastructure is at a crisis stage, endangering the public safety, lowering U.S. economic competitiveness, and diminishing the overall quality of life. But the current situation won't even approach the critical nature of the future crisis if remedial actions are not taken now. America's population is expected to increase by 44 million over the next 30 years, adding even more pressure to already overburdened public works facilities.

What has caused this decline in infrastructure investment and, consequently, in our quality of life? Since 1970, the American economy has created jobs at a rate twice that of population growth. Metropolitan areas now account for three-quarters of the total U.S. population, with more than 40 percent of America living in the suburbs. Nearly 90 percent of the growth during the 1980s has been in metropolitan areas.

At the same time, the relationships between federal, state, and local governments have been undergoing some major changes during the 1980's. The federal budget deficit, as well as a philosophical view during the Reagan presidency that more responsibility should shift to the state and local level, has resulted in the termination or reduced funding of many programs that had financed infrastructure projects. The federal share of infrastructure spending for fixed capital formation declined from 41 percent in 1981 to 34.5 percent in 1986. From 1980 through 1987, federal aid to states and cities declined 37 percent in real terms (adjusted for inflation).

Even some of our more vital infrastructure programs are being held hostage to the federal budget deficit. Users of the nation's transportation systems contribute user fees—in the form of gasoline taxes and the ticket tax on air travel—to be held by the federal government in dedicated trust funds. The proceeds of these transportation trust funds can only be spent for surface and aviation transportation programs. When the federal government does not invest all the money that is collected for pressing highway and airport needs, a balance mounts in the federal treasury that is used to reduce borrowing needs to finance other federal programs. Currently, about $28.8 billion remains unspent in these two funds while Americans cool their heels on airport runways and in traffic jams.

It is now universally understood that postponing action on infrastructure investment only leads to increasing costs. Not only do facilities continue to deteriorate, but a four percent rate of inflation would mean that a 60 percent increase in funds would be needed by the year 2000 just to have the same buying power.

If the costs of delay are prohibitive, the benefits of taking action now are enormous. David Aschauer, a senior economist at the Federal Reserve Bank of Chicago says that "Raising the level of public investment spending from its current abysmal level of less than one-half of one percent of GNP to a modest two percent—some $80 billion to $90 billion dollars per year would work wonders." The economic returns would not only help ensure our standard of living, but our quality of life as well.

CLEAN WATER

Cleaning up the nation's polluted rivers, bays, and streams to preserve the environment for fishing and recreational uses continues to be a priority demanded by the nation's citizens. Since the signing of the Water Quality Act of 1965, more than $60 billion of federal funds have been spent cleaning up the nation's waterways. The quality of some 47,000 miles of monitored streams has markedly improved as a result. In Lake Erie—pronounced biologically dead 15 years ago—perch, walleye, and even largemouth bass and coho salmon are thriving. Trout have returned to the Hudson River near New York City.

According to the Environmental Protection Agency's National Water Quality Inventory Report, substantial reductions have occurred in pollutants. Sewage treatment plants are removing about 13,600 tons per day of the two principal conventional pollutants—suspended solids and Biological Oxygen Demand—an increase of 65 percent over 1973 levels.

But elsewhere, 311,000 miles of water have worsened or remain unchanged. The Environmental Protection Agency compiles a biannual survey of the cost of constructing publicly owned wastewater treatment works

necessary to meet the goals of the Clean Water Act. Included in the survey are estimates for all types of required changes to wastewater facilities, such as the construction of entirely new facilities and enlarging, upgrading, or replacing existing facilities. Existing facilities are considered for replacement when they have reached the end of their design life and are no longer able to operate satisfactorily.

The 1988 Needs Survey identifies "current needs" for facilities to meet wastewater treatment needs of the U.S. population on January 1, 1988. The survey also provides a projection of "design year needs"—the facilities that will be required to adequately protect the environment by providing the wastewater treatment required for a projected population in the year 2008.

Wastewater treatment plant construction to meet the needs of the population in 2008 will require an additional investment of $83.5 billion. These needs fall into seven categories:

Secondary Treatment—$26.8 billion.

Advanced Treatment—$5.0 billion.

Infiltration/Inflow Correction—$2.9 billion.

Replacement/Rehabilitation—$3.7 billion.

New Collector Sewers—$13.8 billion.

New Interceptor Sewers—$14.9 billion.

Combined Sewer Overflows—$16.4 billion.

However, the EPA has estimated that 400 cities and towns will be unable to meet the deadlines set by the Clean Water Act for their secondary treatment facilities. Of the rivers and streams in the United States that do not meet their state water quality standards, 17 percent are failing because of pollution from inadequate wastewater treatment. Of U.S. estuaries, 22 percent are not meeting standards because of needed wastewater plant construction.

Eighty-seven percent of all publicly owned sewage treatment plants in the country provide secondary or better treatment for 95 percent of the nation's sewage. Secondary treatment protects communities from the disease potential of untreated human waste and removes materials that can rob waters of oxygen necessary for aquatic life.

When the Clean Water Act was reauthorized, only $2.4 billion annual funding level through FY 1991 was provided toward meeting these $83.5 billion future needs. Federal funds are reduced in the following fiscal year and end completely after 1994. Additional funds are being raised at the state and local level, despite unfavorable changes in the laws governing tax-exempt bonds. State by state needs are tabulated with New York, California, Florida, Massachusetts, and Texas showing the largest construction needs to meet clean water targets.

A separate survey conducted by the Association of State and Interstate Water Pollution Control Administrators summarizes the 7,590 identified municipal wastewater treatment projects that will be necessary to first bring communities into compliance with the Clean Water Act, and then keep them in compliance over the next five years as population increases.

HAZARDOUS WASTE

Another component of the solid waste problem became a focus of attention in the early 1970s—the potentially hazardous wastes generated by industrial production. Every year about 3,000 facilities manage 275 million metric tons of hazardous waste as defined by the Resource Conservation and Recovery Act of 1976 (RCRA). Under this definition, wastes are hazardous if they pose a fire hazard, dissolve materials, or are acidic, explosive, or otherwise dangerous to human health or the environment.

Most hazarous waste results from production of widely used goods such as polyester and other synthetic fabrics, kitchen appliances, and plastic containers.

Wastes that are not properly disposed of can cause health problems ranging from headaches to cancer. Hazardous wastes can also seriously damage the environment by seeping into surface waters and killing fish and other aquatic life, for example. The vast majority of hazardous waste managed annually is treated in man-made surface ponds and wastewater treatment plants. A relatively small amount—about 2 million metric tons annually—is incinerated. A number of different treatment technologies are used on hazardous wastes to render them less toxic before final disposal.

A more serious problem is the cleanup of uncontrolled disposal sites containing hazardous wastes and other contaminants. These sites can contaminate groundwater, cause explosions, and present other dangers to people and the environment. Most sites where hazardous materials have escaped are linked to the chemical and petroleum industries. Many are municipal landfills that have become hazardous as a result of accumulated pesticides, cleaning solvents, and other chemical products discarded in household trash. A few are the result of transportation spills or other accidents. Radioactive materials are hazards at about 20 sites.

Approximately 30,000 potentially contaminated sites may pose a threat to human health or the environment. The process for obtaining financing from the Superfund—the federal hazardous waste cleanup program—begins with site discovery. The sites currently identified range from a closed-down hazardous waste incinerator in Maine to a leaking underground pipe in Florida. After site discovery, the EPA conducts a preliminary assessment to determine whether further investigation is necessary. If so, a site inspection is conducted to assess the potential danger and the site is evaluated using a hazard ranking system. Sites with scores of 28.5 or higher are placed on the National Priorities List for attention under Superfund.

Since the Superfund program was established in 1980, almost 9,000 sites have been found to require no further action, and more than 8,000 site inspections have been conducted. The number of Superfund sites on the National Priorities List now totals 1,224. On these sites, further studies are conducted to determine the nature and extent of the contamination. Cleanup remedies include incinerating contaminated soils to destroy contaminants, depositing contaminated materials in a landfill that is designed to prevent any movement of the contaminants from the fill, and pumping and treating contaminated gound water to clean up an aquifer. To date, more than 140 long-term cleanups have been initiated at Superfund sites across the nation.

QUALITY OF LIFE: AN EFFICIENT TRANSPORTATION NETWORK

America's transportation infrastructure is not only deteriorating from aging facilities, but underinvestment in new facilities is overburdening current transportation networks.

*Highways*

In 1989 Americans will travel more than two trillion vehicle miles by auto, truck, bus, and public transit systems, more than triple the mileage traveled in 1956. From 1980 through 1988 traffic growth has increased at an average rate of five percent annually. Using conservative estimates of only two percent to three percent annual growth, by the year 2005 highway travel is expected to top three trillion vehicle miles, and by the year 2020—only 30 years into the future—total travel in the U.S. is expected to be double what it is today.

America's population will increase by 44 million over the next 30 years. Nearly 90 percent of America's population growth in the 1980s has occurred in metropolitan areas. Three-quarters of the 250 million trips made each day are in metropolitan areas, and more than 90 percent of these trips are made in private motor vehicles. As a result of substantial growth in travel, America's major highway systems in both rural and urban areas have experienced increasing congestion. Urban interstate travel increased 13.4 percent from 1985 to 1987, with other urban freeway and expressway traffic increasing 12.9 percent during the same two-year period. The percent of peak-hour travel on urban interstates that occurs under congested conditions has increased from 54 percent in 1983 to 61 percent in 1985 and to 65 percent in 1987.

Travel delays in the nation's largest urbanized areas now cause the loss of nearly two billion hours annually. A Department of Transportation study has estimated that by the early 21st century delays are likely to be several times greater than they are today.

A 1983 Federal Highway Administration Study indicated that 11 percent of all labor force work hours are spent on the highways. Obviously, a 10 percent or greater reduction in their travel times could have a marked effect on national productivity. The reverse is also true; increases in travel time are having a negative effect on the productivity of the nation's industries.

FHWA statistics show that more than 11 percent of principal highway miles are deficient and therefore in need of resurfacing or reconstruction. By 1990, 35 percent of the interstate system will have outlived its design life. Most of the highway system was not designed to carry current loads, and a single, modern 80,000 pound truck can inflict as much wear and tear on an interstate highway as 9,600 cars.

Operating costs are closely correlated with pavement condition. Truck costs shoot up by 6.3 cents per mile when road conditions drop from "good" to "fair". Continuing to fund our highways at the current level will result in further deterioration of the highway system, resulting in an estimated $1,000 increase in vehicle operating costs per household. The relationship fortunately works the other way as well. Every $1 invested in highways reduces direct operating costs by $3 to $4.

Recently the American Association of State Highway and Transportation Officials conducted a comprehensive study of the future capital needs of the nation's surface transportation systems. In their final report "The Bottom Line: A Summary of Surface Transportation Investment Requirements 1988-2020." AASHTO estimated annual capital investment requirements of $58.5 billion to meet future highway transportation needs. This compares with current annual expenditures by all levels of government of $31 billion.

Federal, state, and local governments spend 3.2 cents per vehicle mile to fund the capital, maintenance, and operation expenses for the nation's highway system.

Compared with the cost of owning and operating an intermediate-sized vehicle, which is currently estimated at 33.4 cents per mile, expenditures on highway infrastructure represent less than 10 percent of vehicle costs. An additional 1.1 cent-per-mile investment would be enough to fund the current capital investment shortfall, both improving pavement conditions and financing new highways to meet growing population needs.

*Bridges*

Inadequate bridges are one of the nation's more pressing infrastructure problems. More than 41 percent of the 577,710 bridges included in the 1988 National Bridge Inventory are either structurally deficient or functionally obsolete. A structurally deficient bridge is one that must be replaced. A functionally obsolete or deficient bridge is one that cannot handle modern traffic loads safely and requires either widening or replacement.

As of June 1988, 238,357 bridges were deficient either structurally or functionally, a two percent improvement from the 243,646 bridges rated inadequate in 1986. The tremendous backlog of bridges needing replacement and rehabilitation, along with estimated needs to meet growth, will require an investment of $93 billion between now and the year 2005 as estimated by the Federal Highway Administration.

The number of structurally deficient bridges increased to 135,826 in June of 1988 from 131,562 in 1986. The number of functionally obsolete bridges decreased from 112,084 in 1986 to 102,531 in 1988; part of the decline was the further deterioration of functionally obsolete bridges due to aging and heavy traffic, causing them to be moved to the structurally deficient category.

Bridge conditions on the most heavily trafficked highways have generally deteriorated. The proportion of Interstate bridges classified as deficient rose from 10.6 percent in 1982 to 13.1 percent in 1984, to 14.3 percent in 1986, and to 15.9 percent in 1988.

Of the total $93 billion in bridge needs, $67.6 billion is needed to eliminate backlog and existing deficiencies; the remaining $25.3 billion is necessary for accruing needs to the year 2005. The federal government should be expending a minimum of $3.5 billion annually through 2005 to rebuild and replace deteriorated bridges. To meet continuing needs and support the growth in population, a minimum of $4.9 billion should be spent each year.

For a number of years the federal government has been spending less than one-third of the minimum $3.5 billion needed to preserve and provide safe bridges. According to Secretary of Transportation Samuel Skinner, the required repair and replacement of highway bridges in this country will cost two-thirds as much as the original construction of the interstate system.

*Air transportation*

The air transportation system is an increasingly important segment of the infrastructure, now accounting for 17.2 percent of all intercity passenger miles traveled. In 1988 U.S. airlines carried 454.6 million passengers more than 423 billion passenger miles on 6.7 million scheduled flights. Although 66 percent of all Americans over the age of 18 have flown on a commercial airline; the majority of these miles are flown by business travelers, and the air transportation network is crucial to both management of industry and service enterprises. Revenue passenger miles flown have increased on average by 8.9 percent annually over the past ten years, severely straining the capacity of the nation's air transport system.

The Federal Aviation Administration is forecasting a five percent annual growth rate in the number of revenue passenger miles flown by major air carriers from 1988 through the year 2000. Commuter and regional airlines are expected to grow even faster, increasing their revenue passenger miles flown at an annual rate of 8.7 percent through the turn of the century.

As air travel continues to grow at this rapid pace, the Federal Aviation Administration estimates that the number of "seriously congested" airports will increase to 58 by the year 2000, affecting 76 percent of all passengers. This is a substantial increase from the current congested conditions. In 1986 the FAA calculated that 16 commercial service airports met the "very congested" criteria, affecting the 41 percent of all air passengers whose routes took them through these 16 airports.

In September 1989 the Federal Aviation Administration awarded a $60 million grant to Denver, Colo., taking a large step forward in the process of constructing the first new major airport in 15 years. The airport, which has been under review for two years, will be built on a 53-square mile site 18 miles northeast of Denver. The new Denver airport is expected to begin operation in 1993 with five runways, and plans are in the works to expand the airports to 12 runways by the year 2020.

The new Denver airport should handle 817,000 takeoffs and landings and board 33.2 million passengers by the year 2000. The current airport, Stapleton International, frequently operates with one runway during inclement weather, causing backups throughout the nation's air traffic system.

Secretary of Transportation Skinner has commented that "It's a national embarrassment that we've had no new airport in the U.S. since 1974." Secretary Skinner estimated a need for a 55-percent increase in airport capacity by the turn of the century.

Airport capacity expansion needs have been computed by the Federal Aviation Administration as part of the National Plan of Integrated Airport Systems (NPIAS). The assessed needs break down as follows:

Increase Capacity and Expand System—$17.4 billion.

Update and Improve System—4.3 billion.

System Maintenance—$2.6 billion.

*Ports and waterways*

U.S. ports and waterways are integral to the transportation of the goods produced and used by America's agricultural sector, industries, and consumers. In 1988 international shipments rose 16 percent. The value of experts increased by 50 percent over the three-year period from 1985 to 1988. The value of imports rose 28 percent.

The U.S. has 188 deep-draft ports along the Atlantic, Gulf, Pacific, and Great Lakes coasts. In addition, deep-draft navigation on the Great Lakes-St. Lawrence Seaway System requires a series of 16 locks, with 23 separate chambers and connecting channels. Taken together, the U.S. inland waterway navigation system carries about one-third of U.S. waterborne tonnage (foreign and domestic).

Expansion and modernization of the nation's ports and waterways will require investment in a number of projects. On the inland waterway system, a number of locks and chambers are so old that they require major rehabilitation or replacement. For seaports, modernization is necessary to achieve transportation cost savings for a number of ports with depths of less than 50 feet to 55 feet. The Water Resources Development Act of 1986 and 1988 authorized more than 38 projects that should be constructed to deepen or widen channels in these ports, at a total cost of more than $2.7 billion.

Over the last 15 years there has been an increase in the size of vessels involved in waterborne commerce. In 1980 about 35 percent of vessels exceeded 10,000 dead weight tons (d.w.t.). As of 1987 more than 60 percent of the active tonnage in the world tanker fleet exceeded 10,000 d.w.t. These vessels need channels that are deeper than 50 feet. However, there are no harbors on the U.S. Atlantic and Gulf coast deep enough to handle a fully loaded vessel of that size; no harbor exists with a depth greater than 45 feet. Only the Pacific Coast harbors of Los Angeles/Long Beach and some of the ports at Puget Sound have depths of 55 feet to 60 feet.

The driving force behind the need to service large vessels is the cost savings achieved by use of larger vessels. A transportation cost savings of $3 to $5 per ton for trips from the U.S. Atlantic coast to Europe can be achieved, with much greater savings for trips to the Far East. The Office of Technology Assessment has estimated that 10 percent can be cut from the cost of export coal as received by Europe and the Pacific Rim countries if U.S. ports could handle "super-colliers." A Congressional Budget Office report has noted that it would appear cost-effective to dredge one or two ports to 55 feet.

## WERTHEIMER EDITORIAL ON ETHICS-SALARY PACKAGE

### HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SCHEUER. Mr. Speaker, on the last day of the first session of the 101st Congress, my colleagues and I can proudly return to our districts confident that we have just passed a bill that is what Fred Wertheimer, president of Common Cause calls, "the most important vote on congressional ethics since 1977, when the current House ethics code was adopted."

Common Cause, a nonprofit citizens' lobby, has, in the past, been unremittingly critical of what it perceived to be ethical and moral lapses in the practices, procedures, and standards observed by many Members of Congress. However, today I direct my colleagues' attention to the following editorial in the Washington Times in which Wertheimer unequivocably supports the new ethics-salary package of the U.S. Congress.

Mr. Speaker, I am pleased to add this editorial into the CONGRESSIONAL RECORD, and commend my colleagues who can now go home with quiet pride, knowing that they did the right thing.

[From the Washington Times, Nov. 20, 1989]

ARE YOUR ETHICS BETTER TODAY?

(By Fred Wertheimer)

A vote in Congress last week could dramatically change the way business is conducted in Washington.

The legislation, a bipartisan ethics-pay package backed by House Speaker Tom Foley, Democrat of Washington, and House Republican leader Robert H. Michel of Illinois, was drafted to end the present corrupt system that allows members of Congress to pocket tens of thousands of dollars in special-interest honoraria fees.

It's a comprehensive, far-reaching ethics package that provides representatives with the most important votes on congressional ethics since 1977, when the current House ethics code was adopted. The ethics package poses a critical test for Congress: Are they serious about cleaning up the ethics mess in Washington?

[As finally approved late Friday and sent to the President, the House will get the entire original pay proposal, raising member's salaries to $125,000 in 1991, with all honoraria eliminated. The Senate limited itself to what it termed a cost-of-living increase of 9.7 percent beginning in January, 1990, raising their salaries to $98,400 with a gradual reduction in honoraria.]

Under the former honoraria system, special-interest groups pour thousands of dollars—more than $7 million in 1988—directly into the pockets of members of Congress, supplementing their salaries and creating real conflicts of interest with a member's public duties.

The term "honoraria" is one of Washington's greatest misnomers: There is no honor in a system that allows members of Congress to receive fees—of up to $2,000 per appearance—for having a breakfast meeting with lobbyists, touring a manufacturing plant or giving a speech to corporate executives.

The honoraria system has been described in editorials in more than 300 newspapers across the country as "legalized bribery," "rotten payola scheme," "fees for influence," "the shame of Congress."

The practice is wrong, it's corrupting, and it creates a blatant double standard. If members of the executive branch were to supplement their salaries with honoraria for job-related activities, they "would be immediately clapped in irons," according to former Assistant Attorney General William Weld.

The bipartisan ethics-pay bill would help end that double standard and staunch the flow of this special-interest influence money to members of Congress for their personal use.

The comprehensive bill [as it applies to the House in final form] provides an outright ban on accepting honoraria fees, with other prohibitions against taking private fees, and it provides catch-up salary adjustments for representatives, top executive-branch officials, Supreme Court justices and other federal judges. The catch-up increases are intended to deal with the fact that the purchasing power of salaries for top government officials has declined by as much as 35 percent during the past two decades.

By abolishing honoraria and providing catch-up salary adjustments, the bill [as left intact for the House and senior executives] will help ensure that our nation's top public officials are fully compensated by the public, without supplements of private-interest influence money.

The honoraria system is an intolerable ethics scandal that must be dealt with now. And the public officials on whom we depend to lead and govern the nation must be fully and appropriately compensated by the public they serve—not by private interests.

## WHOSE RIGHTS DOES CRÈCHE VIOLATE?

### HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. HUBBARD. Mr. Speaker, as we near the time of adjourning sine die this 1st session of the 101st Congress and prepare to return to our respective congressional districts for the holidays to be with our families, friends, and constituents, I want to share with my colleagues an editorial which appeared in today's edition of the Paducah Sun, a 6-day a week newspaper at Paducah, KY.

Don Gordon, the editorial page editor at the Paducah Sun, the largest circulated newspaper in my congressional district, asks in today's editorial: "Whose rights does crèche violate?"

In Kentucky, the American Civil Liberties Union is upset that Kentucky State officials plan to include a crechè in its capitol holiday display before a Federal appeals court rules on a suit brought by the ACLU about the Nativity scene last year.

The executive director of the Kentucky ACLU complained that including a Nativity scene at this point is divisive and hostile.

On the other hand, however, the Paducah Sun editorial asks: "Who actually is going to be hurt if the State includes a Nativity scene in its Capitol grounds holiday display this year?" The editorial further asks: "Are we really to believe that citizens will swoon in shock or suffer fits of anguish at the sight of a manger display on public property?"

I, for one, think not, and I believe that my views are shared by the great majority of Kentuckians.

I especially agree with that part of the editorial which states: "If the Christians of America can tolerate government-financed sacrilege in the form of a crucifix in a jar of urine, then others surely can make it through the holidays knowing that a Nativity scene has been set up on the Capitol grounds."

The editorial follows:

[From the Paducah Sun, Nov. 21, 1989]

WHOSE RIGHTS DOES CRECHE VIOLATE?

Let's be honest, ACLU. Who actually is going to be hurt if the state includes a Nativity scene in its Capitol grounds holiday display this year?

The American Civil Liberties Union, which has made of the creche issue an unholy crusade, seems to take a fanciful view of society.

Are we really to believe that citizens will swoon in shock or suffer fits of anguish at the sight of a manger display on public property?

Are we really to suppose that there is the slightest danger that the state is about to try to impose a religious orthodoxy on its citizens?

Through two centuries of freedom, the Republic has stood, and Nativity scenes, chaplains, prayer at public events. Christmas programs at schools and many other reminders that by and large this is not an atheistic nation have been part of the fabric. And we have not even come close to establishment of a state religion.

In fact, society today probably is more religiously diverse and tolerant than at any other time in its history. Just what bogeyman does the ACLU fear?

The organization is upset that Kentucky state officials plan to include a creche in its Capitol holiday display before a federal appeals court rules on the suit brought by the ACLU last year.

The executive director of the Kentucky ACLU complained that including a Nativity scene at this point is divisive and hostile. It's especially divisive, of course, if the ACLU choose to protest and engage in a new round of expensive litigation against the state.

It comes down to tolerance. If the Christians of America can tolerate government-financed sacrilege in the form of a crucifix in a jar of urine, then others surely can make it through the holidays knowing that a Nativity scene has been set up on the Capitol grounds.

## SHOOTING OURSELVES IN THE FOOT

### HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. CLINGER. Mr. Speaker, with the post-earthquake image of California's Interstate 880 still fresh in our minds, it is wholly appropriate for this body to take a long hard look at our infrastructure needs.

The November issue of Constructor, a magazine published by the Associated General Contractors, is devoted entirely to the infrastructure crisis and I would recommend it to my colleagues.

One article, appropriately entitled "Shooting Ourselves in the Foot," may be of particular interest to the Members because it makes a case for restoring favorable tax treatment for municipal bonds. The editorial is also noteworthy because it spells out what must be done to address our infrastructure problems.

Mr. Speaker, I would like to share these two items with my collegues.

[From Constructor, November 1989]

SHOOTING OURSELVES IN THE FOOT—WHY TAX-EXEMPT FINANCING MUST BE RESTORED

When policy makers debate national economic problems, they quite rightly focus on the low rate of U.S. savings, the lagging competitiveness of U.S. firms in international markets, and the federal budget deficit. But one critical aspect of economic policy—public investment—is virtually ignored. Recently, however, research has demonstrated what the public finance community has believed for some time: public investment is critical in fostering economic growth, productivity, and international competitiveness. In view of this evidence, it is unfortunate that the federal government has taken steps over the last decade to limit significantly one of the more important financing vehi-

cles for public investment: state and local tax-exempt municipal bonds.

Public investment in roads, bridges, and schools supports the free movement of goods and people, which makes for efficient commerce. Fortunately, we no longer have to rely solely on intuition to support this argument. In a series of articles, David Alan Aschuer, a senior economist at the Federal Reserve Bank of Chicago, has demonstrated a statistical relationship between public investment and productivity in the major industrialized countries.

In a recent article, Dr. Aschauer concludes that "[a]n increase in the level of public investment by one percent of gross output yields a gain in productive growth of about 0.4 percent per year." In earlier articles, Aschauer points to differing rates of public investment as a major determinant of differing rates of productivity growth in the major industrialized countries. The clear implication of Aschauer's work is that the United States can take positive action to improve its economic fortunes through a policy of increased public investment.[1]

But how can such an increase in public investment be carried out? At the federal level, national programs for investment are constrained by the continuing political stalemate over the budget deficit. At the state and local level, there are three methods of financing public investment: federal grants, tax revenues, and borrowing. The politics of deficit reduction have forced the elimination of general revenue sharing and the reduction of other forms of federal aid to state and local governments. The ability of state and local governments to increase tax revenues is subject to varying political winds. What remains as the most stable method of raising money for public investment is state and local government borrowing. The primary vehicle for such borrowing is the tax-exempt municipal bond.

Municipal bonds have traditionally been a staple of state and local project finance. The exemption from federal taxes on municipal bonds allows state and local governments to finance their public projects at much lower interest rates than those available to private corporations. In addition, borrowing allows state and local governments to spread the costs of their investments over time, as benefits from the investments accrue. In 1986 borrowing accounted for 50 percent of all state and local investment. Moreover, public approval for this kind of borrowing is high. In the 1980s over 74 percent of the bonding authority requested by state and local government through bond referendums has been approved by voters. Clearly, voters understand the importance of public investment to address infrastructure needs, and the need for states and localities to borrow to finance this investment.[2]

Unfortunately, however, federal policymakers in the mid-1980s seemed less favorably inclined to state and local borrowing. Over the last decade the federal government has taken steps to limit the scope of tax-exempt borrowing through a variety of means. On the supply side, private participation in projects financed by tax-exempt bonds has been limited, reducing the scope of public-private partnerships, which are necessary for the efficient provision of public investment. The volume of tax-exempt bonds issued for certain purposes has also been restricted. Moreover, the federal government has limited the ability of state and local governments to earn money on borrowed funds while these funds are idle, pending expenditures on public projects. Prior to the imposition of these limits, state and local governments used investment earnings to reduce the cost of their projects. All of these measures have limited the ability of states and localities to finance important public projects with tax-exempt bonds.

Equally important is that steps have been taken to limit the attractiveness of municipal bonds to investors. As a result, certain types of otherwise tax-exempt municipal bonds are subject to the individual alternative minimum tax, which is paid by individual who have large deductions from taxable income. These bonds are also subject to the corporate alternative minimum tax (AMT). In addition, all other municipal bonds are subject to what amounts to a 10-percent tax rate on interest under the corporate AMT. This rate will increase to 15 percent in 1990. The increase will weaken the demand for municipal bonds by property and casualty insurance companies, the major corporate investor in bonds. Furthermore, banks have essentially been eliminated as investors in most kinds of long-term municipal bonds through the elimination of their ability to deduct the cost of carrying these bonds. These restrictions on demand mean that state and local governments must pay higher interest rates to attract investors for their bonds. Higher interest rates, of course, increase the costs associated with financing public projects.

The upshot of all of this is that public and private professionals concerned about public investment must make a case to Congress and the U.S. Treasury for the preservation of one of the more important means of financing such investment, namely, tax-exempt bonds.

Fortunately, although the federal government continually debates new restrictions on tax-exempt bonds, there are some positive signs.

First of all, Rep. Beryl Anthony (D-AK, who sits on the House Ways and Means Committee, has established a commission to study the effects of tax reform on state and local finance. Partly as a result of the work of the commission, Congressman Anthony has introduced a bill that would provide some relief to state and local governments in complying with the arbitrage restrictions imposed by the federal government. At the time this article went to press, Congressman Anthony's bill had passed the House of Representatives as part of the Reconciliation Bill, and was awaiting consideration in the Senate.

Beyond the work of Congressman Anthony, the tax-writing committees in general have shown some sensitivity to the ability of tax-exempt bonds to target investment in worthwhile public projects. Prompted by the problems of financing a high-speed rail project in Florida, the Senate Finance Committee introduced a provision into the 1988 tax bill to allow tax-exempt bonds to be used to finance high-speed rail projects. The House accepted this provision in the Conference Committee.

Finally, the public investment community has become more active in pressing the case for tax-exempt bonds. The Rebuild America Coalition, a group of public and private associations (including the Associated General Contractors and the Public Securities Association (PSA)), publicizes the need for increased public investment and takes note of the problems created by limits on tax-exempt bonds. In addition, the Public Finance Network, composed of groups representing state and local public officials, has organized key officials across the country to respond to Congressional proposals to limit the scope of tax-exempt finance.

For the sake of increased public investment, productivity, and international competitiveness, we should all hope that these efforts are productive. PSA encourages and welcomes support from AGC in this effort.

AMERICAN PUBLIC SAYS "YES" ON BOND ISSUES

| Year | Percent volume approved (percent) | Total volume approved | Total volume voted on |
|---|---|---|---|
| 1989 | 70.1 | $4,510.0 | $6,433.7 |
| 1988 | 80.7 | 21,130.0 | 26,183.4 |
| 1987 | 73.3 | 8,480.0 | 11,568.9 |
| 1986 | 82.7 | 13,370.0 | 16,166.9 |
| 1985 | 83.2 | 9,160.0 | 11,009.6 |
| 1984 | 81.0 | 10,630.0 | 13,123.5 |
| 1983 | 61.1 | 7,160.0 | 1,171.5 |
| 1982 | 83.2 | 8,890.0 | 10,685.1 |
| 1981 | 57.2 | 5,030.0 | 8,793.7 |
| 1980 | 71.0 | 6,280.0 | 8,971.4 |

[1] All dollar amounts are given in millions.

Note: Voter turnout is lighter in non-election years, making bond issues more difficult to pass.

[From the Constructor Editorials, November 1989]

INFRASTRUCTURE—WHAT MUST BE DONE

After eight years of effort by AGC to alert the American public to the seriousness and scope of the nation's infrastructure crisis, it is now widely accepted as fact that America's infrastructure must be rebuilt to preserve our nation's competitiveness and our citizens' quality of life.

No longer is there debate over whether our infrastructure needs rebuilding, or why it must be rebuilt. It is now time to direct the debate to the important issue of "What must be done to ensure that the infrastructure is rebuilt."

We offer the following list of actions which must be taken to ensure the rebuilding of America:

First, as the National Council on Public Works Improvement concluded, all levels of government, and the private sector, must develop a national commitment to increase capital spending by at least 100 percent above current, inadequate levels.

Unwarranted limits on the ability of state and local governments to fund infrastructure projects through tax-exempt financing must be removed.

Comprehensive federal highway legislation must be enacted significantly increasing capital investment in the nation's highway and bridge programs, and ensuring that every state shares in that increase.

America's environment must be protected through adequate investment in solid waste disposal and hazardous waste clean-up.

The Transportation Trust Funds must be removed from the unified federal budget, and their balances, which now exceed $28 billion, must be fully expended.

The nation's water-related infrastructure needs—its dams, ports, waterways, groundwater, water supply, wastewater treatment facilities—must be met. The state revolving loan funds established to finance water pollution control projects must be fully capitalized, as Congress intended.

[1] See Asxhauer, David Alan, "Public investment and productivity growth in the Group of Seven," Economic Perspectives, Federal Reserve Bank of Chicago, September/October, 1989.

[2] Based on data obtained from "*The Bond Buyer.*"

The federal gasoline and diesel excise taxes must be preserved as dedicated highway user fees, and not used for any other purpose, such as deficit reduction.

The nation's vertical infrastructure needs—its schools, government buildings, libraries, prisons, public health care facilities, for example—must be recognized and met.

The federal tax exemption for gasohol and other alternative fuels must be eliminated.

The nation's military infrastructure must be rebuilt and modernized.

Government at every level, and all who regard themselves as leaders, must recognize that infrastructure investment pays dividends to this nation's economy and quality of life.

The cost of neglect grows daily.

## TRIBUTE TO JERRY HARTLESS

### HON. DUNCAN HUNTER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. HUNTER. Mr. Speaker, last February more than 2,200 people, most of them police officers, gathered in San Diego to mourn the death of rookie San Diego Police Officer Jerry Lee Hartless. Hartless had been shot while patrolling a neighborhood known for its drug traffic.

Jerry Hartless was raised in Hillsdale, MI. The Marine Corps brought him to San Diego. After graduating from boot camp, Jerry Hartless married Shawn Dee, who he had met in high school. San Diego's police chief praised Hartless saying that he had a finely honed sense of right and wrong, and wanted to act on these principles to contribute to his community.

One of my constituents, Robert E. Fleetwood, has written a tribute to Jerry Hartless. These words are for an individual killed in the line of duty, but they could apply to fallen police officers everywhere.

IN MEMORIAM—POLICE OFFICER JERRY HARTLESS

(By Robert E. Fleetwood)

On January thirty first, nineteen eighty eight, a San Diego Police Officer died.
Some people paid his passing little heed, some bowed their heads and cried.
His wife held his hand as he passed from this life, her courage was something to see.
A brave young man had given his all, protecting you and me.
Like so many Americans, he was killed in combat, a Police action that's really a War.
In Korea and Vietnam this same question's been raised. What did he die for?
To give one's life in "The Line of Duty," is painful for the dead and the living.
Yet brave young women and brave young men, keep right on fighting and giving.
When they leave for work, unlike most of us, they enter a Combat Zone.
Volunteers all, they continue to serve in a battle they can't win alone.
A routine stop might be their last, a pursuit could cost them their life.
That parting hug could be their last, from a child a husband or wife.
And to those who begrudge these same Officers a donut while they're on their beat
That donut just might be the last thing they will ever eat.
When some San Diegans complain of Police harassment, corruption and such
They forget the majority of professional Officers who are out there doing so much.
When Officer Hartless is laid to rest, and the sounds of taps and gunfire echo o'er his grave,
We know he'll be reunited with his gallant fallen Comrades, for he was good, he was strong and he was brave.
We must never forget what Officer Jerry Hartless gave his oh so precious young life for.
So let's respect and support all of Law Enforcement, for without us they cannot win "Our War."

## IN CELEBRATION OF THE 75TH ANNIVERSARY OF THE PRIDE OF JUDEA MENTAL HEALTH CENTER

### HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ACKERMAN. Mr. Speaker, I rise today to pay tribute to the Pride of Judea Mental Health Center on the eve of its 75th anniversary.

The Pride, as it is affectionately called, is many things to many people. It is one of the handful of outstanding institutions in our country that seek to serve an entire community's psychiatric needs. For more than seven decades the leadership of Pride has focused its attention on the current pressing problems of society. The challenge is ever present in today's society—the single parent, the child who feels deserted, the young person at risk, the lonely, the depressed elderly, the substance abuser, the abused child, the unemployed, the homeless—the anxious of all ages—and their families. The Pride provides warm, caring, innovative outreach programs developed to meet the changing needs of its patients and of the community the Pride serves. This invaluable institution has shown an impressive commitment to developing new approaches to improve its services and respond to the complex variety of problems that distress our troubled society.

The Pride operates a broad range of programs, aimed toward evey age from an Early Childhood Evaluation and Treatment Program, to a Teenage Suicide Prevention Program, to memory loss consultation and counseling for the elderly. The Pride provides counseling for alcohol and substance abuse, a model Group Therapy Program for the Homeless, a Child Abuse Program, and many related family therapy services. Of these outstanding programs, Mr. Speaker, I would like to bring to your attention three which I believe epitomize the Pride's commitment to flexibility and innovation in shaping treatment to meet the needs of their patients: the Geriatric Program, the Program for the Homeless, and the Preschoolers' Program for Emotional Growth.

The elderly are now the fastest growing group in the United States. Today we are faced with the possibility that older people will make up 15 percent of the population by the year 2000. About 86 percent of our elderly have chronic health problems. Depression, anxiety, and Alzheimer's disease are common problems which cause the elderly to seek treatment. Pride's response is to treat each case in either individual, marital, or group therapy with a focus on improving the quality of life through the resolution of problems and support. Issues such as retirement, chronic illness, loneliness, loss of memory, diminished feelings from losing a spouse, relative, or friends are faced in group or private therapy. The Pride hopes to develop, in addition to its existing geriatric programs, an outreach program to touch those elderly who are homebound and who may have excessive emotional difficulty in coping with physical illness.

Another sector of the population, the homeless, is also on the rise. The dramatic increase in the number of homeless in the past few years, on the streets of New York City and other cities around the Nation, has led communities to seek different solutions to this serious social problem. The Pride's response, a model program, addresses those homeless individuals handicapped by mental illness. This program combines therapy and medication treatment. In a highly structured and supportive environment, participants in this program receive alcohol and drug counseling and therapy in groups of 8 to 12, which promotes socialization skills. In these groups the individuals share common concerns and are encouraged to develop and utilize their own resources. The Pride's experimental and sensitive treatment of this ostracized part of our society is an inspiration to other communities in their search for a positive way in which to assist the homeless in building a new life.

The Preschoolers' Program for Emotional Growth focuses on the problems of the youngest members of the community. Preschoolers who express severe behavioral and socialization problems are provided with a structured group, run by therapists who, with the help of the parents, help the children to readjust their own behavior. Often the root of the problem lies in conditions in the home. The Pride reaches out to those parents and provides them with a parent-child therapy program, to better understand the effects of their own behavior on their child. This kind of comprehensive approach characterizes all of the Pride's programs.

Mr. Speaker, The Pride of Judes Mental Health Center has a long and illustrious history. Begun in 1915 as an orphanage, it was considered one of the best institutions of its type. As changing social patterns led to a sharp decrease in the number of orphaned children and a greater awareness of the need to provide for the emotional well-being of youngsters, the Pride demonstrated its flexibility and foresight, altering its previous function to provide new and sophisticated ways of dealing with children's emotional needs. At a time when most of the world was just learning about autistic children, the Pride in 1959 courageously undertook the establishment of the Pride School, which attempted to both edu-

cate and treat such children. The Pride's full-service outpatient clinic in Douglaston, NY, the Andrew and Rose Miller building, has been responding to vital concerns and problems of individuals and family groups since 1972.

As the Pride celebrates its own 75th anniversary, it wishes to honor two individuals who have contributed to the education and health of their communities. Fred C. Trump and Edgar F. Braun are two extraordinary businessmen, philanthropists, and community activists. Mr. Trump will be receiving the Pride of Queens Award and Mr. Braun will be receiving Pride of Long Island Award at the community awards dinner held on November 30 by the Pride in celebration of its 75th anniversary.

Fred C. Trump, the patriarch of the Trump Organization, the famed New York real estate company, is active on the board of directors of Jamaica Hospital and the Kew-Forest School. His major philanthropic gifts include a nursing pavilion to the Jamaica Hospital, an apartment building for United Cerebral Palsy, and a synagogue to a Brooklyn community. He is the recipient of innumerable awards and honors from major religious groups and charitable organizations.

Edgar F. Braun is the vice president and community banking executive, northern Nassau tier at the Chase Manhattan Bank, N.A., Long Island region. He is a concerned Long Island advocate who has dedicated himself to serving both the charitable and business communities. A member of the C.W. Post Council of Overseers, he has championed high quality education on Long Island. Among his charitable concerns has been the American Cancer Society. In the business arena he has contributed his financial acumen to assist Long Island individuals and companies as they grow. He is a strong proponent of area not-for-profit endeavors.

Edgar Braun and Fred Trump are exemplary of the commitment of individuals to the growth and health of their own communities. It is upon such a commitment that the strength of our country is built. The Pride of Judea is composed of such individuals and has contributed its knowledge and service to its community for 75 years.

I ask my colleagues to join me in saluting this commitment and wishing the Pride equal success in its endeavors over the next 75 years.

## NEBRASKA'S AGRICULTURAL PRODUCERS AND THE 1990 FARM BILL

**HON. VIRGINIA SMITH**

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mrs. SMITH of Nebraska. Mr. Speaker, I rise today to offer the views of Nebraska's farmers and ranchers regarding the formulation of the 1990 farm bill.

Mr. Speaker, many individuals and groups present their views to Congress claiming to represent substantial segments of affected populations. However, many of these views represent singular agendas, not the collective wisdom of those who must operate under Federal Farm Program guidelines.

It is with great pleasure that I submit a report for my colleagues to review prepared by Dr. Lynn Lutgen, professor of agricultural economics, University of Nebraska—Lincoln. This report is based on a sound and impartial survey of Nebraska's farmers and ranchers. I am hopeful that all my colleagues will carefully consider Dr. Lutgen's report when forming opinions for the direction and scope of the 1990 farm bill.

### How Nebraska Farmers View Agricultural and Food Policy Issues

(By Lynn H. Lutgen)

Earlier this year, the University of Nebraska—Lincoln was one of 21 landgrant universities to survey farmers and ranchers about a number of agricultural and food policy issues. Special emphasis was given to issues that are expected to arise in the 1990 farm bill.

In Nebraska, 112 usable responses were returned from a sample of 1,000 farms and ranches drawn by the Nebraska Statistical Reporting Service. The response rate of 11.2 percent for this survey is much lower than is desired for research purposes. Hence, it may be risky to generalize from the responses provided.

#### FARM COMMODITY PROGRAMS

A plurality of Nebraska farmers (39 percent) want to keep the present price support/production control system beyond 1990. This far exceeded two alternative plans that are sometimes discussed: mandatory supply control programs, favored by 13 percent of the producers; and decoupling, supported by 11 percent. However, the decoupling preference may be somewhat understated because another 27 percent of the respondents said they favored the gradual elimination of all programs. Oftentimes, decoupling is linked to the gradual elimination of programs.

Despite the seemingly significant number of responses favoring decoupling or program elimination, 46 percent of the respondents favored increasing target prices over time to match inflation. This would imply greater support from the federal government, which is somewhat inconsistent with the above responses.

Producers were sensitive to concerns about keeping U.S. commodity prices competitive in world markets. About two-thirds of the respondents favored either using a 5-year average of market prices to determine the loan rate or eliminating nonrecourse loans altogether.

Further evidence of concern about international competitiveness is suggested by the plurality of 38 percent who favored extending marketing loans to wheat, feed grains and soybeans.

One of the areas of strongest agreement among producers was that more flexibility is needed for making planting decisions. Over 60 percent of those returning survey forms want to be allowed to plant any crop on permitted acres.

Support was indicated for continuing three provisions of the current farm bill—paid land diversions, payments in generic certificates, and a farmer-owner reserve. However, support for the generic certificate program was not as strong as for the other two.

Interestingly, respondents wanted the Secretary of Agriculture to be given less authority than at present to make discretionary decisions on loan rates, acreage set asides and other matters. In recent farm bills, the Secretary appears to have been given more discretionary authority, not less. Political trade-offs exist that will make this one of the more fascinating areas to watch in the mark-up and passage of the 1990 farm bill.

#### CONSERVATION PROGRAMS

Nebraska producers favored, by almost a 2 to 1 margin, extension of the soil conservation requirements of the 1985 farm bill to water quality protection in 1990. A wide variety of benefits could be withheld in the event of noncompliance.

Another part of the soil conservation section in the 1985 act provided for a long-term conservation reserve program. A plurality of respondents favored extending this program from its current national total of about 30 million acres to 45 million acres. However, many other opinions were also expressed, perhaps indicating that there is no clear consensus on this program at the present time.

A question was asked regarding alternative measures that might be taken to enhance soil conservation and to protect groundwater from contamination. The greatest preference was for government cost-sharing for conservation and water structures. However, many observers might find it interesting that 22 percent of the respondents supported a tax on high levels of chemical and fertilizer applications.

#### CROP INSURANCE

Thirty-seven percent of those responding indicated support for the present voluntary crop insurance program. This compared to 21 percent who preferred a disaster assistance grant from the federal government instead of crop insurance. In what appears to be even stronger support for crop insurance than represented by the present program, another 21 percent said all farmers should be required to buy crop insurance to be eligible for government program benefits.

#### OTHER ISSUES

One of the widely discussed features of recent farm bills has been payment limitations. Over half of those responding wanted to keep the present payment limitation of $50,000 per person. However, 30 percent wanted to decrease the limit, compared to 7 percent who supported an increase in the limit.

A plurality of 22 percent indicated support for continuing the present milk price support program. A significant number of respondents, however, were not certain what should be done about milk price supports. The latter group may have included many who have no direct interest in dairy policy issues.

Respondents also gave strong support to three other widely discussed farm policy issues: targeting price and income supports to those with gross farm sales under $250,000; government regulation to reduce pollution of available water supplies; and rural development programs.

Somewhat less support was expressed for government-supported farm credit programs and increased food assistance programs, such as through food stamps.

However, Nebraska producers rejected a proposal that would use government commodity programs to influence the structure of agriculture. Apparently, producers prefer that the number and size of farms should be the result of natural evolution, did direct action by the federal government.

INTERNATIONAL AGRICULTURAL TRADE AND DEVELOPMENT

A series of questions were posed on the agricultural trade relationship of the United States to other nations.

The strongest support was expressed for the United States taking a leadership role in reducing international trade barriers.

Strong support was also expressed for providing more separate trade agreements between the United States and other countries and negotiating reductions in domestic farm subsidies that impede world-wide trade.

Despite producers' support for reducing international trade barriers, over 40 percent indicated that they preferred joining with other countries to establish production and marketing controls. It appears, therefore, that there is some inconsistency—one can't have it both ways with respect to reducing trade barriers and establishing new barriers through more controls.

Two other items in this section are worthy of special comment.

Nebraskans indicated fairly strong support for the export enhancement program. This program appears to have been especially helpful to wheat producers in recent years.

On the other hand, respondents opposed continuation of U.S. support for agricultural development in other nations. This continues to be one of the more sensitive agricultural trade issues in Nebraska. The debate hinges on whether such assistance helps or hinders U.S. commercial exporters over an extended period of time.

FEDERAL SPENDING

Federal spending issues are relevant to all citizens, including those in production agriculture. Farmers and ranchers responding to this survey gave strong support to reducing federal spending in total, as well as in two more limited categories: defense and social programs.

However, respondents strongly opposed any reductions in social security payments. Moreover, those responding were equally split on the question of whether farm program expenditures should be a part of an overall budget reduction.

Raising taxes as a means of reducing the budget was strongly opposed but, not surprisingly, respondents favored enhanced collection of taxes due the federal government.

CONCLUDING COMMENTS

Nebraska's agricultural producers appear to be calling for some fine-tuning, but not a major overhaul of the 1990 farm bill. This response perhaps is the result of an improved price and income situation for agriculture in the late 1980's. When the previous farm bill was implemented in 1985, the agriculture sector was experiencing considerable financial stress. In short, at the present time, the collective attitude of those interested in the farm bill seems to be "business as usual."

To be sure, agriculture is many things to many people. Moreover, because of the multiple goals of farm bills, some responses appear to be inconsistent. For example, many producers indicated a willingness to consider phasing out farm programs, while another response indicated a preference for increasing target prices. It may be difficult to do both. Similarly, general support for reducing international trade barriers was somewhat inconsistent with a preference for joining with other countries to establish production and marketing controls.

Finally, the respondents indicated a strong preference for dealing with the federal budget deficit by reducing expenditures. However, the response was much more ambivalent when the question specifically related to farm program expenditures.

Surveys such as this are intended to give producers and other interested persons an opportunity to compare their individual views with those of a larger group. Policy makers should also find such information useful as deliberations ensue on the 1990 farm bill. It is hoped, in doing so, that it generates understanding, discussion and, ultimately, better farm policy.

(The author wishes to express a special thank you to Dr. A.L. (Roy) Frederick, Professor and Extension Economist, Department of Agricultural Economics, University of Nebraska, for his help in editing and interpretating of the results of this paper.)

## SAMUEL FOARD, FARMER OF THE YEAR

### HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mrs. BENTLEY. Mr. Speaker, in today's world of high technology, we often take for granted the simple things—such as the food we eat.

We never have to worry.

It's there; it's inexhaustible; it's inexpensive.

The American farming miracle—less than 3 percent of the population feeds not only the United States, but also a significant portion of the world. Our agricultural products are, in reality, a national asset; and the one major export that this country has left.

The wheat and corn that our farmers grow will be used to feed people from Iowa to Poland to India. U.S. dairy products are sold throughout the hemisphere.

Farmers are an independent breed. They are the embodiment of the American dream. They own their own businesses and work long hours to keep them. Dairy farmers can be found in their barns at 4 in the morning for the first milking.

Samuel Foard is a successful farmer. The Harford County Farm Bureau has selected him to be Farmer of the Year.

A native of Maryland, Mr. Foard has spent all his life dedicated to his Pylesville area farm. Enjoying the farming life and graduating from Jarrettsville High School, Samuel's parents sent him off to college. After his first year at Wheaton College in Illinois, Mr. Foard persuaded his father to allow him to return to the family farm—the love of his life. Two years later, Mr. Foard acquired the entire 750-acre farm with its three-herd dairy operation.

During the next 37 years, with his wife, Dorothy, by his side, Mr. Foard worked diligently to improve his farming operations, keeping abreast of advances in farming technology and acquiring more efficient machinery and equipment, thus being one of the most productive farmers in the county.

Not only is Samuel Foard a grandfather of four, but he has also been extremely active in civic duties. He has served on the State Agriculture Committee and has been a corporate board of directors member of Dairymen, Inc. He also has been on the County Scenic River Committee and a member of the advisory board to the Harford County Extension Service as well as an official appraiser for the County Orphans Court.

Mr. Foard was recognized in 1967 as Harford County's Outstanding Young Man by the Chamber of Commerce. He served as treasurer to the County Soil Conservation Committee as well as a charter member and prior chairman to the County Land-Ag Preservation.

Mr. Foard has made a great contribution to the State of Maryland and Harford County—a portion of my congressional district. I only hope that others from our Nation's agriculture community will follow Samuel Foard's footsteps.

## IN RECOGNITION OF THE ORANGEBURG COUNTY SOCIAL SECURITY OFFICE

### HON. FLOYD SPENCE

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SPENCE. Mr. Speaker, I rise today, in honor of the outstanding efforts of the Orangeburg County, SC, staff of the Social Security Administration. These dedicated individuals have always been responsive to my inquiries in behalf of constituents. Theirs is not an easy task as the office has borne the brunt of severe budgetary restrictions while at the same time seeing an incredible increase in casework.

Recently their efforts were noted by the Social Security Atlanta regional commissioner. In an effort to properly recognize the achievements of the Orangeburg staff, I would like to share with my colleagues a letter I received from the Commissioner, along with the names of those individuals who have been so helpful to the citizens of South Carolina's Second Congressional District:

*To the Office of Congressman Floyd D. Spence:*

The Social Security offices in the Atlanta Region were challenged in August, 1989 to "clear the decks of 1989 year workloads to get ready for fiscal year 1990 workloads. The work issues involved were those of a more complex nature, not just routine work items.

The Orangeburg, S.C. Social Security office achieved the best record in the State of South Carolina. All of the workload issues involved in the project were cleared. This was accomplished in spite of a loss of staff in the Orangeburg office. In January 1989, the total employees was 21 and by September 1, 1989, the total staff was 16 employees.

For this special accomplishment, the Orangeburg staff will receive a plaque of recognition from a member of the Atlanta regional commissioner's staff on Friday, October 27, 1989 at 8 a.m.

Sincerely,

CHARLES H. MATHIS,
*Orangeburg Branch Manager.*

STAFF OF THE ORANGEBURG, SC, SSA OFFICE

Charles Mathis, BM.
Gail Perozzi, OS.
David Caldwell, T16 CR.
Linda Page, T2 CR.
Linda Kemmerlin, T2 CR.

Henrietta Robinson, T18 CR.
Gloria Pooser, T16 CR.
Barbara Fultz, Generalist.
Mark Greene, T2 CR.
Mary Williams, Generalist.
Mary Lou Golini, SR.
Linda Drawdy, SR.
Jennie McAlhany, Secretary.
Linda Merritt, DC.
Debbie Bowers, DC.
Pamela Thompson, Data Transcriber.

## INTRODUCTION OF THE COMMUNITY REINVESTMENT IMPROVEMENT ACT OF 1990

### HON. STEVE BARTLETT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BARTLETT. Mr. Speaker, today, I am introducing legislation to amend the Community Reinvestment Act of 1977. This proposed legislation would clarify and streamline the current CRA procedures for all concerned parties: Federal regulators, depository institutions, and consumers, as well as the public.

Joining me in cosponsoring this legislation are House Members on the Subcommittee for Consumer Affairs, Congressmen DOUGLAS BARNARD, CHALMERS WYLIE, JOHN HILER, TOM RIDGE, and DAVID DREIER. Introducing this bill at the end of the 1989 session of Congress puts it on record as a major legislative item for House consideration in 1990. Called the Community Reinvestment Improvement Act of 1990, this legislation is in response to what we learned during the FSLIC debate.

The current CRA statute is well-intended. Its stated purpose is to encourage financial institutions to address the credit needs of the communities where they are located. The resulting CRA practice, however, is less positive than its original intent. It lacks clear direction, especially with its application review process for financial institutions which apply to relocate or establish branches, merge with other institutions, or acquire another branch.

My bill refines and streamlines the CRA in three areas:

First, it would enhance the CRA review process by requiring the regulators to set formal timeframes and procedures for parties interested in challenging a bank application.

Second, it would provide that depository institutions that have established legislatively prescribed community development banks shall be granted a satisfactory CRA rating.

Third, if a bank maintains a satisfactory CRA rating, regulators would have to expedite review of bank applications and set a 2-year safe-harbor period during which a bank would not be subject to further examinations, unless there is evidence to the contrary.

I look forward to working with the Subcommittee on Consumer Affairs and the full Banking Committee in streamlining the Community Reinvestment Act so it will work in the best interest of banks, consumers, and the regulators.

## TWENTY-FIFTH ANNIVERSARY OF THE WAR ON POVERTY

### HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McEWEN. Mr. Speaker, this year marks the 25th anniversary of the war on poverty. As we look back on that war, it is clear that the effort to end poverty and provide real opportunity for all has had its impressive victories, and its difficult setbacks.

We can take pride that more Americans are working today than ever before. More of our citizens—young and old—are achieving an education. And, this month marks the seventh full year of economic growth, the longest peacetime expansion in our Nation's history.

However, for too many the economic tide has not raised them fully into the mainstream of economic opportunity. Pockets of poverty throughout the country tell us quite clearly that economic opportunity for all has yet to be realized.

Well, this administration is once again taking up the fight. Last week, President Bush announced an ambitious strategy, called Project Hope, Homeownership, Opportunity, and Prosperity for Everyone.

Project Hope will provide the seed capital to spawn growth in economic opportunity, self-sufficiency, and homeownership among those Americans who are struggling most.

That is good news for our battle for opportunity for all Americans—young and old.

## AMERICA'S VETERANS, THE TRUE HEROES OF FREEDOM

### HON. C.W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. YOUNG of Florida. Mr. Speaker, as President Bush prepares for his summit at sea with Soviet General Secretary Gorbachev, the world media is giving the Soviet leader credit, that is in part due him, for the freedom and reforms that are taking hold in the Eastern bloc.

Being overlooked in all the celebrations of new found freedom in East Germany and democracy in Poland are the real heroes of freedom throughout the world: America's veterans. If not for their efforts, there would be no freedom for the East bloc countries to aspire to in Western Europe and the United States.

It was the American veteran who fought in the European, African, and Asian Theaters of battle in World War I and World War II who provided the beacon of freedom for the people of those war ravaged lands. The courage and struggle of all Americans who have carried the Stars and Stripes into battle around the world showed the oppressed and downtrodden citizens under siege the value of freedom and the great lengths that our Nation is willing to go to preserve this inalienable human right.

There is a great debate in our Nation over how strong our national defense must be to preserve our freedom and the freedom of our allies. Throughout our history we have made the decision to maintain the strongest, most well-equipped, and best-trained military possible so that we could remain the lighthouse of hope and beacon of freedom for people throughout the world who were being denied their freedom and basic human rights. Through our strength we were able to give conviction and strength to the freedom movement in Poland, East Germany, Estonia, Latvia, Lithuania, and the Soviet Union. And we will continue to be that lighthouse of hope and beacon of freedom for these people until they realize the dream of living in a land governed by the leaders of their choice selected in free elections.

Our Nation has cause to be proud of our veterans and of our powerful military strength that we have never used to take away another country's rights or freedoms. Instead, we have used that force to restore freedom where freedom was threatened, to restore peace where peace no longer existed, and to deter aggression where otherwise small and defenseless nations would be overrun by tyrannical forces.

The front pages of our Nation's newspapers and the footage on our evening news highlights the bravery of those who have scaled the Iron Curtain and brought it down with hammers and picks. The world media, however, fail to recall the American heroes who preserved a free Europe on the other side of the wall. We must never lose sight or forget symbols of communism such as the Iron Curtain, which was built to keep its people in rather than to keep others from entering. Free nations, such as the United States, need no walls to keep their people from leaving. In fact, we have to regulate the number of emigrants to our Nation because so many people dream of the day when they can come here to live and worship freely.

That dream is only possible because of America's veterans and their unselfish service. With the approach of a new decade, I believe the 1990's will bring new-found freedoms for many formerly Communist nations. Let us hope that the euphoria surrounding the opening of every closed border and the tumbling of every wall does not overshadow the deeds of America's veterans who kept alive the dream of freedom in the hearts and minds of the newly liberated people of the world.

Mr. Speaker, the Congress has established Veterans Day and Memorial Day for our Nation to honor the heroics of our veterans, but let us also give thanks for their sacrifices every time we read or hear of another person or country gaining new-found freedom. This is the message I delivered to the veterans of Pinellas County this past Veterans Day and is the message I share with them at every opportunity.

## CARNEGIE REPORT CALLS FOR TRIBAL COLLEGE SUPPORT

### HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DORGAN of North Dakota. Mr. Speaker, the Carnegie Foundation for the Advancement

of Teaching has issued a stinging indictment of flagging Federal support for tribal colleges. I want to urge my colleagues to review the major recommendations of the report, "Tribal Colleges: Shaping the Future of Native America."

The major thrust of the 2-year study is that "America must affirm and aggressively support these institutions as they prepare to meet, in a new century, the needs of their communities." The reason is simple: Tribal colleges have played a critical role in the drive of Indian people to renew their communities, to promote self-determination, and to preserve their native heritage.

The major problem is that a lack of Federal support has frustrated the tribal colleges in fulfilling their mission to Indian students. Congress recognized the potential of having indigenous higher education institutions on reservations when it enacted the Tribally Controlled Community College Act of 1978. It originally authorized $4,000 for each full-time student and later increased that level to $6,000. However, appropriations have never matched those figures and the funding trend is even more disconcerting.

UNREALIZED POTENTIAL

In 1981, the full-time equivalent of 1,689 Indian students received support of $3,100 each. By 1989, per student support had plummeted to $1,900. The very success of tribal colleges had triggered an enrollment increase to the equivalent of 4,400 full-time enrollees—nearly a threefold increase. Regrettably, funding has not kept pace with the increased demand for higher education on our reservations. Federal support for tribal colleges is only one-tenth that provided for some other minority colleges.

This marks a sad commentary on Federal budget priorities. The amount we spend on star wars defense schemes in one day would fund the entire tribal college budget at current levels for an entire year. What a sorry waste of resources.

For example, the Carnegie report illustrates the enormous promise of tribal colleges in my own State of North Dakota. Many of Turtle Mountain Community College's vocational education graduates transfer to 4-year colleges and 70 percent of these students found employment immediately after graduation. Contrast that with unemployment rates of 60 to 70 percent on the reservation and you can see immediately what a modest investment in education can not only enhance Indian self-determination but also increase tax revenues and reduce welfare outlays.

Equally remarkable is Standing Rock Community College's record of placing graduates in jobs. With unemployment rates as high as 80 percent on the reservation, the college's graduates have only a 5-percent unemployment rate.

While tribal colleges are small relative to larger State-sponsored institutions across the Nation, their impact is great. At Little Hoop Community College at the Devils Lake Sioux Reservation in North Dakota, almost one-tenth of their tribal members are enrolled in the college. Fort Berthold Community College meets the unique needs of older students—especially those of women with children. Were it not for tribal colleges, many tribal members would lack any opportunity for higher education.

I take pride in having actively supported the tribal college movement. I can testify to their vital work in Indian higher education in my State and throughout the Nation. I commend their leaders for struggling against indomitable odds to achieve impressive records.

Nevertheless, there is much left undone and many obstacles to overcome if tribal colleges are to realize their full potential.

A STRATEGY OF EXCELLENCE

With this background in mind, I request that my colleagues join me in supporting a "Strategy for Excellence" outlined by the Carnegie study. The main elements of that plan include:

First. Appropriations of $5,820 per student pegged to growth in enrollment.

Second. Improvements for tribal college libraries, science laboratories, and classroom facilities.

Third. Appropriations sufficient to support construction as authorized by the Tribally Controlled Community College Act.

Fourth. Strengthened connections between tribal colleges and non-Indian higher education institutions on transferability of credits and interchangeable degree programs.

Fifth. Philanthropic support for specific development needs of the colleges and for building national support for the institutions.

I also want to appeal to President Bush to lend the vigorous backing of his administration to Indian higher education—for tribal colleges and for Indian students at all institutions. Congress has scraped to sustain tribal college funding, in the face of budget requests which failed to recognize the growing needs of the colleges.

A WISE INVESTMENT

In a word, Mr. Speaker, I think that it's time for us to help Indian Americans to help themselves. The modest investment we should make in fully funding tribal colleges would pay handsome dividends as Indian people find productive work and an enriched appreciation for their own cultures. As the report concluded:

Native Americans have laid the groundwork by dint of sheer determination and conviction. They are on the threshold of a new era. Building on this remarkable beginning will serve us all.

## INTRODUCTION OF THE SELMA TO MONTGOMERY NATIONAL TRAIL STUDY BILL OF 1989

### HON. JOHN LEWIS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LEWIS of Georgia. Mr. Speaker, I am introducing legislation to designate the road from Selma to Montgomery, AL, for study as a national historic trail.

The road from Selma to Montgomery was the last leg in the journey to the Voting Rights Act of 1965. It was the last hurdle in achieving the legal right to vote for all Americans.

On Sunday, March 7, 1965, in an effort to dramatize the need for voting rights legislation, approximately 525 people attempted to march the 54 miles from Selma to Montgomery. When we reached the apex of the Edmund Pettus Bridge in Selma, we were confronted by police dogs and billy clubs. Scenes from what became known as Bloody Sunday sent shockwaves around the world, raised the Nation's consciousness, and convinced political leaders that the time had come for voting rights legislation.

Two days later, on March 9, 1965, the marchers, took off from Selma again. But, we had to turn back to avoid a second bloody encounter.

Finally, under the protection of National Guardsmen, 1,900 men of the Alabama Guards' Dixie Division, and 2,000 more regular Army troops, as well as 100 each FBI agents and U.S. marshals, we were able to complete a 3-day journey from Brown Chapel in Selma to the State capitol in Montgomery. As a direct result of this march, the Voting Rights Act was signed into law on August 6, 1965.

The designation of the route of the march from Selma to Montgomery as a national historic trail will serve as a reminder of the right and responsibility to vote. It will also give long-overdue recognition to the men and women who have sacrificed so much for, and dedicated their lives to, voting rights for all Americans.

## CONGRATULATIONS TO DR. RALPH D. NURNBERGER

### HON. DON SUNDQUIST

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SUNDQUIST. Mr. Speaker, it is with a great deal of pleasure and a tremendous sense of pride that I rise today to offer my congratulations to my close personal friend Dr. Ralph D. Nurnberger. Dr. Nurnberger has recently accepted the position of Director of Congressional Affairs for the Bureau of Export Administration in the Department of Commerce.

For the past 8 years, Ralph has served as a legislative liaison for the American Israel Public Affairs Committee. During his years at AIPAC he has earned the respect of Members of both Houses of Congress of both political parties. This fact is underscored by the fact that a reception in his honor to be held today in the Dirksen Senate Office Building is hosted by Senators JOHN MCCAIN and ALBERT GORE and Majority Leader RICHARD GEPHARDT and myself.

He has established a reputation for honestly and credibly presenting complex Middle East issues to Members of Congress and to the general public. Ralph has assisted Members in analyzing the events in that troubled region of the world and made the tangled web of history more understandable. In brief, Members have learned to trust him and rely upon his judgment.

Dr. Nurnberger is one of the leading experts in Washington on the budget process and its implication for international affairs. As a result, during my tenure on the House Budget Committee I called upon his expertise on all matters relating to Function 150 of the budget.

Dr. Nurnberger has published extensively on a wide range of foreign policy issues, particularly those dealing with the Middle East. He is also an outstanding spokesman, whose speaking ability and sense of humor made him a most sought after public speaker.

Ralph had an extensive background of experience and expertise even before he began to work for AIPAC. Prior to joining AIPAC he had served as a senior fellow at the Center for Strategic and International Studies (CSIS), on the professional staff of the Senate Foreign Relations Committee, as foreign policy assistant to former Senator James B. Pearson of Kansas and as a special assistant to the Administrator of the General Service Administration. In addition, he has taught diplomatic history and international relations at Georgetown University for over a dozen years.

While I am sure that many Members of Congress, as well as Tom Dine and Ralph's other colleagues at AIPAC, share my regrets that he will be leaving AIPAC, we are pleased that he will continue to work with us on important issues affecting American national security. I am sure that the Department of Commerce will be well served by a man of such talent, commitment and integrity. It is for these reasons that I am proud to cohost the reception in honor of Dr. Ralph Nurnberger.

## IN RECOGNITION OF ARCHBISHOP IAKOVOS

### HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. GEKAS. Mr. Speaker, I want to recognize and honor a man who has, for so many years, been the driving force behind the Greek Orthodox Church in America. For the last three decades, His Eminence Archbishop Iakovos has, from his position as head of Greek Orthodoxy in the Americas, worked to engender greater harmony in the Greek Orthodox Church, between Greek Orthodoxy and other religions, and within the Greek-American community as a whole.

April of this year marked the 30th anniversary of His Eminence Archbishop Iakovos as primate of the Greek Orthodox Archdiocese of North and South America.

As leader of Greek Orthodox America, His Eminence holds the undying love and respect of his community and of many who are not Greek Orthodox.

And, as a member of the Greek-American community. I am honored to recognize this very important occasion and to add voice to that of the United Hellenic American Congress as it honors Archbishop Iakovos.

## DEVELOPMENTS IN GUINEA

### HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. PAYNE of New Jersey. Mr. Speaker, I would like to take a moment to discuss the recent events occurring in the West African country of Guinea. I recently had the opportunity to meet with three ministers from the Government of Guinea, and found it heartening to learn of the positive and hopeful steps they are taking to establish a democracy and build a foundation for a productive, free-enterprise economy.

As you may know, Guinea began a new era of self-rule under the capable leadership of President Lansane Conte in 1984. Soon after his inauguration, President Conte launched an economic reform program that has received widespread praise from the International Monetary Fund, the World Bank, and the U.S. Agency for International Development. To facilitate the success of this program, he has privatized most of the former state-controlled enterprises and has instituted policies to encourage entrepreneurship.

In a speech delivered on October 2, 1989, Guinea's Independence Day, President Conte called for the establishment of a democracy, which he termed "an historic responsibility" for the people of Guinea. In the same speech, he announced that the Military Committee for National Recovery [CMRN], Guinea's ruling party, would undertake a complete revision of the 1984 Constitution. This new Constitution would incorporate many of the aspects familiar to most democracies of the world—namely a Presidential system, in which the President is elected by universal suffrage for a maximum of two 5-year terms; a unicameral parliament; tripartite form of a government comprised of executive, legislative, and judicial branches, with the judiciary enjoying full independence protected by law; and a two-party political system that would eventually evolve into a multiparty democracy. During the 5-year period of transition, the National Council for the Recovery of Guinea, a transition body comprised of both military and civilian citizens, would work to pave the way toward a fully democratic nation.

Regarding the economic challenges facing Guinea, particularly unemployment, President Conte believes firmly that Guinea's success in alleviating these problems will only come by instituting steps toward the creation of private sector employment. These steps would include simplifying procedures regulating the creation of private enterprises and the undertaking of a comprehensive study of existing policies to determine what further steps must be taken to improve the overall investment climate and creation of an environment more conducive to entrepreneurship and private enterprise.

Mr. Speaker, I have found these bold initiatives rather compelling, especially considering Guinea's turbulent past. In light of this, I would therefore encourage each of my colleagues to inquire about the progress that this government has made, I think you may find it worth the effort.

## PETITION TO END THE CONTRA WAR

### HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DELLUMS. Mr. Speaker, I want to acknowledge the receipt of some 12,000 signatures on a petition opposing United States assistance to the Nicaraguan Contras. The petition had been circulated by the Mt. Diablo Peace Center.

I appreciate this support. I will, of course, continue my efforts to end our funding of the Contras and to seek to end the conflict in that poor nation.

I cannot conceive of how any aid, humanitarian or otherwise, would serve any constructive purpose unless all parties requested it. The more than $350 million already spent on Contra aid—this amount includes illegal diversions furnished by the Iran-Contra conspiracy—has only prolonged conflict in Nicaragua. I continue to believe that the problems of Nicaragua, and Central America generally, can only be solved through multilateral diplomacy, not intervention and low-intensity warfare.

Former President Reagan liked to cite the Monroe Doctrine in support of his ill-conceived policy; yet, the Monroe Doctrine that I learned in history class includes the phrase:

It is still the true policy of the United States to leave the parties—in Latin America—to themselves, in the hope that other powers will pursue the same course.

## ARTHUR AVENUE 187TH STREET MERCHANTS ASSOCIATION

### HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ENGEL. Mr. Speaker, I would like to take this opportunity to recognize the contributions to the Belmont community made by the Arthur Avenue & 187th Street Merchants Association, and of its Merchant of the Year, Gino Raguso.

The Arthur Avenue & 187th Street Merchants Association has, since 1975, worked strenuously to improve life in the Belmont neighborhood. This privately funded association has played a significant role in the renovation of the Arthur Avenue retail market. It has been a major sponsor of Belmont's Annual Columbus Day parade, and has encouraged business investment in the community.

The most important work of this association has, however, been in its efforts to bring the Belmont community closer together. It has helped to foster and enrich the community's sense of togetherness by assisting the Mount Carmel Church in organizing its annual feasts of St. Anthony and of Our Lady of Mount Carmel feast. It has also brought joy and cheer to the community's children by its promoting of sidewalk Santa and strolling minstrels.

It gives me great pleasure to recognize the efforts of this fine community association. I wish to heartily congratulate the association, and its officers, for their dedication to the people of Belmont.

None deserve praise more than Mr. Gino Raguso, their Merchant of the Year. Mr. Speaker, Mr. Raguso epitomizes the American dream. Owner of Gino's Pastry Shop, Gino Raguso came to the shores of this country with his bride, Chiara, in 1957. They settled in the Bronx, worked hard, and soon opened, in 1961, their own pastry shop. Gino and Chiara worked long hours, 7 days a week, all the while raising a family of six children. Their devotion to their family, their community, and their new country is what I rise to salute today. Our country has indeed been fortunate to have had families like the Raguso's. My sincerest congratulations goes out to Gino Raguso on his selection as Merchant of the Year.

## IMPACT OF SCHOOL SWITCHING AND TUITIION TAX CREDITS

### HON. JILL LONG

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Ms. LONG. Mr. Speaker, there has been increased discussion recently about allowing children to switch from one public school to another, and about the use of tuition tax credits. However, little attention has been given to the impact such practices would have, particularly on rural areas.

Having attended and taught in both public and Christian schools, I recognize the value of public and private education. As the Representative of a predominantly rural area, I am also all too aware of the impact that switching from one public school to another could have on rural education.

Parents naturally want to send their children to the better public school. Once that school becomes overburdened with students, however, it can no longer maintain the high level of education that attracted parents in the first place. In an urban area, parents may simply move on to another public school that provides a high level of education. In a rural area, however, with fewer schools and more distance between them, alternatives are limited once this type of switching has resulted in the demise of the few schools immediately available to the area's children. Other schools may be located many miles away, and it can be virtually impossible for a child to travel the distance necessary to reach them.

Tuition tax credits have a similar impact. Parents are literally paid to desert the public school system and enroll their children in private school. This is a disservice to America's children, all of whom deserve the opportunity for a quality education. Rather than turning away from our schools, parents should instead be encouraged to participate in programs to improve their area's public schools. The answer to our Nation's education needs is not to turn tail and run, but for all of us to pitch in and make the difference.

## TIME TO AID THE U.S. FASTENERS INDUSTRY

### HON. CLAUDINE SCHNEIDER

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Ms. SCHNEIDER. Mr. Speaker, recently the House passed an important piece of legislation, H.R. 3000, the Fastener Quality Act, to help protect U.S. manufacturers of bolts and fasteners from unfair foreign competition. Although the challenge of foreign competition has taken many forms, one of the most disturbing is the false marking of defective bolts and fasteners regarding grades and properties. That is why I am proud to be an original cosponsor of this bill designed to halt this offensive practice.

The part of the industry that has been most afflicted by this practice is the part which supplies bolt and fasteners needed for their strength—such as in the construction of airplanes, cars, weapons, and nuclear powerplants. Bolt and fastener counterfeiting is an intolerable situation that rips off the consumer, cheats business, and even threatens our national security.

This bill, by establishing procedures for testing and ensuring the quality of bolts and fasteners, would help protect both domestic firms that operate in good faith and consumers who trust the products they buy. I commend the work of the leadership of the Science, Space, and Technology Committee for the valuable work they have done in this area.

In addition, I would also like to mention a separate but related issue that I brought to the attention of the committee last year; namely, the infringement by certain foreign companies of copyrights on promotional material. I was originally informed of this situation by a fastener manufacturer in my home State of Rhode Island.

Apparently, because certain foreign governments do not recognize U.S. copyrights, their companies are able to copy totally the promotional materials of U.S. companies. I am concerned that this practice could confuse the consumer who would order products of a lower quality from a foreign company thinking they were buying the higher quality products of a U.S. firm. Of course, this could facilitate the distribution of counterfeit products as well.

As a result of having this matter brought to its attention, the Science, Space, and Technology Committee approved a legislative report directing the Department of Commerce to investigate this practice and to make recommendations on ways to correct it. Therefore, I urge the department to undertake this investigation as soon as possible, given the potential seriousness of the problem.

Now that the House has passed this legislation, it is vital that the Senate take action and the administration offer support. The United States faces very tough overseas competitors who will stop at nothing to take away our markets. It is time for us to get tough too.

## KENTUCKY RIVER LOCKS AND DAMS 5-14

### HON. LARRY J. HOPKINS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. HOPKINS. Mr. Speaker, credibility—the faith people have that Government will keep its word and honor its commitments—is one of the cornerstones on which our representative system is built.

Based in part on the word of the Federal Government and more specifically, the Army Corps of Engineers, the Commonwealth of Kentucky agreed in 1985 to accept ownership and responsibility for a series of locks and dams on the Kentucky River.

Those locks and dams were constructed and operated by the Federal Government, some as long as 100 years ago.

Ten years ago, the Corps of Engineers began the process of divesting of the locks and dams, citing what they referred to as a lack of significant Federal interest, due to the fact that commercial navigation had ended and substantial flood control was not involved.

That position failed to take other more urgent factors into consideration.

The locks and dams were an integral part of our history, making commercial navigation possible on the Kentucky River and contributing to what has become one of the most productive and progressive areas of our State.

As significant as they have been to our past, however, the locks and dams are even more important to our future.

Today, the locks and dams create pools of water on which 400,000 persons depend each day, to say nothing of the commercial, industrial, and agricultural purposes also served.

These facilities transform the river into the lifeblood of central Kentucky.

And that is why thoughtful Kentuckians believe we now have a compelling obligation to take in this orphaned stepchild, left on our doorstep by the Federal Government.

To facilitate that "adoption" process, Kentucky and the Corps of Engineers executed a memorandum of understanding 4 years ago.

The State agreed to take ownership after a transition period during which the Corps of Engineers would complete major and routine maintenance to make the locks and dams operational.

Whether the Corps of Engineers has kept its word and lived up to the agreement it signed with the Commonwealth is now in litigation.

State officials believe the agreement has not been honored and feel it has a constitutional responsibility to seek a determination in the courts as to the validity of its claim.

The legislation I offer today simply states that the Secretary of the Army shall not proceed with the divestiture of the locks and dams until such time as the memorandum of understanding between the United States and the Commonwealth has been complied with.

This legislation is being introduced simultaneously by Senator WENDELL FORD in the other body.

I ask the support and cooperation of the Members of this House in this endeavor.

## THE NEPHROLOGY FOUNDATION OF BROOKLYN, NY

### HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. TOWNS. Mr. Speaker, today I rise to commemorate the 10th anniversary of the Nephrology Foundation of Brooklyn.

The Nephrology Foundation of Brooklyn was established as a not-for-profit organization dedicated to providing the highest quality of hemodialysis patient care. On December 17, 1979, the center treated its first four patients. Since that humble beginning, the need for freestanding hemodialysis facilities in the borough has allowed the foundation to open offices at two other locations in Brooklyn. This phenomenal growth is attributable to the caring service provided to those in need.

During its 10-year history, the foundation has provided life sustaining dialysis care to over 1,100 patients while supporting extensive research and educational activities at some of Brooklyn's most prestigious medical centers.

Through the leadership of a dedicated and concerned board of directors (Alfred P. Ingegno, Jr.—president) the foundation has responded, to the needs of the community. I am certain that they will continue that caring and concerned response in years to come.

## TRIBUTE TO PERCY H. STEELE, JR.

### HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Ms. PELOSI. Mr. Speaker, it is indeed a pleasure to rise before my colleagues and honor Mr. Percy H. Steele, Jr., of San Francisco. Mr. Steele, president of the Bay Area Urban League [BAUL] for over 25 years, has shown selfless and unswerving dedication in the pursuit of social justice.

Mr. Steele has championed the causes of the inner city poor and those afflicted by racial prejudice. At the age of 28, he was executive director of the Urban League in Morris County, NJ. After 2 years teaching at the College of St. Elizabeth, he became the first executive director of the San Diego Urban League. He was also the first black to hold a local housing agency's top position. On January 1, 1964, he became president of the Bay Area Urban League.

The Bay Area Urban League, a local chapter of the National Urban League, was founded in San Francisco in 1946 to help black war veterans find jobs. In 1965, BAUL began its first on-the-job training program. It helped blacks obtain jobs as construction workers, streetcar drivers, and telephone operators. Over the years, the league has worked diligently with the public and private sectors to make resources available for blacks seeking better employment, housing, and education. As Government funds have dwindled sharply in recent years, Mr. Steele has skillfully sought backing from private companies and organizations.

In San Francisco the league also played a major role in integrating public housing. It served the redevelopment agency of Oakland and assisted the relocation of black families displaced by public developments. The league also helped retain 500 units of public housing that were badly needed in Oakland. In the city of Richmond, it worked successfully with other community agencies and organizations to give blacks access to housing in areas previously closed to them. The league strives to promote equality among all races by providing a broad range of services and support programs throughout Alameda, Contra Costa, Marin, San Mateo, and San Francisco counties.

Mr. Steele has served on a variety of committees and received a number of awards befitting a man of renaissance talent. He has served on the following committees: the National Association for the Advancement of Colored People; the Oakland Cancer Control Board; the San Francisco Archdiocese Justice and Peace Commission; the East Bay Africare Chapter; the National Association of Social Workers; the Board of Directors of the Bay Area Black United Fund; the San Francisco Black Leadership Forum; the Executive Committee on the Institute of Industrial Relations at UC Berkeley; the Board of Directors of the San Francisco Black Cultural Center; the Bay Area Chapter of Black Social Workers; the San Francisco and Oakland Chambers of Commerce; the Board of Directors of Merritt-Peralta Medical Center in Oakland; and the Civilian Advisory Board for the Presidio of San Francisco.

Mr. Steele is the recipient of the following honors: the Corecipient of 1959 James J. Hoey Award for Interracial Justice; the Optimist of the Year Award for outstanding community service, 1961; Corecipient of Atlanta University School of Social Work 50th Anniversary Outstanding Alumni Award, 1970; the Recipient of Sigma Iota Chapter, Omega Psi Phi Fraternity Citizen of the Year Award for 1972 and 1984; the Recipient of Distinguished Leadership Award from San Diego Urban League, 1973; the Recipient of the Community Service Award from West Side Community Mental Health Center, 1974; the Recipient of Koshland Award, 1975; the Recipient of Bay Area Urban League Guild Outstanding Community Services Award, 1981; the Distinguished Services Award from the National Association of Black Social Workers, 1987; and the Distinguished Services from the Council of Executives, National Urban League, 1989.

Now retired from BAUL, Mr. Steele continues to fight for civic justice. He is active in the Church of St. Paul's, helping unwed mothers and those suffering from drug addiction. In the words of Rev. Amos Brown, a pastor of the Third Baptist Church in San Francisco. Mr. Steele is a "prime example of sensible black leadership." Indeed, Mr. Steele has demonstrated leadership in its primest fashion during his many years in view, charitable, and educational fields.

Mr. Speaker, this represents only a small portion of the good deeds of this public man. I close this modest testimonial with one more thought: We should all aspire to the heights achieved by Mr. Percy H. Steele of San Francisco.

## LARRY CRAIG ON RURAL REFERRAL CENTERS

### HON. LARRY E. CRAIG

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. CRAIG. Mr. Speaker, let's not allow rural America to become a victim of congressional wrestling over the budget reconciliation bill. It is critical for the House to accept the Senate's amendment relating to rural referral centers.

Rural health care is facing a financial crisis. With the depressed financial conditions and the high rates of closure among small rural hospitals, these rural referral centers are becoming more and more important. In many rural areas they are the sole source of health care. Because rural referral centers provide a larger variety of specialized services, they are reimbursed from Medicare funds at a rate 11 percent higher than their small rural counterparts. The larger rural referral centers must also pay salaries and expenses comparable to urban hospitals. If they are to continue offering the much needed, specialized care, rural referral centers must be reimbursed at a rate which properly reflects their costs.

In Idaho, three hospitals have already been forced out of business, and seven others are struggling to survive due to inequitable reimbursement from Medicare. That number may not sound so terrible until you consider how many lives are affected by those hospitals, and the great distances that must be traveled to obtain health care without them.

Idaho is not alone; this problem will have an impact on our Nation as well. As of October 1, 43 rural referral centers began to see reductions in their Medicare reimbursements. These hospitals and their communities are also facing the prospect of closure, holding on to the hope that Congress or the Administration will hear their voices and somehow correct the health care financing administration's Medicare inequities.

Mr. Speaker, I want to make their voices heard.

Let me thank Congressman STARK for his help in getting the language from my bill, H.R. 680, included in reconciliation. While I still will work toward the passage of that provision in reconciliation, our current uncertainty about the fate of reconciliaton demands that we pursue other avenues to that same goal. I thank Chairman NATCHER for his willingness to assist in that effort by supporting the Senate amendment to the Labor/HHS-Education appropriations bill which will provide at least 1 year for Congress to respond in a more permanent manner to the financial danger rural hospitals face.

A recent article on rural hospitals in Smithsonian magazine did an excellent job of highlighting the importance of those institutions:

A rural hospital, then, may be a place where nothing "special" ever happens. Where no one is a number; where everyone

knows your name, tolerates your quirks and shares your griefs; where the nurses celebrate your birthday. Where when you telephone to say you feel sick and wish to be admitted, they turn down your bed and have the florist deliver a half-dozen pink carnations to your room. Where visiting hours do not matter even if they are posted—relatives and friends come and go as they please; where a turned-on light over your door instantly brings a nurse to your bedside. Where the kitchen staff makes bread and pies from scratch, and real mashed potatoes, and if you don't like the evening menu, someone will run to the corner and bring you a pizza with mushrooms and onions—and no anchovies.

Mr. Speaker, rural referral centers are more than just health care centers—they are an important thread in the fabric of rural society. America's rural hospitals are facing an economic crises, one that threatens not only their existence, but also the existence of the communities they serve. Medicare payments are already inequitable to our rural referral centers. Let us protect them and the thousands of rural Americans they serve by retaining the Senate's amendment to H.R. 3566.

## A TRIBUTE TO BETTY B. LINKER

### HON. LAWRENCE COUGHLIN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. COUGHLIN. Mr. Speaker, it is with great sadness that I rise today to pay tribute to one of Montgomery County, PA's finest individuals and a true lady, Betty B. Linker.

Betty Linker served as the first female Republican commissioner of Montgomery County from her appointment in February 1986 until her sudden death on October 21, 1989. Prior to her service as county commissioner, Betty served Montgomery County as a special investigator for the county's weights and measures department from 1971 to 1973, the first director of the department of consumer affairs from 1973 to 1980 and as the register of wills and clerk of orphans' court from 1980 until her appointment to the board of commissioners.

Throughout her career in public service, Betty was synonymous with good government no matter what level of government she served. She was a tireless, dedicated worker who always had the best interest of her community and its residents in mind.

In addition to being an outstanding political and government leader, Betty was also a dedicated and loving wife and mother to her husband, Erich, and her two sons, Erich Jr. and Stephen.

I am proud to have known Betty Linker and to have regarded her as a close personal friend. Over the years we spent countless hours together on the campaign trail or on matters of government. I believe that everyone who knew Betty or worked with Betty is better for their time with her.

Betty Linker will no doubt be remembered for her work as a government leader. More imporantly though, Betty will be remembered for her values of family and friendship, her cheerful personality, and her love of life.

## SUPPORT OF LEGISLATION TO CORRECT AN UNINTENDED CONSEQUENCE OF THE TAX REFORM ACT OF 1986

### HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mrs. MORELLA. Mr. Speaker, I am pleased to cosponsor H.R. 3711, legislation introduced this past Friday, November 17, 1989, by my colleague from New York [Mr. MCGRATH], on behalf of himself and our colleague from Indiana [Mr. JACOBS]. I believe this legislation will correct an unintended and unfortunate financial hardship to certain nonprofit organizations engaged in significant contributions to scientific and medical research.

One of the affected organizations is the Federation of American Societies for Experimental Biology, located in Bethesda, MD. The federation is a nonprofit organization that disseminates information on the results of biological and medical research among scientific investigators through publications and scientific meetings.

Five years ago, the federation built an addition to their national headquarters building in Bethesda. The federation negotiated an interest rate under a tax-exempt industrial revenue bond issued by Montgomery County, MD, and financed by a Maryland bank. The bond contained a gross-up clause which enabled the bank to protect its yield and increase the interest rate should the Internal Revenue Code's corporate income tax rates be reduced in the future. However, although the Tax Reform Act of 1986 lowered the corporate income rates, the bank was willing, nevertheless, to waive its right to increase the interest rate on the loan charged to the federation.

In 1987, the Internal Revenue Service's Revenue Ruling 87-19 determined that if banks renegotiated the increase in interest rates, as required by industrial revenue bonds with gross-up clauses, the bonds would be considered to be reissued. Thus, they would be subject to rules for bonds issued subsequent to August 7, 1986. Under these rules, the banks would then lose the tax benefit of deducting 80 percent of the interests they pay to underwrite the bond as a business expense. IRS Revenue Ruling 87-19 places the federation's bank in the position of not being able to waive the increase in the interest rate. Consequently, the federation must now pay an additional annual expense of $40,000.

This excess interest payment is a severe burden to nonprofit organizations, such as the federation. Enactment of H.R. 3711 will not result in a loss of revenue to the Federal Government since the banks will continue to receive the same tax deduction. It seems clear that this inequitable situation needs to be rectified. I urge my fellow colleagues to support H.R. 3711.

## IN PRAISE OF THE DROPO FAMILY

### HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. CONTE. Mr. Speaker, Thanksgiving is a time that we think of our families and give thanks for our blessings. And few of us are as blessed as the Dropo family of Moosup, CT.

Most baseball fans and, certainly, all good Red Sox fans can recall one of the greatest rookie seasons that any baseball player ever had. In 1950, the product of Moosup, CT, the U.S. 7th Army, and the University of Connecticut, batted .322, hit 34 homers, and knocked in 144 runs. His name was Walt Dropo. That's right, Walt Dropo of the Moosup, CT.

Savo and Mary Dropo left Serbia for a new life in America in 1924. Settling in the hamlet of Moosup, CT, along with their daughters Zurka and Emily, they raised three sons who would become regional legends. Along with Walt, were his older brother Milt and younger brother George. Together, they formed the greatest family athletic force in Connecticut history. They could have been called the Great Dropo Triumvirate.

For Milt, it was varsity football, basketball, and baseball at UConn, as well as a bronze star won as an infantry platoon leader with Patton's 3d Army. Only a busted knee prevented him from a future in the pros. For the youngest, George, it was UConn baseball, a stint in the Navy, 6 years with the White Sox in the minor leagues, and 25 years as a respected sports official in Connecticut area baseball and basketball. And, of course, there was Walt, the rookie of the year in the major leagues in 1950. Walt went on in his career to tie a major league record by getting 12 straight hits and finish up with a career .270 average and 152 homers.

And so, as Thanksgiving approaches, and we think of our families and our blessings, we join the wonderful Dropo family in their annual celebration.

Mr. Speaker, I would like to include with my remarks an article about the Dropo family that appeared in the May 28 Hartford Courant.

UCONN'S FIRST FAMILY—MEMORIES ARE STILL STRONG FOR MOOSUP'S DROPO CLAN

(By Bob Sudyk)

MOOSUP.—The Cadillac Eldorado with "Dropo" on the license plate wound around Cemetery Road up Dropo Drive, turned at a yellow road sign "Moose Crossing," and stopped at a sprawling split-level natural wood and flagstone house on six acres of landscaped lawn.

The familiar surname labeled the family's garage, it was etched in the stone walk that led to the front door and a lighted bocci ball court carried the Dropo name. If the old homestead is ever sold, the Dropos will have to sell it to somebody named Dropo.

"We're proud of our family name," George Dropo said as he stepped out of his car.

George, 55, is the youngest of the Dropo brothers, who each played sports at the University of Connecticut. Milt, 67, and Walt, 66, excelled in basketball, baseball and foot-

ball at Storrs, and Walt went on to a 13-year career in the major leagues.

San Francisco has Nob Hill. Washington has Capitol Hill. Moosup has Dropo Hill. It looks down upon this hamlet on a few thousand citizens who, at the least geographically, look up to UConn's most illustrious sports family.

Mary and Savo Dropo left Mostar, Hercegovina in Serbia and built a tiny farmhouse, barn and smokehouse on this high plot of ground back in 1924.

"Five of us were born and grew up in this house when it was just two bedrooms," George said.

Moosup gets a real bang out of the Dropo clan, which celebrates holidays, family anniversaries and birthdays with fireworks shows. These festivals include feasts of barbecued lamb, chicken, and sarma (stuffed cabbage) for as many as 500 townfolk and friends.

"It's that we like to share special family moments with others," Explained George, now an assistant principal at Plainfield High. "Pop loved Moosup and its people. The townspeople loved him." Savo died five years ago at the age of 92. The family mourned his passing with fireworks. This comes from a Serbian custom to shoot the pushka (gun) in the air to mark special occasions.

On Aug. 15, the Dropos will combine Mary's 92nd birthday party, a civic V-J Day celebration and an All Hallow's Catholic Church carnival in a pyrotechnic blast that will include 92 rockets (for each year) and a 2,000-shot finale.

The Dropo boys' productions, mixing color and kaboom, last as long as an hour. They put on the grandest private whiz-bang shows in the state (if not all America) that attract thousands to the Moosup Valley.

The Dropos' fascination for fireworks is more than a recreational thrill. After Milt graduated from UConn in 1947, he began selling firecrackers out of a retail stand in Killingly. He later expanded it into a wholesale distributorship and his American Importers now has annual volume sales approaching $20 million.

George and Walt work for the company. Each of the brothers spends several weeks every year in China, purchasing artifacts, art goods and fireworks.

The Dropo boys live apart—Walt in Boston, Milt in Washington D.C., George at home in Moosup—but they remain as close as they were when growing up, sharing a bed in the six-room farmhouse.

The boys learned discipline on their dawn patrol chores that included milking the family cow, feeding the pigs and chickens and gathering eggs before going to school. Corn, potatoes, vegetables and fruit were raised to feed the family during the Depression days of the 1930's. Mary sold what they didn't eat in the town market. Savo also worked fulltime in the town's textile mills.

"The farm kept the family well-fed," George said, "Pop would slaughter a pig every fall, cure it in the smokehouse and we'd have it for holiday celebrations over the winter."

The Dropo boys got better-than-average grades and learned to excel in sports at the Carpet Grounds, a Moosup athletic field. They starred at Plainfield High. George and Walt followed Milt to UConn and even took his major, chemistry. They later switched to education. "In Serbian families, the eldest brother is respected as the leader," George explained. "You did what he did and listened to him."

There were no athletic scholarships then, so the Dropos took jobs in the university cafeteria. Milt and Walt, each a three-sport star, had their careers interrupted by World War II. Milt was an infantry platoon leader in Gen. George Patton's Third Army in Germany. He won a bronze star. Walt saw combat in Europe his three years in the Seventh Army.

George, who played baseball while attending UConn a decade later, spent two years in the Navy, then went on to play minor-league baseball for six years. Only Walt succeeded professionally.

Upon graduation in 1947, Walt, 6-foot-5 and 225 pounds, was drafted by the NBA Boston Celtics as a center and the NFL Chicago Bears as an end. The Red Sox, his boyhood favorite, were among many major league clubs, including the Yankees, seeking his services.

"Walter kept telling me to say he's not at home when the Yankees call," laughed his mother, Mary, a Yankee hater all the way from Serbia.

"The Celtics' [owner] Walter Brown had no money," said Walt. "The Bears' best lineman, Bulldog Turner, was making only $2,500 a year. Mr. [Tom] Yawkey had personal wealth and Red Sox were very generous."

Walt agreed to a $15,000 bonus and a $600-a-month Triple-A contract.

He came up to stay in the big time when Billy Goodman broke his ankle a couple weeks in the 1950 season. In his own version of Dropo fireworks, Walt batted .322 with 34 home runs and 144 runs batted in. He made the All-Star team and was named American League Rookie of the Year. It was one of the greatest first seasons in major league history.

"You only dream of a year like my first one," Walt said. "I just wanted to hit well enough to play on a Red Sox team that batted .300 [actually, .302]. I was in my prime physically. Pitchers kept challenging me with inside fastballs all year, and that's all I was looking for."

He was quickly nicknamed "Moose" for his giant physical proportions (he wears size 15 shoes) and because of his hometown. Moosup comes from an old Indian chief who once said, "There is moose up river." So claims George.

Walt never came close to another year like his first.

"After my first season, pitchers started throwing me off-speed stuff," he said. "They brought me down to my level. But I did as well as I could for the talent I had. I have no regrets."

He tied Pinky Higgins' 1938 record of 12 straight hits in 1952 when he was with the Tigers. It still stands. He was stopped short of a new record by the Washington Senators' Lou Sleater on a first-pitch fastball. Walt lofted it sky-high to catcher Mickey Grasso near the stands.

"Once I tied the record, I should have waited for the perfect pitch," he said. "I can still see that fastball. I got under it. When I fouled it up, I was prayin' it would go into the seats. I sure wanted that one back. But I got no kick coming. I was tickled to death to do what I did." He singled in his next at bat.

The family has shared the glory of Walt's athletic career. His brothers know all of his stats, have kept scrapbooks and gathered memorabilia from Walt's UConn and major league baseball days. They are in a glass case in the home's two split-level recreation rooms. The walls are covered with hundreds of photographs.

It was not an easy adjustment to life without baseball for Walt.

After he retired, Walt entered the insurance and investments business in Boston. As the years rolled by, the more he missed competition and the cheers of the crowd the more he withdrew into himself. "Walt lost his enthusiasm for life," George recalled. Walt started eating and drinking more than he should have. His weight ballooned to 285 pounds.

Then, two years ago, Walt sustained a concussion from a fall on an escalator. A blood clot developed on the brain, which caused a seizure. His right side was paralyzed, and he lay near death. Three operations, performed at a Boston hospital, saved him.

It took a full year of intense physical therapy for Walt to regain full health. He is now in his best shape since his playing days. He weighs 225 pounds, walks three miles a day and plays golf several days a week, shooting in the mid-80s. He attends card shows, signs autographs and appears in old-timer's games. He also is working with fresh vigor in Milton's import business.

"It's like a reincarnation," Walt said with a smile. "This is a new start in life. I'm enjoying my career all over again. I haven't felt this good in years. The accident woke me up."

The Dropos remain deeply involved in UConn affairs. In 1979, they provided the university's only fully endowed athletic scholarship, the Dropo Family Scholarship, now awarded annually to a baseball player from the state. They are generous contributors to many university programs and regularly attend alumni functions. Walt's three children graduated from UConn. His daughter, Carla, captained the women's swim team. The Dropos are considered UConn's "First Family."

This devoted clan assembles on Dropo Hill for every holiday and family birthday. "We all keep returning to the nest," George said. One sister, Zurka, also lives at home with George and Mary. The other sister, Emily, lives in East Killingly with her family. Walt and Milt, who like George are unmarried, both spend weeks at a time in Moosup with the family.

A photographer who had come to the house huddled the Dropo boys around mom. "Gimme a smile," he said. "Smile?" asked mom, grinning even wider, "It's easy for the Dropos to smile . . ."

## CATHOLIC RELIEF SERVICES—A NEW MEMBER OF THE BALTIMORE COMMUNITY

### HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mrs. BENTLEY. Mr. Speaker, I am pleased to announce the arrival of a new member to the Baltimore community. The Catholic Relief Services has moved from its New York location and established itself in Baltimore's historic Market Center.

The new location will serve as the world headquarters for Catholic Relief Services international humanitarian relief and development activities. As a new member of the Baltimore community, Catholic Relief Services [CRS] not only will add to the city's continuing

renaissance, but will bring a fresh new influx of worldwide concerns and involvement to our community. Currently CRS is the largest nongovernmental relief service in the world. It spends nearly $300 million a year in emergency relief and development programs in over 70 countries.

Since 1943, CRS administered care to the suffering by providing food, shelter, and clothing. Originally CRS was created when U.S. bishops recognized the need for emergency relief to the victims of World War II and was at that time called War Relief Services. Regardless of creed, they aided prisoners of war, widows, orphans, and refugees. After the war the bishops decided to expand the efforts of the War Relief Services to include more than war and post-war programs, in doing so they renamed the agency to its present title.

Not only does CRS alleviate the immediate needs of the less fortunate, but goes a step further in that they institute preventative measures as well. Through socioeconomic development and nutrition projects the goal is to encourage self-sufficiency and eventual independence. Obviously CRS is adhering to the well-founded principle that it is better to give a man a fishing rod, than merely a fish. Indeed it is evident that CRS does not seek a bandaid cure, rather it seeks a comprehensive plan to improve the long-term conditions for all mankind.

The arrival of Catholic Relief Services to the Baltimore community will without a doubt prove beneficial to Baltimore and CRS. It is estimated that operating expenses at the new Baltimore headquarters will be 22 percent below the New York operating expenses, which is clearly much more cost effective and will allow CRS to channel those savings to its relief efforts.

Mr. Speaker, my fellow colleagues, I am pleased to welcome Catholic Relief Services to the Baltimore community. Through their efforts they have given a new and vibrant element to our community. The devotion and dedication of CRS to the needs of all mankind are truly commendable.

## CONGRESSIONAL CALL TO CONSCIENCE FOR SOVIET JEWS, DAVID AND OLGA MIKHAILEV

### HON. ANTHONY C. BEILENSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BEILENSON. Mr. Speaker, thank you for this opportunity to join my colleagues in supporting the 1989 Congressional Call to Conscience for Soviet Jews.

I would like to speak to you today about the plight of David and Olga Mikhailev, and their 9-year-old daughter Marina. In 1975, David, a long-time well-known refusnik, left his job at the Institute of Communications, and was technically cleared of secrets. In 1978 the family applied to emigrate, but was refused on the grounds that David allegedly had access to state secrets while working at the institute. He has not been able to secure employment since then, because every prospective employer has demanded that he withdraw his visa application before being hired. He is currently the vice chairman of OVIR, the Public Committee for Monitoring the Soviet Visa Office.

In September 1988, David and Olga were forced to obtain a fictitious divorce so that Olga and Marina could come to the United States to obtain necessary medical treatment for Marina, who has a genetic disorder. The United States is the only country offering this particular treatment.

I would like to take this opportunity to urge the Soviet Union to honor its commitments as outlined in the Helsinki Final Act, and allow David to be reunited with his family in the United States. Such action would be a positive example of the continued success of the glasnost campaign and would help further amicable relations between our two great nations.

## TRIBUTE TO DR. BILL McCOLL

### HON. BILL LOWERY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LOWERY of California. Mr. Speaker, it gives me great pleasure today to recognize an extraordinary citizen from San Diego who has just been chosen as this year's honorary chairman of the 1989 Sea World Holiday Bowl.

Dr. Bill McColl has worn many hats in his life. Bill was twice elected All-American while playing football for Stanford; he played eight seasons of professsional football with the Chicago Bears and has been elected to both the College Football Hall of Fame and the National Football League Hall of Fame.

What makes this athlete exceptional though is what he has done off the field. Bill McColl knew early on that football would only be part of his life's work. While playing for the Bears, he studied medicine and prepared himself for career as an orthopedic surgeon.

Three years after he left football, Dr. McColl traveled to South Korea as a medical missionary for the United Presbyterian Church. There, he pioneered reconstructive surgery for leprosy patients and found a disease and a cause that stirred his heart. Today, he remains active in the field as chairman of the board of American Leprosy Missions.

A devoted physician, community leader, and father, Bill McColl has never stopped giving of himself. Few Americans could be more deserving of the honor the Holiday Bowl Organizing Committee has bestowed upon him. He represents what is best in American sports.

Mr. Speaker, I hope you and all of our collegues in the House of Representatives will join me today in thanking Bill McColl for his commitment and service to humanity. As chairman of the Holiday Bowl, he will inspire athletes and spectators alike to strive for excellence in all aspects of their lives.

## INTRODUCTION OF THE CONSERVATION RESERVE PROGRAM ENHANCEMENT ACT

### HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DYSON. Mr. Speaker, today I am introducing the Conservation Reserve Program Enhancement Act. The Conservation Reserve Program was authorized under the Food Security Act of 1985 and ends with the life of that bill. My legislation is designed to continue the good work of the CRP and to make the program more attractive to farmers. The success of the CRP rests with the farm community, and we must work to increase their participation in the program.

The Conservation Reserve Program is beneficial to both the farmer and the environment. Farmers who voluntarily enroll in the program are paid to take highly erodible or environmentally sensitive land out of production for a period of 10 years. This reduces agricultural runoff, lowers surplus produce, and protects our farmland. Everyone benefits, and few other programs can make that claim.

Originally designed for highly erodible land, the CRP has evolved to include environmentally sensitive land as well. In fact, it is one of the best methods of preventing nonpoint source pollution. Agricultural land along the waterfront is taken out of production, which acts as a buffer to runoff. This is especially important to my district, which borders the Chesapeake Bay.

The Chesapeake Bay is one of America's treasures. Famous for its beauty, it is our largest and most productive estuary. Unfortunately, until recently it has been in decline due to pollution and disease. Recognizing the importance of the bay, the States of Maryland, Virginia, Pennsylvania, the Federal Government and the District of Columbia have joined together to clean up the bay.

Agricultural runoff has been a serious problem for the Chesapeake Bay. Eighty percent of the sediment runoff into the bay comes from agricultural sources. One-third of the pesticides in the bay are attributed to farmland. And one-third of the phosphorous and three-fifths of the nitrogen in the bay is attributed to nonpoint source pollution. This last is such a serious problem that the Chesapeake Bay Agreements have called for a 40-percent reduction in these nutrients by the year 2000. The Conservation Reserve Program figures prominently in this reduction strategy.

The Conservation Reserve Program is one of the most effective Federal programs for reducing agricultural runoff. It is also very popular among our farmers. Thirty million acres have been enrolled in the CRP nationwide. Unfortunately, the success of the program has not carried over to Maryland. Through the eighth signup only 11,000 acres had been enrolled, only 3 percent of the eligible acres. This is one of the lowest totals in the country, where the national participation rate is 25 percent. Maryland enrollment must be increased if we are to protect the bay.

Mr. Speaker, my legislation will amend the Conservation Reserve Program to provide more environmental benefits by encouraging farmer participation in environmentally sensitive areas. My legislation authorizes the Secretary of Agriculture to designate environmentally sensitive areas as conservation priority areas. Incentives will be provided to farmers in these areas to increase participation.

These incentives may include, but are not limited to, higher rental premiums or a one-time bonus for areas with high developmental pressures; more narrow filter strips, so that less land would have to be taken out of production; shortening contract lengths; allowing CRP acreage to count toward the farmer's set-aside land; or Federal contributions toward conservation planning of up to 90 percent of the total cost, instead of the current 50 percent.

My legislation will also encourage tree planting. Forests are one of the most effective ways of eliminating soil erosion and agricultural runoff.

Finally, my legislation is designed to extend the benefits of the CRP. The Secretary of Agriculture is authorized to enter into voluntary contracts with farmers who participate in the Conservation Reserve Program, to acquire conservation easements on environmentally sensitive land. This is especially important for the Chesapeake Bay, where most of the enrolled acres could be back in production before the year 2000, when we hope to reach our nutrient reduction goal. With the voluntary assistance of our farm community, I would like to extend the benefits of the program into the 20th century.

Mr. Speaker, the Conservation Reserve Program is one of those rare programs which gains approval from both the environmental and the agricultural community. I believe that the Conservation Reserve Program Enhancement Act will continue and improve its good work.

## THE FAILURE OF COMMUNISM AND THE WESTERN RESPONSE

### HON. RAYMOND J. McGRATH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McGRATH. Mr. Speaker, last week the Radio Free Europe/Radio Liberty Fund held a conference on "The Failure of Communism and the Western Response." I would like to share with my colleagues a letter from the President to the participants in the conference citing the critical work of RFE/RL in Eastern Europe and the Soviet Union today. I would also like to enter into the RECORD remarks made at the conference by Deputy Secretary of State Lawrence S. Eagleburger and an editorial from the Baltimore Sun about RFE/RL's role in this new era of constant change in the Eastern bloc. It is clear to many that Radio Free Europe and Radio Liberty have played a critical part in the emergence of a non-Communist Government in Poland, the rejection of communism in Hungary, and the first contested elections in the Soviet Union in seven decades.

THE WHITE HOUSE,
*Washington, DC, October 17, 1989.*

I am pleased to send warm greetings to all those gathered in Washington, D.C., for the Radio Free Europe/Radio Liberty Fund conference on "The Failure of Communism and the Western Response." This meeting of distinguished representatives of academia, journalism, politics, and business will no doubt produce many valuable insights.

The United States remains fully committed to supporting self-determination for the peoples of Central and Eastern Europe. Today, the prospects for attaining that goal are greater than at any time since an Iron Curtain was drawn across Europe in the late 1940's. The very concept of a divided Europe is under siege, not by armies, but by the spread of a single powerful idea—democracy. The triumph of individual liberty and representative government is the message; international broadcasts, such as those of Radio Free Europe/Radio Liberty, are part of the medium.

The Radios' mission is not yet complete. As long as the peoples of the USSR and Eastern Europe continue to be denied full national sovereignty and human rights, as long as there remains the threat of reversal in the positive trend toward greater democratization in the East, there will be a need for organizations like Radio Free Europe and Radio Liberty. The free flow of ideas and information is vital not only to those who mean to govern themselves but also to peace among nations. As you well know, respect for human rights and real peace are inseparable. I encourage you to keep up your outstanding efforts—they provide invaluable moral support to the millions of courageous individuals who are struggling to win freedom.

Barbara joins me in offering our best wishes for a successful conference. God bless and keep you.

GEORGE BUSH.

REMARKS BY LAWRENCE S. EAGLEBURGER, DEPUTY SECRETARY OF STATE

To be honest, I hesitated before agreeing to come here this morning to make these brief opening remarks. I hesitated because I knew that in addressing the Radio Free Europe-Radio Liberty Fund, I would have to say something about current events in Eastern Europe and the Soviet Union. I feared instinctively that anything I might say to you now would become irrelevant or outdated by this evening—such is the pace of change these days. I run the risk today of being accused of nostalgia not for the Cold War, but for last week!

On the other hand, this is a splendid opportunity for me to pay tribute to organizations which are in no small part responsible for the exciting events of the moment. For what we are witnessing in Eastern Europe today is testimony to the power of information and the influence of ideas. I have never been one who believed that the tensions of the Cold War were the result of the arms race between the United States and the Soviet Union. On the contrary, the Cold War has lasted so long because while we in the West have feared Soviet weapons, the Soviet Union has feared Western ideas. Stalinism, and all that followed until Gorbachev's rise to power—with the possible exception, from time to time, of the Khrushchev era—was a system based on lies as well as on repression. It functioned only as long as borders could be sealed, airwaves jammed and peoples' minds closed to the idea and example of freedom without.

But even in the most benighted days of the Cold War, Radio Free Europe and Radio Liberty provided East Europeans with a window on reality, and enough fresh air passed through that window to prevent Stalinism from thoroughly suffocating hope for freedom and truth. And then two events occurred which helped set the stage for the democratic renewal in Eastern Europe today.

The first was the signing in 1975 of the Helsinki Agreements. You will recall that the Ford Administration came under criticism from certain quarters for agreeing, it was charged, to legitimize the post-war status quo in Eastern Europe in exchange for paper promises of respect for civilized standards of behavior. The Warsaw Pact nations, of course, had no intention of abiding by their Helsinki commitments to respect human rights and the free flow of people and ideas. But they miscalculated: A standard was set against which those Governments would be judged not only by the West, but by their own citizens as well.

Second, there was the birth of Solidarity in 1980. The Communist Party's monopoly on truth, if not yet on power, was over. Radio Free Europe played an important role that August in alerting Poles to what was happening in different parts of their country, thereby preventing the government from isolating pockets of protest as it had done in the past. Martial law ensued, but the credibility and legitimacy of the Communist regime was shattered irrevocably.

We know what happened next. The passing of the Brezhnev era found the Communist world mired in stagnation, in danger of missing out altogether on the post-industrial revolution, and of falling irretrievably behind the West. No one believed the old dogmas any longer, but those dogmas stood in the way of any genuine effort to reverse the East's decline. And then Mikhail Gorbachev came along and declared an end to the state's and the party's monopoly on truth. All that has followed, including last Thursday's de facto obliteration of the Berlin Wall, is an inevitable consequence of that original repudiation of infallibility.

Abolishing the monopoly on truth and destroying the Iron Curtain, in short, are two sides of the same coin. Once you commit to telling it like it is, there is no stopping on the road to where truth-telling may lead you. All barriers—including discredited ideologies, failed political and economic systems and the artificial division of an entire continent—will, in the end, be swept away by the power of truth.

President Bush has said that we would like perestroika to succeed. Glasnost, and the process of liberalization which has accompanied it, offer the first real hope in the post-war era that the Soviet Union and the nations of the West may some day be linked in a community of shared values. Last month in New York, Secretary of State Baker said that the U.S. could now pursue points of mutual advantage with the Soviet Union. Before Gorbachev, all that we had in common was a mutual desire to avoid nuclear war and the destruction of the planet. Today, one can hope that we have a mutual interest in seeing freedom spread and prosper throughout Eastern Europe and in the Soviet Union itself.

The degree of openness now encouraged under Gorbachev is little short of astonishing. Who would have thought that Soviet listeners would be permitted to call in to Radio Liberty, or that east bloc officials would allow themselves to be interviewed by

Radio Free Europe and Radio Liberty correspondents? Clearly, Gorbachev has understood that the Soviet Union's economic and political survival depends upon the awakening of the Soviet citizen from generations of apathy and sullen passivity. And he understands as well that to accomplish this, the Soviet people need to be informed and to become participants in the political process. It is premature to say where all of these changes may lead, but there is no denying that a revolution of historic dimensions is already underway.

It is obvious that perestroika is facing some daunting obstacles these days. But the fact that the problems of reform result almost wholly from the discredited doctrines and policies of the past is no reason for us to assume the mantle of superiority just as the Soviets are discarding it. We have problems of our own, and no one ever said that democratic government was easy; it is, as Winston Churchill argued, the least worst kind. But democracy begins with the premise that you cannot solve problems unless you first acknowledge that they exist and are willing to examine them unflinchingly in the light of all the facts.

The truth, however, can sometimes hurt, and in a system which until recently was based on systematic lying and truth-avoidance, it can even be destablizing. Freedom, too, in societies where lowest-common denominator equality was for long the highest virtue, can be difficult to adjust to. All change is unsettling, and it is not surprising that the transition from totalitarian rule in a multi-ethnic empire to something resembling an open political system is a painful and risky process.

What we can do, and what Radio Free Europe and Radio Liberty can do, is to assist the forces and the process of change in the East. The new openness currently prevailing in the region does not mean that the radios have worked themselves out of a job. Indeed, the fact that your programming is no longer subject to jamming is in part testimony to official recognition that you can be catalysts for further positive change in the East. Your very presence on the airwaves is an incentive to more open and objective reporting on the ground; it is, moreover, an insurance policy against the efforts of those who remain the enemies of glasnost. And you can contribute to the success of perestroika as well by creative programming which introduces listeners to the techniques and the building blocks of the free enterprise system and of democratic political institutions.

Obviously, we cannot ignore the fact the glasnost has brought to the fore age-old ethnic rivalries which totalitarian rule had stifled, but never managed to eliminate. There are a good number of nationalities and ethnic groups in the Soviet Union and Eastern Europe who have a very poor record of peaceful coexistence and whom we hope will learn to live together by choice, and by virtue of a common stake in an emerging democratic order. Your reporting on these and other issues, while meeting the highest standards of fairness and accuracy, will help to ensure that the challenges of the present are not met with the methods of the past. We want the world to understand that the United States believes in self-determination and in change by peaceful means. We should never lose sight of one principle at the expense of the other.

I know you are not going to let me escape without saying something about the current situation in Eastern Europe. Events of the past few weeks would seem to demonstrate that the movement toward democracy is irresistable. If last week's change at the top in Bulgaria means a step in the direction of reform, than only Romania and Czechoslovakia remain spectators in the historic movement underway. They cannot linger on the sidelines for long, however.

I think it is worth repeating President Bush's statement that we do not seek a gain at the Soviet union's expense from what is happening in Eastern Europe. A de-populated East Germany, for example, would serve nobody's interests. But a GDR implementing genuine democratic reforms would be contributing to the security of all of Europe, East and West. We believe, in short, that a democratic Europe will make for a peaceful and stable Europe.

Let me be clear that the United States also believes that a democratic Germany will make for a peaceful Germany—A Germany that will serve as the foundation for lasting peace in Europe. We are not surprised that the rapid changes taking place in the GDR are giving rise to all sorts of questions and speculation on transcendental issues such as the future of Germany and the future of NATO and the Warsaw Pact. These are terribly complex issues which will have to be dealt with over time. Our concern at the mement, however, is to see a widening and a deepening of the process of reform and democratization in Eastern Europe and the Soviet Union. This is a process which has only begun.

In the meantime, let us repose our confidence in the German people to find answers to the challenges they face. They understand better than any of us the dangers of unilateralism. They understand as well that it has been the steadiness of Western purpose and the strength of Western multilateral institutions which have largely been responsible for the great changes taking place in the East. That same steadiness and solidarity will be essential to seeing the current transitional period through to success, and the Government of the Federal Republic of Germany knows it. And by enlarging the cooperative edifice we have created to include a widening community of democratic nations, we can, over time, build a house that is neither merely European nor Western in its dimensions, but is instead a universal house based on universal democratic values.

Thank you.

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[From the Baltimore Sun, Nov. 17, 1989]

RADIO FREE EUROPE'S FUTURE

These are heady days for Radio Free Europe and Radio Liberty, the twin stations broacasting around the clock from Munich to Eastern Europe. Just the other day, Lech Walesa said his own contribution to the Communist bloc's current liberalization process paled in comparison with what those stations have done in piercing the Iron Curtain since the late 1940s. "Can there be land without sun?" the Polish labor leader said of the role of the stations which are financed by the U.S. Congress to the tune of $171 million a year.

The recognition of those two stations' essential role does not come only from people like Mr. Walesa. Several Communist governments, which used to condemn and electronically jam those "hostile voices" and "CIA tools," have now recognized the stations as legitimate broadcasters. Ranking Soviet officials routinely grant interviews to Radio Liberty. Hungary has permitted a Radio Free Europe bureau to open in Budapest. Just a few years ago, such things would have been as unthinkable as the fact that listeners from the Soviet Union nowadays regularly call Radio Liberty by telephone to report on local developments.

But aren't those stations in danger of becoming outmoded in this era of glasnost?

We do not think so. The head-spinning developments throughout Eastern Europe are only an opening act in a historic drama of those countries' transformation from communism. Exactly where that transformation will lead them, no one knows yet. The hope of American people is that it would lead all Eastern European nations to prosperity and stability under democratic governments. But there is no guarantee that that will be the end result in each case.

Certainly just a glance at the Soviet Union today shows how glasnost and perestroika have produced greatly varied results in various parts of the country. In the Baltic republics, democratic forces are on a forward march and the atmosphere is one of optimism, despite growing shortages of essentials. The Russian federation, the biggest and most populous of the 15 Soviet republics, offers a stark contrast, however. In the coming months and years, the battle over reform and the future of the Soviet Union will be fought amid the gloom of that republic. In that fight, Radio Liberty can and should be a reliable beacon.

To Radio Liberty and Radio Free Europe all this presents new challenges. To retain their credibility and listeners, they must become even more diversified and sophisticated than they are now—and adaptable to constant, rapid changes. This means abandoning ideological blinders and following a coldly realistic but consistent line in broadcasts to Eastern Europe, full of facts but devoid of emigre emotions and Cold War rhetoric.

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## INDEPENDENCE FOR THE BALTIC STATES

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### HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. RITTER. Mr. Speaker, on December 2 and 3, President Bush will be meeting with Mr. Gorbachev at Malta. With the phenomenal changes now sweeping through Eastern Europe it is timely that President Bush raise the question of self-determination and independence for the people of the Baltic States of Lithuania, Latvia, and Estonia with Mr. Gorbachev.

For the last 50 years the people of the Baltic States have been struggling quietly and peacefully for the restoration of their stolen independence in 1939. Recently the people of the Baltic States organized a 400-mile human chain consisting of more than 2 million people, stretching from Vilnius, to Riga, to Tallinn, as a public demonstration of their support for the restoration of their lost independence. The calls for freedom by the people of the Baltic States can no longer be ignored.

Today, East Europe is openly calling for democracy and free elections. The opening of the Berlin Wall has given new hope to millions of people long suppressed by the failed policies of the Eastern bloc. While popular fronts have emerged in all three Baltic countries, the

people of Lithuania, Latvia, and Estonia, still remain under the occupation of Soviet troops and the central administration of Moscow.

Mr. President, I request that you raise the illegal occupational status of the Baltic States which were annexed to the Soviet Union by means of the Hitler-Stalin Pact and its secret protocols, a violation of international law. Mr. President, I urge you to obtain assurance from Mr. Gorbachev that he will not interfere politically or militarily into the internal matters of Lithuania, Latvia, and Estonia, and that in upcoming elections the Soviet Army not be allowed to participate unless the members of the army are citizens of those republics. Soldiers from Mongolia should not be voting in Lithuanian elections.

We must not let this opportunity slip by as we approach a new century, we must let the world know that brute force can no longer suppress the spirit of the proud people of Eastern Europe.

Please Mr. President, do not let the historic occasion of Malta become another Yalta, where Eastern Europe was left to the horrors of Joseph Stalin. History is now on your side.

Mr. Speaker, I include in the RECORD a copy of a letter forwarded to me by the Supreme Committee for the Liberation of Lithuania in Washington, from the Council of the Lithuanian Reform Movement "Sajudis," the Council of the Popular Front of Estonia, and the Latvian Popular Front, to President Bush and Secretary Gorbachev on the occasion of the Malta conference:

To: The Honorable George Bush, President of the United States the Honorable Mikhail Gorbachev, Chairman of the Supreme Soviet of the Soviet Union.

GENTLEMEN: At the end of the 1930s, significant changes occurred on the international stage. There was an increasing tendency to ignore the rights of smaller nations.

Treaties which were signed between the Soviet Union and Germany in the period between 1939 and 1940 and the secret protocols which followed, were put into effect immediately after the signing of the non-aggression treaty between the two powers on August 23, 1939. These documents sealed the fate of the sovereignty of Estonia, Latvia and Lithuania and led to the occupation, annexation and incorporation of these states into the Soviet Union.

The Baltic peoples have never accepted their occupation and annexation. This was made clear by the mass demonstration of August 23, 1989, where more than 2,000,000 representatives of various nationalities linked their hands in the Baltic Way.

Estonia, Latvia and Lithuania are the only nations in Europe which to date have not regained the sovereignty they lost in the aftermath of World War II.

Considering the fact that the Baltic question is not, in light of international law and international rights, an internal matter for the Soviet Union, we call on you to address this topic at your forthcoming discussions, and to search for solutions which correspond to the world's interests in stability, security and progress. We believe that the renewal of Baltic independence corresponds to the word and spirit of the Helsinki Agreement. It would bring an end to the constant tension which has long existed in this part of Europe.

A renewal of sovereignty for Estonia, Latvia and Lithuania must be considered a fundamental prerequisite for cooperation among the nations of the Baltic basin. That, in turn, could become an important stabilizing factor in the context of European security.

We wish you all the best in your forthcoming talks. On behalf of the Baltic Council,

Respectfully yours,

VIRGILIJUS CEPAITIS,
*Representing the Council of the Lithuanian Reform Movement "Sajudia."*

MART TARMAK,
*Representing the Council of the Popular Front of Estonia.*

IVARS GODMANIS,
*Representing the Latvian Popular Front.*

## INCREDIBLE CHANGES IN EASTERN AND CENTRAL EUROPE: IS THERE A PEACE DIVIDEND?

**HON. DOUG BEREUTER**

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BEREUTER. Mr. Speaker, amazing, almost incredible changes are underway in most of the Eastern and Central European nations of the Warsaw Pact. These countries are the Soviet Union and the Communist nations that remained under their domination since the Yalta Agreement after World War II. The pace of change is breathtaking in Poland and Hungary as they move toward pluralization, democratization, and more market-oriented economies. Then in East Germany their leader, Erich Honecker, was forced out, soon thereafter East Germans began to flee by the thousands across the newly open border of Hungary and through Czechoslovakia. The thirst for freedom among the East Germans was not to be denied. Dramatic changes culminated in the highly symbolic breaching of the Berlin Wall and the Iron Curtain by the ready issuance of exit visas to all who wanted to leave. Already this year 225,000 East Germans of its 17 million people had escaped to West Germany before the wall was opened.

As I speak these words, there are daily advances in pluralism, democratization, and "capitalist-oriented" economic restructuring continuing in the German Democratic Republic which continue. There are early signs of similar steps even in Bulgaria where their hard-line President Tudor Zhivkov has stepped down. Also, as this member predicted, massive numbers of Czechs demonstrated yesterday and today in Prague and elsewhere in that nation. Only in Romania where the ultimate hard-liner, repressive Nicolae Ceausescu, remains firmly in control, is the status quo forceably maintained.

Many of these changes are clearly happening with the announced or tacit support of Soviet General Secretary Mikhail Gorbachev whose hand is forced by the desperate economic failures of the Soviet Union and by his need to adopt radical restructuring measures—perestroika. Economic restructuring necessarily meant opening up the Soviet society—glasnost—which in turn inevitably resulted in: First, even greater demands for freedom by the people of the Soviet Union; second, dissatisfaction by the lower- and middle-level, Communist Party leadership and bureaucrats—the nomenklatura; third, ethnic unrest and strife; fourth, unprecedented challenges for greater freedom and independence by the Baltic nations of Latvia, Lithuania, and Estonia, which were illegally and forceably annexed by the Soviet Union at the end of World War II.

Clearly General Secretary Gorbachev has his hands full at home. Coal miners are striking—something that is not supposed to happen in a Communist country. Parts of the Soviet Union face the prospects of actual famine this winter. Economic productivity and product quality drops from bad to worse. He desperately needs the technology and assistance from the West; however, he is very short on the hard currency to pay for it, and there are Western controls on some of what he needs. His is now a country with a third-world economy and a superpower military capacity.

With up to 20 percent of the Soviet GNP being spent on the military and with most of the best technicians, engineers, research, and production facilities devoted to the military, Gorbachev realizes he must: First, drastically reduce military expenditures through arms control agreements and troop reductions with the United States and other NATO countries, second, pull Soviet troops out of Afghanistan and cut back on Soviet Third World military adventurism and subsidies—if the West insists; and third, reduce the apparent level of hostility and armed confrontation in central Europe.

It may well be that the West has won the ideological cold war, but it is clearly a matter of economic necessity that drives Mr. Gorbachev urgently to: First, move toward arms and troop reductions; second, implement perestroika directly in the Soviet Union; third, accept market-oriented economic changes in its satellite European nations; and fourth, encourage or accept the glasnost—openness—democratization, and pluralism that are demanded and which necessarily followed perestroika. Yes, Mr. Gorbachev could lose power or be assassinated, but I do not believe that all of these changes can be reversed in the Soviet Union or Warsaw Pact countries—not even under the military boot or through massive state terrorism. Some things are changed permanently, and more will certainly follow—with or without the ideological conversion of the Communist leaders and even without an abandonment of either aggressive policies or the goal of the Communist world domination. America and its allies must recognize and act upon the recognition that these results and motives spring from matters of internal and Warsaw Pact economic and political necessity; must avoid provocative or ambiguous actions toward the Soviet bloc; must welcome and even assist in changes that enhance pluralism, economic restructuring, and democratization in the Soviet bloc. However, it should do so only with eyes wide open, only with a knowledge that most of these changes in the Soviet bloc are at least in part reversible, and only when giving assistance and greater cooperation is clearly in our national interest.

That brings one to the question of how we should assist, first, Poland and Hungary, and

then the Soviet Union, East Germany, Czechoslovakia, et cetera. The Bush administration asked Congress to approve an aid package for Hungary and Poland to complement West European aid. The Senate upped the ante and the House proposal was a bit more conservative than the Senate. After months of debate and wrangling the aid package was passed on November 18, 1989, and the President has or will sign it.

Many Americans will ask "why send assistance when we have so many needs at home and a huge deficit?" That is a logical question. There are many reasons which relate first and foremost to enhancing the prospect of peace while maintaining our freedom; that is, stepping back from the nuclear precipice.

Consider these points. First, a very large share of United States defense expenditures are driven by the perceived and very real threat that we have faced from the Soviet bloc countries' overwhelmingly massive forces in central Europe. Second, most of our defense expenditures have, in general, been required by the threatening capacity and actions of the Soviet Union. But third, there now seems to be a very real possibility of radical troop and arms reductions in Europe and the world. Fourth and finally, we see the very real possibility of the disintegration of the Warsaw Pact into a more independent, pluralistic, democratized, and less militantly and thoroughly Communist group of nations. Because of all these possibilities, prospects, and challenging opportunities, there is, for the first time since World War II, a very real opportunity to carefully, but dramatically, reduce our defense expenditures as the Soviets reduce their forces and threatening demeanor and military adventurism. That can result in a significant peace dividend to both give America the dramatic budget relief for domestic needs and the opportunity to eliminate our huge budget deficits. The first concrete recognition of the prospect for such a breakthrough came just a few days ago when Secretary of Defense Richard Cheney ordered our military services to devise a plan for reducing our defense outlays further by $180 billion during the 1992-94 fiscal years—a cut of roughly 10 percent each year.

Secretary Cheney's proposed defense reductions show that the United States is adapting to a new national security environment. The United States must continue to depend on a strong military to defend our vital interests. However, if the Soviet changes in prospect materialize, then the type of threats we are likely to face in the future can be handled very well with a much smaller defense budget.

I suggest it is a very good deal to send $738 million in the direct outlay of aid to Hungary and Poland—and perhaps eventually to the other Warsaw Pact countries—over the next 5 years, while: First, shipping our grain, food, and industrial products; second, opening their markets to American exports; third, weaning them from a dictatorial, Communist system; and fourth, dramatically reducing the prospect for warfare. It is a good deal when we can reduce our defense spending by $180 billion over 3 fiscal years without jeopardizing our national security. Perhaps similar assistance to other Warsaw Pact nations will eventually also be appropriate when it is clear that reforms are real and our assistance to them is in our national interest, but we should again ask Western European neighbors and various Asian nations, like Japan, to provide the majority of the financial outlay.

Yes, there can be pitfalls, detours, and missteps, but we have set out on a road that clearly can lead toward greater prospects for peace, prosperity, civilized conduct among nations, and fiscal sanity. We must seize the opportunities presented.

## INTRODUCTION OF THE CABLE TELEVISION CONSUMER PROTECTION ACT

### HON. CHRISTOPHER SHAYS

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SHAYS. Mr. Speaker, today Congressman JIM COOPER and I introduced the Cable Television Consumer Protection Act of 1989 in the House. Senator JOHN DANFORTH, ranking member of the Senate Commerce Committee, introduced similar legislation, S. 1880, in the Senate on November 15, along with the several colleagues, including Senators AL GORE, HOWARD METZENBAUM and my colleague from Connecticut, Senator JOSEPH LIEBERMAN.

Since 1984, deregulation has helped encourage cable companies to reach out to more subscribers and offer more varied programming, but at what cost? The fact is, cable rates have gone up significantly, without a proportionate increase in benefits to subscribers.

More and more, cable is the only source of popular programs that used to be available on "free TV." And consumers have no choice but to subscribe to cable if they want to watch local news, entertainment, or major sports events.

There is no effective competition and no rate regulation, and operators' advertising revenue, combined with growing subscriber fees, give them vast financial resources to bid for exclusive rights to popular programs that was formerly available on free television.

Cable operators can buy the rights to popular programs, raise rates and change programming at will, and they do. And they know that without regulation, they can pass on the increased cost of the programs to the consumer.

The legislation we introduced today, the Cable Television Consumer Protection Act, takes important steps toward limiting the monopolistic behavior of cable operators by returning regulation to franchising authorities when there is no direct competition from at least one other cable operator.

In addition, the bill permits franchising authorities to revoke or refuse to renew a franchise if it can prove an operator has increased rates substantially or provided poor service. This gives franchising authorities more authority when the franchise comes up for renewal.

Finally, the bill requires cable operators that want to use the prorated compulsory license fee for copyrighted programming to carry local broadcast stations and limit the operators' discretion over where they can be placed on the dial. This provision will help ensure that local and publicly supported programs are not shifted from one station to another in favor of programming that is more lucrative for cable operators.

This past summer, the General Accounting Office [GAO] issued a report that found cable rates have increased 29 percent nationally since deregulation in 1984. While the report is incomplete because one-quarter of the GAO's random sampling did not respond, the survey identifies some franchises in which rates increased more than 100 percent.

Many feel those operators who declined to respond to the survey did so because they imposed much higher increases. In the Fourth Congressional District in Connecticut, for example, while the number of basic service channels expanded somewhat, basic rates increased nearly 400 percent.

There is every indication cable rates will continue to climb. Testifying before the House Telecommunications and Finance Subcommittee, which requested the report, John Ohls of the GAO stated that based on the report's information, the cable television industry is clearly a monopoly. He asserted there is little chance of limiting further rate increases without congressional action.

The 1984 act was intended to "promote competition and minimize unnecessary regulations that impose an undue economic burden on cable systems" by establishing one national regulatory policy for the industry. But regulation is only unnecessary if competition exists to curb prices and improve service.

Several years after implementation of the 1984 act, more than 99 percent of the cable systems in the country are operating with no direct competition. Clearly, this does not serve the consumer's interest.

Cable operators can't have it both ways—no competition and no regulation. Until competition exists, the legislation Congressman COOPER and I introduced today in the House, and which Senator DANFORTH and his colleagues introduced in the Senate, puts the right to regulate cable television back where is belongs—in the hands of the States and municipalities that granted the franchises in the first place.

For the sake of the consumer, we must grant franchising authorities the right to reregulate the cable television industry as soon as possible.

## BALTIMORE'S BEST: THE 1989 ORIOLES

### HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MFUME. Mr. Speaker, When the Baltimore Orioles returned from Toronto on the last day of the 1989 season to the tumultuous welcome of grateful fans from all walks of life and all ages, hundreds of dedicated followers bellowed, barked, yowled, and yawped their approval of the O's. Part of the fans' frenzy was that their beloved team had moved from the cellar of the American League to second place, while staying in first place for 98

straight days. Much of the adulation was for the professional quality and personal integrity that the players consistently displayed throughout the season. Yet, I believe that the real reason behind the riotous revelry was simply that Baltimoreans love their baseball team and wanted to show them the depth of the respect they hold for their own "boys of summer." As the team gave its finest in each and every game of the season, so also, did the fans give their best by showering their team with adulation and confetti.

Not every team can do what the 1989 Baltimore Orioles did, nor how they did it. Baltimore's "boys of summer" moved the 1989 club to a 32½-game turnaround over 1988, making this season's 87–75 record the third largest turnaround in major league baseball's history. Not surprisingly, Manager Frank Robinson was the shoo-in winner for "Manager of the Year," and the first African-American to be selected as such. His coaching staff was second to none.

Mike Deveraux, Cal Ripken, Craig Worthington, Phil Bradley, Joe Orsulak, Steve Finley, Mark Williamson, Dave Johnson, Jeff Ballard, Renee Gonzales, Kevin Hickey, Pete Harnish and Randy Milligan, played their ways into our homes and our hearts.

Gregg Olson won the honor of the 1989 American League "Rookie of the Year," by the Baseball Writers Association of America. Olson averaged 9.95 strikeouts per nine innings. Olson racked up 27 saves, the most saves by an American League rookie. All rookie distinctions aside, Olson allowed the fewest home runs of any major league pitcher. These impressive statistics did not go unnoticed by Baltimore fans.

When the Orioles returned home at the end of the season, they were greeted on a rainy night by dedicated fans from all walks of life who gave their hometown team a hero's welcome, expressing their appreciation for the spark that the 1989 Orioles rekindled in the hearts of baseball fans everywhere. Although they finished in second place in the American League East, this outpouring of love and respect was, indeed, second to none. What also made this season so memorable was an event that happened late in June 1989, when two African-American managers, our own Frank Robinson and Toronto's Cito Gaston, traded lineup cards for the first time, marking an significant moment in baseball history. It is the wisdom and insight of the Oriole's quality front office personnel like "Major League Baseball's Executive of the Year," Orioles General Manager, Roland Hemond, and Vice President Larry Luchino, that make such events possible.

Having climbed from a last place finish in 1988 into a first place standing for much of the season, the Orioles captured the attention of the Nation. From May 26 through August 31, this young, improving baseball team, under the watchful eye of Coach Frank Robinson, held steady in first place. Besides pitcher Greg Olson, teammates like Bob Milacki also had great seasons. When catcher Mickey Tettleton was injured, Bob Melvin and Jamie Quirk were able to step into his shores to get the job done. Tim Hulett was outstanding as a second baseman, filling in for the injured Billy Ripken. And perhaps the greatest unsung hero, who served as both a cornerstone and a focal point, was all-star golden glover shortstop Cal Ripken.

Frank Robinson, was able to pull this young team together in such unity that the players, many of whom were unknown, were always ready and willing to do whatever it took to play with integrity and determination. Truly, these have been exciting times. Congratulations to all the exceptional players of the 1989 Baltimore Orioles—the most exciting team in baseball.

## THE CATASTROPHIC ILLNESS PROTECTION PROGRAM

### HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ENGEL. Mr. Speaker, I rise today in support of H.R. 3607, the bill to repeal the Catastrophic Illiness Protection Program.

I was not a Member of Congress last year when the Medicare Catastrophic Coverage Act was passed. However, since arriving in Washington, I have received more mail on this issue than on any other subject.

The Medicare Catastrophic Coverage Act is unfair because it asks senior citizens to completely foot the bill for this coverage. Never before has one group been asked to pay the full cost of a Government program. The surtax in this act is very unfair and would cause undue hardship on many senior citizens. I am glad that Congress is finally acting to correct this injustice.

I would have preferred to modify this program to insure that seniors would have real long-term catastrophic health care at no additional cost to them. As a result, I cosponsored H.R. 2547. This legislation would have financed the Catastrophic Illness Protection Program by insisting that single people earning more than $109,000 per year and married couples earning more than $218,000 per year, pay taxes at the same rate as moderate and middle income taxpayers. Unfortunately, the full House never had a chance to vote on this proposal.

During the past year, I have talked to many of my senior citizen constituents and the overwhelming majority supported repeal of this program. On October 4, I voted for legislation to repeal the Catastrophic Illiness Protection Program. Today, I will vote for the House-Senate conference agreement which will repeal this program once and for all.

Mr. Speaker, I am pleased that this controversy has finally been solved. However, we still need to develop a health care program to provide seniors with real, long-term catastrophic health coverage without unfairly taxing them. I look forward to working with my colleagues to achieve this goal.

## OVERDUE REDRESS FOR AMERICANS OF JAPANESE ANCESTRY

### HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MINETA. Mr. Speaker, this is truly a historic day in American history.

Last year, Congress promised that we would redress the injustices endured by Americans of Japanese ancestry whose rights were stripped from them by the United States Government during the Second World War. Today, we are one critical step closer to keeping that promise in full.

This afternoon President Bush signed into law the Commerce, Justice, State, and the judiciary appropriations bill for fiscal year 1990. Within this legislation is a guarantee for an automatic appropriation of $1.25 billion beginning in October 1990 to fund the compensation program authorized by the Civil Liberties Act of 1988.

Mr. Speaker, this is a critical guarantee. Many of the estimated 60,000 individuals eligible for compensation under the law are elderly. The guarantee will mean that the redress payments of $20,000 to each of these surviving internees will be delivered as quickly as possible.

The debt we owe these survivors will be more than 50 years overdue by the time the last internee is compensated, but it is a debt that will at last be paid.

Beginning in 1942, more than 120,000 loyal Americans of Japanese ancestry were forcibly removed from their homes and confined to stark prison camps scattered throughout desolate regions of the United States for up to 4 years. Their rights were stripped from them because of their race, because of wartime hysteria, and because of weak political leadership.

I was a 10-year-old boy when my family and I were loaded into a darkened train, bound for a destination unknown. We were sent first to the Santa Anita Racetrack, then to a barren camp in Heart Mountain, WY. For the next 43 years Americans of Japanese ancestry were burdened with an unwarranted stigma of shame and unceasing questions of loyalty to the United States.

But today, the survivors of the internment and the entire United States can take pride in knowing that justice will soon be done. Our struggle for personal justice will at last be won.

For 47 years, Americans of Japanese ancestry have lived in the shadow of the internment. We have spent many years seeking redress for these wrongs. We did so not out of any rancor or bitterness, but from our deep faith in the United States, in our Constitution, and in the American people. The 10-year legislative struggle which brought us the victory we celebrate today would not have been possible otherwise, nor would it hold the special meaning it does for all those who fought with us for justice.

Mr. Speaker, I join the many supporters of this legislation in Congress and throughout the

Nation in the hope and prayer that the tragedies of the internment will never again occur.

## SOLIDARITY'S VICTORY; AMERICA'S RESOLVE

### HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. KOSTMAYER. Mr. Speaker, on Sunday, November 19, Lech Walesa, the man who has come to symbolize the new found freedom of Poland, participated in a mass led by Cardinal John Krol at the Shrine of Our Lady of Czestochowa in New Britain Township, PA. We were honored by his visit, and we rejoice in the victory that it symbolizes for the democratic principles that we now are able to share with the people of Poland.

Solidarity challenged the legitimacy of the Communist government and—by remaining unbowed in the face of brutal repression—gave new hope to those who had lost the will to resist. Walesa's leadership rekindled the awareness in the Polish people that "governments are instituted among men, deriving their just powers from the consent of the governed." The changes in Poland have helped spread change across Eastern Europe—in Hungary, Bulgaria, Czechoslovakia, and East Germany. Even the Berlin Wall—for almost 30 years the symbol of confrontational communism—has effectively been torn down.

Since World War II, our foreign and military policy has rightly sought to oppose communism in Eastern Europe. The changes that are now occurring represent a step toward this goal. Nonetheless, serious difficulties remain. The fact is that Poland is an economic basket case, and the new Polish Government has little time to demonstrate to its people the success of the Polish experiment in democracy. Moreover, the fate of Poland will affect the success of reforms in the other Eastern European states. The governments of those countries are surely watching.

We are facing a historic opportunity, and it is critical that the United States not abandon its 44-year policy of promoting freedom in Eastern Europe and opposing repressive political regimes. With our allies, we must find effective ways to provide emergency currency stabilization and food assistance, as well as aid to foster and develop private sector initiatives. At the same time, such aid must be tied to economic reforms that will prevent corruption and waste. We must provide this assistance to Poland—now the furthest along on the path toward a system based on competitive markets and an open political system. Given the hundreds of billions of dollars that we have expended in the defense of Europe against the Warsaw Pact, it seems prudent to make this modest investment in peaceful change.

When Lech Walesa addressed a joint session of Congress on November 15, this shipyard electrician turned emancipator left us with the following observation:

> We have heard many beautiful words of encouragement. These are appreciated, but, being a worker and a man of concrete work, I must tell you that the supply of words on the world market is plentiful, but the demand is falling. Let deeds follow words.

Indeed, Mr. Speaker, let America's deeds match her words—deeds which have sustained freedom in its darkest hours—words which have lifted men's spirits for two centuries.

## TRIBUTE TO DR. C. CLAYTON GRIFFIN OF NEWARK, NJ

### HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. PAYNE of New Jersey. Mr. Speaker, the city of Newark and the entire State of New Jersey lost a good friend this week with the passing of Dr. C. Clayton Griffin, an outstanding physician whose work touched countless lives.

Dr. Griffin, a national leader in trauma and emergency medical services, instituted New Jersey's air ambulance program, Jumpstart, with bases of operation in north and south Jersey. He was also the developer of criteria for level 1 and level 2 trauma centers.

Like many great men, Dr. Griffin held numerous professional and civic positions. He was the chief of the division of trauma and emergency medical service at the University of Medicine and Dentistry of New Jersey [UMDNJ]/New Jersey University Hospital.

The New Jersey Trauma Center, UMDNJ/University Hospital, was privileged to have Dr. Griffin as its director. He also served as assistant professor of surgery at the New Jersey Medical School. New Jersey's Governor, Thomas Kean, called upon the expertise, talent, and wisdom of Dr. Griffin by appointing him to the Governor's Council on Emergency Medical Services.

Over the past few months with the onslaught of Hurricane Hugo and the California earthquake, this Nation has been witness to the importance of emergency medical services. Men like Dr. C. Clayton Griffin play key roles in developing and implementing emergency plans and techniques that save lives.

Mr. Speaker, I know my colleagues here in Congress will join me in offering our sincere sympathy to Dr. Griffin's family and friends.

## SUPPORT FOR THE CLIFF WALK

### HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MACHTLEY. Mr. Speaker, I have introduced legislation to redesignate Newport, RI's Cliff Walk as a national historic site. Of at least equal importance, our legislation authorizes a one-time appropriation of $3 million so that the Army Corps of Engineers can make the necessary improvements and repairs to ensure the safety and endurance of this important landmark.

The Cliff Walk is one of Newport, RI's most popular sites, and for good reason. Described at the turn of this century as "the most beautiful and extended walk in the country," the 3½-mile walk along Newport's high cliffs winds its way between mankind's opulence and the drama of the natural landscape.

In recent years, the Cliff Walk has been worn by physical wear and tear which has exceeded both municipal and private funding. Since 1981, more than three quarters of a million dollars in local funds have gone into stabilization projects for the Cliff Walk. However, seriously damaged areas to the Cliff Walk remain, and threaten the security of visitors to the walk.

Already recognized as a national recreational trail, the Cliff Walk nonetheless receives no direct Federal funding. Under its new designation, the Cliff Walk will be included as a unit of the National Park Service, and will therefore be afforded maintenance support from the National Park Service.

In addition to the documented need for Federal support, the Cliff Walk's broader significance further qualifies it for additional recognition and assistance. The decision to include a site as a unit of the Park Service is based upon standards of national significance, suitability, and feasibility. The Cliff Walk certainly meets these standards, and this fact has been well noted. For example, a 1989 report by the north Atlantic regional office of the Park Service summarizes: "The Cliff Walk is a nationally significant resource when viewed in any but the narrowest perspective. Its management and protection must be built on recognition of the collective value of its natural, cultural, scenic and recreational resources."

The special significance of the Cliff Walk clearly extends far beyond local appeal, to embrace historical, cultural, recreational, and national sympathies. In turn, the Cliff Walk deserves the additional support afforded by our legislation so that this great testament to the balance between natural and manmade beauty perseveres for this and future generations to safely enjoy.

## WILLIAM H. PHELPS HONORED AS ELDEST BLOOD DONOR IN STATE OF FLORIDA

### HON. TOM LEWIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. LEWIS of Florida. Mr. Speaker, I am pleased to join in honoring a gentleman who has quietly gone about the business of saving lives throughout south Florida for the past 12 years. William H. Phelphs, of West Palm Beach, FL, has donated 5 gallons of blood in support of local hospital patients and accident victims. At 88 years of age he is the eldest donor at the Palm Beach Blood Bank and is believed to be the oldest donor in the State of Florida.

Mr. Phelps gave over 2 gallons of blood with the local blood bank in his hometown of Sydney, NY. Because of an age restriction at the Sydney Blood Bank, he was unable to continue giving bood there. However, he began donating again during a winter trip to south Florida after he learned there was no upper age limit at the Palm Beach Blood Bank.

In an area where more than 70 percent of all blood users are over the age of 65; and where less than 3 percent of this same age group donates blood, Mr. Phelps is a bright example to follow. In addition to donating blood he actively encourages others to give as well. As he says, the blood he freely gives today may be used to save the life of some small child tomorrow.

Thank you, Mr. Phelps, for the precious gift you have shared with so many—hope, life, and love.

## EXPEDITED RESCISSION BILL

### HON. WAYNE OWENS

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. OWENS of Utah. Mr. Speaker, phrases like "fiscal responsibility," and "tough choices" abound in Congress. As time goes on and this Nation's debt ceiling reaches further into the trillions, the only bargain to be found is the rhetoric. Talk is cheap.

Unfortunately, Gramm-Rudman-Hollings has inspired more creativity in accounting gimmicks and 1-year savings than real budget discipline. Just look at the numbers. The deficits have actually been increasing—from $150 billion in fiscal year 1987 to more than $161 billion in fiscal year 1989.

Process is not the problem; courage is. However, in the absence of courage, and faced with a deficit which will cripple our children, the only alternative is to hone the process and keep our feet to the fire.

Mr. Speaker, I rise today to introduce, along with eight of my colleagues, bipartisan legislation which improves an existing mechanism for cutting spending. This expedited rescission bill takes the President's authority to submit a spending cut proposal on appropriations bills and forces Congress to respond one way or the other within 20 days. There's no way out. The President must submit a rescission message and Congress must act on it. There's no room in this bill for accounting gimmicks. It forces the tough choices.

## HONORING RICHARD PRUSS AND SAMARITAN VILLAGE

### HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ACKERMAN. Mr. Speaker, I would like to take this opportunity to pay tribute to Richard Pruss, the president of Samaritan Village. Samaritan Village is a very special place in Queens County dedicated to the task of helping people overcome their addictions to drugs and alcohol and on December 3, 1989, the Friends of Samaritan held a banquet to honor Richard for his professional innovations in the fields of substance abuse as well as his devotion to those he serves.

Drug and alcohol abuse has become all too prevalent in our society. This problem encompasses every sector of our society and it has become, according to many public opinion polls, the No. 1 concern of Americans. Throwing more money into the system will not be enough. We need dedicated groups such as Samaritan Village, and individuals such as Richard Pruss to attack the problem at its most basic levels.

Richard has served for over 15 years as chief executive for Samaritan Village. During that time he has displayed exemplary professionalism, devoted humanitarianism and loyal friendship to those afflicted by alcoholism and substance abuse. Richard has been a pillar of strength in this organization, both to the victims and to their families, guiding them through their darkest, most desperate hours. Richard's work has not been limited to the local level, however, he has also strived vigorously at the State, National and International levels to promote treatment of alcohol and substance abuse. He has served as president of the New York Regional Chapter of Therapeutic Communities and Treasurer of the World Federation of Therapeutic Communities.

Richard has helped build Samaritan Village into a consortium of five residential treatment centers with a total population of 600 residents. He has been assisted in his work by the many drug counselors and workers at Samaritan Village and also by the Friends of Samaritan, a family association consisting of the parents, grandparents, spouses and children of those in treatment at Samaritan Village. They support the programs and activities that do so much to help patients overcome chemical dependency. Thus, those in treatment know they are not alone, that they have so much to live and fight for by beating this disease. Although he has received assistance from many individuals, as leader of Samaritan Village, it is Richard who has been the catalyst for the success of the program over the past 15 years.

Drugs remain a very large problem in our society and it must be attacked at all levels and fronts. The Federal Government can do its part by funding and creating programs for the enforcement of drug laws and for the treatment of those who have fallen under a chemical spell. However, it is the work of individuals like Richard Pruss and organizations like Samaritan Village who will ultimately play the largest role in winning the war on drugs. I can only hope that Richard and Samaritan Village will continue their selfless work and also inspire more people to get involved in the issue. I call on my colleagues in the House of Representatives to join me in paying homage to Richard Pruss and his work at Samaritan Village.

## 10,000 DEAD IN THE FIRST 10 MINUTES

### HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. STARK. Mr. Speaker, Congressman TOM LANTOS of California is joining Representatives BOXER, ROYBAL, PELOSI, and me in sponsoring the National Earthquake Damage Prevention Act, H.R. 3624.

This bill, described in the November 8 RECORD on page H8170, requires the establishment of building standards so as to reduce the damage and loss of life in major earthquakes—earthquakes which are certain to strike both in the East and the West in the next few decades. The bill then uses the Tax Code to make sure that the new standards are used in new structures. It does this by denying the use of tax exempt bonds and deductions for interest and depreciation on new structures built after 1996 which do not meet the new standards.

"In a major earthquake, a disaster plan would be irrelevant. We would be absolutely overwhelmed. If we get a major quake, the ambulances would be irrelevant. We could have 10,000 dead in the first 10 minutes," said Stephen Hoffman, MD, attending physician, San Francisco General Hospital.

Unfortunately, Dr. Hoffman is right. Once buildings and bridges collapse on people in an earthquake it is very unlikely that many survivors will be found after the first few minutes. The solution to this problem is making buildings and other structures safe from collapse and serious damage. The National Earthquake Prevention Act, if passed, will make buildings and other structures safer by ensuring tougher building codes.

The recent San Francisco Bay quake showed that building codes work. According to the Washington Post:

The performance of the city's modern buildings is a tribute to the increasing sophistication of earthquake engineering and structural design, which has resulted in buildings that can absorb significant seismic shocks without suffering anything more than superficial damage. Architects and engineers say that when an even larger earthquake hits the Bay Area, San Francisco's high-rises will still be among the city's safest places.

According to Newsweek:

Strict adherence to San Francisco's building codes saved thousands of lives and hundreds of buildings, demonstrating the importance of good construction.

It's a good thing earthquakes don't kill people, for we're not in a position to prevent them, or even predict them with any precision. Seismic disturbances have leveled countless cities throughout the world, of course, and millions of lives have been lost. But the actual killing has been done by dams and bridges and buildings—structures that can be designed to resist even the most violent temblors.

If any proof was needed, last week's quake produced it. The earth shook just as hard in the Bay Area last week as it did in Soviet Armenia last December. The Soviet quake killed 25,000 people and destroyed whole communities. The Bay Area's killed roughly 55; the worst of the damage was confined to a handful of apartment buildings, a 50-foot bridge segment and a mile-long strip of elevated highway. The obvious lesson is that stronger structures save lives.

According to U.S. News & World Report:

Experts credited California's strict building codes, designed to prevent a recurrence of devastation of the 8.3 magnitude 1906 quake and recently updated to include the lessons learned from the 1971 San Fernando and 1985 Mexico City quakes, for containing the damage. Indeed, much smaller earthquakes registering between 5 and 6 on the Richter scale hit China last week and de-

stroyed about 10,000 homes that were more primitive. "There could have been thousands killed" in San Francisco if not for the steps taken over the years, says civil-engineering Prof. Phillip Gould of Washington University in St. Louis, an earthquake prone region that until recently has done little to prepare.

According to the Washington Post:

When an earthquake with a magnitude of 6.8 walloped Soviet Armenia in December, 25,000 people died—more than 300 times the number killed by the slightly larger 7.1 jolt on Northern California on Oct. 17.

The contrast shows how California leads the nation and much of the world with stringent building rules. But quakes in California and in other states will kill thousands unless much more is done to make buildings, bridges and other structures withstand shaking, experts say.

"The lesson of this quake is that we have the technology to radically reduce death, injury and damage in the case of an earthquake," said Sen. Don Rogers, the only geologist in California's Legislature. "Let's get on with using it."

All of the evidence shows building codes have, and will if we consistently continue improving them, save billions of dollars and thousands of lives. The National Earthquake Prevention Act will make these important code improvements. I urge Members to support H.R. 3624.

## TRIBUTE TO SARAH LUNA

### HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MAZZOLI. Mr. Speaker, today I honor a close friend and exceptional coworker, my administrative assistant Sarah L. Luna, who will be leaving my Washington office staff at the end of December.

Sarah joined my staff in 1973, and after 16 productive years of selfless work for the people of the Third District of Kentucky and the Nation, she will be moving to Arizona with her husband Phillip and son Bradley to embark on a new career.

During Sarah's tenure on my staff, the Nation has gone from Watergate, the Vietnam war, and the oil embargo to perestroika, glasnost, and Europe 1992. My office has gone from manual typewriters and carbon paper to computers and fax machines. And, my children, Andrea and Michael, have grown from children in grade school to young married adults on their own.

Through all this immense, profound change in the world and in the Mazzoli family, Sarah has matured in her own way personally and professionally and has devoted her talents, heart, and soul to the staff, to the people of the Third District of Kentucky, and to the people of the United States.

Sarah's departure is a great personal loss to me, to my staff, and to all who had the honor and pleasure of working with her on the Hill. Her extensive legislative background, her humor, her political judgment, and her steady friendship will be sorely missed by me and my family.

I wish Sarah, Phillip, and Bradley all the best of health and happiness as they embark on their new life.

## THE PROPER ROLE OF BANKS IN THE SECURITIES BUSINESS

### HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DORGAN of North Dakota. Mr. Speaker, today I wanted to discuss with my colleagues the need to restrict the ability of federally insured banking organizations to invest in so-called junk bonds. One lesson learned from our efforts to deal with the thrift crisis is that deregulation often spells financial disaster for depository institutions.

I was concerned to find out that banking organizations are more aggressively trying to get involved in underwriting and dealing in certain commercial paper including junk bonds, and some members may not be aware that the Federal Reserve Board has discovered a loophole in section 20 of the Glass-Steagall Act that may allow them to do so.

Less than 3 years ago, the Fed issued an order permitting our largest banking organizations to form securities affiliates to underwrite and deal in commercial paper, municipal revenue bonds, securitized consumer-related receivables and mortgage-backed securities, provided the combined revenue from these activities does not exceed 5 percent of total securities affiliate revenue. The justification offered by the Fed for the order was that the prohibition in section 20 of Glass-Steagall against banks affiliating with a firm engaged principally in the securities business was avoided since the bulk of the revenue generated by the securities affiliate would come from trading in Government securities, municipal general obligation bonds and certain other permissible transactions under the act. However, when the 5 percent limitation is applied against the enormous revenues produced by underwriting and trading in eligible securities the resulting quotient is sufficiently large to allow these bank securities affiliates to conduct business in these otherwise ineligible securities on a scale equal to our largest nonbank affiliated securities firms.

Earlier this year, before any real experience had been under the Board's first order, it issued a second order expanding the power of bank securities affiliates to underwrite and deal in corporate debt securities and indicated that during the coming year it is prepared to allow bank securities affiliates to underwrite and deal in corporate equities. Furthermore, the Fed has proposed that the 5-percent revenue restriction be increased to 10 percent.

A major concern to me is that, whereas the first order to the Fed only allowed securities affiliates to underwrite investment grade debt, that limitation was lifted in the second order so that bank securities affiliates will now be able to underwrite and deal in junk bonds virtually without limitation, permitting banking organizations to expand their financial participation in corporate mergers and acquisitions and leveraged buyouts. Banking organizations will now be able to provide not only the bridge loans but also the junk bond financing required to complete such transactions.

The situation described above results directly from the handiwork of the Fed and is one that was surely not contemplated by the Congress when it enacted the Glass-Steagall Act. In my opinion, this Congress has an obligation to review these actions of the Fed and to determine for itself the proper role for banks in the securities business; thus avoiding the debacle which resulted from deregulation of the thrift industry.

## CLARIFICATION OF SECTION 1433(b)

### HON. ED JENKINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. JENKINS. Mr. Speaker, I understand that there has been some question raised about the scope of the language in section 1433(b)(3)(A) of the Tax Reform Act of 1986. I would like to take this opportunity to help clarify this question. Specifically, the question that has been raised is whether this language was intended to include a bequest to a step grandchild as well as to a grandchild.

I offered the language of section 1433(b)(3)(A) during the markup of the 1986 legislation in the Ways and Means Committee. It was accepted in its entirety by the committee. I want to make clear that the language was designed to treat step grandchildren in the same manner as grandchildren, just as step children have been treated in the same manner as children in numerous other provisions of the Code.

I believe that the question of the coverage of the 1986 amendment arose because of language included in section 1014(h)(3)(A) of the Technical and Miscellaneous Revenue Act of 1988 which amended section 1433(b) of the 1986 act. It is my understanding that the language of the 1988 act was intended solely to clarify that a bequest to a great-grandchild who moves up to take the place of a grandchild in the event that the child of the transferror predeceases that transferror is not subject to the deceased generation exemption provided for in the 1986 act. It is my further understanding that the language was not intended to exclude other step grandchildren from the coverage of section 1433(b) of the 1986 act, as amended by the 1988 act.

I hope that this statement clarifies the question.

## MEMPHIS, OUR NATION'S NORTH STAR

### HON. HAROLD E. FORD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. FORD of Tennessee. Mr. Speaker, I rise today to pay tribute to the 1,000 points of light of Memphis, TN. The residents of this great city embody the American spirit in its highest

form. They act upon the truth that individuals can help our less fortunate brothers and sisters to improve their conditions.

The volunteers of Memphis feed the hungry, house the homeless, and assist the disabled. The volunteers of Memphis act with perserverance to save babies who would otherwise fall through society's cracks and drug addicts headed toward certain death.

Recently, the commercial appeal newspaper initiated "A Thousand Points of Light" campaign, and recognized 1,000 volunteers in the Memphis area by highlighting their contributions for all to see. Tomorrow, November 22, President Bush will visit Memphis to personally congratulate these Memphians for their efforts.

We all applaud volunteers for their efforts. Today, in conjunction with Federal Express and the South Central Bell Co., I hosted a luncheon to welcome the President and to salute our volunteers.

I would like to particularly congratulate Dr. William Coley, who received the Statewide Volunteer of the Year Award for his efforts in establishing a free dental clinic through the Church Health Center.

I would also like to congratulate Mr. Lewis Pittman and the Exchange Club Child Abuse Prevention Center for receiving the Agency of the Year Award Program.

Finally, I would like to congratulate Mr. Bill McCormack of the South Central Bell Co., which was named Corporate Neighbor of the Year for its outstanding community efforts.

Mr. Speaker, today I also draw attention to the fact that volunteer programs need Federal support. If the Federal Government provides a meaningful level of resources—through contracts and tax treatment—and serves as an effective clearinghouse for program information, then volunteer programs can make an even more significant difference throughout our communities.

As well, the Federal Government must allocate its funds in the most effective manner possible. Resources must be directed toward programs, not media campaigns. I am concerned that the President's Points of Light Foundation will create a look-good, feel-good mood among our citizens, rather than augmenting services to the needy.

Mr. Speaker, most importantly, the Federal Government cannot use volunteer programs to shirk its constitutional responsibility to promote the general welfare. Volunteer programs can and do serve a tremendous role in local communities, but only the National Government can effect national changes.

This Thanksgiving, Mr. Bush has selected the right place to view a community hard at work. If the President sees America as a thousand points of light, then Memphis is our Nation's north star.

## TRAGEDY IN LEBANON

### HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BONIOR. Mr. Speaker, I rise today with an extremely heavy heart. The assassination of Lebanon's newly elected President, Rene Moawad, is a tragic chapter in a sad story that has gone on for far too long. I extend my deepest sympathy to his family and friends. Rene Moawad was more than the political leader of Lebanon. He represented the profound hopes and dreams of the Lebanese people for a united and free country.

The seemingly endless cycle of violence must end now. I don't know who is responsible for this cowardly act. However, now is not the time to assign blame. This is the time for all sides to come together. Nothing less than the very future of Lebanon is at stake.

My thoughts are with the entire Lebanese community who care so much about their country. While events in Eastern Europe fill us with hope, we must not overlook the terrible suffering in Lebanon. I call on my colleagues and the administration to stand by our longstanding ally in this time of crisis.

## REMEMBERING THE BUDAPEST GHETTO

### HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. SOLARZ. Mr. Speaker, the bright new dawn rising over Europe is being felt around the world. The Iron Curtain that had descended over Hungary so many years ago has been lifted as relations between that nation and the State of Israel have been renewed.

To mark the resumption of diplomatic relations between these two great nations, and to celebrate the increasing liberalization of human and religious rights by the Hungarian Government, the Emanuel Foundation for Hungarian Culture will sponsor a gala dinner at the Hotel Pierre on January 31, 1990.

The proceeds of the dinner will benefit the new Hungarian Holocaust Victims and Heroes Memorial which is currently being erected on the site of the Budapest ghetto. It was there that thousands of Jews died of disease and starvation, victims of the depraved Nazi slaughter that swept over Europe a half century ago. Funds raised at the dinner will also support the renaissance of Jewish culture and Jewish Institutions in Hungary, including the only Jewish hospital in Hungary, the Dohany Synagogue, a Talmud Torah day school, and a summer camp.

The memorial itself will represent a tree in the shape of an inverted menorah, with the names of those who perished inscribed on the tree's leaves as a lasting memorial to the past and as a symbol of hope for the future.

The most extraordinary part of the memorial will be the site itself. Located on the corner of Rumbach and Wesselenyi Streets in downtown Budapest, and adjacent to a mass grave where thousands of Holocaust victims were interred anonymously, the plaza has been donated by the Hungarian Government.

For the survivors of the Nazi terror, and for Jews around the world, this rebirth of a community once nearly obliterated by the blind brutality of fascism, is indeed a miracle. Were these extraordinary events merely great new day for world Jewry, it would be enough.

The events of the last few months are a sign of hope for all humanity. The chipping away at the Iron Curtain, the memorialization of the victms of the Holocaust, the restoration of human rights are all events that have captured the imagination of the world. People of all nations are rejoicing in the fresh breeze blowing across the continent.

I am proud to note the active role our Nation, and its Jewish community, has played in these exciting events. The work of the Emanuel Foundation for Hungarian Culture is a shining example of the activist role being played by these partisans of freedom.

The foundation will honor three great Americans at its dinner:

Richard Roth, of the architectural firm of Emery Roth & Sons, is a native New Yorker and the firm's chairman since 1988. While the name Emery Roth & Sons may not be well known to the man on the street, their buildings are. Their best known works are the World Trade Center, the Pan Am Building, and the Citicorp Building. These striking and innovative structures are as much a part of the New York landscape as Central Park or the Brooklyn Bridge.

The firm's founder, Emery Roth, immigrated to the United States in 1884, and lived the American dream, founding his own firm at the age of 32. His buildings are now landmarks, and the firm he began one of New York's most respected.

Kitty Dukakis has been an outspoken advocate for human rights around the world. As a member of the U.S. Holocaust Memorial Commission, she helps keep the memory of that terrible period alive in order to prevent a return to that dark moment of history.

Kitty Dukakis' service to the State of Israel has brought together Israelis with the people of this country, building understanding and friendship. She understands that in a world of justice and cooperation, all people will be free to lead lives of dignity.

Michael Hone of the brokerage house of Asiel & Co. has been active in the effort to erect a monument to the martyrs and heroes of the Budapest ghetto. A member of the board of the Emanuel Foundation, he is a fountain of energy and commitment.

Most of all, Michael Hone has been a builder for the future of Hungary's Jewish community. He has worked to forge bonds of understanding between people of all faiths and nationalities. Through his work he is helping to give life to the words "never again!"

The evening's speaker will be the acclaimed author Leon Uris, who has traveled across the United States and to Hungary to promote the work of the foundation and the memorial in Budapest.

Mr. Speaker, from the ashes of a divided and war torn Europe, a new Europe is rising. We must never forget the terrible events of the past, but we must strive to overcome the burden of that bitter legacy. The opening of Europe, the establishment of relations between Hungary and Israel, the restoration of human rights in Hungary, and the construction of a holocaust memorial on the site of the Budapest ghetto are all signs of extraordinary change. I am pleased and honored to join the Emanuel Foundation for Hungarian Culture in

celebrating these historic events and in honoring these exceptional individuals.

## HONORING ALBERTA ALSTON HOUSE

### HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ACKERMAN. Mr. Speaker, I rise today to honor one of the most innovative and dynamic housing projects in the whole of Queens, Alberta Alston House. On Monday, December 4, the board of directors of Alston House sponsored a dinner dance to commemorate the fifth anniversary of the house.

Alston House was named in honor of Alberta Alston, the first black woman moderator of the New York Presbytery and an elder in St. Albans. The house was established 5 years ago to house well-bodied seniors. It is a federally funded project sponsored by Presbyterian Senior Services and under the management of Phipps Houses. The complex houses 150 persons in one bedroom apartments that are comfortable and spacious.

Residents of Alston House are very active in their community. Many are former teachers and Government workers and many still work as volunteers in various departments, sewing for AIDS patients and homeless children, tutoring in local schools and performing various inhouse services for fellow tenants. Residents are also energetic participants in the Tenants Association which helps build a sense of community in the apartments.

Despite the relative self-sufficiency of the residents of Alston House, members of the board of directors of the house have played major roles in its success. The board is made up of Presbyterian, Roman Catholic clergymen and laymen of many different professions. Especially notable contributions have been made by Rev. James Watson, board president for 5 years, who will be presented with a plaque to commemorate his 5 years of service at the banquet on the fourth and Rev. James Grant, director of Presbyterian Senior Services for over 16 years. A number of other individuals have made significant contributions to the house, especially Father Thomas Fox, of St. Paul's Roman Catholic Church, Dr. Ruth Alward, Gladys Daniel, Carmen Pineiro, all original members of the board and Roger McAteer, current president of the board and a member of First Presbyterian Church, Newtown.

In this time when seniors seem to be more and more cast by the wayside and presumed to be unable to contribute to society, it gives me great pleasure to observe a group such as the residents of Alston House who have not only made substantial contributions to their community in the past but continue to make significant contributions. Mr. Speaker, I ask my colleagues in the House of Representatives to join me in congratulating the board and residents of Alston House on their fifth anniversary and to wish them continued success in the future.

## RECOGNIZING A DEDICATED NURSE SPECIALIST

### HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. STARK. Mr. Speaker, I would like to recognize and the record to show a very moving statement by a dedicated constituent. Marcia L. Musgrove, a clinical nurse specialist, works for Valley Home Care in Livermore, CA. She recently won a Home Care Essay Award that reflects her compassion for her patients and self-fulfillment she receives from her work.

"THANK YOU, NURSE"—"THANK YOU, PATIENT"

(By Marcia L. Musgrove)

I am on my knees between the bed and the wall in a cluttered, musty home, holding the wrinkled hands of my patient who is near her last days. The temperature inside hovers around 100° degrees. There are a variety of odors enveloping me—chicken cup-a-soup simmering on the stove, baby powder, the usual body odors and an over bearing floral scent which attempts to disguise the other smells. My patient is crying and telling me that she does not want to be a burden to her family any longer. Searching my mind for just the right words, I softly tell her that this is her family's final gift to her—to care for her in her own home. She seems to relax after many minutes and closes her eyes. My back aches as I rise from my cramped position. I pick up my black nursing bag as I am accompanied to the car by her two daughters who are in their seventies. They wave and say, "Thank you, nurse. We wouldn't be able to manage without you!" I open the car door and as I slide into the car seat, I wish I had remembered to park under the large tree I now notice. The sweat drips on my map as I check the destination of my next visit. As I take in a few breaths of the hot, sultry air, I think to myself, "Why do I still do home care?"

The first and foremost reason is the people, the patients, their families, and my co-workers. I have met many wonderful people including the 102 year old rancher who wanted to get well so he could resume riding his horses; the families from India, China, the Ukraine, and Italy who really help me understand cultural and ethnic differences. I enjoyed a brother and sister who lived on a remote eighty acre farm in Iowa. The sister had never been off the eighty acres or seen anyone other than her brother. I visited there a year before she was comfortable enough to stop running into the woods whenever she saw my red Fiesta drive in the driveway.

And I can't help but remember my first hospice patient. She was a forty-two year old woman who was sent home with a prognosis of two weeks. She not only survived those two weeks but lived the next nine months because she was not ready to die and leave her husband and twelve year old twins.

I have learned so much about life from my patients. I have learned that life is fragile and to enjoy each day. I have learned that the way to find out the patient's "problem list" is to ask them, "What's bothering you?" It is important that a patient's basic needs be met before agency or insurance company requirements. Another lesson is that we, as home care nurses, are guests in our patient's homes. Instruction and information need to be given to the patients and their families. They need knowledge of their options and resources so they can make informed decisions and be in control as much as possible.

I have learned that patients frequently need a patient advocate as much as they need nutrition, hygiene, safety teaching or pain control. When a person has the discomforts of illness or injury, it is often overwhelming to have to fight "the system."

Flexibility is an important trait to develop. I have emptied kitty boxes, carried wood through two feet of snow, been bitten by a dog, chased by goats, and cleaned the floor after the toilet overflowed. Through all these home care experiences, I have learned one of the most important lessons—that laughter truly is the best medicine.

I am sometimes envious of my colleagues who are heads of large departments doing research, publishing etc., but then I feel lucky to have found the area of nursing which allows me to do what I love to do and, hopefully, to make a difference in patients' lives each morning. I look forward to helping patients become independent at home, or if that is not possible, to teach others to care for their loved ones at home. After twelve years it still brings tears to my eyes when someone says, "I don't think we could have done it without you."

## JEFFERSON COUNTY MEDICAL SOCIETY OF LOUISVILLE, KY, TO OPERATE CENTER FOR HOMELESS MEN

### HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MAZZOLI. Mr. Speaker, it is with much pride that I bring to the attention of my colleagues an innovative response being mounted in my congressional district to meet the needs of homeless people in the community.

Effective January 1, 1990, the Jefferson County Medical Society Outreach Program, Inc., will assume ownership and operation of Mission House, Louisville's largest shelter for homeless men.

The society's program to provide food, shelter, and medical care for homeless people answers the challenge issued by Dr. James E. Davis, president of the American Medical Association [AMA], who asked physicians to "tithe of your time" in community service. The Mission House project will be honored at a February AMA national leadership conference and is expected to serve as a model to other medical societies around the Nation.

I wish to recognize three individuals who are closely associated with Mission House and with the new program:

The Reverend John Morgan, who founded the shelter in 1971, who is a pioneer in providing for the homeless and whose tireless efforts have brought Mission House to the forefront of local shelter facilities;

Dr. Kenneth Peters, president of the Jefferson County Medical Society, who will oversee

the transition and has given leadership in this unprecedented project; and

Dr. Will W. Ward, Jr., who has operated a weekly clinic at Mission House since 1981, and who cares deeply about people, especially people who are hurting.

I am privileged, Mr. Speaker, because these three devoted and talented and caring people are all close friends of mine.

I salute the Jefferson County Medical Society for its leadership and generosity on behalf of our community's homeless.

## THE MAKING OF THE TWO DAKOTAS

### HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DORGAN of North Dakota. Mr. Speaker, this year North and South Dakota celebrate 100 years of statehood. On November 2, 1889, President Benjamin Harrison signed the statehood proclamations establishing two States out of what was then known as Dakota Territory. Those of us from the Dakotas know very well, however, that our heritage extends beyond 100 years of statehood.

Helen Graham Rezatto, a native of Ellendale, ND, recently published a centennial history which details the rich cultural heritage and historical milestones of North and South Dakota. The book is entitled: "The Making of the Two Dakotas." This fine book tells the story of the Lewis and Clark expedition that surveyed the Louisiana Territory for President Thomas Jefferson. The experience of the expedition with the native Americans in the Dakota Territory, the Mandan, Sioux, Shoshones, Hidatsas, and Arikara Indians, are recalled as well as the famous encounter with Sakakawea, a teenage Shoshone Indian girl who served as a guide to Lewis and Clark.

The book describes the industries and the people that formed the Dakotas. Agriculture and fur trapping were key industries in the development of the Dakota Territory and figures such as Gen. George Custer, Wild Bill Hickok, Calamity Jane, Sioux Indian chiefs Sitting Bull and Red Cloud, and Theodore Roosevelt, and the countless immigrants from Germany and Scandinavia played monumental roles in the early history of Dakota Territory and statehood of the two Dakotas.

Mr. Speaker, it is with great pride that I speak of the history of North and South Dakota. Not only do North and South Dakotans have a rich heritage but we have an optimistic future. It is my hope that as we celebrate the centennials of not only North and South Dakota but Montana, Idaho, Washington, and Wyoming that we take time to reflect on the people and events that brought us to where we are today, lest we forget that it is upon the foundation laid by our precedessors that we build our future.

## HORRORS IN EL SALVADOR

### HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MINETA. Mr. Speaker, I wish to share with my colleagues the thoughts of an American who was shocked, angered and horrified, as I was, at the massacre of six priests and two civilians in San Salvador earlier this month. We also share deep anger and shame at the role U.S. dollars may be playing in the carnage destroying that nation.

His letter reads:

NOVEMBER 17, 1989.

CONGRESS OF THE UNITED STATES,
*Washington, DC.*

DEAR MEMBERS OF CONGRESS: The murder of six Jesuit priests and many Salvadorean civilians should not only be denounced by the United States, we should also request that the United Nations intervene in this senseless killing. The Geneva Convention must be respected.

The time has come for the United States to stop providing weapons and ammunition to any government and/or counter revolutionary group and insist that the United Nations make other nations such as Cuba and the Soviet Union stop as well. Without arms negotiations are more likely.

It is a sad day when even the Red Cross is hampered in providing assistance to refugees and innocent, suffering civilians.

Please keep me informed as to the action taken by the Senate and the House of Representatives in Central America. Thank you for your attention to this very critical issue.

RENATO G. MARTINEZ.

Mr. Speaker, I hope my colleagues and the other policymakers in this Government heed his words. These murderers must be found and put to justice. The killings must stop. The United States must end our senseless policy of supporting a military solution in El Salvador.

## H.R. 1495: THE ARMS CONTROL AND ONSITE INSPECTION AUTHORIZATION

### HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. FASCELL. Mr. Speaker, on November 19, 1989, the House passed H.R. 1495, the authorization for the Arms Control and Disarmament Agency [ACDA] and the On-Site Inspection Agency [OSIA]. The Senate had previously passed the measure on November 17, 1989. Passage of this legislation clears the way for the funding of our arms control negotiators and negotiations in Geneva and Vienna and for enhanced arms control verification requirements.

TITLE I: ACDA

As part of the Foreign Affairs Committee's ongoing jurisdiction over U.S. arms control and national security policy, we authorize a 2-year appropriation for the Arms Control and Disarmament Agency [ACDA].

Title I of H.R. 1495 authorizes $35,881,000 for fiscal year 1990 and $37,316,000 for fiscal year 1991 for the Arms Control and Disarmament Agency.

The objective of the Foreign Affairs Committee historically has been to enhance ACDA's ability to carry out its responsibilities under its mandate for formulating and implementing U.S. arms control policy and for implementing and verifying existing and future arms control agreements.

Foreign Affairs Committee members worked together in a truly bipartisan fashion to determine how best to meet these objectives. The committee concluded that in order to meet these objectives additional funds would be needed for external research, personnel and computer resources.

The full House and Senate concurred in this conclusion. The Congress recommended that ACDA add 10 additional personnel and $790,000 for their salaries and expenses to enhance ACDA's role in ongoing and future arms control negotiations. ACDA had originally requested 35 additional personnel, but the Office of Management and Budget gave them only 10. With our recommendation of 10 more personnel, this would bring the total to 20, still some 15 short of ACDA's original request.

The administration requested $200,000 for external research. The Congress recommended that that amount be increased to current levels, nearly $1 million. To support ongoing negotiations and new verification requirements, the Congress recommended some $400,000 for computer hardware. This will help to rectify ACDA's inadequate computer systems.

The dollar increase for personnel, moneys, external research and computer enhancement totals an additional $2 million over the administration's request.

Title I further:

States that the Director of ACDA should study and report to the Congress on the advisability of establishing in ACDA an arms control implementation and compliance resolution bureau, or other organizational unit;

Urges the President to establish a working group to examine verification approaches to a strategic arms reduction agreement and other arms control agreements;

Gives the Deputy Director of ACDA—under the direction of the Director—the direct responsibility for the administrative management of ACDA, the intelligence-related activities of ACDA, and ACDA's special compartmental facility;

States that if the ACDA Director appoints the two special representatives for arms control and disarmament negotations that he is permitted to appoint, one should be assigned to conventional arms control negotiations, and the other should serve as the chief science advisor to the Director; and

Includes a technical provision which eliminates the need for duplicitous travel orders by ACDA employees which begins in a fiscal year, but is not completed until the next fiscal year.

TITLE II—OSIA

In title II of H.R. 1495, the role of the Director of ACDA, the Secretary of Defense and other officials is clarified as these officials relate to the On-Site Inspection Agency [OSIA].

Included in title II is the authorization for the On-Site Inspection Agency: $49,830,000 for fiscal year 1990 and $48,831,000 for fiscal year 1991.

The Foreign Affairs Committee's involvement in OSIA grew out of a committee staff study mission on the On-Site Inspection Agency. Under the direction of Representative BROOMFIELD and myself, committee staff embarked on a series of study missions to INF Treaty inspection and elimination sites in the United States, Europe, and the Soviet Union from October 1988 through January 1989. The objectives of the study missions were twofold: First, to exercise the Foreign Affairs Committee's jurisdiction over the On-Site Inspection Agency consistent with the committee's jurisdiction over arms control; and second, to examine the relevance of the INF Treaty implementation process and verification approaches for a United States-Soviet strategic reductions agreement and other future arms control agreements.

The report's finding conclude that the continued effective operation of OSIA will best be served by ACDA providing arms control policy direction consistent with its charter.

As the On-Site Inspection Agency is the implementing agency for the INF Treaty, it will have a significant contribution to make to the kinds of verification provisions that should be included in future arms control agreements as well as how they should be implemented.

Hopefully, the balance of this century will see the signing and implementation of many new arms control agreements in the areas of START, conventional, chemical, nuclear testing and fissile material, which simply underscores the viability and importance of the On-Site Inspection Agency.

As such, the Foreign Affairs Committee will continue to oversee the management and creation of arms control policy and its implementation in general and the role of the On-Site Inspection Agency in particular.

## VACCINE INJURY COMPENSATION

### HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. WAXMAN. Mr. Speaker, with respect to those provisions within the Omnibus Budget Reconciliation Act of 1989, regarding vaccine compensation, I would note, that this language specifies that the Secretary of Health and Human Services is to participate in vaccine proceedings. The language also makes it clear that this participation is subject to a variety of other amendments, including those requiring all parties to attempt to make proceedings "less adversarial, expeditious, and informal." The special masters in these proceedings are directed by this language to use "flexible and informal standards of admissibility of evidence" and to include the opportunities "for parties to submit arguments and evidence on the record without routine use of oral presentations, cross examinations, or hearings." We would not anticipate that the Secretary will be required to provide direct testimony in support of his positions on the medical issues in the majority of cases. However, some cases may require such participation, and some will be clear on the record. We hope that the masters will make the most judicious use of the time of all parties and will enable the proceedings to be expeditious and fair.

## TRIBUTE TO THE TROLLWOOD PERFORMING ARTS SCHOOL

### HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DORGAN of North Dakota. Mr. Speaker, every summer something wonderful happens in Fargo, ND. Creative and enthusiastic young students from a wide range of States and communities and an experienced, talented staff bring alive the Trollwood Performing Arts School. It's proving to be one of the upper Midwest's treasures.

Now in its 13th year, Trollwood is home to classes in dance, voice, drama, and a variety of theater arts. After a summer of preparation, the school puts on one of the region's most awaited events—a high stepping, high spirited musical. The most striking aspect is that it's almost totally accomplished by children. With the exception of rare adult performers, children as young as 6 years fill every role, from star to spear carrier, from stage crew to musician.

Year after year, the caliber of the operation stays remarkably high. The polished professionalism of the cast and crew belie their youth and is the source of enormous regional pride. I had a chance to visit this year and was taken with the creativity and animation of the staff and students. Not only was there a shared dedication to artistic excellence, but warmth and affection abounded.

The school continues to expand its cultural horizons and is in the process of turning a remarkable vision into reality. Students from Russia and China spent last summer in Fargo and after one more summer of preparation will produce, along with their American counterparts, a musical that will be performed in Washington, Moscow, and Beijing in 1991.

Mr. Speaker, I'm sure my colleagues will share in my congratulations to Trollwood and to its impressive accomplishments and uncommon dreams.

## TRIBUTE TO WILLIAM J. RHINE, A DECADE OF DISTINGUISHED SERVICE IN BRINGING RAIL RAPID TRANSIT TO LOS ANGELES

### HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. DIXON. Mr. Speaker, it is a great honor to pay tribute to a gentleman who has provided almost a decade of leadership to the construction of the Los Angeles Metro Rail.

William J. Rhine enjoyed a career rich with accomplishments in the fields of transportation and aerospace. Before coming to the helm of the Los Angeles Metro Rail, Bill provided outstanding public service as director of engineering for the Bay Area Rapid Transit System [BART] and certifying safety standards for the Urban Mass Transportation Administration [UMTA].

In this decade, the hopes of the people of Los Angeles for the return of rail transit have been realized because of the work and leadership of Bill Rhine. He brought his wealth of experience to the Southern California Rapid Transit District [SCRTD], serving as director of systems design and analysis for 7 years. Since 1987, he has served as assistant general manager for transit systems development. During this period, we have gone from the very initial stages to 50 percent completion of the first 4.4-mile segment of the metro red line.

Bill enjoys tremendous respect from transit professionals, elected officials, and the business community. He has tackled a project facing enormous engineering, geologic, scheduling, and budgetary challenges. Despite this, he and metro rail have persevered and in the 1990's Angelenos will be the beneficiary of the most advanced rail transit system in the entire Nation.

Bill is also admired for his tremendous personal qualities. He is an individual of great warmth and compassion. He also has the strength and skill to bring together over 400 consultants and SCRTD personnel, and more than 1,000 contractors in the construction of this massive project.

Mr. Speaker, I am proud to provide this recognition of William J. Rhine, as he retires at the end of this year from his work with metro rail. It is appropriate that we acknowledge Bill's career and legacy in the field of transportation. I also want to express gratitude for his leadership of the Los Angeles Metro Rail which will greatly enhance the quality of life in the Los Angeles community.

## A CONGRESSIONAL SALUTE TO THE LAKEWOOD, CA, CHRIST PRESBYTERIAN CHURCH

### HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ANDERSON. Mr. Speaker, I rise today to call to my colleagues' attention the achievements and activities of the Christ Presbyterian Church of Lakewood, CA. The church, having been founded on June 30, 1957 as the 173d Presbyterian Church to be organized in southern California, has over the past 32 years done many things to enrich the spiritual and physical lives of many people in my district.

For 29 of the 32 years of its existence, the church has been under the guidance of its pastor, the Reverend Doctor John C. Bonner. And although barely over a generation old, the church has created or become involved in many important programs.

Since its founding, the church has been a participant and a supporter of the Lakewood Ministerial Fellowship Group, Lakewood's oldest professional organization. For 20 years, Reverend Bonner was the convener of the fellowship group. Also serving as a demonstration of its civic mindedness, is the church's cofounding of the annual mayor's prayer breakfast.

To help serve the community better, the church operated a bus ministry, and opened a conference center in Crestline. Furthermore, the church sponsors a Vacation with a Purpose Program, which spans five different States of the Union.

Extensive programs and services may nourish and relieve the soul, however, they increase the demands on the physical structures of the church. To meet its needs, Lakewood Christ Presbyterian Church has doubled its off-street parking facilities since its inception, added several additional Sunday school classrooms, and in 1979, dedicated its newly completed sanctuary.

One final accomplishment, which I am sure was a source of joy and satisfaction to the entire congregation, was the church recently buried its mortgage, and is now totally debt free. Future members of the congregation owe a great deal to those who proceeded them, and made this milestone possible.

My wife Lee and I offer our congratulations to Reverend Bonner, and all of the people who have contributed to the record of success for Christ Presbyterian Church of Lakewood. We wish the entire congregation all the best in the years to come.

## COOLIDGE WINS KING'S DAY REGATTA

### HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BENNETT. Mr. Speaker, on November 19 the 12th annual King's Day Regatta was held in Jacksonville, FL, on the St. Johns River where in 1775 the British colonists in the area held their last King's Day Regatta at this place. The event today is a great outdoor celebration in my hometown, a delightful athletic event and it is also a symbolic event, symbolizing the great alliance that today exists between the United States and the United Kingdom. That's something worthy of keeping alive and healthy. At the conclusion of my remarks I include a newspaper clipping from the Florida Times-Union about the event.

I would like to thank our English friends for sending Capt. David Pender-Cudlip and his wife, Anne, to represent the United Kingdom in the events. He spoke at a preregatta dinner at the Rudder Club and again at a meeting of the Sons of the American Revolution in the Sheraton Hotel. Both speeches about American-English cooperation and alliance were well delivered and well received.

COOLIDGE WINS KING'S DAY REGATTA

(By Lawrence Dennis)

Jacksonville's Bill Coolidge won the race, but St. Augustine's Dave Drysdale may well have won the war in the 12th annual King's Day Regatta sailed out of the Florida Yacht Club on the St. Johns River yesterday.

Coolidge piloted his Lindenberg 28, Zulu Warrior, around the 18.46-nautical mile course with a corrected time of 1 hour, 49 minutes, 28 seconds. Bubba Ball of St. Augustine, also sailing a Lindenberg, Pere de Mer, was second in in the 51-boat fleet to Coolidge in 1:51:21.

Ball beat Drysdale on J-40 Sarenee, who finished third in fleet in 1:57:17 according to the Performance Handicapping Rating Fleet system under which boats are assigned handicaps based on their sail area, length and other factors.

Coolidge won the Carl Z. Suddath Memorial Trophy, which goes to the first-in-fleet boat, in the King's Day, but Ball may not have beaten Drysdale by a large-enough margin to win another trophy.

In sail-racing parlance, Ball had to put a lot of boats between Pere de Mer and Sarenee to overtake Drysdale in the points race for the PHRF of Northeast Florida's Perpetual Trophy, which the yacht-rating group awards to the boat with the best year-long record in 11 races on the river and offshore.

After yesterday's race, the last that counts toward the Perpetual Trophy this year, Drysdale unofficially finished with 4,472.33 points. Ball, who won the trophy last year, unofficially has 4,349.54.

"I don't know," Drysdale said after yesterday's race. "The way we had it figured [before yesterday's race], it was really close."

The PHRF of Northeast Florida will announce the official winner of the Perpetual Trophy after the year's totals are tabulated.

Things were much simpler for Coolidge, who only had to worry about winning yesterday's race, the most prestigious cruiser regatta of the year in Northeast Florida. And he didn't have that much to worry about, since his handicap gave him an advantage over Drysdale and he beat archrival Ball boat-to-boat in what was a three-boat competition almost from the very start.

"We had the best crew, with that think-tank . . ." Coolidge said, referring to veteran captains Steve Lucie and David Parrish, who came aboard Zulu Warrior as crewmen. "I've got to give a lot of credit to the whole crew. Don't forget about the helmsman, though."

One way in which it wasn't average was the absence of the guest of honor, U.S. Rep. Charles Bennett. Bennett, honorary commodore of all the sailing clubs of Jacksonville, missed his first King's Day Regatta since 1978 because of a rare Sunday session of Congress.

## A NONVIOLENT CELEBRATION

### HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MFUME. Mr. Speaker, I rise today for a very important issue. This issue is about saving lives. Throughout our Nation, crime seems to have taken a drastic swing upward. I am especially concerned about the ever-increasing number of violent crimes that have penetrated many of the neighborhoods in my home town of Baltimore, threatening the very infrastructure of this otherwise progressive community of communities.

Drugs, homelessness, unemployment, underemployment, and pure poverty have played havoc with the stress levels of our citizens, resulting in an alarming pattern of crimes on person and property. We must all agree that the time to reverse this calamity is now. Over the years, many of Baltimore's local leaders have taken a stand to stem the ebb and flow of crime in our streets. I applaud them for their courage and pledge my allegiance to their cause.

Mr. Speaker, Martin Luther King, Jr. Memorial United Methodist Church, which is located in my congressional district in Baltimore, has decided to challenge our citizens to go against this negative grain of violent crime. This church was born out of a desire to serve our present age with great zeal and plan for our future with a clearer vision. It has been established as a violence-free zone and works to spread this concept into the homes of its members, the neighboring schools, and the community at large. It serves as a haven for those plagued by crime and violence, and this ministry of nonviolence reaches out in an effort to reverse the high tide of turbulence that has permeated our foundation.

Under the spiritual leadership of Rev. Douglas Sands, and in cooperation with WBGR Radio, the Baltimore chapter of the Southern Christian Leadership Conference, and the Eastern region. Alpha Phi Alpha Fraternity, Inc., the church has decided that enough is enough. The congregation has organized a campaign to call attention to this horrid phenomenon. It is their hope to have the entire community rally together and support their effort and, at least on Martin Luther King, Jr.'s birthday, Monday, January 15, 1990, observe a "Crime-Free Day." I sincerely believe that if we can convince our Nation's citizens to stop smoking for a day as evidence by the "Great American Smoke Out," than certainly we can and must convince them that time-out is most assuredly needed from crime and violence for our Nation's sake.

Martin Luther King, Jr. Memorial United Methodist Church and their "Nonviolence Now" campaign pledges people, individually, to nonviolence. This is done for a short period of time in the beginning, then the involvement in a nonviolent lifestyle is extended as others join to make the commitment a collective effort. The crisis of violence in our society is a formidable challenge to those who would make a change by nonviolent means. A personal pledge to resist and reduce this catastrophe is definitely a necessary starting point toward promoting a healthy environment for a community of which we are all a part. Dr. King's birthday was chosen because it seems only right and fitting that on this particular day we pay homage to the nonviolent crusade for which Martin Luther King, Jr. is immortalized.

Dr. King once said, "The ultimate measure of a man is not where he stands in times of comfort and convenience, but where he stands at times of challenge and controversy * * *." His namesake, Martin Luther King, Jr. Memorial United Methodist Church has decided to follow this lead, and has accepted one of today's greatest challenges, for this I commend them.

Mr. Speaker, it is not expected that one "Crime-Free Day" will be an absolute panacea, but it will serve to educate, advocate, and eradicate as a community of which we are all a part, rather than a community divided against itself.

In closing, I proudly salute Rev. Douglas Sands and his congregation for being in the vanguard of this noble cause, and rise in full support of their efforts. I hope my colleagues will join me in urging our Nation's citizens to commit themselves to become a part of this victorious event, promoting self-control, self-love above all brotherhood.

## IN RECOGNITION OF JOSEPH MALONE

### HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Ms. ROS-LEHTINEN. Mr. Speaker, Joseph Malone, assistant supervisor of elections, Dade County Florida Board of Elections is retiring. He is to be highly commended for his 20 years of hard work and commitment to the community of south Florida.

Joseph Malone's civic commitment has found expression in each of his vocations, in Third World development, as a Dade County educator, and county employee. Mr. Malone's educational background includes three master's degrees in: religious education from the Washington Consortium, American history from Catholic University, and urban sociology from the University of Northern Colorado.

Mr. Malone has served his fellow man both in his immediate community and abroad. He worked with grassroots development and famine relief projects in Chile and Peru. In each development program he exercised his talents of administration and project analysis. At home in Miami, FL, Mr. Malone served with the Department of Community Improvement Program where he initiated studies to streamline and improve social services. Later, as chief of the Management Information Systems of Dade County he designed and maintained the current urban information system. The system compiles vital census data for public and private consulting on data needs, surveys, and feasibility studies.

Mr. Malone has also served his community as an educator. He has been professor at Miami-Dade Community College in social and political sciences for 13 years. Still more, he has taught history, government, math, and English for the Dade County Adult Education Program for 20 years.

Most recently, his creative leadership has been of benefit to the electoral process of Dade County with a system of electronic election tabulations. The system he developed tabulates elections from first programming to certifying results, and provides analysis of election results, voter registration, and political demography.

Our society finds much of its strength from the civic commitment of people like Joseph Malone. Let us join in recognizing his lifetime of community service. I know we all wish him and his wife Estela the best in their future endeavors.

## IN SUPPORT OF SOVIET REFUSENIK VLADIMIR RAIZ

### HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mrs. COLLINS. Mr. Speaker, I am proud to participate today in the 1989 Congressional Call to Conscience for Soviet Jewry. I commend the efforts of all who have taken part in supporting this important cause.

Today I would like to take the time to draw attention to the plight of Vladimir Raiz, a refusenik from Vilnius, Lithuania, and his family. Mr. Raiz first applied for an exit visa in 1972 and received a refusal in 1973, based on reasons of state security. Vladimir was employed by the Institute of Molecular Sciences at the Academy of Sciences, and was denied a visa because he had access to secrets during his employ. His work, however, was part of an international program involving scientists from around the world, in close conjunction with the Laboratory of Molecular Biology in Cambridge, Great Britain. According to Professor Perutz of Cambridge the work carried out by the laboratory represents a purely scientific and medical interest, and has no connection to matters of defense.

The Raiz family have appealed their refusals numerous times. In August of this year, Vladimir Raiz was once again refused the right to emigrate, despite the fact that he now has in his possession a letter from the Radio Ministry saying that his secrecy was lifted.

In addition to being denied their basic freedoms, the Raiz family have also suffered repeated prosecution due to their refusenik status. Vladimir, who speaks and writes English, and is an honorary member of the New York Academy of Sciences, was forced to resign from his position when he applied for permission to emigrate. He has not held a job in his field since then, but has instead held jobs delivering newspapers, and for a while worked as a postman. Vladimir has been offered a job at the Weitzman Institute in Israel, which he is being unjustly prevented from taking.

Similarly, his wife Karmela, who is a violinist and formerly performed with the Moscow Symphony Orchestra, is now the lowest paid member of the Lithuanina Symphony Orchestra, due to her refusenik status.

The Raiz family have repeatedly been harassed by government authorities and the media. Both Vladimir and his wife have been questioned by the KGB, and in 1983, Vladimir was denounced in the Lithuanian Daily News. This family has been in refusal for 16 years, and that is a tragic situation.

Recent reforms in the Soviet Union are encouraging, and there have been noted improvements in Soviet treatment of its Jewish community. However, obstacles to free emigration remain, as is evidenced by the continuing practice of arbitrary refusals based on grounds of state security. The Soviet Government must work to ensure human rights for the hundreds of thousands of refuseniks by adopting a uniform and free emigration policy for all Soviet citizens who wish to leave the country.

Mr. Speaker, once again, I commend the Union of Councils for Soviet Jews for their commitment in striving to achieve this goal, and I thank them for allowing me to participate today.

## H.R. 1306, THE SPECIAL MILITARY ENLISTMENT BILL OF 1989

### HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ENGEL. Mr. Speaker, there are critical manpower shortages in the Armed Forces of the United States and in the National Guard of the Northeast States. Demographic projections show that the available manpower for military recruiting might fall as much as 20 percent below present levels.

These shortages are caused by several factors including the drop in American birthrates. There is a solution.

I support H.R. 1306, the special military enlistment bill of 1989. H.R. 1306 would provide an opportunity on a continuing basis for a limited number of people to enlist in the Armed Forces and the National Guard, in concurrence with the military's perception of their needs.

Service in the Armed Forces is an efficient introduction to American life—what better way could there be to prepare for citizenship? This would be a boon for the Armed Forces, not only in quantitative terms, but also in the growing absence of personnel with knowledge of foreign languages and cultures.

H.R. 1306 would not create a foreign legion or entitle any alien or class of alien to special privilege. There would be a minimum enlistment of 3 years which would confer provisional residence status upon the enlistee and his legitimate dependents, which would be converted to permanent residence retroactive to the initial date of enlistment. All persons seeking enlistment under H.R. 1306 will be required to meet all criteria for enlistment, with the exception of the legal admission to permanent residence status, and will be required to make a declaration of intent to become a citizen of the United States.

I believe this is an equitable measure which will help to protect the national security of the United States by ensuring that the National Guard, particularly units in the Northeast, have complete units at fully authorized levels. The Congress should act on this legislation expeditiously.

## ACHIEVING EDUCATIONAL EXCELLENCE: BLUE RIBBON SCHOOL PRINCIPALS SHOW THE WAY

### HON. RON WYDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. WYDEN. Mr. Speaker, it is with great pleasure that I take this opportunity to recog-

nize a group of school principals who are making a difference in the lives of at-risk youths. From New Jersey to California, Kentucky to Montana, these educators have each found their own way of turning bad learning environments into schools of excellence.

Ron Herndon, director of the Albina Ministerial Alliance Head Start Program, in Portland, OR, brought this group of blue ribbon principals together for the first time July 1988, to discuss their methods and establish common ground. They met again November 3–6, 1988, to come up with ideas on how to improve schools and involve business and government in the process of bringing their experience to the rest of the country.

Now known as the National Association for Schools of Excellence, these educators are determined to share their successful methods and to prove to our communities that transforming bad schools into great schools is not a hopeless task.

The success stories are many. Juana Dainis took the Jose C. Barbosa School in Manhattan, NY, school where 83 percent of the students were reading below grade level and turned it around. Now 90 percent of the students read above grade level, the attendance rate is one of the highest in New York, and the school ranks in the top third in New York City in achievement.

Thomas P. O'Neill, Jr., took Solomon Lewenberg Middle School in Mattapan, MA, a school on the brink of closing, and in 1 year changed the percentage of students passing the writing component of the Massachusetts basic skills test from 63 to 100 percent. In 1987, the school's 510 students had the highest reading scores of all 22 Boston middle schools.

Lester Young, Jr., principal at General Daniel "Chappie" James School in Brooklyn, NY, doubled the achievement level of the students in his school. In 1982, 36 percent of the school's 670 students were reading at grade level and 34 percent were at grade level in mathematics. In 1988, 78 percent were at or above grade level in reading and 68 percent were at or above in math.

At Thomas Jefferson Elementary School in Pasadena, CA, Jarret L. Brunson took control of a school where 41 percent of the students possessed limited English proficiency. The school's students ranked in the 10th percentile on the California achievement test. In 2 years, student scores increased to the 60th percentile and Jefferson became one of 245 distinguished schools in California.

Under the leadership of George M. Hughes, test scores of students at Lee Elementary School in Milwaukee, WI, have improved an average of 64 percent since 1980. On the Iowa test of basic skills, only 23 percent of students in grades 1–6 scored in the low performance category in reading, 18 percent in math, 12 percent in language arts, and 17 percent in study skills. Lee Elementary School has also reduced its absence rate to 8 percent.

In the fall of 1986, 81 percent of the first grade students attending Lincoln-McKinley Elementary School in Havre, MT scored below national norms, and 48 percent scored below the 25th percentile, classifying them as educationally disadvantaged and truly at risk. In 1 year Principal Jeff Pratt reduced those figures to 38 and 14 percent, respectively. Fifteen percent of second-graders were classified as academically disadvantaged at the beginning of the year but only 1 percent fit this description at end.

Carolyn S. Reedom, principal at Paradise Elementary School in Las Vegas, NV, improved achievement at her school significantly over a 3-year period. From 1983–86, the school improved student achievement to higher than the district in reading and math at the third grade level; significantly higher than district in total math; and equal of the district in reading of the sixth grade level.

Students at Patterson Intermediate School in Bronx, NY, scoring at or above grade level, have increased from 29 percent to 71 percent. Under principal Felton Johnson, 90 percent of graduating eighth graders write at or above the State average.

The list goes on: Louise Smith of Charles Rice Elementary School in Dallas, TX, created an environment where the vast majority of sixth graders perform at or above grade level; and Albert Weiss of Twentieth Street Elementary School in Milwaukee, WI, cut the percentage of students scoring low from as high as 60 percent to as low as 10 percent.

In all, 25 public school administrators and principals were recognized by the program. These innovative people are a fine example of how individuals can make a difference. Their insight, skills and dedication are a lesson to all of us. By their example, we can learn a valuable lesson in how to restore our education system to a state of excellence.

## NAMIBIAN VOTERS DENY TOTAL POWER TO SWAPO

### HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BURTON of Indiana. Mr. Speaker, the recent elections in Namibia were important for all of us who are concerned about democracy in Africa. There are still significant potential problems in Namibia, and this excellent Wall Street Journal article by Michael Johns of the Heritage Foundation highlights them quite well.

[From the Wall Street Journal, Nov. 15, 1989]

NAMIBIAN VOTERS DENY TOTAL POWER TO SWAPO

(By Michael Johns)

WINDHOEK, NAMIBIA.—Along this city's well-traveled Talstrasse last week, almost every corner had a large red and blue billboard. "Vote Without Fear," the signs instructed passing Namibians. Signs on neighborhing streets informed passersby, "Your Vote Is Your Secret."

Erected by the South African administrator general, who with the United Nations is responsible for the maintenance of Namibia through independence, the signs were designed to calm the fears of Namibian voters as they elected a constituent assembly. In the balloting, the first major step toward independence, the Marxist South West African People's Organization won most of the votes, about 75%, according to unofficial figures. But SWAPO fell short of the two-thirds majority it was predicting and thus was denied total power to write a new constitution.

This is despite the fact that to Namibians, who have been ruled by South Africa since 1915, democracy is a foreign concept. The administrator general and the U.N. Transitional Assistance Group, or UNTAG, had been busy correcting widespread misconceptions about election rules. The unfamiliarity with the voting process, combined with Namibia's 60% illiteracy rate, opened the door for intimidation and deception tactics by many of Namibia's political parties.

For instance, some Namibians were led to believe that political parties would be informed about how their votes were cast and that there would be retribution if they voted for a rival party. Several SWAPO leaders went so far as to threaten that if SWAPO failed to gain 50% of the vote, they might renew the guerrilla war SWAPO has waged for 23 years. This tactic may have been perhaps the most intimidating of all, because it turned the election into a referendum on the war.

Stories abound of political parties spreading deliberate disinformation about the voting. During the campaign, SWAPO reportedly told many Namibians to "put a big 'X' on the SWAPO ballot if you support SWAPO, but if you are against us, put a small 'x' on the SWAPO ballot."

Like other African independence elections, Namibia's constituent-assembly elections may have been its last. Though SWAPO now contends that it is prepared, if necessary, to work with other parties to develop a coalition government, it has strong totalitarian inclinations, and fear is widespread that a SWAPO-dominated government would lead Namibia into one-party rule.

There is concern that SWAPO will not respect rival opinions in the prospective coalition, and may use the constituent assembly as a stepping stone to total control in Namibia, similar to the approach used by the Marxist-Leninist factor of the Sandinistas following the overthrow of Anastasio Somoza in Nicaragua. Werner Neef, an adviser to the Christian Democratic Action Party, says that the CDA will not join a coalition with SWAPO.

The SWAPO victory could lead to ethnic-based violence. SWAPO's power base is rooted in Namibia's largest tribe, the northern-based Ovambos. Indeed, SWAPO lost Namibia outside of Ovambo territory to the free-market Democratic Turnhalle Alliance, winning overall only because it defeated the Alliance by 197,000 votes to 9,200 in the northern region of Ovambo.

There are fears that an Ovambo-based SWAPO government might persecute other tribes such as the Hereros, Namas and Bushmen. SWAPO has admitted keeping many non-Ovambos in underground pits in its camps in Angola and Zambia and torturing them as "spies."

SWAPO's win also raises security concerns. Since 1964, SWAPO has received financial and military support from the Soviet Union, and SWAPO leader Sam Nujoma has boasted of his strong alliance with Cuba's Fidel Castro, SWAPO also enjoys close relations with the African National Congress, which sent SWAPO 300 minibuses to assist in getting SWAPO supporters to the polls.

There is deep concern that the SWAPO-dominated government may attempt to model Namibia after its northern neighbor,

Angola, by bringing in Cuban troops and Soviet military advisers. There is even deeper concern that SWAPO may cooperate with the Angolan regime in launching military attacks against Jonas Savimbi's National Union for the Total Independence of Angola, which is based in southern Angola. However, South Africa's proximity and may force SWAPO military restraint.

SWAPO's economic vision is no more promising, but its traditional Marxist-Leninist rhetoric moderated considerably during the campaign. SWAPO told foreign investors recently that is does not support wholesale nationalization, and Mr. Nujoma has said that he does not wish the country's 70,000 whites to flee since their technical and management skills are needed. But according to Mishake Muyongo of the Democratic Turnhalle Alliance, which got 29% of the votes. "SWAPO will say in public 'We want whites here,' but then in private they will turn around and say 'Get rid of these people.' "

For southern Africa, the outcome of Namibia's independence process will be critical for the strategic and economic composition of the region. With Namibia's mineral wealth and abundant land (the country is twice the size of France), a moderate, free-market approach by the country's new government could lead to strong economic growth, perhaps making Namibia a regional success story among the underdeveloped front-line states. Conversely, a statist, authoritarian approach by Namibia will likely sway the regional political and economic balance in the other direction.

The outcome is equally important for the U.N., which, as the monitor of Namibia's independence process, has embarked on one of its most ambitious missions to date. More than 6,200 members of UNTAG are in the country to oversee the process, and the U.N. brought in more than 1,000 additional personnel to serve as official election observers.

Having funded SWAPO, given it observer status in New York, and recognized it as "the sole, authentic representative of the Namibian people" in General Assembly resolutions, the U.N.'s capability for objectivity is in justifiable doubt. Indeed, several Namibian political parties contend that the U.N.'s longstanding finanical and diplomatic support for SWAPO tipped the scale in SWAPO that is now taking issue with the U.N.'s formal declaration after the polls closed that the five-days elections were "free and fair."

But perhaps the greatest irony of the Namibian independence process is the composition of the member nations represented in UNTAG. Nondemocratic nations such as Cuba, Libya, Romania, East Germany and the U.S.S.R. have been sent to Namibia to oversee democratic procedures that they forbid in their own countries.

For Namibians, the concern is not merely that many of these countries have their own dubious agenda in southern Africa, but also that the political system of an independent Namibia may soon be shaped in their image.

## MICHAEL CHATOFF: OVERCOMING DISABILITY

### HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ACKERMAN. Mr. Speaker, I thought my colleagues would be quite interested in the following article by my good friend and constituent Michael Chatoff.

Michael is a brilliant college classmate of mine from Queens College of the City University who lost his hearing while in law school. But he has overcome his disability to establish a stellar career. In 1982 he became the first deaf attorney to argue before the U.S. Supreme Court.

As the House of Representatives prepares to consider the landmark Americans With Disabilities Act in the second session, I believe that Michael's comments on being a disabled professional in today's society will be of interest to all of us.

The article follows:

[From National Law Journal, Oct. 2, 1989]

JUDGE ME BY WHAT I CAN DO

I am a lawyer—and I am deaf. That combination is a decided rarity; therein lies the reason for this essay.

By any measure, I had a typical youth. I had normal hearing, won my share of honors and awards and was elected to several offices, both in college and in earlier years. I entered law school the year after I graduated from college. Problems developed during that first year in law school—my hearing started to decline, and I used to tell people "there's something wrong with the fine-tuning."

I certainly did not fulfill the promise expected of me. During the summer after that first year in law school, tests revealed that I had a tumor on each auditory nerve. Both tumors were surgically removed along with the auditory nerves. The operations left me totally deaf, but the "fine-tuning" worked again. I returned to law school; during my final two years I was in the upper part of my class. I had been a student all my life, so I did what came naturally—I went on to the next degree. After passing the bar exam I earned a master's of law degree—now wild horses couldn't get me back to school.

Because I had no disabilities prior to the operations, I knew nothing about the rights of people with disabilities. I was flabbergasted to find out that legally speaking, deaf people are still in the Dark Ages. The U.S. Senate recently passed the Americans with Disabilities Act of 1989. When it becomes law, as it inevitably will, it will assure that people with disabilities are protected by the civil rights laws of this country; an act of simple fairness, one can hardly believe that it took so long to accomplish. The bill would make provisions for telephone relay services (conference calls or party lines for deaf individuals) and the more extensive use of sign-language interpreters.

But for the most part, the problems encountered by deaf people are attitudinal—and no law can legislate away prejudice, intolerance and impatience. Twenty-one years ago, when I became deaf, communications laws made no provision for people who were deaf. Education for children who were deaf might better have been called segregation for the deaf. In judicial proceedings, there seemed scant effort to enable deaf people to understand what was happening. I have devoted a great deal of time to the legal problems of people who are deaf; I like to think that I have made some contribution to improving their plight—at least where the law is involved. I have learned sign language—I am a reasonably adept signer, but, to paraphrase Martin Luther King Jr., I have a dream. A dream that one day I will be judged on the basis of what I can do, not on the basis of what I can't do. I concede that I can't hear. I think there is more to me than that. I like to think that I am the sum total of my abilities and disabilities; that I am more than just deaf.

Because of advances in medical science, people are living today, albeit with disabilities, who would have died in an earlier age. Those people are used to being treated as first-class citizens. They resent being treated as second-class citizens because of the presence of a disability. I am not deaf because I want to be, although I must admit that deafness is preferable to the alternative. I am not proud of my deafness, nor am I ashamed of it; it is just a part of me. I accept it as readily as the fact that Joe Dimaggio need not worry that I will break any of his records.

When a person is born deaf or loses hearing early in life, the acquisition of language becomes difficult because that person cannot hear his or her own voice. Also, the acquisition of knowledge becomes difficult because he or she cannot hear the voices of others. Conversely, learning sign language as a first or primary language is not difficult. When a person loses hearing as an adult, the acquisition of language and knowledge is not a significant problem, but it is difficult to learn sign language as a native tongue. I would not recommend deafness for everyone or anyone, for that matter—but if it happens, it's not the end of the world.

If you're deaf, you learn to compensate for your lost sense. In law school and graduate law school, I read twice as much as everyone else to compensate for what I did not hear in class. When I drive, I am more alert than other people to make up for what I can't hear. When I jog, I always run against traffic. When I play bridge, I have developed a "pigeon sign language" that I teach easily to my partner and opponents. No matter what happens, you can always "make do."

I am a lawyer. I am not a deaf lawyer. I dislike the term.

I took the same courses as everyone else. I passed the same exams as everyone else. I received no special treatment because I am deaf. I do not think I should be characterized by a reference that suggests or implies that I received any special dispensation. Lawyers are characterized on the basis of their specialties, e.g., tax lawyer, real estate lawyer, civil rights lawyer, not on the basis of their physical characteristics.

Some day I hope people will judge me as I used to be judged before I lost my hearing; on the basis of my intellect, analytical abilities, determination, etc.—and not solely on the basis of my deafness.

## AMENDMENTS TO THE HEALTH CARE QUALITY IMPROVEMENT ACT OF 1986

### HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. WAXMAN. Mr. Speaker, this statement is to describe amendments to the Health Care Quality Improvement Act of 1986 that are contained in the conference report on H.R. 3299, the Omnibus Budget Reconciliation Act of 1989. My amendments will resolve the confusion and misunderstandings that have developed over the relationship between the Feder-

al law and State laws governing physician discipline.

The purpose of the Federal law is to encourage peer review by assuring adequate protection for all parties—peer reviewers, witnesses and accused physicians alike. Peer reviewers needed protection against suits under both State and Federal laws, while accused physicians needed guarantees of fair procedures. The Health Care Quality Improvement Act of 1986 itself provides both types of protection. It also leaves substantial authority to the States.

Since immunities with resquest to suits under Federal laws—including antitrust—can only be granted by Federal law, the act is a source of such protection. But States can, and some have, provided both immunities against suits under State law and procedural requirements for peer review actions.

Some States, however, have not enacted or otherwise adopted adequate procedural requirements and immunities for peer review participants. The act addresses this problem by providing specific immunities for causes of action brought under State laws, conditioned upon the requirement that procedures meet defined standards or otherwise be fair to the accused physician under the circumstances. This resolves the situation in States whose laws are inadequate principally through inattention or inaction.

The argument was made, however, that some States might want to adopt a formal policy against providing the substantial immunities granted in the act with respect to causes of action against peer reviewers under State laws. To accommodate such States, an "opt-out" provision was adopted. This "opt-out" provision was extremely limited, and only related to the immunities otherwise provided under the act for causes of action brought under State laws. There was no opportunity to "opt-out" from the requirements for immunities under Federal antitrust laws or other Federal laws, or from the remainder of the act.

This was an unusual provision that was widely misunderstood and thought by some to be much broader than was intended. As such, the provision raised the specter of time-consuming litigation arguing over its interpretation. To end this confusion and assure a uniform national minimum level of protection for peer review, the opt-out has been eliminated.

In addition three other questions have been raised about the interaction between the act and State laws.

Earlier this year, my distinguished colleagues Mr. MADIGAN, Mr. WYDEN, and Mr. TAUKE joined with me as the four House cosponsors of the Health Care Quality Improvement Act of 1986 to address one of those questions, whether the legislation was supplemental to or preemptive of State immunity laws that are more protective of peer reviewers than the act. In a joint letter of February 27 we stated our agreement that the act was always intended to supplement, not preempt, such State laws.

Nevertheless, some groups continued to be concerned that the Federal laws could be misconstrued as undermining stronger State protections. Consequently, one of the amendments just enacted clarifies this point explicitly in the statute, stating that the law is not to be interpreted "as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this part."

Two other questions have also been raised that are not addressed by these amendments but I believe are clearly answered in the act.

One is whether State law may control procedural matters not addressed in or in conflict with the act, including establishment of minimum procedural standards for professional review actions that exceed the requirements contained in the act.

The second is whether the act does or does not preempt or override State law setting forth requirements with respect to the composition of professional review bodies conducting professional review activities.

In general, Mr. Speaker, I have always believed that State laws will apply with respect to procedural matters not dealt with in the Federal law.

One of the key areas in which this question arises is with respect to matters such as the rights of accused physicians to evidence. I made it clear during floor debate on the Federal bill that "* * * nothing in this bill is intended to expand or narrow current discovery rights under State or Federal laws," and "that the courts should not read anything in this bill as authorizing the overriding of any State and Federal law relating to discovery."

Of course, Mr. Speaker, the act cannot be read to say that State law preempts Federal law in any case of conflict. Such an interpretation of congressional intent is unthinkable, since it would turn on its head and undermine entirely the purpose of the act to establish a national minimum standard of protection for peer review.

I believe that these amendments were necessary to carry out the Health Care Quality Improvement Act of 1986 as it was originally designed, which was to foster peer review in a way that protects the interests of everyone—patients, peer reviewers, and accused physicians. I trust that we all share this goal and will work diligently with the hospitals and physicians to see it accomplished.

## THE BUSINESS INCUBATOR REVIEW ACT

### HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MAZZOLI. Mr. Speaker, I rise today to join with my colleagues, JOHN RHODES and JOE MCDADE, in supporting H.R. 2955, the Business Incubator Review Act. This legislation would establish a business review group within the Department of Housing and Urban Development, Energy, Commerce, Agriculture and within the Small Business Administration to examine the issues facing business incubators and to report their findings to Congress.

U.S. businesses—especially small businesses—find incubators extremely helpful for start-up assistance and for insurance against business failure. In fact, over 80 percent of the businesses which graduate from incubators survive.

Business incubators help nurture the growth of fledgeling, microbusinesses into viable and healthy small businesses by providing affordable office, warehouse and manufacturing space, shared services such as secretarial support and advanced office equipment; management assistance; and an entrepreneurial atmosphere. The business incubator concept is spreading and communities across the Nation are recognizing their value in fostering small business growth.

I know that many businessmen and women in my own community of Louisville and Jefferson County, KY, are supportive and excited about the assistance business incubators can provide. In fact, the Greater Louisville Economic Development Partnership has conducted a feasibility study to develop a science park in Louisville and Jefferson County, which—like existing incubators—could provide the physical environment and support to attract, develop and enhance businesses, especially on an international level.

I believe that legislation, such as H.R. 2955, would go a long way toward helping business incubators and projects like the science park so that they can continue their successful fostering of business ventures. I hope that my colleagues will join me in supporting this measure.

## ISRAEL—DEMOCRACY'S STRONGHOLD IN THE MIDDLE EAST

### HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Ms. ROS-LEHTINEN. Mr. Speaker, in June of this year, I witnessed firsthand the stronghold of democracy in the Middle East—Israel.

Today, Congress continues to debate many issues of concern to Israel. Policy regarding Soviet refugees, terrorism, foreign aid, and the Middle East peace process justifiably demand our complete attention.

There is, however, a more pressing issue on our collective agenda—it is Israel's national security. As a member of the Foreign Affairs Committee, I had the great pleasure of meeting with the Israeli Prime Minister Yitzhak Shamir to discuss his concerns about the Arab Middle East. His visit to Washington was timely.

In his address to the members of the Foreign Affairs Committee, Mr. Shamir made apparent his dedication to the peace process in the Middle East and his qualified acceptance of Secretary Baker's five point plan. The historically embittered relations between Israel and the Arab nations have been exacerbated by tensions in the occupied territories. Shamir has been faced with the unenviable position of quelling unrest internally while maintaining Israel's security externally.

While encouraging developments are taking place in the rest of the world, Israel is denied its right to exist and is regarded as an alien entity in its historic homeland. Today, 19 Arab countries are still in a state of war with Israel; and some of them continue to support terror-

ist attacks on Israel. Their joint hostility and military potential poses and awesome threat to Israel. Recently, all of the 19 Arab States, except Egypt, joined in the annual ritual to disqualify the credentials of Israel's delegation to the United Nations and thus deny its legitimacy.

Last week, the UN General Assembly showed once again its ambivalence towards Israel. It deferred to vote on whether to upgrade the status of Palestine from an observer delegation to an observer state, but passed another resolution which recognizes the Palestine Liberation Organization's [PLO] right to establish an independent state. The resolution reduced the whole of the Middle Eastern problem to that of Palestinian conflict and adopted the PLO's request for an international peace conference.

More than once, Israel has demonstrated their readiness and capacity to take risks for peace. But Israel should not have to take those risks if they are not offered reciprocal overtures of peace from the Arab nations.

Ultimately, the complex issues and interests of Israel, the occupied territories, and Arab nations are mot properly addressed and resolved at the negotiating table. As the governments of the United States and Israel work together on the peace process, we must seek a compromise in our respective foreign policy agendas. The United States wants to see tranquility and peace in the Middle East in general. But Israel is all too aware of how perlious the march towards peace is to their sovereignty—every step towards this common objective is fvaught with danger. The risks are enormous, the variables extreme, and the unknowns plentiful.

Yet, peace is possible. Together with the United States and other democracies from around the world, Israel is actively seeking a peaceful solution in the midst of terrorism from within and without. If we stand together and look beyond our petty differences to the real challenges that await us, Israel as a nation will persevere and flourish.

## TRIBUTE TO CYNTHIA ANN BROAD

### HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. HERTEL. Mr. Speaker, I rise today to recognize an outstanding individual Cynthia Ann Broad, who has been honored as the 1990 Michigan Teacher of the Year.

Cynthia Ann has spent 13 years teaching in the L'anse Creuse School District, where she has been especially devoted to helping pupils with physical and mental disabilities. Prior to that she worked with the neurologically impaired and in a reading clinic both in Ohio. She has received much recognition for the excellent job that she has done. She was named "Outstanding Teacher of the Year" in 1972 and received the L'anse Creuse/MEA-NEA Outstanding Educator Award in 1985.

She decided on a career in special education as a seventh grader when her youngest brother was diagnosed as having autism. During her high school years she began to futher develop this interest and worked as a teacher's helper at an orphanage and as a teaching assistant for the mentally impaired.That gave her the determination and dedication to help disabled students realize their potential and to develop a love for learning. Cynthia Ann continues to exemplify the dedication, the enthusiasm and the patience that she possessed in the early days of her career.

Cynthia Ann also finds time to become involved in several community activities. From 1978 to 1981 she served on the board of directors for CLEAVE, Inc., a community organization promoting housing, education, and social acceptance of the handicapped. She also is on the auction committee for the Center for Creative Studies, Institute of Music and Dance in Detroit. In the summer of 1989, she helped organize and develop a cultural exchange program for Chinese educators visiting Michigan. She has also written several handbooks and resource guides for teachers that work with disabled students.

A celebration is being held in her honor on January 25 at the Grosse Pointe Yacht Club. Fellow educators and other local community leaders will be in attendance.

My dear colleagues please join me in recognizing Cynthia Ann Broad, an outstanding educator who has influenced and encouraged young minds throughout her illustrious teaching career.

## FRANK D. FAGA; OUTSTANDING SERVICE AT GENERAL MOTORS

### HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BROOMFIELD. Mr. Speaker, it is with great pleasure that I rise before you today to pay tribute to an outstanding individual.

On January 1, 1990, Frank D. Faga, a constituent of mine, will mark the end of a long and illustrious career with General Motors Corp. Mr. Faga began working at GM in 1943 while a student at GMI Engineering and Management Institute. At that time, he was an assembly line employee at a Fisher body plant in Flint, MI. He graduated in 1950, earning a bachelors degree in mechanical engineering.

Through the years, he quickly rose up the ranks and was promoted to engineer-in-charge by 1959 at that facility. Over the next dozen years, Mr. Faga moved to various GM assembly plants throughout the Midwest, including Lansing, MI, and St. Louis, MO. With ever increasing responsibilities, he assumed his present position as general manager of the B-O-C Group's Flint Automotive Division Orion Assembly Center, in Orion Township, MI, on April 1, 1986.

The quality evident in the cars that roll off the assembly line are a direct result of the dedication and commitment that Mr. Faga inspires into each of the line workers under his keen oversight. Mr. Speaker, I would like to express my appreciation to Mr. Frank D. Faga for his vision and leadership in the quest to bring quality into the American auto industry. He understands how essential this is if we, as a nation, are to remain competitive in an ever increasing unified world marketplace. He has always championed this cause and, in my opinion, has succeeded by following a strong work ethic with fierce determination.

Mr. Faga's reputation as a superlative teacher is demonstrated by his emphasis on trying to involve every worker in the plant's operation. He is the sort of hands on manager who enjoys going out onto the plant floor and listen to the people. It is there, he says, that one might learn how things could be improved. He knows that a plant's ultimate success comes from satisfied employees. By utilizing all facilities available to him, Mr. Faga is able to accomplish his objectives.

Mr. Speaker, Frank Faga is truly a model citizen who I am proud to represent in the U.S. Congress. Mrs. Broomfield joins me in wishing Frank and his wife Bea, all the best in the years to come.

## TRIBUTE TO HAROLD ROSEN

### HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. NEAL of Massachusetts. Mr. Speaker, it is with a distinct sense of pleasure that I rise today to express my admiration and respect for Harold Rosen, a man who has distinguished himself as an entrepreneur, a family man and a community leader.

For the past 25 years, Harold Rosen has dedicated himself to the growth and development of the western Massachusetts Jewish community. Through his involvement in organizations such as the Jewish Federation of Greater Springfield and the Jewish Community Center, Mr. Rosen, along with his family, have consistently given of themselves for the betterment of others. It is only fitting that they should be recognized for their many contributions.

On December 11, 1989, the Jewish Federation of Greater Springfield will hold a special dedication ceremony renaming its renovated headquarters as the "Rosen Family Federation Facility." It is an appropriate tribute to the Rosen families hard work and unyielding commitment.

Mr. Speaker, I ask my colleagues to join me in extending our congratulations to this caring and giving family. On behalf of the U.S. House of Representatives, I wish them all the best in the years to come.

## COMMEMORATING THE RETIREMENT OF VINCENT J. HEBERT

### HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. CONTE. Mr. Speaker, I rise today to pay tribute to a man who has served his country with pride and his city with distinction. His name is Vincent Hebert but to his many friends he is known as Vinny. On January 2 a

retirement party will be held in his honor for the nearly 40 years of committed service he has enjoyed as an employee of the city of Pittsfield, MA.

Although Vinny is a native of Quincy, MA, he has been a great boon for the area I am fortunate enough to represent in Congress. Most of his career has been spent with the Pittsfield parks and recreation service where he is retiring from the superintendent's position he has held since 1950. The only break in his tenure occurred in the mid-1980's when he became director of the department of community services. He returned to his former post in 1988.

As a resident of Pittsfield, Vinny has been involved with many charitable organizations and has been granted numerous awards for his leadership and generosity. He has been active with Pittsfield's little league and his numerous recognitions range from having a street named after him to marching at the front of this year's Fourth of July parade as the grand marshal.

His move to Pittsfield began after World War II where Vinny distinguished himself as a lieutenant (jg.) in the Navy. He was one of the amphibious troops that landed at Normandy on June 6, 1944—D-Day. He also fought bravely in North Africa, Sicily, and the Pacific theater.

After the war, Vinny earned his master's degree in education and recreation at Columbia University. He moved to Vermont for a short period before he and his wife of 45 years, Pearl, became permanent residents of Pittsfield. Vinny and Pearl have raised four children: Gail, Douglas, Craig, and Roberta; and his daughters have raised Vinny's and Pearl's four grandchildren.

But, Mr. Speaker, the one catch to this is that some day we may have to repeat this commemoration. I understand that Vinny likes to work long hours and that after a week without work he will be itching to get back. If so, I know that Pittsfield will get the best Vinny Hebert has to offer. There are few like him in this world, so those whose lives Vinny has touched should count their blessings each and every day.

I salute you, Vinny Hebert, and wish you success in all of your future endeavors.

## IN HONOR OF JOHN T. CAREY

### HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ENGEL. Mr. Speaker, I rise today to honor John T. Carey, the director of professional practicum at Manhattan College. Mr. Carey is a hard-working teacher who has helped train many fine people for physiology and sports medicine careers.

The professional practicum experience, which Mr. Carey supervises, is an important part of a student's education in the sports medicine field. This program allows students to put their classroom knowledge to use.

The fields of physiology and sports medicine have changed greatly since Mr. Carey's first days at Manhattan College due to medical advances which have made it easier to successfully treat sports-related injuries. Additionally, the desire of many people to stay in good physical condition has increased the need for professionals in this field. Mr. Carey has played an important part in ensuring that society has had properly trained people to treat these problems.

Mr. Carey is an excellent teacher who is well respected in the community. I am pleased to honor Mr. Carey for his fine work over the years in the educational field.

## TRIBUTE TO JOHN BRISCUSO

### HON. C. THOMAS McMILLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. McMILLEN of Maryland. Mr. Speaker, I rise today to honor Mr. A. John Briscuso on his recent induction as a Knight of the Order of Merit of the Republic of Italy by the President of Italy. Mr. Briscuso has been awarded this position in recognition of his leadership in the Italian-American community, as well his many business achievements.

Amelto John Briscuso was born in the town of Naso in the Province of Messina, Sicily, in 1921. One year later he was brought to the United States by his parents where he was raised in Washington, DC. After graduating from Notre Dame College, he served in the Navy, eventually commanding an LCI(R) rocket barrage ship in the Pacific. Prior to being recalled to the Navy for active duty in the Korean war, Mr. Briscuso began a dry cleaning business in Bethesda, MD.

Upon his retirement from the Navy as lieutenant commander, John Briscuso returned to the dry cleaning business, where he was selected by Norge applicances to be their turn key contractor for building and starting coin-operated laundry and dry cleaning facilities known as Norge Villages at various military bases. With the building experience that he gained, Mr. Briscuso then founded the Woodbridge Construction Co. which has built various office buildings, retail shopping centers, and residential developments.

In addition to these many accomplishments, A. John Briscuso was the cofounder ot the sons of Italy in Annapolis and the Italian Businessmen's Club. It is in honor of these leadership abilities, as well as his stature in the business community that John Briscuso has been named Knight of the Order of Merit of the Republic of Italy by the President of Italy.

I know that my colleagues will join me in extending my sincerest congratulations to A. John Briscuso for his many admirable achievements.

## TWO OREGON GROUPS COMMENDED IN PRESIDENT'S CITATION PROGRAM FOR PRIVATE SECTOR INITIATIVES

### HON. RON WYDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. WYDEN. Mr. Speaker, I am very pleased to offer my congratulations to KGW-TV and the Oregon Remodelers Association, both from Portland, OR. They deserve recognition today for their outstanding performance in the 1989 President's Citation Program for Private Sector Initiatives.

KGW was a citation winner for its public service campaign, "Celebrate the Family" and the Oregon Remodelers Association received an award for their program, "Project Pride."

The President's Citation Program for Private Sector Initiatives was developed to encourage this joint cooperation between associations, business communities, services associations, and others.

The first citation was presented to Peter Ueberroth and the Los Angeles Olympic Committee for their work on the 1984 Olympic Games. President Reagan presented this first citation, and since then over 4,500 businesses and associations have qualified.

The program consists of two levels of recognition. The objective of the first level is visibility and support for corporate social responsibility. Businesses and associations conducting programs such as drug abuse or job training programs have an opportunity to fly the C-flag. The recipients are presented with a red, white, and blue C-flag. This flag states, "We Can" and "We Care," a simple motto that conveys a powerful message to each of us.

The second level of recognition involves an Awards Committee comprised of representatives from various businesses and associations. This committee selects the top 100 entries. The U.S. President then presents 30 Presidential awards and 70 citations. Programs are rated based on 10 criteria including the likeliness similar programs will be implemented, the potential benefits of the program, volunteerism, and social responsibility. Private sector organizations demonstrating outstanding performance in the areas I have just mentioned are recognized for their contribution to society.

While recognizing the recipients of these awards, we should also express our gratitude to those who make this program possible. The Citation Program is voluntarily administered by the American Society of Association Executives [ASAE] in cooperation with the White House Office of National Service. The program sponsors are the American Bankers Association, the American Medical Association, the Chamber of Commerce of the United States, the Council of Better Business Bureaus, the Independent Sector, the National Association of Broadcasters, the National Association of Life Underwriters, the New York Stock Exchange, the Public Relations Society of American and VOLUNTEER; The National Center. I would like to take this opportunity to

thank all those who have contributed to make this program possible.

The Office of National Service presented the 1989 awards on November 17 at the White House. KGW is a second time citation winner. Three years ago KGW was awarded for its community service campaign, "Sex Is Serious, Think About It," a program dealing with teen sexuality. This year's program was "Celebrate the Family."

This was a 12-month public service campaign. It was designed to increase awareness about sexual and physical child abuse and to prompt changes in public policy to tackle the problem. The program included documentaries, public service announcements, and public affairs programs. In addition, KGW established a foster care telephone network, provided study guides on child and foster care were, and organized a children's fair.

The most important aspect of this campaign was the results. We can see the effect their message had. The Oregon Legislature began considering a bill to aid Oregon's children; a permanent statewide foster care telephone network was established; and KGW raised more than $10,000 for homeless families. Their words and actions were heard. I want to emphasize that not only was this a successful campaign about child abuse, but on a larger scale, a successful campaign to show that you can have an effect, people will listen. Again, I offer my congratulations to KGW-TV.

The second group I wish to commend is the Oregon Remodelers Association and their "Project Pride." This event is jointly sponsored by the Metropolitan Family Services and Fred Meyer Hardware Stores. The program incorporates volunteer time and donated materials. Potential homes were identified by the Metropolitan Family Services and evaluated by the Oregon Remodelers Association. 50 homes owned by low-income elderly persons were selected based on the feasibility of completing the necessary repairs in one day. The volunteers were coordinated by the Metropolitan Family Services and the materials were donated by the Fred Meyer Hardware Stores.

Project Pride was held on October 1988. There were 200 volunteers participating with many other contributors such as the press, cosponsor representatives and the public officials who were present for the kickoff. Since then, Project Pride expanded and now includes additional homes in other parts of the city. Efforts to clean up parks, roadsides, and private properties have also been incorporated into the program. I would like to stress here, the success of the program lies in its ability to motivate others to initiate similar community programs.

Both groups began innovative campaigns using volunteer time and resources. Both programs were successful. In both cases the success was determined by the ability of a group or an individual to motivate others into action. Action is what makes it happen and it is with pleasure that I recognize these outstanding programs and the prople who made them possible and successful.

## SALUTE TO THOMAS J. GASPAR

### HON. JOSEPH E. BRENNAN

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. BRENNAN. Mr. Speaker, Tommy Gaspar became a scout in Troop No. 312 in February 1983. He advanced to tenderfoot in July of 1983, to second class in January 1984, to first class in December 1984. He attained star rank in February of 1988 and the rank of Life Scout in August of 1988.

Tommy finished his Eagle Scout project in October 1989 and passed the board of review for the rank of Eagle in October 1989.

Tommy's Eagle Scout project was to pick up litter on the perimeter of Mt. Hope Cemetery in North Berwick, ME. He then constructed a bench and placed it next to the Veterans' Memorial. He also placed a trash container there. This project has enhanced the beauty of the cemetery, and many citizens have spoken highly of his work. They are pleased that they have a place to rest and reflect while visiting a loved one's gravesite, and that the cemetery is now a place of beauty.

Tommy held the position of patrol leader and senior patrol leader within the troop. He earned the "Arrow of Light" award in Cub Pack No. 312.

Tommy is a senior at Noble High School. He is active in sports—cross-country, basketball, winter and spring track. Tommy has been involved in the Student Council, the National Honor Society, the math team, Project Search, band, and has been a representative to Boys State. He received the UMO Academic Achievement Award.

Tommy is the son of Charles and Carolyn Gaspar of North Berwick, ME.

## GERALD E. NEUMANN ENDS 40-YEAR GOVERNMENT CAREER

### HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. MONTGOMERY. Mr. Speaker, at the end of this year, the Department of Veterans Affairs will lose to retirement an outstanding public servant. Gerald E. Neumann will end a 40-year career that has seen him rise through the ranks of the Department's facility construction program over which he has presided.

Beginning as a field engineer at many construction sites around the country, Jerry worked his way to various supervisory positions in the Department's Central Office here in Washington. On March 23, 1986, he was appointed Director of the then-Veterans' Administration's Office of Construction. On October 1, 1986, he became Director of the new Office of Facilities.

Jerry has had the responsibility of overseeing the Department's construction program for 15 years. As Director of the Office of Facilities, he has supervised the planning, development, design and construction of medical facilities: hospitals, outpatient clinics, nursing homes, domiciliaries, data processing and cemetery facilities, as well as regional benefits offices. There are now over 3,500 projects, totaling more than $10 billion, administered by the Office of Facilities in the planning, design, and construction stages.

Jerry, a World War II Army veteran active in civic affairs, received his undergraduate education in civil engineering at Indiana University, New York University, and Ohio State University. He attained a masters degree in public administration from George Washington University.

Mr. Speaker, the Department of Veterans Affairs and the veterans of this Nation have been served capably and admirably by Jerry Neumann. He has been integral to the Department's management team. He has worked hard; he has been very successful; he leaves an improved construction program because of his initiative and firm hand. For these reasons and for the cooperative and amicable atmosphere he fostered among his office, the Department as a whole, and the Congress, he has earned the respect of his colleagues and those of us in veterans' circles who have had the pleasure of working with him over the years. We will miss him.

## HOW TO MODERNIZE U.S. TRADE POLICY

### HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 21, 1989*

Mr. ROTH. Mr. Speaker, the Bureau of Economic Analysis of the U.S. Department of Commerce projects a $112 billion merchandize trade deficit for 1989. Our overall current account balance of payments deficits will be even higher—approximately $122 billion. Everyone agrees deficits this large are unsustainable, yet it seems nobody quite knows what to do about it.

Just a short while ago mainstream economists were assuring us that a devaluation of the dollar would eliminate or dramatically reduce our annual trade deficits by making U.S. goods relatively cheaper and foreign goods relatively more expensive. Well, the dollar has lost 50 percent of its value since 1985, yet our huge trade imbalances continue. The only thing devaluation seems to have accomplished is to make U.S. economic assets cheaper, fueling an unprecedented surge of foreign direct investment in the United States.

What worries me most about the deficits is that they reflect a decline in America's international competitiveness, an erosion of our industrial strength.

The fact is, America in the past two decades has sustained one setback after another in the global marketplace. In the 1970's, foreign competition nearly wiped out the U.S. consumer electronics industry, and we were forced to protect steel and textiles. During the 1980's, we have seen foreign competition make deep inroads into U.S. domestic and international markets for automobiles, semiconductors, machine tools, industrial ceramics, fiber optics, and shipbuilding.

Observing these trends, some analysts have tried to assure us that all is well. Noting

that America still leads the world in internationally traded services, they profess to see no reason to lament our loss of leadership in manufacturing. In fact, they boast that America is the first Nation to enter a new "post-industrial" phase of development. There is only one problem with this analysis. It doesn't square with common sense—or the facts.

Banking and finance are among the most important sectors of the modern service economy. But today which nation is the world's leading financial power? In 1980, a ranking of the world's 10 largest banks included 2 U.S. institutions and 1 Japanese. In 1989, the world's 10 largest banks are all Japanese. Financial and industrial power go together. Leadership in services cannot be sustained indefinitely without leadership in manufacturing.

Competitiveness is the most serious issue facing America today, because so very much depends upon our ability to compete in the global marketplace: Our prosperity, our economic sovereignty, the vitality of our political institutions, our freedom of action in the world. In the long run, we cannot continue to be a society of opportunity, a model democracy, and an influential action on the world stage, if we do not remain leaders in a wide variety of industries.

We have lost considerable ground in the past two decades. We are still losing ground. The danger is that we may reach a point beyond which it is no longer possible to catch up.

The competitiveness of goods in the international marketplace is increasingly a function of the level of technology they embody. However, it takes advanced technology to produce even more advanced technology. It takes state-of-the-art computers to design and build the next generation of computers. Once a country falls behind in technology development, it tends to fall farther and farther behind.

Competitiveness also is increasingly a function of economies of scale and the "learning curve" efficiencies—the improvements in manufacturing methods—which result from high volumes of production. Firms that manufacture for export in the global economy tend to have the largest output. Why are the economies of Japan and the other Pacific "Tigers" so dynamic? An important reason is simply that they are export-oriented. In today's world, export growth is not only a consequence of superior competitiveness; it is also a cause of such superiority. Nations that do not continually find new markets for their products tend to become less competitive. And the less competitive they become, the harder it is for them to find new markets.

America is at a crossroads. Unless we break out of our rut in trade, we may find ourselves in a vicious cycle of economic decline.

To meet the critical challenges we face in the global marketplace, the U.S. Government must be able to devise and implement coherent, long-term trade strategies. Our competitors certainly do not leave their export performance to chance. Many foreign governments today develop and implement strategies to give their industries an edge in international competition. Unfortunately, strategic planning in the areas of international economic policy and trade is now beyond our capability. Our trade policy machinery is simply too fragmented. Literally dozens of agencies make decisions which affect U.S. trade policy.

Strategy implies unity of command—generalship. We have many "trade warriors" in the U.S. Government, but no general—no department head—in charge. The result is inconsistent policies and actions, as well as frequent turf battles, which our trade competitors do not hesitate to exploit.

On November 15 I introduced two bills to address this situation. The first, H.R. 3667, is entitled the "Commerce and Trade Reorganization Act". This bill would transfer the trade-related functions of several agencies to the Department of Commerce, which would be redesignated as the Department of Commerce and Trade.

Agencies whose functions would be transferred to the new Department of Commerce and Trade include: The U.S. AID's Trade and Development Program, the Overseas Private Investment Corporation, the U.S. Customs Service, the Export-Import Bank, the Foreign Agricultural Service, the U.S. Trade Representative, and the Office of International Transportation and Trade.

The bill would also establish a Trade Policy Committee within the Executive Office of the President, consisting of the President, the new Secretary of Commerce and Trade, and the Secretaries of Agriculture, State, Treasury, and Labor. Functioning as a kind of National Security Council for the Nation's commercial and trade interests, it would improve the coordination of trade and international economic policy throughout the U.S. Government as a whole.

In addition to improving our capacity for long-term strategic planning, the Trade Reorganization Act would yield other important benefits. First, it would enhance our bargaining power in trade negotiations, because it would ensure that our inducements—all the "carrots and sticks"—available to the U.S. Government as a whole.

For example, suppose the Secretary of Commerce or the USTR is negotiating with another country to eliminate trade barriers created by that country's testing and certification procedures. The U.S. agency best able to exert effective pressure on the foreign government to remove those barriers is the Customs Service of the Treasury of Department, because Customs regulates the terms under which foreign goods enter the U.S. market. Today, however, there is no assurance Customs will coordinate its actions with Commerce or the USTR to maximize our leverage. Each agency is independent of the others. But if we had a Department of Commerce and Trade, the bargaining chips possessed by the Customs Service would be immediately available for use by our trade negotiators.

The formation of a new department would promote savings of our tax dollars by eliminating duplication and redundancy in Federal programs. At the same time, it would free up existing Federal moneys to support trade promotion efforts that are currently underfunded.

Finally, the establishment of a Department of Commerce and Trade would provide a tremendous benefit just by raising the profile of trade as an area of national concern. For the first time, trade would have permanent, Cabinet-level representation within the executive branch.

Today, the Commerce Department does not have a permanent representative in Brussels, the headquarters of the European Economic Community, to champion U.S. trade interests as the Europeans move ahead with their program to establish a single integrated market by 1992. When we consider how enormously important Europe is as a market for our exports, this lack of adequate representation is astonishing. The Commerce Department also does not have a single officer whose chief function it is to advise developing countries on the setting of industrial standards for imported goods. Not surprisingly, standards are being set in ways that discriminate against U.S. goods.

If we had a Department of Commerce and Trade, there would be a more rational allocation of resources and personnel, and critical U.S. interests in the international marketplace would not be neglected. Within the civil service, we would see many more talented and experienced professionals seek careers in trade promotion, trade policy development, and trade negotiation.

Someone may wonder why the bill would leave the existing Commerce Department intact, adding functions to it rather than transferring Commerce's trade-related bureaus into a wholly new entity. There are two main reasons.

First, there is not a single bureau of the Commerce Department that does not, or could not, play an important role in developing U.S. trade policy. For example, the Bureau of Economic Analysis and the Bureau of the Census, although not primarily trade-oriented, possess the best data in the Federal Government on foreign investment in the United States. The Bureau of Technology Administration supervises our national laboratories, which can and should play a greater role in developing commercially useful technologies for our export industries. The Bureau of Oceans and Atmosphere administers U.S. fishing zones, and by exerting pressure on foreign fishing industries can extract trade concessions in other areas.

Second, our trade priorities should be consistent with the overall priorities of the U.S. economy. They should be based upon a comprehensive assessment of the structure and condition of the U.S. economy, and of major trends in the international marketplace. Within the U.S. Government, only the Commerce Department has the capability to make such assessments. The age of the global economy has arrived. The lines separating internal and external commerce are increasingly hard to draw. U.S. trade policy should no longer be made in isolation from U.S. domestic economic policy. One and the same Department should be responsible for both.

However, to regain our competitiveness, trade reorganization is not enough. We also need trade policy mechanisms that enable us to insist upon reciprocal treatment from our trade partners.

We know from recent experience that hard bargaining and the threat of retaliation work; they produce results. Our tough response to the European Community's threatened ban on

U.S. beef imports is a good case in point. The EC backed down. We need trade mechanisms that enable us to respond quickly and comprehensively to the whole range of unfair trade practices employed by other nations.

My second bill is aimed at this problem. Entitled the "Trade Relations Assessment Act," H.R. 3668 would require the International Trade Commission to provide an annual ranking of our trade partners with respect to the extent to which they trade fairly with the United States. The test of fairness would be reciprocity: Do they allow our businesses to do in their markets what we allow their businesses to do in ours? Each country would receive a grade, as in a report card, reflecting the degree to which it accords U.S. businesses reciprocal treatment in its markets. These grades, or rankings, would then become the basis for our tariff treatment of imports from each country. The more protectionist the country, the higher the tariffs its exporters would encounter when trying to sell in U.S. markets.

Countries whose markets are substantially open to U.S. exports and investment would be ranked in one broad category, category A. Countries whose markets are not substantially open but which are taking steps that will lead to reciprocal access within a reasonable time would be ranked in category B. Protectionist countries which are not taking significant market-opening steps would be ranked in category C.

These rankings would have the following consequences. Imports from category A countries would continue to receive most-favored-nation or preferential tariff treatment. Imports from category B countries would be subject to a 50-percent increase in applicable duties. Imports from category C countries would be subject to a 100-percent increase in applicable duties. In addition, category C countries would be ineligible for U.S. development assistance, and the U.S. Government would oppose multilateral development bank loans to such countries.

The tariff mechanisms contained in this bill would not preclude or replace efforts to redress trade problems on a case-by-case or sector-specific basis. Rather, they would supplement such efforts.

Most important, these mechanisms would help create indigenous pressures within the protectionist countries for freer trade. For example, automakers in a protectionist country would lose access to the U.S. market because of barriers to U.S. agricultural products. The automakers would acquire a strong incentive to put pressure on their government to lower barriers to U.S. farm products.

The defenders of the status quo will say that the trade reorganization bill will founder on the shoals of interagency turf battles. However, they underestimate the gravity of our situation. They mistakenly believe that the current economic expansion will last forever. It won't. When the next recession comes, the trade deficits will become a salient, even explosive, issue in American politics. We will then be able to overcome narrow bureaucratic perspectives and interests.

Critics will also say that the Trade Relations Assessment Act is too unilateral, that it will lead to counter-retaliation by other countries, reducing further our ability to export. This, too, is a mistaken assessment. We have not been shut out of markets because we were too assertive. Rather, we've been shut out because we haven't been assertive enough.

For too long we have allowed ourselves to be intimidated by the argument that retaliation can only backfire, making the trade situation worse for us. This is exactly what countries that routinely practice unfair trade want us to believe. It is a false argument. And if we accept it, we will by that very fact already have lost our economic sovereignty.

We must begin now to lay the political groundwork for a Department of Commerce and Trade and for policies based on the idea of reciprocity.

We can no longer afford to let trade policy be decided by the pulling and hauling of semi-autonomous fiefdoms. We need a Department of Commerce and Trade.

Furthermore, we have the richest, most dynamic consumer market on Earth. This market is one of our great strategic assets. Our trade competitors are dependent upon it. It's time we learned how to make it work for us in international trade.

The future of the American economy depends upon export competitiveness. In the past, we could rely on domestic consumer demand to keep our economy growing and dynamic. We can no longer. We are up to our eyebrows in debt, and we can't go on borrowing forever to keep spending rates up.

The Europeans, the Japanese, and the newly industrializing countries also know that their future depends upon exports. Yet while the Europeans are rapidly completing their EC '92 project, and the Pacific nations are organizing to enhance their trade competitiveness, we continue to drift. We still operate without coherent, long-term trade strategies. We still lack mechanisms that can reliably level the international playing fields and bring down the trade barriers.

The result in that the very structure of our economy is increasingly being shaped by the trade strategies of other countries. Let me give just one example of what I mean.

In 1978, America had a vital shipbuilding industry. Our shipyards had 60 contracts, with both domestic and foreign ship operators, to produce commercial vessels. Since mid-1987, however, our shipbuilders have not won a single contract to produce a commercial vessel. The industry is in a state of near collapse. How did this happen? It was not because our builders lacked imagination, skill, or dedication. It happened because foreign governments heavily subsidize their shipbuilders, enabling them to underbid U.S. firms in international markets. Needless to say, several U.S. industries have been severely harmed by such unfair practices.

We are at a critical juncture in our history. The decisions we as a people make today will decide whether, in the 21st century, America declines into a second rate power, or emerges as a leader of a freer, more prosperous world.

We are moving into a new era, in which the competition of nations for power and influence will increasingly take place in the spheres of economics and trade. we need to develop 21st century capabilities to meet the trade and economic challenges that lie ahead. I believe the bills I am introducing can help us meet those challenges. Following are summaries of H.R. 3667 and H.R. 3668:

H.R. 3667: COMMERCE AND TRADE REORGANIZATION ACT

(Summary of key provisions)

SEC. 2. FINDINGS

(1) expansion of U.S. participation in international trade is a principal national goal;

(2) all domestic sectors of the U.S. economy are influenced by the dynamics of global trade and investment;

(3) expansion of U.S. participation in international trade and investment will improve the general welfare of the American people;

(4) business, labor and all levels of government must join efforts to make U.S. businesses more competitive in foreign markets;

(5) the Federal Government must play a key role in helping U.S. businesses compete;

(6) effective Government action to enhance U.S. competitiveness requires coordination of Government trade policies;

(7) effective Government action requires the employment of a corps of highly trained and experienced professionals;

(8) the existing institutional structure is so diffuse that inconsistent and contradictory policies and actions often result;

(9) such inconsistencies discourage experienced personnel from career service in internaitional trade and investment;

(10) the consolidation of trade functions into a Department of Commerce and Trade will provide the needed coordination of Government activity and encourage the retention of highly experienced professionals;

(11) consolidation of trade functions will, in addition, enhance the bargaining power of U.S. trade negotiators;

(12) the priorities of U.S. trade policy should be determined on the basis of an overall assessment of U.S. national interests and priorities;

(13) in the past, U.S. trade policies have frequently been determined by legal remedy mechanisms and special interest pressures, sometimes to the neglect of broader strategic objectives;

(14) to ensure that U.S. trade policies reflect and overall assessment of national interests and priorities, the administration of trade policy should be coordinated with the administration of domestic economic policy;

(15) such coordination by a Department of Commerce and Trade will be needed to maintain and enhance the competitiveness of American businesses in the 1990s and beyond.

SEC. 3. DEFINITIONS

In this Act, "Department" refers to Department of Commerce and Trade; "Secretary," to Secretary of Commerce and Trade.

SEC. 4. ESTABLISHMENT OF DEPARTMENT

(a) Department of Commerce redesignated as Department of Commerce and Trade.

(b) Department administered by Secretary of Commerce and Trade, with rank of Ambassador Extraordinary and Plenipotentiary with respect to trade and investment matters.

(c) Two Deputy Secretaries of Commerce and Trade, each with rank of Ambassador.

(d) 11 Assistant Secretaries of Commerce and Trade and a General Counsel.

(e) Inspector General.

(f) Secretary shall prescribe order by which subordinate officers act for, and exercise powers of, the Secretary in case of absence or disability.

SEC. 5. FUNCTIONS

(a) The Secretary shall in addition to carrying out the other functions of the Secretary of Commerce—

(1) exercise leadership in international trade and investment matters;

(2) develop and coordinate trade policies of the United States;

(3) negotiate trade agreements, assert and protect U.S. rights under such agreements, participate in consultations and negotiations regarding other treaties and agreements to extent they affect international trade;

(4) seek fair and equiptable trade relationships;

(5) protect American economy against unfair or injurious competition;

(6) develop trade monitoring systems that encourage timely reaction and adjustment to increased volumes of imports and global competition;

(7) seek and promote new trade and commercial opportunities for U.S. industrial and agricultural products;

(8) assist small businesses in developing export markets;

(9) assist in financing international trade;

(10) develop long-range programs to promote U.S. international economic policy interests;

(11) secure reliable access at competitive prices to foreign supplies of raw materials;

(12) develop and implement policies concerning foreign investment.

(13) mobilize and facilitate participation of U.S. private capital and skills to assist development of friendly developing countries;

(14) administer export controls as provided by Congress;

(15) develop, collect, analyze, disseminate data relating to international trade and investment;

(16) consult and cooperate with other Departments in gathering such data;

(17) advise Attorney General regarding impact of anti-trust policy on international trade and competitiveness of U.S. business; and

(18) consult and cooperate with State and local governments and other interested parties on international trade matters.

(b) In carrying out these functions, Secretary shall consult with heads of other departments and agencies as appropriate.

(c) The Secretary shall jointly study with heads of other departments and agencies as appropriate, how Federal trade and foreign investment policies can most effectively serve national and international economic needs. The Secretary shall include in the annual report required by section 10 a description of such studies and any recommendations for legislation which he considers appropriate.

SEC. 6. TRANSFERS TO THE DEPARTMENT OF COMMERCE AND TRADE

(a) All functions of Office of the United States Trade Representative;

(b) All functions of Foreign Agricultural Service;

(c) All functions of USAID's Trade and Development Program;

(d) U.S. Customs Service;

(e) Export-Import Bank;

(f) OPIC;

(g) Office of International Transportation and Trade of Department of Transportation.

SEC. 7. ESTABLISHMENT OF TRADE POLICY COMMITTEE

(a) Amends the Trade Expansion Act of 1962 to establish in the Executive Office of the President a Trade Policy Committee, consisting of:

The President, who shall be chairman,

the Secretary of Commerce and Trade, who shall be Vice Chairman,

and the Secretaries of Agriculture, Labor, State, and Treasury.

(c) The Committee shall draw upon resources of departments represented, other departments, and ITC.

(d) The Committee shall obtain advice from any appropriate department or agency.

(e)(1) Trade Negotiating Subcommittee shall advise Secretary of Commerce and Trade concerning negotiations.

(2) Trade Negotiating Subcommittee shall be composed of:

Deputy Secretary of Commerce and Trade, who shall be chairman,

officers of Departments of Agriculture, Labor, State, Treasury.

(f)(1) Chairman of the Committee may establish additional subcommittees, review groups, staff committees.

(g) The President shall provide such staff and support to the Committee and its subcommittees as may be necessary to enable them to carry out their functions.

(h) As Vice Chairman, the Secretary of Commerce and Trade shall be the President's chief spokesman on trade.

SEC. 8. ADMINISTRATIVE PROVISIONS

(a) The Secretary is authorized, subject to civil service and classification laws, to select, appoint, employ and fix compensation of subordinates.

(b) The Secretary may delegate his functions as he finds appropriate.

(c) The Secretary may make such rules and regulations as may be necessary or appropriate to administer the Department.

SEC. 9. ANNUAL REPORT

The Secretary shall prepare and transmit a written annual report to the President and Congress on the activities of the Department during the previous fiscal year.

SEC. 10. TRANSFER MATTERS

(a) The personnel, assets, liabilities, etc. of the agencies transferred by this Act are correspondingly transferred to the Department.

(b) The transfer of personnel shall be without reduction in classification or compensation for one year.

(c) Any person transferred to a position with comparable duties shall be compensated at not less than the rate of his previous position.

(d) The Secretary shall have the same authority as was exercised by the head of the department or agency transferred.

(e)(1) The Director of OMB shall make such determinations and such additional incidental dispositions of personnel, assets, liabilities, etc. as may be necessary to carry out the provisions of this Act.

(2) The Director of OMB, in consultation with the Director of OPM, is authorized to transfer positions within the Senior Executive Service in connection with functions, offices, or agencies transferred.

SEC. 11. SAVINGS PROVISIONS

(a)(1-2) All orders, rules, regulations, permits, etc., in effect at the time this Act takes effect, shall continue in effect until modified, terminated, repealed, etc. by the President, the Secretary, a court of competent jurisdiction, or statute.

(b) The provisions of this Act shall not affect any proceedings pending at the time this Act takes effect.

(c)(1-2) The provisions of this Act shall not affect actions commenced prior to the date Act takes effect.

(d) No action or other proceeding commenced by or against any officer for any department or agency transferred by this Act shall abate by reason of its enactment.

(e)(1-2) If any transferred department, agency or office is a party to an action prior to the date of enactment, such action shall be continued with the Secretary of other appropriate official.

(f) The Secretary is subject to the same statutory requirements and procedures of judicial review as the head of the department, agency or office transferred to the Department.

(g) After the date of enactment, references in U.S. law to departments, agencies, or officers transferred shall henceforth refer to the Department.

SEC. 13. EFFECTIVE DATE; INITIAL APPOINTMENT OF OFFICERS

(a) The Act shall take effect 90 days after enactment.

(b) Any officer provided for in this Act may be appointed in the manner prescribed at any time after the date of enactment.

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H.R. 3668 TRADE RELATIONS ASSESSMENT ACT

Outline of Key Provisions

SEC. 2. FINDINGS

U.S. actions to eliminate/reduce foreign barriers to U.S. exports must be based on comprehensive assessments to trade relationships

U.S. Trade Representative's primary negotiating role may be impeded by current duty to also report on unfair trade practices

International Trade Commission (ITC) is capable of independent comprehensive assessments of trade practices

SECS. 3 & 8. ANNUAL TRADE ASSESSMENTS

ITC reports annually by June 1 to President and Congress with assessment of "free trade status" of each GATT member

Assessment includes:

extent of open markets for U.S. trade and investment

extent of fair trade in goods, services and investments

Assessment factors:

tariff barriers

trade actions/policies subject to Title III of 1974 Act

infringement on intellectual property rights

unfair trade practices (e.g. subsidies, dumping, state trade enterprises)

other actions/policies which distort trade

other relevant factors according ITC

SECS. 4 & 8. ANNUAL RANKINGS

As part of annual assessment report, ITC ranks each U.S. trade partner on prior calendar trade practices

Categories:

"A"—substantially reciprocal access for U.S. exports

"B"—is moving toward substantially reciprocal access within a reasonable time

"C"—no substantially reciprocal access and is not moving toward reciprocal access

SEC. 5. EFFECT OF RANKINGS

Sanctions for Category "C" ranking

no U.S. trade preference

no U.S. development assistance

U.S. opposes multilateral development bank loans

Tariff treatment according to ranking:

"A"—most favored nation status
"B"—50% increase in applicable duties
—10% duty on previously "duty free"
"C"—100% increase in applicable duties
—25% duty on previously "duty free"
President may waive sanctions for "national interest"
30 day prior report to Congress
Secretary of State must take ranking into account in conducting U.S. diplomatic relations

SEC. 6. EVALUATION OF U.S. EXPORT PROMOTION PROGRAMS

ITC evaluates export promotion programs in each Category "C" country
Commerce Secretary must take ITC recommendations into account

SEC. 7. PUBLIC COMMENT AND ITC INFORMATION ACCESS

ITC shall obtain public comment on assessments, ranking and export promotion recommendations
ITC has access to all relevant information from all federal agencies

SEC. 9. PRESIDENTIAL REPORT

President reports to Congress in 60 days after ITC annual report specific responses to all recommendations

SEC. 10. DEFINITIONS

SEC. 11. EFFECTIVE DATE

First ITC annual assessment to calendar 1990 trade practices (due June 1, 1991)